

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 13, 2012**

Approved 6/12/12

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:00 a.m., Tuesday, March 13, 2012, 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: ...at this time, I'll open the floor to public testimony. Is there anyone here that wishes to provide testimony on any agenda item? We have two individuals signed up. You may testify now or when the particular item comes up. John Hiroshima.

The following individual testified at the beginning of the meeting:

John Hiroshima - Item B-3, Janice Tanaka Tower, SUP2

His testimony can be found under the item on which he testified on.

Mr. Hiranaga: Next individual is Ray Bane.

Mr. Bane: I'll wait.

Chair Hiranaga: Thank you. Anyone else wishes to provide public testimony at this time, please come forward? Seeing none, public testimony is now closed. Moving onto Agenda Item B-1, Communications. Deputy Director?

Ms. McLean: Thank you, Chair. There are four Communication items on the agenda this morning. The first one is a request from the Grand Wailea Resort Hotel and Spa requesting a County Special Accessory Use Approval to provide laundry services for guest rooms that they manage at the adjacent Hoolei Resort. The Staff Planner is Joe Prutch.

B. COMMUNICATIONS

- 1. GRAND WAILEA RESORT HOTEL & SPA requesting a County Special Accessory Use Approval to provide laundry service for guest rooms managed by the Grand Resort Hotel & Spa at the adjacent Hoolei Resort on approximately 36.6 acres of land in the State Urban District at TMK: 2-1-008: 109, Wailea, Island of Maui. (J. Prutch)**

Mr. Joe Prutch: Good morning, Commissioners. Yes, I have the Grand Wailea Accessory Use Permit to present to you today. The applicant, Mich Hirano with Munekiyo and Hiraga is also here to present more of a description of the property, show some photos, giving more of the details of it. What I wanna do is I wanna share with you the, the Code. The Grand Wailea has obviously been in operation since 1991. They obviously do all their own laundry for their own, their own hotel units. Across the street on a separate TMK is the Hoolei Resort which includes 60 townhouses that

are managed by the Grand Wailea. It also includes another 11 units that are owned by Exclusive Resorts Club Management but also managed by Grand Wailea. So essentially there's 71 units across the street that are managed by Grand Wailea and these units get to use the facilities at the Grand Wailea, the pool, restaurants, whatever they wanna use, also they get laundry service from the Grand Wailea. Well, in the Code, the hotel itself, of course, can have its own laundry facility but the hotel itself is not permitted to do laundry for the property across the street or off site. However, of course, with the, with the Code for 19.14.020 it allows, let me just read it to you, it allows accessory uses which are other accessory business or service establishment which supply commodities or perform services primarily for the hotel guests. However, these uses shall be approved by the Commission which is why we're here, of course, today.

Staff is looking at it as if the Grand Wailea does, obviously their hotel, their laundry services for their units. They're also doing laundry services for their units they manage across the street on a separate TMK. However, they need their Accessory Use Permit through you guys to be able to do so. I have a recommendation, but I think I'll save that till later. I'd like to get the applicant up here to give you a presentation on the laundry facilities, the location, and the description of the project if that's okay? Mich?

Mr. Mich Hirano: Thank you, Joe, and good morning, Chair Hiranaga and Commissioners. My name is Mich Hirano with Munekiyo and Hiraga and our firm is assisting the Grand Wailea Resort with their Special Use or their Special Accessory Use Permit application before you this morning. We prepared some slides that we would like to just share with you and provide some additional information on the application. The first slide is an overview aerial photo of the service area. There are two properties involved and as Joe had mentioned, the Special Accessory Use application involves the laundry services which are located, which are located at the Grand Wailea Resort. This is the Grand Wailea Resort and as you know, this is Wailea, Wailea Ike Drive and Wailea Alanui. So the Grand Wailea Resort has 780 rooms and they have their laundry service facility in the Molokini wing at this particular point. They provide, and they manage 71 guest rooms at the Hoolei Resort which is adjacent across the street from the Grand Wailea, and the guests from the Hoolei Resort through agreements are guests for all the facilities and amenities provided at the Grand Wailea Resort, and the guests walk back and forth to the Grand Wailea or are shuttled back and forth to the Grand Wailea to access the resort.

The guests at the Grand Wailea and Hoolei are treated as guests of the Grand Wailea Resort with all the amenities and privileges of the guests at the Grand Wailea. There's no real difference between how they're treated. And to give some background to the Commission, in 2007, when the Hoolei at Grand Wailea was opened there were rental agreements that were entered into that provided access to the Grand Wailea services and part of the reason is that the Hoolei Resort is an independent resort. They wanted to affiliate themselves with, you know, established resort and hotel operation to help with their management and rental. They also have more access to amenities and privileges through the Grand Wailea, so they entered into these management agreements. And they've been operating since 2007.

In 2011, a representative of the laundry companies approached the Grand Wailea and claimed that the laundry services provided to the guests of the certain Hoolei units were not in compliance with the Maui County Code as Joe had mentioned in terms of the specific provisions of the use permits

and requirements and standards of the Hotel District. So immediately to address this situation, the Grand Wailea--this was in July and then in August, we submitted on behalf of the Grand Wailea an application relating to the Special Accessory Use Permit that you're reviewing this morning. So that provides a bit of the background to the permit application. And the request is to seek approval for the Special Accessory Use Permit for its laundry facilities which are provided to guest rooms at the adjacent Hoolei Resort which are managed by the Grand Wailea. There are 120 units at the Hoolei Resort, 71 of those are managed by the Grand Wailea, and those are the 71 units that are being provided with room service, laundry service and the amenities to the Grand Wailea. The other remaining units at Hoolei, they manage and they do their own housekeeping and deal with their own requirements.

In terms of the summary as I mentioned, since the Grand Wailea opened in 1991, laundry services have been a part of the housekeeping and guest service amenities and operations of the resort. Hoolei started this rental program around 2007 and has a 120 units and 71 of those units are managed by the Grand Wailea under the rental management agreements. The rental management agreements include common reservation and booking services, Grand Wailea Kulana Club membership, pool access and pool activities, spa and resort privileges and laundry services which are provided to their guests at no charge.

In terms of the operations, the Grand Wailea staff remove and transport and return laundered linens for guests in the service area. This laundry service for the Hoolei is batched and cleaned along with the Grand Wailea's laundry and so they share common bedding and robes and whatever goes into those units. So they're commingled so four bed sheets that come out of the Grand--come out of Hoolei, they're laundered with the Grand Wailea's laundry, those same four bed sheets may not go back to that, to that unit, they just commingle, they just share the common linen. The Grand Wailea's laundry service workload is approximately, you know, 92 percent is Grand Wailea's that are on the Grand Wailea property and about 8 percent of the laundry load is attributed to the Hoolei units.

