

**MAUI PLANNING COMMISSION
REGULAR MINUTES
APRIL 26, 2011**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:01 a.m., Tuesday, April 26, 2011, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Chair Hiranaga: I'd like to call the meeting to order. Good morning, Commissioners and Staff. Just for the record, all Commissioners are presented and accounted for except for Ward Mardfin who I believe is going to be a little late, and today is April 26, 2011.

Just a couple housekeeping issues, I just want to thank all the Commissioners for their cooperation in their new seat assignments. It will assist me in administering the meetings. And just for a little heads up for the new Commissioners primarily on protocol when asking questions to applicant or staff if you will upon recognition from the Chair limit your questions to two and then yield the floor to other Commissioners and then they would ask two more questions, two questions and then if there's no other Commissioners that wish to ask questions and you wish to ask additional questions, upon recognition from the Chair you would ask two more questions and yield the floor and so on and so forth. Kind of a heads up on that.

At this time, I'd like to open the floor to public testimony for the general public. If there's anyone that wishes to speak on any agenda item, I guess we have a sign up sheet. Lee Ohigashi? Good morning. As customary, please limit your comments to three minutes. Thank you, and please identify yourself?

The following individuals testified at the beginning of the meeting:

Mr. Lee Ohigashi - Item B-3, Mr. Alan Arakawa - Proposed Maui Business Park Phase II, SMA
Mr. Earl Ichimura - Item B-3, Mr. Alan Arakawa - Proposed Maui Business Park Phase II, SMA
Mr. Sonny Gamponia - Item D- 1, Mr. Robert McDaniel III, Maui Medical Plaza, EA Determination

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

Chair Hiranaga: Is there anyone else that wishes to provide testimony at this time? Seeing none, public testimony is now closed. Agenda Item B-1, Director?

Mr. Spence: Thank you, Mr. Chairman, Members. The first item on your agenda for Public Hearings in Mr. Glenn Okimoto of State DOT requesting a Special Management Area Use Permit and Shoreline Setback Variance for a revetment on Honoapiilani Highway. Our staff planner is Mr. Jeffrey Dack.

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

1. **MR. GLENN OKIMOTO, Director of the STATE DEPARTMENT OF TRANSPORTATION requesting a Special Management Area Use Permit and a Shoreline Setback Variance for the proposed Honoapiilani Highway Shoreline Protection Project to provide shoreline protection along a 900 foot stretch of shoreline involving the placement of large boulders ranging in size between 2.3 to 3.8 tons and rock fill under them, widening of the existing road shoulder, and the installation of jersey crash barriers, between Launiupoko Point and Hekili Point, TMK: 4-8-003:006 (por.), Olowalu, Island of Maui. (SM1 2009/0005) (SSV 2009/0001) (J. Dack)**

Mr. Jeffrey Dack: Yes, good morning, Commissioners. The applicant is requesting a SMA permit and Shoreline Setback Variance in order to undertake shoreline protection for a 900-foot stretch of Honoapiilani Highway between Launiupoko Point and Hekili Point south of Lahaina on the west coast of Maui in Olowalu. Site work related to the shoreline protection involves the placement of large boulders and geotextile fabric along the shoreline slope, the filling of rock under the large boulders, widening of the existing road shoulder and the installation of Jersey barriers.

The property is, the property on which it's located is approximately 13 acres, 13.8 acres. It's a long narrow parcel of government beach reserve located along the shoreline north of Olowalu Wharf. Its southern terminus is approximately 500 feet northwest of Olowalu Wharf and the parcel extends approximately 8,500 feet to the northwest.

The land use designations in – for the site, it's in the State Land Use Conservation District. It's Open Space in the community plan. County zoning is Agriculture and it's clearly in the SMA. Surrounding uses to the northwest is undeveloped shoreline, to the east is vacant, uncultivated land, to the south is developed shoreline and cultivated land and to the west is Auau Channel.

The edge of the highway pavement in this area is approximately eight feet above sea level. The Environmental Assessment for the project states the project area is located along a cobble shoreline which is subject to long term coastal erosion and wave action. The coastline is comprised of black sand and cobble block with patches of calcareous sand.

The applicant's representative will now make a short presentation to further describe the project. I'll then need to return to the dais for the project analysis.

Ms. Dagdag-Andaya: Mr. Chair? Just wanted to disclose that I worked on the project when I was with Munekiyo and Hiraga and I'm sure you probably saw that in some of the documents. But I just wanted to let the Commission Members know.

Chair Hiranaga: Okay, thank you very much.

Ms. Karlynn Fukuda: Can someone get the lights please? Good morning Chair and Members of the Maui Planning Commission, my name is Karlynn Fukuda and I am with Munekiyo and Hiraga, Inc. We are here today regarding the Special Management Area Use Permit application and Shoreline Setback Variance for the proposed Honoapiilani Highway shoreline improvements.

Joining me today are members of our project team. We have Fred Cajigal and Karen Chun from State Department of Transportation, the applicant. Project management is being provided by Sato and Associates, Richard Sato and Lori Fong. Civil engineering is also being provided by Sato and Associates in addition to Mr. Sato and Ms. Fong, we have Mike Ishikawa. We are the planning consultants and our coastal engineering consultant, Elaine Tamaye from EKNA Services, Inc. is also present today. Nancy Nishikawa was unfortunately unable to make it today, but she is providing permitting services with regards to the Section 404, Department of Army Permit as well as the 401 Water Quality Department of Health Permit.

As I previously noted the purpose of our meeting today is for the Commission's review and action on the SMA and Shoreline Setback Variance application request. The State Department of Transportation is proposing the installation of large boulders along approximately 900 feet of shoreline to prevent shoreline damage to this portion of Honoapiilani Highway which has previously experienced undermining during a large coastal storm event – excuse me, a large coastal storm events in early 2000's as well as in 2009. It is noted that this area in particular was identified by a Statewide Highway Shoreline Protection Study prepared for the DOT as an area of concern. The proposed project will provide an engineered solution with the installation of boulder fill and geotextile fabric and will include other project components including widening of the existing roadway shoulder to approximately 15 feet and the installation of Jersey barriers as warranted to minimize overtopping of the waves and subsequent flooding.

As you all know, Honoapiilani Highway is a vital transportation and economic link to and from West Maui to the rest of the island. And DOT is charged with the responsibility to insure that the highway is a safe route that is maintained for reliable service for all travelers. DOT is in the beginning stages of reviewing options for a long term solution to move the highway further mauka. However, at the earliest, environmental review and land acquisition discussions would be initiated in 2013. This action proposed today would replace the existing boulders along the shoreline which were placed as part of the emergency action after a high surf event undermined a portion of Honoapiilani Highway. The proposed project is an engineered solution which as opposed to the random placement of boulders which occurred during the emergency action and it will provide a more secure solution to support the functionality of the highway. Additionally, because the engineered – excuse me, because the emergency action was not engineered it is difficult to determine the life span of what's there now.

This is a project location map showing the approximate project area. Olowalu is here and the transfer station is approximately here, the Olowalu transfer station. This is a site photo of the project area taken from the ocean. And as we can see here, and I'll, you know, discuss it a little later on in my presentation there are several large trees along the mauka boundary of the roadway. And in looking at alternatives for this project, if we were to look at movement of the highway within the right of way we would probably lose at seven trees, if we look beyond that to the canehaul road we're probably looking at about the loss of 16 trees. This is an aerial photo taken from of the project site again, the existing boulder fill, taken from the opposite site, taken from the land looking towards the ocean.

This is the project plan that shows the approximate limits of the existing boulder fill which is this area here. And then the approximate proposed improvements. So it will be longer than what's

existing. And this is due to the engineering design of the actual boulder fill in this project. These are just photos of the boulder fill, the existing boulder fill taken now from ground level. This view is facing towards Olowalu and this is the view facing towards, looking towards Lahaina.

This next slide is a typical section of what you would see after the improvements are done. It's basically if you were to cut a slice, you know, in the proposed improvements this is what you would see. We have the boulder fill with the geotextile fabric, and then the fill to provide for the 15-foot wide shoulder and then the Jersey barrier as warranted.

I would like to note that there were several members of the Planning Commission who were on the Commission when the draft EA came before you for review and comment in April of 2009. The Department of Transportation was the approving agency for the EA and in July of 2010 they issued the FONSI on the final EA and then in February of this year, the Maui Planning Commission conducted a site visit to the site and we are before you today again, for the review of the SMA and Shoreline Setback Variance.

At the site visit there were comments received from the Commission, and the comment was expressed that you would like to have when we came before you these items discussed and so this is a summary of the items that I jotted down at our site visit. So the first item was discussion on the long term plan for loss of shoreline and provision for beach access. And with regards to that, the DOT noted that the existing shoreline in the project area is cobble beach and in reviewing the alternatives for the proposed project it was determined that the proposed project would assist in stabilizing the existing area. Further, with the selection option of the boulder fill, DOT believes that the provision of beach access would continue to be provided. The public currently accesses this area across the boulder fill with the existing boulder placement.

Secondly, with regards to the lateral transport of sand and sediment in the project area it is believed that the proposed project will not impact the natural transport of sand in the area because there's no existing sandy beach fronting the project site first of all, and second, if we go back to this aerial photo as the coastal engineer pointed out, the waves are naturally pulling to the north of where the project site is and it's not believed that the engineered design would effect the wave action here.

A third question that had been received at the site visit was who is the landowner? Who owns the property across the street? And in checking the Real Property Tax records, it appears that the canehaul road is a separate TMK parcel and that, as well as two other parcels which would be adjacent to the project site are owned by Olowalu Elua Associates, LLC.

Lastly, the Commission asked for a discussion on the alternatives considered in the Environmental Assessment document. And there were several alternatives that were studied in the, in the EA. The first one being the no action, no build alternative which was dismissed. As I noted previously that DOT is charged with responsibility of insuring that Honoapiilani Highway remains open and safe transportation route for all travelers. I'm sure the Commission is aware of the challenges that occur when temporary road closures happen due to fires or accidents and you know, how that can be quite inconvenient.

Again, as this area was identified as an area of concern in the 2003 DOT Statewide Highway Shoreline Protection Study this was not considered, the no action, no build was not considered a

viable alternative.

Secondly, we looked at the placement of – replacing the existing boulder fill with sandbags. However, DOT determined that due to long term maintenance because the bags do have the potential to tear and spill their contents and would need to be reset and that the existing shoreline is a cobble beach as well as the cost associated with this alternative, this alternative was dismissed. The estimated cost of the sand bag alternative was \$1.8 million not including the long term maintenance of replacing the broken bags.

The third alternative that was considered was cobble beach. And again, when DOT reviewed this alternative, it was felt that there would probably be a need to replace the rocks over time because we're looking at smaller rocks. And that they would need to be replaced over time to maintain the design profile of the project as well as the initial cost of the cobble beach alternative was estimated at \$3.19 million.

The next alternatives were looking at the mauka shift of the highway and as I had mentioned, there were several alternatives that were reviewed. The first one was shifting the highway within the existing right of way. And in reviewing this alternative, DOT determined that it would probably involve the loss of seven large trees on that mauka side of the highway as well as the installation of a retaining wall. The estimated cost of this alternative would be \$1.7 million and additionally, it would not address the primary concern which would be protecting the highway from continual shoreline erosion.

The third, sorry, the second alternative within the mauka shift of the highway was beyond the existing right of way and it – DOT reviewed any kind of agreements that they have for use of the canehaul road, and it was determined that the only agreement that they have with the private landowner is in emergency situations only are they allowed to use the canehaul road because of liability issues. However, if they were to look at acquiring that to go beyond the existing right of way DOT determined that there probably be a loss of 16 large trees, would need additional environmental review because of the use of State funds, land acquisition and the estimated cost for this alternative was approximately \$1.8 million and that does not include the land acquisition cost that would be needed.

The third alternative in the mauka shift of the highway is the long term solution which is the mauka shift of the highway and as I previously mentioned DOT is currently studying that but the cost estimated for that mauka shift of the highway is between \$450 to \$750 million and that would include land acquisition but at this point in time, the earliest that DOT is projecting project initiation on that would be 2013.

Also, reviewed in the alternatives was alternative materials, specifically concrete armoring units which was brought up earlier and DOT in reviewing this alternative felt that it would be expensive number one, and number two, it would not be visually compatible with the surrounding area. Additionally, there was a public safety concern for the public trying to access the area over these concrete CORE-loc units.

So the last alternative, the preferred alternative is the boulder filled, engineer design as discussed.

This alternative provides for public access, continues to provide views to the shoreline from the highway and the cost is estimated at \$1.29 million. It will also provide a more immediate solution to protect this portion of Honoapiilani Highway from further undermining.

This is a slide that basically lists the additional permitting requirements that DOT will need to seek in order to permit the project to proceed. We need to seek a Conservation District Use Permit from the Department of – or from the Board of Land and Natural Resources. As I previously mentioned, we do need a Department of Army, Section 404 Permit and a Section 401, Water Quality Certification Permit from the State Department of Health as well as Coastal Zone Management Consistency Approval from the State Office of Planning. And I would like to note that both the 404 and the 401 applications have been filed and are pending review by those agencies.

This concludes my presentation and the project team is available to answer any questions you may have. Thank you very much.

Chair Hiranaga: Thank you. At this time, I'd like to open the public hearing.

a) Public Hearing

Chair Hiranaga: Is there anyone in the public that wishes to provide testimony on this agenda item at this time? Yes, Kenny. Please identify yourself and you're limited to three minutes.

Mr. Kenny Hultquist: Good morning, Commissioners. I'm Kenny Hultquist. I drive that highway almost every day. A couple times a week at least. A couple of Planning Directors ago, Mike Foley, he ... really advocated buying a whole bunch of land from the pali towards Lahaina to move that whole highway inland. There's more than just this spot that's endangered of falling into the ocean. So I would strongly urge you guys to do everything in your power to get these – get the State or the County or whoever to buy that land and move – get the highway moving in. This is one small spot. Fifteen feet doesn't sound like very much to me. You know, just moving it over 15 feet, I don't know, maybe I heard wrong. I don't think that's gonna really solve the problem. But for long term, you know, move the highway in as much as possible and do whatever you can with this little portion to get it moved in as close as you can towards the mountains. Thank you.

Chair Hiranaga: Questions for the testifier? Seeing none, is there anyone else that wishes to provide testimony at this time? Seeing none, the public hearing is closed. At this time, I'll open the floor to Commissioners for questions to either staff or the applicant. Commissioner Ball?

Mr. Ball: Morning. I have a question kind of what on the lines what Kenny was talking about. If this project is approved does that then end the, the talks of trying to move the road?

Ms. Fukuda: Thank you, Commissioner, for your question. The mauka shift of the highway as I mentioned is a long term project that DOT has on the books and is intending to do. So this is a temp– you know, it could be seen as a temporary fix until that highway is actually moved. But that's also a long term process. So it's uncertain at this point when the highway would actually move. So, but that is still on, on the list of projects that DOT is intending to do.

Mr. Ball: And my second question.

Chair Hiranaga: Yes, Commissioner Ball, proceed.

Mr. Ball: There is some mention of how the traffic will flow during the construction period and can you address that a little more?

Ms. Fukuda: Yes, DOT is well aware, you know, of the importance of this highway and so they will keep two lanes at all times during construction of the improvements. They will put together a traffic control plan but as I said, DOT is well aware of the need to keep this highway open so it would not be closed at any point during the construction.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I have a follow up to that question. I notice in the document that you were not going to do construction at night, is that correct?

Ms. Fukuda: That is the plan at this point in time and I believe that that is a commitment that has been made in the Section 404 Permit application that DOT has submitted for this project.

Ms. Wakida: Why don't you do some construction at night when there is less traffic?

Ms. Fukuda: At this point in time I could defer to maybe to the civil engineer on that but the thought was to have that during the day so that would limit the amount of lights. We're close to the shoreline and disturbance to, you know, any kind of animals in the area, so –

Ms. Wakida: True, but I didn't really see anything in the document that supported that there would be serious disturbance because it was in reference to the fish and so on, but it said that it was not a highly populated area if I remember correctly. So I know that we, there was work on the pali they worked at night, that was preferable – obviously having it done during the day. I realize that's not right on the shore, but I would like to see that revisited and a little more information on the impact.

Ms. Fukuda: I'll have the civil engineer respond.

Mr. Michael Ishikawa: Hello, Commissioners, my name is Michael Ishikawa. I'm the civil engineer on the project. To answer your question Ms. Wakida, it is envisioned that this project would be able to done during the day. Obviously there'll be traffic delays but we believe that we can keep two lanes open safely. Obviously, down the line during construction of that project we find that there are significant delays to the traffic we may revisit doing work at night, but that creates a lot of problems. One, we still need to reroute traffic and yes, traffic may be less, little, less congested but it brings up issues with noise, lighting of the area because we need to light the area for safety purposes and there's a lot of issues with sea birds and those kind of situations which we would like to avoid. Once again, we believe that by just shifting the lanes and coning off the lanes that we can obtain traffic flow and still proceed accomplishing this project during the day.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: As a regular commuter for over 30 years, I'm glad there's not going to be any traffic delay and I'll be looking forward to you being able to keep two lane because I know it's a pretty narrow, but we've done it with the widening of the Lahaina and that project moved along very well. But my question is, with the proposal that you're having as the preferred alternative, has this been done elsewhere in the state and how successful was it?

Ms. Fukuda: Thank you, Commissioner for your comment. I believe that there have been other shoreline protection projects proposed and actually completed along state highways. As I mentioned, that 2003 study was the review of all statewide highways that are along the shoreline. And so, I believe it's, it's successful, the design of the structure that we are proposing today, it will be designed to withstand hurricane force waves. Okay, and then I have Karen Chun from the DOT who would like to provide you with an example.

Ms. Karen Chun: Thank you, Commissioner Sablas. I did have a project with DOT that was on Kauai and it was a similar boulder fill and we had the same alternatives with sandbags and etc., but my project I had existing just like this and we extended and it's pretty successful right now. It's in Kekaha, and it was done, I'd say about maybe ten years now, ago.

Ms. Sablas: Thank you.

Chair Hiranaga: I have a question for the consultant, Lori, Ms. Hong [sic], I have a follow up question.

Ms. Fukuda: Ms. Chun?

Chair Hiranaga: Ms. Chun, yes.

Ms. Fukuda: DOT?

Chair Hiranaga: Yes.

Mr. Fukuda: Okay.

Ms. Chun: Yes?

Chair Hiranaga: How would you define successful? Does successful mean you stopped the wave impact or it was successful that it did not impact the surrounding beaches?

Ms. Chun: Both. It, it's a sandy beach, it's not cobble, but for the area that the revetment was, the integrity of the structure held like we wanted engineered solution to design and the sand actually replenished which was one of the concerns of that Planning Commission at the time and we haven't had complaints either the road failing or the revetment so that's my definition of successful.

Chair Hiranaga: Okay, thank you. Commissioner Shibuya?

Mr. Shibuya: This is for Karen. Hello, thank you for your testimony and I also want to thank

Munekiyo and Hiraga for providing this information. It's actually from the Coastal Geologic – Geology Group, Department of Geology and Geophysics, University of Hawaii at Manoa, and it shows the erosion rate and I just want to relate a personal experience in December. I drove by with my wife in a SUV and I believe it was a high tide I guess because the wave, I could see it coming and it went over the Jersey barrier, and you know, I luckily anticipated that and slowed down and I got washed, but you know, had I continued faster, probably I would have been in an accident because it was quite a bit of water that came over. I'm interested also in the effectiveness of the mitigation at Kekaha you mentioned on Kauai. Here you have the wave which is, has velocity, so because of that force it has a runup and so will this some how have the distance in which the wave comes up and then not hit or impact the vehicles. So it's a functionality of the height in which you put the, the boulders as well as distance from the highway. Can you comment on that?

Ms. Chun: You're talking about the one on your island, right?

Mr. Shibuya: That's right.

Ms. Chun: Okay, I'm going to defer to my coastal engineer.

Mr. Shibuya: Okay.

Ms. Elaine Tamaye: Thank you for the question. Yes, you're correct. There's a lot of wave overtopping that currently –

Chair Hiranaga: Please identify yourself?

Ms. Tamaye: I'm sorry. My name is Elaine Tamaye, I'm with EKNA Services, I'm the coastal engineering consultant on the project. There is significant wave overtopping along several sections along that highway as you all know. This section that we're trying to provide permanent protection for presently has emergency boulder rock revetment. I think it's helping to mitigate what used to be a really bad overtopping situation. I believe after this last tsunami event there wasn't any problems with that section of highway. Now what we're proposing to do is to rebuilt that revetment to provide a wider shoulder next to the highway, 15-foot wide shoulder that will provide a little bit more buffering for waves that may still continue to overtop the rebuilt revetment. The revetment we're proposing will be armored with large boulders. The armoring would also extend over the crest portion of this structure so both crest and the seaward slope will have large boulders. That will help to dissipate any of the waves that run up and overtop the face of the structure. There might still be problems with overtopping during large hurricane events because the water level rises so much that waves can easily run up over the structure and onto the road which is why we're also proposing to keep the Jersey barriers in place which will help to mitigate some of the overwash from completing closing out the highway. But, you know, there was a reason we kept the crest elevation low was because of the, the aesthetics of, of it. We didn't want to block scenic views from the highway. If you really wanted to solve the overtopping problem we would have to raise the crest of the revetment probably a good five or six feet above the highway and you don't want to see a boulder revetment along that stretch. So there's a trade off but, you know, we're doing the best we can to try and resolve that issue with the wave overtopping.

Mr. Shibuya: Okay, because at this point, I was looking at the cross section that was proposed and it looks level.

Ms. Tamaye: Yes.

Mr. Shibuya: And I see it even in the charts here that you provided it is level.

Ms. Tamaye: Yes.

Mr. Shibuya: And I had some concerns that why do you put it level when you have an opportunity to build it up at least to the height of the Jersey barriers because you're going to put the Jersey barriers there anyway?

Ms. Tamaye: Well, the Jersey barriers are just narrow concrete, you know, barriers.

Mr. Shibuya: It has height.

Ms. Tamaye: It has height.

Mr. Shibuya: It has height.

Ms. Tamaye: A revetment crest however, would be very wide and very massive. And so you definitely would not see beyond the – you would not be able to see beyond the crest of this revetment structure from your vehicle. Whereas, you can see over the crest of just the little Jersey barrier.

Mr. Shibuya: Well, I'm more concerned on public safety and also the other aspect of public access, lateral access, and if you don't have it, right now you don't have safe public access, lateral access. You have the Jersey barriers and when that wave hit us, I was concerned because I know concrete floats. Most people don't know that, but concrete floats, and so now I was concerned not only on the wave, but where the Jersey barrier going come into me and then it's aloha.

Ms. Tamaye: The wave overwash will not be a massive wall of water because the revetment structure is massive enough that it will absorb most of the wave runup compared to what's there now for example. And so what water may wash up over the structure would be splash obviously, you know, and yes, it may still, there may still be some water coming over the highway but certainly a lot less often than occurs now. And only during very severe hurricane events which in most cases, the highways would be closed anyway for safety concerns.

Mr. Shibuya: Just one more point, Mr. Chair? We talked about the height and we talked about velocity of the waves, and now I'm going to bring in another element called mean sea level. Mean sea level the highway is only about eight feet as mentioned but I don't know whether that is during average mean sea level or is that high tide or whatever it was but certainly was at – apparently I passed by at high tide and because it didn't take much of a wave to come over and so I'm concerned now the distance in which you have this energy absorbing runup how far out from the height of that item to the ocean side are you planning to place these rocks or boulders?

Ms. Tamaye: I think cross section –

Mr. Shibuya: The chart says 14 feet.

Ms. Tamaye: ... edge of the existing highway pavement, the extra 15-foot shoulder that would be filled in to provide that safety clearance zone. The crest of the revetment where the large boulders would extend over is another 12 feet, then you have the slope portion which will extend another 14 feet seaward. So you have a total distance according to this typical section of 14 plus 12 plus 15 before you get to the existing road. This is now, it's basically existing road and, and there's the shoreline and you don't have this structure to absorb the wave energy. So you'll, you'll be extending it significantly further than what currently exists along the highway.

Chair Hiranaga: Ms. Tamaye, I have a follow up question. If you were to increase the height of the revetment, wouldn't that also increase the extension of the toe seaward?

Ms. Tamaye: That's a very good point, it would. Say we extended the height to here, that means the slope will start from there, by the time it gets back down to the ocean bottom it will be a lot of farther seaward than it right now. So that was another concern is we did not want to encroach seaward to the extent – to the extent it could minimize seaward encroachment is one of the goals of this project.

Chair Hiranaga: Any more questions, Commissioners? Commissioner Lay?

Mr. Lay: I have a question. Of course, this road has to be fixed but I do have a question on sediment discharge after we have this, this patch work down will it affect the surf spots down there. I just went surfing this Sunday it was a really good, fun place with my son surfing there and I'm wondering will it effect that in any way adversely where we might have a chance of losing these surf spots at Olowalu.

Ms. Tamaye: The revetment shoreline work will extend probably along this section of shoreline. It won't extend far enough to even get to this inshore break. And, and because you can see the wave approach direction causes sand transport in, in towards the north. This is the north direction there – the reason, this, this south end is so badly eroded which required emergency work is because of this northward transport. So the shoreline around Hekili Point is rocky, this south end is rocky, but you get to see more sand further northward towards Awalua Beach and Launiupoko Point. So I think your major surf, surf area is off here, off of this – there's a drainage ditch here and I think most of the surfing is done in this area so our project significantly south of that, that surf break and also close to shore so it won't encroach into the actual surf zone so there should be no effect.

Mr. Lay: My son will be glad to hear that.

Ms. Tamaye: Good.

Chair Hiranaga: Commissioner Mardfin, did you have a question?

Mr. Mardfin: I have a couple of questions. On this project to protect the roadway and harden the shoreline which you guys didn't want to call it that but that's what I believe it is also. I want to first make one complaint. I couldn't read this. I held it up to the light nothing came through. I would have appreciated getting a hard copy of the final EA. We received the – I had the draft EA but I did not have the final copy. I was going to on general purposes vote against this, adopting this because I didn't receive. On the other hand, I decided to consider it more you did have Exhibit 17 and 19 in there which answered I think a lot of what would have been in the final EA. I do regret I didn't have the final EA to look at because that didn't do me any good at a meeting like this.

Ms. Fukuda: Commissioner, I apologize for that. That was the request that we had received from the Planning Department. But for future reference we will make note of your preference of hard copy.

Mr. Mardfin: I've made that several times over the years that I would like a hard copy, one that I can mark up and examine. Nonetheless, because you did have Exhibit 17 and 19 in there that takes care of a lot of my concerns. If you'd look at Exhibit 62, Exhibit 62 is a letter from OHA.

Ms. Fukuda: Yes.

Mr. Mardfin: And on Page 2, well it says 38 of this, but it's Page 2 of the letter, and I'm going the fourth paragraph down. " We do note that the project footprint extends some 40 feet offshore. OHA points out that submerged lands are ceded lands which hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. As such, we request that they be treated with respect due to them as they are part of the 1.8 million acres of land that belongs to the Hawaiian monarchy and were transferred to the state when Hawaii became a U.S. state. We also ask if the project will possibly affect the waves," you answered the wave issue. Your comments never address the ceded lands issue. It refer to conservation lands, it refer to all kinds of submerged lands, they never refer to ceded lands and I wondering if there was a reason for that? Your responses are in the Munekiyo and Hiraga in Exhibit 63, and from the DOT in Exhibit 64, and in no where do I find the word, ceded lands here not referring to that issue at all.

Ms. Fukuda: Thank you for your comment Commissioner. I guess the, the reason for that is there is disputes I think amongst parties as far as what is considered ceded lands and not. And I think in terms of this particular project it was not felt that the project site would be a area of concern for ceded land, the ceded land issues. There have been other areas which the Office of Hawaiian Affairs has taken up the charge on that, but this was not an area that DOT was aware of that OHA was in dispute that this was a ceded land issue so we believe that –

Mr. Mardfin: So, are you, are you conceding that it's ceded lands?

Ms. Fukuda: No, I'm not conceding that it's ceded lands. I just note that this is a public right of way that has been a public right of way for probably well over 75 to maybe even a hundred years now and that DOT's responsibility is to maintain the life line that this highway provides. So to date we have not received any further comment from OHA disputing the ceded land issue. And the other reason is that the Department of Land and Natural Resources right now, the reason why we're seeking the CDUA Permit is because these lands are considered Conservation District lands

including the submerged lands and as far as we know the Board of Land and Natural Resources and the Department of Land and Natural Resources has jurisdiction over that. So we are planning to file the Conservation District Use Permit application for that.

Mr. Mardfin: Thank you for your response. Can you go back to the – may I ask a follow up – not a follow up, a different question?

Chair Hiranaga: Yes, proceed.

Mr. Mardfin: Can you go back, that's the one I want. How are those rocks going to be – are they going to be sealed in there or are they just laid in there. I'm going to go up and point, but I won't say anything because I know I need to be on the mic.

Ms. Fukuda: Thank you, Commissioner. In looking at that, what you're, you're pointing to the boulder fill itself, I believe that they will be placed there and I can have not, not sealed because that would, you know, involve the intrusion of, of foreign materials. So it's just the placement of the boulder fill. And if you need further clarification I can have the coastal engineer respond?

Mr. Mardfin: I would like that.

Ms. Tamaye: There will be no concrete sealing or placement in this rock revetment structure. All of the smaller rock is just placed. The big boulders will be just placed on top of the smaller rocks and the idea being that the porous nature of the revetment structure will be able to absorb the wave energy more effectively than a solid concrete structure.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: As long as you're up there, what's the life expectancy of this revetment?

Ms. Tamaye: You know, that's kind of a loaded question because I don't have a crystal ball and I can't tell you how many storms we're going to have in the future or when they're going to occur, but I'll just say this, the structure is designed to withstand waves generated by a passing hurricane. Meaning that we looked at the elevated water levels that would occur and the maximum ...(inaudible)... limited waves on that shallow shoreline area. So suffice to say, you know, if we had a hurricane hit us tomorrow this revetment would still be standing hopefully.

Ms. Wakida: Thank you. I had a second question but is Ms. Chun with Department of Transportation?

Ms. Tamaye: Yes.

Ms. Chun: Yes?

Ms. Wakida: First of all, I was, I have a general concern about this project as a band aide approach to a problem that has been ongoing for years if not decades. And if the coastal engineer is correct in this and this is going to stand up for a long time then does this mean that any serious look at

moving this highway in is going to be further down the road?

Ms. Chun: No, Commissioner. Right now that project that we talked about that we said the earliest you'll see action is 2013 because they are in that planning stage and they're working on their EIS document on purpose and need for moving the highway mauka. Now you heard the cost was \$450 million, you know the state of our current economy and so that's why we're saying although you might look at this as a band aide approach we need to do something to save this highway and this is our Department's commitment to do something to keep it open until we can get that mauka highway to go through. So it's not like because you do this we're not going to pursue the other project. That's still on the books, but it's in the planning stage and it is a long term thing because most EISs go anywhere between five to seven years and then you go to design. So it's not like you're going to see that mauka highway in the next seven years, you know, because there's a process you gotta go through to get it built. Did I answer your question or?

Ms. Wakida: Correct. And I, well I believe that something needs to be done now but I am, I am concerned that it's taken the Department of Transportation this long to get an EIS moving if this is something that should have been started years ago and, and I don't want to see any heel dragging on this on the long range work.

Ms. Chun: I don't believe there is. I ...(inaudible)... wrote the contract for the planning project so I know it went concurrently with this one. And part of it if you, well you know, this is not really a band aide approach it's a commitment that we made to DLNR when we did the emergency work back in 2009 that when we were going to put in something more permanent and engineered we go through this environmental process instead of just doing the emergency declaration and dumping rocks every time you have a shoreline event.

Ms. Wakida: You brought up the money issue. How much of this project, what percent of this project is Federally funded?

Ms. Chun: Right now the stage we're at is not Federally funded, it's State funding in planning and design. When we get to construction then it will be Federally funded at 80 percent.

Ms. Wakida: How much percent?

Ms. Chun: Eighty percent Federal, 20 percent State.

Ms. Wakida: Eight percent. So –

Ms. Chun: In construction only.

Ms. Wakida: In construction only, yes, and that's – those are funds that made foreseeably be in the long range project.

Ms. Chun: The long range solution is a Federally funded project whereas this one is not. It's only Federally funded in construction.

Ms. Wakida: Okay, thank you.

Ms. Chun: Okay.

Chair Hiranaga: Commissioners? Commissioner Shibuya?

Mr. Shibuya: A quick one. Contrary to my colleague I really enjoyed the CDs, thank you very much. I thought it was very revealing and I, I spent a lot of time on it and I got accused for sitting on my ass at home by my spouse, but I enjoyed reading it and I thank you for that. I do have a little comment. I was wondering and I was looking at the rock and boulders and I was thinking geez, it will probably eliminate some of the boulders that you have on the mountain sides, all these rock piles. That would be a great opportunity to make the land more productive there, but then I said, yeah, I would like to see the height of that barrier at least come up not level to the ground because of the sea level rising but to insure that we have at least a Jersey barrier height. You're gonna put the Jersey barrier there anyway so you're talking about visual, there it is folks, it's no higher than the Jersey barrier and it's a pretty good compromise so thank you very much.

Chair Hiranaga: Any other questions from the Commissioners? Commissioner Mardfin?

Mr. Mardfin: Karlynn, I'm not sure you can answer this or not, I'm trying to really wrap my head around this whole thing. They're doing a thing, were you guys on the project for Hana with the access road to wharf where they're – you're not?

Ms. Fukuda: No, I'm not. I'm sorry.

