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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., November 23, 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:

WARD MARDFIN VICE-CHAIR

KENT HIRANAGA

WARREN SHIBUYA

DONNA DOMINGO

ORLANDO TAGORDA

JACK FREITAS

LORI SABLAS

PENNY WAKIDA

CORPORATION COUNSEL:

JAMES GIROUX

1 MAUI COUNTY PLANNING COMMISSION

2 TRANSCRIPT OF PROCEEDINGS

3 * * *

4 CHAIR STARR: Good morning one and all. Welcome.
5 This is November 23rd, meeting of the Maui Planning
6 Commission. Welcome everyone, and thank you for joining us
7 today. We will soon start on our agenda items, but before
8 we do, we offer the opportunity for members of the public to
9 testify on any agenda item. And before we do that, I want
10 to introduce the commissioners. We have Commissioner Kent
11 Hiranaga, Commissioner Jack Freitas, Commissioner Orlando
12 Tagorda, Commissioner Ward Mardfin. We have our Corporation
13 Counsel lawyer for the Commission, Deputy Corp Counsel James
14 Giroux.

15 I'm Jonathan Starr, Chair of the Commission. We
16 have Kathleen Aoki, the Director for Planning for the County
17 of Maui. We have Commissioner Donna Domingo, Commissioner
18 Warren Shibuya, Commissioner Lori Sablas and Commissioner
19 Penny Wakida. Carolyn Takayama-Corden, who is the secretary
20 for the Commission. Mike Miyamoto, Deputy Director of
21 Public Works is representing the Director, who is an
22 ex officio member of the Commission.

23 Ann Cua, Deputy Director and overseeing most of
24 the current division. The administrator for the current
25 division and a person who keeps our meetings and agendas and

1 everything on track and has been for a long time,
2 Mr. Clayton Yoshida. We have Trisha Kapuaala, who is here
3 with us on the first item.

4 There will be quite a few other planners with us
5 throughout the day as we get to different items. I see Joe
6 Prutch back there. Any other planners? Anyway, we shall
7 proceed with public testimony. Members of the public are
8 welcome and invited to testify on any agenda item that they
9 wish to. They have one of two choices, either before we
10 start with the regular agenda items, which will be now, or
11 before decision-making on any agenda item. The -- I would
12 like to open the floor to public testimony on any item on
13 the agenda.

14 Members of the public, we would request you keep
15 it short and in no case more than three minutes. Anyone
16 would like to testify, please make yourself known. Okay.
17 Not seeing any, initial public testimony portion of the
18 meeting is now closed. I would like to introduce our first
19 item. The Director's Report. I turn to our Director.

20 DIRECTOR AOKI: Thank you, Mr. Chair. First item
21 is the three reports that are handed out to the members
22 EA/EIS Report, SMA Minor Permit Report, and SMA Exemption
23 Report. You were also given a handout from questions that
24 were received prior to today's meeting from Commissioners
25 Wakida and Shibuya. So, those notes were handed out to you,

1 and at this time, we would entertain any questions that the
2 Commissioners have on the reports.

3 CHAIR STARR: Members, anyone have any questions
4 they would like to get answered today? I have one, which is
5 on the SMA exemption list that's Dunbar Wetland Habitat on
6 Molokai. I'm curious about that, would like to have a
7 little bit more information, what actions are being
8 exempted.

9 DIRECTOR AOKI: All right. We can look into that.

10 CHAIR STARR: Okay. Members, anything else?
11 Commissioner Shibuya.

12 COMMISSIONER SHIBUYA: Can anyone explain to me
13 the differences in various ways in which the three-lot
14 subdivisions are getting their water. There's various
15 ordinances and code items here that were explained to me or
16 at least written out. And if somebody can use plain
17 English, I would appreciate that. But if not, then I'll
18 wait for another time.

19 CHAIR STARR: I want to ask you to just be a
20 little more specific on which projects.

21 COMMISSIONER SHIBUYA: There is an involvement of
22 the affordable housing involved in one of them. And the
23 other one would be Ordinance 35.02, and there's another one
24 involved with the -- a code which deals with maximum of six
25 rooms, and by -- supported by five-eighths-inch water meter.

1 And I would just like to see how all of this gets
2 together.

3 CHAIR STARR: Are you asking on like related to a
4 specific project, or in general?

5 COMMISSIONER SHIBUYA: In general.

6 CHAIR STARR: Okay. Okay. That may be something
7 difficult to answer today -- well, it's something that we
8 can put on our list to have a little better day workshop on
9 it.

10 COMMISSIONER SHIBUYA: Like a workshop or
11 discussion on it. That would be fine.

12 CHAIR STARR: So, Ms. Cua.

13 DIRECTOR AOKI: I think what we can do is try to
14 get those questions answered by the Department of Water
15 Supply, because they're obviously the authority. We can
16 invite them for a workshop and see, you know, whether or not
17 they're willing to come. But in the meantime though, we can
18 try to at least get an answer to your questions.

19 COMMISSIONER SHIBUYA: All right.

20 DIRECTOR AOKI: Sure.

21 COMMISSIONER SHIBUYA: Thank you.

22 DIRECTOR AOKI: You're welcome.

23 CHAIR STARR: So, does anyone have anything on the
24 EA/EIS and SMA minor report? No, okay. We can accept the
25 receipt of that information if someone wants to make a

1 motion.

2 COMMISSIONER SHIBUYA: So move to accept.

3 CHAIR STARR: Is there a second?

4 COMMISSIONER WAKIDA: Second.

5 CHAIR STARR: Moved by Commissioner Shibuya.

6 Seconded by Commissioner Wakida. The motion is?

7 DIRECTOR AOKI: To accept the reports as presented
8 and the information that was given to you.

9 CHAIR STARR: And just for discussion, I had a
10 question about one item, but I think that item is on
11 Molokai.

12 DIRECTOR AOKI: That's okay. We can --

13 CHAIR STARR: It's probably why it was confusing,
14 but it probably shouldn't be on our list. Am I correct?
15 Well, we'll find out later.

16 DIRECTOR AOKI: I think it would still be on the
17 list, because it doesn't matter which island it's on, but we
18 could definitely try and give you more information on
19 that -- you're looking at the SM-5?

20 CHAIR STARR: Yeah. So, it's not really in our
21 purview. So, I'm not going to --

22 DIRECTOR AOKI: It's not within your purview,
23 however --

24 CHAIR STARR: Out of curiosity, I would like to
25 know. All in favor of the motion to accept, please raise

1 their hand. All opposed. Okay.

2 DIRECTOR AOKI: Unanimous, Chair.

3 CHAIR STARR: Okay, good. Thank you. Let's move
4 on to our first item, Director.

5 DIRECTOR AOKI: You have before you Communication
6 Item James Takayesu, Attorney representing Micah Buzianis
7 and Charlotte Strong appealing the Planning Director's
8 notice of violation for exceeding the amount of dwellings
9 allowed pursuant to the conditions of approval for a special
10 management area use permit for property located at 111
11 Makahiki Street, TMK: 3-8-002: 113, Spreckelsville, Island
12 of Maui. Application 2010/0003.

13 Trisha Kapuaala is the planner for this item from
14 the Zoning and Enforcement Division. The Commission and the
15 public were notified via the October 26th, 2010 meeting
16 agenda that this appeal had been submitted to the Planning
17 Department pursuant to the Maui Planning Commission Special
18 Management Area Rules and its Rules of Practice and
19 Procedure.

20 The parties in the appeal as of November 10th,
21 2010 are Micah Buzianis and Charlotte Strong, who are the
22 Appellants. Department of Planning is the Appellee. The
23 Commission may act today to select a hearings officer or
24 hearings body. The Commission may act to select a mediator.
25 And if the Commission is determined to be the hearings body,

1 then the Commission may determine the briefing and hearing
2 schedule. I believe Trisha has a Power Point presentation
3 for the Commission. So with that, I'll turn it over to
4 Trisha.

5 MS. KAPUAALA: Thank you. Thank you, Kathleen.
6 Just a brief presentation to go over what your duties are
7 today, your powers, what we're calling the Buzianis Appeal
8 APPL 2010/0003. Again, the parties, the Appellant is
9 Mr. Micah Buzianis and Charlotte Strong, who has remained
10 silent in this contested -- this hearing represented by
11 Mr. James Takayesu. And they are appealing the Department
12 of Planning.

13 This is the time line. On September 22nd, 2009,
14 the Planning Department issued a notice of violation. On
15 October 7th, 2009, the Appellant submitted a notice of
16 appeal to the Planning Director. This is for exceeding the
17 amount of dwellings allowed per a condition of approval
18 pursuant to the SMA major permit for the subdivision. On
19 July 6 and 7, 2010, Judge Boyd Mossman, who was appointed by
20 the Planning Director, conducted a hearing on the NOV.

21 And on August 11th, 2010, Judge Mossman ruled in
22 favor of the Appellant and recommended that the Planning
23 Director withdraw the NOV in its entirety. So again, the
24 NOV was for violating the SMA condition. The fine was the
25 maximum, according to Hawaii Revised Statutes, because it's

1 \$10,000. On September 15th, 2010, the Planning Director
2 issued a letter with a final decision, and this was it.

3 The NOV 2009/0015 shall not be rescinded. That
4 all of the daily fines shall be waived, which was \$1,000 a
5 day, and that the total initial fine of \$10,000 shall be
6 reduced to \$8,000, and it was a nonnegotiable decision.
7 There's the decision. So, the Appellant appealed that
8 decision. And pursuant to the Planning Commission Rules,
9 you are final -- you shall conduct a contested case. So
10 today, you can choose a mediator, which is required by the
11 Planning Commission Rules.

12 You can also waive the requirement to mediate,
13 which the Department will be recommending. Choose to select
14 a hearings officer or hearings body, which can be yourself.
15 And the Department will recommend that you appoint yourself
16 to be the hearings body. If that is the case, then today we
17 wish to conduct a prehearing conference and set the
18 contested case hearing for sometime in January or February
19 of 2011.

20 So, this is your Planning Commission Rules,
21 Section 12-201-68. All parties in a contested case shall
22 participate in good faith in one mediation conference.
23 However, it goes on to say that upon motion by a party, the
24 Commission may waive the mandatory mediation for good cause
25 shown by the Movant. So again, the Department will

1 recommend that we waive the requirement to mediate today and
2 that we choose a hearings officer, that the Commission
3 appoints itself as the hearings officer.

4 In all contested case proceedings, a hearings
5 officer shall be appointed. If more than one person is
6 appointed, a presiding officer shall be selected. And
7 according to the definitions in your rules, it says a
8 hearings officer may be any person or persons, including the
9 entire Commission, designated and authorized by the
10 Commission to conduct a contested hearing to take testimony
11 to submit proposed findings of fact and conclusions of law
12 with recommendations to the Commission on matters that are
13 within the jurisdiction of the Commission.

14 These are the hearings officer powers according to
15 your rules. So, our recommendation today, recapping, to
16 waive the mediation requirement, appoint yourself as the
17 hearings body, and conduct the prehearing conference today,
18 set the contested case hearing date and prehearing document
19 submittals. And that is all. Mahalo.

20 CHAIR STARR: Thank you, Ms. Kapuaala.

21 MS. KAPUAALA: Also, we have Deputy Corporation
22 Counsel Mary Blaine Johnston here representing the Planning
23 Director as well as Jim Takayesu representing the Appellant.

24 CHAIR STARR: Thank you very much, Ms. Kapuaala.
25 Before we proceed, Mr. Takayesu, are you speaking on behalf

1 of the Appellant?

2 MR. TAKAYESU: That's correct. I'll enter my
3 appearance. James Takayesu appearing on behalf of the
4 Appellant, Micah Buzianis, who is also present.

5 CHAIR STARR: And Ms. Johnston.

6 MS. JOHNSTON: Yes.

7 CHAIR STARR: Are you appearing and speaking on
8 behalf of the --

9 MS. JOHNSTON: Yes, Deputy Corporation Counsel
10 Mary Blaine Johnston appearing on behalf of the Director of
11 the Department of Planning.

12 CHAIR STARR: Okay. As we proceed, I want to
13 first give the Appellant a brief opportunity. I want to
14 ask -- in fact, I would like to command that you not speak
15 to the merits of the case, but merely in terms of your
16 comments on how we will proceed. And how long will you
17 require approximately, Mr. Takayesu?

18 MR. TAKAYESU: Just a couple minutes.

19 CHAIR STARR: Okay. So, under five minutes.

20 MR. TAKAYESU: The parties have discussed
21 mediation. We agree with the recommendation of the
22 Department that we should waive that. We're willing to
23 stipulate to that. In terms of a selection of a hearing
24 officer, I would prefer to have a hearing officer appointed,
25 specifically an attorney who is familiar with land use law,

1 because these proceedings are going to require a resolution
2 of different questions of law. And I believe the
3 Department's position is they would prefer that the
4 Commission act as a hearing officer, since I guess because
5 they already spent money on Judge Mossman to act as the
6 Director's designee.

7 And the hearing went for what, about a day or so.

8 MS. JOHNSTON: Two days.

9 MR. TAKAYESU: Two days.

10 CHAIR STARR: Thank you, Mr. Takayesu.

11 Ms. Johnston.

12 MS. JOHNSTON: Yes. The Department spent -- the
13 bill from Judge Mossman was \$5,408 for the two days that he
14 spent. The Department believes that the Commission is the
15 appropriate body to hear this. Because if a hearings
16 officer is appointed, comes up with a decision, more than
17 likely, it will still come back to the Planning Commission
18 by one of the parties.

19 Further, the Department believes that this body
20 has had before it already the same subdivision, the Kai Holu
21 Subdivision, which was issued a permit in 1995. And
22 Condition 23 of that permit is there can only be one farm
23 dwelling on this property.

24 CHAIR STARR: Ms. Johnston, I'm going to ask you
25 to stay out of the merits of the case.

1 MS. JOHNSTON: I'm not going to talk about the
2 merits of the case.

3 CHAIR STARR: Thank you.

4 MS. JOHNSTON: You've already had in April of 2008
5 a request made by the subdivision to amend the permit to
6 allow for two dwellings.

7 MR. TAKAYESU: Again, I'm going to object. She's
8 still getting into --

9 MS. JOHNSTON: I'm not. I'm trying to say you're
10 already familiar with the case.

11 MR. TAKAYESU: You're not familiar with the facts
12 of this investigation other than what you read in this.

13 CHAIR STARR: Mr. Takayesu, we've heard your
14 objection. It's noted. Thank you. Ms. Johnston, please.

15 MS. JOHNSTON: I haven't said anything about the
16 facts of this case. You did have the subdivision come in
17 for amendment. This Commission turned it down. You had --
18 at your last meeting, you had another homeowner from there
19 coming in requesting B&B permit. So, same subdivision.

20 MR. TAKAYESU: Objection.

21 MS. JOHNSTON: No, I'm just saying this is before
22 -- already this subdivision presented to this Commission.

23 CHAIR STARR: Quiet, please. Mr. Buzianis, you'll
24 be -- you're out of order. Okay. Thank you. Mr. Takayesu,
25 your objection is noted. Ms. Johnston, you're commanded to

1 stay away from the facts and merits and the history of the
2 case. We're talking today about the process by which we
3 will proceed, and that only.

4 MS. JOHNSTON: Okay. The process is that he's
5 said that he has requested a hearings officer or somebody
6 familiar with the law. This Commission certainly is, and
7 specifically, with this particular subdivision. For those
8 reasons, the Department asks that we agree with the waiver
9 of the mediation, that the Commission appoint itself the
10 hearings officer and set this for late January, early
11 February.

12 Under the rules, we can do discovery, but we
13 actually did a lot of de facto discovery during the hearing
14 that's already been held. So at this point, we could
15 probably proceed very quickly and address this recurring
16 issue that this case presents.

17 CHAIR STARR: Okay. Thank you, Ms. Johnston.

18 Mr. Takayesu, you have a couple of minutes to make
19 a quick --

20 MR. TAKAYESU: My concern is because the
21 Commission only meets on certain days, we want a contested
22 case hearing. If it takes two days, I prefer not to have it
23 not conclude on one day, and then we have to wait to try to
24 schedule it to those two days. Whereas, with a hearing
25 officer, we can go ahead and resolve the evidentiary portion

1 of the appeal. And that's what happened when we had Judge
2 Mossman. We thought we could do it in a certain time. It
3 spilled over. He made a change in his schedule. We were
4 able to continue the evidentiary hearing, and that's my
5 concern.

6 And also, there are a lot of questions of law.
7 So, I think it would assist the Commission by having an
8 attorney who is familiar with land use laws to try to
9 summarize everything after they hear the evidence and then
10 present it to this body.

11 CHAIR STARR: Thank you, Mr. Takayesu.

12 Ms. Johnston, you'll have one minute to finish up.

13 MS. JOHNSTON: The timing problems can be pretty
14 easily dealt with by this Commission setting time limits for
15 the presentation of the parties' cases and enforcing those
16 time limits, so it can be finished in one day.

17 CHAIR STARR: Okay. Mr. Takayesu, you've had two
18 opportunities.

19 MR. TAKAYESU: I think we have a right to a
20 hearing, and to limit our time could be unfair. Again, I
21 believe that the more efficient way to do it is to have the
22 hearing officer.

23 CHAIR STARR: Okay. Thank you, Mr. Takayesu.
24 You've made your case. Before we proceed, I would just like
25 to get clarity for the Commission Members. Ms. Johnston is

1 counsel for the Department in this case. Mr. Takayesu is
2 counsel representing the Appellant, Mr. Buzianis.

3 Ms. Kapuaala is a planner working for the
4 Department for Zoning, but my understanding is her role is
5 that of trying to maintain a fair process. And Mr. Giroux
6 is our attorney, who is not on the side of the Appellee.
7 He's not working with Ms. Johnston. He's there to represent
8 us and to answer our questions in a fair manner for the
9 benefit of the Commission.

10 So, I do want to make that clear. The Director is
11 here helping staff the meeting, but when we do get into any
12 discussion or any process regarding the merits, I'll ask her
13 to step down. And I don't see a problem, because right now,
14 we're just deciding the process and not dealing with the
15 merits. And we're going to stay away from the merits or
16 questions about the merits of the case. But we're here to
17 set a process by which we will proceed.

18 At this point, I want to allow Commissioners to
19 ask questions, and they can ask questions to Ms. Kapuaala.
20 They can ask questions to either of the two counsels, who
21 are representing the two sides in the issue. And I want to
22 maintain the separation. We're not asking questions trying
23 to understand the merits of the case at this point, but
24 really just proceeding with the process.

25 Commissioner Mardfin, I believe you had a

1 question.

2 COMMISSIONER MARDFIN: First, I want to make one
3 comment. It seems to me we had that hubbub a little bit
4 about our involvement in previous cases. How we decided
5 previous cases in my mind is immaterial. And the primary
6 outtake of that is that in general, we have some familiarity
7 with the area.

8 And I think that's a fair way to put without
9 specifying how we voted in the past. I have a question that
10 it seems to me that Mr. Takayesu's main argument, one of the
11 main arguments at least, is that we lack the judicial
12 training to understand the points of law. And I would like
13 to ask our counsel, James Giroux, if he's at all familiar
14 with what the issues are and whether -- he knows this very
15 well -- whether in his opinion we do have the capability to
16 understand the legal issues.

17 MR. GIROUX: First question is am I familiar with
18 the -- I'm not completely familiar with the merits of the
19 case; however, I do understand that it's -- it's a notice of
20 violation dealing with an SMA issue. I know that this Board
21 is familiar with 205-A, and it's also dealt with a lot of
22 issues dealing with applicants who have come in for
23 after-the-fact permits, have had possible violations on
24 their properties and have dealt with issues of fact and of
25 law dealing with the area of the special management area

1 law.

2 That being said, there's the question of is there
3 other law that would be thrown at you. I cannot -- I cannot
4 say that you will or will not be able to deal with those
5 areas of law outside of environmental law, administrative
6 law. You know, and it's very hard to say, you know, what
7 types of issues would come up outside of the issue of 205-A
8 and of the issue of -- the issue of violations of that
9 chapter.

10 Your second question was?

11 COMMISSIONER MARDFIN: Well, it was sort of, in
12 your opinion, do we collectively have the ability to learn
13 on the fly fast enough to deal with legal issues?

14 MR. GIROUX: Now, you're putting me on -- now
15 you're putting me over a barrel. I think collectively
16 you're going to have to discuss that amongst yourselves,
17 because, you know, I think this Board has shown a lot of --
18 a lot of ability to learn on the fly. I mean this Board has
19 dealt with an incredible amount of different types of land
20 use and environmental issues, that you have shown me that
21 you have grasped a very high level of the law to the point
22 where, you know, you almost render me useless sometimes,
23 because you guys are always quoting the cases now that I
24 used to always get to quote.

25 But there's always something to learn. And I

1 think -- you know, I mean depending on how you proceed, I
2 will be available always to ask questions, you know, to
3 answer questions in that area. So, as far as I'm concerned,
4 it doesn't raise a concern about, you know, that. I
5 wouldn't cringe if you guys decided to take it on as a body.
6 So, if that's what you're asking, I think that's the best I
7 can answer at this time.

8 COMMISSIONER MARDFIN: It is. Thank you very
9 much. I just wanted to make sure it wasn't beyond our
10 ability to deal with it. It sounds like it's not.

11 CHAIR STARR: Members, any other questions? Okay.
12 Right now, it is time for members to ask questions.

13 Mr. Takayesu, please sit down. I will give you
14 another opportunity. Commissioner Wakida. Oh, sorry.

15 COMMISSIONER TAGORDA: Mr. Chair.

16 CHAIR STARR: Commissioner Tagorda.

17 COMMISSIONER TAGORDA: I have a question. I heard
18 someone, if this body is going to take this case as a
19 hearing body, that they are concerned about the time line.
20 It will take us days or more to tackle the problem. You
21 think this case -- this is addressed to both counsel -- we
22 have more information coming in case we take this hearing
23 from you folks, or just the information that we had?

24 CHAIR STARR: Ms. Kapuaala, I'm going to ask you
25 to answer the question.

1 MS. KAPUAALA: When Judge Mossman conducted the
2 hearing at the Corporation Counsel's conference room, we
3 transcribed all of those minutes. There were prehearing
4 documents, exhibits, pleadings submitted. There's a final
5 report by Judge Mossman. We were going to -- if you
6 determine yourselves, if you appoint yourselves as the
7 hearings body, we are going to give those documents to you.
8 There was a hearing conducted. The evidence was put on
9 trial, so to speak.

10 So, the Department is in a strong position that
11 you can take those documents and move forward, hopefully not
12 recreating another hearing.

13 COMMISSIONER TAGORDA: Because what came to my
14 mind, it worries me that if this body is going to take this
15 case, like Mr. Takayesu said, it will take days or more.
16 And if we appoint a hearing officer, probably another two
17 days, which is another \$5,400 from the County's coffer. And
18 that -- I would like to really prevent that to happen.

19 So, if this body can take that, I think we can, I
20 think we are very capable of judging based on the merits of
21 the case, and if we can only guarantee a speedy trial here
22 hearing the case, I think we should take it, in my opinion.

23 MS. KAPUAALA: I might add also in the past when
24 you've been the hearings body, we have begun the contested
25 case after lunch. If we can start at 9:00, and it be the

1 only matter on the table, I think we can be very productive
2 and accomplish a lot in one of your regularly scheduled
3 days.

4 COMMISSIONER TAGORDA: Thanks.

5 CHAIR STARR: I have a question of Mr. Giroux.
6 This matter pertains to 205-A; is that correct?

7 MR. GIROUX: I believe so. It's stemming from
8 alleged violation of a condition coming out of a special
9 management area use permit.

10 CHAIR STARR: So, it's about the special
11 management area. Who is the authority, the final authority
12 on the 205-A and the implementation of the SMA on Maui?

13 MR. GIROUX: And that would be, according to Maui
14 County Charter, the Maui Planning Commission or the
15 commissions in the various region.

16 CHAIR STARR: So, it is this body that is the
17 authority and does have the final say and hopefully the
18 knowledge of it?

19 MR. GIROUX: That is correct.

20 CHAIR STARR: Thank you.

21 MS. KAPUAALA: Mr. Chair.

22 CHAIR STARR: Yes.

23 MS. KAPUAALA: If a hearing officer outside of
24 this body is appointed, a hearing will transpire again. And
25 all of those documents will be forwarded to you, and you

1 will be the final authority. You would still have to make a
2 decision.

3 CHAIR STARR: So, for clarity, even if we appoint
4 someone else as a hearings officer, they will only make a
5 recommendation?

6 MS. KAPUAALA: Yes, sir.

7 CHAIR STARR: That will come back to us for
8 decision-making based on their recommendation after hearing
9 the parties' presentation. Okay. I did say I would give
10 Mr. Takayesu another short opportunity. Mr. Takayesu and
11 then Ms. Johnston.

12 MR. TAKAYESU: In terms of questions of law,
13 because Mr. Giroux is assigned to be the legal advisor, when
14 we submit legal memoranda, whether there's a hearing officer
15 or to the Commission, then I assume the attorney would take
16 a look at it, review the cases to see and then advise you as
17 to what he believes the law is?

18 When you're dealing with the questions of law,
19 it's not like the majority rule. It's of right or wrong.
20 Now in terms of the timing, we had a BVA hearing. We didn't
21 finish. So, they called a special meeting, so we didn't
22 have to wait months. And they came back, and within a few
23 days, we completed the hearing.

24 And I was just concerned that you have a hearing,
25 and then in the meantime, all these things are put on the

1 agendas. So, then if you can't finish, then the -- they
2 jump you months ahead, you know, ahead; whereas, I know the
3 BVA, what they did, and we both appreciated it, they said,
4 okay, we'll have a special hearing. It's only -- I think it
5 was only a half a day to finish, and we completed it.

6 And it worked very good. But that's out of the
7 ordinary. Because we know you're volunteering your time,
8 and sometimes it's hard to do. But if we proceed with the
9 Planning Commission being a -- hearing the contested case,
10 then if it comes to that, we would -- I will probably make
11 that request. Again, it's hard to estimate a time how long
12 it's going to take, whether it's one day, three-quarters of
13 a day, a day and a quarter. It's just hard.

14 CHAIR STARR: Okay. Thank you, Mr. Takayesu. If
15 it does come to it, we will have discussions about what the
16 Rules of Evidence and all that are. Ms. Johnston, and then
17 back to the commissioners.

18 MS. JOHNSTON: I just want to speak to the issue
19 of this body's ability to make a decision about this alleged
20 violation. What you're actually looking at is determining
21 whether the permit that was issued by this body has been
22 violated by the actions of this Appellant. So, you're
23 interpreting the document you've already produced as to
24 whether it's been adhered to.

25 CHAIR STARR: First Commissioner Freitas and

1 Commissioner Shibuya.

2 COMMISSIONER FREITAS: Yes, answer to
3 Mr. Takayesu's question, I believe this body can get it done
4 in one day. We have done it in the past. But if that's his
5 concern, I think the members would agree that we could come
6 back the next day if it's unfinished, and that would address
7 Mr. Takayesu's concerns.

8 CHAIR STARR: I'm convinced the scheduling would
9 not be a problem. Commissioner Shibuya.

10 COMMISSIONER SHIBUYA: Yeah, I was just going to
11 make a commitment, and because I'm retired and there's
12 several of us that are sort of retired. I'm just more
13 concerned in terms of those that have employment and that
14 would they be able to come back the following week on the
15 same Tuesday.

16 COMMISSIONER FREITAS: The following day.

17 COMMISSIONER SHIBUYA: Or the following day.

18 CHAIR STARR: I'm sure we can find a way to
19 schedule it and Mr. Yoshida is here if it comes to that
20 step. I'm going to allow Chair's prerogative, and although
21 this is not an item that we take public testimony on
22 specifically, I will allow members of the public, if they
23 wish, to make a short comment just about procedure. And I
24 will cut anyone short if they try to speak to the merits of
25 the case.

1 But if anyone in the public wishes to give any
2 comment regarding just the process and the process only, I
3 would allow that. Not seeing any, that ship has sailed.
4 Commissioner Mardfin.

5 COMMISSIONER MARDFIN: If it's proper for a
6 motion.

7 CHAIR STARR: Yes.

8 COMMISSIONER MARDFIN: I want to separate the
9 various issues. And so, my first motion will be to waive
10 mediation of this, since both parties have agreed to it.

11 CHAIR STARR: Is there a second?

12 COMMISSIONER SHIBUYA: Second.

13 CHAIR STARR: So, we have a motion by Commissioner
14 Mardfin, and seconded by Commissioner Shibuya. The motion
15 is?

16 DIRECTOR AOKI: The motion, Chair, is to waive
17 mediation for this case.

18 CHAIR STARR: Okay. Any discussion? Okay. All
19 in favor of the motion, which is to waive mediation, please
20 raise their hand. All opposed. Thank you. The motion --

21 DIRECTOR AOKI: The motion carries unanimously.

22 CHAIR STARR: Okay. Any additional motions?
23 Commissioner Mardfin.

24 COMMISSIONER MARDFIN: I move that we select a
25 hearings officer and that that officer be this body.

1 COMMISSIONER TAGORDA: I second.

2 CHAIR STARR: So moved by Commissioner Mardfin.
3 Seconded by Commissioner Tagorda. The motion is?

4 DIRECTOR AOKI: That the Commission select the
5 hearings officer and that that officer be this body.

6 CHAIR STARR: Okay. Any discussion, amendments?
7 All in favor, please raise their hand. All opposed.

8 DIRECTOR AOKI: The motion is unanimously
9 approved.

10 CHAIR STARR: I want to ask Mr. Yoshida to come
11 forward to the podium to help us get a grasp as far as
12 scheduling. Yeah, Director, please.

13 DIRECTOR AOKI: Thank you. This is what I would
14 recommend, since we really don't know how long this would
15 take, is to try to schedule at least two days for this, so
16 that it's blocked off on the calendar just to secure it.
17 That's just my recommendation.

18 CHAIR STARR: I think that it would be good to
19 have ample spare time in hand. Mr. Yoshida, how can we make
20 this work?

21 MR. YOSHIDA: I guess I heard earlier arguments
22 from the parties that they would like the contested case
23 hearing or one of the parties scheduled for late January or
24 early February. Your regular meeting dates in January are
25 the late January. The second meeting would be on the 25th,

1 and the first meeting in February would be on February 8th.

2 CHAIR STARR: Mr. Yoshida, would it be possible to
3 take January 25th and have that an all day, an all day
4 meeting on this one -- this one item?

5 MR. YOSHIDA: We have not committed yet for public
6 hearing items. You know, we do that 45 days in advance.
7 But that deadline is coming up soon. If it is the
8 preference of the Commission to reserve the 25th to conduct
9 the contested case hearing on this matter, you know, we can
10 do so.

11 CHAIR STARR: My own thinking is that if we have
12 all of the 25th available to us and we also put aside say
13 half of the -- of February 8th if we need it, and if we
14 finish on the 25th, then, you know, we could have a workshop
15 or something or we could fill in a workshop on February 8th
16 with that time. That way we could still have several public
17 hearing items on part of February 8th and have half of the
18 day put aside if we need this. Mr. Yoshida, would that work
19 calendarwise?