This is a, just a picture of the laundry facilities at the Grand Wailea. They are really state of the art and up to date. They're energy efficient and water conservation efficient. They're--it's a very professional service that's provided. There are 34 employees that are employed in the laundry, sort of, facility unit and as you can see, you know, they batch all the laundry and they're going through a series of washers and dryers and come out with the ironing of the linen and the shirts. And the laundry service washes all the linen in the guest rooms. Of course, all the banquet rooms and even the employee uniforms are laundered at the laundry facility.

The justification for the accessory use. The rental management agreement allows those properties to share the facilities. Their guests are treated as one and the same. And the laundry services are included at no charge to, you know, to the guests. The rental management agreement establishes just to combine amenities and services of both guests at the Grand Wailea Resort and the Hoolei and all these services are provided for the benefit, use, and convenience of those guests.

The Maui County Code under the Hotel District which both properties are zoned Hotel, they have the accessory use provision that other accessory businesses or service establishments which supply commodities or perform services primarily for the hotel guests are permitted as a accessory

uses. And these uses shall be approved by the Commission. And further in Chapter 19.14 under Section 020.I, there are certainly restrictions for the Accessory Use Permits. There are three exceptions, restrictions on those permits. The hotel buildings must contain more than 20 rooms and as such, accessory uses shall be operated only as adjunct to and as part of the main building and no other. Personal services and businesses shall be operated primarily as a service to and for the convenience of tenants and occupants. And in this particular case, it's --they're all--all the services are provided to the tenants. There are no--you can't come off the street and get your clothes laundered or anything. It's only for the guests. And then this other provision really, which really isn't applicable but it's there that the lot area in excess of 20,000 square feet, doors and entrances to shops and businesses may be allowed to open to the public street. But as we've shown the laundry operations are within the hotel, within the Molokini wing.

So in conclusion, the laundry services are provided to the guests at the Hoolei which are covered by the rental management agreement. The laundry services only part of the guest amenity package. The others are concierge service, the pools access, spa and the laundry facilities meet the operations and requirements of the Accessory Use Permit in the Hotel District as requirement under the Maui County Code. In closing, I'd just like to ask the managing director of the Grand Wailea just to speak a bit on how important these services are to those guests. Thank you.

Mr. Matt Bailey: Aloha, Mr. Chairman, Commissioners. I'm Matt Bailey. I'm the managing director at Grand Wailea. I have been such since August of 2007. When we first established the relationship with Hoolei, we identified Hoolei as a product that the hotel did not previously have. Larger units that appeal to families who had previously been guests to the hotel but had outgrown hotel rooms. It was key when we established Hoolei that it would operate just as the hotel does providing all of the services that are provided to our guests, front desk services, concierge services, use of the pool, the spa, the other amenities, and importantly housekeeping which includes laundry. We've been very, very pleased with the, with the relationship with Hoolei. We feel it's a very important adjunct to the hotel and it's even more because, because part of our competitive advantage is providing the same services we provide in the hotel, laundry is very key which is why we request this, this Accessory Use Permit. May I answer any questions for anyone?

Chair Hiranaga: Not at this time. You're part of the applicant's presentation.

Mr. Mardfin: I have one quick one.

Chair Hiranaga: You can ask him later. He's part of the applicant's presentation.

Mr. Hirano: Thank you, Chair Hiranaga. So as you know, members of the Grand Wailea management are here and they can answer any questions you may have.

Chair Hiranaga: Thank you. At this time, I will open the floor to public testimony regarding this agenda item. Is there anyone here that wishes to provide testimony at this time? Seeing none, public testimony is now closed. We'll have the--do you have any additional comments you wish to make besides your recommendation?

Mr. Prutch: Just the recommendation.

Chair Hiranaga: Okay, well hold off on that. We'll open the floor to questions from Commissioners. Commissioner Mardfin?

Mr. Mardfin: I've got a couple of questions. And I'm not sure who's--know the best, but the laundry you're doing are the towels, the robes, the bed linens, but you're not doing their personal shirts and socks and pants or are you?

Mr. Hirano: Those--that's part of the service, you know, if they require it. It's not a large part though.

Mr. Mardfin: My second question is, on the most smallest possibility that we should deny this, what would the alternative be? They'd have to do their--create their own laundry facility or send it out to some commercial service, is that pretty much it?

Mr. Bailey: Were you to deny this request, a couple of things would happen. Yes, we would have to avail ourselves of one of the commercial facilities that filed this initial issue. And it would probably result in a reduction in staff at the hotel because we do employ a number of people and Hoolei provides a fair amount of volume in the total laundry load.

Mr. Mardfin: Thank you.

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

Mr. Lay: I have a question. Director Dave Taylor made a recommendation that with the linens that they give this card, this conversation card--not conversation--conservation card which will--if they want to wash their towels or not they can.

Mr. Hirano: Yes.

Mr. Lay: Is this currently being used at the Hoolei or is this only with with the Hyatt right now because the example that we're given is it's a pilot with the Grand Wailea.

Mr. Bailey: We do use a conservation card at the hotel. At Hoolei, we only do a midweek change of linen. So we actually have a conservation program built into the operations at Hoolei automatically. We don't do it every day unless there is a request.

Mr. Lay: Okay, thank you.

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

Mr. Ball: So this practice is currently ongoing, right?

Mr. Hirano: Yes, it is.

Mr. Ball: So we don't expect an increase in water usage then?

Mr. Hirano: No.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: This is for Joe. This didn't strike me as rocket science exactly, no offense my rocket scientist isn't with me today, but why is this valid for only three years? It says, standard condition shall be valid until March 31, 2015. Why isn't 10 years or 20 years or something?

Mr. Prutch: It could be more, of course. And you can choose to do so. Usually with--for us usually with permits for the first time, we just traditionally give them one, two or three years. It's kind of the norm to let things play out, see how they go and then we can bring it back. If there's no complaints, no problems, no issues with it which this one seems like there wouldn't be, then we can extend it for maybe ten years at the second time. So it's just, it's just kind of protocol. We give 'em a few years first, see how it goes and then if everything goes well, we can give 'em more.

Mr. Mardfin: How long have they been doing this already?

Mr. Prutch: Since 2007.

Mr. Mardfin: Five years already?

Mr. Prutch: Yes.

Mr. Mardfin: And no complaints?

Mr. Prutch: Not that I know of. Well, one complaint.

Mr. Ball: Except for the one that brought --

Mr. Prutch: Yes.

Mr. Mardfin: I'm sorry?

Mr. Prutch: The reason it's here is because the Laundry Association made a complaint that they weren't in compliance with the Code. That they were doing linens--that the Hoolei units were--linens were being washed by the Grand Wailea and that's an outside property and that doesn't meet the Code. So they've come in to get their permit for that because of that reason.

Mr. Mardfin: Okay.