Mr. Mardfin: I'm trying to find out if it was, if it's similar to that, but that's okay. I'm going to use the mic because I want to ask some questions at the – hello. I want to ask some questions. This geotextile fabric what, I'll ask all of my questions first and then you can start to answer them. What's this, how will it hold it in, and I read that you didn't want sand bags is that the equivalent of sand bags in there? Secondly, water comes up, I can, I understand why Commissioner Shibuya was suggesting we go up to here, I understood the answer that we – if you do that then because of the weight you've gotta go out more, and I want that confirmed. If you just added here, would you still have to push out? Third thing, the water comes up here, it overtops how is the water gonna, is the water just going to drain back into here and drain out, is this permeable or –

Chair Hiranaga: Commissioner Mardfin, let's let them answer your three questions first because –

Mr. Mardfin: Okay, those were the only three I had anyway.

Ms. Tamaye: As I mentioned before the structure is entirely permeable, pervious to water. The geotextile fabric is the first layer. That's to prevent the sand and soils, the fine materials from passing through the porous rock structure. That's a common method of failure if you don't have provisions to prevent leaching of materials from, from the existing ground through the structure. So we have a geotextile fabric then we have small rock fill as the next layer to cushion the large boulders. These rocks are large enough so that they won't pass through the voids in the boulders

armoring. So this entire structure is totally pervious. Whatever water comes up, washing in here will, will leach back into the ground or through the structure seaward.

Mr. Mardfin: What are ...(inaudible)...

Ms. Tamaye: Whatever overtopping happens is, is overtopping onto this area and there's drainage, provisions for drainage of water from the highway surface itself.

Mr. Mardfin: Thank you that answered them.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: I have a question, thank you, on the exposed drain pipe. I'm not clear where that drainpipe leads to under the highway. What's on the other side and what's being drained through that drainpipe?

Ms. Fukuda: I'll defer to the civil engineer, Mike Ishikawa.

Ms. Wakida: Thank you.

Mr. Mike Ishikawa: Hi, Mike Ishikawa again. As it was alluded previously, the highway is actually super elevated sort of like a race track and a bank. I mean, not as severe but similar to that and what happens is when, when it rains or water overtops so the water runs toward mauka, toward the mountain and then there is inlets in the shoulder where the water drains and then it's transported via that drainpipe out to the ocean.

Ms. Wakida: Okay, so it's just runoff from the, from the road, it's not leading to something further mauka?

Mr. Ishikawa: Thank you.

Chair Hiranaga: Any other questions from Commissioners? I have a couple questions. First, just a comment on Page 24 of the staff report, under No. 4, Analysis, second to the last line, the marine resources section of the EA states at the bottom, "no sea turtles or other endangered or threatened species were observed in or near the project area during the marine survey." I'm not sure how long your marine survey takes but there is thousands of sea turtles in that area, it's like – I mean, they're like they pop head out of the water all over the place, so I just want to make that comment. I guess to preference my comments, those three or four surf spots over there in Olowalu I have been surfing there for 40 years and they are my favorite spots on this island. I did have the fortune of having time to go out there last week when there was a nice south swell. First thing I go in the water people start asking me, a what they going build over there? And I told them don't worry, it's not going to impact the surf spots. So my question is, how much detail did you put into the study that would reassure us that backwash would not be created by this improvement? We have a backwash issue at the mouth to Maalaea Small Boat Harbor which fronts – you have a rock revetment, there's a surf spot right in front of it and there is backwash and I'm sure before that rock revetment was created there was no backwash. So I think that's the biggest concern of the peoples

surfing that spot is will that structure create backwash primarily in high tide?

Ms. Tamaye: That, that's a good question and I, this revetment is right on the shoreline. The water depth at the toe of the structure will be very shallow. It doesn't extend far enough into the water to provide any sufficient water depth to be able to carry wave energy back off shore. So imagine what's there now and how, how it's sitting right on the shoreline. It's basically what's going to be extended a little, just a little further north, and also a little further seaward maybe another 10, 15 feet or so, but still, the, the water depth at the toe of the structure will be very shallow. Backwash occurs in the situation where you have a structure in relatively deep water and, and when waves break at the structure it doesn't dissipate all of its energy and so part of the energy gets reflected back into the water column and that's what, you know, is the – what determine backwash or wave reflection off of the structure. This revetment is sitting right on the shoreline in very shallow water so there will be virtually no reflection back off shore.

Chair Hiranaga: And just a second follow question. How much longer is the proposed improvements stretching northward versus what's there now, the existing rocks? How much further are you extending the improvements?

Ms. Tamaye: You can refer to this slide that shows a little further extension northward from the – what's there right now as the boulder fill.

Chair Hiranaga: Is it 30 feet, 50 feet, approximately?

Ms. Tamaye: A couple hundred feet maybe.

Chair Hiranaga: But your, your improvement is 900 feet, right?

Ms. Tamaye: The total length, yes.

Chair Hiranaga: And you're extending it a couple of hundred feet?

Ms. Tamaye: Northward beyond the existing boulder fill.

Chair Hiranaga: I'm not sure how familiar you are with the site but there is a utility pole that's sort of inland but leaning, are you going up to that utility pole or beyond?

Ms. Fukuda: Commissioner Hiranaga, Karlynn Fukuda. It's, if you're familiar with the site there are those yellow sand tubs that have been placed at the ends of the guardrails, it's approximately to the south end of that one that's on the Lahaina side of the guardrail, that's about where we're talking about.

Chair Hiranaga: Okay, great. Thank you. Any other questions, Commissioners?

Mr. Mardfin: I just want a clarification.

Chair Hiranaga: Yes, Commissioner Shibuya?

Mr. Shibuya: I'm going to show them this annual erosion hazard rate chart and if they can just put a pen mark for me then it would be helpful or you can demonstrate it on the graphic.

Ms. Fukuda: A pen mark in the approximate location of where the project is?

Mr. Shibuya: Yes, yes. And I can circulate it amongst the others. I'm not going to use a micrometer.

...(Short pause while the consultants looked at the map)...

Ms. Fukuda: Commissioner Shibuya, I'll pass this back to you. This is the project limits but are noted here and I have a pen mark to the approximate location of where the end of the site would be or the boulder fill would be. So I'll pass this back to you.

Mr. Shibuya: Okay, thank you. Please pass it that way.

Chair Hiranaga: Okay, any other questions for the applicant or staff? Seeing none, may we have the staff recommendation?

Mr. Dack: Commissioners, I'd like to go back and do the analysis because it raise, this obviously is coming to you in the context of the Coastal Zone Management Law, your Shoreline Rules and your SMA Rules and so I would like to proceed with the analysis that I had prepared and wasn't able to present to you earlier. This is a normal with, with all the reports. First off, we look and confirm that the project is in conformance with the Hawaii State Plan and as mentioned, it's subject to receipt of the Conservation District Use Permit from the Board of Land and Natural Resources who will determine the final consistency of the project with the State Conservation District. Then we also need to look at the conformity of the project with the, with the General Plan and we'll note that a couple principal features of the Countywide Policy Plan, the project is in keeping with the policy to insure that roadway are safe, efficient and maintained in good condition. It is contrary to the last part of the Countywide Policy Plan Policy to protect undeveloped beaches, dunes and coastal ecosystems and restore natural shorelines processes because it would do the opposite of that. It is in keeping with the West Maui Community Plan, when you have a project which is contrary to and in concert with, with different aspects of the plans, the Commission needs to weigh and balance those, those considerations to make the required finding, to be able to make the required finding that the development is consistent with the County General Plan.

The project, as mentioned, was subject to environmental review that was carried out by the Department of Transportation. They have complied with Chapter 343. Also mention that there's exhibits in your staff report from February 2005, the County published the Pali to Puamana Parkway Master Plan that although not adopted that is relevant as a draft statement from a few years ago the County's long term vision for the desires in the area. Among its purposes, the plan's purposes are to recommend a proposed realignment of Honoapiilani Highway from Papalaua to Puamana Park, to protect the shoreline environment and to protect the public health and safety by getting the highway out of the tsunami inundation zone.

For the area of that plan that addresses Olowalu, Olowalu it states that the proposed realignment

of Honoapiilani Highway would utilize the existing road for parking and pedestrian bicycle access. So the main point there is that at least according to the draft, draft plan, once the road, the current Honoapiilani Highway would be abandoned and the major shift of the roadway up mauka that we've been talking about would occur. The intent is that, that this roadway would not be used any longer for roadway purposes but would again be pedestrian bicycle path.

Relative to considerations for shoreline setback variance you'll need to be able to make certain conclusions and determinations under the Shoreline, Shoreline Rules of the Maui Planning Commission. I first wanted to make a correction to the, the Page 21 of the staff report where we indicated that the current configuration of the project is a result of work done in 2001. It's been, it was just clarified to me very recently that the currently configuration was worked on in 2008 which included the placement of large boulders and river rocks to restore the roadway that had been eroded as you'd seen.

Recent site visits by the Department and University of Hawaii, Sea Grant Program did not find evidence of ...(inaudible)... present eminent collapse of the roadway. That may have been the case in 2008, but does not appear to be the case right now. Their observations were that since the general time frame of the placement of the boulders in 2008, there have been, there's been some, moderate – erosion to the north of the area of the boulders, however, the area of the boulders appears quite intact with the boulders performing their, their function well to this point.

So we'll move onto – let's see, under the Shoreline Setback Variance consideration further the Commission will need to make again, determinations. A couple of relevant ones from the rules are that the Commission, Commission may consider granting a variance for the protection of the – of a public infrastructure provided the structure is at risk, poses a danger to health, safety, and welfare and is the best shoreline management option in accordance with relevant state policy or shoreline hardening. I'll note that state policy on shoreline hardening is to discourage permanent structures in favor of alternative solutions which have been studied and appear available as presented to you although they are not DOT's preferred solution. However, there's another factor within the Shoreline Rules that, that wouldn't require that consideration, it says that you may grant a variance if you find that the proposed structure is necessary for facilities or improvements by the public agency. So that's basically if you determine that this – that this – the DOT proposal is necessary.

Also, you need to consider the SMA Rules, SMA Goals and Objectives and, and CZM Law relative to, to SMA. There's a number of factors that need to be considered that are in your staff, in your staff report beginning on Page 22, the most relevant of those appeared to be a recreational resources in which staff also concluded that surfing and other shoreline recreation would not be impacted by the project. There is also a little discussion of marine resources. The applicant indicates that coastal ecosystems and marine resources as also addressed by significant number of agency comments will be protected under permits from the Army Corps and the Department of Health.

Relative to beach protection, the policies include to minimize the construction of public erosion protection structures seaward of the shoreline. This, this is an area where there is a cobble beach, it would be replaced by the erosion protection structure. Our Sea Grant representative to the County suggest the County at some point see the plans for the applicant's – that meet the

applicant's intent to protect the flanking of the rock slope from continued erosion and scouring of the unprotected shoreline, but we also then conclude that the recreational use portion of Olowalu Beach surf spots should not be impacted.

So then the last substantive section in the report relates to project determinations and determination of substantial adverse effect. As one of the, one of the significant things that the Commission needs to be able to conclude is that the, the project will not, basically as stated there from, from our rules, your rules, excuse me, no, I'm sorry, from the HRS, the development shall not – no development shall be approved unless the authority has first found that the development will not have any substantial adverse environmental and ecological effect except as such as adverse effect is minimized as indicated on, on the slide. So we need to go through analysis and determine whether there may be a substantial adverse effect. Your SMA Rules provide 12 factors that helps with that kind of analysis, 12 factors that may constitute a significant adverse effect on the environment which one of those is, effects an environmentally sensitive area such as shorelines, tsunami zone, erosion prone area, geological hazardous land or coastal waters. It says, staff's conclusion that this development may have a significant or substantial adverse environmental effect or ecological effect in that it will interfere with natural shoreline processes and thereby effect the shoreline, but there were no other substantial adverse effects that were identified.

So to wrap all of those things up, the Commission needs to make ultimately as you see, as you know at the end of your staff reports we always recommend that you adopt reports, make findings, you have to have, make conclusions of law.. You have to go through a, a little bit of a process at least conceptually to be able to relate all the information you've heard about the project particularly from the applicant and the representatives to the, the standards that you need to review projects against which are HRS 34 – HRS 205A, CZM Law, Shoreline Rules and Setback Rules and then be able to come to some conclusions.

One way that you could do this even though staff is concluding that there are substantial environmental effects, there are some issues, as I just presented is if you, if you were to favor the project, you could make one of the determinations, possible determinations that is listed in your recommendation report that would kind of wrap all of this up together and I'll, I'll read it, "the development may have a substantial adverse environmental, ecological effect and it will interfere with the natural shoreline processes and thereby affect the shoreline. However such adverse effects may have, such adverse effects have been minimized to the extent practicable and are clearly outweighed by the compelling public interest of the protection with the proposed structure will provide the public infrastructure given that in accordance with section of the rules the structure is at risk of damage. Other option is, as I indicated you conclude that the project, the structure is just necessary. So that, that concludes the, the analysis that was going to be provided earlier. If you'd like I can move right into the recommendation because this leads, leads well into it?

So if the, if the Planning Commission were to make this kind of determination as well as others that you will find in the recommendation report or some similar to that you should be able to conclude that the application complies with the applicable standards for this Special Management Area Use Permit and criteria for a Shoreline Setback Approval, excuse me, Shoreline Setback Variance. And there's a couple pages of, of those kinds of considerations listed in the, the recommendation report. Again, one of the – most of the, most of the concerns that, that, that staff discovered when

reviewing this project relative to rules and HRS are, could be addressed, wrapped as I say, in this, in this first determination. There are other determinations that are required by, kinds, kinds of things determined by rules and law that you'll find on the, the page under determinations where you can conclude that the, again, if you favor the project, if the development is consistent with the objectives, policies and SMA Guidelines of the Special Management Area, it's consistent with County General Plan, West Maui Community Plan, zoning, and other applicable regulations, that the applicant has sought to minimize various factors listed in Item No. 4 under determinations and that the application of recommended conditions of approval is, is subject to reasonable terms of conditions for items given in the staff report.

So after weighing and balance, ...(inaudible)... various factors associated with the proposal and given the, the concerns that were just, just raised, the Planning Department still does recommend that the Planning Commission make those kind of determinations you find in your recommendation report including the, the item on the screen and recommends approval of the Shoreline Setback Variance with five listed conditions required under the Shoreline Rules and then also after similar weighing and balancing the, the Department Recommends the Commission make again similar determinations and approve the Special Management Area Use Permit with 14 conditions. The first ten of which are standard conditions.

Very briefly on the other four, Condition No. 11 would be, the applicant obtain permits from the Army Corps of Engineers pursuant to Section 404, Clean Water Act, Section 10 of the Rivers and Harbor Acts as well as Section – a Section 401, Water Quality Certification. Condition 12, briefly, “the applicant address National Pollutant Discharge Elimination System or NPDES Permit requirements. 13, obtain permits from the Clean Water Branch, Department of Health pursuant to Section 401, Water Quality ...(inaudible)... and the last condition, that qualified archaeological monitor be present and that the applicant submit appropriately prepared monitoring plan to SHPD for review and acceptance. So in consideration – in conclusion, in consideration of the foregoing the Planning Commission [sic] recommends to the Maui Planning Commission adopt the Department's report prepared for the April 26th meeting and the Department's recommendation report prepared for the same meeting as Findings of Fact, Conclusions of Law, Decision and Order and authorize the Director to, of Planning to transmit the Decision and Order on the behalf of the Commission. Any questions from the Commissioners?

Chair Hiranaga: Questions, Commissioners? I guess, Corporation Counsel would like to make a couple of comments?

Mr. Giroux: Just real quick Jeff. I saw your Condition 1 and 2, and as far as the time extension process right now our office is getting a lot of calls about that. So I just want to make sure that, this standard condition right now as it is does not ...(inaudible)... our rules. And I just wanted to know, I mean, it's okay, because this would supercede the rule, but I want to know if this being consciously because what I'm having a problem with is the last four lines where it says, “the Planning Director shall review and approve a time extension request, but may forward said request.” Right now as the rules are, its “shall.” If the intention is to follow the rule, what I would suggest is that you insert or you delete everything from, “the” to “approval” and insert, “time extension shall,” “shall be in accordance with the provisions of Section 12-202-2 of the Special Management Area Rules for the Maui Planning Commission.” And that would comport to our rules

as they are now.

Mr. Dack: Thank you, that's good.

Mr. Giroux: And that would be same for Condition 1 as Condition No. 2.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I'm wondering if Planner Dack is agreeing with that recommendation that he's making to this body?

Mr. Dack: That's the Department's recommendation.

Mr. Mardfin: With those changes as suggested?

Mr. Dack: Yes, please.

Mr. Mardfin: Thank you.

Chair Hiranaga: I guess I would like to take the two items separately. So I'll open the floor for a motion on the – regarding Shoreline Setback Variance?

Shoreline Setback Variance

Mr. Lay: Like to make motion to approve the Special Management Area Use Permit and Shoreline Setback Variance for the proposed Honoapiilani Highway shoreline protection along with conditions and recommendations that go along with that.

Chair Hiranaga: Commissioner Lay, we're just gonna address the variance at this time.

Mr. Lay: ...(Inaudible)...

Mr. Ball: Second.

Mr. Giroux: Just divide the ...(inaudible)...

Chair Hiranaga: Okay. Moved by Commissioner Lay, second by Commissioner Ball regarding approval of the Shoreline Setback Variance. Any discussion? Commissioner Mardfin?

Mr. Mardfin: Do we need to make those determinations that Planner Dack was telling us earlier?

Chair Hiranaga: Yeah, I was gonna kind of –

Mr. Mardfin: – ...(inaudible)... first?

Chair Hiranaga: I was going to raise that question since this is a little unusual. So you're placing the burden of agreeing on these determinations on the Commission or could you explain exactly what you're requesting the Commission to do regarding the variance?

Mr. Dack: Well, part of the recommendation would be to make those determinations, and, and then you've made determinations such as that then you, then that would set you up to be able to legally approve this variance is you so – if you're interested in doing that.

Chair Hiranaga: So do we need to state those determinations or is that just part of the motion, recommendation from staff?

Mr. Dack: I think you probably could just move the staff, move the Department's recommendation.

Chair Hiranaga: Okay. All right. Commissioner Mardfin?

Mr. Mardfin: If it were its recommendations and determinations that we would be approving.

Mr. Dack: Yeah, the Department's recommendation included the determinations but you could certainly state them both, that would be fine.

Mr. Mardfin: Thank you.

Chair Hiranaga: No discussion? Call for the vote. All in favor of the motion, please indicate by raising your hand.

It was moved by Mr. Lay, seconded by Mr. Ball, then

VOTED: To Approve the Shoreline Setback Variance for the Proposed Honoapiilani Highway Shoreline Protection Project, as Recommended. (Assenting - I. Lay, K. Ball, D. Domingo, L. Sablas, J. Freitas, P. Wakida, W. Shibuya, W. Mardfin)

Mr. Spence: That's eight ayes.

Chair Hiranaga: The motion is carried. Second motion is by Commissioner Lay is to approve the Special Management Area Use Permit as recommended by staff. Any discussion? No discussion. Call for the vote. All in favor, please so indicate by raising your hand.

Special Management Area Use Permit

It was moved by Mr. Lay, seconded by Mr. Ball, then

VOTED: To Approve the Special Management Area Use Permit for the Proposed Honoapiilani Highway Shoreline Protection Project, as Recommended. (Assenting - I. Lay, K. Ball, D. Domingo, L. Sablas, J. Freitas, P. Wakida,

W. Shibuya, W. Mardfin)

Mr. Spence: It's eight ayes.

Chair Hiranaga: Motion is carried. We'll take a short recess.

A recess was called at 10:36 a.m., and the meeting was reconvened at 10:46 a.m.

Chair Hiranaga: Next agenda item is B-2.

Mr. Mardfin: Are you having the Director introduce?

Chair Hiranaga: I guess I'll do it. The Director's absent. Ms. Marcia Lucas requesting a Special Management Area Use Permit and a Shoreline Setback Variance for the 11 Hale Malia Place slope repair project in order to construct a structurally engineered slope retaining system at 11 Hale Malia Place, Napili, Island of Maui. Jim?

2. MS. MARCIA LUCAS requesting a Special Management Area Use Permit and a Shoreline Setback Variance for the 11 Hale Malia Place Slope Repair Project in order to construct a structurally engineered slope retaining system at 11 Hale Malia Place, TMK: 4-3-003: 096, Napili, Island of Maui. (SM1 2009/0018) (SSV 2009/0005) (J. Buika)

Mr. Jim Buika: Thank you. Good morning, Chairman Hiranaga and Commissioners. My name is Jim Buika, planner with the Planning Department and I'd like to thank each of you for your experience and dedication and contributions to the people of Maui County.

With the Chair's concurrence I would like to outline the Department's suggested proceedings here. I would like to first introduce to you to the past planning steps completed for the project beginning with an SMA Emergency Permit. We had past Maui Planning Commission deliberations on both a draft Environmental Assessment and a final Environmental Assessment where we had, where this body concluded in a Finding of No Significant Impact and also I will discuss the Maui Planning Commission's purpose today. Following these opening comments, I'll ask the – Matt Slepik from the applicant's representative from Chris Hart and Partners to describe the need of the project and also to present just straight through the, the criteria for judging the project today under the SMA Assessment criteria in order to understand the potential impacts and the mitigation that has been built into the project to determine that the environment, environmental impacts have been mitigated and then finally to review the Shoreline Setback Variance criteria which this permit also requires. So there's the SMA and the Shoreline Setback Variance. Following the project presentation, look at the mitigation built into the project and have our deliberation and public hearing and then I'll follow with the Department's recommendation upon this. So is this good way to proceed?

So the scope of the project is to construct a structurally engineered slope retaining wall on a shoreline parcel in Napili in order to stabilize the collapsed shoreline bluff. And this first slide shows you the collapse in front of the structure and the need for the project. As an introduction, the project does have a – it has a long history already. This bluff failure occurred in December of 2007, and

this is the third Maui Planning Commission meeting about this project. I know we have two new Commissioners who have not seen this yet.

The project construction, it was authorized by the Planning Director and State Department of Land and Natural Resources, the Office of Conservation and Coastal Lands in May 2008 as an SMA Emergency Permit. The shoreline planner at the time and the UH Sea Grant Agent concurred also to allow the project to proceed with mitigation built into it. So this project is already pau. It's already been, been completed and this session really is to conclude the required permit process to fully authorize this project. And the, the SMA, the amended SMA Emergency Permit is Exhibit 4 in your document. It's dated December 10, 2008. So the event occurred in December 4 through 7 in 2007 when we had heavy rain storms, lots of flooding on the island. We had damage throughout the island at the time and this was caused by poor drainage behind an existing unpermitted wall and there was this collapse along the shoreline bluff. The site was visited after that February 28, 2008. Early the next year, the applicant applied April 8, 2008, and the gained Emergency Permit approval in May, on May 30, 2008. Requested a time extension over the summer leading up to a December 10, 2008 Emergency Permit and the Commission was presented this on November 17, 2008 for concurrence. So that exhibit for the Emergency Permit goes on to indicate the reasons for accepting this as the best, the project that has been completed, this stabilizing wall is the best practicable alternative. There were 20, 20 conditions imposed on the Emergency Permit at the time. The project was completed in 2009, and because it does require a Shoreline Setback Variance and a Major Permit this project has continued after the emergency work has been completed.

Since the shoreline, since the development work was done in the Shoreline Setback Area it required the variance, it also required the Environmental Assessment to assess impacts to the nearshore environment. The Major Permit and the Variance were submitted on November 30th. On February 23, 2010 the Commission reviewed the draft EA with 11 comments and questions answered. After that, the applicant also went to the Maui Lanai Island Burial Council on two dates, March 25th and April 29th, 2010 to present the project because there were some potential issues. The Burial Council had no comments on the Environmental Assessment and on November 23rd, 2010 last year, the Maui Planning Commission accepted the final Environmental Assessment – accepted a Finding of No Significant Impact, that the development does not result in significant environmental impacts to the surrounding properties, the nearshore waters, natural resources and archaeological resources on the site or in the immediate area. And then finally, in this long list of activities, on February 3rd, 2011 as part of the Maui Planning Commission site visit to West Maui, the site was visited. It was the very last site that we had visited in Napili.

So your purpose today is to conclude with this public hearing process on the SMA Use Permit application and the Shoreline Setback Variance application before you today. Again, the final Environmental Assessment has been accepted as a FONSI and so if there are no further or any questions from the Commission regarding the project history or the Planning permit process I would like to ask the applicant to really focus on just a very short review of the project and then go through the SMA criteria for your benefit so that you can conclude that the project has been done in a, in the best, with best management practices and to accept the Shoreline Setback Variance and the SMA Use Permit today. So with that, if there are any questions, and the Chair's permission I'll turn it over to Matt Slepín.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: One question. Has the what do you call, all the conditions has been met being that this project is done?

Mr. Buika: Yes. All conditions have been met and the project has been completed.

Mr. Freitas: Thank you.

Chair Hiranaga: Okay, proceed.

Mr. Buika: Thank you. I'd like to present Mr. Matt Slepín from Chris Hart and Partners.

Mr. Matt Slepín: Thank you, Jim. Matt Slepín, I'm a Senior Associate at Chris Hart and Partners, we're serving as planning consultants for the project. You'll work it for me. Fantastic. As, as Jim said, this project's been seen a couple of times already by the Planning Commission during the EA process and you did see it at the site visit a couple months ago, so I'm gonna try to be fairly brief on this. We've got Keonenui Bay right here, you've got the Kahana Sunset, you can see right there and this property is just north of that. As we get in a little bit closer this is Hale Malia Place, that's the beginning of the Kahana Sunset. You can see there's the house with the swimming pool, and you could just see this photo was taken during the collapse event that occurred at the end of 2007. This gets us in a little bit closer, I tried to play with the contrast to make that pop out a little but it's a little dark to see, but what's, what's relevant to see here is is that portion of the coast is done at the shoreline is essentially black basalt, it's categorized in the soils report as rough broken stony ground, something like that. I forget the exact term, but it's not beach sand in other words. So there's a sort of a, a natural armoring of the coast here from the basalt and then perched over that is the soil upon which the, the house and the yard were built. No, that's good go ahead.

So here's, here's the collapse event again. You can see the distance from the pool was roughly ten feet and essentially what happened is that there was an existing unpermitted retaining wall on the site that was holding the soil in. That, that, retaining wall had some problems notably it had no real drainage. So over the course of about seven years after it was constructed it was holding in moisture behind it as there were rains and storm events and eventually the whole thing just slide off the rock beneath it and collapsed or most of it did. This from down on the shore. You can see here's the stony coastline that fronts this part of the bay. This is the remains of the original unpermitted retaining wall and this is that big chunk of soil and sediment that fell off. This is a little bit closer. Again, you can see there's some exposed pipes and drain lines that that came out during the collapse and this is again a piece of that original unpermitted all. I'll note that the current owner did not build that wall that was a previous owners who built the house and the original wall.

Since Jim mentioned, we had a consultation both with the Maui County Planning Department and the State Office of Coastal Conservation Lands to determine what the best course of action was. Everybody agreed that in a situation like this, the best course of action was to try to come up with an emergency mitigation that would also be the long term mitigation. So that you wouldn't come back in and rip everything out again and expose all the soil and present more opportunity. Therefore, the emergency permit and the building permit process took a little while. We examined

various alternatives. There were about three different design alternatives that the project engineers came up with. To come up with a wall that was going to work in the short term and work in the long term. And essentially what, what you've come up with then is an engineered retaining wall holding the soils back behind the wall roughly 75 feet which is the, the stretch of the, of the property fronting the bluff somewhere in the area of 29 feet above sea level it meanders a bit, but approximately. And here's the, here's the wall then finishing after construction. This is about a year ago. The original wall was just sort of that remnant piece was capped off and then the new wall was constructed up above that.

So this shows us the site plan. Here's the residence. This is the swimming pool right here. We've put up, the, the new retaining wall and a chainlink fence up over that and the, the lawn there renovated with the, with the space remaining. The purpose and need of the wall was, was multiple, but essentially it was to prevent any further soil erosion and collapse into the bay there. There was concerns not just for the existing property but for public safety, health and welfare and sedimentation into the bay and losing all of that soil up above.

As, as Jim mentioned because of the, the nature of the SMA Rules as well as the Shoreline Setback Rules, we went through the Chapter 343 State Environmental Assessment process. This body was the accepting authority for the EA. You commented upon it in February of last year and then accepted the final and issued the Finding of No Significant Impact in November of last year. I think there are two new Commissioners now but everyone else I believe was here at that time.

Then I'm just going to run through without trying to be too boring, a little bit of the SMA criteria and how this project fits into that. The, the first criteria is that it involves an irrevocable commitment to loss or destruction of any natural or cultural resources. There were no, no cultural remains identified during the archaeological inspection of the property. There was some discussion that came up during the EA process about a potential for burial and a sea cave on site although it was never found, the conclusion was that there may have been one back behind that old wall that was covered up about ten years ago then.

The second criteria is that it significantly curtails the range of beneficial uses of the environment. The wall does not curtail these uses, it, it keeps the soil in place, it doesn't substantially alter the coastline.

Number three, conflicts with County or State's long term environmental policies or goals. It's actually in compliance with those goals to mitigate the potential for further impacts from soil erosion. There aren't any impacts to flora or fauna, archaeological or cultural resources.

D, substantially effects the economic or social welfare and activities of the community, County or State. The idea of this project is to improve public safety in the area.

E, involves substantial secondary impacts such as population changes and increase effects on public facilities, streets, drainage, sewer, water systems, et cetera. This does not have any substantial secondary impacts. It isn't a population generator for instance.

F, in and of itself, has no significant adverse impacts, but cumulatively, I can say that word,

cumulatively, yeah, that's an English major, cumulatively has a considerable effect upon the environment and involves a commitment for larger actions. There's, there's no commitment for larger actions here. The retaining wall in this case is, is located outside the reach of the waves on a basalt outcropping. It therefore, doesn't artificially affect wave action or coastal processes.

G, substantially effects rare, threatened or endangered species of animal or plant or its habitat. There are no identified rare, threatened or endangered species of animal or plant or its habitat. There's no identified wetlands in this property.

H, is it contrary to the State Plan and County General Plan, appropriate community plan, zoning and subdivision ordinances, this retaining wall supports the approved use for the property which is single family subdivision. I, – or single family residence, excuse me.

I, detrimentally effects air or water quality or ambient noise levels. It has no impact on air quality or noise levels, it's supposed too in fact protect water quality by preventing any more soil collapse into the bay.

J, effects an environmentally sensitive area such as flood plain, shorelines, tsunami zone, et cetera, et cetera, I won't read the whole thing. The project site is located out of the flood zone largely because it's up on a cliff, 30 feet above the shoreline and it's not regulated in terms of Flood Insurance Rate Maps. It is within the County shoreline setback but again, it's not on the shoreline, it's back on a rocky outcropping above the shoreline.

K, substantially alters natural land forms and existing public views to and along the shoreline. It does not alter the natural land form significantly nor does it interview [sic] with, with any views at present.

L, is contrary to the objectives and policies of 205A HRS which is the, the, the State's Environmental Law. It is not contrary to those objectives and policies, and I think the staff report probably goes into that with greater deal. That's the Special Management Area Permit

At the same time we're seeking a Shoreline Setback Variance because it falls within the calculated shoreline setback although again, it's not actually on the shoreline. The variance request meets the appropriate criteria for the approval of a variance and that is a private facility or improvement which does not adversely affect the beach processes nor artificially fix the shoreline provided that the Commission which is you, also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the area, the hardship here being one would presume that without the retaining wall there would be continual soil erosion due to rain as the, as the years would go on.

That's, that's gonna conclude my very brief presentation although I'm certainly available to answer any questions that you might have.

Chair Hiranaga: Commissioners, questions for the applicant and/or staff? Commissioner Mardfin?

Mr. Mardfin: This would be for staff. Is there a policy, at what point do we let natural things happen

versus trying to save property and homes?

Mr. Buika: Well, right now, right now our rules, your rules limit, limit the natural processes to continue until a structure, habitable structure is threatened within 20 feet of the shoreline. So if this bluff had been 40 or 50 feet from the habitable structure obviously it wouldn't be as threatened as, as it was. This was a serious situation where the pool being tied to the home could have caused a collapse. So I don't know what our policy is, but our rules at this point look at 20, a 20-foot criteria in terms of coastal erosion and impacts from, from the ocean waves in this, in this under the Shoreline Rules.

Mr. Mardfin: And, and if, I looked at it, it looks pretty solid to me, but if this were to collapse, we'd let him build another and another and another?

Mr. Buika: Actually the rules do address that also that if a, a permitted structure can only be repaired up to 50 percent of the valuation of the structure. So beyond that, the structure would not be allowed to be repaired according to your rules. So there is a valuation criteria. So if that entire house had collapsed, it would not be allowed to be repaired and replaced in that same location according to your, according to your rules. So there is a 50 percent reconstruction rule in the – due to damage, due to damage by coastal hazards. So the idea is, whole idea behind that is strategic retreat away from the ocean. If it had burned down, if there had been termites, other problems, it could be rebuilt 100 percent. So there is this 50 percent valuation criteria for rebuilding due to coastal hazards only.

Mr. Mardfin: Okay, so fire or termites they could do exactly what they have, but if, if more damage had occurred initially instead of just coming within 10 feet, if the pool had gone and the house was tipping in.

Mr. Buika: Yes, then we would –

Mr. Mardfin: They would not be allowed to rebuild?

Mr. Buika: Yes, according to your rules.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Mr. Buika, this is a small thing but I want to thank you for putting your name on this packet. Most of the planners don't and I, and I appreciate it because I am usually digging out the agenda to figure out whose project it is. Thank you.

Mr. Buika: You're welcome.

