

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 11, 2011**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 9:03 a.m., Tuesday, January 11, 2011, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Chair Starr: Good morning everyone. Welcome. Let's all quiet down. I know everyone's exuberant and we have a great new year. I'd like to welcome everyone to the January 11, 2011 meeting of the Maui Planning Commission. I'll start by introducing some of the folks with us today. I'm going to start – usually I start by introducing the Commissioners. Today, I'm going to start by introducing our new Director of Planning, Will Spence, and it's good to have him. I'll go finish the introductions and I'll ask Will to say a couple of words. We also have with us our brand new Deputy Planning Director Michele McLean, and welcome Michele. Michele's been involved with planning and government for a long, long time. I remember she was Michele Chouteau when she used to work for Council Services and other areas. We also have our new Director of Public Works, Mr. David Goode.

Mr. Goode: Hi, Jonathan.

Chair Starr: And it's great to see Mr. Goode back, back in Public Works and I'll also give him an opportunity to say a few words. I appreciate him being here with us. We have Commissioners Kent Hiranaga, Commissioner Jack Freitas, Commissioner Ward Mardfin had to go to another meeting. He'll be here a little later. Mr. James Giroux is our exceptionally good Deputy Corporation Counsel. He's our lawyer and I – makes me fearless to have him sit next to me.

Everyone: ...(Laughing)...

Chair Starr: Maybe foolish as well as fearless, but we're lucky to have him. He's good. I'm Jonathan Starr. I'm the Chair. We have Commissioner Donna Domingo, Commissioner Warren Shibuya, Commissioner Lori Sablas, Commissioner Penny Wakida. Moving along, Carolyn Takayama-Corden is the secretary of the Commission. She really works hard to keep our meetings happening, our minutes update and she's done a great job with that. Clayton Yoshida, Current Division. Clayton is kind of the behind the scenes guy for getting our agendas and making sure all of the commissions run, are able to do their job, everything's coordinate. Ann Cua is a great, great planner with incredible experience and wisdom, and she's really – does a great job in Current Division. Who else do we have in the room? Trisha Kapuaala and she is involved with zoning, zoning enforcement issues, contested cases and things like that. I feel like I'm – oh, Gina Flammer is another, one of our great planners, Danny Dias is back there, Jim Buika and there may be someone else hiding back there. If I miss anyone, I apologize.

I'd like to turn it over to our new Planning Director, Mr. Will Spence, and really glad to have you with us.

**B. Introduction of New Planning Director William Spence and Deputy Planning Director Michele McLean**

Mr. Will Spence: Thank you, Jonathan, and good morning Commissioners. I'm very excited to be sitting on this side of the table. It's going to be, I think it's going to be a good ride for everybody. I know that my staff, you know, provides you with a lot of information, provides you with, you know, good service. I don't expect that to change with this Administration. We hope to push forward a lot of different rule changes and whatnot, you know, make the permitting process clearer for, for the Commissioners, for the public, for the applicant, all while protecting our environment and pursuing like the mandates for the SMA. It's going to be an exciting time. I look forward to working with you on so many different projects.

Chair Starr: Good. Well, thank you, and I, I really think we're gonna have great, great teamwork and I think our hearts are all in the right place. Michele, why don't you give us a few comments and introduce yourself? We're glad, really glad to have you with us.

Ms. Michele McLean: Thank you, Chair. My name is Michele Chouteau McLean. As the Chair mentioned earlier, many years ago I worked for the Office of Council Services as a Legislative Analyst staffing the Planning Committee. That's when I first met Will. We worked on the Makawao-Pukalani-Kula Community Plan update. And I was with Council Services for a little over five years. I left the County and started by own consulting business which I did on my own for a few years, and then briefly worked with Smith Development as a planner in the private sector. For the past five years, I was with the Kahoolawe Island Reserve Commission which is a State agency responsible for the management and control of Kahoolawe and doing the restoration of Kahoolawe. I was the Deputy Director there. So from that side, I have more administrative experience so Will and I compliment each other well to, to lead the Department with his very experienced planning background and my administrative support. We're both very excited to be here. Thank you.

Chair Starr: Good. Welcome. And Mr. David Goode, another old friend.

Mr. David Goode: Thank you, Chair. Aloha, good morning everybody. It's good to be back. I sat here in this very chair or an older chair ten years ago, and like Will said, you know, our department is going to be focused on permit streamlining on our, our side of the fence. We're – already enacted some of those. Internally we'll be going to Council with some changes as well. I do want to let the Commissioners know that I'm also a member of the State Land Board, Board of Land and Natural Resources and I got clearance from the Deputy A.G. to continue that work. Mayor Arakawa wanted me to continue that work on behalf of the County. And so for a couple of meetings a month I actually, I do what you do. And it also allows another bridge hopefully that I can help bring some perspective on some State issues or let get some resource people available to help you folks out whenever it's needed. And as always, we will be staffing position here as adjunct to the Commission. My Deputy, Rowena Dagdag-Andaya will be staffing this primarily. She's at new employee orientation today which I ...(inaudible)... out of. So I'm here to serve you today and get a sense of what you folks are doing. And finally, you will see some projects from us, from our department coming through and we look forward to presenting those to you. Thank you.

Chair Starr: Thank you, and congratulations. Commissioner Freitas, did you want to – oh, I saw your hand move, you had a comment? Before we go to other business, there's one housekeeping matter I'd like to move up on the agenda if we may, and that's the discussion of future Maui Planning Commission agendas and this relates to the site inspection. That's scheduled for

tomorrow. So if someone would make a motion to move that up on the agenda, it would be appreciated so we can –

Mr. Shibuya: So move.

Ms. Domingo: Second.

Chair Starr: Okay, moved by Commissioner Shibuya, seconded by Commissioner Domingo, and the motion is? And here I ask Mr. – Director Spence to restate the motion for clarity and I know it's not a complicated motion, but we might as well follow our procedure.

Mr. Spence: Thank you, and, and, it will be a little bit of a learning curve sitting on this side. So the motion was to move Item J-4 about the West Maui site inspections –

Chair Starr: Yeah.

Mr. Spence: Up on the agenda for discussion.

Chair Starr: Correct. So any discussion? No. All in favor, please raise a hand. Okay, all opposed. And the vote is?

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

**VOTED: To Move Up on the Agenda, Item J-4.  
(Assenting - W. Shibuya, D. Domingo, K. Hiranaga, J. Freitas, L. Sablas,  
P. Wakida)  
(Excused - O. Tagorda, W. Mardfin)**

Mr. Spence: Affirmed.

Chair Starr: Thank you.

## **J. DIRECTOR'S REPORT**

### **4. West Maui Site Inspections - January 12, 2012**

Chair Starr: So let's move it up on our agenda, and the site inspection scheduled for tomorrow has been canceled. It was canceled by Civil Defense Agency on our behalf. So, we're looking for a new date and one suggested date would be Thursday, the – is that the 4<sup>th</sup> of February?

Ms. Domingo: No, that's the 3<sup>rd</sup>.

Mr. Hiranaga: The 3<sup>rd</sup>.

Chair Starr: The 3<sup>rd</sup>? Yeah, Thursday, the 3<sup>rd</sup> of February. Is there any discussion regarding the 3<sup>rd</sup>? Okay, motion to change the date to the 3<sup>rd</sup> of February?

Ms. Wakida: I so move to change the date to the 3<sup>rd</sup> of February.

Mr. Shibuya: Second.

Chair Starr: Okay, moved by Commissioner Wakida, seconded by Commissioner Shibuya. The motion is?

Mr. Spence: The motion is to change the site inspections on the west side from January 12<sup>th</sup> to February 3<sup>rd</sup>.

Chair Starr: Okay, and for discussion, I'd like to ask Ms. Cua to make a comment. Is there anything we need to do for notice?

Ms. Cua: Just a, just a small little item. Civil Defense did not cancel. They – we got the report from the National Weather Service. Based on that, the Department is recommending and we talked with the Chair about canceling. So we just want to get the record straight. Thank you.

Chair Starr: And as far as notice requirements is there anything we need to be concerned with? Mr. Yoshida?

Mr. Yoshida: I guess we'll try to work with the Public Information Officer to send out some information that tomorrow's site inspection is canceled, and we will file another agenda for the February 3<sup>rd</sup> site inspections.

Chair Starr: Okay, and I ask anyone in the room who knows people who are planning to attend this, to, to try to reach out and let people know about the new date. Okay, all in favor of moving the date, please raise a hand. All opposed. Okay, thank you.

**It was moved by Ms. Wakida, seconded by Mr. Shibuya, then**

**VOTED: To Reschedule the West Maui Site Inspections to February 3, 2011, Thursday.  
(Assenting - P. Wakida, W. Shibuya, K. Hiranaga, J. Freitas, D. Domingo, L. Sablas)  
(Excused - O. Tagorda, W. Mardfin)**

Mr. Spence: The motion is passed.

Chair Starr: Okay, good. The first order of business as always is to allow public testimony. We allow the public to testify on any agenda item and they have two options in testifying. They can testify at the beginning of the meeting which is now or when that agenda item is up for discussion but before decision making. We ask that testimony be kept short, under three minutes in any case. And we welcome members of the public to testify.

The following individuals testified at the beginning of the meeting:

Mr. Tom Welch - Item D-2, Amendments to Chapter 202, SMA Rules

Ms. Lucienne deNaie -Item C-2, SMA Minor Permit Report, SM2 2001/0083;

Item F-1(c) Transfer of SMA Permit;

Item C-4b(1) Parking spaces at Keawakapu, Kihei; and

Item J, Designation of the Hana Advisory Committee as the hearings body.

Mr. Kaneloa Kamaunu - Did not speak on any specific item - his testimony follows.

Ms. Johanna Kamaunu - Item F-2, OW Ranch, SUP2 and CP time extension

Their testimony can be found under the item on which they testified on.

Chair Starr: Other members of the public wishing to testify? Please let us know. Yes, please come forward. Welcome, introduce yourself, glad to see you.

Mr. Kaneloa Kamaunu: Aloha, my name is Kaneloa Kamaunu. I am from Waihee Valley. It's more a general comment. We had a – the group that I work with, had a discussion with the County Council and basically some of the things that – and this is why I talked about since I've come here to this Commission is basically the rights of the natives. What we discussed with them was basically there are laws in the State of Hawaii that already ...(inaudible)... our kingdom laws. You have, HRS 7-1, you have HRS 172 and these deal with native rights. And when we – why I came here today is basically, a lot of these projects, and this is what the County Council realized after we spoke with them, that they were actually breaking laws. The laws that actually are State laws because they were conveying lands, they were allowing projects to be put up and things to be given when in actuality they didn't address the laws that were already there. So my concerns with a lot of these developments are they contrary to the laws that the State already has accepted? And that, due to the lack of the Commission and the County Council knowing those laws, arbitrarily end up breaking them. So the thing is, a lot of these projects that come through, a lot of times, I mean, you know, we look at our economical situation, we take these things into consideration. More than what actually is at play. You kind of have to look at a lot of these things being injurious to the native ...(inaudible)... because we are protected. Whether people like to believe it or not, we are actually wards of the State. Take that if you may, but if you look at us politically and we're looking at the resolution was given in County Council, they accepted to recognize 103150 which is if you don't know, the Apology Bill that was passed in 1993 recognizing that Hawaiian never gave up their sovereignty which was already debated in 18, 1898. So what we're trying to say is we still intact. Our laws still apply. And that being that you like the County Council convey away things, convey away lands or the rights to other people, you have to take into consideration your fiduciary duties to the natives.

Ms. Takayama-Corden: Three minutes.

Mr. Kamaunu: Because the natives we have rights. A lot of these things that parking lots, we talking about roadway, diminishing our rights to get access to where we legally have rights to be, needs to be taken into consideration. Thank you.

Chair Starr: Mr. Kamanu, I have a question. Are you talking about globally for all the lands in

Hawaii or are you talking specifically about the ceded lands, State lands?

Mr. Kamaunu: Basically all lands of Hawaii. Because they all, they all have the same stipulations.

Chair Starr: Okay, thank you. Thanks for being here.

Chair Starr: Anyone else wishing to offer testimony at this time? Please make yourself known. Not seeing any, the initial public testimony portion of this meeting is now closed. We'll move onto our first item which is the SMA – well, the EA/EIS Report but we'll also take comments simultaneously on the SMA Minor and the SMA Exemptions Report. Mr. Spence?

**C. DIRECTOR'S REPORT**

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

The following testimony was received at the beginning of the meeting:

Chair Starr: Our next testifier is Lucienne deNaie. Welcome, Ms. deNaie.

Ms. Lucienne deNaie: Thank you, Mr. Chair, and Happy New Year to all the Commissioners. Nice to see the, all the new faces here. Lucienne deNaie testifying on behalf of myself as a citizen. I signed up to testify on a number of items. How would you prefer Mr. Chair that I go through the laundry list? Just start at one, and then go to the next, and so forth and so on?

Chair Starr: Yeah. We really have a real, real full agenda though, so be – give us your testimony but try to be concise. Ms. deNaie: Thank you. I will. First on Item C, the Director's Report, I notice that there's a SMA Minor listed that's being approved with some conditions for some property across the street from where I live. I do not believe that the alterations that are gonna take place on this property would be under \$125,000. It's going to be up to me to go and pay someone to prove that which is unfortunate, but there's going to be major, major things that have to be done to make this compliant. The permit number is SM2 2001/00083. My husband and I have already brought this to the attention to the Commission once. We intervened on the exemption that was going to be granted. The staff of the Public Works did agree that an exemption was not warranted for this project. So I guess we're gonna have to intervene again. I have to go and check the record so just, hello, that's the end of that one.

Chair Starr: That item is excavation for a proposed three-lot subdivision?

Ms. deNaie: Yes, yes. And in this case, I'll segue into the SMA amendment. It would be wonderful in a perfect world if people when they apply for SMAs and came before this Commission were accurate in describing what the conditions of their property were. What the conditions of their proposed actions were. But they are not. In fact, everyone puts the best face forward, minimum

disturbance, no impacts to this, no impacts to that, but it isn't necessarily so. And folks who live around these places know that because they know the land, they know the road conditions, they know what the beach is like, whatever the particular, you know, aspect might, might be. They know what the cultural sites are, and this is why I urge you to do something. I agree with Mr. Welch, that I think the fines should be a little bit higher so it's not just a cost of doing business because I think right now, you get your SMA, you build your seawall later. It's just the cost of doing business. You know, you get a little fine, and so what. And we all know this happens. This Planning Commission, I don't envy your burden, but since you set the conditions, it seems like it would be wise for you to be informed if there was some violation of the conditions. Now whether you would be a first step on a process, I support the idea that citizens could go directly to the Commission and make things known to them. And maybe some of the things that citizens bring forward are frivolous or just vindictive but a lot of time, you know, citizens are bringing forward information that is not available, information about how that public access is really working on that beach lot. You know, whether it's closed off all the time. The Planning Director doesn't go down there and check those things out, they're too busy. Citizens bring to the attention how parking has been implemented when it's a condition. Drainage problems. Look at the floods we're having in Kihei. All those places got SMA permits.

Ms. Takayama-Corden: Three minutes.

Ms. deNaie: So, you know, something wasn't right there because they're flooding. The gulches are flooding. I will – let me just say that I support this Commission taking some action. It can be balanced. There can be a standard of proof put up so that citizens have to meet, you know, some basic standard. But citizens should be allowed to be eyes and ears, they're a valuable resource.

This concludes the testimony received at the beginning of the meeting.

Mr. Spence: Mr. Chairman, Members, we have distributed the Planning Department's Report for the SMA Minors and Exemptions. Are there any questions on this? You have heard testimony on one item. My understanding is that if you have questions on these things, staff will go find out and where we will report back to you at the end of the meeting.

Chair Starr: Members? Mr. Yoshida?

Mr. Clayton Yoshida: Yes, Mr. Chairman, Members of the Commission. Some of the Members did call in ahead as is encouraged on the SMX, SMA Report. For Commissioner Wakida, we did submit some additional information regarding SMX 2010/0512 for a demolition on Shaw Street, and for SMX 2010/0488 for the Maui Sands, Building 1 reroofing, and on SMX 2010/0480 Kaanapali Land Management consolidation and resubdivision. This particular one, since the report was issued an SMA Exemption has been issued for the SMX 2010/0480.

Commissioner Mardfin also called in and Jim Buika submitted a description on SMX 2010/0077 the AOA Kulakane seawall repair and SMX 2010/0501 Gary Stice open picnic pavilion in Hana.

So these are the reports for the Commissioners who had called in the request earlier.

Chair Starr: Okay, thank you, Mr. Yoshida, and do we have a written report on those? Okay, good I see that. I have a couple of, a couple of others to add. First a, just a clarification and my concern is always with the SMA Exempt Report and the SMA Minor Report because those, the only chance we have to look at them is the meeting where they're presented. The other ones are kind of water that's run under the bridge. I see that the on the bottom there's a little mark that says asterisk shoreline projects, I don't either in the Minor or the Exempt see any place where those asterisks are applied. Is that, does that mean that absolutely none of these SMA Exempt projects or Minor projects touch on, touch on the shoreline? Or did some of them get left out, the asterisks?

Mr. Yoshida: We do submit a report entitled, "Open Permits in the Shoreline GEO Area." These are open permits.

Chair Starr: Okay.

Mr. Yoshida: ...(inaudible)... become reported as. So the Commission knows beforehand which open permits applications located along the shoreline are in for Department review. And then they are reported out as SMA Minor Permits or SMA Exemptions.

Chair Starr: So, I'm a little bit confused by this. Say for example the last one in the PD Open Permits and Shoreline GEO Area, the Lindal residence that's an SMX 2010/00503 now has that appeared on either of the Minor or Exempt list or has it not gotten there yet?

Mr. Yoshida: No, these are just open SMA Assessment applications that are being processed by the Department.

Chair Starr: Okay, so in other words, these will result in either a Minor, an Exemption or most likely in a requirement for a Major is that correct?

Mr. Yoshida: Yeah, those are the options which are left to the Director.

Chair Starr: Okay, and in today's sheet on the Minor and the Exempt projects am I correct in assuming that none of these touch on the shoreline? It's just hard for me to believe that none of them are shoreline lots.

Mr. Yoshida: Well, I guess from the SMX GEO Report they become either SMA Minor Permits or SMA Exemptions. We would just have to look at previous GEO Reports, Shoreline GEO reports if they were on the shoreline.

Chair Starr: But how come we have this? It says shoreline projects equal asterisks but none of them are marked with an asterisks.

Mr. Yoshida: We can try to work with MIS to develop some sort of –

Chair Starr: So in other words, that's not true that that, it's not true that if they are on the shoreline they have an asterisk? Is that correct?



Mr. Yoshida: Well, if they're on the shoreline, and we're still processing, it's on the Shoreline GEO Report.

Chair Starr: Yes, but if it's been processed and is a Minor or an Exempt, I would like to –

Mr. Yoshida: Oh, yeah, that's correct, it does have an asterisk.

Chair Starr: And I would like to know which of these are on the shoreline? And in the future, I'd like to have them marked with an asterisk or some other mean.

Mr. Yoshida: I guess if you look at the Approved SMA Minor Permit Report, if it is on the shoreline there will be an asterisk next to it.

Chair Starr: What?

Mr. Yoshida: That's the notation on the bottom left. Asterisk equals shoreline projects.

Chair Starr: In other words, none of these are on the shoreline, is that correct?

Mr. Yoshida: Yes, that's my understanding.

Chair Starr: And the same with the Exempt projects, none of the Exempt projects listed are, are shoreline projects?

Mr. Yoshida: Yes, that's my understanding.

Chair Starr: Okay, I would like some more information, I'll start with the Minors, David Bolles, then on the Exempt projects there's one, County of Maui Road Improvement. The applicant is Frank Pikrone. This looks exactly like the last one that we've had some spirited discussion about. Next is La Canada Residence, a residence and pool improvements in Makena. I just want confirmation that that's not on the shoreline. Next is Kai Makani Beach Villas, install new motorized gates. I'm concerned about possible shoreline access issues with that. I'd like more information. Next is Ian Fisher, Ian Fisher, Ian Fisher, nothing more than the person's name. No clue as to what that is. Next is Paul Crociara, Paul Crociara, Paul Crociara, no more information available on that other than the name. No planner listed. Next is GNC, GNC, GNC, no additional information available. And next is KaaNapali Land Management Corp. KaaNapali Land Management Corp. KaaNapali Land Management Corp. No additional information. And then I do want confirmation that none of these are on the shoreline. Commissioner Wakida?

Ms. Wakida: I missed one that I wanted identification of what the project is. Apologize for not getting this in advance. It's on Page 8 of 10 and it is SMX 2001/00485. I sent in 488 by accident. I misread the number. I would like to know what Gardens of West Maui where the project is? That's all.

Chair Starr: Okay, Members? Commissioner Shibuya?

Mr. Shibuya: I just got one on the Exempt, Page 1 of 2, SM5 2010/0341, Kuwada's lot, consolidation of three existing lots to one. That's it.

Chair Starr: Okay. Commissioner Mardfin?

Mr. Mardfin: I called in a couple of already and we have responses back already, but there was one I didn't ask about because I didn't know who the planner was and that is on Page, excuse me, I'm sorry, it's on Page 8 of 10, and it's lets see the, one, two, three, four, fifth from the bottom it says Hana Highway Route 360, Hana – Under Permit Name, Hana Highway Route 360, State of Hawaii, DOT-Highway Division, and I would kind of like to know just what it is? Since I probably drive it.

Mr. Shibuya: Bridge widening.

Mr. Mardfin: That's fine, just let me know. And I apologize, there wasn't a planner on it, otherwise I would have called them directly.

Chair Starr: Okay, thank you, Commissioner Mardfin. Let's move along. Okay, good we're ready for our next item. I turn to Director Spence to introduce it.

Mr. Spence: Okay, thank you, Mr. Chairman. Number C-4, regarding Mr. Isaac Hall, attorney on behalf of Robert Lee, Gila Willner, and pardon me if I mess with some people's names, I can stand corrected. Randy Bowen, John Salinas, James L. Payne, Jose Figueroa and Murray Jafine and Dana Naone Hall, Pro Se submitted a Notice of Appeal on November 23, 2010 on the Environmental Assessment Exemption along with the Shoreline Setback Approval issued by Department of Planning on November 19, 2010 to Pyramid Project Management LLC for the proposed landscaping improvements. I think everybody is very familiar with this. We do have a letter from – Ann, would you like to present that?

**4. Pursuant to the SMA Rules of the Maui Planning Commission, notification to the Maui Planning Commission of the submittal of the following SMA Appeals:**

- a. **MR. ISAAC HALL , attorney on behalf of ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE and DANA NAONE HALL , Pro Se submitting a Notice of Appeal on November 23, 2010 on the Environmental Assessment Exemption along with the Shoreline Setback Approval issued by the Department of Planning on November 19, 2010 to PYRAMID PROJECT MANAGEMENT LLC for proposed landscaping improvements in the Shoreline Setback Area at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. (APPL 2010/0006) (EAE 2010/0083) (SSA 20090030) (A. Cua)**

**The parties thus far are:**

1. **Isaac Hall and his clients and Dana Naone Hall - Appellants**
2. **Department of Planning - Appellee**
3. **Pyramid Project Management, LLC**

Ms. Ann Cua: Good morning Chair, Members of the Commission. The Department received a letter, and you have copies of it dated January 5, 2011. The letter is signed both by B. Martin Luna, Counsel for Pyramid Project Management LLC as well as Isaac Hall, Counsel for the intervenors that Will had just, had just read. And basically the letter says that, well the letter reiterates what was expressed at your November 23, 2010 meeting where both counsels agreed that the issues raised in this appeal could be or would be litigated within the contested case hearing and so, I do have an update on, on the mediation, contested case hearing portion for you.

Chair Starr: Please?

Ms. Cua: I received yesterday from Mr. Kosaka's Office, and if you recall the Commission selected Glenn Kosaka to be the mediator in this matter, and John Rapacz, the hearing officer. So, pursuant to your rules, the mediation has to occur first. You did, encourage and strongly suggest to the parties and to the Department that we communicate to the mediator and the hearing officer that this happened as expeditiously as possible. We did communicate that to Mr. Kosaka. As a result, he sent a memo to the parties about the scheduling of a pre-mediation conference. The parties have decided and I did call Mr. Kosaka yesterday to inform him that the parties are agreeing to meet, tomorrow, Wednesday, January 12<sup>th</sup> at 3:00 p.m., and this is a pre-mediation conference to, to schedule and talk more about the actual mediation sessions that's going to occur later.

At the same time, the Planning Department is going to initiate a request to the Corporation Counsel's Office for the preparation of a contact for the hearing officer in case the mediation is not successful.

Chair Starr: Okay, thank you. Mr. Giroux, did you have comment about the consolidation?

Mr. Giroux: On 4a we received a letter, but if we do have the parties here to just confirm that that is the intention of the letter is to basically agree or stipulate to consolidate 4a with the pending SMA proceedings that are going on with the, with the same project. That would be appreciated just so there's no confusion in the future. I read the letter, I think that's what it's trying to say. But just to make sure that there's no issue in the future about that.

Chair Starr: I believe we only have – is Mr. Luna there? I saw ...(inaudible)... before. Mr. Hall, I guess we're in a position where you're here but the other side isn't here. Oh, okay. So, ...

Mr. Giroux: Two out of three ain't bad.

Chair Starr: Since this is for informational purposes at this point I, I would allow you to speak to us. We did get a letter from the third side, yeah?

Ms. Kimberly Sloper: Good morning Chair. Kimberly Sloper, Deputy Corporation Counsel. I – Mr. Luna, Mr. Hall, and I did speak about this actually this morning right at the beginning of your

meeting. So it is our intention to go forward with the mediation to include this EA exemption appeal in all of these proceedings in this one mediation and potentially the hearings officer.

Chair Starr: Okay, thank you. Mr. Hall?

Mr. Isaac Hall: Yeah, Isaac Hall for the intervenors. Actually my understanding of the Commission's action was when you granted the petition to intervene that you also took action at that time to include this issue in the contested case proceeding and that somewhat influenced what our letter. But in any event, I agree that it should be part of the contested case proceeding.

The only thing I would like to place on the matter of record now. You folks may have read in the newspapers that Morgan Stanley does not own or control Grand Wailea Hotel anymore and the authority to process the permit comes from Morgan Stanley. So our concern is that it seems like the hotel is now only controlled by Poulson and Company Group and we're gonna want to make sure that we're dealing with the people that have the authority to process the permit and/or participate in mediation. We don't want to mediate with somebody that's no longer the owner of the hotel. So we're gonna want to confirm that, and want to let you know that from the very beginning.

Chair Starr: Okay, and I'm sure you'll discuss that in the mediation and then it will come to us?

Mr. Hall: Yes.

Chair Starr: Okay, thank you very much. We can move on –

Mr. Hall: Thank you.

Chair Starr: –onto our next item.

Mr. Spence: I guess next is the Commission Rules?

Chair Starr: No, we have –

Mr. Spence: This has all been dealt with.

Chair Starr: No, we're on b. Okay, still going.

Mr. Spence: Item b, Mr. Isaac Hall on behalf of Mr. Shep Gordon submitting Notice of Appeal on December 14, 2010 on the issuance of a Special Management Area Exemption for roadway improvements by Mr. Frank Bud Pikrone, I apologize again if I'm mispronouncing his name, on South Kihei Road in the Keawakapu area, Kihei, Island of Maui. Trisha?

Chair Starr: Ms. Kapuaala?

- b. MR. ISAAC HALL on behalf of MR. SHEP GORDON submitting a Notice of Appeal on December 14, 2010 on the issuance of the Special Management Area Exemption for the roadway improvements by MR.**

**FRANK BUD PIKRONE on South Kihei Road in the Keawakapu area,  
Kihei, Island of Maui. (APPL 2010/0005) (SM5 2010/0281) (T. Kapuaala)**

**The parties thus far are:**

- 1. Isaac Hall on behalf of Shep Gordon - Appellant**
- 2. Department of Planning - Appellee**
- 3. Frank "Bud" Pikrone of the Wailea Community Association - Applicant**

Ms. Trisha Kapuaala: Aloha, good morning, Trisha Kapuaala of the Zoning Administration and Enforcement Division. This item is on your agenda for notification purposes only. Ms. Kimberly Sloper is also representing the Department of Planning in this appeal. And again, we have two-thirds here. Mr. Isaac Hall is here. I'd be happy to answer any questions, if any. Other than that we will see you on February 8<sup>th</sup> to determine a hearings officer.

Chair Starr: Okay, this will not be combined with the – the request was not to combine this also with the other items, right?

Ms. Kapuaala: At this point, no.

Chair Starr: Okay.

Ms. Kapuaala: It's separate.

Chair Starr: Mr. Giroux, any comments?

Mr. Giroux: Yeah, there's no further action needed on this side.

Chair Starr: Okay. So Mr. Hall, unless you have a comment or Corp. Counsel, we can move a long. Commissioner Mardfin, hold on a second. Yeah. Yeah, if you wish to make a comment, I'll allow that.

Mr. Isaac Hall: No, I'm, I'm – perhaps the Commission is aware, I mean, we – you were advised when we last in front of you that we should – we had remedies in the Circuit Court. Mr. Giroux advised us that that if we wanted injunctive relief we should go to the Circuit Court. We did go to the Circuit Court. The Circuit Court did enjoin this project because on ground that the SMA Exemption didn't appear to be validly issued and I just wanted to say that. So we're still in Circuit Court and there's further hearings in Circuit Court on January 24<sup>th</sup>.