Mr. Prutch: The competition.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: What is the agreement with Hoolei as far as time frame? Going kinda along Ward's line of making this thing--

Mr. Prutch: Oh, how long is the agreement?

Chair Hiranaga: The management contract.

Mr. Bailey: The management contracts are one year in duration but they automatically renew. So I would say the vast majority of the units in the program have been in the program since 2007 or when they received a Certificate of Occupancy upon completion.

Mr. Ball: But there's no renegotiation then?

Mr. Bailey: They automatically renew. They have the ability to terminate the agreement.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Is there a possibility that you may obtain more units in the future from Hoolei?

Mr. Bailey: There's a possibility, the units -- let me qualify that. There are a 120 total units in Hoolei. I would say, probably 10 are owner-occupied or never rent. The balance either rent on their own or through other agencies. So the total number of units that would ever rent, it's pretty fixed whether they rent through us or rent through another operator. Generally, those other operators are using the, the laundry equipment in the, the rental units themselves which is far less efficient than our commercial equipment. So more units will actually reduce overall utility consumption.

Ms. Wakida: Thank you.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, we're ready for the staff recommendation.

Mr. Prutch: Thank you, Chair. Department of Planning finds that this outside laundry service does provide a service that is a compatible use in the Hotel District and performs a service primarily for guests of the Grand Wailea including those Hoolei units managed by the Grand Wailea, and thus recommends approval for the County Special Use--Accessory Use Permit subject to the six conditions as stated in the report with five of them being standard, one of them being specific and the reason for the specific condition is simply because the Code says that the accessory service shall supply commodities or perform services primarily for the hotel guest. That word "primarily" we figured meant at least 50 percent for the Grand Wailea, up to 50 percent could be for the Hoolei. Although, after writing this condition and looking at the numbers they had up there, if they washed all the laundry at the Hoolei units, it looks like they wouldn't even up to 50 percent of the number of rooms that the Grand Wailea has. So it doesn't look like this condition will ever be necessary, but it was included in there just because of that reason for the primarily guest services for the Grand Wailea, so I put that in there. That's our recommendation. If there's any questions I could answer.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Would you like to recommend a longer time period?

Mr. Freitas: Amendment.

Mr. Prutch: Yeah, I think through an amendment process by you guys for sure.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I move the adoption of the report and approve --

Chair Hiranaga: I haven't opened the floor to a motion yet. We're still having questions for staff.

Mr. Mardfin: Sorry.

Chair Hiranaga: No problem. Any other questions for the--regarding the recommendation? Seeing none, I'll open the floor to a motion. Commissioner Mardfin?

Mr. Mardfin: I move we adopt the report of the Planning Department and approve the County Special Accessory Use Permit.

Mr. Freitas: Second.

Chair Hiranaga: Discussion? Commissioner Mardfin?

Mr. Mardfin: I move to amend the Standard Condition 1 from March 31, 2015 to March 31, 2022.

Mr. Freitas: Second.

Mr. Mardfin: Ten years.

Chair Hiranaga: Discussion on the amendment? Commissioner Mardfin?

Mr. Mardfin: I have made this motion and I raised the question initially because they've been doing it. It's not posed a problem. It strikes me as extremely inefficient to require them to do it in some other fashion. I think this saves water and manpower and helps us. And I don't see waiting the future Commission's time three years from now to do an extension.

Chair Hiranaga: Any other discussion? Seeing none, if the -- yes, Joe?

Mr. Prutch: If I may? Can I add to what Mr. Mardfin just said? That the Condition No. 1 although it was for only two, three years, it does also have the provision that the Planning Director--that the Planning Director may approve the extension provided there's no changes to the original permit. So it does, you may not see it again if everything goes well, and then we get another extension, there's been no problems, no issues, no complaints then the Planning Director could extend it as

well. But ten years definitely seems like a good idea to me.

Chair Hiranaga: Any other discussion? If not, I'll have the Deputy Director restate the amendment?

Ms. McLean: Thank you, Chair. The motion, as amended us to approve the granting of --

Chair Hiranaga: Actually, we're just voting on the amendment.

Ms. McLean: The amendment is for the time extension to be for a ten-year duration.

Chair Hiranaga: All in favor so indicate by raising your hand.

Ms. McLean: Seven ayes, Mr. Chair.

Chair Hiranaga: Opposed. None. Motion carries or amendment carries.

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

**VOTED: To Amend Condition No. 1 that the Time Extension be for a Period of Ten (10) Years.
(Assenting - W. Mardfin, J. Freitas, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida)
(Excused - W. Shibuya)**

Chair Hiranaga: So any further discussion on the main motion? Seeing none, if the Deputy Director will restate the main motion?

Ms. McLean: The main motion as amended is to approve the granting of the Accessory Use Permit subject to the six conditions listed in the staff report and for a duration of ten years.

Chair Hiranaga: Call for the vote. All in favor please indicate by raising your hand.

Ms. McLean: Seven ayes.

Chair Hiranaga: Opposed? Motion carries.

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

**VOTED: To Approve the County Special Accessory Use Approval, as Recommended with the Amendment to Condition 1 for a Time Period of Ten (10) Years.
(Assenting - W. Mardfin, J. Freitas, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida)
(Excused - W. Shibuya)**

Chair Hiranaga: Thank you.

Mr. Prutch: Thank you.

Mr. Bailey: Thank you very much.

Mr. Hirano: Thank you very much, Commission.

Chair Hiranaga: Commissioners, where are you guys going? We're not in recess. Moving on, Communication Item B-2. Deputy Director?

Ms. McLean: Thank you, Chair. This is a request by Dan Martin and Amy Wisthoff Martin requesting a time extension for their State Land Use Commission Special Use Permit to continue operation of the Hoolio House Bed and Breakfast in the State Ag District in Launiupoko. Kurt Wollenhaupt is the Staff Planner.

2. DAN MARTIN and AMY WISTHOFF-MARTIN requesting a time extension on their State Land Use Commission Special Use Permit until March 31, 2017 in order to continue to operate the Hoolio House Bed and Breakfast in the State Agricultural District at 138 Awaiku Street, TMK: 4-7-009: 058, Launiupoko, Lahaina, Island of Maui. (SUP2 2003/0003) (K. Wollenhaupt)

Mr. Kurt Wollenhaupt: Good morning, Members of the Maui Planning Commission. My presentation will be somewhat short today since the Planning Director and I both seem to have the same vocal issues. This is a request for a time extension for a State Land Use Commission Special Use Permit for the operation of the Hoolio House Bed and Breakfast. It's located in the subdivision in West Maui known as Launiupoko. This was approved back on December--on November 10, 2008. Just to give you some background this is one of the initial bed and breakfasts that was approved. However, it began under the Conditional Permit process. So when you look at the potential recommendations, the wording of the recommendation is going to follow our current procedure. However, we are looking to day consideration of an extension for a Special Land Use Commission as this property is on deed on Agricultural land. The purpose of this meeting therefore, is to review their agricultural progress and then to make a recommendation based on that. On the assumption that the SUP2 would be confirmed for approval and extension, the Director then could increase the years of approval for the B&B to coincide with the SUP2.

