

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
FEBRUARY 22, 2011**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 9:07 a.m., Tuesday, February 22, 2011, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Chair Starr: ...Joining us today I'd like to welcome everyone to the February 22, 2011 meeting of the Maui Planning Commission. We have a long and interesting agenda today and we're glad many people have joined us. We have with us so far Commissioner Jack Freitas, Commissioner Orlando Tagorda, we have Deputy Corporation Counsel, Michael Hopper. James Giroux who's usually here is in a continuation in the County Council and glad to have Michael Hopper here as our attorney in representing this Commission. I'm Jonathan Starr. I'm Chairman. We have our Director of Planning, Will Spence. We have Commissioner Donna Domingo. We have Commissioner Penny Wakida. Several Commissioners are off island and are excused. Carolyn Takayama-Corden, she's the Secretary for the Commission. Rowena Dagdag-Andaya is Deputy Director of Public Works. I'm glad she is here to share her expertise. Planner Danny Diaz, Clayton Yoshida of the Current Division keeps the trains on track here and keeps everything behind the scenes going for these meetings and agenda items. And I did see Planner Kurt Wollenhaupt, Planner Gina Flammer, Planner Livit Callentine and who else?

Mr. Spence: Francis Cerizo.

Chair Starr: Oh, Francis Cerizo is here with us and I'm sure we'll have much other expertise before the day is done. I'd like to thank Kenny Hultquist who's here filming the meeting for Maui Tomorrow for airing on Akaku. Thank you, Kenny, you don't get acknowledged enough but we really appreciate your presence and your good work. With that said, we will move along.

The first item is that we allow public testimony or comment on anything on our agenda. If, if the normal public hearing item it's, it's testimony sometimes if we're into a contested case then we make it – we allow people to say their piece, but it's public comment, and people have the opportunity to make their, their statement to us in one of two ways either before the body of the meeting which would be now in a moment or before decision making is done on an agenda item. So at this time, we'll allow testimony or comment from any members of the public on any agenda item. I have three sign ups so far and I'll start with them and then anyone else is welcome to come up. So our first testifier is, Kathleen Heller will be followed by Dolores Bio. Please Ms. Heller, are you here?

Ms. Kathleen Heller: Yes, ...(inaudible - speaking from the audience)... I would like to hold my comments until ...(inaudible)...

Chair Starr: Okay, Ms. Heller will hold. Ms. Bio, are you here?

Ms. Dolores Bio: ...(inaudible - speaking from audience)...

Chair Starr: Okay, she will also wait. Jocelyn Perreira is our next sign up, please, welcome, Ms. Perreira.

The following individual testified at the beginning of the meeting:

Ms. Jocelyn Perreira - Item C-2, Council Resolution No. 10-78, Bills for Heritage Hall, CPA, CIZ

Her testimony can be found under the item on which she testified.

Chair Starr: Any other members of the public wishing to give testimony at this time, please make yourself known? No other testifiers? Last call. Not seeing any, the initial public testimony portion of the meeting is now closed. We'll move onto items on our agenda. Director, please why don't you proceed with Director's Report?

Mr. Spence: Thank you, Mr. Chairman. The first three items on your agenda under Director's Report. One is the EA/EIS Report, the second is the SMA Minor Permit Report, and then the SMA Exemptions Report, and those have been distributed to you in your packet.

## **B. DIRECTOR'S REPORT**

### **1. EA/EIS Report**

Mr. Spence: And I see we also have for the Commissioners we have the draft Environmental Impact Statement for the Auwahi Wind Farm at Ulupalakua Ranch, two volumes for your review.

### **2. SMA Minor Permit Report**

### **3. SMA Exemptions Report**

Chair Starr: Thank you, Director. I know I had two questions on the SMA sheet that were answered by memo to my satisfaction. Does any of the other Commissioners have any questions or concerns regarding this list? Not seeing any, we'll move along. We'll still have an opportunity to discuss and receive it officially at the end of the meeting. Director, next item.

Mr. Spence: Mr. Chairman, we're already up to Item C, Public Hearings. Mr. Don Nelson of Nellie's on the Beach, Ltd., requesting SMA Permit to construct Nellie's Wedding and Catering Project. We have Ms. Gina Flammer as the Staff Planner to give a brief presentation.

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

- 1. MR. DON NELSON of NELLIE'S ON THE BEACH, LTD., requesting a Special Management Area Use Permit in order to construct the Nellie's Wedding and Catering Project, a 6,816 square feet commercial building, 41 on-site parking stalls, one (1) loading zone, landscape planting, and associated infrastructure improvements to support a wedding hall, accessory restaurant, and retail shop in the B-R Business Resort District at 85 North Kihei Road, TMK: 3-8-013: 011, Kihei, Island of Maui. (SM1 2010/0001) (G. Flammer)**

Mr. Spence: I would also note that we do have a Petition to Intervene on this item so after, well –

Chair Starr: Okay, thank you, Director. I'd like, the Chair would like to comment that since we do have a Petition to Intervene on this it will necessitate taking action on the Petition to Intervene one way or another before we deal with the actual facts and, and decision making of the, of the original request that is under a public hearing. We would like to have a public hearing on it, but we may be precluded from any decision making because of the request to intervene. If it's acceptable to Members, I would like to take the two items together now at the beginning of the meeting, and our process will be the one that we followed previously which is that we'll have a presentation on the, on the overall request and get to understand what this whole thing is about. We'll also have a presentation on the request for the Petition to Intervene and then we will have – the Commission will be able to ask questions at that point not about the merits of the projects itself but rather on the request for intervention. We will allow public comment on it and then we will attempt to deal with the Petition to Intervene and based on the outcome of that we will see about whether there's any possibility of proceeding on with the actual item, but we do want to try to in any case, do, do that much today. Ms. Flammer, why don't you please proceed?

Ms. Gina Flammer: Okay. But I do want to let you know that as we speak a settle was either being signed or the final touches are being placed on it. So that will change kind of how our procedure is. Our Chair just explained the procedure, it's the same we used for the Grand Wailea. Basically when the Department gets an intervention to intervene our staff report changes, you don't have a recommendation in front of you. I do have one ready for you should there be a withdrawal of the intervention so we could proceed after that. For the benefit of you and the public there will be the brief overview that the Chair discussed. You will be able to ask questions though questions at this time period your attorney will caution you that they're only about dispensing with the intervention. There will be a public hearing item because we do need to satisfy the public participation requirements that can be done after your questions. Then we'll have the intervenor's attorney come up, address you, bring you up to speed on what's happened in the past half an hour, and then if needed, then the applicant's attorney can come on up and speak and we'll kind of go from there.

So beginning with the overview presentation, the property is located in the State Urban District. In the Kihei-Makena Community Plan it's designated as Business. The property's zoned Business Resort and if you look at Pages 13 and 14 of your report it does go into detail on the zoning. Basically BR Resort Commercial District is intended to provide for commercial activities and services oriented towards the need of the transient visitor. Permitted uses which are listed in your report but they do include bars, nightclubs, restaurants or uses similar in character to providing food services or facilities primarily to transient visitors as approved by the Commission. As noted in the report, wedding facilities are not an outright permitted use really in any district so in 2005, the applicant did obtain from this body an Accessory Use Permit for a wedding and catering business. I do want to let you know that the height limit in BR Zoning is 35 feet and the building does meet this requirement.

There's been some questions about fill that was put on the property and where the natural grade is. Our Zoning Division is the one that reviews the Flood Development Permits and looks at the grading. I passed out a – the most recent letter from our Zoning Division discussing what the natural grade is. It's going to be where the original grade was. Any additional fill put in the last 50 years, and we have the architect here that can talk more about that, will count towards the height

of the building. So the building is 33 ½ feet, I believe. So they can have about 18 inches of fill, the rest would need to be removed. I do have Francis Cerizo here today from our Zoning Division who can talk about Flood Development Permits. I know you've had a lot of workshops on it but if you have specific questions.

The project was also required to adhere to the Maui Planning Commission Shoreline Rules and the Shoreline setback. That was determined to be 82.5 feet. And interestingly that's measured from the back of the dune. If you look on your exhibits that show the site plan, if you look real closely it does show where the shoreline setback is. Oh, you see it there, okay, good.

I do want to note that in 2004, that dune system that's in there, there are some photos of it, was done by the applicant with the State and the County, that's still in place. The project was also required to meet County parking and building setbacks. Setbacks are 10 feet on the sides of the property because with our Zoning Code it requires a 10-foot setback when the properties adjacent to either Residential or Hotel zoned, the condominium to the South, the Kai Nani Hale is zoned Hotel, and then the other side is zoned Residential, so they do have 10-foot setbacks. And now I'm going to turn the floor over to the project representative for a more thorough explanation of the project.

Chair Starr: Okay, how long will that presentation be about?

Ms. Flammer: Five to seven minutes.

Chair Starr: That's fine. Please. Welcome, Mr. Summers.

Mr. Michael Summers: Mr. Chairman, Members of the Commission, my name is Mike Summers, and I'm a land planner with Chris Hart and Partners. Today we'll be giving you a short power point that gives kind of an explanation overview of this project. We do have today our entire project team. So if you have any questions, please feel free to ask.

With that, so the applicant/developer is Nellie's on the Beach. We have Don Nelson here available to answer questions you might have. Chris Hart and Partners is the permitting, landscape architecture consultant. George Rixey is the architect. Otomo Engineering we have Mark Matsuda is the civil engineer. Philip Rowell is our traffic engineer. Philip's in the audience. And SCS based in Honolulu is our archaeologist.

So today, essentially we're providing an overview of a special event wedding facility. It's about 6,816 square feet. It includes dining, banquet, retail facilities, 43 parking stalls are provided on site. We have landscape planting and associated infrastructure. The parcel size is 39,000 square feet. Access is from North Kihei Road and South Kihei Road. The project site is located in North Kihei. It's just to the north of Piilani Highway along North Kihei Road approximately 200 feet from the intersection of South Kihei Road. It's a makai, shoreline parcel, infill development. Just to the north we have the Nani Kai Hale. It abuts our southern boundary. We have the Kihei Sands adjacent to it and the undeveloped parcel is owned by the applicant as well. Tax map key of the parcel, next. As Gina mentioned, the subject property is community planned Business Commercial and this includes retail stores, offices, entertainment enterprises and related accessory uses. You can see

the zoning is BR Resort Commercial. It's in an area of largely H-1 Hotel. We do have a single family zoned parcel just to the north of us. As Gina mentioned, in 2005, an accessory use permit was granted for this project and the district is intended to provide for commercial activities, services oriented towards the needs of a transient visitor. The district is distinguished from Hotel Districts in that independent commercial uses are permitted.

We did go through quite an extensive community preconsultation phase. In June 2000 – June 15, 2010 we did meet with the KCA's Planning Committee and then we went back to their general membership on July 15, and we again met with the KCA Planning Committee and the neighbors of the project, the Nani Kai Hale on January 25. We did present this project to the Urban Design Review Board on August 3<sup>rd</sup>. Okay, and with that, I'm going to turn it over to George Rixey to go through the project.

Chair Starr: Yes, Mr. Rixey, please. Good to see you today.

Mr. George: Rixey: So hi everybody. My name is George Rixey. I'm the architect for the project. I'll just try to go through this quickly. If you have any questions, please ask but I'm going to try to go through as fast as I can. This is a picture of the property that is looking mauka. This is the – this property was cleared in two phases. This picture was taken after the first phase was already cleared. If you notice there's like some slabs here in various places where there were old sort of derelict buildings that were falling down. The whole place was overgrown. There was homeless and drug use and stuff like that going on the property. This building is still there because we were waiting for permit from Historic Preservation Division because it was older than 50 years old. Okay, next. So that's just some more pictures of the general condition of the property.

This is a picture of the shoreline. This is old Margarita's Kealia Plaza building. This is prior to when applied for a dune restoration project. That's the Margarita's up top in the old building. That building is on the adjacent property which is currently zoned single family. That building's also been removed.

This is along North Kihei Road and showing the frontage of the property. This is actually both properties. This is the Business Resort property. This is the single family property next door. Both properties are owned by Mr. Nelson. Again, South Kihei Road, North Kihei Road and this is the end of the property in front of the business resort area. This is looking from – this is looking again mauka from the beach. This is Nani Kai Hale to the south. This is the property right here. This is after we did the dune restoration project and what's good about this photo is it shows, you can see a little bit of sand right there. That's actually the shoreline setback, the building setback. So the building has to be here or further back. And this will remain and in that condition. And then that's after we did the dune restoration project. This is the condos to the north of the property. And again, that's Hale Kai Nani to the south. This is the condos to the north and along adjacent to that, this the residential area, the single family there's a beach access down there.

Okay, so this is the shoreline setback, open space to remain as it is. The building is right here in the middle. It's relatively small in size and the attempt was to try to design it in a way that it would appear residential and have sort of a tropical Hawaiiana characteristic. Parking is in the front here.

Now this is the site plan again. Can you flip back to the other site plan real quick. The way this was

laid out is the kitchen and all the operational functions were on this side of the property next to Hale Kai Nani where there's the loading dock and trash and all that kind of thing and in response to their concerns about the building, we flipped it. So the next, if you look at the next – this is a – there's a – you guys should have a package of three pages and that shows that we've flipped the building so we put all the kitchen and the loading and trash and the storage and everything is now on the side opposite of Nani Kai Hale. That's the original floor plan where the kitchen and all the loading dock and whatnot is on the Nani Kai Hale side. There's bathrooms over here and shops and storage but basically it's just a big great room in the middle, sort of a multipurpose type room. You know, kind of like a community house would be, you know, traditionally something like that. Next photo.

So here you see we've flipped it. So we put the kitchen and storage and loading and everything on this side and now the bathrooms are on this side. One of the things about the building was I wanted to have an open feeling, you know, like a hale so what we've done is we've oriented it mauka makai, so it's, it's open. You can see through. It's visually open. You can see through the building this way, but on the sides, these wings are solid so you can't see through the building this way. And one of the benefits of that is the sound if it exits the building is going to exit towards the ocean side, it won't be exiting on the adjacent property sides.

So that's just a picture of the front elevation. It's slightly modified because of the changes. Because of the configuration of the lot, it's kind of pie shape so when I flipped it over, I actually had to make the building smaller in order to accommodate the changes that way. So it's a little smaller than what you see there. This is the, can you go back one?

That's the ocean side. So on the ocean side, it's, it's all open. It's, it's closeable but it's glass sliding doors. This is the same picture of the ocean side and the reason I'm showing you this is because if you notice, the building is elevated. It has to be elevated from the grade, existing grade because of the flood zone that it's in for tsunami.

And these are the pictures of the side elevations. This is the side that faces Hale Kai Nani and if you flip the next one, this is a revision of that same side also in response Hale Kai Nani because this dormer window up here, they've asked if we would make that solid so that light and sound could not escape from that and so we've done that.

This is a little bit of a technical drawing but it's only meant to show that this is a cross section of the building and right here is the existing grade before we were given a permit to place fill on the property. This right here is the level of the fill which varies. It averages around two feet. In the areas where it exceed two feet of fill, we've been asked by the Zoning Department to remove that in order to meet the FEMA standards which allow no more than two feet of fill. FEMA is the Federal Emergency Management Agency for flood protection. So the 30-foot height limit of the building will be based on this original grade before any of the fill was placed. And the rest is landscape. Thank you very much.

Chair Starr: Okay, thank you, Mr.Rixey. And, Ms. Flammer?

Ms. Flammer: ...(inaudible)... a little bit more.

Chair Starr: Oh, okay.

Mr. Bill Mitchell: Mr. Chair, Members of the Commission, my name is Bill Mitchell. I'm the project landscape architect. I'll make this very brief. We do have an irrigation well which will serve the landscape irrigation needs of the property and as George mentioned, the dune restoration on the makai side has been complete and essentially that side is, is in the place and so that will be retained as you saw it in that photo. The remainder of the property will be focused primarily on native and low water, drought tolerant planting to minimize maintenance and water use and that, that will be the extent of the landscape. Thank you.

Mr. Rixey: Pictures of the plants. I don't know how much time you want to spend on this but there are a number of, you know, methods of building the projects and materials that we're using to try to be as sustainable and environmentally conscious as we can. You've probably all seen many of these things before. I can run through the list if you'd like?

Chair Starr: I think that –

Mr. Rixey: It's in the report. Okay.

Chair Starr: Yeah. You know, if we, if we get to the actual merits of the project I'll ask you to come back with this.

Mr. Rixey: Okay.

Chair Starr: I know there is a lot of interest in this, but let's wait and see how far we get.

Mr. Rixey: Okay.

Mr. Summers: Okay, we'll quickly summarize our development impacts regarding drainage, the project will result in a net increase of drainage. We are proposing to capture a 100 percent of the drainage on site. That includes the existing drainage that's being generated by the property in the undeveloped condition. The catch basin inserts will remove sediment, trash, debris, so we are installing those as well. Our drainage system will be located on the mauka side of the property rather than being on the makai side of the property. And BMPs, of course, will be implemented during the construction phase, as was mentioned, the project is located in the V18 flood zone. That's a 100-year flood zone with tsunami velocity and a Flood Hazard Development Permit will be required for this project.

The project will generate a slight increase of traffic. However, our traffic study indicates the level of service post project will be level of service of C or better. Now ingress and egress from the project driveways will be restricted to right in, right out only.

Obviously, we'll generate some water demand. We do have a 5/8-inch meter on site and we have a 12-inch line along North Kihei Road. We will be including a number of water conservation measures including nonpotable irrigation water from an existing onsite well. We'll be using native plants and drip irrigation and low flow fixtures. The onsite sewer system will connect to the existing

15-inch line along North Kihei Road and we do have capacity in Kihei for the wastewater.

Regarding noise, we will comply with HAR Chapter 1146 Community Noise Control, to mitigate our construction impacts. And we are also in the process, I guess it's been completed possibly of negotiation mitigation measures for the operation phase of the project.

We did do an archaeological inventory survey. The onsite work was conducted in 2009. Our report was finalized in September 2010. We had no subsurface deposits. However, because, you know, South Kihei is generally kind of rich in deposits in sandy soils, we will be doing archaeological monitoring during construction. Thank you.

Chair Starr: Okay, thank you very much. I'm going to ask Ms. Flammer to give us the background on the request for intervention and then we'll go to questions from the Commission relating to –

Ms. Flammer: I don't think I have an update at this point. We could –

Chair Starr: Yeah, okay, give me a bit of a background and where we're at.

Ms. Flammer: Okay, it appears that they're signing the Memorandum of Agreement right now which would lead to them withdrawing it. We could continue on with questions relative to the petition. We do need to do a public hearing.

Chair Starr: Yeah, we'll do all of those. Members, at this point, does anyone have any questions on this particularly in relation to the request for intervention? Commissioner Freitas?

Mr. Freitas: We will have a copy of the intervention settlement, right, agreement?

Chair Starr: Yeah, before, it's, it's put in place. It does come before us. Oh, we'll discuss that. We – first of all, I'd like to hear from Commissioners to make sure no one – Commissioners are okay with us moving Item E which further back in our agenda up to the, up to be part of this discussion? If so, let's have a motion to that effect that Item E be combined with, Item E-1 be combined with Item C-1.

Ms. Wakida: I so move that Item E-1 be combined with Item C-1.

Ms. Domingo: Second:

Chair Starr: Okay, we have a motion by Commissioner Wakida, seconded by Commissioner Domingo. The motion is?

Mr. Spence: The motion is to combine Item E-1, the Petition to Intervene with Item C-1, the application for an SMA Permit for Mr. Don Nelson.

Chair Starr: And they are separate processes but we will handle them co- what is the correct term, Mr. Hopper?



Mr. Hopper: Essentially at the same time.

Chair Starr: Concurrently.

Mr. Hopper: Yes.

Chair Starr: Concurrent resolution. All in favor, please raise a hand. All opposed.

**It was moved by Ms. Wakida, seconded by Ms. Sablas, then**

**VOTED: To Take Up Item E-1, the Petition to Intervene Concurrently with Item C-1.  
(Assenting - P. Wakida, D. Domingo, K. Hiranaga, J. Freitas, O. Tagorda)  
(Excused - W. Shibuya, L. Sablas, W. Mardfin)**

Chair Starr: Thank you very much.

Mr. Spence: You have five eyes and zero nays.

Chair Starr: Okay, so we can now also discuss the Petition to Intervene. Thank you.

## **E. COMMUNICATIONS**

- 1. ISAAC HALL, Esq. attorney on behalf of KATHLEEN HELLER, EDWARD CHRISTENSEN, JEWEL BUSCH SMITH, DR. ROBERT LONDON SMITH, MICHAEL SHRIVE AND MARILYN SHRIVE, JOHN AND PATRICIA CINTULA, DOUGLAS AND MARIA PARKIN, THOMAS AND CAROLYN MORAVEC, KIMBERLY AND MARVIN WHITE, WILLIAM BOWMAN, GEORGE AND SANDI HODGERNEY, RHONDA LORD, ANTHONY AND JULIE HOOK, ROLF AND JENNIFER EVERS, MARY LAWRENCE, DON CEPENDA, GEORGE AND DAPHNE THOMPSON, MICHAEL AND SUSAN SCALES, STEPHEN IZZO, DONALD AND LINDA RANKIN, MICHAEL AND LINDA PERRY, CHARLES AND LYNN CANNON, YONIA KALHAR, REUEL AND JUDITH MATKIN AND STEVE AND JOAN PENNINGGS submitting a Petition to Intervene on the application of MR. DON NELSON of NELLIE'S ON THE BEACH, LTD., requesting a Special Management Area Use Permit in order to construct the Nellie's Wedding and Catering Project, a 6,816 square feet commercial building, 41 on-site parking stalls, one (1) loading zone, landscape planting, and associated infrastructure improvements to support a wedding hall, accessory restaurant, and retail shop in the B-R Business Resort District at 85 North Kihei Road, TMK: 3-8-013: 011, Kihei, Island of Maui. (SM1 2010/0001) (G. Flammer)**

Chair Starr: Okay, I'm going to, Ms. Flammer, I know you just presented the Members with a letter on the letterhead of attorney, Isaac Davis Hall. Is that a public document and available to the community?

Ms. Flammer: I believe it is now, yes.

Chair Starr: And does this reflect a, an agreement that's, that made regarding the intervention?

Ms. Flammer: Yes it does. All parties have signed at this point.

Chair Starr: Okay. Okay, we're going to at this point ask the attorneys for both sides to come before us and give us their view of, of where we stand at this time. Mr. Hall, please proceed.

Mr. Isaac Hall: Good morning Chairperson Starr and Members of the Maui Planning Commission. Tom Cole has been representing the applicant but I don't believe he's here right now. We, we just right now signed a Settlement Agreement. It needs to be assembled. I talked to the applicant, and I don't believe the applicant has a problem with giving copies to the Commission, but I do have this letter that's been distributed. And basically, I represent a long list of owners at the Nani Kai Hale condominium. And wedding centers and activity centers are known to generate adverse impacts and the Commission has dealt with them, I, myself, have dealt with them in one instance with Intrawest Hotel at North Beach. We had to deal with Kaanapali Beach Hotel when they did their restaurant and the Grand Wailea. So it's something the Commission's dealt with in the past. Those adverse impacts are capable of being reduced to acceptable levels through the attachment of conditions to permits. And we met for a lengthy period of time with the applicant, Mr. Nelson, Tom Cole and George Rixey yesterday with representatives of my clients and reached this agreement. And basically, I mean, the basic of the agreement are we agreed to 29 conditions that the applicant I believe, I know the applicant agrees to have attached to any permit that you choose to, to issue. And those 29 conditions are listed in this letter that I've given to you and I believe someone from the applicant's side is going to stand up and agree to have those attached to any SMA Permit that you issue. And we believe that these conditions will reduce the adverse impacts or potential adverse impacts of this project on my clients to levels that are acceptable to us. Our Settlement Agreement calls for them – for us asking for those conditions. It also provides that the applicant under any circumstances will comply with those conditions no matter what in the design, construction, and operation of this facility. So we receive that protection and that's, that's the heart of it. And based upon that, we are willing to withdraw our Petition to Intervene.

Chair Starr: Okay, thank you. And the, there is a document to that effect that's been signed by both parties?

Mr. Hall: Yeah, there is, and, and basically I need to go assemble. I think I have, I will have in about five minutes a total of five copies. So it would need to be Xeroxed.

Chair Starr: Okay. You know, if we hear that from that from both sides, I think that's good enough for us to proceed. Mr. Hopper?

Mr. Hopper: Just to clarify, Mr. Hall, you're withdrawing your Petition to Intervene?

Mr. Hall: I'm going to withdraw it as soon as the applicant gets up and says that they want these conditions attached to the permit.

Chair Starr: Okay.

Mr. Hopper: Because that's just going to affect the process.

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

Mr. Don Nelson: Yes.

Chair Starr: Welcome. Come up, come up to the mic. and introduce yourself. We, we need to have it on the, on the record which is taped.

Mr. Nelson: Okay, my name is Don Nelson. We have agreement.

Mr. Hall: ...(inaudible - not speaking into a microphone)...

Mr. Nelson: Oh, I agree to have the 29 conditions be attached to contract.

Chair Starr: Okay, thank you, Mr. Nelson. I, I have a hypothetical question both for Corp. Counsel and also for I, I think Mr. Hall may want to comment on it as well, but I want Mr. Hopper first. What – I haven't read these and we are going to take a short recess to read them. I'll allow you to compile the document, but not having read them, what if there are conditions in here that the Commission doesn't want for whatever reason to attach as conditions to the SMA, Mr. Hopper?

Mr. Hopper: Whether or not the Commission, you know, decides on a given condition is up to the Commission under the Coastal Zone Management Act. I mean, that's that's the final decision on that is the Commission's decision.

Chair Starr: Okay, but I mean, would they, is there still a way that they be binding as a private agreement between the intervenors and the party or if we don't want to include one does that just extinguish that, that topic?

Mr. Hopper: I mean, theoretically there could be a contract between the, the intervenor and the applicant. The issue would be the Planning Commission or the, the Planning Department could not enforce that agreement. They wouldn't be official SMA conditions, and so, you know, at this point I think the Commission is being, basically you're being, you know, the applicant is saying we're okay with these conditions, the Department can give its opinion on them and the Commission can look at the conditions. The final decision again is up to the Commission. Theoretically, yeah, the applicant and the, and Mr. Hall's clients could agree to a separate agreement but that's not something that the Commission could enforce directly is my understanding.

Chair Starr: Okay, thank you. And Mr. Hall, this is hypothetical. I have no reason to believe that this is, this is case or likely.

Mr. Hall: Yeah. I mean, this is not new ground. We've been here before and I don't disagree with what your attorney's telling you. We know it's your choice to adopt conditions. We can't force you to, but normally if the applicant's saying we agree to have conditions on our permit makes it

something that you take a good look at, and would be willing to do. And we hope that you're willing to do that.

Chair Starr: And I'm sure that unless they're kind of against the spirit of our rules, the likelihood is that –

Mr. Hall: Right, and I think we worked to fashion these that – they're consistent with other, other conditions that you've placed on wedding centers throughout the island. So I'm, I don't think you're gonna find anything that's inconsistent with conditions that are, that are appropriate under the Coastal Zone Management Act.

Chair Starr: Okay. At, at this time, I'm going to allow members of the public to offer comment on this if they want and then we're going to take a short recess so we get a chance to examine them. So if there's any members of the public that wish to share their mana'o at this time please come forward, introduce yourself and welcome.

Ms. Kathleen Heller: Good morning. My name is Kathleen Heller. I represent the owners of Nani Kai Hale. Nani Kai Hale, my husband and I have owned there for over – almost 25 years . It's a 46-unit condominium building located directly adjacent to the South of Mr. Nelson's lot. For over 40 years the lot was the residence of a local family with whom we lived very happily. Basically the lot further to the north of that was where Kealia Shopping Center, and more significantly Margarita's Restaurant was housed. Because we, we know full well that the zoning on the lot adjacent to us is BR and we simply wanted to meet with Mr. Nelson in a neighborly fashion to see if we could resolve some of our concerns.

Our concerns were really based upon the fact that these lots are quite narrow, and because of these narrowness once built upon the proximity of the buildings are very close. We were concerned when we saw the initial drawings not because of the style of the architecture which frankly we think is beautiful but more importantly because the parking lot is quite large. We understand that the building can house up to 300 people, and we really had concerns primarily with noise generated from a group of that size or even a smaller group on the beach partying. Basically, because of our owners having lived through for many years the quite honestly nightmare of Margarita's, listening to loud music late into the night and I believe you saw in the photo of where it was, and the noise level was unbelievable and that was followed frankly by clean up crews dumping trash, not trash but glass, beer bottles into garbage bins at two in the morning. For those reasons, we felt necessary to file the petition solely to protect our rights and also to afford us an opportunity to meet in a neighborly fashion with Mr. Nelson.