Mr. Spence: Commissioners if I could add just one thing too, Commissioner Mardfin's question and Mr. Buika's answer, shoreline setbacks now, I mean there's a preexisting home, it was built before our current rules so when people come in now and they want to build on shoreline properties, you

know we assess shoreline setbacks, we assess a lot of things now that were not done when that particular home was constructed. So nowadays if somebody comes in and they have a vacant property and they want to develop it, you know, the home would have been built significantly further back to allow for those shoreline processes just to –

Mr. Mardfin: And they admitted that there was an illegal retaining wall there and that wouldn't have been allowed if they tried to do it –

Mr. Spence: That's correct too.

Mr. Mardfin: If they had actually said that that's what they were going to do before they did it.

Mr. Spence: Yep.

Chair Hiranaga: Any other questions? Commissioner Shibuya?

Mr. Shibuya: It's more of a comment than a question, but I'm looking in terms of this retaining wall structure as remedial action. Fixing something that's broken. But something caused this and it says, moisture build up on the back of the retaining wall, and as you look at the entire picture in this area, it is on the slope, the makai of the huge mountainside and the water runs down and you find out that as we increase the population and the footprint of living spaces we have impermeable type of surfaces areas here and we're not controlling the water flow from the mountainside as well as from our homes and this is problematic for me. We are continually gonna be facing with this until we start facing up to the fact that we should be responsible for directing or redirecting some of this water flow. In Kihei, we don't control the gulch water and all of a sudden you find out Kihei is flooded. Here you have a planned community and the water somehow has to go to the lower parts and so it comes through this property apparently. Unless we fix that, this situation is not going to be fixed. This is remediation temporary.

Chair Hiranaga: Thank you. Any other questions from Commissioners? Commissioner Mardfin?

Mr. Mardfin: Yes, Mr. Chairman, actually I wanted to ask you a question as a realtor and maybe you know the answer, maybe you don't, I feel really sorry for the owner, the current owners of the property who bought it not knowing things. When they bought the property should they or would they have been told that there's an unpermitted retaining wall and that there's danger from that or is that not something that would have normally happened?

Chair Hiranaga: I'll have to claim the fifth on that.

Commissioners: ...(Laughter)...

Mr. Mardfin: Can anybody tell me whether a realtor is obligated to let the, let the new buyer know whether there are hazards like this?

Mr. Spence: I'll just, and I have a, a inactive license. You're supposed to disclose everything you know about the property. You know, you'd have to go in the transaction and all that stuff to

determine all that. But as a matter of course, if you're gonna be purchasing a coastline property, you would go hire an attorney to do research for you and, you know, I mean, you would do your due diligence before you're investing this kind of money, so – I mean, who knows happened with that transaction, but normally those things should be uncovered.

Mr. Mardfin: So the realtor if they knew about it should have disclosed to the potential buyer that there's an unpermitted retaining wall and if the realtor didn't then the potential buyer should have found out on their own? I just want to know what the story is.

Mr. Ball: Let me, let me clarify a little bit, it's not between –

Chair Hiranaga: Okay, well, Commissioner Ball – first of all, Commissioners should not be addressing other Commissioners, they should be –

Mr. Ball: Well, I want to clarify an incorrect statement by one of the Commissioners, Chair.

Chair Hiranaga: They should be addressing the Chair so –

Mr. Ball: Chair, may I correct his –

Chair Hiranaga: You can address an ...(inaudible)... Go ahead, and let's try to stay on point.

Mr. Ball: I'll look at him though, okay? I'll address you, but look at Mr. Mardfin. It is not the – there is a law, 508D that has the seller has to fill out a document which is called, the Seller's Disclosure Statement, and within there it will ask those sort of questions. Has anything built, been built illegally or anything? So I want to clarify that, that it's not the realtor's responsibility, it is the seller's responsibility and it actually states on the Seller's Disclosure Statement not to be filled out by anyone but the seller. The only exemption to that would be the banks. But other than that, there would be a document, a Seller's Disclosures Document. Now whether the seller knew that the thing was build illegally, it's up to them to disclose that and, you know, and that sort of thing. So anyway, just a clarification on that, Chair.

Chair Hiranaga: Thank you, Commissioner Ball. Once again, questions for staff or the applicant? Seeing none, I'm going to open the public hearing at this time.

a) Public Hearing

Chair Hiranaga: Is there anyone that wishes to provide testimony? Seeing none, I'm closing the public hearing. Staff, you have a recommendation?

b) Action

Mr. Buika: Yes, thank you, Chair. We have two. We have, I have quickly just the conclusions of law regarding the Shoreline Setback Variance. The Department finds that the applicant has met the criteria for the development in the Shoreline Setback Area as set forth in Chapter 203, Shoreline Rules for the Maui Planning Commission, Section 2, named purpose, and HRS Chapter 205A, as

amended, as well as Section 12-203-15 regarding criteria for approval of a variance and there are some of those points here in your recommendation document are A8, B, C, D, E, and F that meets those criteria. And we presented one of those slides on the A8 which was the private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline, et cetera. So that's it for the Shoreline Setback Variance as far as conclusions of law

Conclusions of law for the Special Management Area Use Permit, the Department finds that the Special Management Area Use Permit application complies with the applicable standards for the Special Management Area as listed as we went through A through L, all of those criteria in the presentation. The Planning Department based on the facts presented in the Department report finds that the proposed action as completed does not have a significant environmental or ecological effect since mitigation measures are incorporated into the project and that the said action essentially meets the objectives, policies and guidelines of the SMA Rules and that the said action is consist with County zoning and the West Maui Community Plan.

The recommendation for the Shoreline Setback Variance application, based upon the fact, the findings of fact presented in the Maui Planning Department's report to the Maui Planning Commission for its April 26th, 2011 meeting, the Maui Planning Department recommends approval of the Shoreline Setback Variance application request subject to six conditions and those are listed there, I will not read through them unless required.

And the recommendation for the SMA Use Permit, the Maui Planning Department recommends that the Maui Planning Commission approve the Special Management Area Use Permit subject to five standard conditions that are noted in, in your recommendations report noting that the proposed action has already been completed as part of the SMA Emergency Permit.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report prepared for the April 26, 2011 meeting and the Department's recommendations report prepared for the same meeting as its finding 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. Thank you.

Chair Hiranaga: Corporation Counsel would like to comment.

Mr. Giroux: Jim, you know, in Condition No. 2?

Mr. Buika: Yes.

Mr. Giroux: I believe that your reference to Special Management Area Use Permit is the reference to the Shoreline Rules?

Mr. Buika: And it should be the SMA Rules is that what you're saying?

Mr. Giroux: Should be the Shoreline Rules.

Mr. Buika: Where?

Mr. Giroux: Condition No. 2? Because you're –

Mr. Buika: Under the Shoreline Setback Variance, I'm sorry, or the SMA?

Mr. Giroux: I'm looking at your standard conditions. For some reason, you have 12, you're referencing 12-203, within the body of that, you're referencing the Variance, but in the beginning of the sentence you're referencing the Special Management Area Rules.

Mr. Buika: Oh, where No. 2 on Page 6?

Mr. Giroux: Yeah.

Mr. Buika: It should be referencing what? How should I correct it?

Mr. Giroux: ...(inaudible) the Shoreline Rules? Is that your intention?

Mr. Buika: Yes. It is, 12 -?

Mr. Giroux: 12-203.

Mr. Buika: 203. Is that – referencing?

Mr. Giroux: I'm asking you is that your intention?

Mr. Buika: Oh, I see. I'm sorry.

Mr. Giroux: I'm confused because –

Mr. Buika: I thought you were correcting me.

Mr. Giroux: I'm reading two different rules there, but to make it consistent I believe you would put Shoreline Rules.

Mr. Buika: 202 – or Shoreline Rules, okay.

Mr. Giroux: And then it would reference 12-203 which are the rules, and then it would continue to reference the Shoreline Setback Variance. And then 3, would reference all your Special Management Area concerns, right? 12-202-17?

Mr. Buika: Yes, I agree.

Mr. Giroux: All right. Just wanted to clarify.

Mr. Buika: Okay, thank you.

Chair Hiranaga: So would you like to restate that to the Commission, the changes?

Mr. Buika: There actually aren't any changes, but what I will do is in, in standard Condition No. 2, I will, I will spell out that the subject Special Management Area Permit shall not be transferred without prior written approval in accordance with the Shoreline Rules for the Maui Planning Commission, Section 12-203, I'll insert the Shoreline Rules for the Maui Planning Commission.

Chair Hiranaga: Once again, I'd like to address each item individually. So if we could open the floor to a motion regarding the Shoreline Setback Variance application?

Mr. Freitas: So move.

Chair Hiranaga: Just for clarity, Commissioner Freitas, could you just state your motion?

Mr. Freitas: Request the Special Management Area Permit.

Chair Hiranaga: No, it's a Shoreline Setback Variance.

Mr. Freitas: Shoreline Setback Variance to repair the wall.

Chair Hiranaga: Thank you.

Mr. Ball: Second.

Chair Hiranaga: Moved by Commissioner Freitas, second by Commissioner Ball. Discussion? I did have a comment, looking at your recommendation on Page 5, you have six items and I'm looking at No. 1, I guess this is a standard comment, but that the applicant maintain and require a safe lateral access to and along the shoreline for public use. So, isn't that rather onerous to place upon the property owner that they maintain and require a safe lateral access? I mean, it's a rocky shoreline? So if someone gets hurt crossing that area that makes the property owner liable?

Mr. Buika: The reason each of these six conditions were included is because it is part of your rules, the Shoreline Rules that these six conditions are required for any Shoreline Setback Variance. So I took them from the rules and did put them in here. It is across the top. It is, I think it meets that criteria. Once you're on the bluff, across the bluff, the applicant does have safe lateral access at that point. Down below it is not safe lateral access for sure. So that is a requirement of this, of the Shoreline Setback Variance according to your rules.

Chair Hiranaga: Not to belabor the point, but for clarity you're saying that lateral access at the top of the bluff is adequate whereas this says along the shoreline for public use. But isn't that State property above the high water – below the high water mark? It just seems like –

Mr. Buika: Yes, it is. I guess it depends on how you interpret the word, shoreline. And what lateral access is being maintained.

Chair Hiranaga: Maybe we could take a look at that in the future. Seems a little onerous to be placing it upon the property owner. If there's no further discussion, I'll call for the vote. All in favor of the motion so indicate – I'm sorry, Director, have you restate the motion?

Mr. Spence: To approve the Shoreline Setback Variance in accordance with staff recommendation.

Chair Hiranaga: All in favor of the motion, please raise your hand.

Shoreline Setback Variance

It was moved by Mr. Freitas, seconded by Mr. Ball, then

**VOTED: To Approve the Shoreline Setback Variance for the 11 Hale Malia Place Slope Repair Project, as Recommended.
(Assenting - J. Freitas, K. Ball, D. Domingo, L. Sablas, I. Lay, P. Wakida, W. Shibuya, W. Mardfin)**

That's eight ayes.

Chair Hiranaga: Motion is carried. Open the floor for a motion regarding the Special Management Area Use Permit. Commissioner Ball?

Special Management Area Use Permit

Mr. Ball: Chair, move to approve the Special Management Area Permit subject to the following standards and conditions.

Mr. Freitas: Second.

Chair Hiranaga: Moved by Commissioner Ball, seconded by Commissioner Freitas. Discussion? No discussion. Director, if you could restate the motion?

Mr. Spence: The motion is to approve according to the standard conditions.

Chair Hiranaga: All in favor of the motion, please so indicate by raising your hand.

It was moved by Mr. Ball, seconded by Mr. Freitas, then

**VOTED: To Approve the Special Management Area Use Permit for the 11 Hale Malia Place Slope Repair Project, as Recommended.
(Assenting - K. Ball, J. Freitas, D. Domingo, L. Sablas, I. Lay, P. Wakida, W. Shibuya, W. Mardfin)**

Mr. Spence: We have eight ayes.

Chair Hiranaga: The motion is carried. Thank you.

Mr. Buika: Thank you very much.

Mr. Spence: Thank you, Jim.

Chair Hiranaga: Next agenda item is B-3, Director?

Mr. Spence: Thank you, Mr. Chairman and Commissioners. The third public hearing item today is Mr. Alan K. Arakawa, Senior Vice-President of A&B Properties requesting an SMA Permit for the proposed Maui Business Park Phase II Subdivision, North Project Area. Our staff planner is Mr. Danny Dias, and as a reminder to the Commissioners, we do have a Petition to Intervene that we will have to deal with. Go ahead, Danny.

3. **MR. ALAN K. ARAKAWA, Senior Vice-President of A&B PROPERTIES, INC. requesting a Special Management Area Use Permit for the proposed Maui Business Park Phase II Subdivision, North Project Area, in order to develop a 32-lot light industrial subdivision, including subdivision road, common area landscaping, installation of utilities as well as drainage improvements at TMK: 3-8-079: 013, 021 (por.), and 999 (por.) and 3-8-001: 166 (por.), Kahului, Island of Maui. (SM1 2010/0005) (D. Dias)**

Chair Hiranaga: Okay, before you start Danny, I believe Corporation Council did you want to comment at this time regarding the intervention?

Mr. Giroux: Yeah, at some point we're going to need to dispose of some issues. I don't know, in the past, I think we've allowed the Planner to at least give a short description of the, the project is and then when he's done maybe we can call up the attorneys and then start to dispose of the intervention issue?

Chair Hiranaga: All right, Danny, thank you.

Mr. Danny Dias: Okay. Good morning, Chairman Hiranaga, Members of the Maui Planning Commission as Director Spence stated the item before you involves a Special Management Area Use Permit in order to construct the north project area of the Maui Business Park Phase II Project. This property is located in the area behind Costco and Kmart in Kahului between Haleakala Highway and Hana Highway. The project site is approximately 38.19 acres in size.

To add some clarification, Maui Business Park Phase II involves two different land areas. The first is called is the south project area and this portion is located behind the Maui Marketplace, Walmart, Home Depot and so forth. The second land area is called the north project area and this is the area behind Costco and Kmart. Only the north project area is located in the Special Management Area and that's what we're here for today.

Just a little history, this project has been through quite a bit of review so far. In 2004, an Environmental Impact Statement was prepared for the entire project. The final EIS was accepted by the State Land Use Commission in November of 2004 and in 2005, the Land Use Commission granted approval of a District Boundary Amendment from Ag to Urban for the entire project. In 2008, the Maui County Council approved the change in th zoning which rezoned these lands from

M – these lands to M-1, Light Industrial. The Planning Commission at that time did review and support the district boundary amendment and change in zoning. So this project has been going through review for almost a decade now.

As far as the project itself, I'll let the applicant give a more thorough presentation on it, but just a summary, it involves a subdivision and construction of a 32-lot light industrial subdivision which includes a loop road that connects to Haleakala Highway at two points. The applicant will basically create the subdivision, grade the lots, put in the infrastructure and so forth and then sell the lots. Future owners will then be responsible for building whatever it is that they plan to build. Keep in mind that since the project area is in the Special Management Area each individual lot owner will be required to come back before this commission and obtain an SMA Permit. So with that, I guess we can go into the intervention.

Chair Hiranaga: We're gonna depart from the normal process at this time and open the public hearing. Is there anyone here that wishes to provide testimony regarding this agenda item? Please come forward and identify yourself? And also, please limit your comments to three minutes. Thank you.

a) Public Hearing

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

Mr. Lee Ohigashi: Good morning.

Chair Hiranaga: As customary, please limit your comments to three minutes. Thank you, and please identify yourself.

Mr. Ohigashi: Yes, my name is Lee Ohigashi. I'm a lawyer. I'm here representing Dairy Road Partners, LLC, whose general partner is also here, Mr. Glen Nakamura. Essentially what I wanted to inform the Commission was that at on yesterday at 2:38 we filed a Petition for Intervention in the Docket No. SMA 2010/0005. And essentially my client is filing this matter late is because although he believes he's within the 500-foot radius, he didn't get written notice of it and only discovered it on Thursday which was – and Friday was a holiday and we were only able to put together admittedly hastily written petition to this, yesterday, yesterday. We'll be asking at that time if, if the Commission wish to address this petition later on. Because I believe the rules require you to dismiss or – before any final action be taken to determine the petition. We have arguments with regard to why the petition should be granted or at least a determination or hearing be held to determine whether the petition should be granted. Essentially that's my testimony.

Chair Hiranaga: Okay, thank you. Corporation Counsel, did you want to comment?

Mr. James Giroux: As far as what was stated by the testifier, it is accurate that the Petition to Intervene is filed, we are going to have to take that up according to your rules before final action, but I would advise that we probably take it up before we proceed on that agenda item in order to, to clear that because there are several things that the board will have to determine. It will have to determine some facts that right now may be in dispute as far as the petitioning date. The issues

of cause and if it does decide to grant it, then there's issues of, of an opportunity for the other party to, to address within a memo some of the issues that may be of, may be brought up as far as opposing the Petition to Intervene. So we will probably get to there because the board at that time will be addressing its adjudicatory functions. There's no reason to be changing the agenda. It would be seen that this issue needs to be resolved before we go any further or at a worse case scenario before you take final action. So the Chair at that time will take up issues of order and then we will try to dispose of the matters in a timely fashion.

Chair Hiranaga: Thank you. Any questions for Corp. Counsel or the testifier? Seeing none, thank you. Next individual is Earl Ichimura, please identify yourself.

Mr. Earl Ichimura: My name is Earl Ichimura. I'm the president of a company called Pural Water, a specialty company, we're a utility company in Hawaii with offices throughout the state and I'm here to testify on the SMA that you're about to review today for the A & B project, the Kahului Business Park, Phase II. And I wanted to, to report you, the Commissioners that I think this is a good project because for us as part of the community for the last 20 something years, economic conditions have been pretty bad and we think this project that you're about to review today is, is a project that is important for us in terms of the economy. My guys, we've been pretty slow in hours of work and we think this project will be, it will benefit the community and our, our staff here in Hawaii. So I would like to thank the Commissioners and the Chairperson to allow me to testify again on behalf of, of this project and we hope that you approve the SMA for A & B project, the Kahului Business Park, Phase II. Thank you.

Chair Hiranaga: Questions? Commissioner Wakida?

Ms. Wakida: I didn't quite hear you. What company did you say were?

Mr. Ichimura: Penny, Penny Wakida, right?

Ms. Wakida: Yes.

Mr. Ichimura: I was your student.

Commissioners: ...(laughter)...

Chair Hiranaga: That was not the question.

Mr. Ichimura: I know. But anyway I'm with Pural Water Specialty Company. We're a utility company at least in Hawaii and we have three offices in Hawaii and of all the offices, Maui has been the greatest impact for us.

Ms. Wakida: Thank you, and wonderful to see you again.

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

Mr. Bubba Thibodeaux: It's going to be less than that. Anyway, hello. My name is Bubba

Thibodeaux and I'm with TKH Construction and as a small general contractor I strongly support A & B in their efforts in pursuing this project. This project will help stimulate the economy by getting people off of unemployment and into the workforce. It will also bring more jobs to the Maui community once the businesses are established in this areas. I strongly ask to approve this permit today. Mahalo.

Chair Hiranaga: Thank you. Questions for the testifier? Seeing none, thank you. Is there anyone else that wishes to provide testimony at this time? Please identify yourself.

Mr. Vicens: Good morning Chairman Hiraaga, Hiranaga. My name is Mercer "Chubby" Vicens. I am the President of Vicens Entitlement Group and I am here testifying on behalf as a consultant to A & B. I actually worked on Phase I of Maui Business Park when we did Lowes and all the rest of the stores that, that exist there, and planned and was at and involved in the, the zoning and the conditions that set forth Maui Business Park II. This 38 acres is, is only a part of a 171 acre total project and is the only piece that lays within the SMA area. So therefore, I would like to urge you to support this application. It's for the SMA Permit for a relatively small portion of, of much larger area. So all impacts and conditions have pretty much been already dealt with at many different levels. Your action today represent the County's support of getting our economy going again. The best thing you can do for our economy is to approve this application as soon as you possibly can. This project has been through numerous points of review in establishing its zoning, community plan designations, et cetera. It is always – it has already been through State Land Use Commission, the Maui Planning Commission, the Maui County Council. It has already had dozens of conditions attached to it. As far as I'm concerned, there is nothing more to discuss in terms of conditions. Please support this Maui Business Park SMA. It would greatly be appreciated. Thank you very much.

Chair Hiranaga: Questions for the testifier? Seeing none, thank you.

Mr. Vicens: Thank you very much.

Chair Hiranaga: Anyone else that wishes to provide testimony at this time? Seeing none, the public hearing is now closed. At this time Corporation Counsel would like to comment.

Mr. James Giroux: Being that we are in receipt of a Petition to Intervene, we're going to have to dispose of some matters concerning that petition. I just want to read, you know, out of your rules just as far as what the Commission is looking at, at this point as far as how far we are going to go as discussing the Petition to Intervene. According to your rules, you have ten – a petition to intervene has to be filed no less than ten days before the first public hearing date. Today is the first public hearing date. You're gonna have to look at the date that that petition to intervene was filed and if it was filed in accordance to all of the rules of service, et cetera. So those questions are going to need to be asked and answered.

Your rules state that untimely petitions will not be permitted except for good cause but in no event will an intervention be permitted after the Commission has taken the final vote on the matter before it. So your rules do anticipate that people will miss deadlines. However, in order to continue to entertain whether or not you're going to grant a petition to intervene or not once it's deemed late

by this board is that, you will have to look into the issue of good cause and the question is why, why was it filed late and is that reason enough to deviate from your process?

Once, once those questions are answered, then the issue is whether or not you are going to go forward and entertain the actual petition to intervene. Your rules, the reason you have the ten-day rule is because there's also a five-day rule. If somebody is going to oppose that that petition within, within five days after being served, a person opposing the petition to intervene can file a motion to oppose the intervention. So your rules anticipate that both parties would be present and able to answer questions about whether or not the petition to intervene should be granted on its merits.

You are familiar with the Section 12-201-41 about interventions and that's gets complicated. I don't know if you want me get into that now. I mean, you already have quite a bit to take up in order to get to that point and maybe I can come back once we get there to walk you through the analysis of what would happen. But we need to hear from both parties as far as their positions and have them answer questions from you in order to get to the point of the issue of timeliness and whether or not service was made and whether or not a response is being requested. So Chair you may want to ask both parties to step forward so at least we know who the representatives are?

Chair Hiranaga: Okay, we'll ask a representative of the intervenor and the applicant to come forward, please? Please identify yourselves.

Ms. Karlynn Fukuda: Good morning Chair and Members of the Planning Commission. Karlynn Fukuda of Munekiyo and Hiraga on behalf of the applicant, A & B Properties, Inc.

Mr. Lee Ohigashi: I identified myself earlier, my name is Lee Ohigashi. I'm a lawyer. I represent Glen Nakamura, who's the general partner of Dairy Road Partners, Inc. or Dairy Road Partners LLC.

Chair Hiranaga: Okay, Mr. Ohigashi, we'll let you comment first. Commissioner Shibuya?

Mr. Shibuya: It's just a procedural type of a question. Will you give them a time limit on the presentation and will there be a rebuttal period and how much time would you allow for them?

Chair Hiranaga: At this time we're not going to be placing a time limit, but we just want the intervenor and applicant be sensitive regarding we do have a full agenda so – and as far as a rebuttal, Corporation Counsel?

Mr. Giroux: Your rules are silent on the issue, but since Mr. Ohigashi is the – he, he carries the burden at this point, so I would assume that he would have the last say on his, his petition. But that's not to say that there may not be questions that, that the more important part is that your questions are answered.

Chair Hiranaga: Okay, thank you. Proceed, Mr. Ohigashi.

Mr. Ohigashi: I'm going to take it in the order that the Corporation Counsel had – we admit, fully admit that we are late in filing because we filed yesterday. We filed, we filed yesterday at 3:38 p.m.

I think, the file mark stamp says. And we just handed this morning copies of the file-marked petition as well as our short memorandum to Munekiyo and Associates so therefore, we are late and we can't deny that.

The question then turns is to whether or not there's good cause to file late. And essentially we have two separate types of arguments and the first argument is actually the facts of what happened. What happened was Mr. Nakamura, who he has a business at 370 Dairy Road, who is a lessee, long term lessee from HRT found out about this – or this particular action being taken on Thursday which is if everybody remembers on Friday, it was a Good Friday which was a – which meant that the County Building and all offices were closed. So over the weekend, we tried to get as much information as possible and I was able only to contact me on Monday. And Monday afternoon, we had one hour to prepare a petition to intervene realizing that finding out that today was the deadline or today was the date of the hearing. That's essentially the facts of what happened. There was no intent for us to delay this filing, there was no – other than the fact, we didn't find out about it until a long weekend. If not, it would have been probably filed earlier on Friday.

The second question, the second thing is, is a – is also a factual question but it's also a notice question. The – Your rules require that or ask that or say that you have to send written notices of these hearings to all owners, lessees within 500 square feet of the affected parcel. My client says that 370 Dairy Road is within that 500 square feet and he's never – 500 feet, and he never received actual notice of this particular proceeding.

That – we filed a declaration to that effect along with our petition to say that a, that's he within 500 feet. We didn't have actual notice. Given the circumstances of the time when we found out and that is why, that is why we waited. We had to file, well, we tried to file on late Monday afternoon.

Mr. Nakamura went to his – after the filing he went to his engineer because he wanted to make sure that he was within that 500 feet. His engineer took a look at the GPS mapping and determined that it was too close to call. That there was an indication that it might be 510 feet his property. But the margin of error was too difficult to determine whether he was not in that 500 feet, and the only way to determine would be an actual measurement from the one – an actual measurement using I guess surveying points and making that determination which is almost too costly for anybody probably to do to make that determination. So being up front with you, we were saying that we believe that he was within that 500 feet or so very close that it doesn't matter that that is the reason why he didn't receive actual notice. And we are not, it's not necessary to blame that they intentionally failed to give us actual notice, it is to set the circumstances around the reason why we filed late and we believe we have good cause. If we had received the notice within the proper time, written actual notice, we would have been prepared to file earlier and have this matter disposed of at today's hearing. However, because of the sets of circumstances, given the fact that even the GPS review done by his own engineer, General Dynamics, indicates that it was questionable. We believe that there is good cause to believe that we could – for us to file at this late date. We ask the Commission's permission that we be permitted to at least have that good cause applied to our – our late filing of the petition.

The second part is that addressed by the Corporation Counsel is it's substantive, more substantive question is, is there a reason why we should be allowed to intervene? And I know that the

Corporation Counsel says that's something that the, that the Commission may want to, may want to decide or have memos on this subject, but as aside, a petition and it's poorly drafted I admit and it's because of a late date indicates that Mr. Nakamura's main concerns in this area is related to drainage and traffic and the economic impacts of traffic problems that would arise from this particular development on the use of Dairy Road.

One knows, without getting too much into, one knows the area by Costco, Haleakala Highway is a highway that borders Costco and goes around and takes this winding turn around, around the airport and goes all the way up and comes out up on Hana Highway. This is the main highway or road that is being used for ingress and egress for this particular development. It is not a two-way road. Traffic going to Paia up Haleakala, Upcountry will not take Haleakala Highway by turning right out of Costco or turning right out of this development or even coming down this development. This development will use Haleakala Highway to access Dairy Road and affect the businesses of traffic congestion, congestion over there. It's much easier to travel that method than to drive that winded road, triple your time driving that area to get access to Hana Highway. His main concern is that, is that traffic already bad on Dairy Road will cause economic impacts and according to your rules, those economic impacts are the subject of the SMA application, are the subject for your review and those, and based upon those economic impacts, it affects all the businesses, small businesses over there and we would like to – we believe that our intervention will give us a opportunity to provide evidence with regard to the effect of this economic impact and hopefully lead to mitigating matters in this ...(inaudible)...That's our – that's basically our position.

Chair Hiranaga: Thank you. Questions from the Commissioners?

Mr. Freitas: Yes.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: The 500 feet notification, I believe it is to be notified when the project is being proposed not when they're gonna be up – come before the Planning Commission and if I'm wrong correct me Corporation Counsel.

Chair Hiranaga: Director?

Mr. Spence: Thank you, Mr. Chairman. Yes, we give a 45-day notice to the applicant of the, the date of the public hearing. The applicant then prior to 30 days, they have to give 30 days notice to everybody within 500 feet of the public hearing. So at least 31 days before they need to get the notice out. I think the question here is how the 500 feet was determined. Everyone in 500 feet is notified.

Mr. Freitas: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Yeah, I have a series of questions for counselor. Your argument about you found out Thursday, your, your client.

Mr. Ohigashi: ...(inaudible)... my client.

Mr. Mardfin: Your client found out Thursday. Would have missed the timeliness notice anyway.

Mr. Ohigashi: That's correct.

Mr. Mardfin: So that's neither – seems to me to be neither here nor there, what we need to do is discover whether or not you should have – your client should have been notified prior and that's a technical determination on distance. Is that correct?

Mr. Ohigashi: We believe that that – without out boxing myself into that, we believe that we should have – we believe that we fall within the 500 feet. The question turns is that if using the methods that everybody has used whether or not our property would fall within the 500 feet or is it close enough to be within the margin of error to make it should have been included within the 500 feet.

Mr. Mardfin: I have a follow up question actually for the Director?

Chair Hiranaga: Yes, Commissioner Mardfin.

Mr. Mardfin: Suppose they're 520 feet away, is there any other way his client could have found out about this project and had an opportunity to respond?

Mr. Spence: Yes, we according to your rules, we do notice in the paper, in the newspaper a legal notice. Clayton, we do it once or twice?

Mr. Yoshida: We do it once in five newspapers the Maui News, the Honolulu Star Advertiser, Garden Island, Hawaii Tribune Herald and West Hawaii Today.

Mr. Spence: And even prior to the application being filed with the Planning Department the applicant files a notice of application in the newspaper as well. So there's – you know, there's other means to be aware of it.

Mr. Mardfin: And if I'm correct, has this – part of this come before us before with an EA or something like that?

Mr. Spence: Yes. I know prior to tenure, but they did go to Land Use Commission. They would have been required to get a change in zoning. So there's significant amount of public review by other governmental agencies. And the change in zoning would have come before this Commission on its way to the County Council.

Mr. Mardfin: I think I recall it that's why I asked. And so in all likelihood the Maui News would have written it up in some fashion or at least it's possible that the Maui News would have written it up in some fashion? I'm not asking you for a –

Mr. Spence: Yes, I would imagine. I don't recall seeing it, but I yes, normally it is reported.

Mr. Mardfin: So at least, so at least Mr. Ohigashi's client could have known something was afoot perhaps?

Mr. Spence: Perhaps.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I was looking at it last night, not anticipating what we have here a intervention but as I read through this on Page 6, it says on March 25, 2011 a notice of hearing on the application was published in the Maui News, Honolulu Star Bulletin. Now I subscribe to the Honolulu Star Advertiser, so when I got that I said, wait a minute they're gonna get the wrong name then I better check. So I went on the internet and I went to through the legal notices and I got a whole bunch of obituaries but I had nothing on this. So either I'm doing it wrong or it was not published. Can I be straightened out?

Mr. Spence: I'm, I'm sure we have affidavits from the newspapers to the effect of publication, that's one of our requirements.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Okay, we are here to ask questions of the intervenor. So is there anyone that has any additional questions for the intervenor? Commissioner Freitas?

Mr. Freitas: Yes, Lee do you know that they're – with this project they are coming in with a highway off of, in the back of Walmart and what have you where it will –

Mr. Ohigashi: Talking about the airport access highway proposed by DOT, is that the one?

Mr. Freitas: Yes, part of this project –

Mr. Ohigashi: I only had a, I only had a chance _-

Mr. Freitas: Wait, let me finish please. Which is part of this project to, to take what you call traffic off of Dairy Road and that was one of the requirements? Are you aware of that?

Mr. Ohigashi: Not the way I've read that. I don't believe – if you're asking me substantively whether or not that is correct, I cannot tell you right now if that is correct or, or incorrect. Or what I did read is that if that is the airport access highway that you're talking about that I'm not aware of any time table that that access highway would be developed. And that the way I read the report which I only got admittedly last night about 7 o'clock when I was finally able to secure it in the afternoon and ...(inaudible)... last night at 7 o'clock. The way I read the report, and they way I understood the report was that the development of this area was supposed to take up into 2014 I believe or they expect a build out in about ten years and there was no time table on the airport access road. If the airport access road is going to be able to be developed then at concurrently then I didn't see that

in the report and maybe I'm wrong, but I didn't see that.

Secondly, if the airport access road is developed, there's no provision for Haleakala Highway to connect to the airport access road that I could see and if you take a look at that, if Haleakala Highway road is meant to be a reliever road to help take it away from, take it away from Dairy Road or that area then the connection towards Dairy connection from this development, additional traffic from this development to get onto Hana Highway would have to connect from, would have to connect to the airport access road and I didn't see that in the report or any provision for that, I don't know.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: Yes, but that's –

Mr. Ohigashi: But that's the only thing I can tell you.

Mr. Freitas: Right, right now the applicant before us has a provision to enter and exit the Haleakala Highway and it will be a reliever road.

Mr. Ohigashi: Is that, is that in the report? I haven't – but I don't believe that that's necessarily the issue before us right now. The issue before us right now is the question of whether or not intervention.

Mr. Freitas: Well, the only reason why I raise that is because your, your – one of your primary concerns was what you call the traffic on Dairy Road. That is the only reason why I raised that they will be relief of Dairy Road.

Mr. Ohigashi: And if what you say is true then, we would – intervention status would help us in determining whether or not the time tables for the development of that access road, the connection points and the actual traffic counts would match up with that. It would help us assist in developing the record for you to make that determination and I think intervention should be granted based upon that even if it ...(inaudible)...

