

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JULY 12, 2011**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:03 a.m., Tuesday, July 12, 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: I'd like to call the Maui Planning Commission meeting to order. Today is July 12, 2011, and for the record we have all Commissioners present. At this time, I'd like to open the floor to public testimony. Is there anyone here that wishes to provide testimony regarding any agenda item? Seeing none, we'll proceed with the agenda. Director?

Mr. Spence: Thank you, Mr. Chairman and Members. We're on Item B-1, Thomas and Victoria Leworthy requesting a five-year State Land Use Commission Special Use Time – Use Permit time extension to continue to operate the bed and breakfast on West Kuiaha Road in Haiku. Our Staff Planner is Mr. Kurt Wollenhaupt.

**B. COMMUNICATIONS**

1. **THOMAS and VICTORIA LEWORTHY requesting a 5-year State Land Use Commission Special Use Permit time extension in order to continue to operate the Bamboo Valley Inn Bed and Breakfast, a 4-bedroom bed and breakfast in the State Agricultural District at 1444 West Kuiaha Road, TMK: 2-7-012: 030, Haiku, Island of Maui. (SUP2 2008/0003) (K. Wollenhaupt)**

Mr. Wollenhaupt: Good afternoon Members or good morning Members of the Maui Planning Commission. The item before you today is a request in order to review the continued use of a four-bedroom bed and breakfast heretofore after known as the "Bamboo Valley Inn." The applicants are Mr. Thomas and Mrs. Victoria Leworthy who are in the audience today who will be happy to answer any questions should you. They are requesting a five-year time extension and staff is also requesting the deletion of Condition No. 7 it is no longer applicable according to staff's review of the project. This is as indicated for the continued operation of their four-bedroom bed and breakfast.

In 2009, the Maui Planning Commission in a duly noticed public hearing approved this bed and breakfast and the Land Use Commission Special Use Permit for a period of two years. During that time, the applicant has been operating successfully. There have been no requests for service. There have been no complaints.

Part of the requirements of this project were that the applicant was to contact an adjacent neighbor who had concerns about egress and ingress. The applicant did contact the adjacent neighbor via certified mail. The adjacent neighbor did not pick up the letter. They do not communicate with our applicant today. However, the applicant did follow all of the requirements of this Commission.

The letter was indicated to the neighbor to request whether a barbed wire or a horse wire should be erected upon the easement to the adjacent property owner's property. The Leworthys did not receive any notification from the adjacent neighbor. Therefore, they have made the decision to put up the barbed wire fence according to Condition No. 7 of the original approval. That fence was put up. A few weeks later the fence was down. The Leworthys do not know who took the fence down but it was taken down. Since then there had been no complaints from anyone, in fact, there have been letters of support from neighbors requesting a continuation of this project.

Also within this documents are indications that the neighbor who had concerns with it, their house is in foreclosure. There has been a notice as indicated in the Planning Commission packet that this house has officially been noticed for foreclosure. The Leworthys are indicating that the adjacent residents are not even living there anymore. Therefore, this whole purpose of having this fence seems moot to have a barbed wire fence for an easement which there is no neighbor. Seems appropriate to take it out. Therefore, the new recommendations would be taking out Condition No. 7.

In addition, the Leworthys were required to regrade and gravel their driveway. They have done that. There is an indication of the charges that were given and the driveway is when I drove past had been regaveled, they're going to do it again.

Again, this is for consideration of a Special Use Permit which has to do with the ag uses. Approximately one and a half acres of the property are devoted to continuing grazing and farming operations. I think it's important for the Members who were not here two years ago that this land is classified as the lowest rating. Very rough. The major existing uses according to the detailed land classification at the time of the survey are for grazing and forest. That was in the original staff report. The property is also referred to rough broken land, (rRR) small r, capital double r by the Soil Survey of Islands – of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, USDA. The rough, broken land consists of very steep land, broken by numerous intermittent channels, there are gulches and mountainsides which makes this for farming operations challenging. Therefore, the Leworthys are using it as grazing for their horses.

As indicated, the compliance reports have been provided in a timely fashion. The Leworthys did comply with all the requirements from the Department of Building and the Department of Water for rate fixtures and has indicated before the Commission did approve this in July 28, 2009 and the staff is comfortable moving forward with a recommendation for a five-year extension of the Land Use Commission Special Use Permit. If you have any questions, I'm happy to answer them or Mr. and Mrs. Leworthy are in the audience who will be able to answer the more specific ones. Thank you.

Chair Hiranaga: Does the applicant wish to say anything?

Ms. Victoria Leworthy: I'm Victoria Leworthy. We'd be happy to answer any questions you have.

Chair Hiranaga: Thank you. Is there anyone here in the audience that wishes to provide testimony at this time? Seeing none, Commissioners open the floor to questions? Commissioner Shibuya?

Mr. Shibuya: I just wanted to identify which plot we're talking about. I'm looking at this one chart, this map here and if you can just point out which one of those six lots?