20 MR. YOSHIDA: Well, we do have one matter, public
21 project where the applicant is anxious to schedule because
22 they also need a conservation district use permit, which is
23 the State DOT Shoreline Protection, Honoapiilani Highway
24 Shoreline Protection Project at Olowalu.

25 CHAIR STARR: So, perhaps we could do that in the

1 morning, because the State likes to be early in the agenda
2 when they come over. And then after lunch, we would
3 continue this item if we need the time?

4 MR. YOSHIDA: Yes. We also have a request from
5 the State Department of Land and Natural Resources to
6 conduct a workshop with the Commissions on the new flood
7 maps based on flooding due to hurricanes. They would like
8 to be here that week of February 7th to conduct these public
9 workshops in Maui County.

10 CHAIR STARR: Any idea how long that workshop will
11 run?

12 MR. YOSHIDA: I'm not sure. We would have to
13 check with our zoning staff.

14 CHAIR STARR: Would it be aggressive to try to
15 have that workshop and the Olowalu highways hardening on the
16 morning of February 8th?

17 MR. YOSHIDA: We can try to have the two in the
18 morning.

19 CHAIR STARR: You know, I hate to have State, a
20 room full of State people come over and then have to tell
21 them to come back though. Commissioner Shibuya.

22 COMMISSIONER SHIBUYA: I'm -- although I'm
23 retired, the 25th does not sound too good to me. The reason
24 for it is because I will be skiing, and I've already paid
25 for my airline tickets, lodging and a car. And so, I'll be

1 there coming back on the 25th. If you could move that
2 probably to the 8th, I would appreciate that, and put the
3 State activities on the 25th.

4 CHAIR STARR: Mr. Yoshida.

5 MR. YOSHIDA: Well, I guess we would have to
6 coordinate with DLNR, and I guess they would have a
7 representative from FEMA, since it's their maps. I think we
8 are targeting to make these public presentations in Maui
9 County the week of February 6th.

10 CHAIR STARR: Would it be possible to set aside
11 another day somewhere between the -- it sounds like February
12 8th is -- is locked up with the State at least half of the
13 day. It would probably be better if we could dedicate that
14 whole day to shoreline issues, you know, and make that an
15 all day program.

16 Is there another day in January that we can --
17 that we can utilize on an as-needed basis to continue?

18 COMMISSIONER SHIBUYA: February 1st.

19 CHAIR STARR: Yeah, say February 1st. Is the room
20 open?

21 MR. YOSHIDA: Well, the first Tuesday of February
22 is typically the meeting of the Urban Design Review Board,
23 which they haven't been as active due to the economic
24 downturn. I think, well, we probably would have to check
25 who else is using the room on that date.

1 CHAIR STARR: How about we take a short recess,
2 and maybe you can make a call. We're going to take a
3 ten-minute recess.

4 (Recess taken 9:53 a.m. to 10:03 a.m.)

5 CHAIR STARR: Okay. We'll come back to order.
6 It's the November 23rd, 2010, meeting of the Maui Planning
7 Commission. Mr. Yoshida, you have a recommended pair of
8 dates for us?

9 MR. YOSHIDA: Yes. Thank you, Mr. Chairman.
10 Provided assuming that we would start the contested case on
11 the 25th, January 25th, this room would be available on
12 Wednesday, the 26th; Monday, the 31st of January; February
13 2nd, which is a Wednesday, or February 4th, a Friday. Or if
14 we need to bump the Urban Design Review Board, then February
15 1st, on Tuesday.

16 CHAIR STARR: Chair's recommendation would be that
17 we proceed on January 25th, and we keep January 26th
18 available if we need more time. If anyone likes that,
19 perhaps a motion to that effect would be in order or other
20 discussion. Commissioner Mardfin.

21 COMMISSIONER MARDFIN: I move that we follow the
22 recommendations of the Chair that we use January 25th, and
23 if necessary, January 26th.

24 CHAIR STARR: Do we have a second?

25 COMMISSIONER TAGORDA: I second.

1 CHAIR STARR: Moved by Commissioner Mardfin.

2 Seconded by Commissioner Tagorda. The motion is?

3 DIRECTOR AOKI: The motion is to have the hearing
4 held on your regular meeting of January 25th, and to have
5 available the 26th if necessary.

6 CHAIR STARR: Okay. Any discussion? All in
7 favor, please raise their hand. All opposed. Okay. Thank
8 you.

9 DIRECTOR AOKI: The motion is unanimous.

10 CHAIR STARR: So, January 25th and possibly
11 continues on the 26th.

12 Ms. Kapuaala, what other issues do we need to
13 decide on? I assume we'll need to have a conference to set
14 Rules of Evidence and so on.

15 MS. KAPUAALA: Yes. If it's okay, we would like
16 to conference to be conducted now. The Department would
17 only request that all prehearing documents be submitted two
18 weeks prior to the hearing date of January 25th and that it
19 be distributed.

20 CHAIR STARR: I know last time we did this, you
21 had a list of the items that we needed to set at the
22 conference. Could you give them to the body?

23 MS. KAPUAALA: Typically, during a contested case,
24 the parties would submit an exhibit list, a witness list.

25 CHAIR STARR: Wait, slow down.

1 MS. KAPUAALA: The Department requests that the
2 county uses exhibits alphabetical, A, B, C, and the
3 Appellant do numerical, 1, 2, 3.

4 CHAIR STARR: So, exhibit list, County is
5 numerical.

6 COMMISSIONER SHIBUYA: Appellant.

7 CHAIR STARR: Why is the County alphabetical? And
8 the Appellant is numerical, okay. And what else other than
9 the exhibits? Do the witness lists have to be numerical and
10 alphabetical also? So, all lists would be, okay. What
11 else?

12 MS. KAPUAALA: The parties have indicated they
13 wish to do prehearing memos.

14 CHAIR STARR: Okay. Prehearing memos. What other
15 items?

16 MS. KAPUAALA: And if we could set the ground
17 rules today as far as time lengths for opening and closing
18 arguments.

19 CHAIR STARR: Ground rules pertaining to timing,
20 okay.

21 MS. KAPUAALA: I'll let you --

22 MR. GIROUX: Can I just interject? Is there any
23 discussion about discovery, and have we reached the
24 discovery cutoff? Or would you like to see this as a
25 discovery cutoff date also?

1 MS. KAPUAALA: I'll defer to the attorneys.

2 CHAIR STARR: So, let's put that on our list for
3 discussion.

4 COMMISSIONER MARDFIN: Mr. Chair.

5 CHAIR STARR: Yeah, Commissioner Mardfin.

6 COMMISSIONER MARDFIN: The staffer for the
7 Department said it should be before this date. I think we
8 should set a specific date when it's due, and it should be
9 enough so that documents can be duplicated and forwarded to
10 us so we'll have time to read it.

11 CHAIR STARR: I'm just trying to get a list of the
12 items that we need to discuss regarding this. Ms. Kapuaala,
13 what other items?

14 MS. KAPUAALA: That will be it. Well, you can
15 discuss your discovery.

16 CHAIR STARR: Okay. Mr. Takayesu, are there any
17 other items that we should set agreement upon?

18 MR. TAKAYESU: Our discovery deadline request I
19 guess.

20 CHAIR STARR: Yeah, discovery request or
21 deadlines. What else? Ms. Johnston, do you have anything
22 to add to the list we've been discussing?

23 MS. JOHNSTON: No, just the discovery cutoff date.

24 CHAIR STARR: So, we have exhibit -- we have
25 exhibit list, witness list, prehearing memos, ground rules

1 regarding timing and order, discovery deadline and also the
2 numbering of exhibits.

3 Just to check on one thing, Mr. Giroux, we are
4 under the purview of our agenda by having this today, are we
5 not?

6 MR. GIROUX: Yes, this is under your adjudicatory
7 duties, so anything dealing with scheduling, you can
8 discuss.

9 CHAIR STARR: Okay. So, going down the list, I'll
10 start with all -- all listing and items, as I understand it,
11 the County will be labeling alphanumeric. The Appellant
12 will be labeling in a numerical fashion. Mr. Takayesu?

13 MR. TAKAYESU: That is correct.

14 CHAIR STARR: Ms. Johnston?

15 MS. JOHNSTON: That is correct.

16 CHAIR STARR: Okay. As far as exhibit lists,
17 Ms. Kapuaala, what else?

18 MS. KAPUAALA: Exhibit lists, witness lists.

19 CHAIR STARR: Okay. The exhibit lists, we're
20 looking for a date that will be presented and any other --

21 MS. KAPUAALA: January 11th by fall of business,
22 which is 4:30. One original plus 15 copies.

23 CHAIR STARR: What?

24 MS. KAPUAALA: One original plus 15 copies.

25 Mr. Takayesu, we're discussing that exhibit list

1 be completed January 11th with one original and 15 copies.

2 Is that acceptable?

3 MR. TAKAYESU: Yes, it is.

4 CHAIR STARR: Ms. Johnston?

5 MS. JOHNSTON: Does that include --

6 CHAIR STARR: I'm going to -- I think the exhibits
7 should also accompany the exhibit list, so the Commission
8 will have the actual exhibits in hand to review.

9 MS. KAPUAALA: Yes, thank you. Thank you for that
10 clarification.

11 MR. TAKAYESU: Yeah, that's -- that will be a good
12 process for the parties and the commissioners.

13 CHAIR STARR: So, the exhibit list plus the
14 exhibits, the actual exhibits. Okay. Witness list. Would
15 that be at the same date?

16 MS. KAPUAALA: Yes.

17 CHAIR STARR: Mr. Takayesu, you can nod if that's
18 okay.

19 MR. TAKAYESU: Yes, the same date.

20 CHAIR STARR: And --

21 MS. JOHNSTON: That's fine, yeah.

22 CHAIR STARR: So, we have exhibit, witness lists.
23 Now, prehearing memos. So, prehearing memos, we have two
24 items. One is, first of all, the date. Is that acceptable
25 to utilize that same date, January 11th, for prehearing

1 memos?

2 MR. TAKAYESU: Yes.

3 MS. JOHNSTON: Yes, that would be fine.

4 CHAIR STARR: Thank you. Now, I would also like
5 to set a page limit on those prehearing memos.

6 Mr. Takayesu, would you like to offer a number as
7 a starting point for discussion, a maximum page limit?
8 Obviously, it's not a minimum.

9 MR. TAKAYESU: Yeah, make it 15 with attachments.
10 I think we're looking at it as more like optional. If
11 either party would like to, then they can submit it within
12 that deadline, but not necessarily we'll be submitting
13 anything.

14 CHAIR STARR: Okay. If you do, how about maximum
15 of 15 pages for the memo and a maximum of 15 additional
16 pages for exhibits, so 15 plus 15? And those will be due on
17 January 11th, one original, 15 copies. Now, as far as the
18 timing goes, and if my memory serves me well, the Appellant
19 will open. It will go back to the Appellee, then back to
20 the Appellant. And is that -- is that how you see it,
21 Ms. Johnston?

22 MS. JOHNSTON: Yes, that's normally the way the
23 case is presented.

24 CHAIR STARR: The Appellant gets the last word, am
25 I correct?

1 MS. JOHNSTON: Yes.

2 CHAIR STARR: So, now, the -- on the openings, how
3 long, Mr. Takayesu, do you foresee you would want for your
4 opening max?

5 MR. TAKAYESU: Five to ten minutes opening.

6 CHAIR STARR: So, ten minutes. And Ms. Johnston?

7 MS. JOHNSTON: Ten minutes is fine.

8 CHAIR STARR: So, we have ten and ten for the
9 openings. And now, Mr. Takayesu, how long would you want
10 for your closing?

11 MR. TAKAYESU: Ten to 15, but normally ten I
12 think.

13 CHAIR STARR: So ten, ten and ten. Ms. Johnston.

14 MS. JOHNSTON: I would prefer 15 minutes for
15 opening, I mean for the closing, the two parties, and maybe
16 another final five minutes if he wants to do rebuttal. That
17 gives him 20 minutes. That gives the County 15 minutes.

18 CHAIR STARR: I'm a little bit confused here. So,
19 in other words, what you're suggesting is that each party
20 will have 15 minutes to allocate as they choose?

21 MS. JOHNSTON: Correct.

22 CHAIR STARR: Mr. Takayesu, is that okay, or do
23 you want 20?

24 MR. TAKAYESU: That's okay.

25 CHAIR STARR: So, you'll each have 15 minutes, and

1 you can allocate it as you choose. Now, are there any other
2 deadlines that we need to discuss, any other cutoff dates?
3 Not seeing any, so that deals with our basic deadlines.

4 Now, Mr. Takayesu, why don't you both stay up by
5 the mic or sit down together and share that wireless mic or
6 something. Just use the microphone. Mr. Takayesu, are you
7 going to be sending out any subpoenas?

8 MR. TAKAYESU: I probably will. I'm not sure at
9 this point. Last time we just had agreements to have the
10 witnesses there because they basically were -- hello.

11 CHAIR STARR: Step up to the mic.

12 MR. TAKAYESU: During the Director's hearing, we
13 basically agreed to a list of people, and I was never
14 required to issue subpoenas for the County employees. And
15 the other people just -- I just gave them a call, and they
16 didn't need a subpoena.

17 CHAIR STARR: You might issue subpoenas?

18 MR. TAKAYESU: I might issue subpoenas.

19 CHAIR STARR: And do we need a deadline for that?
20 If you do issue a subpoena, I want to have a deadline for it
21 because I'll have to sign them as presiding officer. I want
22 to be sure that we don't mess up. So, give me a date that
23 would work for you.

24 MR. TAKAYESU: The 11th or earlier?

25 MS. KAPUAALA: The Department would suggest that

1 the discovery cutoff date, the December 28th, Tuesday
2 December 28th. So, maybe we could make the subpoena
3 deadline date the same date.

4 CHAIR STARR: So, December 28th would be subpoena
5 for individuals. Would that also work for a subpoena for
6 documents if you decide to subpoena any documents?

7 MR. TAKAYESU: Yeah, I think it would be good to
8 have -- if you get too many dates, it gets confusing. So,
9 it's nice to have, if there's going to be a subpoena duces
10 tecum, it should also be on that same date.

11 CHAIR STARR: And Ms. Kapuaala is recommending
12 that that's December 28th be discovery cutoff date as well.

13 MS. KAPUAALA: Two weeks prior to January 11th.

14 CHAIR STARR: The only problem is that if that's
15 the deadline for subpoena for documents, there wouldn't be
16 time for those to be fulfilled, since that's the same as the
17 cutoff date. I mean can we depend that you'll work that out
18 so that the December 28th date will work?

19 MS. JOHNSTON: Okay. I think you're talking about
20 subpoenas for people to come or for documents to be
21 presented. But there may be some discovery that needs to be
22 done ahead of that, like witnesses, a deposition needs to be
23 taken. Hopefully, we can keep that to a minimum. So, I
24 think we're looking at two different subpoena dates, and as
25 the Chair, you've got to assign them. So, I know there's a

1 time limit for those, too.

2 CHAIR STARR: Give me two dates that would work.

3 MS. JOHNSTON: The discovery.

4 CHAIR STARR: Ms. Kapuaala.

5 MR. TAKAYESU: The discovery cutoff is the latest
6 date you can make the request, you know, so we'll be doing
7 it before. But it's to stop people from making the request
8 after. And so, it's almost a month before. It should be
9 good for both sides.

10 CHAIR STARR: Okay. And then as far as -- as far
11 as the witnesses, we'll have direct, cross, questions from
12 Commissioners, opportunity to redirect, and then opportunity
13 to recross. Does that work?

14 MR. TAKAYESU: That is correct.

15 MS. JOHNSTON: Okay. That's fine.

16 CHAIR STARR: Okay. Thank you. What else do we
17 need to discuss here?

18 MS. KAPUAALA: I can't think of anything else.

19 CHAIR STARR: Okay. Thank you. So, Commission,
20 do all the members understand what we've just done? Okay.
21 Thank you very much. That completes our discussion of this
22 item.

23 MS. KAPUAALA: Thank you.

24 CHAIR STARR: Hold on a second. Commissioner
25 Mardfin had a question.

1 COMMISSIONER MARDFIN: Chairman, don't we need
2 ground rules, or is that decided already?

3 CHAIR STARR: That's what we just did.

4 COMMISSIONER MARDFIN: Okay.

5 CHAIR STARR: And we're going to take a very, very
6 short recess, just two minutes.

7 (Recess taken 10:22 a.m. to 10:26 a.m.)

8 CHAIR STARR: November 23rd, 2010 meeting of the
9 Maui Planning Commission is back in session. We're ready to
10 take up our Item D. I'm going to ask our Deputy Director,
11 Ms. Cua, to introduce the item. Then I'm going to ask her
12 to turn it over to herself. She was -- has been the planner
13 on this item, and I'm going to ask her to give us some
14 background to refresh our memories, remind us what's -- what
15 actions we've taken, what actions other entities have taken
16 where we're at.

17 And then I'm going to turn to Mr. Giroux to give a
18 little bit of background on litigation issues that have
19 occurred regarding this matter. Ms. Cua.

20 MS. CUA: Thank you, Mr. Chair and Members. We've
21 received a lot of motions, memorandums. And so, I'll try
22 and take you through the amended agenda as quickly as
23 possible. First item under Unfinished Business D is a
24 request by Isaac Hall, Attorney for -- I won't read all the
25 individuals' names, seven individuals, submitting a motion

1 to disqualify or recuse Commissioners Domingo and Hiranaga
2 dated November 12th, 2010, in the matter of the application
3 for Pyramid Project Management LLC to obtain a special
4 management area permit and Step 1 and 2 planned development
5 approvals for the proposed renovations and guest room
6 expansion at the Grand Wailea Resort & Spa to include
7 renovations to the hotel public areas, cultural garden,
8 landscape improvements, expansion of pool activity areas,
9 and 310 additional guest rooms housed in eight extended and
10 detached buildings throughout the hotel property at 3850
11 Wailea Alanui Drive at Tax Map Key 2-1-008, Parcel 109 in
12 Wailea.

13 Immediately listed under that is a request by
14 Ms. Dana Naone Hall, Pro Se, submitting a Joinder in Hoolei
15 Intervenors' Motion to Disqualify or recuse Commissioners
16 Domingo and Hiranaga dated November 12th, 2010, in the
17 matter of the same applications. Then we have another
18 request from Mr. Hall on behalf of his clients submitting a
19 motion to declare applications incomplete.

20 The motion is dated November 12th, 2010 in the
21 matter of the same applications mentioned previously. Then
22 another request by Ms. Dana Naone Hall submitting a Joinder
23 in Hoolei Intervenors' Motion to Declare Applications
24 incomplete dated November 12th, 2010. Then Item 3, request
25 by Isaac Hall on behalf of a number of clients submitting a

1 petition to intervene dated September 8th, 2009 on the
2 application by Wade Fischer, again, same project.

3 The Commission may take action on this request.
4 If the intervention request is granted, the Commission may
5 also choose to appoint a hearing officer and a mediator.
6 And then Ms. Dana Naone Hall, Intervenor Pro Se, submitting
7 her petition to intervene on the same applications. The
8 Commission again may take action on this request. If the
9 intervention request is granted, the Commission may also
10 appoint a hearing officer and a mediator.

11 And then we did receive three additional
12 documents. The first one is a memorandum in opposition to
13 the intervenors' motions and memorandum filed on November
14 12th, 2010. And this was submitted by G. Martin Luna and
15 Jay Handlin from Carlsmith Ball, and it was received by the
16 Department on November 19th, 2010. And then yesterday
17 afternoon, we received, and I'm sorry, we passed it out
18 earlier because we found it at the start of today's meeting.

19 We did find it upstairs, two documents filed by
20 Mr. Hall. The first is a reply memorandum of intervenors to
21 the memorandum in opposition to Mr. Luna and Mr. Handlin's
22 memo in op. And then secondly, an appeal of the Director's
23 decision to grant an environmental assessment exemption
24 dated November 19th, 2010 regarding the documents that we
25 mentioned.

1 The only other thing that we would like to mention
2 is that the Planning Department did on November 19th issue
3 an environmental assessment exemption for proposed
4 improvements within the 150-foot shoreline setback area, and
5 this exemption is very similar to the original exemption
6 that we had issued back in -- on November 18th, 2009, which
7 was voided by the -- by the judgment in Circuit Court.

8 And that concludes my overview. And at this
9 point, I think the attorneys can --

10 CHAIR STARR: I would like to ask you to go back
11 in time since this has occurred over several years and just
12 refresh our memories as to, you know, all the occurrences
13 and actions from way back at the birth of time until now
14 regarding this.

15 MS. CUA: Okay. I'm really not prepared to go
16 back from the birth of time. But what I can -- I have in
17 front of me that I can talk about is that back in -- on
18 September 22nd, 2009, the Commission conducted a public
19 hearing on a special management area planned development
20 Step 1-2 application for all the improvements that I listed
21 previously that's agendized for the Grand Wailea Resort.

22 Action on the request was deferred until October
23 13th, 2009 where the matter was again deferred until October
24 27th, 2009. And on October 27th, 2009, the Commission voted
25 to grant approval of the Step 1 and Step 2 planned

1 development approvals as well as the special management area
2 use permit. At that same meeting, you voted to deny
3 interventions from three parties, Mrs. Hall, Mr. Hall on
4 behalf of the Hoolei owners, and then Mr. Hall on behalf of,
5 I'm sorry, I don't have that in front of me -- Wailea Beach
6 Villas.

7 And now I'm going just by memory. My
8 understanding is that the Wailea Beach Villa intervention
9 was settled. And so, what we have before you is the two
10 remaining requests for intervention. And I believe that's
11 what I have for you.

12 CHAIR STARR: Okay. And then I believe that there
13 was some filings made, and it went to Circuit Court, am I
14 correct?

15 MS. CUA: Correct. And we did receive the final
16 judgment, which you have before you today, which basically
17 voided all the permits that you issued as well as the
18 administrative permits that the Planning Department issued,
19 which was the shoreline setback approval and the
20 environmental assessment determinations issued in 2009.

21 CHAIR STARR: Mr. Giroux, I'm going to ask you to
22 give us any additional details on that ruling and its
23 ramifications.

24 MR. GIROUX: Thank you, Chair. What we have is a
25 decision and order that's dated September 15th, 2010. And

1 we also have a final judgment dated October -- wait, it
2 looks like October 11th, 2010. Basically, what's critical
3 for today is that both documents mirror the same -- the same
4 order to this body basically remanding the two petitioners
5 to intervene.

6 And I'll just read it from the document. It says,
7 "Upon remand, the Maui Planning Commission is instructed and
8 ordered to reconsider the Petition to Intervene filed by the
9 Hoolei Appellants Plaintiffs with respect to Appellants
10 Plaintiffs Robert Lee, Gila Willner, Randy Bowen, John
11 Salinas, James Payne, Jose Figueroa, Murray Jafine and to
12 reconsider the petition to intervene filed by Appellant
13 Plaintiff Dana Naone Hall in light of the findings,
14 conclusions and considerations set out herein.

15 And that's the judge's findings of facts and
16 conclusions of law. So, upon reading that document, it
17 should be clear as far as how the judge saw your findings of
18 facts and conclusions of law, which he vacated. So, he's
19 asking you to look at your hearing. The petitions to
20 intervene are before you, and he's asking you to act on it
21 in accordance to his findings and his conclusions of law.

22 CHAIR STARR: Okay. And then we've had several
23 filings subsequent as well. Before we proceed, Ms. Cua, why
24 don't you introduce some of the parties here for us starting
25 with the various counsels.

1 MS. CUA: Sure. Isaac Hall is present today, and
2 Dana Naone Hall is also present. And then B. Martin Luna on
3 behalf of the Applicant, and then Jay Handlin, both from
4 Carlsmith Ball on behalf of the Applicant.

5 CHAIR STARR: Okay. And Ms. D'Enbeau.

6 MS. CUA: I'm sorry, I forgot her. And Madelyn
7 D'Enbeau from the Office of the Corporation Counsel.

8 CHAIR STARR: Okay. And then we also -- the
9 Applicant is also here with us as well.

10 MS. CUA: Wade Fischer is in the back with the
11 green shirt.

12 CHAIR STARR: And Mich Hirano. Okay. So, we will
13 proceed -- proceed with this serially as listed in our
14 agenda. The first item is a motion submitted by Mr. Hall,
15 and it's a motion to disqualify. Now, it is -- there's also
16 a companion -- I don't know if it's a companion motion, or
17 it's Joinder is what it's titled.

18 And my intention is to handle the motion and the
19 joinder as one. And I want to ask both counsels if
20 that's -- if that's acceptable and correct in their
21 viewpoint?

22 MR. HALL: Yes.

23 CHAIR STARR: And Martin, Mr. Luna.

24 MR. LUNA: Mr. Chair, and Members of the
25 Commission, I'm Martin Luna. Working with me on this matter

1 is Jay Handlin. Jay did the hard work in preparing the
2 responses, so Jay will be the one to respond to the motions
3 filed by Mr. Hall.

4 CHAIR STARR: Okay. Mr. Handlin, just yay or nay.

5 MR. HANDLIN: That's fine.

6 CHAIR STARR: Thank you. And I will ask that
7 everyone utilize the microphone and to be recognized. I'll
8 do my best to give ample and more than ample opportunity to
9 express -- express whatever you wish to express. This
10 motion has been answered by Mr. Handlin. And does everyone
11 have both the original motion and the response to that? We
12 all got those?

13 MS. CUA: Yes. Most of the motions were
14 distributed as part of your agenda packet. The only three
15 matters that were not distributed as part of your packet,
16 but that were distributed later to you actually,
17 Mr. Handlin's memo, you did receive earlier, because we were
18 able to e-mail that and have some of you pick that up in the
19 office.

20 However, Mr. Hall's motions, which we actually
21 received yesterday late afternoon, so we were aware this
22 morning only that we got them. We did find them, and we've
23 passed them out to you this morning.

24 CHAIR STARR: Okay. Mr. Hall, I'm going to ask
25 you to open -- open the proceedings. Do me a favor though

1 before you proceed, about how long do you want for your
2 opening?

3 MR. HALL: I think maybe five minutes. I'm
4 assuming we're just addressing that first motion.

5 CHAIR STARR: Yes, so far just the first motion
6 and the response, the response to it.

7 MR. HALL: Yes, but it's just the motion to
8 disqualify, not the second one?

9 CHAIR STARR: Yeah, correct. And you'll have an
10 opportunity, Mr. Handlin, and then you'll have another
11 opportunity if you wish. Dana Hall, will you want to
12 separately --

13 MRS. HALL: No, I think Isaac Hall will be able to
14 cover it.

15 CHAIR STARR: Okay. Thank you. Mr. Hall, please.

16 MR. HALL: Good morning, Chairperson Starr and
17 Members of the Maui Planning Commission. My name is Isaac
18 Hall for the Intervenors who have been listed. I think it
19 may not have been totally clear, but what happened after you
20 denied our petitions to intervene, it actually took place on
21 that first hearing, September 22nd, although you adopted the
22 proposed findings later, we appealed to the Circuit Court.
23 Because we felt, as we expressed to you at the time, that
24 the reasons that you gave for denying the petitions to
25 intervene couldn't be supported by the law at all.

1 We appealed to the Circuit Court. It was fully
2 briefed, and the Circuit Court agreed with us that we had a
3 right to intervene, and we also had a right to permissive
4 intervention both. And the Court vacated the permits
5 because they were issued on flawed procedures and remanded
6 to you actually with instructions, as Mr. Giroux said, to
7 reconsider based on the findings. And when it's based on
8 the findings, it means that the Court has already determined
9 that we have a right to intervene and we have a right to
10 permissive intervention.

11 And it's my understanding that the Applicant does
12 not oppose intervention at this time in any event. We have
13 filed a motion to disqualify two of the Commissioners. That
14 was one of the claims earlier on. I am assuming in making
15 this that Commissioner Domingo's husband is still employed
16 as a bartender at the Grand Wailea. And Commissioner
17 Domingo, if your husband is not so employed any longer,
18 then, of course, I'm not going to continue to make this
19 claim.

20 So, you can at some point announce whether that's
21 true or false. And we filed this because Commissioner
22 Hiranaga's wife has a contract with the Grand Wailea. And,
23 of course, Commissioner Hiranaga, if your wife no longer has
24 that contract, we're not going to make that claim any
25 further. But you can disclose that.

1 But assuming that both of those situations still
2 exist, we believe that disqualification has to take place
3 here, but let me back up. One of the things is that the
4 Applicant has suggested we had no authority to file these
5 pleadings. And in my reply memo, I've addressed that.
6 There's contested case, I would say, with a small C, and
7 formal contested case with a large C. We haven't gotten to
8 the formal contested case proceedings with a large C,
9 because the petitions haven't been granted.

10 But the case law is, and we cited these cases, EJ
11 Lounge is one of them, and Towne versus Land Commission is
12 another, that the proceedings prior to the granting of a
13 petition to intervene are still contested case proceedings.
14 So, we think we had authority to file these, and that's not
15 really an issue. And in addition, I just thought of this
16 this morning. This is really a continuation -- a remand is
17 a continuation of the proceedings we had before, so we think
18 we had authority to file these pleadings.

19 Secondly, it was suggested that somehow the remand
20 precluded us from raising these issues. And I don't think
21 any analysis of the findings of Judge August or the final
22 judgment of Judge August in any way barred us from that.
23 And in particular, in the final judgment, it states that the
24 issue of disqualification is remanded for further
25 adjudication before you.

1 The reason why we filed this is this particular
2 motion is that the Sussel case states that the Code of
3 Judicial Ethics applies to administrative adjudicators. You
4 folks are administrative adjudicators, so the Code of
5 Judicial Ethics applies. And what that says -- we cited one
6 provision, is if a judge or the judge's spouse has an
7 economic interest in the subject matter in controversy or in
8 a party to the proceeding, then that person has to recuse
9 himself. And basically, both Commissioner Domingo's spouse
10 is a full-time employee of the Grand Wailea, a party in this
11 case.

12 Now, I know it was argued before that, well, it's
13 Pyramid and not Grand Wailea. But Pyramid is the agent of
14 Grand Wailea. Pyramid is acting on behalf of the Grand
15 Wailea. So, this provision applies. And it was also
16 disclosed by Commissioner Hiranaga that his spouse has a
17 contract with the Grand Wailea, and it doesn't matter that
18 it's Pyramid that's the Applicant. They're the agent for
19 Grand Wailea, so they have a spouse. What happens, you as
20 administrative adjudicators are in the same position as a
21 judge.

22 I simply cannot imagine a judge hearing a case
23 where the judge's spouse is an employee of one of the
24 parties. It just wouldn't happen. The judge would have to
25 recuse himself, and I think that's what has to happen here.

1 Now, on the reply memo of Pyramid, they say, oh, this is
2 more similar to the situation where they cite a case where
3 the judge got a fish occasionally from somebody.

4 Well, this isn't at all like that. This is
5 somebody whose husband is a full-time employee. It's not
6 occasional fish that he received every once in a while.
7 It's a check that you're getting every two weeks or the end
8 of the month or something like that. And so, it's not
9 applicable. And secondly, the rule of necessity doesn't
10 apply in this case. Rule of necessity is, well, if you did
11 the recusal, we wouldn't have enough people to decide the
12 case. Well, you've got a nine-member commission. If you
13 excluded two, you've still got seven.

