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PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

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COUNTY OF MAUI
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REGULAR MEETING

Held at the Planning Department Conference Room,
First Floor, Kalana Pakui Building, 250 South High
Street, Maui, Hawaii, commencing at 9:00 a.m., on
January 25, 2011.

Reported by:
Tonya McDade, Hawaii CSR #447

1 ATTENDANCE

2 COMMISSION MEMBERS PRESENT:

3 Jonathan Starr, Chair

4 Ward Mardfin, Vice-Chair

5 Kent Hiranaga, Commissioner

6 Warren Shibuya, Commissioner

7 Donna Domingo, Commissioner

8 Orlando Tagorda, Commissioner

9 Jack Freitas, Commissioner

10 Lori Sablas, Commissioner

11 Penny Wakida, Commissioner

12 STAFF PRESENT:

13 William Spence, Director, Department of Planning

14 Michele McLean, Deputy Director, Department of Planning

15 Trisha Kapua`ala, Zoning Enforcement Division,

16 Department of Planning

17 Clayton Yoshida, Administrator, Department of Planning

18 Rowena Dagdag-Andaya, Deputy Director, Department of

19 Public Works

20 James Giroux, Deputy Corporation Counsel

21 Carolyn J. Takayama-Corden, Commission Secretary

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24

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1 JANUARY 25, 2011

2 TRANSCRIPT OF PROCEEDINGS

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4 CHAIR STARR: ...(gavel)... Okay. Good
5 morning, one and all. I'd like to thank everyone for
6 joining us today. It is January 25th, 2011, we're here
7 at the Maui Planning Commission. We have with us
8 Commissioner Kent Hiranaga, Commissioner Jack Freitas,
9 Commissioner Orlando Tagorda, Commissioner Ward Mardfin,
10 in 3D or incognito

11 VICE-CHAIR MARDFIN: (Inaudible.)

12 CHAIR STARR: No. They look cool.

13 VICE-CHAIR MARDFIN: They're cool? I'll wear
14 them every week.

15 MR. GIROUX: Those are mine.

16 CHAIR STARR: James Giroux, our lawyer, Deputy
17 Corp Counsel extraordinaire. I'm Jonathan Starr, I'm
18 Chair. We have our excellent Director, Will Spence, all
19 raring to go. We have Commissioner Warren Shibuya, we
20 have Commissioner Lori Sablas and Commissioner Penny
21 Wakida. We have Carolyn Takayama-Corden, Secretary to
22 the Commission. We have Rowena Dagdag-Andaya. Is that
23 right?

24 MS. DAGDAG-ANDAYA: Yes.

25 CHAIR STARR: Because I always think of

1 Michele Chouteau, but that's not right.

2 MS. MCLEAN: McLean.

3 CHAIR STARR: Michele McLean, our Deputy
4 Director of Planning. We have Clayton Yoshida, who
5 makes the trains run around here. And Trisha Kapua`ala
6 from Zoning Enforcement. We also -- who else did I see?
7 We have other members of the public and the community
8 and participants in the item before us here as well.

9 Before we start on our agenda items, I'd like
10 to open the floor up for public testimony. If any
11 members of the public wish to give testimony on any
12 item, they're welcome to, either before the meeting,
13 which would be now, or before an item comes before us.
14 If the item is a contested case, we don't actually take
15 testimony, but the public is welcome to give comments.
16 So anyone wishing to do so, please make yourself known.

17 (Silence.)

18 CHAIR STARR: Not seeing any, public testimony
19 portion of the meeting is closed. I turn it over to our
20 Director, Mr. Spence, to begin bringing us through the
21 agenda items.

22 DIRECTOR SPENCE: Thank you, Mr. Chairman,
23 Members.

24 The next item on your agenda for this morning
25 is the Director's Report. You've been distributed Items

1 1, 2, 3, the EA/EIS Report, SMA Minor Report and SMA
2 Exemptions Report. Normally, the Commission would ask
3 for detail on things that you're not sure about, what
4 comes on this report.

5 CHAIR STARR: Members, any questions or
6 comments on items on the report?

7 (Silence.)

8 CHAIR STARR: I have several. And, once
9 again, it's because I don't know what they are, not
10 because I have any specific problem with any one -- with
11 any of them at this time. Those are Kamaole Sands AOA;
12 Gardens at West Maui; Hana Highway Route 360; and the
13 water line project Uluniu Road. So I would like more
14 detail on those. Members, any -- any further?
15 Commissioner Shibuya.

16 COMMISSIONER SHIBUYA: I just have one, on
17 Page 3 of 10. It's SMX, midway, 20090043, A&B
18 Properties, Haiku/Consolidate and Resubdivide of Lots.

19 CHAIR STARR: Director, got that? Okay.
20 Members, any additional?

21 DIRECTOR SPENCE: Clayton, do we have that
22 list? I mean, did you get 'em all?

23 MR. YOSHIDA: Maybe I can get together with
24 the Commissioners during the break, but we would provide
25 responses either after the lunch break, if we go that

1 far, or before the next meeting, certainly.

2 CHAIR STARR: Okay. That's fine. And as far
3 as I'm concerned, either written or verbal would be --
4 is equally good, whatever saves staff time.

5 Okay, moving right along. Director.

6 DIRECTOR SPENCE: Okay. Commissioners, Item C
7 on your agenda today, Contested Case Hearing Subject to
8 Chapter 91, HRS. Mr. James Takayesu representing
9 Michael Buzianis and Charlotte Strong, appealing the
10 Planning Director's Notice of Violation for exceeding
11 the amount of dwellings allowed pursuant to the
12 conditions for an SMA Permit, for property located at
13 111 Makahiki Street, TMK:3-8-002:113, in Spreckelsville.
14 And Trisha Kapua`ala is our staff person for this item.

15 CHAIR STARR: Okay. I'll ask Ms. Kapua`ala to
16 introduce the item and, also, bring us up to date if any
17 new activity has occurred.

18 MS. KAPUA`ALA: Thank you, Mr. Chair. Good
19 morning, Commissioners. I'd just like to defer to the
20 attorneys who are here to let you know the status of the
21 case.

22 CHAIR STARR: Okay. I'll ask the two
23 attorneys, if it's okay, come on up. And I'll let
24 Mr. Takayesu, former Corporation Counsel, now the
25 attorney for Mr. Buzianis -- Mr. Takayesu, why don't you

1 begin?

2 MR. TAKAYESU: Okay. I'll just enter my
3 appearance for the record. As noted by the Chair, I'm
4 appearing on behalf of the appellant Mr. Buzianis.

5 And at this time we have been working on a
6 settlement agreement that we've just finalized in the
7 last three minutes. But we've been working on it since
8 last week, and we also met with the Director. And I'll
9 defer to Deputy Corp Counsel.

10 CHAIR STARR: Okay.

11 MS. JOHNSTON: Deputy Corporation Counsel Mary
12 Blaine Johnston appearing on behalf of the Director, the
13 Department of Planning. Literally, it's still warm from
14 the copy machine, but we have been working on this.
15 We've had the Director's very helpful input on reaching
16 a settlement agreement.

17 Under your rules, a settlement has to be
18 approved by the Commission. So I'm going to pass out
19 the form for you to look at. And usually, you know,
20 you've got the materials, and some of you may have gone
21 through them, spent time going through, some of you may
22 not, and I apologize, that, technically, if you approve
23 the agreement, you don't, but I think, if you have gone
24 through the materials, it will help you under -- it will
25 give you a real insight into the case and what the

1 settlement agreement is about. So I don't think that
2 will be lost time. I think it will facilitate your
3 review of the proposed settlement agreement. So you
4 wanna --

5 CHAIR STARR: I'm going to call a recess for
6 about 10 minutes to give us time to take a look at that.

7 MS. JOHNSTON: Oh, yeah. You may need -- you
8 may need a little bit longer than that.

9 CHAIR STARR: Yeah. I will be recessed until
10 the call of the Chair. ...(gavel)...

11 (Recess, 9:12 a.m. to 9:23 a.m.)