Chair Starr: Okay, thank you, Mr. Hall. And Corp. Counsel? I'm sorry, I forgot your ...

Ms. Kimberly Sloper: Kimberly Sloper.

Chair Starr: Kimberly.

Ms. Sloper: No,,just to reiterate Mr. Hall's statement. We are currently in the middle of the Temporary Restraining Order hearing or the Injunctive Relief hearing. So there's a temporary injunction in place now, and you have the further hearing, we're in the middle of testimony.

Chair Starr: Okay, thank you. Commissioner Mardfin, but remember it is before the courts.

Mr. Mardfin: I don't think I'm going to jeopardize it. I'm just, it's just for clarification and maybe James can help me out here. You just made a ruling that this is separate from the contested case, is that because it's in court or?

Mr. Giroux: No. There's no ruling. It's just that we're not taking any action right now because it is pending. There's other processes going on. Today, on the b, it's just the – according to your rules, you have to be notified that an appeal has been filed. The last time this was brought up on the agenda, I believe on that day, there was an appeal filed but that's not the official notice. This is the official notice.

Mr. Mardfin: I just wanted to clarify that – after it's finished in court that – what I don't want to see happen is we have one contested case hearing then this finishes up and then we have to do it all over again, that , that at some point they get combined?

Mr. Giroux: We can, we can bring that up on February 8<sup>th</sup>. That's going to be – It's going to have a docket number and, and it be more timely to talk about that at that point.

Mr. Mardfin: Thank you.

Chair Starr: Mr. Hall?

Mr. Hall: I'm sorry. I'm – when, I didn't understand what you meant when you said would this be combined with the other contested case, it wasn't ringing bells in my head that you're talking about the Grand Wailea contested case. We, we have made an argument that this beach parking was made part of the Grand Wailea project. The judge in granting the temporary restraining order took that possibility into effect but he hasn't ruled that. So, I, I agree with what Mr. Giroux is saying. At some point if the judge rules that it is part of the project then it may, may be more appropriate to handle it within the contested case for the Grand Wailea project. I just wanted to clarify our position on that at any rate.

Chair Starr: Okay, thank you very much. Let's move along. Mr. Director?

Mr. Spence: Commissioners, we are moving along to Item D-1, Public Hearings, Mr. –

Chair Starr: Oh, no, no, no, no.

Mr. Spence: No?

Chair Starr: No, you skipped one.

Mr. Spence: Pardon me, we're jumping the gun.

Chair Starr: Yeah, we're on C-4(b), the second, (b)1, it's kind of –

Mr. Spence: Where are you looking?

Mr. Mardfin: The letter from Shep Gordon?

Chair Starr: Yeah, the December 17 – this one, it's a separate item.

Mr. Spence: It is a separate item?

Chair Starr: Yeah.

Mr. Spence: Okay.

Mr. Giroux: ...(inaudible)...put it on the agenda?

Chair Starr: Yeah, I think I'd like to have it read in, read in as a separate item. ...(inaudible)... after the ...

Mr. Spence: Per the Chair's prerogative. This is Number C-4(b)1, December 17, 2010 letter from Mr. Shep Gordon asking the SMA Exemption for the construction of parking stalls and roadway within the County right of way at Keawakapu, SM5 2010/0281, be placed on the January 11, 2011 agenda.

- 1) **December 17, 2010 letter from Mr. Shep Gordon asking that the SMA Exemption for the construction of parking stalls and roadway within the County right-of-way at Keawakapu (SM5 2010/0281) be placed on the January 11, 2011 agenda.**

Chair Starr: We had a request that this be placed on the agenda because there was a desire for a discussion, possible action on it previously. It is placed on our agenda. Now in essence it is in front of the court so that most likely limits what we can do with it. And so I'll ask Mr. Giroux to clarify.

Mr. Giroux: Yeah, just a word of caution is that because of the notice today that you will, you will be seeing this as a, as a litigation item in front of you, possibly in the future. It's possible future board business in your adjudicatory roles so, any, any comment or conclusory statements made at this point can jeopardize your ability to be seen as fair and impartial.

Chair Starr: So I ask Commissioners not – to be aware of that and not to prejudice any of our position on it. But I did feel it should be on the agenda and if there's anyone from the public who wants to make a comment, I would as testimony, I would allow that because that original request to us. Commissioner Hiranaga?

Mr. Hiranaga: I guess I'm a little confused. This issue is in litigation?

Chair Starr: Yes.

Mr. Hiranaga: So why would we place it on the agenda until after the litigation is completed? Why would we not put it on the agenda after the litigation is completed? Why we put it before? Because it seems to me like, putting the cart before the horse.

Chair Starr: The intent is that if the public ask that an item be placed on the agenda, that it be, that it be done to allow comments to be made. If it's in the courts it kind of becomes clear that there's very likely likelihood we're going to act on it as a separate item. But we are kind of here to be a sounding board for the community and I think that was the intent. Mr. Giroux?

Mr. Giroux: Just a point of clarification. Right now, there's, there's two separate legal processes going on with the same issue. One is that in the Circuit Court there's a restraining order processes which would basically make everybody stop moving. But there's also what we've gotten today is a notice about a challenge to the actual exemption itself, or the – not the exemption, but the – yeah, the exemption which is an appeal process that actually goes through the Commission. So there's two legal processes going on. So this will be in front of you. It's just the issue, just because somebody appeals the decision of the director doesn't mean the tractor stop. The tractors can only stop if the court says they stop, and that's the dual processes that's going on. So it's not taken out of your hands, it's just that the way the SMA Rules are written is, you do not have injunctive relief. And, and I think we've kind of touched on it. It's a concept that a judicial body can have certain powers, but another body will have other powers. And the way the statute is written is you are given, you're the ultimate authority, but the courts have certain powers that you do not have. So that's the purpose of the dual processes that you're seeing.

Chair Starr: Okay, thank you. Anyway, if anyone wishes to make a comment? Mr. Hall, was – please be brief though.

Mr. Isaac Hall: Yeah, Isaac Hall for Shep Gordon. I will be very brief. I think at the time that Mr. Gordon wrote this letter, none of these other things had happened. The court hadn't happened or hadn't been rulings in the court case. The appeal hadn't got to the point before you that it did, so the fact that he's not here doesn't mean he isn't concerned, but he just took stock of where everything was, saw that it was for notification purposes. He's got plenty to say about it, but decided for the same reasons that you're being given here that probably it wouldn't be a good idea for him to come. So he didn't, but he is very concerned about this. Thank you.

The following testimony was received at the beginning of the meeting:

Ms. Lucienne deNaie: And on, shoots what is it, there's one more, Item F. It concerns. I'm not sure I have the right item number here. It concerns, oh, it's 4-b(1), it concerns the road improvements in Wailea Keawakapu Beach. And I don't know if any of you go down there and park at Keawakapu Beach but a lot of cars can park there now. And Wailea Community Association for years instead of trying to put funding together to actually buy more beaches when large developments come into Wailea like Wailea 670 or like Makena Resort, like there are beach lots



available at Palauea, we could expand our beaches. Instead they expand parking, and this has been a proposed condition of the expansion of the Grand Wailea. It was a proposed condition to satisfy impacts on beach access of Wailea 670 but I think it got moved over to the Grand Wailea to satisfy their parking requirements. In essence you're reducing parking. By making a formal number of stalls, I think it's 22 that are noted, you're taking away the informal parking that's two or three times that. I've attended events down at Keawakapu Beach. I've attended events at Mr. Shep Gordon's house. In fact, the Governor had an event there early in his campaign. There's plenty of parking now, it's just that it's informal parking and I don't really see how this helps the public because it's going to limit the amount of parking by having no parking where there is informal parking now, and then 22 formal parking stalls. So look at this very carefully and get all the facts. Thank you.

Chair Starr: Thank you, Ms. deNaie. Any questions? Thank you very much.

This concludes the testimony received at the beginning of the meeting.

Chair Starr: Okay, thank you. Anyone else? Okay, thank you very much. We'll move onto the next item. Director?

Mr. Spence: Now, Item No. D, Public Hearings. Planning Director transmitting various amendments to Chapter 202, Special Management Area Rules in the Maui Planning Commission to increase fines and have the SMA violations be heard by the Maui Planning Commission instead of the Planning Director. Mr. Chairman?

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

- 1. MR. WILLIAM SPENCE, Planning Director transmitting various amendments to Chapter 202: Special Management Area (SMA) Rules of the Maui Planning Commission to increase fines and have the SMA Violations be heard by the Maui Planning Commission instead of the Planning Director. (J. Alueta)**

Chair Starr: Mr. Alueta, please? Thank you for bringing this before us and Happy New Year.

Mr. Joe Alueta: Happy New Year. I'll be kind of doing a tag team between me and Mr. Giroux, your Corporation Counsel, who did the actual drafting of the proposed amendments to your SMA Rules of Practice and Procedures for, for this particular commission. I'll briefly go, you should have my memo report of December 14, 2010 which kind of does a quick summary of the changes of them. A lot of these as I indicated with regards to the initial maximum fine, this is bringing it in compliance or not in compliance but consistent with what the State law already states within HRS 205A. So are rules were not updated since they had increased the fines in HRS. So we're just reflecting that. Again, when it says, "up to" that means that's not what we normally – it all depends on the gravity of the situation, how egregious violation is based – for the initial fine. So say someone changes out an exterior window of their condominium, you know, and that technically requires an SMA Assessment, we would not hit them with say a hundred thousand dollar fine on the initial. But if someone decided to pour several tons of concrete into the ocean to shore up their revetment then we might think differently on that initial fine.

We also have, establishes a provision for a service of Notice of Violation. We had in the past where not only in the SMA but in violations in general with the Planning – Enforcement Agencies where we've tried to serve them with the notice. They know that it's coming, and they refuse to accept it either they leave in their mail box, leave it at the post office box and refuse to pick it up. And so this is one way in which they primarily delay action. This would allow the Planning Department and Enforcement Agencies to publish within the paper, the Notice of Violation after they've made several attempts to serve the alleged party of the violation.

Increase of the maximum, oh, I'm sorry, the next section allows for a stay on the pending, pending negotiation settlement while preserving the alleged violators his or her rights of due process. This is just to clarify from legal standpoint so that someone does enter into negotiations, they still have – they're still preserving their rights as part of the intervention or notice of violations.

Hearings, second, again, the daily fine maximum daily fine reflecting State law increasing it from a thousand dollars a day to ten-thousand a day, and that again, that is a just maximum number. The most, I guess, the one that you heard testimony on today was adds a new section on the enforcement of SMA conditions, representations of commitments in obtaining an SMA Permit, and establishes a new process in order to enforce and ensure conditions are complied with or if conditions are not met, establishes Commission's power to revoke a permit.

I think, and I was talking with some of the developers outside, and they, they apparently agree that you have issued a permit during the SMA and that you have the inherent right, that's an implied right that usually the permit you have the right to revoke that permit if the conditions and representations made during the public hearing process to obtain that permit are not met. And as explained to me by our Corporation Counsel, it's an implied right. However, the Courts recognize that you have that right but you need to set up a process in which to exercise the right to revoke that permit. If you're the person to do some type of processing in which to argue against why they shouldn't have their permit revoked before you go ahead and revoke and so it's not deemed as just a arbitrarily revoking a permit. And so, Mr. Giroux has drafted up a new section within your rules and that's on 12-202-25.1 which regards to the enforcement of conditions and it, it lays out the process in which you, you or the department could initiate or a public person who had interest in the permit could file a complaint in which then – and there would be a process in which you could then decide whether to reject it, to revoke the permit or say the person is still in compliance with the permit.

Some other issues or questions that came up was, you know, does this bypass our standard enforcement process. It's kind of a yes and no. It's, no and then someone files a complaint about someone not fulfilling the conditions, right, we would take that complaint and proceed to investigate it through our standard Zoning Administration and Enforcement Division. They would meet with the Current Division on what, on what the conditions were of that permit, and how, and then try to investigate the alleged violation. Someone theoretically could bypass that process of not going through the Planning Department and filing something to this Commission. Now as, as you just had a letter, that was requested to be placed on the agenda. Anyone can request to have anything placed on the agenda, okay, but the rules in which or the process in which is laid out, clearly in your rules and the person would need to do some work so that it couldn't just be, hopefully it's not frivolous but if they – they would have to exercise some type of effort, they would have to explain,

one, their interest in the party, of the petitioner, obviously the permit number or permit that is in question, and the conditions, representations or commitments that are not being performed or satisfied. Okay, so they would have to do their own investigation or explain in a logical manner why they feel that that condition or representation is not being met. They would have to have particular facts supporting their by an affidavit giving ...(inaudible)... the conditions and representations or commitments have not been performed. Okay, that's not an – I mean, to me, you, you really have to have some grounds and, I think that, and you really have to want to exert a lot of energy and effort to file before the Commission. And it's not saying it's not going to happen, but you would – logic prevails, we hope that you would first try to raise your issues and concerns before the Planning Department and the Enforcement Officers to find out exactly what has transpired. It could be just a simple miscommunications or again, the condition or the requirement for compliance of a particular condition does not happen until a later phase of a project and that was represented in the project but it was not clear to that person who has concerns over the project.

And again, looking on Section, action just trying to go with the summary, go down some of the section of this thing, we feel that this allows for, you know, even if they come in for, get before, and they provide a lot of documentation, the Commission can reject it outright by saying that you did not meet the standard – you did not submit the appropriate documentation or adequate information for us to pursue this further and submit the petition back to the party.

So, and then, and then it goes into setting out when the Commission, and again, it's kind of like preserving the rights of people to be able to file but also you need to preserve the rights of the person you gave the permit to. And that's the second part of this, you know, and it puts the burden – it does put a burden of proof on the applicant or the permit holder to certain degree, but that's – they have that burden of proof all through once they've been granted a permit to show that they have been in compliance. Most of time it's, they do that already either through the preliminary compliance reports as well as the final compliance reports. Hopefully the staff has done their job in ensuring that the conditions have been met before we even get to the stage of potential revocation. I think it's just clarifying your rules, your inherent right to satisfy the test within the court system. I'm hoping James will step in here if I say anything wrong.

Mr. Giroux: Sounds brilliant, should have gone to law school, Joe.

Mr. Alueta: Yeah.

Mr. Giroux: ...(Laughing)...

Chair Starr: ...(Laughing)...

Mr. Alueta: And then, I think that pretty much sums it. Then you have the appeal of Director's decision, filing a notice. Other than the Notice of Violation issued pursuant to ...(inaudible)... all that does is clarify the distinction between a Notice of Violations or the appeal of the Director's decision. Just providing clarity on the two tracks. preserves the rights of the Commission right to appeal and then the violations are handled through the BVA. It just clarifies who, where you're gonna go. And that's all I have for now.

Mr. Giroux: Wait, Joe, the last part?

Mr. Alueta: On the Section 12- 202-20, Appeal of Director's Decision, Filing of Notice of Appeal. Appeal of the Director's Decision other than an Notice of Violation issued to pursuant Section 12-202-23.

Mr. Giroux: Yeah, no, it's not the BVA, it's just that you would be – there's another subsection that we created regarding NOV's that have a, a very truncated or expeditious –

Mr. Alueta: Oh, okay. That's right.

Mr. Giroux: – this is still the body that would hear it.

Mr. Alueta: Okay.

Mr. Giroux: It's just a different procedure.

Chair Starr: Okay, before we go to discussion, I, I want to ask Mr. Giroux to comment if he wishes?

Mr. Giroux: Joe, did an awesome job. Makes me proud. That means, everybody should be able to understand what you wrote. Basically, this, again, this is just updating the law. The Hawaii State Law has changed, so we're just trying to catch up. The law has changed in the Statutes and that, that's the fine amount. And then law was also created through litigation through the Morgan Case that came out of Kauai and that's where the, the idea that you have – the law said that you do have an inherent power, it's just that you have to have a process to, to execute it. And Kauai was very fortunate because the way that their Charter and Rules were laid out, they actually had a global rule that said that their commission could do that. They could, they did have a process. If the Morgan Case had happened on Maui at the same time, this Commission would be at a loss, you would be depending on your attorney, very scary, to try to ensure that due process was occurring during all steps of the procedure. We don't – attorneys don't like that and judges don't like that because it keeps everybody guessing, is the person or are – is everybody getting fair play? Is everybody getting the process that due them at that time for the rights that are being asserted? If the rules are here, nobody has to guess. It's written down, you get to speak first, you get to speak second, you get to bring evidence, this is the evidence you get to bring. You don't have to look at the lawyer and ask, you know, are we doing it right, should we go forward, should we stop? It's all in the rules. We tried to model those rules after the Land Use Commission. The Land Use Commission has had a lot of litigation based on their order to show cause process. So we're fairly comfortable that we modeled it close enough to theirs that it would uphold any scrutiny as long as they were followed, that your process of petitioning, hearing the petition and sending out of Orders to Show Cause and the contested case procedure that would follow should all be upheld in the court of law challenge. So that's kind of where we're coming from. We're trying to give you guys a tool – at this time you can look at, look at it from a policy standpoint, look at it from a technical standpoint, look at it in the sense that is this something that you want sitting in your tool chest? Is this something that you see as beneficial? And we believe so. We're just trying to keep this Commission at the cutting edge of doing its job.

Chair Starr: Okay, thank you. Director Spence. I believe you have some comments on this?

Mr. Spence: Yes, thank you, Mr. Chairman. Members, I – this was a project that I inherited and some of it I'm very comfortable with. Some of it, I'm not so very comfortable with. I have spoken with and perhaps a little bit of background about myself. I have appeared before this Commission before where Joe is standing as a consultant representing mostly small landowners, and you know, so on that side of things when you're, you're looking out for the interest of the landowner and you think about just bypassing normal procedure or completely stopping a process, a project, you know, that perhaps may be under construction or you know, contractor's subcontractor is hired, you know, contract is signed et cetera. I want to make sure that in these rules, you know, there isn't – after they've gone through the big long process of obtaining their Special Management Area Permit, that it can be frivolously just brought to a halt. I know that, I spoke with Mr. Giroux and Mr. Alueta yesterday. We have some agreement on adding something to the enforcement -- the petition that order to show cause that they go through the Planning Director first as part of their petition to this body. I'm not opposed to the people coming to this body, but I want to make sure that it's – this project, new process for you is not abused. Just, you know, as you heard testimony this morning, the process is not just given the second bite of the apple. So, I am open to discussing amendments to this, I have not reviewed this to the way that I am very comfortable with them. But certainly willing to discuss with the Commission.

Chair Starr: We're going to take a ten-minute recess. Perhaps when we come back, you know, we could get a bit of, more of a feeling whether that – the wording on a possible amendment is in place, that Corp. Counsel and that Mr. Alueta [sic] are comfortable with we could examine. Otherwise, if not, we might defer it. But let's look at that after we come back, after our ten-minute recess.

A recess was called at 10:29 a.m., and the meeting was reconvened at 10:44 a.m.

Chair Starr: Planning Commission meeting, January 11, 2011 is back in session. The item before us is the amendments to Chapter 202. I, I'll be intending to recommend to the body that the item be deferred until we have departmental leadership and staff has had an opportunity to work together on it because they, they really haven't had the time and it's not their fault. But Commissioner Mardfin had two very quick questions and then I'm going to allow the public hearing to proceed. Commission Mardfin?

Mr. Mardfin: Joe, you said something earlier about currently the procedure is to work through – you, you, asked a question, does this bypass Zoning and Enforcement and your answer was roughly not entirely. They have a role, and we have a role. Does Zoning and Enforcement have the power to revoke a permit?

Mr. Alueta: No

Mr. Mardfin: So this is a new remedy?

Mr. Alueta: Correct.

Mr. Mardfin: In that revocation is a possibility.

Mr. Alueta: Correct. As I indicated, it's always been like an implied right or an inherent right of this commission but the process to do it would have to have come from the Planning Commission to revoke it. The Department doesn't have the ability to revoke a permit that's issued by the Planning Commission. Only the Commission would have that power inherently and then this sets out the process and procedures to grant you that.

Mr. Mardfin: Okay. The second question, I don't want an answer today, but when we – if this gets deferred, but I will ask so that people can think about it, this is particularly the section on appealing the Director's decision. What's the problem that this is intended to correct? Where have things come up where this happens? And I'm concerned about generating frivolous appeals as a delaying tactic. Less so on the enforcement of, of SMA conditions, I'm glad something's being done on that because, I think people have been able to escape but I do understand the concern that you go down the path in a good faith effort, you don't want to get jerked back. We had some testimony on that a few weeks ago, when we were rescinding a project and there was public testimony to the effect that, you know, you got, once you've made a commitment you want to go through with it. So of those are serious questions, but I don't want answers now.

Chair Starr: We'll take the answer when we're ready to proceed.

**a) Public Hearing**

Chair Starr: I would like to move through the public hearing and our public hearing process we'll begin with accepting public testimony on this item. We've been noticed to do.

The following testimony was received at the beginning of the meeting:

Chair Starr: The first testifier who signed up is Mr. Tom Welch. Mr. Welch, welcome and thank you for being with us today.

Mr. Tom Welch: Morning Chairman, Morning everyone. I'm Tom Welch. I'm here on my own behalf as an attorney who represents land owners and lenders generally. And I'm, I'm sorry to be the first testifier of the year, I apologize for testifying negatively, but I'd like to just give you my objections to the proposed changes to rule, Chapter 202 on the SMA Rules.

The proposal, what the new rule, proposed new rule does is it creates a new enforcement power by adding SMA Permit revocation as a penalty for a permit holder's breach of any condition, representation or commitment associated with the permit. And appoints the Planning Commission as the adjudicating body to enforce violations. Under the present enforcement structure, what you, what you, without this rule, you have fines levied by the Planning Director and \$10,000 and a \$1,000 a day which the rule is proposing to increase to \$100,000 and \$10,000 a day which I don't oppose.

And number two, stopping the project by injunction in the Circuit Court until the permit holder cures the violation. What the new rule does is it does four things. One, it adds permit revocation to the

enforcement powers. Number two, it empowers private citizens to bypass the Planning Department and initiate enforcement proceedings directly with the Commission by private petition. Thirdly, it expands the Commission's burdens by making it a court of law, the whole trials, adjudicate questions of fact and law, and rule on permit revocations. And finally, in those proceedings, it shifts the burden of proof on the permit holder to show cause why the permit holder – the permit should not be revoked.

The impacts of this are as I see it, the following. Number one, people who initially oppose the issuance of an SMA Permit will now have a second chance to effectively stop or disrupt the project after the permit is issued and the project would be done merely by initiating proceedings with no penalty or risk for having initiated a false claim if they're ultimately shown wrong. Number two, because of this risk, new projects in the SMA will be discouraged. And I can tell you on behalf of construction lenders it would not be a situation where they would – where many of them would be willing to issue, to grant a construction loan for a project of any size with that possible permit revocation risk hanging over. This Commission knows how difficult and time consuming contested cases are, and this rule will, this rule change whereby making the Commission a court of law to adjudicate violations adds a whole new category of judicial responsibility to this, to this Commission and case management to this Commission's workload. Permit revocation is not simple. Third parties can be hurt. If an SMA for a subdivision is revoked after lots have been sold, what happens to the people who bought their lots.

Ms. Takayama-Corden: Three minutes.

Mr. Welch: Can I just sum up one quick –

Chair Starr: Yeah, sum up, please.

Mr. Welch: If, if the proposed rules, if, if the purpose of the proposed rule change is to discourage or stop any development in the Special Management area, then the rule's okay. But if balanced, you know, regulation is the goal, then please either reject this, these portions of the proposed amendment or at least submit it to a sincere process of soliciting public comment from the business community, legal community and lenders. Thank you.

Chair Starr: Okay, thank you, Mr. Welch.

Mr. Welch: And I, I have copies of my written testimony.

Chair Starr: Okay, can someone help hand those out? Ms. Kapuaala. Okay.

Mr. Shibuya: Mr. Chair?

Chair Starr: Mr. Welch, I believe you have a question for you. Commissioner Shibuya?

Mr. Shibuya: Yes. Thank you for your testimony. I really appreciate that. On this permit revocation, those issues and points as well as false claim risks can you elaborate a little bit more on that? How do you know it's false claim?

Mr. Welch: What I mean to say is lets say, it's just a practical circumstance, lets say somebody who objected now is objecting again and he's objecting – he or she is objecting to, alleging a either violation of a condition, a violation of a commitment or a violation of a representation, those are the three things, not just condition, but these other, other categories of things that are involved in the SMA process that are part of the SMA record. And lets say, they come in and they say, oh, this wasn't – they haven't performed this condition or they're not living up to this representation. So then it goes to the Commission, the Commission hears it, and the trial – and over the course of the trial it comes out that that's not what the condition meant at all. Or in fact they had complied with it, or they complied with it after the fact and brought it current. And what's happened – in order to get to that point, this Commission has appointed a hearings officer, it's gone on the calendar, months have gone by, the project is probably stopped because the construction lender is not lending any more on it --

Mr. Shibuya: Right.

Mr. Welch: – because of this. And, and then, the developer wins. But meanwhile, the project has, has been really hurt badly and maybe it stopped. Maybe they can't, you know, all the consequences in a project. And the private litigant who brought the petition there's no penalty for that. The only thing they've done is maybe they've paid a lawyer to help them, but they're effectively stopped the project without consequences to themselves in being wrong. Whereas in the present situation you've got, you know, you go through, you go through an enforcement provision. It's all in the discretion of the Planning Director and so forth, may be bring, they bring Corp. Counsel involved and you bring a ...(inaudible)... legal case, and so forth. It's a little different, different circumstance.

Mr. Shibuya: So it does come out with some damages or possibility of damages and how do you compensate for this? Whereas there's no provision for this? Are you suggesting that we have provisions for compensation for such false claims or some frivolous types of a, a I guess, arguments?

Mr. Welch: Well, you could, you could approach the problem that way and put some kind of penalty in the rules, but it would probably be beyond your rule making power maybe, you know, James ...(inaudible)...

Everyone: ...(Laughing)...

Chair Starr: ...(inaudible)... fines.

Mr. Welch: Also, also it would discourage the proper, you know, private parties from actually taking action on it. If you're going to adopt the regulation, you want to make it usable for the private parties and it would be taking away. You're creating more of a risk. So now what you've done is kind of ineffective anyway. I mean, I suppose you could put a penalty in there and it would discourage anybody from bringing a claim, and I suppose that would solve my problem.

Mr. Shibuya: Yeah, I'm not trying to discourage the people, I'm just saying we need to keep some balance of fairness here.



Chair Starr: Yeah, we'll have an opportunity to discuss this when we get to the item.

Mr. Shibuya: Thank you.

Chair Starr: Thank you very much, Mr. Welch.

Mr. Welch: Thank you.

This concludes the testimony received at the beginning of the meeting.

Chair Starr: Yes, Ms. Bowie, please would you lead off? Welcome.

Ms. Irene Bowie: Irene Bowie, Executive Director of Maui Tomorrow Foundation. Happy New Year to all Commissioners and the new Planning Director and new staff. Maui Tomorrow Foundation definitely supports the amendments to Chapter 202. I, I would say that when Mr. Welch testified and said that new projects in the SMA would be discouraged, I beg to differ. I think that it would be an incentive to developers to do a project correctly from the start if they know that they can be brought before this Commission, and that, that fines are increased. I think that misrepresentation of projects, an example of that is the Wailea Community Association with the road improvements on the SMA Exemption that, that you folks are dealing with now. As Ms. deNaie stated earlier, things can be misrepresented not, not very clear, I think there was an example of that this morning when you were going through the SMA list that even amongst yourselves it's a little bit confusing that of the process right now. So I certainly think that following State's model on this and increasing those fines and, and having a process for this procedure is necessary and important for the public. I know that there's been talk about frivolous challenges and certainly that does come up once in a while, but I attend these meetings fairly regularly and I would say, most of the time when there's a challenge to something, it's not frivolous it's concerned citizens and community organizations. And I also I would like to differ with Mr. Welch in saying that there's not a, a penalty. There is not a penalty per se for organizations and citizens, but it's certainly is a sober challenge that you go forth and it's very expensive when you do entertain legal counsel and our, our resources are certainly limited. So I think the majority of challenges you would find are certainly not frivolous. And I would go along with the, with the Director's provision that petitioners first go through the Planning Director. I think that makes sense. So we definitely support this. Thank you.

Chair Starr: Any questions? Thank you very much, Ms. Bowie. Any other members of the public, please let yourself be known? Not seeing any, the public testimony portion of the public hearing is now closed.

**b) Action**

Chair Starr: Mr. Director, my recommendation was probably to defer unless there's, you know, there's a feeling that it's all ready to wrap it up. Do you agree that that might be a course at this time?

Mr. Spence: I think that, I mean, considering the questions that have come up, the newness of this Administration, I would like a little bit more time to review these proposed rules and I'm certainly not

opposed to the idea of, you know, having a process to come back to this Commission for, you know, violations of the SMA. I'm not saying that at all. I would just like, personally, I would like more of an opportunity to review those and perhaps propose some additional amendments to this Commission.

Chair Starr: Okay, fair enough. Commissioner Freitas.