The property was issued a farm plan approval in 2003, and there's a photographic montage that was given that indicates what's currently out there now. Consequently the farm plan was approved and implemented per the guidelines of the Zoning and Enforcement Division. I believe that the applicant has a short presentation, then will update the Commission on what's happened over the previous couple of years, and they're gonna give that at this time.

Mr. Jay Wisthoff: Morning Commissioners, Commission.

Chair Hiranaga: Morning.

Mr. Wisthoff: My name is Jay Wisthoff. I'm one of the owners of Hoolio House. The permit is in the name of my daughter and son-in-law, Amy Wisthoff-Martin and Dan Martin. My responsibilities

in the company are handling all the administrative, legal and tax matters which is why I'm here doing the presentation today. This is my daughter, Amy. We'll just give a really quick presentation and just kinda let you see what we have going here. Hoolio House is a six-bedroom, six-bath Bali inspired home and we provide luxury accommodations in a peaceful rural atmosphere. It's a niche market in Maui that we don't feel is, is adequately filled by the resort hotels.

We're family owned and operated and this being spring break week, everybody in the family is here today. Amy and Dan are the full-time owners and hosts. They live on site and the B&B Permit is in their name. And my wife and I initially lived in the B&B for the first couple of years and now have a home just outside the 500-foot radius. We are dedicated to providing our guests with the unique Maui experience minimizing our impact on our neighborhood and our island, growing pesticide-free fruits and vegetables and providing community support to Maui. The next page is just a listing of some of the recognition we've received in travel magazines and by travel organizations. One of the ones we're most proud of is in 2006, we were designated as one of the top ten winter destinations in the world by Fodor's travel organization and we've been a Fodor's Choice every year in recent time.

Community support, we've donated over \$200,000 to charitable organizations including the Pacific Whale Foundation of which we are one of the top five all-time donors for that organization, the Maui YMCA and other local organizations. We felt it very important from the very first day we opened up to limit our environmental impact on the island realizing that we are on an island with limited resources. We have recycle bins in every guestroom and we also do use the conservation cards and allow guests to choose whether or not they want their linens cleaned every day. We do onsite composting, pest control is nontoxic and organic, pesticide-free orchard. About four or five years ago, we started providing logo'd reusable water bottles for all the guests that check in and eliminated the use of plastic water bottles. So we don't have any plastic water bottles to recycle any longer. And just last year, we installed a new 33kwh photo voltaic solararray and it provides 90--about 80 to 90 percent of our power right now and we're hoping to move that number up to a 100 percent through some energy conservation efforts in the next couple of years.

Agricultural use. We are currently producing bananas, star fruit, grapefruit, naval oranges, mandarin oranges, mango, mulberries, lemon, lime and avocado and Eureka limes. We use the fruit daily in our breakfast that we provide to the guests and we have bananas coming in pretty regularly at this point and so just have hands of bananas out on the table with breakfast. For the last couple months, we've had quite a few grapefruits coming in and so we've had pitchers of fresh squeezed grapefruit juice in the morning for the guests. And then in the last, starting in December, the Launiupoko started a farmers market down at the bottom of the hill and so we go down there periodically and sell our excess fruit at the marketplace. We do all our--we do composting on site. All the organic waste that's produced by preparing the breakfast goes into the organic compost tumbler and then we use that compost around the property for our fruit trees and other plants. Around the house, not only in the orchard area, but around the house, we grow papaya, tropical flowers and native plants. And we feel like we're offering a form of agri tourism leads to a greater appreciation of Maui on the part of the guests. They are always asking us the names of plants and how they grow and things like that. And then finally in our agricultural use, we have an area designated down at the bottom where we propagate coconut palms and plumeria trees that we either sell or use around the property or in the neighborhood. So that's the extent of our

presentation. You wanna ask questions now?

Chair Hiranaga: No, we'll defer questions till later. Thank you. At this time, is there anyone here that wishes to provide public testimony regarding this agenda item, please come forward. Seeing none, Commissioners, the floor is open to questions to the applicant. Commissioner Mardfin?

Mr. Mardfin: This is for the applicant. This is not a --is this a sole proprietorship?

Mr. Wisthoff: No, it's Subchapter S Corporation and we are the only four shareholders.

Mr. Mardfin: Is Subchapter S a corporation?

Mr. Wisthoff: Yes, it's a corporation and the difference is instead of paying corporate taxes, any income or loss flows through to our personal returns and it's recorded there.

Mr. Mardfin: Thank you very much, oh one more thing.

Mr. Wisthoff: Yes.

Mr. Mardfin: Maybe this is for Kurt. This isn't a hearing item is it? Your public hearing.

Mr. Wollenhaupt: There's no notification, no.

Mr. Mardfin: No notification to neighbors?

Mr. Wollenhaupt: That is correct.

Mr. Mardfin: Thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: This is for Kurt also. In the Zoning Code it says that agricultural operations are to produce \$35,000 of gross sales of ag products for each of the proceeding two years. How is this applied to this particular project?

Mr. Wollenhaupt: Well, when we're looking at the bed and breakfast there's a acreage coordination on the aforementioned discussion that you just indicated and that has to do with if the lot is greater than five acres. That's a part of the process by which the homeowners has -- wants a bed and breakfast and their lot is greater than five acres, then they need to show that they had 35,000 in receivables for the previous two years. If their lot is smaller than five acres then they, then they don't have to meet that requirement. So that doesn't apply to this particular one. In fact, I don't believe we've ever had a B&B that's come in on this over five acres issue. So, that would apply if we do get one of those in the future.

Ms. Wakida: Okay, good. Thanks.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: This is either for Kurt or for our esteemed Corp. Counsel. Under the B&B Ordinance, what does it say about ownership? Doesn't it say it has to be a--well, I don't know.

Mr. Wollenhaupt: The critical point on that is that the permit has to be in a real person's name in which case this is in the Martin name. The type of ownership of the property could be in a limited liability family entity it's my understanding.

Mr. Hopper: Yeah, I don't know about that offhand. You're being asked to approve a State Special Use Permit at this point as I understand it. Is not the Bed and Breakfast Permit an administratively approved permit at this point or is the Commission being asked to approve the permit? It's an administratively approved permit, correct?

Mr. Wollenhaupt: It is. This is only looking at the State Special Land Use Commission.

Mr. Hopper: Yeah, the Commission needs to act on the State Special Use Permit. The Bed and Breakfast Permit is something that the Planning Director will be looking at approving for a duration based on the action the Commission takes on the State Special Use Permit. Is that correct?