Mr. Wollenhaupt: I think the photocopying of the – it's shaded – well, remember it's two, the final four numbers are 2030. I'll step there and it's very lightly shaded.

Mr. Shibuya: Thank you.

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: Can you point, I know that it's – I agree that this is a moot point but I'm still a little curious. Where exactly is this easement, maybe that same map would be the best one to use?

Mr. Wollenhaupt: I could pass out a color photograph here that shows the easement in blue.

*(Pause while Mr. Wollenhaupt circulated the photograph)*

Ms. Wakida: Thank you. Can you point out specific, is the easement?

Mr. Wollenhaupt: The easement is from the – on the bottom half of the map, it indicates there's a – on Kuiaha Road that's the main road off to the right side of the map shows the ...(inaudible)... the roadway there and the easement is in blue up to the Leworthy property, it says bed and breakfast home. So that easement's indicated in blue.

Ms. Wakida: And what, what was the original problem? Why, why?

Mr. Wollenhaupt: The adjacent property owner had concerns that there were people coming to visit the Leworthys who would step out of the easement, who would get onto their property, that they were crushing some plants, that they were getting into, into their private property. This is a recorded easement so the neighbors were concerned about trespassing if you will.

Ms. Wakida: I see, and, and so the onus was on these rather than the other people to put up their own fence?

Mr. Wollenhaupt: Well, that's what was, that was the solution that was decided by the Planning Commission that a fence would be one means of eliminating the concern about if this was an approved B & B, if there were guests coming that then there would be an additional level of barrier so that they wouldn't trespass off the easement pathway.

Ms. Wakida: And they put a fence along the entire blue line?

Mr. Wollenhaupt: Yeah on the southern end. On the southern edge of that where the house for the adjacent property owner was. That, that was determined that it didn't need to be on both sides because the problem was –

Ms. Wakida: Right, I understand that. Okay. Thank you.

Chair Hiranaga: Any other questions? Commissioner Lay?

Mr. Lay: I understand there's horses on this property?

Mr. Wollenhaupt: That's correct.

Mr. Lay: How many horses you have there?

Mr. Wollenhaupt: Well, there were four, two of them apparently at the time of the original approval, I know two of them had died. There's two now. Two horses are being –

Mr. Lay: And these are used for recreation/

Mr. Wollenhaupt: I imagine recreational activity, yes.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Hi. On Page 2, of your ...(inaudible)... green piece in mine. The second paragraph, it says, "the applicant did in the compliance report provide evidence of such communication with the adjacent property owner and that it was unclaimed." Is that old property owner or the new property owner?

Mr. Wollenhaupt: Well, this is, this is the letter in evidence that the applicant was required to send by certified mail to the property owner.

Mr. Mardfin: At the time.

Mr. Wollenhaupt: At the time.

Mr. Mardfin: Okay.

Mr. Wollenhaupt: And so it was unclaimed.

Mr. Mardfin: That answers my question. It's the old owner. Is there a new owner?

Mr. Wollenhaupt: The process is in foreclosure. So there's no evidence of a new owner, owner yet.

Mr. Mardfin: Okay, I was going to ask if the new owner had been notified but that's not relevant. Thank you.

Chair Hiranaga: Any other questions? Seeing none, may we have the staff recommendation?

Mr. Wollenhaupt: The recommendation of the Maui Planning Department is to recommend for approval that the Land Use Commission Use Permit shall be valid until July 31, 2016. With the conditions of approval noted in the staff report and the deletion of the original old Condition No. 7 which has to do with the fencing and barbed wire requirement. Therefore, the new conditions would

be seven conditions as outlined in the staff report and in consideration of the foregoing recommending that the Commission adopt the report's memo report and recommendation prepared for today's meeting authorizing the Director to transmit the findings of fact, conclusions of law, decision and order on behalf of the Planning Commission.

Chair Hiranaga: Thank you. I'll open the floor to a motion.

Mr. Freitas: Move.

Chair Hiranaga: Moved?

Mr. Freitas: Move to accept the time extension as presented by the planner.

Ms. Domingo: Second.

Chair Hiranaga: Moved by Commissioner Freitas, seconded by Commissioner Domingo to accept the staff recommendation. Discussion? Commissioner Shibuya?

Mr. Shibuya: I find this, the owners to have improved since the last submission and I really want to thank the owners for their integrity and for also complying with all of the requirements of this. They've done an excellent job. Thank you very much. The last time I saw this application I had some questions and now actually I find this an outstanding piece here. Thank you very much, Kurt and thank you very much Leworthys.

Chair Hiranaga: Any other discussion? Seeing none, Director if you could restate the motion?

Mr. Spence: The motion is to approve as recommended by staff.

Chair Hiranaga: All in favor please raise your hand.

Mr. Spence: That's eight ayes.

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

**VOTED: To Accept the Recommendation of Approval of the Five-Year State Land Use Commission Special Use Permit Time Extension.  
(Assenting - J. Freitas, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida, W. Shibuya, W. Mardfin)**

Chair Hiranaga: The motion carries. Thank you. Our next agenda item, Director?

