

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 28, 2011**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:06 a.m., Tuesday, June 28, 2011 Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Hiranaga: This is the Maui Planning Commission meeting of June 28, 2011. At this time, I'd like to invite anyone that wishes to provide testimony on any agenda item. Start with the list that I have before me. James – Jeffree Trudeau. You may speak now or wait for the agenda item comes up.

The following individuals testified at the beginning of the meeting:

Jeffree Trudeau, C-3, Waipio Bay Benevolent Association Appeal of Director's Decision
Dave Deleon, B-1, Dept. of Environmental Management and Dept. of Parks and Recreation, SMA
Daniel Grantham, C-3, Waipio Bay Benevolent Association Appeal of Director's Decision
Chad Fukunaga B-1, Dept. of Environmental Management and Dept. of Parks and Recreation, SMA
Pat Borge - C-1, Cherie Attix, Conditional Permit time extension
Lester Wong - C-3, Waipio Bay Benevolent Association Appeal of Director's Decision
Craig Henderson - C-4-5, Lee Ohigashi, Petition to Intervene, Maui Business Park Phase II, SMA
Mike Morris - B-1, Dept. of Environmental Management and Dept. of Parks and Recreation, SMA
Jocelyn Perreira - C-1, Cherie Attix, Conditional Permit time extension
Miles Inokuma - C-4-5, Lee Ohigashi, Petition to Intervene, Maui Business Park Phase II, SMA
Tyron Manegdeg - C-4-5, Lee Ohigashi, Petition to Intervene, Maui Business Park Phase II, SMA
Moki Akiu Kahiamoe - C-3, Waipio Bay Benevolent Association Appeal of Director's Decision
Darrell Kahiamoe - C-3, Waipio Bay Benevolent Association Appeal of Director's Decision
Neola Careny - C-3, Waipio Bay Benevolent Association Appeal of Director's Decision
Ruth Maeda - C-4-5, Lee Ohigashi, Petition to Intervene, Maui Business Park Phase II, SMA

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

Chair Hiranaga: Anyone else wishes to provide testimony on any agenda item at this time? Seeing none, we'll start with our agenda. Director, first agenda item.

Mr. Spence: Thank you, Mr. Chairman and Members. We're on Item B-1, Mr. Kyle Ginoza, Director of Environmental Management and Mr. Glenn Correa, Director of Parks and Recreation. They're requesting an SMA permit and Shoreline Setback Variance for a proposed Lahaina Force Main No. 3 and pedestrian path project. Our Staff Planner is Mr. Jim Buika.

Chair Hiranaga: Good morning, please proceed.

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

- 1. MR. KYLE GINOZA, Director, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT and MR. GLENN CORREA, Director, DEPARTMENT OF PARKS AND RECREATION requesting a Special Management Area (SMA) Use Permit and a Shoreline Setback Variance for the proposed Lahaina Force Main No. 3 and Pedestrian Path Project constructed in the shoreline setback area along Honoapiilani Highway at TMKs: 4-4-006: 028 and 070; 4-4-013: 003, 007, 009, and 010; and 4-5-021: 007, 010, 014, 015, 016, 019, and 025, Wahikuli, Lahaina, Island of Maui. (SM1 2009/0013) (SSV 2010/0001) (J. Buika)**

Mr. Jim Buika: Good morning. Thank you, Director, Chairman, Planning Commissioners, thank you for all of your expertise and your time that you dedicate for the people of Maui County. The Maui Planning Commission's purpose today is to conduct this public hearing to review the SMA Major Use Permit application and a Shoreline Setback Variance application for the Lahaina Force Main Replacement Project and the secondary, Wahikuli Pedestrian Trail before you today. As you know, the SMA is an environmental review.

The scope of this project, it is County funded and it is a project to replace the existing Lahaina Force Main 3, aging ductile iron force main with a new 20-inch PVC pipe force main generally in the same location but more makai of the current location which is under Honoapiilani Highway. The force main will be completely buried within the basalt rock and behind existing revetments along the shoreline. It will cross under five existing drainages, drainage areas totaling eight different culverts. I'll just show you a – I won't go into the slides, I'll allow the applicant to give you a briefing on the project, but I'll just show you a location map just north of Lahaina Town up to Hanakaoo Beach Park.

The applicants are the Department of Environmental Management and the Department of Parks and Recreation and they're here today along with the consulting engineers on the project and they will present a slide presentation of the project and answer your questions. I would like to provide you first with some facts about the project from the planning perspective and point out some areas of concern and potential impacts so that we can focus our discussion and then turn it over to the applicant engineers to present the project to you if this is acceptable to Chair.

This is the first time that you've seen this project. However, if you recall, last December I did transmit to you the final Environmental Assessment and then in May with the new commissioners coming on I transmitted the final Environmental Assessment to Commissioner Lay and Commissioner Ball also in preparation for this meeting. And a great deal of that information that was contained in the Environmental Assessment is contained in the Special Management Area application.

The final Environmental Assessment was accepted by the Department of Environmental Management as the accepting agency and was given a finding of no significant impact on December 23, 2009. There was one alternative route discussed in the Environmental Assessment which we, which the applicant will present to you as opposed to the preferred route today.

The project requires a Shoreline Setback Variance because several locations along the projected force main replacement route are located close to the shoreline within the shoreline setback area. The applicant will demonstrate that adequate mitigation is in place to protect both the force main as well as the coastal environment complying with the criteria for granting of a Shoreline Setback Variance today. The reason Department of Environmental Management was able to choose the makai route is that the shoreline is either natural basalt outcrop where it will be placed into or behind protected existing rock revetments and the alternative mauka route on the other side of the Honoapiilani Highway pose some pretty substantial accessibility problems that will be explained. The State certified shoreline has confirmed that all rock revetments are legal and they're permitted by the State and that the State Department of Land and Natural Resources Office of Conservation and Coastal Lands responsible for the lands makai of the shoreline does not object to this project.

As the Planner on the project I have conducted two site visits, walked the entire length of the project. In addition, Tara Owens who is our University of Hawaii Sea Grant Coastal Process Geologist also walked the length of the project and we are both satisfied that the siting of the force main behind, within the basalt, with behind the revetments is, is okay and that it is a hardened, hardened environment. There are two points where the shoreline is vulnerable and the applicant will demonstrate that we've done adequate mitigation at both of those locations to protect the force main and also to make sure that the beach remains intact there.

As you'll recall, on February 3rd, earlier this year we did a site visit. I believe four of the existing, the current Commissioners were along on that site visit. We didn't have much time at the site, we didn't, we didn't see the entire area but what I did is along with Department of Environmental Management we, we took you to look at the vulnerable locations along, along the shoreline. As far as land use, the project spans six TMKs and they are all, they're West Maui Community Plan Open Space, Public/Quasi-Public and Park it's basically in the same TMKs where the existing force main is so there are – it is consistent with the, the land use designations. Of the two alternatives makai and mauka of the highway, the makai route is the preferred route for reasons that the applicant will explain. Again, the Department of Planning is satisfied with the makai route with mitigation. There are – there are no significant outstanding agency comments objecting to the makai route, but rather just some of them conditioned the project with mitigation.

The secondary part of the project is the Wahikuli pedestrian trail that will be 4,800 plus feet over the Lahaina force main and it will be constructed six-foot concrete and it – there will be a drainage runoff totaling 1.64 cubic feet per second for a ten-year storm not a 50-year storm. And this runoff will be mitigated also by, by the, DEM and Parks and the reason for this project is that the existing force main in the area is now 32 years old and it's in need of replacement. So bottom line, this entire project is for environmental mitigation. On February 8, 2007 there was a major uncontrolled spill into the ocean of 685,000 gallons of raw sewage due to a break in the line as a result of deterioration of the ductile iron pipeline. So that is the impetus for this project. There is a spill report of that incident as Exhibit No. 7 in your packet. So essentially it's a race against time to replace the existing force main before we have a second environmental disaster on our hands. The replacement will be a state of the art 20-inch PVC pipeline. And just to conclude my opening remarks and turn it over to the applicant for the presentation. The Planning Department and the other commenting agencies we've identified seven areas of potential impact and mitigation. I have two slides at the end of this presentation where I'll summarize the potential impacts and the

mitigation in place prior to turning it over to the, the Chair to ask questions. So at this point, I'd like to have our applicant come up and do a presentation on the project. Okay?

Chair Hiranaga: Thank you.

(Ms. Ann Cua replaced Director Spence at 10:00 a.m.)

Mr. Buika: I'd like to introduce Juan Rivera from the Department of Environmental Management who is the Project Manager and he'll introduce the other, other folks here from the County and the consultants.

Mr. Juan Rivera: Good morning. Thank you for your time. My name is Juan Rivera. I am the Project Manager with the – for this project with the Department of Environmental Management, Wastewater Reclamation. I'm here with Director Kyle Ginoza, our engineering consultant, Alan Unemori, President of Warren S. Unemori Engineering, and with Baron Sumida representing the Department of Parks and Recreation. This project was prompted as like Jim said, some years ago we had some studies that determined that this existing force main in Lahaina is – has deteriorated and in fact we already had a major spill and as part of our program of replacing all this major force main throughout the island. As you can see the force main will begin at the southern end of, of Wahikuli Park and then it will continue along the shoreline following, you know, parallel to the highway within the park area all the way up to the discharge point which will be in the next slide near – past Hanakaoo Park and into the Kaanapali Golf Course where it will discharge and then, from there the sewage will flow by gravity. This is a typical cross section of what you would expect. Our force main will be in general within the, the park land. It will be some six to eight feet below grade. Then we'll have a pedestrian trail that we will try to put it along the trench of the pipeline but there will be some points where the, where the path will go near the shoreline. May I add that this project we are working in conjunction with the Department of Parks and Recreation. We came with an agreement with that they would let us build a force main through the park land if we help them build the pedestrian trail and that really, you know, works very well for us because we want to keep the public infrastructure in public land and we have much fewer land issues. We only have to deal with one private owner in this location which is the Kaanapali Golf Course and they've been very helpful.

Here we see a typical plan and profile of the pedestrian trail. It will go along the, the force main as much as we can but then where we have the outcrops towards the sea we would like to have the, the pedestrians go along the shoreline to enjoy the view so we will diverge at some points and follow the coastline but, next slide, in general, we want to provide a path that's – that we can use the – the trench that we're building for the force main as much as possible. And as you can see the pedestrian trail follows again, the coastline all the way from Wahikuli north to Hanakaoo and it connects – then from that you can connect to the Kaanapali Resorts. Next. This pedestrian trail is all ADA compliant and it's, it's been engineered to be exclusively a pedestrian trail.

The project need, the force main is 35 years old. We had, already had a spill. We – our intent as a Division is whenever we replace a force main is to keep the existing force main connected as a back up just in case that anything happens we can switch back between two lines. And this force main is – this new force main is going to be made of PVC material that is very resistant to corrosion and we expect it to last 50 to 100 years. And of course, the pedestrian trail, we thank the people

from Lahaina Bypass Now for their testimony. It's a – it goes along with their vision.

I wanted to show you as far as the importance of the sewage project, we already had like we mentioned, a spill there in 2007. This map shows the area that is being serviced by that station. Basically all the sewage generated in Lahaina is gonna pass through that pipe. So it's a, it's a – we right now currently do not have any other means to convey the sewage from Lahaina up to the plant other than the existing force main that already broke. So in case we have another, if there's another break on the line these are all the people that are going to get affected, you know, just to get an idea. The station conveys about 1.4 million gallons of raw sewage every day.

Jim already talked about this about the time line for the Environmental Assessment. This – we're showing the alternatives that we consider. We consider three alternatives. One was what we call the Route A, the makai route which is the one that it's our preferred alternative. We also considered going on the mauka side of the highway and we also considered doing nothing. The pros of the alternative one, which is the makai route is that we will have no land issues. We can complete the trail. We can also minimize disruption to traffic and the soil conditions are, are more favorable for the trenching and we have much fewer utility crossings. The cons is that it may be subject to long term erosion and is within the tsunami zone and also requires a temporary closure of, of the parks.

The Route B, the mauka route is less prone to long term beach erosion but we require, it will require us to cross the four-lane highway twice, once to get from the start point and then we need to cross the highway again at the end to go back to the discharge point. And it will require for us to cross all the entrances to the Lahaina Civic Center, the post office, the fire station. It will disrupt the, the train, the sugar cane train, it would – and then we have a just a ...(inaudible)... of utilities out there. It would also contribute less to the pedestrian trail because if we have to build the, the force main outside the park then our contribution to the pedestrian trail will just go away. And then again, the, the big problem in that area is the utility crossings. If we go on the mauka side of the road, there are the MECO lines, there's a fiber optic cable, water lines, there's a number of telephone lines, it would really make it difficult to, to place the line. It will slow down the project considerably causing more traffic disruption and there's also the potential for disruption of services if God forbid, you know, a line or cable gets disturbed and it's also within the tsunami inundation zone anyway. And of course, we also have to deal with much more, much more many landowners as opposed to the other route where we only have County land and golf course then we have a lot more land owners that we have to deal with for which we don't have any easements.

The no build alternative is the – of course, we wouldn't disrupt traffic but it doesn't mitigate the risk of spill and the cost that is associated with the spills and repairs and of course, if we don't build anything then we contribute nothing to the pedestrian trail.

We have done a number of studies. We did an archaeological assessment and we also have a cultural impact assessment on the project. As part of the archaeological assessment we hired a consultant from the mainland to do ground penetrating radar at the Hanakao Cemetery site. Some of you that were there during the site visit in February, I was there, I told you about this already, but what we did is we staked out the corridor of the, of the force main and we had ground penetrating radar survey and there were no findings at the time. So just to make sure that we're covering all

the bases. We've also done the geotechnical investigation, drilled a number of borings along the alignment to determine what the nature is of the existing soil conditions. That's how we determined the, the makai route has better soil conditions.

And we also wanted to show you the – on the existing park access path they have now, this is roughly where the pedestrian trail will go to. It's already been used by maintenance crews of, of Parks. So I think adding the path will help mitigate all the, all the mud and erosion that is being caused by normal traffic of the maintenance vehicles.

Our pedestrian trail is going to be, we're proposing a six-foot wide pedestrian trail made of concrete and we intend to mitigate that with a grassy swale along to catch the runoff. With dealing with traffic control, the Route A, the makai route, greatly minimizes traffic disruption because we're going to be working within in the park property and within the golf course property off the road. The only anticipation – anticipated disruptions for the highway would be at the terminus, at the start and end of the force main, we will have to go in the highway to make the connections. Also, there's a portion of the, of the force main in front of the Civic Center, post office area where the shoreline is more vulnerable that we, we got in in an agreement with the Department of Transportation, they allowed us to place about 900 feet of force main within the road, within the right, the right of way so we could get away from the shoreline, but this will be only traffic disruptions that we anticipate. And of course, when we're working within the parks we may have to close some of the parking lots entrances for a few hours while we're there. All traffic control has been engineered by Unemori Engineering and it will be submitted to DOT for approval as far as their review and it will comply with all the traffic control regulations. These are some of the examples of the engineering drawings we have prepared to deal with traffic when we're on the road. Next slide.

And, and like I think Jim talked already about this a little bit but these are the shoreline setback issues time, the time line. So we've been – we did all our surveys and got all our comments. It's all part of the package here and on May 23rd we got our shoreline certification of last year. And this are some of the photos that we have showing that the existing shoreline is already been hardened and our force main is going to be quite a bit behind. Our, our force main is going to stay close to the highway. You can see on the photo on the left, you can see the guardrail. So we're going to be running near the guardrail in that area, but we're already gonna be protected by, by an existing rock revetment along the shoreline there.

There are a couple of places where we're gonna be close to the shoreline so one of them is at a station 18 ...(inaudible)... in that area, what we're proposing – we're gonna be behind a rock wall but since we're gonna be close we're proposing to a, in the case the, the, the force main with a concrete jacket. Yeah, that, that shows better, another station, so that's the other point. But yeah, at one point we're gonna build, there two vulnerable points, one of them we're gonna build a force main on the along the highway and on the other one we're – because it's it's not practical to go on the highway, we're gonna encase the force in a concrete jacket to harden it and protect it from erosion. And this exhibit shows some of the areas where the green areas represent the shoreline setback areas that are – where we are encroaching. So – and this is our – the purple area, the magenta areas represent the shoreline setback areas in which the highway is already encroaching so even if we decided to go on the highway, the highway would be in the setback area anyway. And this is the same exhibit but showing in photographic form your reference. That's the beach

area in front of the Civic Center where we're gonna go in front of the highway. It will be on the highway because the shoreline has not been hardened there. And these are some of the, again, more photos showing the, the shoreline there. That's the area, yeah, we're showing existing amours. There's an gabion wall there right now, it's not very clear but you can see it on the photo and, and we're going to be behind that gabion wall. Yeah, and Jim is going to expand on this mitigation issues.

Mr. Buika: So, I'll just conclude with two final slides summarizing the potential impacts to the environment due to this project and mitigation in place for the force main and the trail. The first is traffic control. I think Juan addressed that fairly well. The first vulnerable location we will have to site the force main along the shoulder of the highway and there will be traffic control in place. It may be from one to three weeks of two-lane traffic control there but they'll work with the State DOT on that. The second vulnerable location again will be jacketed in concrete below the surface and they will comply with all traffic management mitigation requirements. Archaeology, burials, historic culverts and cultural impacts will be mitigated. Number two, there is an archaeological inventory that revealed no new significant or important cultural finds or potential finds are highly anticipated the report stated. So the archaeological monitor will be in place for all ground alteration, an archaeological monitor will be sited at each, each piece of equipment. Third, work in the shoreline setback area will require mitigation again similar to No. 1, the vulnerable areas have been identified, we're relocating the force main away from the beach to preserve the beach and also then, in, in the one little pinch point just to the north of the beach, the force main will be jacketed in concrete. Then the fourth is runoff from the concrete pedestrian trail, all runoff will be captured via engineered vegetated swale. The concrete will be built in three-foot segments and we will consider porous concrete solution also for the pedestrian trail. Fifth, there's potential impact to mature park trees. There are many of these park trees throughout the, the Wayside Park. The project was originally routed to minimize impact to the existing park trees through the parking lots, et cetera, and if trees are impacted they will be either relocated or replanted as per the contracts to the consultant. And there are two remaining ones I believe. No land use issues for the makai preferred alternative Route 1, there are County parcels in Kaanapali Golf Course. And then alternative two, the mauka route does present challenges, easement challenges across access to land, multiple utility lines laid down in the same path and major traffic disruption totally shutting down the highway in both directions for potentially an extended period of time to be avoided. I believe that's it. What's the next slides, okay. So I'll turn it over to, back to the Chair for questions to the consultants and the staff.

Chair Hiranaga: Well, actually, at this time, I'd like to open the public hearing first before we go to questions.

a) Public Hearing

Chair Hiranaga: So is there anyone here that wishes to provide testimony regarding this agenda item? Please come forward and identify yourself.

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

Chair Hiranaga: Dave Deleon.

Mr. Dave Deleon: Morning, aloha. I'm Dave Deleon. I'm representing the Maui Nutrition and Physical Activity Coalition. It's been my advocacy for the last 25 years to promote safe walking and bicycle facilities in Maui County and when I first moved to Maui County was moved by the fact that there wasn't any facilities for walking or biking and I asked a friend why that was and my friend kind of tongue in cheek replied, it's because it's illegal to be a pedestrian in Maui County. You have to take a car.

So as it happens in democracy a small band of us got together and tried to change that and we've been doing that over the years and one of the earlier targets we have was is creating a walking connection between Lahaina and Kaanapali. We tried to plan one along the ocean but that ran short of land. The highway goes right up to the ocean and there's a seawall and about a hundred yards just short of Front Street you can't quite make the connection easily without moving the road or doing something really, really expensive and dramatic. So we kind of moved onto other projects, but that just left that kind of hanging. That was an opportunity that we weren't able to resolve. Then I saw this item on the agenda, B-1 which is a wastewater treatment facility and a walking path between Wahikuli and Hanakaoo. This project is a pedestrian path added onto a wastewater pump station improvement and usually I don't give a, excuse my French, ...(inaudible)... for wastewater treatment facility. I wouldn't care one way or the other but this one is about something that I do care about. It will not fill the gap I'm talking about but it promotes walking along the coast between, between these two parks and that in itself is a good thing. Maui residents lack safe places to walk away from the threat of being run over and this project will open up other new possibilities. I congratulate the wastewater treatment, the Wastewater Division for undertaking this noble addition to their pump station project.

Of course this project is not designed to fill the connectivity gap I spoke of but will create a safe walking path to that point and perhaps allow a future project say the highways, State Highways Division's reinforcement of the road shoulder where they're worried about erosion taking out the highway to fill that gap. Scientific – numerous scientific studies have shown that we Americans are too sedentary and that we are paying an increasing severe – increasing severe public health price for that. We design our communities around the automobile and have effectively designed our kids and ...(inaudible)... and others who aren't able to get cars out of being able to move around the communities without somebody else driving them.

Ms. Takayama-Corden: Three minutes.

Mr. Deleon: I'm almost pau. If there was a safe connection between Lahaina and Kaanapali, a relatively short distance there would be fewer cars and fewer bicyclists risking their lives on the highway. The West Maui community would be that much safer and healthier. This project is a step in the right direction and it deserves your support. And as my way of a bribe, I brought you guys some mountain apples from my tree this morning.

Chair Hiranaga: Questions for the testifier? Commissioner Shibuya.

Mr. Shibuya: Thank you very much, Dave for your – both the testimony and your mountain apples.

Mr. Deleon: Yes, I do applaud your efforts to allow for this pedestrian walkway as well as maybe even bikeways. I lived in a community for about 16 years in Redondo Beach and we did have the strand and the strand goes along from Palos Verdes, Torrance, Redondo Beach all the way through Manhattan Beach and into El Segundo and it's beautiful. It's just a wonderful place and you can also connect through – all the way to Santa Monica by the way, and I think that's your vision to have –

Mr. Deleon: I can't express how jealous I am.

Mr. Shibuya: Thank you. These are examples I think Maui County listening to us can take heed and start looking towards this vision.

Mr. Deleon: Thank you.

Mr. Shibuya: Thank you.

Chair Hiranaga: Again, questions for the testifier? Commissioner Sablas?

Ms. Sablas: Thank you, Mr. Deleon for coming to support this project. I appreciate it being a Lahaina resident. Are you aware that there is a Lahaina Bypass Now organization and they are really – have been working on this connectivity between Kaanapali and Lahaina and they – and if you would be interested in contacting them that's what I would suggest because they are working – there's a small area that still needs – it's kind of difficult in connecting and they're still trying find solutions, but so I may – I'd like to suggest that you contact Bob Pure, he's the President of Lahaina Bypass Now.

Mr. Deleon: Thank you for that. I will do that.

Chair Hiranaga: Any other questions? Seeing none, thank you.

Mr. Deleon: Thank you.

Chair Hiranaga: Next testifier is Chad Fukunaga.

Mr. Chad Fukunaga: Good morning, Commission Members. My name is Chad Fukunaga. I work for Kaanapali Land Management Corp. but I'm here today to speak as a board member for Lahaina Bypass Now in favor of the Wahikuli Forced Main Project. By namesake, the Lahaina Bypass Now is interested or greatly interested in the Lahaina Bypass but we also take a interest in traffic in general throughout West Maui.

We recognize and agree with the need to replace an aging sewer force main but we appreciate the idea of two County departments partnering together to benefit each other in a common project. As we understand this project is to replace approximately 6,900 ...(inaudible)... force main and provide a pedestrian trail of approximately 4,800 feet. Where possible the pedestrian trail is to be placed over the alignment of the force main. In a typical force main project the disturbed area needs to be stabilized this is typically done by grassing which would typically require irrigation, grassing,

watering, maintenance, all of these are costs. With this project some of these areas can be – will be replaced by the pedestrian trail. In a typical pedestrian trail project the area would need to be grubbed, the grub would need to be disposed of and the area would need to be graded. In this case, some of these areas would be taken care of by the force main project itself.

So we, we see the need for a pedestrian trail through West Maui. We're looking at a path from approximately 505 Front Street to Kahana Gateway. There are a few gaps in this route one of which Dave previously pointed out the seawall by Canoes but we recognize that this project will add greatly to this path. It provides a, a great means for the public to, to walk, run, jog and even ride a bike to get from 505 Front Street Kahana. It's a great, it's a great thing for the public and we support it. Thank you.

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

Chair Hiranaga: Next testifier is Mike Morris.

Mr. Mike Morris: Good morning. I'm Mike Morris. I'm the Director of the YMCA. I'm also the Chairman of Nutrition and Physical Activity Coalition and I serve on the Pioneering Healthy Communities Team here in Maui. I'm here to back up Dave Deleon's testimony earlier about B-1 and pedestrian trail. I wanted to give you just a couple little statistics to talk about why we're interested in having a healthier community by design. Center for Disease Control put out a recent study that obesity is become an epidemic in our country. Nearly 30 percent of our folks are obese. Well, what does that mean? In Hawaii alone, medical costs attributed to obesity is upwards of \$300 million annually. The other thing that was more staggering to me that the Center for Disease Control said was that today's children growing up for the first in modern history, today's children, that generation growing up will not out live their parent's generation because of obesity issues. So it's our responsibility as a community to help build a healthier a environment and by, by providing bike paths and walking trails and things that connect, I think those are really important for us to pay attention to if we're concerned about the health of our community. And that's all I have to say about it. I think it's a great opportunity. I think we shouldn't let it go by.

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

This concludes the testimony from this morning.

Mr. Todd Madden: Good morning, my name is Todd Madden, I work at Kaanapali Golf Courses. I just had a question as far as like take a closer look at where the impact is at the golf course? If that's something we have on a slide I could look at or – we were in agreement we want to work with this but, I just want to see if there's anything I can look at today or be sent as far as the layout?

Chair Hiranaga: You could talk to staff after you're done with your public testimony?

Mr. Madden: I really don't have any testimony other than that. It's the only thing I was going to bring forward just how, how do I get some of the information to pass to my, my boss this type of thing. That's all I got. Thank you.

Chair Hiranaga: Okay, thank you. Any questions for the testifier? Commissioner Wakida?

Ms. Wakida: Yes, hasn't this project, hasn't Park and Recreation contacted the golf course about this already?

Mr. Madden: We've gotten, I got some emails from Juan. I was just – I'm not high up on the hierarchy. I know they've been in contact, but I'm not that close with – the General Manager's asked me to just to show up and see what's going on with it. You know, we've already worked with the force main process inside the resort a year and a half ago, something like that. So, you know, we know where the stub in is, that type of thing. I'm just gathering information basically, but they have been in contact.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions? Seeing none, thank you. Anyone else, please come forward.

Mr. Arthur Takabayashi: My name is Arthur Takabayashi. I was just wondering if there was a feasibility or study on trying to just install PVC through the existing sewer line? I mean, that's been done many places where through the existing line they run, they insert this PVC. So I was just wondering if that study was taken into consideration?