12 CHAIR STARR: ...(gavel)... Maui Planning
13 Commission meeting of January 25th, 2011, is back in
14 session. I believe all Commissioners -- has everyone
15 had sufficient time to examine the proposed settlement
16 agreement? Does anyone have any questions or comments?
17 Commissioner Wakida.

18 COMMISSIONER WAKIDA: Sorry. The settlement
19 agreement, apparently, relates just to one violation,
20 the ag office, is that correct? Oh, sorry.

21 MS. JOHNSTON: Yes. Okay. There were notices
22 of warning given for both the ag office and what's
23 called the workout room. There was only one notice of
24 violation given for the ag office. So, apparently,
25 there was some steps taken to correct the problems with

1 the workout room. So that never received a notice of
2 violation.

3 CHAIR STARR: I have a question and possible
4 concern. I'm, actually, gonna turn to Mr. Giroux as our
5 -- our attorney, to ask about the -- this paragraph
6 about successors and assigns, whether that's a usual --
7 whether it's usual to see that. Mr. Giroux.

8 MR. GIROUX: Yeah. I'm not sure if it's an
9 issue of whether it's usual to see it, but whether or
10 not the parties are -- are meeting a mutual
11 understanding of what that means. What the Chair is
12 looking at is, in Paragraph 14, the successors and
13 assigns paragraph appears to be a little bit disjunctive
14 and possibly have some vagaries that we want the lawyers
15 to talk about on the record. The first sentence talks
16 about that the agreement shall be binding upon and inure
17 to the benefit of the parties hereto and their
18 respective successors and assigns. The subsequent
19 sentence -- skipping one sentence and going to the next,
20 the third sentence, it says, "This agreement shall
21 terminate should the current owner sell their interest
22 in the property." This agreement also contains a
23 paragraph that both parties agree to submit this to the
24 Bureau of Conveyances. So there is an issue that
25 whatever is in this document will be on record at the

1 bureau. A subsequent owner will be on notice that this
2 agreement was made and that it -- it would be binding on
3 them, also.

4 The problem is, is that with -- with this
5 disjunctive language, it's not clear what the intent of
6 the parties is, as how -- how binding and what is
7 binding on the subsequent owners of the property.
8 Because if you look at the Paragraph 3, this agreement
9 terminates. It doesn't make sense to be filing
10 something to the -- on the Bureau, giving future notice,
11 and then saying that this is going to run with the land,
12 but then agreeing, within the document itself, that it
13 won't. So if we could just get that clarification and
14 see what the -- the attorneys are trying to get at with
15 this.

16 CHAIR STARR: Yeah. I'd like to add one --
17 one additional point to that, which is, does this relate
18 to any sale or just an arm's length transaction?

19 MS. JOHNSTON: Okay. What the purpose of here
20 is that Mr. Buzianis has had his house listed for sale
21 for, what, a couple years, year and-a-half or so.

22 MR. BUZIANIS: Off and on.

23 MS. JOHNSTON: Off and on. And it's presently
24 on the market, being advertised for sale. And what
25 we're trying to do here is that the notice of violation

1 was given to the owners -- these owners of the property.
2 If someone new comes in and buys the property, they can
3 buy it without taking the burden of satisfying this
4 settlement agreement. In other words, if they want to
5 commit their own violations, they'll get -- they'll get
6 new notices.

7 The language was put in to try to make clear,
8 though, that if there's a NOV issued prior to a sale of
9 the property to somebody else, to whoever else, that
10 that NOV gets followed through the process. In other
11 words, you can't get out from under the NOV by selling
12 the property, another NOV by selling the property. And
13 this language may not make it as clear as could be, but
14 we can try to rephrase the language. But that was the
15 intent. Somebody else buys the property and they --
16 they use it in a way that's in violation of the permit,
17 then they would get -- they would get their own
18 citation. But his doesn't -- their violations don't
19 extinguish just because there's a sale of the property.
20 They would still have to continue to deal with it.

21 MR. GIROUX: Mimi, my concern is that part of
22 your agreement is that there's a suspension of the fine
23 for two years.

24 MS. JOHNSTON: Correct.

25 MR. GIROUX: If there's a sale within the two

1 years, what does this language do with the suspension?
2 Does the new owner then get fined the remainder of the
3 \$8,000?

4 MS. JOHNSTON: No. I think the fine was
5 essentially, then, that would -- that the balance of the
6 fine would be paid if he no longer owned the property,
7 no longer -- he committed the violation. If a new owner
8 commits the violation, again, we start over again. So
9 he just walks away from it, \$4,000.

10 CHAIR STARR: Is there a willingness to
11 wordsmith? Because it seems to be, you know, kind of
12 two conflicting statements here.

13 MS. JOHNSTON: Okay.

14 CHAIR STARR: And I think it could be cleared
15 up -- cleared up, easily.

16 MS. JOHNSTON: Okay. We can work on it. We
17 can work on that.

18 MR. TAKAYESU: Okay.

19 CHAIR STARR: Let's have other questions and
20 comments and then we'll take a few more minutes.
21 Commissioner Mardfin.

22 VICE-CHAIR MARDFIN: My concern is that the
23 spirit of what is supposed to be done on that property
24 be maintained. Is the understanding -- the spirit of
25 the understanding, at least, that there will only be one

1 dwelling on the unit -- on the property?

2 MS. JOHNSTON: Correct.

3 VICE-CHAIR MARDFIN: There will not be any
4 other units being used in any fashion?

5 MS. JOHNSTON: That's -- that's the intent of
6 this agreement. The buildings will remain. The one
7 cited with a notice of violation, he will be removing
8 those things that make it look purely like it is a
9 second dwelling, which he admitted under oath that he
10 had built that as a second dwelling when he built it.
11 The refrigerator is going, the stove is going. He can't
12 use it for living accommodations. In other words, it's
13 got to become an ag office. He can have an ag office.
14 He can have a workout room. He cannot use the ag office
15 for a second dwelling, that's the intent of this.

16 VICE-CHAIR MARDFIN: And -- and that will be
17 binding on subsequent owners, that they -- there will
18 only be one dwelling on it?

19 MS. JOHNSTON: Well, that is the restriction
20 that's under the -- the permit.

21 CHAIR STARR: Let's -- I want to turn it over
22 to the Director here for comment.

23 DIRECTOR SPENCE: Well, I forget the exact
24 date of the SMA Permit that was issued for the
25 subdivision as a whole, but one of the conditions on

1 there is Condition 23, there's only one house per
2 property in there. So what we're trying to do is
3 rectify -- you know, Mr. Buzianis admits that, you know,
4 he built this other building and it looks, quacks, you
5 know, like a duck, it is a duck. So we're agreeing to
6 remove things so it can be an ag office.

7 VICE-CHAIR MARDFIN: So it cannot be a
8 dwelling?

9 DIRECTOR SPENCE: So it cannot -- correct. So
10 it -- so it will be an ag office rather than a dwelling.
11 So --

12 VICE-CHAIR MARDFIN: And --

13 DIRECTOR SPENCE: -- removing the dwelling
14 aspect of it.

15 VICE-CHAIR MARDFIN: And it will be clear to
16 any subsequent owner that it is not to be a dwelling?

17 DIRECTOR SPENCE: If this document is recorded
18 with the Bureau of Conveyances and a buyer comes and
19 says, hey, I want to look at this property, and does
20 their due diligence, this document will show up. And
21 they will see, oh, there was a whole big issue with
22 second dwellings on this and what's the original
23 condition of the SMA Permit. And if you're gonna spend
24 that kind of money on a piece of property, you know,
25 you're -- let's put it this way. If you don't -- if you

1 don't do your due diligence, you know, you're doing it
2 to yourself.