Mr. Spence: Item B-2 in Communications is Mr. Alfred Lapeter requesting a five-year time extension for a State Land Use Commission Special Use Permit also for a bed and breakfast within the State Agricultural District in Lahaina, Island of Maui and our Staff Planner is Kathleen Aoki.

**2. MR. ALFRED LAPETER requesting a 5-year time extension on the State Land Use Commission Special Use Permit in order to continue to operate the Horizon of Gold Bed and Breakfast situated in the State Agricultural District at 114 Keoaloe Street, TMK: 4-3-008: 016, Kapalua, Lahaina, Island of Maui. (SUP2 2009/0004) (K. Aoki)**

Ms. Kathleen Aoki: Good morning, Commissioners. I actually regret to inform you that there appears to be a procedural error in our noticing of the agenda. We conferred with Corporation Counsel yesterday. On the agenda the TMK is listed incorrectly. A three was put in the of a two and in addition to that, the street name is also incorrect. So because of these two errors combined it's not properly noticed. So we respectfully ask for a deferral of this matter.

Mr. Ball: Move to defer.

Mr. Freitas: Second.

Chair Hiranaga: Motion by Commissioner Ball to defer it as requested. Seconded by Commissioner Freitas. Discussion? Commissioner Mardfin?

Mr. Mardfin: Yeah, I'm happy to vote for the deferral but I have a question and I may as well get it as long as it's going to come back maybe you can get it resolved before it comes back. In Exhibit C, –

Chair Hiranaga: Corporation Counsel?

Mr. Giroux: Maybe you can address it with the Department off the record?

Mr. Mardfin: Okay.

Chair Hiranaga: Should we actually be voting to defer since it's not properly noticed?

Mr. Giroux: Yeah, it's going to have to be put on through the process anyway. Basically just being taken off of your agenda for non action.

Chair Hiranaga: So just to by if there's no objection?

Mr. Spence: Yeah.

Chair Hiranaga: Okay, I guess if the – the person that made the motion and the seconder wish to withdraw their motion, we'll just do it by consensus.

Mr. Ball: Withdraw.

Mr. Freitas: Me too. I withdraw my second.

Chair Hiranaga: Okay. So if there's no objection, we'll reschedule this agenda item. Seeing none.

Mr. Giroux: It will be rescheduled when it's properly posted.

Ms. Aoki: Thank you.

Chair Hiranaga: Next agenda item, Director?

Mr. Spence: Boy, we are moving really quickly. We're on Item C, Discussion on potential amendments to the Maui Planning Commission's SMA Area and Shoreline Area Rules regarding requirement for certified shoreline survey.

**C. Discussion on potential amendments to the Maui Planning Commission's Special Management Area and Shoreline Area Rules regarding the requirement of a current certified Shoreline Survey for proposed actions on properties abutting the shoreline where the proposed action does not significantly impact the Special Management Area(SMA) such as interior renovations only, repair and maintenance of existing permitted structures, etc. (W. Spence)**

Mr. Spence: Okay, I've been meeting with Staff on this and I, I apologize we have nothing to provide you today. However, ...(inaudible).. we're going really fast. The way that your SMA Rules read right now is if somebody is just in the special management area no matter how far away they are from the water if they're just, if they pull a building permit and they're, they're on a property that's adjacent to the ocean they need a certified shoreline. I mean, if they're remodeling their kitchen, if they're reroofing the building, something that could have no possible effect on the shoreline and not, you know, you're not increasing any nonconformity or anything of this sort and it puts the, and it in so many cases you have a condominium. There may be a couple hundred units and one person comes in, you know, to do something, change the windows and it triggers that requirement for a certified shoreline. Now and those things you gotta go out and hire the surveyor, you go to DLNR, it's a six-month process, gets noticed and all that stuff. So what we're working on is when are these really going to be required, when should they be required, when they shouldn't. Some of the things we're looking at are, you know, really what's the purpose and intent of 205A, why would a certified shoreline be required? And the things that we're coming up with is really ... assure shoreline access both lateral and I guess whatever perpendicular from the street to the, to the shoreline. Make sure it doesn't affect shoreline processes with the movement of either beach sand or, or whatever. And so, we're looking at those things, we're trying to figure out exactly what language we want to bring to you. And we want to schedule it again for, for two weeks from now we can do that. Questions?

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Is another consideration that this is an, that having the shoreline management certification in place enables the department to catch violators that you would not otherwise catch?