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: I'm not sure if you had mentioned it before, but what is the customer base for Dairy Road Partners? What is the customer base for Dairy Road?

Mr. Ohigashi: They have a Shell service station and they have a convenience store and I think they hold the lease on Savers.

Chair Hiranaga: Any other questions for the intervenor? Commissioner Mardfin?

Mr. Mardfin: Yes, I'm, I'm just trying to – I'm sorry, we have a map on Figure 6 in here which shows where the project site is. Is there any way he can indicate where his clients have their site?

Mr. Ohigashi: The only way I can, if I can approach you?

Chair Hiranaga: Why don't we break for lunch and have the applicant provide a map when we reconvene to show the location of that parcel for –

Mr. Mardfin: That would, that would allow me to get a feeling for whether the 500 feet is a significant barrier or not if I knew exactly where you were in relationship to the project site and I'm not sure this map does it because I don't know where you guys are.

Chair Hiranaga: So, we're gonna have – the applicant will have an opportunity to provide their comments so at that time she can show you where the property is in relation.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: So before we recess, is there any additional questions for the intervenor? If not, I'll break –

Mr. Ohigashi: Chair, over the lunch break, if you just take a look there's a power station, MECO, they're right behind the power station of MECO, right there on Dairy Road.

Chair Hiranaga: Yeah, okay. So we'll break for lunch, reconvene at 1 o'clock and maybe we can talk story a little bit and come back. Thank you.

A recess was called at 12:00 p.m., and the meeting was reconvened at 1:01 p.m.

Vice Chair Shibuya: Planning Commission come to order. The last time we – before we took recess Mr. Ohigashi, you were presenting your position.

Mr. Ohigashi: I just wanted to revisit one thing that Mr. Freitas has asked me if I knew of anything? What I, what I checked on this was their Exhibit No. 33, and Page No. 16 I think, and 17, and they talked about the airport access road and I think he asked me that question if I ...(inaudible)... and when I read this last night, from what I understood it to say is the airport access road would be utilized rather than Dairy Road based on most recent plans for the airport access road, this is on Page 17, it has been assumed that Haleakala Highway and the airport access road will not intersect. However, an on ramp from the northbound airport access road to the eastbound Haleakala Highway is proposed but there is nothing in the plans within here that shows that there is any intersection or the proposal or who has proposing it. And is the off ramp, not a entry point so again, our point is, is the same, that all the traffic coming out will access Haleakala Road without – and go towards Dairy Road, that's our point. Anyway, the projections are based on a 2024 completion of the airport access road and we point out that although we know that A & B is not going to build it, but the State is going to build it and that A & B will contribute their fair share. However, according to their reports, there hasn't been a fair share agreement determined yet nor is there any indication of that airports have the funding source or the necessary capital improvement budget. So I think those types of issues would, would assist the Commission in being ...(inaudible)... a contested case procedure.

Vice Chair Shibuya: Okay, any other questions? Mr. Ohigashi, any other arguments? Commissioner Freitas?

Mr. Freitas: I'll let this fly.

Vice Chair Shibuya: Commissioner Mardfin?

Mr. Mardfin: I just want to make a quick comment. I'm not going to ask him questions about drainage or traffic now. I want to deal with the – at this point, I'm following the lead of our Corp. Counsel that we ought to decide on whether the timeliness and it wasn't timely. I want to have decided the issue about whether or not we should allow intervention. We should excuse the lack of timeliness and at that point, I'd be willing to entertain the other questions about drainage and traffic.

Mr. Ohigashi: I just have – Mr. Chairman, I just have one final point if I could make? My client is the general partner of a LLC. He runs small businesses. He has what do you call that now, his Shell Oil service station and his businesses along that Dairy Road. He's taken on this, this matter not for the purposes of delay, trying to make – or trying to hurt the economy. He's, he's beyond this point because as a individual, as a member of the public that is within proximity we believe 500 feet of the project that he has directly impacted about this project and the traffic that it will generate.

The second thing is that his, his motives are is that to make sure that these issues are addressed properly and not necessarily to assume to have taken, taken place. Just a reading of these, of the, of the report indicates that a lot of the impacts are mitigated by future infrastructure development. So the question is, that's why he wants to intervene in there to get – to make sure that these future impact, future developments can – will take place, will have the generating the mitigative factors and what mitigation factors in the meantime during the construction and during the time that this access road will be created will be able to – will be able to be implemented so that the economic businesses that suffer because of the congestion on that road, people don't use that road. People – businesses will suffer because – because of the congestion having to do with this is the main road to the airport. And because of that congestion, the businesses on that road will be economically impacted. We believe that it should, that our, our intervention will assist the Commission.

Vice Chair Shibuya: Commissioners, this will be only questions to clarify not to have an and take a position. Commissioner Freitas?

Mr. Freitas: Yes, he quoted that what you call that, that traffic on the, on the – would, would be a tremendous impact. If, if I ran a gas station I would want traffic. It does not make sense to me why he would want less traffic if he's running a gas station heading towards the airport?

Vice Chair Shibuya: Commissioner –

Mr. Ohigashi: Really interesting, that's counter intuitive of what our data shows. We, we show that since the inception of his station, he ran about 300,000 gallons at the – in the early '80's and maybe '90's out of that station. Since the development of that area, and the increase in traffic, and the amount of cars and the – his volume has increased [sic] by one-third, to 200,000. Now everybody

can say well, you know, you get more fuel efficient cars et cetera, et cetera, but you would think that the increase of traffic would result in a increase of business, but it does not. It decreases business and why is because the local customers that you were serving avoid that area for that – for the purposes – because of the congestion, because of that and they go down to that area only because they have to and not necessarily because it is convenient and easy and fast, and that, that's your target customers. The one-time gas guys who come from – tourists that come from, that rent cars and use that road to access the airport, they're not necessarily the type of person that's gonna stop at Shell or that gas station all the time. It's the local, it's your customers that you have developed over a period of years, and if you increase the traffic congestion, it actually has a decrease. And that's the kind of the evidence that we would like to present in an intervention.

Vice Chair Shibuya: Commissioner Mardfin?

Mr. Mardfin: It sounds like my hope that we could bifurcate this question is being frustrated so I will ask substantive ones. What is your issue about flooding and drainage – your clients?

Mr. Ohigashi: I haven't been able to read, review this directly except that anecdotal evidence of his, of his station indicates that the whole area is subject to flood.

Vice Chair Shibuya: Mr. Ohigashi, we just want to have the merits of this particular thing. We'll be discussing that item. So if you will, talk directly to your petition for an intervention.

Mr. Ohigashi: I'm just trying to answer the question.

Vice Chair Shibuya: Yes.

Mr. Ohigashi: He asked me what's the basis of it, so that's the answer.

Vice Chair Shibuya: Okay, –

Mr. Mardfin: ...second one if I?

Vice Chair Shibuya: Commissioner Mardfin, I would like to hear from the A & B, so –

Mr. Mardfin: Okay. Does any of your client's concern have to do with the potential for Costco to be offering gasoline?

Mr. Ohigashi: Not for this petition. And I say that because this petition has – is strictly to do with traffic.

Mr. Mardfin: So in your – if, if you're allowed to intervene you wouldn't be raising any issues about competition from some related project?

Mr. Ohigashi: In fact there's a competitor right across if you're – from us.

Mr. Mardfin: Not substantially undercutting you in price.

Mr. Ohigashi: Well, that's a different type of issue.

Mr. Mardfin: Yes.

Mr. Ohigashi: That's a different type of issue. That's not a SMA issue.

Mr. Mardfin: Thank you.

Vice Chair Shibuya: Okay, thank you. Thank you, Mr. Ohigashi. We have Karlynn.

Mr. Yoshida: Mr. Chairman, I guess before the applicant provides their arguments, I would, as a note, direct you to Item C-1, regarding the report on the settlement agreement for the Buzianis case which Ms. Johnston is here and she says it only take a few minutes.

Mr. Mardfin: Do you need a motion to amend the agenda?

Ms. Mary Blaine Johnston: It's on the agenda.

Mr. Mardfin: Amend the order in which we take things on the agenda.

Ms. Johnston: Oh, on.

Vice Chair Shibuya: Yes please.

Mr. Mardfin: I move that we take up the agenda item involving Mimi at this point.

Ms. Domingo: Second.

Vice Chair Shibuya: It's been moved and seconded to take up this issue with Ms. Mary Blaine Johnston, the Deputy Corporation Counsel on the settlement agreement. All those in favor raise your hand. All opposed.

It was moved by Mr. Mardfin, seconded by Ms. Domingo, then

**VOTED: To Take Up Item C-1, Status Report on Settlement Agreement.
(Assenting - W. Mardfin, D. Domingo, J. Freitas, L. Sablas, I. Lay,
P. Wakida, K. Ball - abstain)
(Excused - K. Hiranaga)**

Mr. Spence: Four, five, six. Six ayes. No opposed.

Vice Chair Shibuya: And there's couple abstaining?

Mr. Spence: Oh, there was six ayes. The motion is carried.

Vice Chair Shibuya: Six ayes. Okay, thank you. So Mary Jane [sic].

C. COMMUNICATIONS

1. **MARY BLAINE JOHNSTON, Deputy Corporation Counsel providing a status report on the Settlement Agreement on the following matter: (T. Kapuaala) (To be taken up at 1:00 p.m. or shortly thereafter.)**

MR. JAMES B. TAKAYESU, attorney, representing MICAH BUZIANIS and CHARLOTTE STRONG appealing the Planning Director's Notice of Violation for exceeding the amount of dwellings allowed pursuant to the conditions of approval for a Special Management Area Use Permit for property located at 111 Makahiki Street, TMK: 3-8-002: 113, Spreckelsville, Island of Maui. (APPL 2010/0003) (T. Kapuaala)

Ms. Mary Blaine Johnston: Deputy Corporation Counsel Mary Blaine Johnston appearing on behalf of the County. Clayton has very graciously allowed me to come and have, I think I can do this in a minute. We represented to you I think in January, Mr. Takayesu, who represented Micah Buzianis and his mother Charlotte Strong that we had reached a settlement agreement. We did. It was typed up and sent out. It seemed to be moving very slowly. Mrs. Strong lives on the mainland. So to kind to encourage us to move faster I asked Clayton to let me put a status report. In fact, I did get the signature page this morning signed by Mrs. Strong. So I now have it and Mr. Spence signed off today too so I have a complete agreement. I would ask to be put on the agenda, hopefully at the next meeting because you, the Commission will need to vote to approve that settlement agreement. So that's basically why I'm here just to say that we're ready to go, we're ready to present it to you for consideration.

Vice Chair Shibuya: Okay, thank you very much. And Commissioners, any questions so far? None? Any objections? If there's no objections then we'll just place it on the agenda. Any objections? It will be placed, Clayton, on the next agenda.

Mr. Yoshida: Yes, Mr. Chair.

Ms. Johnston: Let me just add that you will be getting a copy of it in your packet before the next meeting and also, Mr. Takayesu has informed me he has another, a different, slightly different agreement he's going to present to you for consideration too. So, which we will be opposing but anyway, that will probably also be in your packet. So thank you, thank you very much.

Vice Chair Shibuya: Thank you.

Continuation of :

3. **MR. ALAN K. ARAKAWA, Senior Vice-President of A&B PROPERTIES, INC. requesting a Special Management Area Use Permit for the proposed Maui Business Park Phase II Subdivision, North Project Area, in order to develop a 32-lot light industrial subdivision, including subdivision road, common area landscaping, installation of utilities as well as drainage improvements at TMK:**

3-8-079: 013, 021 (por.), and 999 (por.) and 3-8-001: 166 (por.), Kahului, Island of Maui. (SM1 2010/0005) (D. Dias)

Vice Chair Shibuya: Karlynn Fukuda, please?

Ms. Karlynn Fukuda: Good afternoon, Chair. Karlynn Fukuda of Munekiyo and Hiraga. Right before we left for the lunch break there was a request to see the location of where the intervenor's parcel is relative to the site. This is Parcel 13 where the proposed project is located. I believe this here is the location of the intervenor's site. Would you agree, Mr. Ohigashi?

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

Ms. Fukuda: Yeah. The other thing, what I'll do is I'll pull up the real property tax map exhibit that we have here. Again, this is the location of the subdivision improvements itself, and this triangle parcel here is the location of, I believe, of the intervenor's parcel. So –

On behalf of the applicant, A & B Properties I would like to state for the record that the applicant is opposed to the granting of the Petition to Intervene as we feel that there is not good cause for the late filing. We went back and we checked our records and the parcel in question that Mr. Ohigashi's client is a lessee on was noticed in the 500-foot public hearing notice application. Also, I would like to point out in the Planning Commission Rules that you have specifically with regards to the notice of public hearing if I may quote from your rules, it says, "applicants mailed notice of public hearing shall not be mailed less than 30 calendar days before the hearing date by certified or registered mail, postage prepaid to owners of real property situated within 500 feet of the boundaries of the parcel that is the subject of the application." For your information, I do have a copy of the certified mail receipt for the parcel in question that is signed.

So there was notice provided to the parcel. The notice was provided to the owner of the parcel which is HRT Realty, LLC. So with that, we believe that the untimely request, there is no good cause for granting the Petition to Intervene and that's our argument.

I do have other points that I would like to bring up to the Commission, but understanding Commissioner Mardfin's position and what appears the Chair's position as far as disposing with the other items that first it appears that you, the Commission will take up whether or not there was actually good cause for the late petition filing but I would like to note that we do have responses with regards to the traffic and drainage concerns that were noted by the intervenor. So –

Vice Chair Shibuya: Thank you. Commissioner Wakida?

Ms. Wakida: What is the date on – that that was sent?

Ms. Fukuda: Let's see, the notice of application was mailed out on March 16, 2011.

Ms. Wakida: March 16?

Ms. Fukuda: Yes.

Ms. Wakida: So that was for this public hearing?

Ms. Fukuda: Correct. So it was well within 30 days of the notice of public hearing for this hearing.

Ms. Wakida: Thank you.

Vice Chair Shibuya: Commissioner Mardfin?

Mr. Mardfin: What was the address used for this particular lot?

Ms. Fukuda: Our office goes through extensive review with the 500-foot review. We go to the County of Maui, Real Property Tax website, the FTP site which is the actual Real Property Tax records and update them within the 30 days that we're mailing out the notices. We also cross check with the publicly available records that are there. And I also have a copy of the –what's publicly available on the Real Property Tax website for the parcel and there is only one address listed on the Real Property Tax records and it's 3660 Waiālae Avenue, 400, Honolulu, 96816.

Mr. Mardfin: So it was mailed – so, two things, you're not contesting that this is outside the 500-foot limit?

Ms. Fukuda: No, we are fairly conservative when it comes to our 500-foot measurements and if there is a question as to whether or not that is our personal policy in our office, if there is a question, whether it's in or out we are usually more conservative.

Mr. Mardfin: And then you sent the notice to a Honolulu address?

Ms. Fukuda: Yes, because that is the address that is listed on the Real Property Tax records as noted in the rules.

Mr. Mardfin: Thank you.

Vice Chair Shibuya: Any other questions, Commissioners? If not, Commissioner Wakida?

Ms. Wakida: Just one, and this is really for future reference, what is your method of determining 500 feet? How do you, how do you, what, what instrument do you use?

Ms. Fukuda: We use the engineering scale to measure on the real property tax maps from the boundaries of the real property tax parcel in question. And if there are multiple parcels we measure from all boundaries from all parcels.

Vice Chair Shibuya: Any other questions, Commissioners? Thank you very much, Karlynn.

Ms. Fukuda: Thank you.

Vice Chair Shibuya: Thank you. Commissioners, the question here is in terms of the intervention would you like to discuss this or who would like to go first and we're sticking to in terms of the

Petition for Intervention, thank you. Commissioner Mardfin.

Mr. Mardfin: Yeah, James earlier or our esteemed Corporate Counsel earlier said, we have to determine whether it was timely, ten days in advance. There's no question that it was a late filing. Then he said, we – our concern is if they missed the deadline, why they filed late. It seems to me that the applicant, A & B Properties through their consultant, followed what the law was. They're not contesting whether it was 500 feet. They sent it out to the owner of record and it seems perfectly proper. It seems that the owner of record did not notify the lessees if we're to believe Mr. Ohigashi, did not inform the lessees – lessors to lessees about notice, but it would strike me that justice would be that they have a substantial business interest in this and that the fact that they weren't notified on time is beyond the ability of, of the petitioner to have known. So I'd be for allowing a discussion of the petition on its merits and therefore, being essentially saying that they missed the deadline but the reason it was filed late is a reasonable – a reason not to have known in time.

Vice Chair Shibuya: Other Commissioners?

Mr. Freitas: I'd like to call for a vote.

Vice Chair Shibuya: Okay.

Mr. Freitas: I'd like to make a motion to –

Vice Chair Shibuya: To call for a vote?

Mr. Freitas: Yeah, to call for a vote.

Vice Chair Shibuya: Are there other discussions on this matter because I'm just gonna ask any objections to calling a vote.

Mr. Mardfin: We don't have a motion on the floor.

Vice Chair Shibuya: Yeah, we don't have a motion.

Unidentified Commissioner: We don't.

Vice Chair Shibuya: But he would like to make a motion.

Mr. Mardfin: You want to make a motion?

Mr. Freitas: Yeah, I'd like to make a motion that we deny the intervention on ...(inaudible)... it was not filed on a timely manner and they show an extensive business interest in this project.

Vice Chair Shibuya: Okay, it's been moved.

Mr. Lay: Second.

Vice Chair Shibuya: And second. By Commissioner Freitas and then seconded by Commissioner Lay that we deny this request for intervention. Any discussions on this matter? Commissioner Mardfin.

Mr. Mardfin: I'm going to vote against this motion. I will not – I agree it was filed late. I think there were rational reasons for it being filed late because notice was provided to the owner of the property but not to the lessee. The law doesn't call for the lessee to be done but the fact that they weren't notified is, is reason to allow for a late filing and so I have to vote against the motion to deny intervention. I presume the denial of intervention is on the basis that there is no legitimate reason for them to have missed the deadline.

Mr. Freitas: I agree that there's no, no what you call, reason for them to miss the deadline because it's been in the newspaper, it has been all over the place and if somebody had an interest they should have filed – even if they did not receive a notice, any business person that was in the business community know that Costco was going to put up a gas station.

Vice Chair Shibuya: Okay, Commissioner Sablas?

Ms. Sablas: Before we call for the vote can I ask Mr. Ohigashi to come and respond to the applicant's remarks because that was –

Vice Chair Shibuya: Okay, please? Mr. Ohigashi, your response is to the A & B Properties contention that the owner received the notice by the lessee did not?

Mr. Ohigashi: We haven't gotten notice. If we would have gotten notice we would have filed as soon as we received notice. That's – my client has made it clear to me and has stated many times that he didn't get any kind of notice from the owner or lessee. With regard to, my understanding that this is not on the Costco project.

Vice Chair Shibuya: That's correct, right.

Mr. Ohigashi: So I'm kind of confused as to the motion.

Vice Chair Shibuya: No, just – you've provided us a response there, thank you.

Mr. Ohigashi: Okay.

Vice Chair Shibuya: Commissioners, any other discussion? Commissioner Mardfin?

Mr. Mardfin: I'd just like to say one thing. In past meetings we have denied intervention. We have been told by the courts we were wrong on that. I am for permissive intervention so that's why I'm – and I can see some justification for why they missed the deadline that's why I'm going to be voting against the motion to not accept the intervention.

Vice Chair Shibuya: And Commissioner Sablas?

Ms. Sablas: Can I ask for Counsel advice?

Vice Chair Shibuya: Counsel? The question is? The case of permissive intervention.

Mr. Giroux: That was big, counsel advice.

Vice Chair Shibuya: One was actually the owner got the notice, the lessee did not. So is that grounds for denial?

Mr. Giroux: In all fairness I think that this body is – just got to take ownership of the facts and the law in this moment because you know, it's a close call here. You know, it's your process, your rules, your understanding of what's fair and not fair and it's gotta to be a corporate decision with five people or more. So, you know, as far as you know what the facts are and you know what your rules are so you're gonna apply those facts to your rules and if five people agree on that decision then it should stand.

Vice Chair Shibuya: Commissioners, are you ready for the question? More discussion, question? So the Planning Director will you state the motion please?

Mr. Spence: The motion is to deny intervention.

Vice Chair Shibuya: Members, all in favor of the denying the intervention, raise your hand.

Mr. Spence: Six ayes.

Vice Chair Shibuya: Opposed.

Mr. Spence: One opposed.

It was moved by Mr. Freitas, seconded by Mr. Lay, then

**VOTED: To Deny the Petition to Intervene Filed by Mr. Lee Ohigashi on Behalf of Dairy Road Partners.
(Assenting - J. Freitas, I. Lay, D. Domingo, L. Sablas, K. Ball, P. Wakida, W. Shibuya)
(Dissenting - W. Mardfin)
(Excused - K. Hiranaga)**

Vice Chair Shibuya: So it passes. The motion is to deny the intervention. We can continue.

Mr. Mardfin: May I ask the Corp. Counsel something?

Vice Chair Shibuya: Sure.

Mr. Mardfin: James, what's their next step if they wish to do something? Take us to court?

Mr. Giroux: Yeah, your rules allow that once the intervention is disposed with that there's an appeal process.

Mr. Mardfin: Does that do anything to what we with the rest of the day on this issue?

Mr. Giroux: No, absent a stay from the court, you're free to proceed with the matter.

Mr. Mardfin: Thank you.

Vice Chair Shibuya: Commissioner Wakida?

Ms. Wakida: And I have a question to our Planning Director is there another process, another opportunity in this process for a public hearing for this particular project?

Mr. Spence: This would be the last public hearing for this project. But there's been State Land Use Commission, a rezoning, meeting of the County Council and before this body. This is the last one.

Vice Chair Shibuya: Okay, A & B Properties, Ms. Karlynn Fukuda or is it Erin, please state your name please?

Ms. Erin Mukai: Hi, good afternoon, Chair and Members of the Commission. My name is Erin Mukai. I'm with Munekiyo and Hiraga and I'm here today on behalf of A & B Properties to review the SMA Use Permit application before you today for the proposed Maui Business Park Phase II project. Here this afternoon are members from the project team who are available for questions following the presentation. As noted, we are here today to review the SMA Use Permit application for a 32-lot light industrial subdivision proposed by A & B Properties.

Their project site here in gray is approximately 38.2 acres and is located in Kahului adjacent to Costco and Kmart. Immediately to the north is Haleakala Highway and to the south Hana Highway. There's quite bit of history for this project and to give you a little bit of background, the Maui Business Park Phase II project is actually made up of two noncontiguous properties totally a 179 areas. These two properties have been reviewed to as the North Project area and South Project area. The South Project area covers almost a 141 acres and is located outside of the SMA. On the other hand, the North Project area is approximately 38 acres and a portion of that property is located within the SMA. In 2004, an EIS was prepared for the project and that was later accepted by the State Land Use Commission. Then in 2005, a district boundary amendment was approved for the entire project area with condition. And as Danny had mentioned previously, the – recently the County Council approved a change in zoning for the project with conditions and this was previously reviewed by the Planning Commission in 2005 who recommended approval to the County Council.

This is an aerial photo identifying the location of the north project area here in white and outlined here in red is the south project area. In terms of the project before you today, A & B is proposing to construct a 32-lot light industrial subdivision known as the North Project area, and this project will include a loop road within the subdivision that connects to Haleakala Highway as well as widening of Haleakala Highway adjacent to the project site. The lots will be graded and provided

with infrastructure and utility connections under Hana Highway and through Haleakala Highway. The installation of drainage facilities, landscaping and irrigation, subdivision signage are also proposed as part of this project.

This is a subdivision map. I'll point out Haleakala Highway here, Hana Highway here, and the proposed Kahului Airport access road. This is the looped road within the subdivision that connects to Haleakala Highway. Lot sizes in the subdivision range from approximately half an acre to around three acres. There are a total of four parcels included in this project. The first being Parcel 13 which is owned by Alexander and Baldwin and the proposed use of this parcel is to construct the 32-lot subdivision. The remaining three parcels, Parcels 21,999 and 166 are all owned by the State of Hawaii and these will be used for the installation of underground water lines to service the subdivision.

So this figure here better illustrates the location of the proposed water line which is outlined in dashed red. You'll note that it traverses through Parcel 166, 21, 999 before entering Parcel 13. The slide also illustrates the location of the SMA line which is here in blue. So all properties makai of that line or north in this case are located within the SMA.

In terms of water, potable water to serve the project will be provided by a private source, Waiale wells via proposed 16-inch transmission line, and this line will be installed underground within Parcel 13, 21, 999 and 166. A proposed 12-inch water line within the subdivision road will provide water service to lots within the subdivision. And each lot will be provided with a 3/4-inch water meter. Preliminary water demand is estimated to be approximately 78,700 gallons per day for the lots. And additionally, a separate nonpotable water system will be provided for landscape irrigation as well as to reduce potable water use.

A proposed eight-inch sewer line will also be installed within the subdivision road with a four-inch service lateral for each lot. The eight-inch line will connect to an existing 12-inch line in old Haleakala Highway and preliminary wastewater calculations for the subdivision is approximately 40,100 gallons per day.

The drainage master plan for the entire Maui Business Park, Phase II project includes mitigation measures that addresses both storm water retention and storm water quality. There are two existing large retention basins in the south project area which will be expanded to provide 121 acres feet of storm water retention and this is equivalent to 100 percent of the runoff from both the north and south project areas during the 100-year storm. And additionally, the existing A & B drainage channel which currently serves Kmart, Costco and other commercial properties will also serve the north project area, and this is a private drainage system that had previously addressed some of the flooding that occurred near the vicinity of Dairy Road and Haleakala Highway. Lastly, storm water runoff will be pretreated prior to entering the drainage channel. Catch basin filter inserts will be utilized at storm drain inlets within north project area.

There is a two-lane roadway with a sidewalk proposed within the subdivision also called the loop road. Road widening of Haleakala Highway fronting the project site is also proposed and a sidewalk will be installed. And currently, A & B is in discussions with the State Department of Transportation regarding A & B's fair share of the cost for regional transportation improvements and this is a

condition of the DBA.

And so this concludes the presentation, and we are available for questions if you have any. Thank you.

a) Public Hearing

Chair Hiranaga: At this time, I'd like to open the public hearing. Is there anyone here that wishes to provide testimony regarding this agenda item? Seeing none, the public hearing is closed. Open the floor to commissioners for questions to the applicant or staff? Seeing – oh, Commissioner Wakida?

Ms. Wakida: I'll start. Does this, in the utility department is this, are there going to be underground utilities for this subdivision?

Ms. Karlynn Fukuda: Yes, there will be underground water lines. I believe the electrical also, is underground, and sewer, all of those drains.

Ms. Wakida: Okay. And what about lighting, what about light poles? I didn't see that in here.

Ms. Fukuda: I believe that there are lighting for the roadway itself.

Ms. Wakida: Yes.

Ms. Fukuda: Within the roadway that's proposed and that would follow the Outdoor Lighting Code for the County of Maui which would be shielded fixtures. So –

Ms. Wakida: Okay, yes, I just didn't know if you were constructing the light poles or putting them in.

Ms. Fukuda: Yes.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Karlynn can you tell us if there's any renewable generation of electricity? Will these features added to many of the structures or projects within this area, and if not, why not?

Ms. Fukuda: Thank you, Commissioner for your question. The proposed action that A & B has before you today is the subdivision of the lots itself. I would like to note that as previously noted there are conditions on this project already because of the District Boundary Amendment and change in zoning and, I'm sorry, I'm not sure what exhibit that is within your staff report, but I know it's in there and for the District Boundary Amendment if you look at the decision and order, Condition No. 18, does talk about implementing energy conservation measures, oh, Exhibit 34, such as the use of solar energy and solar heating and incorporate such measures into the project. So

there is a condition with regards to the use of energy efficiency. And that I believe also in the change in zoning ordinance which is Exhibit 35, Condition No. 13 says, "that to the extent practical alternative energy shall be utilized including but not limited to the use of solar energy to heat water." So there are existing conditions on the property for energy conservation measures.

Mr. Shibuya: Right, you mentioned in terms of conserving electricity such as getting solar collectors for heating water. And of course, getting more efficient type of appliances, but what I'm acting – actually alluding to is the State Legislature enacted Act 269 which establishes a renewable portfolio standards in which the utility sells 40 percent of the power generated by renewable resources by 2030. The purpose of this Act is to decrease Hawaii's need to import large amounts of oil and increase importation substitution that is economic efficiency and productivity by increasing the use and development of Hawaii's renewable energy resources through a partnership between State and the private sector and I just wanted to go back to this that the Hawaii Clean Energy Initiative of 30 percent conservation, 40 percent renewable generated power. So there's two phases of it, conservation and generation. Thank you.

Ms. Fukuda: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Karlynn, the report says you're gonna get your potable water from Waiale wells?

Ms. Fukuda: Yes.

Mr. Mardfin: How far away is that?

Ms. Fukuda: I'm not sure about the approximate distance I can ask the civil engineer to respond to the approximate.

Mr. Mardfin: Just crudely.

Ms. Fukuda: It's in, in about the location of the Maui Lani area, where the Maui Lani –

Mr. Mardfin: So like five miles or something like that?

Ms. Fukuda: I'm hearing two and a half approximately

Mr. Mardfin: Are the underlying water pipes already laid for that to go down to this project?

Ms. Fukuda: Construction is going to be initiated on the installation of those underground water lines, yes. It hasn't – oh, it has started? Oh, it started, excuse me.

Mr. Mardfin: And nonpotable water is coming from the south project area?

Ms. Fukuda: Yes, A & B as you may know is also or HC&S Hawaii Commercial and Sugar is a subsidiary of A & B and so there are nonpotable water sources in the area that they will be utilizing

for the irrigation source.

Mr. Mardfin: Is some of that coming from EMI?

Ms. Fukuda: I believe there are brackish wells actually in the vicinity if I'm not mistaken. So that's where the water is actually coming from.

Mr. Mardfin: So the answer is, it's not coming from EMI?

Ms. Fukuda: No, I don't believe so. Yes.

Mr. Mardfin: One more?

Chair Hiranaga: Yes, Commissioner.

Mr. Mardfin: Totally different topic. Do you have any idea of what sorts of businesses will be in this business park?

Ms. Fukuda: As you previously had mentioned there is the expansion of the Costco area or the Costco facility and gas station that are being proposed. I would like to note that as part of the District Boundary Amendment condition there is a limitation whereby A & B can no – cannot have more than 50 percent retail operation in the entire north and south project area. So there is a restriction on how much retail can actually be. So it would be light industrial uses mainly or at least 50 percent would be light industrial uses.

Mr. Mardfin: And at least one of the properties would hold the potential Costco gas facility?

Ms. Fukuda: I believe they're actually looking at, yeah, it's three lots the Costco facility is looking at.

Mr. Mardfin: So there would be Costco, presumably would be Costco gas facility in this area?

Ms. Fukuda: Yes. For the north project area particularly, yes.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Wakida.

Ms. Wakida: Towards the end of the packet is a reference to contribution of ten acres of usable land for residential development. I'm assuming this was done a while back when it came under zoning change. Where is, it has – where is that ten acres?

Ms. Fukuda: Okay, I'll bring up Grant Chun from A & B Properties to respond to that question.

Mr. Grant Chun: Good afternoon, Mr. Chair, Members of the Commission, I'm Grant Chun here on behalf of A & B Properties. Thank you for the question. Actually the final condition that was arrived

at through the zoning process was that 40 acres actually be provided for the purpose of the County to do some planning and eventual establishment of affordable housing. That 40 acres has – we've been working with the Department of Housing and Human Concerns in establishing the location of that site and it's going to be in the general vicinity of, I guess the closest landmark would be Pomaikai Elementary School near the boundary of Maui Lani and where, where our holding begin. In the Kahului area.

Ms. Wakida: And that is for, being proposed for residential development?

Mr. Chun: Correct. Yes, ma'am.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: I'm looking at opportunities to improve or minimize the use of land that is so valuable on Maui. It's a finite quality in that we're using it for more roads it seems like. Here's an opportunity I think to minimize some of the roads by straightening it out by working with the State, the DOT. The air field at Kahului Airport, Runway 220 is being lengthened to 9,600 feet. So with this in mind, why have the access road, Haleakala Highway go around the edge of the runway when you can go under the runway? When we have an opportunity because the runway is situated at a higher elevation than the storm drainage and so you can have your highway right under the runway. And along side that have a culvert that runs all of your utilities which is your water line, your reusable water as well as electricity and gas, and gasoline to fuel your aircraft. Here's an opportunity I think that maybe if together working with the State as well as with the County perhaps we can pursue that kind of a initiative to minimize the use of land for roadways. And making humbug for the traffic going around the edge and exposing the vehicles as well as passengers to incoming landing aircraft on an extended runway now. That's all I going to say. Thank you.

Ms. Fukuda: Thank you.

Chair Hiranaga: Did you ask a question as to why they would not consider it?

Mr. Shibuya: I would like them to consider it, and that's about it.

Chair Hiranaga: Oh. Any other questions? Commissioner Wakida?

Ms. Wakida: Just one. I don't know if it's an inconsistency or if I'm just reading it wrong, but in the beginning part on page 8, on the top of page 8 is a reference to three existing water meters. But on Exhibit 18, it says there are six water meters? So I don't know if I'm missing something or if there's a discrepancy.

Ms. Fukuda: I'm sorry Commissioner Wakida, can you point out in Exhibit –

Ms. Wakida: Exhibit 18.

Ms. Fukuda: 18A? Oh, okay.

Ms. Wakida: Am I reading that correctly in the first paragraph. This is from the Department of Water Supply.