Chair Hiranaga: At this time, you provide public testimony but you're not allowed to ask the Commission questions.

Mr. Takabayashi: Okay, sorry.

Chair Hiranaga: No problem. Questions for the testifier? Seeing none, anyone else wishes to provide testimony at this time? Seeing none, the public hearing is now closed. I'll open the floor to Commissioners for questions to either the applicant or staff? Commissioner Mardfin?

Mr. Mardfin: The last testifier asked a very interesting question. Can you feed other line through it rather than construct something else?

Mr. Rivera: Yeah, let me address those two concerns. The first one it was about the, the PVC line. This is the material we're using. It's a PVC C905. The reason we cannot slip line the force main is because it's the only way to convey sewage from Lahaina up to the plant right now. We cannot shut it down for an extended period of time to slip line it. It could be, it is – it could be done in the future but once we build the new one we could potentially – there's a potential to slip line that old line and even use it for other purposes like reuse water or, or for or keep it as a back up. But at the present time, it's not feasible to slip line it because we cannot shut it down.

Mr. Mardfin: Thank you very much. I wanted to give you an opportunity to put that on the record.

Chair Hiranaga: Any other questions from Commissioners? Commissioner Wakida?

Ms. Wakida: This waste water, this sewer line is connecting to a manhole cover at the Kaanapali end correct?

Mr. Rivera: It discharges at a gravity manhole near the – at the golf course yes. Well, it will discharge at one of the golf course and from there it will tie in into the existing sewer line on the highway.

Ms. Wakida: And that goes to?

Mr. Rivera: That, that flows down to the next pump station and from there it keeps getting conveyed to station no. 2 and from there it flows to station no. 1 and from there it flows to the plant for treatment.

Ms. Wakida: And that plant is the one out at the entrance to Honokowai?

Mr. Rivera: Pardon me?

Ms. Wakida: ..(clears throat)... excuse me, and that plant is out at the entrance to Honokowai is that the one?

Mr. Rivera: I believe yes, that's the wastewater treatment plant, yes.

Ms. Wakida: There is, can you tell me what connection if any this project has to the treatment plant that's right there at the entrance to Kaanapali?

Mr. Kyle Ginoza: So basically this part –

Chair Hiranaga: Please, please identify yourself?

Mr. Ginoza: Oh, sorry. My name is Kyle Ginoza. I'm the Director of Environmental Management. Wastewater Reclamation Division is one of my divisions. This project starts from Lahaina 2 and it goes – sorry, Lahaina 3 and it goes to what we call Lahaina pump station 2 which is I believe the one you're talking about that is just mauka of Honoapiilani Highway right at Kaanapali Parkway. And so this one basically is just further down along the line. So it's basically a series – we run our, our force main in series, our sewer lines in series where all of Lahaina basically comes to Lahaina 3, then goes to Lahaina 2, Lahaina 1 and to the treatment plant right above Times I guess it is and Honokowai. But Lahaina 2 which is what you're talking about is the next pump station in line and that pump station is in our capital improvement program to be renovated in the next few years. So, what we do is to be proactive in trying to maintain our sewer system, we did a 2004 Corrosion Study to look at our force mains which this is part of and we also upgrade our pump stations and treatment plants. Sorry, maybe I gave more information than you needed.

Ms. Wakida: No, that was great. Thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: In this description here maybe you can briefly describe some of the ways in which you cross the culverts as well as that gulch. How are you planning to treat that or, or design that?

Mr. Rivera: It's not, normal for, for in our design process to come up with a means and methods of construction. We normally write it in our specs to leave that up to the contractor and they'll come up with some sort of shoring system and normally we would require them to submit it to us for review and approval prior because every contractor is different. They got – they have different equipment. They have different methods. So we like to see what they have and then we, we approve it. If I had to guess, I would say that for crossing the gulches, crossing the – on the under the lines typically what they do is they will excavate around the pipes until they're like halfway down, then they will excavate by hand and put a sling or some sort of a sling around it with a temporary support beam above it to support it while they dig by hand underneath to, to place the line. We had a similar situation when we built the Wailuku force main through the, through the Kahului Harbor side where we had to cross underneath a couple of even 60-inch drain lines. So that's basically how they do it. But I'm telling you how that particular contractor did it. It could be a different situation for another contractor. It may be that some contractor might want to use trenchless or if they have the equipment but we, we don't know that until the contractor is selected.

Mr. Shibuya: I see. The reason I have – I'm asking that is because it goes through some drainage canals and you either can go down below and then harden above that area where the force main is buried. The other one would be having it slung over the culvert and/or gulch as like a bridge and that would be a bridge possibly for even pedestrians too.

Mr. Rivera: It, it is not part of our design. In our current design we're proposing to bury the line. I think leaving the line exposed especially on gulch would, would make it much more vulnerable to to floods and erosion, so –

Mr. Shibuya: Yes. Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: We've had a number of presentations in the past about – from Tara Owens and others about potential, well not potential, actual sea level rise of varying degrees of probability of how much and how fast. But has this been designed so that if sea level went up by say two meters there'd be no impact on the operation of the system?

Mr. Rivera: I don't believe we have designed this so much as two meters sea level rise. We anticipate this force main is going to last about a hundred years and I, I don't think, I mean, that to me six feet sea rise in a hundred years was considered as part of the design. We are mitigating the effect though by staying behind already hardened shorelines. We have kept the force main above sea level as much as possible about ...(inaudible)... of the force main typically will be about six feet, six to seven feet above sea level. We're trying to keep it out of the water as much as possible. And also in the areas that we're vulnerable our mitigation was to put it on the highway just to stay always behind a hardened structure.

Mr. Mardfin: Well, if you got seven feet you've got your two meters. So you're basically, you should

be okay. Thank you.

Mr. Rivera: Yeah.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I'm interested in the maximum capacity of the sewer line. It's the same – you're replacing the old with one the same size, correct?

Mr. Rivera: Yes.

Ms. Wakida: What have you determined to be the maximum capacity?

Mr. Rivera: The capacity of the pump station is much more than what we're carrying right now. Our studies, our engineering studies say that we are right now conveying about 1.4 million gallons per day. The maximum capacity of the station is over 11 million gallons per day. So it depends of course on the efficiency and the wear and tear on the impellers but it is – we have capacity right now on that station for – it was designed for, for future development.

Ms. Wakida: And the line itself is sufficient?

Mr. Rivera: The line will be sufficient, yes. In fact, the new line even though it is the same diameter, it would be – it will have a slightly more capacity because of the material is different. The metal pipe has a higher friction factor than the PVC line. So it would, it would put less stress on the system having the, the PVC.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Looking at best management practices and preventing possibly some spills or some kind of system failure. Is there a set of procedures or are there going to be some sets of procedures that you have periodic inspections and/or reviews of the line as well as the pumping?

Mr. Rivera: You mean for construction?

Mr. Shibuya: No, no after it's constructed, after it's placed, it's in operation are there best practices in terms of insuring or assuring that the risks are minimized for spills?

Mr. Rivera: Yes, we do have a program of assessing the force main. Periodically the Division will go, will hire a consultant and we'll go through a review of all our systems.

Mr. Shibuya: Will this be part of the plan?

Mr. Rivera: Yes.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: In your presentation you mentioned that there'll be a time where you would need to shut down the parks particularly with Hanakaoo Beach Park are you considering the canoe season which would be about this time so you don't conflict that very popular community activity?

Mr. Rivera: Normally what, what we do...(inaudible)... the time, because right now we don't know when construction is going to start. It depends on when we go out for bids and, and the availability of the contractor, we don't know the exact timing. However, we do coordinate with all the local groups especially canoe groups or recreational groups that uses the parks. We had a similar situation in 2008 when we went through a, forgive me the name, it's right here in Kahului, the canoe park in Kahului, Hoaloha, thank you. And we coordinated with the canoe club and scheduled our construction depending on their, you know, they had regattas at the time. We did it in the summer. It was June when we want to the park. So we did coordinate with them to cause them minimum disruption. And I anticipate we'll do the same on this project.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just curious here. This wastewater handling effort is a capital improvement project is it not?

Mr. Rivera: Yes, it is.

Mr. Shibuya: Because it's a brand new. How is this funded? Is this through a bond and through increased sewer fees that you repay this?

Mr. Rivera: This is a state revolving fund project. I'll let Kyle answer this.

Mr. Ginoza: Hi, again, I'm Kyle Ginoza, Director of Environmental Management. This project is a, what we call SRF, State Revolving Fund loan program which is what we get through the State. It's a .75 percent interest loan, .5 percent interest plus .25 percent administrative fees. So that's why we, we as the Department and the Division like to use, utilize this program because it's a lower rate. It is 100 percent funded by sewer, sewer users, you know, the payment of this loan. So it's, yeah, it's paid for by user fees.

Mr. Shibuya: Okay, and so the people in West Maui are funding this as well as the people from Central Maui are funding the same project?

Mr. Ginoza: That is correct. What we have is a capital improvement program, a 20-year plan to look at like I said, our, our pipe line infrastructure as well as our pump station and treatment plant infrastructure which we've laid out and, you know, it's in various areas we have, you know, millions of dollars of projects of trying to keep up with the aging infrastructure and it's distributed throughout the County basically. And so similar to like road CIP, you have different road projects being repaved and that's all paid by everybody else. And so yeah, it's a combination of all sewer users

that are funding this project as well as any other CIP project that we have.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I'd like to follow up a little bit. Is it anticipated that user, sewer user fees will be having to go up to cover this or the level of user fees currently sufficient to pay for this?

Mr. Ginoza: We have, we have a CIP program that as you can imagine depending on which project we have like, you know, we have some pipe line projects and some treatment plant projects where the level of funding for CIP is not constant. You know, some years it might be higher and some years lower and what we've had is a 2 to 3 percent user fee increase per year to accommodate the fluctuations or you know, because it's, it's actually kind of gradually going up as we get more sewer infrastructure. So the sewer user fees won't go up as a function of this project per se but just as a function of –

Mr. Mardfin: Of all projects together –

Mr. Ginoza: Yeah, exactly.

Mr. Mardfin: – it's going to be going up.

Mr. Ginoza: Exactly.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: You're saying your information that we have that a 700-foot section is going to be going under the highway, correct?

Mr. Ginoza: I think just in the right – I'll let Juan respond.

Mr. Rivera: Yes, a portion of the force main is going to be built under the highway and that's going to be in the vicinity of the Lahaina public – Lahaina Civic Center and the post office area. That's the area where the beach is most eroded and – can you – previous slide Jim? Yeah, it's that area where Jim is pointing out where the shoreline is more – has eroded the most and we really have a very – there's hardly any corridor there to put the force main. So we ...(inaudible)... talked with the Department of Transportation and we agreed with them, they agreed with us to let us put a portion of the force main there given a number of conditions like they gave us such as repaving, maintaining traffic control, et cetera.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: You mentioned also in here the possibility of using the old line, tying into it and using it as an emergency back up. Is that still feasible?

Mr. Rivera: It is. That's the intent, to keep the old force main in line with intent of using it as a backup or for maintenance or, or use it being in case we have a surge or for other purpose.

Chair Hiranaga: Proceed.

Mr. Rivera: In general, sorry, in general we do not like to once we have an easement or we have a piece of infrastructure we don't like to abandon it. We like to keep in service as much as possible. So if we can keep it as a back up then that's an asset that, you know, we don't want to give up.

Ms. Wakida: Good, I think that's an excellent plan. I have a question along a different line about trees. I'd like to ask some questions about trees. The proposed pedestrian that you're – are you anticipating having to remove any trees for this?

Mr. Rivera: No, we do not anticipate impacting trees especially as part of the pedestrian trail project. Construction of the pedestrian trail will involve the equipment that's going to be used is gonna be significantly smaller than the one we're going to use for the deep excavation required for the force main. So, and the route, you know, the alignment of both the force main and the pedestrian trail was designed taking the existing trees into account. And also, you know, and I guess I want to add with the concern from the golf course, I – one thing I forgot to mention earlier, we did, I did meet at the site with Chris and Craig over a year ago and we did at that point walk the whole length of the alignment within the golf course and we physically staked the line to avoid the trees over there and minimize the impact to the trees. So that issue has been addressed.

Ms. Wakida: Well, I'd like to also address that issue in constructing this force main from beginning to end and especially along the Wahikuli Wayside area. Removing any trees along there, there aren't that – the Wayside isn't that deep and so what trees are there are, are vital for shade and for that use of that park. And you're a little vague, that not used specifically but the document's a little vague on how many trees will need to be removed. Can you be a little more specific about this for the force main?

Mr. Rivera: I'm afraid that I cannot be specific as to a number or percentage of trees that could be affected. We do anticipate that we will be able to avoid most, impacting most of the trees. And we have written on the plans specifications that if a tree is affected it has to be either relocated or replaced in kind.

Ms. Wakida: Well, I know that intention is is good and of course, you'd like to see that as well, but you must know that those are pretty old trees there so any wonderful shade that they give it's going to be years and years and years before that shade can be reestablished. So I'm concerned, I'd like to see this project happen. I certainly don't want to put new road blocks in it, but I would like to see special attention paid to preserving trees as much as possible.

Mr. Rivera: ...(inaudible)... we can do that. We can do that and, and certainly that's the intent of our project is reduce the impact as much as possible. We're trying to keep the force main near the

guard rail of the highway as much as possible. That area has already been impacted in terms of the embankments, et cetera that exist already there. And, and like I said, any trees are impacted we – I don't anticipate many or even a few. I mean, we will, we will replace them and it's – like I said, it was one of the notes that we put on every drawing on, you know, and so the contractor can be aware of it and figure it as far as the cost of the project.

Ms. Wakida: Oh, okay. Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Juan, can you explain for the public that when you have redundant systems especially replacing the metal type of force main that you have existing now with this new pipe line the force main, that you have additional costs, operating costs because you also have to maintain the existing force main line, the longer you keep it, the greater the maintenance cost.

Mr. Rivera: There will be maintenance involved. I don't anticipate it to be a big cost in terms of the, the cost to the Division or the tax payers. Basically the only routine maintenance that we would do on this pipe line would be like every so often, often our operators will have to go in there and open valves and you know, exercise the valves et cetera. So which it's not much. As far as, preserving the metal pipe itself, we don't anticipate to use it unless it is absolutely necessary. And like I mentioned, there is the potential, we like to keep the asset because we are also thinking about the future potential for other uses. It could be rehab you see, now that we have a new line, then there's a potential to slip line it and make it into a new line or it could even be used for other purpose such as reuse water should the public, you know, want it and pay for it.

Mr. Shibuya: Yeah, this is the point that I'm just trying to make that you know, you keep a redundant system you need to maintain it and during emergencies you're going to switch over to it and if it's not in a state of readiness then you increase of risks for spills during that time. So, you know, there's this operational costs and risk mitigation that has to be addressed in some procedures. Thank you.

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: Hang on, I just forgot what my – oh, you mention in their document about the Kings Trail that there was a trail that ran between Lahaina and Makena and also there's something called the Honoapiilani Trail that circles the island. I have just a nodding acquaintance with these. If this route along here is in conjunction with either the Kings Trail or the Honoapiilani Circle Trail, I wonder if you would consider some sort of historic markers along the bike – the pedestrian trail?

Mr. Rivera: Baron, do you have any – is the Parks Department wants to – I think the trail is supposed to be interpretive trail and I would think that at some point, yes, there will be signs with the – showing, you know, historical markers along the way. I think there are some there already around that park if I recall correctly from my last visit.

Ms. Wakida: But there aren't any plans per se to put anything in along the new trail?

Mr. Rivera: Not on the current plans, no. But it's something that we will consider, yes.

Ms. Wakida: Good. Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: My correct me if I have a misunderstanding. My understanding is you're gonna have the force main underground basically and on top of it it's going to be the walking trail. Is that directly over it, to the side?

Mr. Rivera: There will be portions where they'll be directly above. The agreement that we have with the Department of Parks is that the portions of the trail which are directly above the force main will be funded by us and then Parks and Recreation will fund the rest. But yeah, part of the trail would be directly above the force main, but there are portions that will not because we want to keep the force main straight along the highway whereas if we can get the ...(inaudible)... in.

Mr. Mardfin: Are there any engineering considerations for whether it's better or worse to have it directly above or off to the side?

Mr. Rivera: Pardon me?

Mr. Mardfin: Are there any engineering concerns? I mean, I can understand aesthetic, I can understand economic but are there any engineering benefits or?

Mr. Rivera: No, there are no other engineering concerns. It – the only thing I can think of is if, in the future we need to replace portion of the force main that's above the trail then we'll have to replace part of the trail.

Mr. Alan Unemori: Alan Unemori from Unemori Engineering. Basically all you're going to have is a six-inch slab with no reinforcement. We're going to have fiber reinforced concrete in there. It's specifically designed to break away into segments in case of a tsunami. So should we have to go down and trench it, it's no problem to go through six-inches of ...(inaudible)... concrete.

Mr. Mardfin: The three inches of concrete that's the trail part?

Mr. Unemori: Yeah.

Mr. Mardfin: And so it doesn't matter whether it's directly over or off to the side?

Mr. Unemori: Not really.

Mr. Mardfin: Okay, thank you.

Mr. Unemori: You're going to use an excavator ...(inaudible)...

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Can you explain to the public that there's two different types of concrete. One is the regular concrete you have and the one that's proposed for this project for the walkway would be porous concrete.

Mr. Rivera: I'd to correct that. We are, we are proposing fiber reinforced concrete. The one that currently in design is not porous. We have stated that we would consider porous concrete if drainage was an issue. However, we are, we are planning to mitigate the drainage using grass swale, making the porous concrete in our opinion not required but it will be concrete, regular concrete but reinforced with fiber as opposed to reinforced with steel bars which is the normal in, in concrete construction. I'd like to make that clarification, yes.

Mr. Shibuya: Yes, because on your slide you say porous concrete that's why.

Mr. Rivera: Well, it's one of the alternatives that we, we may consider, yes.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions, Commissioners? I have a question. So this trail will be strictly pedestrian no bicycle usage?

Mr. Rivera: It is designed as a pedestrian trail, yes. We don't – it has not been designed for bicycle traffic, no.

Chair Hiranaga: Because I think there's some public testimony earlier that it would take bicyclists off of Honoapiilani Highway but that apparently is not going to happen?

Mr. Rivera: I'd like to clarify that the trail is being designed as a pedestrian trail. A bicycle trail is a totally different animal in terms of the width, geometry, alignment, sight distance, et cetera. This one is a ADA compliant pedestrian trail. It's been, you know, designed as such.

Chair Hiranaga: So I guess you'll have appropriate signage informing the public because I think it's going to be challenge to keep the bicyclists of that.

Mr. Rivera: We've, we've had discussions to that effect. Yes, and, and our proposed solution is to have signage at the entrances. You know, warning it is a pedestrian trail.

Chair Hiranaga: Okay, thank you.

Mr. Shibuya: The other concern I have –

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Would be that you have land-based surfers, they call 'em skateboarders.

Chair Hiranaga: Any other questions? Seeing none, we're going to take a ten-minute recess at this time and reconvene shortly after 11.

Mr. Rivera: Thank you.

A recess was called at 10:50 a.m., and the meeting was reconvened at 11:00 a.m.

Chair Hiranaga: At this time I'll open the floor. If there's no further questions, I'll open the floor to a motion. Commissioner Wakida?

Ms. Wakida: Does the planner give us his recommendation first?

Chair Hiranaga: He already did. Didn't you give us your recommendation? Not yet? Oh, please do then. Thank you.

b) Action

Mr. Buika: Thank you, Mr. Chair. First, I'd like to begin with conclusions of law and the shoreline setback variance since we don't shoreline setback variances that often. The Department finds that the applicant has met the following criteria for development in the shoreline setback area as set forth in Chapter 203, Shoreline Rules for the Maui Planning Commission, Section 2, Purpose and HRS Chapter 205A as amended, and there are six reasons for the shoreline rules. That the use and enjoyment of the shoreline area be insured for the public to the fullest extent possible. That the natural shoreline environment be preserved. That manmade features in the shoreline area be limited to features compatible with the shoreline area. That the natural movement of the shoreline be protected from development. That the quality of scenic and open space resources be protected, preserved and where desirable restored and that adequate public access to and along the shoreline be provided. The Department also finds the applicant has met the following criteria for approval of a variance in the shoreline setback area as set forth in Chapter 203, Shoreline Rules for the Maui Planning Commission, Sections 12-203-15, Criteria for Approval of a Variance which are listed A through F. I'll just quote the relevant parts, A. A shoreline area variance may be granted for structure or activity otherwise prohibited by this chapter if the Commission finds in writing based on the record presented that the proposed structure or activity is necessary for or ancillary to, there's a list there, number 6 is facilities or improvements by public agencies or public utilities regulated under HRS Chapter 269 which Chapter 269 refers to the Public Utilities Commission. Going down to D, that the requirement for the shoreline setback area approval was not the result of an action by the applicant and E, no variance shall be granted unless appropriate conditions are imposed. 1) to maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss. 2) is to minimize the risk of adverse impacts on beach processes. 3) to minimize risk of structures failing and becoming loose rocks or rubble on public property. And 4) to minimize adverse impacts on public view to, from and along the shoreline, and 5) to comply with Chapters 19.62 and 20.08, Maui County Code relating to Flood Hazard Districts and Erosion and Sediment Control respectively.

Regarding 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 which are the SMA Assessment criteria that you are all familiar with. They're listed there on Page 4 of your recommendations report A through L. I won't go through those at this point. So they do meet these criteria A through L. The Planning Department based on the facts presented and the Department Report finds that the proposed action as completed meets the required shoreline setback variance criteria and does not have a significant adverse 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 consistent with County zoning and the West Maui Community Plan.

Regarding the Department's recommendation. Based on the Findings of Fact presented in the Maui Planning Department's report to the Maui Planning Commission for its June 28, 2011 meeting the Maui Planning Department recommends approval of the Shoreline Setback Variance application request subject to six conditions which are the required conditions that must be put in for the Shoreline Setback Variance and they're listed on Page 5 of your recommendations report. I can go through them quickly. The applicant maintain and require safe lateral access to and along the shoreline for public use. That the applicant minimize risk to adverse impacts on beach processes. That the applicant minimize risk of structures failing and becoming loose rocks or rubble on public property. That the applicant minimize adverse impacts to public views to, from and along the shoreline. That the project shall comply with Chapters 19.62 and 20.08 Maui County Code and that full compliance with all governmental regulations shall be rendered.

Furthermore, the Maui Planning Department recommends that the Maui Planning Commission approve the Special Management Area Use Permit subject to the 13 standard conditions listed in your commendations report. I will not read through the standard conditions there. I think you had time to review those and also subject to the project specific conditions which there are 16 of them, and I will not read through all those just summarize, there's an archaeological monitoring program in place, that the pedestrian trail will be constructed to the satisfaction of Planning and Department of Public Works, I mean, Department of Parks and Recreation, sorry. There will be construction related spill control plan in place, traffic control will be subject to State Department of Transportation, Maui Police Department. Best management practices will be in place to protect the marine environment. Drainage report and best management practices shall be submitted to Public Works for review and approval. That a National Pollution – Pollutant Discharge Elimination System Permit shall be obtained if required by the State Department of Health and also a noise variance to the satisfaction of the State Department of Health. That there will be construction right of entry will be obtained before construction and also a use and occupancy agreement from the Hawaii Department of Transportation and an easement from the golf course after construction if necessary. Drought tolerant plants will be used. Native trees and landscaping and that the applicant will provide mitigation at the pinched area along the coastline where the route of the force main takes it adjacent to the shoreline. And that the contractor will avoid disrupting and removing trees where possible. If trees must be removed, trees will be replaced to the satisfaction of the Department of Environmental Management. So those are the 16 site specific conditions in place.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report prepared for the June 28, 2011 meeting and the Department's recommendation report prepared for the same meeting as its Finding of Fact, Conclusion of Law, and Decision and Order and authorize the Director of Planning to transmit said

written Decision and Order on behalf of the Planning Commission. That concludes the Department's Recommendations, Mr. Chair.

Chair Hiranaga: Questions for Staff regarding the recommendation? Seeing none, open the floor to a motion.

Mr. Freitas: I move.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'd like to move for approval of the Shoreline Setback Variance applicant with the six stated listed conditions. Also, to approve the Special Management Area Use Permit subject to the 13 standard conditions as well as 16 project specific conditions listed.

Mr. Freitas: Second.

Chair Hiranaga: Moved by Commissioner Shibuya, seconded by Commissioner Freitas to approve the application as recommended by the Department. Any discussion? Seeing none, all in favor please raise your hand. The count?

Ms. Cua: You have five ayes.

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

VOTED: To Approve the Special Management Area Use Permit and Shoreline Setback Variance, as Recommended by the Department.

**(Assenting - W. Shibuya, J. Freitas, L. Sablas, P. Wakida, W. Mardfin)
(Excused - D. Domingo, K. Ball, I. Lay)**

Mr. Hiranaga: Motion carries.

Mr. Buika: Thank you.

Chair Hiranaga: We're gonna take a two-minute break.

A recess was called at 11:10 a.m., and the meeting was reconvened at 11:14 a.m.

Ms. Cua: Good morning, Mr. Chair, Members of the Commission, the next item on our agenda, next public hearing item is a request by Mr. Geoffrey and Siobhan Wilson requesting a State Land Use Commission Special Use Permit in order to operate the Rainbow Bridge Bed and Breakfast, a two-bedroom bed and breakfast establishment located in the State Agricultural District at 1274 Olinda Road at TMK 2-4-13: 21 in Makawao and the Staff Planner is Livit Callentine.

2. MR. GEOFFREY and MS. SIOBHAN WILSON requesting a State Land Use Commission Special Use Permit in order to operate the Rainbow Bridge Bed and Breakfast, a two (2) bedroom bed and breakfast establishment located in the State Agricultural District at 1274 Olinda Road, TMK: 2-4-013: 021, Makawao, Island of Maui. (SUP2 2009/0014) (L. Callentine)

Ms. Livit Callentine: Thank you, Ann and good morning, Mr. Chair and Members of the Commission, good to see you again, and I'm the planner assigned to the Land Use Commission Special Use Permit for the Rainbow Bridge Bed and Breakfast. The TMK is 2-2-4-13: 21. And you'll notice that I placed on your desk this morning an additional letter of support from a neighbor within 500 feet of the project.

The public hearing this morning is on the Land Use Commission Special Use Permit and as noted on your agenda the project under consideration is the Land Use Commission Special Use Permit for a proposed bed and breakfast use on the State Agricultural Land. The legal authority here is Chapter 205, Hawaii Revised Statutes. Please note that Planning Commission approval for the Bed and Breakfast application is not required because there are no triggers present for Commission approval and I can go over these later if you like or if you ask. The land use designations are all agricultural and Chapter 19.30A, Maui County Code does allow B & Bs as a special use and the property is not in the special management area.