14 On most of the votes you're going to have to take
15 in this case, you need five people. So, you've got seven
16 people who can still act on this, so the rule of necessity
17 doesn't apply. The reason we're doing this, we're entitled
18 to administrative due process where we get a fair hearing
19 before -- where there's no question that there are any
20 conflicts of interest by these people. And we can't get
21 administrative due process unless people who should be
22 disqualified by the law are disqualified. And that's why
23 it's important to us.

24 And it's even more important to us now because of
25 what happened to us at the last hearing. We felt we didn't

1 get our due process. We felt our petitions to intervene
2 were improperly denied for reasons that were wrong based on
3 case law that existed over 30 years, and that we had to go
4 to Circuit Court and have the judge reverse those permits
5 and void the permits and reverse the denial of the petition
6 to intervention.

7 Our rights were denied. And we want to make sure
8 when we start off and hopefully get our right to a contested
9 case now, that we have our due process without people that
10 shouldn't -- acting on our permit that should be -- excuse
11 me, acting in the case that should be disqualified, so I
12 would ask you to grant that motion. Thank you.

13 CHAIR STARR: Okay. Thank you, Mr. Hall.

14 Mr. Handlin, please.

15 MR. HANDLIN: Thank you. Mr. Hall talked at the
16 outset trying to explain why he thinks that he and his
17 clients have the authority to file these motions. He talked
18 about contested case with a small C and contested case with
19 a big C. Fortunately, the committee has its own rules of
20 practice and procedure. And those rules tell you what's a
21 contested case, what's not, who can file a motion, when they
22 can file a motion, under what circumstances and when not.

23 And with respect to Mr. Hall, if you look at
24 12-201, Section 52, that makes pretty clear that under the
25 Committee's Rules of Practice and Procedure, there is no

1 contested case until intervention has been granted. There's
2 no dispute here that intervention has not yet been granted.

3 So, as long as there's no intervention granted
4 yet, there's no contested case yet. The rules also make it
5 clear, and we cited in our paper, that the time for motions
6 like this to be made are after there's a contested case.
7 Before intervention has been granted, the only motions that
8 your own rules authorize are motions to oppose a request for
9 intervention. Well, we already know the history. This has
10 come back from Judge August with a direction to reconsider
11 the petitions to intervene. So, here are the petitions to
12 intervene.

13 The County has not made a motion to oppose. The
14 Applicant has not made a motion to oppose. You've got
15 unopposed petitions to intervene. There's no contested case
16 yet. Petitions to intervene are unopposed. We think
17 frankly you should just go ahead, grant them, put us into a
18 contested case. And then whatever issues we have, you
19 appoint a hearing officer. You appoint a mediator. We get
20 on with the contested case, and we resolve everything within
21 that framework.

22 Incidentally, the parties here don't agree on a
23 lot of things. They have agreed on a hearing officer. They
24 have agreed on a mediator, so frankly, we think that you
25 should just jump right to, you know, granting the petitions

1 and that the motions are not properly before you. If you
2 decide that you want to hear the motions anyway, let me just
3 address the substance of the motion very briefly.

4 Mr. Hall says that, well, this distinction between
5 Pyramid Project Management as the Applicant, but they're the
6 Grand Wailea's agent, so therefore, you should consider them
7 all one thing. The fact is if you look at the law, that's
8 not the way the cases see it. This case that we cited that
9 Mr. Hall sort of pooh-poohed about somebody who was selling
10 fish. It was a judge who regularly throughout the year sold
11 fish to an entity that was a related entity. It was an
12 agent -- an agent relationship to the party to the
13 litigation. It wasn't the party to the litigation.

14 This is the State versus Ross case. And the Court
15 looking at that said, they said that's important. The fact
16 that it's not the same entity, but it's somebody related to
17 makes it -- makes it less of a direct relationship and less
18 of a disqualifying circumstance. So, right away, that's
19 fact one. It's not the same entity. Number two, the law is
20 clear you only disqualify if impartiality might reasonably
21 question the circumstances, fairly give rise to an
22 appearance of impropriety, and that the decision-maker has a
23 direct personal pecuniary interest in the result of their
24 decisions.

25 And on top of that, the party arguing for

1 disqualification bears the burden of proof here. Okay.
2 They have to come in with facts. They have to come in with
3 admissible evidence and show how all of those things, if
4 somebody has a direct financial interest, the decision-maker
5 has a direct financial interest in the result of their
6 conclusions. None of that exists here. This is speculation
7 built on top of speculation built on top of speculation.

8 If this -- after we have a contested case and
9 assuming that the permits are granted, this project is going
10 to take years to get built. So, before any kind of
11 consequences to anybody are going to happen, we're going to
12 be three, four, five years down the road. So, to say, well,
13 today somebody has a subcontract -- not a contract -- a
14 subcontract to sell bouquets of flowers, who knows what's
15 going to be in five years? Are they still going to be doing
16 that? Is somebody still going to be working at the bar in
17 five years? That's a guess. That's not a basis for
18 disqualifying anybody.

19 And even if they're still there in five years,
20 even if they are still there in five years, to say what,
21 that if -- if the expansion project is carried out, then
22 that a Commissioner's spouse is going to get to sell more
23 bouquets of flowers on account of that? It's just, I think
24 the connection that you are -- the leap or the leaps that
25 you are asked to make here to consider that there is any

1 legally cognizable financial investment, much less a
2 disqualifying financial interest, it is just more
3 speculative than any case that you're going to find where
4 disqualification is ordered. And finally, this rule of
5 necessity, and then I'll wrap up.

6 The rule of necessity here, again, Mr. Hall says,
7 well, there's nine commissioners, so it's really not an
8 issue. Well, the fact is that back on September 22nd of
9 2009 when these issues were in front of this body, there
10 were -- I believe it was that hearing date -- there were a
11 number of Commissioners who were, in fact, not present.
12 People get sick. People have scheduling conflicts,
13 whatever. Everybody knows that happens. I think it was
14 that hearing, one of the hearings on this matter previously
15 there were only six Commissioners present.

16 Now, your rules say that you need five to be able
17 to act. If today, you had the same circumstance, if we only
18 had six of you here today and this motion were granted, you
19 would then only have four Commissioners, in which case the
20 petitions to intervene would have to be denied, because
21 there wouldn't be enough Commissioners to legally take
22 action on them. I think the history of this matter and the
23 history of these hearings only is just the most convincing
24 proof that the rule of necessity applies here square on.

25 Yes, there are nine Commissioners, but we all know

1 that sometimes there aren't nine. And you need to be
2 certain to be able to act on this. History shows if you
3 knock out two, that you might not be able to act on certain
4 things on certain days, including again, something like
5 their petition. So, we don't think the motion is properly
6 before you, but if you hear it, we submit that it should be
7 denied.

8 CHAIR STARR: Thank you, Mr. Handlin. Mr. Hall,
9 you get the last word.

10 MR. HALL: Yeah, very quickly. Pyramid is wrong
11 on the case law. This is a contested case now, whether you
12 recognize it in your rules or not. We cited Chapter 91
13 would recognize it as a case -- as a contested case. EJ
14 Lounge case recognizes this as a contested case. What we
15 are participating in now, Towne versus Land Use Commission
16 recognizes what we're doing right now as a contested case,
17 so that's wrong.

18 In addition, there's another factor. And that is
19 that these motions are time sensitive. The law on
20 disqualification requires us in this case to bring the
21 motion before a vote is taken, or you can waive the
22 disqualification. So, this motion has to be heard before
23 the votes are taken. So, we can't just wait until a
24 contested case is already started when people with potential
25 disqualifications have already voted. So, it's necessary to

1 have this motion heard before votes are taken.

2 I think the Planning Department recognizes that by
3 having it be the first motion heard. Secondly, and this is
4 going to come up again with the motion to declare the
5 application as incomplete, that's time sensitive, too. It's
6 necessary to hear that before we get going, but I'll wait
7 for later on that. The relationship between Pyramid and
8 Grand Wailea is not as what's suggested to you. Pyramid is
9 here to get permits so the Grand Wailea can expand.

10 And so there's a very close, tight relationship
11 there. It's Pyramid acting on behalf so that the Grand
12 Wailea can add to itself. It's not -- Pyramid is not in
13 here to build its own hotel. Pyramid is not here to do
14 anything, except for do something to the Grand Wailea
15 itself, so that's not real. I'm talking about the Code of
16 Judicial Ethics that's applicable by the Sussel case here.
17 That doesn't require that we show that the person is
18 impartial. It doesn't require that we show that as a result
19 of the construction of this project Mr. Domingo is going to
20 make more money or that Mrs. Hiranaga will make more money.

21 It simply says if the judge or the person who is
22 the adjudicator or that judge's spouse, in this case their
23 spouses, has an economic interest in the subject matter or
24 in the party to the proceeding. They make it simple for
25 you. There's no reason to speculate. You don't have to do

1 anything. If the judge, you or your spouse has an economic
2 interest in the subject matter or in a party, they have to
3 disqualify themselves. And I think judges understand. It's
4 pretty reasonable. Because somebody -- it -- it's too close
5 to the Applicant, to a party to the proceeding to allow them
6 to be judging. That's impartial per se if you want to look
7 at it that way.

8 But I don't have to prove that they're actually
9 impartial. I don't have to prove that they would benefit
10 from an expanded Grand Wailea. It's simply that the spouse
11 has an economic interest in what we're dealing with, and
12 that suffices. Again, the rule of necessity that really
13 only applies when -- that's overriding. That's saying we
14 are going to let somebody with a conflict of interest, who
15 should be -- we're going to let them vote anyway, because
16 otherwise, we can't vote or have votes, and that's not our
17 situation here.

18 That would be like saying we're going to allow
19 your due process rights to be violated, because otherwise,
20 we'll never have a vote. And I think when you weigh things
21 like that here, our rights to due process by having a fair
22 and unbiased and objective tribunal in this instance are not
23 outweighed by any rule of necessity. You folks will be able
24 to have seven people or six or five present for any of the
25 votes that you have to take in this matter. So, that it's

1 not a reason for not disqualifying these two people. So,
2 thank you very much.

3 CHAIR STARR: Thank you, Mr. Hall. Members,
4 questions or comments from the Commissioners? Commissioner
5 Freitas.

6 COMMISSIONER FREITAS: Yes, I have a comment.
7 I've done work for Isaac Hall's firm as a locksmith. And I
8 would weigh the case very carefully whether I vote for it or
9 against it. And I believe that Ms. Domingo and Mr. Hiranaga
10 will do likewise. They're people with high integrity, and I
11 don't think that they would go one way or the other. I
12 would like to make a motion to disqualify his motion based
13 on my analogy.

14 Because I would -- if I was doing work for
15 Mr. Hall daily, I would -- whatever he would bring forth, I
16 would weigh it very carefully before I make a decision. I
17 would not -- if it did not meet the requirements, I would
18 vote against it.

19 CHAIR STARR: I'm going to ask you to hold that
20 motion for a little bit. It's just a little bit premature
21 to make a motion at this point.

22 MR. HALL: I need to answer that.

23 CHAIR STARR: Mr. Hall, I will recognize you in a
24 moment.

25 MR. HALL: Thank you.

1 CHAIR STARR: Commissioner Freitas, I'm just going
2 to ask you to hold that, because I want to have a little bit
3 of clarity from Corp Counsel put on this. And I will allow
4 Mr. Hall to make a brief comment, please.

5 MR. HALL: You know, as I said in the beginning,
6 this is based on current employment, not past. I don't
7 believe Mr. Freitas changed a lock in my office for many,
8 many years ago. He might have once. And as I said, if
9 Mr. Hiranaga's wife is -- no longer has contract, I'm not
10 making the motion. And, again, if Commissioner Domingo's
11 husband is no longer employed, I'm not making the motion.
12 This is based on current employment, and there's nothing
13 current -- let me make that clear -- about any activity by
14 Commissioner Freitas at my office.

15 CHAIR STARR: Okay. Thank you, Mr. Hall. I'm
16 going to ask Mr. Giroux to give a comment. And basically,
17 you know, apart from the legal background, I want him to
18 help us understand our options. Because, you know, it is
19 before us, and we should understand that, our various
20 options before we act. Mr. Giroux.

21 MR. GIROUX: Thank you, Chair. I'm going to try
22 to take this in several levels, because this is a very --
23 it's a complicated matter, so I'm going to try to knock the
24 ducks off one by one. The issue of filing a motion,
25 according to our rules and according to the reading of EJ

1 Lounge, it's not how we label a contested case, it's what
2 happens at the meeting that makes it a contested case. So,
3 our rules actually allow for motions to be filed prior to
4 the contested case.

5 So, I would see that the motions would be properly
6 filed. It doesn't mean that they have to be heard at that
7 moment, but our rules do allow for people to file those
8 motions, at least so they're on the record and may be
9 disposed of in due order as to the call of the Chair. The
10 second issue -- I think that disposes the issue of are the
11 motions properly filed. No issues of timing were raised.

12 The issue of a recusal or of a disqualification is
13 not directly -- it's not clear on how the Board is supposed
14 to procedurally deal with an issue like that in our rules.
15 However, we do have Rule 12-201-25, which is the declaration
16 of conflict rule. And I'll just read that into the record.
17 It says, "Whenever a conflict of interest or other ethical
18 question is raised by anyone regarding any member of the
19 Commission, the affected member shall promptly make a full
20 disclosure of the circumstances to the Commission. If the
21 Commission Member has a financial interest in any matter
22 that may be affected by the action of the Commission, that
23 member shall be disqualified from voting in all actions
24 relating to such matters."

25 However, the rules are absent on how to proceed as

1 far as determining the disqualification. This issue can be
2 broken up into three different arenas of law. Right now,
3 we're -- and acting in your adjudicatory capacities, the
4 standard of appearance of impropriety being affected by the
5 due process law is being put forth. Also, there's issues
6 under the County Charter, under ethics that has specific
7 language as to what board members can and cannot participate
8 in, and then, as I just read, our Rules of the Maui Planning
9 Commission.

10 This issue, I don't -- I don't feel is the purview
11 of Corp Counsel to make a ruling on. It is an individual
12 assessment of your situation. As has been stated, there has
13 been no finding of facts as to the depth of possible
14 conflict and the extent of financial interest. In this
15 purview, there is the Board of Ethics that would be more
16 than willing to receive a letter to receive all the facts in
17 this case and to make a ruling. Under the Charter, the
18 Board of Ethics, once it makes a ruling, the Board member,
19 if following the order or the opinion of the Board of Ethics
20 would be free from liability. So, that would take that
21 unknown out of the participation.

22 At this point in time, I feel the -- you know,
23 these members are voluntary members. We're dealing with an
24 issue of process. And that all of the facts have not been
25 put forth in an arena that would say definitively at this

1 time they need to be disqualified. I think that that has to
2 be dealt with in a separate venue in order for that issue to
3 be disposed of.

4 That also raises the issue of the rule of
5 necessity that was raised by both of the attorneys. At this
6 time, when we're dealing with the issue of process, the rule
7 of necessity today may not be imperative, but tomorrow or
8 the next day due to illness, tragedy, war, calamity, we're
9 not to say that today we're going to make a ruling that the
10 law of necessity is not going to apply. And that's going to
11 not allow a fair judgment on that case. So, again, although
12 these motions are allowed to be made, they can be made a
13 part of the record. They could be made a part of the
14 hearing. They can be a standing objection.

15 But I don't believe that they have to be ruled on
16 definitively today, because the facts are, as we know them,
17 they have not been made definitive. And there are other
18 processes to make sure that that happens in all fairness to
19 both parties. And I think that addresses all of the issues
20 that were raised by both attorneys.

21 CHAIR STARR: Thank you, Mr. Giroux. Any
22 questions on that? Not seeing any -- go ahead, Mr. Hall.

23 MR. HALL: I understand that recommendation. But
24 I think your rules, just so the record is clear, I know
25 where you're headed. But I think the two Commissioners need

1 to disclose what those situations are.

2 CHAIR STARR: I'm going to ask staff if there was
3 declaration by the Commissioners in question when we began
4 this process?

5 MS. CUA: I believe there was, yes.

6 CHAIR STARR: Oh, in other words, two -- the items
7 that are on -- are under discussion, they're there because
8 the Commissioners had disclosed them? There was no attempt
9 to hide anything; is that correct?

10 MS. CUA: That is correct.

11 CHAIR STARR: Okay.

12 MR. HALL: Just for clarification, what do you
13 mean, the disclosures filed with some other entity?

14 MS. CUA: I think the issue came up here. It came
15 up as part of a previous meeting that --

16 MR. HALL: I think it would be helpful if it was
17 on the record in this case. Are you talking about in this
18 case?

19 CHAIR STARR: I'm talking about a year or so ago
20 at a previous meeting, I do recall the two Commissioners
21 made a declaration.

22 MR. HALL: No, and I think it's important if it's
23 current. I know Commissioner Domingo said her husband was
24 employed as a bartender. But Commissioner Hiranaga did not
25 disclose what it was.

1 CHAIR STARR: Okay. If either of the two
2 Commissioners wish to comment or further disclose current
3 status, you're welcome to. Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: Yes, my wife continues to
5 be a subcontractor for the Grand Wailea. She provides three
6 floral arrangements once a week in the public areas.

7 CHAIR STARR: Okay. Thank you, Commissioner
8 Hiranaga. Commissioner Domingo.

9 MS. DOMINGO: Thank you, Chair. Yes, my husband
10 still is currently employed.

11 CHAIR STARR: Okay. Thank you. And before we
12 proceed, public testimony is not a part of our process in
13 this matter. But in the spirit of openness, I do want to
14 allow members of the public, if they wish to, to offer a
15 comment, which will not be construed as on-the-record
16 testimony. But I just feel that in this body, which is
17 really here to allow the public to comment, if members of
18 the public want to make a quick comment, I will allow that
19 at this time.

20 Is there anyone wishing to do so? Not seeing any,
21 that opportunity has passed.

22 Now, as the Chair sees this, there are three, and
23 there may be more. I see three possible courses of action
24 in dealing with this. One would be some kind of action
25 affirmative to the -- the motion, the petition. And that

1 definitely would put us into breaking new ground without any
2 real rules as to how we proceed as Mr. Giroux commented.
3 And, you know, I know that that's also a difficult position
4 for basically a voluntary commissioner to go and to try to
5 judge ourselves, you know.

6 That is not I think the real intent that any of us
7 had when we volunteered to be a member of a body like this.
8 I, for one, don't really want to be judging any of my fellow
9 Commissioners. I respect them, and I've been proud to work
10 with them and continue to do so. You know, I really don't
11 think that that's the area that we're put here to -- to
12 proceed with. We can dismiss this.

13 And the third is that we can -- and I'll ask
14 Mr. Giroux to help me wordsmith what I'm about to say. But
15 we could also take the motion and the response under
16 advisement and to allow the body that proceeds with the
17 contested case, and it seems fairly certain that there will
18 be some body doing, some entity doing that, if they wish to
19 deal with it as part of their process, they can do that. If
20 there's a desire for the Ethics Commission to deal with
21 that, they can deal with that. But basically, we would take
22 it under advisement and allow the body that would be dealing
23 with the intervention, if they so desire, to deal with the
24 item.

25 Did I phrase that in a reasonable way, Mr. Giroux?

1 I'm trying to, you know, get my thoughts organized in a
2 manner that works with our process.

3 MR. GIROUX: Yeah. If the body takes this under
4 advisement, it basically would be a running objection. And
5 before the final action were to be taken, this issue should
6 be disposed of and at that time, the facts will be more
7 clear to make a clearer decision on whether or not a member
8 should be participating or not.

9 CHAIR STARR: Commissioner Freitas.

10 COMMISSIONER FREITAS: Yeah. Would you like me to
11 withdraw my motion? I did a motion on the floor.

12 CHAIR STARR: No, the motion was out of order,
13 because it was not timely at that time.

14 COMMISSIONER FREITAS: Okay.

15 CHAIR STARR: So, if you wanted to resubmit that
16 motion or a different motion.

17 COMMISSIONER FREITAS: Yes, I would like to make
18 the motion to deny this motion by counsel. And I still
19 would like to hold him as a customer, even though I haven't
20 done work for him for a while.

21 CHAIR STARR: So, we have a motion on the floor.
22 Is there a second to that motion, which would be to deny?
23 Not seeing any, the motion to deny dies for lack of a
24 second.

25 Commissioner Tagorda was the second one with his

1 hand up.

2 COMMISSIONER TAGORDA: Can I make a statement,
3 Mr. Chair? This will be addressed to Mr. Hall. I heard you
4 base your motion to disqualify the two Commissioners on two
5 grounds, husband being a bartender and wife have a
6 subcontract putting flowers in Grand Wailea. But you never
7 questioned their integrity, their impartiality. So, do you
8 go beyond that, or just because of the husband and the wife
9 have a little bit connection with -- and you never
10 questioned their impartiality before us.

11 MR. HALL: Do I answer?

12 COMMISSIONER TAGORDA: Yes.

13 CHAIR STARR: Yeah, Mr. Hall, please.

14 MR. HALL: Thank you for the question. I think
15 Corporation Counsel Giroux was -- there's actual bias or
16 actual impropriety, and then there's what's called the
17 appearance of impropriety. And disqualification is required
18 even if there's an appearance of impropriety, and I think
19 this Code of Judicial Ethics is aimed as the appearance of
20 impropriety, where the fact that your spouse is employed by
21 a party creates an -- an experience of impropriety, and
22 that's what I'm saying here, that the appearance of
23 impropriety requires a disqualification.

24 COMMISSIONER TAGORDA: And when you talk about the
25 appearance of impropriety, will this come into their

1 economic benefits with working with Grand Wailea or
2 connected to Grand Wailea?

3 MR. HALL: Well, I think that's why the Code of
4 Judicial Ethics is stated the way it is, is that husbands
5 and wives normally share their financial -- they have -- the
6 money that comes in to the spouse comes to the other spouse.
7 And the other is there's an appearance of impropriety,
8 because if your spouse were, you know, working for a party
9 that the judge is going to be voting yay or nay on or
10 conferring benefits on or not conferring benefits on, it
11 creates an appearance of impropriety, so and therefore, you
12 shouldn't vote in cases like that. You shouldn't preside
13 over cases like that.

14 COMMISSIONER TAGORDA: Sir, Maui County is a very
15 small community, that everybody is connected to everything
16 we do here. We have relatives that work someplace else.
17 When we disclose those things, then are you disqualified to
18 vote?

19 MR. HALL: I think in the instance -- I think the
20 case law is in Sussel that the -- what the Hawaii Supreme
21 Court said was if you're an administrative adjudicator, as
22 here, that the same law that applies to judges applies to
23 you. And so, the Code of Judicial Ethics applies to you.
24 So, the same ethics, when you're sitting and deciding on
25 things, the same rules that apply to judges apply to you.

1 So big, small, whatever, if your spouse is making
2 money off of the person that's going to benefit from a
3 permit that you could be granting, then you shouldn't be
4 voting on it. I think that's my sense of it, because of the
5 appearance of impropriety.

6 COMMISSIONER TAGORDA: So, how do you really
7 relate that these two Commissioners have a direct financial
8 interest in this, in matters that we are trying to
9 adjudicate?

10 MR. HALL: Because --

11 COMMISSIONER TAGORDA: That will do that thing by
12 being --

13 MR. HALL: Well, for one, Commissioner Domingo's
14 husband is, as I understand, a full-time employee of the
15 Grand Wailea. And I know Commissioner Hiranaga's wife
16 gets -- has a contract that she gets paid every, I don't
17 know how often, but she gets paid regularly by Grand Wailea.
18 She has an economic -- she's getting money from them.

19 COMMISSIONER TAGORDA: Okay. Thank you.

20 CHAIR STARR: Thank you, Mr. Hall. Mr. Handlin, I
21 would like you to take an opportunity if you wish to make a
22 comment here.

23 MR. HANDLIN: Thank you, Chair. I just want to
24 point out Mr. Hall cites to the Code of Judicial Ethics, and
25 there's no question the Sussel case says that the same code

1 that applies to judges applies to administrative
2 adjudicators like yourselves. But that's not the ending
3 point. That's the starting point. But the case law says --
4 the case law does not say that is a per se rule and that if
5 somebody has a spouse who has a job whatever, that that ends
6 the discussion.

7 On the contrary, cases say you have to look at the
8 circumstances. You have to look at circumstances to see
9 that it would reasonably be considered to create an
10 appearance of partiality, an appearance of impropriety. And
11 sometimes -- and a lot of cases talk about it, and we
12 cited -- you know, there's various cases that both sides
13 have cited. If you look at those cases, you'll see there's
14 all kinds of circumstances where even though there's a
15 relationship, that's the start of the inquiry. And you look
16 at the details of it, and you find that things are actually
17 so attenuated that there is no disqualification.

18 Again, Commissioner Tagorda raises a very, very
19 pertinent question, and that is where is the -- yes,
20 somebody works for -- you know, one of the Commissioners'
21 spouses is a bartender. So, if the permit is granted, how
22 does that affect -- where is the direct financial interest?
23 Is the argument -- what is the argument, that someday the
24 bar is going to do better business, and therefore, there's
25 going to be more money coming into that household because

1 those permits were granted?

2 Just the employment relationship, it's the start
3 of the inquiry, but it's absolutely not the end of it, as
4 Mr. Hall suggests.

5 CHAIR STARR: Thank you, Mr. Handlin.
6 Commissioner Mardfin, you were next with your hand up.

7 COMMISSIONER MARDFIN: I just wanted to make
8 comments than ask questions at this point. I had a bunch of
9 issues that I had made note of. One is yet a contested
10 case. Mr. Hall said it's already a contested case. It's
11 time sensitive. I think we shouldn't -- I think we can't
12 take Mr. Handlin's position that we can disregard it because
13 the contested case hasn't started.

14 If we're going to be voting on whether to make it
15 a contested case, or I think the issue of who can vote on it
16 is a relevant one and should be taken up in advance. I did
17 like the Chairman's idea that we could not deal with it
18 directly, but have that -- take judicial, take notice of it,
19 so that when and if it goes to a hearings officer, they can
20 deal with the issue, so the time sensitive nature of it
21 isn't jeopardized, so that the Halls' arguments can still be
22 heard.

23 The -- another issue raised is whether the Pyramid
24 and Grand Wailea are the same, one and the same. They may
25 or may not be, but I think for all practical purposes,

1 Mr. Hall's position that they're working as an agency at
2 least was persuasive to me, so whoever's name it is doesn't
3 change the situation.

4 The rule of necessity was an issue, and I agree
5 with our counsel that while today it wouldn't be an issue, I
6 have seen days where it could be an issue. And I think
7 Mr. Handlin said something that I would tend to disagree
8 with. He said that if you don't have enough votes, the
9 petition is denied. Well, no, because we don't have enough
10 votes to affirmatively deny a petition. If we don't have
11 enough votes, it just gets continued to another meeting when
12 we do have sufficient people to get a five-person vote. The
13 fourth thing was the -- whether the spouse has an economic
14 issue.

15 And I was going to raise it, but Mr. Handlin sort
16 of beat me to the gun. That while there is an employment
17 relationship, the effect of this decision one way or the
18 other I see having virtually a zero impact on their economic
19 position. We all -- as members, we all file our annual
20 declaration forms to the Board of Ethics. And I routinely
21 put down that I own some shares of Bank of Hawaii and A&B.
22 And you know I don't own 100,000 shares of either. I wish I
23 did.

24 But because I don't, any decision we make with
25 A&B, I mention it, but I don't worry about it. Because any

1 decision I make would have no more than five cents
2 difference in my income based on dividends or anything else,
3 based on price of the share of the stock. So, it strikes me
4 there's a de minimis economic gain. And so, the appearance
5 of bias, if one takes cognizance of that is minimal. I do
6 think, however, at the end James' suggestion that the two
7 Commissioners consult with the Board of Ethics strikes me as
8 a very wise one. I wouldn't presume to tell them what to
9 do, but that could, if it were done before a hearings
10 officer started to deal with this issue, it could save a lot
11 of grief going down the road. So, that's just sort of my
12 reflections on it. Thank you.

13 CHAIR STARR: Thank you very much, Commissioner
14 Mardfin. Anyone -- any of the Commissioners would like to
15 make a motion perhaps? And I did outline three
16 possibilities. Maybe there are more, but you know, some
17 kind of affirmative action. We had a motion to dismiss. It
18 died. The other would be to take it under advisement and
19 pass it along to the hearings officer if they decided to
20 consider that at a later date. Members. Commissioner
21 Mardfin.

22 COMMISSIONER MARDFIN: I'll go for the middle
23 road. I move that we take notice of this, but not act on
24 it, on the motion directly, that -- but that notice be taken
25 and the issue forwarded to the -- to the extent that if the

1 hearings officer is determined, that the issue be forwarded
2 to them for further investigation and determination as to
3 the voting status of those two Commissioners.

4 CHAIR STARR: Is there a second?

5 COMMISSIONER SABLAS: Second.

6 CHAIR STARR: So, we have a motion by Commissioner
7 Mardfin, seconded by Commissioner Sablas, to basically take
8 it under advisement. Ms. Cua, you want to restate the
9 motion?

10 MS. CUA: And maybe James can help me. Take
11 notice of the motion or --

12 MR. GIROUX: Motion to disqualify.

13 MS. CUA: Take notice of the motion to disqualify
14 and forward that to the hearing officer. If this Board is
15 going to move forward in the selection of a mediator/hearing
16 officer, for that person to deal with at that time.

17 CHAIR STARR: Okay. Commissioner Hiranaga.

18 COMMISSIONER HIRANAGA: A question. If this is
19 approved by the Commission, and Commissioner Domingo and I
20 vote in this motion, is there an exposure from the -- is it
21 Appellant I guess -- that he will challenge the validity of
22 the vote to grant the intervention and also in the selection
23 of the hearings officer, which would then delay the process
24 once again? So, maybe the attorney can speak to that
25 matter.

1 CHAIR STARR: Yeah. And please speak to that, but
2 also speak to it in light that there may be more than enough
3 to pass it anyway or there may not be.

4 MR. GIROUX: Yeah, and this kind of he sheds the
5 light on why we wouldn't even touch the issue of
6 disqualification, because this issue would be arising again.
7 So, I think we -- I think Kent is asking me for a guarantee.
8 I can't guarantee you anything.

9 COMMISSIONER HIRANAGA: Actually, I was asking for
10 comment from the Intervenors' attorney.

11 MR. GIROUX: Because you were looking at me.

12 COMMISSIONER HIRANAGA: I was looking at the
13 Chair.

14 CHAIR STARR: Mr. Hall, you were asked for a
15 comment on what would be the -- what would be the status if
16 and when.

17 MR. HALL: I do want to put on the record that any
18 delay that has occurred in the proceeding to date has been
19 because the Commission unlawfully denied our petitions to
20 intervene, because the Applicant suggested and urged the
21 Commission to deny our petitions to intervene. That's the
22 only reason for any delays that have occurred here, not us.
23 You could have granted our petitions to intervene.

24 CHAIR STARR: Mr. Hall, please follow another
25 line.

1 MR. HALL: I know, I know. But, you know, they
2 said that in their pleading, and now Mr. Hiranaga has
3 suggested more delays. We're not about delaying. We want a
4 fair contested case hearing. That's all we've ever wanted.
5 We could have had that a year ago. Now, I can't waive my
6 client's rights. I'm not going to do that as I stand here
7 before you, so I have no comment on his direct question to
8 me.