Ms. Fukuda: I know that there were existing uses on Parcel 13 prior to, if you've gone to Costco lately you've probably seen those dust fences that are up because there was the former Maui Pine seed plant as well as electrical substation that were there. So there were meters to service and then most recently I think those buildings have been repurposed for industrial uses. I think there was a auto body shop that may have been there. But with regards to your question, according to the civil engineer their research have only shown that there are three existing meters. So I'm not sure if the additional three that Department of Water Supply are referencing are maybe old meters that had been removed. But –

Ms. Wakida: Well, this is in September 2010, this letter. So, –

Ms. Fukuda: I guess essentially though that – for the subdivision itself A & B has received a confirmation of reliable long-term water source through the Waiale wells. So they'll be provided water source for the project. So they're okay for the meters, as far as the meter count. Is your concern that they don't have enough meters or the –

Ms. Wakida: No, my concern is how many meters are there? I think it should be cleared up. There's either three or there's six.

Mr. Mardfin: Mr. Chairman? If I read this correctly Exhibit 18 says six fire hydrants and on Page 8 it says three water meters and there's a difference between a water meter –

Unidentified Speaker: Above it says.

Mr. Mardfin: Above it?

Ms. Wakida: I'm looking at the first paragraph of that letter.

Ms. Mardfin: I see it. My mistake.

Chair Hiranaga: Commissioner Wakida, I'm not sure what relevance there is regarding how many meters there are now because when the subdivide the property each lot will get a new meter. So, not sure three meters, six meters, it doesn't really matter because there's going to be a lot more water meters installed when they build the project.

Ms. Fukuda: Maybe have three additional meters that –

Ms. Wakida: You didn't know about?

Ms. Fukuda: Yeah, but my, my guess is, you know, in conferring with the project civil engineer, you know, their records indicate that there are only three. So we have planned for that and we have

the ability to provide, you know, water meters for all 32 lots, so –

Ms. Wakida: Okay, well, you might check with the Water Department see where they got six.

Chair Hiranaga: Other questions for the applicant or staff? I have a question. I would like more detailed explanation on your drainage plan. You mentioned retention basins and in the south phase somehow providing benefit to the north phase, if you could go over that for us, please?

Ms. Fukuda: Yes, I'll call up Terrence Arashiro from Austin, Tsutsumi and Associates, the project's civil engineer to provide you with that.

Mr. Terrence Arashiro: Good afternoon Chair, Commissioners. Terrance Arashiro with Austin, Tsutsumi. I'm the Chief Engineer at ATA and let's see, so Chair what you're referring to once again, the north project area is here. The south project area is here and so, in this location here, some of you may be familiar with the existing detention basins that are onsite and these will be expanded up to 121 acre feet of volume. What is not shown on this particular map is that there are an additional three large basins that are proposed mauka of the south project area's boundaries within HC&S land and the three basins are generally located here on the east end of the site. There's another in the central area of the site, mauka of the south project site and there's another on the west end of the site.

Most of you are familiar with the lay of the land and the mauka drainage areas above the south project area generally flow towards the south project area. There are areas that also flow down to Hana Highway. It's hard to tell from this map, of course, because you can't see the topography, but if I were to draw a line in terms of general areas, it's probably something like this. So most of these areas that are above mauka of the south project area past through either the south project area and/or flow along Hana Highway. What the petitioner earlier had been alluding to was the drainage problems along Dairy Road, at this, in this general intersection with Dairy Road and Hana Highway. What the master drainage plan will provide for both the north project area and the south project area is enough retention such that much of that drainage that currently flows along Hana Highway and flows through the south project site which this is the existing drainage basins, those would be picked up by the new drainage basins as well as the expanded basin and it has capacity to retain the entire 100-year, 24-hour flow for both the south project area and the north project area. So it's, it's basically a replacement in capacity so that we're reducing the net amount of drainage that leaves the total project site.

Chair Hiranaga: The predevelopment storm drainage runoff from the north phase flows into the ocean or into your proposed retention basins?

Mr. Arashiro: The existing conditions currently from the north project area generally flows onto Haleakala and some of the areas that are just makai eventually getting into what's called the A & B channel which connects up to Kalialinui Gulch and the flood control project just west of the airport, yeah. And in the proposed conditions, there will be less drainage going onto Haleakala Highway and most of that will be captured within the subdivision's storm drainage system and that that will be allowed to pass through the A & B channel which has enough capacity for the north project area as well as once again, the reduce amount of runoff that's going to come from the south

project area or its surrounding areas, if any.

Chair Hiranaga: Does any other Commissioner have questions regarding the proposed drainage plan? If not, I have a couple more questions. So I guess County standard you're gonna not increase the predevelopment runoff coming off of the north phase and in your staff report indicated they'll be treated.

Mr. Arashiro: Correct.

Chair Hiranaga: But the predevelopment surface runoff is going to be allowed to flow into the channel?

Mr. Arashiro: With –

Chair Hiranaga: The A & B ditch.

Mr. Arashiro: Yeah, but it will be treated as well. So there would be within the onsite storm drainage system there will be, I think as mentioned in one of the bullets, filters, type of catchment that will separate out the solids, the floatables, that type of thing before it gets out into the A & B channel.

Chair Hiranaga: So there is retention basins for the north phase onsite?

Mr. Arashiro: No, there is – the north project areas retention if you will is provided offsite by basically reducing the total amount of drainage that comes off of both sites, you're actually retaining, we're not even releasing from the south project area. We're retaining everything on the south project area including an equivalent volume to what is flowing off of the north project area. So let me try one more time just so that all the Commissioners are clear. Right now there is an, there is an issue with the amount of drainage that comes off, and there is flooding for 50-year storms, 100-years storms and the all the storms in between or larger. By doing the drainage improvements in this area what you're going to see net coming through the A & B channel or less flow for any size of those storms. So it's a better condition in terms of the available flood control infrastructure. It will be a better condition. You might ask yourself the question well, then what about the storm water quality because now we're just letting runoff go straight into the A & B channel? Once again, the existing areas around here, if you remember, the industrial uses before, those float into Haleakala Highway, once again float into the channel, float out. With the proposed conditions, yes, we're not retaining storm water specifically on the north project site, but we are doing the water treatment in terms of filtering out the water before it gets out, and once again, the net amount of water that comes from the north project area is going to be less than everything that used to come off of both the north and the south project areas. And all of the flooding that maybe potentially happened in these areas along Hana Highway and behind Costco and all of that will be relieved.

Chair Hiranaga: So basically you're saying because you're retaining additional storm water on your south phase or project site you're using credits from that to apply to your north project site?

Mr. Arashiro: I guess you could put it that way, yes.

Chair Hiranaga: I guess, I would like Public Works to comment on that since they are two separate parcels. It seems like – my, my concern is that the north project site is much closer to the ocean and you're allowing the entire surface runoff, predevelopment, post development to flow into the ocean although treated. I'm just kind of – have a concern regarding that.

Ms. Dagdag-Andaya: I conferred with staff earlier regarding this and the relationship between the south and the north project and their review of the master drainage plan. And according to our staff engineers they concurred that the – all of the preexisting flows would – I mean, it would be covered under the south project and that – you know, according to what Terrence had mentioned, the drainage scheme that was proposed would be – is sufficient and adequate because the existing A & B channel would accommodate all of the storm runoff coming from the north project. We did discuss or the previous Director or Deputy Director along with our Chief Engineer did meet with the consultant previously and they also discussed the, the drainage, the filter devices and both of them agreed that it would be sufficient for this project as well. So our Department really is – has already reviewed this drainage scheme and, and concur that it would handle all the storm runoff and be able to filter as well.

Chair Hiranaga: I guess my concern is the legality of having a drainage retention system on a property separate from another property. So you're having a remote property providing retention capabilities then you're applying that to another property that should be actually be standing alone in my opinion because they're not even contiguous. Where do you draw the line as far as how far the two properties can be before they have onsite retention versus offsite? You're proposing offsite retention for the north project site? It seems a little unusual to me especially since that project is closer to the ocean than the south project ...(inaudible)... What we're trying to do basically is protect nearshore waters.

Ms. Dagdag-Andaya: Right.

Chair Hiranaga: I mean, you're confident that it is allowable under our County Code?

Ms. Dagdag-Andaya: When I discussed it with staff they were aware of that and agreed that it would capture all that or be able to accommodate and we'd be – according to Code we'd be able to allow it.

Chair Hiranaga: Seems like you're setting a precedence here.

Ms. Dagdag-Andaya: I can get more information about it. I can contact our staff engineer for a further explanation as to the discussions that occurred.

Chair Hiranaga: Maybe you could ask if someone is present and we can continue our discussion. Thank you. Is there any other questions regarding – yes, Commissioner Wakida?

Ms. Wakida: 'Well just to piggy back on your question. So you're saying that the, that the south project has this retention basin but it's catching all the water that's upstream. But the water falls

on the lot itself doesn't have a drainage plan? Is that correct?

Mr. Arashiro: You know, the primary reason for retention is, there's actually a two-fold reason for retention. One is when infrastructure that serves that parcel, drainage infrastructure is insufficient in its total capacity. The other, of course, is for water quality. And there's different ways to address water quality, one is retention but we feel that by providing the filtering systems a little bit more new things that maybe the County has implemented or has seen implemented on certain projects around County but it's not widespread those are the new technologies that are going to be used here. They're already proved and they're actually not new and they've been used on Oahu as well as on the mainland in coastal cities. The use of retention is really, once again, related to capacity. Our study of the storm drainage system for the A & B channel is such that it has a limited capacity but it can handle the north project area and surrounding areas. What we in effect do is we actually have reduced amount of flow so that there's actually more excess capacity in that A & B channel. Under existing conditions now, that A & B channel is overwhelmed with the amount of runoff that comes through it in a significant storm.

Ms. Wakida: Tell me just quickly again, where that filtering system is?

Mr. Arashiro: Okay, so within the loop road there'll be a series of inlets, curb inlets, catch basins so each of those will have a basket. There's different types that could be installed but primarily it's going to be a type of basket that catches the large floatables. Within there, there also will be types of materials that will be typically rolls that are inserted within the baskets that pick up metals and other types of things like grease and oils, things that you don't want to get into the water system.

Ms. Wakida: And then those are cleaned periodically or how?

Mr. Arashiro: Yes, they're maintained. They have to be replaced periodically and it depends on how much rainfall, of course, rain events happen.

Ms. Wakida: Thank you.

Chair Hiranaga: Questions, Commissioners?

Ms. Fukuda: Chair, if I may just add one more thing on the drainage issue. As Danny noted, you know several of these parcels, and you saw in our presentation, majority of the parcels are located within the SMA and it is likely that as each parcel gets developed they will come before this body for an SMA Use Permit and one of the standard conditions of the SMA permit is that they have provide for filtration devices. So even on each individual lot, they'll be required to provide filtration for treatment of the drainage. So it will be basically double treated. Secondly it has been the position of this body as far as I know to look to applicants to provide for additional retention on site. And so, based on past practice of this Commission, it would appear that as, you know, the lot owners come in that that would be a requirement for them as well. At the very least they would have to provide for retention for any increases in runoff that their project, their structures would provide. So there will on each lot individual retention. So I just wanted to point that out as well. Thank you.

Chair Hiranaga: And just for clarification, when you calculate your runoff from the property are you just basically calculating off of the roadways primarily or are you – take into consideration all the entire project site, this is primarily the north project increase in surface runoff. Is that just primarily from your ...(inaudible)...?

Mr. Arashiro: No, the calculations, once again, Terrence Arashiro, Austin Tsutsumi. Once again, the calculations are for the total drainage area so that is the, the lots themselves as well as the roadway lots. It's calculated into the volume and rate of runoff of the rainfall.

Chair Hiranaga: The proposed lots is that in their current condition or improved. Are, are you assuming that the entire surface will be hardened with either a building or pavement?

Mr. Arashiro: That's correct. I want to say entire because there's certain requirements even for industrial lots, I think for certain amount of coverage, but primarily year, it's it's going to be mostly hardened surface that is taken into account in our calculations, mostly impervious surfaces.

Chair Hiranaga: So when Karlynn said that when they come in for the SMA permit they will have to meet additional drainage requirements, but you're not – I thought – It appears that you've calculated that into your own system.

Mr. Arashiro: Yeah, you know, I, I think I agree with that in that basically you can have double quantities taken care of. So, if there is additional storm water quality issues I guess it would be up to this body to place that on future SMA applicants, the individual lot owners that could be done. I guess if, if there were retention requirements then that also, then yes, you would be double counting not only storm water quality requirements but then even the amount of retention, you'd have adequate amounts offsite and then would making the individual applicants also retain onsite. So it would be double counting.

Ms. Dagdag-Andaya: Chair Hiranaga, I have Cary Yamashita here from our Engineering Division to explain a little bit further about –

Chair Hiranaga: Okay, I'll just clarify my question. I guess my question is, the appropriateness of having the majority of the retention basins located on the south project site versus having whatever retention capacity required for the north project site on site, on the north project site?

Mr. Cary Yamashita: Chair Hiranaga, basically whatever is going to the ultimate outfall that is adjacent to the north property it all belongs to the same watershed area. So basically we had been in discussion with ATA staff and we felt that ultimately the water would have ended up in the same channel, so they oversized that upper, the channel on the south side, in the south development to accommodate whatever increase they had anticipated on the north project area. And if, if the two developments were not in the same watershed we wouldn't have, you know, even acknowledged that.

Chair Hiranaga: Okay, thank you. Any other questions for the applicant or the staff?

Mr. Ball: I have a question.

Chair Hiranaga: Yes, Commissioner Ball. We'll move to traffic, whoever wants to handle that one and I probably might answer my own question here, but it, in your testimony you said that you're going to do your fair share of the final highway, going behind the project and I see some other things in there, but was there anything addressed on the impact? I realize that 50 percent will be retail so that will cut down the amount of traffic also, but was there any kind of study done on what impact that would have in that immediate area?

Ms. Fukuda: There was a traffic study done for the north project area specifically and we do have our traffic engineer and I'll have him come up and address your questions. Again, I would just like to point out as part of the change in zoning ordinance there is the Hookele Street extension. Hookele Street is the road that is currently between Zippy's and the backside of Home Depot that area. A & B is required as part of the first increment of the south project area to construct roadway to, to Hana Highway. So, you know, there are other roadway improvements that they have, but I will have Keith Niiya from Austin Tsutsumi respond to your question.

Mr. Keith Niiya: Good afternoon, Chair, Members of the Planning Commission. My name is Keith Niiya. I'm the Chief Traffic Engineer with Austin Tsutsumi and Associates. With regards to your question about improvements, A & B, our traffic study that we looked at for the north project area, we are proposing widening of Haleakala Highway to a three-lane section right in front of the project. It will be a continuation of what was widened up to I guess the Airport Hotel. They'll continue the sidewalk further on down, there will be a three-lane section which would have one lane in each direction and a left turn into the project so into the loop. Also, as part of our project, we're recommending that improvements at the Dairy Road, Haleakala Highway, Keolani Place intersection to provide dual left turns out of Haleakala Highway onto Dairy Road headed back towards Hana Highway. Those are the improvements that are included in our traffic study.

Mr. Ball: Chair? So when you do those improvements, kind of back to the drainage thing, you know, that corner there right by the Marco's area is kind of where it starts to flood and then kind a works its way down towards McDonalds, if you will. So within, is there any way to, to fix that when you do the other things or are you just kind a restripe the lanes? There's not really any –

Mr. Niiya: Okay, as far as the regional improvements. There's two types of improvements that we look at. One is the regional improvements that is areas outside of the general vicinity of the project, and then there are those improvements that are right at the project location that the project impacts. When ...(inaudible)... to the regional improvements that is part of the pro rata share that A & B is negotiating with State DOT. I know State DOT has on the books projects such as the widening of Hana Highway, Airport Access Road are the two biggest ones in the area that they're gonna help alleviate the traffic. So I know both of those are projects that are on State DOT books that, you know, the pro rata share would fund to help develop them.

Mr. Ball: Thanks.

Chair Hiranaga: Any other questions? Just for clarity, did you say that the proposed retention basins would be, have the capacity to contain both pre and post development surface runoff for both project sites?

Mr. Arashiro: That's correct.

Chair Hiranaga: Okay, thank you. If there are no further questions for staff or the applicant, I will open the floor for a motion – Oh, I'm sorry, staff analysis and recommendation.

b) Action

Mr. Dias: Thank you, Chair. The subject application complies with the applicable standards for a Special Management Area Use Permit, therefore, the Maui Planning Department recommends approval of the SMA Permit based upon 13 standard conditions and seven project specific conditions.

Chair Hiranaga: I'll open the floor for a motion?

Mr. Ball: Chair?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Motion to approve to approve the SMA application with conditions.

Ms. Domingo: Second.

Chair Hiranaga: Moved by Commissioner Ball, and seconded by Commissioner Domingo. Director, could you please restate the motion?

Mr. Spence: The motion is to approve the SMA Permit according to staff recommendations.

Chair Hiranaga: Okay. I guess just for clarity, I would prefer if you kind of read the whole thing?

Mr. Spence: Okay. The motion is to approve the SMA Permit for Maui Business Park Phase II Subdivision, North Project area on 38.19 acres of land located along Haleakala Highway, Kahului, TMKs – all those TMKs listed.

Chair Hiranaga: Any discussion? Commissioner Mardfin?

Mr. Mardfin: While I was for permissive intervention by the petitioners earlier today in that, but it was passed that we would not allow them to intervene, to me, this looks like a pretty good project and I don't have any problem voting in favor of it.

Chair Hiranaga: Any additional comments?

Ms. Dagdag-Andaya: Chair? Here, Public Works

Chair Hiranaga: Yes?

Ms. Dagdag-Andaya: I just had one –

Chair Hiranaga: Deputy Director.

Ms. Dagdag-Andaya: I just had one comment regarding the project specific conditions No. 15, and the first sentence states, "that an appropriate best management practices (BMP) plan shall be reviewed and approved by the Department of Public Works and Environmental Management." I just had a, just a correction on the Department's name. Otherwise, if you also needed to send it to Environmental Management, I don't know if that's, that was the case there, but if anything, maybe a correction to that?

Mr. Dias: Yeah, thanks. We'll take out, "and Environmental Management."

Chair Hiranaga: Any further discussion? If not, I'll call for the vote. All in favor of the motion, please raise your hand.

Special Management Area Use Permit

It was moved by Mr. Ball, seconded by Ms. Domingo, then

VOTED: To Approve the Special Management Area Use Permit for the Proposed Maui Business Park Phase II Subdivision, North Project Area, as Recommended.
(Assenting - K. Ball, D. Domingo, L. Sablas, J. Freitas, I. Lay, P. Wakida, W. Shibuya, W. Mardfin)

Mr. Spence: That's eight ayes.

Chair Hiranaga: The motion is carried.

Ms. Fukuda: Thank you very much.

Chair Hiranaga: Next agenda is B-4, Director?

Mr. Spence: Thank you, Mr. Chair. This is an application by Mr. Don Nelson represented by Thomas Cole and Gwen Hiraga of Munekiyo and Hiraga requesting a Conditional Permit in order to use a single family beach front resident for a three-bedroom transient vacation rental at 2284 South Kihei Road. The staff planner is Mr. Joe Prutch.

- 4. MR. THOMAS R. COLE (attorney) and MRS. GWEN HIRAGA (consultant) of MUNEKIYO & HIRAGA, INC. on behalf of NELLIE'S ON MAUI LTD. (Don Nelson), requesting a Conditional Permit in order to use a single family beach front residence for a 3-bedroom transient vacation rental at 2284 South Kihei Road, TMK: 3-9-005: 026, Kihei, Island of Maui. (CP 2003/0009) (J. Prutch)**

Mr. Joe Prutch: Good afternoon, Chair and Commissioners. This is a conditional permit. The applicant has a power point presentation that will go into the description of the project site, location, that kind of stuff. What I want to do is give you kind of the rules governing the conditional permit

and some of our rules reasons, and reason for approval and then I'll let them go into their, their portion of the project. So the rules governing a conditional permit are in 19.40, to the intent of a condition permit, I'm just going to read this so bear with me, it won't take too long. The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone for the proposed use is similar, related or compatible to the those permitted uses in the area.

Second one, upon finding that the reasons justifying granting of a conditional permit exist and that the proposed, there's the other key words, would not be significantly detrimental to the public interest, the convenience, and the welfare and will be in harmony with the area in which it is to be located issuance of a conditional permit may be recommended. If the Commission determines that the permit request is for a use which is substantially different from those uses permitted in the area then the Commission can recommend denial of the request. So our analysis of the support, I mean, obviously we're here as a conditional permit because this is A-2 zoning and a vacation rental unit is not permitted in the A-2 zone.

So as for similar, related or compatible, the property is and we'll get into this with the maps and stuff, but the essentially the property is surrounded by timeshare and hotels across the street. It's got another TVR directly adjacent on the north. It's got a beach park to the south and it's got the ocean on the west. So it's in an area that's more vacation rental character than residential character. So it is similar and related to the uses nearby. Whether it would be significantly detrimental to the public interest, convenience, and welfare, once again, it's not to be detrimental to the public interest as single family homes exist in the location of Kihei is dominated by vacation rental uses.

Excuse me, also as far as the taking away a long term rental to the public interest, it's not likely as a shoreline beach home such as this it's not something that the average local resident can afford to rent. So it's not, it's not, it's not a home that's going to be taking away from affordable rental to the general public. I know I couldn't afford to rent it myself. In harmony with the area in which it is located, obviously it's located in an area that's surrounded by other more vacation rental uses. It's in an areas that's South Kihei where it's surrounded by more, more vacation type uses, the ABC Store, there's vacation rentals, there's different restaurants that are more catered to, to, to the tourists, the locals alike but it's definitely in an area that's not just residential quiet neighborhood.

As far as testimony this morning. There was no testimony on this project at all this morning, and in your staff report you did receive testimony. There were five letters in support, and these were from neighbors directly north of the property in other homes just directly up the beach from this property. There was one letter of opposition on a kitty corner lot behind ABC. However, that, that letter was, there was some miscommunication, they believe that something was being built there and that it was going to block their view of the ocean, so that letter of opposition is just a misunderstanding. I'm going to go ahead and let Gwen come up here, and she's going to go ahead and give you the power point to kind of describe the project's location and its surrounding uses.

Ms. Gwen Hiraga: Thank you, Joe. Good afternoon, Chairman Hiranaga and Members of the Commission. My name is Gwen Hiraga from Munekiyo and Hiraga representing the applicant, Don Nelson on the request for a conditional permit for a short term vacation rental, Kamaole Villa. Mr.

Nelson and his operations manager is also in attendance.

My presentation will be very brief. Generally, this is just the Kihei area of the project site, Ke Alii Alanui Drive and South Kihei Road. Again, another slide of the project site. This is the residence, this is Kamaole Beach Park, Ke Alii Alanui Drive, Worldmark, Maui Coast Hotel, a vacant parcel, Pacific Shores, and Maui Vista, and we'll have a better view of this parcel as well.

In terms of the property, the parcel is approximately 16,117 square feet. The zoning is A-1, Apartment. The residence is approximately 2,809 square – 839 square feet, excuse me. It has three bedrooms, three baths, and parking for five vehicles.

As Joe mentioned, in terms of the surrounding property uses, to the north, immediate north is a single family residence that's also operated as a short term rental. To the south is Kamaole Beach Park. Immediately east is Worldmark, the club, and west is the ocean. Okay, this gives a better, these in color, again, this is Kamaole Beach Park, this is the residence and the four parcels that I talked about Worldmark, Maui Coast Hotel, Pacific Shores, Maui Vista. The green that you see here, the location of the owners that have written letters of support. And as Joe mentioned, there was one letter that came from Ke Alii Ocean Villas, that I think there was a misunderstanding, I think there was a misunderstanding.

In terms of a site plan, this is the site plan for the residence. There are three bedrooms Bedroom 1, bedroom 2, and bedroom 3, a living room and a kitchen and parking, again, is for five vehicles. We have two right here and three here and the immediate neighbor to the north is the – the owners live there and they are operating a short-term rental.

In terms of the project itself, the residence is called Kamaole Villa, and we feel that, you know, this, this residence makes the positive contribution to the visitor industry by offering a private and peaceful alternative to Maui's hotels, condominiums, and resorts. As a private family home, Kamaole Villa will provide the unfulfilled need of a perfect location for a family to travel together and enjoy the comfort and ease of staying at a home. And I wanted to note that the residence will be rented as a unit, as whole and not with individual bedrooms. The majority of the guests would be families and with a minimum stay of one week. Kamaole Villa will employ eight individuals including the operations manager on a regular basis to maintain the residence. These other individuals are maintenance, housekeeping, et cetera. Currently, the operations manager does not reside in Kihei but is in the process of moving to Kihei and will be there to manage the operations should this permit be approved.

I have taken, I know you do have photos in your packet, but I – these are updated photos taken about I'd say, two, two weeks ago. This is the residence taken from across the South Kihei Road in the vicinity of Worldmark. This is the residence taken from the north neighbor and this shows the two parking stalls. And the view of the residence from Kamaole Beach Park, we have a couple of those. Another one from Kamaole Beach Park. And the last two photos are photos from the beach, and that concludes my presentation this afternoon. I'm open to any questions you may have. Thank you.

Chair Hiranaga: Okay, at this time, I'd like to open the public hearing. Is there anyone here that

wishes to comment? Please come forward and identify yourself.

a) Public Hearing

Mr. Tom Croley: Thank you, Chair. My name is Tom Croley and I'm here as a resident of Kihei and someone very familiar with this area. As was just described to you, this particular property is surrounded by short term rental use on almost all sides. It seems the perfect place for what's being proposed and I would urge you to grant the permit that's being asked for here.

As you know, Maui County Code only allows transient vacation rental use in the Hotel District. That's a highly restrictive thing, and they have to get a Conditional Permit in order to have this use in this area. The County has approved about ten Conditional Permits similar to this one, although I can think of none that's as almost perfectly suited as, as this one compared to the other ones that they have considered.

This applicant is about seven years in the process of trying to obtain this permit. And seven years to get through this process, just to get to this stage of the process and of course, your recommends will be forwarded up to the Council shows that the process by which we're going through is perhaps broken. And I think that that we, we should not delay it any further for this, for this applicant. I believe that this use will benefit the community, the greater community in several ways. One, it will provide jobs for people directly employed with the vacation rental, cleaning it, preparing it for guests and a manager as was already discussed. It will also provide for additional visitor spending in the area, retail spending, that that kind of thing. And I would urge the Commission to consider these, these benefits to the community in its consideration of this, the permits as well.

In about six weeks this Commission will ask to be give its mana'o on a proposed ordinance to streamline the permitting process for properties like this. Between now and then I might ask the Commissioners to think about the concerns that you would have about such a process, and think about what recommendations you would make, make to include, ask to be included in the ordinance to address those concerns. However, this permit should be considered on its own. It shouldn't be considered in preparation for any law that may be coming down the road. So again, I would urge you to grant this permit and I do support it. Thank you.

Chair Hiranaga: Questions for the testifier? Seeing none, thank you. Anyone else wishes to provide testimony at this time? Seeing none the public hearing is closed. Open the floor to questions for the applicant or staff? Commissioner Mardfin?

Mr. Mardfin: I'd like to ask Staff, Joe, I also read that letter, I think it was Exhibit 19 from the person that was, thought that construction would block his view.

Mr. Prutch: Yes.

Mr. Mardfin: And I would have drawn the same conclusion you did, but has anybody actually contacted him to explain that there is no construction involved to see if?

Mr. Prutch: No, I haven't had a chance to contact him yet and I talked to Gwen about it before the

meeting and I believe she's going to try and contact them, I don't know, sometime this week, she was going to try to –

Mr. Mardfin: After we make our decision?

Ms. Hiraga: ...(inaudible)...

Chair Hiranaga: Can't hear Gwen, you need to come to the mic.

Ms. Hiraga: Commissioner Mardfin, as you noticed the, the letter, it doesn't have a phone number nor doesn't have an address. So I am, and I went through our real property tax notification list and it was sent to the Kea Alii Villas, Ocean Villas Association. Our mailing list was about 400 individuals. So I will make, you know, every effort that I can to make contact with this person, and it could involve using that same TMK number which was a master condo list. Yeah, there's no phone number.

Mr. Mardfin: I mean, I do take the point that he says he wants to preserve the view and since there's no construction it does seem a little frivolous but I also think it's proper to –

Ms. Hiraga: Sure.

Mr. Mardfin: – if somebody complains to communicate with them.

Ms. Hiraga: That's understandable. Yes.

Mr. Mardfin: Yes.

Mr. Ball: I have a question.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: The letters in support they're very formed letters. One doesn't even actually fill in the blanks of how long they've been there, a few doors away from them for blank years and the blank is Exhibit 18 is not even filled in. These kind of letters to me, you know, they're not in support necessarily. I understand they say they're in support, they sign their names to it and whatever, but somebody obviously wrote this and had them sign it. Do they feel that way, who knows, maybe they just were there that day, and, and ...(inaudible)... So I would caution the use of the five letters in support. You know, I understand they're in support but they're form letters. They're just signatures in support.

Mr. Prutch: Yeah, I saw that they were form letters too. I know that the applicants didn't create the form letters, so I'm not sure exactly who created the form letter? Oh, okay, the applicant's Operation Manager, Sheila can explain that if you want her to answer it.

Mr. Ball: Not so much the letter, but how did you obtain the signatures?

Mr. Prutch: Yes.

Ms. Hiraga: Excuse me, Commissioner Ball, yes, Sheila Hendrickson is the operations manager and she went to each home to talk to them. And I apologize for it being in a form letter, but I think that was the easiest way to, but she'll explain what she did. Thank you.

Ms. Sheila Hendrickson: Aloha, I'm Sheila Hendrickson, and I work as Operations Manager for Don and Joy Nelson. Mrs. Nelson and I did draft this letter back in February 2010. I personally went door to door to all the neighbors and I did speak with each and every one of them. And they signed this at their own will. They were very supportive. Most of them have been neighbors for several years of the Nelsons, and they gladly signed it.

Mr. Ball: Thank you.

Ms. Hendrickson: Yes, sir.

Mr. Mardfin: Do any of them run –

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Do any of them run TVAs [sic] or are they all private residences?

Ms. Hendrickson: I believe they're all private residents. Oh, Jack – the Beathes, the Beathes, Jackie and Larry Beathe which it shares our driveway and is in our same area, they are, they run a vacation rental property.

Mr. Mardfin: Thank you.

Chair Hiranaga: Question, Commissioner Sablas?

Ms. Sablas: Sheila, just out of curiosity, so is the property being used now as a private residence presently?

Ms. Hendrickson: Yes.

Ms. Sablas: Okay, and another question out of curiosity, what is your weekly rate out of curiosity for the – that you offer for something like that?

Ms. Hendrickson: I think that would be determined with the Nelsons because it's just been their private residence up to this point.

Chair Hiranaga: Commissioner Wakida:

Ms. Wakida: Oh, this would be for the applicant, yes, thank you.

Ms. Hiraga: Yes?

Ms. Wakida: There was an order by the Department of Land and Natural Resources for this property to remove vegetation in front of the property.

Ms. Hiraga: Yes.

Ms. Wakida: I was wondering, in looking at most recent pictures that you showed us, is that naupaka inside their property line or outside?

Ms. Hiraga: It's outside. I see, it's pretty dark but this area, you're referring to this right? Are you referring, I'm sorry, Commissioner Wakida, are you referring to this area?

Ms. Wakida: Well, I'm – I believe so. I'm just referring to the –

Ms. Hiraga: Yes, yes. That is in the State beach reserve area and there was an issue with DLNR and that was one of the reasons why in terms of processing it took a while. We were going back and forth and DLNR finally, and I believe Joe has it in his report that they finally said they would leave it up to the County okay, to resolve this issue with some plantings immediately fronting the residence. And the Planning Inspector went out to the property, and she asked that they remove the water system that was in place and also for the Nelsons to plant morning glory which is what they did. And so we, we did make contact or there has been contact with the Planning Department on this matter and we have not gotten a response, but we did whatever was told to us previously by the Department. So the State is, the State's last correspondence talks about how it's within the County's jurisdiction.

Ms. Wakida: But it's State land.

Mr. Prutch: Yeah, let me elaborate a little bit. She's correct, there's naupaka out there and there was from, from Don Nelson's property all the way down to the end of Charlie Young Beach, it's the whole stretch there either naupaka or some people actually have some grass and some hedges. And the State deferred to the County to take action on this to, Jim Buika is our SMA guy. It's Buika's job to. He's working on this project to get this done. And my understanding is Mr. Nelson's removed the irrigation, the piping is gone but he's not able to remove the naupaka at the time. My understanding from talking to James Buika was that there's some certain kind of bird nest in the naupaka and there's a certain time of the year that they have to wait before they can remove it. So I think Mr. Nelson's ready to take it out, but until he gets word from Jim Buika to go ahead with it, he can't touch it. So it's still there but the idea is to have it removed so that more sand can be back and more beach area can be for the State's property for the use of the public. So that's a separate issue that's going on simultaneously, but it really doesn't have – it's not so much related to the TVR itself, it's a separate issue that's being dealt with by Buika and all the neighbors along this area to remove the naupaka.

Ms. Wakida: Okay, yeah, that naupaka is very invasive and it does start to take up the whole beach, yeah, but it's – Jim's on it. I'm sure it'll get resolved.

Mr. Prutch: Yeah, and he's working on it, but if there's a bird there and some nesting, he's got to wait.

Ms. Wakida: Okay, thank you so much for explaining it.

Mr. Prutch: You're welcome.

Chair Hiranaga: Any other questions? Commissioner Shibuya?