The surrounding land uses on all sides are agricultural lands and they are primarily developed with multiple farm dwellings on each parcel. Additionally to the east is the Puu One Pohue cinder cone and Olinda Road. Haleakala Ranch abuts portions of the southern and eastern borders of the property which you'll see in a moment when I show you some maps. So here's the approximate location of the project located on Olinda Road on a parcel approximately 4.2 acres in size. You get a general idea of where it is in that sort of regional overview here. This is a more distinct look at the parcel itself. You notice that the property is so heavily covered with vegetation that's, you're unable to actually see any structures from the air. So this Olinda Road. This is the private driveway which is shared by several other neighbors and this is the property in question. I'm going to show you the parcel map and the parcel map was just an overlay of the driveway again, Olinda Road here, the driveway and then the property. You can see in the background here is the Puu One Pohue cinder cone. So they are, their property is right on the banks of the cinder cone.

The proposed B & B will consist of use of two bedrooms in a 930 square foot cottage. The applicant lives on the property in the main dwelling. There has been a farm plan implemented and the applicant will be serving prepackaged pastries, fruits, yogurts, fruit juices, teas and coffees to guests for breakfast.

This is a photograph of the driveway entrance and the project notice sign which the notice sign, of course, is required for the B & B application only.

This is a site plan and I've added some color overlays so that you can see the B & B cottage is closest to the road is what you see accented in, well, it was yellow when I put it on the screen last night but it's actually kind of green, light green in the lower right-hand corner. There are two parking stalls adjacent to this cottage and the owners live in the main dwelling which is up here at the top

of the property and there are also two parking stalls there, there in addition. So this is, what you see is this is the, this is the parcel, this is the driveway. So Olinda Road would be down the driveway and running this direction off the slide here. So you, when you enter there's sort of a split in the driveway and you go down the driveway there's the two parking stalls are here for this B & B right here or this accessory farm dwelling. All the structures, by the way, are permitted. You go up the driveway there is an existing garage, storage and farm office right, right in this location the darker green. Following on up the road and this is extremely steep property. Here's the existing owner's dwelling and then this structure here which was built by a former owner as a bath house is why you see it indicated as a bath house. It is no longer a bath house. There is no plumbing in the, in this structure, no, no waste closet that is to say and it's being used for storage. And this is a photo of the front of the cottage proposed for the B & B.

This is a floor plan for the bed and breakfast. The kitchen area is here. It's generally an open plan for the kitchen and living room. There's a large deck off of the kitchen/living room combination. A small bedroom is on, on the right of the living area and in the rear of the home is another bedroom and there are two bathrooms on this lower level. On the upper level it's open below and there is a loft which is being used for storage and a little office.

This is a photograph of the owners residence just to give you an indication of, of what it looks like. And then one of the structures on site again, that's permitted is a greenhouse where the applicant has a butterfly farm operation they're trying to develop and so they grow seedlings I believe it's both to create plants that the butterflies can then pollinate and grow from it, is that right, yeah? And then probably to plant crops as well. This is an example of as I mentioned some of the, or I didn't mention, I mentioned it in the staff report, they do also raise ducks, Muscovy and Mallard ducks. And this is, when I asked to see the butterfly farm I was surprised to see that it's, it's – these are the little incubators and so there is actually chrysalis growing inside the incubators and I'll show you a close up which I would never have guessed that's what that was. I don't know. You know, I'm a kind of city, small town girl but not a farm girl so this is just an example of what these chrysalis look like. And the applicant is here today so if you want to ask her any questions or them ask any questions about, about what they do with the butterflies, why are they raising them, I'll let you go, I'll let you ask them those questions.

So as far as the special use, now we look at the special– reasonable and use – usual and reasonable use tests, and the first one is of course, the first test is that it will not be contrary to the objectives of 205 and 205A and the rules of the Commission. Well in this particular parcel 60 percent or two and a half acres are used for growing crops such as avocado, banana, guava, cherimoya, poha berries and the ducks and butterflies that I mentioned previously. Thirty-five percent is covered by building and structures, 5 percent is waste land and there is an approved and implemented farm plan and the B & B use will not preclude or reduce agricultural use on the property.

So the second test is, would the desired use adversely affect surrounding property? And in this case, the property is heavily covered in vegetation. The nearest dwelling is 450 feet or more from the proposed B & B. The B & B will serve only one family group at a time and the Department received two letters of support from nearby neighbors and one was placed on your desk in front of you this morning and there was a nearby neighbor who opposed the project that's also in your staff

report.

So the third unusual and reasonable use test is that it would not unreasonably burden public agencies. And this is actually a mistake that I just found out, let's go back, it's not Olinda Road that has a 20-foot wide easement although it may I do not know. It is their private driveway that actually has as a 20-foot wide easement so they could enlarge their driveway if they needed to in the future. Water Department has accepted the water demand calculations and the meter size for the property. Department of Health recommended approval of the bed and breakfast. The cottage is served by a 1,250 gallon septic tank and system. So all agency comments have been resolved and the Department believes the project would not create a greater public burden than would long-term residential use.

And the fourth test is that unusual conditions, trends and needs have arisen since the District Boundary and Rules were established. So when the District Boundary and Rules were established we didn't have the visitor industry boom that we now have in Maui County. So there is always as you hear about many times growing demand for alternative accommodations and the applicant believes that this is – would be such a, such an, such an alternative. They are not currently in use. They state that and did not appear to be when I did my site inspection. So you know, it's, it's something they'd like to try to supplement their income, their family income outside of working full-time. So – and B & Bs are permitted within the agricultural zoning in the County zoning that is.

So the fifth test is that the land is unsuited for the uses permitted within the district. This parcel sits on such a steeply pitched incline, incline and is on the slopes of a cinder cone it is not conducive to large scale agriculture and the applicant intends to continue agricultural use that they current carry out. So I'd like to stop at this point and offer you the opportunity to ask questions of either myself or the applicant after which time I'll be happy to give my recommendations. Thank you, Mr. Chair.

Chair Hiranaga: Before we open the floor to questions from Commissioners is there anything the applicant wishes to say at this time?

Ms. Callentine: She indicates no. They indicate no.

Chair Hiranaga: At this time, I'll open the floor to public testimony.

a) Public Hearing

Chair Hiranaga: Is there anyone here that wishes to provide testimony at this time? Seeing none, the public hearing is closed. I'll now open the floor to questions from the Commissioners to the Staff or applicant. Commissioner Freitas?

Mr. Freitas: Do they have a GET tax for resale? They have a farm plan so evidently they –

Ms. Callentine: Wait, wait don't answer from the floor, I mean from the, you have to come up here and answer.

Mr. Jeff Wilson: Hi, my name's Jeff Wilson and I live on the property with my wife and my daughter, and yeah, we do have a GET license and we've been paying taxes on all of our farm proceeds and those are recorded and we turn those in with our farm plan.

Mr. Freitas: And how much money did you derive last year?

Mr. Wilson: Last year, I believe it was \$8,000. We work hard at it but it's hard to make money with the butterflies and fruit.

Mr. Freitas: I know. I live up there.

Mr. Wilson: Yeah.

Mr. Freitas: Thank you.

Mr. Wilson: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: You've said it on Page 6 but I wanted to – of the report, but I just want to make sure from – I'd prefer actually the applicant ...(inaudible)... up there if you don't mind. I'm sorry. I know it's in the staff report but I wanted to confirm orally. This has never been used for a bed and breakfast?

Mr. Wilson: No.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: My question I believe is for the Planner, Staff Planner, Livit. One of the objections or I don't know if it was an objection so much as it was a comment, in the letter that opposed this said that the access to the Wilson property is through an easement. Does that present any problems in terms of this application if they want to do a commercial activity such as a B & B?

Ms. Callentine: We would have to go back and examine the easement documents but it's my understanding that it's – the easement does not restrict the use of the easement itself. But I think that might be something we could, I could look, look up here in my file and then we could ask the applicant as well if they know if their easement has a restriction upon it.

Ms. Wakida: Yeah, I think they certainly want to – well they should at least look into it so they don't down the road have some future problems.

Ms. Callentine: Okay.

Chair Hiranaga: Commissioner Wakida, did you want to ask the applicant that question?

Ms. Wakida: Certainly if the applicant has information.

Mr. Wilson: Yeah, the easement has been granted in our favor. And that easement was granted over 20 years ago and there are no restrictions on it whatsoever and we have included that in our packet.

Ms. Wakida: Thank you.

Mr. Wilson: My pleasure.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: My line of questioning is actually with public safety and my concern for the customers that you will be having lodging there. Let me start off with the fire suppression in terms of smoke detectors as well as sprinklers in that facility.

Ms. Callentine: Yes, yes, Commissioner Shibuya, thank you for that question. On my site inspection, I both located and photographed each of the smoke detectors in the property. They are all spread out throughout exactly where the Fire Department has specified they would like them to be. There's also on each floor of the bed and breakfast cottage a fire extinguisher located and also they will, they will be required as a condition of approval to have all these things to submit annual logs of their safety tests on their extinguishers and their smoke alarms and they also are required to provide an emergency evacuation plan in each of the bed and breakfast rooms.

Mr. Shibuya: No sprinklers? No?

Ms. Callentine: No, no sprinklers.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: This is somewhat of a follow up but it's also more a generalized question. I heard just the other day that I don't know whether it's Building Department or Board of Water Supply or who but they did inspection of a home, not this particular one but did inspection of a home, gave it the okie dokie as a residence and then contacted the owners a few days later that no, it didn't meet Code because it was considered a commercial operation as a B & B. What were – for this property they've gotten the approvals was it as meeting the requirements just of a residence or was it meeting the requirements of a commercial building?

Ms. Callentine: This was a residential building permit that was approved for this accessory dwelling, this accessory farm dwelling.

Mr. Mardfin: So they're not requiring any higher level of standard that a normal residence would be?

Ms. Callentine: No.

Mr. Mardfin: A B & B and a residence would – are considered the same?

Ms. Callentine: No, no sir.

Mr. Mardfin: They are considered the same?

Ms. Callentine: From the Planning Department's perspective, we look at the Title 19 and related land use laws we view bed and breakfast as a residential use.

Mr. Mardfin: I know the Planning Department does. I think there are other departments that may not.

Ms. Callentine: I believe that our Deputy Director of Public Works would like to say something if you let –

Mr. Mardfin: Maybe I would love her to say something.

Ms. Dagdag-Andaya: Commissioner Mardfin, I think I know which B & B you might be talking about and in that case it was considered a residential project or residential development as opposed to a commercial. And I think the statement that was made at the time by the building inspector was just, you know, he just wasn't sure but, you know, coming back to the department he was told, you know, all B & Bs are, are to be treated as residential development as opposed to commercial.

Mr. Mardfin: Thank you very much. I'll meet with you later.

Chair Hiranaga: Commissioner Shibuya.

Mr. Shibuya: Again, with the public safety aspect and hazard mitigation. Electrical inspection and certification has that been accomplished and satisfied?

Ms. Callentine: Yes, sir. To my knowledge all of the open building permits including electrical have been resolved. I'm going to just turn around and check with the applicant and make sure that – I know there was one final one. Has it now been finalized that was for the storage up above, correct? Yes, there was one electrical permit. It was for the storage unit that I showed you that's up at the very top that used to be called the back house, bathhouse. That was not involved in the bed and breakfast but it did have an open electrical permit which has, the applicant has just indicated has been closed, finalized.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I know we're only dealing with the special use permit, but when they go for the B & B it will be granted administratively. Are they aware that they will not be able to have their home tax exemption?

Ms. Callentine: Yes, the applicant indicates they are aware of that.

Mr. Mardfin: Thank you. That's costly, that's why I like people to know.

Ms. Callentine: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Does the applicant have a sample of a house rules that they would be posting?

Ms. Callentine: They submitted sample house rules. I didn't put them in your staff report but I can pull them up out of the file if you'd like to see them or I could provide that to you at a later time if you'd like.

Mr. Shibuya: Or you can just read it, some of it.

Ms. Callentine: I'll have to find it if you'll –

Mr. Shibuya: Okay, later.

Chair Hiranaga: Any other questions? Seeing none, we'll hear the staff recommendation at this time.

b) Action

Ms. Callentine: Is Commissioner Shibuya okay with us moving on without discussing the house rules?

Mr. Shibuya: But the house rules do exist?

Ms. Callentine: They do exist and they will be acknowledged and incorporated into the bed and breakfast approval should you approve this special use permit.

Mr. Shibuya: Okay, thank you. Continue.

Ms. Callentine: Okay, so from my recommendation, our recommendation I should say. The Maui Planning Department recommends that the Maui Planning Commission recommend approval of the Land – sorry, grant approval of the Land Use Commission Special Use Permit for, there's a mistake in your recommendations. I said for two years, until June 30, 2013, but actually my supervisor and Planning Director substitute today, Ms. Ann Cua, corrected me and reminded me that that a minimum we would recommend three years for the initial Special Use Permit. The Department has been and the County as you know, has been attempting to streamline and County processes and operations and so we would suggest that you consider a longer term. I don't believe there's any restriction on the term but we would change the first condition of approval to at least read June 30, 2014. Other than that, there's no amendments to the remaining five conditions that are recommended, recommended, yes.

And in consideration of the foregoing, the Planning Department recommends that the Planning Commission adopt the Planning Director's report and recommendation prepared for the June 28, 2011 meeting and authorize the Director of Planning to transmit Findings of Fact, Conclusions of Law, Decision and Order on behalf of the Planning Commission.

Chair Hiranaga: Any questions regarding the recommendation? Seeing none, I'll open the floor to a motion.

Mr. Freitas: So move the motion to accept, to issue the recommended your permit for your bed and breakfast.

Ms. Callentine: I'm sorry, I didn't catch that.

Mr. Freitas: As recommended by the planner.

Chair Hiranaga: Motion by Commissioner Freitas to approve the State Land Use Commission Special Use Permit to operate a B & B for the – per the staff recommendation of at least three years. Is there a second?

Mr. Shibuya: Second.

Chair Hiranaga: Seconded by Commissioner Shibuya. Discussion? No discussion. Call for the vote. All in favor –

Mr. Shibuya: Discussion?

Chair Hiranaga: Discussion, Commissioner Shibuya?

Mr. Shibuya: Still on public safety again. Are there large, tall trees next to the structure in which the tenants will be in and will that pose a danger to them because I know Olinda either rains or is very windy and that's a problem for me in a sense. Never mind the homeowner, but what about the tenant?

Ms. Callentine: My observation was there's certainly adequate clearance around the property. If you take a look at again at the screen you'll see – that gives you a little bit of an indication. I would have to ask the applicant to come back up to address the distance from the trees you see in the rear, the background, the distance from those trees to the dwelling itself if you'd like.

Mr. Shibuya: Sure, yes.

Mr. Wilson: We've done our best to clear –

Chair Hiranaga: Please identify yourself?

Mr. Wilson: I'm sorry, my name's Jeff Wilson. I live on property. And yeah, we've had a lot of tree clearing done since we've had the property. I mean, we've cleared as much as we could around

the property to make it as safe as possible. Yeah, taking out any tree that looks suspect and certainly any tree that was looking like it was dying or anything like that. So there's yeah, we've done a ton of tree work and we're always happy to cut down more. It's my wife's favorite thing to do. So I'd say it's very safe, yeah. But my wife loves cutting down trees. Favorite pass time. She knows every tree guy on the island.

Mr. Shibuya: Thank you.

Mr. Wilson: Thank you, sir.

Chair Hiranaga: Any other discussion? Seeing none, I'll call for the vote. All in favor, raise your hand.

Ms. Cua: We have four ayes.

Chair Hiranaga: Opposed?

Ms. Cua: One opposed.

Chair Hiranaga: Commissioner votes in favor and the motion carries.

Ms. Cua: Five ayes.

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

VOTED: To Approve the State Land Use Commission Special Use Permit, as Recommended by the Department.

**(Assenting - J. Freitas, W. Shibuya, P. Wakida, W. Mardfin, K. Hiranaga)
(Dissenting - L. Sablas)
(Excused - D. Domingo, K. Ball, I. Lay)**

Chair Hiranaga: Thank you.

Ms. Callentine: Thank you.

Chair Hiranaga: Next agenda item is Communication C-1. Director?

Ms. Cua: The next item under Communications is a request by Ms. Cherie Attix and she's requesting a ten-year time extension on the Conditional Permit for the Hale Hookipa Inn to construct and operate a transient vacation rental in the R-3 Residential District at 32 Pakani Place at TMK 2-4-18: 063 in Makawao and Livit Callentine is the Staff Planner on this extension request as well.

C. COMMUNICATIONS

1. MS. CHERIE ATTIX requesting a 10-year time extension on the Conditional Permit for the Hale Hookipa Inn to continue to operate a transient vacation rental in the R-3 Residential District at 32 Pakani Place, TMK: 2-4-018:063, Makawao, Island of Maui. (CP 2001/0006) (L. Callentine)

Ms. Callentine: I don't have a presentation for this one. As you are aware this is a time extension. This is the second time extension of a Conditional Use Permit. The application first came before the Commission – well, the application was originally applied for in 2001. I'm sure it took a little bit of time before it came before the Commission, but the Council has heard and approved it twice and we are recommending a ten-year time extension of the project. As you are aware there have been a number of concerns expressed over the years from various, different, from neighbors and you heard from someone this morning who also provided you with a letter opposed to the project or well, expressing concern about the length of time rather more than being opposed, he didn't want to see I believe a ten-year time extension. The only change in the project is that – well, first of all, I think you can see from your staff report and exhibit, Exhibit No. 7, it's the last page of the Exhibit No. 7, it's a parking plan and what it shows you on this parking plan is that there's a four-bedroom historic guest house being used for short term vacation rental. And next to that on the same parcel is a accessory dwelling that is now being occupied by the owner. About two-thirds of the way down this site plan you see a heavy dotted line, you all see that? If you do, that dotted line indicates a parcel boundary. The applicant owns both parcels and during the last review of the – the last time extension owner at that time lived in one of the two homes that was not on the same parcel. Now she actually has moved into the access dwelling on the same parcel. Theoretically she could qualify for a B & B at this point but because she's been so long in this process and we now have procedures in place to, to allow the Director to approve time extensions of Conditional Permits she has not at this point come in and ask for a different type of permit. So you also see in – so, so in other words, we reviewed this change, her moving onto the parcel with the, with the short-term rental as a insubstantial change and that's why we brought it before you as a, as a Communication item. She's in compliance with all of her conditions of approval. And we've issued a compliance report. She's received as you saw, a petition with 27 names on it, additional letters of support. In addition of the two different parties that were, had concerns about the project during the last time extension request one of the conditions that Council placed on her was to make a good faith effort to go back and meet with those neighbors and she's done that we believe. She sent out and you'll find this in your, in your Exhibits 12, 11, 12, and 13, the applicant did mail by certified mail requests and offers of mediation with both the earlier testifier, she sent him two letters and did not receive a reply. And also another testifier who has actually since become supportive of the project. So we recommend approval of the – well, I guess I won't go onto approval – recommendations until you've had time to question me, but because it's a time extension and it's been heard so many times by the Commission, I'm going to keep my remarks really brief, also seeing that it's approaching the noon hour. And if you have any questions of me, I'd be more than happy to answer them. Thank you.

Chair Hiranaga: At this time, does the applicant have anything to say?

Ms. Callentine: Okay, please identify yourself.

Ms. Cherie Attix: Hi, I'm Cherie Attix. I'm the owner and operator of Hale Hookipa Inn. I appreciate

this opportunity to be in front of you folks again. I didn't prepare anything. I just can't think of anything else to say that I haven't said before. I have made a good faith effort and I'm getting along great with, with neighbors. And I'm happy to be able to keep the historic property up being able to do this. So if you have any questions?

Chair Hiranaga: Actually I'm going to open the floor to public testimony.

Ms. Attix: Thank you.

Chair Hiranaga: If anyone wishes to provide testimony regarding this agenda item that did not previously provide testimony please come forward?

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

Mr. Pat Borge: Well, the letter kind a shows you what I was going to say that's ... (pause while letter was circulated to the Commission) ...did you give them the letter?

Ms. Callentine: Did you make enough copies?

Mr. Borge: Yeah, I think so. Anyway, my name's Pat Borge. I'm here to discuss that C-1, as you see on my letter it's mostly what I have to say, but it's pretty hard for me because you know, Mr. Spence was the planner for this project two years ago. So it's kind a, I feel like the deck is stacked against me but I'm sure he's a fair gentleman and look at all the issues here.

For me, in my, in my neighborhood, like I wanted to build a cottage on my property and I had to put a septic tank. So I just wanted to know if Ms. Chris [sic] Attix has a cesspool or a septic tank because that's a pretty big, big house. And like I said, it's been quiet for the last couple years and the reason for that because we had some issues two and a half years ago and now she's coming before you for a ten-year extension. I don't see why we have to give her a ten-year extension. I think it should on a compromise basis. I'm not trying to stop her from doing her business. I think we, as residents in our neighborhood should have some kind of control of what goes on in our neighborhood, some kind of protection, some kind of accountability, you know, you give somebody ten years, I mean, god, I don't see the reason for the ten-year extension.

And I know this Administration is for TVRs and B & Bs and all of that, but you still have to protect the local people that live in this residential areas. We gotta have some kind of protection. I'm a tax payer on this island and when I bought my house it was residential and all of a sudden, boom, I got this TVR in my street. You know, over the years I grew up on Maui, I thought Wailea, Kihei, Lahaina, Kaanapali was for the tourists. I didn't expect in my lifetime there would be tourist in my neighborhood. You know, I mean, just look at the local issue, you know, like Mr. Hunt, I talk to him when I saw the B & B, you know, he goes a, I understand a local, the local what they feel, but look where is he now, he's back on the mainland. You know what I mean? We the ones that gotta live this, you know. I don't know if any of you have any B & Bs or TVRs next to you, Maui Meadows is a big issue there, I got a lot of people complain about the B & Bs and TVRs up in that area. There's other areas and there's other locals, you know, local style we don't speak out as much as we

should that's the problem we have. You know, and lot of locals they no vote and that's the problem we have too. But I'm a local that a, I have rights and I want my rights protected as a tax payer of this island and as a local. Like I said, I got nothing against Chris [sic] Attix but I want accountability in my neighborhood, you know what I mean? And I think ten years is a little bit too long and I want to make sure she lives on the property like she supposed to so she can control the tourist that lives in that house none of this, oh, it's okay if she live five feet across the next lot. You know, that's not fair, it's not fair for me.

Chair Hiranaga: Okay, thank you.

Mr. Borge: You know, what I mean? Thank you very much.

Chair Hiranaga: Questions for the testifier? Commissioner Shibuya?

Mr. Shibuya: Mr. Borge, thanks very much for your testimony. I just wanted to ask you if you do have a community association which governs the activities and/or the developments in your area?

Mr. Borge: Well, I belong to the Makawao Community Association, but none of the – mostly they just – we talk a lot about the stores and what goes on in the town itself but not outside of the, the community.

Mr. Shibuya: No, what I was asking was like a homeowner's association?

Mr. Borge: No, we don't, we don't have – we just a have Makawao Community Association.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Good morning.

Mr. Borge: Good morning.

Mr. Mardfin: You referred to some problems that you had can you go into what that –

Mr. Borge: Well, it was, it was a long issue, you know, it was about dogs, it was about chickens, it was about parking.

Mr. Mardfin: Have they been resolved?

Mr. Borge: Yeah, things have been quiet, but it was a long process, you know, we didn't want to come out here and, and, my neighbor, I don't want to bring em, up but they're good people and we all, couple of us got together and that's, that's how this whole issue came out, but that's how we got the two, two-year permit because at that time she wanted a ten-year also. But we had those issues, the issues may had – it's been quiet. I talked to my neighbor the other day, he said everything's been quiet, fine. Yeah, but at the same time, it's just like when somebody creates,

gets into trouble, you give a probation but it doesn't mean, and you know, it still gotta be a check and balance here, that's that's what I'm saying is that, you know, I'm, I'm afraid that, you know, if you give them the green light, you have no control. You know, at least this way she's gotta stay within her boundaries you know what I mean –

Mr. Mardfin: Would you feel better if it were eight years?

Mr. Borge: I would go with five, three, five years, you know what I mean? Five. Look I'm 60 years old, ten years I going be 70 something years old. You know what I mean? I like to have some kind of control in my neighborhood. When I bought my house it was a residential. I was the first house on that lot. And now you guys talking about historical homes grandfathered in. My home's historical too, my home is almost 50 something years old. My grandmother used to live in that house.

Mr. Mardfin: Thank you, thank you very much.

Mr. Borge: Yeah, okay. Thank you.

Chair Hiranaga: Another question. Commissioner Freitas?

Mr. Borge: Yes, sir.

Mr. Freitas: Mr. Borge, you said chickens, dogs, were they your chickens or?

Mr. Borge: Was my neighbor's chickens.

Mr. Freitas: It was the –

Mr. Borge: There were issues where, where she complained about the dogs and then some tourist complained, walking in people's yards in the neighborhood. The dog, there was one dog that got hurt because the guy use 'em for hunting and somebody put a sign that said, a you should – somebody should take care of this dog and all of this and it was just a big, a big – you know, it was just a lot of issues.

Mr. Freitas: But it's properly zoned for chickens and dogs?

Mr. Borge: It's Makawao Town, eh?

Mr. Freitas: Yeah.

Mr. Borge: Get chickens and dogs. You know, got horses, I get horses. No, I just saying let's, let's be fair and, and don't forget the guys who live in the areas that you guys are putting these B & Bs and TVRs in.

Chair Hiranaga: Okay, thank you very much. Any other questions?

Chair Hiranaga: Next testifier is Jocelyn Perreira.

Ms. Jocelyn Perreira: Good morning, Chair Hiranaga and Commissioners. My name is Jocelyn Perreira. I'm the Executive Director and the Small Town Specialist for the Tri Isle Main Street Resource Center and I'm here today to speak on behalf of the Makawao Main Street Association. Morris Haole, Jr., is the Chairman of the Board included is Calvin Shibuya, Bully Joaquin, Dr. Rick Sword, Jordan Santos, Dukie Tavares, Principal John Costales, David Mendoza, Kim Haole and Cookie Tam Sing. We are here in support of the Hale Hookipa operation that we view as a wonderful addition to Makawao Town. The Hale Hookipa Inn is as a unique historic property and an important piece of upcountry history.

The private owner, Cherie Attix, faced with special responsibility and burden. Old houses are difficult and expensive, expensive to maintain and operating Hale Hookipa Inn allows Cherie to defray some of the considerable expense. Without her commitment the historic Gomes family home would no doubt fall into disrepair. We could lose an important resource. Visitors fortunate enough to stay in the Inn get a glimpse of gracious way of life and a sense of place that is fast disappearing.

Makawao Main Street Association's mission to preserve local small town assets and insure that they remain vibrant and economically viable. This project is a thriving enterprise even in tough economic times on the outskirts of Makawao that enhances and reinforces the best of Makawao. Cherie has worked hard and promises to continue to be sensitive to the needs of her neighbors while providing an important service for upcountry visitors who want to visit friends and relatives. What sets this project apart is its commitment to the preservation of a true historic movement that is reflected throughout this home.