Mr. Freitas: Yeah, I move to defer to amend 202.

Mr. Shibuya: I second.

Chair Starr: So we have a motion by Commissioner Freitas, seconded by Commissioner Shibuya, the motion is?

Mr. Spence: The motion is to defer this item till –

Chair Starr: Mr. Yoshida, could you give us a date? If we don't add a date to it, we have to have another public hearing. Having a public hearing means that it has to go through extensive notice requirements whereas if we have a date set, we can hear the item again, we will allow public testimony but it save the Department a lot of money and effort. Mr. Yoshida?

Mr. Yoshida: I would say February 22<sup>nd</sup>. As you know, at the next meeting on February [sic] 25<sup>th</sup> and 26<sup>th</sup>, the Commission is going to have the contested case on the Buzianis. The Commission is going to have the contested case on the Buzianis, Micah Buzianis appeal. And then on the February 8<sup>th</sup> meeting there are three public hearing items scheduled and the Commission will also have a workshop with representatives from FEMA and DLNR on the new proposed flood maps. So February 22<sup>nd</sup>.

Chair Starr: So is that acceptable to the maker and the second that it be deferred to February 22<sup>nd</sup>.

Mr. Freitas: It is.

Chair Starr: Commissioner Shibuya?

Mr. Shibuya: Yes.

Chair Starr: Okay, so could you restate the motion?

Mr. Spence: The motion is as amended –

Chair Starr: Um –

Mr. Spence: Okay, the motion is just to defer this item, the maker and the seconder are agreeable to February 22<sup>nd</sup> to be put on the agenda then.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Yeah, just a couple comments. I know you're gonna develop a process, so clarification I would like to see is, in order for the Commission to take action, you know, is it simple majority or does it take a super majority, just, you know, in your process. It doesn't have to be in the ordinance or...(inaudible)... the rules, but you're going to develop the process, right, procedure? So clarification in what it would take for action by the Commission.

Mr. Spence: Okay.

Mr. Hiranaga: Simple majority or is it super majority. Also, when you, you say the Commission can deem the application or the, the, this action incomplete. We need criteria to determine if it's incomplete or not because it becomes very – I, I want it defined more. We're kind of opening this Pandora's box, and it's just concerning. Also, on this 12-202-25.1 on Page 202-4, you have 7c, may request the assistance of the Director and staff in the investigation of the alleged. So I'm assuming the Commission's not going to be required to do any investigating because we're not –

Mr. Giroux: Yeah, they, they would be your arm. Again, the concern was circumventing the Department. This is an internal catch is that the Department would be asked to go out and, and investigate. So there would be some findings of facts.

Mr. Hiranaga: But just things to look at.

Chair Starr: Okay, thank you. Anyone, I'd like to ask anyone with other comments to send them in if they can? Okay, go ahead Commissioner Mardfin.

Mr. Mardfin: Real quick one. Somebody should be prepared to answer the question about suppose the developer started, they put in \$200,000 worth of improvements and they're breaking it, who's liable for the \$200,000? Is it on the developer risk if they're not fulfilling the conditions or does the County somehow get some liability in there? I don't need an answer now.

Chair Starr: We'll have that answered at the next time. Okay, ready to vote on the motion which is deferral till February 22<sup>nd</sup>. All in favor please raise a hand. All opposed?

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

**VOTED: To Defer the Matter to the February 22, 2011 Agenda.  
(Assenting - J. Freitas, W. Shibuya, K. Hiranaga, W. Mardfin,  
D. Domingo, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: It's unanimous.

Chair Starr: Okay, motion carries. Item is deferred. Okay, Mr. Spence, Director, please introduce the next item.

Mr. Spence: Okay, Mr. Chairman, Commissioners, we're onto Item E, New Business. We have KG Maui Development LLC requesting comments on the Draft Environmental Assessment. I

believe we've prepared a transmittal for you, and we have – is Danny Dias here?

Chair Starr: Mr. Dias had mentioned he might need a couple of minutes. Are you ready or if so we can take our minutes and stuff.

Mr. Danny Dias: Yeah, maybe like a two-minute break just to make sure we can pull up the presentation.

Chair Starr: Okay, while they're getting power point that at which if the Commission would allow let's – we have some minutes to – Are you ready?

Mr. Dias: Ready.

Chair Starr: Okay, we are ready to proceed, so we will proceed. Mr. Dias, take it away.

#### **E. NEW BUSINESS**

- 1. KG MAUI DEVELOPMENT, LLC requesting comments on the Draft Environmental Assessment prepared in support of the Community Plan Amendment for the Pulelehuakea Subdivision, a 13-lot single family residential subdivision in reconfiguring the Single Family and Park-Golf Course community plan designations for property situated along Aina Lani Drive at TMK: 2-3-008: 036 (por.), Pukalani, Island of Maui. (EA 2010/0005) (CPA 2010/0003) (CIZ 2010/0006) (D. Dias)**

**The accepting authority of the Environmental Assessment is the Maui Planning Commission.**

**The EA trigger is the Community Plan Amendment.**

**The project needs a Community Plan Amendment (CPA) and a Change in Zoning (CIZ). The public hearing on the CPA and CIZ applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Danny Dias: Thank you, Chairman Starr, Members of the Planning Commission. I'll keep my portion very brief and let the applicant do the bulk of the presentation. As stated by the Director –

Chair Starr: About how long will the presentation take?

Mr. Dias: About ten minutes.

Chair Starr: That's fine.

Mr. Dias: As stated by Director Spence, the item before you is a review of a Draft Environmental Assessment for the proposed Pulelehuakea Subdivision in Pukalani. It's a 13-lot subdivision along

side the golf course and is ultimately an in-fill type project that will be adjacent to existing residential areas. As a reminder, the Commission is tasked with basically making comments on the Draft EA that was handed out to you at your December 14 meeting. What the applicant will do is take your comments, clarify items that need clarification, expand on certain things, and so forth, and incorporate them into the Final EA. And once the Final EA is ready, we'll bring that back to this Commission for a determination. Given the scope of this project and it's proximity to existing residential areas, we anticipate a findings of no significant impact. So with that, I'd like to hand it over to the applicant's representative, Leilani Pulmano from Munekiyo and Hiraga.

Chair Starr: Okay, welcome Leilani. Please go ahead.

Ms. Leilani Pulmano: Thank you. Good morning, Commissioners. My name is Leilani Pulmano with Munekiyo and Hiraga, and we're the planning consultants for the proposed Pulelehuakea residential subdivision. As Danny indicated, we're here today to get your comments on the Draft Environmental Assessment for the proposed project. The proposed action is for a residential subdivision and to down zone residential lands to park/golf course which requires a community plan amendment and a change in zoning for the project area. The community plan amendment triggers the need for an environmental assessment. So again, we're here today in the first step of this land use process to get your comments on the draft EA. We'll be back at least twice more for the Final EA and the community plan amendment and change in zoning action.

I'd like to introduce you to the project team. The applicant is KG Maui Development and Elton Wong is here today as a representative. We have also Ronald Fukumoto with Ronald Fukumoto Engineers, and Michael Munekiyo and myself with Munekiyo and Hiraga.

To give you a regional context, the project is located in Pukalani within the Pukalani Country Club Golf Course. And this is Haleakala Highway and Kula Highway is along here. The Pukalani Shopping Center is located here and the community center is here. The project is located within holes five, six and seven of the Pukalani Country Club Golf Course and this is the project location here.

As a closer up aerial, the project area is in this kind of broom shaped area here, and these are the holes, five, six and seven. Surrounding the neighborhood is Kula Malu Subdivision which is completely built out at this point. And the access is on this stub out road called Pulelehuakea Street.

So initially KG Maui looked at their current landholdings for this site which allows for 20 duplex housing units. And they determined that this type of housing is not compatible with this area of Pukalani. Given the surrounding single family Kula Malu subdivision they felt that a more appropriate housing type would be single family housing units. So the project is proposing to develop a residential subdivision and related improvements on approximately six acres within Area A. The residential subdivision will provide 13 residential lots ranging from 15,000 square feet to 37,000 square feet. The related improvements include site grading and grubbing, landscaping, relocation of a cart path, installation of utilities and drainage system and construction of roadways and retaining walls. The applicant held a community meeting with the surrounding neighbors to get their early feedback about this time last year. And at that meeting, the Kula Malu Homeowners

Association asked them to establish land use consistency on 8.4 acres of lands adjoining their homes that are zoned residential in Area B here. So when I flip back to the aerial here, these are the lands that are currently zoned Residential and which the applicant is going to down zone to Park/Golf Course.

So I want to take a little bit time to walk through the land use changes 'cause it is a little bit complicated and if you'd like to follow along, Page 6 of the Draft EA has a table. The entire project both Area A and Area B is already in the Urban State Land Use District. So in terms of community plan amendment for Area A, the subdivision site, a portion of the broom shape already has Single Family Community Plan designation and it's indicated on this map in this boomerang shape area. KG Maui is requesting for a community plan designation for Single Family for the entire broom shape Area A here.

For Area B, the existing golf course, this area has Single Family Community Plan designation and KG Maui is requesting to downgrade this area to Community Plan Park/Golf Course. So this area here already has Single Family Community Plan designation and they're requesting for Park/Golf Course.

So in terms of zoning for Area A, a portion of the broom shape already has Family Duplex zoning in this same boomerang shape. And they're requesting for R-3 zoning in all of the entire Area A. For Area B, the existing golf course, the area has R-1 and R-2 Residential zoning along here, and they're requesting to down zone it to Park/Golf Course. So essentially this is kind of reconfiguring the land use in this area and actually reducing the opportunities for urbanization.

So in terms of the project benefits, the project will provide housing opportunities in Upcountry to meet the forecasted growth in this region. As you previously saw, the portion of the site is already zoned for housing and the area currently allows for about 35 total housing units, but the proposed project is for only 13 single family housing units. It will also provide the current homeowners of Kula Malu subdivision assurances that the lands adjoining their property will be designated to golf course use instead of potentially future housing. And I'd just like to also let you know that the project is within the Draft Maui Island Plan Urban Growth Boundary.

Just to give you a look of what the site looks like now. The left photo is looking, is from mauka looking makai at the project site where you see the tree-lined broom shape area and the right photo shows the kind of the state of the land right now for the subdivision site. It's fallow as you can see.

The demand for water is expected to be 7,800 gallons per day, and KG Maui is working with the Department of Water Supply to use an existing golf course well to provide drinking water. The demand for waste water is expected to be 4,550 per day and the project will connect to Pukalani sewer treatment plant. The increase in drainage is expected to be 9.7 cubic feet per second and the drainage improvements will include directing off site flows from the golf course back to the golf course and handling on site flows with a retention-detention basin. The level of – the existing level of service for traffic is A right now and at project build out the traffic will continue to operate at a Level of Service A.

The applicant has held several community meetings, one in particular last year about this time. We

invited neighbors within 500 feet. There were about 400 people invited and 50 people attended which is a pretty good turnout. And again, at that meeting there were requests for the lands to be down zoned in front of their property, the Kula Malu subdivision.

The amendment to the Makawao-Pukalani Community Plan triggers compliance with the Hawaii Revised Statutes, Chapter 343 requirements and this draft EA that you have before you, provides a technical analysis for the proposed project. The Maui Planning Commission is the accepting authority for the Draft EA and it was published in the Office of Environmental Control's, Environmental Notice on December 23<sup>rd</sup>, 2010. The Draft EA anticipates findings of no significant impacts. And following the completion of this EA project, the public hearing for the community plan and change in zoning request will be before this body for its deliberation and recommendation. So you'll actually see this project twice more. Once at the Final EA, and once at the community plan and change in zoning meeting.

So again, we're here today to request your comments on the Draft Environmental Assessment, and we're also here if you have any questions.

Chair Starr: Okay, thank you very much. Members, question? It looks like we're – yeah, okay, Commissioner Mardfin?

Mr. Mardfin: Talk –

Chair Starr: Before we start, I just, the process I, I intend to use is we'll have questions by the Commission, then we'll have public testimony and then we'll have comments that will be added to the draft and once we have our comments in a list we'll – if everyone doesn't – if all the Commissioners don't have a problem with any of them, we'll vote on them as a group. And if any of the Commissioners want to separate any of them out, we can deal with it at that time. Questions? Commissioner Mardfin?

Mr. Mardfin: On Area B, do you know what property tax they're paying on that?

Ms. Pulmano: I don't, I'm sorry.

Mr. Mardfin: Is the developer here that would know? But you're paying at what rate? As if it were single family dwellings?

Ms. Pulmano: Probably what the existing use is, it's probably golf course.

Mr. Mardfin: So your real property tax is based on how it's being used not the highest and best use?

Mr. Pulmano: Probably at this point, yes, but we can confirm that.

Mr. Mardfin: Okay.

Chair Starr: More questions? Commissioner Mardfin.

Mr. Mardfin: You mentioned that the demand for 7,800 gallons per day for water. The EA talks about getting it from desalinization or from buying credits, but today you just said you plan to get it from the existing golf course?

Ms. Pulmano: Yes, thank you for pointing that out. It's a change from what the EA says. From the time that we had to publish or submitted the applications in August to know, the applicant's been working with the Department of Water Supply to use an existing well that they have at the Pukalani Country Club, a portion of it to do a reverse osmosis plant.

Mr. Mardfin: So you're going to use reversed osmosis?

Ms. Pulmano: Reversed osmosis desalinization I think is the technical term for it.

Mr. Mardfin: Okay. How is that – if there's any connection, how would that affect the ability for people on the list Upcountry to get water?

Ms. Pulmano: We are working with Department of Water Supply and hopefully to provide a distribution system within the Upcountry system to connect basically.

Mr. Mardfin: I don't understand.

Ms. Pulmano: To connect this water supply to the Upcountry water system. So I guess essentially if they do accept this it will help the list.

Mr. Mardfin: So you'll do, be paying for reversed osmosis and then be selling the excess water that you're not using in these houses to the County?

Ms. Pulmano: I think the plan – the plan would be to, let me make sure I get my thoughts right here, the plan would be – Elton would like to –

Chair Starr: Come on up, introduce yourself?

Mr. Elton Wong: Good morning, my name is Elton Wong with –

Chair Starr: Yeah, raise the mike up so you don't have to – be comfortable.

Mr. Wong: Thank you. My name is Elton Wong with Kobayashi Group. What we, we actually are looking at being flexible in terms of how we have, get water, but one of our proposals with the – that we've been working with the Department of Water for almost a year right now is we have a water well that can deliver a million gallons of water, and it's slightly salty, not that salty, but slightly salty for potable water. And we have been successful in our developments like Kuki'o on the Big Island where we have a private system and what we do is desalination, we take out the salt in the water by having a membrane and what it yields is a million gallons can yield half a million gallons of water per day. Some of that will go to the department and some of it will go to our development.

Mr. Mardfin: When you say it goes to the department, you mean, you'll be selling it to the



department?

Mr. Wong: Actually, we're gonna give it, a portion of it, to the department. We're hoping that the department will, will pay for the – we already have the well in place, we have the pumps, we'll provide backup, we'll build the desal plant and connect to the Department of Water and dedicate it and hopefully we can dedicate it to the Department of Water Supply. That's the plan.

Mr. Mardfin: In terms of the, you're looking for more comments yet?

Chair Starr: No.

Mr. Mardfin: Sorry, I'll hold off on that.

Chair Starr: I have a follow up question on that, one of the – the two big drawbacks to RO desal are very large amount of electricity required for it, you know, and the cost and the impacts of the huge amount of electricity and the disposal of the brine which is usually considered a hazardous waste product. What do you plan on doing with the brine?

Mr. Wong: The brine would go back into – right now we use the water to help irrigate the golf course. So the brine would go back into irrigating the golf course. The sewage treatment plant, basically mixes or their water, their I guess reclaimed water and the well supplements and in terms of irrigating the golf course. So it would go back on the golf course.

Chair Starr: Okay, do we have –

Mr. Wong: I agree it is a expensive to have a RO plant, Reversed Osmosis Plant. Again, there's little options available yeah because there's been people up in the Upcountry that, you know, just doesn't have water. So you know, the cheap water sources have been developed and it is going to cost a little more. We're willing to pay for the capital infrastructure which could be almost, you know, a million dollars.

Chair Starr: Commissioner Shibuya.

Mr. Shibuya: I was just wondering, who pays for this RO desal energy? Is it going to be the County Board of Water?

Mr. Wong: It would be the County Board of Water, if we can dedicate it.

Chair Starr: Should we go to – Commissioner Wakida?

Ms. Wakida: I have a question on Page 41, but it might, maybe it might be in there, it's under wastewater, it's a definition and I'm still trying to learn some of these terms, so maybe you could help me out. It says, wastewater improvements include offsite and onsite gravity sewers. Would you please tell me what a gravity sewer is?

Ms. Pulmano: A gravity sewer line is basically just a sewer line that gravity flows, that uses, uses

gravity to allow the flows in, instead of a mechanicalized [sic] line that actually pumps it through.

Ms. Wakida: Oh, thank you. And I have one more question. You're asking for a change in lot size to R-3, is there any condition in your development on the number of houses per lot?

Ms. Pulmano: R-3 allows for residential homes that has a minimum of 10,000 square feet lots. We have made an agreement with the Kula Malu Homeowners Association that the maximum number of homes within that site will be 13 as represented here.

Ms. Wakida: And ohanas?

Ms. Pulmano: We also have agreed with the Kula Malu Association that there be no ohanas or transient vacation rentals within this area.

Ms. Wakida: Okay. And I had one last question. On this map, looking at lots 10 and 11, is the lighter line the property line?

Ms. Pulmano: This area here is the property line. This, this, this represents where the retention/detention basin is going to be, but it will be part of the property for lots 10 and 11. This will just have an easement.

Ms. Wakida: Okay, that's all. Thank you.

Chair Starr: Commissioner Shibuya?

Mr. Shibuya: I believe these are all view lots. If you can, Leilani can describe the elevation chain from the upper elevation border line to the lower border line? I believe it's approximately 50 feet difference.

Ms. Pulmano: Yeah, that's about right.

Mr. Shibuya: Yeah, about 50 feet.

Ms. Pulmano: Fifty feet.

Mr. Shibuya: And that's where you have your gravity feed sewer lines coming from each of these units. And it meets down on the bottom. And at the bottom also is where you have your water catch basement, basin. Is it correct?

Ms. Pulmano: Uh hum.

Mr. Shibuya: When Dave Taylor, Sewage Treatment Plant Chief, told us about the hydrostatic pressure, do rainy season, rainy times, the sewage treatment plant would be processing greater amounts of water and it's not because people flush more, it's because of the water from the outside in the soil would pressure into the sewage treatment – sewage lines. Is that a condition that you've considered because your sewage line is right bordering or in fact going through that water basin?

I just ...

Ms. Pulmano: That's above my skill level so let me just defer that question to our engineer, one second.

Mr. Shibuya: Yeah, it's just a thought and concern that we don't do that kind of stuff.

Chair Starr: Happy New Year Ron. Welcome.

Mr. Ron Fukumoto: Good morning. My name is Ron Fukumoto with Ronald Fukumoto Engineering. I'm the civil engineer for the project. We have, I don't know – we don't have a clear drawing here, but we have an engineering report that shows the location of the proposed sewer line. The sewer line is actually running adjacent to the basin, not under the basin. So definitely it is close to the basin but not under the basin. And the plan as far as the drainage basin is concern is that it will retain a portion of the runoff and allow it to percolate down. And there's gonna be a portion that also, you know, in excess of the designed storm, it will be allowed to bypass the site as well. So, you know, the idea is we're gonna have this basin that will eventually dry up and not have that constant pressure that could create, you know, additional infiltration into your sewer system.

Mr. Shibuya: Yeah, okay. Along that same line, I'm just concerned about energy. All of these units are actually brand new units and they will be using a lot of energy and there's the opportunity to conserve energy too. The Hawaii Clean Energy Initiative requires in 2030 that we have 70 percent of which 40 percent is actually from renewable energy that you generate. What steps are you taking to ensure that at least 40 percent of your power or associated power with this project which includes, should include the water because without the water you can't have it, what provisions are being made for this?

Mr. Fukumoto: Perhaps Elton could answer that question?

Mr. Shibuya: Okay.

Ms. Pulmano: Commissioner Shibuya, we have, have looked a little bit about that, not to the extent of what you're requesting at 40 percent, but for single family we'll be having the solar water heaters and energy efficient appliances within the homes itself. But I suppose in the draft EA we can further take a look at getting to that 40 percent.

Mr. Shibuya: I understand the conservation aspects is 30 percent which includes the solar water heating which is required by law. So, but I'm asking about the generation capability such as photovoltaic or wind or whatever system that you come out with. And I just wanted to know what kind of provisions would be available.

Chair Starr: Okay, why don't we have our public testimony then we can make our comments? A lot of this is actually going into the comment realm. Is that okay? Okay, members of the public wishing to offer testimony on this draft EA please make yourself known? Not seeing any, public testimony is closed. Now, comments for the draft for inclusion in the final document? I've got a

couple. I'll lead off, the energy efficiency and provision for renewable language is vague at best and not up to, not up to our current standards or even up to our energy code. Would like to see more ways of making this efficient. Water language in this is very vague. Would like to see specifics including cost and energy usage of the water system and the impacts on the upcountry community by the water, the water system for this project. Members? Commissioner Mardfin first then Commissioner Wakida.

Mr. Mardfin: Danny, you might be able to help them with this. This is an infill project. It's within the urban growth boundary. When we were looking at the Maui Island Plan, we were doing it in part based on housing demand for various areas. If we included this in the urban growth there was probably some figures that were used as to how much new housing demand would be provided in this, in this region. But here they're planning to down zone it in effect, to have it less dense than the assumed numbers probably were. So at some point, I wish you would contact the Long Range Planning, find out what numbers they were sticking in there and how this project would affect that by having a less dense project than might have been assumed. Is that kind of clear to you what I'm asking for?

Mr. Dias: Yeah, basically work with the applicant and Long Range to come up with some figures as far as their projection for amount of houses needed in Pukalani and how it impacts – well, how this project impacts –

Mr. Mardfin: Right, and when we pass those maps, we might have been saying, well there's going to be 40 houses in there and now there's 13, so there's a difference.

Chair Starr: Okay, next. Commissioner Wakida.

Ms. Wakida: Well, I'm sort of commenting in a different direction.

Chair Starr: That's fine.

Ms. Wakida: And maybe it isn't appropriate for the EA but, but you'll let me know I'm sure. You're gonna have one house, one lot and I would like to see some teeth in that, that if that's been the decision that that can be enforced, but I'm not sure that the EA is the place for that?

Chair Starr: Yes, it should be if it's being presented before us then that should be unequivocal language in the EA.

Ms. Wakida: Okay.

Mr. Spence: And, Mr. Director?

Chair Starr: Yeah, Director?

Ms. Spence: And Commissioner, this will come back to this Commission for the recommendation on the change in zoning and community plan amendment. At that time, I mean, all the representations thus far have been, you know, one house, no ohanas on each lot. We can

recommend a condition on the zoning and when it goes up to Council, and they pass the zoning they can put that condition on that as well. So when the building permits come forward, no, I mean, they won't be able to do more than what they've represented.

Ms. Wakida: Thank you.

Chair Starr: Members? Commissioner Shibuya?

Mr. Shibuya: I have concern in terms of the very steep terrain that these 13 units will be place on. I'm not objecting to it, but I'm just saying a 50-foot drop is quite severe. I'm concerned because of water runoffs and our ability to catch whatever and retain it on site if possible. What happens if we are not able to retain that water? Tell me where it goes, and about how much we are to expect and the impact downstream?

Chair Starr: Okay, Danny can you put that into a bite size comment?

Mr. Dias: You want me to suggest some wording for that or –

Chair Starr: Yeah.

Mr. Shibuya: Please.

Mr. Dias: – okay, hmmm.

Chair Starr: Why don't you just work on it, and then at the end we'll, we'll go through it. Commissioner Mardfin?

Mr. Mardfin: On Page 20 of the EA, draft EA, it says at the very top, "an archaeological survey was not conducted for the golf course site as no changes will occur as part of the downsizing action". Well that may be true, but that doesn't mean I'm not concerned about archaeological impact on the golf course. Was there a – an archaeological study done when the golf course was first built? If so, that would be sufficient to include that.

Chair Starr: So –

Mr. Mardfin: If it hasn't been done, I think that somebody ought to look at that golf course for archaeological impact. I mean, if it was done, it was done.

Chair Starr: As far as a comment, I'm trying to look at these as a ...(inaudible)... that they can include. So the comment would be... to show that an archaeological impact was, assessment was done for the golf course at some point.

Mr. Mardfin: And if not, to do one. And if not, then to do one. On their, on their property, the property that they own.

Chair Starr: Okay. That's – any more? Commissioner Hiranaga?

Mr. Hiranaga: Just a initial clarification. So this is a draft EA that they're asking for comments for additional information? So I'm curious, they make this representation here as their proposed plan, so that prevents them from making any change in the future when they come in for zoning to increase or reduce lots, is that correct? It's set in cement now, 13 lots, no less no more?

Chair Starr: Mr. Giroux?

Mr. Giroux: Well, this is a informational document. So what you're supposed to be looking at is alternatives, possible alternatives. If the project is represented to be a certain density but there's a possibility there be another density. You want to, you want to have dual analysis.

Mr. Hiranaga: No, my question is, I thought I heard it said that because they representing in the EA this is their proposed subdivision plan that they will not be able to change that in the future?

Mr. Giroux: Well, the – if, if they were to decide to make changes that would have environmental impacts then they would have to do a supplemental EA.

Chair Starr: I'm gonna ask Ms. Cua from Current Division to make a comment based on long experience of how representations made in an EA interact with the ongoing process.

Ms. Cua: As our Corporation Counsel was indicating it is a disclosure document. An Environmental Assessment, Environmental Impact Statement is a disclosure document. It also explores alternatives. With, with any project, it an analysis is done that is more encompassing than not, if the applicant decides to do a project that has less impact there's usually not a need to, to or maybe I should rephrase that, if that occurs, that's usually not a problem. I think where the challenge is or the challenge becomes and there's no, no fine line on it is, you know, when does changes become a significant impact or a totally different project and I think that happens on a case by case basis. So I wouldn't necessarily say if they, you know, if they decided to do 14 lots that this whole EA is not good. I wouldn't go as far as to say that. I would say that if they decided to do ten lots, the EA should be fine because it analyzed more impacts.

Chair Starr: I know there's a process to create a supplemental EA and I believe there are specific triggers for that?

Ms. Cua: There is a process. I can't, I'm not able to, because I've, I've never really gone through that, but there is a process to file supplemental Environmental Assessments. I don't know what the specific triggers are however.

Chair Starr: Commissioner Hiranaga does that answer it or you want anything added into this document about it?

Mr. Hiranaga: Yeah, pretty much. I guess, you know, the lines are being greyed a little bit between an EA and, you know, a zoning change or, you know, subdivision proposal. I mean, we are here, like we're at home plate still waiting, you know, for the first pitch and we're already looking at how we're going to score this home run. It's like, it just seems like we're getting way, way ahead of the process. I just wanted clarification that we're not getting confused at what is being represented

here is going to be set in stone when they build this thing ten years from now that this is what is going to be built.

Chair Starr: Okay, Members, any other? Commissioner Mardfin?

Mr. Mardfin: On Page 40, it talks about desalinization which is now obsolete, but then it says, "other mitigation measures will include pollution prevention as suggested by DWS as the site overlays the Makawao aquifer. The goal is to protect the integrity of surface and ground water resources." And then they talk about water pollution related to impact during construction. I would like to see more information on how having the homes on an ongoing basis would affect the Makawao aquifer?

Chair Starr: Okay. So impact on aquifer of the homes. Commissioner Shibuya?

Mr. Shibuya: I know this is kind of far out, but on Liholiho Street – Liholani Street, there's an elementary school and it's also the access to Pukalani Superette or I mean to the shopping center there and access to the highways, Haleakala, the Old Haleakala Highway as well as the current bypass. That's how people go in and out to this community. We have a traffic study that was mentioned here it's a Level of Service is A, but I just want you to know that there's a difference in level of service when it's performed, when you have inclement weather especially when you have elementary school students not walking they're being driven to the school and then the level of service changes drastically. It took me ten minutes longer to get to this meeting because I come through and you have all this traffic going through King Kekaulike High School, Kam School and this elementary school. So these types of things sometimes we forget that's a sunny day type of study is fine. Try check inclement weather time? Thanks.

Chair Starr: Okay. I have – Commissioner Hiranaga?

Mr. Hiranaga: I have a follow up comment. I know the traffic study was done on Aina Lani Drive and Liholani Street intersection but I'm just wondering, the bottleneck for this community is really Pukalani Street and the Old Haleakala Highway because basically there's two ways to get in. One is that main entrance by Pukalani Terrace Center and there's one up above across from the Pukalani Superette, I guess, or where Makawao Avenue crosses the Old Haleakala Highway. So I'm just wondering why a traffic study is not done on Pukalani Street or Avenue and Haleakala, the Old Haleakala Road. That's the bottleneck. Is there some type of a radius requirement? How do you determine that a traffic study is only being done on Aina Lani and Liholani?

Chair Starr: Can we just add that as something they should do?

Mr. Hiranaga: Sure.

Chair Starr: Okay. And lets try to work it up guys and gals. Commissioner Mardfin?