Mr. Wollenhaupt: That's right. The Director will approve or disapprove the Bed and Breakfast Permit upon consideration of today's Special Land Use Commission Permit.

Mr. Hopper: Yeah, perhaps the Director could comment on, on that issue, but I don't think--I think some Bed and Breakfast Permits are approved by the Commission, but this is not one that was subject to that criteria, correct? They met the criteria that requires Commission approval, right?

Mr. Wollenhaupt: Yes. This, this--and again, it's the holding of the permit for the Bed and Breakfast which is in a real person's name which ...

Mr. Hopper: Yeah, the ownership question could be a question for, for the Director 'cause or you who have reviewed that application, but at this point, the Commission is looking at approving the State Special Use Permit which itself doesn't have any ownership requirements that ...

Mr. Wollenhaupt: No, and it's also held in a real person's name. So they do meet the requirements. They were approved--...(inaudible)... they were approved for the B&B and the SUP in the past and so --

Chair Hiranaga: Okay, let me interject here. What Corporation Counsel is saying is we have a Special Use Permit extension request before us. The B&B Permit will be administered by the Director upon a decision by this Commission. It is the Director's responsibility to make sure prior to extending the B&B permit that it meets all the requirements of the ordinance. So we should not be discussing the B&B permit. We should be discussing the Special Use Permit extension request. Deputy Director you wanted to say something?

Ms. McLean: Thank you, Chair. I was gonna summarize just like you did. Regardless, the answer to your question is that the B&B has to be in the name of an actual person, not an entity and in this case it is in the name of the two applicants.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I just wanted to correct one thing Kurt had said. We did not approve it as a B&B. We approved it as a TVR, I believe.

Mr. Wisthoff: ...(inaudible)...

Mr. Wollenhaupt: No --

Chair Hiranaga: Please do not speak from the audience. If you wish to speak you can come up to the podium.

Mr. Wollenhaupt: Okay, we can start at the beginning and do a chronology. This was originally applied for it's my understanding as a Conditional Permit. Then it came to this body and on -- at the regular meeting on November 10, 2008, the Maui Planning Commission reviewed the application for a State Special Use Permit and they recommended approval, and it would be valid until the expiration of the Conditional Permit. And then what happened was that the Bed and Breakfast Law was enacted. After the time that the Bed and Breakfast Law was enacted then they were able to go through the notification process for their B&B under the new law. The new law enabled the applicant to send out notices 500 feet. Were they to have objections then they would be required to come to this body. However, there were no objections so the Department was able to approve the Bed and Breakfast, as a Bed and Breakfast not as a TVR, not as a Conditional Permit, but this body had approved the Special Land Use Commission too, which then is the notification and then that gave the Director the ability to approve the B&B administratively as the SUP2 had already been approved. So today, we're looking at the SUP2 renewal and then if you were to renew it, then the Bed and Breakfast could be reviewed by the Director for his approval depending on their conditions. So that's the correct chronology.

Mr. Mardfin: Thank you.

Mr. Wollenhaupt: Sure.

Chair Hiranaga: Any further questions from the Commissioners? Seeing none --

Mr. Ball: I have a question, I guess.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: There's a letter of opposition dated March 5th. Who assume, you know, it was a number of allegations against this property. I don't see any rebuttal if you will.

Chair Hiranaga: There is a response letter.

Mr. Ball: Is there?

Chair Hiranaga: It was handed out this morning.

Mr. Ball: Oh, so that's why.

Mr. Wollenhaupt: The applicant furnished a lengthy response letter to each of the issues and was placed on your desk and I believe would have been emailed if the emails were correct.

Mr. Ball: Nice to let us know that these things are sitting on our desk, if you're busy making our --

Chair Hiranaga: Staff, so was the Department able to determine if the author of this letter holds property within the 500-foot radius or within the Launiupoko Subdivision?

Mr. Wollenhaupt: There's no evidence that the owner--that the letter writing opposition to the Special Use Permit has a real land interest within 500 feet or within the Launiupoko region. So no, we can find no evidence of that ownership.

Chair Hiranaga: How 'bout on Maui?

Mr. Wollenhaupt: There's no admittance that they own land on Maui either.

Chair Hiranaga: Any other questions, Commissioners? Seeing none, I'll have the Department's recommendation.

Mr. Wollenhaupt: The Department recommends that the Commission approve the Land Use Commission Special Use Permit subject to a valid date until March 31, 2017 with the six conditions as noted in the recommendation report. By way of disclosure on this, there was one condition on the original SUP2 that prohibited commercial weddings. We have taken this out because commercial weddings are already prohibited. So a condition was added to prohibit something that was already prohibited and in our recommendation we took that out. The applicant is fully aware no weddings are to occur. Were they to wish to have a wedding then they would have to come back to this body for another SUP2. So the recommendation is simply following the form and the letter of past recommendations and that's our recommendation noted in six conditions.

Chair Hiranaga: Actually, I have another question. You mentioned that the farm plan was approved, but prior to this meeting did someone from the Department go to the project site to confirm that the farm plan has been implemented?

Mr. Wollenhaupt: I was out there and took the photographs on the--the one page photograph, it's on your ..(inaudible).. This sheet. And these photographs were taken on March 7, March 7, just last week and they do correlate with the lower orchard with PV installation was on the farm plan. They also have their adjacent tree orchard, I believe it was mangos. They have the raised planting beds in the central part and then on the upper orchard, they have banana and range of different kinds

of fruits. So proof I was out there, they do have--you have some fruit. So, the name of this...

Mr. Wisthoff: Eureka Lime.

Mr. Wollenhaupt: It's a Eureka Lime. It's kinda a mixture between a lemon and a lime.

Chair Hiranaga: So the answer to my question is yes?

Mr. Wollenhaupt: Yes.

Chair Hiranaga: Okay, thank you. Any other questions, Commissioners? Commissioner Ball?

Mr. Ball: I have a question, maybe not necessarily for this, but when we prohibit weddings that was inclusive of receptions also? We consider those the same, one and the same? Or is a wedding different from a reception?

Mr. Wollenhaupt: I think the Planning Director will answer that question.

Ms. McLean: Yeah, we consider that to be inclusive, yeah. 'Cause the ceremony is relatively small and simple. The reception can be the larger event with greater impacts.

Chair Hiranaga: I'm not sure if I agree with that. Because wedding don't you need a license and some documentation whereas a reception, if someone wants to have a wedding reception be it commercial not commercial be pretty hard to enforce unless they're operating as a commercial reception area then they probably need another permit because they're not in the proper zoning.

Ms. McLean: The reception, it typically is a commercial event as well because it's catered, the equipment, the chairs and tents and all that is, it is a commercial venture.

Chair Hiranaga: Food for thought. Commissioner Mardfin?