Our condo design has 46, 41 rather of a 46 lanais and all bedrooms facing the property. Because of the design our windows, we cannot install window air-conditioning units in the bedrooms which requires that many of our people to get proper ventilation leave their windows open so noise is a big issue.

We met with Mr. Nelson. He generously agreed to flip the property. We really feel that that will eliminate a lot of the concerns that we had and I'm happy to say that we were able to come to an agreement yesterday and we request that the other conditions primarily relevant to noise that we

are pleased to say that we both agreed to and request that you make those as conditions to the SMA Permit. Thank you for your consideration.

Chair Starr: Members, questions? Thank you very much. Anyone else wishing to give comments relating to this matter. We will have one more opportunity. When we do get to the process on the actual SMA. Not seeing any, initial comment period is now closed. We're going to take a recess until 10:00 to give us a chance to read these and hopefully some copies will be available for process at that time. Thank you.

A recess was called at 9:54 a.m., and the meeting was reconvened at 10:03 a.m.

Chair Starr: We're back in order, the February 22<sup>nd</sup>, 2011 meeting of the Maui Planning Commission. We've been dealing with the SMA request for Mr. Don Nelson of Nellie's on the Beach and the Petition to Intervene that was filed by a group of neighbors. We understand that there's a Settlement Agreement that has been reached that has been signed. The Settlement Agreement requested that certain items be added as conditions. I believe there's – how many?

Unidentified Speaker: Twenty-nine.

Chair Starr: Twenty-nine conditions were requested that the Commission consider putting onto the SMA. Since the agreement has been signed my understanding is that the intervention has been terminated. It's extinguished. It does not exist and for that reason, there's no need for us to act on it but we're in a position where we can act on the original request regarding the SMA, the SMA Permit and we will certainly take these requested conditions and the Settlement Agreement to heart in our, our deliberations and we're asking our staff to mechanically create a mechanism for them to, to be utilized by us. I just want to call both sides again and ask if, if what I have just stated is, is in accordance with their own understanding. Mr. Hall first.

Mr. Hall: Well, I'm not sure the Petition to Intervene doesn't exist, but we've withdrawn the Petition to Intervene.

Chair Starr: Okay, it's been withdrawn?

Mr. Hall: Yes, based on the representations of Mr. Nelson that they agree to the adoption by the Commission of those 29, now 28 conditions.

Chair Starr: Okay, I'll take that. Thank you, Mr. Hall. Mr. Nelson, we good?

Mr. Nelson: I agree as well.

Chair Starr: Okay, thank you very much. Okay, lets proceed with the SMA public hearing and we have received signed copies of the Settlement Agreement signed by Mr. Don Nelson and Kathleen Heller. Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, I heard something that I don't quite understand it. I heard 29 conditions and then 28 conditions?

Chair Starr: Mr. Hall?

Mr. Hall: I'm sorry, maybe I got ahead of myself, but I had a brief discussion with Planning Director Spence about one of the conditions which was –

Mr. Spence: No. 27.

Mr. Hall: No. 27. And in our discussion about it, we actually had Mr. Nelson was present we all agreed that that one was not necessary, No. 27.

Mr. Mardfin: Thank you.

Mr. Spence: And Commissioners, when we get to that point I'll explain why.

Chair Starr: Yeah, we wanted to make sure there was some continuity and maybe not having any wording there provides the best mechanism for that step.

Mr. Hall: Thank you.

Chair Starr: Okay, thank you. Ms. Flammer, let's take another, another look at this and we'll do so more in light of the SMA application rather than just the legal framework and petition. Please lead us to a little more detail.

Ms. Flammer: Okay, the presentation we gave is what we had prepared to, to give to you. At this point, we could entertain any questions. We do have quite a field of experts behind us from the Planning Department as well as from the applicant's project team.

Chair Starr: Okay, I'll lead off and I was actually quite happy with many things I had seen in the, in the packet for this project in that I think that one of the most comprehensive efforts to try to be responsible stewards and to be sustainable regarding shoreline and regarding runoff and regarding energy efficiency seems to be being made here and I, you know, I, I appreciate that and I'd like to have a little bit of detail about all of the efforts that are, that have gone into this and the ...(inaudible)... features regarding its interaction with the environment, both the plantings, the water efficiency, the energy efficiency and runoff and so on. Mr. Rixey, please, I know you've studied these issues in South Maui for quite a while?

Mr. Rixey: Okay, all right, thank you. The – can we go to the cross sections of the building? The building itself really in my view the most effective way you can be energy efficient is just in the design of the building itself not necessarily the materials you use. And in Hawaii, of course, we have a particular environment, specific environment and, you know, heat and direct sunlight is probably the biggest thing to contend with as far as energy conservation goes. So, with the shape of the roof, there's very high ceilings on the interior which allows the hot to convect. The idea of the ...(inaudible)... dormers other than the one facing the south is to allow air, and you know, ventilation to escape. There's also in the roof itself attic vents that are solar operated to, you know, help ventilate the building. The main thing probably is the overhangs on the roof. So the overhangs are quite excessive. They're about five feet long. So the building itself is pretty much

entirely in shade all day long.

Other aspects if you go to the sustainable stuff it's just pertaining to how the building's built. The materials used would be wood shakes on the roof which is actually – the way that that's environmentally conscious is they actually, you can buy the wood shingles from certain entities where they make the shingles out of the stumps of a tree. So after the tree is cut then they rip the stump up and make the shingles out of that.

I also looked into this thing called the eco shake which entirely made of our recyclable material but the history of that in Hawaii with our sun, they don't seem to be holding up and they deteriorate so I haven't been able to get any guarantees on that, and that's why I'm a little shy to use that, but it's something we are looking into. All of the lumber comes from mills that are certified for their forestry stewardship. Basically it's all new growth, it's not any old growth. The plywoods are made of residue from milled lumber that's compressed and laminated together so it's all, you know, trying to get the most use out of the lumber, out of the trees as possible. Recyclable aluminum and glass in some of the kitchen products. We're going to use lava rock on the exterior. We're going to use stucco. We're going to use low VOC paints. I wish my wife was here to help explain that to me a little bit, but it's a way they make paints without using detrimental products to the environment such as formaldehyde, low formaldehyde products. We have a radiant barrier in the roof so there's like a – the plywood sheeting that goes on the roof has a, like a silver lining that radiates out the infrared heat and of course, if you looked at the section with those trusses there's a really deep cavity for the roof. So there's a lot of space in there for a lot of insulation and a lot of air flow. So that's gonna keep the building a lot cooler. And we're going to use solar hot water, we're gonna use solar voltaic for electricity. We've got solar powered park lighting, the stall parking lighting. LED outdoor lighting. Let's see, we have the well, that we're using for the irrigation. And 100 percent of the retention of the storm water on site.

And I guess another aspect would be the dune replenishment and the open space that's provided there to, you know, to allow for little more space for birds and maybe even turtles. In this conversation we had the other day, we found out that there were was some turtle nesting there. So – or had been in the past. So I think, I think – there's one other thing too and that, I know you guys have heard a lot about LEED, Leaders in Energy Efficient Design and the certification for products, projects for that, and I don't think there is any on Maui that are private projects, and that's because it's a really hard to, to do that to get accredited that way, but we are looking into that. We can't commit to it because there's so many restrictions on it. It's very difficult, but it is something that we're looking into. My wife is also a partner in my firm is a LEED agent and so that's something we'd like to try to achieve if we could, but you know, I'm not here to say that they're guaranteeing that we're going to do that, be able to do that.

As far as the landscaping goes, Bill, our landscape architect is not here, but we're trying to introduce as much native planting as possible. And some of it is not, you know, when you get into some of the flowering shrubs and whatnot, you know, it will be – won't be so native, but for the most part it be native plants.

Chair Starr: Okay. Thank you, Mr. Rixey. Members, any questions regarding this? Commissioner Wakida.

Mr. Wakida: On your plan here –

Chair Starr: Grab, grab your mic., Penny.

Ms. Wakida: On, on various plans it says maximum roof height 48 or 43?

Mr. Rixey: I think it's 43.

Ms. Wakida: What does that mean?

Mr. Rixey: That's the elevation above sea level. It's the elevation above sea level. And it's just another way of establishing what the reference mark is for, for the maximum roof height. Another way of looking at it is if you go from the existing grade of the property before we filled, when we had the permit to fill, if you go from the existing grade, original grade, you go 30 feet high, 35 feet high, you end up at 43.5 feet above mean sea level.

Ms. Wakida: Okay, so, I mean, you've got here that the maximum building height is, is 35 feet that's to the top of the roof, correct?

Mr. Rixey: Yeah, from the original grade, yeah. From original grade, yeah.

Ms. Wakida: So, – So the building from itself though is 45 feet up?

Mr. Rixey: No, let me see if I can explain it again. The 43.5 feet is relative to the sea level. The property itself, the existing grade on that property was I think 8.5 feet. So if you take 8.5 feet and subtract from 43.5 you get 35 feet.

Ms. Wakida: Thank you, I got it.

Mr. Rixey: Okay, all right, thanks. The buildings actually a little shorter than that, but that's, that's the limit.

Ms. Wakida: I have another question on footings. How deep, how far down do these footings go?

Mr. Rixey: The footings on the average are gonna have to go about, I think I have it down here, it's like to the top of the footing, I can't really read that, it's gonna be about three feet or so. And to the bottom of the footings probably closer to four feet.

Ms. Wakida: And do you know where the water table is here?

Mr. Rixey: Yeah, the water table is below that. I think the water table is probably around 18 inches above sea level. And so, it's – when we did the site – we had to do a site archaeological inventory survey. So they went in and they dug trenches throughout the whole property looking for findings and they went down about six feet, and there was never any sign of water table or anything like that. So –



Ms. Wakida: Thank you.

Chair Starr: Members, any other questions? Okay, thank you, Mr. Rixey. I just want to compliment your work in this regard. The building section it's really almost exactly the section of, of my own residence that I built out as my farm dwelling Kaupo so years ago, and it works. You know, if you're able to maintain several air flows up and out, and good overhangs, it stay really, really cool. So thanks for . . . (inaudible) . . . Okay, Members any other questions regarding this project or this process? Commissioner Wakida?

Ms. Wakida: Just a question for you, Commissioner Starr. Are we in the sort of general question period of this application?

Chair Starr: Yeah, we are. We're asking questions then we'll once again, open public testimony as the official public hearing for the SMA, and then we'll have a recommendation from staff, and then we'll have potential action at that time.

Mr. Flammer: So your questions now can be on the deliberation of the SMA permit.

Ms. Wakida: Correct. Thank you because yes, I do have some more questions.

Chair Starr: Now is the time.

Ms. Wakida: I am not sure who I address this too, maybe the applicant, but I'm not quite clear on the activities that will take place. Obviously it's weddings, but what happens between the weddings? I don't know who, who would answer that?

Mr. Rixey: Well, right now the intention is to just have weddings. So between the weddings there wouldn't be anything going on.

Ms. Wakida: So you don't have like a restaurant facility that you are having –

Mr. Rixey: Oh, ongoing?

Ms. Wakida: Ongoing.

Mr. Rixey: That's not, that's not the intention for the use as weddings, although the building could be used as a restaurant. I think it would be too complicated business wise to have a restaurant operating and then have it, you know, start up and shut down for having a wedding and then, you know, going back and forth. So the idea is it's for weddings.

Ms. Wakida: So the gift shop then is just open during the wedding time?

Mr. Rixey: Okay, actually as a result of flipping the building to put the kitchen on the other side, if look carefully at that drawing, the square footage of the building shrunk and so there's no shops. Now there could be shops, but if there were shops, the intention is they would be ancillary to the wedding, like it would be like flowers or you know gift items that would be relative to weddings.

Ms. Wakida: So what you're saying then if a wedding isn't booked into the facility, then there is no activity on the premises?

Mr. Rixey: Well, there would be activity because, you know, catering operations going on in the kitchen to prepare the food for the weddings, you know, there'll be service coming and going, you know, to prepare for the wedding. So there will be activity, yeah.

Ms. Wakida: All right, will you be doing catering for outside events?

Mr. Rixey: No, I don't – we will be? Yeah, they could be doing catering for outside events too.

Ms. Wakida: So the kitchen will probably be in business the whole time, I mean?

Mr. Rixey: Could be, yeah. Could be, yeah? The kitchen could be being used all day during the hours, operational hours, yeah.

Ms. Wakida: Thank you.

Chair Starr: Okay, Members? Commissioner Wakida?

Ms. Wakida: Well, I'll just continue. I have a question about, I don't have a good map of how the traffic comes into this property and goes out of this property and feeds onto North and South Kihei Road. The maps that we were given seem to be very as far as I'm seeing them –

Ms. Flammer: If you look at Exhibit 28, it'll show you the lanes for North Kihei Road. We do have our traffic – Phillip, should there be any questions looking at that he can go into further detail.

Ms. Wakida: Yes, I would like to have that map explained a little better. I think it's difficult to read.

Chair Starr: Welcome, Mr. Rowell, please?

Mr. Phillip Rowell: Hi, I'm Phillip Rowell. I'm the traffic engineer. There are two driveways to the project. There's one along North Kihei Road that will be restricted to right-in, right-out only. That's to prevent traffic from having to cross the median that's there. There's another driveway that accesses a little frontage road that goes around over to South Kihei Road. This is the driveway that goes to North Kihei Road. This driveway here, . . . (inaudible) . . . frontage road that goes over to South Kihei Road south of the intersection. So, movements along North Kihei Road are restricted.

Ms. Wakida: Okay, thank you.

Mr. Rowell: You look like you have another question.

Ms. Wakida: No, I don't. I just wish the map had shown that South Kihei egress.

Mr. Rowell: There's a – aerial photograph in there it's an old one. Yeah, –

Ms. Flammer: Commissioner Wakida, there's photos, there's not a diagram, but if you look through the report they show the South Kihei egress. They show the intersection as south of the – South Kihei access road with South Kihei Road and then they also show photographs of the intersection of South Kihei Road with North Kihei Road.

Ms. Wakida: Yeah, not being real familiar with that area, it was a little difficult for me to, to visualize, but we can move on.

Chair Starr: Okay, Members? I have a question regarding shoreline – public shoreline access. I believe I read that there was a shoreline access on an adjacent property and I'm wondering whether that's the one where, I think, Margarita's was and what's – does it – if that is, will that remain a public shoreline access?

Ms. Flammer: I do want to let you know there's a photo of it in the report on the last page.

Chair Starr: Mr. Rixey.

Mr. Rixey: When that – the previous owner to Don Nelson purchased the property that's adjacent to that beach access, that owner had the property changed in zoning from Business Resort to Single Family and with the intention of subdividing it into two parcels. And there was a condition placed on the subdivision of that parcel that there have to be a beach access plan. And so that has been in effect, it's recorded and it's approved, and so there is a beach access there that will remain.

Chair Starr: Okay, and that will not, cannot be taken out at any time?

Mr. Rixey: No. No.

Chair Starr: Thank you. Commissioner Wakida, – Mr. Nelson, please, your comment's welcome. Introduce yourself, Mr. Nelson?

Mr. Don Nelson: As far as the use of the building, I want to be perfectly clear, as George is designing it for weddings, that would be the primary event there, but it would be for other things as well, meetings, birthdays, whatever you can imagine the facility would be good for we would consider. So it would be a multipurpose facility not just for weddings, but that's the primary. Thank you.

Ms. Flammer: On the beach access too, I want to note that the applicant is constructing a sidewalk to the public beach access that's gonna run along the front of the property.

Chair Starr: Okay. Any further questions? Commissioner Wakida?

Ms. Wakida: The plans call for shuttle service. That shuttle service is, was from where? Where, where were you thinking of having offsite parking that would need – where you get the shuttle service from?

Mr. Rixey: The shuttle is for to bring people from the hotels to the weddings.

Ms. Wakida: Okay.

Mr. Rixey: Yeah.

Ms. Wakida: So they're not from some other parking lot?

Mr. Rixey: No.

Ms. Wakida: Okay. And was the adjacent property going to be used for offsite – for overflow parking?

Mr. Rixey: No.

Ms. Wakida: Because it seems to show in some of these plans.

Mr. Rixey: Oh, okay. What you're seeing in those plans is probably dashed lines indicating what used to be there when Margarita's was there. That's all been removed. There's no parking on the adjacent parcel.

Ms. Wakida: Okay.

Chair Starr: Okay, with the Commissioners we'll go to public testimony. I'd like to welcome members of the public to come and testify on this item. This is the official public hearing for the SMA. So anyone who wishes to offer public testimony now would be a good time. Last call. Not seeing any, public testimony is now closed. Okay, Members, we ready for a recommendation? Ms. Flammer, please?

Ms. Flammer: So for the analysis, the Planning Department based on the fact presented in the Department report finds that the proposed action will not have significant adverse environmental or ecological effect provided mitigation measures are incorporated into the project. You can see the conditions in your report. I won't go through them unless you have a specific question. You've also seen the Settlement Agreement which has 29 additional items that could be conditions based upon what you want to do with them.

Chair Starr: Twenty-eight. Number 27 having been removed, am I correct?

Ms. Flammer: You can do that. So in terms of the recommendation, in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the February 22<sup>nd</sup>, 2011 meeting as its findings of fact, conclusions of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission. Any other items you want to add as conditions will also be incorporated into the approval.

Chair Starr: Okay, Members, questions, comments or potential action? Commissioner Wakida?

Ms. Wakida: Yes, I have a question. Who is the enforcing body on these additional 28 conditions?

Ms. Flammer: If they're attached to the permit it will be the Planning Department.

Ms. Wakida: And I am asking Mr. Spence, if he has any comment on that?

Mr. Spence: Certainly there's going to be some interesting conditions for the Department to enforce. You know, the applicant prior to receiving building permits has to file a preliminary compliance report on how they're going to comply with these things, and then prior to getting their Certificate of Occupancy they're going to have to file a final compliance report in which they're giving very specific ways in that they're going to have to comply and we will be checking on all those material matters that we can. Some of them, for instance, noise produced between certain hours or past certain hours of – we would send an inspector. You know, if we receive a complaint we would send an inspector to go see are they, you know, violating the conditions of their permit and then we would go and issue Notice of Warning and, you know, through the established procedures that we already have in your rules. So we will be enforcing the conditions as, you know, of whatever agreed upon conditions are attached to the permit.

Ms. Flammer: It is a complaint-based system if you're wondering how that happens.

Chair Starr: Commissioner Mardfin first and then Commissioner Wakida?

Mr. Mardfin: I'd kind a like to ask a follow up. It seems to me the Department of Planning is in a decent position to enforce some of these like which way buildings are oriented, but some of these noise complaints seem – is, is difficult. Is there some better agency within the County to be the enforcement agent for this?

Mr. Spence: Well, according to your rules for the Maui Planning Commission SMA Rules, we are, the Planning Department is the enforcement body.

Ms. Flammer: If it's useful I could point out that for a liquor license you do need to go before the Liquor Commission who also imposes conditions and has enforcement mechanisms.

Mr. Mardfin: And might they not be in a better position to enforce some of these things about music and hours and stuff like that? Isn't that more their kuleana?

Ms. Flammer: I don't know. I do know that the applicant and the neighbors have agreed to a settlement that they're both comfortable with.

Chair Starr: Commissioner Wakida?

Ms. Wakida: Has, has, do we have similar conditions on other projects? That –

Ms. Flammer: The Kula Lodge project has noise conditions. No amplified music after – I think it's all it says when they do have other –

Mr. Spence: We have a number of – it's fairly common to have permits not necessarily SMA but also Conditional Use or Special Use Permits that have time limits for the hours of operation and they're generally related to noise, lighting, that kind of thing. So it's certainly not unheard of in these kinds of cases. I would, – what I really want to do is put Deputy Corporation Counsel on the spot to comment that just with regards – if he could just please comment on with regards to our ability or other avenues of enforcement to – for some of the proposed conditions. And maybe it would be helpful for the Commissioners if we went through these proposed conditions?

Chair Starr: We do have a very long agenda today, so I'm trying to keep it moving along Director.

Mr. Spence: Okay.

Chair Starr: But I will ask Mr. Hopper to make a brief, brief comment?

Mr. Hopper: Try to keep it brief. You know, if there's other agencies. If there's other laws being violated. For instance, if there's noise ordinances that the Police Department may enforce, I mean, the Police Department could enforce; if there's liquor conditions, the, you know, the appropriate department can enforce them. As far as the Planning Department enforcing the types of conditions like this, I mean, I know with Bed and Breakfast Permits there's hours of operation and noise issues as well. I'm not sure if, if inspectors have had trouble enforcing those. I'm not sure of specific situations. You know, if they become SMA conditions, and especially in a case where the applicant has consented to them, then I would say they are enforceable conditions. As far as a given case, yes, it can become difficult to enforce. Any violation issue would be appealed to the Planning Commission and you would be able to determine whether or not, you know there was violation or not. So basically the Department would be trying to establish the violation and prove it to the Planning Commission that the violation occurred. So, you know, there's a lot of different conditions here. You can look at them each if you like. If you have problem with that, that is up to you to make the determination. But at this point, I'd say, since the applicant's consented they're enforceable conditions. As far as the ability in a given case, I mean, it's gonna depend on, on the facts of, of, and the condition.

Chair Starr: Thank you, Mr. Hopper. Can we proceed? Okay, Commissioner Mardfin, we're kind of –

Mr. Mardfin: I understand that, sir. In the past, I've looked at conditions like this and I believe Ann Cua has a, a expertise in this, would it be possible for her input?

Chair Starr: Ms. Cua, two minutes, please?

Ms. Ann Cua: I think I can do one. Just to reiterate a little bit. Mike kind of really hit it. The only thing I had wanted to expand on is, there's nothing to preclude if – the noise concern is, is a concern and obviously if something is going beyond a nighttime hour when the department is not available it doesn't preclude anybody from calling the police. That's who you would normally call if there's a noise issue. Obviously, probably the next week when, you know, when we're back at the office, I'm sure someone will come to us to indicate that there's been a violation of the condition. But again, even though the Planning Department is ultimately responsible for the enforcement of

the conditions, there's nothing to preclude someone from contacting the Police Department.

Mr. Mardfin: Thank you.

Chair Starr: Okay, Members, would any of the Members like to take action on this? Commissioner Freitas, why don't you step forward?

Mr. Freitas: . . . (inaudible) . . .

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: Okay, I will move that we accept the, I'm looking for the conclusions of law – I move that we accept the recommendation of the staff with regard to this with the inclusion of the –

Chair Starr: Twenty-eight.

Mr. Mardfin: Twenty-eight conditions, that is Conditions No. 1 through 26, plus 28 and 29 as were agreed to.

Chair Starr: Is there a second?

Mr. Tagorda: Second.

Chair Starr: Moved by Commissioner Mardfin, seconded by Commissioner Tagorda. The motion is, Director?

Mr. Spence: The motion is to accept Staff's recommendation for February 22<sup>nd</sup>, 2011 and including the 28 of the 29 agreed upon conditions between the two parties. And just for clarity –

Chair Starr: Is this part of the motion?

Mr. Spence: No.

Chair Starr: So you're adding a comment to it?

Mr. Spence: I'm commenting.

Chair Starr: Okay, that's fine.

Mr. Spence: Okay, I don't think we really discussed the, the condition, the proposed Condition 27 where Kathleen Heller shall be contact person for Nani Kai Hale owners and George Rixey shall be contact person for Nellie's, it's a little bit sticky when you start putting living being on a condition for a SMA Permit that's supposed to keep running. You know, the people may move, et cetera, so I had discussed this with the parties at the break and they were agreeable to taking the condition off.

Chair Starr: Okay, thank you, Director. We have a motion on the floor. Any discussion, possible amendments? Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I'll be voting against the motion as presented primarily because I believe the condition, the additional 28 conditions I believe is a private matter and, and I can ask Corporation Counsel, but typically SMA Rules and Regulations is to protect the public's interest and good of the public. I prefer that this agreement between parties say be recorded on, at the Bureau of Conveyances. It's a document they've agreed privately rather than having it placed onto a SMA Permit which makes the County then responsible for enforcement. That means if there's a noise issue, you're gonna send out County inspectors at 10 o'clock at night, charging the County overtime to go out and see if there is a violation of this SMA Rule. So I would prefer to see something more general in nature addressing what has been agreed to by the private parties, but to add these additional 28 conditions as part of the SMA Permit I will be voting against the motion.

Chair Starr: Thank you, Commissioner Hiranaga. Commissioner Freitas?

Mr. Freitas: Could we separate the 28 conditions and vote on them separate – vote on the – if the maker of the motion would separate them and we vote on the conditions recommended by the Planner and vote separately on those 27 conditions?

Chair Starr: There's a motion on the floor if it fails then a different motion could be made. I've not heard that there's a desire to withdraw the motion by the maker. Are we ready to vote on the motion? Commissioner Mardfin?

Mr. Mardfin: I'd like to say, I'm gonna vote in favor of this. And, briefly I'll give reasons. One is that, this is on the right kind of property. It's zoned right for it and I think that's an important thing. We've had projects come before us that are on the wrong zoning and not appropriate for the area, but this has the right zoning for this. I'm also going to vote for it because I understand Commissioner Hiranaga's concerns that it's a private agreement but I think it deals with public issues. It deals with, – it happened to have been, been designed by two private parties but I think it deals with public issues and so I think the conditions are appropriate for this so I can vote for it.

Chair Starr: Okay, Members, we're going to vote on the motion. The motion is?

Mr. Spence: To – The motion is to accept the Planning Department's recommendation for the project along with the 28 conditions upon by –

Chair Starr: Twenty-seven.

Mr. Mardfin: Twenty-eight.

Mr. Spence: Twenty-eight.

Chair Starr: Oh, twenty-eight, I'm sorry.

Mr. Spence: Twenty-eight conditions agreed upon by the parties.



Chair Starr: Okay, thank you very much. All in favor, please raise a hand.

Mr. Spence: Three, four in favor.

Chair Starr: All opposed.

Mr. Spence: To three opposed. The ayes have it. No, they don't.

Chair Starr: The motion fails.

Mr. Spence: The motion fails. Pardon me.

**It was moved by Mr. Mardfin, seconded by Mr. Tagorda, and**

**The Motion to Approve the Special Management Area Use Permit as Recommended Along With the 28 Conditions Agreed Upon by the Parties, FAILED.  
(Assenting - W. Mardfin, O. Tagorda, P. Wakida, J. Starr)  
(Dissenting - K. Hiranaga, J. Freitas, D. Domingo)  
(Excused - W. Shibuya, L. Sablas)**

Chair Starr: Okay, is there a different motion that someone wishes to make? Commissioner Hiranaga?

Mr. Hiranaga: I make a motion to approve per the original Staff Recommendation. Again, I'd like to see and maybe Corporation Counsel can help. . . . (inaudible) . . . I know these parties have mutually agreed to these conditions and they are willing to work together, but I really don't believe it's appropriate for that, those conditions to be placed on a SMA permit. So can we make reference to the letter or the Settlement Agreement or something where it's not really the responsibility of the County to enforce these issues. It should be a private matter. If the parties down the road are not cooperating and so someone wants or feel that there's a violations of these conditions they should either take civil action or call the Police Department or whatever, but not involve County inspectors to go out there and enforce these, these conditions that the private parties have agreed to. So if there's some way we can craft this?

Chair Starr: Yeah, Mr. Hopper, please brief response.

Mr. Hopper: Commissioner Hiranaga, you know, I would typically advise against, you know, advising – me advising or advising parties on how to come to that kind of private agreement. I mean, I think you have, you have, you know, conditions before you. You do not have to include them in your, if you believe they're not appropriate for an SMA permit, you do not have to include them as conditions. You know, the parties have agreed to them. You know, they, they do apply to the public. It's, you know, it's not just one, you know, group that can enforce them. Anybody, you know, they would apply to those hours whether or not they're creating a nuisance for the neighboring property or otherwise. So I mean, I do believe they're enforceable conditions and it's

entirely up to you whether or not you would like to, you know, place them on the project. Aside from that, I don't see much else, you know, that the Commission would be getting involved in in, you know, a private Settlement Agreement. That would be, you know, between as you said, the two private parties. What the Commission could do here, you know, is make reference in a condition or, or act accordingly based on, you know, that, that Settlement Agreement. Referencing the settlement, I'm not sure, you know, how much that would accomplish as far as, you know, basically you're being asked to consider certain mitigation measures and it's up to you if you believe they're appropriate. You know, if you believe that these are not appropriate mitigation measures or conditions you would have the ability to, you know, not include them as conditions. So again, that's up to you. I wouldn't look at it as enforcing these parties' Settlement Agreements for them. Once they become County conditions, they are County conditions, they're not – the private parties could have a separate agreement, but these would be conditions that they County would be imposing now. It would become the County's conditions so you would need to determine if you think they're appropriate for inclusion as conditions on this SMA permit to mitigate the impacts of the proposed use.