9 CHAIR STARR: Mr. Handlin, do you have a comment?

10 MR. HANDLIN: I do. It's hard for me to imagine
11 how the Intervenors would have basis for complaining if, A,
12 their petitions to intervene are granted, and B, a hearing
13 officer and a mediator on whom their counsel have agreed are
14 appointed. I cannot imagine what the legal grounds for
15 objection are.

16 CHAIR STARR: Okay. As always, we all have the
17 option to vote affirmatively, to vote negatively, to abstain
18 or to recuse. Are we ready to vote on the motion? All in
19 favor, please raise their hand. All opposed.

20 MS. CUA: Motion passes unanimously.

21 CHAIR STARR: That is --

22 MS. CUA: To take under advisement the motion to
23 disqualify.

24 CHAIR STARR: Yeah, what's the count, just for
25 clarity?

1 MS. CUA: I'm sorry, it was eight.

2 CHAIR STARR: To zero?

3 MS. CUA: To zero.

4 CHAIR STARR: So, just to make a comment, even if
5 those two members were not -- were not counted, which they
6 are, it would still pass. Okay. Moving right along. We'll
7 ask Ms. Cua to introduce Item D-2.

8 MS. CUA: The next request, as mentioned earlier,
9 was request by Mr. Isaac Hall, attorney on behalf of his
10 seven clients, submitting a motion to declare applications
11 incomplete dated November 12th, 2010 in the matter of the
12 applications by Pyramid Project Management to obtain an SMA
13 permit and Step 1 and 2 planned developments for the Grand
14 Wailea Resort & Spa and a similar request by Ms. Dana Naone
15 Hall.

16 CHAIR STARR: Okay. Once again, I ask Mr. Hall if
17 he has a problem if we deal with the motion and the joinder
18 as one item.

19 MR. HALL: Not at all.

20 CHAIR STARR: And Mr. Handlin.

21 MR. HANDLIN: That's fine.

22 CHAIR STARR: So, we're dealing with the item and
23 the joinder. Mister -- I just want to be sure that members
24 are cognizant of all of the documentation regarding this
25 item. That documentation, which was submitted to us was

1 a -- Mr. Hall's pleading. We had a response from
2 Mr. Handlin. We also had a copy of the original EA, and we
3 had a new finding of an EA exemption issued more recently by
4 the Department. Mr. Hall, please proceed.

5 MR. HALL: Yeah. Thank you very much. I filed a
6 motion to declare the application incomplete, because at the
7 time I filed the motion on November 12th, there wasn't a --
8 an EA attached to the application. And there wasn't an
9 exemption determination either. And that was because --
10 well, back when we were before you in September of 2009, the
11 applications had been filed, and there was no EA or
12 exemption determination, so in our petitions to intervene,
13 we had argued that the applications were incomplete.

14 Because your own rules say that if -- that has to
15 be -- there has to be some analysis whether an EA is
16 required, and either there be an EA attached or an EIS or
17 the exemption determination. And one thing that occurred on
18 the appeal was that Judge August -- well, I'm sorry,
19 subsequent to the petition to intervene, last time around an
20 exemption determination was issued. And that exemption
21 determination was voided by Judge August.

22 So, as we returned to you on remand, there was no
23 longer any exemption determination. So, at the time I filed
24 this, we were basically where we were first time around.
25 And on November 19th, which is Friday, the Planning Director

1 issued an exemption determination. We believe that
2 exemption determination is unlawful, that it constitutes
3 unlawful segmentation, violates the State's environmental
4 rules, violates Hawaii case law *Sierra Club V. DOT*.

5 CHAIR STARR: Excuse me, Mr. Hall, are you
6 referring to the new --

7 MR. HALL: Yeah, I'm referring to the new one, the
8 November 19th one.

9 CHAIR STARR: And was that part of your filing?

10 MR. HALL: Well, the reply memo was in there.

11 And there's always an issue for people that are in
12 the Intervenor's situation, because the other side is always
13 telling us that we've explored the wrong remedy no matter
14 what we do. If we go straight to Circuit Court, they say,
15 oh, you should have exhausted your administrative remedies
16 before the Planning Commission. If we go to the Planning
17 Commission, they say you should have gone to Circuit Court.

18 So, the County attorney in her brief before the
19 Circuit Court had said about our last -- to the challenge in
20 the exemption determination that we should have appealed
21 that to -- as an appeal to the Director's decision. So, on
22 yesterday, we filed an appeal of the Director's decision to
23 Maui Planning Commission challenging the exemption
24 determination that was issued on Friday. Because we didn't
25 want somebody to say we didn't exhaust our administrative

1 remedies. Whether that's the correct and only remedy, I
2 don't know.

3 But in any event, we still feel the motion that we
4 filed before you is still right in the sense that we don't
5 think the exemption determination that has been made is
6 lawful. We still feel that an EA is required before this
7 project can proceed and that any permits that would be
8 issued without an EA would be unlawful. So, there is
9 something -- it's a live motion. Hearing the inclinations
10 of the Commission to defer these things to a hearing officer
11 if a hearing officer is appointed, that might be a good way
12 to deal with this motion. Thank you.

13 CHAIR STARR: Mr. Hall, just for clarity, you're
14 saying that basically to take it under advisement and pass
15 it on to the hearings officer?

16 MR. HALL: Well, I'm saying if you choose to do
17 that and pass it on to the contested case, if you grant one,
18 seems like what you did with the last one wouldn't be a bad
19 way to deal with this one.

20 CHAIR STARR: Thank you.

21 MR. HALL: I'm just recognizing the reality, I
22 think.

23 CHAIR STARR: Mr. Handlin, please.

24 MR. HANDLIN: Well, I'm glad to hear Mr. Hall
25 recognizing reality, because what he's actually recognizing

1 is the relief that he asks for in his original petitions to
2 intervene filed a year ago. That is exactly what they asked
3 for on all of their issues including the environmental
4 assessment issue. Yes, they said before, they said you need
5 to have an environmental assessment or an EIS right up
6 front, but they said the remedy that they asked for in
7 intervening was they said petitioners request that the
8 Commission grant their petition to intervene and allow them
9 to participate in a contested case hearing on whether an SMA
10 permit can issue for this project as currently designed.

11 They previously said this EA issue should be
12 addressed in the contested case. We agree completely. So,
13 the fact that Mr. Hall, he's not only recognizing the
14 reality of I think everyone's inclination today, he's coming
15 back around to what he asked for a year ago and we agree
16 with that. So, again, we have the second unlikely
17 concurrence today, we not only agree on the hearing officer
18 and the mediator, we agree this issue can and should be
19 addressed in a contested case.

20 CHAIR STARR: Thank you. Mr. Hall.

21 MR. HALL: I agree with what I said when I stood
22 up here. I don't agree with what Mr. Handlin said. I think
23 he's confusing what was said in Circuit Court based on a
24 different record, but that doesn't need to be belabored.

25 CHAIR STARR: Thank you, Mr. Hall. I would like

1 to get clarification from the Department on the issuance of
2 the exemption.

3 MS. CUA: I'm sorry, clarification in what way?

4 CHAIR STARR: That there was a EA exemption issued
5 by the Department recently, and just give us when was that
6 issued and give me a little bit of the basis for the
7 exemption.

8 MS. CUA: The environmental assessment exemption
9 was issued on November 19th, 2010. It's very similar to the
10 environmental assessment exemption that was issued back in
11 2009. It is typical for, you know, minor work within a
12 shoreline setback area, and that was the trigger. A special
13 management area permit in and of itself is not a Chapter 343
14 trigger. Work within the shoreline setback area, however,
15 is a trigger. That trigger put us in the arena where a
16 review of an environmental assessment laws and rules
17 applied, and there is an exemption list that the County has
18 issued that has been approved by Office of Environmental
19 Quality Control.

20 And work like landscaping, minor landscaping
21 improvements, irrigation and movable pavers to create a
22 walkway qualifies as an exempt class of action. And
23 therefore, similar to what we did in 2009, we issued an
24 environmental assessment exemption for that particular work
25 as we believe it qualified as an exempt class of action

1 under Chapter 343.

2 CHAIR STARR: Commissioner Mardfin.

3 COMMISSIONER MARDFIN: Did you want to take public
4 testimony, or are you ready for a motion?

5 CHAIR STARR: We won't take public testimony, but
6 I will allow comments. What was the work that was being
7 proposed?

8 MS. CUA: Landscaping improvements, minor
9 irrigation and installation of movable pavers within the
10 shoreline setback area.

11 CHAIR STARR: So, no hard construction?

12 MS. CUA: No.

13 CHAIR STARR: Okay. Thank you. Once again, I
14 will allow members of the public, if they wish, to make some
15 comments which are informal to do so. This would be time.
16 Please make yourself known. Not seeing any, that
17 opportunity has passed. Commissioner Mardfin.

18 COMMISSIONER MARDFIN: Seeing as how we have
19 agreement between both sides of the party, I move we -- that
20 we take no direct action on this at this time. And that
21 we -- but we take notice of it and forward it as one of the
22 issues to be determined by the hearings officer, take under
23 advisement and notice to be dealt with by the hearings
24 officer.

25 CHAIR STARR: Is there a second?

1 COMMISSIONER TAGORDA: I second.

2 CHAIR STARR: Moved by Commissioner Mardfin.

3 Seconded by Commissioner Tagorda.

4 MS. CUA: To take under advisement the motions by
5 Mr. Hall and -- Mr. and Mrs. Hall actually to declare
6 applications incomplete and to forward that to a hearing
7 officer and the mediator in this matter.

8 CHAIR STARR: Commissioner Mardfin.

9 COMMISSIONER MARDFIN: Technically, it's not
10 incomplete. But it's because an EA has been filed. The
11 arguments still hold. It's whether the EA is appropriate or
12 not is the issue.

13 MS. CUA: I believe the motion -- the motion that
14 you're responding to is the motion to declare the
15 applications incomplete because of the EA issue. But that
16 is the motion that I'm reading in the agenda.

17 COMMISSIONER MARDFIN: I'm going to make it a more
18 complicated motion then.

19 COMMISSIONER TAGORDA: I withdraw my second.

20 COMMISSIONER MARDFIN: Because it goes beyond --
21 it's incomplete because no EA was filed. Subsequent to that
22 an EA has been filed -- I'm sorry, not an EA -- an EA
23 exemption has been filed.

24 MS. CUA: Right.

25 COMMISSIONER MARDFIN: So, the incomplete -- if

1 that's allowable, then it's no longer incomplete. So, the
2 incomplete is a strange --

3 CHAIR STARR: Commissioner Mardfin, you're
4 muddying the record, and this is not helping things. Please
5 keep it simple.

6 COMMISSIONER MARDFIN: I withdraw the motion.

7 CHAIR STARR: Okay.

8 COMMISSIONER TAGORDA: I withdraw the second.

9 CHAIR STARR: We're looking for a motion. I just
10 request that it be clear and not confusing. Commissioner
11 Shibuya.

12 COMMISSIONER SHIBUYA: I would like to have a
13 brief discussion here, and then I'll probably enter a
14 motion. I see this as not -- it's an exemption for an EA
15 for repair and maintenance of landscaping, and that's all it
16 is. It's not development. It has nothing to do with
17 development of the issue that we had prior to which was
18 remanded back to this body. This has been broken up into a
19 smaller repair and maintenance project. And that's all it
20 is. And I see this as a good way of maintaining the Grand
21 Wailea Resort & Spa.

22 It has nothing to do with the development. So,
23 I'm proposing the motion -- I would like to make a motion to
24 accept this exemption for the repair and maintenance for the
25 existing landscape improvements.

1 CHAIR STARR: Commissioner Shibuya, I believe that
2 that's not on the table. Mr. Giroux.

3 MR. GIROUX: That would be beyond the scope of
4 this hearing. I think you should address the motion. There
5 may be further proceedings that will be put on the agenda
6 because of the subsequent filings that may head towards that
7 direction.

8 CHAIR STARR: To clarify, all we're dealing with
9 as an agendaed item at this point is a motion to declare the
10 application incomplete, and also, the secondary filing in
11 relation to that. So, the motion would be to either accept
12 the motion that the application to complete, to deny it, or
13 once again, to take it -- take the motion under advisement
14 with the expectation that the hearings officer will deal
15 with it if that is the desire of the hearings officer. So,
16 would you like to offer a motion?

17 COMMISSIONER SHIBUYA: Okay. I'll offer the
18 motion that we take it under advisement, and if we so decide
19 at another motion, to be done by a hearings officer.

20 CHAIR STARR: Is there a second?

21 COMMISSIONER SABLAS: I second.

22 CHAIR STARR: So, we have a motion by Commissioner
23 Shibuya. Seconded by Commissioner Sablas. To restate that
24 and make sure we're clear, it would be to take the motion by
25 Mr. Hall and Dana Hall under advisement and to forward,

1 basically forward it for consideration by the body that does
2 the contested case. Is that acceptable?

3 COMMISSIONER SHIBUYA: That's correct.

4 CHAIR STARR: Commissioner Mardfin.

5 COMMISSIONER MARDFIN: I move to amend. My
6 amendment would be and to include the issue of whether an EA
7 exemption was correctly issued.

8 CHAIR STARR: Is there a second to that amendment?

9 COMMISSIONER SHIBUYA: I'll go ahead and accept
10 it, second it.

11 CHAIR STARR: So, could you restate the amendment?

12 MS. CUA: To take under advisement the motion to
13 declare the application incomplete and to forward it to a
14 hearing officer for their consideration and the further
15 amendment is to also have the issue of the EA exemption
16 whether it was properly issued or not addressed by that
17 hearing officer.

18 CHAIR STARR: Okay. Commissioner Wakida.

19 COMMISSIONER WAKIDA: I see that as two separate
20 motions. The first motion is dealing with this -- the
21 original motion is dealing with this declaring this
22 application incomplete, and I would like to see that dealt
23 with separately. This other issue of this environmental
24 assessment exemption really just pertains to, as been
25 pointed out, something -- a specific improvement in a minor

1 way, not this project as a whole.

2 CHAIR STARR: I agree. I question whether that's
3 really in our purview. I will allow counsel to comment, but
4 first I want to hear from Mr. Giroux.

5 MR. GIROUX: I think you have to look at the
6 motion as it is. Because they're trying to address the
7 motion. My understanding from the argument of Mr. Hall is
8 that he feels that he filed the -- a supplement to this
9 motion; is that accurate? Your motion dated --

10 MR. HALL: You mean the reply?

11 MR. GIROUX: Your reply memo. In your reply memo,
12 you're saying that that is taking up the issue of the
13 exemption, whether or not it was legally filed or legally
14 granted?

15 MR. HALL: Yes, and then -- well, if I might. I
16 think the Applicant and we are in agreement to the amended
17 motion just to get it all to the hearing officer. And that
18 would obviate any need to have any appeal to the planning --
19 of the Planning Director's decision to the Commission. You
20 would be consolidating them anyway. I think we both agree
21 it would be more efficient.

22 MR. HANDLIN: We do.

23 MR. GIROUX: I just want to address procedurally,
24 it's nice to see you guys agreeing, I think because it was
25 addressed in the memo, that the motion can incorporate that

1 issue.

2 MR. HALL: I agree.

3 MR. GIROUX: The fact of the matter is that
4 Mr. Hall, and this is not on the agenda, but we have before
5 you an appeal of that decision. So, there's still a matter
6 of process that we will need to in the future to clean this
7 up. But I think today, because it is in the memo, you can
8 address it. But you're going to have to further address
9 something that's not on the agenda today and not before you.
10 You'll see it in the future.

11 So, right now as it stands, because of that
12 filing, there's a separate -- there's a separate Planning
13 Commission number to that issue. Your rules state that you
14 can consolidate it. So, that -- that will have to be done
15 in the future. But the motion as it stands is acceptable
16 legally.

17 CHAIR STARR: And the amendment is acceptable
18 under the way our agenda was filed? That's my concern.

19 MR. GIROUX: Yes, because under the filing, there
20 is a supplemental memorandum to this memo. That issue was
21 raised.

22 CHAIR STARR: Commissioner Wakida.

23 COMMISSIONER WAKIDA: No.

24 CHAIR STARR: Oh, we have a motion and an
25 amendment. Please, we're going to deal first with the

1 amendment. Let's just for clarity's sake, we'll keep the
2 amendment.

3 MS. CUA: Just the amendment or the whole motion
4 at this time?

5 CHAIR STARR: Just the amendment at this time.

6 MS. CUA: To also take under advisement and
7 forward it to the hearing officer whether or not the EA --
8 EA exemption was properly issued.

9 CHAIR STARR: Okay. We're ready to vote on the
10 amendment. All in favor of the amendment and the amendment
11 only at this point, please raise your hand.

12 COMMISSIONER TAGORDA: Abstain.

13 MS. CUA: We have seven.

14 CHAIR STARR: All opposed. Okay.

15 COMMISSIONER TAGORDA: Abstain.

16 MS. CUA: We have seven aye's and one commissioner
17 abstaining.

18 CHAIR STARR: Okay. Now, for the main motion with
19 the amendment included, please read the main motion and as
20 amended.

21 MS. CUA: To take under advisement the motion to
22 declare the application incomplete and whether or not the
23 EAE was properly issued, and forwarding both of those to the
24 hearing officer if you so choose to select one, move in that
25 direction.

1 CHAIR STARR: Okay. All in favor, please raise
2 your hand. All opposed.

3 MS. CUA: Eight aye's.

4 CHAIR STARR: Okay. At this point, we will recess
5 until 1:00. Good work, everyone. We'll come back and deal
6 with the rest. Thank you.

7 (Lunch recess taken 11:56 a.m. to 1:01 p.m.)

8 CHAIR STARR: Good afternoon, one and all. The
9 November 23rd, 2010 meeting of the Maui Planning Commission
10 is back in session. We're going to proceed with our Agenda
11 Item D3 and D4. Before we proceed, I would like to ask the
12 counsel for both sides whether they have a problem if we
13 combine the discussion on the two items. And then if we
14 have motions, we'll separate the motions for D3 and 4, but
15 whether we could have the presentations combined. Mr. Hall.

16 MR. HALL: You mean from the two sets of
17 petitioners?

18 CHAIR STARR: Yeah.

19 MR. HALL: Yeah, that's fine.

20 CHAIR STARR: And Mr. Handlin.

21 MR. HANDLIN: Yes, that's fine.

22 CHAIR STARR: So, with that said, I'm going to ask
23 Ms. Cua to introduce the items together.

24 MS. CUA: Item D3 is a request by Isaac Hall on
25 behalf of a number of his clients submitting a petition to

1 intervene dated September 8th, 2009 on the Grand Wailea
2 applications. Item 4 is Ms. Dana Naone Hall, Intervenor
3 Pro Se submitting petition to intervene on the applications
4 in the matter of the Grand Wailea.

5 CHAIR STARR: Okay. So, we have the two petitions
6 basically for the same -- for the same purpose. I'm going
7 to invite Mr. Hall to address this on his filings.

8 MR. HALL: Very briefly. We filed for the appeal
9 a petition to intervene and reply memorandums in support of
10 the petitions to intervene, one for the Hoolei Intervenor
11 as-of-right as adjoining property owners or immediately
12 next-door property owners. And Dana Naone Hall filed her
13 own as-of-right. And both Intervenor asked for permissive
14 intervention. The Commission denied both petitions to
15 intervene on both grounds, said they didn't have a right to
16 intervene and didn't have the right to permissive
17 intervention.

18 That went up on appeal, and Judge August ruled
19 that both sets of Intervenor had a right to intervene and
20 that both sets of the Intervenor had a right to permissive
21 intervention. And on remand, he ordered that the
22 Commission, I think the language was reconsider the denial
23 of the petition to intervene in light of his findings of
24 fact and conclusions of law. His findings of fact and
25 conclusions of law actually don't give the Commission that

1 much leeway at this point in time. Because his findings of
2 fact, conclusions of law already found that Hoolei had a
3 right to intervene and had a right to permissive
4 intervention.

5 And his finding of fact and conclusions of law
6 found that Dana Naone Hall had a right to intervene and had
7 a right to permissive intervention. So, his order to the
8 Commission is that you reconsider your prior orders in view
9 of his proposed findings and conclusions. He's basically
10 saying you've got to grant them intervention in my view.
11 And so, I would ask at this point in time -- there may be
12 slight procedural issues that you have to deal with, and
13 that is that he ordered you to reconsider your findings so
14 that somebody I suppose that voted to deny has to vote to
15 reconsider, and then you take a second vote to grant them.
16 And that's what I would ask that you do.

17 CHAIR STARR: Okay. Mr. Handlin.

18 MR. HANDLIN: I'm not going to express any opinion
19 on that last little procedural twist that Mr. Hall just
20 proposed. But in light of Judge August's decision, the
21 Applicant does not oppose the granting of the petitions to
22 intervene.

23 CHAIR STARR: Thank you. Mr. Hall, do you need
24 more?

25 MR. HALL: I don't.

1 CHAIR STARR: Mr. Giroux, first of all, I would
2 like to have a definition of the difference between right to
3 intervene and permissive intervention.

4 MR. GIROUX: All that is is that in the analysis
5 of your decision-making, there's a process whereby people
6 who have certain status have a definite, you know, right to
7 intervene, meaning that there's no discretionary analysis.
8 If they have a special interest in the property as such,
9 then they would absolutely -- you know, you can't deny them
10 an intervention.

11 CHAIR STARR: And that's permissive?

12 MR. GIROUX: No, that's the mandatory. That's the
13 mandatory. If the person who is trying to intervene doesn't
14 meet that criteria, the next level is whether or not your
15 rules say that people who have interest, just, you know,
16 interest, not a legal interest, but an interest in the
17 goings-on, they should be given leave to intervene freely.
18 But it also allows you to do another level of analysis of
19 whether or not allowing intervention would be too
20 cumbersome, or they wouldn't be able to help in developing a
21 record or things like that in order to make the hearing
22 manageable.

23 So, when you're doing an intervention analysis,
24 the Intervenor will first try to establish that they have an
25 intervention by right. And the fallback is if you don't

1 find that, allow them to enter freely doing your analysis,
2 that they're not going to do anything to hinder the
3 fact-finder from getting to the conclusion that they need
4 to.

5 CHAIR STARR: Okay. Thank you. Now, if there's a
6 desire on the part of the body to allow the intervention at
7 this time, Mr. Hall has stated that his reading of it is
8 that that would require a motion to reconsider, which would
9 require the support of someone who voted on the other side
10 of it. It's my own reading of it that enough facts have
11 changed between then, and now that it would not necessarily
12 require a motion to reconsider, but a motion to allow
13 intervention would be -- would itself be in order, and I
14 would like to ask your opinion on that.

15 MR. GIROUX: Yeah, I think it's an issue of
16 Robert's Rules of Order. But seeing that we are in a quasi
17 adjudicatory role now, I mean I wouldn't -- I wouldn't argue
18 with the Chair. I think Mr. Hall is correct, if you wanted
19 to do everything by the Robert's Rules of Order and have a,
20 you know, something previously that was granted. You know,
21 there's a long, cumbersome procedure. But the fact of the
22 matter is that we're dealing with a court order. Action
23 needs to be taken. It needs to be done expeditiously as
24 possible.

25 And by not following that, I don't think would be

1 a problem, unless there is a major objection from somebody
2 on the Board.

3 CHAIR STARR: Before we proceed to any action on
4 this, I would like to open it for members who may have
5 questions or comments. Commissioner Mardfin.

6 COMMISSIONER MARDFIN: First of all, it wouldn't
7 be a motion to reconsider. That can only be -- according to
8 Robert's Rules, that can only be taken on the day action is
9 taken. Instead, you would use the motion to rescind or to
10 repeal or annul if you wanted to formally knock it out. It
11 would seem to me the judge's decision sufficiently rescinded
12 what we did.

13 MR. GIROUX: Your decision has already been
14 voided, so there's no reason to have to strictly follow the
15 Robert's Rules of Order.

16 CHAIR STARR: Yes, and even in Robert's Rules of
17 Order, if the conditions have changed where it's a different
18 thing that is being considered, which is sort of the case,
19 it becomes a moot point. So anyway, any other questions or
20 comments? I would allow, once again, allow members of the
21 public, if they wish to offer informal comments, to do so.
22 Not seeing any, that opportunity is over.

23 Commissioner Mardfin.

24 COMMISSIONER MARDFIN: Did we want to hear from
25 Mr. Handlin?

1 CHAIR STARR: We did. It was brief.

2 MR. HANDLIN: I guess I wasn't memorable.

3 COMMISSIONER MARDFIN: You said you concurred, I
4 presume.

5 MR. HANDLIN: I did. Actually, I said we did not
6 oppose the conditions.

7 CHAIR STARR: Yeah, we heard from Mr. Hall,
8 Mr. Handlin and gave Mr. Hall an opportunity to close.
9 Okay. So, Chair would be open to a motion, and I would ask
10 that the motions be made separately and serially.
11 Commissioner Mardfin.

12 COMMISSIONER MARDFIN: On the Item Number D3,
13 Mr. Isaac Hall's petition to intervene, I move that we grant
14 the intervention.

15 CHAIR STARR: Is there a second?

16 COMMISSIONER SHIBUYA: Here.

17 CHAIR STARR: Moved by Commissioner Mardfin.
18 Seconded by Commissioner Shibuya.

19 MS. CUA: To grant the intervention as identified
20 in Item D3.

21 CHAIR STARR: Okay. Ready to vote. All in favor,
22 please raise your hand. All opposed.

23 MS. CUA: Motion passes unanimously.

24 CHAIR STARR: Okay. Now, in the matter of D4, do
25 we have a motion?

1 COMMISSIONER MARDFIN: If you want. But I think
2 we're still on D3.

3 CHAIR STARR: Yeah. Before we select the
4 mechanism of that, I would prefer we take the first part.

5 COMMISSIONER MARDFIN: If we do this according to
6 the agenda, I move that in Item D4, we grant intervention to
7 Dana Naone Hall and her clients.

8 CHAIR STARR: Is there a second?

9 COMMISSIONER SHIBUYA: Second.

10 CHAIR STARR: Moved by Commissioner Mardfin.
11 Seconded by Commissioner Shibuya.

12 MS. CUA: To grant intervention to Dana Hall,
13 Intervenor Pro Se.

14 CHAIR STARR: All in favor, please raise their
15 hand. All opposed.

16 MS. CUA: Motion passed unanimously.

17 CHAIR STARR: Now, as far as the mechanism or mode
18 of this intervention, is there a recommendation from the
19 Department?

20 MS. CUA: Yes, there is, Mr. Chair. My memorandum
21 dated November 3rd, 2010, we submitted a list of potential
22 mediators and hearing officers for your consideration. And
23 if the Chair would allow me, I would like to just explain a
24 little bit about how we go through the process.

25 CHAIR STARR: Yeah, please.

1 MS. CUA: You saw earlier that Trisha put up on
2 the board a whole list of hearing, potential hearing
3 officers and mediators. And so, we start with that list,
4 and we obviously look for some direct conflicts, like, you
5 know, if let's say I'll pick on Martin. There's several
6 people on the list that are from Carlsmith Ball. So, if
7 Martin is involved, obviously we're not going to go and
8 contact some of the Carlsmith Ball people and ask them if
9 they're interested in being a hearing officer.

10 So, we go through the list, and we try and call
11 everybody that we can that we don't see any direct
12 conflicts. So, in this particular case, we sent a letter to
13 nine people on that list. And of the nine -- and when we do
14 send them something, we let them know what the case is. We
15 let them know the attorneys that are involved, because this
16 is what allows them to come back and say I can't serve
17 because I have a conflict for whatever reason.

18 So, what we got back is we got five people that
19 said they were able to serve, and they did not see a
20 potential conflict. And that's how we formed our list, and
21 we try to get at least four names before we bring a list to
22 you. And then we had three people that indicated that they
23 were not able to serve either because they had a conflict or
24 because -- yeah, it was pretty much because they had a
25 conflict or just not available at this time. And then we

1 had one person that did not respond.

2 So, with that, we've, you know, we have come up
3 with this list for your consideration.

4 CHAIR STARR: And could you read the list?

5 MS. CUA: Guy Haywood, Glenn Kosaka, John Rapacz,
6 Mark Honda and Tom Pierce. And I should also note that the
7 Department's practice is to, in advance of the meeting where
8 you're going to possibly grant a petition to intervene where
9 you may get to choosing of a hearing officer or mediator, we
10 circulate this list to the parties and we ask them to meet
11 and to try and decide amongst themselves, if they can, if
12 there's anybody on this list that they would prefer that
13 they could agree to.

14 And then they would come before you and say, you
15 know, we both agree to such and such, or I absolutely, you
16 know, I'm not supportive of this person or that person, and
17 then that's how you start to make your decision. So, we
18 have done that in this particular case. I know the
19 attorneys have talked. But I haven't heard the latest as to
20 if they have agreed or who they have agreed on. So, I think
21 at that point -- at this point, you could maybe ask them.

22 CHAIR STARR: Yeah, I would like to ask Mr. Hall
23 and Mr. Handlin jointly, why don't you both go up to the
24 mic. Is there a name that both of you would prefer and
25 agree on?

1 MR. HALL: We have discussed this, and we have
2 reached an agreement which we would ask you to accept.

3 CHAIR STARR: What's the name?

4 MR. HALL: For the mediator, Glenn Kosaka, and for
5 the hearing officer, Guy Haywood.

6 CHAIR STARR: And Mr. Handlin?

7 MR. HANDLIN: Yes.

8 CHAIR STARR: Okay. Members, and I assume that
9 that's fine with the Department?

10 MS. CUA: Yes.

11 CHAIR STARR: Okay. Members, Chair would welcome
12 a motion regarding the first D3 to select --

13 COMMISSIONER MARDFIN: Can I ask a question?

14 CHAIR STARR: Sure. Commissioner Mardfin.

15 COMMISSIONER MARDFIN: I don't know procedurally
16 what's appropriate, but I've got a hunch mediation isn't
17 going to work here. Is there any reason to do a mediator as
18 well as a hearing officer?

19 CHAIR STARR: I would have to say that that's --
20 you know, that if the parties wish -- if the parties wish to
21 waive it, that would be acceptable. But not -- but only if
22 that was the desire on their part. I will offer them that
23 option. Mr. Hall, do you wish to waive mediation?

24 MR. HALL: No, I actually think some of these
25 issues could be mediated.

1 CHAIR STARR: Okay. Thank you.

2 And Mrs. Hall?

3 MRS. HALL: Yeah, actually, I'm prepared to engage
4 in good faith mediation, and I think it might get us where
5 we want to go. I hope so anyway. I mean I wouldn't be
6 wanting to waste the Commission's time or the County's money
7 if I thought there weren't a possibility of resolving some
8 of these issues, so I think it's worth a try.

9 CHAIR STARR: Good. I think that's a positive
10 desire and everyone shares. So, Mr. Handlin.

11 MR. HANDLIN: Likewise, it's certainly worth the
12 effort to see if at least we can narrow some things.

13 CHAIR STARR: So, as far as Item D3 goes, would
14 any member like to offer a motion as to a mediator and
15 hearing officer if it proceeds? Anyone, please.
16 Commissioner Mardfin.