Mr. Mardfin: I asked it as a question earlier about the real property tax implication to this but I think that should be fully developed in the final EA. Area B's real property tax , for Area's A real property tax rates, and not just the rates but the amount that it will generate for the County because that's

part of the economic impact. Thank you.

Mr. Hiranaga: Kind of a follow up.

Chair Starr: Yeah, go ahead.

Mr. Hiranaga: So without having to do the math, is it a net swap of zero, you're – this moving the designations around but the land acreage is the same that was previously designated?

Ms. Pulmano: Actually it's, ... we're urbanizing less, about three acres less.

Mr. Hiranaga: Oh, okay. Is that explained explicitly in the EA somewhere?

Ms. Pulmano: No, it's not.

Mr. Hiranaga: Yeah, so that might be helpful.

Chair Starr: I want included in answer to a question I try to ask on all new subdivisions which is if someone lives here without a car, how far do they have to walk to access the nearest public transportation? And are there sidewalks? Okay, Commissioner Hiranaga?

Mr. Hiranaga: My last comment is I'd like to see some aerial photos of the site. I know you showed some on your presentation but I could not find any in the EA so that might be helpful. And maybe a closer proximity of the aerals than what you provided. I've golfed that course occasionally. I still can't figure out where that, this property is.

Chair Starr: I know. It's weird isn't it?

Mr. Hiranaga: I don't need to know now, but ... I'm trying to ...

Mr. Shibuya: It's hidden. You gotta follow the trees.

Mr. Wong: Yeah, it's just a wooded area that you go around it.

Mr. Hiranaga: I don't think you have a photo like that in the EA. So that might be helpful.

Chair Starr: Yeah, some more – more aerial photos, et cetera. Commissioner Mardfin?

Mr. Mardfin: Is workforce housing been keyed in here at all? I didn't, maybe I missed it, but I didn't see anything in there about it.

Ms. Pulmano: The requirement for workforce housing is going to be six units, six workforce housing units.

Mr. Mardfin: And I presume they're not going to be in here. It's going to be somewhere else?



Ms. Pulmano: We're looking at two options. One is purchasing Department of Hawaiian Homelands credits, workforce housing credits. The State law had passed I think it was a couple years ago that allowed Department of Hawaiian Homes to issue workforce housing credits. So that's one option, and another option is to provide on site, six units on site.

Mr. Mardfin: Okay, I didn't – I might have missed it, but if that isn't in the EA it should be.

Chair Starr: So a better definition of the workforce housing. Okay, we ready to have Danny to give us a, ... you don't have to read the whole thing, but just give us the headlines of each of them and we'll decide whether we need to separate some out.

Mr. Dias: Okay, ... yeah, I'm going to have to work on the language but basically from my notes ...

Chair Starr: We'll let you fine tune it just give us the headlines.

Mr. Dias: Okay. Basically, expand on the energy efficiency section, bring it up to standard and make sure it meets current code. Same thing with the water section currently it's pretty vague. Explain cost, energy usage, and also discuss its impacts. Where is the nearest public transportation facility and are there sidewalks leading to that area? Include figures on how much housing is needed in Pukalani, and how this, you know, downsizing of residential areas can potentially affect that. Was there an archaeological study done when the golf course was first built, and if not, Mr. Mardfin wants them to do one at least on the portion of their property. Include more information on when the project is once built, how it will impact the Makawao aquifer? What are the current and future tax rates? Include information on the workforce housing if that's not already in there. And, Commissioner Wakida, I'm not sure if you wanted this, but I know you mentioned you wanted more teeth in the one house-one lot representation. I'm assuming that that's not necessary any more since they are making representations that it will be 13 lots and one house per lot.

Chair Starr: We want it clearly stated in the document.

Mr. Dias: Okay, okay. Next up would be basically addressing and including additional information on the terrain of the project site, the anticipated amount of water runoff and the ability to retain the additional runoff in the event of a storm. In addition, if that's not possible to retain all the runoff provide information on its effect to the surroundings properties. Let me see here, what will the traffic impacts be in the vicinity of Pukalani School such as the intersection with the Old Haleakala Highway and Pukalani Street and so forth? I think being sure to include in the EA that this is basically downgrading a portion of this property and lastly, include more aerial photographs, also more close up aerial photographs of the property in ...(inaudible)...

Chair Starr: Well done. Anyone want to either add or separate out? Commissioner Shibuya?

Mr. Shibuya: The energy conservation is one-half of the whole – an issue here, is the energy generation, renewable power as to be generated. Thank you.

Mr. Dias: Okay.

Chair Starr: So we're looking for greater efficiency and greater –

Mr. Shibuya: Contribution.

Chair Starr: – contribution.

Mr. Dias: Okay.

Chair Starr: Okay, Members, we ready to vote on this? Okay, all in favor of passing these on, please raise a hand. All opposed.

Mr. Shibuya: Any motion? No motion, huh?

Chair Starr: Oh, okay. Lets step back a little bit.

Mr. Mardfin: I move that we make the – the comments that we've described, I move we refer to the developer for inclusion in the final EA.

Mr. Shibuya: Second.

Chair Starr: Moved by Commissioner Mardfin, seconded by Commissioner Shibuya, the motion is?

Mr. Spence: To include the, how many?

Mr. Dias: Thirteen.

Mr. Spence: To include the 13 comments made by this Commission be addressed in the final EA.

Chair Starr: Okay, all in favor, please raise a hand. All opposed.

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

**VOTED: To Forward the 13 Comments of the Commission to Be Addressed by the Applicant in the Final Environmental Assessment (Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas, D. Domingo, L. Sablas, P. Wakida) (Excused - O. Tagorda)**

Mr. Spence: Seven in favor, seven "ayes," no "noes."

Chair Starr: And thanks for reminding me that I forgot to make a motion. I do that sometimes. Okay, thank you Mr. Dias.

Mr. Dias: Thank you.

Chair Starr: We have at one o'clock sharp a presentation by Department of Education on school impact fees, long awaited, should be great. Lets see what we can get through –

Mr. Mardfin: Do the minutes?

Unidentified Speaker: You have to Communications, will they be done?

Mr. Mardfin: There's a transfer change that should be ...(inaudible)... controversial maybe?

Chair Starr: Yeah, okay, I think may be a little more complicated. Okay, if it's okay, I suggest we take up Item F-2 before the break if someone move that we move Item F-2.

Mr. Mardfin: I move we move Item F-2 up.

Mr. Shibuya: Second.

Chair Starr: Okay, moved by Commissioner Mardfin, seconded by Commissioner Domingo that?

Mr. Spence: That we move up Item F-2 on the agenda and that would be for the time extension for OW Ranch.

Chair Starr: Yeah, all in favor please raise a hand? All opposed?

Mr. Spence: Okay, we have seven "ayes" and no "nays."

Chair Starr: Okay, please go ahead.

Mr. Kurt Wollenhaupt: Oh, to remind you, F-1, the Communication item for the transfer of the Makena project that was rescheduled to this meeting so, it isn't going to be rescheduled again?

Chair Starr: No.

Mr. Wollenhaupt: Because we had people –

Chair Starr: No.

Mr. Wollenhaupt: We're just trying to get the time. The person's flown in from Honolulu again, so is there a time that this might be taken up?

Chair Starr: No, we'll take it after the DOE.

Mr. Mardfin: After Item G.

Chair Starr: Yeah, after the DOE. Lets proceed with F-2. Yeah?

Mr. Hiranaga: Is your intent to try and get through this request in the next 11 minutes?

Chair Starr: We can try, and if we can't, we don't.

Mr. Hiranaga: I don't think you'll do.

Chair Starr: Okay, we'll try.

Mr. Hiranaga: Because I have many questions.

Ms. Flammer: I did notice the time a little earlier and told the project team they could go to lunch. I can do my portion or we could –

Chair Starr: Okay, how about we take our lunch and then come back with the DOE?

Mr. Mardfin: Can we do acceptance of minutes?

Chair Starr: Okay, we're gonna have to move back to DOE after lunch. Okay, we're taking a one-hour recess. Ten minutes to one o'clock we will be back in session.

A recess was called at 11:50 a.m., and the meeting was reconvened at 12:54 p.m.

Chair Starr: Maui Planning Commission Meeting of January 11, 2011 is back in session. I'm going to ask Commissioner Mardfin to unscramble the agenda which I screwed up before our break.

Mr. Mardfin: I move that we adjust the agenda to deal with Item G, then revert back to F-1 and continue with the agenda as it is, was originally posted.

Chair Starr: Thank you. Is there a second?

Mr. Shibuya: Second.

Chair Starr: Moved by Commissioner Mardfin. Seconded by Commissioner Shibuya to?

Mr. Spence: To move to Item G on the agenda and then afterwards go back to the original order.

Chair Starr: Yeah, from F-1 ...(inaudible)... Okay, all in favor please raise your hand. All opposed.

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

**VOTED: To Take Up Item G, then Revert Back to F-1 and Continue With the Agenda's Original Order.**  
**(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas,**  
**D. Domingo, L. Sablas, P. Wakida)**  
**(Excused - O. Tagorda)**

Mr. Spence: Seven "ayes" and zero "nays."

Chair Starr: Thank you. Motion carried. We'll proceed. Director, please introduce the next item.

Mr. Spence: Okay, Item G, we have a workshop on the new school impact fee program for the island of Maui conducted by Ms. Heidi Meeker from the Facilities Development Branch at State Department of Education. Ms. Meeker.

Chair Starr: Thank you for coming over and doing this.

**G. Workshop on the New School Impact Fee Program for the Island of Maui conducted by Heidi Meeker of the Facilities Development Branch of the State Department of Education (To begin at 1:00 p.m. or soon thereafter.)**

Ms. Heidi Meeker: I'm aware of the length of your agenda and so I'm going to keep it short. I would be available to come back. I'll make sure you all get a copy of my business card and if you have a burning question just email me or call me, but I will leave – I mean, I wanted – be able to answer questions that you might have. Just to give you my place in the DOE bureaucracy. I'm a Planning Section which is part of a Facilities Development Branch on Oahu, but our responsibilities are statewide and the Facilities Development Branch then is a part of an Office School Facilities and Support Services which is presently headed by Randy Moore. It was Randy Moore who came and conducted the hearings on impact fees in the fall.

I've actually been before the Maui Planning Commission two other times, and I was talking then about what we call "The Fair Share System," and I had the pleasure or the experience of watching – I was trying to explain the formula to determine the amounts of fees and I watched the group just slowly lose focus, lose track of what I was saying and so I'm gonna spare you that. I've, I've learned from experience.

Some of the details of how we work the formula are in two Impact Fee District Analysis that the Department of Education has done and they're on the DOE website. If you just Google, DOE Hawaii and Impact Fees, all of the Maui information would come up including rate schedules, the districts, district maps, all of that ...(inaudible)... So again, if you have specific questions, ask me. Can't find something on the website, please call our office.

Basically I'm here now because in 2007 the Legislature passed a bill and put into law the – an Impact Fee Law and the findings of that law and the reason why they passed it was that they believed that there was a link between new residential development and the demand for additional school. And that they felt that new development should be required to contribute both land and money towards the construction of new school. So anyone who seeks subdivision approval, a building permit or a condominium property regime is required to pay an impact fee in those areas defined as impact districts and we now have two impact districts in Maui, the West Maui Impact District and the Central Maui Impact District.

Any development of 50 or more residential units needs a written contribution agreement with the DOE. That's very similar to what we have been doing for many years with other projects that have had conditions placed by this body or by the State Land Use Commission. When you had required people to meet with us, the outcome of that meeting was Contribution Agreement. We need to

continue to have those Contribution Agreements for projects of 50 units or larger and the main reason for that is, 50 units or larger we also need to make a decision as to whether we're gonna ask for land or fee in lieu of land. Anything less than 50 we already know that we won't be asking for land. So that decision doesn't need to be made but it does for units of 50 or larger.

The fee amount, both the land and the cash is based on a formula that I don't think is too complicated but it is hard to describe and it's basically based on how much does it cost to build that much new school for every new housing unit. So in actuality there's probably one public school student very roughly for every two or more houses built. To house that one student we need so much land on average and we need so much construction for the roof over their head in the school. And we used historic data, put that into the formula and we basically ...(inaudible)... this formula by the number of units a developer wants to build plop that into the black box and out comes what we think is the amount of land that needs to accommodate the number of kids we expect to live in that project and the amount of construction that we need to house that many kids. And that's housing in permanent structures.

The most important thing that I need to get across to you today, and the reason that I'm really here is I need to make it clear for you people what happens to the money. When we receive a check and we are now in the process of handling our first applications and so on, we haven't yet received our first check. But when we receive our first check, that goes into a Central Maui Impact Fee District Account or it goes into a West Maui Impact Fee District Account. The amount that is for construction goes into the construction part of the account. The amount that might be cash in lieu of land has to go into a land account. We have to keep the two amounts separate and we if we don't use that money in 20 years, we have to return it. So we have to keep rather careful account of that money coming in. For a very large project where we have an agreement with the developer probably very early in the process, it's not so difficult. We have all of that stuff in writing. We will tend to get checks, probably a bunch of them wired to us at the same time through escrow company, that's generally how we receive our impact. What's going to be different and what was part of the intent of the legislation was very small developers, individual homeowners and developers, they're gonna have to write us checks and we'll have to keep track of those checks as they come in. So that's what we're getting set up to do now.

The land, if it's a very large development and we decide this is the ideal place in where we would need to site a new school then the land gets eventually transferred to the State. The DOE doesn't own land by itself. The State owns the land for DOE. The State accepts this land, it gets transferred and then it's Executive Ordered to the DOE. When it's Executive Order, we have all the responsibility for the land but none of the privileges of owning the land. When we're done with the school, when we're done with the land it gets returned to the State.

We probably don't want land in the development until it's at least half built out until the infrastructure is to the driveway of our school site. We can't open an empty school. So we need to know that there's sufficient demand pretty early in the game in order to build a school and then we start to build and try to plan for the school to open at a point at which we are sure the school would be at least half full, and then we assumed that there's a very high rate of growth in a new project as far as school enrollment. It's possible, very likely that in the early years of a development it would exceed the capacity of what we built the school for but that tends to level off and that there is sort

of a flat line steady number of kids that should come out of any different project. A hundred homes, the same number of kids for the lifetime of the residential development just not the very early years and that's where the DOE then relies on portables, relies on redistricting, does whatever we can do to handle that very early surge of kids, but that surge tends to die down and then becomes very constant as long as a subdivision is sort of turning over an average amount of, average rate. So, we can talk a little bit more but we, again, we basically want to go to those projects and ask for land where there is substantial number of residential units that would surround the campus and would probably, not seriously looking at any project unless it's probably about a thousand units or more just to even look. A thousand units basically of single family houses would probably generate just under 500 kids. That would be K thru 12. So that wouldn't fill one school, but that would be a substantial enough thing that we would start looking at would this project mean that we would need to do a new school.

I'd be glad to talk to if you want about any of the factors that are in the calculation of the formula. I wanted to just point out that Maui County did a study on impact fees just recently and we compared their – they guessed what the school impact fee would be and they compared it ours and we actually came very close. And we relied on their ...(inaudible)... their lists of future projects, plus we maintain a list of all that we know of as future residential projects. And so basically I think that we are in sync as far as that County Impact Fee Study.

It is complicated on Maui between the districts because there is a light difference in what we estimate are the number of kids that come out of units so that's why we have a fee schedule that has three different categories. Unfortunately, that means that there are different number of kids coming out units in West Maui versus Central Maui.

The formula also wants to take into account the geographic difference in construction costs across the State and we used a DAGS cost factor. It's what DAGS uses for all State, for estimating State projects. And unfortunately, they follow judicial district lines so in this case the Makawao Judicial District as you know cuts through Kihei. So we'll have to make this decision about where in Kihei a particular project comes and that will make a difference in what rate they pay. But that's based on DAGS construction cost differential.

Again, anything you need to look at probably is on our website. And I repeat myself that we do try to keep tabs on any kind of residential project that we hear about in the island. We just keep a running list to see what happens, if projects die, we sort of keep them around. Somebody comes and buys the new project it goes back to life. We have a lot of potential projects in Central Maui and West Maui. We came up with an estimate of 16,000 potential new units in Central Maui, 9,000 in West Maui. That's like the outside edge I think. That's every possible project that we know, although we did confer a little bit with the guys, long term planning guys and they told us to get rid of a few that they said for sure dead. But basically 16,000 units in the next 25 to 30 years, 9,000 in West Maui in the next 25 to 30 years. When you folks consider 16,000 units. What the DOE sees is approximately 16,000 DOE students that would be K thru 12, 9,000 units in West Maui, again in a 25 to a 30-year's span we would see an additional 3,300 students.

When you look at that large number of students and you decide well, how many schools would that number of kids require the number is high. And I think that there's been some people who've had

a really hard time believing that we're talking about six to thirteen new schools in Central Maui. It seems a little far fetched. I'd like you to consider that we already have the site of these new schools in Central Maui, Wailuku 2 and Kihei High School. We've got probably a very likely third site, another elementary school in the A & B project Waiale just down the street from Pomaikai. So we're already kind of there in at least half the number of units, a number of new schools that would serve this very large kind of unbelievable number of residential units that are either on board or in somebody's mind they're getting ready to get proposed.

What we need to do and we will rely on the Planning Department is we have to be alerted to these projects. We have to be in contact with the developers and our goal in our early discussions is a signed agreement that says they will pay us and when they will pay us or they will provide us land. And our requirements for land are kind of detailed. I mean, we need land with sewer, with water, we need relatively level land. We need land, it's basically in a square or rectangle with roads servicing at least two sides. All of those requirements go into an agreement.

I know there was a time when the Planning Commission here was actually looking at some detail at projects and I think that you guys were even getting, the Commission, itself, was starting to make some rather detailed conditions on your own for schools. So we always been aware that Maui is by far the most activist county in terms in schools and what they can do to support schools. And the county's willingness to help us and to be the guinea pig in imposing these impact fees I think that there is a certain payoff in the end in that very early we will have secured these locations for future sites, we will have a little bit of the money – if I can backtrack for just a second, the Legislature designed the formula so that developers would provide almost a 100 percent of the land that we need, but only 10 percent of the construction. They were under the, they were under the belief that the Legislature and the taxpayers of Hawaii should pay the other 90 percent. So 90 percent of a school's construction is paid statewide, but 10 percent would be paid by the people in the development where the school is going to serve. Back then to Maui and our early start here, we will have a little bit more construction money. We will have the land pretty well secured. I think it does put you at an advantage statewide as far as future schools.

I hope I didn't talk too fast. I can go back over anything. I just really wanted to hit the basics...(inaudible)... and again, I must say we appreciate your interest because we don't always get this much support from a county, and we're getting it from Maui County, but we have for some time. We've had the support of the Planning Commission for a long time. So we do appreciate that.

Chair Starr: Why, why didn't you put it in place countywide or islandwide?

Ms. Meeker: The law says to look at the places where there is the highest amount of future growth anticipated and where you expect the new schools to be. So basically right now we have sufficient space for growth Upcountry school in the King Kekaulike Complex. Certainly we have room in the Molokai schools. It's really this is the area where we know that schools are crowded now, may get crowded. This is the focus of where the new schools will have to be.

Chair Starr: Commissioner Wakida?

Ms. Wakida: Thank you for presentation. It's always wonder to learn this, get as much information



as we can. Are the amounts going to be adjusted in the future as obviously costs increase?

Ms. Meeker: Yeah, the formula uses land costs which in this case it was just based on school land appraisals we had done at the end of 2010. Those will have to get readjusted on a regular basis. There's also parts of the formula that rely on school, past school construction. So every time we finish a new school, we'll go back in and we have sort of a ten-year average of what a new school costs and that will go into the formula. Also, we have a inflation factor between the time that we sign an agreement with the developer and when the actually homes are completed and people are closing on homes and writing us checks. So there's a number of places where we'll make, making adjustments all the time.

Ms. Wakida: Thank you.

Chair Starr: Commissioner Shibuya, next.

Mr. Shibuya: I'm looking in terms of, this model is ideal for new developments, how about existing developments with inadequate facilities such as Baldwin High School, Maui High School, Lahainaluna High School? They don't have a stadium. They don't have track and field. They don't have football fields. All of the fields are not adequate or qualified for girls and boys. How is this structure gonna fix that?

Ms. Meeker: This structure addresses student capacity. So technically even if you collect these fees they should be spent on classrooms. They wouldn't be spent on additional facilities and the way that you would address those other facilities I believe is through Legislature.

Mr. Shibuya: So whoever's closest to the Legislatures such as from Kalani High School, from McKinley, from Roosevelt would have the stadiums and the people from Maui and Lahaina tough luck.

Ms. Meeker: Well, not all schools, not all high schools have stadiums. Stadiums –

Mr. Shibuya: No, I just –

Ms. Meeker: – basically there's about one per complex. So there's a number of high schools on Oahu that don't have stadiums.

Mr. Shibuya: But we don't even have a complex.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: A couple things. One, this is kind of technical thing but I'm looking at your land amount for Lahaina versus Makawao and Wailuku and I see a different number. Does that mean that you use, that the schools in Lahaina are built on smaller parcels of land?

Ms. Meeker: No, it's basically it's the difference between the number of kids expected out of the units. That's what drives this count.

Mr. Mardfin: I checked that and it was a little bit off, but okay.

Ms. Meeker: Yeah.

Mr. Mardfin: If that's what the intent was, fine. Because I did look at that as a possibility already. Secondly, you said if these aren't used in 20 years they have to be returned. Do they have to be used in the area where the housing is? I mean, could the impact fee from West Maui be used to build a school in Central Maui?

Ms. Meeker: No. It would have to be in the impact district where it was raised. It must be spent within that –

Mr. Mardfin: It looks like for Central Maui you have two impact districts, one in Wailuku and one in Makawao.

Ms. Meeker: No, we just have two cost areas.

Mr. Mardfin: Two cost areas. Central is considered one ...

Ms. Meeker: District.

Mr. Mardfin: So if ... it wouldn't matter, I mean, in theory it wouldn't matter which, whether you built it in Kihei or Wailuku it would be the same impact fee. You wouldn't have to return it if you built – if the development was in Kihei but you built it in Wailuku that would still be kosher according to way things are –

Ms. Meeker: That would be within the district.

Mr. Mardfin: Okay. Thank you.

Chair Starr: Commissioner Freitas.

Mr. Freitas: Yes, fees are collected at the time of your permit or at the finish of the complex?

Ms. Meeker: For large developers who meet with us, 50 more units we can decide with them when is the time to be collected. Sometimes developers are willing to pay say every 50 houses completed they'll write a check, something like that. Most often with the large developers it does come with the closing of individual houses. So somebody buys the house, they go to close, they write a check basically part of their cost includes the DOE fee. For individual and small developers, we would like to be able to collect prior to their getting a building permit. That way we feel we only have to contact those people, and they only have to be in contact with us one time. We receive their check, we let Public Works know and they issue a permit and we're done.

Mr. Freitas: And I heard you quote a number 500 students per school is that the number that determines a school to be built from K thru 12?

Ms. Meeker: No, just a really rough rule of thumb is a 1,000 single family houses is about 500 kids. One kid for every two houses. And a lot of people can't believe that because they think in their own neighborhood there's so, but that tends to be the way it works. So if somebody comes with a proposal for a 1,000 homes we will be listening carefully and looking to see if this is a potential place for a new school. Our schools as far as numbers of students varies between high school and elementary.

Mr. Freitas: Do you have a determined number where a new school would be built say K thru 12, how many students that you can handle? I know like up in Makawao, Kalama School got something like 800 kids which is I believe is overcrowded. Is there a valid number that where you would say it's a good operational number for a school?

Ms. Meeker: What we have is a DOE, our Board of Education has adopted guidelines and for elementary schools, I think it's five to eight hundred and then middle school it's seven fifty to thousand, something like that. High schools up to, the maximum, the desired thing would be a high school a 1,600 students would be the largest. But those are guidelines and we have to adjust.

Chair Starr: Commissioner Wakida then Commissioner Shibuya?

Ms. Wakida: Yes, I understand you've spelled it out here that an owner who's building a house on a individually owned lot pays a fee, what about adding on an ohana, what happens then?

Ms. Meeker: It's an ohana that could serve another family, we consider that a multi-family unit and it's charged at a lower rate. We assume that it's a little bit smaller, there's fewer kids as in apartments. If you were extending your own house and adding three bedrooms to the back of your house but there's, everybody's using the same kitchen and it's considered a single family house then we wouldn't be charging an impact fee at all for expansion.

Ms. Wakida: So it's a reduced rate then on the ohana based on that multi-family schedule?

Ms. Meeker: Right.

Ms. Wakida: Okay, thank you.

Chair Starr: Commissioner Shibuya.

Mr. Shibuya: I was just wondering this money that you collect, it's primarily aimed for CIP, Capital Improvement Projects for classroom only. Does that mean that it includes a new structure for administration and handling and managing the campus? Also, the fact that in such a situation, portable structures are actually allocated under a different structure so portable expenses would not come from this?

Ms. Meeker: Yes. Impact fee law prohibits the use of construction funds for a portable building. So that's ...(inaudible)... question. What would tend to happen is we will get ready to build say a new middle school in this Waiale project as it comes along, we will probably use, it would need an appropriation probably from the Legislature for the 90 percent of the school. We will use the impact

fee construct, construction impact fees for 10 percent and the assumption is that the 10 percent is not building the administration building, but that's how it's going to work.

Mr. Shibuya: But you have support facilities such as a library.

Ms. Meeker: Yes.

Mr. Shibuya: Cafeteria.

Ms. Meeker: Right.

Mr. Shibuya: Nurses aid centers and stations.

Ms. Meeker: Right.

Mr. Shibuya: Aren't these part of the classroom if you will structure?

Ms. Meeker: They are and –

Mr. Shibuya: Or they're not?

Ms. Meeker: – no, they are parts of new schools and they would be provided in new schools. Ninety percent of the costs of building all of those facilities would be through the Legislature, statewide, by the taxpayers statewide providing that money. We will supplement that with roughly 10 percent of the construction cost from these fees that we've collected within the district. Also, this construction money can be used to enlarge the enrollment capacity at a school. So that would be classroom.

Mr. Shibuya: Okay.

Ms. Meeker: So it wouldn't just be used for new schools, it could be used to expand existing schools but not expand athletic facilities. It would be to increase the capacity of the school, student capacity.

Mr. Shibuya: Okay. The paradigm that we're under is that we have growth and so therefore, with the growth we have this impact fee. Lets reverse that growth. Lets say the population declines will the State return the money to the developers or will it return it to Maui? Who does that money go back to when we close the facility?

Ms. Meeker: The requirement is there in law. So will do what we can to meet the requirements of the law. We would return it to the developer as far as land that didn't get used. We might have to return it to individual homeowners who paid. You know, that's something –

Mr. Shibuya: Has this been done?

Ms. Meeker: No, because we haven't even collected our first check yet.

Chair Starr: Could you define the districts? The definition seem a little different from what we're used to.

Ms. Meeker: We tried to use existing school complex boundaries. We didn't want to draw new lines all over the place. So the West Maui District, West Maui Impact District is the Lahainaluna High School Complex. So if you live in an area in which your children go to any one of the schools that feeds into Lahainaluna, that's the West Maui Impact District.

Chair Starr: So is that like, and would that be like from Maalaea to Kahakuloa or pretty much?

Ms. Meeker: Ukumehame to Kahakuloa pretty much.

Chair Starr: Yeah, okay.

Ms. Meeker: The Central Maui District is those areas right now served by the Baldwin High School Complexes Schools and the Maui High School Complexes Schools.

Chair Starr: So that means from Makena to –

Ms. Meeker: Kahakuloa again.

Chair Starr: – Kahakuloa to Paia or not?

Ms. Meeker: Yeah –

Chair Starr: To Paia to Makawao, but not Pukalani?

Ms. Meeker: It doesn't go Upcountry. I don't have the place names for, but we do have it mapped and it's the difference between if your – where does your child go to school now? If it goes to one of the schools in Kahului, Maui High Complex. I don't think it's as far as Paia, but I'm not sure.

Chair Starr: Director Spence.

Mr. Spence: I think one of the things that the Commissioners are thinking, you know, such a large amount of our growth is going into South Maui, into the Kihei area probably wondering why things are lumped into Central Maui, you know, because we're trying to create, you know, not have kids have to drive half way across the island to high school. Why would Kihei be lumped into Central Maui?

Ms. Meeker: In general, the large amount of growth and the fact that right now those schools are organized that way, there might be some day when a Kihei high school is completed and opened and operational that a Kihei Complex is created then we might look at these districts again. We could always change the districts, but right now the idea was to sort of keep the DOE existing boundaries together.

Chair Starr: Okay, my understanding, I'm confused why it is, it sounds like you're – trying to collect

100 percent of the land but only 10 percent of the construction cost. Why is that? Why isn't it 100 percent of the construction cost as well as the land?

Ms. Meeker: You'd have to ask the Legislature but my feeling is that part of the intent is there is a feeling that some cost of schools should be born statewide by the tax payers. As a matter of fact, part of the formula even sort of kicks back so that it's not – we're not duplicating the effort of the Legislature in funding schools. So we back that amount of money out of our impact formula even.

Chair Starr: And how much, if you're building a school what is the value of the land versus the value of the construction?