3 VICE-CHAIR MARDFIN: Okay. I just wanna make
4 sure that -- I just wanna make sure that future owners
5 will know what the -- what the agreement is and not be
6 in the position saying, "Well, I thought I could do it."

7 DIRECTOR SPENCE: Yeah. No. This will be
8 clearly on the record. It will show up in any title
9 report.

10 MR. TAKAYESU: For the --

11 CHAIR STARR: Mr. Takayesu, please.

12 MR. TAKAYESU: For the Commission's
13 information, the restrictive covenants of Kai Holu
14 Subdivision does limit it to one dwelling per unit.

15 In terms of the SMA Condition 23, one of the
16 problems that we have here was that although the
17 applicant, A&B, was instructed to -- or required to file
18 a unilateral agreement granting the County the right to
19 enforce Condition 23 as a condition to obtaining final
20 subdivision approval, that was never done. So the final
21 subdivision was approved by Public Works without this
22 unilateral agreement. And then Planning, also, in 2000,
23 went ahead and sent a letter approving the final SMA
24 compliance report.

25 In this case, I guess my -- because those

1 documents were filed, when Mr. Buzianis submitted his
2 application for an assessment, he was actually granted
3 an exemption for two dwellings on his property. He then
4 went ahead and -- and had the plans drawn up as a second
5 dwelling. But when the building inspector came in, he
6 informed Mr. Buzianis' contractor that there is this
7 restriction, so you're gonna have to make certain
8 modifications.

9 We have met with the Planning Director. And
10 this is a configuration that has been considered a wet
11 bar or not a kitchen by Enforcement. And I think we
12 both agree that, you know, this looks like a duck,
13 doesn't it, even though it doesn't have any appliances
14 for cooking of food. But when they did their
15 inspections, then, with this configuration, without the
16 appliances, cooking appliances, they said this is okay.

17 But I think that the Department wants to take
18 a look at that definition of kitchen to make it more
19 realistic. And we're agreeing to remove the -- the
20 cabinets that are -- are yellow, along with the large
21 refrigerator, and there's a dishwasher down here in this
22 area. That area can be occupied by a small
23 refrigerator, but not a full-size family refrigerator,
24 which would be consistent with office. And we're hoping
25 that other people will be treated in the future as

1 Mr. Buzianis is and -- and have a -- not have this kind
2 of thing that's not considered a kitchen by the
3 Department.

4 Again, it was -- he did apply for his
5 assessment and he was granted permission to go ahead.
6 And the building inspector was aware that there was some
7 type of limitation. And they went ahead and modified by
8 not putting in like the 220 line for the regular stove,
9 things like that.

10 In terms -- in terms -- I know it's -- the
11 section, Paragraph 14, it is kind of inconsistent. But
12 we felt that if he sells the property, and, prior to
13 that, he's never -- commits no further violation before
14 he sells it, then he should be relieved of the
15 responsibilities under this agreement. Should he have
16 committed a violation of, say, Condition 23 during the
17 time he still owned it, the fact that he sells it, the
18 County can still continue to enforce the action against
19 him, both to maybe trigger the suspended fine and to
20 pursue additional fines. But that he shouldn't be
21 responsible for actions of the new owner and the new
22 owner shouldn't be responsible for the actions of his
23 seller. That's what we were trying to accomplish.

24 CHAIR STARR: Okay. Commissioner Shibuya.

25 COMMISSIONER SHIBUYA: I found this case very

1 interesting. And I was suspecting that the A&B
2 developer did not have this thing -- these provisions
3 actually written down in the covenants. And now, with
4 counsel's, Takayesu's, statement there, that it does not
5 exist is very troublesome. Because now we have an
6 opportunity for 16 more contentious efforts here if this
7 is not done properly.

8 It was approved by this Maui Planning
9 Commission in 1995. And that A&B Properties, on this
10 Kaunoa II Subdivision, should have placed these
11 restrictions and conditions, especially Finding of Fact
12 Number 32, the applicant has represented that lots
13 developed for residential use would be limited to one
14 dwelling per lot and that no additional cottages or
15 other dwellings are contemplated to be permitted. Now,
16 this agreement was between A&B and the -- this
17 Commission, even though I was not on member at that
18 time.

19 I would like to pursue the fact that we should
20 have these covenants and these findings of facts and
21 conditions all recorded. And if it's not recorded, I
22 would like to have a follow-up within another year.

23 CHAIR STARR: Ms. Johnston.

24 MS. JOHNSTON: Yes, if I could speak to that.
25 I believe Jeff Hunt, when he was director, wrote to A&B

1 and made a demand that they immediately proceed to
2 record. When the Commission heard -- when the Kai Holu
3 Subdivision came in, in April of 2008, to ask for an
4 amendment to that, I think the Commission again
5 instructed them, you're to get this unilateral agreement
6 recorded.

7 At this point in time, I don't know -- I guess
8 A&B is not gonna record it -- whether the Commission
9 could record it. It should be done. And I'm not sure,
10 you know, who can do that.

11 But we have another problem, that the permit
12 -- the permit that's referred to at 95/SM1-2000, none of
13 us have ever seen that document. So I'm going to try to
14 see if I can find it. They might have it over in the
15 subdivision. I don't know.

16 CHAIR STARR: Commissioner Hiranaga. I'm
17 going to ask Commissioner Hiranaga, he might have some
18 wisdom on this.

19 COMMISSIONER HIRANAGA: Yeah. My recollection
20 is that A&B was not the owner when final subdivision was
21 granted for this project. They sold it prior to
22 construction. And the entity that actually completed
23 the project and received final Subdivision Approval
24 probably does not exist anymore. It was a partnership,
25 I believe.

1 MR. TAKAYESU: Yeah. I did go --

2 CHAIR STARR: Mr. Takayesu.

3 MR. TAKAYESU: I did go through the records.

4 At the '95 meeting, it was first pointed out that this
5 is not the type of condition Planning Commission can
6 normally impose. Okay. But where the applicant has
7 represented that they're willing to agree to a certain
8 condition, then they can put that in, in their approval
9 letter. Okay. So that's what was done. That's why, at
10 the start of the approval letter, you have -- the
11 finding is made and then you have this fancy wording
12 where you require a unilateral agreement to give the
13 County the right to enforce this Condition 23, which is
14 normally not the condition authorized by law.

15 I think the attorney at the time, thinking --
16 he saw, as he went through the report and
17 recommendation, they're saying that the applicant should
18 do this, the developer should do this, the developer's
19 contractor should do this. So they said, let's make it
20 all "applicant." So now the responsibility was solely
21 with A&B. Okay. But what happened is, you know, they
22 sell it -- they sell the property to somebody else,
23 there's a transfer of -- I guess the SMA approval. And
24 the SMA approval is specifically a requirement only for
25 A&B, but they no longer own the property. Then you have

1 somebody comes in, actually is a developer, and now
2 they're no longer there. So what happened was, when
3 Hunt wrote the letter, it was kind of threatening, he's
4 saying, Kai Holu, you're the applicant, you're supposed
5 to do this.

6 The agreement was there to protect subsequent
7 purchasers, so they would know there was this
8 restriction, and for the benefit of the County so they
9 can enforce the condition. So although there's that
10 threatening letter that if you don't -- applicant, don't
11 do certain things within a specific time, we're gonna
12 revoke your SMA permit for the entire subdivision. But
13 I think when somebody looked at it, they saw that you
14 couldn't really go after Kai Holu. The developer was
15 already come and gone, they sold off their interest.
16 And A&B was -- had -- was way out of the picture. And
17 ask them to go ahead and file something on somebody
18 else's land right now, they'll be going, "Oh, we don't
19 own the properties anymore. If we did that, we're not
20 sure what our rights and liabilities are."