17 COMMISSIONER MARDFIN: I move we appoint Glenn
18 Kosaka as a mediator for that item.

19 CHAIR STARR: And hearing officer?

20 COMMISSIONER MARDFIN: You want a motion?

21 CHAIR STARR: Yeah.

22 COMMISSIONER MARDFIN: Guy Haywood as hearing
23 officer.

24 CHAIR STARR: Is there a second?

25 COMMISSIONER SHIBUYA: Second.

1 CHAIR STARR: Moved by Commissioner Mardfin.

2 Seconded by Commissioner Shibuya.

3 MS. CUA: To appoint Glenn Kosaka as the mediator
4 in this matter, and Guy Haywood as the hearing officer.

5 CHAIR STARR: Okay. All in favor, please raise
6 their hand. All opposed.

7 MS. CUA: Motion passes unanimously.

8 CHAIR STARR: As far as Item D4.

9 COMMISSIONER MARDFIN: I move that in Item D4, we
10 appoint Glenn Kosaka as mediator and Guy Haywood as hearing
11 officer.

12 COMMISSIONER WAKIDA: I second.

13 CHAIR STARR: Moved by Commissioner Mardfin.

14 Seconded by Commissioner Wakida. The motion is?

15 MS. CUA: To appoint Glenn Kosaka as mediator and
16 Guy Haywood as hearing officer in this matter.

17 CHAIR STARR: In favor, please raise your hand.

18 All opposed. Thank you. Mr. Hall.

19 MR. HALL: Just for clarity, those are going to be
20 concurrent, they're not separate, right? I think it's
21 obvious.

22 COMMISSIONER MARDFIN: Yes, the intention was to
23 have this concurrent.

24 MR. HANDLIN: So, all one proceeding.

25 CHAIR STARR: Yeah, they were separate agenda

1 items.

2 MR. HALL: No, no, I understand. I wanted to make
3 it clear for the record.

4 CHAIR STARR: Mr. Handlin.

5 MR. HANDLIN: Yeah, if we could just ask if it's
6 possible to try and get Mr. Haywood and Mr. Kosaka under
7 contract to act in those roles within some time frame of the
8 next 30 days.

9 MS. CUA: We're going to try as quickly as
10 possible to get them under contract.

11 MR. HANDLIN: Great. Thank you.

12 CHAIR STARR: Once again, I want to thank everyone
13 for their patience and forbearance and good vibes today.
14 And hopefully, this all can be resolved as quickly and as
15 amicably as possible.

16 MR. HALL: Thank you very much.

17 MR. HANDLIN: Thank you.

18 CHAIR STARR: We're going to recess just so we're
19 ready to start.

20 (Recess taken 1:20 p.m. to 1:23 p.m.)

21 CHAIR STARR: Maui Planning Commission is back in
22 session. To introduce our, what is it, Item D5, is our
23 Deputy Director Ann Cua.

24 MS. CUA: The next request is a request by
25 Mr. Thomas Castleton requesting a Special Management Area

1 Use Permit for the Maui Wave Riders Commercial and Surf
2 School and related improvements on approximately 19,499
3 square feet of land in the B-2 Community Business District
4 at 2021 South Kihei Road. And the planner on this matter is
5 actually Jeffrey Dack, who is out of town, and Jeff Prutch
6 will be filling in for him.

7 CHAIR STARR: Mr. Prutch, take it away.

8 MR. PRUTCH: Okay. Thank you. Thank you. Good
9 afternoon, everyone. I have before you, of course, the
10 Thomas Castleton Wave Riders -- I'm sorry, Maui Wave Riders
11 Surf School commercial retail structure. The Applicant, of
12 course, Gwen Hiraga and her crew is here, and they're going
13 to give the bulk of the presentation. They'll give the
14 Power Point presentation after I'm through. What I want to
15 do is go through some history on this project. This project
16 has been around since 2000. I wanted to kind of bring you
17 up to speed, and they'll take over and kind of go over the
18 project itself and the drawings and the site plan and all
19 that stuff.

20 This SMA use permit was filed back in 2000 by then
21 it was Dale Castleton for a nursery at the time. It was
22 later transferred to his brother Thomas, who is the
23 Applicant today. The property is approximately a half-acre.
24 It's located in Kihei on the southeast corner of Auhana and
25 South Kihei Road right across from Cove Park. The Applicant

1 is requesting an SMA permit for essentially basically
2 construction of a 3,600 square foot commercial retail
3 structure to replace the temporary structures that are
4 currently there now so that the Wave Rider School can
5 function. And, like I said, the Applicant will present that
6 part of the application.

7 What I wanted to tell you is that the site itself
8 is -- it's a triangular shape. It's generally level
9 topography. Just to give you how level and where it's at,
10 the elevation ranges from six feet in sea level at Kihei
11 Road to about eight feet at the rear of the property. So,
12 essentially, it's pretty flat. And I want to let you know,
13 too, there are two fire hydrants located within 250 feet of
14 the property itself.

15 Okay. So, history of the application. In August
16 2000, there was -- a draft environmental assessment was
17 submitted along with the applications for the CPA, a change
18 in zoning as well -- I'm sorry, community plan amendment,
19 change in zoning and the special management area use permit
20 that you have today. This was for construction of a nursery
21 at the time. And a FONSI for the EA was published one year
22 later in August of 2001. In October of 2001, Maui Planning
23 Commission had a public meeting on this. And they voted to
24 defer the action due to some burials uncovered on a nearby
25 parcel associated with the nursery.

1 The Commission also requested an archeological
2 inventory survey for the nearby site, and a survey was filed
3 back in January 2006, five years after that time. Then in
4 January 2006, five years have passed. The Applicant
5 recent -- well, because the application was five years old,
6 the staff sent the revised project to agencies for comments,
7 which are included in your staff report today. Then May
8 2006, the Maui Planning Commission meeting. You guys
9 reviewed the -- well, the Maui Planning Commission at the
10 time reviewed the CPA. The change in zoning, and the SM-1
11 and at that point voted to recommend approval of the CPA and
12 change this zoning the County Council and defer action on
13 the SMA permit.

14 And in October -- at that time still, it was still
15 a nursery that was reviewed by the Planning Commission. And
16 in October 2008, the project went up to Council. It was
17 approved. The CPA and the change in zoning were approved,
18 and the Council approved this with the knowledge of the two
19 changes, one of the changes being that the property was
20 changed from Dale to his brother Tom. And the second
21 change, of course, is that the intended use was now for a
22 commercial retail surf school, not for a nursery. So, the
23 Council approved the change in zoning and the CPA with the
24 understanding of those two major changes.

25 Then in July of 2009, an SMA minor permit was

1 issued to allow the operators to function as a surf school
2 on a temporary basis with temporary structures until the SMA
3 was acted on. And they're currently doing business there
4 now. October 2009, the County -- the County received
5 revised plans showing the surf school retail shop building
6 and everything else that you have before you today.

7 December 2009, these plans went to UDRB. UDRB
8 reviewed them. They recommended approval, and they had
9 three conditions of approval, one being that they wanted to
10 see a bike rack provided on site; two, that they wanted the
11 Applicant to work -- try and work on a method to improve
12 safety of pedestrians walking across South Kihei Road to the
13 cove; and three, they asked for a lighter natural color on
14 the roof of the building.

15 Then in late 2009, the Applicant actually gathered
16 an updated list of the 500-foot list of owners -- I'm sorry,
17 the owners within 500 feet, because it had been nine years
18 since the application was received. They sent invitations
19 to all those attendees to attend the meeting, and they had a
20 meeting December of 2009, a community meeting regarding the
21 project, the changes and what they were proposing. And
22 they'll have a little more information on that, but I guess
23 17 people attended that meeting. Then in September 2010
24 just a few months back, we received a new project assessment
25 report.

1 It was prepared, and that's what you have here
2 today asking for your approval of the SM-1. With that, I
3 would like to switch it over to Gwen and her gang and let
4 them go over the project itself and the site plan and the
5 elevations and all the nuts and bolts of the project. And I
6 can come back up for questions.

7 CHAIR STARR: Ms. Hiraga, you have a Power Point?

8 MS. HIRAGA: Yes.

9 MR. HALL: About how long will that run?

10 MS. HIRAGA: Should be about five minutes, very
11 short.

12 CHAIR STARR: Okay. That's fine.

13 MS. HIRAGA: Good afternoon, Chair Starr and
14 Members of the Planning Commission. My name is Gwen Hiraga
15 from Munekiyo & Hiraga. We have a very short Power Point
16 presentation for your review. We would like to start off
17 with the project team. The Applicant property owner is
18 Thomas and Alissa Castleton of Maui Wave Riders. Myself and
19 Kivette Koeppel from Munekiyo & Hiraga. Architect is Rick
20 McGovern. Civil Engineer, Douglas Gomes. And Landscape
21 Architect, Brian Maxwell.

22 Joe had briefly explained the property location,
23 and this slide just shows the location, the size of the
24 property, access and the land use designations of urban
25 business commercial district in the Kihei-Makena Community

1 Plan and B-2 Community Business Zoning, and also it is
2 located within the SMA.

3 In terms of location, this is the property. Right
4 here is a single-family residence. This parcel right there
5 is the Kihei Parkshore. And in the back, this property here
6 is Kanoe Apartments. The Island Surf Building is located
7 here, and Kalama Park is across the street. This is South
8 Kihei Road. As Joe mentioned, you know, we did have an
9 Urban Design Review Board meeting in December, on December
10 1st, 2009. And the Board did come up with three basic
11 recommendations.

12 And instead of repeating it, you know, I have it
13 noted, but Joe did note it also. In addition, we did have a
14 community meeting on December 17th. Approximately 17
15 members attended the meeting. What was expressed at the
16 meeting primarily, and I know Jeffrey Dack has included the
17 meeting report in your -- in the Department's report, but
18 basically the primary comment or concern was that the --
19 those in attendance were primarily from the Island Surf,
20 residents and business owners. And their major concern was
21 they thought that the zoning was still apartment zoning.

22 And we had to clarify that, you know, it went
23 through a zoning change with the County Council. And
24 subsequent to that meeting, I did send out copies of the
25 ordinances that changed the community plan and changed the

1 zoning from A-1 Apartment to B-2 Business. In terms of
2 the -- you heard Joe mention about -- about an archeology
3 and -- an archeological inventory survey was conducted in
4 February 2009.

5 The Council did have a condition as one of the
6 zoning conditions that an archeological inventory survey be
7 prepared. It was done. It was accepted by SHPD. And in
8 addition to that, an archeological monitoring plan was
9 prepared, which was also accepted by SHPD. We thought that,
10 you know, maybe traffic needed to be updated, so we retained
11 the services of a traffic engineer, who evaluated the prior
12 TIAR. And basically, the traffic engineer concluded that,
13 you know, a new TIAR was not warranted.

14 At this point, I would like to turn the
15 presentation over to Rick McGovern, the architect, and he
16 will describe in more detail the site and the design of the
17 building. And he will be followed by Douglas Gomes, who
18 will speak about drainage and other engineering matters.

19 MR. MCGOVERN: Thank you, Gwen. My name is Rick
20 McGovern. I'm the architect with my own firm, and what I
21 would like to do is just talk a little bit about the site
22 and the project we're actually proposing to build. This is
23 a photograph showing from Kalama Park looking towards the
24 site itself. And basically, as everybody said, it's a
25 fairly flat site, but the thing to notice is the beautiful

1 landscaping that's already there. It's a very attractive
2 site.

3 This is the temporary interim building that was
4 actually discovered on the property. It was kind of buried
5 in the woods. And Mr. Castleton asked if we could get an
6 interim permit so he could occupy this and operate his
7 business while we were going through the SMA process. Our
8 proposed action is to construct a 3,600 square-foot
9 one-story commercial retail building. The previous building
10 that was proposed was going to be a two-story building, and
11 this is going to be a one-story building.

12 The maximum height of the building is proposed to
13 be 20 feet, so it's a very low building. We're using what I
14 call a hip roof. It's a split-pitch hip roof to kind of
15 keep the scale of the building down, so the high point of
16 the building is not all the way along the whole building.
17 It's in the middle of it. The general look of the building
18 is going to consist of making it like a little surf shack.
19 In fact, the owner wanted to put a thatched roof on it
20 originally, but we ran into some issues with that.

21 So, we're actually putting a shingled roof on it,
22 but we're going to use kind of a mid-tone brown, light-color
23 brown roof. And then we're going to use lauhala mat, which
24 is everybody knows probably what that is. And then also
25 some darkened bamboo as a trim for the -- all the siding so

1 that the building keeps that real low-key character to it.
2 I know with the lights out, it's not the easiest thing to
3 see, but this is kind of a synopsis of what we're proposing.

4 Again, it's a just a low scale, very attractive,
5 low-key building if that helps your vision a little bit.
6 The building is in two pieces right now. The owner intends
7 to operate one-half of the building as his own surf school
8 and the other half to rent out to a retail establishment,
9 hopefully something in the same line like a Hi-Tech or
10 something like that. And as far as the site lighting goes,
11 I know that's an issue that was requested. There is ample
12 site lighting on all of the other buildings around this
13 building, so that all we're going to do is put some down
14 soffit lights on the building itself, no external parking
15 lot lights or anything like that.

16 The -- again, this is the general look of the
17 building. It's going to be a very open structure. We're
18 not at this point in time proposing any air conditioning.
19 We would like the air to flow through the building and keep
20 it very natural. A quick review of the site again. The
21 lower right-hand corner is where the entrance is right now.
22 That's going to stay there. There's 12 parking stalls
23 proposed, and then the building you can see sitting there.
24 The existing landscaping is going to stay in place. And
25 instead of putting in lawn, the owner would like to use a

1 Synlawn, so he doesn't have to use a lot of water for
2 irrigation.

3 So, it's going to be a combination of Synlawn and
4 then drip irrigation just to keep the existing planting
5 pretty much the way it is. This site just shows the
6 existing interim plan where the seven parking stalls were
7 put in and a little office building trailer there and the
8 retention basin down at the bottom. The new site, again,
9 just expands the seven parking stalls into 12 parking
10 stalls. And the new building keeps the same existing
11 driveway coming in Auhana Street.

12 As far as the building design itself energywise,
13 even though we are not air conditioning the building, if
14 they ever decide to in the future, we want to make sure it
15 is most energy efficient as possible. So, we're putting in
16 a R30 cool roof system to reflect the heat coming in. We're
17 using R19 in the walls and low energy insulated glass in all
18 the windows, and again, the Synlawn and drip irrigation, and
19 we have pretty good-sized overhangs to help with the
20 shading.

21 MS. HIRAGA: In terms of the operations for
22 Mr. and Mrs. Castleton, they do have a permit from the
23 County, which is called a CORA permit, to operate out of
24 Kalama Park. And they -- the permit allows them to have a
25 maximum of 14 individuals or students -- I'm sorry, 14

1 individuals, including students and instructors. So,
2 there's generally a 12 to two ratio.

3 And also, you know, they operate the school or the
4 lessons from 7:30 -- from 7 a.m. to 3:30 p.m. Monday through
5 Friday and 7 a.m. to 12 noon on Saturdays.

6 MR. GOMES: I'm Douglas Gomes with Engineering
7 Dynamics, the Civil Engineer. Regarding the site drainage,
8 the site currently has about a 30 percent coverage based on
9 existing 200 square-foot trailer. And 300 -- I mean 3,000
10 square foot of existing pavement and parking. The proposed
11 improvements would increase the impervious area of 3,600 for
12 the building and another 3,000 square foot for the paved
13 parking. So, this results in about a 51 percent coverage of
14 the lot consisting of impervious surfaces that would cause
15 runoff to occur.

16 The drainage improvements for the site is in
17 compliance with the current Maui County Code for drainage,
18 and it utilizes three grated catch basins with subsurface
19 retention. And the volume of that subsurface retention is
20 sufficient to capture all of the runoff of the pavement and
21 off the roof area. We did do some percolation tests on the
22 site and found that the soils is a silty sand and had a
23 percolation rate in the 20, 25-inch per hour range.

24 And based on that, we conclude that none of the
25 runoff from this property would leave the property. All the

1 runoff would be either contained within the retention system
2 or absorbed by the landscaped area. The zone -- the
3 property is in a Zone C, so it's not subject to any of flood
4 hazard regulations.

5 CHAIR STARR: Thank you.

6 MS. HIRAGA: So, Mr. Chair, that concludes our
7 presentation. We're open to any questions the Commissioners
8 may have.

9 CHAIR STARR: Yeah, Members, questions?
10 Commissioner Mardfin.

11 COMMISSIONER MARDFIN: I've got two questions.
12 Your engineer was just up there talking about the drainage.
13 Would the Syn -- would the land covering, I forget what it's
14 called, Syn something or other.

15 MS. HIRAGA: Synlawn.

16 COMMISSIONER MARDFIN: Does the water go through
17 that, or is that like pavement where it just runs off?

18 UNIDENTIFIED SPEAKER: It percolates down.
19 There's holes in the grass where it percolates.

20 CHAIR STARR: Please don't speak from the
21 audience.

22 MR. GOMES: It's a very porous surface that allows
23 the rainfall to fall directly through the surface.

24 CHAIR STARR: Yeah, Commissioner Wakida.

25 COMMISSIONER WAKIDA: Is there -- this is going to

1 be a surf school, correct?

2 MR. GOMES: Uh-huh.

3 COMMISSIONER WAKIDA: And it will have rental
4 items?

5 CHAIR STARR: Gwen.

6 MS. HIRAGA: The surf school is to provide surf
7 lessons. And so, the -- they provide the equipment, and
8 they take the students to Kalama Beach Park and they provide
9 the surf lesson at the beach park.

10 COMMISSIONER WAKIDA: And they may conceivably
11 rent surfboards to people, that's a possibility?

12 MS. HIRAGA: I believe so.

13 COMMISSIONER WAKIDA: My question is is there a
14 wash-off area for the equipment?

15 MS. HIRAGA: A wash-off area for the --

16 COMMISSIONER WAKIDA: The surfboards and their
17 ocean equipment.

18 MR. McGOVERN: At this point in time, the way they
19 operate is they use the beach park wash-off station before
20 they come back on their own property, and they propose to
21 continue to do that.

22 COMMISSIONER WAKIDA: Okay. But my concern is
23 they also have a rental operation for equipment. People
24 generally bring things back, and one doesn't know if it's
25 been rinsed off or not.

1 CHAIR STARR: Can we have the Applicant answer
2 this?

3 MR. CASTLETON: We ask the patrons --

4 CHAIR STARR: Please introduce yourself.

5 MR. CASTLETON: Oh, hi I'm Tom Castleton. The
6 patrons usually wash off in the ocean, and then they bring
7 it back across the street. If it's dirty, then we use the
8 hose to squirt it off and put it back right away, let it dry
9 for a few minutes and put it right away.

10 COMMISSIONER WAKIDA: So, you do have a wash-off
11 area, someplace where you would rinse off your equipment?

12 MR. CASTLETON: That's correct, yes.

13 COMMISSIONER WAKIDA: Have you designated anything
14 in your plot for that, a special spot?

15 MR. CASTLETON: I think Rick has designed it right
16 where we suit them up and where they're going to be coming
17 in, to wash them off right there on the south side of the
18 building.

19 COMMISSIONER WAKIDA: And is there separate
20 drainage for that?

21 MR. CASTLETON: There should be. Rick.

22 MR. GOMES: Actually, there is no -- within our
23 design, there was no specific area designated for the
24 wash-down. But any area adjacent to the landscaped area
25 would be suitable and that wash water would generally just

1 percolate right into the ground. We do not have currently
2 any kind of a collection system to collect any of the water
3 and to divert into the sewer or anything. It would just
4 percolate into the ground, the landscaped area.

5 COMMISSIONER WAKIDA: Thank you.

6 CHAIR STARR: Commissioner Shibuya.

7 COMMISSIONER SHIBUYA: You mentioned about
8 cleaning the equipment. How about the patrons that you
9 would have approximately 12 of them. Will they have a
10 locker and a shower room?

11 MR. CASTLETON: There is a shower. And lockers,
12 we're considering putting lockers in for the students.

13 CHAIR STARR: Yeah, Commissioner --

14 COMMISSIONER SHIBUYA: More questions. I'm also
15 interested in -- and I notice you have some skylights, and
16 that's a nice feature that you don't need to use energy.
17 But I would just like to see if you have anything in mind
18 for a photovoltaic system.

19 MR. McGOVERN: We chose not to look at solar
20 voltaic at this time, because the orientation of the
21 building is not towards the south. They have very little
22 roof on the south side. To put them on the west side, which
23 is our only long roof we've got to put them up on an angle,
24 which would be quite unattractive. And since we're not
25 planning on

1 air conditioning, and we've got the natural flow of air
2 going through the building and the skylights, we're not
3 providing hot water because we're just having regular
4 bathrooms.

5 So, there's going to be very low energy usage in
6 this building. So, solar voltaic would be kind of overkill
7 at this time. It could always been added in the future if
8 they decided to add air conditioning. It would be no
9 problem.

10 COMMISSIONER SHIBUYA: Because the photovoltaic
11 panels do not have to be mounted very high. In fact,
12 because we're so close to the equator, no more than 12
13 degrees elevation is fine.

14 MR. MCGOVERN: I have them on my house, and I had
15 to do the exact same thing, so I know what you're talking
16 about, yes. Thank you.

17 CHAIR STARR: Commissioner Wakida.

18 COMMISSIONER WAKIDA: I would like to follow up on
19 the shower. Is that an indoor or outdoor shower?

20 MR. MCGOVERN: That would be an outdoor shower.

21 COMMISSIONER WAKIDA: I'm still a little concerned
22 about the sufficient drainage for all this water that's
23 going to be generated and not create a big puddle, a big
24 mess.

25 MR. MCGOVERN: Well, I think what Doug was saying

1 is that they did the percolation test and found out how fast
2 the water goes down in the natural sand and soil that is
3 there. And with the drainage system he's got, he's saying
4 that no water will leave this property, so that will include
5 heavy rains, runoff from the roof, shower, et cetera.

6 COMMISSIONER WAKIDA: Well, yes, I mean heavy
7 rains is not my concern. It's more daily -- it's daily use.
8 Because this will be persistent. So, my concern is drainage
9 and grading that would allow water to run off in a certain
10 direction so it doesn't have standing water.

11 MR. McGOVERN: Correct. We actually had the
12 grading done so that it's sloped down towards the low spot.

13 COMMISSIONER WAKIDA: Thank you.

14 CHAIR STARR: I have a couple of questions. Your
15 documentation states that you will only be retaining on site
16 the increase in runoff and that the amount of water that is
17 existing runoff will sheet flow into South Kihei Road where
18 it will be collected by the County drainage system and
19 basically put into the shoreline. I don't technically want
20 to see that happen, because the conditions will be changed
21 from a natural -- natural surface.

22 So, I would like to know if you can retain 100
23 percent of the 50-year storm --

24 MR. McGOVERN: That reference to --

25 CHAIR STARR: -- runoff on site.

1 MR. McGOVERN: The reference to the runoff and
2 that water being directed to an existing grated inlet, that
3 is in reference to water that's already on the street
4 flowing along Auhana Street. We are providing curb and
5 gutter and sidewalks along that portion of the property
6 fronting Auhana. And so, that water that referred to that
7 goes into the grate inlet, crosses the street, and goes
8 under the park is actually water that's not on the property.

9 It's all water that flows along the road and along
10 the shoulder. The water that is flowing on the property,
11 all the drainage runoff would be captured by the grate
12 inlets retained within the underground retaining system
13 and/or percolated into the landscaped area, which is almost
14 50 percent of the property. So, there would be very little,
15 if any, runoff from rainfall coming off of this property.

16 CHAIR STARR: So, what I'm hearing you saying is
17 that I assume you will not have a problem with a condition
18 whereby 100 percent of the pre and post development runoff
19 will be retained on site for a 50-year storm?

20 MR. GOMES: We can certainly design a system, and
21 I believe currently as it is, that would be the case.

22 CHAIR STARR: Can you answer my question?

23 MR. GOMES: Yes. Yes, we would be prepared to do
24 that.

25 CHAIR STARR: I have one other question.

1 Actually, I have two more questions. The first is how much
2 parking load will your business place on the Kalama Beach
3 Park parking?

4 MR. McGOVERN: Right now, we're showing 12 parking
5 stalls on site. The County code requires that we would
6 provide seven, so we're actually providing more than what's
7 required.

8 CHAIR STARR: So, when people come to learn how to
9 surf at your school, will their cars be parked at your
10 location, or will they basically park their cars at the
11 beach park?

12 MR. McGOVERN: Depending on the number of people,
13 some at each location. The owner has most of his staff
14 either taking bicycles, which is why the bicycle rack was a
15 good deal, or they live close enough that they've been
16 walking. So, we put as many people on the site as we can.
17 And it's just depending on how many people actually show up.
18 But in general, there's -- it's been operating this way for
19 quite a while, and he's not had a problem.

20 CHAIR STARR: But the people who come and use the
21 beach park do have a problem. I know. I've tried to use
22 the beach park, and I could not -- you know, and it's like
23 that most days, unless you get there really, really early,
24 because it's filled up with customers. I don't know whether
25 they're your customers or someone else's customers. So,

1 what I would like you to consider undertaking is that all
2 your customers park on your site and not park at the beach
3 park. I see Ms. Hiraga nodding in assent to that. So, a
4 condition to that effect would be acceptable?

5 MS. HIRAGA: Yes, Mr. Chair. We would be okay
6 with the condition to prohibit the students or the patrons
7 for the surf school from parking at Kalama Beach Park.

8 CHAIR STARR: Thank you very much. And I have one
9 more question, and are there still any coqui frogs on the
10 property?

11 MS. HIRAGA: Good question, because I know you
12 brought that up back in 2006. And we had a lot of
13 discussion, and in response to your question, there are no
14 coqui frogs. It's been completely eradicated.

15 CHAIR STARR: Members, any questions?
16 Commissioner Hiranaga, and then Commissioner Mardfin.

17 COMMISSIONER HIRANAGA: Just to follow up on the
18 parking. I'm just curious how you're going to control your
19 customers telling them they must park on site in order to
20 attend the surf school. Are you going to make that part of
21 the registration process?

22 MS. HIRAGA: Yes, we could. I think we need to
23 find a way to make sure that the patrons fully understand
24 that parking when they come for their lessons, they're not
25 allowed to park at Kalama Beach Park and the parking is

1 available on site. So, we could include it as part of their
2 registration.

3 CHAIR STARR: Mr. Castleton.

4 MR. CASTLETON: Thank you. All the other surf
5 schools do park at Kalama Park. My name is Tom Castleton.
6 All the other surf schools use Kalama Park for their
7 parking, and then we shut down at 1:30, and the parking lot
8 is empty after that. It's just abandoned, so we don't --
9 we're not during peak times, so there's never been a parking
10 issue. It's a big parking lot. There's been lots of room,
11 and we don't do it on -- Sundays we don't teach. So there's
12 no Sundays. Saturday we're done by 11:30.

13 And we don't even use the park to go and use our
14 vans in there. We're just parking them on the property.

15 CHAIR STARR: I should hope you don't drive your
16 vans across the street and park them at the beach park.

17 MR. CASTLETON: Everybody else does though.

18 CHAIR STARR: I should hope that you don't.

19 MR. CASTLETON: Yeah, I don't.

20 CHAIR STARR: And I should hope that your
21 customers are not going to park in the beach park.

22 MR. CASTLETON: Yes, sir.

23 COMMISSIONER HIRANAGA: I do note that I believe
24 the minimum parking requirement is eight stalls, but that
25 you're going to be putting in 12, so it is beyond the

1 minimum requirement. The Synlawn, are we going to know
2 that's a synthetic lawn, or is it something that really
3 looks like grass that people won't go, hey, look, look at
4 that Astroturf landscaping?

5 MR. McGOVERN: Well, you know, they've improved
6 Synlawn considerably over the old Astroturf days, and
7 they're even allowing it now in Wailea. So, it's gone a
8 long ways. It's actually down in the site right now. Tommy
9 has had it down there since he put in the interim building
10 if you would like to take a look at it. It doesn't look bad
11 at all.

12 COMMISSIONER HIRANAGA: Did the Urban Design
13 Review look at that?

14 MR. McGOVERN: I don't know whether they did or
15 not.

16 CHAIR STARR: Commissioner Mardfin.

17 COMMISSIONER MARDFIN: Yeah, I would like to refer
18 to Exhibit 21 on the police -- Gwen, this is probably for
19 you. In the handwritten comments at the bottom of that from
20 Gary Yabuta, Chief of Police. The comments are, "Note that
21 there are existing pedestrian crosswalks," blah, blah, blah.
22 "Further recommend that a noise stipulation be placed for
23 after hours functions at the proposed building be limited in
24 anticipation of disorderly, loud noise complaints."

25 The response of your company to that was, "Number

1 2, the proposed hours of operation are Monday through Sunday
2 9 to 5. After hour functions are not anticipated to occur
3 on the property. However, should an after hour function be
4 scheduled, the Applicant agrees to establish a noise
5 stipulation to minimize potential for disorderly loud noise
6 complaints from the neighboring residents," which I'm happy
7 you put in there. But it does not seem to be one of the
8 project-specific conditions.

9 And when we get to the recommendations, I'll be
10 asking that a project-specific condition to that effect go
11 in there if you want to start drafting one.

12 MS. HIRAGA: In response to that, when we received
13 the comment, we did have a meeting with the Planning
14 Department, and we discussed it. And it was felt that
15 having a specific condition in terms of a noise stipulation
16 was not necessary. The Applicant intends for at least his
17 portion to have certain hours of operation, and, you know, I
18 think even for tenants, he will note quiet hours. The
19 entire area, the surrounding businesses usually close down
20 about 10 at night.

21 And he doesn't anticipate allowing his tenants to
22 be open later than that as well. But he is aware that, you
23 know, there was a comment from the police about noise. And
24 -- I'm sorry?

25 COMMISSIONER MARDFIN: Your response was Monday

1 through Sunday 9 to 5, and now you're talking about 10 p.m.

2 MS. HIRAGA: No, what I'm saying is that the
3 surrounding uses, the surrounding uses or businesses are
4 open until 9 or 10. What we said was the proposed hours of
5 operation for the surf school is from 9 to 5.

6 COMMISSIONER MARDFIN: So, you would prefer a
7 stipulation that your hours of operation not go past 5 p.m.
8 as opposed to a noise stipulation?

9 MS. HIRAGA: No, that's not what I'm saying. What
10 I'm saying is that the surf school operation is from 9 to 5.
11 But remember, as it was explained, that the commercial
12 structure itself has two parts, and one is a surf school.
13 And the second part is for leasing or renting out to a
14 potential or to potential retailers and other businesses.

15 COMMISSIONER MARDFIN: And it seems to me we need
16 a noise stipulation or an hours of operation stipulation.

17 MS. HIRAGA: For the other --

18 COMMISSIONER MARDFIN: For the entire property.
19 We're approving an entire property. I think the noise
20 stipulation or hours of operation stipulation should be for
21 the entire property.

22 MS. HIRAGA: Well, I'm -- well, we can think about
23 it. But again, like I said, we had a discussion with the
24 Department, and it was agreed that there would not be a
25 condition calling for a noise stipulation.