Mr. Spence: I think that's a, that's an incidental part of it. There maybe, you know, there might be some, there might be some benefit in, in finding out that people have, you know, built structures or

whatever without permits. At the same time, you know, I don't – just simply requiring a certified shoreline and the thousands of dollars of expense just to look and see if somebody did something wrong, you know, that's – I don't want to put enforcement on the back of the homeowner, you know, to turn themselves in as such. So there's other ways, a lot of the examples that we discussed with Staff where people had built structures, things that do currently need to be corrected, those were filed as a result of requests for service. You know, people just, you go in and say, hey was this built, structure built with permits and we go out and find out. So I don't wanna just cast broad net looking for people doing things.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Planning Director, I just wondered if you wouldn't mind refreshing me in terms of the types of data that's available for certified shoreline survey? Do we have it on record and how does it appear on record?

Mr. Spence: You're referring to what form does it come in?

Mr. Shibuya: That's right. Or how do we store it? Is it accessible by anybody else? Is it a public document?

Mr. Spence: Yes, it's, it's – when somebody submits a certified shoreline to us, of course, it's submitted first to DLNR. They're public documents at that point and they go into the Environmental Notice, you know, that gets published around the State. Anybody has access to those files at that time. When they submit for an SMA Assessment with us, that certified shoreline becomes a part of the record. So we keep the paper document as a part of the file. At this time we're not scanning them in that may happen in some time in the future so we'll have digital copies but for the moment they're just paper files.

Mr. Shibuya: Yeah, and I agree with you in terms of not putting the owner into additional work to justify their small maintenance type of property efforts here. I would like to see as habit or at least have the owner be able to withdraw this or pull out this data and show it to us and say, yeah, this is all I want to do. The shoreline has not changed except for some erosion and here's a picture of it. This is what it was before when we got it approved and today, this is what it looks like.

Mr. Spence: Yeah.

Mr. Shibuya: Do we have that kind of simplified way of moving ahead? I would be more amenable to that.

Mr. Spence: Well, probably what's going to happen with this and we'll, we'll come back with something for the Commission, we'll come back with something that, you know, will allow some discretion to make the requirements for the requesting that information if we see something that, you know, we really need to look at. But just as, but just as a ...(inaudible)... kind of requirement for, you know, very small project that shouldn't be required.

Mr. Shibuya: Okay, but two weeks is that enough time for you to come up out with a proposal?



Mr. Spence: I think so.

Mr. Shibuya: Okay.

Mr. Spence: I'm making a commitment here.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I also see the, the wisdom of something like this. It seems silly if they're all within the house to require a lot of expense. On the other hand, we have just to keep in mind in economics there's a concept called, "moral hazards," where we wouldn't want, staying within the same footprint, put in a million dollars worth of amenities if they're in danger of the shoreline collapings and there would be additional liability.

Mr. Spence: Correct.

Mr. Mardfin: If it's relatively small scale, not a big deal, but you know, I can see staying within the footprint and, and going all would be something we might want to do depending on where the shoreline is, so just a consideration.

Mr. Spence: Well, certainly as a part of a any application package, you know, we are looking for photographs of the site, we're also looking for a plot plan, not certified, you know, but we need to see okay where's this building located on the property and if it's, if it's too – you know, there's going to be things that are going to trigger, you know, we need to see additional information, and I, you know, I emphasize to my Staff that I trust their professional judgement that, you know, we need to see something more here or we don't need to see something and right now we don't even have that discretion.

Mr. Mardfin: Yeah, I concur with your concern. I mean, you can do this with clear, as one of my colleagues said this morning, clear thinking or straight thinking pays off a lot, you know, let's be reasonable.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I, I need to disclose just for the record that I'm currently involved with a shoreline project for reroofing and that this – am getting a Special Management Assessment so I just want to disclose that I'm dealing with this on a personal level because I'm working with my church on getting the church reroofed and it's on the ocean so this, so this subject has come up.

Chair Hiranaga: No other questions, Commissioners? Commissioner Ball, I thought one of the reasons you brought this issue up was also looking at the actual boundaries of the SMA?

Mr. Ball: ... on the agenda?

Chair Hiranaga: Yeah, is that something that is part of this discussion?

Mr. Spence: I wasn't thinking so much of this as being a part of Item C, but you know, we can certainly discuss it some more. I think last time we came up we were, we were talking about the – when the SMA boundaries were first established, I'm forgetting 70's, pretty much on all the islands they were established makai of the nearest State highway. Now go around the Pali it's right on the water. If you're in, you know, Kihei or you go around to Huelo, you know, in that case, you're like a mile from the water. And so it, it doesn't really have a, a connection to the purposes of 205A and protecting near shore waters, beach access, marine resources, those kinds of things. So what we're gonna, what we've just initiated was looking at this SMA boundaries based on GIS. That we have all these different layers of where the flood inundations are, where the reefs are, where the different beach accesses are and we can pile these things on top of each other and start looking at, okay, where should the boundaries be according to the purposes of the law rather than just saying okay, a logical place might be a roadway. You know, it's a whole big difference.

Mr. Ball: When was that law enacted? When was that law enacted?

Mr. Spence: 205, I have Staff –

Mr. Buika: 78.

Mr. Spence: 1978. Thank you, Jim Buika. So yeah, the shoreline or the SMA boundaries were established initially right around that time and haven't been significantly changed since then.