21 So I did try to find out what happened to this
22 -- why was the subdivision approved without the
23 unilateral agreement. And then there was this
24 compliance report that was received and signed by John
25 Min. And I talked to Paul Fasi. He hasn't seen a copy

1 of the report. The development consultant who helped
2 Kai Holu, in 2008, when he processed the application to
3 amend, he hadn't seen the report. And so, so far, we
4 haven't seen that report, we haven't seen the actual SMA
5 permit. We don't know what happened, as to why they
6 approved the final subdivision without this unilateral
7 agreement.

8 So it's -- it's an interesting thing. I hope
9 you guys can dig in. Because I've already received
10 probably over \$20,000 from Mr. Buzianis to fight this.
11 And that -- that is another reason why I don't think
12 you're gonna see a lot of people wanting to violate that
13 condition. Even though its -- its history is somewhat
14 clouded, the cost of, at this point, going that route is
15 crazy.

16 CHAIR STARR: Yeah.

17 MR. TAKAYESU: Unless you're maybe Mr. Gordon,
18 you know. So -- but it's -- it's a interesting case. I
19 don't understand why Public Works went ahead and
20 approved the subdivision without the unilateral
21 agreement.

22 CHAIR STARR: Ms. Johnston.

23 MS. JOHNSTON: Yeah, I wanted to add one other
24 wrinkle to this. On the -- Mr. Buzianis applied for an
25 exemption to build two farm dwellings. And it was

1 granted. It was signed off by Mike Foley. About a year
2 after that exemption was granted, if you look on the
3 building permit information for his structure, there's a
4 note down in one corner that says, note, this permit --
5 second dwelling to -- permit to -- for second dwelling
6 to be rescinded per the permit number. And it was never
7 done. To be rescinded, there's no -- we have found
8 nothing that actually rescinded it, no notification or
9 anything. So somewhere along the line somebody picked
10 up on it and made that notation. That was already after
11 the compliance report was filed. So I don't -- So I
12 think that the question we have is how to proceed to get
13 the conditions in a recordable form so they will show up
14 clearly when anybody else comes in and purchases the
15 property.

16 Now, Mike had told me that their association
17 has revised their CC&Rs which is very clear about the
18 restriction. I've not yet seen a copy of that. I don't
19 know if that's something that they're eliminating or --
20 or how you're dealing with it. Is that still --

21 MR. TAKAYESU: I think they're considering --

22 CHAIR STARR: Please address the --

23 MS. JOHNSTON: Okay. Excuse me. Yeah. I'm
24 sorry.

25 CHAIR STARR: -- the Chair and the body.

1 MS. JOHNSTON: Okay. I apologize. I'm sorry.
2 I don't know what -- they are in the process of being
3 revised. I don't know what that's gonna look like. But
4 I think, for the Commission's point, maybe James can
5 help with you this, how can we get those conditions so
6 they're clearly recorded, so we don't have to go back
7 kind of through this whole drill again. And I'm not
8 sure what the procedure would be.

9 CHAIR STARR: I think, if I'm -- that what I'm
10 hearing from the Commission is not so much to go back --
11 there's no desire to go back looking for ghosts, but we
12 want to assure clarity both in this specific issue, but,
13 also, for all future owners. And so I don't know if
14 there is a way that, you know, we can actually -- the
15 whole community can maybe benefit, reap some benefit
16 from this. And maybe the two sides, between the
17 applicant and the County, can find a way to record --
18 record this. I don't think that's a major action or a
19 major expense, you know, to actually record that
20 condition. Maybe that would be something that can be
21 done. And when we do take our -- our recess for
22 wordsmithing, that can be something that perhaps the two
23 of you can discuss and find a way to work with. Perhaps
24 Mr. Buzianis might have some -- some input on, you know,
25 whether the association can be a part of that or not. I

1 -- I don't know. But that's -- the association's not
2 before us today.

3 Members? Commissioner Shibuya.

4 COMMISSIONER SHIBUYA: I was a little harder
5 in a sense than I did want to have the recordation
6 properly administered and completed. You are suggesting
7 that perhaps we can use this as a case in which it
8 provides for future precedences in interpretation of
9 this earlier agreement.

10 CHAIR STARR: Well, there is that, but I -- I
11 would like personally to see it recorded. I think maybe
12 some other -- some of the other Members would like to
13 see it recorded as well.

14 I believe Ms. Kapua`ala has a comment.

15 MS. KAPUA`ALA: I wanted to show you a section
16 in your rules that might help you. Section
17 12-202-23(b), any development pursuant to Section
18 205A-22, HRS, as amended, that has not received a
19 required SMA emergency permit, minor permit or use
20 permit pursuant to this part or has not complied with
21 the conditions established with such a permit shall be
22 removed or the violation shall be corrected by immediate
23 application, and subsequent granting of the appropriate
24 permit or other means as determined by the Director. I
25 think what that says to me is that the Director can

1 provide a remedy for a condition that hasn't been
2 complied with. If the Commission were to instruct or
3 recommend the Director -- suggest to the Director to
4 apply -- record the conditions of approval with the
5 Bureau of Conveyances, it's a 25-dollar fee, I think.
6 We can apply it to all TMKs. We'd have to do some
7 research to see how many parcels were created from the
8 original subdivision. From the Enforcement side, I
9 think this is a doable thing when I read this law. And
10 I can ask James to help clarify if that's not correct.

11 CHAIR STARR: Director, what would you feel is
12 the best mechanism?

13 DIRECTOR SPENCE: Well, you know, you can
14 record any document, you know, you can -- with the
15 Bureau of Conveyances, you know, your mother's chocolate
16 chip cookie recipe, you know, to -- in a -- in a case
17 like this, where there's a specific parcel before the
18 Commission, I think it's one thing to be recording a
19 document like the settlement agreement. I mean, it
20 gives people notice -- future buyers notice that there
21 was this -- this issue on this particular property. I
22 would want to confer with Corp Counsel on filing
23 documents as applied to other people's property. Even
24 though this condition applies to the whole subdivision,
25 if you start filing documents as restrictions on other

1 people's properties, you know, there's -- I'm not
2 comfortable doing that.

3 MS. KAPUA`ALA: Excuse me, Mr. Director.

4 CHAIR STARR: Ms. Kapua`ala.

5 MS. KAPUA`ALA: I wasn't implying that we
6 record the settlement agreement against every parcel.

7 DIRECTOR SPENCE: No, no, no. I understand.
8 The SMA condition, it should have been recorded and
9 everything. I don't know how you go back and remedy
10 that. That's a -- that's a very serious legal question.
11 You know, may be legal to do, it may not as --
12 administering that -- I mean, I know I would sure have a
13 problem if somebody files, you know, something against
14 my property.

15 CHAIR STARR: You know, we'll take a recess in
16 a bit and discuss it. We know that as a -- as a fact,
17 by our rules, the limitation to one dwelling does exist.
18 I think what we're looking for is a way that anyone who
19 buys property there will -- when they do their title
20 report, will know that that is the case so they won't
21 make a mistake. So, you know, I leave that to better
22 legal minds than mine.

23 You want to comment at this time, Mr. Giroux?

24 MR. GIROUX: Yeah. Basically, what you're
25 looking at is you're looking at an enforcement of a

1 condition and you're also -- if you look at the new
2 rules that we proposed to you, is that you would have an
3 alternative to go about making sure that that condition
4 was followed up on. And that would be your order to
5 show cause procedures. So you -- you could -- you know,
6 I mean, if you -- hypothetically, if you look at the --
7 the processing of this subdivision and you wanna work
8 backwards between the -- the AOA, the -- the owner who
9 -- who built out the subdivision and then the owner --
10 original owner of the land, there's gonna be documents
11 saying that there's certain responsibilities between the
12 purchasers. And you're gonna follow that all the way
13 back and -- and these conditions are supposed to be
14 running with -- with that subdivision.