Additionally, the Tri Isle Main Street Resource Center and the small town professionals also gives this its solid endorsement. Cherie Attix has gone through a rigorous process, meets and exceeds criteria for special consideration including historic, architectural, cultural significance, she lives on the site, up keep and maintenance of the property is thereby adding value to surrounding property. Most important of all is her demonstrating respect for those residing in her neighborhood as I have witnessed personally by talking with the Gomes family that I have known since I was child. Their right, -- and she is concerned about their right to peaceful enjoyment that is most important of all and acknowledging the respect that needs to be there. I am honored here today as a former Makawao girl to represent and advocate for those who actually live on the site that we are talking about today. We wholeheartedly support this operation and we hope you will too. Thank you for your time.

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

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

Chair Hiranaga: Seeing none, I'll open the floor to questions from the Commissioner for Staff or the applicant. Commissioner Mardfin?

Mr. Mardfin: Livit, this is a transient vacation rental. You don't consider that a B & B or short-term

rental?

Ms. Callentine: This, this property, this operation functions like a B & B but when she came in for her initial request the B & Bs weren't allowed.

Mr. Mardfin: Right.

Ms. Callentine: Number one. And number two, when they were then – when 1964 was implemented you had to live in the same home.

Mr. Mardfin: Right.

Ms. Callentine: As the B & B operations. So, for those reasons it's always been a conditional permit.

Mr. Mardfin: Would you look at Exhibit 10? This is a list of the house rules that they currently use. This is a much abbreviated form of what's required under the B & B ordinance at least where they have to state hours of operation, there are things about music, noise, all kinds of things. Is it the intention of the Planning Department to have them modify the house rules to be more in compliance with current standards at least for B & B?

Ms. Callentine: No, it is not our intention to do that unless the applicant indicates that she would like to close this permit and open a B & B. We wouldn't be modifying, well as you could see in the report our recommendations we have not recommended that any of this be changed.

Mr. Mardfin: So you're satisfied with the house rules as they stand?

Ms. Callentine: Yes.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: This house is being rented by room by room, correct?

Ms. Callentine: Yes.

Ms. Wakida: I find there's some confusion about what we're dealing with. Their website clearly says it's a B & B operation and if it is, then that has specific rules which is that owner is required on property. In this case, the owner happens to but may choose not to in the future. So, I'm a little confused about the advertising versus what is, is suggested in here. In fact, even some place in here it came up, it called itself a B & B. So I think there needs to be some delineation of what kind of operation this is and it needs to be consistent.

Ms. Cua: I could probably take a stab at commenting on that. The term "bed and breakfast" means something very specific to us in terms of land use regulations, but the name is used very commonly

in transient vacation rentals as well because as Livit mentioned earlier we didn't always have a bed and breakfast law. And so, there are a number of transient vacation rentals that go by the name as, you know, XYZ B & B. And so, you know, this particular application as Livit mentioned, I do have some history with it because I was the planner at one point through her whole process, but you know, it is unusual where she does own the two properties right next door. She has made a choice to preserve a historic structure. She has a quite a task in, in – a challenge in trying to deal with her neighbors which we believe that she has successfully done. You know, with the exception of the neighbor you heard today. She has attempted though, and that's what we asked her to do is to try and contact and mediate. But with the Gomes Family who has been in this audience before, you know, they're not here today, they have – she has resolved their issues. When, when she first came into the Department she had just the one property, the historic property and it went through the Planning Commission, went up to County Council and correct me if I'm wrong, Cherie but - and then by the time she got up to the County Council she had purchased the second property and at that point was choosing to live on the adjacent property to where the historic structure is. So definitely in that case, the Conditional Permit is warranted. Today, as it stands with her wanting to or her living back on the property where the historic house is technically she qualifies for a B & B, but there are other applicants that have come through the conditional permit process that when we did have a B & B law we didn't, we didn't force them to convert because they've gone through a process we don't want to force them to come to a brand new process, get a brand new application. So you know, this is one where it has a lot of history, we're just trying to move it forward and we support in that context and I think the applicant wants to add to that if you'd allow her to?

Chair Hiranaga: Yes, go ahead.

Ms. Attix: Cherie Attix. I would, the reason why I'm continuing on with the TVR is because I would like to someday hopefully be able to live in my house again on the next door property. I would like the option. One of my original okays by the Council said that I could do either or so I was trying to keep that, that going. I've always called it a B & B because to me that indicates that the owner's there and you're present. I do breakfast every single day with my guests and there all the time. So that's why I said B & B.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: On the adjacent property you have two long term rentals is that correct/

Ms. Attix: Correct.

Mr. Mardfin: I'm glad you have long term rentals there.

Ms. Attix: Yeah.

Mr. Mardfin: Are you on the property where the TVR is, you claim the real property home tax exemption?

Ms. Attix: No.

Mr. Mardfin: On the adjacent property do you claim the real property home tax exemption?

Ms. Attix: Right now I do, yes. Yes.

Mr. Mardfin: Even though you're not living there?

Ms. Attix: Right. Well, at this moment I'm not, but I didn't - I can't claim it for the B & B, so yeah, I guess I could let go of that. I never thought of that, but –

Mr. Mardfin: Yeah, I mean if you're not living on a property and you're claiming a home tax exemption –

Ms. Attix: Yeah, I know, okay.

Mr. Mardfin: – there might be some difficulties for you in the future.

Ms. Attix: Okay. All right, I hadn't thought of that.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'm just wondering how many water bills do you receive?

Ms. Attix: Two. I mean, one for each property.

Mr. Shibuya: Because I just see one back flow preventer.

Ms. Attix: Because that's for the short term rental. The long term rental property doesn't require a back flow preventer. It's a separate property. It's just like anybody's house.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any other questions? Commissioner Sablas?

Ms. Sablas: I have a question for Staff. I'm not familiar with this project so can you tell me why the request for ten years which is to me quite as opposed, as was suggested earlier for a shorter period so that if things happen during that time you can address it, but ten years is a long time for an extension.

Ms. Callentine: Sure. The reason that Staff supports a ten-year time extension for this particular project and it is on a case by case basis, but for this particular project she has now been in operation nearly ten years. She's resolved all outstanding – all agency comments, she by and large has overwhelming in support from her community, and she's in compliance with all the conditions of approval. She indicates a very long term commitment, life time commitment to this area, to this island and for those reasons we see her as, this project as one that will continue to go on, and on,

and on. Now, that said, she – any conditional permit is subject to revocation should new information come to light which shows us that an applicant is not – a permittee is not in compliance with their conditions of approval. She, she knows this. So she must remain compliant with her conditions of approval. Should new information come to light it would be – an investigation would be launched and it's possible her permit might be rescinded if she was not in compliance.

Ms. Sablas: Chair?

Chair Hiranaga: Yes.

Ms. Sablas: Follow up, follow up question to that. What would be considered new information?

Ms. Callentine: Oh, I, I really can't speculate on what would be considered new information, but if it had to do I would say it would tie back into the conditions of approval and impacts on the neighborhood. I'm just gonna throw out something because you've asked for something. Okay, if all of a sudden she started renting out the home to rock band and they started performing and practicing until three in morning and created a huge noise problem in the neighborhood which well that would probably be new information. That would we would want to take a look at. With the, with the streamlining bill that has recently been adopted by Council regarding Conditional Permits, also we will still be reviewing the project and would have an – and at the time of review of a time extension we would have the option as a Department to bring the project back to Planning Commission, and the Council if something came to light which we felt was of a significant concern. Say all of a sudden we got word that she had sold the property and transferred the permit without permission which she's not allowed to do, that would be new information. That's an example of new information.

Ms. Sablas: I just would like to continue along this line of questioning if you don't mind.

Chair Hiranaga: Sure.

Ms. Sablas: So would – I'm sensitive to people who live in a neighborhood for a long period of time and enjoy the neighborhood for the reasons they bought especially those who have been there years and years. So say in the future if, if some of the neighbors changed their mind in opposition would that be considered and oppose it, would that be considered a new information?

Ms. Cua: I can answer that. I would say it depends on, you know, how that occurs. I mean, obviously if, if the situation that Livit spoke of where, you know, things change on the property and now there was this, this loud music or disturbance of the neighborhood and people came forward then definitely I think you know, that's legitimate to take a look at it. If, if people came in and started complaining and we did a check and we found that it appeared that she was in compliance with conditions, I mean, we'd have to take a look at that. So it's kind of hard to answer that, but you know, I think obviously if there was a neighborhood disruption that could be verified then – that caused the neighborhood to now not be in support of this operation then definitely it would be something that would put this permit in jeopardy.

Ms. Sablas: Thank you.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: Yes, for staff. Have there ever been a conditional use permit revoked?

Ms. Cua: To my knowledge, no.

Ms. Callentine: Nor to mine.

Mr. Freitas: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Yeah just, with this hypothetical we've been putting forth if she rents to a band group that makes a lot of noise that's not a condition that noise be controlled on this one. It is on B & Bs and it is on short term rentals but not on this. So she wouldn't be in violations of conditions so I don't think you could do much about it. But let me give the counter on this. If it's a B & B, a short term rental, at least they're gone fairly shortly. She could rent the one next door on her long term rental to the same band and then and you wouldn't have conditions on that that could be applied. So I'm not sure you get very far on this, on the noise thing being a reason to revoke.

Chair Hiranaga: Ann?

Ms. Cua: Just real quickly in response to that. Although there's not a specific condition about noise as there would be in a B & B permit, Condition No. 5 talks about the applicant developing the property in substantial compliance with the representations made to the Council and to this body. And there was no representation made of any kind of loud music, disruptions to the neighborhood. On the contrary, the record, you know, the record is I believe clear and so we would use that condition in that instance if that so occurred.

Chair Hiranaga: Any other questions? Commissioner Shibuya?

Mr. Shibuya: In line with my concern for public safety, can you verify for me the smoke detectors, the existence of them, sprinkler systems, approved electrical certificates, things of this nature?

Ms. Callentine: Yes, thank you, Commissioner Shibuya. I went through the property on my site inspection and I observed all smoke detectors operating and in the proper places. I observed the fire extinguishers in the proper places. This house is not sprinkled. It's a residential home. It's not a sprinkled use.

Mr. Shibuya: And about the house rules?

Ms. Callentine: I'm sorry, could you repeat your question about the house rules?

Mr. Shibuya: House rules don't mention anything about noise.

Ms. Callentine: Okay, I know that when the Council considered the house rules, I read through the

testimony and I read through the minutes of the Council meetings, they, they the Council actually established the house rules. And it sounds like perhaps maybe the applicant might want to address that if you'd allow her to, Mr. Chair?

Ms. Attix: Hi, Cherie Attix again. The house rules were actually written in conjunction with Debbie Gomes, my neighbor actually gave me those house rules and I added more to them. So we worked together in, in the neighborhood we created the house rules. I can add anything to them but we worked –

Mr. Shibuya: Are you willing to add a noise feature?

Ms. Attix: Oh, certainly, certainly. That's not a problem. My guests are really quiet so that isn't a problem.

Mr. Shibuya: Okay. Thank you.

Ms. Callentine: Might I make a suggestion, Mr. Chair, on the, on an added rule that we tailor it on the rule that we fashioned for the bed and breakfast because it's very specific about, it's got three or four points included in the rule. I cannot cite it for you right now, could look it up if you needed me to, but that might be something. I know it does address noise, quiet hours and several other items that are pertinent to the operation and reducing the impact of the operation on the surrounding area.

Mr. Shibuya: I would be very amenable to that. I feel more comfortable because we're looking at the community relationships in addition to public safety and so I'm concerned on this. I believe there was a testifier that said that there was no homeowners community association. That's very unusual because you're in the residential area, a subdivision they would have a homeowners association, why is there not one here?

Ms. Callentine: I can't answer that.

Ms. Cua: I can comment on that. I live in Makawao. And this is just a very small little subdivision. It's not I think your typical subdivision that would necessitate a homeowners association. There's probably maybe what, ten, nine houses there, really not many. So anyway, I just wanted to comment on that. And then secondly, if you would allow us, Cherie has already indicated she would be open to amending her, her house rules as she mentioned working with Debbie Gomes. When I talked about that family that sat here initially in one of the meetings that was the Gomes Family and Debbie is the daughter, and according to Cherie she worked with Debbie to form those rules and added to them and so she does appear open to incorporating additional house rules that are more in line with what we incorporate for B & Bs so if you would allow us to do so we would work with her on that that.

Mr. Shibuya: To include that.

Ms. Cua: To include that, correct.

Mr. Shibuya: Right, thank you.

Ms. Callentine: And if you would like me to, I do have the language, the proposed language for the house rule on quiet hours, amplified sound –

Chair Hiranaga: Not necessary.

Ms. Callentine: Okay.

Chair Hiranaga: Thank you. Commissioner Wakida?

Ms. Wakida: I just have a comment, maybe a recommendation to Planner. I am not a big fan of form letters. There's a quite a number of them in this packet and I'm not impressed by them. I would much prefer to see letters that have originated from the person rather than signing off.

Ms. Callentine: Well, the Planning Department – just a quick comment. We accept what people submit. So thank you for the comment though.

Ms. Wakida: But maybe you can let the, let your applicants know that this is Commissioner is not impressed by them.

Ms. Callentine: We'll take that under advisement, thank you.

Chair Hiranaga: Any other questions regarding the recommendation? Commissioner Sablas?

Ms. Sablas: Just a follow up question. I did ask earlier but I don't think I got my answer and, and the question is why recommending, why are you recommending ten years as opposed to five years. I think you told me all the good things but why – we can still have all the good things done, but why ten years as opposed to five years?

Ms. Cua: I'll, I'll take a stab at that. In, in reviewing the facts associated with this particular project, the fact that it's already been extended twice, the fact that the conditions have been met. There is basically one neighbor which I don't believe he lives there.

Mr. Freitas: Yes.

Ms. Cua: He lives in Makena. One neighbor that, you know, would prefer the five years and we've taken that into consideration, but again, when we looked at the overall, the facts associated with this request, the analysis that has gone through in terms of, the, the agency comments that have been complied, the previous conditions of approval that have been complied with. The efforts made by the applicant to meet with neighbors, to mediate, to come together to form house rules, looking at the total record we today feel comfortable with the recommendation for the ten years and that we throw that out. The Commission can accept that or, or choose to do something different, but today we are supportive of the ten years.

Ms. Sablas: Sorry about this, but when you said two times extended for how, how long a period?

Again, I'm, I'm totally naive of this project and I just kind of think it's unusual to grant a ten-year extension.

Ms. Cua: And actually, historically, for conditional permits in general, we've, we've -there's even been, the Council has been supportive and approved a 20-year time extension for a conditional permit. So it's varied. You know, we usually – before we'd start with only one year. Recommend one year, then we go three years, then five years, we've done some ten years. There have been other ones that have been ten years. So it depends on the progress of the specific application, the property, the circumstances surrounding that particular development in terms of how it moves forward in the process.

Ms. Sablas: Thank you. I appreciate the clarification.

Chair Hiranaga: Commissioner Freitas.

Mr. Freitas: Yes, I'm not in favor of bed and breakfasts or rentals in the neighborhood, but I live Upcountry. I'm very familiar with this area. In fact, in 1937, 27, my dad built a house across by Eddie Tam that cost \$800 and it's still standing. So I know the area. I know, and I would support a ten-year extension on this property and as a whole, I'm normally not in favor, but I know the area, I know the people around there.

Chair Hiranaga: Okay, we're still asking questions regarding the recommendations. So questions regarding the recommendation? Commissioner Wakida?

Ms. Wakida: This question goes to Ann. You, in explaining this to us and thank you for that you said that this property could you tell us when it first was permitted and then what those, if you can recall, what those extensions were?

Ms. Callentine: I can answer those if you need some help.

Ms. Cua: I might need some help. I know it was originally granted by Council in 2006. The permit application came in 2001.

Ms. Wakida: So it was granted in 2006 for how many years?

Ms. Callentine: For one year.

Ms. Wakida: And then there was another one after that for?

Ms. Callentine: The first time extension was for four years.

Ms. Wakida: Okay.

Ms. Callentine: So that was part of our deliberation on it was well, they got one year then the Council quadrupled that to four years, to just add one year at this point and make it five years just didn't seem along with all the other facts we considered it just didn't make a lot of sense but again,

that's your decision that's part of our deliberation.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'm normally against bed and breakfasts and TVRs and if you're lucky to get even three years from me. Now you're pushing it for ten, you're going to get a denial because I think it's too long. So, you know, if you come up with something less than that then I can probably support it.

Chair Hiranaga: Okay, any other questions for staff regarding the recommendation? Seeing none, I'll open the floor to a motion.

Mr. Freitas: So move to grant the special use –

Chair Hiranaga: It's a recommendation to Council. Is there a second?

Ms. Callentine: Now is this a motion to approve as recommended by Staff and with the amended added condition from the B & B ordinance?

Chair Hiranaga: Regarding house rules.

Ms. Callentine: Okay, so you're aware of all the conditions. You've, you've looked through the conditions?

Mr. Freitas: Yes.

Ms. Callentine: Okay, thank you.

Chair Hiranaga: Did you give us a staff recommendation? I thought you did.

Ms. Callentine: No, I didn't.

Chair Hiranaga: Okay, staff recommendation please.

Ms. Callentine: Okay, thank you. The Planning Department requests the Planning Commission recommend to the Maui County Council approval of the extension request with the following conditions as amended. All conditions are from the amended ordinance approved for the Conditional Permit which went into effect August 23, 2006 as Ordinance No. 3586, Bill No. 68 in 2008. Amendments to the conditions that are shown in your report are, are – the amendments are shown with brackets around them for removal and with an underline for addition. And so I would just point out there's a couple of conditions that we do recommend be deleted at this time, one of them that all – was condition No. 8 shown on Page 11 of your report recommendation and that was about onsite parking being approved by the Department of Public Works as to materials and configuration. We had quite a time getting the Public Works Department to review this and Rowena would be happy to explain how it came it be that this condition was assigned to Public Works because as Public Works replied to us, they are not the reviewers and purveyors of, of offsite

parking, off-street parking so they passed it to the Zoning Division who did review it and approve it. That's why that one is being, we're request that be removed. The remaining conditions would be renumbered and ending with Condition 10, and then we would add Condition No. 11 regarding the house rules.

Chair Hiranaga: Okay, thank you very much. We had a motion by Commissioner Freitas, but I believe, did we have a second? Yeah, I don't believe we had a second.

Mr. Mardfin: I will second it for the purposes of allowing it to continue. I think the problem some of us have is with Condition 2, about the length of time, but that can be changed by amendment.

Chair Hiranaga: Right. All right, we have a second. Now the floor is open for discussion or friendly amendments or?

Ms. Sablas: I would like to offer a friendly amendment to extend it by five years.

Chair Hiranaga: The person who made the motion agreeable?

Mr. Freitas: Agreeable.

Chair Hiranaga: Secunder?

Mr. Mardfin: I'm agreeable. So the motion on the floor is the motion is recommended.

Chair Hiranaga: As amended.

Mr. Mardfin: As amended to include the noise thing and to delete the two conditions that were no longer applicable.

Chair Hiranaga: As amended. Commissioner Mardfin?

Mr. Mardfin: I can vote. I'm going to support this motion as we've massaged it, but I would ask that the Planning Department, and one reason I can do it is the homeowner exemption is not claimed for this parcel, but I am troubled by the – we always ask people to do these things to give up the home tax exemption and yet it's just putting on an adjoining property where the homeowner does not live. So I think there should be some discussion among the Department – I don't see it pertinent to this action per se, but I think the Department should look with the Tax Department as to the appropriateness of home tax exemptions being claimed.

Chair Hiranaga: I would just like to make one comment. I think, you know, there is, I believe a lot of expense to maintain a historical structure and by providing a ten-year term it provides some confidence to the owner that she can invest money into the structure to continue its maintenance and I know that people have commented about the Lahaina Historic District and how it is expensive to either restore a house or maintain a historic structure that a lot of people don't go through that process because of the financial burden that it may incur. So I can see why a ten-year term might be beneficial to someone like this who has shown a clean record of operation and is willing to

maintain this house, but if there's no further discussion I would –

Mr. Freitas: I'd like to speak to the motion.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: I don't know this lady, never met her in my life. I don't know these people. I want to clear that up, but I live Upcountry and I know this house very well. This house was old when I was a kid and I'm an old man now. So, and you know, to maintain it as a historical society and not having complaints from anybody and living up to her performance on what she was supposed to do, this is the reason why I even made the motion. Like I say, I don't – I'm not keen on bed and breakfasts or TVRs at all, so this is the reason why I made the motion and supporting it.

Chair Hiranaga: Well, this is a recommendation to Council and they'll have a chance to review the minutes. So I'll have the Staff Planner repeat the motion for clarity.

Ms. Callentine: The motion is to accept the Recommendation of the Maui Planning Department including the elimination of Condition No. 8 and the renumbering of the subsequent conditions, adding Condition No. 11 regarding the house rules and with the original motion.

Ms. Cua: To conditions Livit, 8 and 11.

Ms. Callentine: Oh, thank you. Sorry. So and the motion –

Ms. Cua: Wait, wait. There's two conditions that we're recommending deletion of.

Ms. Callentine: Sorry, yes and No. 11, thank you. Thank you. And No. 11, that's currently numbered No. 11 would also be recommended for deletion. And the original motion that we made was for ten years. Now that motion failed. There's a motion on the floor for five years, correct. That's a friendly amendment for five years. So that's what you're currently considering in your motion.

Mr. Giroux: Chair can I just ask for clarification? Because we're gonna have to draft this to the Council.

Ms. Callentine: Right.

Mr. Giroux: We're going to do a draft ordinance.

Ms. Callentine: Right.

Mr. Giroux: And Condition No. 2 it's always been a problem when we do time extensions the ambiguity coming from the recommendation of, you know, extend it for ten years, five years. The problem is is that, we, Corp. Counsel drafts that, it goes to Committee, could sit there for however long time with no action and then by the time they vote, they, they come up with a recommendation and such and then it goes first reading, whatever. The recommendation from Corp. Counsel has

always been that if your recommendation is for a five-year time extension make it five years from the expiration of their last extension and I don't see that in Condition No. 2.

Mr. Mardfin: If the maker of the motion would accept that as a friendly amendment the seconder would also accept that as a friendly amendment.

Mr. Giroux: I mean, only if the intent – because it is up to Council once it gets up there and again, I'm only raising this because it's a drafting issue because we like to have a date certain and then when Council says ten years and they say oh it's been sitting here for five let's make it 15. You know, they can do what they want with the language but it's just in the meantime it's very confusing for the readers of the ordinance to ...(inaudible)...

Mr. Mardfin: I understand your concern and if the, if the – Commissioner Freitas would accept as a friendly amendment, the seconder would also since that's what we'll be voting on.

Mr. Freitas: No problem. Acceptable.

Ms. Callentine: Can Staff just make a point on this, Mr. Chair?

Chair Hiranaga: Yes.

Ms. Callentine: The last time extension made the Conditional Permit expired and agree with what our Corporation Counsel just said about ambiguity. I am all for eliminating ambiguity, however, there's so much ambiguity on knowing exactly when this is gonna be heard by Council that we hesitant I think to put in a date certain since we don't know, but maybe that's what we should consider in the future is an actual date certain even though Council can change it.

Mr. Giroux: Yeah, what we're asking for is that for the spirit of the recommendation to carry forward if it's clear that it's five years from the time that this permit expires then it's clear that your intent was to give them a five-year permit. Now if in four years Council decides to take up this issue then they have to decide are they going to from the time of the ordinance gonna give them five years because they've theoretically have been operating four years with a permit that Council hasn't acted on yet or they could just give a one year permit, you know what I mean? And that's where the policy makers have to kind of look at what they're looking at and say hey, what did Planning Commission at the time they made their decision want? And that's what, that's what the drafters are struggling with.

Ms. Callentine: So right now, and they did file a timely request for an extension, more than 90 days prior to expiration but the permit expired officially on August 23, 2010. So it's almost a year ago. So that means really if you are, if you are recommending approval of five years from that date then it's only four years.

Chair Hiranaga: If we're not going to conclude this in the next 30 seconds I'm going to call a lunch recess so –

Ms. Callentine: Okay.

Chair Hiranaga: Are we prepared to call for the vote? Are we all in agreement on what we're voting on?

Mr. Shibuya: And the wording would be at the expiration, the extension from the expiration.

Chair Hiranaga: Right. Per the suggestion of Corporation Counsel.

Mr. Shibuya: I like that.

Ms. Callentine: I'm sorry, I'm gonna have to write this, rewrite this. I'm not clear what the motion is at this point in time based upon the conversation we just had, I'm not sure how to rewrite this condition.

Mr. Giroux: We can work on the drafting. As long as I'm clear as what the, what the intent is.

Mr. Freitas: Right.

Ms. Cua: And their, and their intent is to go from that expiration date. So really, and the Department has a little concern about that but it's the Commission's choice is that in, in recommending approval today of a five-year time extension for this particular property, we're actually recommending four years from today because it's already been a year.

Chair Hiranaga: Okay, so we're all clear on what we're voting for? I'll call for the vote. All in favor raise your hand.

Ms. Cua: Five ayes.

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

VOTED: To Recommend Approval of a 5-Year Time Extension of the Conditional Permit to the County Council, with Amended Conditions.

**(Assenting - J. Freitas, W. Mardfin, L. Sablas, P. Wakida, W. Shibuya)
(Excused - D. Domingo, K. Ball, I. Lay)**

Chair Hiranaga: Motion carries.

Ms. Cua: The ayes have it.

Chair Hiranaga: Motion carries. We'll recess for lunch and reconvene at 1:30 p.m.

Ms. Cua: Thank you.

A recess was called at 12:25 p.m., and the meeting was reconvened at 1:30 p.m.

Ms. Cua was replaced by Mr. Spence.

Chair Hiranaga: Next agenda item is Communications C-2. Director?

Mr. Spence: Okay, this is Communication for Mr. Josh Stone, the Maui County Charter Commission submitting a May 10, 2011 memo asking for comments from Board and Commissions. I think this was, this was previously passed out and I know we've taken this to Lanai and I'm not sure, I haven't heard any reports from Molokai yet. But some of the Boards and Commissions are making comments as is within your purview as a Commission so we would entertain some, you know, comments, things that you would like to see changed within the Charter.

2. MR. JOSHUA STONE, Chair of the MAUI COUNTY CHARTER COMMISSION submitting a May 10, 2011-memo asking for comments from the boards and commissions by June 30, 2011. (Copy of memo was distributed with the May 24, 2011-agenda packet.)