Chair Starr: Commissioner Mardfin?

Mr. Hiranaga: Mr. Chair? From a parliamentary standpoint, we haven't had a second, so I'll make the motion to approve the –

Chair Starr: You're out of order. Commissioner Mardfin.

Mr. Hiranaga: There's no motion. I put a motion it wasn't seconded.

Chair Starr: Okay, so there's no motion. Commissioner Mardfin?

Mr. Hiranaga: But you haven't asked for a second yet.

Chair Starr: Because you started asking questions, you're out of order Commissioner Hiranaga. Commissioner Mardfin? Then I'll get back to you Commissioner Hiranaga.

Mr. Mardfin: I'd like to defer to Commissioner Hiranaga. The statement I, the statement I wanted to make doesn't make sense without the motion.

Chair Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I make a motion to approve the application subject to the 16 original conditions proposed by the Department.

Mr. Freitas: Second.

Chair Starr: Okay, we have a motion by Commissioner Hiranaga, seconded by Commissioner Freitas. The motion is?

Mr. Spence: The motion is to approve the permit based on the original 16 conditions provided by

the Department.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: I may have to vote against this because without these conditions that were agreed to in part of the motion, it seems to me that we're back to the intervention status where the Isaac Hall and his people might want to intervene because they were not included as conditions to the motion that we're about to pass. So I'm gonna have to vote against the motion as stated.

Chair Starr: Commissioner Hiranaga first as the maker then Commissioner . . . (inaudible) . . .

Mr. Hiranaga: Thank you. I'm wondering if the two private parties can come up with a suggestion that would be binding upon themselves and not have to involve the County in this particular matter. Can they agree to a private agreement that's recorded so it's public knowledge, blah, blah, blah. If you're going to allow the applicant to speak?

Chair Starr: Commissioner Freitas? Commissioner – hold on Mr. Nelson. Commissioner Mardfin?

Mr. Mardfin: Our understanding was that the agreement was made under the, under the understanding that these would be as attached to conditions to the recommendation – to the decision by this body and I have no assurance that the people that were opposed to the original proposal would be happy without having these conditions attached. I do think it applies to not just these people. I think that the conditions apply to any neighbors at any place.

Chair Starr: Thank you. I, I would like to voice some concern on my part of, of approving this with issues out there which could create contention. I think that it's a much better formula for this Commission to try to act in accordance with community wishes and I do think that a lot of effort has been placed on both, on both sides to create a framework which is workable and is related to our SMA Rules closely enough that they're not conditions that – they all have precedent. I'm usually very much – I'm usually the first against noise regulations being a professional musician I think these have been well-crafted and I do feel concern that this project will end up being stuck in contention and litigation when the parties themselves are willing to work together for a solution. Commissioner Freitas?

Mr. Freitas: Yes, there is a motion on the floor and I believe that after this motion is done we can – oh, I believe there's a motion on the floor and I believe that we can, according to parliamentary procedure there can be another motion made to accept these 28 following or . . . (inaudible) . . .

Chair Starr: Well, an amendment, an amendment could certainly be, be added to it. That would be one, the normal mechanism. We did have a request to hear from the applicants I believe, but Commissioner Mardfin, you had your hand up first then Commissioner Tagorda?

Mr. Mardfin: I move to amend to include the 28 conditions agreed to by the two parties.

Chair Starr: Is there a second to that potential amendment?

Mr. Tagorda: Can you say that main motion Mr. ?

Mr. Mardfin: The main motion is to accept the Planning Department's recommendation exactly as stated. My amendment is to include the eight conditions that have been jointly agreed to by the two parties.

Mr. Tagorda: I second.

Chair Starr: Okay, so we have an amendment offered by Commissioner Mardfin, the second by Commissioner Tagorda. The amendment will add?

Mr. Spence: Amendment to the original motion is to add the 28 conditions of the Settlement Agreement.

Chair Starr: And now, anyone would like to speak to that? Commissioner Tagorda.

Mr. Tagorda: I just like to add a brief comment, Mr. Chair. If we not gonna touch this agreement between the two parties in the Petition to Intervene, I think we cannot act upon the request for the SMA Permit of the applicant. We gotta attach this since they agreed upon. I think it helps the Commission's deliberation to a smooth transition to get Mr. Nelson's request for SMA Permit.

Chair Starr: Thank you, Commissioner Tagorda. Commissioner Hiranaga?

Mr. Hiranaga: Two points. I do not have a problem with the spirit of this agreement between the two parties. My primary objection is making the County the enforcing agency because you're making it SMA conditions with an SMA Permit and I think that's not – my opinion, proper use of County funds. If you're sending out County inspectors at night checking on when chairs are being away, music is too loud, it's after ten. My other question is, the proposed Settlement Agreement or the Settlement Agreement allows any condo owner to file a complaint with the Planning Department from Kihei – from Nani Kai Hale? It doesn't take the President of the AOA to file, so any owner of the – I don't know how many owners there are, one of them can call up and say it's too noisy, send somebody out here, they're exceeding what we agreed to. So you get one guy that has a big problem and he's going to make the County go out there and send inspectors? I mean, I have a issue with that.

Chair Starr: Okay, thank you.

Unidentified Speaker: Call for the question.

Chair Starr: Okay, we have an amendment on the floor, we're going to vote on that. All in favor of the amendment to add the 28 conditions, please raise a hand.

Mr. Spence: We have four members, four ayes to amend the motion.

Chair Starr: All against?

Mr. Spence: We have three nays to the amendment. The motion fails.

**It was moved by Mr. Mardfin, seconded by Mr. Tagorda, and**

**The Motion to Amend to Add the 28 Conditions, FAILED.  
(Assenting - W. Mardfin, O. Tagorda, W. Wakida, J. Starr)  
(Dissenting - K. Hiranaga, J. Freitas, D. Domingo)  
(Excused - W. Shibuya, L. Sablas)**

Chair Starr: Okay, Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, I move we amend the motion to add Condition No. 1, and I apologize that this may take a while.

Chair Starr: Are you intending to go through one by one?

Mr. Mardfin: I am intending to vote on each one separately.

Chair Starr: Okay, we're going to take a ten-minute recess before we proceed.

A recess was called at 10:55 a.m., and the meeting was reconvened at 11:05 a.m.

Chair Starr: Planning Commission meeting of February 22<sup>nd</sup>, 2011 is back in session. Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman?

Chair Starr: Yes?

Mr. Mardfin: In the light of the fact that we are kind of short-handed today because two commissioners aren't here, I move we defer this till our next meeting?

Chair Starr: Is there a second?

Mr. Tagorda: I second.

Chair Starr: Moved by Commissioner Mardfin, seconded by Commissioner Tagorda to defer till our next meeting.

Mr. Hiranaga: Point of order Mr. Chair?

Chair Starr: Yes?

Mr. Hiranaga: Did we vote on the motion that was on the floor, I forgot?

Chair Starr: Yeah.

Mr. Hiranaga: I know we voted on the amendment, but did we vote on the main motion?

Mr. Spence: No.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Yeah?

Mr. Mardfin: I believe the motion on the floor is to add Condition 1 from the agreement.

Chair Starr: No, that's actually not been accepted.

Mr. Mardfin: If that wasn't accepted then we're in discussion on the main motion.

Chair Starr: So we do have a main motion on the floor. We have a desire to make a motion to defer. Actually turn to Corp. Counsel on whether that motion would potentially be in order per our rules?

Mr. Hopper: I'll need to look that up to see if we've gotta – you know, that's a motion to table while considering a motion. I mean, the body could decide to take a vote and not do the motion to defer, but if someone wants to have the motion to defer, I would need to double check the Robert's Rules of Order on that.

Chair Starr: You know, I'm gonna call, I'm gonna call the motion out of order until we deal with the main, with the main motion and then if the main motion does not, is not passed we can take up another motion.

Mr. Hiranaga: Mr. Chair?

Chair Starr: Yeah, Commissioner Hiranaga?

Mr. Hiranaga: I'm willing to withdraw my motion if the seconder is.

Chair Starr: Okay, who was the seconder?

Mr. Freitas: I withdraw the second.

Chair Starr: So the motion on the floor is withdrawn. Thank you, Commissioners?  
Commissioner Mardfin?

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: Thank you, Commissioner Hiranaga. I move that we defer this item until our next meeting.

Mr. Tagorda: I second. I second.

Chair Starr: Moved by Commissioner Mardfin, seconded by Commissioner Tagorda. The motion is?

Mr. Spence: To defer this item, decision making on this item until the next meeting.

Chair Starr: Mr. Yoshida, that's possible I assume? You're keeper of the calendars.

Mr. Clayton Yoshida: Mr. Chairman, Members of the Commission, we have, I believe, five items on your next meeting including a public hearing on the MECO substation to service the Maui Lani Subdivision on Kuihelani Highway and the Maui Lani Commercial Center Phase II Project District Approval.

Chair Starr: Another full and exciting meeting, but I think we can squeeze this in. Thank you. Okay, we're going to vote on the motion. The motion is to defer. All in favor please raise a hand. All opposed.

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

**VOTED: To Defer the Decision Making on the Application to the Next Commission Agenda of March 8, 2011.  
(Assenting - W. Mardfin, O. Tagorda, K. Hiranaga, J. Freitas,  
D. Domingo, P. Wakida)  
(Excused - W. Shibuya, L. Sablas)**

Mr. Spence: Six ayes, zero nays. Motion is carried.

Chair Starr: Okay, see you next time. I apologize that we'll have to come back to deal with this. Thank you very much. Mr. Spence, Commission's item is you, and so introduce thy self.

Mr. Spence: Commissioners, the next item under Public Hearings, No. 2, is I am transmitting Council Resolution No 10-78 containing the following bills for the Heritage Hall Project at 297 Baldwin Avenue, Paia, Island of Maui. The Staff Planner is Mr. Danny Dias.

Chair Starr: Mr. Dias, please, and I'm going to ask people who want to chat to please go outside and do it and then come on back afterwards. Please quiet, quiet in the room. Mr. Dias, it's yours.

Mr. Dias: Mr. Chair, can we get just maybe like a minute just to pull up the power point please?

Chair Starr: Okay, we're gonna have a very, very short recess to the call of the Chair. Tell me when you're ready Danny.

A recess was called at 11:09 a.m., and the meeting was reconvened at 11:11 a.m.

Chair Starr: Mr. Dias, please take it away.

2. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 10-78 containing the following Bills for the Heritage Hall Project at 297 Baldwin Avenue, TMK: 2-5-006: 019, Paia, Island of Maui: (D. Dias)**
  - a. **A Bill for an Ordinance to Amend the Paia-Haiku Community Plan and Land Use Map from Heavy Industrial to Public/ Quasi-Public (CPA 2009/0003)**
  - b. **A Bill for an Ordinance to Change Zoning from Urban Reserve District to P-1 Public/Quasi-Public District (CIZ 2009/0003)**

Mr. Danny Dias: Good morning, Chairman Starr, Members of the Maui Planning Commission, as Director Spence stated the item before you involves a Community Plan Amendment and a Change in Zoning in order for the Heritage Hall to be constructed. This item should be familiar to most of you. It was before the Commission on two separate occasions. The first was on September 8, 2009 when the Commission provided comments on the draft Environmental Assessment. The second was on August 10<sup>th</sup> of last year when the Commission reviewed the final EA and issued a Findings of No Significant Impact.

Since you've last seen this project, basically the Department waited for the County Council to introduce a resolution to change the community plan from Heavy Industrial to Public/Quasi-Public and a change in zoning from Urban Reserve to P-1, Public/Quasi-Public. On November 10<sup>th</sup> – I'm sorry, on November 17<sup>th</sup> of 2010 the County Council Land Use Committee heard the item and referred it to the full Council. On December 3<sup>rd</sup>, 2010, the full Council adopted the resolution and referred the land use changes to this Commission for review and recommendation.

Briefly, before I turn this over to the applicant, I'd like to point out that this project has had a lot of public review up to this point. From its early stages it was reviewed by the Tri Isle Main Street Resource Center on behalf of Paia Main Street Association and as we heard from testimony earlier today, they feel that this project fits quite well in Paia. In all the meetings that we've had for this project there has been a lot of support and positive feedback. So with that, I'll let the applicant's representative, Erin Mukai from Munekiyo and Hiraga do about a ten-minute presentation.

Chair Starr: Okay, Ms. Mukai, please proceed.

Ms. Erin Mukai: Can we get lights maybe please?

Chair Starr: Yeah.

Ms. Mukai: Thank you. Good morning, Chair Starr and Members of the Commission, my name is Erin Mukai. I'm here today on behalf of Heritage Hall to review the draft bills before you for a community plan amendment and change in zoning.

Here today from the project team are a few members from Heritage Hall's Board including its President, Delores Bio. Also here is the project's architect, Calvin Higuchi, Reed Ariyoshi, the civil engineer, and Karlynn Fukuda, a planning consultant.



The County Council is seeking your comments on the Council initiated draft bills. The first being for a community plan amendment from Heavy Industrial to Public/Quasi-Public and the second being a change in zoning from Urban Reserve to P-1, Public/Quasi-Public. The community plan amendment and change in zoning are being requested for property in Paia owned by Heritage Hall. And this would allow Heritage Hall, the organization, to construct the facility also called Heritage Hall.

As Danny had mentioned, and an Environmental Assessment was prepared for the project. In August of last year the final EA was accepted and a FONSI was issued by the Commission. More recently, Councilmember Molina introduced the draft bills which were ultimately passed out of Council in December of last year.

This slide speaks to a little bit of the history of Heritage Hall, the organization which was formed as a partnership in 2003 between the Maui Puerto Rican Association and the Portuguese Association of Maui and basically the two groups have come together to construct a joint cultural and community center on their property in Paia.

Here is our regional location map. I'll start by pointing out Baldwin Avenue here. The project site is located here, directly across the street from the old Paia mill.

The parcel size is .68 acre. Its current designation by the State Land Use Commission is Urban, Urban Reserve by Maui County Zoning and Heavy Industrial by the community plan. And as I had previously mentioned, a change in zoning is needed to P-1, Public/Quasi-Public and a community plan amendment is needed to Public/Quasi-Public. The project site is located here in the community plan map highlighted in red. Directly north adjacent to the property is the old Paia railroad station and post office which now houses a couple of commercial establishments. Further north are single family residences and even further north is the current center of Paia Town.

Presently the project site is vacant, although it was once the home of the old Paia Dispensary. Here's another site photo with the project site to the left looking up towards Makawao Town and that's the Paia mill on the right-hand side.

In terms of the project itself, it involves the construction of a multipurpose cultural and community center and office complex. It will provide a social hall, kitchen, cultural resource center, offices, conference room, classrooms, an open courtyard and related amenities. Here is the site plan. Baldwin Avenue is located here on the right-hand side. The building here is the office building. This one here, the social hall building connecting the two will be an open courtyard. Paved parking, 35 stalls including to handicapped stalls will be provided at the rear of the, of the lot.

The next couple of slides are architectural renderings. This one was done ... perspective of standing within the parking lot. So you're looking at the social hall building on the right, and the office complex on the left. The second perspective is done from Baldwin Avenue so this time, social hall building on the left and office complex on the right.

I'll point out some project highlights. The project will provide sustainability features such as energy efficient lighting, water efficient fixtures. Heritage Hall is exploring the option of installing a PV

system. They are providing excess storage capacity for drainage retention on site and although the project is not located within the Paia-Haiku Country Town Business District, the project architecture has been designed with some of the features taken from the design guidelines of that district.

In terms of community outreach, the project was reviewed by the Tri Isle Main Street Resource Center Structures and Design Committee in January of 2009, more recently in 2010 the project reviewed by the Paia Main Street Association, and that brings us to the conclusion of the power point. We would appreciate your comments on the draft bills that have introduced by Council. Thank you.

Chair Starr: Okay, thank you very much. Could someone grab the lights? Lucienne, could you? Okay, thank you.

Ms. Karlynn Fukuda: Mr. Chair, Karlynn Fukuda of Munekiyo and Hiraga. I'm just ready to answer any questions the Commission may have on the project.

Chair Starr: Okay, Members we'll have questions followed by public hearing. Members? Okay, it's been before us a number of times and it seems like the design team has been responsive so I'm going to turn to our public hearing on this.

**a) Public Hearing**

Char Starr: So members of the public who wish to give testimony on this item now would be a good time. Please come forward, Ms. deNaie. Welcome, good to see you today.

Ms. Lucienne deNaie: Thank you. I'm wearing my hat as a board member of the Haiku Historical Society, The Haiku Living Legacy Project. I'm not representing them but just say this is something we're dreaming of for Haiku as well to have a place to really talk about the extent of all the different history that the area's so rich with. This is something that's really needed. I commend the folks that have put in the long time and the hours to make this happen. It could really connect several long needed things in the Paia area. One is, you know, additional community gathering space. The second is a preservation of local family's histories, there's rich history. And the third is as part of a walking tour. I've conducted a number of Sierra Club walking tours in Paia Town and we always go up, you know, to the old railroad station, so forth and now there will be a there, there. There'll be, there will be something to see and something to, you now, tour and give people more of a sense that Paia is not just a little boutique town that it is today but really had a long and fascinating history with lots of different cultural traditions involved with it. So I urge you to give good, good supportive comments and this project should, you know, speed on its way. Thank you.

Chair Starr: Okay, thank you. Members, questions? Not seeing any, other members of the public please come and join us and thank you for being here today.

Mr. Delores Bio: I guess you heard of me before, excuse me, I'm Delores Bio and I really thank all of you for all the work you've been doing. And this building that we're building is a terrific building that we'd like to see for the future and I'm hoping that it would be built while I'm still here. And you

know, and our future lies on our youth actually and the music that we will be putting on there. Dancing, as you know, the Puerto Ricans like to kachi kachi music and Portuguese they do a terrific dance themselves. So putting us together we will make this a better community for everyone. And thank all of you, thank all the Commissioners who have been working hard. Thank you very much.

Chair Starr: Okay, I have a question for you. You're going to do salsa in addition to kachi kachi?

Mr. Bio: Oh yeah, and as a matter of fact, we'll be teaching the little ones to do all that. We have salsa dancing instructors and the kachi kachi is easy all you do is jump for your health.

Chair Starr: Okay, good. Thank you. Other members of the public on this wishing to give testimony now is the time?

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

Ms. Jocelyn Perreira: Good morning. Good morning, Chair and fellow Commissioners. My name is Jocelyn Perreira. I am speaking today on behalf of the Tri Isle Main Street Resource Center and for the Paia Main Street Association. I am the Tri Isle Main Street Program Coordinator. We are here today to request your support for the community plan amendment from Heavy Industrial to Quasi-Public, Quasi-Public in a change in zoning from the Urban Reserve to P-1, Public/Quasi-Public for the Heritage Hall in Paia.

This has come before once before and we have followed this process and included in the final Environmental Assessment for the area. We have been very instrumental in this project from its inception and have – our team of professionals have been involved in the design aspects so that we made sure that it followed a – retained Paia's architecture flavor and character that will enhance and upgrade the whole area and we made recommendations. We're happy to say that they were very good about following it. As a result, they have a really, really creditable project. It's a project that we know is in – that in Paia it's important to keep as much of the current physical surroundings, for instance, the street width, et cetera, that exemplifies the uniqueness and the unique character and genuineness of that neighborhood. We are pleased to see that they have done things required like parking in the back of the building, so on and so forth, the overall scale, massing, and attention to design detail of the facility is well-handled and quite pleasing. This project will do much to consolidate and rehabilitate this once venerable neighborhood. We urge your support to speedily approve it. Thank you so much for your kind consideration.

Mr. Starr: Thank you. Members, questions for the testifier? Thank you very much, Ms. Perreira.

Ms. Perreira: Aloha.

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

Chair Starr: Not seeing any, testimony is now closed on the public hearing. Members, we ready? This is to my understanding a recommendation on our part to the Council. Mr. Dias, you have some wisdom and possible recommendation?

Mr. Dias: That's correct, Mr. Chair. Basically it's – our recommendation is the Maui Planning Department recommends that the Maui Planning Commission recommend to the Maui County Council approval of the community plan amendment from Heavy Industrial to Public/Quasi-Public and for the change in zoning the Department recommends that the Commission recommend approval of the change in zoning from Urban Reserve to P-1 Public/Quasi-Public for this property.

Chair Starr: Okay, thank you. Questions or if there's a motion.

Mr. Freitas: So move.

Chair Starr: I want to ask that they be done serially – did you have a question?

Mr. Mardfin: A question.

Chair Starr: First the question then to Mr. Freitas. Go ahead, Commissioner Mardfin.

Mr. Mardfin: When Lucienne testified she stressed the benefit of this for Paia, but my understanding is that this is for people of – has stressed the heritage of both Puerto Rico and Portugal for the entire island is that correct or not correct?

Ms. Fukuda: Thank you, Commissioner Mardfin. That is correct. That is the cultural resource center portion of the project, but there is the community social hall section so that that would be an overall benefit I think for the Paia-Haiku area.

Mr. Mardfin: Thank you.

Chair Starr: Okay, better include ...(inaudible)... as well.

Mr. Freitas: So move.

Chair Starr: For the first one, Jack, right?

Mr. Freitas: Yes.

Chair Starr: Is there a second?

Ms. Domingo: Second.

Chair Starr: The motion is and it's just for the first one.

Mr. Spence: To recommend approval of the community plan amendment and the change in zoning for the Heritage Hall.

Chair Starr: No, it's better if we keep them separate. So we're going to take the first one first. So please what is the motion?

Mr. Spence: And the maker of the motion can correct me. Recommend approval for a bill for an ordinance to amend the Paia-Haiku Community Plan and land use map from Heavy Industrial to Public/Quasi-Public.

Chair Starr: Okay, thank you. And once again, this is a recommendation to the Maui County Council who have final say on that. All in favor please raise a hand. All opposed.

**a. Community Plan Amendment**

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

**VOTED: To Recommend Approval to the County Council A Bill for an Ordinance to Amend the Paia-Haiku Community Plan and Land Use Map from Heavy Industrial to Public/ Quasi-Public, as Recommended by the Department.  
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, O. Tagorda,  
W. Mardfin, P. Wakida)  
(Excused - W. Shibuya, L. Sablas)**

Mr. Spence: Ayes have it. There is zero nays. The motion is carried.

Chair Starr: Okay, is there another motion? Commissioner Freitas. Common on you're doing good.

Mr. Freitas: The second part?

Chair Starr: Yeah.

Mr. Freitas: So move.

Chair Starr: Is there a second?

Ms. Domingo: Second.

Chair Starr: Moved by Commissioner Freitas, seconded by Commissioner Domingo. The motion is?

Mr. Spence: The motion is to recommend to the Maui County Council approval of a bill for an ordinance to change the zoning from Urban Reserve District to P-1, Public/Quasi-Public.

Chair Starr: Okay, all in favor. All opposed.

**b. Change in Zoning**

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

**VOTED: To Recommend Approval to the County Council A Bill for an Ordinance to Change Zoning from Urban Reserve District to P-1 Public/Quasi-Public District, as Recommended by the Department.  
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, O. Tagorda,  
W. Mardfin, P. Wakida)  
(Excused - W. Shibuya, L. Sablas)**

Mr. Spence: Six ayes, zero nays. The motion is carried.

Chair Starr: Okay, thank you. Wonderful project.

Ms. Fukuda: Thank you very much.

Chair Starr: Okay, moving right a long. Do we need time to switch over? Okay, we're gonna have a very short recess to switch, switch over.

A recess was called at 11:26 a.m., and the meeting was reconvened at 11:27 a.m.

Chair Starr: Planning Commission meeting is back in session. It's February 22, 2011, Mr.– Director Spence will introduce the next item.

Mr. Spence: Thank you Mr. Chairman, the next item, this is under D, for Unfinished Business. This is Mr. Peter Martin of Olowalu Elua Associates requesting an SMA permit to relocate the proposed Driveway D on Olowalu Mauka Subdivision. We have Mr. Kurt Wollenhaupt from Planning Department to present to the Commission.

**D. UNFINISHED BUSINESS**

- 1. MR. PETER K. MARTIN of OLOWALU ELUA ASSOCIATES, LLC requesting a Special Management Area Use Permit in order to relocate the proposed Driveway "D" identified in the Olowalu Mauka Subdivision from its original location east of Kapaiki Village to Luawai Street, roadway intersection improvements, realignment of the old cane haul road intersection with Luawai Street, drainage improvements, subdivision for additional right-of-way, waterline upgrades and improvements to the fire/emergency access road at TMK: 4-8-003: 084 (por.), 101(por.), 102 (por.), and 118 (por.), Olowalu, Island of Maui. (SM1 2010/0008) (K. Wollenhaupt) (public hearing conducted on February 8, 2011)**

Chair Starr: Mr. Wollenhaupt this is a continuation is it not?

Mr. Kurt Wollenhaupt: That's right.

Chair Starr: Okay, Mr. Wollenhaupt.

Mr. Wollenhaupt: Good morning Members of the Maui Planning Commission. As previously indicated the Maui Planning Commission began the deliberations on a new Special Management Area Permit type No. 1, No. 2010/0008 at its February 8, 2011 publicly noted meeting. There was a public hearing that was done on that date. At that time, the Commission elected to defer further review of this item to today's meeting February 22<sup>nd</sup> pending a request by staff and by the applicant of specific aspects of the project to allow the applicant to address a number of these issues. Many of the detailed answers to these questions have been delivered to the commission just by way of memorandum. There's an additional letter from Ernisses, there's an additional letter from Nancy Golly, there's a letter in a packet from Mr. Randy Ragon, you have the addendum report that I delivered to you and it would have been in your packet that addressed the letter that went to the planning commission and the four additional areas to review. There were copies of the minutes from homeowners association meeting in 2010 and 2011 with a list of attendees that was requested by one of the Commissioners.

Also there is an extensive packet that was handed out from Munekiyo and Hiraga that addressed the four areas that the Commission wish to review. Just very briefly those four areas were please review perhaps a reduction in the length of the Lahaina direction acceleration lane and/or other traffic mitigation measures to try to allow the possibility of maintaining two monkey pod trees currently scheduled to be removed at the location.

The second item was to look at the original map for the Driveway D and the connection to Olowalu Mauka. The third item was to provide an update on the compliance chronology, the notices of warning and the final notice of compliance that was issued by the Department and there was a request to explore further drainage mitigation about the standing water in the area shown as drainage A.

There is a short presentation by Mr. Munekiyo or Munekiyo and Hiraga to try to address some of these issues and then of course, staff, engineers, management is all here to continue our discussion.

Chair Starr: Okay, thank you. Before we proceed, Mr. Hopper had a disclosure to make and the Chair always welcomes disclosure.

Mr. Hopper: Just to let you know, I'm Michael Hopper, Deputy Corporation Counsel, I have advised the Planning Department on prior occasions involving the Olowalu Mauka project with regard to some of the original permit issues. I don't believe that would have an effect on my ability to advise the Commission today. I have not advised the Department or the Commission on the new permit for Driveway D. I have explained this to Commissioner Starr and Mr. Spence. They both said they didn't have a problem with advising the Commission in this matter so I wanted to just disclose that for the record and I see that there be no reason that I would be unable to advise the Commission in this matter.

Chair Starr: Mr. Hopper, am I correct in, in feeling that you're prior actions in relation to other parts of this project will not in any way effect your willingness to do the one task which you are here for

which is to advise and represent the Commission?

Mr. Hopper: That's absolutely right.

Chair Starr: Okay Members, is that okay with everyone? Okay, good. Thank you for that, it's always best to make things clear. Please proceed Mr. Wollenhaupt.

Mr. Wollenhaupt: Okay, Mr. Munekiyo will give his short presentation.

Chair Starr: Okay, Mr. Munekiyo, about how long?

Mr. Wollenhaupt: It will be less than ten minutes.

Chair Starr: Okay, that's fine. Please proceed. Can someone?

Mr. Mike Munekiyo: Thank you, Mr. Chair. If I may, I'll refer to one slide here unless Commissioners would have questions on any other aspects of the project again?

Chair Starr: Thank you.

Mr. Munekiyo: What I wanted to do today Commissioners just because Frampton and Ward and we just distributed this packet to you, basically what this packet is, it's dated February 22<sup>nd</sup>, and it's addressed to Director Spence and the subject matter is SMA Use Permit for Olowalu Driveway D. And what this compilation of information does is responds to the comments that the Commission raised at the previous meeting of February 8 and I thought if I could just go through these briefly I would be happy to answer questions that the Commissioners may have following this brief overview.