15 So if the County were to look at this as a
16 Enforcement action, as was read by Trisha, and issue an
17 NOV and process a fine and all of that, and then you
18 would get an appeal and then that would be before you,
19 and then they would reach a settlement, or whatever,
20 that -- that's a process; it's not the process.

21 The other option is, you know, for the County
22 to start entering into negotiations with the AOA and
23 getting an agreement that, yes, they will proceed to
24 follow up on this condition. And once your rules are
25 adopted considering your order to show cause, you can

1 order the AOA before you and -- and say, well, why
2 shouldn't we revoke the permit, you haven't followed up
3 on the condition that was running on your SMA permit.

4 So there's several ways you can do it, but
5 it's -- it's for the Administration to sit down and look
6 at this as far as their resources, their time, their
7 energies and, with the help of Corp Counsel, to maybe
8 strategize to say, you know, what -- maybe this can just
9 be amicably done. I mean, if it's something that should
10 have been done, then maybe it can be done without all of
11 this litigiousness and confrontational lines being
12 drawn. But if the hammer has to come down, the County
13 has several tools in its tool chest. So that's
14 sometimes what helps the congenial discussion, is
15 knowing what the County has in its back pocket. So --

16 DIRECTOR SPENCE: Mr. Chairman, if I -- if I
17 could, I -- this -- now we're -- we've expanded the
18 discussion beyond just, you know, this one notice of
19 violation and settlement thereof. I think it would
20 probably be better if we just deal with the item that's
21 before us. If the Commission wants to discuss, you
22 know, how do we deal with the rest of the subdivision,
23 we can do that at a later time. And I'm happy to sit
24 down with Mimi and James and talk about, you know, what
25 are we gonna do with this. And we'll come back to you

1 at a later time.

2 CHAIR STARR: Well -- Commissioner Shibuya.

3 COMMISSIONER SHIBUYA: Yeah. Since I brought
4 it up, in terms of getting this resolved, not only what
5 is before us, but to look ahead and ensure that all 16
6 other lots are not contemplating the same type of issue
7 or gonna experience the same type of problem.

8 DIRECTOR SPENCE: Yeah.

9 COMMISSIONER SHIBUYA: I just wanna minimize
10 it.

11 CHAIR STARR: I think we're going in circles
12 here. What I would like to do is I'd like to take a
13 recess, approximately 10 minutes, and get some
14 clarification on the other wording. And, also, I would
15 like the Director and the attorneys, and maybe
16 Mr. Giroux can chime in, and Ms. Kapua`ala, and see if
17 there's a way that we can embark on a path toward making
18 sure that the other property owners will have something
19 that tells them what the true situation is in the
20 future. So we're gonna take a recess. ...(gavel)...

21 (Recess, 9:55 a.m. to 10:07 a.m..)

22 CHAIR STARR: ...(gavel)... Okay. I'd like to
23 call the Maui Planning Commission back to order, January
24 25th, 2011.

25 When we took a recess, we had asked the two

1 counsels to clarify some slightly conflicting wording
2 regarding, I believe, succession and, also, to look at a
3 mechanism that, moving forward, we can make sure that
4 all owners know about the -- the status of the SMA that
5 was approved years ago. Ms. Johnston.

6 MS. JOHNSTON: Yes. Paragraph 3 is the one
7 that had the confusing language in it. If you simply
8 delete the first two sentences -- and the language, this
9 agreement shall be binding and inure to the benefit,
10 that's boilerplate language that you find in settlement
11 agreements. But in this case, take out that sentence,
12 take out the second sentence, and it will read, this
13 agreement shall terminate should the current owner sell
14 their interest in the property, provided the sale of the
15 subject provide shall not prejudice the ability of the
16 County to take appropriate action against the current
17 owners who are parties to -- eliminating the typo --
18 this agreement for any alleged violation committed
19 during the term of this agreement when they were owners
20 of the property. And I think that makes it pretty
21 clear.

22 CHAIR STARR: Okay. Members, that seems to
23 give us clarity.

24 MS. JOHNSTON: Yeah, okay.

25 CHAIR STARR: Okay.

1 MS. JOHNSTON: I believe, if you want to go
2 into the broader issue that's -- that has been raised, I
3 think that probably has to be a new agenda item, to
4 allow all the other people to come in. So, I mean, I'm
5 glad that this -- this proceeding has brought those
6 issues up and then you can decide what you want to do.
7 But I don't know that we can go much -- you know, we're
8 only -- all we have before us is Mr. Buzianis and his
9 violation.

10 CHAIR STARR: That's fine. I just think
11 there's a desire that some have toward moving forward be
12 embarked upon. And I think we'd be looking toward that.

13 Before we look for an action, I'd like to give
14 Members another opportunity to make any comments or ask
15 any questions. Commissioner Mardfin.

16 VICE-CHAIR MARDFIN: I'd like to make a
17 comment that I'm glad that the two parties settled. I
18 always prefer agreements for the -- you know, it gives
19 you clarity, it gives you some control over things. I
20 always prefer mediation over other kinds of things. And
21 I'm glad that there was a meeting of the minds here.

22 MS. JOHNSTON: Thank you.

23 CHAIR STARR: Okay. Members? Commissioner
24 Shibuya.

25 COMMISSIONER SHIBUYA: I just wanted to

1 commend Mr. Buzianis. I believe -- Mr. Buzianis, are
2 you the president of the association?

3 MR. BUZIANIS: Yes.

4 COMMISSIONER SHIBUYA: Thank you very much for
5 including this in the CC&Rs.

6 CHAIR STARR: Okay. Thank you, Commissioner
7 Shibuya. Commissioner Freitas.

8 COMMISSIONER FREITAS: I'd like to make a
9 motion that we accept --

10 CHAIR STARR: Hold on one second, because I
11 want to be sure there's no more comments. And I would
12 allow members of the public to -- not offer testimony,
13 but any comment, if they wish.

14 (Silence.)

15 CHAIR STARR: Not seeing any, that opportunity
16 has passed. Commissioner Freitas.

17 COMMISSIONER FREITAS: I'd like to make a
18 motion that we accept the settlement agreement.

19 CHAIR STARR: Is there a second?

20 COMMISSIONER SHIBUYA: Second.

21 CHAIR STARR: Moved by Commissioner Freitas,
22 seconded by Commissioner Shibuya. The motion is?

23 DIRECTOR SPENCE: The motion is to accept the
24 settlement agreement as amended.

25 CHAIR STARR: Okay. Commissioner Mardfin.

1 VICE-CHAIR MARDFIN: I'm gonna vote in favor
2 of the motion, but I'm gonna -- after its disposition, I
3 will immediately follow with a motion to include on some
4 future agenda the resolution of all the other properties
5 in the subdivision.

6 CHAIR STARR: Thank you, Commissioner Mardfin.
7 Ready to vote? All in favor, please raise their hand.
8 All opposed. Okay, Director.

9 DIRECTOR SPENCE: The count is unanimous, with
10 eight ayes.

11 CHAIR STARR: Thank you. Commissioner
12 Mardfin.

13 VICE-CHAIR MARDFIN: I move that the Chairman
14 be directed to arrange for a future agenda to --
15 preferably soon, preferably before April, so during our
16 February or March meetings, that it be placed on the
17 agenda to deal with the entire subdivision and how the
18 legal situation be -- can be clarified.