Chair Hiranaga: I have one for consideration taking into account cost of government and the population size of Lanai and Molokai, I would like to suggest investigation a reducing the member, the number of commissioners for the Molokai and Lanai Planning Commission from nine to seven because I know sometimes they have difficulties reaching quorum or finding applicants who have not served or served on the commission previously or do not have a conflict of interest. Something for consideration. Any other comments regarding this communication?

Mr. Spence: Mr. Chairman, if, if this Commission would like to pass along that suggestion I suggest we make the motion and discussion.

Chair Hiranaga: Sure. Okay. Is there a motion? I can't make a motion, so?

Ms. Sablas: I move that we recommend that the commission numbers for the islands of Molokai and Lanai be – considered to be reduced from nine to seven.

Ms. Wakida: Second.

Chair Hiranaga: Second – moved by Commissioner Sablas, seconded by Commissioner Wakida. Discussion? Commissioner Shibuya?

Mr. Shibuya: I was thinking on a lesser amount such as maybe two commissioners be one from each of those locations just like we have a Hana representative be part of the membership here. I don't think that – I thought that this would be a more favorable type of balancing.

Chair Hiranaga: Just to comment, I don't think, I believe you could make that as a second recommendation – a separate recommendation?

Mr. Shibuya: Oh, okay.

Chair Hiranaga: Yeah. So is there any discussion on the motion on the floor? No discussion, I'll just call for the vote. All in favor say aye. Aye.

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

VOTED: To Send the Comment onto the Charter Commission to Consider Reducing the Number of Members on the Molokai and Lanai Planning Commissions be Reduced From Nine Members to Seven Members.

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

Chair Hiranaga: Motion carries. Commissioner Shibuya you wish to make another recommendation?

Mr. Shibuya: I'd like to make a suggestion that a couple of the members of our current nine-member commission include at least two, one each from Lanai and Molokai and that would be more cost beneficial to the County because now every time they have a meeting we have to send over staff as well as a legal to be present so we would saving considerably in that respect.

Mr. Spence: Okay, just – Mr. Chair?

Chair Hiranaga: Do we have a second?

Ms. Wakida: I will second it for discussion.

Chair Hiranaga: Director?

Mr. Spence: Just to clarify what the motion was, was basically you're saying that no Lanai, no Molokai Planning Commission just, but members from – one member from each of those islands be on this Commission?

Mr. Shibuya: That's correct.

Mr. Spence: Okay.

Chair Hiranaga: Be like a geographical requirement?

Mr. Shibuya: That's correct.

Chair Hiranaga: Any discussion?

Ms. Sablas: So you're recommending a body of nine to eleven?

Mr. Shibuya: No, just a body of nine.

Ms. Sablas: Oh, so it would be seven from Maui and one each from Lanai and Molokai?

Mr. Shibuya: That's right and it already includes one from Hana and one from the West Maui or two from West Maui.

Mr. Spence: And essentially we would be doing away with the Lanai and Molokai Commissions?

Chair Hiranaga: Yeah, the Board of Water Supply is set up that way. They have one Lanai and – well, one Molokai representative because Lanai is private water system. So they do not have a Molokai Board of Water Supply. I think there's some historical reasons how and why the Molokai and Lanai Planning Commissions were created but I'm not going to comment. Any other discussion? So I'll call for the vote. All in favor of the motion please so indicate by saying aye.

Commission Members: Aye.

Chair Hiranaga: Opposed.

Commission Members: No.

Mr. Shibuya: Restate the motion.

Mr. Freitas: Can you restate the motion please?

Mr. Spence: The motion is, would be to have one planning commission on Maui with requiring one member from Molokai and one member from Lanai and eliminating the Molokai and Lanai Planning Commissions themselves.

Chair Hiranaga: Dissolving it.

Mr. Spence: Yes. Would be to simply the system.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Since there's four of us, you're planning to vote as well I assume?

Chair Hiranaga: I would have to.

Ms. Wakida: Yeah.

Chair Hiranaga: Any other discussion?

Ms. Sablas: This is a major thing you're asking and with Molokai people not being present and Lanai I would really be hesitant to vote for such a drastic change. I can see the wisdom of it but with not enough input from those involved, I would really be hesitant to support to this motion.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: It's just a suggestion and for the Charter Commission to consider and they'll have the discussion and it's something that they need to consider anyway so it's just a cost conserving method.

Chair Hiranaga: And, and just for clarification, you know, it has to go on the ballot to be a Charter change. So the voting public decides. This is just, he wants to open discussion and if the Charter Commission decides to place, recommend placing it on the ballot then it goes on the ballot but the voters still vote for it. Commissioner Wakida?

Ms. Wakida: Well, okay, and I can certainly support a discussion of this, but what little I know about people on Molokai and Lanai they're very territorial and I would hate to open up a ...(inaudible)... here about this and create problems where none exist.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I see this as a regional type of representation and as the Chairman mentioned that the total population that's being represented is more akin to what we have here. We have Wailuku-Kahului which has the greatest population and being represented. They possibly could have two representatives on the Commission, Upcountry one, one in South, one in West Maui, one in Hana, one in Lanai and Molokai. It's a representation question.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: I think it's an excellent idea. Open it up to discussion. I support it.

Mr. Shibuya: Yeah.

Chair Hiranaga: Any further discussion? Seeing none, call for the vote please. Raise your hand if you're in favor of the motion.

Mr. Spence: That's two ayes.

Chair Hiranaga: Opposed?

Ms. Wakida: I'm sorry I'm on the fence.

Mr. Spence: Two nays.

It was moved by Mr. Shibuya, seconded by Ms. Wakida, and

The motion to have one member each from Molokai and Lanai on the Maui Planning Commission and eliminate the Molokai and Lanai Planning Commissions, FAILED.

(Assenting - W. Shibuya, J. Freitas)

(Dissenting - L. Sablas, P. Wakida)

(Excused - W. Mardfin, K. Ball, D. Domingo, L. Lay)

Chair Hiranaga: The motion fails. Any other?

Unidentified Speaker: Got to vote.

Chair Hiranaga: No, we need five votes in affirmative. Any other recommendations to be considered? Seeing none, we'll conclude this agenda item.

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: This does not preclude Members of the Commission as private citizens from making suggestions to the Charter Commission. So this just, this is just for this body's recommendations to them.

Chair Hiranaga: Thank you. Next agenda item C-3. Director?

Mr. Spence: Okay, Mr. Chairman and Commissioners, this is the selection of a hearing officer, body and mediator for an SMA Appeal. This is Daniel Grantham, Lucienne deNaie of the Waipio Bay Benevolent Association appealing the Director's decision of December 6, 2010, phew, before my time, to issue an SMA Minor Permit for the Bolles three-lot subdivision in Huelo. I have Clayton Yoshida here and we have Deputy Corporation Counsel, Mimi Johnston.

3. Selection of a Hearings Officer/ Body and Mediator on the following SMA Appeal:

DANIEL GRANTHAM and LUCIENNE DENAIE of the WAIPIO BAY BENEVOLENT ASSOCIATION, LLC appealing the Director's decision of December 6, 2010 to issue an SMA minor permit for the Bolles 3-Lot Subdivision and related improvements on 20 acres of land at TMK: 2-9-007: 052, Huelo, Hamakualoa, Island of Maui. (APPL 2011/0001) (SM2 2010/0083) (P. Fasi) (The notification to the Commission of the appeal was on the May 10, 2011 agenda)

The parties are: 1) Waipio Bay Benevolent Association, LLC (Appellant); 2) Department of Planning (Appellee); and 3) Jeffree Trudeau for the Bolles Family (Applicant)

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

Mr. Jeffree Trudeau: I'll speak now just because maybe we can take care of it earlier. I'm working for David Bolles, the owner, and he hired me to get this subdivision to happen and we did all the processes and I've been working with the neighborhood also and we're at a point now where we just need to get a hearings officer and get some concerns that are being expressed by the neighborhood or Lucienne and Daniel. And I'm here to just see what the – what, what your recommendation is for us to work together with you to get it down the easiest and simplest.

Whether you want – whether it's going to be with a mediator or a hearing officer is either way happens and then, you know, talking together and kind of going through a mediation process for a couple years now. It feels like we're ready to just get this statement to the Commission to be able to make a decision. So I guess –

Chair Hiranaga: If you're asking, if you're asking the Commission a question, you're not able to do that.

Mr. Trudeau: Okay.

Chair Hiranaga: So?

Mr. Trudeau: Okay, so my statement would be is we're here to have the Commission select us a hearings officer.

Chair Hiranaga: You may want to discuss it with the staff planner that's assigned to your item for –

Mr. Trudeau: We have, Clayton.

Chair Hiranaga: So that person may have given you some advice as to what your options are, but –

Mr. Trudeau: Okay.

Chair Hiranaga: I know it's on the agenda.

Mr. Trudeau: Yeah.

Chair Hiranaga: And the Commission will address it at that time.

Mr. Trudeau: Okay, okay, that's what we were just here to see if –

Chair Hiranaga: Any questions for the testifier? Commissioner Wakida?

Ms. Wakida: Just one. Sorry, when you introduced yourself I didn't get your name and what you represented.

Mr. Trudeau: Jeffree Trudeau and I'm representing the owner of David Bolles property in Huelo.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Any other questions? Seeing none, thank you.

Chair Hiranaga: Next testifier, Daniel Grantham?

Mr. Daniel Grantham: Good morning, Commissioners, my name is Daniel Grantham. I hope you all got copies of the testimony I mailed in, emailed in. The mission of the – this is regarding Communication 3, the mission of Waipio Bay Benevolent Association is to help members, supporters and longtime residents of the neighborhood to be heard in often confusing government process to protect their cultural, environmental and community resources. We appreciate the community – the Commission’s willingness to receive additional information from local families who know the land and area well to determine if the Planning Director’s decision to grant a SMA Minor was based on incomplete information and should be reconsidered. This property is 20 acres of rugged coastal pasture land on a three to four hundred foot high cliff above the ocean in Huelo. One reason this land still has so many cultural sites is that it was never farmed for pineapple unlike the surrounding lands. The Association’s appealing because a Minor SMA does not give the neighbors any notice of this development or opportunity to raise concerns in such a way that conditions can be enacted to prevent or minimize cultural, environmental and community impacts. This is not the time to go into specifics that would come during the appeal or during a full SMA process. It is the time to say we have detailed information to present on substantial cultural, environmental and community impacts both immediate and cumulative. We also feel that the cost of proposed subdivision infrastructure is higher than a \$125,000. In fact, the owner has done grading and building infrastructure for subdivision over the past five years that probably already exceeds that amount. Finally, neighbors are concerned given the past history of the owner on his two properties here. They want some assurance that work done will not ignore State and County rules and procedures such that their own recourse to encroachment and excessive impacts will not have to be to hire an attorney. Since the appeal was filed we have had meetings with the owner’s agents. Recently representatives from five different families were able to express some of their concerns. There were at least two more families that were not able to attend. The meeting was, the meeting was important to starting a dialogue but without the pending appeal as incentive it would very likely not have happened. Furthermore, without a complete SMA process it is likely that nothing will come of any dialogue as unfortunately even if the impacts are recognized, reducing them is often seen largely as extra cost to be avoided if legally possible. It’s not enough to look at a checklist filled with N/As by the applicant and pass it on without local review. The law describing whether a minor SMA or full SMA should be required states that a full SMA should be required if the Planning Director evaluates the project’s application and concludes that the proposed action has potential adverse environmental and ecological effects which are defined as “primary and secondary consequences, cumulative impacts, effects to environmentally sensitive areas, fresh waters, coastal waters, flood prone areas –

Ms. Takayama- Corden: Three minutes.

Mr. Grantham: – impacts to public facilities such as drainage and water system.

Chair Hiranaga: Please conclude your testimony.

Mr. Grantham: I’m on my last sentence, sir. Such as drainage systems or involves irrevocable commitment to loss or destruction of any natural or cultural resources. We’re ready to demonstrate that most of these effects apply in this case. There are some family members that are –

Chair Hiranaga: Thank you, sir.

Mr. Grantham: – that are –

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

Mr. Grantham: Okay.

Chair Hiranaga: Next testifier is Lester Wong.

Mr. Lester Wong: Good morning, Members of the Commission. Thank you for letting me speak. I am speaking on this agenda item C-3, the David Bolles Subdivision, Huelo. I'm in support of the Waipio Benevolent Association's request. I am property owner. I own eight plus acres in Huelo neighboring – the neighboring area to this proposed subdivision. The land is being use – we use the land for raising cattle. We've raised cattle there for three generations and I'm hoping to continue that with my children to pass that land on. My concern is with the SMA process is, we fish and we dive in that area and, you know, just to make sure that the ocean will protected and the shoreline will be protected. That's all I have.

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

Chair Hiranaga: Is there anyone else that wishes to provide testimony at this time regarding any agenda item? Please come forward and identify yourself.

Mr. Moki Akiu Kahiamoe: Aloha, my name is Moki Akiu Kahimoe. I'm a resident of the Huelo in support of – in not support of the Bolles Subdivision. My family goes back in the 1800's, lived out there, we still live out there. In this situation that individual is trying to make a subdivision in this area we know of a lot of artifacts, the places, worship place, fishing, significant areas that already has been destroyed by the people who's trying to make this subdivision. So I'm here to support that you take a better look or look at the area in itself and make decisions wisely in this guys making his subdivision in this area which we come from and our family all live in this area and I'm very concerned about the whole thing. Thank you very much.

Chair Hiranaga: Questions for the testifier? Seeing none, anyone else wishes to provide testimony at this time, please come forward.

Mr. Darrell Akiu Kahiamoe: Good morning, Planning Commission. My name is Darrell Akiu Kahimoe, I'm also a resident of Huelo. I'm also against the Bolles project. My main concern is the whole environmental, mainly also there's been also burial grounds that I've known. I've been born and raised there for 50 years. I just like to see it overlooked very carefully in the whole, in every area. I care about everything. I care about the whole environmental, water, traffic, you know, the population and it is a private road. And there's already been things that's been happening as far as desecration on the land, on the grave sites that I know has been there and I just want that you guys before any further things go on someone to really look into this very, very carefully because it really means a lot I mean, to all of us and especially for my home. And I am kupuna, you know, and also moopuna from that valley, and I speak for a lot of my family that couldn't be here. You know, a lot of them have to work and a lot of them don't have the mouth to, you know, to say. They hold it in and so they come to me and you know, if I can speak for all. So I speak for most all my

Kahiamoe family in Huelo and I just thank you for your time.

Chair Hiranaga: Questions for the testifier? Commissioner Shibuya?

Mr. Shibuya: I defer to Ms. Sablas.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: I just wanted to acknowledge you for coming on behalf of your kupuna and your family from Huelo to speak on this subject. Mahalo.

Mr. D. Kahiamoe: Mahalo. Aloha.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Thank you very much, Darrell for coming. I just wanted to see if you can highlight some of the concerns because now you have a change as population grows and people purchase property and then they have different ways of dealing with the property and it seems like it's counter to your way of your life. Can you just highlight in a few sentences?

Mr. D. Kahiamoe: Well, I do have a lot of people that's from elsewhere that has moved in Huelo. One of them is right here is Sharyn Stone. A lot of people that came to my valley didn't really come to stay ...(inaudible)... and it really hurts me as a, you know, as someone that lives there for all my life. They just came there because the place was beautiful and they could make some money and you know, that's their business. But for me, I love to protect my aina and my aina is, you know, I care about every individual no matter what color they are that lives there in my valley. I feel very responsible from small, for my tutu. My responsible is to keep the family together and the family is every one of them. So I always like to know people when they come in. That's the best way to know your neighbor and the people is to talk to the people.

Mr. Shibuya: Thank you.

Mr. D. Kahiamoe: Aloha.

Chair Hiranaga: Any other questions? Seeing none, thank you. Anyone else wishes to provide testimony at this time please come forward?

Ms. Neola Calbany: Aloha kakahiaka. My name's Neola Calbany and I would also like to speak on the agenda item on the Bolles development. I'm a neighbor out in Huelo. Another neighbor and I would really urge the Commission to consider, to require a full SMA. This project looks to have a lot more impact on the community than just building one house. We don't, as you've heard before, we don't have the infrastructure to support this. We have a dirt road. It's going to be torn up. The level of excavation, the level of development is just totally out of hand with that area and in addition, the developer in the past has shown a total disregard for any concerns of the community. I doesn't live there, he's never lived there and he's just gone ahead with basically whatever he wanted to do. I would really urge the commission to look at requiring a full SMA in

consideration of the impact this will have on our community. Mahalo.

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

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

Mr. Yoshida: Thank you, Mr. Chair, Members of the Commission. Clayton Yoshida subbing for Paul Fasi who had to take care of some family duties today. I guess we're here to select a hearings body, hearings officer and/or and mediator on this appeal. As you know, by your SMA Rules the SMA appeal is a contested case proceeding. The notification to the Commission was given at your May 10th agenda. No petitions to intervene were filed during the period. For the record, again, we have here the parties, Mimi Johnston representing the Appellee, the Planning Department, and Jeffree Trudeau representing the Applicant, David Bolles. I don't seen anyone here from Waipio Bay, oh, Daniel is here. So I guess what is before the Commission as we've had in these other SMA appeals is to select whether it wants to hear the matter as the hearings body or it he wants to selects a hearings officer. And I guess your Rules of Practice and Procedure require you to select a mediator unless the parties waive. So, I'll leave it to the parties to make their statements.

Ms. Mary Blaine Johnston: Deputy Corporation Counsel Mary Blaine Johnston representing Director of the Department of Planning. I'm going to make the request that the Commission hear this matter. I realize that is, takes up, probably take up a good chunk of a meeting if not a whole meeting. I have spoken with Mr. Trudeau, the applicant and I spoke with one of the speakers this morning that support the Appellant's position in this and indicated that I would be asking the Commission to designate itself as the hearings officer and let me explain why. One, there's always the issue of money to pay a hearings officer, and I don't think mediation, I think from the tenor of what went on this morning that mediation, there's no indication that would prove successful at all. Second, the lapse of time that's required to give a contract out for a hearings officer, get it in place, actually have the hearing, have the hearing officer write up the recommendations, present those recommendations to the Commission and depending on what happens there then there could be an appeal of that. It just seems to me if the Commission goes – addresses the issue directly, it will be much shorter, much more economic way to proceed. I think those are the primary reasons, so I would ask you to consider, consider taking this on and hearing it directly.

Chair Hiranaga: Thank you. Any questions from the Commissioners to the parties involved? Commissioner Shibuya?

Mr. Shibuya: It's more for Clayton. Scheduling wise Clayton, if we choose, the Commissioners choose to hear this when would we be able to hear it?

Mr. Yoshida: We're booking public hearings for second meeting in August, August 23rd.

Mr. Shibuya: So this would possibly be available on the third week of, no in September, right?

Mr. Yoshida: Well, I mean, if the Commission wants to determine that they'll conduct the contested case hearing on August 23rd, I don't know how the parties schedules are regarding that date, you know, that would be earliest unless you have a special meeting, and sometimes some of the

Commissioners are somewhat adverse to having special meetings.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: We heard kind of on the side in testimony this morning that there is some work going on on the property at least I believe that's the way I heard it. In this process, is there, first of all, do you know if there's work going on on the property and if there is, is it expected to cease until this matter's resolved?

Mr. Yoshida: I'm not aware if there's work going on on the property. Again, the purpose of this agenda item is to select a hearings officer or body.

Chair Hiranaga: Yeah, let me just interject. I would caution from asking that question at this time. We're specifically here just to determine who the hearings officer is, not what may be happening on the property.

Ms. Wakida: Well, my question was relating to the time frame that's all. How this factored into the time frame, how far down the road this was going to be?

Mr. Yoshida: Well, I guess in the context of the contested case hearing the parties can present their evidence, and you know, to that effect. And it's up to the decision making body to weigh the evidence and make a decision on the appeal.

Chair Hiranaga: Okay, then just for clarification you're asking since a Minor SMA was granted are they able to continue working on the property under the Minor SMA Permit or is that permit now suspended until a determination is made by the Commission if it's the hearings officer?

Ms. Wakida: That's right.

Mr. Yoshida: Well, the SMA Permit was issued. However, you know, there is notification that an appeal was subsequently filed so, you know, I guess it's up to the applicant, you know, it's at their risk if they proceed and then if they, you know, the appeal is granted then they're kind of back to square one.

Chair Hiranaga: I have a question in terms of determining the complexity issue here. If it's complex then I can see us delegating it to the hearings officer. If it's relatively simple then I think we, as a Commission, should address it as a hearings body, that's my thought. Mr. Giroux is it in your opinion that it is complex enough to have a hearings officer or is it simple enough, ...(inaudible)... simple enough for me to listen to it and come up with at least my inputs?

Mr. Giroux: Yeah, it's never simple, right? No, I think we should probably hear from the parties as far as what their position of how complicated they think it is. They're probably in a better position knowing their case, but my understanding is that this is an appeal of the Director's decision of granting, I believe it was an Exemption of a Minor, of a Minor? So what you, you would be looking at is you would be looking at all of the criteria that the Director would look at in basically determining whether or not the Director did a sufficient job in deducing whether or not it met the criteria for a

Minor and not a Major. This body is used to reviewing SMA Majors under all of the policies and objectives of 205A. So you are in a position of being, you know, experts in the field of reviewing SMA Majors. So you would know, you would be very conversant in the policies and objectives of 205A. It just a matter of whether or not the – you agree, not, not with Will, but the Planning Director of whether or not this project met the criteria that to, to not be a Major. And again, as far as the complexity, I think that the people involved would probably have a better handle on, on either their factual theories or legal theories and that, that makes a big difference too.

Ms. Johnston: Mary Blaine Johnston again. The Notice of Appeal that went in by the Waipio Bay Benevolent Society Association in bold it says, “we assert that the proposed project is likely to have a valuation of over a \$125,000 in improvements in order to mitigate significant adverse environmental or ecological effects because,” and they say, “1) Involves construction of a primary access and emergency vehicle access – on steep gulch that serves a stream. 2) Will involve destruction of undocumented cultural sites and proposed access road tank area. And 3) Has no verified water source to supply the large storage tanks required to meet fire flow requirements.” So that seems to be the issues that I think would be, you guys would be fine to decide those issues.

Chair Hiranaga: Do the other parties involved wish to provide any comment at this time?

Mr. Daniel Grantham: Hi, I'm Daniel Grantham and It's easier, we call the organization the ...(inaudible)... so it's a lot easier than saying that Waipio Bay Benevolent Association. If that makes things any simpler. I think that, that if this was complex we wouldn't have been able to figure it out. This is something that, these are issues that people that live in the neighborhood go, geez what are they thinking of? So being more expert in the legal side of these things I think that's what we would rely on. All we want to do is bring facts to your attention which unfortunately we believe were not given to the Planning Director to have when he made his decision. Essentially that he was given incomplete information. So we want to bring forward the information that he wasn't given and I'm perfectly happy with the Commission Members' expertise in how that information should be addressed.

Chair Hiranaga: Questions? Commissioner Shibuya?

Mr. Shibuya: Now that we got the complexity and color crayon level can you tell you if you will be available if we do decide about the 23rd of August, you or your representatives?

Mr. Grantham: That's Tuesday/

Mr. Shibuya: Tuesday.

Mr. Grantham: I believe so, believe so. The reason I hesitate is that there's a meeting on Kauai that some time around that time but it should be over by Tuesday.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Do you happen to have, know whether Lucienne would be available at that time also or?

Mr. Grantham: That's what I was hesitating about yeah. Because she's a State Chair of a group there would be meetings.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other questions? Thank you. Thank you. Mr. Trudeau?

Mr. Jeffrey Trudeau: So as far as the complexity this is the way that I see it right now. We have completed the SMA. We have completed the SMA and we've done the State Historic Preservation Plans that's been accepted by the State. So we have done everything on paper and with everyone that we've worked with so far. Me, personally, I'm representing David Bolles but I'm also in the neighborhood for 20 years and that's why David asked me. I've known him since he's owned the property to come in and see if I can somehow mitigate which I've done everything that I can and kind of the neighborhood decided they did what they did this morning, they wanted to just come in, and they're, you know, there's some personal issues with everybody and so I think right now it seems the simplest thing is simply to look at the SMA process, see if there is anything that's not filled out correctly or should be addressed differently. I certainly believe that it's filled out correctly. I did it all with Wayne Arakaki and he has also done the construction plans. We have everything ready to go. We were about to start when the appeal went in. They were all approved. So every – the whole process has been followed by County rules and I'm just – the way that I look at it is there's, there's maybe interpretations of the SMA, you know, the actual form that could be interpreted different and the neighborhood is definitely interpreting it differently. Now, you know, the way that I see it from my own experience, I've done a couple of subdivisions and it – and I'm kind of involved with both sides so I feel like I, I'll do anything I can I can help you get whatever information you need after you get presented with what the issues are. And David, the owner, will be here at the meeting if that's, you know, requested.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Is any work being done on the ground?

Mr. Trudeau: No, not right now. We stopped after the appeal went in.

Mr. Mardfin: You stopped when the appeal when in. So some work had been done prior to that?

Mr. Trudeau: Not on this. Not on the subdivision work. There was some work being done to try and get some existing buildings permitted they were just basically taken down and moved around. So all the permits are being held up.

Mr. Mardfin: And your intention is to not have any work done on the property until after this appeal is resolved?

Mr. Trudeau: Not right now.

Mr. Mardfin: Thank you very much.

Mr. Trudeau: Okay.

Ms. Johnston: Mary Blaine Johnston again. I would just like to add one thing. When you, when you appoint a hearings officer to hear an appeal we have two, two – three parties to the appeal. We have the Department who's the appellee and the Association that's the appellant and the Applicant, thus conducted usually somewhere else, a closed room, public don't really have access too because anything they want to say is not part of the case, it's not taken as evidence. If you have it here like some of you that were here last year remember Hana Beachfront Associates which was denial of an Exemption and I asked you guys to hear it and you did and it was very good because it gave the public that otherwise wouldn't be able to participate a chance to come and they could say something, you can't use that evidence but it kind of opens up the proceedings as much as you want them open so they can see what's happening and I think that's a real positive thing. And so for that's another major reason I think it would be good if you would be willing to take on the hearing of this, of this particular appeal.

Chair Hiranaga: Any other questions or discussion? If not, I'll open the floor to a motion regarding the selection of the hearings officer. Commissioner Mardfin?

Mr. Mardfin: I move that this body, the Maui Planning Commission, act as the hearings officer on the appeal.

Mr. Shibuya: Second.

Chair Hiranaga: Moved by Commissioner Mardfin, seconded by Commissioner Shibuya. Any discussion? Seeing none, I'll have the Director repeat the motion.

Mr. Spence: The motion is to have the Maui Planning Commission act a the hearing officer for the appeal.

Chair Hiranaga: All in favor say, "aye."

Commission Members: Aye.

Chair Hiranaga: Opposed.

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

VOTED: That the Commission will Act as the Hearings Body Regarding the Appeal to Take Place on August 23, 2011.