Mr. Ball: Well, I guess the reason why I asked the year is because Kihei for instance all the way down to Makena really it's, the beach access, the shoreline access, the lateral access is all chopped up now. The intent was not being followed since 1978 so there's something wrong with that, either that law or the interpretation of that law because even in, in the – on the west side there's cases that we all know about where before we used to walk and now there's a wall there who miraculously showed up somehow. Of course, some it is, is caused by the ocean maybe taking away sand that was there and there's rocks or whatever. But I guess the point is that, you know, this law was in effect long before the big developments came up yet, the, the beach access is kind of a joke because there's a little trail there but you gotta walk two miles to get there. It's not really, I'm sure that really wasn't the intent of that. I think the intent was to make sure that you could park there, walk down and not have to bring a wagon to take your stuff down. I mean – but the other side of it is that Piilani is not a good place for that division either because people that are trying to get remodel their kitchen or whatever right below that are away from the ocean, gotta go through all that stuff to get there. So that's where the –

Mr. Spence: Right. And that, and those things adding a lanai or whatever it's not, adding a bedroom onto your house, you know, clear up by Piilani Highway is not going to affect anything having to do with the special management area. So I agree. I am not sure what is supposed to be on the agenda next time but it – how full it is, but it might, I thinking it might be good if we looked at, if we could have a presentation and just look at the – okay, we do know. We have three public hearings. Maybe two meetings from now if, again, I'm not sure. I don't see these as being horribly, the next agenda items, being horribly controversial, but the – we could arrange to have a presentation and start showing the Commission the different layers on the GIS. Yeah, I won't be here this next meeting. So – but we can put it on, you know, we can work with Clayton to get it on

the agenda if you'd like.

Chair Hiranaga: Yeah, we'll leave it up to Staff to decide.

Mr. Spence: Okay.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Just a few things. The current system has the advantage of simplicity and clarity and transparency, everybody sees where it is. But I agree with you, it's functionally, it's, it's kind of strange. One of the things that I'm, I'm sure your planners will work on is elevation should be a concern as well as distance from the ocean and therefore, slope. If we're gonna make changes ultimately, we really need to be very, very careful because if we extend some of the SMAs mauka of the highway there are going to be some people that are, owners that are gonna be very upset. If we move the boundary makai of the highway there are likely to be some community groups that are very upset. So this is gonna, this is a property rights issue and I'm sure James will be well in on the discussions for this sort of thing because there's potential taking here and other kinds of issues.

Mr. Spence: Well, there's a whole procedure in your rules on how to amend the SMA boundaries.

Mr. Mardfin: Okay.

Mr. Spence: So there's a procedure to follow with notice and everything, it's, it's not – we're aren't going to appear one day and change all these boundaries. It's going to be a process.

Mr. Mardfin: Yeah, because I've heard the screams from Hana about having their zoning pushed and you've heard the screams from Hana about pushing their zoning into Interim without notice to them. So we don't wanna, you make a mistake once, fine, but let's not make the mistake twice.

Mr. Spence: Right.

Mr. Mardfin: The other concern I have is that we're still, and I think this is later on too, we're considering a single family dwelling not development here unless it's bigger than 7,500 square feet. I find that a very troubling decision in some cases. Not in every case, but in one case that we all had a lot of discussion about is a single family dwelling and anyway, good luck.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I'm particularly interested in beach accesses. I tried some months ago to get information from the County the recorded beach accesses and it, it seemed woefully incomplete because I knew of some beach access with the County signs or at least beach access signs that were not on this, this map I was given. So I'm interested in, in how many beach accesses there are and where they are and I'd like to see them some place where they're documented accurately.

Mr. Spence: There is a list available on line. It's a little hard to find but it is there. It gives TMKs,

it – I didn't see any associated maps, but it is on there.

Ms. Wakida: But it's, it's on the County website?

Mr. Spence: Yes it is. In the Planning Department area. If you email me, I can, I can send you a link.

Ms. Wakida: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: If this were a priority I'll bet Mark King could if he doesn't already have it could, it would be a useful thing to have on one of Mark King's maps. 'Cause that's one of the layers you'd be, wanna be concerned about for SMA definitions.

Mr. Spence: Yes, I already have a note for that, but I'm even thinking maybe that would be a good map to have online by community plan area or something.

Chair Hiranaga: Any other discussion? Seeing none, thank you. Director, moving onto Item D, Acceptance of Action Minutes May 24, June 28, Regular Minutes of February 22<sup>nd</sup> and June 14<sup>th</sup>. Motion to accept. Commissioner Mardfin?

**D. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 24, 2011 and JUNE 28, 2011 MEETINGS AND THE REGULAR MINUTES OF THE FEBRUARY 22, 2011 and JUNE 14, 2011 MEETINGS**

Mr. Mardfin: I'm going to make it a limited motion. I move to accept the Action Minutes of May 24<sup>th</sup> as corrected and I believe today we got a page labeled second correction and now I believe it's accurate and complete.