19 COMMISSIONER SHIBUYA: Second.

20 CHAIR STARR: So we have a motion by
21 Commissioner Mardfin, seconded by Commissioner Shibuya.

22 VICE-CHAIR MARDFIN: Rather than clarify,
23 let's say how this issue can be resolved.

24 CHAIR STARR: I would say so that the -- the
25 SMA conditions can be made known to all future --

1 VICE-CHAIR MARDFIN: I will accept that as a
2 friendly amendment.

3 COMMISSIONER SHIBUYA: Yes, I accept.

4 CHAIR STARR: Director, could you restate it?

5 DIRECTOR SPENCE: Hopefully.

6 CHAIR STARR: Take your time, Mr. Director.

7 DIRECTOR SPENCE: I believe the -- the motion
8 is to put this condition, Condition 23, on -- discussion
9 of Condition 23 on to a future agenda for the entire
10 subdivision, so we can make sure that the owners know of
11 this condition.

12 CHAIR STARR: Future owners.

13 DIRECTOR SPENCE: Future owners

14 VICE-CHAIR MARDFIN: And, hopefully, the
15 agenda will be for a February or March meeting.

16 CHAIR STARR: Okay. Commissioner Hiranaga.

17 COMMISSIONER HIRANAGA: I'll be voting against
18 the motion. I believe this is an administrative task.
19 I would prefer that the Department come back to us with
20 a report as to how they intend to resolve the issues.
21 But I really don't see why the Commission has to discuss
22 this, so I'll be voting against the motion.

23 CHAIR STARR: Thank you. Members, ready to
24 vote? Commissioner Mardfin.

25 VICE-CHAIR MARDFIN: I'm gonna be voting in

1 favor of the motion; however, if the Department gets
2 proactive and gets it resolved before we have a meeting,
3 I don't know whether they can or not, but if they do,
4 they could include that as part of the report when the
5 agenda item comes up.

6 CHAIR STARR: Yeah. And I would also be
7 satisfied if that's the case.

8 DIRECTOR SPENCE: And -- and I would -- if the
9 Department can just comment, we will look at this. I
10 know there's a lot of legal ramifications. If I found
11 out that the Planning Commission was discussing my
12 property, my attorney would be in here and, you know,
13 going, "What's going on." So we will look at this with
14 Corp Counsel and, you know, decide a course of action.
15 But one way or another, we will report back to the
16 Commission.

17 CHAIR STARR: I just have one comment. And
18 that is that the conditions of the SMA are not in this
19 -- are not under discussion. They are what they are.
20 They are what they were made to be a number of years
21 ago. I think that our desire is simply for
22 clarification, so that people know what those conditions
23 are, but not to alter them in any way.

24 Anyway, let's vote. All in favor, please
25 raise their hand. All opposed.

1 DIRECTOR SPENCE: We have five in favor; we
2 have one, two, three nays. So it was carried.

3 CHAIR STARR: Motion passes. Okay. Thank you
4 very much. Appreciate everyone working together to find
5 resolution here. And good luck.

6 And, Mr. Buzianis, if -- when we discuss this,
7 if the association can be proactive, that will probably
8 be helpful to everyone.

9 MR. BUZIANIS: If you could just let us know
10 when you're going to discuss it.

11 CHAIR STARR: Yeah. Okay. And I want to do
12 one thing further, which is I want Zoning -- Zoning and
13 Enforcement staff, I want to compliment them and thank
14 them for their efforts. I know they have been through a
15 lot with this.

16 DIRECTOR SPENCE: Commissioners --
17 Commissioners, we are moving to Item D, Acceptance of
18 Action Minutes of the January 11, 2007 meeting, and the
19 Regular Minutes of December 14th, 2001.

20 CHAIR STARR: Do we have any desired action
21 regarding the minutes?

22 COMMISSIONER SHIBUYA: Move to accept the
23 minutes as written.

24 COMMISSIONER WAKIDA: Second.

25 CHAIR STARR: Moved by Commissioner Shibuya,

1 seconded by Commissioner Wakida. The motion is?

2 DIRECTOR SPENCE: The motion is to accept the
3 Action Minutes of January 11, 2011, and December 14th,
4 2011 meetings.

5 CHAIR STARR: Okay. Any discussion?

6 (Silence.)

7 CHAIR STARR: All in favor, please raise their
8 hand. All opposed. The vote is unanimous in favor.

9 Okay. Moving right along.

10 DIRECTOR SPENCE: Okay. Mr. Chairman, Item E
11 on your agenda, Director's Report. Planning Commission
12 Projects and Issues, I think we've had some discussion
13 on that. West Maui Site Inspection is set for February
14 3rd, 2011.

15 CHAIR STARR: Who can give us a little bit of
16 a -- a reminder about what we're doing and where to
17 meet? I know staff's put a lot of time into this. It's
18 gonna be a wonderful, wonderful day. Mr. Yoshida,
19 please.

20 MR. YOSHIDA: Thank you, Mr. Chairman, Members
21 of the Commission. This is the rescheduled West Maui
22 Site Inspection from the January 12 -- which was
23 originally scheduled for January 12, but, due to the
24 Flash Flood Watch issued by the National Weather
25 Service, was rescheduled on January 11 to February 3rd.

1 We're visiting about 14 different sites in the
2 West Maui area. Starting with Olowalu, five sites in
3 Olowalu, progressing northward to Launiupoko and Lahaina
4 Town and some of the projects there, doing a walk
5 through a portion of the Lahaina Historic Districts, and
6 then over to Kaanapali and several of the shoreline
7 protection applications in the Napili area, which will
8 be a full day. Again, we anticipate starting off at
9 9:00, at the first site in Olowalu, which is the Roadway
10 D site.

11 We have a bus that we're renting. That will
12 leave here for the Commissioners at 8:00.

13 We have to have a quorum in order to have a
14 site inspection. No quorum, no site inspection. So if
15 you are not going to attend, we need to know that
16 because, then, we can make the proper adjustments. But
17 we need to have a quorum.

18 CHAIR STARR: I'd like to ask Members, are
19 there any of the Commissioners who cannot make it?
20 Okay. It looks like --

21 COMMISSIONER HIRANAGA: Three.

22 CHAIR STARR: Three. Looks like we'll have a
23 quorum. And, you know, if there's any way -- any -- you
24 know, any of you guys can make it, it's gonna be
25 interesting.

1 Please continue. Mr. Yoshida, is that -- did
2 you have anything else on that one?

3 MR. YOSHIDA: No. I did distribute the list
4 of agenda items for your February 8th meeting. We have
5 three public hearing items, a workshop on the new flood
6 maps from FEMA and DLNR, and consideration by the
7 Commission of a waiver or non-waiver of the SMA request
8 for a time extension, two-year time extension, to
9 complete construction of the Veterans Center project.
10 Plus, I guess we could add the Posely Final EA, which
11 has been kind of waiting since November, pending the
12 site inspection which is scheduled for February 3rd.

13 CHAIR STARR: Okay. You know, time
14 permitting, we can do that. There was also --
15 Mr. (Inaudible) has some parking lot issues that we had
16 asked him to come back on -- on shoreline -- on
17 shoreline stuff. And we had discussed having it after
18 the -- the FEMA flood map. And I know there was some
19 things discussed between some of the State people
20 involved with the shoreline yesterday at a County
21 meeting. And -- and that will report on some of those
22 issues, too, if that's okay.

23 Commissioner Wakida.

24 COMMISSIONER WAKIDA: I don't see the Lahaina
25 historic map or the national historic landmark map in

1 our packet. Could we have passed out those two? And if
2 you don't have them, I have them with me, we can make
3 copies.

4 MR. YOSHIDA: Yes. We could distribute it
5 with the agenda we will be posting this week for the
6 February 3rd site -- West Maui site inspections.