1 COMMISSIONER MARDFIN: But as you point out,
2 you're only applying it to half the building.

3 MS. HIRAGA: No, you -- I think what we said was,
4 and this is what the letter says. Nine to 5 is for the surf
5 school portion. Okay. The building has two components.

6 One would be the surf school operation, and the second is a
7 commercial lease. So, on the commercial lease portion --

8 COMMISSIONER MARDFIN: Let's move on. When we get
9 to the conditions, I'll propose a condition.

10 CHAIR STARR: Ms. Cua has a comment, and then
11 Commissioner Hiranaga.

12 MS. CUA: I just indicated we can discuss this.
13 This is a developmental permit you're issuing. It's not
14 like a use permit in the residential district. There's a
15 lot of businesses in the area. We felt this should be
16 handled in terms of noise similarly to how anything around
17 the area would be handled. If there's issues with noise,
18 the police department would be called.

19 Again, this is -- we just see it different as
20 being not a use that's automatically permitted in a
21 different district that you would need extra noise control.
22 We felt it should fall under the purview of everybody else
23 in the area for business zoning falls under, and that was
24 our position.

25 CHAIR STARR: Commissioner Hiranaga.

1 COMMISSIONER HIRANAGA: If you could just clarify,
2 your civil engineer mentioned that the flood zone
3 classification was C, but I saw in the staff report Zone X.
4 So, I just wanted clarification.

5 MR. GOMES: Yes. The original report was prepared
6 on the prior firm maps, which was Zone C, and that's
7 subsequently changed to X, which is the equivalent
8 indicating that there's minimal flooding on the property.
9 It's an equivalent basically saying that it's -- there is no
10 flooding disadvantage for the property. It's minimal or
11 none.

12 COMMISSIONER HIRANAGA: I thought I read in the
13 staff report that if it's Flood Zone X, you had to elevate a
14 foot off of grade.

15 MR. GOMES: No.

16 COMMISSIONER HIRANAGA: No?

17 MR. GOMES: There's no requirement for any type of
18 raising of the grade in the X Zone.

19 COMMISSIONER HIRANAGA: Okay. Thank you.

20 CHAIR STARR: Commissioner Shibuya.

21 COMMISSIONER SHIBUYA: On Exhibit 24, there is a
22 condition for allowing Auhana Road to be improved and
23 perhaps even a right-of-way joining that. There's also a
24 widening aspect of it. Has this been considered in part of
25 your landscaping?

1 MR. GOMES: The proposed construction plans take
2 into account a two-foot road widening. So, we were already
3 in the process of doing a road widening dedication to the
4 County to allow for the road widening. There are some
5 discussions -- I had originally met with Public Works, and
6 on the width, we had originally anticipated a 56-foot
7 right-of-way with a three-foot dedication. I think in the
8 review comments, it mentions a 60-foot right-of-way. We
9 have since met with Public Works and discussed that issue.

10 And I think that's something that would be
11 resolved during the process of the actual preparation of the
12 construction plans in which case we might move the --
13 increase the roadway dedication if it's required by Public
14 Works.

15 COMMISSIONER SHIBUYA: So, it's not settled yet,
16 56 or 60 feet?

17 MR. GOMES: No. We would like -- the ordinance
18 requires a 56-foot right-of-way based on this type of
19 roadway and the zoning. So, we were surprised when we saw
20 the 60-foot right-of-way requirement. It says might -- I
21 think it says may be or might be required. We met and
22 discussed that, and it's not finalized. Our concern is that
23 if the wider width is required, it's going to probably
24 endanger all those palm trees.

25 Currently with the widening to 56, the three-foot

1 dedication, it comes up to the base of those palm trees. If
2 we're forced to go to 60 feet and give another two feet, all
3 those trees are going to be impacted. So, we're hoping to
4 resolve that directly with Public Works.

5 CHAIR STARR: I would like to hear from
6 Mr. Miyamoto on that.

7 MR. MIYAMOTO: Thank you, Mr. Chair. We have been
8 working with the Applicant regarding this issue as he has
9 mentioned. We're still in the process of developing those
10 frontage improvement issues. Fifty-six, 60, I think that's
11 where internally we have a conflict, because our County Code
12 says 56 currently. But our design standards say 60. So,
13 we're looking at it seeing how much right-of-way that was
14 given from the development from across the street.

15 Right now we don't have a clear definition of what
16 existing right-of-way is in this area. But we are looking
17 at it because this Commission did impose conditions on a
18 project further up the Kalama elderly housing. We had a
19 bike lane that they constructed, so we just want to make
20 sure we have sufficient right-of-way to accommodate this.

21 CHAIR STARR: Commissioner Shibuya.

22 COMMISSIONER SHIBUYA: Yeah. That's a
23 continuation that if we do have the bike lane above, then
24 this entire road should have that same consistent type of
25 standards. I'm also very concerned in terms of the line of

1 sight type of access at the intersection as well as your
2 driveway. If you have the palms there, will that impact the
3 line of sight?

4 MR. GOMES: No. Based on the location of the
5 driveway, which is at the extreme -- it was east side of the
6 property, that it can -- there's enough site distance of the
7 entry and exit from the driveways can be done safely.

8 COMMISSIONER SHIBUYA: Because if you stand on
9 South Kihei Road looking up Auhana, and you can actually see
10 the distance, the differences between your property or this
11 property and the one we're reviewing as well as the
12 condominiums above. The sidewalks will not be consistent,
13 and the bikeway is nonexistent. So, I'm concerned about
14 this consistency aspect. Okay. Thank you.

15 CHAIR STARR: One more -- one question upon that.
16 Will be there sidewalks on both the Auhana and South Kihei
17 Road sides of this?

18 MR. GOMES: South Kihei Road is already fully
19 developed with curbs and gutters and sidewalks. And we will
20 be putting in new curbs and gutters and sidewalks on our
21 adjacent frontage of Auhana, so that will be fully improved
22 to the County standards.

23 CHAIR STARR: Okay. So, do we need or would it be
24 relevant to condition to make sidewalks and bike lanes on
25 the Auhana portion? Yeah, I was asking Mike whether we need

1 that or whether it's already part of the County standard.

2 MR. MIYAMOTO: The County standards under the
3 County Code, when they come in for that building permit for
4 that building, this structure, the frontage improvements
5 will be triggered. And as we've been working with the
6 Applicant regarding what those improvements will be, they
7 will be handled during that design stage.

8 CHAIR STARR: That includes sidewalk and bike
9 lanes?

10 MR. MIYAMOTO: We'll have to look at the width and
11 how you would -- you wouldn't want to put a bike lane that
12 really goes to nowhere. It dead ends at the street, but
13 we'll probably make that lane on that side a little wider so
14 it can be accommodated at that point. If we designate a
15 bike lane and it leads to nowhere, then it's more
16 problematic; whereas, if we create a wide enough paved area
17 for the bicycle traffic to be, then at least they have an
18 area up until they get to the residential area where we
19 don't have sufficient right-of-way and asphalt.

20 CHAIR STARR: Isn't there a bike like lane down
21 Auhana though?

22 MR. MIYAMOTO: No, there's one further up as you
23 get by the Kalama retirement community. They created that
24 one as part of Phase 2 and Phase 1. So, there's a void spot
25 in between those two, the missing link, so to speak, that we

1 would have to be working on trying to get property from the
2 adjacent property owners and ultimately building that lane
3 there.

4 CHAIR STARR: I do bicycle quite a bit, and it's a
5 lot easier when you're around a busy intersection to have
6 the bike lane at least close to the intersection. So, I
7 would like to see the bike lane -- more bike lane on this
8 portion. What would be our mechanism for doing that?

9 MR. MIYAMOTO: It can be part of our frontage
10 improvements easily. It's just a matter of striping it and
11 putting in the symbols for the bike lane.

12 CHAIR STARR: Would the Applicant mind a condition
13 as to that, to a striped bike lane on their frontage?

14 MR. GOMES: I think that's something we're willing
15 to work with. Public Works is reviewing the plans.

16 CHAIR STARR: Please use the microphone.

17 MR. GOMES: I think that's something we're willing
18 to work with Public Works to provide if that's a requirement
19 once they make the full determination on the road widening
20 dedication and improvements.

21 CHAIR STARR: But I was asking whether you would
22 be willing for us to add a condition that there be a striped
23 bike lane along with sidewalk on your frontage.

24 MS. HIRAGA: Gwen Hiraga. We would not object to
25 a condition like that, but I think it should also include

1 that, you know, to the satisfaction or work with the
2 Department of Public Works, because they're going to make
3 the determination, rather than imposing a condition that we
4 may not be able to comply with if that's not what the
5 Department is going to require.

6 So, a general type condition I think would be
7 okay.

8 CHAIR STARR: Okay. That's fine. So, I'll leave
9 that to staff to -- Commissioner Tagorda.

10 COMMISSIONER TAGORDA: This is just very quick
11 question. Because when someone was talking about the
12 building materials that they're going to be using on that
13 structure is a webbed thing and bamboo thing like that.
14 Those materials are prone to vandalism. You have plans to
15 install security system in your property?

16 MR. McGOVERN: The owner has indicated he does
17 want to install a security system, yes, because he has a lot
18 of surfboards that might also be subject to somebody wanting
19 to borrow.

20 COMMISSIONER TAGORDA: And then going back to the
21 old development, can you show me the slope of that property,
22 mountain side to ocean side? Do you know what it is? How
23 many feet from the mountain or to the ocean?

24 MR. McGOVERN: Right down at the corner of South
25 Kihei Road and Auhana, the elevation is about six feet

1 going this direction through the property and works its way
2 up to eight feet. So, it's very flat across this, kind of a
3 diagonal slope across the property in that direction.

4 COMMISSIONER TAGORDA: So, where is this retention
5 basin in that property?

6 MR. McGOVERN: Right there in one of the catch
7 basins. There's another one right up in there, and the
8 drainage itself is underground in this area and underneath
9 the parking lot.

10 COMMISSIONER TAGORDA: And you expect all this
11 runoff from outside the property and inside the property and
12 during heavy rain to be retained in that property?

13 MR. McGOVERN: Yes.

14 COMMISSIONER TAGORDA: Okay. Thank you. My other
15 concern is traffic. You know, this area is close to Kalama
16 Park and Charlie -- what, Charlie Young?

17 CHAIR STARR: Charlie Young.

18 COMMISSIONER TAGORDA: And where a lot of surfers
19 and, you know, people who go surfing. How do you address
20 the impact of traffic, foot traffic especially?

21 MR. McGOVERN: Well, foot traffic, we've been
22 asked to utilize the crosswalk that is currently right
23 there. The way that this surf school is going to operate is
24 that the people will come into the surf shop. They will go
25 out to this covered lanai area, put on their booties, get

1 their surfboards, walk out a path to the existing sidewalk.
2 And then they will come up, and they will all cross at the
3 crosswalk. And then when the lesson are over, they'll
4 reverse from the park coming back across the crosswalk and
5 back onto the property.

6 COMMISSIONER TAGORDA: And that's the only traffic
7 improvement that you have in mind?

8 MR. McGOVERN: That's correct.

9 COMMISSIONER TAGORDA: For that area?

10 MR. McGOVERN: That's correct. We're also working
11 with Public Works on how they want to address any other
12 issues relative to crossing at the crosswalk. They've
13 talked about possibly putting in like a push button light
14 system, but they're analyzing the entire South Kihei Road,
15 because they don't want to have one at every 50-foot
16 interval, so that's part of what we're working on right now
17 with Public Works.

18 COMMISSIONER TAGORDA: Thank you.

19 CHAIR STARR: Thank you. Commissioner Wakida.

20 COMMISSIONER WAKIDA: Yes. While you have the
21 plan up, where is the proposed shower, outdoor shower?

22 MR. McGOVERN: Right in this area right here.
23 This is where they get their surfboards. They put their
24 booties on. This is the path they take. And this is the
25 path they take coming back in. They wash off here and come

1 back into the building.

2 COMMISSIONER WAKIDA: And that will be where
3 equipment can be washed off as well?

4 MR. McGOVERN: Yes.

5 COMMISSIONER WAKIDA: And that is where the
6 Synlawn is?

7 MR. McGOVERN: That is one of the areas that the
8 Synlawn is, that's correct, yeah. There's also the major
9 catch basin right there for this whole portion of the
10 property, so it's all tied together underground.

11 COMMISSIONER WAKIDA: Thank you.

12 CHAIR STARR: We're ready for public testimony.
13 Any members of the public that wish to testify on this item,
14 please make yourself known. Not seeing any, public
15 testimony is closed. Members, are we ready to wrap this up?
16 Commissioner Hiranaga.

17 COMMISSIONER HIRANAGA: Actually, I did have a
18 couple more questions. Actually, it's clarification from
19 staff. Just because they call it a surf shop or surf
20 school, they're not going to be required -- that's not a
21 required use, because they're coming in for a development
22 permit. They could change the use to something else if they
23 wanted to as long as it's allowed in the B-2 zoning.

24 MS. CUA: That's correct.

25 COMMISSIONER HIRANAGA: I just wanted to make that

1 clear.

2 MS. CUA: Again, it's a special management area
3 development permit, which was my point on the use of the
4 noise, noise issue and use.

5 COMMISSIONER HIRANAGA: A couple of questions for
6 the Applicant.

7 CHAIR STARR: Go ahead.

8 COMMISSIONER HIRANAGA: So, do people actually
9 graduate from surf school?

10 (Laughter.)

11 I mean is there a protocol that you must go
12 through to get a certificate, or you just give as many
13 lessons as they want until they figure they can go out on
14 their own?

15 MR. CASTLETON: They're guaranteed to get up and
16 ride waves. And if they stand up and ride a wave, they get
17 a diploma, and they get a free T-shirt. And they love the
18 instructors, mostly all Hawaiian, local guys. They have a
19 great experience.

20 COMMISSIONER HIRANAGA: Are you planning to put a
21 web cam up there for Cove Park?

22 MR. CASTLETON: Good question. I'm not sure at
23 this time.

24 CHAIR STARR: Commissioner Wakida.

25 COMMISSIONER WAKIDA: Yes, I have a question for

1 you, too, sir. Assuming that this goes through, are you
2 prepared to start construction fairly soon?

3 MR. CASTLETON: Yes.

4 COMMISSIONER WAKIDA: So, you have some
5 prefinancing in place?

6 MR. CASTLETON: That is correct.

7 COMMISSIONER WAKIDA: And how long do you think it
8 would take to complete the project?

9 MR. McGOVERN: We've talked with a couple of
10 contractors, and they both say that somewhere in the
11 nine-month range once we start construction. The main issue
12 will be how long it takes to get the building permit. We
13 want to submit for that as soon as possible after we get
14 this approval. And then as soon as we get the permit, he's
15 going to start construction.

16 COMMISSIONER WAKIDA: All right. Thank you. The
17 reason I raised this question is I -- I like to see that
18 construction is completed in a timely manner so that the
19 neighbors aren't subjected to this. And it seems to be the
20 case here. However, in one of the recommendations, a
21 standard recommendation, a condition was that the project be
22 completed within five years. I would like to change that to
23 three. Maybe this isn't the time.

24 CHAIR STARR: We can discuss this.

25 MS. CUA: The Department would have a concern

1 about that. Because I mean it wouldn't be fair to other
2 applicants that, you know, that come through the same permit
3 process. It's a standard condition from the Commission, and
4 I believe it's a standard condition for a reason. And so,
5 but anyway, you guys can see where it goes.

6 COMMISSIONER WAKIDA: So, we can't make something
7 specific for this project?

8 MS. CUA: I mean you could. But again, I think
9 there would need to be a really compelling reason why, and
10 this is in a business area. And so --

11 COMMISSIONER WAKIDA: But it is next door to a
12 condominium project, too. So, I don't think we're
13 anticipating a long, drawn-out construction process either,
14 but --

15 CHAIR STARR: I want to comment on that, is that
16 it's unfortunately the case that it's not that easy to get a
17 permit and finish the process and then construct and get a
18 sign-off on everything in three years. It should be, but it
19 isn't.

20 COMMISSIONER WAKIDA: No, I'm just talking about
21 from the time construction is begun until it's completed,
22 not the permit process.

23 COMMISSIONER HIRANAGA: Mr. Chair, I think it
24 would be more appropriate if there's a motion on the floor.
25 And if she wants to either make the motion with that

1 condition or amend it. If it's seconded, we can bring it
2 for discussion. But it seems premature to be debating at
3 this point.

4 CHAIR STARR: I have no problem with the
5 discussion, and maybe it's a discussion for another day, you
6 know, in general. But, you know, we can certainly, you
7 know, add an amendment when we get to it.

8 COMMISSIONER WAKIDA: All right.

9 CHAIR STARR: Commissioner Freitas, did you have
10 something?

11 COMMISSIONER FREITAS: No.

12 CHAIR STARR: Does anyone want to make a motion?

13 COMMISSIONER FREITAS: I'll make a motion.

14 CHAIR STARR: Oh, no, you can't make a motion yet.
15 Sorry, Jack.

16 COMMISSIONER FREITAS: You keep cutting me out on
17 my motions.

18 (Laughter.)

19 CHAIR STARR: I think it's that shirt. It's the
20 shirt that doesn't --

21 COMMISSIONER HIRANAGA: Green light.

22 CHAIR STARR: No, the checkerboard one. I like
23 that. Go ahead, Mr. Prutch.

24 MR. PRUTCH: I'll make a recommendation for you
25 guys to make a motion on. Pursuant to the foregoing, the

1 Maui Planning Department is recommending approval of the
2 special management area use permit subject to the 26
3 conditions you have in your staff report, which includes 12
4 project specific conditions. And with the inclusion, if you
5 will, of three additional conditions. I'll go ahead and
6 read those three conditions to you.

7 If you feel like massaging them little bit, you
8 can, or you can leave it to staff, Ann and myself, to
9 massage them to what they need to be. The first condition
10 being that the Applicant shall make efforts to retain as
11 close to 100 percent of post development runoff as possible
12 during a 50-year, one-hour frequency storm to the
13 satisfaction of the Public Works Director.

14 Evidence of fulfillment of this condition shall be
15 submitted with the final compliance report to the Planning
16 Department. Number 2, that patrons of the surf school shall
17 park on site and not within Kalama Beach Park for parking
18 purposes. Number 3, that a striped bike lane shall be
19 constructed on Auhana Road to the satisfaction of the Public
20 Works Director. That's what we were able to scribble
21 together real quickly.

22 And with that recommendation and the three
23 additional conditions, we're recommending approval of the
24 special management area use permit.

25 CHAIR STARR: Okay. Now, your motion,

1 Commissioner Freitas, and I apologize.

2 COMMISSIONER FREITAS: No problem. I would like
3 to make a motion to accept the special management area
4 permit for the Wave Rider School.

5 CHAIR STARR: As recommended.

6 COMMISSIONER FREITAS: As recommended with the
7 conditions approved.

8 CHAIR STARR: And a second.

9 COMMISSIONER TAGORDA: I second.

10 CHAIR STARR: Moved by Commissioner Freitas.
11 Seconded by Commissioner Tagorda. The motion?

12 MS. CUA: Is to approve the special management
13 area permit with 29 conditions, three additional conditions
14 as read by Joe.

15 CHAIR STARR: Okay. Commissioner Mardfin.

16 COMMISSIONER MARDFIN: I would like to move to
17 amend and add an additional project-specific condition
18 dealing -- if you have a general one, it would be great --
19 dealing with a noise stipulation to minimize the potential
20 for disorderly loud noise complaints from neighboring
21 residents.

22 CHAIR STARR: Is there a second?

23 COMMISSIONER SHIBUYA: I'll go ahead and second.

24 CHAIR STARR: Moved by Commissioner Mardfin.
25 Seconded by Commissioner Shibuya. Commissioner Mardfin,

1 speak on the amendment.

2 COMMISSIONER MARDFIN: I heard what Ann said about
3 the Department wanting to use regular procedures. I would
4 like to see the stipulation for a number of reasons. One,
5 specifically the chief of police has asked for it. And I
6 think we ought to listen to that. Secondly, on October 29th
7 of this year, the Applicant seemed to accept it in her
8 letter of October 29th. Less than a month later, they seem
9 to be backing out of it, which tends to bother me.

10 Third, we were told that some of the neighbors
11 came by to express their views about this site and found out
12 that it wasn't a park, but that was it was business zoning.
13 And we didn't hear more about that, but it seems to me in
14 light of the fact that there's a nearby residential area,
15 that we ought to put something in. If they weren't
16 concerned about this a month ago, I don't know why there
17 should be concern now. But I don't really want to see an
18 hours of operation stipulation, but I want to see an
19 excessive noise stipulation after hours.

20 CHAIR STARR: It is a mixed use neighborhood, but
21 with the concerns that the Department has expressed, is
22 there a way that possibly this can be wordsmithed so that
23 the Department feels more comfortable with it if the maker
24 feels that way?

25 COMMISSIONER FREITAS: Yeah, I would speak against

1 the amendment, because the Planning Department has worked
2 with the Applicant. And it is a mixed use area and -- mixed
3 use area, and it's a business district. And I'm sure that
4 it won't exceed the business hours. And being a surf shop
5 and the size of the building, I can't see where there would
6 be any parties or anything held where there would be
7 excessive noise. They're not putting in a machine shop.

8 CHAIR STARR: Ms. Cua, a comment.

9 MS. CUA: Normally -- I'm trying to think of
10 situations where we deal with a condition like this, and
11 it's normally when we're looking, where somebody is asking
12 to put a use in a zone that is not outrightly permitted.
13 It's either being considered as a special use or a
14 conditional use. And how it's usually handled is through
15 hours of operation, because that's enforceable. I mean if
16 they say until, you know, 5, but again, this is only half of
17 the building.

18 So, we don't know what's going to happen on the
19 other half of the building. But that's how we normally
20 handle it in a situation where let's say a business is going
21 into a residentially zoned -- on a residentially zoned
22 property. To put -- I mean we could put like a general
23 condition that, you know, the Applicant minimize, to the
24 extent practicable, you know, nighttime noise on the
25 property.

1 But the thing about that is when you put a
2 condition, you should put a condition that's able to be
3 enforced. And so, when we go back to noise, who -- the
4 Department looked at who has jurisdiction to take care of
5 noise complaints. And it is really the police department.
6 And a lot of times, maybe it will happen on a weekend, and
7 so they would call the police department. It's -- you know,
8 it's just a challenging one.

9 But it's the Commission's decision, you know, if
10 you want to choose to put one. But not knowing again what
11 kind of use is going to go on the other side of the
12 building, it may be something that goes later than 5:00. We
13 don't know. And again, there are what, 60 uses that are
14 allowed in the business district that could possibly go into
15 that other space.

16 CHAIR STARR: Commissioner Hiranaga. Then
17 Commissioner Mardfin.

18 COMMISSIONER HIRANAGA: Again, this is a
19 developmental permit. So, there's no guarantee a surf
20 school will actually be operated there. They're
21 representing that to us, but there's no requirement that a
22 surf school be created. But if you're going to put that
23 type of excessive noise requirement, I would want some type
24 of a quantitative threshold that needs to be exceeded in
25 order for this type of a condition to be applied.

1 Because when you say excessive noise, it's in the
2 eye or the ear of the beholder. It's such a vague
3 requirement. Who is going to decide it's excessive? The
4 police department. They probably won't want to be called
5 for it anyway.

6 CHAIR STARR: Commissioner Mardfin.

7 COMMISSIONER MARDFIN: I would propose that the
8 wording be as the Applicant had accepted, that I agree with
9 Commissioner Hiranaga that we don't know what it's going to
10 be there. That makes it all more important to have a noise
11 condition from my point of view. That outside -- after 5
12 p.m., should any operation occur, that there will be a noise
13 stipulation to minimize the potential for disorderly, loud
14 noise complaints from neighboring residents.

15 If you want to put it in terms of -- I'm going to
16 turn to my fellow Commissioner Shibuya for what the DB level
17 should be. But we could say 80, 90 DB from the --

18 COMMISSIONER SHIBUYA: From the street.

19 COMMISSIONER MARDFIN: -- from the street.

20 COMMISSIONER SHIBUYA: I don't know. It's very
21 difficult.

22 COMMISSIONER HIRANAGA: Let's call for the vote.

23 CHAIR STARR: Commissioner Tagorda.

24 COMMISSIONER TAGORDA: Can I make a statement or
25 comment on the proposal on the amendment? I live close to a

1 baseball park, and I live close to that MACC. And every
2 time there's a band, there's a game, there's noise. I don't
3 even know if it's loud or what. But we have an ordinance
4 against noise.

5 So, am I going to call the police because they are
6 playing baseball and they're noisy? Who is going to
7 implement that? Who is going to listen to me? That's my
8 statement.

9 CHAIR STARR: Okay. Members, we have an amendment
10 on the floor. Can we review what the amendment is?

11 MS. CUA: That there be some kind of condition
12 about a noise stipulation attached to this permit.

13 COMMISSIONER MARDFIN: After 5 p.m.

14 CHAIR STARR: I don't think that's a viable
15 amendment. I'm happy to bring an amendment to a vote for a
16 condition, but it's really got to be a little more specific.
17 And, you know, I sympathize. I mean, you know, maybe it
18 will become the Four Loko, you know, gone wild party spot
19 instead of the surf school. I mean, but there kind of are
20 ordinances already. Mr. Giroux.

21 MR. GIROUX: Chair, can I just bring to light that
22 if you look at Exhibit 8, the condition of zoning is this
23 was a conditional zoning for the business district, which is
24 very limited. Condition B or Exhibit B for the conditions
25 limits it to apartment, art gallery, surf school, nursery,

1 bed and breakfast. And if there is any major change in use
2 within the retail usage, that it will have to come back to
3 the Planning Commission anyway. So, you will have a review
4 of that. And if that use exhibits some degree of concern
5 about noise, the condition can be further looked at by the
6 Department at that time.

7 CHAIR STARR: Okay. Commissioner Mardfin. You're
8 wisdom. I'm happy to entertain an amendment. Just make it,
9 you know, kind of --

10 COMMISSIONER MARDFIN: I remember when we were
11 dealing with Kula Lodge, we had a noise amendment. Does
12 anybody recall roughly what that said? Because the
13 neighbors were concerned about noise generated from Kula
14 Lodge.

15 MS. CUA: I mean I handled the Kula Lodge
16 initially, which was a long time ago, and I recall two
17 things. One is they had greater setbacks. I think they
18 have -- they had either a 50 or 100-foot setback from the --
19 from the area where the neighbors were, and then in addition
20 to that, I believe there was time, some time stipulations
21 placed on it.

22 CHAIR STARR: Let's move this along.

23 COMMISSIONER FREITAS: Call for the question.

24 CHAIR STARR: Commissioner Hiranaga.

25 COMMISSIONER HIRANAGA: Was it no live music,

1 outdoor live music after 8:30?

2 MS. CUA: Amplified.

3 COMMISSIONER HIRANAGA: After 8:30.

4 MS. CUA: Or something like that.

5 COMMISSIONER MARDFIN: I'll accept that, that
6 they --

7 CHAIR STARR: You're rephrasing the amendment.

8 COMMISSIONER MARDFIN: I'm rephrasing the
9 amendment.

10 CHAIR STARR: Okay, fine.

11 COMMISSIONER MARDFIN: That after 5 p.m., there be
12 no amplified music outside the building on the property
13 outside the building.

14 CHAIR STARR: Is there a second to that?

15 COMMISSIONER SHIBUYA: Outside the building you
16 mean, or in the building, right?

17 COMMISSIONER MARDFIN: I guess on the property.
18 That will be no amplified music on the property after 5 p.m.

19 COMMISSIONER SHIBUYA: Okay. I'll go ahead and
20 second it.

21 CHAIR STARR: I have to say as a musician, I have
22 real concern about this.

23 (Laughter.)

24 COMMISSIONER HIRANAGA: Unplugged.

25 CHAIR STARR: Yeah, but you're welcome to make

1 whatever you want. Okay. We're going to vote on the
2 amendment. The amendment is?

3 MS. CUA: That there shall be no amplified music
4 on the property after 5 p.m.

5 CHAIR STARR: Okay. All in favor, please raise a
6 hand. All opposed.

7 MS. CUA: Motion fails. Two aye's, six no's.

8 CHAIR STARR: Okay. Any other amendments? We are
9 going to vote on the main motion. The motion is?

10 MS. CUA: To approve the special management area
11 permit with the 26 conditions attaching the staff report,
12 plus three additional conditions as outlined by staff
13 planner Joe Prutch.

14 CHAIR STARR: Okay. Commissioner Hiranaga.

15 COMMISSIONER HIRANAGA: I was just looking at
16 these project specific conditions, and there's new language
17 in here. Satisfaction of Department of Water Supply. Why
18 are they all of the sudden inserted in here?

19 MS. CUA: One of the things that the Department
20 has started doing, and we're hoping to be more consistently
21 applying it across the Board with all the planners, is being
22 very clear both to anybody who reads this, to the
23 Commission, to the Applicant, to the Department as to who
24 needs -- who does this condition have to be done to the
25 satisfaction of.

1 And this way, when an applicant is addressing the
2 condition in their compliance report, a lot of these
3 conditions come from different agencies. So, in some cases,
4 it's not appropriate for the Planning Department necessarily
5 to be the one to be making the determination that they've
6 met the conditions. So, we're trying to just be clear with
7 the condition to say kind of where it came from, so you know
8 where it's coming from and who is going to decide that this
9 condition has been adequately met.

10 COMMISSIONER HIRANAGA: But why put "or Planning"?

11 MS. CUA: Oh, you're talking about the one that
12 says "or Planning"?

13 COMMISSIONER HIRANAGA: There's a bunch of them
14 that says "Department of Water Supply or Planning." Some
15 say "or," some say "of Planning".

16 MS. CUA: The reason why we added Planning on
17 those conditions -- you see they are only water conditions,
18 I believe.

19 COMMISSIONER HIRANAGA: Yeah, 17, 18, 19, 20, 21,
20 22.

21 MS. CUA: The reason we did that is because we're
22 aware that it could take a while possibly to get -- to be
23 able to get the Water Department to indicate that they have
24 met the condition or not. And for -- for some of the
25 matters here, we thought -- for some of the conditions, we

1 thought, you know, if the Applicant could just say, okay,
2 we're doing X, Y and Z, and the condition requires X, Y and
3 Z; if we can see that it's there, we don't need to
4 necessarily wait for Water Department to come back and say
5 that it seems acceptable.

6 That's why it's pretty much for the Water
7 Department conditions that we've added that, because we were
8 just a little concerned that it could take a while to be
9 able to get confirmation from the Water Department that the
10 condition was met. So, we would give it a try. But we
11 would see how long it would take, and then based on that, we
12 would maybe be able to move forward.

13 COMMISSIONER HIRANAGA: So, the Department of
14 Water Supply does not have an issue with this language?

15 MS. CUA: We checked with them. That's my
16 understanding.

17 COMMISSIONER HIRANAGA: It's kind of like you ask
18 your father. He says no. So, then you go ask your mother.
19 Hopefully she'll say yes.

20 CHAIR STARR: I think it's more a case, if you go
21 ask your father, and he doesn't give you an answer. And I
22 am -- I think that it's a good trend to actually give the
23 Applicant someone they can talk to. And not just, you know,
24 government, you know, go ask government whether you can do
25 this.