Chair Hiranaga: So your motion is to?

Mr. Mardfin: To accept the Action Minutes for May 24<sup>th</sup> with the second correction.

Chair Hiranaga: Would you like to include the other?

Mr. Mardfin: I'll do that as a separate motion. This is complex enough.

Chair Hiranaga: Is there a second?

Ms. Wakida: Second.

Chair Hiranaga: Motion to accept the minutes for, corrected minutes for May 24, 2011 moved by Commissioner Mardfin, seconded by Commission Wakida, any discussion? Seeing none, all in favor say, "aye."

Commission Members: Aye.

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

**VOTED: To Accept the Action Minutes of the May 24, 2011 Meeting, as Corrected.  
(Assenting - W. Mardfin, P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball, W. Shibuya)**

Chair Hiranaga: Motion carries. Commissioner Mardfin?

Mr. Mardfin: Now I'll give you the rest of it. I move we accept the Action Minutes of June 28 and the Regular Minutes for February 22 and June 14.

Chair Hiranaga: Is there a second?

Ms. Sablas: Second.

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

Commission Members: Aye.

Chair Hiranaga: Opposed.

**It was moved by Mr. Mardfin, seconded by Ms. Sablas, then**

**VOTED: To Accept the Action Minutes of the June 28, 2011 and the Regular Minutes of the February 22, 2011 and June 14, 2011 Meetings.  
(Assenting - W. Mardfin, L. Sablas, D. Domingo, J. Freitas, I. Lay, K. Ball, W. Shibuya, P. Wakida)**

Chair Hiranaga: Motion carries. Item E, Director's Report.

## **E. DIRECTOR'S REPORT**

### **1. 2011 Legislative Amendments to Chapter 205A, Hawaii Revised Statutes (Hawaii Coastal Zone Management Law) - Law effective July 1, 2011**

Mr. Spence: Did we get, we touched on No. 1 just a little bit, the legislative amendments, did we discuss to HB 217? What the Legislature passed and the Governor signed was a change to 205A to increase the valuation for a, the boundary for, you know, an exempt action versus an SMA Minor which they raised it from \$125,000 to \$500,000. So we're gonna see a lot less projects in that kind of price range smaller projects. So that's a big improvement for the permitting process. It also changed the law to say that any house in the Special Management Area over 7,500 square feet is

a development, end of story. No, more, I mean, we don't see a whole lot of those but, you know, there's apparently they do on Oahu. So it is a development and there's no way you're gonna be able to get that under \$500,000. So pretty much homes that are over that amount we're gonna start seeing SMA Majors for them.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Just as a minor correction for the record. I think it's Bill 117, not 217. Just for the Minutes. And it's I believe it's called now Act 153.

Mr. Spence: Yes.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Yeah, I mean, it's, it's an Act so it's Law. But it does say on Page 10, I believe, "development does not include the following: Construction or reconstruction of a single family residence less than 7,500 square feet of floor area and is not part of a larger development. But I believe there is a place where there is some judgement from that the Director has about if the Director sees that it looks like it might have some implications they can exempt it. Is that my understanding correct?

Mr. Spence: Yes. You can still find that even an exempt action has environmental impacts and require, you know, an SMA Minor or an SMA Major Permit. I think that that's particular to Hana, you know, there was a house proposed and you went through a – down at Koki Beach, you went through a contested case to make the determination whether it was exempt or whether it was development. The Commission found that it was a development and going to require an SMA Major Permit should the applicant go forward with that. So that's a good case where you could find a single family residence or any other exempt action would have a significant environmental impact.

Mr. Mardfin: That normally would be fine, but the Director could, has some discretion.

Mr. Spence: Yes.

Mr. Mardfin: To rule that it does have an impact even if it's a single family dwelling.

Mr. Spence: That's correct.

Mr. Mardfin: May I ask a second question, Mr. Chairman?

Chair Hiranaga: Yes.

Mr. Mardfin: With regard to Paragraph 19 on Page 8, it says, notwithstanding Part 2, contrary to plan, blah, blah, blah, and on the next page, anything under the jurisdiction of the Division of Boating and Ocean Recreation of the Department without the need to obtain a Special Management Area Minor or Special Management Area Use Permit can you tell me what the practical impact of that is for Maui? Are there any such things?

Mr. Spence: I would have to look at the language.

Mr. Mardfin: Well, basically they're saying Division of Boating and Ocean Recreation and I don't know what, is that under DLNR?

Mr. Spence: Yes.

Mr. Mardfin: But they don't need anything from us, they can just do it, and that kind of bothers, I mean, you can't do anything, it's a law, but is there a practical impact on Maui? Are there things that DLNR, Division of Boating and Ocean Recreation are doing that, like building a terminal for the Super Ferry or something like that?

Mr. Spence: I'm going to defer to Deputy Director, Michele McLean.

Mr. Mardfin: I was just thinking about off the top of my head.