Mr. Mardfin: Kurt, I understand your reasoning on not wanting to put in a condition that is already conditioned in it. However, I had received some phone calls and complaints about weddings on this property prior to him coming in. They said they didn't know about that they weren't allowed to do them at the time. There was a lot of concern. This hasn't gone out --the surrounding area haven't been notified so there's no real chance for somebody to come, although this one person did, no real chance for somebody that's opposed to weddings to come in. Does it do any harm to leave that particular condition in aside from being perhaps redundant?

Mr. Wollenhaupt: It would not. It would be in my opinion that it doesn't do any harm since it's a, it's a prohibited activity. The condition was that no commercial weddings shall be allowed on the property.

Mr. Mardfin: That was because I asked that it be put in that way.

Mr. Wollenhaupt: It's my understanding that's true in looking at the minutes. So, I see, I see no

harm in leaving it in. Well, actually in making a recommendation to add it in should that be the wish of the Commission.

Mr. Mardfin: Okay, thank you very much.

Mr. Wollenhaupt: And I'm not sure--don't sense any disagreement with that.

Chair Hiranaga: Does the applicant wish to comment?

Mr. Wisthoff: Well, obviously we're not doing weddings or receptions and we haven't been for the last three years. But when we met last time, Commissioner Mardfin indicated that he had a single complaint from somebody, now it's many complaints. Our property is very secluded and the weddings we held, we had very strict limitations. We never had more than 25 people total on the property and no amplified music, nothing after dark. We had a lot of restrictions and I just can't--I've talked to all of our neighbors. They don't know--they weren't even aware that we were having weddings because they can't see anything from their property or hear anything. So I'm not sure why, why this is an issue. But you know, we've struggled like all other small businesses over the last few years and that is something we'd considered as a possibility and we would like to be able to consider it in the future, so ... I mean, consider getting a permit. Obviously, we're not gonna just start doing weddings. But we would like to have the option of having that available to us in the future.

Chair Hiranaga: Any other questions, Commissioners? Seeing none--we've already had the staff recommendation, correct.

Mr. Wollenhaupt: We have, yes.

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

Mr. Mardfin: I'll give you one, you might not like it.

Chair Hiranaga: Oh, test me.

Mr. Mardfin: I move we recommend approval of the Land Use Commission Special Permit with only if -- with the addition of a, the deleted wedding prohibition, prohibition.

Mr. Freitas: Second.

Mr. Mardfin: The line being that no commercial weddings shall be allowed on the property.

Chair Hiranaga: The recommended deletion of a current condition.

Mr. Mardfin: It's the addition of a current --

Chair Hiranaga: Well, it is a condition now, it's being recommended to be deleted and you're saying not to delete it.

Mr. Mardfin: Not to delete it. That's correct.

Chair Hiranaga: And so seconded by Commissioner Freitas. And Corporation Counsel wishes to comment.

Mr. Hopper: Just to clarify, you said recommend approval. I believe the Commission does finally approve the State Special Use Permit.

Mr. Mardfin: Approve it--I'll correct my motion, to approve it but with the continuing prohibition on weddings explicitly stated.

Chair Hiranaga: Discussion?

Mr. Ball: Weren't we just told that it was, it's already prohibited?

Mr. Wollenhaupt: Just by way of history, the State Special Land Use Commission approved by this body on December--on November 10, 2008, Condition 16 says that no commercial weddings shall be allowed on the property. That currently is enforceable under--you are now looking at a renewal of the Special Land Use Commission and that is currently in force. Mr. Mardfin is requesting that that condition remain and be now known as Condition No.7 on the new permit that would then indicate, 7 indicates that no commercial weddings shall be allowed on the property.

Mr. Ball: 'Cause otherwise it goes away?

Mr. Wollenhaupt: Otherwise the recommendation is it would go away, yes.

Chair Hiranaga: But you said under the Ag Ordinance, it is weddings are a prohibited activity without a --

Mr. Wollenhaupt: Without an Special Land Use Commission Permit.

Chair Hiranaga: Additional permit or a State Land Use Permit?

Mr. Wollenhaupt: Probably both. They'd have to come back to this body in order to be permitted to hold the wedding on an Agricultural land. Then they would have to have a Conditional Permit through the approval of the County Council in order to hold that weddings. So that would be a two-prong process.

Chair Hiranaga: Any other further discussion? Commissioner Wakida?

Ms. Wakida: The way I see Commissioner Mardfin's amendment is that leaving this in provides some clear history on the wishes of the Commission. Whereas not having it in doesn't leave any footprint one way or another on what previous Commissions felt.

Chair Hiranaga: Any further discussion? Commissioner Ball?

Mr. Ball: Just for clarification. But the act is still illegal as far as the Ag zoning is concerned regardless whether we put this in or not, right?

Mr. Wollenhaupt: Yes.

Chair Hiranaga: Any further discussion? My comment is the specific prohibition against weddings would preclude the applicant from pursuing a SUP and possibly a Conditional Permit. And the concern I have there is unless you're gonna make this a standard condition on all SUPs, on all Ag zoned property for B&Bs we shouldn't be singling out one particular applicant. I think it needs to be applied across the board in a uniform and fair manner. So, if the Commission continues to extend this particular condition, I hope that they will be applying this same condition to all applicants that come with a property in Ag zoned land. Because it is, it is an illegal activity unless they obtain a SUP and possibly a CUP. And you know, CUP requires Council approval. So it's not something that's gonna be easily obtainable. And if there's no further discussion, I'll have the Deputy Director restate the motion.

Ms. McLean: Thank you, Chair. The motion is to approve the time extension request as detailed in the staff recommendation and including the prior condition that no commercial weddings would be allowed on the property.

Mr. Ball: Aren't you gonna vote on the amendment first?

Chair Hiranaga: It was one motion. There was no amendment.

Mr. Freitas: No, one motion.

Chair Hiranaga: All in favor, raise--so indicate by raising your hand.

Ms. McLean: Five ayes.

Chair Hiranaga: Opposed? One opposed and one abstention?

Mr. Ball: I voted for it.

Ms. McLean: You did? Six ayes, Mr. Chair.

Chair Hiranaga: The motion carries.

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

VOTED: To Approve the Time Extension of the State Land Use Commission Special Use Permit as Recommended, and Continue to Include the Condition to Prohibit Commercial Weddings of the Original Approval. (Assenting - W. Mardfin, J. Freitas, L. Sablas, I. Lay, K. Ball, P. Wakida) (Dissenting - D. Domingo) (Excused - W. Shibuya)

Chair Hiranaga: Okay, I guess we're ready for a recess. We'll take a ten-minute break.

A recess was called at 10:03 a.m., and the meeting was reconvened at 10:13 a.m.

Chair Hiranaga: B-3, Deputy Director.

Ms. McLean: Thank you, Chair. This is a request by Janice Tanaka Tower for a 10-year time extension on a State Special Use Permit to continue operation of the Star Lookout vacation rental on Thompson Road in Kula. Joe Prutch is the Staff Planner.