**(Assenting - W. Mardfin, W. Shibuya, L. Sablas, J. Freitas, P. Wakida)
(Excused - D. Domingo, K. Ball, I. Lay)**

Chair Hiranaga: The motion is carried.

Mr. Mardfin: Chair, the vote was?

Mr. Spence: It was unanimous.

Chair Hiranaga: Corporation Counsel?

Ms. Johnston: The scheduling ...(inaudible - not speaking into a microphone)...

Chair Hiranaga: Is August 23rd acceptable to Staff?

Mr. Yoshida: That's fine. We can reserve the date.

Mr. Giroux: We should probably have a discussion of discovery time line. You know, –

Chair Hiranaga: Go ahead.

Mr. Giroux: Okay. I mean, if we're gonna set – if that's the date for the hearing date, I think there needs to be a discussion of, of discovery deadlines, motion deadlines, exchange of documents, exchange of witness lists, exchange of exhibits and that needs to be put on the record. The other thing is, Mr. Trudeau, because you're going to be a representative of Mr. Bolles if we could it get in writing just an authorization of that? That be fine. Do you want to ...(inaudible).. Do you want to do it off the record or do you want them to work it out or?

Mr. Yoshida: Yes, Mr. Chair, I don't know if you want to either yourself or your representative meet with the party – have a prehearing conference with the parties to establish deadlines for exchange of witness list and exhibits, discovery and the like?

Mr. Giroux: My suggestion is we can have all the parties just get together and do a proposed prehearing order. If you can work it out together, present it to the Chair, the Chair will sign off on it and that will be the order, your prehearing order. It should include everything that I just discussed, you know, your exchange of documents and motions deadlines, discovery deadlines and such.

Mr. Grantham: ...(inaudible)...

Chair Hiranaga: Please come to the mic.

Mr. Giroux: So you would meet with Mary Blaine along with Mr. Trudeau.

Mr. Grantham: Okay.

Mr. Giroux: And you would all work that out. If you can't work it out then you're gonna have to come back and we'll get it on the record.

Ms. Johnston: We'll try to work it out ...(inaudible)...

Mr. Giroux: Okay. All right.

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

Mr. Yoshida: Mr. Chair? Excuse me, Mr. Chair?

Chair Hiranaga: Clayton wants to say something.

Mr. Yoshida: ... mediation is that requirement being waived by the parties upon mutual agreement of the parties?

Chair Hiranaga: Meaning for the record? Yeah, I guess all three of you for the record are you waiving your right to mediation?

Ms. Johnston: Mary Blaine Johnston. Yes, I don't, I don't think given the tenor of things that mediation would get us very far. It would just delay the process.

Chair Hiranaga: Do you concur?

Mr. Grantham: This is Dan Grantham. I, if there, if I thought there was a realistic hope that mediation would help, I mean, if we were dealing with just Mr. Trudeau, I think we could, but I think this is our best process since we are dealing actually, he's only acting for – as, as an agent for the owner. So I think we should continue this process.

Chair Hiranaga: Okay, thank you. How 'bout Mr. Trudeau?

Mr. Trudeau: Jeffree Trudeau, yes, I'm waiving the mediation.

Chair Hiranaga: All right, thank you very much. Agenda Item C-3, Director?

Mr. Spence: We want to take these two?

Chair Hiranaga: Let's call it C-4.

Mr. Spence: I think my, Mr. Chairman, I think my question is, since 4 and 5 are related, one in the procedural –

Chair Hiranaga: Order?

Mr. Spence: Yes. No. 4 is the written, is the adoption, the Commission adoption of written Decision and Order on its April 26, 2011 action to deny the Petition to Intervene request by Mr. Lee Ohigashi, attorney for Dairy Road Partners on SMA Permit by Mr. Alan K. Arakawa. This is for the Maui Business Park, Phase II Subdivision. And then No. 5 is Mr. Lee Ohigashi, attorney for Dairy Road Partners submitting a Motion for Reconsideration on that Petition to Intervene denial. Hope I got

it correct.

Chair Hiranaga: I'm going to have Corporation Counsel comment on the procedural order as it sort of is kind of the chicken and the egg situation.

Mr. Giroux: Thank you, Chair. It's gonna be, I guess, the Chair or the Body's decision, but I think the dilemma is is that your, the Decision and Order would basically is a document confirming this Body's position on its decision of denying the Petition to Intervene in this case. Basically what happens is that because you by law you have to produce a separate Findings of Fact, Conclusion of Law, Decision and Order that at the time of your decision there wasn't a draft document to adopt. You did make a decision, there was a transcript and this document was produced pursuant to that transcript. It would be an issue of basically finalizing your decision making process so that once that decision is made that you can serve that document on the petitioner and then the petitioner would have 30 days to appeal to the Circuit Court and that would be the document representing your position to the Circuit Court as far as what, what your decision making process was.

Now if you look at No. 5, what we have is a Motion to Reconsider which is basically not only asking you to reconsider but to vacate that that finding and that order. So to, to do one before the other kind of puts, it kind of puts you in a kind of strange position. It would, it would almost just procedurally to put everybody at ease it might be easier to take up the issue of the reconsideration because at the end of that I think it would be very clear of whether or not it would just be a matter of based on which way you went on that on how you would want to decide on the first matter. But you do not have to go in that order, but again, it's, it's open, again, the Chair can, can give a recommendation, the Body can give a recommendation but I think that if you disposed of the, the motion and I believe there's a couple of memorandum, you can hear from the attorneys, and if you can dispose of that issue then it will be much easier to then dispose of the second issue.

Chair Hiranaga: So do we need a motion to amend the agenda to take up C-5 if that's the desire of the Board, Commission?

Mr. Giroux: I believe it can be done by consensus. If there isn't consensus then somebody should present a motion to rearrange the, the order, and then you would get a majority vote. This isn't a issue of actually adding to the agenda, so you wouldn't need a super majority to do that, you would just need a majority if you don't get consensus.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I don't know, were you going to ask for whether there's consensus to do it or do you want a motion from me?

Chair Hiranaga: No, I'll just say if there's no – is any objection to taking up C-5 before C-4?

Commission Members: No objections.

Chair Hiranaga: No objection. So we'll proceed with C-5. Director?

Mr. Spence: Mr. Chairman and Members, No. C-5 is Mr. Lee Ohigashi, attorney for Dairy Road Partners submitting a May 19, 2011 Motion for Reconsideration and to Vacate Decision of the Special Management Area Use Permit Approval to A & B Properties to construct the Maui Business Park II Subdivision. The project planner is Mr. Danny Dias.

5. **MR. LEE A. OHIGASHI, attorney for DAIRY ROAD PARTNERS, submitting a May 19, 2011 Motion for Reconsideration and to Vacate Decision of the Special Management Area Use Permit Approval to A & B PROPERTIES, INC. to construct the proposed Maui Business Park II Subdivision, North Project Area located on approximately 38.19 acres of land located along Haleakala Highway 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) (To begin at 1:00 p.m. or soon thereafter.)**

DAIRY ROAD PARTNERS' intervention request was previously denied by the Maui Planning Commission at its April 2, 2011 meeting.

- a **July 14, 2011 Memorandum in Opposition to Dairy Road Partners' Motion for Reconsideration and Vacate Decision submitted by Greg Garneau, attorney for A & B Properties, Inc.**

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

Mr. Craig Henderson: Yeah, my name is Craig Henderson. I'm a business owner along Dairy Road and I'm here about the Costco expansion. I'm all for it like probably all of us are and looking forward to all the services and, and products particularly that outside food court and all the new food they're gonna bring in. But my problem is about the traffic along Dairy Road, as we know. I've been along that – had a business there for 25 years and slowly watched the traffic get worse. As you know, right now it's pretty bad. And with the additional expansion there, there's gonna be, there's gonna be a lot more traffic and I just like the Planning Commission or whoever's responsible to address the traffic. And I'll just throw out one example is to limit the, the commercial vehicles, all those big 18-wheelers that go down Dairy Road and make a left turn at Alamaha, make a left turn at Hana, it all backs up. And if there's somehow, I'm offering a example of what could be done if you can get 'em off Hana Highway during the peak hours. Take them down Wakea, take them down Kamehameha Avenue, there's not that much traffic, there's traffic every place but there's so much and that's really what I had to say is if somehow you can by possibly limiting, limiting the amount of commercial vehicles going down that road, making a left turn and backing up all that traffic. I think if you took all of those 18-wheelers off there during the rush hours, Dairy Road would become a pretty good place or at least a better place than it is right now, and that's it.

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

Mr. Miles Inokuma: Morning, Members of the Planning Commission. My name is Miles Inokuma and I'm here to support Communication No. 5 which is the Motion for Reconsideration by Dairy Road Partners. My concern in the area is traffic and I think intervention is an appropriate way to identify problems and to create solutions that would minimize the impact of the development. So

that's all I have to say. I'm in support of Motion of Reconsideration.

Chair Hiranaga: Questions from – for the testifier? Commissioner Mardfin?

Mr. Mardfin: You suggested intervention is the best way to deal with those, you not feel that the Planning Commission can inquire into those issues?

Mr. Inokuma: I, no – the Planning Commission could but I think intervention because there is a person with vested rights to their, their concerns that they can bring up more appropriate solutions or identify problems that may be missed by the Commission.

Chair Hiranaga: Thank you. Any other questions? Seeing none, thank you.

Mr. Inokuma: Thank you.

Chair Hiranaga: Next testifier is Tyron, Manegdeg, Manmanag? Sorry, help me with your last name.

Mr. Tyron Manegdeg: Manegdeg, that's correct. Good morning, Planning Commissioners and my name is Tyron Manegdeg. Basically I'm just a concerned citizen for seeing better traffic, better traffic control for Maui. I'm also in favor of intervention, intervention for the C-5 to allow for Motion for Reconsideration and to Vacate the Decision of the SMA Permit ...(inaudible)... approval. I'd just like to reiterate what Miles has said is traffic in that general area is really, really horrendous throughout the day. And more so as a citizen for safety issues, many, many times where I've been gone to Savers and it's, it's like a real hazard to get out of that area in general. And I live in Wailuku and I have to go up Dairy Road turn back on Hana Highway and go all the way around on, on the old Puunene Post Office to go home to get easily go the other way, but in many that's, that's what's happening. So I am in support for the Motion to Reconsidering and Vacate the Decision of that SMA Permit.

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

Ms. Ruth Mayeda: Good morning, my name's Ruth Mayeda. I'm a Kula resident and I work in Kihei and I'm here in regards to the Costco expansion and I just wanted to say that I really feel there's going to be a lot of unnecessary traffic that's gonna be causing more congestion in that area on Dairy Road and Hana Highway that I drive on a daily basis. And, I would just ask you to really look into the planning of how to deal with the traffic in that with this expansion. That's it. Thank you.

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

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

Mr. Danny Dias: Thank you, Director. Good afternoon, Chair Hiranaga. I'll just take one-minute just to kind of clear the record. Items C-4 and C-5 both involve an application that was brought before this Commission on April 26th. The applicant, A & B Properties proposed and ultimately received approval for the Maui Business Park, Phase II Subdivision.

As the Commission may recall a large portion of the discussion involved a Petition to Intervene that was filed by Dairy Road Partners the day before the meeting. And ultimately in the end, the Commissioner decided that the applicant did follow proper noticing requirements and did not grant an intervention. So, as was previously discussed before you today you have two items. One is a, is a Motion of Reconsideration and to vacate the decision was filed by Mr. Lee Ohigashi, and the second is, Findings of Fact, Conclusions of Law, and Decision and Order drafted by the applicant's attorney. So with that, I'll, I'll hand it back to you, Mr. Chair.

Chair Hiranaga: Mr. Ohigashi, I'm going to allow you a period of time to present your comments. Can you estimate about how long you will need?

Mr. Lee Ohigashi: ... about five to ...(inaudible).. minutes.

Chair Hiranaga: And Mr. Garneau, how long do you anticipate your comments to be?

Mr. Garneau: I'll be about the same, five to ten minutes.

Chair Hiranaga: Okay, thank you very much. Please proceed.

Mr. Ohigashi: Essentially we've both filed memorandums so we're gonna be relying on the, on our – I'm going to be at least relying on some of my memorandum. However, I did want to say one thing about that procedure that is before the Commission with regard to the proposed Findings of Fact and Conclusions of Law that it leaves us out of it. We don't have an opportunity to file exceptions to ...(inaudible)... and to try to make a record in terms of what we believe is wrong about those Findings of Fact and Conclusions of Law. We were never served with them and we were only notified about them I think when we were sent a letter, our notice that we received I believe last week about six days, seven days ago. Any event we would like to have an opportunity to file exceptions to those proposed Findings of Fact.

Being that the case, we did file a Motion for Reconsideration in this matter and the reason, the basic reason for the Motion for Reconsideration is, is that based on the record at hand, that it is clear that we're entitled to notice. The rules provide that the applicant must provide notice to all persons, all parties who are listed in the County tax rolls and clearly we're listed in the County tax rolls. The affidavits filed by the applicant, does not contain any indication or any, in fact, it contains to the contrary that Dairy Road was never sent a notice. It's a clear violation of the County rule. Now, in the – applicant seems to argue that their rules say, the County rules say, that if you just send to, in this case, HRT et al, that's suffice.

But when you take a look at the case law, the case law in this case, the seminal case in case cited by me Life of the Land v. West Beach, indicates that when you read these rules especially notice you have to look at it within the filter of what the purposes of the SMA rule, SMA statute is. And the purpose of the SMA statute is to make sure that public participation is involved. That's why notice has to be specific. In this case, no such notice was given. Notice was not given to Dairy Road partners. Now, it also says, in that case, that notice or notice not only should be ...(inaudible)... but it shouldn't – any rule should not abuse the process. If you take a look at what this case is, is all about, it's about getting written notice as required under the rules. If you read it the way the

applicant wants you to read it, then it leaves out the fact that applicant, A & B Properties is an owner of that parcel along with Dairy Road Partners, along with HRT. If they can pick and choose who to send notice to because of your rules, that's an abuse of the process. And it, if you're gonna apply this rule to us in a matter ...(inaudible)... we would argue that that would be wrong in that it violates the case law in this case.

Now the real bottom line is this begs a question, the SMA Rule Law indicates, Chapter 205 indicates that we want public participation. We want notice to take place. We want notice to be proper. And in this case, again, notice was not given properly. And the reason why they want public participation in the case is they want that the issues, the real facts be litigated or the real facts be determined and solved in that matter with public participation. In this case, by applying these rules in the matter that is being attempted to be applied today, constricts that ability to even address the issue of traffic that was brought up. And we had people come up today who expressed their concern about traffic on Dairy Road. So we think that if you take a look at this, under the rules that the courts have been developed that notice was properly given, was, was improperly given in this case. That being the case, there is a legal cause in this case to permit our intervention.

Now, our last issue about this is not necessarily addressed in our Memorandums but if you take a look at it, and I've looked at the various persons that were actually sent notice to that they claim that was within the 500 feet and there's several what they call, "et al" or filings that were sent to individuals and not to the other owners of the property. There is a notice defect in this case. And if we, if it's not corrected, then technically this project should go back from the very beginning to correct those notice defects and then brought before the Commission again for a decision. So, we're placing that into the record that if you apply the rule according to what the applicants wants you then you, you create a notice defect in the proceedings. The rule that – if you apply the rule, it creates a notice defect because the rule is not meant to apply it. It's ...(inaudible)...meaning is clear. You have to send it to HRT, you have to send it to Dairy Road Partners and you have to send it to A & B. That's what the rule says. In this case they didn't. We believe there's legal cause for reconsideration in this matter.

Chair Hiranaga: Thank you.

Mr. Ohigashi: I reserve whatever little time I have left for a short rebuttal.

Chair Hiranaga: Mr. Garneau?

Mr. Greg Garneau: Yes, good afternoon, Mr. Chair and Members of the Commission. My name is Greg Garneau and I'm appearing on behalf of the applicant, A & B Properties. The first thing that I wanted to point out to you is that, my client is did follow the SMA Rules for what's required of notice. Your rules are very specific. They say who gets notice and what type of notice to provide. And the way the rules are written that they rely upon the real property tax records. And in this case, they real property tax records which are part of the record as Exhibit 2 to Dairy Road Partners opposition – memo rather. The address for the three owners was the same place, it was a Honolulu address, and that's where the notice was sent to.

Now under the rules the notice does have to go to the owner, but the owner is defined also under

the rules and the owner includes the lessee and your rules also state further that notice to one owner is notice to all. So one owner can't come in and say, well I didn't really get it, but the other owner did. So in this case, you have real property tax records, they say who the three owners are it's very clear, one of those owners is Dairy Road Partners, and there's a mailing address on file with the real property tax that's who it went to, and an owner accepted it, now that's all in the record. There's the return receipt card is, is filed. The affidavit of the consultant of A & B about what date it was filed and so forth. So it's real clear that under your rules A & B complied with what they're supposed to do.

And if you step back for a moment, it makes sense to have the rules in place that you do have in place because to adopt a different rule where someone can't just rely on the tax records themselves, they have to start asking questions, oh, well, there's three owners, one of them may have another address, I gotta go look for that other address, this one is for -. It's completely unworkable when what you want is some definitive, we have sent notice to certain people, we looked it up, we relied on the records, we did it within 30 days of the, the time of the hearing and we sent it there. It's, it's what Dairy Road Partners would be asking someone to do is to not take just the tax records but rather to go further and look for other things and that's just simply not required by the rules. And I also submit that not only is it not required by the rules but if A & B were not to follow the rules then it would, it would be possible for other people to intervene. If you start varying from it, people will say, well, I should have been noticed, and I should have been noticed and it's, it's just simply not workable, but in any event the rules are in place for that reason and they were followed as they're required to be.

And I'd also like to note one other thing that's more just a practical matter the person that's an owner of the property whether owner or lessee determines who these mailings go to, right. So there's an, an address on file and - Honolulu address my clients sent notice to. If you're an owner of a property and you want to get another notice there's nothing to stop you from notifying Real Property Tax saying, oh, I'm also the owner, please serve me at this address and giving a full mailing address. In this case, there were some, some, I think allegations in the documents filed by Dairy Road Partner that somehow there should be have been a copy of notice sent to the physical location but there's nothing in the rules that talks about location. It talks about the owner and their addresses and so that would have been an easy way to fix it. I know they didn't do it. Another way to have had insured separate notice would also had been as you know, under your rules anybody that wants notice of these type of hearings can just contact the Planning Department to get notice and that wasn't done either.

The second point, and this is probably the largest one, there's been a lot said about whether or not Dairy Road Partners was even entitled to written notice by mail. And the way the rules are set up only those owners there within 500 feet of the property or title to written notice, and I was not here at the last meeting, but I did take the opportunity to listen to the minutes and I know there was some discussion about, you know, if there's this margin error. If you look on a map and there are parcels that look like they may be 500 feet but not quite sure then what the consultants will do is they'll go ahead and notice all those people that are within that, that sort of gray area and that's what happened here. So that A & B erred on the side of the caution and actually sent out the written notice to the owner of the property, of Dairy Road property parcel, but it really wasn't required. So subsequently to the hearing, Kendall Meir, who's with A & B and is a licensed surveyor took the

map, did the calculations and provided with you which is in the – attached to the memo that hey, this is really 530 feet and I'm a surveyor, I've looked at the map, I've calculated it and what does that mean? Last time when you were here when you denied the petition, you weren't sure about where this property was located exactly and it could have been 500, it could have been outside 500 but now you know. So there's been a Motion to Reconsider filed, you can consider what evidence you like on that Motion to Reconsider and now we know for certain there's evidence in the record of surveyor who says it's 530 feet. And there's no other record. That's the only record you have with regards to the distance. And if you do have questions, Mr. Nomura is here present. I asked him to be here today if there's any questions you have, but he did file with you an affidavit as well as, as the map.

The other thing I want to talk about, Dairy Road Partners talks about case law and how, how this case, Life of the Land v. West Maui – West Beach Development, supports its position. And I want to talk a little bit about the facts because it doesn't support their position at all. The – In Life of the Land, the mandate was for filing a Petition, Petition to Intervene within 15 days of the notice. And what had happened was their, they had sent out the first notice the Commission had of a hearing. And the hearing was postponed but it was one of those lengthy postponements where, you know, quite a bit of time went by, and I don't think that's the practice anymore in the State and maybe this, that case is the reason why but anyway there was a long time, and so, subsequently a second hearing, you know, the postponed hearing was scheduled and the petitioner in that case filed their Petition to Intervene 15 days prior to the second hearing. And what the Commission said was no, you're untimely you should have done it by the first hearing. So the Court looked at it and said, well, really what you're talking about is, did you have to have to notice of the second hearing? And the Court determined, yes, you did and there was no second notice sent out. So once they decided that that the second hearing was – long term postponed hearing required notice then they made a decision well, from that date, their timing was 15 days and so they, they determined that it was timely. It's a lot different than our case where, you know, the record indicates it's untimely. So case ...(inaudible)... that does not in any way support their position of allowing this untimely petition.

The other case that they cited too, in their Memo was this Maui Beach Vacation Club which actually isn't a case that, that is precedential at all. It's not a case from, from Appellant Court but rather here in the Second Circuit. But in any event, I did read Judge August order and that also is not, not similar at all to the case that we have here. Maui Beach Vacation Club in that particular case, the property that was the subject was within a 150 feet of the project. So clearly entitled to notice. Unlike this case, outside of 500 feet, not required for written notice. And what happened they had filed their petition ten calendar days but not working days prior to the hearing that was scheduled. Now this was back in 2005, it was the same time of year, and one of the days that was in between there was the July 4th holiday. And so what the practice at the time which ...(inaudible)... no longer. What the, the, the Planning Department did they calculated based on business days instead of calendar days and so what happened was is that in interpreting your rule 12-201-40, Judge August said, look that rule doesn't specifically say business days or calendar days and so, I'm going to interpret it as calendar days because that's what you should when it doesn't say, and also because it gives the applicant the most time to file a Petition to Intervene and that's consistent with SMA rules, that's consistent with State Law. So what that meant was, the rule as applied by the Court meant that the intervention was timely not like our case, it's untimely. It's actually timely because it fell within ten calendar days of the, of the date. And so both of these cases that Dairy Road

Partners referred to don't really help their case. They both deal with very different factual situations where the petitions were both timely unlike this one it was untimely. And so, I, I do refer you to all the documents we filed because I think there's ample evidence in the record and argument of record, but in -- on behalf of A & B they follow all the rules, they exactly how it's done in every single application, they relied on information that's with the Real Property Tax Office, they gave proper notice and it just wasn't timely.

So we would ask you to deny the Motion to Reconsider. We'd also ask that you make a finding of fact that the Dairy Road Partners' parcel is not within 500 feet of the project and also a conclusion of law that A & B was not required to send a mailed written notice to Dairy Road Partners and that the proposed Findings of Fact and Conclusion of Law and Order on the calendar be amended to reflect those changes and the denial. Thank you.

Chair Hiranaga: Thank you. Mr. Ohigashi, you care to provide a rebuttal?

Mr. Ohigashi: Just a short rebuttal. First of all, this is a Motion for Reconsideration and I believe what we are relying upon is that the record that is before the court in making it -- before the body making its decision. In that record, filed within that record is an affidavit stating that by the applicant's representative stating that this property is within 500 feet. The affidavit says that they attach it to their Memorandum. They said that they made the choice to, to include that. We checked on it, we believe that it is within 500 feet within the area. If this Commission wants to take additional evidence, then they should grant our reconsideration and take additional evidence on that particular, particular issue. However, it's a settled issue for the purpose of this, of this case.

Secondly, the -- I beg to differ but the rule -- no factual case in any case is exactly the same. However, the principals that I enunciated in those cases when you review how you apply your rules is important. And in this case, if you take a look at the plain meaning or the plain statement, the County's own rules, and I'm gonna take the time to read it, states that, "the mailed notice," this is Section 12-202-13(g) it says, "the mailed notice of public hearing shall be deemed adequate, and if the applicant by affidavit verifies that the name and address of the owners of real property situated within 500 feet." That's what they did. So they're saying their notice is adequate because they filed this affidavit. Now they're saying the affidavit is wrong. And we're saying the affidavit's correct, ... 500 feet. -- Subject parcel were obtained from the County of Maui, Real Property Tax Rolls. And as they've shown the Real Property Tax Rolls show that we have three owners in this case, HRT, Limited, Dairy Road Partners and A & B Properties, we obtained and that the current ownership was verified with the records of County Maui Real Tax Division within 30 days of mailing the notice, saying both date and the addresses were obtained and the date the notice was mailed the ... (inaudible)... Now nowhere in there it says that you have to take the addresses from the Real Property Tax Rolls or limit ... (inaudible)... real property taxes. It only says that these are the names and addresses of owners situated within 500 feet taken from the Real Property Tax Rolls. If you take a look at the Real Property Tax Rolls I submitted in Exhibit 2, it lists Dairy Road Partners and it lists an address of 380 Dairy Road. It is contained within that section. The last line is the most important, "if there are multiple owners of the property, notification of the persons," okay that's in parenthesis, "listed by name of the records of the County of Maui, Real Property Tax Rolls shall be deemed adequate notice as to all owners." It doesn't say, you send to one, you send to all. It says, you gotta send to all those persons listed and that satisfies all the owners whether listed or not.

There is no such rule that Mr. Garneau made up, that if you send to one, you send them all. That's the plain meaning of the statute. In this case, if you take a look at the affidavit, they did not send it to Dairy Road Partners.

And by the way, the Maui Beach Vacation Club case, although it didn't deal with exactly with, the question that is before this body today, it doesn't deal with interpretation of a rule. And that's what we're dealing with right here, 12(g) or 13(g), the interpretation of a rule. An interpretation of the rule should be read so that everybody who's supposed to receive notice to get it as ... (inaudible)... as much as possible. And as I keep repeating to myself, how can A & B Properties say, they didn't know where Dairy Road Partners was when they are co-owner of the property? Members of the Commission, we request that you reconsider and permit us to intervene in this matter so that we can get at the real issues of this case which deal with the problem of traffic and the additional and how to mitigate it given the nature, the impact that this development has. That is the real, that is the real question.

Chair Hiranaga: Thank you very much. I'm gonna, we're gonna take a short recess to 2:45, and then we reconvene we'll have an opportunity to ask questions from both parties, to both parties. Thank you.

A recess was called at 2:33 p.m., and the meeting was reconvened at 2:45 p.m.

Chair Hiranaga: At this time, I'll open the floor to questions from the Commissioners to either party. Commissioner Mardfin?

Mr. Mardfin: My question is actually to Mr. Giroux. My, I have a very old copy of Robert's Rules, namely 1951, I think. But it says that a Motion to Reconsider basically has to be done on the day of the action or the next following day, and we've missed that. On the other hand, I look and I can -- I don't know what the new Robert's Rules say but, mine said what you could do is a Motion to Rescind, Appeal or Annul. And so just as a technicality I would think there should be a Motion Rescind, Appeal or Annul and if it's -- if we do that, then we could vacate, but reconsideration per se I think is the wrong motion, but our esteemed Corp. Counsel can respond if he chooses.