The first comment that the Commissioners posed is the – and I'll read it as, as presented in the Department's letter to the applicant. "Review a reduction in the length of the Lahaina direction acceleration lane and/or other traffic mitigation measures and the possibility of maintaining the two monkey pod trees currently scheduled to be removed at this location." And so this comment Mr. Chair, I think was – arose out of the fairly detailed discussion regarding what options might be available to save the two monkey pod trees and I note that, which I didn't note at the last meeting is that the objective of minimizing any impact to the monkey pod trees was a shared objective of both not only the Commission but prior to that February 8<sup>th</sup> meeting the DOT as well as the applicant they looked at various ways to maintain that trees as is. Some of the things that we note in this response is that there was even part of the design as presented last time was to shift the road makai and by shifting the road makai allow some pavement space on the makai side so that we could to the maximum extent practicable avoid the trees. So I think there's a shared objective here in terms of how best to provide a safe intersection geometrics without impacting the monkey pod trees. What the Frampton and Ward's response addresses is some of the things that, some of the histories and chronology that they went through. I'm not going to go through those items individually but I would note that as part of their investigation last week they were able to get Warren McCord an arborist out to the site to review the conditions of the two monkey pod trees which may be affected by the acceleration lane and we do have a meeting memo that's attached as Exhibit A. Just to quickly summarize of what Mr. McCord's observations were of the two trees



is that one, one tree would definitely be within the path of the acceleration lane and so that tree would need to be removed as currently designed. The second tree perhaps could be saved if certain, I guess, field conditions were right. So there's no really absolute guarantee that the second tree could be saved. It depends on the grade cuts and how the root system might be affected through grading. It may affect – it may be dependent also on the kinds of trimming that needs to be done to cut back the trees to make sure that there's no – there's sufficient clearance would be available for a vehicle passing under it and so those kinds of things would dictate whether or not that second tree could be saved. But again, this is something that the applicant did I think at the suggestion of the Commission I believe so we appreciate that comment. Again, one tree would be – would need to be removed under the current design. The second tree possibly could be saved, but again, that would depend on field conditions.

Now what we've done, Mr. Chair and Commissioners is to – since the last meeting we've met with the DOT seeking design solutions which perhaps could save both trees. That coordination is ongoing. There's not been a final design solution that has been arrived at if one can be arrived at all. I think what the applicant is interested in is working as best as it can to find an engineering solution that would allow the two trees to be removed, at the same time allow for safe operations at that intersection. Of course, safety, public safety is a very important element and decision criteria so again, we've not come to a specific solution but what I wanted to point out to the Commission is this that again, there's a shared objective of saving the trees. There's been coordination ongoing, it continues with the DOT and again, the objective is to see if there's any option for providing the safe intersection geometrics without impacting the trees and that discussion is ongoing. What we've done as a result, Mr. Chair, at the bottom of Page 2 of Frampton and Ward's response letter, there is a proposed condition which we'll be happy to go over during that phase of discussion that the Commission, during the recommendation phase of the Commission's deliberations. So I'll, I'll not get into that except to say that again, that we do have a condition which we hope would be workable for all parties involved.

The second comment Mr. Chair and Commissioners, involves a request to provide the original map of Driveway D and its connection to Olowalu Mauka Subdivision as approved by the Commission in the year 2000. I think Mr. Wollenhaupt had included that, an exhibit in his staff report which showed where the proposed original location was relative to the new location and what we've done also Mr. Chair is in Exhibit B of this attachment that we handed out today, we've indicated or we've attached some of the preliminary plans that were developed back in the early 2000 to get the process, design process going. Again, as I, I mentioned the last time, one of the really severe limitations at this location is the fact that the original location of Olowalu Driveway D is it's quite close to the shoreline and I think all of you are familiar with the situation that occurs here almost on a daily basis where we do have visitors parking along the side of the road and using the shoreline recreation – shoreline for recreational purpose and so, I guess, the difficulty with this location again, just to reiterate from our previous meeting is that the mix of intersection movements with the mix of movements in this area would be problematic from a design standpoint and that is the reason why the driveway location was shifted to where it is currently being proposed. And I, again, this is more hopeful – hopefully will help to clarify the need for relocation among other reasons that were cited last time. But again, we do have the location of the original Driveway D and the plans that were developed initially at least to respond to this question.

The next comment, Mr. Chair and Commissioners, from the, this body is, says, "to provide a chronological record of notices of warning, responses and compliance letters for this project with regard to the original conditions of approval." And I note that we've – Mr. Wollenhaupt's staff report as well as the exhibits that are attached to the Frampton and Ward letter seeks to accomplish that and these, more for informational purposes. I won't get into those.

Finally, Commissioners, the last comment offered at the last meeting was this, "explore further drainage mitigation to reduce standing water in the area shown as drainage A." And you may recall Chair and Commissioners that there was some discussion at the last meeting regarding standing water in this location, in the backside of Kapaiki. That standing water, you had asked if there might be any way to reduce that standing water. We did have last week, Mr. Tom Nance, the hydrogeologist come out to take a look at that situation and his report or memorandum is attached to this packet that we handed out. Mr. Nance's conclusion based on his field investigation and measurements, actually the field data measurements of salinity is that the source of the water which in on the mauka side of the highway, that standing water is sourced through a groundwater spring and salinity therefore, is quite low in that area and as you move makai the salinity then increases. So what we have there is a situation where that standing water has been there for historically for a number of years, and I'm not sure how long but a very long period of time and that source is a groundwater, a spring source. And so what Mr. Nance concludes is that it's not something that can be easily remedied given that it is a natural occurrence and so we provide that information for the Commissioner's review as well. I note that at our last meeting we did speak of the drainage retention capacity that we propose and that the retention ponds for this project will actually accommodate 100 percent of the increase and pre and post development flows. In equivalent terms this amounts to about four times the amount of drainage capacity being provided than what is required. So again, there is a recognition on the part of the applicant to mitigate as best it can under the scope of this project to mitigate drainage impacts and that the standing water unfortunately is something that is a natural occurrence would be difficult to mitigate. So that would be a very brief overview of the response, responses to comments that the Commissioners had last meeting. And we'd be happy to answer any questions that you may have at this time Mr. Chair.

Chair Starr: I have some further questions on the standing water particularly makai of the road where the ditch was back hoed by the State and where the water doesn't come from a spring but comes from the culvert that goes under the highway and sits there breeding mosquitoes and collecting mud behind the beach. Do you have any comment regarding that? I believe your comments before were both related to the mauka water?

Mr. Munekiyo: That's correct, and what Mr. Nance did, Mr. Chair, is to actually do his testing from the mauka side moving across to the makai side, and of course, there is that connection where the springs generate that water, it flows under a culvert under the highway and that is the water that then accumulates on the makai side of the highway. So it's one connected system. But that's again, as, as he, I believe as what he found in testing the salinity levels is that makai of the highway it's very low salinity as we approach – mauka of the highway is fairly low, approaching makai it increases again, there's influence of tidal influence so forth. So it is connected but again, really the source would be the wells or the springs that originate makai – mauka of the highway.

Chair Starr: Members? Commissioner Wakida?

Ms. Wakida: We've been given a document I believe just today, right? This one dated February 22<sup>nd</sup> to – this one? Am I correct?

Mr. Munekiyo: That's correct, Commissioner.

Ms. Wakida: But we haven't had time to review it, opportunity to review it, it's – it's the one with the Frampton and Ward LLC at the top. What would you like us to do regarding this document?

Chair Starr: Well, that's up, that's up to the Commission. If you have time to take that into your deliberations that's fine. If you need more time to examine it then it could be a desire to defer the item. Whatever, whatever the Members wish. Commissioner Hiranaga? I, I for one, do not like us to have a document dump at the beginning of the meeting when it's, when it's quite voluminous and technical like this. Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I agree with the Chair. I do not care for large documents to be placed before us just before the agenda item comes to the Commission but I could stall for ten minutes and then we could break for lunch and then the Commissioners could read the document during lunch or we could go to lunch early.

Chair Starr: Yeah, Mr. Wollenhaupt?

Mr. Wollenhaupt: Oh, I just wanted to just make a clarifying point. Now this is just a matter of fact, when the Commission defers to the next meeting, the next meeting, that would have been the Tuesday request for a deferral, I had to on Wednesday get my new report, addendum report written, I had to have it approved by Mr. Yoshida, I had to have it approved and signed by Mr. Spence, I had to it then also given to Carolyn all in 24 hours. So I do recognize that it's a challenge to get the documents and – but when you have questions that are of technical nature trying to do it to the next meeting presents these unfortunate circumstances that some of the documentation comes to you and you don't have an opportunity. So it's just a notification that we, we tried our best and they were using consultants last week and I tried to get as much as I could to you as soon as possible.

Chair Starr: Yeah, and Mr. Wollenhaupt, it's not, it's not a criticism. I appreciate that you got us the information we asked for, but you know, it is what it is. Commissioner Hiranaga?

Mr. Hiranaga: I did have a chance to review the document. Question, so originally DOT did not recommend or did not require an acceleration lane heading to Lahaina, but that was proposed by the applicant based upon comments from residents in the area?

Mr. Munekiyo: That's correct and I think the issue really was one of safe operations at that intersection and, and that how the discussions with the DOT started with regard to what then would be an appropriate alternative for providing that safe operation.

Mr. Hiranaga: So once you opened the acceleration box, then DOT said it's gotta be 680 feet or whatever it is, 690 feet?

Mr. Munekiyo: That's correct. If we had designed it to standards that they ...(inaudible)...

Mr. Hiranaga: So you could possibly go back to the original design with no accel lane or is it too late, the box's been open?

Mr. Munekiyo: No, I don't think it's too late. I think it's something that we need to explore with DOT. Again, as I mentioned, it's a shared objective in terms of number one, saving the trees but at the same time providing for safe operations and we've had since the last meeting in February 8, we've had a number of occasions with DOT seeking alternate design solutions not necessarily the first one but others which may be workable. We just haven't had time in the past two weeks to bring that kind of discussion to conclusion. But as I mentioned we did have a condition proposed which perhaps the Commission could consider at that phase of the deliberation.

Mr. Hiranaga: Yeah, I live in Paia, Spreckelsville and we have an accel lane onto Hana Highway. I think it's the same speed limit 45 miles per hour and it's no where near 690 feet, it's probably 200 feet. Is it just – I guess, but you're assuming that people are driving at 55, even though the posted speed limit is 45. So you're designing it for people driving at 55?

Mr. Munekiyo: That's correct.

Chair Starr: Commissioner Wakida.

Ms. Wakida: Thank you. Is there anybody here from the Department of Transportation?

Mr. Munekiyo: Not today Madam Commissioner.

Ms. Wakida: Because there is an acceleration at the intersection of the Launiupoko Subdivision across from Launiupoko Park which is I believe considerably shorter. And there is also an entrance onto the highway further down at the entrance to Lahaina. And I don't believe there even is an acceleration lane out of that subdivision, it was just a stop sign and they, they seem to function very effectively those two intersections.

Mr. Munekiyo: I think if I may respond? I think what we're trying to do right now is to solicit the input with DOT and our engineer to come up with a solution that could be workable just as you cited. I know there's different standards for signalized intersections which are stop controlled intersections. So all of those things need to be considered, but again, there is, again, a ...(inaudible)... objective or desire to make something work in that intersection at Luawai Street that we can save the trees. Like I said we've come up with a proposal which we hope could be workable for at least for discussion purposes.

Chair Starr: Okay, Commissioner Mardfin?

Mr. Mardfin: I'd just like to support what Commissioner Wakida has said about getting voluminous documents on the day of a decision. And it isn't just, I mean, there were several here, Frampton and Ward's and I'm blaming Kurt at all for this, but I do agree that it's – in two weeks, a short time to do things. We have one from Randy Ragon which is quite voluminous. He also has a document suggesting that legally we're on – we, we – things we need to pay attention to and today we got a letter from him raising some of the same issues. I'd like to get some more information today, some

testimony perhaps but I find it awkward to have to make a final decision today in view of the lateness of getting the information.

Chair Starr: Commissioner Wakida?

Ms. Wakida: I have a question for Corporation Counsel. Particularly this large document that we got from Mr. Ragon, how does this factor into what is before us as Commissioners? What part does this play?

Mr. Hopper: I think you can consider it in your deliberation as public testimony that's been submitted to you.

Ms. Wakida: Okay.

Chair Starr: I have a question regarding the trees. If those trees are moved, can they be relocated?

Mr. Munekiyo: Mr. Chair, based on the arborist review of the tree, both trees he believes that they cannot be relocated and survive.

Chair Starr: How far is it from the mid point of the intersection to the trees?

Mr. Munekiyo: If I may have our civil engineer respond Mr. Chair?

Mr. Kirk Tanaka: Good morning, Chair Starr and Members of the Planning Commission. My name is Kirk Tanaka with Tanaka Engineers. I'm the civil consultant for the project. In response to Chair Starr's question from the center of the proposed intersection to the first tree is approximately 320 feet.

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

Mr. Tanaka: Yes?

Chair Starr: In your opinion, do you think it's possible to accomplish a turning and acceleration lane and stay within that, that 300 foot and change envelope that is available before the trees?

Mr. Tanaka: What we have done is we have done a few iterations in consultation with the Department of Transportation, mainly Charlene and Freddie's office regarding alternatives to – try to impact the grove of trees as little as possible. And what we ultimately came up with in consultation with them is that we shorten the acceleration lane as much as we could based on AASHTO Standards and we also slightly translated the highway makai. There are pinch points, it's not that we can translate the highway as far as makai as we'd like to because if that was the case we would do that and it comes down to originally on the first proposal we had, we had to had taken out quite a few more trees. And what we came to the Commission with was at that point, our best effort as to try to minimize the impact to the trees. Unfortunately this is one, the first tree, mainly the one that's 320 feet away from the intersection that inside of the paved shoulder and then the

second one which is a I would estimate about 40 feet more towards Lahaina which is outside of the paved section but unfortunately the tree is higher than what we would like and therefore, when we grade the shoulders out to provide for drainage and for the paved shoulder and the guardrail, we're going to try to save the tree, but it appears that that tree might be in the way.

Chair Starr: Commissioner Tagorda?

Mr. Tagorda: Mr. Chair, thank you. Mr. Tanaka, I'd like to follow up again with that future expansion or relocation of that highway. I believe one Of those agencies in the past when you was taking, when you was – when the applicant applied for this subdivision in the year 2000 there was that recommendation from one of these agencies that I believe the developer or applicant is going to reserve at 160 feet for future expansion of that highway, mauka of that highway. Is this region or subject property now will be affected by that future expansion of that highway? And if so, was that reserve 160 feet recommendation by I think, DLNR to DOT, the applicant is going to play or is going to factor in with that proposed Driveway D?

Mr. Tanaka: Mr. Tagorda, are you referring to the proposed relocation from the highway?

Mr. Tagorda: That's correct.

Mr. Tanaka: Significantly mauka of where it is today? If you're referring?

Mr. Tagorda: Yeah, that's what I'm referring to because I think there was a recommendation and then I think the applicant agree to set aside 80 feet mauka of that highway instead of the 160 feet, as I read my notes previously.

Mr. Tanaka: It's my understanding that there is the proposal that is still on the table to relocate the highway significantly mauka. And if that was, and if that did come to fruition then this portion of the existing highway would be used more as a lateral access, lower volume type, type road, whereas, where this proposed intersection would generally be incorporated into the future alignment of the highway as – but be able to handle the beach traffic versus the, the commuting traffic.

Mr. Tagorda: Chair, one more?

Chair Starr: Okay, we're going to break for lunch. We will be breaking for lunch. I want to pose something to you before we do break though. Mr. Tanaka, please stay up there.

Mr. Tanaka: Sorry about that.

Chair Starr: There is concern in the community about that standing water that is in essentially in or tangent to what's considered – what's used as really a public beach park. I've heard from several people that area is used quite a bit by snorkelers and kayakers and I've heard that people have picked up staph there, that that's a mosquito breeding ground and that mud and silt are being carried onto the reef and it's just really dirty when you go look there there's all kinds of junk floating in a pool of water right behind, right behind the beach. I think that even if there's a perception that people are getting staph from that and there are other problems I think that it behooves us when

we're redoing that whole intersection and portion of the highway to try to find some solutions so that there's not stagnant standing water right above the beach and I would like when we come back for you to see if you can dig dip in your great knowledge of engineering solutions some way to get rid of that standing water that is in proximity to the shoreline. And I think it would be very much appreciated if some solution to that could be found. We are going to recess for lunch. We'll be back here at one o'clock.

Mr. Tanaka: Okay, we'll take a look at it. Thank you.

A recess was called at 12:01 p.m., and the meeting was reconvened at 1:04 p.m.

Chair Starr: Welcome everyone. This is the Maui Planning Commission of February 22, 2011, we're returning to our discussion on Item D-1 which is the Driveway D and we're in the discussion phase and then we'll be moving onto our public hearing very shortly. Members, are there any other questions on this before we go to the public hearing. We did the public hearing, but we will allow public testimony on it. Commissioner Wakida?

Ms. Wakida: Yes, I have several questions. I guess, Mr. Munekiyo, thank you, I'm trying to get a handle on the subdivision size and number of lots that this road is accessing. And in one of your documents, it refers to six units out of a total of 48. By units do you mean lots? I mean, –

Mr. Munekiyo: Commissioner, would you mind reading that particular sentence?

Ms. Wakida: It's, it's in the section called, Driveway D improvements and sections, dated January 3<sup>rd</sup> and it's item, Page 2 of let's see, it's under the Traffic Impact Analysis Report I believe. Yes, Traffic Impact Analysis Report.

Mr. Munekiyo: And –

Ms. Wakida: And it's the top of Page 2.

Mr. Munekiyo: Page 2.

Ms. Wakida: And the second paragraph begins, "currently," you see where I am?

Mr. Munekiyo: Yes, I see.

Ms. Wakida: Okay, the Olowalu ... has six units out of a total of 48. Just trying to understand the – what the 48 refers to?

Mr. Munekiyo: Commissioner, I think the 48 in this context of the traffic study relates to the total number of lots in the Olowalu Mauka Subdivision.

Ms. Wakida: So that would be, let me see if I can find one of your maps here, you know, you've given us so much to work with.

Mr. Munekiyo: Commissioner, I think in Mr. Wollenhaupt's addendum report, there is a figure exhibit.

Ms. Wakida: Would that be this one, sir?

Mr. Munekiyo: That's it, yes. And I just was – received some clarification the 48 referred – there are 24 lots, if you see the Olowalu Stream which bisects the property in the mauka to makai direction.

Ms. Wakida: Right.

Mr. Munekiyo: There are 24 lots on the Maalaea side of the stream.

Ms. Wakida: Okay.

Mr. Munekiyo: I think of the 24 the assumption is that there could be a primary farm dwelling and accessory dwelling on each lot so that the total would be two units per lot. There are 24 times two so 48, it refers to the 48 units on the Maalaea side of the Olowalu Stream.

Ms. Wakida: Okay.

Mr. Munekiyo: Which would utilize the Olowalu driveway.

Ms. Wakida: Okay. And those are currently zoned Ag is that right?

Mr. Munekiyo: That's correct.

Ms. Wakida: And is there a plan down the road to change that zoning?

Mr. Munekiyo: You may be aware Commissioner that there is a, a separate effort to develop the Olowalu Master Plan project which would take some of those lots and reclassify it to urban and/or rural. Some would be maintained as Ag as well but that is a separate project that is running parallel with the Maui Island Plan update process.

Ms. Wakida: Okay, thank you.

Chair Starr: Members? Before we had broken I had asked a question of Mr. Tanaka if you can find a way to get rid of the stagnant standing water makai of the highway?

Mr. Munekiyo: Mr. Chair, if I may respond we did meet with Mr. Tanaka. There are or there is potential engineering solution. Right now the standing water is an open channel condition and the engineering solution would be to provide a box culvert. So although that – this is just conceptually what can be done from an engineering standpoint. The, I think the limitation however is one actually doing it because that is – portions of those lands are within the Conservation District. It is within the shoreline setback and there is a possibility that it would require other regulatory approvals from the Department of the Army. So I think the conclusion of the – from an engineering standpoint



it probably can be done, it's more problematic from just implementation standpoint and that's something that really we believe it's beyond the scope of this project so we hope the Commission can understand the limitations associated with doing it.

Chair Starr: So in other words, you're, you're, you're saying that you won't deal with finding a solution for that?

Mr. Munekiyo: I think that will be the response, Mr. Chair, unfortunately.

Chair Starr: Okay, thank you. Members? Commissioner Wakida?

Ms. Wakida: Yes, I have a concern regarding one of the early communications from the Highway Divisions and that was in the packet that we got originally from the planner. And said that, in this letter from the Highway Department it said, and I realize it's referencing Driveway C but it still makes the comment, "the applicant should negotiate with the property owners of Olowalu Store and Chez Paul Restaurant," which I know are no longer those businesses but they will be another business, "to agree to consolidate their driveways and otherwise mitigate the situation of multiple access in close proximity. Accesses should be consolidated to keep them at least one half mile apart." And I was wondering how the applicant was justifying this since the driveway is under, just a little under a half mile in that corner?

Mr. Munekiyo: I think the – what the applicant is proposing and working through with DOT is to close an existing driveway that's there right now and realize this is the primary access. And so there is – there is really an effort to consolidate as a result. So I think what sought to do was comply with the DOT request through replacing existing driveways with this new Driveway D.

Ms. Wakida: Yeah, but if the existing driveway my concern is the, the new Driveway D is in close proximity to that – those stores on that and those accesses to those stores.

Mr. Munekiyo: Right, right. Again, I'm not sure what the date of that correspondence was Commissioner but the applicant has actually gone through a very detailed engineering design coordination with the State to make sure that operations can be handled safely at the various intersections throughout that reach of the highway and so I think that has been addressed through that process.

Ms. Wakida: Okay, can I ask one more question?

Chair Starr: Yeah go ahead.

Ms. Wakida: Did the transportation approve the original driveway location?

Mr. Munekiyo: They did not. It was reflected as part of – it was reflected as an easement on the subdivision plat map and again, it is primarily identified from a schematic preliminary basis where access could be provided for the subdivision. Again, once the engineering details were examined, it proved to be problematic in terms of actually doing there, and so that is why the shift in location came about.

Ms. Wakida: So the Department of Transportation didn't sign off on that original location?

Mr. Munekiyo: It was –no, they did not. Am I correct ...(inaudible)...?

Unidentified Speaker: ...(inaudible - speaking from audience)...

Ms. Wakida: All right, thank you.

Chair Starr: We open public testimony? We will open public testimony. Members of the public who wish to speak on this item please make yourself known. Ms. de Naie? Thank you.

Ms. Lucienne de Naie: Sorry, I was caught in my notes here. Lucienne de Naie testifying as a private individual. Although, I was in this room ten years ago when the EA and SMA permit was being reviewed by your predecessors. And what I heard was that after the conditions were in place there would be a finding of no significant impact. So this is a little confusing because the plan that was being approved that had no significant impact included the original location of the original access which we now find out has impacts and so it's gotta be moved some place else. We also were told that the conditions were going to solve everything, well, one of the conditions was to have several accesses because this is fire prone area and it is an accident prone area. And some how ten years have passed, all the approvals have been given, lots have been sold, homes have been built, money's been made and the conditions are languishing until, you know, this day when you folks are trying to make a decision about it.

Since this is an SMA matter, and since you're looking at the conditions that should be on an SMA permit to do the right thing, I would just like to bring up some questions. You guys are going there with some of these questions, but is it, is it really more the acquisition of the right of way for the old location that has held up this process? Is it a money matter or a time matter of dealing with the State who owns the right of way in the first proposed location? Or is it really about safety? Is this location is this second location safer in terms of drainage, is it safer in terms of, you know, the removal of trees, is it, is it better in terms of a future park entrance that might be some place here because if there is a master plan Olowalu Village there's going to be a park somewhere in this area, where's the entrance to that park going to be, how is it going to correspond to this?

You know, the 14-mile marker is in all the guide books as the place to go and stop and go snorkeling. So you know, it's a very popular area down there. But are the parking issues at the original location something that the DOT really just said, oh, no, no, no or are we being kind of told a version of this that with a few of the important details left out? Those would be things that I would hope that you would want to find out through this process. How about fire safety? Is it better to have a road further away as Commissioner Wakida is sort of going at here? So that if there's a fire, you know, maybe the fire isn't to that section yet, and you can bypass the fire?

The drainage issues, there are wetlands in this area, there are historic ponds in this area. Has an archaeological inventory survey included the general area of this road? Obviously there's a dirt access there now but if the other road was on the plan, that's probably where the archaeologists did some testing to make sure that nothing would be impacted. What happens here?

These are just a few of the things, you know, how much safer is it? Is there a quantitative difference? How much safer is the first intersection or is the new intersection over the first intersection? Is there anyway to quantify how much better that would be? I just would, you know, urge you to get as much information as possible since we've already had this project say there were no significant impacts and now we find out that there are. Let's not be kind of caught twice. Thank you.

Chair Starr: Any questions? Thank you, Ms. de Naie? Any other members of the public? Please, Mr. Ragon. Introduce yourself, and welcome, and thank you for your patience.

Mr. Randy Ragon: If the Committee could, could you please grab a hold of this document that I put together for you. It's a lot of what Lucienne just referred to. I'm giving you the information so that you don't have to guess and I've taken ten years of documents and really streamlined it for you. So the answers are in, are in this document. I apologize that I don't have it tabbed other than just the yellow tabs. We tried to get it to you on Friday which we did, but my secretary ran out of the professional tabs.

And before I start, I just want to just mention to Penny, the answers to your questions that you asked Mr. Munekiyo regarding the number of lots that's in Chapter 2 of this document and they're, they're the documents that show it. And then also regarding the approval, the documents show there was an approval and that's in Chapter 3. Okay, if I could get started with my testimony, thank you.

My name is Randy Ragon. I'm a homeowner in the Olowalu Mauka Subdivision. After attending the February 8<sup>th</sup> meeting, I decided to put together a document for the Commission. The document is a quick study of the issues in our subdivision including the relocation of Driveway D. In short, it is a condensed version of over ten years of Planning Department files and documentation that are relative to today's hearing. It is not just public testimony but includes several legal documents that must be considered by this Committee.

If you refer to the chapter headings in the Table of Contents, you will see that I've addressed every question that was raised by the Committee in the last hearing and also in this hearing. At the beginning of each chapter is a short summary followed by file documents which provide factual evidence of the statements made in the chapter summaries. To save the Committee time, I've also underlined the key points in the documents that pertain to each chapter's content. It should take the Committee no more than 15 minutes to review the document and understand the facts. You could just go through chapter by chapter and read the heading you will get it really quick. Behind it is the actual documents that that verify. Without it, you will be relying on the Planning Department, the developer and the DOT to give you information that could create more safety and liability issues for our homeowners and our taxpayers. So far all of these entities have either omitted or neglected pertinent facts that the Commission needs to know. For example, if you look at Chapter 4, you will see that one of the reasons the developer did not construct the original plan was because they did not own the land for the west bound deceleration lane which would have connected into the plan or into the planned entry to the subdivision. They would have had to purchase that from the State.

In the conclusion in Chapter 9 of the document you will see that the Planning Commission establishes rules for Title 12 for SMA. In accordance with the Charter the Planning Department is obligated to administer those rules and regulations. The problem is that the Planning Department, the developer and the DOT did not follow the rules. Had the DOT followed the rules and the Planning Department properly enforce them and the developer fulfill their obligations there would be no meeting today to discuss relocation of Driveway D. In fact there would be no meeting today if our board had not filed a complaint and I had not filed a lawsuit against the developer and the government agencies to force compliance. Olowalu Mauka would be, would be just one more of the 1,800 subdivisions on Maui where former Public Works Director Milton Arakawa in a County Council meeting publicly admitted that developer commitments had not been fulfilled. There is currently no process for a citizen to come back to the Planning Commission for enforcement. Instead we are compelled to go to the Planning Department. The citizens should be coming back to the Planning Commission and not the Mayor which is a system that essentially operates as a dictatorship. This is why we are forced to file lawsuits like the Maui Lani homeowners had to do to get enforcement.

If you refer to Chapter 10 of the document that I gave you, you will see the request to the Commission. We are simply asking that the Commission follow the rules of Title 12 regarding the relocation of Driveway D and extensions and amendments in our subdivision. We are also asking that the Commission adopt the language in the proposed bill to amend Chapter 202, the SMA Rules that you are revisiting from the January 2011 hearing which we will ensure, which will ensure that the Planning Commission public process remains public and that developers who do not fulfill their obligations are fined appropriately to discourage future noncompliance. These are, these are really legal issues that may have to be decided in court. You might want to consider Corporate Counsel, you know, opinion in deciding these things, but I think if you talk to the new Corporate Counsel head attorney, Patrick Wong, he's going to tell you that, that it's not the Planning Department's job to make up new rules. They're to follow the rules that you guys establish. Thank you very much.

Chair Starr: Thank you, Mr. Ragon. Any questions for the testifier? Commissioner Mardfin?

Mr. Mardfin: Is there any reason you didn't try to join this as a contested case?