3. MS. JANICE TANAKA TOWER requesting a 10-year time extension on the State Land Use Commission Special Use Permit to continue operation of the Star Lookout, a three (3) bedroom transient vacation rental located in the State Agricultural District at 622 Thompson Road, TMK: 2-2-001: 054, Kula, Island of Maui. (SUP2 2002/0007) (J. Prutch)

Mr. Joe Prutch: Sorry, about that. Good morning again, everybody. What we have now is a time extension request for a State Land Use Commission Special Use Permit. ...(inaudible)... we just saw, this is one is for operation of the Star Lookout. We had one person testify in support of this at the beginning of the meeting today. This one has a State Land Use Commission Permit that was approved by you guys back in May of 2008. With a two-year time period at the time. There's also a Conditional Permit which approved by Council a year later on April 4th, my birthday, 2009, with a two-year time period to expire on April 4, 2011. The applicant made their timely request for extension for the SUP and the Conditional Permit. The SUP is before you today, the Conditional Permit can be approved administratively by the Director pending approval of the Special Use Permit. Essentially, if you guys give the Special Use Permit, five years, ten years, whatever you do, we'll give it the same thing for the Conditional Permit.

The applicant's TVR is located at 622 Thompson Road in Keokea. It's about a one and a half acre property with a main farm dwelling and 530-square foot accessory farm dwelling. The farm dwelling is used for the guests and the onsite managers live in the main dwelling, that's Ray and Barbara Bane, who have lived there for quite some time. And then Janice Tower is the applicant/owner of the property. She lives in Alaska although she's here today to respond.

I'd like to first go into a few revisions that the Department is making on the Special Use Permit. The obvious one is the first condition for the time. We're requesting that we give it a time of five years similar to what the B&Bs get a five-year time extension. And we're also requesting that it, that Condition No. 1 not only increasing the time which is why we're here, but also amending that condition to be more consistent with what we have today on these. We always have the same condition now to allow the Planning Director to approve any future extensions pending no changes to the use or no complaints about the use so that the Director can extend it and not have to bring it back to the Commission.

The other two conditions I would like to have deleted, one of them is Condition No. 9. This is a condition put on by the Commission a few years ago to have the applicant pursue preservation of their 100-year plus farm dwelling to see if it can be nominated on the Hawaii Register of Historic

Places. The reason I ask for this to be deleted is because the applicant did pursue this. They did what they could to try to get it preserved, to try to pursue getting it on the nomination or getting it nominated to the register. They received a notification from our Long Range Planning Division from Stanley Solamillo that said that the property was no eligible for listing and there was also a letter from SHPD which reiterated the same thing. So their property can't--their house cannot be listed so therefore we're asking that this condition be removed. They did try, but it wasn't possible.

And then Condition No. 13, I want deleted is because that's the condition asking them to install a wastewater system in compliance with EPA. They used to be on cesspool. Between then and now, they've upgraded and installed a septic system, they've got that approved back in, I think it was 2010. So anyways, we've got a letter from them saying that thing's been approved and I'd like to go ahead and remove that condition.

Now the applicant on this one did request, she's --her letter requested a ten-year time extension for the following reasons. They're saying they've got no opposition from the neighbors or landowners ever from the times they've been operating. They've got overwhelming support from the Keokea community members which was shown in the SUP approval the first time around. And that there's also precedent for a ten-year time period in that the neighboring property owner, a lady named, Oprah Winfrey recently obtained a ten-year time period for her TVR up there on her property. The Department is proposing five years because five years is what we do with B&Bs. That's kind of our standard for B&Bs, however, this is a TVR, it's not a B&B. So it's open for debate or discussion by you guys, but the applicant is asking for ten years. And the applicant, Janice Tower, I know would like to come up and say a few words. So if I can, I'll go ahead and bring her up now. And then Ray Bane is in the audience as well. He lives on the property. So if there's any questions for him, he's available here to talk as well. Janice?

Ms. Janice Tanaka Tower: Good morning. My name is Janice Tanaka Tower and I'm here to request a ten-year extension on our State Special Use Permit. I brought with me this morning, my mother, Rose Tanaka. She's very interested in this process 'cause she also enjoys spending time with us at the Star Lookout. As Joe pointed out and others did before me, Mr. Hiroshima, we have been long-term owners of this property on Thompson Road. We purchased the property in 2000, and with the intent on, on holding onto it for a very long time for our retirement and for our children. We've always intended to do this and also to maintain the property in its original character that people on Thompson Road have been enjoying for many years. I don't know if you've been up there, but a lot of people in the community enjoy walking Thompson Road for its views, peace and tranquility. And we are very interested in maintaining the Star Lookout in that, in that tradition as well. We did apply for a permit in the year 2002 because it was the right thing to do. I understand there's a lot of people reluctant to come forward and go through the process, but we really felt that, again, it's the right thing to do, it's the law and, and we should go through the process. Our patience paid off, seven years later when we got our Special Use Permit and our Conditional Permit and again, legally to be able to operate as a transient vacation rental.

Well, we immediately set about trying to satisfy the conditions of the original permit and, and Joe described some of those in his introduction. Happy to report that we've, we've made it through that process and feel very good about having done that. So the Special Use Permit being valid for two years, pretty much took us two years to satisfy the conditions and I'm very pleased to come and say

that, that's been taken care of. So now, we still plan to be there for a very long time. Still operate the place in the character that it has been operated in for many, many years. And we hope that we have demonstrated that we have integrity and plan to continue to honor the property as it, as it always been and be a viable and valuable member of the community. So that is what why I'm asking for a ten-year extension.

The property itself is 1.43 acres, so it's very small in relation to the ranch land that surrounds us. We do our best to grow wonderful tasty treats for our guests and ourselves. We have lemons and limes and papayas, mandarins, oranges, a nice vegetable garden that Ray and Barbara Bane maintain, and a very prolific herb garden. So we do enjoy living off the fruits and vegetables that we manage to grow. Again, it's a very small piece of property, but we have a lot of fun growing things up there. So in short, we do our best to integrate with the community. We are very involved. We, we support local non profits by offering a free night's stay to be auctioned off at their, at their various benefits. We often have coffee hours, come on in during holidays and anybody is welcome. All the runners and walkers and bikers on the road like to come in and have coffee and pastries with us. It's just a little matter of aloha that we like to do in our community. So we hope you support our request for a ten-year extension and I'm very happy to answer questions.

Chair Hiranaga: Thank you. We're gonna reserve questions till later.

Ms. Tanaka Tower: Thank you.

Chair Hiranaga: At this time, I'll open the floor to public testimony. We have two individuals signed up at this time. First individual is Ray Bane.

Mr. Ray Bane: Aloha Council Members, Commission Members.

Chair Hiranaga: Please identify yourself?