Mr. Giroux: All right, juggling through all the rules here. But as far as Robert's Rules of Order, that's accurate as to basically what would procedurally what you would be looking at is a Motion to Rescind something previously adopted which has special rules of procedure. But Hawaii's not really -- we don't consider Hawaii a -- well, it's a pleading state, you know, just because you call it something doesn't mean it's that. What is the person trying to do, and that's what you would look at. What they're asking, what the motion is, is it says Motion to Reconsider and Vacate and you can read into that that what the petitioner is trying to do is rescind something previously adopted. But you know, --

Mr. Mardfin: We shouldn't get hung up on the words, we should just follow what the meaning is?

Mr. Giroux: Well, yeah. Look at the substance of what is being asked and then, you know, you can apply Robert's Rules of Order to that.

Mr. Mardfin: Thank you.

Mr. Giroux: But I want to go a little further and just to let the body know that, you know, what we're trying to do is not -- like the Circuit Court has a no bounce rule, you know, where, you know, submit something, if it's all jammed up and you got the wrong stuff on it, the clerk's not supposed to bounce it. The Judge gets to look at it, look at it, make a decision, peruse it, and then make a decision of whether or not you're going to act on substantively, are you going to act on it procedurally, that type of thing.

In your rules, I want to point to your rules, as far as Motions to Reconsider, it's silent. Motion's to Reconsider are silent except for when somebody is made a party through intervention. Once you grant somebody intervention then there's rules under that section of intervention that says that motions can be filed at any time and that they can be heard before, after or during a contested case. Also, in your rules just recently adopted once a party is a -- once somebody is made a party pursuant to an intervention there's also rules that they have to follow in filing motions to reconsider. And there's actually a criteria to look at.

The problem is that we're at a point where intervention was not granted and I think that you need to look at your rules as far as where your rules talk about intervention because I think it is kind of dispositive on how you want to look at a Motion to Reconsider under these circumstances and I want to point you to that and it's under your section, Petitions to Intervene, I believe it's 12-201-40, 12-201-40. And this is the same section that you looked at originally to determine issues of timeliness. And I just want you to, I'm going to read it into the record, 12-201-40, the second half, it says, "untimely petitions will not be permitted except for good cause," you had that hearing already, "but in no event will intervention be permitted after the Commission has taken the final vote on the matter before it." I think a major issue is that upon denying the Petition to Intervene this body took action, final action on the SMA. And I, I think that really causes a procedural difficulty for the petitioner as well as a, a legal difficulty for the Commission to take action on rescinding something it already granted. I, I just want to put that into the record so that the Body can discuss that because I, I -- it's a major issue that your rules state that you cannot permit intervention once you've granted the final action. And you're being asked to not only rescind that that portion, the Petition to Intervene, but you're also being asked to vacate your decision on the SMA. So that raises major procedural problems. I can stop there and if there's other questions and if you want me to comment on the other arguments, that's fine too. But you probably want to dispose of that issue before you go to the other legal issues that are on the floor.

Mr. Freitas: So, so basically --

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: So basically you're saying it's a moot issue?

Mr. Giroux: It may be. It may be because of the issue of you taking final action on the SMA permit already, but that's something that you have to decide as a body is that your -- going to be your position or is that something that -- is that how you see it as because you're, you're interpreting your own rule. So that that has to be something that that is discussed and determined by the body.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Mr. Corp. Counsel, have we taken final action if we have not yet approved the Findings of Fact, Decisions of Law and whatever and whatever?

Mr. Giroux: That's, that's one argument. The problem is that it's a decision that you've made not on the Petition to Intervene. The Petition to Intervene, if the argument is that you haven't ratified the Findings of Facts, the Conclusions of Law that the Petition to Intervene hasn't been determined yet. Well, you have determined that it's just a matter of process that you are going to finalize the document that says that that's what you did. The problem is is that outside of that issue, gotta draw big circles, outside of the issue of the Petition to Intervene, you took action on the SMA permit and that's really the final action of issue. And if that's been, been, action's been taken on and, and that has been basically given, then that's what your rule is talking about that to give somebody a permit and then for you to sua sponte allow intervention is gonna be contrary to your rule.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I just want clarification on this one part here. SMA Rule, 12-202-13(g), this deals with multiple owners of the property being notified. The County of Maui provided notice to one of the owners. What's your interpretation on that?

Mr. Giroux: Well, I -- Yeah, I see the issues raised on that, and, and I think the, the bigger issue that has to be disposed of first is was notice required. Before this rule becomes a rule of record, you have to reach the first hurdle of was it actually required?

Mr. Shibuya: Okay, so procedurally let's step back then?

Mr. Giroux: Yeah, I mean, I don't want to not answer your question.

Mr. Shibuya: Yeah.

Mr. Giroux: But because it is a difficult, you know, I mean, you're gonna have to get in there and pick, pick it apart so I think procedurally you have to ask if you're gonna have to dig into that rule so hard that it's cause ambiguities the first question is, is was notice required? And notice is required for properties within 500 feet.

Mr. Shibuya: That's correct. And that's 205A-29(a) Hawaii Revised Statutes. So that's adequate notice?

Mr. Giroux: Yeah, and, and I think just to throw in, just to help the discussion is that there, there's two arguments being made. The original argument in the Petition to Intervene where we were discussing good cause was whether or not there was good cause for missing the deadline. Part of that discussion was that they weren't given notice. In, in the Motion to Reconsider what you're being told or the position being taken is that that this is an illegal procedure, that you should have

never gone forward, that your process is flawed because you didn't give -- well, the applicant didn't give proper notice to the intervenor, the petitioner who -- so I think you gotta be that's why I want you to back up a little bit on that, on that argument.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Not following Corp. Counsel's advice on this not backing up at this point, the -- from my point of view, at the last -- at the meeting where we voted on this there was question as to whether it was in, within 500 feet or not, but in effect A & B sort of waived that as an issue because they said, well we didn't know whether it was or wasn't but we sent them the stuff. So in effect they were making that distance argument moot as far as I was concerned and they were essentially waiving the issue about exact distance and I think it's a little ingenuous to raise it after-the-fact, after we've made a decision and there are appeals and stuff, to relitigate that issue of distance. I think they conceded that they, that property should have gotten notice regardless of whether it actually should have or not.

The second issue deals with should they have been sent to their named address, and the et al means 'cause they weren't listed. I mean, they could have listed in the notice that was sent, they could have listed three names at that Waialae address which was the mailing address not the location address, but the mailing address, and if they had done that, I would have think -- I would think that they had sort of fulfilled it, but if they just list the first one and say et al, it's a little troublesome to me.

Now Mr. Ohigashi is arguing that the address should have been sent to them on Dairy Road, but that's a location address, I think there's a little smoke and mirrors there because the mailing address of record on both the real property taxes and the Maui County is, is the Waialae address. So there's things pro and con on this whole thing.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: But moving back to the bigger picture that you said, I just want to be sure I have this straight. Our rules state that we cannot permit an intervention after we've granted final action. And the final action in this case is when we granted the SMA permit to A & B is that correct?

Mr. Giroux: That's accurate.

Ms. Wakida: Okay.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: So, so the issue is whether to grant them this intervention or not that's on the table. Can we make a motion to do it or do we have to continue discussion?

Chair Hiranaga: Well, I think we should complete discussion before we entertain a motion. Commissioner Mardfin?

Mr. Mardfin: If we, our Corp. Counsel is -- sounds like he's essentially saying our strongest legal position is that our rules say that since we have granted the applicant, A & B their permit, that our rules say we can't change that. The -- if we follow that advice and we dispose of this, and the, the fall back position for Mr. Ohigashi and his client is take us to Circuit Court and have -- make his arguments before Circuit Court that we are not being liberal enough with our interpretation or notice was improperly sent or there was abuse of discretion or whatever abuse of process, whatever arguments he wants to make, but those are arguments to Circuit Court not to us, unless we're to violate our own rules?

Mr. Giroux: Well, I, I just -- like I said, you're, you're interpreting your own rules as, as my advice I'm saying look at that section carefully because it opens up another can of worms. If, if you want to move forward in that way, I think procedurally, you know, you would have to dispose of the issue of whether or not you did want to rescind something previously adopted. If you did want to do -- if you did want to take that course, if that's the course that the Commission would want to take, then you would give notice at this hearing that that's something that you are prepared to do because you have to give notice to the, to the Body that you are now moving in the direction that you are going to be rescinding something you've previously adopted not to mention that you also are going to be taking back something that could be perceived as an entitlement, okay? So, so you're going, you're going down the gauntlet now. You know, you got both sides putting on the gloves, and that's all I'm saying as your attorney is you have to look to your right, look to your left and commit to the direction you want to go, and if that's the direction you're gonna go, and if that's the direction you're gonna go, you better, you're gonna need five votes to get there. Okay.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Just a quick comment. My father used to tell that when you're, if you're a lawyer which he was, if you've got the facts, argue the facts. If you've got the law, ...(inaudible)... the law, and if -- I won't go on with the rest of the analogy but I think lawyers know what comes next.

Chair Hiranaga: I have a question I guess for Mr. Garneau. Why does the real property tax bill indicate an undivided interest for Dairy Road Partners?

Mr. Garneau: I maybe not ...(inaudible - not speaking into the microphone)...do you know ...

Chair Hiranaga: Or maybe Mr. Ohigashi may be able to answer the question?

Mr. Ohigashi: Dairy Road Part, Dairy Road Partners holds an un -- a recorded, a recorded long-term lease from HRT.

Chair Hiranaga: Why is it indicated as a undivided interest though?

Mr. Ohigashi: That's the designation that probably that Maui County -- so I don't represent Maui County so I'm not sure how, why they made that designation in that field.

Chair Hiranaga: Karlynn?

Ms. Karlynn Fukuda: Karlynn Fukuda, Munekiyo and Hiraga. That is our understanding also that that's why they're listed as undivided interest, it's a long term lease.

Chair Hiranaga: Thank you. Commissioner Mardfin?

Mr. Mardfin: Again, this is probably for Corp. Counsel, but Mr. Ohigashi seems to have made the argument that regardless of the mailing address being the proper, he's trying to confuse the issue as to whether a mailing address is the proper address to use, but he says that since A & B is one of the parties to his property, the second one, part of the et al, that they should have known that he was, you know, if they're doing it to the party that could there conceivably be a perceived conflict of interest in A & B not notifying the long-term lessee about things? But that's their issue, that's not something between us, that's something the courts could look at I would presume?

Mr. Giroux: Whether it's a private contractual problem or whether or not the argument is becoming, starting to become an issue of good cause, I think that's that's for you to determine.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: The parties have just made the remark that this was a long-term lessee is there any kind of legal difficulty when it says specifically owners, mailing out -- contacting the owners of the property as opposed to the lessees?

Mr. Giroux: No, that's the point they're making is that, in the rules the definition of owners does include long-term lessee.

Ms. Wakida: Oh, didn't get catch that. Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: For Mr. Giroux, supposing we went ahead and permitted the intervention against our own rules, what's the consequences of that to us? It says in our rules that we cannot permit an intervention after we've granted final actions. Let's supposing that we did, what's the consequences of violating our own rules?

Mr. Giroux: I think at that point, I would want to go into Executive Session as to not to help the other parties draw their complaints.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'm not going to go where Commissioner Wakida is going to go, I'm going to go towards owner of property and property rights. Counsel can you advise on the some of the property rights that let's say the owner of the property has versus the long-term lease holder has?

Mr. Giroux: I think you better focus on the SMA issue because you get me started on property rights, you know, I'm gonna have to start from the beginning and then we're not going to get home for dinner.

Mr. Shibuya: That's okay.

Mr. Giroux: Because you're gonna start talking about bundle of sticks, and you know, do you have the right to sell and the right to sublease and the right to exclude and the right to -- what other rights do you -- I mean, these are all different rights that owners have and that they're contracted, those rights are contracted over to your lessee.

Mr. Shibuya: Right.

Mr. Giroux: So unless you see the lease, you know, as far as how many bundles of sticks are handed over to the lease, you know, we don't -- that's why we're calling it a contractual relationship. We don't know what is involved between the lessee and the owner. We don't know if there's a clause that said you had to give us notice or you have to this, we don't know, we don't know if there's a violation of the lease, we don't know if there's a violation of any contract at this point.

Mr. Shibuya: As far as I'm concerned at the time that we received this information it was the owner, we assumed it to be the owner and the known owners were notified in my mind, and the owner in this particular property exceeded the 500 feet limit. So that's why I know in my mind that's why I dismissed that action and we continued on.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, unless other people want to have more discussion, I'm ready to make a motion?

Chair Hiranaga: Any other questions, Commissioners? Seeing none, I'll open the floor to a motion? Commissioner Mardfin?

Mr. Mardfin: While I had voted to allow intervention last time and I still think we should have, on the floor today is the Motion to Reconsideration and Vacate Our Decision and given our rules, our rules I move that we deny the Motion for Reconsideration and Vacate the Decision.

Mr. Freitas: Second.

Chair Hiranaga: Motion by Commissioner Mardfin, seconded by Commissioner Freitas, any discussion? No discussion. Director if you could repeat the motion?

Mr. Spence: The motion is to deny the Petition to Reconsider and to Vacate.

Chair Hiranaga: Call for the vote. All in favor please raise your hand?

Mr. Spence: That's five ayes.

Chair Hiranaga: Opposed? Motion is carried.

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

VOTED: To Deny the Motion for Reconsideration and to Vacate Decision of the Special Management Area Use Permit Approval to A & B Properties, Inc.

**(Assenting - W. Mardfin, J. Freitas, L. Sablas, W. Shibuya, P. Wakida)
(Excused - D. Domingo, K. Ball, I. Lay)**

Mr. Ohigashi: Mr. Chair? Mr. Chair?

Chair Hiranaga: Mr. Ohigashi?

Mr. Ohigashi: I ask if I can renew our request if we -- to renew our request that we be able to have some time to file exceptions to the proposed Findings of Fact, Conclusions of Law proposed by Mr. Garneau? Your rules don't allow us to do so, but we would. Doesn't specifically disallow us to do so, we should be able to apply to matter of fairness to respond to that.

Note: Short pause while Chair Hiranaga conferred with Mr. Giroux.

Chair Hiranaga: Mr. Garneau, do you have any objection to including the request of the petitioner to include exceptions from the petitioner in your new order?

Mr. Garneau: Yes, I do for the reason that the petitioner is not a party, and so the order is the Commission's order based upon your decision that you made at the last hearing and there is nothing in your rules that allows a nonparty to submit any exceptions to the Commission's order. So on that basis we would object.

Chair Hiranaga: So I'll ask now Corporation Counsel to comment on his microphone for everyone's benefit?

Mr. Giroux: Out loud. I'm just concerned because the applicant for the SMA also asked to, to incorporate some things from this hearing and so it's a challenge in order because what we're gonna have to do, is we're gonna have to ultimately transmit this to the Circuit Court so what I'm trying to look at as a procedure that will make it clear or clean that your, your -- otherwise we gotta do another Findings of Facts, Conclusions of Law denying the Motion to Reconsider. We could do it separately or --?

Mr. Garneau: May I, may I just say one thing to the Commission? I think Mr. Giroux, based on the Commission, you know, procedurally based on what the Commission has done, you've essentially said under their rules that there is no, there's no method under their rules to file or even consider a motion to reconsider. So the arguments that we've submitted, the opposition, the arguments that we made today at this point, I don't see how they're part of the record. If you're saying at the outset, you can't even hear it which is what you said, then I think that ends the discussion. It's denied and you're back with the other item on today's agenda which is considering the Findings of Facts, Conclusion of Law and Order as they were from the last session. That's how I see it here.

Mr. Giroux: You might want to just take up the issue is this something you might want to adopt based on the last hearing and no issue or adding or, or, well, you can subtract, but whatever was presented at this hearing is not going to be added to this document.

Chair Hiranaga: Is that the call of the Chair or ?

Mr. Giroux: Of the Body, because you have to move to adoption, I mean, and if you don't move to adopt it, then you don't have a decision and order to serve.

Chair Hiranaga: ...(inaudible)...

Mr. Ohigashi: Mr. Chair?

Chair Hiranaga: Mr. Ohigashi?

Mr. Ohigashi: Just a short response. I just wanted to make a short response. We have in the record and we have a letter from Mr. Spence indicating that the proper method to address our concerns that we brought up in a letter to him was to file a Motion to Reconsideration. We believe that that direction by the Planning Director provides for the basis for filing this matter. The second thing, I think that the action that the Commission has, the rules provide for fairness in this matter to at least have us address the proposed Findings of Fact on the original matter. We're asking that the Chairman allow us to file written objections and our own proposed Findings of Fact and the Chair can determine which one to adopt or the Body can determine which one to adopt. We're just asking for that opportunity. And we want to make sure that the record is clear that we're asking for that opportunity.

Chair Hiranaga: I think it's a good time for a recess. We'll reconvene at 3:30.

A recess was called at 3:15 p.m., and the meeting was reconvened at 3:30 p.m.

Chair Hiranaga: Regarding the, regarding the petitioner's request to include exceptions to the Findings of Fact, Conclusions of Law and Decision and Order I guess based on advice from Corporation Counsel, it may not be appropriate to include exceptions or to grant the plaintiff, petitioner's request, but I'll put it to the floor if there is no objection to denying that request to include the exceptions. Commissioner Mardfin?

Mr. Mardfin: My position would be not that I deny it or allow it but just give them an opportunity to speak on -- you know, I wouldn't say we're gonna postpone it to get written things but if he has some specific things that he thinks they got wrong in some fashion, I'd like him, give him some time at the microphone to tell us what he thinks.

Chair Hiranaga: Well, my understanding is once this Findings of Fact is adopted by the Commission, this is the document that will be filed with the Circuit Court and so --

Mr. Mardfin: And that's the reason I think he ought to. If he thinks there are errors in there, there may be errors and we should make corrections to it if there are errors. I mean, I don't know what

he's going to say, so, but I would at give him at least an opportunity to speak on it if not, but I wouldn't give him an opportunity to present written or delay or written comments.

Chair Hiranaga: I would believe that he would be filing written comments with the Court when this is filed. So I'm not sure what verbal statement at this time would really do.

Mr. Mardfin: Well, for instance, I found a mistake in it. On Page 4, and I've already pointed this out to Mr. Garneau, on Page 4, half-way down, Item 17 it says, "the report also indicated that on March 25, 2011 the Notice of Hearing and the application as published in Maui News, Honolulu Star Bulletin". Well, Honolulu Star Bulletin didn't exist. It says Honolulu Star Advertiser. Yeah, little things like that. It's within ...(inaudible)... so maybe you can't change it, but there was a mistake somewhere along the line because the Star Bulletin didn't exist on March 25, 2011. I mean, there may be other things that are in there. That's the one I caught as an error, but anyway. That's why I would allow him to speak, but I – just like it would be if we had a public hearing. I know we're not doing a public hearing, but I'd like him speak and then we could either choose to include some of it or choose not to.

Chair Hiranaga: Mr. Ohigashi?

Mr. Ohigashi: Please let me clarify my request. Maybe, maybe everybody's misunderstanding me. I'm asking not for written exceptions to be included necessarily in your decision. I'm asking for an opportunity to file written exceptions to make sure our statements are part of the record, clearly part of the record and well thought out so that we put, put that before you. And if, if you desire not to allow me to do so then we'd just like to have the ruling say that denying our request. One or the other, but we're requesting that we have an opportunity to file written exceptions to this matter.

And the, the reason for that is simply that this was prepared by Mr. Garneau, not by your Corporation Counsel and contrary to what, what the Corporation Counsel said, I don't believe a transcript has been prepared because we asked for and would be required us to – but a written, I guess video tape, video of the proceedings were made. So this was made based upon, I guess that video not on the transcript. So we'd like to have an opportunity to file that written exceptions. And a reasonable time to file it so that we can go through the transcript and make sure that the exceptions that we point out are part of the record to show that yes, this is where we believe it's different based upon the transcript. So unless I'm wrong, but I requested the transcript I think three days ago, and it wasn't available. That was my request that's –

Mr. Giroux: I kind of hesitate in that since that, I think we need to get this document out so that, you know, if your intent is to appeal then you can take those issues up with the Circuit Court as far as if there's any errors within the findings that's, that's what you're going to bring out to the Circuit Court, that either our findings are wrong or that our Conclusions of Law are wrong and that at that point the record will speak for itself.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: On my, fellow Commissioners identifying No. 17 on Page 4, as saying that there's an error, well, that was the error I brought up. This actually is No. 17, quotes, it says, "the report also

indicated that," and it quotes, and that is true, that's what it said, it said, Honolulu Star Bulletin. At that, at the meeting or the hearing I did mention that as the Star Advertiser but it was corrected on the report. So I just want you to know that yes, if you check the transcript, I did state that, but this is just a quote of the report. So it should stand.

Chair Hiranaga: Are there any other comments or corrections regarding the Findings of Fact?

Mr. Ohigashi: Mr. Chairman, can, can I have ...(inaudible - speaking from the audience)...

Chair Hiranaga: Yeah. Sure. I guess I'll make my original statement, is there any objection to denying his request, the petitioner's request? Seeing none, the request is denied.

4. Adoption of the Written Decision and Order on its April 26, 2011 action to deny the following Petition to Intervene Request (To begin at 1:00 p.m. or soon thereafter):

Petition to Intervene request of MR. LEE OHIGASHI, attorney for DAIRY ROAD PARTNERS on the Special Management Area Use Permit request of MR. ALAN K. ARAKAWA, Senior Vice-President of A&B PROPERTIES, INC. 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: Any other comments or corrections regarding the proposed drift Findings of Fact? Commissioner Wakida?

Ms. Wakida: Well, it's, it's the same quote, and of course, as Mr. Shibuya pointed out it's a quote of something, but I'm just questioning the West Maui Today as a publication, never heard of it. I'm wondering if this, some really old reference. So I don't know what the West Maui Today publication is. So I'm just.

Ms. Takayama-Corden: The State procurement requires statewide notification in five papers. Those five papers ...(inaudible - not speaking near a microphone)... Two is on the Big Island, one is on Kauai and one is Oahu and one is Maui News.

Ms. Wakida: And West Maui Today is?

Ms. Takayama-Corden: Big Island. West Hawaii.

Ms. Wakida: It's called West Maui?

Ms. Sablas: West Hawaii Today.

Ms. Takayama-Corden: West Hawaii Today.

Mr. Spence: Oh, so that's a typo.

Ms. Wakida: Oh, okay.

Chair Hiranaga: So if there's no other corrections or comments, I'll open the floor to a motion to adopt the written Decision and Order. The draft written Decision and Order.

Mr. Freitas: So move.

Chair Hiranaga: Moved by Commissioner Freitas.

Mr. Shibuya: Second.

Chair Hiranaga: Seconded by Commissioner Shibuya. Discussion? Commissioner Mardfin?

Mr. Mardfin: I intend to vote against the motion. I, if you look at Item No. 16, it says, "petitioners assertion that he did not receive actual notice of the hearing date of the application is insufficient to support a finding of good cause." I disagree with that, therefore, I have to vote against the motion to adopt this. Item 17, says, "the fact the petitioners only found a," I don't know, "only found out about this case on the evening of April 21st was only able to ...(inaudible)... does not constitute good cause." I disagree with that, therefore, I have to vote against the motion. Item 19, "petitioner has failed to meet his burden of that good cause existed." I disagree, I think he did, therefore, I have to vote against the motion. So I will be voting no on this as Findings of Fact, Conclusions of Law, Decision and Order. It's consistent with my position last time that I voted against the motion to deny intervention.

Chair Hiranaga: Any other discussion? If not, the Director, if you could repeat the motion?

Mr. Spence: The motion is to approve the Findings of Fact, Conclusions of Law, Decision and Order Denying Dairy Road Partner's Petition to Intervene filed on April 25, 2011.

Chair Hiranaga: I'll call for the vote. All in favor, please raise your hand,

Mr. Spence: Four ayes.

Chair Hiranaga: Opposed?

Mr. Spence: One opposed.

Chair Hiranaga: The Chair votes in favor and the motion carries.

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

VOTED: To Approve the Findings of Fact, Conclusions of Law, and Decision and Order Denying Dairy Road Partners Petition to Intervene Filed on April 25, 2011.

(Assenting - J. Freitas, W. Shibuya, L. Sablas, P. Wakida, K. Hiranaga)
(Dissenting - W. Mardfin)
(Excused - D. Domingo, K. Ball, I. Lay)

Chair Hiranaga: Next agenda item is Communication C-6. Director?

Mr. Spence: Okay, Mr. Chairman and Commissioners, I think Items C-6 and 7 are going to go together. Ms. Gwen Ohashi-Hiraga, Project Manager for Munekiyo and Hiraga, Inc., on behalf of Maui Beach Resort Limited Partnership submitting their 2011 annual report on the disbursement of funds in the Settlement Agreement with Intervenor Charles Fox III pursuant to Chapter 32, et cetera. Our Staff Planner was Mr. Joe Prutch but I see Mr. Clayton Yoshida.

- 6. MS. GWEN OHASHI HIRAGA, Project Manager from MUNEKIYO & HIRAGA, INC. on behalf of MAUI BEACH RESORT LIMITED PARTNERSHIP submitting the 2011 annual report on the disbursement of funds in the Settlement Agreement with Intervener CHARLES FOX III pursuant to Condition No. 32 of the Special Management Area Use Permit and Step 2 Planned Development Approval for the proposed Honua Kai Resort, North Beach Park, and related improvements at TMK: 4-4-014: 006 and 008, and 4-4-001: 010, Kaanapali, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

Mr. Clayton Yoshida: Yes, Clayton Yoshida substituting for Joe Prutch who had some other commitments. I guess this item is unnecessary due to the July 15, 2010-letter to Ms. Hiraga documenting what happened in the 2010 Annual Reports and essentially, sentence states that the Commission went further to relieve the applicant of further annual reports on disbursement of funds in the Charles D. Fox III Settlement Agreement as to the funds to the Lahainaluna High School Foundation have been made in full. Annual funds of the WMPA Funds are still necessary per Condition No. 32. So this is unnecessary, but Item 7, regarding the Annual Reports, regarding disbursement of funds to the WMPA is still necessary.

Chair Hiranaga: Okay, well since it's an agenda item I'll allow public testimony if there is any. Seeing none. So is there any objection to disposing of agenda item C-6? Commissioner Wakida?

Ms. Wakida: I'm not opposing it necessarily but I'm not clear Clayton. Did you say that we had agreed at a future meeting that we did not need to have future annual reports?

Mr. Yoshida: Just for the –

Ms. Wakida: I mean at a past meeting?

Mr. Yoshida: – Charles D. Fox III Settlement Agreement. This is a July 15, 2010-letter from myself on behalf of Kathleen Aoki, Planning Director to Gwen Hiraga based on a 2010 report. The Commission relieved the applicant of further annual reports on the Charles – on the disbursement of funds for the Charles D. Fox III Settlement Agreement.