Mr. Ragon: Yeah, you know, one of the, the biggest problems and I think this is one of the reasons why we've got this ongoing problem with, with incomplete subdivisions is when you try to hui up, and I was the president of our homeowners association, when you try to hui up owners and a lot of them are on the mainland and, and get together for money for legal fees and whatever, unless you've got somebody that's very savvy in your subdivision, in my case I'm, I'm a developer, so you know, I've got some expertise, you know, in the area and that's why I took it on as the, and was asked by the board when I was the president to do it. So that's why I came and I did the research also. My wife is a litigation attorney, so she helped me do the initial research. We probably saved a \$150,000 in legal fees. So, the problem is they don't want to spend, you know, the money and most of them they're not here to really get involved and that's one of the reasons why it is, the system is the way it is. That's why we needed to be able to come back to you folks when enforcement doesn't happen.

Mr. Mardfin: With respect to safety, how does the old driveway -- in your opinion, how does the old

Driveway D compare to the new proposed Driveway D?

Mr. Ragon: Well, if you you -- if, if, if you were to pull up a map of the original -- there's the original plan where the original Driveway D was to go that goes into the front end of the subdivision which separates from the existing entry which is Luawai which is not even on the subdivision and it's not properly engineered so it's been a problem for our association from the beginning, but for example, when we had one of the fires, my wife, my baby and dog literally had to drive through flames to get out on Luawai because there was no exit in that particular fire to get out on the original Driveway D location which should have been a fire road but they never put it in. So we have to have entrances and exits that are far enough apart to be able to, you know, to have safety in our subdivision.

Mr. Mardfin: That's referring to safety for the people, for the lot owners. How about safety for entrance and exit onto the main highway?

Mr. Ragon: Well, you gotta -- also in the valley, you know, in one of our fires we had the flames go right through, right the valley and went right over someone's house and over the pig farm and they were fortunate that they didn't die. They were in the house, but fortunately there was, there was trees in front of their property where it went over it, but they had a way out. But that's why the original plan has four locations and they're spread out so that you can, you have more than one way to get out of where you're at.

Mr. Mardfin: My question was comparing the original proposed entrance D to the newly proposed exit D, entrance D, how do they -- and I'm asking not in terms of the lots but in terms of the traffic is one significantly more safe than the other?

Mr. Ragon: Well, yeah because, because in this new proposal --

Mr. Mardfin: Which is more safe?

Mr. Ragon: Yeah, safety because --

Mr. Mardfin: Which is more safe?

Mr. Ragon: Oh, the original by far. That's why it was designed that way. We've been, we've been through this entire process once before with engineers, with professionals who did all this before and you'll see that, I think it's in Chapter 3, it was all approved. It was good plan. It just wasn't executed.

Mr. Mardfin: And what is it about the original Driveway D that made it safer for the drivers on the highway?

Mr. Ragon: Well, because when you, when you're coming from Maalaea side, it's just a right hand up into the subdivision and there's plenty of other exits for people living throughout the subdivision and in the area to get on and off the highway all the way up towards the dump. There's four entryways. There's multiple, you know, it spreads it out. And the other thing that was a big problem

in the beginning was exiting off of Luawai which didn't really exist but right towards Camp Pecusa, in the traffic analysis they didn't want that much traffic going out towards Camp Pecusa.

Mr. Mardfin: Thank you.

Chair Starr: Commissioner Wakida?

Ms. Wakida: Thank you. I'm trying to pour through some of this. In Section 2, where does this -- whose study is this? Where it says "project overview" on the second page. Where did this come from?

Mr. Ragon: Environmental Impact Statement.

Ms. Wakida: Yeah but who? Is this from the Department of Transportation, is this from who?

Mr. Ragon: It was, I think, I think I put in there that I didn't know the date on it, but it was a document I believe that was part of the Environmental Impact Statement submitted by the engineers.

Ms. Wakida: Okay. And you're saying that the Department of Transportation did in fact approve the original location?

Mr. Ragon: Yes, let me -- it's toward the back.

Ms. Wakida: Would that be the July 14th letter?

Mr. Ragon: Yes, yes. Go to, go to Chapter 3.

Ms. Wakida: Yeah.

Mr. Ragon: That's where it's at.

Ms. Wakida: And is that that July 14 letter? Is that the one you're referring to?

Mr. Ragon: Yeah, you got a July 14th letter, yeah, we recommend approval.

Ms. Wakida: Of these construction plans?

Mr. Ragon: Yeah.

Ms. Wakida: So that assumes that driveway?

Mr. Ragon: That's the original plan of the four driveway locations, approval of the original plan.

Ms. Wakida: Okay.

Mr. Ragon: And then on Page 67 of the Environmental Impact, if you just flip through about five pages they in that statement they talk about the recommendations in approving the -- all four locations. Okay, and then at the very, very end in Page 68, specific recommendations and comments by the Department of Transportation during its review of the draft EA had been addressed applicant subject to review and approval of construction plans and proposed mitigation measure the DOT feels the applicant has satisfactorily addressed their concerns.

Ms. Wakida: Okay.

Chair Starr: Hold on, Commissioner Tagorda you're next. Commissioner Tagorda?

Mr. Tagorda: Sir, I couldn't go through with all this, but I believe I read something about statute of limitations that the developer is playing here so to stall, as a stall tactic that the developer would comply with a lot this conditions. Can you comment on that please?

Mr. Ragon: Okay, if you take a look, and it's really not that difficult to go through this if you just, if you just read what's underlined and that should take about 15 minutes to go through after read the chapter headings. What you're going to see in there clearly that the developer stopped doing any work on this after 2005. There is no documents in the files after 2005 which is one of the reasons why we filed the complaint. And also you're going to see in here documents where in one of our board meetings, when I was board president, I specifically asked Peter Martin who was there as a representative what were his plans with the highway. He got up, walked out the door and I said, Peter please answer the question? On his way out, we're not doing anything. And then in talking with his employees, the guys that I know that because I've had someone work up at my property, they told me Peter's plan is to, is to run out the statute of limitations. You know, so he doesn't have to pay for anything.

Mr. Tagorda: Can I have a comment from our Deputy Corporation Counsel about statutes of limitation here?

Chair Starr: Mr. Hopper, I will ask you comment if your prior involvement precludes that, please let us know or -- I mean, we do want a comment on the requirement to implement conditions and whether they sunset, whether there is a statute of limitations and so.

Mr. Hopper: I'm not sure if the statute you're talking about is for a landowner suit directly against the developer. As far as County enforcement I know of nothing if you have a SMA permit condition that would, that there would be a statute of limitation to prevent the County enforcing that condition. I don't know of anything there. I'm not sure what happened as far as private agreements that may have went on between lot owners and the developer. That's an issue that I don't have that information for, but as far as County actions I don't know of way where our statute of limitations would apply to prevent the County from enforcing an SMA permit condition. I mean, unless the condition was, you know, was to build something and it was built, or, or -- but I mean, if these conditions generally, I wouldn't see a time limit being a bar for the County to take action.

Mr. Tagorda: Get to follow through -- and there was also a statement made in this piles of papers that I had that SMA permit already expired and the applicant didn't renew it or apply for a new one.

Mr. Ragon: Correct. Expired in the year 2005 and I've addressed that in one of these chapters as well. Let me just, give me about five seconds and I'll tell you the chapter and you can read the documents on that.

Chair Starr: While you're looking that up, I have a question for the Director which is say entity A is doing a development project and they get an SMA and they substantially build that project but there are still some things that remain and the SMA permit, you know, runs its course and then, you know, ten years later they go onto fulfill those conditions. Do they need to reapply for an SMA permit if the previous one expired?

Mr. Spence: Thank you, Mr. Chairman. If I understand the question correctly, SMA permits don't expire. There may be individual conditions on the permit that expire.

Chair Starr: Okay.

Mr. Spence: You know where something construction of the project may be completed within five years or time to initiate construction by a certain date, something like that, but the other conditions don't expire. I mean, if you have to choose one at random, develop the property in substantial compliance. That's still there, that does not go away no matter how old the permit is. They can't go in and say that they're gonna do these ag lots and then go do a whole bunch of, you know, other things. So, in those kinds of terms certain conditions may expire but the permit itself would not. The conditions would not.

Chair Starr: When does the Department go and look to see if all of the substantial compliance has been, has been actually implemented?

Mr. Spence: A standard condition for any SMA permit, first we have preliminary compliance report, and mostly that's where the applicant says how he's going to comply with the application. Different conditions are different in -- you need to show, you know, that you get an NPDES permit or a noise permit or something prior to obtaining grading permits or whatever. Other things can still be left till after -- and just by the very nature of the condition they have to wait till after construction starts. Final compliance is required before we'll sign off, where the applicant shows how they have complied with the specific permit or with the specific conditions. I know there's a part of the, the staff's supplemental report, addendum report you'll see a couple letters in there issuing the developer notices of warning and saying hey, you gotta do this, so I believe this particular application that's before you to, you know, change the location of the driveway is in an effort to try to resolve some of those things that the Department has said, hey you gotta comply with these things.

Chair Starr: What are the -- are there other items beyond this Driveway D relocation that are still outstanding in this particular project?

Mr. Spence: I'm looking at, I'm looking at the September 19, 2000 SMA approval and subsequent letters from the Planning Department, December -- how they do say that they are complying with many things, there's things they still need to work on. I'm not familiar with exactly, you know, what has been investigated. This is something I inherited. I'm not entirely familiar with the conditions



that they still need to comply with, but it appears to me they're at least making an effort to do so

Chair Starr: So they're - but you're saying there may be other things that are outstanding?

Mr. Spence: There may be. I'm not entirely sure.

Mr. Ragon: Mr. Starr, I could answer the question, respond to that because that's not what the document says here?

Chair Starr: Please Mr. Ragon? And then Mr. Tagorda will finish and then I'm going to ask Mr. Wollenhaupt after testimony is finished.

Mr. Ragon: If the Committee goes to Chapter 6, and goes to the April 26, 2010 letter from the Department of Planning. I respectfully disagree with Mr. Spence. Condition No. 2 says, the project was to commence no later than September 30, 2002 which it did. However, Condition No. 2 states that the project shall be completed within five years after the date of initiation. Failure to complete this project within the five-year period ... (inaudible)... no recorded and/or approved time extension requests of which there is none may indicate that this SMA Use Permit 99/0021 has been automatically terminated. There was no work done on this project until 2009 after we filed the lawsuit. That's from, that's from the beginning of 2000 until the end, that's, that's the only reason there's anything done at all and it's still not complete by a long shot was because of the lawsuit.

Chair Starr: Thank you. Mr. Tagorda?

Mr. Tagorda: Just a very -- again, one more concern, Mr. Chair. Can you comment about that verbal agreement made in 2003 between DOT, Maui District and why it wasn't shared to the Planning Department, to the homeowners association and all that between the developer and the DOT, Maui District Manager?

Mr. Ragon: Well, that's one of the problems, and that's why it's good to read these documents because what what the local Maui DOT Office is saying with a verbal agreement that they said that they made which now shows up, you know, it was apparently done in 2003, but it shows up after a lawsuit was filed and, and right before, you know, these hearings started. That's inconsistent with when I went and met with the head of the DOT, the Director over there and he said that there is no, there is no plan, phasing plan on record. It also begs the question why, you know, the last hearing we had the local DOT, Ms. Shibuya here testifying and why we didn't have Freddy Cajigal who supposedly made that verbal agreement? Why wasn't, why wasn't Freddy here? But more important to us as homeowners because we inherit the liability of this. This is going to be our problem when, you know, whatever you folks decide, we're going to end up with the liability, not, not with all respect to the local people down below us, it's, it's our subdivision and it's our liability and that's been one of the biggest issues. There hasn't been anything, the, the, the Director of the DOT in Honolulu, no phasing plan, but for whatever reason, the Maui local office is coming up with a verbal agreement. I mean, there's a question for Corporate Counsel, since when do verbal agreements decide whether or not we build subdivisions or we allow subdivisions to be occupied? Where's that in the law? Because that's what, that's what the Planning Department is going on right now making their decisions if they're in compliance.

Chair Starr: Okay, thank you very much. Mr. Tagorda, you're satisfied?

Mr. Tagorda: I'm done. Thank you.

Chair Starr: No seeing -- Commissioner Wakida?

Ms. Wakida: I have one additional question but not for Mr. Ragon.

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

Mr. Ragon: Thank you very much. Appreciate it.

Chair Starr: No, Commissioner Wakida we're still in public testimony, so wait.

Ms. Wakida: Oh, beg your pardon.

Chair Starr: Are there any other members of the public that wish to give testimony on this item? Please come forward, introduce yourself and thanks for joining us today.

Mr. Dave Miname: Commissioners, good afternoon, Dave Miname, a Lahaina resident. After listening to the testimony I think there's a couple of things I'd like to maybe make comment on and the first one would be safety. You know I work in that area and I travel this road numerous times all day long. And you know, when you think about it right now, in fact even with the majority of the people that live in the area where do they go when they want to get on the highway. They use this new proposed intersection. You know, when you look at the area it's the widest. It has as far as grade separation it's the levellest. There's two areas that I tell my men to use to get on the highway, that's one of them and the other one's further north past the store because those are the areas that you have the most view to make it the safest egress and ingress through the intersection. So you know, when we talk about safety, I don't think you can beat the location that, the proposed location now. Even when my family needs to go, they come visit me at work, I never let them go out by the store or anywhere else, but in the north and south entrances.

The other thing I think I need to touch base on is that drainage that has been coming about. That drainageway is a very important drainageway. Without that drainage, you know, there's a lot of homes back there that, you know, you put their homes in jeopardy if that drain isn't maintained and looked after. There's always water in that drainage. So if we call it stagnant water I think we need to be a little careful on that. When we go back there to do maintenance, you know, there's no mosquitoes in that water. That water is living. In fact, when we go back there an clean it residents frequently come out and tell us to be careful because they use the fish in there for bait. There's a whole hole in there, there's all kinds of fish in there. You gotta be careful because they use that for bait. So when they go fishing they got. You gotta be careful there's a spring back there so the water's always moving back there. It's not stagnant water. So you need to, you know, we need to be careful how we address that drainage. You know, there's vegetation that grows back there that acts as a good filtration. So perhaps there's a way of enhancing that kind of concept. You know, if a filtration type of scenario, natural filtration. I know we used to do that a lot at Maui Land and Pine we tried to create filtration strips and things like that --

Mr. Takayama-Corden: Three minutes.

Mr. Miname: -- but the drainage is important, the safety of the highway, the majority of the people use where it is now. So I think that' about it.

Chair Starr: Thank you, Mr. Miname, we have a question from Mr. Mardfin.

Mr. Miname: Sure.

Mr. Mardfin: When you first stepped up you identified yourself as a resident of Lahaina. But from your testimony it sounds like you have some professional or business in it, could you explain what that it is?

Mr. Miname: Yeah, I'm also the Land and Water Manager for West Maui Land. So I work that ditch a lot.

Mr. Mardfin: You have any direct connection to the proposed project?

Mr. Miname: No. Other than what I do as far as -- my title is Land and Water Manager. So I take care of the water systems and land issues ... (inaudible)... agricultural lands and things like that.

Mr. Mardfin: Thank you very much.

Chair Starr: You work for the company that is basically the developer here is that correct?

Mr. Miname: I work for West Maui Land Company.

Chair Starr: Thank you. Commissioner Tagorda?

Mr. Tagorda: Mr. Miname, I heard you said about up north. You suggest that your people use that. Can you point in that map where that up north intersection is?

Mr. Miname: Okay. ... (inaudible - not speaking into the microphone)...

Chair Starr: You have to use the mic. You can take the portable mic if you want.

Mr. Miname: Yeah, Olowalu Store is here, the area we use is here and here.

Mr. Tagorda: Where the proposed driveway location is?

Mr. Miname: Where the -- Camp Olowalu, yeah. So we use this and this right here because the view, the view corridor here is safest as well as here. Now when you come down to here I think it was down there the proposed -- well, number one, it's close to the snorkeling place so there's a lot of cars, lot of traffic and the other thing is the grade separates more. So when we try to get on the highway there, you know, you're kind of looking uphill, but here it's flat. So you know, the majority of the people use this from my observation.

Mr. Tagorda: Okay, while you're there can you point to me where's that drainageways that you're talking about that those fishermans get their baits?

Mr. Miname: It runs right along this back of this subdivision.

Mr. Tagorda: Thank you, sir.

Chair Starr: Commissioner Wakida?

Ms. Wakida: Yes, Mr. Miname, to the best of your knowledge how long has this Luawai Street been there?

Mr. Miname: I think, I want to say about six years, five or six years.

Ms. Wakida: And that intersection, is that just a six-year-old intersection?

Mr. Miname: Well there's none now, it's just gravel.

Ms. Wakida: No, Luawai Street comes out to the highway.

Mr. Miname: Well, it stops at the canehaul road right now. But it's always been there, that's geographically it's always ended right there.

Ms. Wakida: Okay, but what I'm getting at is who originally built that road?

Mr. Miname: The developers, you can talk to these guys.

Ms. Wakida: Okay.

Mr. Miname: Yeah.

Ms. Wakida: Thank you.

Chair Starr: Thank you. Any other members of the public please come forward. Introduce yourself Mr. Martin. Welcome.

Mr. Peter Martin: My name is Peter Martin. I'm with Olowalu Development Company or Olowalu Elua real estate. Let's see I wanted to first thank Ms. Wakida, Mrs. Wakida for going out there I think that was very valuable. And I really only got up to speed because I think the issue, is what I wanted -- hope you guys would all focus on is, we only had really a couple permitted access places. One was the original Olowalu D which other people have already explained and justified why that didn't work and then we came up with the new one. And so it really -- we wanted ...(inaudible)... intersection. It was problematic the old location. This location we spend a long time, hundreds of thousands of dollars in EAs for both of them and this one's been a lot of work and a lot of paying to come and wait and so we hope that there will be a decision and we've had number of also meetings with Frampton and Ward have met the owners out there. There's been a number

of meetings. It's almost universally in support. Yes, there are a couple of people, we had other people that were going to testify but to come randomly and sit they just didn't but they've written letters and you've seen them. So it's either here or there, and -- or none at all I guess. And DOT really is a big controlling factor. We want your approval but we have to get their approval first on these things and there's sight distance and studies an immense amount of energy and engineering.

Finally, the idea that -- when the homeowners association asked me to go to their meetings, I usually come. Randy Ragon has made an issue of that I left. I was only asked to stay a short period of time. I don't always go to homeowners association meetings they drag on. And I said I'd be there for a while. We have some questions, but the thing that we said was the intersection wasn't going to be done there, not that there was not going to be an intersection, that the intersection wasn't going to be there meaning the old location because of problems and you were working and we are working as fast as we can and we'll do the intersection if we can get approval and the trees I agree with everybody on the trees. I just want to get the intersection done. Thank you.

Chair Starr: Thank you, Mr. Martin. Any questions for the testifier? Commissioner Wakida.

Ms. Wakida: Yes, Mr. Martin, did your development company build that street?

Mr. Martin: Well, it was always a roughly a cane road here, not a cane road a dirt road that was used. So what we did is we black topped it and then modified it somewhat. But there was always kind of a way of getting up mauka.

Ms. Wakida: I have a question on the original location and one of the justifications you have from moving it was that you would need to acquire state and private lands for right of way. On the maps that I'm showing, the original location seems to come out through subdivision land.

Mr. Martin: Yes.

Ms. Wakida: So what private and state land are you looking at that would need to be acquired?

Mr. Martin: This would maybe better be asked to somebody else, but my recollection and I want to put that in there, is I believe once you -- we started getting involved in it in more detail and required road widening, if you look at Ukumehame and things this is again, my layman's you should ask other people, I'm sure could -- my belief is that that road widening things created not only created a number of issues as we got into it but I think one of them was, and I don't believe that was a deciding factor was we had to acquire road from DOT. But that's not a ridiculous expense, it might be a time factor but not, not a prohibitive reason. I think that is not the reason, in fact I know that's not the reason why wanted the location here.

Ms. Wakida: So what is your main reason?

Mr. Martin: Well, it's ...(inaudible)... one is as Mike Munekiyo said, one is it is not across from a snorkeling place where there's a lot of people pulling over. I actually think we have to put guardrails

along this whole thing wherever we're doing. That's the new ...(inaudible)... sticker, Maui the guardrail isle which I'm frustrated with but I believe that the guardrail, it be widened, I believe there's not enough room with the erosion like Mike Munekiyo brought up, more erosion. And this is a nice, safe long term spot where there is constantly the beach is encroaching.

Chair Starr: Mr. Martin, other than this particular item, this Driveway D, are there any outstanding items to complete regardin this subdivision project?

Mr. Martin: No, and there's a letter to that effect. We're in compliance.

Chair Starr: Everything else is in compliance other than this?

Mr. Martin: That's correct.

Chair Starr: Is this location for Driveway D has this been moved because it makes it more convenient for development of other properties mauka?

Mr. Martin: I don't think, I don't think it will be even used. I don't think it's in the long term plan but I'd have to check with other people. It's very much nicer for, by the way, if you were going to go to the store and you're a resident and you go down way down to the south and then all these Olowalu Mauka residents they want to go to the store because we did allow them to keep using the cane road, then they're gonna go all the way always across the village people, it's -- the more you think about it, this is the spot.

Chair Starr: Thank you. Commissioner Tagorda has a question.

Mr. Tagorda: Sir can I get a minute of your time again? You said just recently that you're in full compliance with all the conditions.

Mr. Martin: Yes.

Mr. Tagorda: Set forth by SMA permit in the year 2000, but I read this conditions, there are numerous of them and about nine are still outstanding that you should construct all related highway improvements and that's not have been done, no access road, so tell me where you're at here?

Mr. Martin: Okay. I stand by what I said before, but it's a little nuanced. First, we are in compliance with the SMA conditions and we have a letter that says that, not just my statement, from the Planning Department. However, with the Department of Transportation -- with the Planning Department's -- hope I can say this correctly, when we were approved, we were approved subject to DOT's approval, subject to DOT's approval. I hope I say this right. And DOT did approve us with the understanding that we would get, you know, they -- with the understanding we would move ahead and do the, do the work. We wanted to move ahead and do the work, but Driveway D in the old location wasn't good. So we start working on this new one which takes time. But remember the rights, we had a bunch of lots up there. We could have just sold the lots off and then nobody would have had to talk to DOT or anybody, they could have built their houses and driven onto the road. We did not create any new lots. We did not increase anything. We actually made it better

and more intelligent use of the land commission awards that were there and people enjoy living there. But so really DOT mostly in these kinds of things doesn't ...(inaudible)... the only reason they got involved is SMA brought them in and when they brought them in they said, they said, your Commission said, comply with DOT or work something with DOT and we have been. So they've worked with us and we're really just get this approved, we'll do the intersection, this argument would, I hope will go away.

Chair Starr: Okay, thank you, Mr. Martin. Commissioner Mardfin.

Mr. Mardfin: Real quick. You said you could have sold these lots and just kind of been done with it. Would they have been able to get building permits?

Mr. Martin: Of course, they were existing. They've been existing for most of them a 150 years.

Mr. Mardfin: What is this condition that half, that you need to have the access the road before half of them -- at the time half of them are built?

Mr. Martin: That came in -- that only came in because we came in front of this Commission and they requested it

Mr. Mardfin: Back when?

Mr. Martin: I guess it was 2000.

Mr. Mardfin: So in 2000 you had a condition that you, that you would have to complete an access road before you could, I don't know about sell the lots, but at least before the lot owners could get building permits.

Mr. Martin: No, it was we had to comply with DOT and it's the DOT that has allowed and they do, we said -- because I said, hey listen Department of Transportation there's a letter in there and I've been involved in these subdivisions before and it explains that I asked the Department of Transportation since we had the right to have access our new lots should have that right too. The old one, the -- you know, whatever it was 36 lots that were there originally before we reconfigured it.

Mr. Mardfin: Thank you.

Chair Starr: Okay, any other questions for Mr. Martin? Okay, thank you very much, Mr. Martin. Any other members of the public wishing to testify on this item? Now would be a good time. Last call. Okay, public testimony is now closed. I have a question for Mr. Wollenhaupt. This is related to items and conditions on the, I believe it's the 2000 SMA for the subdivision and also as the Director was mentioning earlier today that anything -- that the project also be in compliance with everything that was stated by the applicant back then. So I assume that you've also studied the minutes of the meetings and so on even if they were not conditions that we're told that those all must be in compliance. I'd like to know what items there are that have not been -- that are still outstanding other than this Driveway D if any?

Mr. Wollenhaupt: As, as you know, just to give a small bit of history, in 2000 that was the original acceptance of the original SM1 99/0021 and there were 36 conditions attached to that. There was a final compliance report that Director Spence had mentioned the process behind which at that time on April 8, 2002, the Planning Director on April 9, 2002 wrote that the project was in compliance. There was a final compliance report. You have a letter, it's been signed. That then brings us to 2010. As with any project if we receive a request for service then we are obligated to go out and look at it, and my inherited this project and went out and looked at the project, looked at the conditions and then that started a couple of Notices of Warning. No Notices of Violations, a couple of Notices of Warning so that allows the Department to get additional information. Many of the issues that flowed out of that had to do with this Driveway D that we're talking about today, and that we needed to see some kind of a phasing plan. Through a long series of on site reviews of the, reviews with former Planning Director Aoki and Deputy Director Cua and Mr. Yoshida, with the developer, with Corporation Counsel, with the consultants it was determined that the project by letter, December 16, 2010 was now in compliance. Now you ask yourself well how can it be in compliance if we're talking about the Driveway D today. And the reason is, that as was indicated that if the phasing plan was ...(inaudible)... that then allowed that Condition 32 which talks about the highway, to be in compliance. When Condition 32, with the phasing plan was found to be properly done that then translated to these other conditions that we've been talking about that the project had expired or terminated, it wasn't approved with these conditions because 32 was the nexus to the other conditions flowing. We did get proof from the developer that Director Aoki looked at and felt did put the project into compliance. So as of today with the letter that the Director, the past Director had signed, the project now is in compliance. We now have a new SMA that looks at our new driveway location. So this is really a new project that should be looked and thought as an entity in and of itself that we're discussing today.

Chair Starr: Commissioner Mardfin.

Mr. Mardfin: I'm a little confused about things. Have Driveways A, B, and C been create?

Mr. Wollenhaupt: They've been finished and they been finished -- Yeah, they've been finished to the ...(inaudible)...

Mr. Mardfin: So they exist?

Mr. Wollenhaupt: They exist with the specifications that they were to be existing.

Mr. Mardfin: And so there are four, and with the old road that goes to D currently now with an approved intersection but just D comes down also to the road does it not?

Mr. Wollenhaupt: Well, they were easements on that map. So here's we get into the issue about the reconsolidation and subdivision process. When you do a reconsolidation subdivision and this I all had to learn this, when I went out there I wasn't aware of some of these issues, but when you do just a reconsolidation of the subdivision there are -- subdivision approval can occur rather easily. There are not a lot of requirements that go with that. So what may on maps appear to be roads or such, to be easements. So this whole process of reconsolidating is not going to create a subdivision that I might have thought would be seen on the mainland if you will or perhaps in



Wailea. So there are some philosophical issues about this process nevertheless the project was found to be in compliance because it had been developed according to the requirements of subdivision and got their approval.

Mr. Mardfin: Okay, let me get to the question that's bothering me and the question that's bothering me is I asked Mr. Ragon how, whether there was a difference in safety, not to the residents but to the drivers from having it in the new D versus old D? And the answer I got was to the effect that well, there'd only be one way down and that he needs A, B, and C. I didn't get a very clear answer as to old D versus new D. It was new D versus A, B, C, and D. And I think that's comparing apples and oranges. I don't think that's a fair comparison. What I want to know is assume we went with the new D, do A, B, and C still exist so there are still four ways down?

Mr. Wollenhaupt: There's additional ways down, there's a fire road that it provides for another one. There's a, there's a road that's on the far, far Lahaina side which it exists but that's really for a part of the future development and then there was an extension of the makai exit that was expanded. You have to remember that this original conditions were actually for the larger project of the makai and mauka areas. So it included the nine lots on makai and the 34 lots on the mauka side. So when we talk about A, B, C, and D, that's going to be showing lot -- Driveway A which is on the Lahaina side, Driveway D and then one additional driveway that are flowing mauka and then one road went makai. So there are other ways out of the project via a fire road, via the current road, and then via a road that goes on the Lahaina side and that is access to what we were talking about there's a farmer in that area that's on the Lahaina side. Those would be three access points whereas the fourth access point was the makai one that had been slightly widened, that you would shift really quickly off.