Mr. Shibuya: This is more of a question for the owner and this deals with State Legislative Act 269 which establishes a renewable portfolio standard where the utility sells 40 percent of the 2030 electricity produced by renewable resources. The purpose of this Act is to decrease Hawaii's need to import large amounts of oil and increase import substitution, economic efficiency and productivity by increasing the use and development of Hawaii's renewable energy resources through a partnership between State and the private sector. And in this, I see your picture and it's a beautiful home. It has a beautiful south facing roof but I don't know whether you'd like to put some photo voltaic cells up there or modules up there to capture sun and produce some renewable energy there. I was just hoping that we could urge you to include some renewable power system to generate at least 40 percent minimum for the facility consumed electricity by December of 2029 because that would insure that that power would be available for sale during 2030. This is important because when you start doing TVRs people don't generally do conservation. They leave it on and they go on their merry way, and so it's consuming electricity and conserving. So I was just wondering if you would be willing to put in some kind of renewable generating system?

Mr. Don Nelson: I couldn't agree with you more. I'd be happy to do it. I'm doing it in one of my buildings in Paia as we speak.

Mr. Shibuya: Oh, thank you very much. Okay.

Chair Hiranaga: Any other questions? Commissioner Mardfin?

Mr. Mardfin: This might be for the gentleman that was just up here, Mr. Nelson? I think the question was asked but I didn't hear it very, the answer very clearly. How is this building being used right now?

Mr. Nelson: Well, I live there part-time. My family lives there. I live in Paia. I have a home Paia as well. So friends and family have been using it for since I think, we rented it out until '08 and we turned down at that time, and we've just been –

Mr. Mardfin: So you haven't been using it for a long term rental in any way?

Mr. Nelson: No.

Mr. Mardfin: And to clarify, the letter that was written, that form letter that was written says, they, I think referring to you live here part-time and much prefer that someone is in the house.

Mr. Nelson: That's correct.

Mr. Mardfin: You only live in Hawaii, part-time?

Mr. Nelson: Well, I've been working till this year. I've just retired. So I'll be living there, you know, just a couple weeks a year, but I live in Paia. I built a house in Paia now, that's why we're asking.

Mr. Mardfin: Okay, but when I say, lives ...(inaudible)... here is referring to that particular building. When I saw they live here part-time, I thought they meant, you lived partially on the mainland and partially here in Hawaii.

Mr. Nelson: Well, until I retired that was true.

Mr. Mardfin: Okay, thank you.

Mr. Nelson: Okay. Oh, could I talk about the naupaka out here? This has never been watered by me. This is just natural. But what I did have on my property I had an additional from the boundary line between the State and my property about six feet, which I had grass planted. And the State asked me to remove the grass, take the water system out and plant morning glory and native plants which I did. So it looks a little different, but it was only about six feet that I was watering. This is just all natural. And on the other side of that is a hau bush that is a wonderful bush but it's very difficult and they tried to take about a quarter of it out and they're still struggling with it.

Chair Hiranaga: Thank you. Any other questions for the applicant or staff? Commissioner Mardfin?

Mr. Mardfin: Probably this is for Gwen more than anybody I would think. I want to talk about some tax issues. I presume if this gets approved they'll be paying GET taxes on their revenues?

Ms. Hiraga: That's correct. They would have to pay GET and TAT.

Mr. Mardfin: And TAT.

Ms. Hiraga: And they have licenses for both.

Mr. Mardfin: And what happens to – when they were doing it prior to stopping in 2008, were they paying both at that point?

Ms. Hiraga: That's my understanding, yes, they were.

Mr. Mardfin: And what will be the impact on property tax if this gets approved?

Ms. Hiraga: Currently my understanding is that once a permit like this is approved by Council and for B&Bs by the Commission or the Department the Department of Taxation is notified and the real property tax records are adjusted. As you may know, the Council I'd say at the time the B&B Ordinance was approved and I think Tom may have more information in this there is a new real property tax classification called, "commercialized residential" and that the intent of that particular classification was to put the short-term homes, you know, rentals, short-term rental homes into this category. So right now he, although the property is zoned Apartment and he is paying Apartment taxes right now.

Mr. Mardfin: So it's conceivable that the real property taxes paid would go down with this ...(inaudible)...

Ms. Hiraga: I think it depends on the, the rate that the Council sets. The Council establishes the real property tax rate. And I don't know if this would be considered as a commercialized residential classification. My understanding is that the B&Bs and the short-term or the transient vacation rentals would come under this category and I know Mr. Croley has been following it very well.

Mr. Mardfin: And is the assessed value likely to change with, if this is approved?

Ms. Hiraga: I don't, I don't believe so. I don't believe the assessed valuation would change.

Mr. Mardfin: And my last question on this issue, in Exhibit 13, I think I'm getting to the right one, there it's called reasons justifying the request for conditional permit, and the third paragraph says, "the County significant tax base on this beach front property is 16,000 some odd," Is that assessed valuation or that's the taxes paid?

Ms. Hiraga: That is the taxes paid. The assessed valuation was –

Mr. Mardfin: Would be considerably higher.

Ms. Hiraga: Like 4 million, 4.4 million.

Mr. Mardfin: Okay. I thought that's what it meant, but I usually mean tax, when I use the term, tax base, I usually – to mean the assessed value not the amount paid, but I looked at that number, I said, no that can't be what they mean.

Ms. Hiraga: I knew you were going to ask a tax question.

Mr. Mardfin: Thank you very much.

Ms. Hiraga: Thank you.

Chair Hiranaga: Any other questions for staff or the applicant? I would like to just make one comment. Page 10, applicant's reasons justifying the granting of the Conditional Permit, I do not agree with the statement, "this type of short-term rental does not have an impact on Maui's housing shortage as it represents a unique beachfront property that commands higher rents than the average resident can afford." Most of us know the theory of supply and demand. The smaller the supply, the higher the demand. The bigger the supply, smaller the demand. So you may want to consider removing that when you take it to Council.

Other comment is I'm disappointed that there is no onsite manager. So I would like to suggest that there be some procedure where the primary contact person is not available that there be some type of a secondary contact. Some type of procedure because I know this person is not going to be available 24 hours a day, seven days a week, 365 days a year.

Mr. Nelson: I've already asked my neighbor if he would participate and he said yes, he would.

Chair Hiranaga: Okay. As long as there's a procedure, and you notify the people in the 500-foot radius. Commissioner Mardfin.

Mr. Mardfin: I support both of the things you've said. Both the, the impact on housing is, is I mean, it's only one house but it shouldn't be ignored. Secondly, I agree that the – somebody in the neighborhood should know who to contact so if there are complaints from the beach or some place else that they can do it. The third thing I wanted to ask was, oh, Joe, on Page 8, of your report, of the report –

Chair Hiranaga: Proceed Commissioner Mardfin.

Mr. Mardfin: I'm waiting for the...(inaudible)... On Page 8–

Mr. Prutch: Yes, sir.

Mr. Mardfin: One, two, three, fourth paragraph down. The paragraph beginning, further it should be noted that the plan identified, the lack of affordable housing is one of the major problems. It's lack of affordable housing is such a problem in Maui County it's difficult to support the conversion. And then the next sentence says, however it can be argued that a large luxury shoreline residential dwelling – are those your words or is, I guess I'm wondering who writes this? Do you write it? The planner write it or does the consultant write it?

Mr. Prutch No, no, no, this, this part is, is mine and Clayton's writing. We come up with this.

Mr. Mardfin: Okay. I was just wondering. It sounds like it could have been written by the consultant. I just wanted to know.

Chair Hiranaga: Okay, point taken. Are we ready for the staff's analysis and recommendation?

Mr. Prutch: Yes, what I'm trying to do is draft a condition based on the mention of a first and second contact person so bear with me just a few seconds. I've got something in mind here.

Mr. Mardfin: While he's doing that, I do have one last question.

Chair Hiranaga: Yes, Commissioner Mardfin?

Mr. Mardfin: Is there any beach access through this property, and if not, where is the nearest beach access?

Mr. Prutch: Sure, I mean, you can walk –

Ms. Hiraga: Right next door.

Mr. Prutch: Right next door is Kamaole Beach.

Mr. Spence: Kamaole Beach is right next door.

Mr. Prutch: And there's the volleyball courts and all that stuff is right next door. So you can go out Kihei Road and just walk 50 feet down the, behind the house and you can go straight out onto the beach or there's no fencing around his back property between the beach and his house so if you walk out on the grass, and then you walk straight down through the naupaka to the beach.

Mr. Mardfin: Thank you.

Mr. Prutch: Yes. Yes is the short answer.

Mr. Mardfin: Thank you.

Chair Hiranaga: Yes, Commissioner Sablas.

Ms. Sablas: Okay, I asked a question earlier but it wasn't answered but in light of the recent questions about the affordability for rent, I'd like to restate and ask my question again. What is the range that you are hoping to get on a weekly rental basis as a vacation rental from this residence as a whole?

Mr. Nelson: Back in '08 we were getting a thousand dollars a day.

Ms. Sablas: Back in '08?

Mr. Mardfin: And how many, and how many –

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: And how many days was it on average rented would you suppose during a year or during ...(inaudible)..

Mr. Nelson: Oh, I'm going to say 70 percent of the time.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Are we ready staff?

b) Action

Mr. Prutch: Yes we are. Okay, so the application complies with the applicable standards for a Conditional Permits as stated in your recommendation report, and as, as listed in the staff presentation as well. The recommendation is, the Maui Planning Department recommended that your Planning Commission recommend to the County Council approval of this Condition Permit based on the conditions in your recommendation report. There are six standard conditions. One of them including a three-year time period prior to renewal of the permit. Seven specific conditions as listed in the report with a added Condition No. 14, as recommended by Chair Hiranaga. And I'll

message this a little bit better, but essentially that a property manager shall be available 24/7. If that person cannot be reached there shall be a second contact person available. Both these phone numbers shall be posted in the rental home and on the house policies given to the guests at check in. And you can message it if you like, but that's – so we're recommending you recommend recommendation of approval to the Council. Thank you.

Chair Hiranaga: Okay, I'll open the floor to a motion.

Mr. Freitas: So move.

Chair Hiranaga: Commissioner Shibuya?

Mr. Freitas: Oh.

Mr. Shibuya: If there's a motion, I'd like to add –

Chair Hiranaga: There is no motion. I thought you were going to make a motion.

Mr. Shibuya: Okay, I'll make the motion that we approve all of the conditions with an additional condition and it will be Condition No. 15, "to urge Nellie's on Maui, Limited, include renewable power system to generate a minimum 40 percent of facility consumed electricity by December 2029."

Chair Hiranaga: Is there a second?

Mr. Freitas: Second.

Chair Hiranaga: Moved by Commissioner Shibuya, seconded by Commissioner Freitas, any discussion?

Mr. Ball: Discussion?

Chair Hiranaga: Discussion, Commissioner Ball?

Mr. Ball: So, it's just a recommendation then, it's not a must.

Mr. Shibuya: That's correct. It's just a urging.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: If this is discussion, I'd just like to mention that I was on the Commission several years ago when we turned down a short-term vacation rental for this applicant because there were lots of neighborhood complaints, no neighborhood complaints, I'm happy to support this one.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: In regards to the addition of this condition, should we hear from the applicant?

Chair Hiranaga: I think he's already agreed to it. But if the applicant wishes to comment?

Mr. Nelson: I already agreed to do it, I was going to do it anyway, so it's not a problem.

Mr. Shibuya: Yeah, it's just an urging.

Mr. Nelson: I totally agree.

Chair Hiranaga: Thank you.

Mr. Nelson: Is that enough?

Chair Hiranaga: Any further discussion? If not, will the Director please restate the motion?

Mr. Spence: The motion is for approval of – to recommend approval to the County Council for the Conditional Permit with already – with the stated conditions and with an additional condition for contact person, actually two contact people and encouraging them to include photovoltaic or some other power generation on the residence. There would be 15 conditions total.

Chair Hiranaga: Call for the vote. All in favor of the motion, please raise your hand.

Mr. Spence: That's eight ayes.

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

**VOTED: To Accept the Recommendation to Recommend Approval of the Conditional Permit to the County Council with the Recommended Conditions.
(Assenting - W. Shibuya, J. Freitas, D. Domingo, L. Sablas, I. Lay, K. Ball, Wakida, W. Mardfin)**

Chair Hiranaga: Motion is carried. We'll take a ten-minute break and reconvene at ten after three.

Ms. Hiraga: Thank you.

A recess was called at 3:00 p.m., and the meeting was reconvened at 3:10 p.m.

Chair Hiranaga: ...Director?

Mr. Spence: Yes, Commissioners, this is a letter from Mr. John Rapacz, attorney for SVOP, Inc., submitting their 2011 annual report of disbursements of funds to intervener West Maui Preservation Association and to the West Maui Community Benefit fund pursuant to the Lot 3 Settlement Agreement. Clayton is here.

2. **MR. JOHN RAPACZ, attorney for SVOP, INC., submitting SVOP's 2011 annual report of its disbursements of funds to intervener West Maui Preservation Association and to the West Maui Community Benefit Fund pursuant to the Lot 3 Settlement Agreement between the Applicant and the Intervener as a required by Condition No. 44 of the Special Management Area Use Permit for the Kaanapali Ocean Resort Villas - Lot 3 project at TMK: 4-4-014: 005 (por.), Kaanapali, Island of Maui. (SM1 2006/0018) (P. Fasi)**

Condition No. 44 of the SMA Permit states:

- "44. That an annual report shall be filed with the Commission for its information on the disbursement of the funds in the Lot 3 Settlement Agreement by the applicant to the intervener and to the West Maui Community Benefit Fund."**

Mr. Clayton Yoshida: Good afternoon, Mr. Chair, Members of the Commission. Paul Fasi is out sick today. About three years ago, the Commission issued an SMA Permit for development on Lot 3, KOR Lot 3, Kaanapali which is located south of the Intra West Honua Kai project. One of the conditions with that annual report be with the Commission for its information on the disbursement of funds in the Lot 3 Settlement Agreement by the applicant to the intervener and to the West Maui Community Benefit Fund. Mr. Rapacz, attorney for SVO Pacific, the applicant has provided a report, annual report dated February 25th, and as it shows, monies have not been disbursed since April 2008. The trigger is the applicant obtaining the building permits for the project. So this for information, the Commission's information.

Chair Hiranaga: Since this is an agenda item, I'll just open it to public testimony at this time. Is there anyone here that wishes to testify regarding this agenda item, please come forward? Please state your name, and you have three minutes.

Ms. Louise Rockett: My name is Louise Rockett. I have big concerns about the West Maui Community Benefit Fund and the terms of the, of the settlement agreement. I went onto Star Guide yesterday and the – I found out that in the West Maui Benefit Fund there's \$1.4 million that was disbursed in 2008, and I'm not really sure why they call it a community fund when the community doesn't know anything about it, how to get the funds, how many funds there are, what their expenses are and what the terms of the agreement were with? The West Maui Benefit Fund and the West Maui Preservation Association, I'm very nervous, I don't think I can spit it out in three minutes, but I'm really concerned that they were – there is this fund out there for the West Maui community that was given for three intervention. The Lot 2 intervention and Lot 3 intervention and the Honua Kai. The Honua Kai has \$600,000. They haven't disbursed any money if you look at their 990. They have the 2008, 990 shows that the West Maui Benefit Fund they disbursed \$18,000 and they got one \$1.4 million. There are people in our community who need this money and if we could have an idea of what the terms of the agreements are, I have the terms of the Honua Kai, but nobody seems to know what the terms of the West Maui Community Benefit Fund. There's their board has the same president, all three presidents. Who are the people who nominate the board? Nobody knows. I wrote them a letter in December, I got no response whatsoever. I have a copy of that letter with me. Just asking how are the board members decided, who determines that, is the

West Maui Preservation Association it's not like having the Lahaina Restoration Foundation where you have a hundred members that elects a board. We don't even know who these people are. I asked them for a bio of the community members, they didn't send me one. It's not that don't – I think money is being spent, you know, or somebody is taking the money, I just want to know why we can't have it for our community in these hard times when social services are being cut right and left. And there's stories, I can't repeat them because I can't validate them where this person has said, okay, I'm going to give you money. That person dies, and they didn't get the money. So it's, you know, it was not that person, it was that group. So my concern is that this was for the west side community an intervention that was made, and now in order for the west side community to get the money it's really difficult. I mean, the stories that I hear are nightmares and I think, well first of all, I would like a copy of the Lot 2 and the Lot 3 settlement agreement.

Chair Hiranaga: Thank you. Questions for the testifier? Commissioner Wakida?

Ms. Wakida: Actually, I think my question goes to staff.

Chair Hiranaga: Well, actually we're in public testimony at this time, so you can reserve that question for later?

Ms. Wakida: And I will ask a question. Have you been able to get a hold of any financial records like –

Ms. Rockett: Yes.

Ms. Wakida: This is a nonprofit organization, correct?

Ms. Rockett: Yesterday I went onto, I found a – I got some help from another nonprofit. I went onto guidestar.org and you can go in there and find out what anybody's, and then you can pull up their 990 form. Again, I've got the information here. In 2000 and it was either eight or nine, their gross receipts for the West Maui Preservation – the West Maui Community Benefit Fund was \$1.4 million. In 2009, it was a \$115,000 or \$114. I'm kind of ...(inaudible)... were \$18,000. Their expenses were \$41,000 for an attorney. You know, they gave more money to an attorney than they did to the community. I don't understand. I don't understand what the terms of the agreement are and why this money was awarded to the West Maui community and we don't see it.

Ms. Wakida: So you didn't see any disbursements to any community organizations?

Ms. Rockett: There were two. One was 1,500 to the Lahaina Library for books and there was 15,000 more or less to a – they did some research and provided information for a law library.

Ms. Wakida: You know of any – may I ask another question?

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Do you know of any other organizations that have requested information from this organization?

Ms. Rockett: Well, yes, and I do believe, I don't have their 2010 receipts. I think many people in our community just received information, they got a map of all the beaches in West Maui. She paid the West Maui Benefit Fund paid for that map. I mean, we have beach information in every drive guide, I don't know why they paid for that, but yes, in 2010 there has been disbursements. I do not have their 2010 information.

Ms. Wakida: Yes, I received that map in the mail and I didn't understand what the point was. Do you know why that organization sent out beach maps?

Ms. Rockett: I mean, it just seems silly because I don't know how many beach maps there are available, in the drive guides, everything and she sends out a beach map. She, they also did a economic impact study of Halloween not being in Lahaina.

Chair Hiranaga: Thank you. Any other questions? Commissioner Sablas?

Ms. Sablas: Thank you, Ms. Rockett for bringing this up because I have heard about issues in the West Maui community and we are going to charge staff to give us a more accurate report and maybe hopefully confirm what you have stated about the receipts that they've received and records of disbursements to date because I have heard, again, many community concerns about funding from this and never had answers. So thank you.

Chair Hiranaga: Any other questions for the testifier? Thank you very much. Is there anyone else that wishes to testify at this time? Please come forward and identify yourself. You have three minutes.

Mr. Bruce U'u: Good afternoon everyone. Bruce U'u. Showed up today and heard you guys speaking about WMPA. I don't know if you guys know but at the time I was on the Commission we requested WMPA give us a annual update also on their spenditures and whether it was on KOR 1, 2 or 3, I'm not sure which one we imposed the condition of to, but they did give us one presentation. I think her name was Marilyn Madison [sic] and, or, or not a presentation and, and I guess the spenditures that they spent and was just by word of mouth. We gave so much to the attorney, we gave so much here, but nothing on paper, but we made it clear and if I not mistaken was a condition that they do report back to the Commission annually and report to your guys, the Commissioners and how they spending the money. So I would ask that you guys ask staff. Staff changes over times and maybe things get forgotten over time, but definitely you guys should look at it because at the time that we when grant the intervention was based on the premise that it was going be a community benefit whether it be cleaning the beaches or, or doing something in a positive way to, to help Lahaina. We've asked for it numerous times. I know Clayton called them, WMPA numerous times to come and give presentation, so I don't know how you can go about and depositing money in it when they're not doing their end of the bargain, so just food for thought.

Chair Hiranaga: Questions for the testifier? Commissioner Wakida?

Ms. Wakida: Do you know if this report was supposed to be an oral or written?

Mr. U'u: I think it was they like a written report was my thought like how we have from KOR or SVO

I should say. That what the thought process was at the time. And we have received none when I was on the Commission for the last five years.

Chair Hiranaga: Any other questions for the testifier? Thank you.

Mr. U'u: Thank you.

Chair Hiranaga: Any questions for staff from the Commissioners regarding this agenda item? Commissioner Sablas?

Ms. Sablas: ...(inaudible)...

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Is this organization a 501(c)(3)?

Mr. Spence: I assume if they're filing 990's they must be.

Ms. Wakida: There's, there's requirements for 501(c)(3) about audits, about bookkeeping and so on. So I'm a little surprised that they're being so, maybe cavalier about filing reports. And, and also their board structure and their bylaws and all of that sort of thing that apparently is, it's been difficult to access. So, I don't know if this body has required that specific report but it certainly seems like we need to start doing that. We need to get an audited report and an accounting of, of the money that's there as well as the structure of this organization and how they determine their board.

Mr. Spence: Commissioners, I'm, I'm, I feel probably the same way as Commissioner Wakida. There should be some accountability on the part of the, the nonprofit. I am not sure. I guess the Commission could request that information, but probably the settlement agreement between the applicant and the nonprofits and their requirements of the conditions of the permit are on KOR not, you know, the nonprofit. So I'm not sure how the Commission would reach into that.

Chair Hiranaga: Can we ask the Director to meet with Corporation Counsel and report back to us with an opinion as to what remedies might be available?

Mr. Spence: Yes, we can do that.

Chair Hiranaga: So we could, I guess defer this item to the next meeting.

Mr. Spence: Yes, and if the Commissioner would like -- I mean, the settlement agreement, Clayton, I'm, I'm guessing the settlement agreement is public record?

Mr. Yoshida: Mr. Chairman, Members of the Commission, I believe the Commission amended its rules back in 2005 or 2006 to require if there is a settlement that parties reveal the terms of the settlement agreement to the Commission for their information. So they know what the terms of the settlement was. That is part of your rules. There was a rule change that the Commission so that requires it.

Mr. Spence: If this is going, if this is something that's going to go back on the agenda, perhaps we can get copies of that as just a part, you know, for the Commission's information and whatever the conditions are on at least I'm sure the condition is on the developer and not on the nonprofit. That we can get that information for the Commission.

Chair Hiranaga: I guess the Chair would ...(inaudible)... Commissioner Sablas?

Ms. Sablas: And I think, you know, based on testimony that they had received over a million dollars and compared to the report here, I'd like to see, get an idea of income and disbursements.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: And also if we can get their yearly membership, who's involved with them, what groups associated with them?

Mr. Spence: Okay, that's – some of the stuff is , you know, we'll discuss with Corp. Counsel all what – I'm, you know, I have an interest in it too, but the – what's before the Commission, the purview of the Commission of the conditions placed on the applicant, I'm not sure about the Commission reaching in, like I was saying, reaching into the business of the nonprofit. They were not the applicant. It's not their permit that was before the Commission. But we'll discuss and we will get, we will get back to you.

Chair Hiranaga: Yeah, I think the Chair and Corporation Counsel should basically meet to define the rights and duties of the Commission regarding this agenda Item, and explain it to the Commission then we decide course of action. So at this time, the Chair would --

Mr. Yoshida: We're only talking about KOR Lot 3. We're not talking about Honua Kai which has a separate settlement agreement.

Chair Hiranaga: Yeah, well this is the only agenda item before us at this time.

Mr. Yoshida: Yeah, they will be submitting a 2011 annual report.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Would it be appropriate though to get the report on –there was three lots, right, that had this settlement – there were three settlement agreements.

Chair Hiranaga: I think we should just deal with this particular agenda item first.

Ms. Wakida: Okay.

Chair Hiranaga: So the Chair would entertain a motion to defer this Communication item to the next meeting?

Mr. Shibuya: So move.

Chair Hiranaga: Moved by Commissioner Shibuya.

Ms. Domingo: Second.

Chair Hiranaga: Second by Commissioner Domingo. Any discussion?

Mr. Ball: Quick discussion. If the Director and the Corp. Counsel will take those notes, the concerns that the Commissioners had if they find that we are not overstepping our bounds in discovering that information then maybe they can bring forth those questions or those answers I should say to the Commission so we don't have to go and get the answers later on for another meeting.

Ms. Wakida: Chair?

Chair Hiranaga: Yes?

Ms. Wakida: May I also add that the information that's being requested should be public information. It's not private information.

Chair Hiranaga: I think – Commissioner Freitas?

Mr. Freitas: The settlement agreement is a private agreement, right?

Mr. Spence: We'll find that out. I believe it's a public agreement, but we'll, we'll find that out. We'll report back to the Commission.

Chair Hiranaga: Okay, no further discussion, I'll call for the vote. All in favor of the motion to defer please so indicate by saying aye. Any opposed?

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

**VOTED: To Defer the Matter to the May 10, 2011 Meeting in Order for the Director and Corporation Counsel to Meet and Discuss What the Rights and Duties of the Commission are in Regards to the Matter.
(Assenting - W. Shibuya, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball, P. Wakida, W. Mardfin)**

Chair Hiranaga: Motion is carried. The next agenda item is New Business, D-1. Director?

Mr. Spence: Thank you, Mr. Chairman. Item D-1, New Business, is Mr. Robert T. McDaniel III, development partner for Kanaha Professional Plaza, LLC requesting an Environmental Assessment determination on the Final EA prepared in support of SMA Area Use Permit for the proposed Maui Medical Plaza project. I don't see Jim. I don't see Mr. Buika here. This is for the Commissioners to accept the final EA, and this is in preparation pursuing a Special Management Area Use Permit.

D. NEW BUSINESS

1. **MR. ROBERT T. MCDANIEL III, Development Partner of KANAHA PROFESSIONAL PLAZA, LLC requesting an Environmental Assessment determination on the Final Environmental Assessment prepared in support of the Special Management Area Use Permit for the proposed Maui Medical Plaza Project consisting of the construction of a six-story approximately 132,865 square foot professional medical office/laboratory facility, a six-story approximately 365 stall parking structure, and related improvements in the M-2 Heavy Industrial District at 151 Hana Highway, TMK: 3-7-011: 028, Kahului, Island of Maui. (EA 2010/0002) (SM1 2010/0006) (J. Buika) (The Draft EA was reviewed at the July 27, 2010 meeting.)**

The accepting authority of the EA is the Maui Planning Commission.

The EA trigger is the utility work being done within the State right-of-way.

The project needs a Special Management Area Use Permit. Action on the Special Management Area Use Permit application will be taken by the Maui Planning Commission after the Chapter 343 process has been completed.

Mr. Clayton Yoshida: I guess, Mr. Chairman, Members of the Commission, if the Commissioners may recall back in July or August of last year you reviewed and commented on the draft Environmental Assessment for the project as well as conducted a site visit. Since then, the applicant has prepared a final Environmental Assessment and also, addressing the comments of the Commission and the applicant is prepared to make a short presentation. I see that Jim Buika is here.

Mr. Jim Buika: I apologize. I guess I underestimated your efficiency.

Mr. Spence: Go ahead Mr. Buika.

Mr. Buika: Sorry about that. Good afternoon Chairman Hiranaga and Commissioners. My name is Jim Buika, Planner with the Planning Department. The purpose today is to review the final Environmental Assessment as required by Chapter 343 HRS pertaining to Environmental Impact Statements regarding the proposed Maui Medical Plaza and related improvements located in the M-2 Heavy Industrial zone in Kahului on approximately 2.5 acres of land. I will ask the applicant's representative to present the project summary.

The review by the Maui Planning Commission is to assess the potential for environmental impacts as well as mitigation in place by the applicant in order to minimize environmental impacts. In considering the significance of potential environmental impacts, the Maui Planning Commission shall consider the sum of effects on the quality of the environment and shall consider every phase of a proposed action, the expected consequences both primary and secondary and the cumulative as well as short-term and long-term effects of the action. If actions have been – if impacts have been minimized with no significant impacts, the Maui Planning Commission can concur on a finding of no significant impact. The applicant's presentation is designed to walk the Commissioners through the required environmental significance criteria process. Please keep in mind that following

this Environmental Assessment review the Maui Planning Commission will again see this project as a Special Management Area Major Use Permit as a public hearing item at a future date.

Today is the third Maui Planning Commission meeting in which we have reviewed this project. On two dates last year, July 27th, and August 10th, the Maui Planning Commission reviewed the Maui Medical Plaza proposed project. We devoted about six hours of time answering questions. We also did a site visit. Out of those two meetings, the department issued a letter on August 24, 2010 with a total of 28 questions to be answered by the applicant regarding the EA, the draft EA. The applicant also consulted with a total of 35 agencies during the draft Environmental Assessment process. In total, the final Environmental Assessment also addresses comments from 44 letters received during the draft Environmental Assessment process besides the 28 questions that you had on the project.

Following those meetings on September 7th and October 5th, 2010, the Urban Design Review Board during two meetings devoted two meetings to reviewing the design and design changes to the proposed project and voted with seven affirmative votes to approve with the design, with just three additional changes recommended to the Maui Planning Commission. The trigger for the EA is the work in the County or State lands to improve some of the roadways fronting the project. The Maui Planning Commission is the accepting authority for the final Environmental Assessment.

I have asked the applicant to focus on the Chapter 343 significance criteria review in their presentation to examine potential environmental impacts, review final Environmental Assessment analysis and to explain to you the intended proposed mitigation actions that are built in, into the project.

From the Planning perspective the applicant has complied with all mitigation requirements and has spent a great deal of time, several years, expertise and money to meet these requirements. This is an important project respectful of the environment and will provide important societal, environmental and economic benefits to the community. Your, your task today is to review the project against the environmental significance criteria defined in Section 11-200-12 Hawaii Administrative Rules and from this review, the Commission may take one of the following actions today. First action is accept the final EA and issue a Finding of No Significant Impact Determination. Second is to defer the final Environmental Assessment. You would do this in the case where the Commission finds that additional information is required to make a determination on the final Environmental Assessment. Once the additional information is incorporated, the applicant resubmits the final EA to the Department and the Department retransmits the document for your review and for your action. The third option is to prepare an Environmental Impact Statement. The Commission finds – in this case, the Commission would determine that the proposed action may pose significant impacts and requires the preparation of a more detailed Environmental Impact Statement. And EIS assesses the proposed project through additional research, discussion and review. With the Chair's permission, I would like to ask the applicant's representative to present the project in the context of the final environmental analysis. And following your questions, any final deliberation the Department will provide the Commission with its conclusions of law and its recommendation on the final EA. I'd like to present Mark Roy from Munekiyo and Hiraga representing the applicant.

Mr. Mark Roy: Thank you, Jim. Good afternoon, Chair, Members of the Maui Planning Commission. Thank you for allowing us the opportunity to be before you today. I'd also like to thank the Commission for its participation in the site visit that was held on this particular project during the later part of last year. My name is Mark Roy with Munekiyo and Hiraga. As noted by staff, this comprehensive medical facility is being proposed to specifically address the current shortage and quality conveniently located medical space in the central valley of Maui. It will offer a wide range of specialist medical services including a pharmacy, a women's health center, a laboratory, a pediatrician, a physical therapist, a family practice, a dentist, a gerontologist to name but a few. With me, and available to answer any questions you may on this particular project, we have representatives of the applicant, to my right, Kanaha Professional Plaza, LLC., as well as members of the project team in the audience.

Our presentation for the Commission today will focus on the conclusions of the final Environmental Assessment. We've also prepared a handout which I believe is being delivered to the Commission Members as we speak. For orientation purposes however, for the new Members on the Commission I'd like to first, however, just offer a few slides summarizing the location and design of this particular project.

This aerial photo on the slide here shows the property's located in this yellow highlighted area here and represents part of an overall industrial subdivision called, Kanaha Industrial Subdivision Phase II. It's about 2.5 acres in area project site and is located along Hana Highway in the commercial and industrial core of Kahului. It's located directly across the highway from 24-hour Fitness and sits adjacent to the Midway Center which contains the well-known Bounty Music record store. Other uses in the area include light and heavy industrial uses towards Kahului Harbor area including Pacific Biodiesel and Chevron as well as various commercial and retail uses located to the north, west, and southeast of the project site including Maui Mall and the Island Auto Center.

Kanaha Pond Wildlife Sanctuary off to the right of this slide is located to the east and is separated from Lot 8 which is the project site by the Kahului drainage canal. So I'll just try and point those out with the light, with my laser pointer. The drainage canal provides drainage function for the central areas in Kahului and this drainage canal is maintained by A & B, is not part of the project site and separates the project site from the Kanaha Pond.

Now this is just a site photo looking across Hana Highway pretty much around 24-hour Fitness showing the current condition of the property. As you can see, it's vacant and overgrown with non-native vegetation.

I'd like to just give a brief project summary. The project proposed is a six-story medical office building. It's about 75 feet in height. Will provide about 106,000 square feet of gross leaseable floor area for the tenants. To meet the parking requirements for the facility there'll be an attached six-story parking garage at the rear of the project site, so away from the highway and obviously related improvements such as site grading, landscaping, and also installation of onsite, offsite utilities improvements and two access driveways to gain access and exit from the site. Just as another note, there'll also be an educational viewing platform constructed on the east side of the project site next to one of those drainage canals that will provide opportunities for the public to view Kanaha Pond.

This is a brief, sorry, a few slides, perspective shots looking at the proposed facility. This actually comes from a three-dimensional computer animation program that puts the project in the context of surrounding conditions. This is looking from Hana Highway at the six-story medical plaza facility of notice the remainder of the industrial activities and the uses in the subdivision towards the harbor. Next please.

This shot looks back at Hana Highway and, and the outlying areas of Kahului. Here you can see the parking structure I mentioned in my comments and the drainage canal here and its accompanying land actually which separates Kanaha Pond from, from the project site. Next please.