Ms. Meeker: I don't know.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, you asked pretty much the question I wanted except I just wanted to be clear, when you say this is an impact fee, this is only a 10 percent of an impact fee excluding the land. You're only paying 10 percent of the construction cost not a 100 percent of the construction cost out of this fee.

Ms. Meeker: Yeah, maybe need would be the easier – we're coving the – these fees would cover 10 percent of what we estimate will be the construction need of some project impact on the school.

Mr. Mardfin: Okay, thank you.

Chair Starr: Okay, Members? Commissioner Shibuya?

Mr. Shibuya: Just curious, how much does it cost to administer this program and how much money is it actually managing?

Ms. Meeker: This bill didn't provide any funding for the administration. It's myself and two guys who work for me. We're gonna give it a try. We've done it up till now with the system that existed before impact fees which was what they called the Fair Share Contribution and since 2002, I've basically done that one by myself. So now I got more help. I think that we will be able to do this.

Mr. Shibuya: And equipment and facilities cost?

Ms. Meeker: One of the best things is the Department of Public Works here is going to let us link into their online permit tracking system and so we will be able to comment and give our approvals and stuff online.

Mr. Shibuya: And the County of Maui has a excellent GIS system by the way, and it has great GIS districting. Maui's version of districting not Honolulu DOE's version of how we are districting. So there's a big difference so that's why you have the questions here of where does Haiku fall in, Paia fall in?

Ms. Meeker: The schools or the locations? Are you asking about Paia School?

Mr. Shibuya: Yeah, a Paia District does that school go in the Central Maui or is it Haiku, Paia, Makawao?

Ms. Meeker: Those schools are part of the King Kekaulike Complex. And right now we feel that there is sufficient space in those schools to be able to accommodate some amount of growth as opposed to the areas that are served by the Baldwin and Maui High Complexes.

Mr. Shibuya: Okay.

Chair Starr: Commissioner Wakida?

Ms. Wakida: I think maybe you've sort of answered some of my question. I'm just interested in how all this works. This application, is this given to the home owner or whoever at the time that they go pick up all the permits at the County?

Ms. Meeker: No, we will actually have to send that to people who contact us. So all Public Works will do across the hall is notify us that a permit has come in and then we will be able, once we're really up and running as we will see it on line that a residential permit has come in.

Ms. Wakida: Okay.

Ms. Meeker: And then they're told, those applicants are told they must contact us.

Ms. Wakida: Okay. You know, instead of just passing this out with all the other permit applications it won't work that way, huh?

Ms. Meeker: If they're online so people can go and ...(inaudible)... right now we are so grateful for the support we're getting, we don't want to trouble them anymore. They just give us a copy of the application, we'll go from there.

Ms. Wakida: Thank you.

Chair Starr: Okay.

Mr. Shibuya: I'd like to get a map of what they're talking about. You know, I don't have a map.

Chair Starr: Okay, could I request that, you know, we get maps that show the complex area? Which this is not a new formula. And well, And I want to thank you for your presentation. I think this is a wonderful thing and really appreciate your work. I guess it's kind of a first step and I'll look forward to the day when it's all of the state and instead of 10 percent, hopefully it's more because I guess there's an argument could be made that why should people who've been living in a place where there have been adequate schools for a long, long time be paying to build schools in a place where there aren't. But anyway, thank you very much and we really appreciate you coming over. That was very good. Okay, Members, moving right along our Director will introduce our next item.

Mr. Spence: Members, we are returning back to number F, Communications. The first agenda item is Mr. Christopher Lau, Commissioner appointed by the Court in the case of Wells Fargo Bank, N.A. , as Trustee for Registered Holders for UBS Commercial Mortgage Trust 2007 FL 1 v. Makena Hotel, LLC et. al., Civil No. 09-1--625. Basically what they're requesting is a transfer of three Special Management Area Permits from one owner to the other. The staff planner is Kurt Wollenhaupt.

Chair Starr: Okay, Mr. Wollenhaupt, thank you very much, and I think we'll take them sequentially.

## **F. COMMUNICATIONS**

- 1. MR. CHRISTOPHER LAU, Commissioner appointed by the Court in the case of Wells Fargo Bank, N.A. as Trustee for Registered Holders for UBS Commercial Mortgage Trust 2007-FL1 v. Makena Hotel, LLC et. al., Civil No. 09-1-0625 requesting a transfer of the following Special Management Area Use Permits previously granted from HONU A LLC to ATC MAKENA S GOLF LLC and ATC MAKENA HOTEL LLC due to ownership change on the following projects located at Makena, Island of Maui (K. Wollenhaupt): (Previously scheduled for the December 14, 2010 meeting but the Commission ran out of time.)**
  - a. Special Management Area Use Permit dated November 13, 1998. (SM1 98/0013) for Makena Resort roadway and utility improvements at TMK: 2-1-005: 108 (por.); 2-1-007: 094 (por.); 2-1-008: 098 (por.); 2-1-008: 099 (por.); 2-1-008: 100(por.); 2-1-008: 106 (por.); and 2-1-008: 108 (por.); Makena, Island of Maui. All work has been completed under this permit. Transfer is from Honua LLC to ATC MAKENA S GOLF LLC.**

Mr. Wollenhaupt: Okay, just to give you a background on this, good afternoon. By letter dated to the form Planning Director, Kathleen Aoki on August 25, 2010, Christopher Lau who was appointed Commissioner by the Court in the Case of Wells Fargo Bank as Trustee for Registered Holdings for UBS Commercial Mortgage Securities Trust 2007, FL 1 v. Makena Hotel et. al., Civil No. 09-1-0625 requested the transfer of the Special Management Area Use Permits that had been granted in the past for the Makena Resort. This permit transfer was a requirement from the Mr. Lau to ATC Makena as a condition for two reasons. Number one of which this Commission in writing the recommendation and in the conditions requires a review of the new owner and consequently that's why we're bringing it to you today. The second reason for the transfer via the letter from Mr. Lau is that the transfer is being requested so that the new owners would have the benefit and also the obligations imposed by previously imposed SMA Permit and supported this request and in compliance with the requirements of the SMA Rules affidavits acknowledging the conditions established by the prior permits and the new owners agreement to comply with all of the terms and conditions established in the SMA Permits and approvals have been enclosed. The Department's in receipt of these affidavits. Consequently, we're here today to have the three that have been listed on the agenda. One being from 1998, one being from 2002, one being from 1900. Two of the three have already been completed. However, there are continuing compliance conditions. One of the



SMA, one of the SMA permits is currently – has been initiated so it's currently under construction. That being the case, Ms. Becky Collins from ATC Makena is not here at the moment as it was understood you were going to be taking OW Ranch prior to this, and that being the case, she thought then that 2:00 would be a more appropriate time. So she probably will be returning about 2:00 as it was understanding that OW Ranch had been agendized prior to this before noon.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: I don't have a problem reshuffling the agenda if OW Ranch is here. We can could just move onto that.

Chair Starr: It's either that or we could just defer. I kind of feel like the applicant should not have left.

Mr. Hiranaga: It was under advice from the Department. She flew in from Oahu and the Department told her when to appear.

Chair Starr: Okay, make a motion to amend the agenda again.

Mr. Hiranaga: I make a motion that we address item, Communications 1 – Communication 2, OW Ranch, LLC.

Ms. Domingo: Second.

Chair Starr: Okay, all in favor of moving to the next item on the agenda, please raise a hand. All opposed. Thank you.

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

**VOTED: To Take Up Communication Item No. 2, OW Ranch, LLC.  
(Assenting - K. Hiranaga, D. Domingo, J. Freitas, W. Mardfin,  
W. Shibuya, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: Mr. Chairman, No. 2, under Communication Items, Mr. Rory Frampton on behalf of OW Ranch requesting a ten-year time extension for a Land Use Commission Special Use Permit and Conditional Permit for O.W. Ranch vacation rental in ...(inaudible)... presenting the – is staff member Gina Flammer.

Chair Starr: Take it away Ms. Flammer.

## **F. COMMUNICATIONS**

- 2. MR. RORY FRAMPTON on behalf of OW RANCH, LLC requesting a 10-year time extension on the State Land Use Commission Special Use Permit and Conditional Permit in order to operate a transient vacation rental and conduct**

**special events at O.W. Ranch on approximately nine acres of land located in the State and County Agricultural Districts at TMK: 2-2-001: 017 (por.), Kula, Island of Maui. (SUP2 2003/0006) (CP 2003/0008) (G. Flammer)**

Ms. Gina Flammer: Good afternoon Commissioners. This item is being reviewed for a time extension for State Special Use Permit and County Conditional Permit to operate O.W. Ranch transient vacation rental and for special events. The property has a State Land Use Classification as Ag. So as you know, any permitted use not outlined in the Code under AG needs a State Special Permit. The Planning Commission is the approving body for that. In 1995, this body did grant a State Special Use Permit for vacation rental and for special events to the previous owner of the property. A copy of that is in the report. At that time, the facility was called the Silver Cloud Ranch. The permit was granted a time extension again by this body again in 1997. Now that time the property held a County designation of Interim. So what that required was a variance from the Board of Variances and Appeals because the County zoning it wasn't permitted under the County zoning. In 1998, as part of Bill 84, the property was rezoned to Ag. At that point, a Conditional Permit was going to be required. The State Land Use Permit did expire in 1999. So in 2003, O.W. Ranch LLC purchased the property and they just applied for two new permits. They applied for the State Special Land Use Permit and then a County Conditional permit. So this body recommended approval in 2004 of the State Land Use Special Permit and they recommended approval of the Conditional Permit to the County Council who is the approving authority for Conditional Permits. In 2005, the County Council did approve the Conditional Permit. They adopted Ordinance 3264. The permits were originally issued for five years from the date of the Conditional Permit. So in the interest of time I'm going to turn the floor over to Project Consultant, Rory Frampton. He's going to give you some more background information on the project itself and then I'll return and give you some analysis and recommendation.

Mr. Rory Frampton: Thank you, Mr. Chairman and good afternoon, Planning Commission Members. My name is Rory Frampton. I'm a Planning Consultant for O.W. Ranch, LLC and with me today to help answer any questions I have Hugh Starr, who's the on-island project – client representative who helps manage more of the day to day activities up at the facility and also, Mr. Tom Welch, who's a Maui-based attorney.

I want to thank Gina for doing a, putting together a fairly comprehensive staff report that was submitted to you. And I'll just try to highlight some of the, some of the important aspects. The property location is up near Keokea in Upcountry, Maui, just south of Kula Sanatorium and Kula Hospital. Here's Keokea Park and Grandma's Coffee. Instead of taking the highway out to Ulupalakua, there's a little road that branches off and it's called Thompson Road, it's about a mile, a little over a mile to the former Silver Cloud Ranch property, and then just past the property is Kamaole Road. It's an old road with various farm dwellings and farms off of that road and just at the top of that road there's a water tank and I'll come back to that later because the Kula water line comes right down along in this area and there's a tank in that vicinity and I'll reference that Kamaole Road and Thompson Road a little bit later.

So this is the property right there with the various structures on it. And there's a map outlining the – all the structures on the property. Again, here's Thompson Road. This is mauka up here, and this is makai. So the driveway comes in and there's approximately, well not approximately five

major structures on the property, the foreman's cottage, the main plantation house, lanai cottage, an old carport, and the paniolo bunkhouse. All of these structures were previously approved as part of the Thompson Ranch or Thompson Family property and I'll, let me just jump into that history right now.

The main property was the, I don't know if you'd call it the headquarters. It was a family owned ranch and it was the main place where the family lived. Thompson Ranch actually was established in 1902, and at one time, encompassed about 500 acres in the vicinity. It was mostly a horse ranch. In the '70's and '80s, the uses kind of expanded and they had week-long summer camps up there where some of it were Girl Scout Camps and they actually had old teepees that people would stay in or the Girl Scouts would stay in the paniolo bunkhouse. When it wasn't during the summer time, the paniolo bunkhouse was used for either Haleakala Ranch employees, people working up at the observatories at Haleakala or other short term rental. So there was history of short term rentals, summer camps, et cetera, commercial trail rides. I, myself, was lucky enough to where our family was close to the Thompsons and we got to go out there and do horse rides and that kind of stuff on the property. So it was a place that people would do that kind of activities.

And as I mentioned earlier, all the structures were legally constructed as farm labor dwellings. Most of the additional, the main house actually was built in the '40's, burnt down in the '60's and was rebuilt in '65, and the other structures that I referenced up there were mostly –three of them were built in the late '60's and early '70's but they all have building permits and we have that if you're interested.

Mrs. Thompson passed away in the late '80's and her children were forced to sell the property just because of the state taxes and that kind of stuff and eventually it was acquired by Michael Gary, Michael and Sarah Gary, and as Gina mentioned they received a Planning Commission approval to do the transient rentals and special events in 1995. And I actually helped them do with that permit back then so I'm familiar with the issues and discussions that took place from the beginning of this project. And at the time, I believe it was only the second approved transient vacation rental use in the Ag District. There hadn't been too many legally approved facilities, but Mike and Sarah really wanted to make sure that what they were doing was up and up and was legal and so they did get that permit in '95. As Gina mentioned, they got extension from the Planning Commission. After '95, sometime after '95 there was a ruling by the Corp. Counsel that that all those lands up there were actually in the Interim District so for a short period it was considered to be in the Interim District and they complied and went ahead and go the BVA approval and the County Council approve for being located in the Interim District. About a month later, the Council zoned it Agriculture and then they were required to go get a Conditional Permit because of the Agriculture and that actually, they never, no, they never actually got the Condition Permit. Mike continued to run, Mike Gary continued to run the facility up until the early 2000's at which time, the property was purchased by O. W. Ranch, LLC.

Once they purchased the property and they realized that permit permits, the previous permits had actually lapsed, the rental, short-term rental ceased. They didn't want to – given the high profile nature of the client, they didn't want to have anything going on there that wasn't approved. So they ceased the short-term rental operation and they came in for a Special Use Permit and a Conditional Permit to get re-legalized if you will, to do the type of operations that were allowed or permitted for

Silver Cloud Ranch. You have those permit approvals in Exhibits 1 and 2 of the staff report. Those are the 2004, 2005 approvals.

The applicants, actually, they started what they thought was going to be some minor renovations and repairs and as they got into it, it became quite a bit more expensive. And eventually involved bringing all those structures into compliance with current Building Codes, Fire Code, Water Code as well as the Department of Health Rules regarding wastewater facilities. And actually, – the building permits, I say that the renovations started in 2006, that was actually a lot of the work on the plans and stuff. The building permits I don't think were issued until 2007. And since, then they've been in the process of implementing the renovations and bringing everything up to Code and it again has proven to be a little bit more extensive than originally anticipated. The improvements are anticipated to be completed in 2011. So the operations, the transient – vacation rental operations have still yet to commence and it will commence once the application, the improvements are completed in 2011. Earlier today I was here and there was a testimony from an individual that said that the applicant hadn't done anything or was requesting an extension even though they hadn't done anything. Well, there's been a lot of activity that's been done and, but I'll just – there's been a lot of activity that's been going on since the original permits were issued and I would also remind you, the Commission, that the permits itself were not for development but really the permits were for the use of the facility, the use of the structure for transient vacation rentals and special events.

The major upgrades which are outlined in your staff report, I'm just going to highlight two of them. One is, I reference Kamaole Road on that map and the water tank up at Kamaole Road, well, the property didn't have satisfactory fire flow requirements so they ended to improvement the offsite water lines to bring it all up to eight-inch and to bring, put fire hydrants in front of the property. And actually four fire hydrants were installed, two adjacent to the property, and there were two others that were installed up closer to the water tank on Kamaole Road which doesn't benefit this property but benefitted the neighbors in the area.

The other major improvements was the replacement of three older cesspools, two of which were partially collapsed when they went in there and started working with them. But they got rid of the old cesspools and they replaced them with new individual wastewater systems that are consistent with the Department of Health Rules and Regulations.

And this is a photo looking from the south towards upcountry, the main plantation dwelling, you can see it still being renovated with the roof and stuff. Here's the main plantation dwelling, the foreman cottage off to the left, and the lanai cottage just behind it. So in this upper – in this lower area, there's – and there's another structure just behind that, so there's four structures right on this lower area. And then this is the paniolo bunkhouse and it's a U-shaped building that was actually, it's – when you look at the building permit, it was approved as apartments, with an apartment structure for farm labor, farm dwellings and that permit was I think in the 1970's. It actually had four separate units with four separate kitchens. And now it's just going to have one kitchen with four bedrooms.

This is the foreman's cottage which is right next to the main plantation house. With the improvements to the main plantation house, the other significant change was that it went from six rooms down to five rooms. They wanted to make the bedrooms a little bit bigger, so they lost one

bedroom. So the main house went from six to five. So the total amount of rooms available rentals is now 11.

One other change that's happened since the original approval is the consolidation to actually make the parcel bigger, the TMK parcel, but this is the consolidation of the original nine-acre parcel which was here to an adjacent approximately eight-acre parcel here. And this allows for the incorporation of ag on the entire property. When the Thompsons' had it, the corrals, there was a corral right near Thompson Road and the idea is to shift the focus of that, the horse and equestrian activities to the north or to the Keokea side of the property and that would occur in this area. Right now that area is being grazed, currently being grazed by Haleakala Ranch and that's shown in this hatched area here. And I did, wanted to point this out because we are, we do anticipate one change, one minor change to the site plan and this was the original parking plan showing all the parking on the original nine-acre piece. It's a gravel parking lot here for the 12 required stalls and then there was overflow parking on geoblock grassed pavers which are just, those, those, black reinforced rings that allow cars to drive on it, but it also allows grass to grow out of it. So that was for overflow parking or for special events. But the preferred parking plan is to locate that over here so it would be in this facility. So you'd drive into the property, go through a turn around, and then park in the gravel parking here and the overflow parking here and there's lot of other room. There's a lot of room in this area for overflow parking for, you know, additional cars much in the way that they park cars up at the Yokouchi residence where you have valet parking, just parking on mowed grassed areas. But the reason why this is the preferred parking plan is it gets the cars sort of away from the front of the building then it removes them from the view of ... I guess it goes both ways, from the main dwellings you're not looking at a bunch of cars and from Thompson Road you're not looking at cars up towards the structure as well. So that is the preferred parking plan. And the only reason why we're showing you two right now is that, we need to – most of the archaeological work has been done, but it hasn't been approved by the Department of Health. So, we'll be implementing this parking plan subject to compliance with, did I say, Department of Health? I mean, State Historic Preservation Division, I'm sorry, the Archaeological Inventory Survey which is nearly complete, but we wanted to show you both options. If anything totally unexpected, which we haven't found anything yet happens, we can accommodate the cars on site but the preferred plan is to locate it on the newly consolidated areas, again, subject to compliance with State Historic Preservation Division. And that's my presentation in a quick nutshell, and we're open to any questions.

Chair Starr: Okay, Commissioner Mardfin first?

Mr. Mardfin: I think you told me, but I want to get it real clear.

Mr. Frampton: Yes.

Mr. Mardfin: They're, they're currently not doing short-term rentals?

Mr. Frampton: That's correct.

Mr. Mardfin: When was the last time that they did short-term rentals?

Mr. Frampton: It was in the early 2000's. It was about the time, – well, it was about the time that

the property was purchased. --

Mr. Mardfin: So around 2003?

Mr. Frampton: So when the new owner came in, as I recall, when the new owner came in, Mike Gary still had a number of reservations on the books. And I think they allowed him to finish up the existing renovations [sic], but they didn't take new reservations once it was found out that his permits had lapsed, and he was unaware of it at the time too, but they lapsed. So the vacation rentals stopped around, lets say 2003 in that vicinity, in that area.

Mr. Mardfin: But you did, did they then get permits at the time?

Mr. Frampton: And then shortly thereafter, they got a Special Use Permit, and they got a Conditional Permit from the County Council. So right now they have permits to conduct the vacation rentals on the property.

Mr. Mardfin: But they didn't use them?

Mr. Frampton: They haven't used it because of the renovation activities proved to be – take a lot longer than expected. They had fully anticipated to be using it by now.

Mr. Mardfin: I just wanted it to be real clear in my mind. Thank you.

Mr. Frampton: Yes.

Chair Starr: I'm curious about, I've been hearing about a road, a paved road that extends all the way down to somewhere in Wailea or Makena that's gated, could we?

Mr. Frampton: Yeah, I'll –

Chair Starr: Is that part of this facility and can you tell us –

Mr. Frampton: – it's not part of this facility, and it's located on Haleakala Ranch land, but I'll Tom Welch respond to that one since it's not really under my purview.

Chair Starr: Yeah, Mr. Welch?

Mr. Tom Welch: ... Mr. Chairman, yeah, in I think it was 2003 when Kamaole Ranch, LLC, an affiliated entity, bought the land, bought thousand acres from Haleakala Ranch in this area. They negotiated with Haleakala Ranch to get an easement over an existing ranch road so that, so that there could be access down below. And that was, that was negotiated and documented in recording, recorded at, at great length. The ranch – and the way, the way it's set up, and the way it finally turned out was, the ranch granted an easement for the personal use of the particular client. And it's over the ranch, it's over an existing ranch road, and it allows them to, allows the client to use it from time to time subject to notice requirements, a ranch gate closing requirements and general ranch – this is not a entire, entirely harmonious situation between the use of the ranch land

for ranching purposes and the personal of use of this but it's all worked out and that's basically the situation. It's 12-feet wide and the client was allowed to improved so that you wouldn't have to use a four-wheel drive.

Chair Starr: Is that, so it's on Haleakala Ranch?

Mr. Welch: Yes, it's all Haleakala Ranch.

Chair Starr: So it's, it's actually not in Wailea, it's toward Kihei side, it comes down near the, near the school, it's that road?

Mr. Welch: Maui Meadows. Near Maui Meadows.

Chair Starr: Yeah, like kind of on the north side of Maui Meadows.

Mr. Welch: Right. That's right.

Chair Starr: Okay, Commissioner Freitas

Mr. Freitas: Yeah, back to that road. I understand it's like seven miles long? Did they get a grading permit for that road?

Mr. Welch: Did they get it? I don't think they did any grading, did they?

Mr. Freitas: No, you have to grade to make the road.

Mr. Welch: They just paved just the road.

Mr. Frampton: I'm sorry, yeah, Rory Frampton. Yes, I did inquire as to whether or not they did do their permits. And there was a grading permit that was issued and Goodfellow construct – Goodfellow Brothers was the contractor and they did comply with all the grading permit requirements.

Chair Starr: Commissioner Hiranaga? Use your mike Kent.

Mr. Hiranaga: Was there any attempt to record these buildings as in the Historic Registry? Or they don't qualify?

Mr. Frampton: They don't qualify because they were, the main structure had burnt down and so it was rebuilt in the '60's, and all the other structures were after, they were in the '70's so they weren't over 50 years old.

Mr. Hiranaga: Is it safe to assume that the applicant is paying for the water line extension?

Mr. Frampton: Yes.

Mr. Hiranaga: Because it wasn't explicit in the staff report.

Mr. Frampton: It's safe to say, yes, that was – the applicant was required to bring the County system up to standards, and so they had to prepare civil drawings, get it approved by the Department of Water Supply, and they're – believe they've initiated construction on the portions on Kamaole Road and they'll be commencing with the portion on Thompson Road in the near future and it's all – it's Department of Water Supply lines so it's under the review of the Department of Water Supply and they will construct those and put those fire hydrants in within the public right of way, again, as part of the upgrades to the County's water system and it's mainly for fire protection.

Mr. Hiranaga: Isn't TVR requirement because I don't believe it's required for B&Bs?

Mr. Frampton: It was really because of the fire flow requirements given the requirement of the size of the house, the nature of the construction materials and the fact that the lines in the area were inadequate to supply the calculated fire flow for the largest structure on the property which was the main plantation house.

Mr. Hiranaga: Oh, so this is for to meet domestic standards instead of commercial standards?

Mr. Frampton: Well, as one of the – Gina's mentioning to me that it was a requirement as part of the upgrades that they bring the property into compliance. As to whether or not there was a higher requirement because of the transient vacation rental, I'm not really sure. I think that's what your question is?

Mr. Hiranaga: Yeah, I was curious.

Mr. Frampton: Yeah, and I was curious too, and never really got a straight answer. The answer I got from the engineers was that it was required because of the structure and that the transient vacation rental use did not kick it up to a higher use, but I'm not entirely certain on that.

Ms. Flammer: We have a condition with our B&B permits where they submit fire flow standards to the Department of Water. So that was the standard condition for here. So as part of that they did submit and then the Department of Water Supply asked them to bring it up.

Mr. Hiranaga: Thank you.

Chair Starr: Commissioner Wakida?

Ms. Wakida: This is a question for Mr. Spence or the Director. In a property of this size, with they say up to 24 could be staying there, they have two water meters. What is the water meter requirement for 24?

Mr. Spence: I think that's probably a better question for the applicant. Just a regular single family residence is going to require a 5/8-inch meter. Since you have other uses, I'm sure the demand is higher, but I would defer those things to Mr. Frampton.



Chair Starr: Yeah, Mr. Frampton, tell us about fixture count and all that good stuff.

Mr. Frampton: Yeah, fixture counts and all that good stuff. When the structures were built there wasn't as much let's say scrutiny or I don't know if there was at all in terms of what the limit for fixture counts were from a given water meter. Under today's requirements when I say fixture counts that fixture means like a toilet or a sink or a washer/dryer, laundry tub. Under today's standards there's a certain number of fixture counts that can be fed by a 5/8-inch meter. This property is served with two, 5/8-inch meters and as part of the building permit renovations they had to remove a number of the fixtures that were previously installed in these structures. So the structures now have less fixtures available in order to comply with the current standards and then all the fixtures, of course, have been brought up to date with the current, you know. low flow fixture requirement so that they don't use a lot of water when they are turned on. So, so the – it is in compliance with the current Department of Water Supply regulations for the number of fixtures that are allowed on the two, 5/8-inch meters that service the property.

Ms. Wakida: And that's why you took out those kitchens?

Mr. Frampton: Yeah, well, it was also, yeah, there were some other reasons why – start getting into a whole bunch of other rules and regulations with building codes and stuff, but they just wanted – basically they removed the kitchens so there was just one kitchens per dwelling, I mean, per structure. They didn't want to have multiple kitchens per structure and it was also related to the fixture count, yes.

Ms. Wakida: Does anybody live full-time on the property?

Mr. Frampton: Not at present.

Ms. Wakida: But is somebody intended to down the road?

Mr. Frampton: If the person's not going to be right on property, they'll be right next to it. There's an adjacent property that the client owns as well, but they do intend to have a full-time presence there. So it might not be on this TMK but it would be on an adjacent structure.

Ms. Wakida: And what does O.W. stand for?

Mr. Frampton: That's the initials of the client, Oprah Winfrey.

Chair Starr: Is this gonna be operated as a commercial facility, you know, with a tariff that the public can rent and stay or is it a more in the nature of a private guest house?

Mr. Frampton: Well, if it was a private guest house and there wasn't any commercial activities you wouldn't need these permits that we're asking for. So the intent is to evolve to the point where it is a commercial entity and that's why the applicant has maintained these permits. But it's not going to happen overnight and there's going to be sort of a real soft opening where it's kind of – maybe it will be just for friends and employees and business associates at first, but eventually over time it will evolve to where there's a mix of not only private use, but also commercial use, and that again,

is the reason for keeping these permits alive.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: This might be for Gina, but have – were they ever issued notices of violation or anything, complaint, neighbor complaints or?

Mr. Frampton: I've been involved with it since '94, and we've had no neighbor complaints. In fact, every vote before the Planning Commission, the BVA, two County Councils and probably three or four different Planning Commissions they've all been unanimous. We've never had a negative vote cast on it, nor have we had complaints, any kind of official complaints from letters or neighbors.

Mr. Mardfin: And what's the distance to the nearest neighbor dwelling?

Mr. Frampton: There's some neighbors on –

Mr. Mardfin: You can exempt, you can exempt the one where the owner might be staying, somebody might be staying.

Mr. Frampton: Yeah, there's some adjacent properties to the south that might be a couple hundred yards. There's not too many. And then there's the Kamaole Road part. Let me just show you on the aerial photo. So the subject property is here and then the adjacent properties that they own are right above it and to the side of it and there's some down here too, but the other properties that are on Kamaole Road. So it's a couple hundred yards distance away.

Mr. Mardfin: Okay, so they're not likely to be bothering the neighbors?

Mr. Frampton: No, and it hasn't in the past. So it's not likely too. I think what has probably if anything frankly has impacted the neighbors it's been the construction activity, but that's nearly complete. And once the construction is pau, then there would be a lot less traffic on the road than what has been occurring with the construction.

Mr. Mardfin: And I noticed there were conditions limiting it to a hundred – any activity to a hundred people that's still would be in effect?

Mr. Frampton: Yes.

Mr. Mardfin: Thank you.

Chair Starr: About, about I don't know three or four or fives ago on the Commission we had a – I thought it was, I don't remember if it was a transfer, an extension for I guess it was, I don't know if it was a B&B or TVR, and I had thought that that was on Thompson Ranch. There had been someone who had been operating it under the owners for a long, long time and we had a lot of testimony from the community about how good the husband and wife team were.

Mr. Frampton: Yeah, that's –

Chair Starr: Is that the same?