Ms. Wakida: And why did we agree to that?

Mr. Yoshida: Because all of the funds –

Ms. Wakida: Have been disbursed.

Mr. Yoshida: – to the Lahainaluna High School Foundation have been paid.

Ms. Wakida: Have been paid. Okay. Thank you.

Chair Hiranaga: Once again, any objection of disposing of Item C-6? Seeing none, we'll move onto Item C-7.

Mr. Spence: Again, this is Ms. Gwen Ohashi Hiraga from Munekiyo and Hiraga, Inc., regarding the Maui Beach Resort Limited Partnership 2011 Annual Report. This is regarding the disbursement of funds to the West Maui Preservation Association or WMPA.

- 7. MS. GWEN OHASHI HIRAGA, Project Manager from MUNEKIYO & HIRAGA, INC. on behalf of MAUI BEACH RESORT LIMITED PARTNERSHIP submitting the 2011 annual report on the disbursement of funds in the Settlement Agreement with Intervener WEST MAUI PRESERVATION ASSOCIATION (WMPA) pursuant to Condition No. 32 of the Special Management Area Use Permit and the Step 2 Planned Development Approval for the proposed Honua Kai Resort, North Beach Park, and related improvements at TMK:4-4-014:006 and 008, and TMK: 4-4-001: 10, Kaanapali, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

Mr. Clayton Yoshida: I'll turn it over to Gwen.

Ms. Gwen Ohashi Hiraga: Good afternoon Chair Hiranaga and Members of the Commission. My name is Gwen Hiraga representing the applicant, Honua Kai. And we did submit a written report. I'll be happy to respond to any questions or comments the Commissioners may have.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: Were any of these funds used to fund in any manner the study that was looked at different ways of electing councilmen?

Ms. Hiraga: I don't know the answer. The funds that are provided to the Honua Kai West Maui Community Benefit Fund is administered strictly by the fund itself or the members of that organization and neither myself representing the applicant or the applicant has participated in recent funding for that purpose. But I, I received one of those brochures as well and it said, "West Maui Community Benefit Fund," but I'm not sure where, whether it came from this fund or the Starwood fund or both.

Mr. Mardfin: Could you find out for us?

Ms. Hiraga: Okay. So basically the brochure that was sent out about a year ago on district voting --

Mr. Mardfin: Right.

Ms. Hiraga: – who paid. Okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Have all the funds have been disbursed to the West Maui Preservation Organization?

Chair Hiranaga: Yes, except for, if you look at the report on Page 3, we talk about the community benefit, Item B there is a recurring payment. Yeah, so that's the only thing that would be left.

Ms. Wakida: Do you have any, do you oversee in any way that organization or are you – for example if they have to have so many board members, are you involved or are you concerned in any way about them carrying out their mission or their – following their bylaws. Is that your kuleana?

Ms. Hiraga: We're not involved with that at all. The fund has a board of directors and I believe they're represented by West Maui Preservation Association Lot 4 which is the Intra West project, Lot 3 which is the Starwood and some, a few community members, but I'm not even sure who the current membership is. I can find out and get back to you, but going back to your specific question, we do not oversee the spending of that fund.

Ms. Wakida: But you could have access to information for like – for example, who's on the board, where they reside, that kind of thing or any of their bylaws? I've, I've had difficulty finding out information so maybe?

Ms. Hiraga: Yeah, we will try. And what we'll do is, there is a North Beach Advisory Group that meets every other month, the second Thursday, I'm sorry, the third Thursday of every other month so they will be having their next meeting in July, and we'll put it on the agenda.

Ms. Wakida: And who is the, – may I continue Chair with this question? Who is the North Beach Advisory Group?

Ms. Hiraga: It was a, it was a group, it is a group that was appointed many years ago primarily by Amfac at that time who owned the property. And this group was formulated to review all projects in the Kaanapali North Beach area. So again, it would be the Starwood project and the Honua Kai project and they report back to this group every other month as to the status like you know, what is the status of the building construction, of building permit and from time to time reports such as this was presented to the committee at their last meeting in anticipation of it coming before this Commission. So the group and I can provide you with the names but there are six members of the group.

Ms. Wakida: Is it a community group or is it?

Ms. Hiraga: Yeah. It's a community group.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I don't know whether this is what Commissioner Wakida was asking or not but for Item 2, it says, "community benefit of the settlement agreement provides in part for funding to charitable nonprofit organization." What's the name of that?

Ms. Hiraga: I believe the name is Honua Kai, Honua Kai Community – yeah, West Maui – Honua Kai West Maui Community Benefit Fund.

Mr. Mardfin: What do they do?

Ms. Hiraga: This is the organization that receives or has received the funding that we're reporting on and the, the mission I guess is to assist with items that are deemed important to the West Maui community so they do receive requests for funds and I'm not sure how much.

Mr. Mardfin: So they, they receive the money and then they dole it out to other organizations?

Ms. Hiraga: Yes. But how much I don't know.

Mr. Mardfin: And in Item C, is that the same charitable nonprofit?

Ms. Hiraga: That's correct. Item A, B, and C is the same ...(inaudible)...

Mr. Mardfin: A, B, and C are the same?

Ms. Hiraga: Yes.

Mr. Mardfin: Okay.

Chair Hiranaga: Commissioner Sablas?

Ms. Sablas: On Page 3, 2A about the amount to be disbursed \$400,000 and it was disbursed to Title Guaranty Escrow and Title Services. Do you have a breakdown of, of, of who received that \$400,000 and if not, I mean, can we have a copy of that?

Ms. Hiraga: Okay, the entire \$400,000 went to the, and I got the name correct, Honua Kai West Maui Community Benefit Fund. That same group got the money.

Ms. Sablas: Is it possible to have the breakdown of where that – how it benefitted the community?

Ms. Hiraga: Yes, I think that's the same question that Commissioner Wakida and Commissioner Mardfin, so we will try to get that information from I don't know if they'll respond to me but we will have Honua Kai's attorney write a letter to Mr. Lance Collins who's the benefit fund attorney and request for a breakdown of the funding. We'll try that if that's okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Can you explain what is the difference between the Honua Kai West Maui Community Benefit Fund and the West Maui Preservation Association?

Ms. Hiraga: The West Maui Preservation Association was the name of the entity or the group that intervened on the SMA for this project.

Ms. Wakida: Okay, 'cause when I, when I checked the websites they both seem to have the same –

Ms. Hiraga: It's the same people.

Ms. Wakida: Same thing, yeah. Same. So, because they say they're the ones that are doling out the money.

Ms. Hiraga: That's correct.

Ms. Wakida: But you said that Honua Kai is –

Ms. Hiraga: Community Benefit Fund.

Ms. Wakida: But when I – I talked to one of the board members of the West Maui Preservation Association and he said they're doling out the money. So that's why I'm confused by these two entities.

Ms. Hiraga: Yeah, as far as the settlement agreement, the SMA settlement agreement on the intervention it specifically calls for this Honua Kai West Maui Community Benefit Fund.

Ms. Wakida: Well, okay, they're getting that .25 percent. And then the West Maui Preservation Association got a hundred grand. I find it – it's very confusing and those of us in West Maui are even more confused. Because I've asked around and there's not a lot of information flowing around West Maui about this.

Ms. Hiraga: So I will also check as to whether or not it is the West Maui Preservation Association or the Honua Kai West Maui Community Benefit Fund that's receiving for now at least the resales because that's all that's left to be paid to the fund or to the group, only the resales.

Ms. Wakida: Yeah, see who's got the jurisdiction and who, what the – if you have this information and the make up of these two organizations.

Ms. Hiraga: I will.

Ms. Wakida: Thank you so much.

Chair Hiranaga: Any other questions? Commissioner Mardfin?

Mr. Mardfin: Ready for a motion?

Chair Hiranaga: I think it's just acknowledgment of receipt.

Mr. Mardfin: I don't want to do that. I want to defer action to acknowledge receipt until we get the additional information.

Chair Hiranaga: Is there a second?

Mr. Shibuya: I'll second it.

Chair Hiranaga: Discussion?

Mr. Mardfin: We have an incomplete report as far as I'm concerned so I don't think we should acknowledge receipt of this.

Chair Hiranaga: Any other discussion? Commissioner Wakida?

Ms. Wakida: Well, I certainly go along with this because we have two organizations in West Maui and we don't seem to understand how they work either together or separately. Thank you.

Chair Hiranaga: Any other, any other discussion? Seeing none, I will call for the vote. All in favor please say, "aye."

Commission Members: Aye.

Chair Hiranaga: Opposed. Motion carries.

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

VOTED: To Defer the Matter Until Information Requested by the Commission is Received.

**(Assenting - W. Mardfin, W. Shibuya, L. Sablas, J. Freitas, P. Wakida)
(Excused - D. Domingo, K. Ball, I. Lay)**

Ms. Hiraga: Okay, we'll get back to you. Wish us luck. Thank you.

Chair Hiranaga: Item E, Acceptance of the Action Minutes of June 14, 2011.

D. ACCEPTANCE OF THE ACTION MINUTES OF JUNE 14, 2011 MEETING.

Chair Hiranaga: Motion to accept? Actually there is a typographical error on the agenda. It's actually June 14 versus June 28. I guess Corporation Counsel is that an issue regarding noticing

that the wrong date was provided on the agenda? It should have been 14. So it's okay to go ahead and accept the minutes as long as it is noted that it is in fact June 14 and not June 28? Okay, so is there a motion to accept the minutes for June 14?

Mr. Shibuya: So move.

Chair Hiranaga: Second? Moved by Commissioner Shibuya, seconded by Commissioner Sablas, any discussion? Seeing none, all in favor say, "aye."

Commission Members: Aye.

Chair Hiranaga: Opposed. Motion is carried.

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

VOTED: To Accept the Action Minutes of the June 14, 2011 Meeting.

**(Assenting - W. Shibuya, L. Sablas, J. Freitas, P. Wakida, W. Mardfin)
(Excused - D. Domingo, K. Ball, I. Lay)**

Chair Hiranaga: Next agenda item is E, Director's Report. Director?

Mr. Spence: This is a request from – this is notifying you, notifying the Commission of my intent to process a time extension request for Mr. David Goode, Department of Public Works requesting a two-year time extension on an SMA Permit to initiate construction on the Kaholopoo Bridge replacement in Hana and I have Clayton Yoshida and I also see Cary Yamashita from Public Works here.

E. DIRECTOR'S REPORT

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the time extension request administratively on the following:**

MR. DAVID GOODE, Director of the DEPARTMENT OF PUBLIC WORKS requesting a two (2)-year time extension on Special Management Area Use Permit condition regarding the period to initiate construction of the Kaholopoo Bridge Replacement Project at TMK: 1-4-007, Hana, Island of Maui. (SM1 2001/0019) (P. Fasi)

Mr. Yoshida: Good afternoon, Mr. Chair. Clayton Yoshida subbing for Paul Fasi who's out on family matters. This is a request for a two-year time extension on a period to initiate construction of the Kaholopoo Bridge replacement project and the Commission is being asked to acknowledge receipt and whether they wish to waive its review. Again, we have the representatives from the Department of Public Works here who can answer any technical questions.

Chair Hiranaga: Any questions for the Department? Commissioner Shibuya?

Mr. Shibuya: I'm quite disappointed in the sense that there was some delay but maybe it's for the good because I would like to increase the width of the deck to – from single length to two-lane vehicle traffic. I know where this bridge is and it is pretty dilapidated it needs to be upgraded. And to be upgraded and since you're gonna go through that process, I'd like to have it two, two vehicle width.

Chair Hiranaga: Are you asking a question to Public Works as to the feasibility or are you just going to be stating your reason for denying the waiver?

Mr. Shibuya: No, I'm not going to deny it. I just want their, their rational for just a single width.

Chair Hiranaga: Okay, so question to Public Works. Why is the proposed bridge only a single lane?

Ms. Dagdag-Andaya: Commissioners I'm going to defer that to our Chief Engineer, Cary Yamashita who can talk about the design issues that we have for this bridge.

Mr. Cary Yamashita: Hi, Commission. My name is Cary Yamashita. I'm the Division Chief of the Engineering Division, Department of Public Works. We were required to go through a bridge preservation plan for Hana District and that plan underwent lot of scrutiny and was approved by those numerous cultural entities out in Hana. So we're just following the plan as agreed upon through that body, and it's a Hana District Bridge Preservation Plan and it called for Kaholopoo to be a one-lane bridge. For your information most the bridges that were, well all of the bridges were reviewed in this study and the, the Hana people wanted the, the bridges to remain the same and in character of the Hana District. So that is why we kept it as, at one lane.

Mr. Shibuya: I find it unbelievable that you would have something like this, if you get fire and you want some fire support and it's capacity is three tons what's the problem here of the fire truck going down?

Mr. Yamashita: Oh, the capacity will, will be increased to 20 tons but the width will remain the same but the thickness and the strength of the bridge will be increased.

Mr. Shibuya: Incredible.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I wasn't living in Hana at the time this decision was made but the Hana people I apologize to the Commissioner Shibuya but the Hana people want the width kept at one lane. There were – the original proposal that went to them was for a two-lane bridge. It was huge over, outcry about this and it got put back to the one lane. A couple of weeks ago we approved it, a widening but that was a particular place right by the fire station. This is not right by the fire station. The fire truck will be able to go over. When I saw this item on the agenda, I contacted Clayton Yoshida, he probably contacted you I would guess?

Mr. Yamashita: Yes, he did.

Mr. Mardfin: And I was concerned because they said they were going to lengthen it from 22 to 42, 42 ½ feet and I was concerned that it, it's, it's where the road bends fairly sharply right around here and I was thinking that maybe you were shortcutting it and I asked if it was going to change the alignment and he assured me that your answer was no.

Mr. Yamashita: No, it's not.

Mr. Mardfin: You're not going to shortcut across, you're gonna keep it, you're just gonna extend it out.

Mr. Yamashita: Exactly.

Mr. Mardfin: And that would probably meet the concerns of the Hana residents. I also asked if it was in the budget and your response was?

Mr. Yamashita: It is Federally funded, 80 percent Federal funds and 20 percent County matching which we already have in our Fiscal Year 2011 budget.

Mr. Mardfin: Now it will change the appearance. Right now if you go in there there is a piping on the side, there's not even a metal guardrail. It's PVC piping or something like that.

Mr. Yamashita: Yes.

Mr. Mardfin: And you would easily go, but you go slowly there. Locally that bridge the correct name is Kaholopo`o with an `okina between the last two o's and I checked with Hawaiian experts on that. It's locally known as make man bridge because and this was written up by Takashi Okana, Okano and somewhere around 1918 there was a train a little bit mauka of this that went from the sugar fields into the mill and he said the train operator Nishiyama was speeding a little too fast homeward bound at the end of the workday especially at this turn with workers on the empty cane cars, the accident was so bad that the engine fell to the bottom too. According to my father, his father was luna, was heading home on his horse when he came to see the accident. He raced to Hana as fast as his horse could take him and told my father to get the other engine fired and hitch some cane cars and pick up the injured workers. The community alerted of the accident. Besides the engine operator Nishiyama, a Tokushige and a Murai died as a result, many injured people. So this has historical importance to us. Hana people like it the way it is but we do appreciate without widening or changing the character, do appreciate strengthening and making sure it will last a good long time.

Mr. Yamashita: Yes.

Mr. Mardfin: Thank you very much.

Chair Hiranaga: Any other discussion? Questions? Director?

Mr. Spence: I just wanted to kind of carry on with Commissioner Mardfin's comments. This was a big issue when I was staff planner and the, the replacement Papahawahawa Bridge was the focus, it was almost intervened on, it prompted the preservation plan of all the bridges. People out there like the one-lane bridges. It's part of the character of Hana and if you ever walked underneath this bridge you'll see the big spalls and the rebar that's rusting through, they, they really do need to go on this thing.

Chair Hiranaga: Any other questions for the Department? Seeing none, I'll open the floor for a motion. Commissioner Mardfin?

Mr. Mardfin: I move that we waive review of the time extension and allow the Director to grant it administratively.

Mr. Freitas: Second.

Chair Hiranaga: Moved by Commissioner Mardfin, seconded by Commissioner Freitas. Any discussion? Seeing none, I'll call for the vote. All in favor say, "aye."

Commission Members: Aye.

Chair Hiranaga: Opposed. Motion carries.

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

VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension Request.

**(Assenting - W. Mardfin, J. Freitas, L. Sablas, W. Shibuya, P. Wakida)
(Excused - D. Domingo, K. Ball, I. Lay)**

Chair Hiranaga: Next agenda Item E-2, 3, 4, 5, 6.

Mr. Spence: Clayton, do we have anything?

- 2. EA/EIS Report**
- 3. SMA Minor Permit Report distributed with the June 14, 2011 agenda packet**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report distributed with the June 14, 2011 agenda packet**
- 6. SMA Exemptions Report**

Mr. Clayton Yoshida: Yes, we weren't able to get to our SMA Reports at the last meeting due to the length that we went till 5:30 on the short term rental homes resolution. So we have that list and

we have circulated another list regarding the SMA Minor Permit and SMA Exemptions. Questions?

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I just, I don't have anything to add other than the fact or questioning but as I look through them many of these items are repeatedly printed here. And rather than try to remember what was given back to me would there be a possibility of just putting one line, brief description between, I mean, under the one that I asked earlier like say three subdivision, just a one-sentence brief explanation that you guys gave me? So I don't ask the same question again.

Mr. Yoshida: We'll can take a look at that without our permit tracking people.

Mr. Shibuya: I know this is a data base.

Mr. Yoshida: And what kind of reports we can produce. I mean, we can do the one with the full on scope but it's going to be like ten times the –

Mr. Shibuya: No, no, no I don't want the whole thing, just a brief one-sentence statement.

Mr. Yoshida: Okay, we'll work with our computer people to see if we can provide more –

Chair Hiranaga: Okay any other discussion? Commissioner Wakida?

Ms. Wakida: Mr. Spence, please refresh my memory on these SMA Assessments. If it's a single family residence it doesn't come to us is that correct if it's on the shore?

Mr. Spence: A single family residence is an exempted – well, under State Law a single family residence is not considered a development unless there's some kind of overriding ecological factor or some other kind of impact. It's because a proposed home is on a shoreline parcel or I should say a property that abuts the shoreline it still doesn't necessarily mean that it's a development. There's gonna be a lot of factors. I mean, you have huge parcels that are abutting the shoreline, you know, I can't say from this where that proposed residence is located. There might be a little teeny tiny parcel in which, you know, there's – they're gonna be shoe horning a ...(inaudible)...

Ms. Wakida: Yeah, this is specifically in reference to the Fidel residence, a 3,000 square foot addition. It's on, well, it's SMX 2011/0188, and I don't recall how the rules apply to something like this. It's on the ocean.

Mr. Yoshida: Well we would still – even if it could be an exempt action, we would still have to do an assessment and determine that it would not have any significant adverse environmental or ecological effect. In the case that Mary Blaine Johnston cited, the Gary Stice, the Department did determine that it may have a significant adverse –

Ms. Wakida: I didn't catch that Clayton, what did you just say, in the case of what?

Mr. Yoshida: In the Gary Stice appeal that Mary, Mimi Johnston, had referred to earlier. You know,

the Director did determine that there may be significant adverse environmental or ecological effects because it was in a tsunami zone and therefore, had required the applicant to seek an SMA Major Permit for which he appealed to this body and he had a lengthy two-day contested case hearing on that matter.

Ms. Wakida: Yeah, I would like, I don't know, I mean, I have additional information on this but I just real concerns about the extent of all of this. I've seen the property and add a pool and a 3,000 square foot addition there's and it's right on the shore. It seems a huge impact right there. So I'm just.

Chair Hiranaga: Any other questions or comments regarding these reports? Seeing none, I'll open the floor for a motion to accept Items E-2 through 6.

Mr. Freitas: So move.

Chair Hiranaga: Moved by Commissioner Freitas, seconded by Commissioner Shibuya. Any discussion? Seeing none, all in favor say, "aye."

Commission Members: Aye.

Chair Hiranaga: Opposed. The motion is carried.

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

VOTED: To Accept the SMA Minor/Exemptions Reports (Items 3-6).

**(Assenting - J. Freitas, W. Shibuya, L. Sablas, P. Wakida, W. Mardfin)
(Excused - D. Domingo, K. Ball, I. Lay)**

Chair Hiranaga: Item E-7. Planning Commission Projects/Issues.

7. Planning Commission Projects/Issues

a. Revising the SMA Boundaries

Mr. Spence: Commissioners, we don't have anything to report to you regarding revising the SMA Boundaries.

Chair Hiranaga: Okay, I'd like to bring something up. Paia Town Center, SMA parking lot permit. I believe during the application the applicant made a representation that the property owner/developer would providing validated parking for his lessees. I believe that is not at this time occurring. That it is totally paid parking and no validation policy in place. So I'd like to have the Department look into that?

Mr. Spence: Okay, Mr. Chairman, we will write the applicant's consultant and request a response. And I, I am aware that the minutes reflect what you're saying that there, it would be some validated

parking.

Chair Hiranaga: Thank you very much. Any other issues? Okay, moving on Item E-8. Director?

8. Discussion of Future Maui Planning Commission Agendas

a. July 12, 2011 meeting agenda items

Mr. Spence: Discussion of future Planning Commission agendas.

Mr. Yoshida: We have circulated our list of items for the July 12th meeting. It's fairly short. We've kind of reached our summer lull before it starts accelerating again in second meeting in July, first meeting in August and then, we've already scheduled the contested case hearing on the Waipio Benevolent Association appeal for the second meeting August. So we just have two State Special Use Permit time extensions for bed and breakfast operations in the Ag District.

Chair Hiranaga: Any comments or questions? Seeing none –

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Is there something else we can – I mean, if I drive over here I don't really want to spend just an hour in a meeting. Is there some stuff that we can accomplish productively? I mean some policy things or – I know there was a concern a while back about the level of fines and enforcement of things. I mean, it seems to me there ought to be some productive work we can do.

Chair Hiranaga: Mr. Yoshida?

Mr. Yoshida: I guess if the Commission has requests, I guess there's Commissioner Ball's standing item on revising the SMA boundaries the Commission never gets to because we're always at about 5:00 and it gets deferred.

Chair Hiranaga: So maybe a preliminary report?

Mr. Yoshida: I'm not sure what exactly Commissioner Ball had in mind in wanting ...(inaudible)...

Mr. Spence: Commissioners, if – Mr. Chairman?

Chair Hiranaga: Yes, Director?

Mr. Spence: If I could suggest something? It's a little rush but we might want to pull together a relatively minor rule change. Right now your rules when somebody files an SMA Assessment and the property happens to be on the shoreline, you always have to submit a certified shoreline. Now that just on the surface oh, well, well that's fine they can do that. We're running into time and time again where somebody remodeling their kitchen within an existing residence is having to file for a

certified shoreline. Means they have to go hire a surveyor. They have to go, you know, submit it to DLNR, DLNR has to public it in, you know, the, the OEQC Bulletin, we have to wait for any appeals and then we can process their assessment for remodeling their kitchen. And so what we'd like to be able to present to the Commission is an opportunity that, you know, there would be certain cases where there's no new construction or they're just really obviously things that no certified shoreline would be required. If we could pull that together, is it possible?

Mr. Yoshida: Well, we can talk to our shoreline team. Also, I guess, you know, the new, the amendments to the Coastal Zone Management Law will take effect on July 1st.

Mr. Spence: Yes.

Mr. Yoshida: Which increases the minor permit threshold to – form a 125,000 to \$500,000.

Mr. Spence: And?

Mr. Yoshida: And if you have a single family residence with an area of 7,500 or more then you are subject to an SMA Major Permit.

Mr. Spence: The change in the law just says that a house of 7,500 square feet or more is a development, but and of course, you can't build a house that size for less than \$500,000 so it's gonna be major. So–

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: On the topic that Ward brought up about, Gina wanted us to give additional input sort of part 2 on, help me out, what were we working on last week? Anyway, she wanted the fines and the – oh, the short term rentals.

Chair Hiranaga: Right.

Ms. Wakida: And she wanted additional – we hadn't finished that. I don't know if she's prepared to, to talk to us next week or not or in two weeks?

Mr. Yoshida: Well, I guess she's –we're trying to wrap it up with the various Planning Commissions. We go to Molokai tomorrow. We have a meeting On Lanai on July 6. She has to get the transmittal, well, the deadline to get the transmittal back to the Council is July 22nd. So she has to kind of consolidate all of these different comments that have come from different reviewing bodies into the Department's transmittal. I don't know, you know, if she's had a lot of time to talk about the future on the enforcement regarding these short term rentals.

Ms. Wakida: Does she need that additional information? You said she's pulling together the final report. Is that correct?

Mr. Yoshida: She's pulling together the recommendations from the various Planning Commissions and the Hana Advisory Committee to transmit that to the County Council.

Ms. Wakida: Right.

Mr. Yoshida: So they would have a basis of, this is what the Maui Planning Commission recommended and this is what the –

Ms. Wakida: But she said she wasn't done with it. We needed to get part 2 of that.

Mr. Yoshida: Well, I guess, you know, part of it is – well, some of it is the enforcement and I guess she's been trying to work on that too, but it's just we're trying to meet this July 22nd, 120-day.

Ms. Wakida: Okay. Well, I'm just throwing that out there is if she needs to come that day, I don't know maybe that would be appropriate.

Mr. Yoshida: And see if she does have time. But I know we're, she's going to Molokai tomorrow, she's going to Lanai for a second time next week and just trying to pull all of these different comments on the proposed legislation together.

Chair Hiranaga: Any other comments regarding this agenda item?

Mr. Shibuya: Yes.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I believe we were scheduled to have some kind of a briefing on the coastal management, shoreline line coastal management and we had to cancel that and I don't know if it can be recouped or represented to us. It was Tara Owens.

Mr. Spence: We completed that. I think you were skiing.

Mr. Shibuya: You did it on purpose.

Mr. Yoshida: They did present their presentation on sea level rise at a later meeting because she couldn't get on the initial April 12 orientation workshop. Didn't have a time with the two Hana items and Pauwela Farms land use entitlements also.

Chair Hiranaga: Okay, any other issues or comments? Seeing none, next regular meeting is July 12th. And if there is no objection this meeting is adjourned. Thank you, Commissioners.

F. NEXT REGULAR MEETING DATE: JULY 12, 2011

G. ADJOURNMENT

The meeting was adjourned at 4:20 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Jack Freitas
Kent Hiranaga, Chairperson
Ward Mardfin (in attendance at 9:11 a.m.)
Lori Sablas
Warren Shibuya, Vice Chairperson
Penny Wakida

Excused

Keone Ball
Donna Domingo
Ivan Lay

Others

William Spence, Planning Department (9:00 a.m. - 10:00 a.m.)(1:30 p.m. - 4:20 p.m.)
Ann Cua, Planning Department (10:00 a.m. - 12:25 p.m.)
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works