Mr. Mardfin: So I'm seeing this project, if I view this project narrowly as opposed to broadly, we're, we're changing the location from old D to new D, there are more than one way up and more importantly probably down in case of fire, and so the narrow issue is whether the old D better or worse than the new D and, and my concern is mostly the safety issue and the testimony seems largely to be that the new D is likely to be more safe than the old D. Is that a fairly good Reader's Digest version of it?

Mr. Wollenhaupt: In looking at the Department of Transportations analysis of it, looking at the proximity to the coast if you're trying to prevent impacts to the coast through this SMA process is that the new Driveway D would seem to have a better location especially with the proposed, well, pocketing. I know there's some debate about the merits of this acceleration lane in the Lahaina direction but if we can move through that and perhaps have a stop sign and then accelerating, I think there would be safety merits from this location because of the width of what you're able to do in that area with an acceleration and deceleration.

Mr. Mardfin: And the main disadvantage of the new D is two big trees?

Mr. Wollenhaupt: Two of the trees.

Mr. Mardfin: Would get destroyed.

Mr. Wollenhaupt. Well, that, that seems to be -- that seems to be the disadvantage that I've been hearing ... (Inaudible)...

Mr. Mardfin: Thank you very much.

Chair Starr: Okay, thank you, Mr. Wollenhaupt. That's -- members? Okay, if there's no more discussion, I think we could possibly entertain, entertain action. I know frankly I'm still a little bit confused and have not really had time to study all the documents, but whatever the pleasure of the body is fine with me, so what's our desire someone?

Mr. Freitas: So move.

Chair Starr: Thank you, Jack.

Mr. Tagorda: I'm going to support that. I second.

Chair Starr: I think we need to be a tiny bit more specific with the motion.

Commission Members: ... (Laughter)...

Chair Starr: I mean we're close, but ---

Mr. Freitas: So move to go ahead with this Driveway D.

Chair Starr: Yeah, Mr. Wollenhaupt you have a recommendation?

Mr. Tagorda: Yeah, recommendation please.

Mr. Wollenhaupt: The Department does have a recommendation, Members. And the recommendation would be that the Maui Planning Department would -- recommends that the Commission adopt the Department's report and recommendations prepared for the February 8th meeting as the findings of fact, conclusions of law and decision and order with a couple of modifications. I don't know if the Members have the green sheet in front of them. The first modification on Standard Condition No. 1, fourth line down, indicates and we indicated and I quote in quotations, "initiation of construction of the foundation or issuance of a building permit and initiation of building construction," deletion of building and building construction and replacement with the words, "issuance of a grading permit and initiation of grading." That would be--

Mr. Mardfin: Would you repeat that please?

Mr. Wollenhaupt: Oh, on Standard Condition No. 1, fourth line down, deleting the word building and replacing with the word grading. And then deleting the second building on Line 4 with deleting building construction and replacing that with grading because this would be a grading permit so that, that would be more appropriate.

The next modification would be on Condition 9, that's on Page 4 of 5. If we look at Condition 9, Line

No. 5 of Condition 9, it says, "a final compliance report shall be submitted to the Department for review and approval prior to issuance of final permit." The modification would be, "a final compliance report shall be submitted to the Department within 30 days of acceptance of the improvements by the State Department of Transportation." Seems to be more applicable in this case.

Mr. Mardfin: And I ask what if DOT doesn't grant it?

Mr. Wollenhaupt: Well, if they didn't grant it then I guess we'd have to come back here and we would have to explore alternatives. Then we have, if we go to project specific conditions 18 and 18 I think is important for the members also. I'm sure they've read it, but the, just to review the Department is requesting a bond to be posted with the County of Maui in the amount of construction cost of \$675,000 to be held as a guarantee of project completion. If you go down to the eighth line down, again, we're going back to what I just mentioned, it says, "and upon request of a final grading permit," so the words, final grading permit are to be changed to, "and the receipt of an acceptance by the improvements by the State Department of Transportation." So those would be the three modifications that the Department recommended. I know that the -- that would give our Department's recommendation right there. Thank you.

Chair Starr: Okay, thank you, Mr. Wollenhaupt. Commissioner Freitas, please try again.

Mr. Freitas: I move that we accept the Special -- Use permit for the project on the Driveway D, ...(inaudible)... Olowalu.

Chair Starr: As recommended?

Mr. Freitas: As recommended.

Chair Starr: Is there a second?

Mr. Freitas: With the conditions as proposed.

Chair Starr: Is there a second?

Mr. Tagorda: I second.

Chair Starr: So move by Commissioner Freitas, seconded by Commissioner Tagorda. The motion is, Director?

Mr. Spence: The motion is to -- is for approval in accordance with the Department's recommendation dated February 20th, excuse me, February 8, 2011.

Chair Starr: Okay, any discussion? Commissioner Wakida?

Ms. Wakida: Yes, I'll be voting against this motion. I don't feel that the, the tree issue been resolved and I am not convinced that this location is the safest because of its proximity to the corner

and the speed limits and so on. So I will be voting against it.

Chair Starr: Thank you. Commissioner Hiranaga?

Mr. Hiranaga: I did mention this at the previous meeting but hopefully the applicant can work with DOT to design the acceleration lane towards Lahaina for the posted speed limit and not the practical speed that is being used by motorists on that particular section of the roadway. I think if they design accel lane for the posted speed limit, that might eliminate the need to remove those two trees.

Chair Starr: Mr. Munekiyo, did you have a comment?

Mr. Munekiyo: I did, Mr. Chair, and thank you, Commissioners. We recognize that the trees and their removal potential are significant concern to this Commission. And as I mentioned in my introductory remarks, you know, we continue to work with DOT to see if we can find some alternative design which can make it work without the removal of these trees. We think we can get there. The applicant is willing to offer a condition which I think will hopefully satisfy the Commissioner's with respect to the tree issue. And if I may read this Commissioner. Mr. Chair, I'd like to offer this as a condition for consideration?

Chair Starr: Yeah, please give us your proposed wording?

Mr. Munekiyo: That the intersection improvements shall be implemented without the removal of the two monkey pod trees initially identified in plans presented to the Planning Commission at its February 8, 2011 public hearing. In the event, an engineering solution cannot be achieved to save the two monkey pod trees, the applicant shall submit an application for amendment to terms and conditions for the SMA permit. Such application for amendment to this condition shall be accompanied by an engineering analysis reviewed and approved by the State Department of Transportation providing justification as to why removal of any of the monkey pod trees is required. So what this does Mr. Chair is, the applicant is accepting the burden and the challenge of making this thing work, and if it doesn't work we would then need to come back to you.

Chair Starr: Can you present that wording to Mr. Wollenhaupt? And Members, is there any desire to offer an amendment in relation to a possible additional condition?

Mr. Mardfin: I move we, to amend the conditions by adding this additional condition.

Chair Starr: Is there a second?

Mr. Tagorda: I second.

Chair Starr: Okay, moved by Commissioner Mardfin, seconded by Commissioner Tagorda. The amendment is?

Mr. Spence: To accept the applicant's proposed condition onto the Planning Department's list of proposed conditions.

Chair Starr: Okay, any other discussion on the amendment, the amendment only? Commissioner Mardfin?

Mr. Mardfin: I made the amendment and I'll vote for it, but I tell you in my heart, I think this is putting lipstick on a pig.

Chair Starr: Okay, let's vote on the amendment. All --Commissioner Hiranaga?

Mr. Hiranaga: Just trying to understand the language here. So you're saying if you have to remove the two monkey pod trees you will come back to the Commission and request an amendment to the SMA permit terms and conditions, is that what the applicant is saying?

Mr. Munekiyo: Yes, Commissioner. In other words, we accept the burden of maintaining those trees, but whatever reason it is not possible from an engineering standpoint we would need to file an amendment to this application to amend this particular condition.

Mr. Hiranaga: I guess I don't understand why you want to come back to us? I mean, it's just if DOT says no way, no how, it's just the way it's gotta be. I mean, why come back to us?

Mr. Munekiyo: I think as a matter of process Commissioner, as I understand it, this condition says no trees to be removed. If that condition cannot be met then we would need to amend the condition.

Chair Starr: Okay, thank you and I appreciate the spirit in which that's being offered. We will vote on the amendment. The amendment regarding the additional condition. All in favor please raise a hand.

Mr. Spence: There are four ayes, and -- you want to call the nays? We have four ayes, the motion is going to fail.

Mr. Mardfin: Mr. Director?

Chair Starr: Yeah, all opposed please, raise a hand.

Mr. Spence: And two opposed, three opposed.

**It was moved by Mr. Freitas, seconded by Mr. Tagorda, and**

**The Motion to Add the Additional Condition of: "That the intersection improvements shall be implemented without the removal of the two monkey pod trees initially identified in plans presented to the Planning Commission at its February 8, 2011 public hearing. In the event, an engineering solution cannot be achieved to save the two monkey pod trees, the applicant shall submit an application for amendment to terms and conditions for the SMA permit. Such application for amendment to this condition shall be accompanied by an engineering analysis reviewed and approved**

**by the State Department of Transportation providing justification as to why removal of any of the monkey pod trees is required." FAILED.**

**(Assenting - J. Freitas, O. Tagorda, W. Mardfin, D. Domingo)  
(Dissenting - K. Hiranaga, P. Wakida, J. Starr)  
(Excused - W. Shibuya, L. Sablas)**

Chair Starr: Okay, so amendment fails.

Mr. Spence: The amendment fails, we're back to the main motion.

Chair Starr: Any discussion on the main motion? Okay, we're voting on the main motion. The main motion is?

Mr. Spence: The main motion is to -- is for approval of the SMA permit in accordance with the --

Chair Starr: Original recommendation.

Mr. Spence: Original recommendation by staff dated February 8, 2011.

Chair Starr: Okay, all in favor --

Mr. Spence: And as modified.

Chair Starr: As modified but not with this additional condition.

Mr. Spence: Right.

Chair Starr: All in favor please raise a hand.

Mr. Spence: There are four in favor.

Chair Starr: All opposed.

Mr. Spence: Three nays. Motion fails.

**It was moved by Mr. Freitas, seconded by Mr. Tagorda, and**

**The Motion to Approve the Special Management Area Use Permit as Recommended by the Department, as Amended, FAILED.**

**(Assenting - J. Freitas, O. Tagorda, J. Freitas, D. Domingo)  
(Dissenting - W. Mardfin, P. Wakida, J. Starr)  
(Excused - W. Shibuya, L. Sablas)**

Chair Starr: Motion fails. Commissioner Hiranaga?

Mr. Hiranaga: Motion to defer.

Chair Starr: Is there a second?

Mr. Mardfin: Second.

Chair Starr: Moved by Commissioner Hiranaga, seconded by Commissioner Mardfin, the motion is to defer.

Mr. Spence: To defer.

Chair Starr: Before we do that and vote on that, I'd just like to ask if anyone has any additional desires for information or for anything else now would be the time? Commissioner Hiranaga, please.

Mr. Hiranaga: Yeah, maybe some information on that acceleration lane I believe which was built for that subdivision near Ukumehame, I don't know if that accel/decel lane was built about two years ago. I thought they were converting Honoapiilani Highway to four lanes, but I found out it was really only an accel/decel lane. You know what project I'm talking about?

Mr. Wollenhaupt: ...(inaudible)... nice driveway they have there.

Mr. Hiranaga: Yeah, I thought they were converting Honoapiilani Highway to four lanes. You know, the length of those because it seemed like another overkill on the length of the accel and decel lanes.

Chair Starr: Commissioner Mardfin.

Mr. Mardfin: I voted against the prior motion because it didn't have this amendment in it. So if we're deferring and they're going to come back I would like that is time enough perhaps for them to look at what their plan is to save the trees. Another reason I'm going to vote for the motion to defer is because I really didn't like getting a whole packet of stuff sort of at the last meeting without attributing blame to that, but I don't like getting a whole lot of stuff on the day I have to make a decision. So I'm glad for the deferral. And I guess I'd want to hear, we've heard some testimony on the safety issue, but I think if there were more there I'd feel better about it, safety of comparing the two.

Chair Starr: Thank you. We're going to try to defer to a date certain, so we don't have to repeat the public hearing, but meanwhile we'll continue. Commissioner Wakida?

Ms. Wakida: Well, I just want to continue on Mr. Mardfin's request. I'd like more information on the, on the original location and its advantages and not its, not its disadvantages.

Chair Starr: Okay, I'd like to request that in light of the fact that we have had testimony saying that

there is a belief among residents that there are still outstanding items from the original SMA. I'd like a – staff to take a look one more time at the – at all the original conditions and even beyond conditions because as the Director states, any – what was the term you were using before, Director?

Mr. Spence: I don't know.

Mr. Mardfin: Representations.

Chair Starr: Yeah, any representations, could you read that? You had that before. ...(inaudible)... the Director's wording here.

Mr. Spence: That was the other – well, it's the standard condition 10. I'm not sure if it's on the permit from 2002, "Substantial compliance with the representations made to the Commission."

Chair Starr: So that would include anything that was on the minutes from the previous meetings. My – I was – I understand that, you know, what's not written is, my understanding is what's not written as a Commission being kind of kiss goodbye, but the Directors says that in the policy of the Department is that anything that was told was to the Commission has the same bearing as a Condition. So I would like to –

Mr. Spence: And I should, Mr. Chairman, I should correct that. That's – if that's a standard condition, that's one of your standard conditions.

Chair Starr: Yeah.

Mr. Spence: So if – not looking at it right in front of me, if that's a – if that is one of the conditions on the permit then, yes, that would be enforceable and we would look at that.

Chair Starr: Okay, thank you. That was what I was asking for. And I think we're looking at the date of March 22<sup>nd</sup>. So I think we want to defer it to a date certain so that we don't have to repeat a public hearing. So, is that – is the March 22<sup>nd</sup> date suitable?

Mr. Wollenhaupt: I guess because I already have a couple of other reports I think due then, but if it gives enough time, I don't know if the development – outside consultants, just don't want to have the same thing happen today.

Chair Starr: Okay, good.

Mr. Mardfin: Mr. Chairman?

Chair Starr: We do have the report from 2000 and just to mention thank you Director, Condition 11 states, "That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to do so, to do so develop the property may result in revocation of the permit." I would also like to request that once again we have before us another look by the applicant at ways of solving



the standing water not mauka, I'm talking about makai of the road where there is that standing, stagnant water right behind the beach. Commissioner Mardfin?

Mr. Mardfin: I just wanted to add to something Kurt said earlier, I want to reinforce it. He said to avoid the problem of us getting new material on the day of the decision you need to get it done before that. This is essentially about a one-month deferral, a four-week plus deferral. So it needs, and I live in Hana for them to mail it out they've got to get it a week or a so earlier than that. So it gives you about two weeks to get stuff into Kurt I would think.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Yeah, because the applicant has to work with the Department of Transportation and they really have no control over when the Department of Transportation will make any type of conclusions, I would prefer that the applicant work with staff to determine when they're ready to come back so that they have something to report. By just saying come back in four weeks doesn't mean they're going to have anything new to report, so I think we should just leave it up to the applicant to work with staff and when they're ready and DOT's ready they come back.

Chair Starr: The problem with that is, and this is something that I tried very hard in my time as Chair to do is to avoid having to repeat public hearings because the notice requirements for public hearings is difficult and expensive both for the Department Staff as well as for the applicant. So, if we don't defer to a date certain what happens is that that increases the workload all around and that's why in this case, as we have been we're trying to be helpful with that. Commissioner Hiranaga?

Mr. Hiranaga: Can we ask the applicant when they would like to come back so we can use that as the date certain?

Chair Starr: Yeah. Mr. Munekiyo?

Mr. Munekiyo: I think if we can work with the 22<sup>nd</sup> of March would be okay. Again, as Commissioner Hiranaga states it's somewhat problematic to provide assurances that we can get all of the information timely. As, as in this instance, what we needed to do was submit to you today which we realize was not the best situation for Commissioners. We can certainly try.

Chair Starr: Thank you. And in the event that you find that it's not working talk to Mr. Wollenhaupt and talk to Mr. Yoshida and it can be put off for another time and if, you know, I don't know if it's possible still to come back and change that date or we need to go to a new public hearing, but staff will deal with that if that's the case. Okay, we have a motion on the floor. The motion is to defer till March 22<sup>nd</sup>. All in favor please raise a hand. All opposed.

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

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

Chair Starr: Thank you. The item is deferred. We're taking a ten-minute recess.

A recess was called at 2:33 p.m., and the meeting was reconvened at 2:44 p.m.

Chair Starr: Maui Planning Commission meeting February 22, 2011 is back in session. We had a request to slightly shuffle our agenda. We have a parking consultant from the State over from Honolulu, so if it's okay with the Members, if someone wants to make a motion to move Item E-2 up to the next spot on our agenda would be appreciated to enable them to get back on an early flight.

Ms. Wakida: Item E-2? I so move that Item E-2 be moved next on our agenda.

Ms. Domingo: Second.

Chair Starr: Okay, moved by Commissioner Wakida, seconded by Commissioner Domingo, the motion is?

Mr. Spence: That Item E-2 be next on the Commission's agenda.

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

**It was moved by Ms. Wakida, seconded by Ms. Domingo, then**

**VOTED: To Take Up Item E-2 Next on the Agenda.  
(Assenting - P. Wakida, D. Domingo, K. Hiranaga, J. Freitas, O. Tagorda)  
(Excused - W. Shibuya, L. Sablas, W. Mardfin)**

Mr. Spence: We have five ayes, zero nays. The motion is carried.

Chair Starr: Okay, thank you. Director.

Mr. Spence: Okay. Commissioners this is a request by Mr. William D. Brooks of Ferraro Choi and Associates on behalf of the State Department of Education requesting Off-Site Parking Approval for 201 parking stalls at 980 Lahainaluna Road to meet the parking requirements for Lahainaluna High School and Staff Planner is Kathleen Aoki.

- 2. MR. WILLIAM D. BROOKS of FERRARO CHOI & ASSOCIATES, LTD. on behalf of the STATE DEPT. OF EDUCATION requesting Off-Site Parking Approval for 201 parking stalls located at 980 Lahainaluna Road at TMK: 4-6--018: 005 in order to meet the required parking for Lahainaluna High School located at 980 Lahainaluna Road, TMK: 4-6-018: 012, Lahaina, Island of Maui. (OSP 2010/0005) ( K. Aoki)**

Ms. Kathleen Aoki: Good afternoon, Commissioners. You have before you an application for approval for off-site parking for Lahainaluna High School. This matter arise due to their construction of a new cafeteria. Lahainaluna High School is primarily occupied or contains four

different parcels. However, you're only looking at two parcels here where the main campus is located.

The applicant is request off-site parking for 201 parking stalls to meet the requirements for the entire campus. You do have a graphic on Page 5 of the report that indicates that a total of 449 stalls are required for the whole campus, 407 stalls are required on Lot 12, 42 are required on Lot 5. It's on Lot 12 where this cafeteria is being built. And essentially what happens is when applicants come in what we're trying to do in the Zoning Division is to look at the – they're trying to do a comprehensive require of the parking, the current parking situation. So that's how this kind of got triggered and they looked at it collectively for the whole school to make sure that they were in compliance. So the applicant is asking for 201 of these stalls to be located on Parcel 5.

If there are any questions, I do have the consultant here. Here's actually a representative for the Department of Education, Bill Brooks. If not, I can just – yes?

Chair Starr: Commissioner Wakida, go ahead.

Ms. Wakida: Forgive me, I'm forgetting who my boss is here. I looked at the map, but you said there's 201 new stalls? Or just –

Ms. Aoki: Two hundred and one stalls need to be located off site from that TMK. because you have to look at collectively –

Ms. Wakida: Correct.

Ms. Aoki: What's on Parcel 12. So with the construction – like I said, they looked at it comprehensively, it wasn't just – it wasn't just the cafeteria that triggered this. It was taking a whole review after having not done it for so many years and what had been built and what had been expanded and portables, et cetera.

Ms. Wakida: So they've actually gone there – I mean, I tried to kind of highlight on here, so that's what they did, is they went through and, and –

Ms. Aoki: The Zoning Division went through it with them and came up with a whole worksheet.

Ms. Wakida: Right. But, there aren't any new parking stalls, right? It's just –

Ms. Aoki: There will be a new grass area that will contain 88 stalls which is --

Ms. Wakida: I mean, I mean it has been used before.

Ms. Aoki: Yeah, right, but now it's gonna be –

Ms. Wakida: But now it's official?

Ms. Aoki: It's going to be improved actually which is part of the recommendations for the conditions

of approval.

Ms. Wakida: Okay. As you know, I'm very familiar with this campus.

Ms. Aoki: Yes. I can appreciate that.

Chair Starr: I'm going to do something unusual because we do have a Commissioner is familiar with it and I, for one, am completely confused whenever I try wondering around there I get lost so Commissioner Wakida can you kind of go through what, you know, what exists and what we're looking at for us? Help explain it a little bit.

Ms. Wakida: Well, I don't – I can but I don't want to take Kathleen's job away from her.

Chair Starr: Okay, I mean, maybe you can do it together.

Ms. Aoki: I'm sorry, I don't quite understand your question.

Chair Starr: Yeah, I want a walking tour –

Ms. Aoki: You want a walking tour?

Chair Starr: – through this, virtual walking tour.

Ms. Aoki: I think Ms. Wakida might be better at that since she taught there. I never attended Lahainaluna, so –

Chair Starr: And she was there for –

Ms. Wakida: Forever.

Ms. Aoki: I know where the field is.

Ms. Wakida: Can you tell me more specifically what you want to know?

Chair Starr: I mean, what's not there that's being added if anything? And is there enough parking?

Ms. Wakida: Well, that was my question. On my map I highlighted the areas because I was trying to figure out what they were – how they were figuring this. All of this parking exists already except this stuff down here at the bottom and as you're driving up the campus it's – it used to be ag cultivation and they've used it for overflow parking for graduation and so on, but it was always sort of casual parking. And as I understand it, the new cafeteria which is as you can see is up here, it's labeled, the new cafeteria has triggered them to actually count all the stalls to show there's proper amount. And so these 88 down here are the ones that are added as official and not just sort of casual parking in the old ag fields. Anything else?

Chair Starr: Okay. Commissioner Hiranaga?

Mr. Hiranaga: We had a similar request from Seabury Hall and I can't recall, did we require the area to be grasscreted?

Ms. Aoki: I don't know. You know, Mr. Yoshida?

Mr. Yoshida: Yes, they would have to comply with the Off Street Parking and Loading Ordinance, if it allows for grass parking then they could utilize grass parking.

Mr. Hiranaga: So no grasscreting would be required?

Ms. Aoki: No, I'm sorry. Yeah, if that's question, I'm sorry Mr. Hiranaga, but you are allowed up to 25 percent of the stalls to be grass. So their numbers do meet that 25 percent.

Mr. Hiranaga: Grass meaning unimproved.

Ms. Aoki: Unimproved – well, improved in the sense that they are going to have to provide signage and lighting but not grasscrete.

Mr. Hiranaga: Okay, thank you. But you don't recall what we did with Seabury Hall?

Ms. Aoki: I'm sorry I don't.

Mr. Hiranaga: I guess it is wetter up there in Makawao than it is in Lahaina.

Chair Starr: Who do we have here from the applicant or consultant?

Ms. Aoki: We have William Brooks from the Department of Education.

Chair Starr: Okay, could we have him come forward?

Ms. Aoki: Sure.

Chair Starr: Please introduce yourself and give us any – what you want to share with us.

Mr. William Brooks: Yeah, I'll give you the nutshell version. My name is Bill Brooks. I'm a partner with Ferraro Choi. We are the architects of record for the new cafeteria and as Kathleen mentioned as part of our building permit process we were requested to update the overall campus parking compliance to kind of figure out were the hundred, roughly hundred new stalls that are required for the new cafeteria fit. And so our, what we did was we determined that with the existing hard stalls plus 88 additional grass stalls, even with the new requirement for the cafeteria the campus was compliant. So we went through that process with Avelina Cabais here at the Department and she basically, we basically got a letter that approved the parking plan for the campus, but at the last minute the problem was that the campus is comprised of more than one parcel. So technically some of the stalls that are required for building on parcel, actually physically reside on a separate parcel and so as matter of formalization my understanding is that we're going through an Off-Site Parking Approval so that the campus is combined. And I think over the 180 years of its existence

it kind of grew organically as a single campus and the fact that there were different parcels was always just sort of ignored.

Chair Starr: Thank you. I know I was confused about why it's before us, but now I see. Ms. Aoki, so my understanding is that this will basically legalize the fact that this parking here is for that and that parking here is for that, et cetera. It puts it all in one, in one basket.

Mr. Brooks: That's absolutely right, yeah.

Chair Starr: Okay, good. So we could have public testimony on this. So if there are any members of the public who would like to offer testimony on this off site approval please make yourself known. Not seeing any, testimony portion of this item is closed. Members, any further discussion? Not seeing any, Ms. Aoki you have a recommendation for us?

Ms. Aoki: Thank you, Mr. Chair. The Department recommends approval of the applicant's request subject to the following conditions which are on Page 5 and 6 of your report that one, I'm sorry, excuse me, 201 parking stalls located on Parcel 5, 980 Lahainaluna Road shall be used to satisfy a portion of the parking requirements for Lahainaluna Highschool's cafeteria and other combined uses located on Parcel 12. That Condition No. 1 shall run with Parcel 5 and shall be set forth in a Unilateral Agreement approved as to form and legality by the County of Maui which requires the use of the 201 stalls for Lahainaluna High School on Parcel 12 and shall be recorded with the Bureau of Conveyances within 120 days. That the grassed parking stalls shall have appropriate signage and lighting and a landscaping and irrigation plan shall be submitted to the Department for review and approval and that full compliance with all other applicable governmental requirements shall be rendered.

Chair Starr: Okay, thank you. Members, any questions, comments, motions? Commissioner Wakida.

Ms. Wakida: I move to accept the recommendation of the Department.

Chair Starr: Is there a second?

Ms. Domingo: Second.

Chair Starr: Moved by Commissioner Wakida, seconded by Commissioner Domingo. The motion is?

Mr. Spence: To approve the Off-Site Parking Approval per the Department's recommendations.

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

**It was moved by Ms. Wakida, seconded by Ms. Domingo, then**

**VOTED: To Approve the Off-Site Parking Approval Per the Department's Recommendation.**

**(Assenting - P. Wakida, D. Domingo, K. Hiranaga, J. Freitas, O. Tagorda,  
W. Mardfin)  
(Excused - W. Shibuya, L. Sablas)**

Mr. Spence: It's six ayes, zero nays. The motion is carried.

Chair Starr: Thank you.

Ms. Aoki: Thank you.

Chair Starr: Okay, now we're ready for Mr. Alueta [sic]. Can someone take a look outside and find Joe?

(Short pause while waiting for Mr. Alueta to come up to the podium)

Chair Starr: There he is. Director, introduce our next item.

Mr. Spence: Commissioners, we are back to Item D-2, under Unfinished Business. These are proposed amendments to Chapter 202, Special Management Area Rules of the Maui Planning Commission. Joe Alueta is Staff. He'll provide you with some background information and then the Director will have some additional comments and recommendations for the Commission.

**2. 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) (public hearing conducted on January 11, 2011)**

Mr. Joe Alueta: Good afternoon, Commissioners. Again, this is a second round for this one. There's some amendments to the Maui Planning Commission Special Management Area Rules primarily to deal – dealing with increasing the fines to match up with HRS 205A as well as for daily fines. We also have an enforcement section for condition which adds a new section, a new section, and that's the one we had some discussion on with regards to appealing, appealing before this Commission on proposed violations.

We also had the appeal of the Director's decision which basically moves the appeal of Director's decision out of your standard methodology into a new section. So if you look on Page – on Exhibit 1 of the amendments and if you go to 202-5 which basically Page 5, I know there was a lot of discussion on the previous page with regards to the enforcement of conditions and the intent – and – for the potential revocation, those are Page 2 and 3, but we didn't cover much on Page 5 which primarily on Section 12-202-26, Appeal of Director's Decision, Filing of Notice of Appeal, and this is appeal other than Notice of Violations issued pursuant to – So what that does is that it moved the Notice of Violation and the Order to Show Cause, and if you look at the bottom of 202-5, that whole section, Sub Chapter 4 is new to you, to the Maui Planning Commission.

So it sets out – this is in regards to Notice of Violations. Just to let you know, that's the same or

it should be the same to what Lanai already has in their rules. They were adopted and they were – so basically we're – I guess because Lanai was one of the more later ones when they adopted theirs they established this new set of rules and we're slowly making our way. In the future we'll get to Molokai. We're adding that whole new sub chapter to the Maui and we're also going to do it to Molokai later on.