1 COMMISSIONER HIRANAGA: Thank you.

2 CHAIR STARR: Let's vote on the main motion. Is
3 everyone clear what it is?

4 COMMISSIONER SHIBUYA: Yeah, you're going to
5 change the wording?

6 CHAIR STARR: Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: I'm not sure the last
8 condition regarding the bicycle path is real appropriate. I
9 think it should say if the Public Works Department
10 determines that a bicycle path is applicable, then -- but
11 the way the Planning Department's language, if you could
12 repeat that, I'm not in total agreement with what your
13 proposed condition language is.

14 MR. PRUTCH: Let me read what I had. And since we
15 have Mike here, he can verify whether this has enough
16 wriggle room to work around it or not. That a striped bike
17 lane shall be constructed on Auhana Road to the satisfaction
18 of the Public Works Director.

19 Does that give the Public Works Director enough
20 room if there's not room for a bike lane to not put it in?

21 MR. MIYAMOTO: Yes, it does give us sufficient
22 flexibility to determine what can be fit and what's
23 necessary in that area.

24 COMMISSIONER HIRANAGA: Well, if you said a
25 bicycle pathway shall be constructed. It doesn't say if

1 determined appropriate by the Department.

2 MR. MIYAMOTO: Well, if after in getting more
3 details in the design process, we determine that a bike lane
4 is not possible in this area because of some physical
5 constraints, I think this allows us that flexibility. This
6 statement allows us that flexibility. We want to make sure
7 it's a bike lane and not a bike path, because we're already
8 tight in this area. As there are already existing bike
9 lanes on South Kihei Road, we're pretty much going to
10 continue the same scenario along Auhana.

11 CHAIR STARR: Let's move along. But first, Ann.

12 MS. CUA: I'm sorry, I do need to comment.
13 Because just based on other projects that I know sometimes
14 when conditions are worded a certain way, it could cause
15 problems later on if somebody wants to challenge. I think,
16 Mike, you know, if there's -- if there's a chance that for
17 whatever reason Public Works would determine that maybe
18 there shouldn't be a bike lane in that particular location,
19 then I would not suggest this language.

20 Because I would just -- I would rather go with
21 language that, you know, should Public Works determine that,
22 you know, a bike lane is needed, then it should be
23 constructed on Auhana. And the reason I say that is because
24 the way it's worded right now, it says that there should be
25 a bike lane. It's just a matter of how it's going to look.

1 And I was even thinking we should probably take out
2 "striped" because I think what Mike was saying was that if
3 there isn't necessarily room for a dedicated like lane, then
4 maybe they would just widen the pavement. And it could be
5 used that way. I didn't know if he was meaning stripes.

6 So, not knowing what he was actually meaning, I
7 would -- I think it's important to know what could possibly
8 be. Because the condition does, you know, in the first
9 sentence does say that the bike lane shall be constructed.
10 And if it's just that -- and it's just saying how it's going
11 to be constructed is decided by Public Works, but that
12 you've got to have a bike lane there.

13 CHAIR STARR: I don't understand why we're having
14 this discussion over whether the Planning Commission can say
15 there should be a bike lane. I mean this is 2010. Bike
16 lanes are pretty much mandated on most roadway standards.
17 You know, yes, they're inconvenient. It's much more
18 convenient not to have them, except for if you're a
19 bicyclist.

20 MS. CUA: I think it's just that because when
21 Public Works was asked, they had indicated that they're sure
22 that in some way they could try and accommodate it, but they
23 have issue because there's -- or there might be an issue
24 because there's a piece of -- or they were concerned that
25 there would be a bikeway that could lead nowhere. And so,

1 they were still looking at it. Again, I just don't want to
2 preclude them from making a decision they're going to be
3 able to make when they get all the information that they
4 have. I don't know. Mike, can you help us out?

5 CHAIR STARR: Mike, is there a problem? I mean I
6 would like to point out that the main bike thoroughfare for
7 south Maui, which is the North-South Collector Road, dumps
8 out onto Auhana Road. And that's the only way to get from
9 Auhana Road onto -- from the North-South Collector Road to
10 South Kihei is to go by bicycle down and onto South Kihei
11 Road. So, this is a major bicycle thoroughfare that
12 connects the North-South Collector, which is basically a
13 large bikeway, and South Kihei Road. And I'm just kind of
14 staggered that it's like waffling over whether we can make
15 it safe for all the people who are going to do that
16 transition.

17 MR. MIYAMOTO: Yes. I think we're just trying to
18 -- I guess it's a matter of how you interpret that. I think
19 everybody's intent is to provide sufficient roadway width in
20 front of this subject property to accommodate bicycle
21 traffic, whether that's with a striped bicycle lane or
22 additional width asphalt that provides for that.

23 I guess that's, you know, something we can work
24 with the Applicant on deciding, but I think we're all in
25 agreement that there will be some kind of accommodation made

1 for bicycles in this area. Because it's part of the Kalama
2 project, the retirement community project. One of the
3 conditions that was placed upon that applicant was to design
4 a bicycle facility from Piilani Highway to South Kihei Road.

5 And we're working with that applicant on that
6 design process also.

7 CHAIR STARR: So, are we okay with the current
8 wording?

9 MR. MIYAMOTO: I guess, for me, I thought the
10 "shall" implied that the Applicant needs to work with us to
11 come up with some kind of solution to provide a bicycle
12 facility, whether it be wide asphalt or a striped lane.

13 CHAIR STARR: Can we go ahead with this? Okay.
14 Main motion. Commissioner Mardfin. Could we please get off
15 this item?

16 COMMISSIONER MARDFIN: I'm off this item.

17 I just want to say I'm going to be voting against
18 the main motion, because when the police recommend something
19 and then the Applicant agrees to it, and then within a month
20 with the cooperation of the Planning Department they're
21 reneging on it, I don't support it.

22 CHAIR STARR: That's the noise?

23 COMMISSIONER MARDFIN: That's the noise.

24 CHAIR STARR: Main motion to approve with how many
25 conditions?

1 MS. CUA: Twenty-nine conditions.

2 CHAIR STARR: All in favor, please raise their
3 hand. All opposed.

4 MS. CUA: We have seven aye's, one no. Motion
5 passes.

6 CHAIR STARR: Please build a surf school there.
7 You know, I just want to comment it's good to see a surf
8 school in walking distance to the beach, so you don't have
9 to take cars and buses. We're going to take a ten-minute
10 recess.

11 (Recess taken 2:46 p.m. to 3:01 p.m.)

12 CHAIR STARR: Okay. Maui Planning Commission is
13 back in session. It is November 23rd, 2010. We're ready
14 for New Business. Ms. Cua.

15 MS. CUA: Thank you, Chair. Item E-1 under New
16 Business is a request by Ms. Marcia Lucas requesting an
17 Environmental Assessment Determination on the Final
18 Environmental Assessment prepared in support of the
19 shoreline setback variance for the 11 Hale Malia Place Slope
20 Repair Project in order to construct a structurally
21 engineered slope retaining system at 11 Hale Malia Place at
22 TMK 4-3-003, Parcel 96 in Napili.

23 And the staff planner on this is Jim Buika, and we
24 just want to note that the Draft EA was reviewed by this
25 Commission on February 23rd, 2010.

1 CHAIR STARR: Mr. Buika.

2 MR. BUIKA: Thank you. Good afternoon, Chairman
3 Starr and Commissioners. My name is Jim Buika with the
4 Planning Department. And how I propose to proceed with the
5 Chair's concurrence, of course, is as follows. I would like
6 to introduce you to first the purpose of this agenda item;
7 second, explain the reason for the mitigation action on the
8 shoreline; and third, then present the three options before
9 you today in terms of regarding -- regarding the Final
10 Environmental Assessment before you.

11 Following these introductory procedural remarks, I
12 will turn it over to the Applicant's consultant, who is
13 Chris Hart & Partners to describe the project, there will be
14 a short Power Point presentation, and discuss the additional
15 information that is included in the Final Environmental
16 Assessment as requested by the Maui Planning Commission.
17 And following the presentation and Commission deliberation,
18 I will provide the Department conclusions and
19 recommendations for you today. So, if this is acceptable to
20 the Chair, I'll proceed.

21 CHAIR STARR: Yeah, please.

22 MR. BUIKA: Thank you. First, the purpose of this
23 agenda item is for the Maui Planning Commission to take an
24 action on the Final Environmental Assessment, which has been
25 distributed to you. The project is for the completed work

1 issued by the Planning Department under an emergency SMA
2 permit, SM-3 2008/0004, and it was to construct the
3 shoreline slope stabilization and repairs and a retaining
4 wall, seawall located at 11 Hale Malia Place, Napili, Maui,
5 TMK (2)4-3-003:096.

6 And, second, the reason for the shoreline
7 stabilization emergency permit and subsequent work was that
8 there was a catastrophic failure of the existing shoreline
9 bluff and seawall shoreline property due to an apparent
10 saturation of the property itself from the drainage mauka of
11 the property combined with high surf and storm surge in the
12 early December 2007 storm. The event was the 4th through
13 the 7th. The failure occurred on December 5th, 2007.

14 And then, third, the Applicant, Ms. Marcia Lucas,
15 is requesting a finding of no significant impact from the
16 Commission for the Final Environmental Assessment today. I
17 have with me today the Applicant's representative Mr. Matt
18 Slepín, who will do the presentation, along with Jason Hart.
19 And Chris Hart is also here. They will also introduce the
20 archeologist, who is here, and the engineering team on the
21 project.

22 The EA trigger is the work completed in the
23 shoreline setback area. The Maui Planning Commission is the
24 accepting authority. The Draft Environmental Assessment,
25 again as Deputy Director Cua mentioned, was presented to you

1 and reviewed on February 23rd, 2010, and it was also
2 published in the Environmental Notice of the Office of
3 Environmental Quality Control in February 2010.

4 And at the time of the hearing on February 23rd,
5 the Commission requested additional information on 11
6 topics. And Chris Hart & Partners, representing the
7 Applicant, will follow my introduction with a review of
8 these information requests that have been included in the
9 final EA. And also, the Draft EA was transmitted to 12
10 additional federal, state and county agencies for review and
11 comment back in February.

12 And those commenting agencies are listed on Page
13 8. And then the agencies that did not have any comments are
14 listed on Page 9. To date, the Department has not received
15 any additional testimony regarding the project. So, in my
16 opening conclusion here or concluding -- to conclude my
17 remarks, I would like to state your three options for the
18 Commission action here today. The first option is under
19 Section 11-200-12 of the Hawaii Administrative Rules.

20 Option one is to accept the Final Environmental
21 Assessment and issue a finding of no significant impact
22 determination. In this case, the Commission determines that
23 the proposed action will not have a significant impact on
24 the environment and that potential impacts have been
25 adequately mitigated. As such, the Commission issues a

1 FONSI determination at today's regular meeting November
2 23rd, 2010.

3 If this is your determination, the Department will
4 transmit your determination to the OEQC for publication,
5 which initiates a 30-day legal challenge period. If the
6 determination remains undisputed, the Department will
7 continue processing both the SMA, the special management
8 area application, and the shoreline setback variance
9 applications following the EA process.

10 So, option two is to defer the final EA if you
11 find that additional information is required to make a
12 determination on the final EA. And then at that time, we
13 would have to come back and review the Final Environmental
14 Assessment again once that information was included. And
15 then the third option is to prepare an Environmental Impact
16 Statement, which an EIS assesses the proposed project
17 through additional research, discussion and review. Also,
18 the Commission must note for the record the deficiencies
19 relative to the significance criteria as defined in Section
20 11-200-12 of the Hawaii Administrative Rules.

21 So, those are your three options; to issue a FONSI
22 today, defer the Final Environmental Assessment, or ask that
23 an Environmental Impact Statement is to be prepared. So,
24 this concludes my introductory remarks. And with the
25 Chair's permission, if there are no questions on the

1 procedures at this point, I would like to turn it over to
2 Mr. Matt Slepín, who is representing the Applicant, who will
3 also introduce the technical team here available to answer
4 any questions later on. Is this okay?

5 CHAIR STARR: How long will that presentation
6 last?

7 MR. BUIKA: I've been told it will take ten
8 minutes. Thank you. Mr. Matt Slepín with Chris Hart &
9 Partners.

10 CHAIR STARR: Mr. Slepín, please.

11 MR. SLEPIN: Thank you, Jim. Good afternoon,
12 Chair and Members of the Maui Planning Commission, my name
13 is Matt Slepín. I'm a senior associate with Chris Hart &
14 Partners. I'll make one slight clarification. My associate
15 is Jason Medema, or we could all be Hart. That would be
16 fine, too.

17 Anyway, we have a very short presentation here.
18 There's a couple of commission members who were not on the
19 Commission when we took the Draft EA through. So, we will
20 go through the project, but fairly briefly. If someone
21 could knock the lights off. Thank you very much. Okay.

22 An aerial of the project area. Here is
23 Honoapiilani Highway. That's the lower road here heading
24 down to Lahaina that way. Here is the two points, and our
25 project site is right here on the northern end of the bay.

1 What we've got is the site of a single-family residence that
2 was built about ten years ago, and we'll note that there was
3 a large cement koi pond there, which then was converted in
4 2003 to a swimming pool.

5 This gives a little better view of what we're
6 talking about. There is the house. You can just see the
7 little pool kind of coming off the back there. And there is
8 the slope. And if you look really closely from when this
9 was taken, there was the collapse back in 2007, which as Jim
10 pointed out, December of 2007, so virtually three years ago
11 now that we had this. Again, there's a little bit of the
12 pool. There is where the slope collapsed, and from the
13 ocean side.

14 You can see some of the pipes and whatnot, the
15 utility lines came out and that collapsed. So, we undertook
16 a consultation both with the Maui Planning Department and
17 the State Office of Coastal Conservation Lands to determine
18 what the best course of action would be. The Planning
19 Department then issued an emergency permit deeming that
20 there was essentially an imminent threat or imminent
21 potential threat to public safety and welfare. In addition,
22 we all agreed the state, the county, that the preferable
23 option would be that the emergency measure be the same as
24 the long term solution rather than slapping up something
25 right at the moment and then tearing it back out again

1 later.

2 So, the idea then, the solution was to engineer
3 this retaining wall to keep the shoreline bluff from falling
4 down again, which would replace the original seawall, which
5 was an old unpermitted wall that there actually aren't
6 particularly any records on. But as best we can determine
7 some point in the '80s, it was constructed by a previous
8 owner and had collapsed during this event. So, this is
9 what's come up in the interim, a solid, as you say,
10 structurally engineered wall to keep everything in place.
11 It goes over that bit of the old wall. This is the site
12 plan.

13 Here is the house with the pool right there. Here
14 is the lawn. There's the wall. And although it's a little
15 hard to see, I think the shoreline setback line as it is
16 currently calculated from the new rules or, well, after this
17 house was built runs right there. And the shoreline, yes.
18 Thank you. The shoreline there, good point, Jason. As you
19 can see from those photos, what we have essentially is a
20 rocky hard, naturally hardened shoreline down there. There
21 isn't really a beach.

22 So the purpose of the project is to prevent any
23 further collapse, any damage to the restaurant -- to the
24 restaurant -- to the residence or to the water quality in
25 the bay, mitigate that potential threat and prevent any

1 sedimentation or pollution of the ocean water. This body
2 commented on the Draft EA back in February of this year.
3 And as Jim went through, you're now being asked to accept
4 the Final EA and issue a FONSI. The Draft EA was sent out
5 to a number of agencies, as is always the case, federal,
6 state and county. We didn't receive too many substantive
7 comments. I'm not going to go through all of them. They're
8 in your application or in your copy of the FEA if you want
9 to see them.

10 Of those substantive comments, essentially we've
11 got things like use best management practices, ensure that
12 lateral public access is preserved. There was a question
13 about archeology, which we'll get to. That was taken up by
14 the Commission as well and a confirmation from the Army
15 Corps that we don't need a Department of the Army permit.
16 So, the major comments came from the Planning Commission
17 themselves. I'll just go through these a bit.

18 There was a comment that came up during the course
19 of the cultural impact assessment. It was determined that
20 there was probably some sort of burial cave on the property
21 that had been covered up sometime ago. As best we've ever
22 been able to determine, that cave would have been behind
23 where that earlier seawall was placed. Archeologist Dave
24 Perzinski from SCS is here to answer questions if we get to
25 that, but essentially, the archeologist went out to the site

1 multiple times attempting to see if there was any evidence
2 of this case. No evidence was ever found, which leads us to
3 conclude that if it was there, it's behind this old seawall.
4 The Planning Commission asked us to take this project to the
5 Maui Lanai Burial Council for this issue. We took it to the
6 Burial Council. They had no comment. There was a question
7 of the history of the structures on the project site. Here
8 we encountered some of the difficulties of looking up old
9 permits in the County records.

10 We got what we could, and all we know at this
11 point is that there was that residence built in 2003 by the
12 previous owner. The pool converted in 2000, sorry, the
13 original residence, which replaced a previous residence, but
14 there is no existing documentation of what was there prior
15 to this 2000 residence. Then in 2003, a permit was issued
16 to convert the koi pond to a swimming pool. There was a
17 question about the historic beach conditions at the site.

18 We included a series of mosaic aerial photos going
19 back to 1975, so that's about 35 years worth of photos
20 that's included in your application. We have a few up here,
21 project site, project site going up. Essentially -- there
22 we are there, 2007 again. Essentially, the shoreline hasn't
23 changed very much in the last 35 years. As I say, it's
24 essentially a naturally hardened shoreline without very much
25 in the way of sandy beach like you get further down. That's

1 the Kahana Sunset condominiums right there where they have
2 natural beach.

3 We were asked to prepare a map showing the walls
4 in relation to the shoreline and the annual erosion hazard
5 rate map. We show the site plan. I -- we can throw it up
6 there again. In the site plan that we had, we showed you
7 the shoreline setback line. If we go here is a close up of
8 the erosion map. It's a little hard to make out. I had to
9 blow it up pretty far. But that's where the house would be.
10 You can see that the orange -- the light blue, the purple
11 are the more recent surface that were done. They all pretty
12 much cluster together, because again, there really isn't
13 much in the way of erosion going on here.

14 Hardened structures within the shoreline setback
15 area, as we noted, there's a permitted -- there's a koi pond
16 that was permitted to be converted to a swimming pool in
17 2003. Subsequent to that permit, the shoreline rules were
18 amended to change the calculation of the shoreline setback.
19 When that pool was permitted, it was outside of the
20 shoreline setback. Since the change in the rules, a piece
21 of it, it's about 100 square yards, 200 square feet of the
22 pool now intrude into the new shoreline setback making it
23 legally nonconforming.

24 In terms of the relationship of that, that to the
25 collapse of that, the best we've got from our structural

1 analysis is that the presence of the pool or the absence of
2 the pool really had no impact on whether that collapse was
3 going to occur. It was largely due to a poor drainage
4 system on site as well as a not particularly well
5 constructed wall, which this has replaced. We were asked to
6 provide a time line. It's fairly lengthy, so I won't go
7 into it. It's in your application. It goes back about
8 three years including the event, the consultation, our
9 appearances before the committee, before the Commission, the
10 building permitting process as well. But we can answer
11 questions if you have any on those.

12 Discussion of coastal hazards. Paul Webber, the
13 structural engineer, is here to answer any questions on the
14 actual mechanics of the law. But essentially, what we've
15 done is try to design a wall that's going to be a long term
16 solution to the erosion problem so that there would not be
17 any further expected collapse or damage. Part of the key to
18 that was incorporating a drainage system into the wall so
19 that you don't get the ponding, which is what we essentially
20 had prior to that where water was building up on the
21 landward side of the wall weakening the ground behind it.

22 Lateral shoreline access we should note again if
23 you want to do the picture. This is the Kahana Sunset south
24 of it. You've got this beach. You've got a beach with
25 lateral access. But as we head up to this property, which

1 is over there, we lose the beach. We've got this stepped
2 wall, and there essentially, I think there's one more that
3 takes us up. Yeah, there essentially isn't any lateral
4 access on this beach. The property goes down. Yeah, that's
5 part of it, too, where you can see. There's no beach access
6 from the site. It's approximately 30 feet, yeah. It's
7 approximately 30 feet from the back of the yard down to the
8 rocky strand there.

9 Also, going back to the archeology question, we
10 were asked to verify that during the grading process for the
11 wall that there was no -- no artifacts had been encountered.
12 We did get signed statements from everybody involved on the
13 contract or team that indeed there was nothing encountered
14 during the grading process. We were asked to provide a
15 series of photographs showing the beach and the shoreline
16 area before and after the wall. We've gone through some of
17 those photographs in here, which we can refer back to if we
18 want to talk about it. But essentially, the beach has
19 remained or the shoreline has remained essentially unchanged
20 in the last 35 years. It does appear to have gone out
21 farther a long time ago.

22 One of those lines goes out to about 1912, but
23 within the last several generations, it hasn't particularly
24 changed. Potential effects on seawall construction on
25 adjacent beaches. Again, I'll refer that kind of to the

1 more technical discussion in the application. But because
2 this bay is largely rocky shoreline with the exception of
3 the Kahana Sunset, there's no expectation that this wall
4 would have any impact on beach processes. It's set up from
5 the water above -- above that shelf, that stepped -- that
6 stepped profile that we have. The wall essentially is there
7 to keep the bluff in place rather than to do anything to the
8 shoreline processes themselves.

9 And that's going to conclude our little
10 presentation. I'm available for questions. I mentioned we
11 have Paul Webber, the structural engineer; Dave Perzinski
12 from Scientific Consulting Services, who are also available
13 to answer any questions you might have.

14 CHAIR STARR: Mr. Slepín, could you put on the
15 picture, there's an aerial shot that shows Kahana Sunset up
16 to the project site. You can look down to see where there's
17 beach and so on.

18 MR. SLEPIN: That one. Is that the one?

19 CHAIR STARR: There's more of a closeup than that.

20 MR. SLEPIN: Go back to the tilted oblique one
21 right towards the beginning. Is that the one?

22 CHAIR STARR: Isn't there a more closeup one.

23 MR. SLEPIN: This one, but you can't really see --
24 it's closer, but you can't really see the beach there.

25 CHAIR STARR: No, go forward to the other one that

1 shows the beach at the Kahana Sunset. I mean to me, this is
2 a -- you know, a really good shot of what happens when you
3 have a beach in a place where stuff is set back and there's
4 a beach. And then you have another area where there's
5 structures built close to it. And ultimately, the shoreline
6 becomes hardened, and there's no beach.

7 And, you know, I have a real problem when I hear,
8 well, there's no more actual erosion here. And that's
9 because, you know, it's been hardened, and there's no
10 possibility of having a beach where is if it hadn't been
11 hardened, there would be a beach. But it would be moving
12 back the way it is by Kahana Sunset. And the beach
13 basically, we see from our transect, is marching back around
14 point eight to one foot a year. And once it hits a
15 building, there's no more beach. I really -- you know, I
16 don't know exactly how -- how or whether it should affect
17 this particular project.

18 But frankly, I think in a perfect world, these
19 seawalls would be ripped out and these houses would be
20 allowed to fall off into the ocean, and then we would have
21 beaches there.

22 MR. SLEPIN: Well, I think in this case, that
23 doesn't entirely summarize the situation correctly, because
24 you've got a naturally hardened shoreline here. Can you go
25 back to the one showing the steps? It's towards the end.

1 Well, that shows it a little bit.

2 CHAIR STARR: Yeah, all that dirt would go away,
3 and there would be a beach.

4 MR. SLEPIN: Well, you've got these rocks. The
5 shoreline is determined along here. That's set back from
6 the shoreline. The wall is set back from the shoreline
7 above the older wall. So, the wall didn't -- wasn't placed
8 within the shoreline area. It was placed within the
9 shoreline setback area, which is different, right. So, it's
10 not -- it's not really compacting with the water, except
11 when you get some kind of a high surf event such as we had.
12 But it doesn't really impact anything sort of involved with
13 beach erosion. That's a little different.

14 CHAIR STARR: I think you're justifying something
15 really horrible we've done to our shoreline, Mr. Slepín.
16 But I've said my piece, and we'll let it rest there.

17 MR. SLEPIN: You can say your piece, yeah.

18 CHAIR STARR: Commissioner Tagorda.

19 COMMISSIONER TAGORDA: Sir, can you show me that
20 picture or map than that 1975, the old one?

21 MR. SLEPIN: Yeah. There you go.

22 COMMISSIONER TAGORDA: Okay. Thank you. You see
23 the 1975 photograph compared to 1988. In that photograph,
24 you see a lot of vegetation. And in 1988, those vegetation
25 just kind of diminished. Do you know why those

1 vegetation --

2 MR. SLEPIN: Are you talking here basically versus
3 there?

4 COMMISSIONER TAGORDA: Yeah, those are all
5 vegetations during that time.

6 MR. SLEPIN: I don't think the houses along Hale
7 Malia Place had been built at that point in 1975.

8 COMMISSIONER TAGORDA: No, it's close to the
9 shoreline I'm talking about. In 1988, it just a little bit
10 of sand is remaining, and the vegetation is gone. Do you
11 know the causes of that? Are there seawalls constructed
12 before 1980 -- after 1975?

13 MR. SLEPIN: Not that I'm aware of.

14 COMMISSIONER TAGORDA: So, the adjacent properties
15 close to the property now, how many --

16 MR. SLEPIN: I think the first one, is that
17 Lucardi over there somewhere, Chris? Yeah, I think that
18 Lucardi may have been the first one, and that was maybe ten
19 years ago.

20 COMMISSIONER TAGORDA: Yeah, when I was listening
21 to your statements, you said in 1980 there was seawall
22 construction in that area. Okay. Am I right?

23 MR. SLEPIN: You're correct. There was a seawall
24 on the site, on this project site, which we are guessing was
25 built sometime in the '80s. There's no documentation

1 whatsoever, so I could not tell you when it was built. It's
2 just a guess on our part, yeah.

3 COMMISSIONER TAGORDA: What I'm trying to get into
4 this is impact of building seawalls near the shoreline. And
5 if I can justify myself, that on those residential
6 properties, the owners built seawalls to protect their
7 properties without being -- there's no erosion at that time.
8 There was vegetation. And all of the sudden, all this
9 nearby properties, their properties tends to collapse.

10 Erosions -- more erosions and rapid erosions
11 exceed. And all the sand we see before, they're no longer
12 there. Once in a while, they come back.

13 MR. SLEPIN: I would say two things to that.
14 First off, I'm not quite sure what we're talking about for
15 vegetation. If you're talking about over here on the sort
16 of the seaward side, we're looking at the rocks there.
17 That's not vegetation. That's black basalt that we've got
18 down there. If you're looking up here, that's vegetation,
19 but that was replaced by the houses that were built. And
20 that's not on the shoreline.

21 The second thing that I would say is there really
22 is quite a difference between the seawalls that are built in
23 front of a sandy beach. We've seen a lot of those obviously
24 on this island, and the impact tends to be exactly that,
25 that the wave processes scoop out the sand in front of the

1 seawall and you take out the beach. But this is -- again,
2 this is a different case because we're talking about a
3 artificially -- no, a naturally hardened shoreline that is
4 rocky and is not a beach. There's nothing there. The only
5 beach is in front of the Kahana Sunset. And you can see --
6 actually, the Kahana Sunset has some seawalls as well.
7 There's no real change between those years.

8 We could go on, but that's a different project
9 site. But I think this is a qualitatively different case
10 than when you have it on a sandy beach.

11 CHAIR STARR: Commissioner Wakida.

12 COMMISSIONER WAKIDA: The house that's there
13 currently you said was built around 2000?

14 MR. SLEPIN: 2000.

15 COMMISSIONER WAKIDA: And you said there's no
16 documentation of the previous house?

17 MR. SLEPIN: You could ask the County. But we
18 pulled all the boxes, and we found a building permit for
19 that house. But there was nothing describing what had been
20 there prior. We were told that there was a house there that
21 this replaced, but that's -- that's all we have.

22 COMMISSIONER WAKIDA: Thank you.

23 MR. SLEPIN: Jason reminds me actually we found a
24 demo permit for the house that had been there, but the demo
25 permit didn't have a drawing. Things were done differently

1 a few decades ago.

2 COMMISSIONER WAKIDA: It's possible that previous
3 house was built maybe 30 years ago?

4 MR. SLEPIN: It could be. Sure, sure.

5 CHAIR STARR: Commissioner Mardfin.

6 COMMISSIONER MARDFIN: Could you go to Appendix E,
7 I believe it's Appendix E, Appendix E, Exhibit B as in boy.
8 Prior development permits on subject parcel and then there's
9 a blank page, and then there's a letter from the Department
10 of Planning. Then there's the second side of that. Then
11 there is a letter from 2003 where they're talking about the
12 calculation of the setback.

13 MR. SLEPIN: That's the e-mail to Matt Niles?

14 COMMISSIONER MARDFIN: Correct. Now, on the next
15 page, well, two pages later, there is a diagram. I want to
16 work from that diagram a little bit and go back and forth.
17 And it says the length of the two sides of the lot are
18 113.84.

19 MR. SLEPIN: Yes, I'm with you.

20 COMMISSIONER MARDFIN: And then the diagram
21 doesn't show that, so, I'm presuming it got cut off in
22 the -- that it was the right-hand --

23 MR. SLEPIN: Right gutter probably, yeah.

24 COMMISSIONER MARDFIN: You know, your Xeroxing
25 just missed it. Does that seem a reasonable thing?

1 MR. SLEPIN: Yeah, actually, it wasn't our
2 Xeroxing. That's what we got, but yeah, probably.

3 COMMISSIONER MARDFIN: Okay. And then it says the
4 length of the other side is 73.69. And if you look at the
5 diagram, you see 73.69. That's what make me think the other
6 one probably read 113. Then it says the length of the
7 center line is 106.64. And I see where that line is.
8 Finally, why did that line go there as opposed to go toward
9 the deepest parts?

10 Is that the way they do it all the time? How do
11 they decide -- I understand the beginning part is halfway
12 along the lot line. But how did they get the ending part?

13 MR. SLEPIN: I don't know. Maybe -- I forgot, I
14 apologize, I forgot Kirk Tanaka, wrong of me, who is the
15 civil engineer. He may be able to say something about that,
16 but I don't know. Do you have any idea why they do the line
17 there instead of there?

18 MR. BUIKA: I can explain it.

19 MR. SLEPIN: Can you? All right. There you go.

20 MR. BUIKA: I can explain it. Jim Buika, Planning
21 Department. The center line is taken from the mid point
22 along the makai side and then the mid point along the mauka
23 side as much as possible. This is an irregularly shaped --

24 COMMISSIONER MARDFIN: I get the mid point on the
25 makai side. That's easy. It's the mid point on the mauka

1 side that looks a little puzzling to me, because it's not at
2 a right angle to the shoreline. That would have made it --

3 MR. BUIKA: No, but it's fairly close. And the
4 rules do say at a right angle or close to the right angle to
5 the shoreline. The rules do not accommodate every possible
6 situation --

7 COMMISSIONER MARDFIN: Okay.

8 MR. BUIKA: -- in detail, especially for these
9 irregularly shaped lots. But this is fairly close. And the
10 Department -- the Applicant has never come to the Department
11 to do an official shoreline setback assessment. But I have
12 looked at it in detail. And it pretty much, if you use the
13 average lot depth for this lot, because of the -- the bluff
14 shoreline, the fixed shoreline, the average lot depth
15 averages with this center line under 100 feet in depth. So,
16 the setback is -- would be 25 feet.