Mr. Frampton: It's not the same structure, it's about halfway down Thompson Road. Oh, it's about right there, so here's the subject property here. That's called the Star Lookout and it's a much smaller little plantation cottage and I think the owner was Ray Baine, who's the resident manager.

Chair Starr: Okay, so that's not related?

Mr. Frampton: Not related.

Chair Starr: And one other question, I acquired an antenna tower from up there, probably about 15 years ago. There used to be a radio station up there. Where?

Mr. Frampton: Well, there was a radio station right near, just south of us, the facility and that's no longer there. But there is one down in this vicinity that if you're driving along the road from Ulupalakua right before you get to Keokea, you can see a radio tower in that vicinity and there was one in very close proximity to the property, but that's no longer there.

Chair Starr: Yeah, I got the tower and ended up giving it to someone else. Commissioner Wakida?

Ms. Wakida: I am really not up to snuff here on this road that you were talking about. I'd like to know a little bit more. Is that a private, unimproved – improved road?

Mr. Frampton: Thompson Road?

Ms. Wakida: No, the one that goes down to Maui Meadows.

Mr. Frampton: Oh.

Chair Starr: Can you show us that on, on a map?

Mr. Frampton: We don't have it on a map, but it, it generally goes down an old ranch road all the way down, and it's a ranch road that's been in existence, utilized by Haleakala Ranch for who knows, 50, 60 years. And so it was an existing road that they just provided an all-weather surface on it.

Ms. Wakida: And that's available to whom?

Mr. Frampton: Only to the client. Well, it's primarily a ranch road. And it's got gates on it. It's used by Haleakala Ranch and it really has improved the operations of the ranch to have this all-weather surface and they've added additional fencing on each side of the road so that you can now separate pastures and there's gates and stuff to manage the cattle operations. So it's really a cattle – a ranching road, that the client has been allowed to use under the detailed conditions that Mr. Welch described.

Ms. Wakida: Client and the client's guests?

Mr. Frampton: It's subject to the terms of the agreement. I'm not really sure if she's allowed to have guests on it.

Chair Starr: Okay, Mr. Welch?

Mr. Welch: Yeah, the answer is yes. She does have the right to have guests use it, but it's not for the operation of this facility. It's ...(inaudible)... it's her own personal use and her own personal guests.

Ms. Wakida: Thank you.

Chair Starr: Director, do you have a question?

Mr. Spence: No, I was just going to comment, my understanding of what Mr. Welch just said, you know, it's not really – the use of that road is not really within the scope of these permits. This is a use permit just for the vacation rentals of this particular property and these structure that are on it.

Ms. Wakida: True, but since he brought it up, I wanted to get some more information.

Mr. Welch: It's very restrictive. And it's dictated really by Haleakala Ranch's requirements. It was the best we could negotiate under the circumstances. Very limited.

Chair Starr: Okay, Members, we go to public testimony? Okay, any members of the public wishing to give testimony on this? Now is the time.

The following testimony was received at the beginning of the meeting:

Chair Starr: Anyone else wishing to testify? Please come, aloha.

Ms. Johanna Kamaunu: Aloha, a hauoli makahiki hou. Johanna Kamaunu from Waihee. I had not expected to be here this year, but I'm kind of glad I am here. And I want to thank you for having – continuing in the work that you're doing. My concern today is one issue regarding the Frampton's project. And the request for extension, I have to ask the question, is how reasonable is a ten-year extension? And what was the length of time given for a permit to begin with and if this permit has already been extended once before? So not having all the answers to those questions, my objection at this point is that the extension may be excessive. And one of the reasons I come to that conclusion is after hearing the County Council consider other developmental projects when an applicant had brought forward a project when they have not completed a previous project, and yet they link the first projects completions to the second project that they're presenting. So my concern is, with all these projects you have on the dockets, that are to have permits for to go ahead and be completed but no work is being done on them? What happens in this situation? If I am correct, I hear the County Council having some reservations about this kind of action. That we pile up all these proposed projects, give them permission to go ahead and they're not doing it. So I would want to know what the intention is regarding that particular permit and their need for that extension? If that's fair? Because if it's not fair, then other action should be taken. And reiterating what my husband was saying things are changing and in this other project I wanted to talk about the other

issue that you have regarding the transfer of permits, I have a concern as to what could have changed from the time that permit was issued to the time that they're transferring the permit today or making that request for transference? And I already know that there are changes in our understanding of what our rights are regarding some of these issues. Anything that impacts the land, and the resources.

Ms. Takayama-Corden: Three minutes.

Ms. Kamaunu: So as we start to understand what these rights and possibilities are, those things are changing so we need a chance to intervene if we might be able to do so. Thank you.

Chair Starr: Ms. Kamaunu, we have a question from Commissioner Wakida.

Ms. Wakida: Yes, thank you for coming this morning. You brought up the Frampton project. Were you objecting to the extension as a general idea or did you have something specific about that project?

Ms. Kamaunu: No, just, just the idea that the permit was going to be extended for another ten years.

Ms. Wakida: Okay. Thank you.

Chair Starr: Okay, thank you

This concludes the testimony received at the beginning of the meeting.

Chair Starr: Not seeing any, public testimony is now closed. Members, we ready to have a analysis and recommendation by the Planner? Ms. Flammer? We don't need to have the whole thing read to us.

Mr. Flammer: I understand. I'm not going to do that to you. The project is in compliance with the original permit conditions. There have been no complaints filed with the County. The entire street was notified of the extension request per one of the conditions of the original permit, and the Department has not received any testimony on the request. The Department is recommending an extension of ten years for both permits, specifically, the Department recommends approval of a time extension to the State Land Use Special Use Permit. We also recommend that the Maui Planning Commission recommend approval of the Conditional Permit time extension to the Maui County Council with the exception of Condition No. 1, both permits would state the time periods of the permit, all remaining terms and conditions remain applicable as originally approved. So it's only the time of the permit that would be changed.

Chair Starr: So what is the specific request again, and is it, do we have – should we break that into two segments or?

Ms. Flammer: We have a request for just one small minor change.

Mr. Frampton: I'm sorry, before I do my request, you were asking if we're going to have two

recommendations?

Mr. Spence: Two motions.

Chair Starr: Do we need, shall we break it into two motions and if so, I want some clarity on that. That's actually for Ms. Flammer, but if you had something, a condition or some change you wanted, let us know what that is.

Mr. Frampton: Yeah, the Commission is being asked to because they're the sole authority for the Special Permit and then they're only providing a recommendation on the Conditional Permit, but my request for a modification relates to the conditions of the Special Permit, and that is to just add the words, "foreman cottage" under No. 7. So that is clarified that the foreman's cottage is one of the other structures that can be used as part of the rental units on the property.

Chair Starr: Okay, Ms. Flammer, does that fit in with your analysis and recommendation?

Ms. Flammer: Yeah, that would be fine. The description of the property includes the foreman's cottage in the report.

Chair Starr: Okay, so we have two, two items before us. The first would be the State Land Use Commission Special Use Permit which we are the final authority. They're asking, is that – they're asking for ten years, and if anyone is interested they could make a motion to that. We are the final authority because it's less than, is it 30 acres?

Ms. Flammer: The area is less than 15 acres, otherwise it would be the State Land Use Commission.

Chair Starr: Yeah, okay.

Mr. Freitas: So move.

Chair Starr: So we have a motion by Commissioner Freitas, seconded by Commissioner Shibuya. The motion is Director?

Mr. Spence: The motion is to extend – it's for approval of the State Land Use Commission Special Use Permit for an additional ten years. And if I could ask for clarification of the maker that is to include the – I think it – is that to include the foreman's cottage?

Mr. Freitas: Yes sir.

Chair Starr: As recommended.

Mr. Spence: As recommended.

Chair Starr: As recommended, yes.

Mr. Freitas: The change.

Chair Starr: Okay, does everyone understand? Commissioner Mardfin?

Mr. Mardfin: I'm sorry, I don't understand. Where is this foreman's mentioned or not mentioned? In Exhibit 1?

Ms. Flammer: Are you asking for the description Commissioner Mardfin? Or are you asking which condition?

Mr. Mardfin: Yeah, I'm asking which condition.

Mr. Spence: On Page 3, of the ...(inaudible)... Exhibit 1, Page 3, No. 7, in order to come up to the 12 rental units that would include the foreman's cottage.

Mr. Mardfin: I thought we were at 11 units? Is that not true?

Ms. Flammer: It will be 11 units.

Mr. Mardfin: So the 12 ...

Ms. Flammer: That's what they're using. We can keep it at 12. They're proposing 11 at this point.

Mr. Mardfin: So we're scratching 12 and making it 11 and we're adding to plantation house, home, lanai cottage, paniolo bunkhouse and foreman's ...

Ms. Flammer: I don't think the motion was to go to 11 but you could.

Chair Starr: You could make an amendment if you wish.

Mr. Mardfin: Okay, but it's there that you're making?

Ms. Flammer: They did a little bit of reshuffling around with all the units with the bedrooms and in the end they ended up with a total of 11 and they put some in the foreman's cottage. If you look at the map, the site plan, it will – This is Exhibit 8, you'll see where the foreman's cottage is located kind of in the middle of the page.

Mr. Mardfin: Okay. And that's, with that, that's 12 units or 11 units?

Ms. Flammer: It's at 11 units with that because they took out one of the bedrooms in one of the other buildings.

Mr. Mardfin: Do they want 11 or do they want 12?

Mr. Spence: Commissioners, I think we could – if we just leave it at 12 then, you know provides them a little bit of flexibility. They just want to make sure that the foreman's cottage is included.

They're originally approved for 12, I think we've ...(inaudible)...

Chair Starr: If you want to offer an amendment, do it, otherwise let's move on. Commissioner Mardfin?

Mr. Mardfin: I don't want to make an amendment. I was just curious ...(inaudible)...

Chair Starr: We have a motion on the floor, the motion ... Will, just say it one time.

Mr. Spence: The emotion, the emotion ...

Commissioners: ...(Laughter)...

Mr. Spence: Sorry, the motion is to approve the ten-year time extension and along with that is the inclusion of the foreman's cottage in that.

Chair Starr: Okay, all in favor, please raise a hand. All opposed. Director?

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

**VOTED: To Approve the 10-Year Time Extension of the State Land Use Commission Special Use Permit, as Recommended.  
(Assenting - J. Freitas, W. Shibuya, K. Hiranaga, W. Mardfin,  
D. Domingo, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: Okay, that was approved as –

Chair Starr: Yeah, seven, seven ayes. Okay, the next item is the Condition Permit. The Conditional Permit we are only making a recommendation. It goes to the County Council. The recommendation would be to recommend approval for ten years as, as per the recommendation.

Ms. Flammer: That's from the effective date of the ordinance just so everyone understands that.

Chair Starr: Yes, Mr. Giroux.

Mr. Giroux: Just as a from a drafting standpoint, we've been having troubles with these extensions as far as picking the beginning and end date, so what we've been doing is we've been trying to refer to the last ordinance number and I believe it was --

Ms. Flammer: 3264.

Mr. Giroux: – 3264 and if you use a time frame using the expiration of that ordinance, when we draft these ordinances what happens is we take out paragraph 1 and then we insert the new paragraph and when you say, this ordinance, this actually kind of confuses what ordinance you're talking about when you use the word, "this." So just as a drafting standpoint, if it is the intention of



the Commission to give a ten-year time extension from the expiration date of Ordinance 3264, that that the motion would reflect that.

Ms. Flammer: Would that be from the expiration or would that be from when the new one's approved?

Chair Starr: I would like to go on the record that it will be in accordance with Staff and Corp. Counsel working out the fine details of the date. I think that's good enough for us.

Mr. Giroux: Just for the record, because it does make a difference because a ordinance coming from you can sit on Council floor for years. So it really is important to know that – what your intention is is to give a ten-year time extension –

Chair Starr: From the original one.

Mr. Giroux: And from when does that clock start ticking.

Ms. Flammer: The way it's written it's from when the new ordinance becomes effective. You want different language?

Mr. Giroux: ... giving somebody a 50-year time extension that sits in Council for –

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I would, and if it needs an amendment say from the date after the expiration of the current permits.

Ms. Flammer: It hasn't expired.

Mr. Hiranaga: It will.

Ms. Flammer: ...(inaudible)...

Mr. Hiranaga: It will be expiring so, you want an extension ...(inaudible)..

Chair Starr: Who was the maker of the motion? I think Commissioner Freitas. Is that your understanding what Commission Hiranaga just said that if –

Mr. Freitas: Sure.

Chair Starr: And is that understanding of the second?

Mr. Shibuya: Yes.

Chair Starr: So the motion for clarification is that it will begin at the expiration of the current permit. Okay. All in favor please raise a hand. All opposed.

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

**VOTED: To Recommend Approval of the 10-Year Time Extension of the Conditional Use Permit to the County Council, as Recommended.  
(Assenting - J. Freitas, W. Shibuya, K. Hiranaga, W. Mardfin,  
D. Domingo, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: Seven ayes and no nays.

Ms. Flammer: Thank you.

Chair Starr: We shall take a ten-minute recess.

A recess was called at 2:21 p.m., and the meeting was reconvened at 2:36 p.m.

Chair Starr: Welcome back everyone. Maui Planning Commission meeting of January 11, 2011 is back in order. We're moving onto our next item which is?

Mr. Spence: Communication F, No. 1, under Communications.

Chair Starr: No.

Mr. Freitas: F-1.

Ms. Sablas: F-1, yes.

Mr. Spence: Yes, we took this out of order, O. W. out of order because the applicant's rep was not here.

Chair Starr: Okay, we'll move to Item F-1.

Mr. Spence: Okay, thank you, Mr. Chairman. Under Communication items, No. F-1, Mr. Christopher Lau, Commissioner, okay, we previously read this into the record. This is for transfer of three Special Management Area Use Permits from one owner to another. Mr. Kurt Wollenhaupt will summarize and go from there.

Chair Starr: And we'll take them one at a time in order.

## **F. COMMUNICATIONS**

- 1. MR. CHRISTOPHER LAU, Commissioner appointed by the Court in the case of Wells Fargo Bank, N.A. as Trustee for Registered Holders for UBS Commercial Mortgage Trust 2007-FL1 v. Makena Hotel, LLC et. al., Civil No. 09-1-0625 requesting a transfer of the following Special Management Area Use**

**Permits previously granted from HONUUA LLC to ATC MAKENA S GOLF LLC and ATC MAKENA HOTEL LLC due to ownership change on the following projects located at Makena, Island of Maui (K. Wollenhaupt): (Previously scheduled for the December 14, 2010 meeting but the Commission ran out of time.)**

- a. **Special Management Area Use Permit dated November 13, 1998. (SM1 98/0013) for Makena Resort roadway and utility improvements at TMK: 2-1-005: 108 (por.); 2-1-007: 094 (por.); 2-1-008: 098 (por.); 2-1-008: 099 (por.); 2-1-008: 100(por.); 2-1-008: 106 (por.); and 2-1-008: 108 (por.); Makena, Island of Maui. All work has been completed under this permit. Transfer is from Honua LLC to ATC MAKENA S GOLF LLC.**

Mr. Kurt Wollenhaupt: Thank you for your indulgence regarding issue on scheduling. The client thanks you also. I'm pleased that Ms. Becky Collins is with us today from ATC Makena Holdings and she'll be happy to answer each of the questions. I appraised that we had done the overview summary that this is a transfer of the permits as required both by the Commissioner, Commissioner Lau and by the Conditions of Approval for each of the SM1 Permits. Therefore, I believe that we can proceed with the first permit as Chairman Starr has wished to look at these sequentially. And also, Ann Cua is in the audience, who originally looked at these permits and will be able to elucidate probably to a higher degree than I would since I haven't been personally involved with these from a historical perspective.

So the first permit is SMA Area Use Permit dated November 13, 1988, SM1 98/0013 for Makena Resort roadway and utility improvements. It's my understanding that all work has been completed under this permit. The transfer is from Honua LLC to ATC Makena South Golf LLC. If there's any questions, Ms. Collins and Ms. Cua or myself would be able to help at this time.

Chair Starr: Could you describe what this is for? What areas it pertains to?

Mr. Wollenhaupt: I think Becky Collins will help you out on this one.

Ms. Becky Collins: Good afternoon, Chairman Starr and Commissioners, and again, I'd like to thank you for your indulgence. I apologize for my lateness. There was some miscommunication as to the order after lunch. The first area, Item A I'm not exactly where that SMA area started but it completes just past the golf course access roadway and that work is complete. And the reason for the transfer is just to make sure that we can transfer and then properly close it and make sure the file is closed and complete and put to rest. Makena Alanui Roadway, I believe it starts near the Lower Makena Road and comes up and around past the main entrance to the resort just past the golf course entrance that you would go mauka if you were going to go to the golf course and stops just past the –

Chair Starr: You mean from the Wailea side?

Ms. Collins: From the Wailea side, starting from the Wailea side and it terminates at, just past the golf course entrance.

Chair Starr: You're sure? I'm kind of surprised your asking us to deal with a permit when you don't know, you know, you don't know where it's for. I want to be clear about where these are. Could, Mr. Wollenhaupt, you have any maps associated with this?

Ms. Collins: Well, I know where it, I know where it, I don't know where that section of that permit started, but I do know where it terminates. And again, the work is complete, we just want to make sure that the permit is properly closed.

Mr. Wollenhaupt: In regards to the conditions of approval here, it indicates that the project included resurfacing selected portions of Honoiki Street within the Makena Keoneoio Road and extension of sewer line improvements within these aforementioned streets. The improvements for Makena Alanui remained unchanged. So that was the area in which there ...(inaudible)...

Chair Starr: Which is the street and where is that located?

Mr. Wollenhaupt: The project included resurfacing selected portions of Honoiki Street and Makena Keoneoio Road that was the area in which this first permit had been done.

Ms. Cua: Sorry, you know, we didn't come prepared with a map or anything. He's mentioning Makena Keoneoio Road which is the lower road, and what was the street?

Mr. Wollenhaupt: Honoiki.

Ms. Cua: Honoiki Street. You know, they were improvements done years ago on Makena Road – Makena Alanui Road that was subject of this particular permit and again, because all the work had been completed, this was something that came down to us from the commissioner appointed in this court case that just wanted to make sure that until, that until everything is finalized that all the permits just kind of followed suit. And so because it was all completed, you know, I guess we're not prepared with a specific map, but it is the road as we drive it today.

Chair Starr: My concern is that I understand there are problems of access to the shoreline that I believe were original conditions and I believe that access to the shoreline is being stopped and I'm trying to figure out which of these – the shoreline access is being obstructed on.

Ms. Cua: Yeah, and I think – you and I –

Chair Starr: It would be on the LaPerouse side.

Ms. Cua: Yeah, I think you and I talked about that a little bit, and these three particular applications really are separate from what you are speaking of. There may be a condition on the overall Makena property that with all of the new – with the new owners when they come in to develop that, that may be an issue, but these particular – these three items on the agenda are not, are not dealing with what you're speaking of. I understand what you're off.

Chair Starr: Yeah, that's what I'm trying to find out.

Ms. Cua: Yeah.

Chair Starr: If not, then I have no –

Ms. Cua: And Becky does have information. We did, we did let her know that that was an issue. It was an issue before when I worked on the Maluaka project. I did see the access that that does occur right in front of the Maluaka property even though it's not on Maluaka's property, but Becky is prepared to talk about that because it is part of the greater Makena Resort holding lands.

Chair Starr: Okay, thank you. And I'm sorry for confusing the issue.

Ms. Collins: No, no problem. The access issue was brought to my attention not only through the Department, but from others as well, and it is my understanding that the – well, first of all, it is not part of either of these three actions. There is a shoreline lateral access that is part of No. C which we can either get to then or I can explain now, either way, but the lateral shoreline access issue is a zoning condition. And we had had that complaint and I investigated it and my investigation showed that the signs have been taken down and lateral shoreline access is not inhibited at present under present ownership.

Chair Starr: You're talking about where they've made the new wedding grounds and put a fence, a gate across ...(inaudible)...locked.

Ms. Collins: Correct, there is a gate there, but it is not locked and there are no signs that say private property or no trespassing.

Chair Starr: There were.

Ms. Collins: My understanding is that it was there, but it has been – at least as of my inspection and more recent inspection as of on Friday, they were not there.

Chair Starr: Okay. Members any questions on this? Commissioner Wakida.

Ms. Wakida: In my ongoing effort to learn how all this stuff works, when work has been completed does the Department go out and inspect these things and see that they're completed before the file is closed as you say?

Ms. Cua: The normal process is that the Planning Department has two compliance reports that it has to review. The first compliance report is prior to issuance of a building permit normally. And we check for, we check for compliance with conditions that need to be fulfilled before one is able to get a building permit. The second is pretty much what you're speaking of. Before we can grant approval of a final compliance report, the applicant, when they submit the final compliance report goes through every single condition and tells us how, and tells us and shows us how they have met the conditions, and yes, depending on the conditions we do go out, send an inspector out and they have to parking, they have to check landscaping, but everything does have to be met. If it's not met, we're not able to approve the final compliance report.

Ms. Wakida: Okay, so somebody physically does go out and take a look? Is that what you're saying?

Ms. Cua: Somebody goes out and takes a look.

Ms. Wakida: Okay, thanks.

Ms. Cua: And that's for, not for every single condition. Obviously if they were supposed to submit a certain kind of report and if the report if the report is there, but for the conditions that necessitate physically looking to see if something was there, then yes.

Chair Starr: Commissioner Mardfin.

Mr. Mardfin: Ann, where does that fit in with the – Building Department giving a Certificate of Occupancy?

Ms. Cua: Certificates of Occupancy I believe Building – there's a whole set of inspections that are done by various governmental agencies, Fire Department has to go out, Planning goes out for like I said, landscaping, parking, Building goes out, so everybody – there's like a sign in, like a block of where every agency that is required to sign off, has to sign off, and once that's all done the Building Division can sign off, and Dave's been here before so if I'm saying anything wrong he can jump in.

Mr. Mardfin: So you would, the second compliance report comes before the Certificate of Occupancy?

Ms. Cua: Usually, yeah.

Mr. Mardfin: Thank you.

Chair Starr: Okay, Members? Okay, so we'll allow public testimony on this. This is the first one which I understand is from the Wailea end up to the along the roadway up to the entrance of the golf. Ms. Bowie, welcome.

Ms. Irene Bowie: Irene Bowie, Executive Director, Maui Tomorrow Foundation. I do just want to address Chairman Starr's question about the beach access because this is kind of confusing as to what area is what, and I was told that the rock wall that starts at Maluaka Point where the gate is is the end of this property so that beach access would be relevant to this.

We have been, Maui Tomorrow has been following this issue since the gate and the signage went up and that seems to be about six months ago during the interim management at the hotel between owners. We've talked to Becky and Stanford Carr about this and they have gone out and checked on it. I have some pictures, but unfortunately I don't have copies for everyone. But this is the gate.

Chair Starr: Wanna pass these around.

Ms. Bowie: With the signage for events, for special events, and this is the no trespassing sign that was up there that has been removed. We're not sure how long ago it was removed. But we appreciate the conversation with the new owners and, and looking into this issue. However, our feeling is that that sign there advertising having events doesn't really speak to public access. You have a gate, and you have a sign on it that says, you know, call this number and you can have your event here. We would like to see something a little bit further that really does speak to public access there. A gate that's closed, a lot of people aren't gonna understand that they can go through that. So whether it's some kind of low key signage that would say, you know, invite the public to go down the access trail or keep the gate open and also have some kind of signage.

We would also just point out that I think that the nature of that white picket fence is not in line with the feeling of Makena and the cultural heritage of that area. So if there was something that could be done to make it fit in a little bit better with the nature of the area that would be most appreciated.

And I would say that that we're happy, Maui Tomorrow is happy to be a member of the, of the newly put together Makena Resort Advisory Group that will be commenting on these things. But I did want to put this before you because we feel strongly that those conditions of zoning that were, that were put in by the County Council, you know, need to be honored through the new ownership and this was one of the conditions of zoning. Thank you.

Chair Starr: Okay, any questions for Ms. Bowie? Next testifier, do we have anyone else? Public testimony is closed. I know at some point I would like to have this, an item that is body can discuss and I'm trying to understand if these, if it's relevant to any of the three of these, if so, which one? And if not, at what, at what point does this become a relevant discussion? Because one of the things that we are the guardians of this shoreline access to the shoreline line and lateral and I know, I personally went down there and could not access the shoreline and was certainly felt less than welcomed unless I was ready to climb over this white picket fence and risk being arrested. So what, could I ask Director or Ms. Cua or Mr. Wollenhaupt, whoever wants to take this what the venue for this discussion is?

Ms. Cua: Well, I – I mean, definitely not A and B, Items A and B because they're clearly roadway and utility improvements. You know, Item 3, we can talk about just that, just that general area which is in the vicinity of Maluaka. But it's still, it's not directly what you're talking about, but you know, it is, it does talk about some public access, parking stalls. I mean, we can talk about, start to talk about it a little bit there, but I think at this point all the Commission can do is ask the new owner, I don't know, that's a Corp. Counsel thing, if it's, you know, it's not something on the agenda, and, you know, you want to be having this discussion about an area that isn't reflected here, I don't how far you can go with that.

Chair Starr: Let's move ahead with A and B which obviously it's not relevant to.

Ms. Cua: Yeah. Thank you.

Chair Starr: Members? Any other comments or questions or would someone like to make a motion on the first, on Item A?

Mr. Freitas: So move.

Chair Starr: Is there a second?

Ms. Domingo: Second.

Chair Starr: And the motion is, and I'll ask the Director to restate the motion.

Mr. Spence: As I understand the motion it is to, go ahead and transfer Special Management Area SM1 98/0013 from – to the new owners of the resort.

Chair Starr: Okay, any more discussion? Commissioner Mardfin?

Mr. Mardfin: I just want to make sure it's – that that's the motion narrowly defined, not the – the December 14<sup>th</sup> memo refers to some general things about having these permit transfers handled administratively. We're not dealing with that at all, is that correct? We're dealing with this particular transfer?

Mr. Spence: Yes. It would be just this – the motion was for this particular Item No. A.

Mr. Mardfin: So we're not talking about a general policy of transfers?

Mr. Spence: Correct, and I would have to look back at your rules to see what the – about transferring. I believe they all come to this body?

Mr. Giroux: Yeah, I believe it would be – it would be governed by the permit itself, what the wording was on the permit and then we also have news that have been passed, rules that have been subsequently. So it's a different issue.

Chair Starr: You know, I read this, I appreciate you bringing this back to our attention because I read it and was kind of shocked and I forgot about it, but as part of the recommendation it says that the department recommends approval of the transfer of ...(inaudible)... Special Management Area Use Permits along with the revision of the transfer condition to allow future Special Management Area Use Permit transfers to be reviewed administratively and be approved by the Planning Director.

Mr. Mardfin: And I just want to make sure that's not part of this motion.

Chair Starr: So, I, you know, I did have a moment of paranoia thinking that there was an attempt to slip through a change in our practice. Mr. Giroux could you comment on whether this –

Ms. Cua: I could comment if you want?

Chair Starr: Yeah.

Ms. Cua: The rules right now, and I don't have it in front of me, but the rules, the SMA Rules were



amended years ago to allow the Planning Department to do transfers. We do it now. The challenge is that there are old permits that have the language that says the Commission has to transfer. So actually what happened with, with these Makena properties, there's quite a number of permits that were issued for Makena Resort historically. A number of them say subject to the – extensions are subject to the approval of the Planning Director, but there are a few that still say Planning Commission. And so, we're just trying to, you know, make them all consistent with the rules, and I don't know if you have that, the SMA Rules if James could let you know when that was approved, and what it actually says now.

Mr. Giroux: Yeah, thank you, Ann. Yeah, I do remember these discussions as far as what the effect of the rule is when it was passed and I believe these revisions were made some time in the – as early as '08. So what happens is in the law of retroactivity I think we have to look at what would be the ruling authority and our opinion has always been that the permit as issued is the ruling authority. As long as it's within the context of 205A. The rule, what would happen is the rule as passed in '08 would take, would be effective if the permit were silent on the issue. So what the Department is asking you to do is to look at the permit because the permit is what is the authority and the permit says that the Commission is to grant that. What rules says now is that the Department would be given, delegated the responsibility but in your rules, they would notify you of that transfer and you would be able to see what was going on. So, despite the rule, it doesn't exclude the Commission from looking at the permit and seeing if there is, you know, a special necessity to maintain authority. What the rule is it's your rule also, but your rule delegates the authority. So it, it – you have to be very clear when passing new conditions now that it's done with the knowledge that you are giving the authority to do transfers administratively to the administration.

Chair Starr: After notification to us and with the ability to see it if we want to I believe.

Mr. Giroux: That's correct. Yeah, the notification.

Chair Starr: Which is fine. I just don't want to give up jurisdiction without discussion.

Mr. Giroux: That's correct.

Chair Starr: Okay. Anyway we have a motion on the floor. The motion is?

Mr. Spence: To, the motion is to transfer SMA Permit SM1 98/0013 from the old owner to the new owner.

Chair Starr: Okay, all in favor please raise a hand. All opposed.

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

**VOTED: To Transfer Special Management Area Use Permit (SM1 98/0013) to  
ATC Makena S Golf LLC.  
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, W. Mardfin,  
W. Shibuya, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: We have seven nay –

Chair Starr: Seven ayes.