But again, that's just a quick overview on the changes, and I believe like I say, the biggest discussion that you had at the time was one, increasing the fines; and then as well as, the procedures in which, how the Department would implement if someone had a, I believe if there was a violation in the terms of condition would they come and directly appeal directly to the Maui Planning – file for a hearing before the Maui Planning Commission to have a permit revoked. And the way we envisioned the whole process to go about is that someone would file a RFS or a Request for Service complaint over potential violation of an SMA condition. We would then take action through our investigative arm to determine whether or not a violation did exist. We would then go through – if there was we would issue a Notice of Violation and to get the correction or compliance with the conditions as represented to the Planning Commission through that action. If we were not able to get satisfactory results from the normal violation method and discussions with the applicant potentially we, the Department could or as indicated someone could file for the revocation to the Commission and they would have to show, Order to Show Cause and that's where your standards on Page, I'm sorry, on Page 202-3 and 202-4 go about. In which case, you know, the Commission could reject that for incomplete, inaccuracy or failure to comply with the rules of the Commission.

So that's pretty much all I had and maybe my Director had some comments on the whole matter.

Chair Starr: Okay, Commissioner Mardfin?

Mr. Mardfin: You said that this new process for hearing on appeals has been enacted on Lanai. What's been the experience with that? Has it ever been used?

Chair Starr: Yeah, Mr. Hopper, please?

Mr. Hopper: To my knowledge I don't know if there's been any of these issued on Lanai or appeals. So I don't think so. The intent of it was to make the hearing on Notices of Violation follow an expedited process that's similar to what the Board of Variances and Appeals had implemented. It would allow kind of a more specific form and theory is a bit more of a quick hearing that the Commission could hear without necessarily having a hearings officer for Notices of Violation. That's when someone gets an NOV and they appeal and many times it's a fact specific type of hearing and so that could be seen as something the Commission could hear. So that was adopted on Lanai. I know that we're looking at rules for Molokai and that was the theory behind this. It is a separate process. It goes into things like the order that the parties have to have for their hearing. You know it creates kind of more specific standards in the event there's no hearings officer because usually a hearings officer will establish a lot of those things. So I think that was the theory behind it. I don't think Lanai has had it. The Board of Variances and Appeals on Maui I think has had a couple of hearings under their rules which I don't think are exactly same but are, are similar, I think, in nature.



Mr. Mardfin: And they found them success – it's a successful process?

Mr. Hopper: You know, I haven't followed those hearings particularly specific but I think there were, were a couple of them. I wouldn't want to speak for them because I don't advise them and I haven't been a party to those cases.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: If I understand Joe correctly, you're saying Sub Chapter 4 all of that is new language?

Mr. Alueta: Yes.

Mr. Hiranaga: I'm kind of caught off guard because I only looked at your underlined language. And I didn't even read this part because I thought it was old language.

Mr. Alueta: Again, I apologize, you know, in talking with our Director, it's like these were again, again these were drafted by our, our Corporation Counsel, by James and Mike is just filling in for James at this time. And I guess the, I again, the same thing, I was familiar with more of our different Ramseyer and I was not aware of it until I read it myself again more thoroughly so I admit my own fault that. It's just the way the standards I was told that's how it's – when you do a new, a whole new sub chapter it doesn't need to be underlined. So, but that's why I was trying to explain that whole area that that was never covered. Well, basically we never got to it at the last meeting because we pretty much got hung up on the first part or Page 2 and 3.

Chair Starr: Mr. Hopper?

Mr. Hopper: Just to explain. Yeah, the the there's basically a State law both explains how things have to be done as far as Ramseyer format. If there's an amendment as you can see on 202-5, No. 4 says, "this section is being amended." So you're amending part of the section. No. 6 on that page says, "Chapter 202 is amended by adding a new Sub Chapter 4 to read as follows," and that whole sub chapter is new, and that's, you know, that's just the requirement of the drafting I guess in the future, you know, we could make an effort to be more specific. I mean, No. 6 is what you'd have to read to know that, but you know, that's that's a whole new chapter and that's why that's not all in Ramseyer format.

Chair Starr: I have a comment to make. I've served as presiding officer several times in the last year over contested cases where this body has served the hearings officer was a departure from the process in the past. And it was, it was a really fun adventure. You know, I kind of spent a week learning how to be, learning how to be a judge, you know, reading and talking to retired judges and working with staff. It's very, very complicated if you're going to create a procedure on the spot so that all of the different options as far as submittal of evidence and, and you know, and the timing and submittal of documents are to be done in a, a fair way. And it's, you know, it's difficult and complicated and I think that this is an attempt to try to set out a process that makes it a much more workable process for someone who's not really schooled and trained for it. I do think it's a, it's a good thing to be implemented and will allow, you know, allow process that right now is – you kind

of have to make it up as you go along and hope you don't make a mistake or forget something.  
Director?

Mr. Spence: Thank you, Mr. Chairman, Commissioners. I was also – I'm a little embarrassed by this, I was also unaware that the entire Sub Chapter 4 was a new section and I have not reviewed that. My comments were going to be to the Commission was going to be on the other sections particularly the fines and then the Order to Show Cause. I certainly have not reviewed – I'm not saying it's a bad section, but you know, I have not reviewed it. I have not considered what the consequences would be.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Yeah –

Mr. Mardfin: In light of that --

Chair Starr: Commissioner Mardfin first.

Mr. Mardfin: In light of that, would the Director recommend we defer this one also?

Mr. Spence: Actually, Commissioners what I would really like to do is the – we've been talking with a couple of Staff Planners and the Deputy and myself and we're recognizing a number of places that we would like to amend your rules. I would actually like to bring you an entire package that would include some of these things, some items with regards to Emergency Permits, with regards to when shoreline survey is required, and when it's not required, if that would please the Commission. There are a couple of things, just particular with this package here before you today, you know, bringing the fines up to . . . (inaudible) . . . with State law, that's perfectly fine with me. I think that ,– I think we should do that.

Chair Starr: Yeah, I, I understand that there's been some issues with the fines on – particularly on Lanai because the State law created a new framework for the fines but we're not – our rules are not consistent with them. And so, Lanai rules were brought up to consistency with the State, but there are people on Lanai who were threatening legal action because Maui Island isn't consistent and has lower fines but Lanai is consistent with the State. So I, for one, would if we're not gonna deal wit the whole package at least separate out those portions where the Director feels comfortable and, and act on those. So perhaps either Director or Mr. Alueta can help us.

Mr. Spence: Those would be – Joe, check my, check me, the two sections were the fines, would be Section 2-12-202-23(d)(1) as well as 12-202-25, and –

Mr. Alueta: Yes, as well as the notice – establishment of the provision to service of Notice of Violation publish in acceptable paper if that's acceptable also?

Mr. Mardfin: Mr. Chairman?

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: While I appreciate the desire to get into compliance with State law, and I'm willing to deal with this as a unit. I don't necessarily feel we have to deal with all SMA Rule changes – all commission rule changes, but this one seems to be a manageable bite that it seems – I'd, I'd hate to deal with two pieces of this and then have to come back and deal with it again. I would – my druthers would be that we defer this to another time in view of the fact that the Director wants to make some comments, and, and I think among some Commissioners we misunderstood exactly what was going on and just deal with it on a date when we can look at it anew, but without having to wait for a full package of changes.

Chair Starr: I think what the Director requested though was to take those sections of it and hold them off for what will certainly be many months if not years when the entire SMA Rules become looked at for amending, am I correct?

Mr. Spence: I hope it's not years.

Chair Starr: It would certainly be many months when we're not in compliance with the State and we're likely to cause lawsuits on Lanai where, where those rules have been changed as far as the fees.

Mr. Spence: I think that – well, just for the Commission's consideration, and with due respect to Commissioner Mardfin, bringing the SMA violations from \$10,000 in two places that's just compliance with State law. There's one other section that I think is, is fairly no-brainer establishing an alternative service for Notices of Violation that's pretty easy as well, but that's, you know, certainly the Commissioner's choice.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I don't have a problem with action on the fine amounts but all the other sections would prefer that the new Planning Director take a look at it since this was proposed under previous Administration and I would also like the new Corporation Counsel to look at it since we have a new Corporation Counsel.

Chair Starr: You're talking about Mr. Wong?

Mr. Hiranaga: Whoever that may be.

Chair Starr: Okay, I would assume that it's consistent. So, are you saying that you would like to proceed with the fees and not the rest of it?

Mr. Hiranaga: Yeah, just, just the, just the fines amount.

Chair Starr: Is that just taking kind of straw poll because we haven't had public testimony, but is that kind of consistent with the feel of, of the body? Mr. Alueta, why don't we proceed on that, on that basis? Yeah, Mr. Hopper?

Mr. Hopper: Just quickly. There's also other sections in 12-202-23 and 25 in addition to the

Penalties, there's language establishing Alternative Service as Director Spence mentioned. There's also language in D-3 dealing with the Say of the Hearing if a settlement is reached and in addition also that right now if there's a appeal of NOV filed it goes to the Planning Director first to conduct the hearing which is a bit of an odd process for the Director to conduct and then come to the Commission. This would have that, that appeal go directly to the Commission who's going to be the decision maker anyway that's in Sub Section 4. So just to note that that in addition to fine amounts there's other parts of those sections you mentioned. So if you make motions for that, I think you'd want to be specific as to which of those sections would include or not include.

Chair Starr: Okay, so that's all getting kicked back to the Director and Corp. Counsel for more work so I don't think we need to apply ourselves to that today. Commissioner Wakida?

Ms. Wakida: Just a clarification. So Sub Chapter 4 goes from Page 202-5 to the end of the document is that correct?

Mr. Alueta: Yes.

Ms. Wakida: Okay.

Chair Starr: Okay, and you know, I'd just like to have the last word on those items which seem to be . . . (inaudible) . . . past us which is I really do suggest that they be dealt with as soon as, as soon as possible because our present system for doing them is vague and inefficient and it's much better to have these things clarified and a proper, proper structure put to them, but let's proceed with the parts of it that we are willing to deal with which is the fee structure where we're looking to go into consistency with the State. Mr. Alueta will you just give us a little more depth on those and then we'll have public testimony, any other discussion, and act on it?

Mr. Alueta: Okay, as indicated on the front page of the memo report, there's little bullet points that show those changes itself so again we're looking at if I'm working from Exhibit 1, you're looking at 12-202-23(d)(1) and it goes onto say, civil fines not to exceed a \$100,000 per violation and 10,000 per day and that's a change from the previous 10,000 and 1,000. And again, the Commission is not supportive of any alternative service. Two Notices of Violations. Nor is the Commission supportive as of this time to a hearing may be stayed pending a settlement. Nor is the Commission supportive of changing it from the Commission, excuse me, from the Director to the Commission. And then on Section 12-202-25, Penalties, again, you have the increase from 10,000 to a 100,000 per violation, again, maximum daily fine from 1,000 to 10,000. And then, the Commission, again, is not supportive of any enforcement of conditions as represented or commitment in order to show cause. So that whole section, the Commission is not willing to support at this time. Furthermore, Section 12-202-26, Appeal of the Director's Decision, Filing of Notice of Appeal, with regards other than a Notice of Violation. You're not supportive of that change at this time. Regarding Sub Chapter 4 which is dealing with Notices of Violation and/or Order to Show Cause, that whole new sub chapter, the Commission is not willing to deal with at this time.

Chair Starr: It's a, It's a hope that it will come back before the Commission after the Director's had a chance to review it.

Mr. Alueta: Correct.

Chair Starr: I wouldn't say we're not supportive of it, I think it's, it's just premature.

Mr. Alueta: Okay.

Chair Starr: So if we want to separate out the two areas where the fines are I think that's what we want to – what we're looking to do.

Mr. Alueta: Right.

(Mr. Mardfin excused himself at 3:18 p.m.)

Chair Starr: Let me see if there are any members of the public who want to testify on this item?

**a) Public Hearing**

Chair Starr: Any members of the public wishing to give testimony on this please make yourself known? Mr. Ragon, please join us, introduce yourself, welcome.

Mr. Randy Ragon: Hi, my name is Randy Ragon. I think we just went through this morning, I wasn't prepared to testify on this but in listening to this, it does very much relate to the problems that we've experienced in our subdivision. And that problem is, is what began as a public process where you go to a planning commission for SMA Rules and you expect as a citizen that when you buy a property that those rules are gonna be followed. Ends up the final decision becomes a, a decision of the Director. And if you take a look at the history of directors in this County when they finish their job as directors they usually get pretty good jobs with developers. So I'm strongly encouraging the Commission take a look at, you know, what starts in the public sector comes back to the public sector, it stays in the commission so it stays with the public so that we don't experience what we've had today where we've got I mean, I sat and listened to testimony all day long from Directors who are making decisions that did not comply with the SMA Rules and do not comply with the laws and that's why we have a lawsuit.

So you talk about a lawsuit in Lanai, you know, the, the other thing is, is, you know, obviously the fines in the past and the penalties haven't been substantial because there's no, there's no reason for a developer to comply if, if number one they can get away with it with the Directors which is what's been happening, what was it, 1,800 subdivisions? Not just Olowalu. We got a big problem here and we need to take a look at it. So this is a very important bill that you guys are looking at but we need to get it back into the public and we need to get control of the situation that is clearly out of control and is costing not only it's costing taxpayers a lot of money for, you know, to complete these subdivisions that haven't been completed because directors are choosing to not follow the rules and make up their own rules and developers not complying, but we've got a problem here with, you know, people have died on the highways that haven't been improved. You know, we've got, for example, my situation I'd like to get out of Olowalu but I'm a real estate broker and developer and I'm not going to sell my property without disclosing, the problem is, is we've got all kinds of problems that may take years to resolve, you know, and in the meantime, I gotta live in the

subdivision. My wife won't live in it. She's moved back to California and she refuses to live in Olowalu, you know. We heard testimony from Dave Minami today where he works for the developer getting on and off the highway, well he hasn't had phone calls where your wife is screaming and yelling at you because her and her baby came within two feet of getting killed again. Okay, so we need to take control here and not leave this up to the directors any more. So I ask you to consider that. Thank you.

Chair Starr: Thank you, Mr. Ragon. Any other members of the public wishing to testify, please – yeah, Lucienne first, and –

Ms. Lucienne de Naie: Thank you, Chair. Lucienne de Naie testifying as a citizen. I just want to say that over the years if you see a number of developments especially ones in sensitive areas that have SMA conditions that are kind of hard fought, you know, either they're passed down from Council conditions and then during the SMA the, you know, the Planning Commission wants to make sure that drainage problems are addressed and so they put in these conditions. You know, we, we need some way that people really take this seriously because number one, there's very little information about what happens after these conditions get imposed. You cannot go on line for instance, and find the conditions listed for a project that was widely debated ten years ago, it's just not available. So while I support the kinds of things that are being put forth by the Department, the change in fines, this sort of thing, I also think that if you want people to be your eyes and ears, you've got to make the information more transparent for them so that they don't have to do what Mr. Ragon and his wife did, and dig through boxes of files somewhere in the County archives. So I support increasing the fines and making it consistent with the State fines.

I also support the Commission having a larger role. I don't think it's bad to have the Director like kind of make the first cut and, and view and say, you know, how many of these things are substantial? If so, let's, let's forward them to the Commission, but the Commission is the one that works so hard on these conditions. You know, the crafting them and asking questions and getting additional information. I mean, I do think that they should have an opportunity to sort of review the results of what happens if there are alleged violations.

And I also support a reasonable process whereby citizens can bring those violations forward. It's not like a runaround of, you know, oh you talked to this person, oh but, you know, now you're in the wrong department. There should be a fact sheet on it or something where it's like here's what you do, you have a problem, here's the steps you take. I'm just looking at this from a citizen's perspective. Believe or not we don't have all the time in the world us citizens who really care about things to go and become lawyers, you know, otherwise we'd probably would be making a lot of money and going to law school and so forth and so on. So thank you. I think it's wise to wait and see what the Director is looking at the larger picture, but move forward with what you can today where some of things are kind of no-brainers. Thank you.

Chair Starr: Thank you, Ms. de Naie. Next, Ms. Reimann. Welcome.

Ms. Carol Reimann: Aloha, my name is Carol Reimann, and I represent the Maui Hotel and Lodging Association. We also support increasing fines and all of that bringing it up to State standards, but we're especially concerned about the proposed amendment that pertains to the

enforcement process that would allow any member of the public to submit a complaint which would grant an Order to Show Cause. This places an immediate burden of proof upon the permit holder. As you know, the majority of our hotels, timeshares, and condominiums are within the SMA boundaries so we feel this would be – especially affect our industry.

Our primary concern is that the proposed rule amendment would allow multiple or tag team type challenges to be ...(inaudible) ...with the Planning Commission by certain parties in opposition to the industry and to specific projects. These types of stall tactic from our opponents could possibly go on indefinitely as there are no fees or penalty provisions in the proposed amendments that would seek to prevent frivolous types of challenges. We understand that there's already an enforcement process in place and Ms. de Naie suggested some kind of balanced approach where the Director would still have some control and, you know, we could support that, but we do ask that you carefully review the proposed amendments before you make any decisions. Thank you.

Chair Starr: Ms. Reimann?

Ms. Reimann: Yes?

Chair Starr: You know, I understand your concern and, you know, there's, there's validity there. Do you have any suggestions on a mechanism that would allow the public to interact as individuals but would be able to preclude, you know, frivolous action? Do you have any ideas or something that Mr. Alueta take into account when working with the Director?

Ms. Reimann: Well, this isn't my area of expertise so I will, you know, leave it up to the Director and Mr. Alueta to come up with some balance approach that would, you know, allow people with valid, you know, concerns to raise their concerns and be heard.

Chair Starr: Okay.

Ms. Reimann: Thank you.

Chair Starr: Thank you very much. Anyone else from the public wishing to testify? Please come forward. Welcome and aloha. Introduce yourself.

Ms. Cindy Denny: Good afternoon. My name is Cindy Denny. And I would like to speak about the little guy in the SMA who is trying to correct something with his property which is literally a lot of the homes that are deteriorated on the west side right now is what I'm thinking about. And maybe an idea that Joe might be able to work on and the Director would be that what if the fines correlated more directly with the zoning sort of categories so that, you know, if something is in a Hotel District maybe the fines are relative to that or an infraction is, you know, on the a sliding scale of some sort, I don't know, but it just seems like in looking at the SMA application, I know we have the threshold of \$125,000 and have an exemption process, but a lot of people, and I'm speaking again about, you know, the single family residence kind of component of the island. They don't understand what they need to do or what the process is. So I just wanted . . . (inaudible) . . . Thank you.

Chair Starr: Thank you, Ms. Denny. Anyone else wishing to offer testimony on this item? Not

seeing any, public testimony is closed.

**b) Action**

Chair Starr: Mr. Alueta, could I request you to come forward with a recommended course of action based on what you perceive as our desired direction and the Director's desired direction which is to work on a smaller pallet here?

Mr. Alueta: My understanding is that you guys are supportive of the changing on the civil fines, but all other language would not change at this point. So you're amending – you're basically are supportive of the amendments of the ones dealing with the fines and you'd rather not have those amendments – the other amendments passed today.

Chair Starr: Yeah, could you give us a recommended language that takes that into account that if there's a desire we could use as a basis for action?

Mr. Alueta: I guess your desire would be amend Section 12-202-23(d)(1) to increase the civil fines from 10,000 to 100,000 per violation and from 1,000 to 10,000 per day, for each day in which the violation persists. Second, would be amendment to 12-202-25, Penalties in which the initial civil fine shall not exceed a 100,000. That's an increase from 10,000 to 100,000 and the maximum daily fine from 1,000 to 10,000.

Chair Starr: Okay.

Mr. Alueta: I believe that's the only sections.

Chair Starr: Those two amendments?

Mr. Alueta: Yes. That is correct, Mr. Chair.

Chair Starr: Okay, if there's a desire for action on, on that, perhaps any members that so desires would make a motion? Commissioner Wakida?

Ms. Wakida: Are you suggesting a motion to approve, approve those two amendments is that what we're looking at?

Chair Starr: Yeah, yeah.

Ms. Wakida: Okay, I, I so move that we approve those two amendments as recommended by Mr. Alueta.

Chair Starr: Is there a second?

Ms. Domingo: Second.

Chair Starr: Okay, moved by Commissioner Wakida, seconded by Commissioner Domingo. I turn



to either the Director if he wants Mr. Alueta do it to rephrase the motion so it becomes the property of the body?

Mr. Spence: Commissioners, as I understand the motion is to amend Section 12-202-23(d)(1) to increase initial maximum SMA violation from 10,000 to \$100,000 per violation, and then also amend Section 12-202-25 of your rules to increase the maximum daily fine from 1,000 to \$10,000 per day. Section 25 would also be amended to \$100,000 per violation maximum.

Chair Starr: Mr. Hopper?

Mr. Hopper: Did you also mention \$10,000 per day for (d)(1)?

Mr. Alueta: Yes. But he did not, but –

Mr. Hopper: Okay, just want to make clear it's basically all the fine amount changes.

Mr. Alueta: Correct.

Mr. Spence: Yes, that's the –

Chair Starr: Mr. Alueta, we can depend on you to make sure that it's – that it's written up correctly?

Mr. Alueta: Yes, it's just going to be – again, you have two types of violations, fines that are being dealt with and that one is the initial fine. So when we first get you, we tell you we can, we can – the maximum we're gonna fine you is up to \$100,000. So, and again, that can be a sliding scale. If you fail to correct the situation then within the time period in which we've given you, we can then start daily fines of up to \$10,000. Those fines are referenced not only in Section 12-202-23(d)(1), they're also referenced in Section 12-202-25 and those are the only two areas, sections, in which those figures are, are referenced.

Chair Starr: And just for discussion purposes, could you also reference HRS where, where the State has set these numbers?

Mr. Alueta: HRS is defined in HRS 205A-32. And again, this is right on, on the front page of the memo dated December 14, 2010.

Chair Starr: Okay, any discussion? Okay, we have a motion on the floor, the motion's been seconded. All in favor of the motion, please raise your hand.

Mr. Spence: Five in favor.

Chair Starr: All opposed.

Mr. Spence: Zero nays.

**It was moved by Ms. Wakida, seconded by Ms. Domingo, then**

**VOTED: To Approve Amendments Relating to Fines in Section 12-202-23(d)(1) and Section 12-202-25.  
(Assenting - P. Wakida, D. Domingo, K. Hiranaga, J. Freitas, O. Tagorda)  
(Excused - W. Shibuya, L. Sablas, W. Mardfin)**

Mr. Spence: The motion is carried.

Chair Starr: Okay, and thank you, Mr. Alueta, and I, once again, I thank you for your work on all of it and thank Corp. Counsel and James for having worked on it and I, for one, look forward to – I probably won't be here, but I look forward to seeing – Let's take a ten-minute recess.

A recess was called at 3:38 p.m., and the meeting was reconvened at 3:50 p.m.

Chair Starr: ... 2011 is back in session. Director, please – Director, please introduce our next item.

Mr. Spence: Commissioners, this is Item E-3 for Stan and Hassie Zitnik requesting a ten-year time extension on a Conditional Permit for Zitnik Interior Design Office. They're operating a design office at 2144 Kahookele Street in Wailuku and Gina Flammer is the planner.

**3. STAN and HASSIE ZITNIK requesting a 10-year time extension on the Conditional Permit to the Zitnik Interior Design Office in order to continue to operate an interior design office at 2144 Kahookele Street, TMK: 3-4-006:004, Wailuku, Island of Maui. (CP 2005/0006) (G. Flammer)**

Ms. Gina Flammer: Good afternoon, Commission. The time extension is for continued use of a converted garage. It measures by 10 x 18 feet it is an office for an interior designer who is the homeowner. The applicant states that the office is used by Mrs. Zitnik during the hours between 8:00 a.m. till 4:00 p.m. The office contains design samples, office equipment, books and files and is used to prepare for client meetings and then to prepare design packages for the client. The meetings are typically held at the client's home. It's also used for business operations such as bookkeeping and billing. According to the applicant, clients do not meet at the office though the permit does allow for one client at a time to come to the office. The Conditional Permit was approved by the County Council in 2006 and it was for five years. Gonna show you just a couple quick pictures so you can see what you're deliberating on. Okay, so here is the garage. The parking area to the – you're facing the left of the garage you can see a little bit of the overhang there in the right part of the picture. That's the home they live in and the garage is situated behind that. If there's any questions, we have the applicants here today.

Chair Starr: Okay, Members any questions? Can I ask the applicant to come and introduce themselves and share anything they wish to share with us on this?

Mr. Stan Zitnik: Good afternoon, Chair and Commission Members. My name is Stan Zitnik and this is my wife, Hassie Zitnik, she's the interior designer.

Ms. Hassie Zitnik: Hi, I'm Hassie Zitnik.

Chair Starr: Okay, Members, any questions? Commissioner Hiranaga?

Mr. Hiranaga: With the passage of a, I'm not sure what you call, home occupation ordinance, wouldn't something like this qualify under that ordinance.

Ms. Flammer: It would, however, the permit does allow one person, one client to come to the office at a time. A home occupation is defined in Title 19 does not allow clients to come to the home.

Mr. Hiranaga: But it's stated in here that no clients come to visit.

Ms. Flammer: Yeah, I explained that to the applicant. I think Conditional Permits are extremely difficult to get and once you have one, it's hard to let go. She may in the future decide to use the provision though she doesn't now.

Chair Starr: Okay, continue.

Mr. Hiranaga: Regarding real property taxes, does this impact how the property is taxed when a Conditional Permit is granted because it basically legalizes a commercial use in a residential area. So I'm wondering if that's reflected in the assessed values and the tax rate for real property tax purposes.

Ms. Flammer: The Director can correct me but I do not believe it is. There is a commercialized residential category that was added last year but it's for transient vacation rentals and for bed and breakfast.

Chair Starr: Director?

Mr. Spence: I'm – Commissioner Hiranaga, I'm not aware of the tax consequences of this. It does seem pretty remarkable to me though that a 180 square foot operation will have to go to County Council and have an ordinance passed for, you know, such a small thing. If, if the Council does pass the not home occupation, the home business ordinance, something like this would be allowed.

Mr. Hiranaga: So there's a pending legislation?

Mr. Spence: Yes.

Mr. Hiranaga: Because it does take County time and money to process a Conditional Permit.

Mr. Spence: Yes, it does.

Mr. Hiranaga: So if it's not necessary ...(inaudible)...

Ms. Flammer: This is an extension to an existing permit.

Chair Starr: I have a question for the applicant, and this is more a policy question not necessarily pertaining to specifically the time extension before us. But I know that, I attend a lot of planning conferences and read a lot of the journals and it seems to be the trend is to move toward ability especially in urban areas where you can work – live and work in the same place. And you know, it seems to be from a planning perspective a good thing. You know, it means certainly less car trips less, you know, the less footprint and, you know, having, you know, experienced this, sometimes I do the same type of thing but I'm in business/commercial which is, you know, includes a residential use. I mean, do you feel that all our urban areas should allow these type of commercial uses even if they're primarily residential, you know, and suggest a path to it? I know you've been working in government Mr. Zitnik, can you share a little of your own feelings based on experience?

Mr. Zitnik: You're correct and that's what I've read as well is that, just like the development in Kihei on South Kihei Road where there's residences above businesses that seems to be the trend back. It's sort of interesting how things will come for a full circle where, you know, the corner little grocery store was down on the first floor and then the family lived above it. So we're just trying to – at the time, five years ago, we applied for this permit so that my wife could, you know, operate her business out of her home which we have all the benefits of what you just said about not traveling and a smaller footprint and being able to work at home. There are also some benefits to having someone in the neighborhood. You know, my wife is there frequently at home, so that it's good to have a presence in the neighborhood with the neighbors and they appreciate that as well.

Chair Starr: Okay, thank you. Members, any questions? Move to public testimony. Are there any members of the public who wish to give testimony on this item please make yourself known? Not seeing any, public testimony is closed. Turn to our planner, the indubitable, Ms. Flammer to give us a possible recommendation.

Ms. Flammer: Okay. The Department has determined that there have been no substantial changes in the factors surrounding the original application. The original application is compliant with all – I mean, the business is currently compliant with all of the original applications in the permit. The Planning Department recommends that the Planning Commission recommend to the County Council approval of the extension request based upon the following conditions which are listed out. I do want to note that Condition 5 of the Ordinance requires that the applicant receive a Certificate of Occupancy. That has been done, so I have deleted that out of the time extension and the rest of the conditions are all from the original permit.

Chair Starr: Okay.

Ms. Flammer: So let me read the legalese here. In consideration of the foregoing, the Planning Department recommends to the Planning Commission adopt the Planning Department's Report and Recommendation prepared for the February 22<sup>nd</sup>, 2011 meeting as the Findings of Fact, Conclusions of Law and Recommendation and authorize the Director of Planning to transmit said recommendation to the Maui County Council on behalf of the Planning Commission.

Chair Starr: Okay, thank you. Members, is there any desire to take action on this? Commissioner Wakida?