17 COMMISSIONER MARDFIN: Okay. Now, I want to --
18 now I understand this one. I mean I don't really understand
19 how they got that, they decided to plot that line. Now,
20 let's go back to in the body of the report, Page 15. It's
21 right at the very beginning. And are we on Page 15?

22 MR. BUIKA: Yes, I see that. This is an
23 inconsistency here.

24 COMMISSIONER MARDFIN: There is. I see 72, and
25 instead of 73, well, that's one foot. Maybe you can argue

1 about that. 120, is that supposed to be the -- the 113?
2 And then the 109, and is that supposed to be the 106?

3 MR. BUIKA: Neither of those are consistent. I
4 don't know who did these calculations. Again, like I said,
5 the Planning Department was not asked to do a --

6 COMMISSIONER MARDFIN: Shoreline setback.

7 MR. BUIKA: -- shoreline setback assessment on it.
8 Actually, an accurate shoreline setback assessment is, since
9 we weren't putting any new -- we weren't doing -- I mean the
10 activity clearly was in the setback already, and we weren't
11 adding any structures in the setback.

12 COMMISSIONER MARDFIN: Right.

13 MR. BUIKA: It's not a critical piece of the
14 puzzle here.

15 COMMISSIONER MARDFIN: I agree.

16 MR. BUIKA: But there is inconsistency.

17 COMMISSIONER MARDFIN: I agree with you it's not
18 critical. I agree it doesn't have much to do with the issue
19 per se. But does have to do with my understanding of
20 shoreline setbacks and how arbitrary versus rule-based they
21 are.

22 MR. BUIKA: I could give you -- I mean I haven't
23 done an official shoreline setback assessment for this. The
24 Department has not, so I mean I have my opinions on which
25 numbers are correct and which ones are not, because I've

1 looked at all the information. But why don't I defer to
2 Matt, and I think Matt Slepín has more information.

3 COMMISSIONER MARDFIN: I agree it's not a crucial
4 issue in this case, but it helps my understanding what goes
5 on when we set shoreline setbacks.

6 MR. SLEPIN: This is Matt Slepín again from Chris
7 Hart & Partners. I think what we have here is a question of
8 history. The drawing that you're looking at in the
9 appendix, which was done back in 2003, he was doing it based
10 on the property lines. It should be based on the shoreline,
11 which is how we did the calculation now. The shoreline
12 setback should be based from the shoreline rather than from
13 the property line.

14 And when -- I don't actually know, unless it says
15 on there, I'm not sure who did that drawing back then. But
16 when -- but when we did ours, when Kirk Tanaka did his --

17 COMMISSIONER MARDFIN: He got the numbers on Page
18 15, I would guess.

19 MR. SLEPIN: Yeah, Charles somebody. I don't know
20 who did that old one from 2003. But if you see, it's just
21 like a flat -- you know how the makai line there is just a
22 straight line. If you see that on that old one, that's not
23 the way that really is. It's a meandering shoreline, which
24 is actually where we got our numbers from.

25 COMMISSIONER MARDFIN: That's why the 113 turns

1 out to be 120, maybe because you pick up a little bit there.
2 That explains it to me. Thank you. I just wanted to have
3 an understanding of this.

4 MR. SLEPIN: Yeah.

5 CHAIR STARR: Members, other questions? How about
6 we see if there's any public testimony. Any members of the
7 public wishing to give testimony on this? Now is the time.
8 Not seeing any, public testimony is closed. Members,
9 anymore questions or discussion? Commissioner Mardfin.

10 COMMISSIONER MARDFIN: Yeah. On -- this is in
11 Appendix E, responses to the comments, and it's the letter
12 from Chris Hart and Page 5, I guess it is.

13 MR. SLEPIN: To whose letter?

14 COMMISSIONER MARDFIN: It's the one from --

15 MR. SLEPIN: Planning Department?

16 COMMISSIONER MARDFIN: No, it's from you folks,
17 signed by you actually.

18 MR. SLEPIN: Right, but the response to Planning
19 Department, response to you actually.

20 COMMISSIONER MARDFIN: Response to the Maui
21 Planning Commission. First, let me say in general, I like
22 the way you did this. I think took you what we asked, and
23 you were responsive.

24 MR. SLEPIN: Thank you.

25 COMMISSIONER MARDFIN: Now, I want to ask a

1 question about it.

2 MR. SLEPIN: There's always a catch, right?

3 COMMISSIONER MARDFIN: I want to ask a question
4 about on Page 5, Item 8.

5 MR. SLEPIN: Yes.

6 COMMISSIONER MARDFIN: You say access to the
7 shoreline area beneath the subject property is by stairs and
8 a ladder from the top of the bluff. Is that on the
9 property? And I thought five minutes ago, you told us there
10 was no access to the property.

11 MR. SLEPIN: Yeah, I meant there was --
12 essentially, there is no natural access down there because
13 it's a cliff. There is that constructed stairway, yeah.
14 Sorry if that was confusing.

15 COMMISSIONER MARDFIN: Is that open to the public?

16 MR. SLEPIN: That's not open to the public, no.

17 CHAIR STARR: Okay. Members, Commissioner
18 Tagorda.

19 COMMISSIONER TAGORDA: Can you open the page on
20 18, please, shoreline conditions and processes. On the last
21 sentence of that, it says vertical rock and concrete walls
22 protect the properties along the nearly -- along the
23 nearly -- the entire 500 to 600 foot stretch of coastline.
24 And what would that vertical rock and concrete wall have an
25 effect on adjacent properties and near shoreline?

1 It does protect the property. How about the
2 adjacent property, nearby property and the beach, do you
3 know?

4 MR. SLEPIN: For all of the various natural and
5 artificial hardenings along the bay, I don't think I could
6 answer that question.

7 COMMISSIONER TAGORDA: Okay. I don't have any.
8 Do you have datas or research studies what are really the
9 significant effect of this seawall construction? Because
10 I'm really concerned about putting seawalls around our
11 shoreline. Eventually, this small island would be built
12 with seawalls, vertical walls, and you know it. It's going
13 to -- we're not going to enjoy the ocean pretty soon because
14 of all these fortresses being built.

15 MR. HART: Chris Hart speaking, Chris Hart &
16 Partners. Commissioner Tagorda, in this particular case,
17 the wall is -- the basic revetment was built above and
18 actually mauka of the shoreline, so it's not affecting the
19 shoreline processes. And I think that one thing that's
20 really important is looking at the map, you can see the
21 Kahana Sunset is here, and this is -- this is a historical
22 sandy beach. You can see the sand offshore. You see it
23 under there?

24 That sand comes and goes with the season, with the
25 currents, okay. If you look at historical maps, you're

1 going to see that all of this area and all of this area is
2 historically a rocky shoreline. There's no sand. Do you
3 understand what I'm talking about?

4 COMMISSIONER TAGORDA: Yeah.

5 MR. HART: Now, there's parts of Maui that are
6 like that. There are parts of Maui where there are sand
7 beaches, and in some cases in the context of projects, walls
8 have been built. But in this particular case, these
9 function like groins, and the sand comes and goes. And the
10 walls don't have an effect on the sand beach, okay.

11 But in cases like this, the tides and the surf
12 basically grinds away at the embankment. And in some cases,
13 the rock, you know, is basically very strong, and there's no
14 change in the shoreline. In some cases, the geology of the
15 area is such where there's basically an ash layer
16 essentially. And basically, the waves scour it out, and
17 there's caves. And there's undermining, and basically, the
18 bank collapses.

19 And this might not have been known at the time
20 these individuals bought the land and built the houses. But
21 over time, it reveals itself and state law allows for the
22 protection of the property. Now, in these cases, we're not
23 affecting the sand beach. All we're doing is protecting
24 health, safety and welfare and the investments of people who
25 have invested in property and built houses. That's what

1 we're trying to do. We're trying to -- we're trying to work
2 and to solve a problem, and it was an emergency.

3 COMMISSIONER TAGORDA: Yeah, I agree what you're
4 saying, but my concern is you're trying to protect this
5 particular property. But where is the protection of the
6 shoreline from building the seawalls? I worked along from
7 Kuau side to Baldwin Beach for 28 years. I've seen some
8 buildings. Their property was okay, and all of the sudden,
9 they built a seawall. Then the next adjoining property just
10 getting erosions.

11 And so, with the seawall that they built, if it's
12 not too strong, from the pounding of the waves, those
13 seawall -- these seawalls that was manmade going to
14 collapse. And it destroys the bluff, the cliff everything
15 you see. All the sands are gone. And I saw that with my
16 own two eyes for 28 years working.

17 MR. HART: I'm not disagreeing.

18 COMMISSIONER TAGORDA: Yes, thank you. I just
19 need some kind of protection.

20 MR. HART: I'm just saying that all shorelines are
21 not the same. I'm saying this is a unique area. And you
22 can see it. We have historical photographs that show
23 there's no sand here, that this is a rocky shoreline, right.
24 This goes back to 1975.

25 COMMISSIONER TAGORDA: What I'm trying to say here

1 so my colleagues understand is I have really problem
2 constructing seawalls.

3 MR. HART: Well, in this case, again, I told you
4 that the seawall, and you can see the drawings, it basically
5 is a structure that's designed to stabilize the bank. It's
6 built mauka landward of the shoreline. It's not seaward of
7 the shoreline. There's no sand below the -- on the
8 shoreline. It's basically designed to stabilize the bank to
9 protect the property. Because a catastrophic event took
10 place based on high surf. And I believe that there was
11 probably not only was the wall that was built was built
12 illegally, unpermitted, collapsed, but I also think there
13 was a geologic problem. I think that there was probably a
14 layer, kind of ash and clay that eroded out.

15 It wasn't solid rock. And it created an
16 undermining. And it collapsed. And that's typical. That's
17 typical geology of this area. The Lucardi wall is something
18 that's talked about. It was built, and because of the fact
19 it was a big cave became a public safety issue. You know,
20 we're asked as consultants to help, to help these people,
21 and so we did. And we went through an extended, arduous
22 process to get an emergency permit to basically help to cure
23 a health, safety and welfare problem, which we did.

24 CHAIR STARR: Thank you, Mr. Hart. You know, I
25 wish that there was someone hiring you to protect the public

1 beaches instead of to protect the, you know, the
2 million-dollar swimming pools. But I understand the
3 exigencies, but I understand Commissioner Tagorda is on the
4 right track.

5 And if you look way back before 1970, you'll see
6 there was a nice, white sandy beach there. And we also have
7 discussion in the historical document about a little fishing
8 village down on the beach. Anyway, Commissioner Wakida.

9 COMMISSIONER WAKIDA: I think this question is for
10 Mr. Buika. Do you happen to know -- I guess we probably
11 need one of these pictures up that shows the completed
12 wall -- what the high tide, high water mark is on this
13 frontage?

14 MR. BUIKA: I do not know exactly where it is.
15 But the shoreline is indicated well below the wall, the base
16 of the wall itself. Because there is an outcrop of rock
17 along the base there. So, the high tide line would be the
18 shoreline, and it would be below -- below topography of the
19 built seawall. So, as Chris Hart indicated, this is more of
20 a retaining wall. I think it's a misnomer to call it -- the
21 purpose is not a seawall. It's more of a retaining wall to
22 stabilize the slope from further collapse into the ocean.

23 And it is sitting on top of a rock outcrop that is
24 at the base of the bluff and represents the shoreline, so
25 the shoreline is at an outcrop along the -- below the --

1 below the retaining wall, if that answers your question or
2 if that addresses your question.

3 COMMISSIONER WAKIDA: It does in part, yes. So
4 that you're saying that the high water mark doesn't cover
5 the rocks. Would that not -- do you have this picture of
6 the finished wall that we have in our packet? That one.
7 So, the high water mark doesn't cover this, this rocky
8 shoreline?

9 MR. BUIKA: Can you point out where the finished
10 wall is?

11 MR. SLEPIN: Matt Slepín again. This is the new
12 wall that's constructed and is the subject of this
13 application. That's the remains of the old wall that comes
14 out in the bench. The shoreline essentially goes somewhere
15 along here. The shoreline is determined by high water mark
16 or vegetation line. There's no vegetation line here, so the
17 water essentially goes up to here to the base of the old
18 wall, which is, I don't know, maybe five or six -- ten feet,
19 about ten feet high. So, you're some ways away from the new
20 wall.

21 COMMISSIONER WAKIDA: And the old wall was
22 repaired as well?

23 MR. SLEPIN: I believe that what happened was the
24 portions that essentially failed were moved off, and the old
25 wall became -- it's not holding up the slope. It's not

1 serving a structural function at this point; is that
2 correct, Paul? Let me ask Paul Webber to come up. He can
3 answer this better than me.

4 MR. WEBBER: Good afternoon, Commission. Paul
5 Webber. The bench is a previously existing rock outcrop.
6 At some point in time earlier, owners of the property built
7 some kind of a weak seawall. But basically, it's a basalt
8 or volcanic rock outcrop at a level about 10 feet above the
9 beach. At the time that we began the emergency design and
10 construction, we weren't sure exactly what the character of
11 that bench was, called a bench, rock bench was. So, we
12 perforated the bench ten feet deep with drill holes and
13 grout injected under high pressure into the basalt rock in a
14 sense solidifying any kind of defects or cracks or opening
15 in that basalt bench.

16 So, we made a retaining wall kind of out of the
17 existing rock as though we would have built a rock wall and
18 cemented it with mortar, except we did it by drilling in and
19 injecting ground. Any help?

20 COMMISSIONER WAKIDA: Thank you.

21 CHAIR STARR: Commissioner Mardfin.

22 COMMISSIONER MARDFIN: Do you have Michael Dega
23 here, did you say, Michael Dega?

24 MR. SLEPIN: No, Mike Dega is not here, but Dave
25 Perzinski from SCS is here, who did the actual field work.

1 CHAIR STARR: Mr. Perzinski.

2 MR. PERZINSKI: Good afternoon, Mr. Chairman, and
3 Members of the Commission. My name is David Perzinski. I
4 work for SCS, Scientific Consultant Services. And I guess
5 to summarize what our role was, we had completed an
6 archeological monitoring plan prior to -- well, right after
7 the failure of the original seawall.

8 I guess it was probably built a year to two later,
9 we got a call from the construction team out there that they
10 had actually completed most of the ground disturbing
11 activities. That was in April 13th of '09. And then I went
12 out there for the initial inspection. Pretty much all the
13 ground disturbing activities were completed. I walked along
14 the shoreline where the original seawall still existed just
15 looking for any archeological remains. At that point, no
16 one was really aware of that cave that may or may not exist
17 under that old seawall.

18 So, I wasn't looking for that at the time. But
19 there's no findings. I did draw a stratographic profile.
20 The soil profile behind the new seawall was about a meter of
21 fill and then a massive layer of the -- the red silty clay
22 you get in that part of Maui. And then at about three
23 meters deep, you do have the basalt, the bedrock. So from
24 that, this is good picture, because that new seawall is --
25 that's about three meters, and the old seawall is pretty

1 much built right up against the natural, the natural
2 bedrock, I think like as Paul was saying.

3 Obviously, I'm not really concerned about deposits
4 in the basalt. They just don't really exist, and at the
5 time, there was no indication of a cave. About a month
6 later, Jill Engledow was conducting a cultural impact
7 assessment for the seawall. She was interviewing the old
8 land owner, and she had said that in the '80s when the wall
9 had collapsed, there was a cave exposed. There were some
10 skeletal remains. They didn't know what -- if it was human
11 or animal. But to be on the safe side, they just sealed the
12 cave and didn't tell anyone.

13 So, this was all news to everyone at the time when
14 we found out about this. But following that, I went out
15 there for another inspection just to basically specifically
16 look for any indication of a cave behind the old -- or
17 anywhere on the property, and there was none. I climbed
18 around all over along the shoreline. There's little voids
19 like that in there. So, you know, that type of coastline is
20 probably prone to creating sea caves like that. But, you
21 know, these go back maybe three or four feet, and that's it.

22 So, there was no indication of any burial cave.
23 And if there is one, it's all built -- it's all behind this,
24 the lower shelf.

25 COMMISSIONER MARDFIN: Thank you very much. Let

1 me ask you one quick question. What's your academic
2 background in this?

3 MR. PERZINSKI: I have a degree in archeology.

4 COMMISSIONER MARDFIN: You have a degree in
5 archeology. Thank you very much.

6 CHAIR STARR: I want to ask a question of the
7 engineer. I forget your name, sir. What's your name?

8 MR. WEBBER: Paul Webber.

9 CHAIR STARR: Mr. Webber, how much concrete did
10 you inject to the area behind that old seawall?

11 MR. WEBBER: We put in 30 holes. And if I'm not
12 mistaken, we probably put two or three bags of cement into
13 each hole, the cement not being powder form. It was mixed
14 with water, so it became grout. A bag of cement makes
15 three-quarters to a cubic foot. So, we might have put two
16 to three cubic feet of cement grout into each hole.

17 CHAIR STARR: So, it wasn't multiple yards?

18 MR. WEBBER: Oh, no, no. No, the basalt is pretty
19 tight, and the reason for the grouting was to get it to
20 force out into the cracks in the basalt or any pukas in the
21 basalt or whatevers to fill them up.

22 CHAIR STARR: I was just wondering if you piped in
23 enough to fill a cave in down there.

24 MR. WEBBER: No, no, no way. Nor was there any
25 indication -- that's an excellent point. I hadn't even

1 thought of that before. There was no indication in our
2 drilling, because we monitor constantly full-time while the
3 contractor is drilling. There was no indication of any kind
4 of a large chamber. Small ones, pukas, maybe a foot, a few
5 inches, no large.

6 CHAIR STARR: You weren't hauling trucks and
7 trucks in there?

8 MR. WEBBER: We were not putting trucks in, sir.

9 CHAIR STARR: Commissioner Mardfin.

10 COMMISSIONER MARDFIN: Sir, could you come back?
11 I saw something vaguely in here, and I don't remember
12 exactly what it was. But I think I recall -- sorry, I can't
13 find it. There was something you put under the pool?

14 MR. WEBBER: Yes, we underpinned the pool, sir.

15 COMMISSIONER MARDFIN: How did you do that?

16 MR. WEBBER: We basically drilled high strength
17 rods and grouted the rods into place down to the bedrock
18 underneath the pool. And then we bolted those rods onto the
19 pool structure and encased it all in concrete.

20 COMMISSIONER MARDFIN: So, you didn't go through
21 the pool per se, you went along the outside of the pool?

22 MR. WEBBER: We exposed the footings of the pool
23 on the outside and then drilled through the footings. We
24 cored through the footings and put these metal piles
25 underneath the footings, yes.

1 COMMISSIONER MARDFIN: And so, you're convinced
2 with that kind of structure, due to the pool, there won't be
3 any additional stress on the wall, on the retaining wall?

4 MR. WEBBER: No, we relieved the pool of putting
5 any stress on the soil or the retaining wall.

6 COMMISSIONER MARDFIN: Thank you very much.

7 CHAIR STARR: Okay. Members, I think we're ready
8 for some action here, if anyone would like to do some
9 action. We did ask for public testimony, didn't we?

10 COMMISSIONER FREITAS: Yes.

11 CHAIR STARR: Who would like to -- we have three
12 choices, as I understand it. We can defer, we can approve a
13 finding of no significant impact, we can demand that it get
14 kicked up to an EIS. I'll accept a motion for either of
15 those three choices. Commissioner Mardfin.

16 COMMISSIONER MARDFIN: I move we accept the final
17 EA and issue findings of no significant impact.

18 COMMISSIONER FREITAS: Second.

19 CHAIR STARR: Moved by Commissioner Mardfin.
20 Seconded by Commissioner Freitas. The motion is?

21 MS. CUA: Excuse me, to accept the Final
22 Environmental Assessment and issue a FONSI.

23 CHAIR STARR: Any further discussion, amendments?

24 COMMISSIONER MARDFIN: I'm not -- no amendments.
25 I just wanted to say I can vote for this in a clear

1 conscience, because I think James had it right. This is a
2 retaining wall. This isn't really a seawall, as I look at
3 it. For a seawall, I would have much more problems with it.
4 But it doesn't seem to be. And the Chairman can disagree
5 with me.

6 CHAIR STARR: No further comment. Commissioner
7 Hiranaga.

8 COMMISSIONER HIRANAGA: Yeah, I don't necessarily
9 agree with the issuance of an emergency permit in order to
10 protect an existing pool. I mean I can see if the residence
11 itself was being threatened, but a swimming pool to me is
12 much different from a residence. But luckily everything
13 worked out, and the wall is not beyond the certified
14 shoreline and everything came out good in the end. But I
15 think if it had not worked out, and the wall was, in fact,
16 beyond the shoreline, certified shoreline, there would have
17 been bigger issues. So, at this point, I would be agreeable
18 to voting for the motion.

19 CHAIR STARR: Okay. Ready to vote? All in favor
20 of the motion, raise their hand. All opposed.

21 MS. CUA: We have seven aye's, one nay. Motion
22 passes.

23 CHAIR STARR: Okay. Thank you. Order, please.
24 If you're going to have a conversation, do it outside.
25 We're going to move along to our next item, Item F.

1 Ms. Cua.

2 MS. CUA: Item F is approval of the action minutes
3 of the November 9th, 2010 meeting.

4 CHAIR STARR: Okay. Commissioner Wakida.

5 COMMISSIONER WAKIDA: So move.

6 CHAIR STARR: Is there a second?

7 COMMISSIONER SHIBUYA: Second.

8 CHAIR STARR: Moved by Commissioner Wakida.

9 Seconded by Commissioner Shibuya. The motion is to?

10 MS. CUA: Accept the November 9th meeting minutes.

11 CHAIR STARR: All in favor, please raise their
12 hand. All opposed.

13 MS. CUA: Motion passes unanimously.

14 CHAIR STARR: Okay. Director's Report. Ms. Cua,
15 what do we got?

16 MS. CUA: We're actually on your future agenda
17 December 14th as well as an upcoming site visit. So first,
18 on December 14th, we distributed a memoranda dated November
19 22nd to you from Clayton. You have four public hearings
20 that day as well as one communication item, and that's
21 what's scheduled so far. So, it's going to be, as we had
22 indicated at our last meeting, it is going to be a pretty
23 heavy meeting day for you. And typically, the December
24 meeting is usually that way. So, any questions on that
25 before we move to the site visit?

1 CHAIR STARR: Okay. There will be a full meeting
2 on December 14th.

3 MS. CUA: And then we also distributed another
4 memo, same date, from Clayton regarding the West Maui site
5 inspections. And you could see there's a number of areas,
6 Olowalu, Lahaina, Kaanapali and Napili that we're looking to
7 cover. So, I think we're looking in January.

8 Clayton, do you want to say a few words about
9 that?

10 CHAIR STARR: And before you do it, I want to
11 thank the Department for putting together such a, you know,
12 a good list to really give us -- update our knowledge base
13 of the west side. And thanks for -- I know a lot of work
14 went into this. Mr. Yoshida.

15 MR. YOSHIDA: Yes, thank you, Mr. Chairman,
16 Members of the Commission. I did neglect one project, which
17 is between Lahaina Town and Kaanapali, which is the
18 Department of Environmental Management Wastewater Line
19 Project from Waiohuli to Hanakaoo Beach Park. And with that
20 is a Department of Parks and Recreation project to put in a
21 pedestrian access on the makai side of the highway in the
22 same area.

23 I believe what started us off or maybe the two
24 catalysts for the west Maui site inspection were; one, we
25 were going to schedule the final EA for the Poseley

1 community plan amendment for today's meeting, but the
2 Commission wanted to do a site inspection; and secondly, we
3 did deal with the Council resolution late in October
4 regarding uses in the historic district, including the two
5 historic districts in Lahaina.

6 And there was some suggestion that maybe the
7 Commission should walk portions of the historic district to
8 get a feel for what is there. I don't think we can do all
9 of this in one day. I think the Commission has to kind of
10 choose. I know they want to see the Poseley site. There
11 are four projects in Olowalu. I did mention that the
12 Department of Transportation wants to have that highway
13 shoreline protection SMA and shoreline setback variance done
14 soon because they also need a conservation district use
15 approval from the State Land Board.

16 And I guess there's some funding concerns before
17 the end of the fiscal year in June 2011. So, I guess the
18 decisions are do you want to do site inspections before the
19 holidays or after the holidays, sort of from December 17th
20 until around January 2nd during the holidays, and do you
21 want to do all-day site inspections or half a day? And what
22 areas or which projects do you want to see? Plus, if you
23 want to do the walking tour of the historic district.

24 CHAIR STARR: Commissioner Wakida.

25 COMMISSIONER WAKIDA: While I think the walking

1 tour is wonderful, Lori and I both being members of the
2 Lahaina Restoration Foundation. If we're short of time, one
3 other alternative would be to have the Commissioners both
4 have maps of both the Lahaina districts and the national
5 historic landmarks and at least drive the perimeters of
6 those, so that we are pointing out which -- what fall where.

7 There is some spot zoning for the Lahaina
8 Districts 1 and 2, but at least guess a sense of the lay of
9 the land in that way, although first choice is always to see
10 things walking if we can.

11 CHAIR STARR: It sounds to me like it's a full
12 day. It's a full day, and I would even make -- make a
13 suggestion that we consider going one step further, which is
14 we spend a full day doing site inspections, driving around,
15 and then kind of after -- after hours, those of us who might
16 want to do a walking tour, you know, around Lahaina. How do
17 we do this without a Sunshine Law problem, Mr. Giroux?

18 I was envisioning walking around, but we can't
19 really all walk around. Do we want to -- I mean let me get
20 a feel from the Commission whether we want to take a -- an
21 off-day or a meeting day to do this? Commissioner Hiranaga.

22 COMMISSIONER HIRANAGA: I prefer an off-day.

23 CHAIR STARR: Okay. I guess we don't need a room
24 for that. So, what day would the Department recommend that
25 staff could be available?

1 MR. YOSHIDA: I guess it depends on how much of a
2 break the Commission wants for the holidays. Last regular
3 meeting of the year is scheduled for December 14th. Our
4 first meeting of next year is scheduled for January 11th, so
5 that's four weeks. On the 25th and the 26th, the Commission
6 has committed to conduct a contested case hearing on the
7 Micah Buzianis SMA appeal.

8 We can do it on the 18th if that's convenient.
9 Again, I think the State Department of Transportation would
10 like to get on the February 8th, if at all possible,
11 February 8th agenda for the public hearing for the SMA and
12 shoreline setback variance for the Olowalu shoreline
13 protection.

14 CHAIR STARR: What would be the 18th of December?

15 MR. YOSHIDA: 18th of January.

16 COMMISSIONER SABLAS: That's a Saturday.

17 CHAIR STARR: No, it's --

18 MR. YOSHIDA: 18th of January.

19 CHAIR STARR: It's a Tuesday, third Tuesday, which
20 is an off day for the Commission. Would the 18th of January
21 be a workable day?

22 COMMISSIONER SHIBUYA: Not for me. I'll be
23 skiing.

24 COMMISSIONER MARDFIN: Mr. Chairman, would
25 December 21st work; is that too close to Christmas?

1 CHAIR STARR: Okay. We have a discussion of
2 January 18th or we have -- and we have a suggestion of 21st
3 of December. Commissioner Wakida.

4 COMMISSIONER WAKIDA: Is there any reason that we
5 don't want to be early January, say the day before our
6 commission meeting or within that week before?

7 MS. CUA: Commission meeting is the 11th, is that
8 the first day, January 11th?

9 MR. YOSHIDA: Yes.

10 MS. CUA: Tuesday, so either the 10th or 12th.

11 COMMISSIONER WAKIDA: I personally am very
12 flexible, but I think what about everybody else weighing in
13 on their schedules.

14 COMMISSIONER SHIBUYA: I'm going to be gone the
15 17th to the 25th.

16 COMMISSIONER SABLAS: But you're here on January
17 10th.

18 COMMISSIONER SHIBUYA: I'm here on the 10th and
19 12th.

20 CHAIR STARR: Commissioner Shibuya, could you
21 do --

22 COMMISSIONER SHIBUYA: I can do the 10th and 12th
23 of January. I'll be grouchy if you guys have it on the
24 18th.

25 CHAIR STARR: I'm trying to figure out what the

1 opening of the Legislature is.

2 MS. DOMINGO: That would be a Wednesday.

3 CHAIR STARR: So, that's the third or second?

4 MS. DOMINGO: Third.

5 CHAIR STARR: Third Wednesday. So, third
6 Wednesday is the 19th. Okay. So, how about the -- how
7 about the 12th, January 12th?

8 MS. CUA: Wednesday.

9 CHAIR STARR: Yeah, Wednesday, January 12th. Does
10 that work for you and staff?

11 MR. YOSHIDA: Yes, I think we can conduct -- guess
12 the question is what sites does the Commission want to
13 visit?

14 CHAIR STARR: Let's take that off line, but ask
15 Commissioners to comment on what we could -- what we -- what
16 we would leave out. My preference would be to try to do it
17 all, and, you know, maybe try to stack it such a way that if
18 we run out of time, you know, we can -- we can leave the
19 last -- we just do a drive-by of the last sites. That way
20 we'll still be on the agenda, right, Mr. Giroux?

21 MR. GIROUX: Yeah, as long as the public knows
22 that what areas you're going to be in.

23 CHAIR STARR: Commissioner Mardfin.

24 COMMISSIONER MARDFIN: I remember when we did the
25 site visit in Hana, we were all in one large van and went

1 around and could see lots of things and sort of talk on the
2 road, or at least have things explained to us on the road,
3 have things explained to us on the road. We didn't discuss
4 any issues. And that strikes me as an efficient way to do
5 it rather than what we did last time is have this caravan of
6 cars. And that just seems to be a very inefficient way to
7 do it from my point of view.

8 CHAIR STARR: Is there -- is there a way we can
9 get a -- how about -- we have a date. We have a concept.
10 How about we let Clayton work on it, and I can -- I can
11 communicate with him, and we'll bring it back at our next
12 meeting for final details. Is that good? Commissioner
13 Hiranaga.

14 COMMISSIONER HIRANAGA: Yeah, I just want to, for
15 the record for purposes of quorum, I'm not planning to
16 attend.

17 CHAIR STARR: Okay. Very good. Thanks for
18 putting your time in on that. We still have a bunch of
19 workshop stuff that we want to try to schedule, I know
20 Mr. Buika and shoreline. It looks like we'll probably do a
21 day of shoreline stuff on the -- Clayton, what's the date
22 we're doing the two state projects, is that February?

23 MR. YOSHIDA: February 8th.

24 CHAIR STARR: Okay. We might do some more
25 shoreline workshops that day. Because that looks like it's

1 an all shoreline day.

2 MR. YOSHIDA: I think we might have a pent-up
3 demand for public hearings. Because the 25th is -- January
4 25th is being reserved for the Buzianis Appeal.

5 CHAIR STARR: Let's see how it goes. Okay. I
6 think we've done enough today. We're at the end of the
7 agenda. I think thank everyone for their patience and
8 putting up with all this stuff. Good work.

9 (The meeting adjourned at 4:19 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