Mr. Spence: She's more familiar with some of those projects.

Ms. Michele McLean: Thank you, Mr. Chair. Thank you. DBOR is responsible for the small boat harbors. Something like the Super Ferry would be under the jurisdiction of the Department of Transportation. So something that significant wouldn't fall under DBOR but the Kihei Small Boat Ramp, Maalaea where there are some major improvements going on would fall under, falls under DBOR. Hana Small Boat Ramp, Mala Wharf are all DBOR facilities. If, if the language would exempt them from SMA review that might be just one level of review but any of those actions would trigger environmental review. So there would still have to be an EA or EIS prepared. There are other permitting requirements that would also apply. So it's not as if they wouldn't have any kind of review process but if, if the language as you're reading it indicate that they would not fall under SMA scrutiny that doesn't relieve them of other permitting requirements that would still apply.

Mr. Mardfin: The reason I ask is that they're currently working on that small boat ramp in –

Ms. McLean: Maalaea?

Mr. Mardfin: – in Hana.

Ms. McLean: In Hana.

Mr. Mardfin: And it's major construction. It's a major harm to the local fishermen. They have to go out before, like 6 o'clock and come back after six. And it did go through some scrutiny before the Hana Advisory Committee. And it will be done and hopefully it will only be done once, but under similar circumstances I would hope that there would be an opportunity for community input at least and if not this way, then some other way.

Ms. McLean: The EA or EIS process would, should allow for that.

Mr. Mardfin: Unless DLNR does their own accepting of their EIS.

Ms. McLean: Even if they're the accepting agency they still need to do consultation, it still needs to get circulated for agency review. There's still a community outreach and community participation process.

Mr. Mardfin: Okay, thank you very much. That helps me a lot.

Chair Hiranaga: Thank you. Any other questions? Seeing none, moving onto E-2, 3, and 4.

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

Mr. Spence: The Commissioners have their SMA Minor Report in front of them. I'm not sure if there's any questions regarding that.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I did have one but I left a message with Clayton. Is he, he's on vacation or something?

Mr. Spence: Yeah, Clayton took some leave.

Mr. Mardfin: Okay, so there's, there's I don't need an answer today. But if we're gonna come around to accepting the report I would want to exempt SMX 2011/0276, it's on Page 11 of 11 under the Open. It's on white paper, 11 of 11, it's about five-eighths of the way down.

Mr. Spence: Okay.

Mr. Mardfin: 276, Sue Wong, drill and install a well in Kipahulu. I'm sure it's okay. She's a wonderful neighbor of everybody out there but I just wanted to get a little extra information.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Question about procedure when we accept this document aren't we just accepting the approved items and the rest are left open? What's, what's the approval requisite?

Mr. Spence: You're not making any approvals, you are, I believe your rules say that you are acknowledging receipt of the list. You're not making – the approvals are delegated to the Department. You're just acknowledging that you received this. It sort of gives, part of the reason for that is to give the public notice that, you know, that all these things have been passed. It does start the 10-day time thing so people, you know, we have one appeal that's going to be coming up to the Commission and, you know, that's one this time line has triggered.

Ms. Wakida: But the ones that have been approved are the ones that's stated that's been



approved, right? The rest of them are just open?

Mr. Spence: Correct.

Ms. Wakida: They're still in the works.

Mr. Spence: That's correct.

Ms. Wakida: Okay.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just a quick one since Jim Buika is here. This item SMX 2010/0510, A & B Properties, move sand from front of outlet pipes in Kahului. Jim would you mind just explaining a little bit just briefly. It's not a project description but – it's on Page 6 of 11.

Chair Hiranaga: Go ahead.

Mr. Jim Buika: Chair, Jim Buika, Planning Department. That was a result of the tsunami. Out here in the Kahului Harbor the tsunami actually plugged up a major drainage way that is the, that's the drainage through the industrial area by the Honda area, Honda goes across Hana Highway there and drains much of the – actually there was a huge boulder that got pushed up into the, into a closed culvert that they needed to get in there and remove. That's what that project was all about just to, just clean up the drainage culvert. A & B did come and get the –

Mr. Shibuya: Was it done?

Mr. Buika: Yes, it was done.

Mr. Shibuya: Thank you very much.

Mr. Buika: Thanks

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: I know we talked about this before but I would like to have some brief explanation on these. This is three lot subdivision shoreline Waihee, on Page 4 of 11, SMX 201/506, Page 4 of 11, and it's the LLC, three-lot subdivision shoreline Waihee, Betsill Brothers. I know Livit told me about it, but I was just wondering if, I know it's extensive amount of acreage here involved and so I was just curious because there's I believe one-fourth of one of the lots is conservation. And so I had a little concern on that. The other one I have is three-lot subdivision, family Peahi and this one is on Page 2 of 2, the Approved SMA Exempt projects for Maui, SM5 2011/0226, Robert Roberson John, applicant Jessica ...(inaudible)... I'm just curious about that. I also am curious about there's a 250 kilowatt project and I can't find it but I remember reading about it. I thought that was quite extensive. 250 kilowatts is a huge project. I'm not trying to stop it or anything. I just wanna, I'm just curious. I don't know which one that is. I know I saw it.