Mr. Spence: Seven ayes. I'm going to get this right.

Chair Starr: It's a long day Will, you're doing good.

Mr. Spence: Yes, we have seven ayes and zero nays. Motion is passed.

Chair Starr: Okay, we move right along to F-1b, and could you describe the area of F-1 b a little bit?

- b. Special Management Area Use Permit dated January 9, 2002 (SM1 2001/0013) for the Makena Alanui Roadway Improvement Project at TMK: 2-1-005: 085 (por.) And 2-1-005: 108 (por.), Makena, Island of Maui. Transfer is from HONU LLC to ATC MAKENA S GOLF LLC.**

Mr. Wollenhaupt: The next area under consideration is SM1 2001/0013, Special Management Area Use Permit for the Makena Alanui roadway improvement project and landscaping between the Maui Prince Hotel and the Makena Alanui, Makena Keoneoio

Ms. Cua: Keoneoio.

Mr. Wollenhaupt: Keoneoio Road intersection. So that would describe the area between the Maui Prince Hotel and the Makena Alanui Road intersection. Just to give you – this permit was extended by the Planning Commission by letter dated December 14, 2005. Project construction was initiated on December 13, thereby meeting the project condition requiring project initiation by January 31, 2009. And so it's currently an active permit that has five years after initiation in order for completion.

Chair Starr: Okay, is any members of the public wishing to testify on this? Not seeing any testimony is closed. Now, any questions, comments and motions? Commissioner Wakida?

Ms. Wakida: When did you say construction was initiated?

Mr. Wollenhaupt: Construction was initiated on December 23, 2008, meeting the project condition requiring initiation by January 31, 2009.

Ms. Wakida: And what is being done exactly?

Mr. Wollenhaupt: Well, it's improvements that would include pavement widening, lighting landscaping, gutters, sidewalks that's what is approved. I think that Becky Collins could probably illuminate it a bit further as to what their plans might be, but that was the original plan.

Ms. Wakida: And how long a stretch of road is this approximately?

Mr. Starr: Mile, mile and a half?

Ms. Becky Collins: I believe the stretch, this one I do have a map for and I can hand this one out. This one I'm a little more familiar with. It's probably just under a mile of roadway.

Ms. Wakida: Well, I guess my question is what is holding everything up? What's taking so long?

Ms. Collins: Well, this was started under the prior ownership and the project was in foreclosure process that we're just coming out of right now. And so we're reviewing this permit to see where we go from here on it as it relates to completing it within the time frame.

Ms. Wakida: Okay, this special permit was this in connection with a larger hotel?

Ms. Collins: Not to my knowledge. It's my understanding from the research that I've been able to find through the documents that this was just a piece of work that was being, was being done as they were planning their process. It is not to the best of knowledge, to the best of my research, it's not tied to any one particular development or development project like a hotel or a condominium or anything like that.

Chair Starr: Commissioner Hiranaga? Grab your mike Kent.

Mr. Hiranaga: Is this the section of roadway that goes south from the entrance to the Makena Golf Course and hooks up sort with the Old Makena Road that ran parallel to the ocean?

Ms. Collins: Yes, it is.

Mr. Hiranaga: So it leads up to the public parking and that Dowling project that he had proposed initially as condominiums and now single family residential lots?

Ms. Collins: I can confirm that that is the area, yes.

Mr. Hiranaga: Yeah, I think it is. So it may have been linked to that, the Dowling project. I think he still retains ownership on that?

Ms. Collins: Yes, he does.

Chair Starr: I believe this doesn't include that road, that runs along the shoreline, it just runs up to the intersection with that road.

Mr. Hiranaga: To the old road?

Chair Starr: Yeah.

Mr. Hiranaga: Yeah.

Chair Starr: Members, action or discussion? Commissioner Mardfin?

Mr. Mardfin: I'm sorry, I might have been distracted. When – the last permit for this was issued when?

Ms. Collins: Kurt informs me and the record states that it was extended in 2005. And my understanding is the prior ownership did start the work in – in late 2008.

Mr. Mardfin: And they have five years from when construction was initiated?

Ms. Collins: Correct.

Mr. Mardfin: So they have till 2013?

Ms. Collins: Correct.

Mr. Mardfin: And what is their status now?

Ms. Collins: Presently there's no work occurring on it while we're evaluating its – the overall need requirements.

Mr. Mardfin: Would explain that a bit more? Are you waiting for the transfer of ownership before they continue work?

Ms. Collins: No, we're not, but that would be something that would need to happen before the work could be done. But because my research doesn't show that this is specifically tied a specific project or a requirement, it may not be something that present ownership is going to proceed with, but we're researching it.

Mr. Mardfin: So they've done some work and they may just stop. Or some work has been done and the owners may just stop?

Ms. Collins: Well, the work has been stopped for quite sometime during interim ownership and it has not started back up again. So it may – we're still reviewing all of the options related to the work before proceeding. We want to make sure, it's, you know, the right work at the right time.

Mr. Mardfin: And why was it asked for originally?

Ms. Collins: It was asked for by prior ownership and as I said before, the research that I've been able to do to date does not tie it to any specific development parcel.

Mr. Mardfin: Thank you.

Chair Starr: Okay, Members shall we proceed with this? Commissioner Wakida?

Ms. Wakida: I just want to make a comment. The reason I raised the issue was in my limited experience here because I'm the new kid, subdivisions and projects get these special conditions attached to them like you got to improve the road or you have to add parking and so on and these

are done whenever they feel like it it seems like and then if a business or a subdivision or whatever goes into foreclosure and then the special road improvement or whatever gets passed on to who knows when and I have a little – this isn't going to be resolved with this what we're looking at today, but in general I have a concern about these special, these requirements, these conditions that are allowed to be completed later and I'm wondering – I think it's something that we need to be considering shouldn't they be completed up front or something along those lines.

Chair Starr: Ms. Cua?

Ms. Cua: I would like to be able to address that. I've been– although I may not have handled specifically some of these SMA permits, I did handle the overall change in zoning for Makena Resort and the – I understand what you're talking about. You're talking about improvements that are triggered as a result of a project and sometime – okay, what happened with Makena Resort and I'm going way back, how they chose to develop the resort is they did a lot of the infrastructure first. They did what we say should be done. They did the right thing. They came in for permits to do roads. They came in – separate roads not linked to necessarily a hotel or a single family project. I mean, look at the development that's – that is there today. I mean, it's not very developed in Makena and the resort did not do a lot of development. What they did do is a lot of infrastructure. They put in, you know, a lot of water line improvements. They were part of the joint venture. They put in a whole sewer treatment plant to take care of the needs of the entire resort and what ended up happening is some of that need was used from other areas. So there were specific projects within Makena Resort that were stand alone projects, and some of these roadway improvements were just that, and that's why you see it – Makena Alanui Roadway Improvement Project, that's what it is. It's not a Makena single family residential project that has this roadway improvement tied to it as a requirement. So this is different from something you normally, normally see, unless lets say the County comes in for a roadway improvement project. But this was typical of the resort and so, it's not something like I said, you normally see, but I think the concern you're talking about is not really reflected here. It is separate.

Ms. Wakida: Thank you so much Ann. You're also so helpful in your explanations.

Chair Starr: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, and the applicant can correct me if I'm mistaken but this section of the roadway is paved, it just does not have the curbs, gutters, sidewalks that you see as you drive from Wailea to the Makena hotel. You look at it it's urbanized. It's got the nice sidewalks, curbs, gutters, planting strip, trees, street lights. Right now, it's just paved. And so they're debating whether they're going to put that in or not. It's not really that big a deal.

Chair Starr: Okay, I have a comment here which is, you know, some of that spirit of trying to do things right and be a model did carry over through Mr. Dowling and his organization and I know part of what they were intending to do was to put really good filtration into the drainage for that road. And I was going to bring it up specifically when we got to the Keoneoio Road because it's more relevant to that though to a lesser extent along the main road where they were actually going to put in very large pieces of concrete which filter out the debris and pollutants from the runoff and let that settle out in separate chambers and absorb some of it. And that was kind of a selling point for them

that gained them a lot of respect and appreciation from the community. That and solar powering the sewage treatment plant and a lot of other things they did. So I don't really think it's time to extend new conditions or anything but I just did want to make a statement that that was a good deed and I hope that that continues because it's in everyone's interest to protect the shoreline waters and do it right. And I know they bought, you know, those big boxes and they bought the stuff to do, to do that filtration. You know, I hope, I'd love to see it, have that occur. Lets proceed, I'm sorry to digress. Does anyone have any desire to make a motion regarding the second of these permits, that would be "b?" Someone? Commissioner Freitas?

Chair Starr: Commissioner Freitas. Second, someone?

Ms. Domingo: Second.

Chair Starr: Second by Commissioner Domingo. The motion is?

Mr. Spence: The motion is to transfer SMA Permit SM1 2001/0013 from the former owner to the present owner.

Chair Starr: Okay, all in favor please raise a hand. All opposed.

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

**VOTED: To Transfer Special Management Area Use Permit (SM1 2001/0013) to ATC Makena S Golf LLC.  
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, W. Mardfin,  
W. Shibuya, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: Seven ayes, zero nays. The motion is carried.

Chair Starr: We get to the third one. Mr. Wollenhaupt?

- c. Special Management Area Use Permit dated November 21, 1990 (86/SMA-010) to construct improvements to the Makena - Keoneoio Road including two (2) permanent cul-de-sacs and related road widening, public beach access, and 40 parking stalls, walkways, rock walls, public comfort station, beach activities shelter, landscaped planting, and related improvements at TMK: 2-1-005: 084, 2-1-005: 086; 2-1-008: 056; 2-1-006: 057, 2-1-006: 057; 2-1-006: 059; and 2-1-006: lot 1-B, Makena, Island of Maui. Transfer is from HONU A LLC to ATC MAKENA HOTEL, LLC.**

Mr. Wollenhaupt: The third SM1 that's to be considered for transfer today is 86/SMA-010 to construct improvements to the Makena - Keoneoio Road including the permanent cul de sacs, road widening, public beach access, parking, walkways, rock walls, comfort station, beach activities. Again, this transfer is from Honua LLC to ATC Makena Hotel, LLC. This project has been

completed. However, as in many of these SMAs there are continuing compliance conditions both of which are noted in the report, 11 and 17, that the comfort station is open to the public from 6:00 a.m. to 7:00 p.m. and the applicant's responsible to maintain the public beach rights of ways and accesses.

Chair Starr: Members? I know I'd like to hear from the applicant regarding first of all, their intent regarding the maintenance of access, the trail, the gate, the public's ability to have free use of the comfort station, the maintenance of the drainage improvements for filtration and so on to the best of their ability.

Ms. Becky Collins: Okay, the area that is covered by this SMA Permit is the area that is fronting the hotel and it starts at the north terminus of Makena-Keoneoio Road and continues through in front of the makai side of the hotel along the stone pathway and completes and finishes at the south cul de sac which is the other terminus of Makena-Keoneoio Road. And we are maintaining that on a regular basis and it's beautiful. And the comfort stations are open and clean and very well used on a regular basis, not only this one but others at Makena Landing and in other places right near the resort. So that as the conditions of the SMA Permit, we are doing that. As a separate item relating to the lateral shoreline access, again, that is a zoning requirement. It's – I will look into it. I will continue to work on it. As Irene said, we've worked together on a number of things so we will look toward making that a more friendly experience and a more Hawaiian experience. White picket fence not being necessarily the right venue for that.

Chair Starr: Okay, thank you. That is what I was I hoping to hear. I do have one other question, and there's a rumor going around that there's a plan to build housing units where those golf holes are between Maluaka and the ocean. I don't know if that touches the shoreline access or not, but can you tell me if that's – if there's reality to that?

Ms. Collins: Well, I can't say this is the first time I've heard it because the first time I heard was when Ann let me know that it might come up. That was the first time I've heard it. I would absolutely love to meet with you separately to find out where you heard it so that I could follow it back to its source because I have no – that's the first –

Chair Starr: So that's just a rumor and there's no –

Ms. Collins: Coconut wireless, and regardless, I would have to come before this body and many others to make something like that happen.

Chair Starr: Okay in that case, I give it zero validity and I apologize for bringing it up.

Ms. Collins: But again, I would really honestly love to hear where it came from so that I could track it back because we're trying to, we're trying to not proliferate these types of rumors and to try and get the miscommunication source so that we can clarify and provide accurate information.

Chair Starr: Okay, good. Thank you. Commissioner Hiranaga?

Mr. Hiranaga: I just wanted clarification. You said, the seventh hole?

Chair Starr: I don't know what the – the ones that are between Maluaka and the ocean.

Mr. Hiranaga: Yeah, the only hole that runs parallel to the ocean in the whole resort is the golf course ...(inaudible)... that one.

Chair Starr: I'm innocent of golfing so excuse me.

Mr. Hiranaga: That's the one.

Ms. Collins: I believe, just to be very clear, that's the area that he's referencing but we have –

Mr. Hiranaga: It's the only hole --

Ms. Collins: Yeah, we have no plans other than golfing there.

Mr. Hiranaga: --in Makena that fronts the ocean.

Chair Starr: Okay, good. It's a really beautiful spot. Okay, Commissioner Wakida?

Ms. Collins: Could you indulge me one other thing? I'm sorry.

Chair Starr: Yeah.

Ms. Collins: And, and, when you were at the resort and felt unwelcome, I apologize for that and I'd love to hear some more about the time frame. If it was during our ownership or if it was prior to our ownership. If it was during our ownership, I'd like to know so that I can rectify that as well.

Chair Starr: How about if I, you know, if I – if conditions are that, you know, there are new – I see new signs posted and new fences, I'll let you know.

Ms. Collins: Please do.

Chair Starr: But I don't want to complain about something that's been cured.

Ms. Collins: Thank you.

Chair Starr: Commissioner Wakida.

Ms. Wakida: I am not clear on this is for the Commissioners and for you, where we – what we decided on this recommendation that the future Special Management transfers be reviewed administratively by the Planning Director in this recommendation. What was decided on that? Anything?

Chair Starr: So far we've not acted on that.

Ms. Wakida: Okay.



Chair Starr: In the first two.

Ms. Wakida: Okay.

Chair Starr: So lets, Commissioner Mardfin.

Mr. Mardfin: I just want clarification. When, I think I heard what you said properly, but I want to just be real certain, when you offered for the Chairman to meet with you on problems, but you have made a commitment to deal with that gate and I know you said the signs have been taken down but the – the sign on the gate said, I wrote it down, something about, see somebody about – now I can't find it, call us, call us about getting access for an unforgettable experience or something like that, you're going to do something with the wording of that and something with?

Ms. Collins: We're gonna work with – as I said, we're working with Irene on a number of things, Maui Tomorrow's group on a number of things and we'll, as a part of that, this SMA dates back to 1990 and it has two ongoing conditions and as it relates to that SMA, I'd like to, you know, we're gonna continue to comply. As a separate matter, we're gonna work on making that a better experience.

Mr. Mardfin: Okay, thank you very much.

Chair Starr: Okay, any members of the public wishing to give testimony on this item, please make yourself known. Not seeing any, public testimony is closed.

The following testimony was received at the beginning of the meeting:

Ms. Lucienne deNaie: On to F which is kind of a standard item about SMAs being transferred from one owner to the other which is a condition of every SMA that, you know, you need to inform the Commission when ownership is changed. This has to do with an SMA, Number C. Makena Resort has an SMA that was issued many years ago for the establishment of the Maluaka Park and the cul de sac. There was a settlement of a legal agreement. Since that time, conditions have been put forward by this Commission and by the County Council asking for lateral access along that shoreline. The language is a little weak, it says, if practicable. But there is traditional access along that shoreline. Ms. – Maile Luuwai came and showed you pictures and referred to her father's use and her uncle's use of that shoreline trail. And now is the time when this SMA permit is being reviewed just to make sure that that lateral access can be continue to improve. Your Commission was told for example, that oh, it's just fine. One of the Commissioners said I walked there with my kids. Well, when Mr. Luuwai was taken to show the trail he was supposed to walk again. His comment was this isn't where the trail was. The trail was where it was safe and along the edge of the golf course. This is not where a trail has been established now. So unfortunately, things are portrayed one way and they happen differently in the SMA area. So I would just urge you in your routine approval of these things, try to reinforce the coastal zone management objectives which are allowing traditional and public access.

This concludes the testimony received at the beginning of the meeting.

Chair Starr: Any other comments or a motion would be in order? Someone? Jack?

Mr. Freitas: So move.

Chair Starr: Moved by Commissioner Freitas, seconded by Commissioner Domingo. ...(inaudible)...

Mr. Spence: Okay, the motion is to grant, go ahead and transfer SMA Permit 86/SMA-086 from the former owner to the new owner.

Chair Starr: Okay, any comments? All in favor, please raise a hand. All opposed.

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

**VOTED: To Transfer Special Management Area Use Permit (86/SMA-086) to ATC Makena Hotel LLC.  
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, W. Mardfin,  
W. Shibuya, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: Okay, we have seven ayes and zero nays, so the motion is carried.

Chair Starr: Okay, Ms. Cua?

Ms. Cua: Are you, are you willing to address for these permits the transfer or no, you want to keep it coming back here?

Chair Starr: No, that was not part of the motion.

Ms. Cua: Okay.

Chair Starr: Okay, thank you very much. Is it time for a –

Mr. Spence: Do you want to do the workshop?

Mr. Shibuya: Workshop.

Chair Starr: Okay, workshop, workshop. And I want to preface the next item with just a brief introduction. The intent for this was to really help us gain an understanding and tie our own, our own ongoing actions with, you know, news story of the flooding which, you know, in a worse storm would have been life-threatening. You know, we definitely are in the – involved in this in our decisions regarding the shoreline, regarding retention, and regarding channelization and all these other issues has bearing. So we've asked Mr. Buika and Ann to make a little presentation on this. I'm hoping we can keep it quite, fairly short today because of our full agenda and we will be coming back to flooding issues in February when we're going to have FEMA and State come to us with flood rules and I was hoping we would have a more definitive discussion and maybe revisit the work that Mr. Buika's been doing looking at our own rules and our own actions at that time, but I did feel

that this, since this is noteworthy, it's Kona season we're seeing it occur, you know, to a greater or lesser extent every week, we ought to have a little presentation on it. So Mr. Director, why don't you introduce it?

Mr. Spence: Item H on your agenda, the workshop on the damage caused by the recent flooding in Kihei over Christmas 2010 weekend and the Staff Planner, is James Buika.

**H. Workshop on the Damage Caused by the recent flooding in Kihei over the Christmas 2010 Weekend ( J. Buika)**

Mr. Jim Buika: Good afternoon, Chairman Starr, Commissioners, Corporation Counsel and all the new Directors. My name is Jim Buika with the Planning Department and the purpose of this agenda item again, is just to present some images and document some of the Kihei flooding that occurred between December 21<sup>st</sup> and 26<sup>th</sup>, 2010. And again, I'd like to thank Chairman Starr for adding this short presentation to the agenda today. I'd like to acknowledge Mike Napier of our GIS Section, Planning Department, who's put some of the GIS maps together. The photographs are not mine, they were Anna Benesovska, Planner, did a post mortem survey about a week after the event and then some photos were submitted by both Bob Richardson of the Kihei Community Association and the South Maui Volunteer Group, and then Kevin J. Olsen, both private citizens here. So this is just a short summary of many, many photos that were taken.

Just some caveats, limitations on the presentation. Again, we just selected a few slides to present the scope and the types of damage that we saw in Kihei. We did our best, to our best of our ability to identify locations and the dates. This presentation does not represent any form of an official preliminary damage assessment and there was no County disaster declaration from this from fairly isolated event. We are not presenting any causes whatsoever of the flooding here today, but really – the reason for the presentation is just an awareness raising presentation so that we can follow up with the Commission at a later date to look at some of the causes and solutions to chronic Kihei flooding.

So we'll look at three hard hit areas. First, Kamaole II Beach Park, then we'll move north to Maui Lu area, and then to North Kihei near the Luana Kai Resort and the Maui Schooner Resort. This is a time line of event provided by Bob Richardson. On Tuesday, December 21<sup>st</sup> was the evening of the first flooding that hit Kamaole Point. The first slides I'll show you, came through Keonekai ditch and it flooded for two, three days out onto the beach. Then there was a short hiatus, Thursday, Friday, right before Christmas. Maalaea was flooded. The Island Sands Resort, Thursday evening, December 23<sup>rd</sup> and into the 24<sup>th</sup>, and then Sunday, December 26<sup>th</sup>, North Kihei got hit pretty heavily by mud and floods that were generated from Upcountry. It was actually an interesting day, it didn't rain in Kihei but it flooded in Kihei on that day. So they really weren't ready for it.

So moving to the south I'll show you, this is just an image, I'll show you the location map in a second. But this is the drainage channel at Kamaole II mauka of South Kihei Road. Those people are standing on the drainage channel. That's South Kihei Road looking to the north. And you can see, this is a churning quite a large volume of muddy water flowing. The next slide, picture will be onto the beach in Kamaole II. This our location map, this is the drainage gulch that the water is

coming down, the blue arrow shows right, the culvert at South Kihei Road and then it goes onto Kamaole Beach Park, Kamaole II. This is the drainage channel here cutting same amount of muddy water and you can see it extended all the way across here. It cut through all of this dune and breached the dune out to the ocean here. You can see to the north some of the debris that is accumulating on the beach from Upcountry. You can see some sand fences and the dune work that has been done here over the last several years. This is again is looking north, the same day, Kamaole Beach II you can see the debris collecting on the ocean and the muddy waves here, muddy ocean. Next slide. And this is a horrific slide mud laden waves here on the same beach. The next day, the beach with runoff and tourists, I'm sure some locals here, but this is still when we had a bad water issue out here on Kamaole II. And this is one week later, this is Anna's picture. This is Bob Richardson here who does a lot of work, he permits various dune stabilization projects with County Parks and Rec and the Planning Department and this is the same Kamaole channel makai of South Road over here showing how it has, it has receded and stabilized.

So now we'll move up north a little bit to Kulahakoi Gulch and Kaunalu Stream area both called the same thing, this is up by the Maui Lu, again, this event broke through a fairly large dune complex here, and you can see there's a lot debris on the shoreline and the water is continuing out, but it did rage through here at one point. This is a week later after the event. Next slide.

So this is a location map of where we are. Here's the Maui Lu Resort to the north, the big green lawn that shows the flooding. This is all the flood zone map in here. So it's a area of low laying area, chronic flooding. Here is the actual gulch that comes through and it also comes from Upcountry through this channel right here, so this is the area we're looking at the hatched mark. Next slide.

This is on the mauka side of the South Kihei Road where we have three I don't know, four to six foot culverts underneath the highway showing what happens in these large events when a lot of debris is carried from Upcountry. It creates a log jam, jamming up the culverts under the highway causing flooding across the South Kihei Road, not the highway but South Kihei Road. These are these Jersey barriers on the south side or on the makai side of the gulch here. Next slide.

So this is again, this is after a week, aftermath, this is on the makai side showing the channel that we saw through to the ocean. This is the Jersey barrier there, there were a couple of them that I had pointed out and you can see the force that that went through there and took out some of the reinforcement in all of dunes. You can see it's a bout 10, 12-foot dune on the left-hand side here remaining.

This again, is an aftermath about a week later. This is looking from standing on South Kihei Road looking up, up the gulch and you can see the mud flat that has been created in this low lying flood plain here, and then, next slide, again, this is looking again, on the mauka side, these are the drainage culverts, one, two, three, four underneath South Kihei Road where a lot of that debris has been removed but you can still see the mud laden fresh waters coming down from, from the storm event.

Moving north from there to North Kihei, approximately 940 South Kihei Road, by the Luana Kai and the Maui Schooner area. This is South Kihei Road. This was one representative example of quite

a bit of South Kihei Road that was caught in a, kind of a “mud flood,” here Public Works worked on this day and night with some heavy equipment to get the roads cleared. Next slide, I think I just have one more. Okay, this shows the area again. Again, the light yellow green area here in the red is all of the flood zone, the FEMA flood map, again, is by Waipuilani Stream, this is the area that we’re looking at here. Next slide. And this is some of the extent, another, just an example of the amount of mud that moved out onto the roads here in front of Luana Kai area here.

And then just in conclusion, my final two slides, this is just a representative flooding on South Kihei Road, day after Christmas, circa day after Christmas, December 26. You can see the amount of flooding, standing water, and then my final slide here, is just showing the rehabilitation and that the impact were road closures and some flooding to isolated areas and some homes. So that concludes my presentation of these three areas.

Chair Starr: Thank you very Mr. Buika and Ms. Benesovska, well done.

Mr. Buika: Thank you.

Chair Starr: First of all, I want to introduce and welcome Rowena Dagdag-Andaya, who’s Deputy Director of Public Works, I think I saw her coming in. We’ll be happily seeing a lot of her and it’s good to have her with us. And I want to turn things over for a couple of minutes to Mr. David Goode, you know, I think all of us we’re not, none of us are into finding fault. I think Public Works their people really went out of their way to try to make the best of a bad situation. They did heroic work, but what can we do to improve the situation as the years go on and how can we, what can we all do, Mr. Goode?

Mr. David Goode: Thank you Chairman, Members of the Commission and thanks Mr. Buika. Boy, your put together, and I started the job six days ago and this has been Item No. 1 on my agenda. I’ve actually had three, Item No. 1’s that were tied for first. And I spent some time with the Engineering Division which, you know, basically plans and builds drainage and roadway improvements to get an understanding of what’s happened in the eight years since I’ve haven’t been involved and what’s in the works?

I think first of all, it’s safe to say that these were huge events. Some have been basically micro bursts of clouds Upcountry. I live Upcountry so, Mr. Shibuya you were there too, it was pretty intense that particular day. Anytime you have a flooding event, engineers that look at flood waters not only look at volume but they look at what’s called scouring. And we don’t think about it much but scouring is what causes gulches. When we have intense rainfalls, I mean, that’s what water does. Water can wear down rock, water can take just about anything with it. And I think what you see in a lot of these slides is that you saw the effect of major scouring and it was complicated I believe by the fact that we’ve had a few years of drought. So we have a lot of powdery conditions, we have trees that have died, this is all mauka not – outside the SMA area that complicated this and brought down a lot more junk than certainly we’re accustomed to seeing. So that’s kind of background.

We have, the Department has a Drainage Master Plan for Kihei. I need to get myself reacquainted with it. It does include the idea of including retention basins mauka. Those of you that have been

West Maui or from West Maui, you can see there's a series of drainage basins throughout West Maui that pick up the runoff that runs off that mountain and is laden with sediments and collects it in such a way that it helps to, you know, protect nearshore waters. All those basins were built with Federal funds. Most of them are a 100 percent, some 80/20, in fact, we're participating right now to ...(inaudible)... final one towards Puamana that big drainage master plan.

Chair Starr: We'll be seeing that on our site inspection I believe.

Mr. Goode: Great. But you'll probably see some water in some of them for sure. South Maui only has really just project-based ones. I'm not aware of any mauka there might be, but there really aren't that many. And then finally, just kind of work your way down the mountain. I mean, South Kihei Road is our kind of point of entry that's under County control. Piilani Highway is a State highway. Most of the openings over the highway are bridges, they allow the water to flow through pretty easily, then you hit South Kihei Road. And South Kihei Road, it was identified many years ago, before I started with the County that needs, it needed significant upgrades and improvements. And South Kihei Road, Phase I is about in the area of Kamaole II where you saw the water going under the bridge, with tourists standing on the bridge. No problem, there's plenty of capacity. Actually that was a functioning drainage system in my opinion. I worked perfectly. We saw slides a few days later where the beach had closed back and was starting to repair itself. As to the quantity of sediment that might be another discussion item but what you saw was really a functioning drainage system. What you saw in the other slides, was where those road improvements of South Kihei Road, went Phase 1, Phase 2, Phase 3 and at just before Lipoa and it stopped. There's a separate project Lipoa, some of which was picked up by the commercial entities in that area and then South Kihei Road Phase 4 which I recall permitting with this, your predecessors, whatever year that was 2000 or so, we got an SMA Permit and we were ready to go, had spared the monkey pods, figured out a way to make it work and provide those drainage improvements and quite frankly was stopped by the Luana Kai, the same condominium complex you saw that got flooded. Well, low and behold now they want everything cleaned out. They're actually the ones that stopped the project. So those Federal funds evaporated. South Kihei Road Phase 4 did not proceed, it stopped and the drainage improvements and the roadway improvements, you know, it's the stuff you see on top of the road is what you see, but what functions is what's under the road. And so there was an opportunity in that particular area to fix it and it stopped even though we got the SMA Permit. So I'm anxious to try to revive that project. I got to sit down with the Feds and the State and figure out how we can get those funds again. But Phase 5 was down by Kaonoulu which is the next section and Phase 6 if I recall correctly I think went all the way to North Kihei Road.