Ms. Wakida: Let's see, a motion, I move that adopt the Planning Department's Report and Recommendation and authorize the Director of Planning – am I on the right ...(inaudible)... here for this? Is that what we're supposed to be doing? We're not approving this project, we're recommending it to the – is that correct? Okay, where I left off, recommend that the Planning Commission adopt the Planning Department's Report and Recommendation and authorize the Director of Planning to transmit said recommendation to the Maui County Council.

Ms. Domingo: Second.

Chair Starr: Moved by Commissioner Wakida, seconded by Commissioner Domingo. The motion is?

Mr. Spence: The motion is to adopt the Planning Department's Report and forward this and a recommendation for approval to the Maui County Council.

Chair Starr: Okay, any discussion? Just like to say that I hope that well, well before the ten years is up this becomes more of a, not only as of right permitted use but an encouraged type of use. I think it's a good thing they're doing. All in favor, please raise your hand. All opposed. Thank you.

**It was moved by Ms. Wakida, seconded by Ms. Domingo, then**

**VOTED: To Recommend Adoption of the Planning Department's Report and Recommendation and Transmit the Recommended Approval of the 10-Year Time Extension on the Conditional Permit to the County Council. (Assenting - P. Wakida, D. Domingo, K. Hiranaga, J. Freitas, O. Tagorda) (Excused - W. Shibuya, L. Sablas, W. Mardfin)**

Mr. Spence: That's five in favor, zero nays. The motion is carried.

Chair Starr: Thank you for your patience. I know you've been waiting around a long time.

Okay, Commissioners Item E-4, William E. and Kathleen A. Cambra requesting a ten-year time extension on Special Use – Land Use Commission Special Use Permit and a Conditional Permit to operate Shampoo U and Spa Too and an amendment to change the hours of operation and to allow them to stay open till 7:00 p.m. at night, and Staff Planner is Livit Callentine.

Chair Starr: Okay, Ms. Callentine.

- 4. WILLIAM E. and KATHLEEN A. CAMBRA requesting a 10-year time extension and an amendment to the hours of operation to stay open until 7:00 p.m. instead of 6:00 p.m. for the "Shampoo-U & Spa Too," a hair, skin, and nail care salon on approximately 2.119 acre parcel in the State Rural District at 212 Kula Highway, TMK: 2-3-032: 003, Kula, Island of Maui. (SUP2 2005/0003) (CP 2005/0004) (L. Callentine)**

Ms. Livit Callentine: Thank you, Director. Good afternoon, Chair Starr and Members of the

Commission. As noted by our Director, the request before you is for amendments to a Conditional Permit and a Land Use Commission Special Use Permit specifically the request is for a ten-year time extension and a change in the hours of operation. This item came before you in the past, and you approved the Special Use Permit, June 12, 2007, and prior to that had recommended approval of the Conditional Permit to the Maui County Council. The applicant's, let's see, William is here but not Kathleen, sorry. So William Cambra is here today, and he has not prepared a presentation so I will give a very brief summary of the request and touch on a few key points.

The request, first of all, is to continue to operate an existing hair, skin and nail saloon. Do you need me to stop for a moment, Mr. Chair?

Chair Starr: No.

Ms. Callentine: Shampoo U and Spa Too within the State and County Rural District thus Conditional and Special Use Permits are required. Beside the request for time extension, the applicant is requesting to be allowed to extend the hours of operation by one hour each business day to allow staff time to clean up after serving clients. If approved, the hours would change from 9:00 a.m. to 6:00 p.m. to 9:00 a.m. to 7:00 p.m., Tuesday thru Saturdays only. Together these requests were deemed a substantial changes in the factors surrounding the original application and in accordance with Section 19.40.090, Maui County Code, the Director determined that no public hearing need be held.

As you probably are aware by reading your report the property is located across from King Kaulike [sic] School within the State Rural District and the Land Use Commission has delegated the authority to the Planning Commission for properties less than 15 acres including the ability of the Commission to extend the time limit if it deems that circumstances warrant the granting of the time extension. Further the property is zoned RU Rural, RU 0.5 Rural, and this district is intended to provide among other things low density development to preserve the rural character and to serve as a transition zone between standard residential or other urban density development in ag lands. In, in the items before you although it includes a request for the first time extension, the applicant is requesting an additional ten years. The applicant also wishes to extend the business hours by one hour per business day. There have been no complaints filed with the County regarding the existing salon and no testimony has been submitted. Upon inspection by staff, the business appears to be operating in harmony with the rural character of the neighborhood and the existing request complies with applicable standards for time extension and amendment of a Conditional Permit and a Land Use Commission Special Use Permit. I won't go into the details on that unless you need more information.

So based on our analysis we recommend approval of the Land Use Commission – shall I just go right ahead with the Recommendation or would you like –

Chair Starr: No, we gotta give public testimony.

Ms. Callentine: Okay, let's hold off on that then and did you want the applicant to come up?

Chair Starr: Yeah, sure. Come on up and share with us what you like about, about this?

Mr. William Cambra: I'm Will Cambra and good afternoon, Chairman Starr and Commissioners. Yeah, we were granted a permit to operate in our cottage there. And since then we've employed two people. And it's, it's good for us, we raised our son near our home. So we'd like to get an extension and just keep going how we are.

Chair Starr: Okay, Members any questions? Not seeing any, let's see if any members of the public wish to offer testimony on that, if so, please make yourself known. And not seeing any, public testimony portion is now closed. Now Ms. Callentine would be a excellent time for recommendation.

Ms. Callentine: And now I will give my recommendation. Based on our analysis the Department recommends approval of the Land Use Commission Special Use Permit amendment and time extension subject to amended conditions which are listed on Pages 12 and 13 of the report. I'd like to point out that we recommend Condition No. 6 be amended to address ongoing compliance reporting and Condition No. 8 be amended to allow for extension of business hours to 7:00 p.m., Tuesdays thru Saturdays. We also recommend deletion of Condition No. 9, which required the applicant to obtain a Certificate of Occupancy. This has been done and the condition is no longer necessary.

Further, for the Conditional Permit, the Department recommends the Commission recommend to the County Council approval of the Conditional Permit amendment and time extension subject to conditions as shown on Page 13 of the report. I note that we recommend deletion of Conditions No. 6 and 8 and renumber the subsequent condition relating to Certificates of Compliance and Certificate of Occupancy as these conditions have been met and are no longer necessary.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the February 22<sup>nd</sup>, 2011 meeting as its Findings of Fact, Conclusions of Law, Decision and Order and Recommendation and to authorize the Director of Planning to transmit said written Decision and Order and Recommendation on behalf of the Maui Planning Commission.

Chair Starr: Okay, thank you. Commissioner Hiranaga?

Mr. Hiranaga: Livit, looking at the staff report on Page 5, Sewers, it states that the property is serviced by two cesspools and I believe since this is a commercial operation, that operation cannot be serviced by a cesspool. So I would you to check with the Department of Health to make sure it is in compliance because I believe Federal EPA Laws mandate that commercial operations be serviced by septic systems.

Ms. Callentine: Are you, are you wanting to defer the project in order to give me time to do that?

Chair Starr: I believe the applicant has a comment to make. Please come and reintroduce yourself?

Mr. Cambra: I'd just like to say that I was – in order for the Board of Health to give me their approval, I was asked to write to the EPA in San Francisco and they gave me specific language and

they're allowing me 20 uses per day with my restroom because they're considering me a low use business. So there are signs that I needed to put up stating that there's no public restrooms and if I have more than 20 uses then I need to close my restroom. So it's locked and they get the key at the front desk. So just, I don't know if that, I just wanted to mention that. Thank you.

Chair Starr: Commissioner Hiranaga?

Mr. Hiranaga: Was there any concern about hair products being flushed down the drain because I assume you do coloring and whatever. Department of Health did not have any issues with that?

Mr. Cambra: I was asked no questions about that.

Mr. Hiranaga: How long ago was the letter?

Mr. Cambra; The letter was done, with the EPA?

Mr. Hiranaga: Yeah.

Mr. Cambra: I'd say about four or five months ago while I was getting my Certificate of Occupancy. That is something that I had to get the Department of Health so they checked on my cesspool, they wanted to know the size and everything. That was, I don't know that guy's name but –

Mr. Hiranaga: ...(inaudible)...

Mr. Cambra: Ariyoshi signed my thing but it was the other –

Ms. Callentine: Tihano.

Mr. Cambra: Yeah, Tihano. Tihano, you know, wanted to know the size of my cesspool and all of that. And then, but any questions about the products that we use was not raised during that time.

Mr. Hiranaga: Can we just ask the staff to confirm with the Department of Health that he is in compliance?

Ms. Callentine: I will. Let me let you know that the Certificate of Occupancy did have to be signed off on by the Department of Health and that was just granted in December. Sorry, the Certificate of Occupancy was granted in October. So they reviewed the project at that time.

Mr. Hiranaga: Can you just confirm with the Department of Health that they're aware that –

Chair Starr: Commissioner Hiranaga, we've just heard from our planner that they signed off on it and they signed off on it within two months ago.

Mr. Hiranaga: So you're, you're saying I can't ask my question?

Chair Starr: I'll allow you to ask your question.



Mr. Hiranaga: Thank you.

Chair Starr: But you're redundant, you're redundant to the process.

Mr. Hiranaga: I don't believe so.

Chair Starr: Please.

Mr. Hiranaga: Can you confirm with the Department of Health that they are aware of the use which is a hair salon and that products flushed down the drain that relate to hair salon usage. I'm not questioning the 20 flushes of the toilet. I'm talking about the chemical products.

Ms. Callentine: Mr. Chair, Commissioner Hiranaga, the Certificate of Occupancy was for a change in use from residential to retail for a hair, nail and skin salon. I can confirm that.

Chair Starr: So it is, it is in order. Thank you. Members?

Mr. Freitas: I'd like to make a motion.

Chair Starr: Yes, please, Commissioner Freitas?

Mr. Freitas: To grant the ten-year extension and the Recommendations put forth by the planner with the hours changing from 6:00 to 7:00.

Chair Starr: Okay, is there a second?

Ms. Domingo: Second.

Chair Starr: And we're making a recommendation—

Ms. Callentine: You're approving. You're taking action on the Special – the State Land Use Commission Special Use Permit and you're making a recommendation on the Conditional Permit. They're both required.

Chair Starr: Okay so the motion is for both that we're acting on behalf of the Land Use Commission and we're making a recommendation as far as the Council goes?

Ms. Callentine: Correct. Director?

Mr. Spence: I know the previous practice was to take one of them at a time, but –

Chair Starr: Okay, let's take the first one first.

Mr. Spence: Okay, for the State Land Use Commission Special Use Permit.

**State Land Use Commission Special Use Permit**

Mr. Freitas: Ten year extension. So move.

Chair Starr: Yeah.

Mr. Spence: Okay, so the motion - -well, we need a second.

Chair Starr: We have a second from Commissioner Domingo and this is for – which one is this for?

Mr. Spence: This is for the Land Use Commission Special Use Permit. The motion is to Approve the ten-year time extension and approve an additional hour onto the day from – increasing the hours of operation from 6:00 to 7:00

Chair Starr: Per the recommendation.

Ms. Callentine: May I make a suggestion or just a comment? Since we also did amend a couple of the conditions to be fitting with a time extension, you might want to word the motion as move to approve as recommended by staff.

Mr. Freitas: Accepted.

Chair Starr: Okay. Director, move?

Mr. Spence: Okay, motion is to approve as recommended by staff.

Chair Starr: Thank you. That's correct form. All in favor, please raise a hand. All opposed.

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

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

Chair Starr: Thank you. The second motion. Commissioner Freitas? We're waiting for you. It's in your hands, Jack.

Mr. Freitas: You lost me there.

Chair Starr: This is recommend to the Council.

Mr. Freitas: Oh, I gotta find.

Chair Starr: That's the County Special Use Permit. Oh, I'm sorry, to Recommend the Conditional Use Permit.

**Conditional Permit**

Mr. Freitas: Yes. I move to Recommendation the Conditional Use permit, as stated.

Ms. Domingo: Second.

Chair Starr: As recommended.

Mr. Spence: Okay, the motion is to recommend to the County Council approval of the time extension as recommended. Approval of the Conditional Permit as recommended by staff.

Chair Starr: All in favor please raise a hand. Oh, Commissioner Wakida had a question first.

Ms. Wakida: Are we recommending this to the Council?

Chair Starr: There's two parts to this. One is a State Land Use Special Use Permit. Under a certain acreage we act as the hearings body for the Land Use, State Land Use Commission and that we've already done.

Ms. Wakida: Right.

Chair Starr: And then the second part is for the County Council and here we're just recommending for that.

Ms. Wakida: Okay.

Chair Starr: So in favor raise a hand please. All opposed.

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

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

Mr. Spence: ...(inaudible)... Motion is carried.

Chair Starr: Okay, thank you very much and congratulations and continue.

**F. Continuation of Maui Planning Commission 2<sup>nd</sup> Special Session on Protecting, Developing, and Conserving Coastal Resources: Recent flooding impacts to Kihei and South Maui with focus on reducing future impacts to flood-prone areas of South**

**Maui. (J. Buika) (Session initiated at the February 8, 2011 meeting.)**

Chair Starr: Members, I may have been – it's possible I was acting in error but I didn't think we'd get to the next item, and that was the continuation of the Shoreline Workshop and so I had suggested that the staff necessary for that were able to move onto other things and we put it off to another day. I hope that's okay. And if that's acceptable we can move to defer Item F. Would someone?

Mr. Mardfin: I move to defer Item F.

Ms. Domingo: Second.

Chair Starr: Director?

Mr. Spence: The motion is the defer Item F to a later date.

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

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

**VOTED: To Defer the Matter to a Future Date Due to Time Constraints.  
(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, J. Freitas,  
O. Tagorda, P. Wakida)  
(Excused - W. Shibuya, L. Sablas)**

Mr. Spence: Six ayes, zero nays. The motion is carried.

**G. ACCEPTANCE OF ACTION MINUTES OF THE FEBRUARY 8, 2011 MEETING,  
REGULAR MINUTES OF THE JANUARY 25, 2011 MEETING AND MINUTES OF THE  
FEBRUARY 3, 2011 SITE INSPECTION.**

Mr. Spence: Item G, the Acceptance of the Action Minutes of February 8, 2011, the Regular Minutes of 25, 2011 and the Minutes of the February 3, 2011 Site Inspection.

Chair Starr: We got a motion or corrections, whatever? Commissioner Wakida.

Ms. Wakida: So move.

Mr. Mardfin: Second.

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

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

**VOTED: To Accept the Action Minutes of February 8, 2011, Regular Minutes of  
January 25, 2011 Meetings, and Minutes of the February 3, 2011 Site**

**Inspection.**

**(Assenting - P. Wakida, W. Mardfin, K. Hiranaga, J. Freitas, O. Tagorda,  
D. Domingo)**

**(Excused - W. Shibuya, L. Sablas)**

Chair Starr Done deal.

**H. DIRECTOR'S REPORT**

Mr. Spence: Okay, Item H, the Director's Report. Commissioners we do have, we do have Anna Benesovska to report on several SMA Emergency Permits. One to Ms. Mary Kielty for the Department of Recreation and others so.

Chair Starr: Okay, Ms. Benesovska, and I'm also going to ask for Ms. Dagdag, no, Mrs. Andaya, sorry, to give us an update on what's happening over there. Please.

- 1. Pursuant to the Special Management Area Rules and the Shoreline Area Rules of the Maui Planning Commission, notification of the issuance of the following permits:**
  - a. Special Management Area (SMA) Emergency Permit and Shoreline Setback Approval to MS. MARY KIELTY, South Maui Supervisor of the DEPARTMENT OF PARKS AND RECREATION for the Kamaole II Beach Park Restoration Project located at TMK: 3-9-005: 029, Kihei, Island of Maui. (SM3 2011/0003) (SSA 2011/0007) (A. Benesovska)**

Ms. Ann Benesovska: Good afternoon, Commissioners. I have an update on a permit as Director stated. It's the SM3 2011/0003 Emergency Permit to fix the damage that was caused by the January flooding on Kamaole II Beach Park. I can – this permit has been issued and the work is in progress. It entails essentially fixing scouring with beach quality sand and our Sea Grant Agent is working every closely with our applicant to make sure that the work is done appropriately. That's all I have. If you have any other questions, I can answer those questions at this time.

Chair Starr: I have a question. Where do you find the sand and how much more have we got?

Ms. Benesovska: I believe we got 267 tons of sand for the two beach parks. Today in front of you it's only Kamaole II but we're also fixing Kalepolepo Park with the same sand. And I spoke to our Sea Grant Agent today, Tara Owens, Tara Miller and she informed me that we may not have enough sand for the two parks but they're going to do as, as, you know, as much as they can and see how, how it looks essentially afterwards. The damage at Kalepolepo Park seem to be getting worse and more sand is needed than was initially estimated. So, did that answer your question, Mr. Chair?

Chair Starr: Yeah, zero was the answer. Is there, I mean, is there any other prospects of sand availability?

Ms. Benesovska: So we did secure the 267 tons as far as I understand, but there is a question whether it's going to be enough at this point I don't know the answer to that. So we may need some additional sand and we'll be identifying potential prospects of getting more sand for these two parks.

Chair Starr: Commissioner Mardfin?

Mr. Mardfin: That's what I was going to ask. Are there prospects for getting more sand?

Ms. Benesovska: Working on it as we speak. There is, as you know, there is not that much sand around. So I've heard, we're exploring if some sand could be potentially used from North Kihei from north of the Whale Sanctuary potentially to be put in Kalepolepo Park but because it's a continuous dune system there's goes a lot of thought into what sand we can and what sand we cannot use. And so, really our Sea Grant Agent, Tara Miller, is working very hard on figuring this out and we can report to you next time around as well on this.

Chair Starr: I just want to request that when we do finish up our Coastal Workshop that one of the items of discussion since obviously there's been an update on our ...(inaudible)... base of available sand resources for beach replenishment.

Ms. Benesovska: Certainly.

Chair Starr: And Ms. Andaya, could you tell us what's happening? I know your people have really been working on this.

Ms. Dagdag-Andaya: Yes, Public Works has been busy in these past two months working with a lot of the issues that we've had out in Maalaea and South Kihei Road. So as far as the damage in Maalaea, you learned about Hauole Street, the culvert and the fact that one of our, our trucks had gone out there and because of a sink hole that had formed under the road that was partly due to a washed out culvert the excavator broke through and damaged the roadway. We had to replace it. And now there's an existing three by eight-box culvert underneath the roadway. We've also repaired the road. That at this time is a temporary fix. We do have a much larger project for the future which involves a much bigger culvert for that area. We did apply for an SMA Emergency Permit, got verbal approval and have provided the Planning Department with the information that they needed for that particular project.

Also, with the January storm the Kulanihakoi drainageway and the Waipuilani drainageway also we observed a lot of damage to our structures there so our department, our engineers worked on a design to fix the concrete rubble masonry and also to put back the backfill that had been washed out because of the storms.

In addition to those two projects, about two weekends ago, we had another storm event where a portion of the South Kihei Road near the old Suda Store is located on the mauka side of the drainageway we're calling it the Waiakoa culvert on the mauka side the inlet side, there's a bit of undermining in that area as well. So our engineer had, our chief engineer along with his staff came up with a design to, to fix it. We're -- we had initially wanted to go in and replace the culvert because right now there's two pipes. I believe there's a 38-inch pipe and an 18-inch pipe that

carrying the water from, from Haleakala and obviously those two pipes pipe are undersized to carry all the water that's coming down, but because of permitting issues that we need to deal with in order to replace the culvert, we're coming in with a temporary emergency fix for that roadway until we can get the necessary permits to do the permanent work there. So that, Planning Department has been already informed of that work that we intend to do this week and just awaiting the verbal, the verbal permission to move forward with that.

Chair Starr: Is there anything that the Department or the Commission can do to help you with expedite the more permanent fix for that?

Ms. Dagdag-Andaya: Not at this time. Those permits are with the Army Corp of Engineers and we've actually looked into other, you know, different ways of whether or not we could do an after-the-fact permit or an emergency type of permit. The only way we can do that is for the Governor to declare an emergency which we can't do right now. So until -- at this time we're just -- what we intend to do is just plate the road so that, you know, the cars can move safely down in South Kihei Road and in the meantime work on a design for a more permanent solution and also get the permitting done to get that as well.

Chair Starr: Okay, Commissioner Freitas? Oh, Commissioner Wakida?

Ms. Wakida: The verbal permission that you got was that followed up with some kind of a written memo that confirmed that?

Ms. Dagdag-Andaya: We're -- oh, you wanna --

Ms. Wakida: And you probably suspect why I'm asking. So we don't run into these verbal agreements down the road.

Mr. Spence: This is, this is different kind of verbal agreement. Your rules allow that when there's -- when there is an emergency like say at Kamaole II when there's a huge scarp that needs to be filled otherwise there's a public danger or in this case where you have some, you know, you have structural damage that needs to be taken care of, the Planning Director can issue, can give a verbal approval, you know, to take these kinds of things and then Public Works or Parks Department or whatever agency can come back and say, hey, you know, within ten days they're supposed to get me all the specs and all that stuff. Does that make sense?

Ms. Wakida: Yeah.

Mr. Spence: It will be followed up with paperwork.

Ms. Wakida: Yeah, it's just that, I mean, somebody documents in an email or something that you gave verbal permission, right?

Mr. Spence: Yes.

Ms. Wakida: Yeah, that's all.

Mr. Spence: Okay.

Chair Starr: Am I correct in assuming that when, when this occurs that our shoreline planners and Sea Grant people are all onboard so that we can feel confident that the solutions are those which no one is going to come back later and say caused long term problems?

Mr. Spence: That's correct. The -- my staff is involved, they inform very specifically and give me quite a bit of information. It's, I mean, it's in extreme cases when there really needs to be something done now, you know, public health and safety kinds of issues.

Chair Starr: I know for me, I have absolute confidence in our shoreline planners and the Sea Grant people.

Ms. Dagdag-Andaya: Yeah, in fact, we've been working with Jim Buika on all these issues that we've been having out in Kihei and he has also been informing Tara Owens as well. So we're in constant communication along with Will and Michele and also with Clayton.

Chair Starr: So everyone's, everyone's onboard. I'm sure the State people too, are making sure it's all done right. Okay, Members, one other thing, are we expecting a big storm in the next couple of days?

Ms. Dagdag-Andaya: Let's pray.

Unidentified Speaker: Tonight after midnight.

Mr. Spence: Really?

Chair Starr: Yeah. It was East Maui last night was real -- my place was real gnarly, you know, five, six inches. Okay, let's finish it up.

## **H. DIRECTOR'S REPORT**

Mr. Spence: Okay, Commissioners, No. H-2, Planning Commission Projects or Issues. It seems we have discussed some of those. Item H-3, Discussion --

Chair Starr: Wait, let's finish up. Usually under that we finish up the Exemptions Report at the beginning of the meeting.

## **B. DIRECTOR'S REPORT**

### **2. SMA Minor Permit Report**

### **3. SMA Exemptions Report**

Mr. Spence: And there was no --



Chair Starr: We had asked if there, if anyone had anything further. I had just made a request a few days ago was answered which was the limit --the physical areas where the emergency permits were issued. Does anyone have anything else on that?

Mr. Mardfin: Mr. Chairman, I gave Clayton a call this morning when I wasn't here and he followed up with at one of the items and I suspect the other one will be followed up on soon.

Chair Starr: Yeah, go ahead.

Mr. Mardfin: I was just going to say I don't know if we want to do anything more with it. I think Clayton; you want the numbers of the two that I was questioning? Okay.

Chair Starr: Mr. Yoshida, anything further on that?

Mr. Yoshida: I guess we have some more detailed information from our KIVA Permit Tracking System regarding those SMXs that Commissioner Mardfin had questions about regarding the SMX 2011/0040 and SMX 2011/0060.

Chair Starr: Okay, thank you. And with that said, would someone make a motion that we received --

Mr. Mardfin: I move that we acknowledge receipt of the list

Ms. Domingo: Second.

Chair Starr: Okay, Director?

Mr. Spence: The motion is the Commission acknowledges receipt of the Planning Director's SMA Minor Permit Report.

Chair Starr: Okay, 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 SMA Minor and SMA Exemptions Reports.**  
**(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, J. Freitas, O. Tagorda, P. Wakida)**  
**(Excused - W. Shibuya, L. Sablas)**

Mr. Spence: Five ayes, zero nays.

Chair Starr: Okay, good. Mr. Yoshida, what do we got coming up? Give us the latest on the next two meetings.

## **2. Planning Commission Projects/Issues**

**3. Discussion of Future Maui Planning Commission Agendas**

**a. Agenda items for the March 8, 2011 meeting**

Mr. Yoshida: I believe on the March 8th meeting which is your next meeting as explained earlier I did circulate a memo. We do have that MECO substation on Kuihelani Highway, County Special Use Permit as well as the Maui Lani Commercial Center, Phase II Project District Approval which the Commission dealt with the acceptance of the final EA back in August of 2010. We have Poseley, Doug Poseley, final EA which was deferred from the last meeting because we couldn't get to it. We have a waiver of a request from the Hyatt for a two-year time extension to initiate construction of their timeshare towers at Kaanapali and the Commission earlier today deferred the Nelson Weddings SMA Permit. And then we do have discussion on Condition No. 23 of the Kai Holu, Kaunoa II Subdivision, which arose from the January 25th discussion on the Micah Buzanis Appeal.

Chair Starr: Okay. Commissioner Hiranaga?

Mr. Hiranaga: Just for the record on Item E, Condition 23 of the Kai Holu Subdivision, I did make a request via email to the Planning Department to also explore the option of removing Condition No. 23 because it's my understanding this is the probably the only ag subdivision on this island that prohibits second farm dwellings.

Chair Starr: Excuse me? You made a request that that be removed?

Mr. Hiranaga: Explore the option of removing that condition. I know we were looking at a way to have some type of a agreement recorded by the developer which was initially A & B and then became someone else and then so, as part of that I asked them to look at the other side of the coin to remove that condition because this is about the only ag subdivision in the county that has this type of a restriction.

Chair Starr: Excuse me, Commissioner Hiranaga, don't you -- do you own, still own some lots there or were you the broker on that?

Mr. Hiranaga: Not at all.

Chair Starr: No? Okay.

Mr. Hiranaga: How about you, were you involved in that?

Chair Starr: No, ...(inaudible)...

Mr. Hiranaga: I'm a resident there. I've lived there for 15 years.

Chair Starr: Okay, that's what I meant.

Mr. Hiranaga: But I don't own any lots in that subdivision. I live in a different subdivision, 10,000

square foot lots. I don't live in the two-acre subdivision.

Chair Starr: Okay, you don't, so you're not a resident there, you're a resident --

Mr. Hiranaga: A resident of Spreckelsville in a different subdivision.

Chair Starr: Oh, okay. I'm sorry; I thought you were a resident in that particular subdivision.

Mr. Hiranaga: I couldn't afford to live there. It's too expensive.

Chair Starr: Okay. Okay, thank you.

Mr. Mardfin: Mr. Chairman?

Chair Starr: Yes.

Mr. Mardfin: I apologize for having been absent, but can you tell me, when I left we were talking about the SMA Rules change and my understanding is that in my absence, and I'm happy with it, you changed the two dollar amount items and what did you do with the rest of it? Was it deferred or?

Chair Starr: Director?

Mr. Spence: We're going to defer that to another time. We'll get you new Sub Chapter 4 a couple Commissioners and Planning Staff, including myself and Joe Alueta were unaware that there was a new Sub Chapter 4. We were just looking for the underlined stuff.

Mr. Mardfin: But, you're not going to wait until you have a grand plan for the entire SMA Rules? You'll do this narrowly, in pieces?

Mr. Spence: Oh, we'd like to look at the -- at much larger view of the rules.

Mr. Mardfin: I'm happy to have that done, but that would take more time, it would seem to me that have at least a piece of it that we could deal with right away, I'm mean, by right away, I mean relatively soon.

Mr. Spence: Possibly. We didn't really define that.

Mr. Mardfin: Okay. So was it officially deferred?

Mr. Spence: Yes.

Mr. Mardfin: So we don't have to do renoticing?

Mr. Spence: No.

Chair Starr: We will. It will have to be renoticed. It will come back as a new item.

Mr. Mardfin: Thank you.

Chair Starr: Okay, thank you everyone. It's been wonderful. Till next time. ...(gavel)...

**I. NEXT MEETING DATE: March 8, 2011**

**J. ADJOURNMENT**

The meeting was adjourned at 4:35 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 10:00 a.m.)(and excused from 3:15 p.m. to 4:00 p.m.)

Orlando Tagorda

Penny Wakida

### Excused

Lori Sablas

Warren Shibuya

### Others

William Spence, Planning Department

Clayton Yoshida, Planning Department

Michael Hopper, Department of the Corporation Counsel

Rowena Dagdag-Andaya, Department of Public Works