7 COMMISSIONER WAKIDA: Okay. Thank you.

8 CHAIR STARR: Do we need that before -- oh, we
9 will have that in time for the site inspections, if we
10 did that, right?

11 MR. YOSHIDA: Yes. We will be doing a portion
12 of a walking tour through the historic districts as well
13 as for the Lahaina Harbor Ferry System Improvement
14 Project that's located in the Historic District.

15 COMMISSIONER WAKIDA: Right. But I want to
16 make it clear, while we're doing this, that we can point
17 out where the boundaries are and what the difference is
18 between those two areas.

19 CHAIR STARR: Okay. So we shall have it by
20 then. Okay. Members, anything else on agenda? We --

21 COMMISSIONER WAKIDA: Do we need to clear up
22 where everybody meets for this?

23 CHAIR STARR: Yeah. Where do we meet and how
24 do the logistics work Mr. Yoshida?

25 MR. YOSHIDA: Oh, for the --

1 COMMISSIONER SHIBUYA: February 3rd.

2 CHAIR STARR: Yeah, for the site inspection.

3 MR. YOSHIDA: February --

4 CHAIR STARR: Yeah. Do we meet here, do we
5 meet in Lahaina, what do we do?

6 COMMISSIONER WAKIDA: For the site inspection.

7 MR. YOSHIDA: Oh, for the site inspection. I
8 guess for people who need transportation -- well,
9 Commissioners -- Commissioners and related County staff
10 who will need transportation, we'll be meeting back here
11 at about 8:00. Well, I say 8:00, and we'll leave at
12 8:15. We have a very tight schedule because we're
13 visiting 14 sites. And we'll be out in the first site
14 in Olowalu, at the projected Roadway D site, at about
15 9:00. So we can make arrangements. If you live out in
16 West Maui, you can meet us in Olowalu at 9:00, and then
17 you can jump on the bus.

18 CHAIR STARR: Okay.

19 COMMISSIONER HIRANAGA: 9:00, it takes half an
20 hour. Here to Olowalu, 20 minutes, 25 minutes.

21 COMMISSIONER WAKIDA: Yeah. Takes not more
22 than 30 minutes to get to Olowalu.

23 COMMISSIONER TAGORDA: You make him laugh.

24 COMMISSIONER SHIBUYA: You guys drive on two
25 wheels.

1 COMMISSIONER DOMINGO: It's a big bus, guys.

2 COMMISSIONER WAKIDA: We're talking to West
3 Maui.

4 CHAIR STARR: I'd like to make sure everyone
5 has a cell phone number that, if they get separated or
6 whatever. I'm happy to give mine or -- unless you wanna
7 give yours. Should I give mine? Okay, my cell phone --
8 okay.

9 COMMISSIONER FREITAS: Record it.

10 CHAIR STARR: The Department will let the
11 Commissioners know. And members of the public are
12 willing to call me. Okay.

13 COMMISSIONER WAKIDA: Another question.
14 Besides -- besides Commissioners, who else is joining
15 us?

16 COMMISSIONER HIRANAGA: Public is invited.

17 COMMISSIONER WAKIDA: On this bus?

18 COMMISSIONER HIRANAGA: On the bus?

19 MR. YOSHIDA: Yeah. I guess it's the Planning
20 Commissioners and County staff.

21 COMMISSIONER WAKIDA: Because I think the --
22 one of the hopes was that because we would be all
23 together on a bus, it would be somebody on the bus who
24 can give us some prep as we get from place to place.

25 MR. GIROUX: As far as the Sunshine Law,

1 there's got to be minimal discussion in the
2 transportation part because the meeting is agendaed as
3 the site. So the public has a right to be a part of
4 that discussion and understand what -- if there is any
5 conversation about what's gonna happen about that
6 project, the public has the right to hear that
7 discussion. The transportation portion is not a
8 meeting. The meeting is agendaed as the site.

9 COMMISSIONER WAKIDA: Can the -- can a planner
10 just give us a description of the site that we're
11 visiting or is that considered discussion?

12 MR. GIROUX: Well, you should have -- if they
13 wanna do that, there should be materials. But, again --

14 COMMISSIONER WAKIDA: Okay.

15 MR. GIROUX: -- the conversation's gotta be to
16 a minimum because it -- under the Sunshine Law, a site
17 visit is considered a meeting. Just like you have to
18 have the minutes, the agenda, the public has the right
19 to participate --

20 COMMISSIONER WAKIDA: Okay.

21 MR. GIROUX: -- in such. So --

22 COMMISSIONER WAKIDA: Okay. Thank you. Yeah,
23 I got it.

24 CHAIR STARR: And we -- at each location, I
25 will convene the Commission and -- but I will ask that

1 we try to keep our discussion as brief as possible
2 because we don't have our usual mechanisms for recording
3 the meeting. So any -- you know, discussion, any real
4 in-depth questions, I would ask that we put in our
5 parking -- that the planner note them, we put them in
6 our parking lot and bring them back here.

7 Also, to actually get through this, we're
8 going to have to be really quick. I mean, we're really
9 just gonna get to look at something. And, you know, if
10 someone really needs to ask a question, we can do it and
11 then move along. And in the bus, I mean, if some -- if
12 a planner wanted to say, "That's the ocean," that's
13 okay. But we would not want a real presentation about
14 the agenda items to occur before we reach the site. And
15 Mr. Giroux will certainly be there to help us. And, you
16 know, we --

17 MR. GIROUX: Sunshine sheriff.

18 DIRECTOR SPENCE: Sunshine sheriff, I like
19 that.

20 CHAIR STARR: Let's move along here. Thank
21 you, Mr. Yoshida. I think it's gonna be a great day.

22 MR. YOSHIDA: Yes. We do have reports on some
23 of the SMA exemptions --

24 CHAIR STARR: Okay.

25 MR. YOSHIDA: -- and SMA assessments, two of

1 them. One is the Gardens at West Maui, which is SM5
2 20110006. This is the replacement of a cedar shake roof
3 with an (inaudible) tile roofing. There is no change in
4 the roof configuration or structure. The individual
5 shake size tiles result in a similar visual texture to
6 the original, so this was exempted as a repair and
7 maintenance to an existing structure.

8 The other one was for SMX 20090043. This was
9 for the consolidation and reconfiguration of five
10 parcels in Peahi by A&B into five parcels. And it's a
11 paper subdivision. There's no related construction
12 improvements associated with the subdivision. And the
13 smallest -- involved a total of about 81 acres. And the
14 smallest lot would be about 9.2 acres.

15 CHAIR STARR: Commissioner Shibuya, does that
16 satisfy your --

17 COMMISSIONER SHIBUYA: Yes. Thank you.

18 CHAIR STARR: Okay. So the Chair would
19 undertake a motion to accept all items that have
20 appeared on these reports with the exclusion of the
21 three exemptions that we haven't had further information
22 on. I think Mr. Yoshida knows which ones those are.

23 VICE-CHAIR MARDFIN: I'd like to move to
24 acknowledge receipt of these. I don't wanna say the
25 word "approval."

1 CHAIR STARR: No. We don't -- we don't
2 approve them.

3 VICE-CHAIR MARDFIN: We're -- we're
4 acknowledging receipt.

5 CHAIR STARR: Yeah, that's fine. Is there a
6 second?

7 COMMISSIONER WAKIDA: Second.

8 CHAIR STARR: Moved by Commissioner Mardfin,
9 seconded by Commissioner Wakida. The motion is?

10 DIRECTOR SPENCE: That the Commission has
11 received -- acknowledges receipt of information
12 regarding questions SM --

13 CHAIR STARR: No. As we receive -- once we
14 receive these items, then that sets the clock going.
15 And so we're receiving all the items, whether we
16 questioned them or not, with the exception of those
17 three. So I'll let you restate it.