Mr. Spence: Out in Haiku?

Mr. Shibuya: Yes.

Mr. Spence: Yep.

Mr. Shibuya: I thought that was quite a generous project.

Chair Hiranaga: Any other discussion? Commissioner Freitas?

Mr. Freitas: I got a question for the Director. How come we have stuff dating back to 2006 on this report here, 2006, 2007, Page 1 of 11. Why aren't these stuff being withdrawn or acted on?

Mr. Spence: I don't know. I know a lot of times and I'm just looking at the nature of the applications. A lot of them after-the-fact dwelling permits, after-the-fact swimming pool, those kinds of things, renovation. I can't really say why. I know for like the Major permits a lot of times we'll ask for information and they have to go do another study or you know, and sometimes it does get caught up, and you know, with neighbors or other issues that need to get resolved, but for minor things like this, I'm not sure why.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Commissioner Freitas and Director. I know there were couple that were in the Hana area I had looked at that were long, long old and I talked to the owner and they were just kind of waiting, they had been asked for a study of some sort or some information and it just drags on and drags on. Sometimes it's the owner that's the property, sometimes it's the Department. They just hang in there.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: On this project that Jim just talked about this outlet that was plugged. It's on the Open SMA Assessment, right? And, but yet, but yet the project's been completed it sounds like. I mean, they did the work they needed to do which I'm glad they did and it plugged up an outlet it needs to be done so why is it still open?

Mr. Buika: Jim Buika. Most likely the project just has been closed out by our administrative staff. I mean, if it was completed as far as approved by the Planning Staff, and it may have not be administratively closed out in our data base. That's what I, that's what I suspect.

Ms. Wakida: Okay, good. Thank you. Yes, I'd hate to see a project that important still sitting around for a year and on the books, yeah.

Mr. Spence: And what Jim is saying is probably true for a number of these things, Commissioner Freitas was asking about, they're probably done and we need to go back in the data base and you know, close them out.

Chair Hiranaga: Any other discussion? Seeing none, moving onto Item E-5a.

**5. Planning Commission Projects/Issues**

**a. Revising the SMA Boundaries**

Chair Hiranaga: I think we touched upon that so if there's no further discussion we can move onto E-6.

**6. Discussion of Future Maui Planning Commission Agendas**

**a. July 26, 2011 meeting agenda items**

Mr. Spence: Okay, we did discuss possibly putting on a GIS demonstration for the SMA boundaries and I don't – whenever the Commission would like to schedule that. I'll be gone next meeting but we could do the GIS presentation and we could also have something for your rules.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Just administration, I notice around the room here some of the Commissioners have this copy of the Fire Department for Lahaina. I don't have that and some do. Is there a reason?

Unidentified Speaker: Either you're a disk guy or a paper guy?

Mr. Shibuya: I'm a disk guy.

Unidentified Speaker: Right...(inaudible)...

Mr. Shibuya: Oh. Oh, okay. If it's a disk then that's why.

Mr. Spence: For July 26, we have three public hearings. The first is Mr. Jeffrey Murray our Fire Chief requesting a County Special Use Permit and SMA Permit for Lahaina Fire Station Apparatus Bay. It's up by the community center. The second one is Easter Seals requesting an SMA Permit. They're renovating and expand existing building formerly used as a preschool. That's in Kahului. And then No. 3, is Todd and Debra Preseault requesting a Land Use Commission Special Use Permit and Conditional Permit to have offices in the Old Morihara Store up in Waiakoa. I guess disclosure is everything, they are former clients of mine, but that's not why I'll be gone. That's why I know how to pronounce their last name. And with the Director's Report, A & B Kane, LLC is going to be requesting a two-year time extension on an SMA Permit for a mixed use project in Kahului.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I'm really looking forward to having the presentation on the SMA boundaries, however, I would like to allow enough time for the presenters to have all the information that they need like beach accesses and all that sort of thing, so – because I think that's really important that

if they can be as complete as possible?

Mr. Spence: So maybe not this next time but schedule it a time when there's a little bit more room for discussion? Okay.

Chair Hiranaga: Any other discussion? If not, the next meeting is scheduled for July 26, 2011, and if there's no objection, this meeting is adjourned.

**F. NEXT REGULAR MEETING DATE: JULY 26, 2011**

**G. ADJOURNMENT**

The meeting was adjourned at 10:04 a.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Keone Ball  
Donna Domingo  
Jack Freitas  
Kent Hiranaga, Chairperson  
Ivan Lay  
Ward Mardfin  
Lori Sablas  
Warren Shibuya, Vice Chairperson  
Penny Wakida

**Others**

William Spence, Planning Department  
Michele McLean, Planning Department  
James Giroux, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works