So we have, we've had plans, we've had some permitted. Those that have been done functioned pretty well. Those that haven't been done, we'd like to get going and finally, we'd like to work on these retention basins mauka and actually the first one is the Maalaea one, I kind of expected we'd see some folks from Maalaea. They got hit again last night. You know, knock on wood, they don't get it tomorrow, but that drainage basin that flooded in '06 or '07, Council appropriated funds, the department hired an engineer, they got plans, I've seen them. We have no monies right now for construction. So one thing, in fact, I need to meet with the Budget Director in 15 minutes to talk about our upcoming budget is whether we should appropriate \$2 million of construction money for a retention basin for that particular one above Hauoli Street. If that's something you feel is

important than I'd suggest maybe the Commission or you as individual members help lobby the Council for that. That would likely be an all County no Federal fund type project that's roughly 2 million bucks. But again, the idea would be big basin in front of Hauoli Street, collect, collect the water, slow it down, have the sediments drop, outlet it into an, take it to an outlet that works. Right now there in that particular case there's a 48-inch pipe, it would go to two box culverts and probably utilize the same channel that operates that's basically there through the condos already and it would function.

So I have learned a little bit in the last six days. So we will continue that process, but again, it will come down to money because I think, quite frankly the work that you folks do within the SMA is rather small in scope in terms of area, and the real action happens up above. And so while you do your best what you can with those particular projects and those particular areas, you know, the big, the big results are going to come from I think significant projects mauka. So we look forward to working with you guys on – love to come back here with South Kihei Road, Phase 4, you know, if we can get the funding for that. I guess the final thought I'll put out with you is our guys are on call. They were out there last night. I was on the phone with some of them, 8 o'clock last night. They're going to be prepared to go out there tomorrow. We're going to get another maybe more worse storm, and they work to do what they can as debris coming down without putting themselves and lives in jeopardy. You know, if a culvert is clogged up, you know, there's a potential of road washout, there's raging waters in some instances, and I don't want to put our guys at risk, but we'll clear culverts and we've cleared culverts and finally, we'll work at the ocean mouth where we have access, you know, to help, if needed open up certain berm areas so the water can get out without risking further life and property. So that in a nutshell is or maybe more than a nutshell is where we're at.

Chair Starr: Okay, thank you very much Mr. Goode. I think we all appreciate that you hit ground running and you're going to be proactive in this issue. And hopefully, the further uphill we can deal with it, the less damage to property and to our reefs will occur. Members, you know, if there's any pressing questions we can take them. Really, we're going to have a more in-depth discussion about this in February and so, you know, if you could hold off and it will probably be more useful then. Commissioner Mardfin?

Mr. Mardfin: Just one quick one of Jim. Has anybody checked, are there any coral reefs outside of the Kihei area that somebody could have checked?

Mr. Buika: I do not know. I do not know.

Mr. Mardfin: That would strike me as a useful thing for somebody to do.

Chair Starr: I've been out – I was out there last week and there's a lot of mud on them, but it's not ...(inaudible).. it's not scientific, but there's a lot of mud out there.

Mr. Buika: Anecdotally I've been out, I've been out on one reef at Keonekai and over the weekend, Saturday and Sunday it was crystal clear, looked good, but it was far south of, fairly far south of Kamaole II and I don't think it, it, it didn't appear that area took that much of a hit from the muddy water.

Mr. Mardfin: If somebody wants to do a good PhD dissertation they could figure out how quickly the coral recovers.

Mr. Buika: It's a huge issue. It's a huge issue of monitoring. How do we monitor the reefs. That's something that's beyond the County, but it is an issue that we've raised before.

Chair Starr: Well, thank you very much.

Mr. Buika: Thank you.

Chair Starr: We're going to take our ten-minute recess at this point and come back and finish up.

A recess was called at 3:47 p.m., and the meeting was reconvened at 3:59 p.m.

Chair Starr: Commission meeting of January 11, 2001 is back in order. Item I, Mr. Director?

**I. ACCEPTANCE OF ACTION MINUTES OF THE DECEMBER 14, 2010 MEETING AND REGULAR MINUTES OF THE SEPTEMBER 14, 2010 AND NOVEMBER 23, 2010 MEETINGS.**

Mr. Spence: Thank you, Mr. Chairman. Next item on our agenda is acceptance of the Action Minutes from the December 14, 2010 meeting and the Regular Minutes from September 14, 2010 and November 23, 2010 meeting.

Chair Starr: Okay, anyone have any corrections, revisions, comments or wish to make a motion? Commissioner Wakida?

Ms. Wakida: I so move the acceptance of the minutes.

Mr. Shibuya: Second.

Chair Starr: Okay, moved by Commissioner Wakida, seconded by Commissioner Shibuya. The motion is?

Mr. Spence: The motion is to accept the minutes from all these different meetings.

Chair Starr: Okay, all in favor please raise a hand. All opposed.

**It was moved by Ms. Wakida, seconded by Mr. Shibuya, then**

**VOTED: To Accept the Action Minutes of the December 14, 2010 Meeting and Regular Minutes of the September 14, 2010 and November 23, 2010 Meetings.**  
**(Assenting - P. Wakida, W. Shibuya, K. Hiranaga, J. Freitas, W. Mardfin, D. Domingo, L. Sablas)**  
**(Excused - O. Tagorda)**



Mr. Spence: Okay, thank you, Mr. Chairman, that's seven ayes and zero nays. Motion is carried.

Chair Starr: Okay, good. Director's Report, for the Director's Report we turn to the Director.

Mr. Spence: Commissioners, we have two items, several items for the Director's Report. the first one is for Mr. Matthew Slepín, Senior Associate of Chris Hart and Partners on behalf of Central Pacific Bank. They're requesting a two-year time extension on a SMA Permit condition to initiate construction at the Pacific Plaza Office Complex on Lipoa Street in Kihei. The Staff Planner is Anna Benesovska. I'll get that right.

## **J. DIRECTOR'S REPORT**

### **1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of her intent to process the time extension request administratively on the following:**

- a. MR. MATTHEW SLEPIN, Senior Associate of CHRIS HART AND PARTNERS on behalf of CENTRAL PACIFIC BANK requesting a 2-year time extension on the Special Management Area Use Permit condition to initiate construction of the Pacific Plaza Office Complex and related improvements on Lipoa Street, TMK: 3-9-002: 215, Kihei, Island of Maui. (SM1 2006/0041) (A. Benesovska)**

**The Commission was previously notified of the transfer of the SMA Use Permit from LIPOA STREET PARTNERS LLC to CENTRAL PACIFIC BANK.**

Chair Starr: Okay, Ms. Benesovska, and please explain our options here.

Ms. Anna Benesovska: Good afternoon, Commissioners. My name is Benesovska. I'm the planner assigned to this project. We also have Mr. Matthew Slepín of Chris Hart and Partners with us who is representing CPB, Central Pacific Bank, the applicant. And we also have Mr. Stacy Otomo, the civil engineer for the project and Chris Hart of Chris Hart and Partners here to answer any questions that you may have.

This item is a two-year time extension request. It's requesting an amendment to Condition No. 1 of the Special Management Area SMA Use Permit for the Pacific Plaza and related improvements in Kihei, permit SM1 2006/0041.

On September 8, 2010, the Department approved a Special Management Area SMA Use Permit transfer for the Pacific Plaza and related improvements project from Lipoa Street Partners, LLC to Central Pacific Bank, the current owner. The current property owner, Central Pacific Bank is requesting a two-year time extension and modification to the permit so that the SMA Condition No. 1, would be amended to read in part, "that the construction of the proposed project shall be initiated by July 31, 2012". Pursuant Section 12-202-17(e)(1), Special Management Area Rules, the

reasons for the permit time extensions are as – extension are as follow:

The Lipoa Street Partners, LLC, the original owner of the parcel and original holder of the SM1 2006/0041 permit were unable to initiate the project due to financial difficulties due in some part to the general economic crisis. Ultimately, the property was acquired by Central Pacific Bank through a deed in lieu of foreclosure. CPB are not developers and are unprepared to initiate the project by the time specified. Their intent is to find a buyer who can develop the property pursuant to the SMA permit.

Pursuant to Section 12-202-17(e)(2), Special Management Area Rules, the length of the time extension requested is two years so that the Condition No. 1 would be amended to read in part, "that construction of the proposed project shall be initiated by July 31, 2012."

Pursuant to Section 12-12-17(e)(3), Special Management Area Rules, analysis of whether any changes have occurred within in the Special Management Area since the granting of the permit that may cause the permit holder's development to have a substantial adverse environmental or ecological effect is as follow:

There have been no substantive changes to the County of Maui Special Management Area since the granting of the SMA Permit on July 23, 2007. No amendments to the SMA have been made in this time. No significant changes in population, public services, infrastructure or land use have occurred since then.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: I hate to interrupt. I didn't receive this time extension. I did have the packet on the transfer, but I didn't have the time extension. Does anybody have it?

Ms. Domingo: It was at the end.

Mr. Mardfin: This is transfer.

Mr. Yoshida: I believe that exhibit, Exhibit 2 is the September 9, 2010-letter from Matt Slep in to Kathleen Aoki, Page 2.

Mr. Mardfin: Thank you very much.

Mr. Yoshida: And they're saying that they're requesting a two-year time extension.

Chair Starr: Okay, my understanding of this, this is a – one of those areas that we did a change in the rules a couple of years ago. Originally, we, the Commission, reviewed all of these time extension and we changed the rules so that it would come before us and we would decide whether we want to review it and decide whether to grant it or whether we want to waive our review and leave it to the Director. So what's really before us is not the time extension but whether we want

to review it or waive our review and allow the Director to review it. So if we waive it, we're not automatically approving it, we're saying to the Director, you use your judgement me for it and we don't need to spend commission time on it. So I just wanted to clarify that. Commissioner Hiranaga?

Ms. Benesovska: I have one final item.

Chair Starr: Yeah.

Ms. Benesovska: 12-202-17(e)(4), Special Management Area Rules, analysis of whether any changes have occurred within the special management area since the granting of the permit that may cause the permit holder's development to adversely affect the capacity or condition of the infrastructure is as follows:

There have been no substantive changes to the County of Maui Special Management Area since the granting of the SMA Permit on July 23, 2007. No significant unexpected changes in population or increased demand for infrastructure have occurred. Based on the information, the Department is recommending to grant the two-year extension and request the Commission to waive the review of the request.

Chair Starr: Commissioner Wakida?

Ms. Wakida: I don't know if I'm misreading my packet, but it says here the construction of the proposed project shall be initiated July 31, 2013 and you're saying 2012?

Ms. Benesovska: On July 31, 2012 would make a two-year extension.

Ms. Wakida: But this says, 2013? Am I looking at the wrong thing? This is in Exhibit 2, under Condition 1.

Ms. Benesovska: I apologize that must have been my mistake. The extension is for two years, and it should read July 31, 2012.

Ms. Wakida: Okay.

Chair Starr: 2012. I have a question for the civil engineer on the project. Looking at the aerial photo, I notice that the contiguous lot which is about the same width to the north of this is wetlands where this one, you know, is not wetlands. How was the – what's the background and why was the decision made to make some of it wetland and fill some of the other portions?

Mr. Stacy Otomo: Stacy Otomo. Chair Starr, good afternoon. The northern portion of the property is the start of the wetlands between this area and Longs Drugs. So the back end of the property is actually the start of the wetland.

Chair Starr: So in other words, half of the property is wetlands and half is it not or a portion is then?

Mr. Otomo: No, the entire back end is the start of the wetland. So there's no wetlands on the property.

Chair Starr: Okay, but how – I mean, one – I assume that all of this was wetlands at one time and some of it was filled in and some of it was maintained as wetlands. You understand anything about the history of why some of it, this portion is filled in and buildable where the portion next to it and other portions are, are maintained as wetlands?

Mr. Otomo: I'm not sure of the history, but I know when the Longs Center and the Azeka Shopping Center was built, some of these wetlands were actually created. I don't have enough history going back that far, but I know those projects kind of triggered how these wetlands were created.

Chair Starr: Perhaps Director Spence has a comment?

Mr. Spence: Similarly, I can't give you a date or particular project but I understand these wetlands were created. They went through extensive review by the Army Corp of Engineer, and it was, if I have it right, it was in relation to Azeka II Shopping Center. It was a mitigation project. If you look at the little dots on the aerial, those are actually manufactured nesting site for Hawaiian Stilt. So I guess the subject property was not a part of that project and there were no wetlands on that site. The wetlands are just to the north.

Chair Starr: So it was the Army Corp of Engineers that made the call over which were to be maintained as wetlands for habitat and which were to be filled in?

Mr. Spence: Correct.

Chair Starr: Okay, that was my, that was my question. I got one other question. How's the drainage on that site to be handled? ...retention?

Mr. Otomo: On this particular project, everything is handled by subsurface drainage systems. I think when the original SMA Permit was granted that was the way it was presented. A brief background. This project has been underway for quite some time. So we were actually in for a building permit, and we were fairly far along. I think there was one outstanding issue with Department of Public Works which was the Lipoa Street frontage, but basically the drainage plan was approved by them and as far as Department of Water Supply there were some calculations that they were waiting for, but that's when the project went into limbo so there was no sign off but that's the status of the project as it is right now.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Stacy is there additional capacity for your drainage system to go beyond the minimum requirement of the County Code?

Mr. Otomo: What we committed to at the time the SMA Permit was granted was to take care of the increase plus an additional 15 percent. We're slightly above the 15 percent as it stands right now in for building permit.

Mr. Hiranaga: But without having to redesign the whole project is there or is there a geographical or size limitation on the lot that prevents you from increasing the retention?

Mr. Otomo: There is some limitation in a sense that this is a fairly low laying area. The elevation ranges, the finished elevations ranges between seven and eight feet. So we don't have an opportunity to install large diameter pipes. The ones that we have right now are based on a design of 24 inches and 36 inches. So we needed to put in a lot of pipe to get the, even the 15 percent additional volume in there. We didn't have a detention basin situation. So everything is subsurface drainage.

Mr. Hiranaga: Is this the building with the driveway in the middle of the building. You kind of like built it over the driveway, the parking lot is in the back?

Mr. Otomo: No, the main building is in the back and I think there was one – this is Lipoa Street, the main building was further back and there was one complex for the front of the property.

Chair Starr: Was that a self – one of them a self storage and the other an office building? Is this the one? Yeah. Okay, Members any other questions? Commissioner Shibuya?

Mr. Shibuya: I'm just concerned about two years extension. Is that too short?

Mr. Matt Slepín: Good afternoon, Matt Slepín.

Mr. Shibuya: I would like to give you more, but you say two, I say, okay, well.

Mr. Slepín: We'll take what we can get. Sorry, Matt Slepín with Chris Hart and Partners. We're serving as planning consultants. It's my understanding that if we ask for more than two years at this point, then we had to – we immediately fell into full planning commission review of the time extension. And given the uncertainty of what's going to go on here, actually my initial letter had asked for three, but when we talked about it, when Anna and I talked about it, we realized that given – we don't know what's going to happen here quite yet, it made sense to me and to Central Pacific Bank to just ask for two, try to keep it simple right now and then figure out. But you know, they'd take more, but we didn't want to go through that more complex process right now, basically is the answer.

Mr. Shibuya: Okay, so you're in punt mode now?

Mr. Slepín: I'm sorry?

Mr. Shibuya: You're in punt mode?

Mr. Slepín: Yeah, I mean, you know, to be realistic here, the previous permit owners they were unable to meet their financial obligations. The bank took this over. The bank is not going to develop this. The bank is trying to find someone else who would do the project.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: Are there any prospects on the bank's horizon?

Mr. Slepín: That I couldn't answer.

Chair Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: Just a, just a personal comment. I think once, if and when the bank finds a buyer, the buyer will look at the project and if they believe they need an extension, they will come in for the extension as a requirement to attempt to purchase the property. So the bank is just holding it, hoping to find a buyer in two years. But the new buyer will come in for an extension and whether they're going to build it as designed or build something else ...(inaudible)... I don't feel we really need to get that involved in this request.

Chair Starr: Any members of the public who would like to give testimony on that, please make yourself known? No seeing any, public testimony is closed. The item before us is not to grant an extension or how long the extension, the item before us is whether to waive the review to the Director which is sort of our normal course or whether we want to do our own review. Commissioner Mardfin?

Mr. Mardfin: I move we acknowledge receipt of the request and waive our review of the time extension.

Chair Starr: Is there a second?

Ms. Domingo: Second.

Chair Starr: Okay, moved by Commissioner Mardfin, seconded by Commissioner Domingo. The motion is, Director?

Mr. Spence: The motion is to waive the Commission's review of the time extension request.

Mr. Mardfin: And acknowledge receipt.

Mr. Spence: And acknowledge receipt.

Chair Starr: All in favor, please raise a hand. All opposed.

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

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension Request.  
(Assenting - M. Mardfin, D. Domingo, K. Hiranaga, J. Freitas,  
W. Shibuya, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: We have seven ayes and zero nays. Motion is passed.

Chair Starr: Okay, thank you, Anna. Thank you, Matt.

Mr. Hiranaga: Mr. Chair, just for clarification?

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: You know, the staff report talks about a transfer, and then the public notice talks about an extension. So did we grant a transfer and an extension.

Mr. Spence: The motion was to –

Mr. Hiranaga: Waive review.

Mr. Spence: – waive review of the time extension.

Chair Starr: Anna, can you help us here. What was the deal with the transfer?

Ms. Benesovska: Yes, I can address this. The motion to transfer the SMA has actually – we've already done that in September 8, 2010. It already came here as a communication item and it has been communicated to the Commission. Now we were coming for the time extension. Usually they go together and maybe that's why this seems a little bit confusing. We split this apart for no particular reason, but that's how it came in.

Chair Starr: Okay, thank you. Director?

Mr. Spence: Okay, Commissioner, the next item on your agenda is designation of the Hana Advisory Committee to the Maui Planning Commission to conduct a public hearing on the following application: The State of Hawaii, Department of Transportation, Highways Division, they're going to be requesting an SMA Permit for the proposed Hana Highway improvements from Uakea Road to Keawa Place in order to widen the existing one-lane bridge culvert to two lanes, TMK: 1-4-006.

**2. Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing on the following application:**

**STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION requesting a Special Management Area Use Permit for the proposed Hana Highway Improvements from Uakea Road to Keawa Place in order to widen the existing one-lane bridge culvert to two (2) lanes at TMK: 1-4-006: 999(por.), Hana, Island of Maui. (SM1 2010/0020) (P. Fasi)**

Chair Starr: Commissioner Mardfin is there a name for that particular bridge?

Mr. Mardfin: No. Not that I know of. But that's not on Hana Highway, it's on Uakea Road. If there is, I'll find out what it is. I know the water that goes through there, the mauka one I know. I move that we designate –

Chair Starr: Let's allow public testimony. I know they're all screaming to stand up, but any member of the public wishing to testify on this please make yourself known.

The following testimony was received at the beginning of the meeting:

Ms. Lucienne deNaie: And then on to Item J. Item J concerns the provision for the Hana Advisory Committee to be the reviewing body for the road improvements. I support that entirely. End of testimony. That makes sense. Those are the folks that are using that road.

This concludes the testimony that was received at the beginning of the meeting.

Chair Starr: Permission to proceed.

Mr. Mardfin: I move we designate the Hana Advisory Committee to conduct the public hearing on the application.

Ms. Wakida: Second.

Chair Starr: Moved by Commissioner Mardfin, seconded by Commissioner Wakida.

Mr. Spence: The motion was to designate the Hana Advisory Committee to hold the public hearing on this application.

Mr. Shibuya: I'd like to ask a question here? In so doing, does this provide a time delay for the implementation by the State Department of Transportation? Is there a construction delay and how long?

Mr. Spence: I can't answer. The construction delay would be – Clayton, do you know when this is going to be scheduled for Hana Advisory Committee?

Mr. Yoshida: I believe that a environmental assessment was done by the State Department of Transportation. So possibly some time after March. You have to give the applicant 45 days notice to provide – send out the notices to the adjoining landowners within the 500-foot radius 30 days prior to the hearing.

Mr. Shibuya: The reason I'm trying to hurry this is that I'm familiar with some of the funding issues with the DOT. I'm somewhat related to the individual engineer.

Chair Starr: You're admitting this ...(Laughter)...

Mr. Shibuya: When the money and the projects are available, I think we should be jumping on it rather than, you know, delaying it with all this other things and good political processes, but it's your call.

Chair Starr: Okay, Commissioner Shibuya just to comment. First of all, there are two bridges are building right now over that side. And the Hana Advisory Committee which I did spend five years



on that is chartered to specifically hold these public hearings on Hana items and so, it is a correct procedure to allow the people of Hana to have their input through that body even if we didn't want to, it's what we're supposed to be doing.

Mr. Shibuya: Okay, don't wait too long.

Mr. Spence: I understand, you know, when funds could possibly lapse. You know, so we'll do what we can to –

Mr. Shibuya: It's not lapsed, it's going to be gaji. by somebody else. There's a difference between gaji and lapse. This is not lapse.

Mr. Spence: Okay. We'll get it back to this Commission as soon as we can.

Mr. Shibuya: Thank you.

Chair Starr: Okay, we have a motion on the floor. The motion is?

Mr. Spence: The motion is to authorize the Hana Advisory Committee to hold a public hearing on this project.

Chair Starr: All in favor please raise a hand. All opposed.

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

**VOTED: To Designate the Hana Advisory Committee to Conduct the Public Hearing.**  
**(Assenting - W. Mardfin, P. Wakida, K. Hiranaga, J. Freitas, D. Domingo, W. Shibuya, L. Sablas)**  
**(Excused - O. Tagorda)**

Mr. Spence: That's seven ayes and zero nays, the motion is carried.

Chair Starr: Director?

### **3. Planning Commission Projects/Issues**

Mr. Spence: The Planning Commission Projects and Issues. I'm not sure what falls under that.

Chair Starr: Mr. Yoshida, what do we have coming up? I guess we have agendas and the site inspection ...(inaudible)... is there anything else?

Mr. Spence: I'm not sure where it falls, but I do know that we have a small report on the more information requested for the SMA Minors -- Exemptions or Minors.

Chair Starr: Oh, I didn't see that.

**2. SMA Minor Permit Report**

**3. SMA Exemptions Report**

Mr. Yoshida: This was a follow up to the various SMA Minor Permits, SMA Exemptions, SMA Assessments which the Commissioner raised this morning.

Chair Starr: I want to take about three minutes to the call of the Chair to be able to look at this before we finish up with the SMA. We'll be back in a couple minutes.

A recess was called at 4:24 p.m., and the meeting was reconvened at 4:27 p.m.

Chair Starr: We're back in order. We're going back to the – our SMA Minor and Exempt and other reports and we have a number of items that came back from us. I know that we want to accept as many of them as we possibly can, but there are two of them that I have real concerns with and I don't know if Members still have concerns with any of them. The two that I have concerns with are the Bolles three lot subdivision which is a minor, but a minor means less than a \$125,000. We have installation of water tanks, pipelines, fire hydrants, grading, excavation, fill. We had testimony today that this is a very major project on 20 acres of land and I would like to hold the clock on that one. And the second is the, the second one, SM5 2010/0281 which on this sheet it's shown as County of Maui road improvements for Bud Pikrone, but on this one it's shown as two farm dwellings. So I think there's a mix up. So I'd request that we separate out those two and any others anyone else wants and accept the rest. Does anyone have any additional ones to pull out? Commissioner Wakida?

Ms. Wakida: No, I don't. However, I would like to recommend something that may save the Department some time. On, I'll use the – on the approved SMAs, Page 2 of 2 as an example, the SM 2010/356 reads, Kaanapali Land Management Corp., Kaanapali Land Management Corp., Kaanapali Land Management Corp. All I would want to know there is briefly a description of the project. So if, and this reoccurs in here. There's just absolutely no information, so if these columns could be redefined so that some place there was, one of these said, description of project and in four or five words so that it, I don't know, the Department can figure this out, so that that would eliminate me asking questions and then having to – time to come up with all this stuff.

Chair Starr: Precisely, I know I'll come up with a question just because – yeah, there's nothing, and you know, once we look at it, we realize it's innocuous.

Ms. Wakida: Right. And that just – some of these are and some of them aren't. This could be very easily resolved I think.

Chair Starr: So we can ask the Director and Deputy along with Mr. Yoshida to look into a way that we could have access to enough information so we don't have to bug you about them. If, you know, if they're indeed innocuous and I can say that we may end up with one or two we ask about instead of ten.

Ms. Wakida: So it's just a matter of redefining some of these columns. Maybe one says project

description and it's very simple.

Mr. Spence: Yeah, I would tend to agree that it's not a whole lot of information and I don't know if it's the way that they're entering it into KIVA or what it is, but we can definitely make those more informative.

Ms. Wakida: Right.

Mr. Spence: ...(Inaudible)... wouldn't know what that is either.

Ms. Wakida: Yeah, yeah. And we don't need to take up important time.

Mr. Spence: Sure.

Chair Starr: So if no one has any others, perhaps a motion to accept all of them except for the first two? Would anyone like to do something like that or any other motion?

Mr. Mardfin: I'll move to accept the rest of them except the top two.

Chair Starr: Is there a second?

Mr. Shibuya: Second.

Chair Starr: So moved by Commissioner Mardfin, seconded by Commissioner Shibuya.

Mr. Spence: To accept – the more information requested – all the information request –

Chair Starr: Well, no, all of this.

Mr. Spence: All the –

Chair Starr: The entire report except for –

Mr. Spence: The SMA Report.

Chair Starr: With the exception of those two items.

Mr. Spence: With the exception of SM2 2010/0083, SM5 2010/0281.

Chair Starr: And we'll get more information.

Mr. Spence: And since we're in discussion, exactly what information would the Commission want on those?

Chair Starr: Well, the second one there's – there's an obvious error. Somewhere one of the numbers got, you know, got mixed up. And the first one, is yeah, I'd like to see if, you know, would

like some documentation that this is really – fits under a minor.

Mr. Spence: Okay.

Chair Starr: You know, frankly for my own purposes if the Director looks at it personally and is assured I'm sure that will give us more confidence.

Mr. Spence: Okay.

Chair Starr: So all in favor, please raise a hand. All opposed.

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

**VOTED: To Accept the SMA Minor Permit and SMA Exemptions Reports With the Exception of SM2 2010/083 and SM5 2010/0281 for Further Information/Clarification.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas,  
D. Domingo, L. Sablas, P. Wakida)  
(Excused - O. Tagorda)**

Mr. Spence: Seven ayes, and zero nays. The motion carries.

Chair Starr: Director, site inspections?

Mr. Spence: The westside site inspection, the Commission already just put it on for their February 3<sup>rd</sup> agenda or scheduled it for February 3<sup>rd</sup>.

**5. Discussion of Future Maui Planning Commission Agendas**

**a. Agenda items for the January 25-26, 2011 meeting**

- 1) JAMES B. TAKAYESU, attorney, representing MICAH BUZIANIS and CHARLOTTE STRONG appealing the Planning Director's Notice of Violation for exceeding the amount of dwellings allowed pursuant to the conditions of approval for a Special Management Area Use Permit for property located at 111 Makahiki Street, TMK: 3-8-002: 113, Spreckelsville, Island of Maui. (APPL 2010/0003) (T. Kapuaala)**

Mr. Spence: No. 5, discussion of future Maui Commission agenda items. So Clayton, would you like to describe what the item is for January 25 and 26?

Mr. Yoshida: Yes, as decided at your November 23<sup>rd</sup> meeting, the Commission is the hearings

body on the SMA Appeal by Micah Buzianis and Charlotte Strong on certain fines that were issued for SMA, alleged SMA violation.

Chair Starr: Just to offer some information. I was contacted by Department of Corporation Counsel who issued four subpoenas for that case. Two of them, subpoenas for deposition, two of them subpoenas to appear. I assume Mr. Giroux might have seen those, no?

Mr. Giroux: ...(Inaudible)...

Chair Starr: Oh, okay. He didn't see them through the Chinese wall. I did sign them. Hopefully, that was not a terrible mistake. I've never signed a subpoena before, but I did want to make everyone aware of that. That's regarding the Buzianis and also hopefully we get through it in one day and not two, not need the two. Commissioner Hiranaga?

Mr. Hiranaga: That was the question Is staff anticipating this one item to be a all-day affair?

Mr. Yoshida: I believe on November 23<sup>rd</sup>, and the Commission accepted the minutes for that meeting, it did reserve two days. Depending on the number of witnesses and the length of questioning from the two attorneys.

Chair Starr: I mean, frankly I hope it's less than that. But it will be, what it will be. James said, blame it on the lawyers. Okay, and it's going to be a beautiful, sunny day tomorrow. Everyone should go to the beach.

Mr. Mardfin: In Lahaina?

Mr. Shibuya: I just want to let you know I'm real salty. The problem is I was gonna go skiing on the 13<sup>th</sup> so I changed it so that we could go on the site visit on the 13<sup>th</sup>. I changed it, but then now, I moved it to the 26<sup>th</sup> through the first of February. So I going miss the second half of this Takeyesu business if we go into – come on guys.

Chair Starr: Consider yourself lucky. This meeting is adjourned. Never thought we'd get through it today. Good work everyone.

**K. NEXT MEETING DATE: January 25, 2011**

**L. ADJOURNMENT**

The meeting was adjourned at 4:38 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

Present

Jonathan Starr, Chairperson  
Donna Domingo  
Jack Freitas  
Kent Hiranaga  
Ward Mardfin, Vice-Chair (in attendance at 9:47 a.m.)  
Lori Sablas  
Warren Shibuya  
Penny Wakida

Excused

Orlando Tagorda

Others

William Spence, Planning Department  
Michele McLean, Planning Department  
Clayton Yoshida, Planning Department  
James Giroux, Department of the Corporation Counsel  
David Goode, Department of Public Works