18 MR. YOSHIDA: Yeah. I guess we have a late
19 bulletin. I just got information on the three, which is
20 SM5 20110004, which is after-the-fact remodel of the
21 reception building at the Kamaole Sands complex in
22 Kihei. For SM5 2011 0007, Hana Highway resurfacing from
23 the vicinity of the Honomanu Bridge to the Waikane
24 Bridge. And then I guess it's, then, SM5 2011/0008,
25 which is the installation of 2,800 lineal feet of

1 replacement water line and related improvements along a
2 portion of Uluniu Road, a portion of Waipuulani Road and
3 Ewa Place in Kihei.

4 CHAIR STARR: So that one is outstanding?

5 MR. YOSHIDA: Let's see. We did 0004, 0007,
6 0008, and SMX 20090043.

7 CHAIR STARR: Is that a shore -- the shoreline
8 lots?

9 MR. YOSHIDA: I think 2009 -- SMX 20090043 is
10 a shoreline lot, but it's kind of along the cliffs.

11 CHAIR STARR: No. I mean just the water line
12 one.

13 MR. YOSHIDA: Yeah. I think you probably
14 would have to.

15 CHAIR STARR: Let's hold -- let's -- can we
16 hold that? Can we hold that one open? So, Commissioner
17 Mardfin, why don't you restate your motion so it's only
18 that one? It's that we've accepted all of them except
19 -- we've received all of them except that one.

20 VICE-CHAIR MARDFIN: Are we gonna get any more
21 information on the Hana Highway one?

22 CHAIR STARR: Do we want it? Yes, okay.

23 VICE-CHAIR MARDFIN: I would.

24 CHAIR STARR: So those two. The two are the
25 360 and the second is the Uluniu Road.

1 VICE-CHAIR MARDFIN: So we're acknowledging
2 receipt of all the rest?

3 CHAIR STARR: Yes, everything --

4 VICE-CHAIR MARDFIN: Except those two.

5 CHAIR STARR: Commissioner Shibuya, is that --

6 COMMISSIONER SHIBUYA: Wakida.

7 CHAIR STARR: Oh, Commissioner Wakida.

8 COMMISSIONER WAKIDA: Yes. Fine.

9 CHAIR STARR: Okay. Director.

10 DIRECTOR SPENCE: Okay. The motion as stated
11 is the Commissioners are acknowledging receipt of the
12 information to their satisfaction with the exception of
13 the water line at SM5 20110008 and SM5 20110007, which
14 is Hana Highway improvement.

15 CHAIR STARR: Yes, sir. All in favor, please
16 raise their hand. All opposed.

17 DIRECTOR SPENCE: It's unanimous with eight
18 ayes.

19 CHAIR STARR: Okay.

20 VICE-CHAIR MARDFIN: Mr. Chairman?

21 CHAIR STARR: Yes, Commissioner Mardfin.

22 VICE-CHAIR MARDFIN: Before Mr. Yoshida
23 departs the microphone, would he wanna make a very short
24 report on what happened at the Hana Advisory Committee
25 meeting last Thursday and what the status of (inaudible)

1 is?

2 MR. YOSHIDA: Well, I guess the item --

3 COMMISSIONER HIRANAGA: It's not on the
4 agenda.

5 COMMISSIONER TAGORDA: Not on the agenda.

6 MR. YOSHIDA: -- will be coming to you --

7 VICE-CHAIR MARDFIN: I can't do that?

8 MR. YOSHIDA: -- in the future.

9 CHAIR STARR: Order, please.

10 COMMISSIONER HIRANAGA: Order.

11 CHAIR STARR: Order, please. This is,
12 actually, an item -- this is the reason why we have
13 Planning Commission project issues, specifically for
14 this type of -- type of thing. And we did kind of skip
15 that over. If a Commissioner would like to move that we
16 examine that under Director's Report, E1, the Chair
17 would be amenable to that request. Commissioner
18 Mardfin.

19 VICE-CHAIR MARDFIN: I will move that, under
20 Director's Report, E1, we request the -- go back to that
21 so that Clayton Yoshida can report on what happened at a
22 recent meeting.

23 CHAIR STARR: Is there a second? Moved by
24 Commissioner Mardfin, seconded by Commissioner Shibuya.
25 Go ahead, Commissioner Hiranaga.

1 COMMISSIONER HIRANAGA: Point of order. This
2 item that he's about to discuss will actually come back
3 to us, is that correct?

4 CHAIR STARR: Yes. Well, that's what we're
5 going to find out.

6 COMMISSIONER HIRANAGA: Okay. Because I would
7 hate for it to be prejudiced by --

8 VICE-CHAIR MARDFIN: It won't.

9 COMMISSIONER HIRANAGA: -- unprepared
10 comments.

11 MR. GIROUX: Just a caveat, as long as it's
12 procedural; it's not substantive, you know, and if we
13 can keep it short.

14 CHAIR STARR: Okay. Thank you, Mr. Giroux.
15 All -- the motion again is just to take up that item.
16 All in favor, please raise their hand. All opposed.
17 Okay.

18 DIRECTOR SPENCE: We have -- the motion was to
19 discuss what happened at the last Hana Advisory
20 Committee meeting procedurally.

21 VICE-CHAIR MARDFIN: It was to ask about the
22 status, procedural status of it.

23 DIRECTOR SPENCE: Procedural status. There
24 were four members in favor and three opposed.

25 CHAIR STARR: I don't think so. Let's vote

1 again. All in favor, please raise their hand.

2 DIRECTOR SPENCE: Okay. We have five in
3 favor.

4 CHAIR STARR: All opposed.

5 DIRECTOR SPENCE: I have one opposition
6 raising their hand at this time.

7 CHAIR STARR: Okay. And one abstention --

8 DIRECTOR SPENCE: Okay.

9 CHAIR STARR: -- which counts as an aye. So
10 we will take it up. Mr. Yoshida, what happened?

11 MR. YOSHIDA: Yes. The Hana Advisory
12 Committee to the Maui Planning Commission conducted a
13 public hearing on the Special Use Permit request for the
14 Ala Kukui Spiritual Retreat Center at Kawaipapa. The
15 Commission had visited this site in May of last year
16 when the Commission went to Hana and conducted various
17 site inspections. There were about 60 people at the
18 meeting. It was overwhelming testimony in favor of the
19 project. At the end of the hearing, the hearing was
20 closed, the advisory committee deferred action pending
21 conducting a site inspection and receiving a further
22 recommendation from the Planning Department. So we'll
23 be going back to Hana again for an advisory committee
24 meeting. They will conduct a site inspection and
25 deliberate and make a recommendation to you.

1 CHAIR STARR: Okay. Well, thank you,
2 Mr. Yoshida. Commissioner Mardfin, does that satisfy
3 you?

4 VICE-CHAIR MARDFIN: It does. The site
5 inspection is not for the Planning Commission, but for
6 the Hana Advisory Committee?

7 DIRECTOR SPENCE: That's correct.

8 CHAIR STARR: Okay. Thank you very much. I
9 thank everyone for their patience and perseverance. We
10 will travel on next week to Lahaina. ...(gavel)...

11 (Meeting adjourned at 10:38 a.m.)

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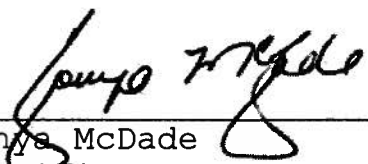
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I, TONYA MCDADE, Certified Court Reporter of the State of Hawaii, #447, Registered Professional Reporter, Certified Realtime Reporter, Certified Broadcast Captioner, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney nor an employee of any of the parties hereto, nor in any way concerned with the cause.

DATED this 8th day of February, 2011.



Tonya McDade
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