This is a regional perspective shot looking back along Hana Highway as if you were driving from Upcountry along to Wailuku or to the Maui, to the Maui Shopping Center. This is looking back toward the harbor area and again, you know, it puts the project in the context of the surrounding industrial, light industrial, heavy industrial, retail and commercial uses within this central area of Kahului.

The final EA as Jim noted evaluates both the existing conditions of the project site and potential impacts related to the development of the medical plaza. The draft EA was published and reviewed by the Commission in the summer of last year and as Jim mentioned all comments received during this process by other government agencies and the public have been reviewed and responded to by the applicant and incorporated into the final EA that's before you today. As noted by staff, the final EA has been reviewed and deemed complete by the Planning Department in formulating its recommendation that a finding of no significant impact be issued for this project. The Department has evaluated the final EA in the context of 13 significance criteria set forth by the applicable legislation that guides the preparation of these kinds of environmental documents in the State of Hawaii.

I'd like to now offer the Commission a brief summary of the significance criteria analysis that is presented in Chapter 7 of the final Environmental Assessment. The first criteria relates to loss or destruction of natural or cultural resources. In regards to natural resources, the project will involve the unavoidable loss of a .49 acre functionally degraded wetland that sits in the center of the project site. This wetland is separated away from the Kanaha Pond resource by those drainage canals I mentioned earlier. The applicant has undertaken extensive coordination with the Department of Army over the past few years as part of project planning to mitigate this impact. As of February of this year, the Corp of Engineers issued an approval of final Wetland Mitigation Plan that will rehabilitate a five-acre area of wetlands at the Waihee Refuge in conjunction with the Maui Coastal Land Trust. As confirmed by the various studies within the final EA there will be no archaeological resources or cultural practices impacted by this project. Mitigation to protect against undiscovered resources being impacted during construction include the implementation of an archaeological monitoring plan as well as stop work protocols during construction.

The next deals with beneficial uses of the environment. The project will present any significant adverse impacts on existing uses within Lot 8 as there are none current and present. It will actually serve to enhance environmental uses of the property and Kanaha Pond through the construction of an observational platform that I mentioned earlier on the eastern portion of the site to facilitate

the educational objectives of the sanctuary.

The third criterion relates to consistency with State environmental goals and policies. The project is in compliance with zoning standards and is located within the urban growth boundary for Kahului and therefore represents a unique urban infill opportunity for Kahului and is consistent with the guiding principals of both of the Countywide Policy Plan and the ongoing 2030 General Plan Update process. A full analysis of the project's compliance with government plans, policies and controls is provided in Chapter 3 of the final EA.

The fourth criterion relates to substantial effects on economic, social, cultural welfare parameters. There are no impacts on these parameters expected with the project. In fact, benefits be generated in the form of employment and improved access to medical services and facilities for Central Maui residents. Next please.

The next criterion addresses public health impacts. As stated in the final EA, the project will not adversely impact the health of the general public. Positive impacts on the other hand are expected in form of improved availability and quality of specialist healthcare services, excuse me, on Maui. Next please.

Criterion No. 6, as noted on this slide, the project is not expected to generate substantial secondary impacts. It is not a population generator nor will it place a significant burden in public facilities in the area. As detailed in the final EA, a number of utility and roadway Improvements are being funded and constructed by the applicant to provide necessary service to the project. These improvements will insure the project does not place an unreasonable burden on existing infrastructure in the Kahului area. Next please.

Criterion No. 7 is in place to prevent project substantially degrading environmental quality. The project is considered a low impact use especially when considering some of the other industrial uses in the area and will not involve emission of air or noise pollution that would be expected with other commercial or industrial land uses. Temporary impacts are expected, however, during construction and as such, a comprehensive best management practices program will be implemented during construction to insure that construction process, the construction process fully contained within the site and to minimize opportunities for dust, noise and water quality impacts. And to minimize those – that potential down to acceptable levels.

Criterion No. 8 deals with the likelihood of cumulative impacts. There are no future actions related to the implementation of this project. All infrastructure requirements have been addressed in the final environmental assessment, and as such, there are no cumulative impacts expected with the implementation of this project. Next please.

Criterion No. 9 asks if the project is likely to affect a rare, threatened or endangered species or its habitat. The applicant has conducted a biological survey as part of the final EA. This survey concluded that there are no rare, threatened or endangered species present within the project site. In recognition of the nearby Kanaha Pond the applicant had undertaken extensive coordination with Federal, State and County agencies to insure that all concerns related to potential light impacts have been appropriately addressed. Mitigation in this regard includes the confinement of exterior

lighting to the Hana Highway side of the property and the use of a dual lighting system to reduce light pollution from the facility during night time. With these mitigation measures in place the project is not expected to present significant adverse impacts on flora and fauna in and around the site.

Criterion No. 10 specifies the project should not negatively affect air or water quality or ...(inaudible)...noise levels. From a long term operational standpoint, the facility is considered a low intensity use and is not anticipated to generate long-term impacts on these parameters.

Project will improve existing drainage conditions by providing a comprehensive drainage system designed to retain at minimum 100 percent of both the pre and post development runoff across the site. Short term construction impacts as I mentioned earlier are expected as is the case with many, with all new development projects, excuse me. As I mentioned earlier, these temporary impacts will be short term in nature and will be mitigated through a comprehensive BMP plan to insure that all related impacts for construction are contained within the project site.

In regards to Criterion No. 11, the project site is considered to be an appropriate site for development as indicated by the underlying zoning designation. It is not located within a flood plain or is it designated an environmentally sensitive area. In regards to coastal resources it is situated inland approximately 2,500 feet from the nearest area of shoreline.

Significance Criteria No. 12 specifies the project should not substantially affect State or County designated view vistas or view plains, excuse me. There are no such view corridors or designated view corridors within or in vicinity of the project site. There are no view corridors identified in State or County plans that effect this particular location. A three-dimensional view analysis using some of the shots that, I, I, I offered the Commission earlier during the presentation has been prepared as part of the final EA at the request of the Commission to show the appearance of the facility from various angles in relation to surrounding land uses. Mitigation proposed to lessen the massing of the building in relation to the almost one-mile stretch of continuous open space that lays along the makai side of Hana Highway as it runs past Kanaha Pond includes incorporation of a staggered or stepped back design for the building and integration of a landscaping plan that emphasizes both the use of native species as well as planter boxes around the floors of the Medical Plaza building. These mitigation measures were formulated as a direct result of consultation with the County's Urban Design Review Board to provide an appropriate transition between Kanaha Pond and the various industrial land uses located throughout the remainder of the subdivision. Copy of the UDRB recommendation for approval letter to the Maui Planning Commission is provided in the final Environmental Assessment.

And finally we reach No. 13, the final Criterion stipulates the project should not require substantial amounts of energy consumption. By nature, the proposed use as a medical facility, this is not expected to be the case for the Maui Medical Plaza. To lessen the project's reliance on electrical power provided by the MECO grid, the facility will however, be utilizing a system of photo voltaic panels, PV panels which will have the capability of powering 100 percent of the energy needs of the core and shell of the building, the parking structure and also exterior lighting around the property. A number of green design themes such as outdoor corridors have also been included in the plans to maximize the use of natural ventilation and promote overall resource use sufficiencies throughout the facility.

With that, I'd like to conclude our summary of the significance criteria evaluation as contained within the final EA before you today. I'd like to draw our presentation to a close by respectfully requesting review of the final EA and consideration by the Commission for issuance of a finding of no significant impact as recommended by the Department of Planning. Thank you very much.

Mr. Hiranaga: At this time, I'd like to open the floor to public testimony. Is there anyone here that wishes to provide public testimony? Please come forward and identify yourself. Please limit your comments to three minutes. Thank you.

Ms. Irene Bowie: Thank you Chair, and good afternoon Members. My name is Irene Bowie. I'm the Executive Director of Maui Tomorrow Foundation and I was at the two former meetings here at the Planning Commission when the project was on the agenda. I would just like to state that I think although the developers present this project as urban infill and that it's not part of the scenic view corridor losing nearly an acre of jurisdictional wetlands for the development of a six-story structure is not in keeping with the spirit of urban infill and development projects. Maui Tomorrow feels that this area is indeed a part of the scenic view corridor for Central Maui and that it does not meet the, the goals of the 2030 Maui Island Plan for promoting sustainable land use planning and development and protecting the natural environment. And as I stated when I was here before, I would also like to comment that the project's developers claim that a lack of office space is preventing doctors from practicing on Maui, but the overwhelming fact is that the level of reimbursement for physicians practicing in Maui County is low as Medicare defines this area as a rural as opposed to Honolulu which defines it as urban, therefore, doctors practicing in Honolulu get paid a better rate than doctors on Maui. The fear is that this is going to be one more building that's going to be built and it's not going to be filled up. If you go just a little bit further down the road, you'll find a multi-story building on the Mercedes dealership that has never had one space leased in there and that thing has been in existence for a few years now, not one space has been leased. And as you drive around Central Maui you'll find a lot of areas like this that have space that's available for leasing. So I just feel that it's really sad. I notice in the three-dimensional pictures that you saw, nothing shows coming down Hana Highway towards Paia, towards Haleakala where those of us who live in Central Maui are looking at the view plain. You see in those renderings looking back on an urban area and industrial development, but the fact of the matter is that's on the edge of that and beyond that it is a wetland area. So again, you know, it just it seems sad to me. I think in some of the responses that we got back from the, from the developers on our comments, Maui Tomorrow's comments on this they stated they're not currently envisioned or sought any use of any portion of the structure for other than medical offices would necessarily have to compliment and not detract from the primary medical office function. In other words, if doctors don't come and related businesses then it will be for lease --.

Ms. Takayama-Corden: Three minutes.

Ms. Bowie: – for anybody. I'll leave it at that. Thank you.

Chair Hiranaga: Questions for the testifier? Seeing none, thank you. Anyone else wishes to provide testimony at this time? Please, come laterally and identify yourself.

Mr. Kenny Hultquist: Hi, Kenny Hultquist from Lahaina. I testified twice before at the two other

meetings that we had on this project. This, this project really kind of tears me up. I've missed maybe three Planning Commission meeting since 2007. In a perfect world, in my perfect world, if I were king, I would, the Planning Commission just approved the Maui Lani with the Safeway across from Baldwin, if I were king, I'd kick the Safeway out and put this building up there because it's right by the hospital and by the other clinic. I just think, you know, I love, I like the project, the building is beautiful. The people that are doing with it, that are doing the project I think are pretty cool people and hang out and have a beer with them anytime. But this is just in a really bad spot. It's just – that, that pond right there and that view plain is priceless and the building, even though it's a really nice building, is gonna just totally completely block everything that's there and it's proximity to the pond is just, I just feel it's too close, so that's all I have to say about it. Thank you.

Chair Hiranaga: Questions for the testifier? Seeing none, thank you.

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

Chair Hiranaga: Is there anyone else that wishes to testify at this time? Please come forward and state your name.

Mr. Sonny Gamponia: Hello, my name is Sonny Gamponia. I'm a volunteer at Kealia National Wildlife Refuge and I teach birding classes at Kaunoa just to share, share what, share the life cycles of Maui birds with other seniors and I'd like to testify against the building of the medical center at Kealia Wildlife – at Kanaha Pond Bird Sanctuary.

I would like to address two, – I mean, what prompted this was seeing a bumper sticker that said, "save the humans," which I totally advocate, but, but I would like to also address two misstatements and maybe errors in that the developers have used. One, one was that Kanaha Pond was not unique and it was not the last of its kind, the last wetland of its kind. It was built it's said two centuries, about 200 years ago, over 200 years ago it was built, built at the request of the chief. They brought people over from Molokai, men over from Molokai to carry rocks hand over hand across, across Kahului Harbor to make two, two twin, to make twin ponds which Kamehameha I said should be named after the chief Kapiihookalani who was killed in battle after his son and his daughter Maoni and Kanaha. Maoni Pond has since been covered over by, by some of the storage tanks and somewhere under near there is the original Kanaha Pond. I'm not sure what happened, but the whole thing now became a bird sanctuary in 1961. It should be a treasure. It is definitely unique.

Another thing it said was it's not the last of its kind. Well, the world has lost half its wetlands over the past hundred years, 50 percent of the wetlands worldwide, that's why they had that Ramsar Convention in 1971 to preserve this, this, this land, this habitat where so many, so many endangered species and native plants live. Hawaii has lost, we used to have 59,000 acres of wetland and we've already lost 31 acre at a time just encroaching on the breeding and nesting and feeding areas of especially endangered species, the Hawaiian Coot and the, and the Hawaiian Stilt.

Testimony in July stated that they saw one bird flying. I've done bird counts for the, for the Audubon Society with a Christmas bird count and with Cornell University Ornithological Lab, Lab of Ornithology with a backyard, backyard bird count. They have been consistently two to, two to

forty – no like twenty to forty stilts, two to twenty coots and they've nested there every year. It used to be the largest breeding area for the stilt. And, and they're endangered because they're about 3,500 species of each. And so that's why they're protected. That's why they were put on the endangered –

Ms. Takayama-Corden: Three minutes.

Mr. Gamponia: – species act. Now, also –

Chair Hiranaga: Mr. Gamponia?

Mr. Gamponia: Yes?

Chair. Hiranaga: Could you please conclude your remarks?

Mr. Gamponia: I would conclude. Okay, what you need to do is go and look at the site. Birds, with heavy construction, birds will leave their nests. The nests will back in 20 minutes in the drought. At some point, at some point there, there will be – wetlands will do what it do, there will be bugs, there'll be bird droppings, there'll be flooding and there'll be unpleasant smells. They'll ask the County to do something about this, it will – make sense prevent all of that by just not building in this location. And the rest of my testimony was submitted before the meeting.

Chair Hiranaga: Thank you. Questions from the Commissioners? Mr. Gamponia, there's a question from Commissioner Ward. Commissioner Mardfin?

Mr. Mardfin: Hi, your testimony was that this will hurt the birds if the building as they plan to put it in. If it were a smaller building would the same effects occur?

Mr. Gamponia: You would still have, I think you would still have the problems with flooding and ponding because it's, it's a sponge. It saturates, it ponds, that's what wetlands do. Things die when the water recedes. Look at Kealia Pond. There's insects and they want the County want to do something or, or the Federal Government to do something to do about the midges. There used to be a stench there because like algae growth, algae dies, crustaceans grow, crustaceans die as it recedes. Those problems still exist especially now that the pump is broken. The pond is not – the natural habitat there does not make a good neighbor and the medical center which is a worthy project will not be a good neighbor to these endangered species as well as the habitat.

Mr. Mardfin: So even if it were a smaller scale that wouldn't solve any of the problems?

Mr. Gamponia: You would still have the same problems.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions? Yes, Commissioner Sablas?

Ms. Sablas: Thank you for coming forward. Can you elaborate a little bit more on your background

and your experience please?

Mr. Gamponia: I'm a speech pathologist, a retired speech pathologist. I've been following, I started taking pictures of the birds especially on Maui, and every time I took a picture of a bird and I would, I would read about them and just found that they were fascinating. Over the past seven years, I've gone to the wetlands and participated in bird counts. The Audubon bird count, the great backyard bird count that are sponsored nationally just for citizen science. When I retired I went to work for the National Wildlife Refuge in Kealia and got to see first hand the coots, the coots and the stilts nesting for over the last five years and very closely over the last two years. If, if you disturb, you disturb them it stresses them out. In fact, they close the ponds this of year both Kealia and Kanaha because the birds also pose a danger when they get stressed they'll circle you, they'll hit you or, or they'll definitely, definitely complain. It's easy to step on their eggs. But the biggest danger is when they get stressed the stilts will leave their nest, the nest will bake, you have a failed – and you have a failed nest. When, when you disturb their breeding season which is like from March to July, you decrease the population of there's already a small pool of birds which are, which are unique. They're sub species but they've stopped migrating and, and settled here. Both of them are part of Hawaiian folklore and probably because of the folklore aspect as well as the small population they're protected.

Ms. Sablas: Thank you.

Chair Hiranaga: Commissioners, any other questions? Seeing none, thank you.

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

Chair Hiranaga: Anyone else wishes to provide testimony at this time? Seeing none, the public testimony is closed. Open the floor to the Commissioners for questions to staff or the applicant regarding the final EA. Commissioner Mardfin?

Mr. Mardfin: Mark, on your EA I was looking at the, particularly the new things because I spent a lot of time with the original one, the preliminary and you have a, I went through the Table of Contents and you have a section X, Letters received during the draft Environmental Assessment on Page 237, but I want you to turn to Page 240, this is – and I was looking for a couple letters in particular and I saw Irene Bowie's No. 45 from Maui Tomorrow. I was looking for the Sierra Club one, I was looking for Tara Miller's one and I didn't know what the Wailuku Public Library was, I couldn't find them in here, you wanna?

Mr. Roy: Sure I can address the Commissioner's question. The list that you see as Chapter 10, as new Chapter 10, Letters received during the draft Environmental Assessment review period and responses to substantive comments, from a process of going from draft EA to the final EA there were, there were additional people that requested to receive a copy of, of the document, and so these additional individuals that you see on Page 240, received a copy of the draft EA and did not provide a comment as a, during the course of their review. So it's not intended to be an exhausted listing of every letter that you find in the document. It's who received the draft EA and then the letters behind it and the responses to each letter of those people and agencies that chose to respond.

Mr. Mardfin: So this shouldn't be called letters received. It should be called people who requested information?

Mr. Roy: So noted. I think on Page 237 we attempt to clarify the Commissioner's concern by saying in the paragraph, "the following agencies and individuals were sent a copy of the draft EA." I do, however, recognize your comment regarding the title.

Mr. Mardfin: May I?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Totally different issue. Could you get out, back the 3-D views of the project? Those almost all look like they were taken from a helicopter hovering at 50 to 100 feet up in the area and I, I remember specifically when we were, did the site visit, I said, I would really like to see what this looks like from the roadway, and I, we specified even a couple of corners where we'd want to see it. I don't see that anywhere. Because from, from the air you're looking down at it, it looks small, it foreshortens it. I wanted to see what it would look like if I was driving a car by there.

Mr. Roy: Sure. The power point before the Commission today was just put together in, in consideration of time allocations and we selected a few shots from the view analysis that's provided in the final EA document that I believe is Appendix H and is titled, "View Analysis (3-D and photographs), Appendix H," and that would be in Commissioner's Volume II which a, I think is the slightly thicker of the two documents. We had to separate them because it just overly burdensome.

Mr. Mardfin: I missed that.

Mr. Roy: But the Commission's comments from the previous meetings during review of the draft EA were very much taken into consideration and reviewed wholeheartedly by the applicant.

Mr. Mardfin: I apologize, I see them now.

Mr. Roy: Okay. So just for the benefit of, of the other Commissioners, there is a series of ground level shots provided in this analysis that we, we hope addresses the comment that was raised during the previous Maui Planning Commission meeting.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Now that I've had a chance to look at this more carefully, four is from the air, you've shown that up here, five is from the air, six is from the air, seven is from the air, three is from the air, two and one are the only ones from ground level and both are from the other side of the street. Not as you'd see it coming down Hana Highway from Paia.

Mr. Roy: Correct, and, if, if you were to flick past the three-dimensional view analysis which are the 11 x 17 sheets, you'll get to a photographic view study and this was specifically put together to respond to the Commission's comments of taking some shots from various angle around the surrounding Kahului area.

Mr. Mardfin: But it doesn't show where the building will be? The massiveness of the building.

Mr. Roy: We understand that and the exercise that was undertaken for this particular exhibit, the first photo for example, you know, we went over to the intersection just in front of Costco that would be near the new A & B Airport Hotel, and we, we took a photo at that location. It became clear at that point that a number of locations around the site specifically the ones I think that were identified in the Maui Planning Commission's official comments it would be very difficult to make out the building just given the location of, of the local and so the analysis that's before you today is intended to, you know, provide a, a pedestrian's perception as to the locations that were mentioned by the Commission.

Mr. Mardfin: I'm not satisfied with it, but maybe other people are.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Well, I would like to follow up. I, too, don't find this very useful. I was hoping that you would impose in there a rendering of what the building look, something that was fairly accurate. Just saying that you can or cannot see the building is one man's opinion and it doesn't really, I think, satisfy the request. And as long as we're on the topic of pictures, thank you for including perspective shots, but are you sure that these perspectives are to scale? I mean, you've got buildings that are one-story high that just look huge next, so I'm a little thrown by some of these in here.

Mr. Roy: Just to kind of provide a bit of background to the preparation of these shots before the Commission and we're talking about the three dimensional animation shots I believe, a consultant who specializes in the preparation of three dimensional view analysis was hired as a result of our, our last Planning Commission appearance and in respect to the comment that was presented to the applicant. The program that he uses we believe to be an accurate depiction of the proposed facility as you would see it in the field down in, in Kahului at these various locations. It may not be a 100 percent accurate but we believe it's, it's a fairly good shot of what you would see given it is a three-dimensional analysis.

Ms. Wakida: Well, okay, I mean you say so, but the building for example, next where – is it Bounty Music or whatever's next to the proposed structure, isn't that a one-story building in Picture 6? The building to the left isn't that a one-story building?

Mr. Roy: I believe actually, I've, I've only been in that building once and I believe it's got some kind of loft spaces incorporated into the facility, so –

Ms. Wakida: But it looks next to this building, it looks enormous, so, I'm, I'm just commenting that I, I'm not finding these perspective pictures very helpful because there seems to be, just a problem with the scale.

Chair Hiranaga: Just a comment. That building next door is the Second Wind sailboard shop and it is a warehouse style building so I think it is maybe 20 feet high to the top of the roof and not a 10-foot. It is a warehouse and you've got the Firestone or used to have Firestone Automotive in it and

Bounty Music. Any other questions? Commissioner Ball?

Mr. Ball: I have a question on the traffic ingress/egress. And looking at the, the plan here, it's a, it's a little confusing. So if you could just clarify that what your proposed, more so the egress of the thing and how it, how it flows with Hana Highway? People may be going out there and wanting to go towards Haleakala out of that building.

Mr. Roy: The site plan that I have on the power point projector is I think the same as the site plan that's presented in the final Environmental Assessment. To address the Commissioner's question regarding ingress and egress, for cars entering the project site it would be entering at this point here which is Labeled A on this slide. There would be a driveway providing access into the facility and into the, the parking structure for the project. So it's a, a counter clockwise, sorry a clockwise movement around and through the parking structure. It's the driveway on this side, on the eastern side of the project site that would then lead the cars down to the exit driveway on the eastern side of the project site. These turning movements at this location would be restricted to right-turn only given that it's a busy thoroughfare through Kahului.

I would like to mention the applicant has been fully engaged with the State Department of Transportation to this project given the location. They recognize that, you know, there is traffic in the area and there are a number of roadways near the project site. In specific regard to the access driveways and the exit driveways, DOT has issued the approvals as those being viable driveways, and the approval letter is, is within the final Environmental Assessment. So State DOT has essentially said, okay, acceptable to these, these proposed driveways.

Mr. Ball: Okay, then Chair?

Chair Hiranaga: Can you?

Mr. Ball: It still doesn't address the situation where you, where you, exiting and you want to go to Haleakala regardless of what the State says.

Mr. Roy: We have some backup slides there that I just –

Mr. Ball: Okay.

Mr. Roy: We have the traffic engineer here with us this afternoon and I think he can give a good explanation as to exactly how someone making that turning movement could actually do it.

Mr. Lloyd Lee: Okay, my name is Lloyd Lee, I'm one of the engineers assigned to handle the traffic mitigation with the State DOT and we've been working with over two years with the State DOT on Maui as well as in Kapolei on Oahu. And to address your question about circulation, as you know, the project site is here, when you come out of the project site, you would have to go back on Hana Highway and then either turn left at Kamehameha and then hook around to go back this way to get to Haleakala or the State wanted us to improve the storage lane or the U-turn, so as part of that requirement we had to install a new storage lane in the median to allow cars to stack in the median and make a U-turn when it's clear and go back on Hana Highway. So there's two things they

wanted us to do, improve the lane here as far as the left-turn lane into Hobron, I mean, to Wakea Avenue and then if the cars couldn't get outer access – if the cars cannot come in here and, and make the left-turn lane in time, they would have to pass the left-turn lane, go back to the U-turn lane and make a U-turn around on Hana Highway. And that's what DOT wanted us to do as far as to address that, that movement as far as getting back to going towards Paia.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: This is a take off from Commissioner Ball's question. I notice Wakea today it's not signalized. Are you proposing signalizing?

Mr. Lee: We ...(inaudible)... the developer is not proposing signalize, State DOT is. They are already in the process of designing that traffic signals, but they're looking at maybe 2012, 2014 before they install it. And when they do install it, the State has asked us or they will plan to close this median opening here, left-turn storage lane, they would remove it. So the access to the process now from this side would have go back to Wakea turn around, make a U-turn and come back into the project site. So there's no – there be no cross traffic through the median area.

Mr. Shibuya: Now my question.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I got two. One of them is for clarification. On the handout, significance criteria No. 13, you estimated electrical demand load for the project is 1,000 kilowatt, of kilovolts is that amps or it volts, watts? What is it? Kilowatts? KW?

Unidentified Speaker: Kilowatts.

Mr. Shibuya: Okay, kilowatts. So you're talking about one meg. So you also mention the PV panels on the roof to offset usage of the MECO power grid. How large is your ...(inaudible)...? The capacity would be?

Mr. Roy: Well, to address the Commissioner's question, on specifics regarding the photo voltaic design, what the, the applicant has, has evaluated at this point is what could be provided for by incorporating photo voltaic panels on, on the roof of this particular structure given the roof area available for, for PV panels. We've ascertained that the number of panels that they can fit into that specific area as I noted be able to provide for not the entire facility obviously, but 100 percent of three significant components which would be the core and shell of the building, the parking structure, and the exterior lighting around the building.

Mr. Shibuya: Okay, doesn't seem like 40 percent. I'm looking for at least 40 percent to support Act 269 and you probably heard me say on several subdivision Act 269 establishes the renewable portfolio standards where the utility sells 40 percent of its power in 2030 electricity produced by renewable resources and that the whole intent is to minimize the importing of these amounts of oil and to replace it with use of our renewable energy resources, the sun, the wind, geothermal, whatever, and you're being part of this canoe paddling along with this new structure, I don't want

you to be riding the canoe and not paddling as far as I'm concerned. So I would like to see not only carrying the paddle but stroking the canoe towards the goal. There's a difference. Okay. That's why I'm asking what is your total capacity that you expect in terms of kilowatt hours as well as what's your total capacity on your photo voltaic or your wind or whatever your renewable system is. Is it the heat pumps, whatever? Okay, thank you. Can I allow others to?

Chair Hiranaga: Yeah, well, Commissioner Mardfin did you have your hand up previously?

Mr. Mardfin: I do. And I, I want him to get back to that, but I want to ask a question about Page 9. Okay, on Page 10 you have a list of medical uses programmed for proposed Maui Medical Plaza, I guess it's two pages of that. The last paragraph on Page 9 says, "as summarized in Table 2 below the following uses are currently programmed for the proposed Maui Medical Plaza facility based on lease commitments and expressions of interest from medical practitioners." How many of these are lease commitments?

Mr. Roy: I'd like to have the owner representative stand to the podium to address that specific question.

Mr. Mardfin: That would be fine.

Mr. Roy: This specific table, just to provide a little bit of background, was put together again, in response to one of the Commission's comments about intended uses for the facility and so we really went back and looked at the lease commitments which Commissioner is asking at this point and also expressions of interest and really, you know, what level of service, what medical uses are envisioned for this facility, so that just provides a bit of justification, a little bit of background to this particular table

Mr. Mardfin: This is the issue that Irene Bowie was asking about in effect. Is, is will, will this really turn in just any other office building or will it be really a medical building? And if you can have your person do it. I think a lease commitment is something serious. I think an expression of interest is thin air.

Mr. Roy: Sure.

Mr. Mardfin: In my own mind.

Mr. Roy: So to address the specific question about exactly how many of these uses are programmed –

Mr. Mardfin: Right.

Mr. Roy: – based on commitments I'll ask Bob McDaniel, the owner-representative to respond to that specific question.

Mr. Mardfin: Please.

Mr. Bob McDaniel: Good afternoon, Chair, Commissioners. My name is Bob McDaniel. I'm a development partner in the project. These medical professionals identified in the document, I have letters of intent from all of these medical specialties. They don't fill the whole building, but each of these identified, Mark and I went down and looked at our list and some of are double and some of them are triple in the facility. And they are at this point in time, that the Commissioner characterized as thin air. They're not legally binding, they are intent documents to negotiate further as we entitle the property and the facility and it's an ongoing conversation with all these potential tenants.

Mr. Mardfin: So there are no lease commitments? There are 22 expressions of interest.

Mr. McDaniel: That is correct. I don't know about 22 there but –

Mr. Mardfin: Well, I counted 22 things on your list. There may be more, I don't know. And you say some of these would occupy more than one space?

Mr. McDaniel: No, there would be, for example, three physical therapists.

Mr. Mardfin: Oh, each having one space?

Mr. McDaniel: Correct.

Mr. Mardfin: And how many spaces in total will be in the building?

Mr. McDaniel: It's a fluid number but some are taking 3,000 square feet, some are taking 8,000 square feet. So there could be 30 different individual, independent practices and support facilities like laboratory and pharmacy.

Mr. Mardfin: But on the six-story building you don't have a number – accrued number?

Mr. McDaniel: No, they're not – yeah, they're not divided into 2,000 square foot spaces and that would provide 51 of those, no sir.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: I would like to address your significance criteria No. 9 about substantially affects the rare, threatened or endangered species and your report says no rare, threatened or endangered species found within the project site. I've talked to some practitioners who especially who do weaving and they confirmed that a special sedge makaloa which was used in ancient time to weave mat, that is the only site that on Maui that it's found. And it's confirmed in your report, Page 35 with Wes Wong who stated that, and their family lived there in the early 1900's that indeed there was sedge, the makaloa that's there, and yet it doesn't appear on your report. So my concern is, if you consider this insignificant what other areas perhaps did you consider insignificant. And we had early, earlier testimony about the birds. And I just wanted to ask a question, what is this symbol of that's here, is it the Kolea?

Mr. Roy: We have the wetland consultant today who's very familiar with birds around the project site so maybe she can address that specific question about the emblem on the letterhead.

Ms. Sablas: Sure.

Ms. Penny Levin: Yeah, the bird on the letterhead is actually the Ae`o, the Hawaiian stilt.

Chair Hiranaga: Please identify yourself?

Ms. Levin: Oh, I'm sorry. I'm Penny Levin and I'm the restoration ecologist and conservation planner that's done the wetland mitigation for this project, and also to answer your question about makaloa. It's not endangered. It is found in several other sites around Hawaii including in Kihei in one of the Laie wetland which we're working on a restoration project out there now. And it's not on the project site. Project site is highly degraded. Makaloa is in Kanaha, it's being multiplied in Kanaha with Fern Duvall and the project that he's working on in the restoration there. And so there's no endangerment of that at all because it is not within the project site.

Ms. Sablas: Okay, thank you for that clarification, and we heard earlier testimony about some of the birds there. Were you here when Sunny Gamponia testified?

Ms. Levin: No, I wasn't, but I do have a copy of that.

Ms. Sablas: Do you have comments on his testimony?

Ms. Levin: Can I answer to some of that. He's very right that there's a lot of birds within Kanaha and it's a wonderful sanctuary and I think all of you earlier during the draft EA received a copy of the original mitigation plan and there was a lot of attention to the pond itself. We were originally going to mitigate it in the pond and work very closely with Department of Land and Natural Resources on restoration in there. We were negated by the FAA. So in, in doing that we had to move to Waihee, but the project site itself has no birds on the property. They don't nest in there and it is divided, separated from the actual pond by the canal in there. So it, it – he's absolutely right that Kanaha is a wonderful and important place, but in terms of the particular project site, Lot 8, there are no birds on there.

Ms. Sablas: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: On the birds since you're the expert on the – as an ornithologist, I believe you are, are you not?

Ms. Levin: No, I'm not an ornithologist. I'm probably even more labeled as a naturalist.

Mr. Shibuya: A naturalist. Can you tell me the size of the population that I know it varies during the seasons, the high and the low and the different types of birds and what are their flight patterns?

Ms. Levin: There's a wide range of birds that are there.

Mr. Shibuya: Okay. Myna birds.

Ms. Levin: But for example, the stilt it can range anywhere from 20 or 30 to 50 or 60 or higher. They fly between Kealia, Kanaha and also out to Waihee. And they move around, but quite a number of them are, are regulars there and they do an annual bird count which I believe the man talked about where they try to get an assessment of the numbers during each year.

Mr. Shibuya: And what elevation do they fly? Low to the ground?

Ms. Levin: Yes.

Mr. Shibuya: Twenty feet?

Ms. Levin: Relatively low.

Mr. Shibuya: Forty feet, 200 feet?

Ms. Levin: You know, it's hard to tell when you're only five feet tall and you're looking up. But I would say they probably fly in a range of under a hundred feet elevation for the most part especially when they're near water, they're flying, flying over water they're very low. I've seen them fly relatively high when they actually fly long distance coastline between wetlands, but mostly relatively low.

Mr. Shibuya: Okay, thank you. Chairman?

Chair Hiranaga: Yes?

Mr. Shibuya: I'd like to make a point about bird strikes?

Chair Hiranaga: Proceed.

Mr. Shibuya: Earlier I asked for a map showing where the runways go and where this site is located. Maybe you can show me where it is, but I don't see any map that shows the site in relation to the runway, Runway 5 specifically

Mr. Roy: The issue that Commissioner Shibuya is pointing towards with his comments is one of an official comment that was issued by the Maui Planning Commission during the review of the draft EA at last year's meeting. There were questions as to how this particular project site relates in regards to location of flight path activity on Kahului Airport. And really the applicant took those comments from the previous meeting that we were before the Commission and really did some thorough research in regards to addressing those particular comments. There was a new section added into the final Environmental Assessment actually on Page 44 of Volume 1 of your EA document, Page 44, and this would be Volume 1 again. There was a whole new infrastructure section added to the final EA to address that specific comment and there's a discussion about

existing conditions over at the Kahului Airport and how the project site relates to both operations at Runway 5 at the – under existing condition and probable or a potential or a theoretical I should say condition of instrumentation of that particular runway. To summarize the finding of that particular discussion really the heights of the proposed structures for this particular project are not expected to present any significant impacts on aircraft operations over at the Kahului Airport. In fact the FAA who is the responsible Federal agency tasked with reviewing developments or conditions or changing operations around airport facilities has completed a review of this particular project and that determination actually was recently extended because it's time sensitive and this project's been in the planning stage for a number of years now. They really issued a formal determination from the Federal agency responsible for this particular issue of impact assessment for airport operations and the determination was that there was no hazard posed on aircraft operations, excuse me, at Kahului Airport from this project.

Mr. Shibuya: Okay, Mark, I want to draw your attention to Page 100, Exhibit D as in delta. FAA, Federal Aviation Administration issued 7-30-2009 that specific determination of no hazard to air navigation has an expiration date as you mentioned and the expiration date is January 30th, 2011. I believe today is April 26, 2011 so it's way overdue. So how valid is this?

Mr. Roy: You're, you're correct in referencing the date and as I mentioned just now, the applicant's has actually submitted a request to the FAA for renewal of this no hazard determination. And as of, I think, within the last couple of months the FAA issued a renewed determination that this no hazard finding from the FAA is still in effect and it has a new deadline that is actually some time off in the future now. So it still lives on this particular determination.

Mr. Shibuya: Okay, and then maybe you can clarify for me about Brennon Morioka who is the Director of the Department of Transportation. In the other letters, he's mentioning that FAA has no jurisdiction, but the Department of Transportation, Airports Division has jurisdiction. Can you help me understand what's happening here. I think this is a food fight.

Mr. Roy: I'd like to clarify that the specific determination that Commissioner Shibuya is pointing towards is one of a no hazard to aircraft operations related to development at the project site which is where the Maui Medical Plaza will be. So you're building a six-story structure is it expected to impact in any way aircraft operations related to the Kahului Airport? The answer is from the FAA is that there is no impact expected with this project. I think if I'm correct, in, in, interpreting the Commission's comments regarding Brennon Morioka's letter, I believe those comments were in relation to the previous version, and it gets somewhat confusing because there has been a lot going on with this project in regards to the specific wetland mitigation aspects behind the project. And as Penny Levin noted earlier there was extensive coordination with the Army and the Federal and State agencies to really find a mitigation site within the Kanaha Pond and that mitigation site was really nixed by the State Department of Transportation, Airports Division that really came in and said they don't want to do anything within Kanaha Pond that could potentially increase the potential for bird strikes over at the Kahului Airport. So I think they're, they're kind of different categories of comments that, that you're referring to.

Mr. Shibuya: Understand, and I just don't want to be argumentative or anything. I helped draft some of the aspects of the Kahului Master Plan. And so I'm quite familiar with some of the data.

And I want to share of the information that creates why and some of the runway improvements. For your information, we currently have the number of operations today, while 2010, less than 9,000 overseas operations at 80 to 85 percent load factor. Translating that in 2010, that is approximate, well, less than 2.5 million passengers here in Kahului. In 2035, that number jumps and exceeds three million. How do you deal with this and the master plan does this, Runway 523 is lengthened 5,000? Runway 220 is 9,600 feet. These are significant. The big problem we have today and I know this doesn't relate. I'm going to try and put all these things together for you, for all of us, currently on Runway 2 if you look carefully on the water draining lines that they etched in the runway, the straight line when they etched it, today they look like a W. What happens is the loads are heavier and the runway is weakening. So when you break the aircraft, it stretches and moves the top surface of the runway. And today we have that situation. Earlier plan was to have a dual runway so that if one was done you could operate with the other. We don't have. Because of the financial situation we are now extending the runways. I went out because you didn't provide me the charts that I asked and here's the chart and I'm going circulate this around so the fellow members can see. This, a corner here is where the project is. Runway 5 is here. It's almost direct line.

Mr. Roy: Again, just to, to, to focus in on the Environmental Assessment process for this particular project. The Chapter 343 process is one of, of course, going out for government and agency and public review and there's been extensive coordination on a number of issues related to this project in regards to the specific questions or comments from the Maui Planning Commission those to my understanding or from my recollection were only, the only comments pertaining to the airport operations itself. The official comments from the Commission was number one, explain how the project would impact the potential creation of an instrument approach to Runway 5 at the Kahului Airport. And I believe, the second one was, discuss future plans for the Kahului Airport. At the time of writing the final EA document as I noted, we incorporated this full new section to discuss the existing conditions over at the airport and the future plans that were available for public review at the time of writing. I understand that the master plan is, is, is an ongoing process at this point, but we've put much attention into addressing those two specific comments and we hope that the Commission feels that the research and analysis that we've provided is adequate in that regard.

Mr. Shibuya: Yes, I just wanted to point out that the runway extension is closer to the structure and it's closer to the wetland wildlife sanctuary where the birds are. So what that means is that the aircraft is coming in lower and you have a potential bird strike unfortunately.

Chair Hiranaga: Commissioners, any other questions? Commissioner Wakida?

Ms. Wakida: I would like to address some concerns I have with the Kanaha Pond. In the draft EA was a letter from the Department of Ag, U. S. Department of Agriculture, Natural Resources in which they said that this, they identified this as a pristine wetland and in a letter from the DLNR they tell us that it's - it's a historic national natural landmark. In fact, it is the first wetland in the State of Hawaii and it is precontact and it has extreme historic value as well as being a wetland value. Back to the letter from the Department of A. They talk about mitigation for this wetland and I believe that they're talking about what is this project going to do to prevent impact on Kanaha Pond not about mitigation where you're going off to Waihee and restoring other wetlands, but what about the impacts at Kanaha. The DLNR, in the final EA refers to the Hawaiian duck and it says that they

encourage the Army to protect this wetland and so on. I mean, there's a number of things that I don't feel have been adequately addressed in this final EA. I don't see very much information from creditable sources that have a stake in Kanaha Pond. I'm not quite sure who those would be but I would like to see more information from the people who are in charge of Kanaha Pond and the stakeholders in that pond, official stakeholders about the impacts of this project, and I have not seen much in this. You do say in place that there will be no significant impact to the wetland. Well, just saying that there will be no significant impact doesn't make it so. So I would like to see the people who are caretakers of this pond have some input in this and I do think that there is a dearth of that sort of information in this, in this final EA.

Mr. Roy: To, to address Commissioner Wakida's question, regarding consultation with government agencies who have purview and oversight over Kanaha Pond.

Ms. Wakida: And private agency.

Mr. Roy: And private agency. The what I understand the question is not going towards a question on wetland mitigation because the wetland mitigation is being handled offsite. As part of that process the, the Maui Medical Plaza project and the wetland mitigation components of the project was extensively reviewed by both the Department of Army, the Environmental Protection Agency at a Federal level, also down at the State level by the Department of Land and Natural Resources and the specific DLNR division is the one headed by Fern Duvall, who's local based on Maui. So there has been quite a bit of coordination with that particular agency during the process of planning this particular project. I would also like to draw the Commission's attention to the process undertaken as part of the Chapter 343 process. There was early consultation with a number of agencies conducted before the EA document was even put together. DLNR was, was obviously included in on that list too. I believe has operational jurisdiction over Kanaha Pond but I understand as going through this wetland mitigation process the State Department of Transportation has agreements in place from the Airports Division as to what can and can't be done within the Kanaha Pond itself, so –

Ms. Wakida: Well, well that's kind of not quite what I – there was a great deal of information about mitigation for the piece of property itself and that particular property and it's whether it was or wasn't a wetland and what the mitigation would be for the back property.

Mr. Roy: Sure.

Ms. Wakida: And there was a lot of agencies that were consulted. What I'm saying is I am not seeing much feedback about the impact on, on Kanaha Pond itself.

Mr. Roy: Sure. I think my presentation earlier today kind of hit upon some of the mitigation aspects that are being incorporated in this project as part of going through the agency consultation process. The design of the project in itself, the orientation of the buildings has really been put together as a result of this coordination with the agencies. The human use of, of the Maui Medical Plaza has been oriented on, on the Hana Highway side of the property there was originally a recommendation, there are obviously lighting mitigation that – a lighting plan has been put together to really insure that Kanaha Pond is not significantly adversely affected by this project. I think to go to the question,

I think I may be a poor job at articulating a response about consultation with the various agencies. If it's okay with the Commission, I'd like to invite Penny, Penny Levin, excuse me, to the microphone as she was involved on the ground, with, with, with Federal and State and County agencies during this process of planning for the project and she can maybe point the Commission to, to some of the other aspects related to, to the Commissioner's question.

Ms. Wakida: Oh, that will be fine. And I'd like – she has say, however, I do think that this information should be in this document.

Ms. Penny Levin: Aloha Commissioners, Penny Levin. It was in the original mitigation plan when we were first going to do –

Chair Hiranaga: Excuse me, could you pull the mic a little closer to you?

Ms. Levin: I'm sorry. That information that you're looking for was actually in the original mitigation plan where we were going to do work with Fern Duvall at DLNR in Kanaha Pond. But to answer your question in terms of agencies. The Army Corp of Engineers are the guys who decide what goes on for us in terms of the wetland, in terms of mitigation. In consultation with Fish and Wildlife Service and DLNR, OHA and a number of other agencies as well as interested parties, private parties or non profits, their decision was that there was certain criteria that we had to adhere to. We did a Section 7 consultation with the Fish and Wildlife Service which they required us to mitigate for lighting, mitigate for windows that would not be reflective so birds wouldn't fly into them as well as issues of human impacts as Mark described.

In terms of protecting the wetland itself because the property didn't have birds on it, didn't have endangered species on it and didn't, doesn't actually touch the wetland even though it's close by, they felt that putting together a series of protective actions during construction was, was amendable to what they needed to do in order to protect the wetland.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions from Commissioners? Commissioner Wakida?

Ms. Wakida: For staff, what is the average height of a story in a multistory building, office building, standard?

Mr. Spence: Kind of going to vary floor to ceiling or floor to floor probably about 12 feet.

Ms. Wakida: About 12 feet, yeah, because this building is 93 feet high, but it says it's six stories and then there was a chart. I don't – of other buildings and I don't know if those six-story buildings are 93 feet higher or if they're more closer to 70, so?

Mr. Roy: Just to clarify Commissioner Wakida's question, the, the structure is proposed as a six-story structure. The, the top of the six stories themselves comes to I think about 75 feet. There is an elevator shaft on top of the building which is allowable per County zoning which brings the height up to the height that the Commissioner mentioned.

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: I just have one comment and I, I'm wondering if it is proper for an elected official to write a letter of recommendation that would appear in the EA, final EA when he was a consultant on the project prior to being elected and I just want to bring up that I am a little concerned about that.

Chair Hiranaga: You want to ask that question of Corporation Counsel?

Ms. Wakida: Yes, I think I would.

Mr. Giroux: What's, what's your concern, Penny?

Ms. Wakida: How appropriate it is for an elected official to write a letter of recommendation on a project that this Commission is looking at and also that person was the consultant on this project prior to be elected to that position?

Mr. Giroux: I'm not sure exactly what you're speaking on as far as the, the, as appropriate. If that person thought that it was gonna, you know, be a conflict or anything they would probably check to see if they're going to create that type of conflict with the Board of Ethics. Just as a Member of this Board if they were a former consultant they would check with the Board of Ethics I would hope. So, if, if – so I –

Mr. Spence: I'm, I'm not, I didn't quite look up the letter you were referring to but our Mayor is, was a consultant on this, current Mayor was a consultant on this particular project and you know, it's – I'm not sure when that letter was written. I assume it was before, it was after –

Ms. Wakida: No, it's on letterhead. It's on County letterhead.

Mr. Spence: Okay.

Ms. Wakida: I was just interested, I just wanted to make a comment on that for the record.

Chair Hiranaga: Any other questions regarding the EA? Seeing none, staff would you like to provide your commentary?

Mr. Buika: Yes. The Department's conclusion of law. Upon reviewing the final Environmental Assessment, the Department concludes that the project as proposed with mitigation measures does not pose a significant impact to the environment relative to the significance criteria stated in Section 11-200-12, Hawaii Administrative Rules. The Department's recommendation. The Department recommends that the Commission accept the final Environmental Assessment and issue a finding of no significant impact determination at today's meeting. At a future meeting, the Maui Planning Commission will conduct a public meeting and review a Special Management Area Use Permit application. So please note that the issuance of a FONSI determination does not preclude the Commission from requiring additional information and/or mitigative measures during review of the SMA Use Permit application. This concludes the Department's recommendations and

remarks about the project's final EA.

Chair Hiranaga: Jim, could you just clarify the purpose of an Environmental Assessment and briefly why, how the Department deems it's complete?

Mr. Buika: The, the purpose of an Environmental Assessment is an information document designed to bring together enough information for the accepting authority to make a determination whether there is a significant impact or not a significant impact so that you can do one of three things. You can determine that there is a finding of no significant impact. There is a finding that you don't have enough information to conclude that there's not a finding of significant impact and that you need additional information or that you think that it rises to a level where it requires more research and information to do a full-blown Environmental Impact Statement. So our role in the Planning Department is to review it against exactly what I stated the Section 12- or Section 11-200-12, Hawaii Administrative Rules which are the 13 significance criteria which we presented to you to determine whether or not it's complete from a, from a legal perspective presenting to you. So it is your determination whether or not you have enough information to make a finding of no significant impact today.

Chair Hiranaga: So hypothetically, if the Commission accepts this as a no significant impact, what happens to this document?

Mr. Buika: This document is then forwarded to the Office of Environmental Quality Control, Department of Health which is in the Department of Health, State Department of Health and it is published for a 30-day challenge period in the Environmental Notice publication and if it does not have significant challenge during that 30-day challenge period then it is deemed complete and finalized and the Chapter 343, HRS process is completed.

Chair Hiranaga: And then what happens to the document?

Mr. Buika: Then the document is complete. It is used – the, the, the information in the document is, is used for the SMA Use Permit obviously and probably you need a subset of the information in the Environmental Assessment.

Chair Hiranaga: Okay, thank you. At this time, I'll open the floor to a motion?

Mr. Ball: Chair?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Motion to accept the final EA, issue a finding – a FONSI and proceed.

Chair Hiranaga: Is there a second?

Ms. Domingo: Second.

Chair Hiranaga: Motion by Commissioner Ball, seconded by Commissioner Domingo. Director?

Mr. Spence: Motion is to accept the final EA and make a finding of no significant impact.

Chair Hiranaga: Discussion? Commissioner Mardfin.

Mr. Mardfin: I will not be able to support that motion. I am not convinced that we should issue a finding of no significant and then no significant impact. I think there may well be significant impacts. No. 1, I think the answers to asking for scenic views from the highway was not complete. So I think the document itself is not complete. It think there are going to be major impacts on scenic views. So that's one major concern.

A second major concern has to do with birds and other fauna in the general area. And here I have – there are competing experts. I read Robert Hobdy's study that seem to be supportive of no significant impact. I acknowledge Penny's testimony but we have competing testimony from Sonny Gamponia and there are other things that make think that there will be an impact. That's sort of a maybe there is, maybe there isn't. Those are the two major areas that make me unable to support a finding of no significant impact at this time.

One last thing, I, I concur with Kenny and his comments. I think if this were in a different location there would be almost no problem with it. I think it's a beautiful design, I think there's lots of other things but I think it's the wrong place. So I think there will be a significant – there might well be a significant impact on the environment.

Chair Hiranaga: Any other discussion? Commissioner Sablas?

Ms. Sablas: I, too, will not be able to support the option a lot and I concur with almost all of the points that Commissioner Mardfin said including Kenny's comments by the way. But also the long term, long term impact to our airport expansion for the long term of Maui. I think we need to really look at that. Look at where it is. You know, why do think we've had to struggle about this project because obviously there's a lot of concerns that we have that haven't been addressed otherwise this project would have been approved a long time ago. So I really caution us in a direction we're going for Maui by approving a project like this in the wrong place.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I concur with the points that have already been made and in addition to that, as far as long term effects and this was brought up at the, at the draft EA that this building does not conform to the Kahului Community Plan about having tall buildings in the interior of a commercial area. It in blatant defiance of that. So as far as long term effects I don't feel that those have been sufficiently addressed and to put a building up of this size, we have a long term effect.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: I'm very torn in this particular situation. I can go in either way. I'm very for the construction because it adds towards the economic development of Maui. I'm, I'm for this facility. I don't know about this location because I have family currently living in Boston. He is a internal medicine specialist. She is a speech audiologist specialist and they would really love to be here.

They stay here with their four children and every time I see them landing on Runway 2 I cringe because I know what the conditions on that surface is. We cannot continue this kind of tragic type of situation but I'm not taking it out on, on this project. We have a problem here in a sense that we've got everybody on the canoe and hardly anybody's holding their paddle much less dipping it in and stroking us towards self-sustaining ourselves. We talk green, we talk conservation, we talk generating renewable energy but we don't do it. Show me. This facility uses a lot of energy, I know that, and if you're gonna be part of this Act 269 which the Legislature passed, we're not going to make it. We can't be depending on HC&S and the wind turbines to carry us through. It ain't gonna work. We each gotta be part of the solution. We each have to be part of this canoe and we each have to dip our paddles in there and stroke, not just take a ride and ride along.

The other aspect is, here we are trying to work toward maintaining the wildlife, the endangered species that we have at Kanaha. My gosh, here we're trying to increase the population, we're also trying to extend the runway toward them. Somewhere, someplace we're not thinking right. Something's going to go wrong here. And I'm afraid that one or a few of the three million passengers in 2035 could be a victim of a bird strike. This is very troubling for me. If we're talking quality of life, this certainly is risking that quality of life. And I am willing to do that? In my own conscious I have to look at myself and say, I was part of this decision making, I feel very torn. I want my family here. I want them to have their, their job opportunities. I want my friends to have a better life, my gosh I don't want them to risk it for other generations. Thank you.

Chair Hiranaga: Additional discussion regarding the motion? I, I would just like to clarify that if the EA is adopted, does not mean that this particular design is approved. You still have a major SMA Use Permit that has to come before the Commission. So this is an informational document that assists the agencies as well as the Commission when they come before us for a major SMA Permit. So I just want to make that clear that we're not approving a building at this point. Am I correct, Director?

Mr. Spence: That's correct. And in between now and the time that those Special Management Area Use application comes before you, they could provide other information or you know, mitigation for, you know, I mean, it's going to be roughly the, the same certainly because, you know, because of whatever findings this body makes, you know, provided that a FONSI is issued. You know, there may be other things that come up in the SMA permitting process and there will be, you know, conditions per the Commission on that, on that particular permit.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: I, I, I take your point. I take the Director's point. I'll address the Chair. I take the Director's point on that. And I take the Chairman's point that this is only the FONSI determination. This isn't approval of the whole thing. The whole thing will come before us. But it's the first step on that. And if we say a six-story massive building has no significant impact on the environment, then we're not going to be able to put conditions on it that it be two stories or anything like that. We're stuck with saying that this building, in this spot, under these conditions have no significant impact. I believe that's false and that's why I can't support it.

Chair Hiranaga: I would like maybe clarification from either the Director or Corporation Counsel

regarding the Commissioner's statement that if we approve this EA with a proposed six-story building that that is set in stone that it will be a six-story building because I do not believe that is true, but if you can clarify for us?

Mr. Spence: Sure. Assuming this Commission accepts the final EA and makes a finding of no significant impact for this building under these circumstances if they wanted to come in with the SMA and say we want to do a two-story building, you know, I can't imagine that happening. But I'm just saying, you know, the logical thing would be there would be less effect so –

Chair Hiranaga: Well, to clarify my question is, if we adopt this does that mean they have the right to build a six-story building?

Mr. Spence: No, they don't have a, that right, that comes with the Special Management Area Use Permit.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: That, I agree with you that that's correct. However, if they say, well we need six stories to make it economically feasible and you already said that a six-story building will have no significant environmental impact we will be hard pressed to have grounds on which to limit the height.

Chair Hiranaga: Well, I guess, I think we're approving a project as a whole on the EA. We approving six stories or number of doors or number of parking stalls. We're talking about an EA right now. So the project has to pass on its own muster.

Mr. Spence: Sure.

Chair Hiranaga: If there's no further discussion, I will call for the vote. The motion has been – why don't you restate the motion?

Mr. Spence: The motion was to accept the final EA and issue a Finding of No Significant Impact.

Chair Hiranaga: So all in favor of the motion please so indicate by raising your hand.

Mr. Spence: It's three ayes.

Chair Hiranaga: Opposed?

Mr. Spence: Five naves.

It was moved by Mr. Ball, seconded by Ms. Domingo, and

**The Motion to Accept the Final Environmental Assessment and Issue a
Findings of No Significant Impact, FAILED.
(Assenting - K. Ball, D. Domingo, I. Lay)**

(Dissenting - L. Sablas, J. Freitas, P. Wakida, W. Shibuya, W. Mardfin)

Chair Hiranaga: So the motion fails. Floor is open to other motions?

Mr. Freitas: Move that we delay this action.

Chair Hiranaga: Defer.

Mr. Freitas: Defer rather, excuse me.

Chair Hiranaga: Is there a second?

Mr. Shibuya: Second.

Chair Hiranaga: Motion to defer by Commissioner Freitas, seconded by Commissioner Shibuya. Discussion? Commissioner Mardfin?

Mr. Mardfin: Defer until when? Indefinitely, until they come up with more information, till the year 2015?

Chair Hiranaga: We're in discussion.

Mr. Mardfin: I'm wondering what, what is the – is the deferral open-ended?

Chair Hiranaga: Well, I think there's some questions that Commissioners had so maybe the applicant might indicate when they might be able to address some of those additional concerns that were expressed?

Mr. Buika: Can I add possibly some clarifying comments here?

Chair Hiranaga: Sure.

Mr. Buika: So we're down to two options. We can defer the final EA or we can ask for a preparation of a Environmental Impact Statement. The deferring to the final EA, the Commission finds that additional information is required to make a determination on the final EA. So what we need are some definitive – you're required to come up with some definitive required additional information so that you can make your determination on the final EA that it either – it either rises to the level of a FONSI or it requires an Environmental Impact Statement if we do find there are significant impacts to do a Environmental Impact Statement. So I think what we need are some definitive –

Chair Hiranaga: Thank you for that clarification. I'll give the first opportunity to the maker of the motion.

Mr. Freitas: Well, there was concerns raised and to address those concerns. And to come back to this body.

Chair Hiranaga: Well, he needs specific.

Mr. Freitas: Specific? The flight, the flight pattern issue. The what do you call, height issue, the traffic issue. Those was the concerns that I can remember and if anybody have any one, make an amendment to the motion.

Chair Hiranaga: Well, actually it's part of the motion. It's just identifying exactly or specifically as possible what you feel is lacking from this document. So Commissioner Shibuya?

Mr. Shibuya: I looked at the energy. I would like to have a more definitive type of estimate of the amount of power that this structure is going to be using. If you are gonna cut back on that, then perhaps that could determine the height limitation or your willingness to place renewable type generators in this system.

Chair Hiranaga: Commissioner Wakida you had your hand up?

Ms. Wakida: Yes, but just point of order. Don't we vote on whether or not to defer and then afterwards list our items that we want them to explore?

Mr. Giroux: No, I think we're doing it the right way. I'd rather see if there is, if the motion to defer is going to pass, I'd rather see the list of the specific items first because the, the when you vote on to defer or not, if that list is not, you know, something that concerns you it would affect the way you vote.

Ms. Wakida: Oh, I see. All right, I'd like to add to the list. I'd like feedback from specific agencies that are in charge of Kanaha Pond and those agencies be allowed to respond on the impact of this project on Kanaha Pond.

Chair Hiranaga: Are you done?

Ms. Wakida: I'm done, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: As I asked for last time, I'd like to see t 3-D photos, 3-D images of this in completed stage taken from various -parts along Hana Highway, not 100, 200-foot helicopter. So you can see what the impact will be as you drive in from Paia and come in from Costco and the airport, and coming the other way, how you –I mean, we had specified different street intersections, as you're coming, going toward Hana from – as you pull out of Longs on Kaahumanu and what it's going to look like there. They're close on that one, because they were on the other side of the street, but, but coming west they need to show what it's going to be like from the street. I think it's gonna look massive. And I think we need, while I appreciate what, what Penny has testified and appreciate what Bob Hobdy's report was, but we also have competing things. I don't think if there are other ways to resolve the competing expert issue on, on bird life and other fauna.

Chair Hiranaga: Any other issues you would like addressed? Commissioner Wakida?

Ms. Wakida: Yes, just lastly I would like them to address the issue of the Kahului Community Plan and the specific height recommendations in that plan. They kind of skirt that issue.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I would also feel more comfortable, we had the owners say that he had expressions of interest. I guess, I'm, I'm taking cognizance of Irene Bowie's comments about, you know, this gets sold as a medical office and then it turns into a regular office and there are lot's of regular office space around. And you know, I'm not expecting them to come up with signed leases, that's not going to happen at this stage, but I had a better feeling for the level of commitment of different medical specialties what percentage of the floor they're likely to take versus the total floor space of a six-story building would make me feel a little bit better depending on what the answers were.

Mr. Ball: Does a medical building look different than a office building –

Chair Hiranaga: I guess my only comment is a professional office space occupancy levels fluctuate with the economy. And five years ago, there were probably a 100 percent occupied and not they're at 70 percent. So by the time they build this building, the economy may be back and that's what they're hoping for. Typically developers do not build during the peak of a economic real estate boom. They want to be building at the ...(inaudible)... –

Mr. Mardfin: Right, because the –labor costs will be cheaper.

Chair Hiranaga: Exactly. So to say who's going to commit at this point –

Mr. Buika: And actually the applicant is willing to address that question right now from a legal perspective if the Chair is willing to take the time for that?

Chair Hiranaga: I don't think we need that.

Mr. Buika: Yeah, okay.

Chair Hiranaga: Any other issues you need addressed?

Mr. Ball: Just to go back onto that?

Chair Hiranaga: Commissioner Ball.

Mr. Ball: Mardfin's comment on, on the building. I mean, we're looking at the exterior. It doesn't really matter about the use inside. I mean, you could have anything inside. It's about what the exterior of the building is going to look like coming, coming down the road. To you, it could have anything inside. To restrict the use of the property owner to only medical if that's what you're – where you're going with that is very prohibitive on them trying to get tenants in a down economy. So just that comment for that.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Let's not have a debate.

Mr. Mardfin: I don't want a debate. I just want to say, they're selling it as a medical facility. If they sold it as office space, my questions would be very different.

Chair Hiranaga: Thank you. Any other issues regarding the EA, we're kind of running a little late here on time, so anyone else have any issues. If not, you want to go down that list?

Mr. Buika: Yes, I have five. Commissioner Shibuya regarding energy, definitive amounts of power using renewable type generators, address the energy issue. He didn't mention height limitation. It is within the height limitation I believe. You just mentioned those words. I don't know, do you want to form that as a specific question or ?

Mr. Shibuya: In relation to the flight pattern risk as well as with the bird strike.

Mr. Buika: Those were addressed today but we can readdress those. Height limitation with respect to flight pattern and birds, bird strikes, bird --

Mr. Shibuya: Risk.

Mr. Buika: Bird Risk. Thank you. Commissioner Wakida, wanted feedback from specific agencies in charge of Kanaha Ponds and their written response to the project in terms of impacts. And also, okay, Commissioner Mardfin, 3-D photos taken along Hana Highway coming in from various directions and with that specific street intersections. I think those specific street intersections are in the document, but just to have some 3-D renderings coming from west on this --

Mr. Mardfin: And we told them at, during the last site visit where we wanted them from. And it's not just photos, it's, it's you gotta put the 3-D -- the building image has to be in there.

Mr. Buika: the superimposing onto the photographs is that what you were talking about? The ones that we had looked at?

Mr. Mardfin: Like he, like he has but not from a helicopter from the ground level. I mean, he's got the right program to do it. If he can do 3-D imaging.

Mr. Buika: All from ground level. And Commissioner Wakida, to address the specific height issues relative to the Kahului-Wailuku Community Plan. Yeah, it, it is in the document already but we can clarify that. Also, Commissioner Mardfin wanted a better feel for the level of commitment in terms of percentages of floor space that tenants are interested in leasing. Anything else?

Mr. Mardfin: You forgot the competing experts on what will happen to the fish pond, the Kanaha Pond.

Mr. Buika: Can you, can you give me a definitive? What do you want them to?

Mr. Mardfin: Well, we two sets of experts but we have a third expert I presume?

Mr. Buika: No, a speech pathologist.

Chair Hiranaga: Retired speech.

Mr. Mardfin: Who did bird counts.

Mr. Buika: So what do you want, please formulate ...(inaudible)...

Unidentified Commissioner: He's a volunteer.

Chair Hiranaga: Order, order, please.

Mr. Mardfin: I would suggest that we get, that – I don't know. Maybe somebody that can, can referee it a little bit better than I, maybe a third source that can confirm or deny and I don't know how you do that fairly to be honest.

Mr. Buika: Okay. Okay, we'll provide third party review of the public testimony that was provided today at, at minimum.

Mr. Mardfin: That will work. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: That's okay.

Chair Hiranaga: Commissioner Freitas, as the maker of the motion, did you have anything specific or is that covered on that list now?

Mr. Freitas: That covers it all. Let's take a vote. I need a second.

Mr. Mardfin: You had a second.

Mr. Shibuya: I got a second. I gave you the second.

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: Yes, Mr. Chairman, I believe Commissioner Sablas wanted some additional information on the airport expansion.

Mr. Buika: Could you please restate that for me?

Ms. Sablas: Clarification on how this project would fit in the long term plans for the airport expansion.

Mr. Buika: Okay.

Chair Hiranaga: Are we done? Okay, so I'll call for the vote. All in favor of the motion to defer, please so indicate by raising your hand.

Mr. Spence: It's seven ayes.

Chair Hiranaga: Opposed?

Mr. Spence: One nay.

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

**VOTED: To Defer the Matter In Order for the Applicant to Provide the Additional Information Requested by the Commission.
(Assenting - J. Freitas, W. Shibuya, D. Domingo, L. Sablas, I. Lay,
P. Wakida, W. Mardfin)
(Dissenting - K. Ball)**

Chair Hiranaga: Motion carries.

Mr. Buika: Thank you.

Chair Hiranaga: I know we're running a little overtime, but I just want to get, dispose of the minutes, Item E, do we have a motion to accept?

E. ACCEPTANCE OF THE ACTION MINUTES OF APRIL 12, 2011 MEETING AND REGULAR MINUTES OF THE JANUARY 11, 2011 AND MARCH 22, 2011 MEETINGS

Mr. Shibuya: Move to accept. Move to accept.

Ms. Wakida: Second.

Chair Hiranaga: April 12th and January 11th and March 22nd, 2011. Motion by Commissioner Shibuya, seconded by Commissioner Wakida. Any discussion? All in favor say aye. Opposed. Motion is carried.

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

**VOTED: To Accept the Action Minutes of April 12, 2011 and the Regular Minutes of the January 11, 2011 and March 22, 2011 Meetings.
(Assenting - W. Shibuya, P. Wakida, D. Domingo, L. Sablas, J. Freitas,
I. Lay, K. Ball, W. Mardfin)**

Chair Hiranaga: Motion is carried.

F. DIRECTOR'S REPORT

- 1. EA/EIS Report**
- 2. SMA Minor Permit Report**
- 3. SMA Exemptions Report**
- 4. Planning Commission Projects/Issues**
 - a. Revising the SMA Boundaries**
- 5. Discussion of Future Maui Planning Commission Agendas**
 - a. May 10, 2011 meeting agenda items**

Chair Hiranaga: Any objection to not completing the agenda or does someone have anything specific they want to bring up regarding F, Director's Reports? Yes, Commissioner Wakida? No, I've got – I apologize the motion that we just had was for April 12th?

Chair Hiranaga: April 12.

Mr. Shibuya: Yeah.

Ms. Wakida: The Action Minutes?

Chair Hiranaga: Right.

Mr. Shibuya: Yeah.

Ms. Wakida: I can't recall, do we vote on these other packets of minutes that we were given?

Chair Hiranaga: We just did.

Mr. Shibuya: We did.

Ms. Wakida: The January 11th?

Chair Hiranaga: Yeah.

Ms. Wakida: Oh, we did them all?

Mr. Shibuya: Yeah, all together.

Ms. Wakida: Oh, sorry.

Chair Hiranaga: So if there's no further business? Commissioner Sablas?

Ms. Sablas: Just to let you know that I will not be able to be at the May 10th meeting.

Chair Hiranaga: Okay, thank you.

Items under the Director's Report were deferred due to lateness of the day.

G. NEXT REGULAR MEETING DATE: MAY 10 , 2011

Chair Hiranaga: So if there's no further business this meeting is adjourned. Thank you.

H. ADJOURNMENT

The meeting was adjourned at 5:27 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Kent Hiranaga, Chairperson (excused from 1:00 p.m. to 1:35 p.m.)
Keone Ball
Donna Domingo
Jack Freitas
Ivan Lay
Ward Mardfin (in attendance at 9:09 a.m.)
Lori Sablas
Warren Shibuya, Vice Chairperson
Orlando Tagorda
Penny Wakida

Others

William Spence, Planning Department
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works