Mr. Bane: I'm Ray Bane. I live at 622 Thompson Road which is Starr Lookout. My wife and I have been the caretakers for the property there since the Towers purchased the land. I've lived on the island for some time. I'm a retired park ranger, school teacher, bunch of different things over the years. We do our very best to work closely with our neighbors. We make sure that they're aware of any changes that take place. Any concerns that may come up. We, we--at the time we applied, the Towers did I should say, at the time the Towers applied for the Conditional Permits, we asked the people who walk Thompson Road, all the neighbors, anybody that had any, you know, anything to say about it to speak out. And as a matter of fact, we had a petition of support which has a total of 120 names of people who live in the general area. Everybody on Thompson Road at that time, there have been changes since then, but everybody on Thompson Road at that time signed that petition of support.

Whenever we have guests, all of our guests are informed of the need to make sure that we maintain respect for our neighbors. They're told of all the restrictions on how the place should be cared for and how we, you know, standards that we set. My wife and I are there 24/7 and except, you know, on normal circumstances of just going downtown or whatever, but we try to make sure that any concern whatsoever is dealt with immediately. Just as a general point of information, the people

of Kula, the Kula Community Association canvassed the residents in the general area up there as to their concerns in regard to vacation rentals. The great majority supported it, the use of vacation rentals with somebody there, somebody on wherever it was, somebody who would actually be on property to deal with whatever concerns may come up. That's been the way we have operated over the years. And as Janice has said, we're trying very hard to make sure that we abide by any, any kind of conditions that are placed on the permit and also just to maintain a sense of aloha with our neighbors.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you. Next individual is Paul Meyer.

Mr. Paul Meyer: Thank you, Mr. Chairman, Commissioners, Staff, Deputies. I'm a resident of Upcountry.

Chair Hiranaga: Please identify yourself?

Mr. Meyer: Paul Meyer, resident of Upcountry.

Chair Hiranaga: Thank you.

Mr. Meyer: I have known Steve and Janice and their family, their kids for many years and Ray and Barbara Bane for many years. My wife and I walk and ride our bicycles on Thompson Road. We've gotten to become good friends with them. Like to share my observations and thoughts. Hope they'll be beneficial to you. I'll be brief. First of all, I'd like to say, I'd like to suggest that we support your considering extending their permit for ten years instead of five, and secondly we feel that providing discretion to the Director for renewal is a good idea as well. It would save a lot of time and effort in the future. The reasons, these people do it right. They do it the right way. They do it correctly. They do it carefully. They've been in the business for many years. And the historical nature of the operation is, is well-established. They've got the community support. What you may not know is I can share with you personally is that Janice and Steve Tower are absolutely the best. They're hardworking people. They spend a couple of months a year here on Maui, and they operate this property with the highest standards. Similarly, their caretakers, Ray and Barbara Bane are just the best. They're careful, considerate, thoughtful and really take care of their neighbors. That being said, I think they've proven over the many years that they could be trusted and that they justify a renewal of ten years. That's all I have to say.

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

Mr. Meyer: Thank you.

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

Mr. John Hiroshima: Good morning. My name is John Hiroshima. I'm a farmer in Kula and I'm here to support the ten--request for a ten-year extension for the Special Use Permit for Janice Tanaka Tower for Star Lookout on Thompson Road. I, I support this, I support the extension for ten years for several reasons. One, the applicant has always had a great respect for the

procedures and the laws of Maui County. They first applied for their permit in 2002, and they finally got it in 2009. When the County issued a decree ceasing--to cease all TVR operations a number of years ago, they complied completely and promptly. So, they have followed all the rules and regulations. Finally, in 2009, seven years after their initial application, they got a permit for two years.

They have demonstrated integrity throughout the whole process of now ten years since 2002, and I've known the applicant and her family for, for many years and know them to be of sound character. I've also known the resident manager, managers, Ray and Barbara Bane for about 20 years and they've been residents on the property ever since it was purchased in 2000. The, the level of--I'm familiar also with their clientele because I, I spend a lot of time out there and I see them a lot at Grandma's Coffeehouse and Ching Store and Fong Store in Keokea. And these tend to be older people. They're very quiet. And the property in question has one immediate neighbor right next door and that neighbor is very supportive. There's nobody around for half a mile in any direction. Keokea Town is half a mile down in one direction, you know, and then the rest of Thompson Road residents are on the other side, half a mile. So I don't think there's ever been a complaint. They have demonstrated integrity for the whole process and, you know, having waited nine years for their first permit and getting only two, and now they're into the 14-month for their request for an extension. So there's a lot of, lot of waiting and they've been patient and they've done everything the County has asked them to do. So I really do support a ten-year extension because they've been through the process for a very long time. Thank you very much. If you have any questions. I'll be happy to answer any.

Chair Hiranaga: Questions, Commissioners? Seeing none, thank you.

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

Chair Hiranaga: Anyone else wishes to provide testimony at this time regarding this agenda item, please come forward? Seeing none, public testimony is now closed. We'll have the staff recommendation.

Mr. Prutch: Yes, thank you. The Department recommends to the Commission approval of this time extension request for the State Land Use Commission Special Use Permit subject to the following conditions as shown in your report with the amendment to Condition No. 1 for the time and to allow the Director the opportunity to extend future permits and also with the deletion of Condition No. 9 which was to pursue preservation of the old home on the property and Condition No. 13 which was the installation of a wastewater system since those two items have been performed.

Chair Hiranaga: Actually, I skipped a portion here. I'll open the floor to Commissioners with questions to the Staff or applicant? Commissioner Ball?

Mr. Ball: Can you state the time in your recommendation for the record?

Mr. Prutch: Oh, yes, Staff is recommending a five-year time period so that permit would expire March 31, 2017.

Chair Hiranaga: You have a follow up?

Mr. Ball: Yeah, we're talking about ten years and then all of a sudden recommend five?

Mr. Prutch: Well, Staff is, the Department is proposing a five-year time period similar to what we do with B&Bs. However, the applicant and some of the testimony are requesting ten years. So that's up for debate by you guys, if you, if you choose to do the ten years, that's your prerogative.

Mr. Ball: Thanks.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: With that five years, you were saying after five years, it would be under consideration of the Director, right, for an extension after that? His discretion.

Mr. Prutch: If approved as recommended, yes. The Director would have the discretion to approve an extension assuming no changes have been made. The use hasn't been increased. They haven't increased the size of the unit, something like that. There hasn't been any complaints from neighbors or maybe some police records, anything like that. Then the Director can take it and say there's been no changes, there's been no complaints, I can extend this another five years. If there is something, the Director has the discretion to bring it back to you guys and do it the way we're doing it now.

Mr. Lay: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Joe, when you were going through your recommendations, isn't there also a slight change in Condition 6, to make it consistent with Condition 1?

Mr. Prutch: Yes, yes, I'm sorry. I forgot about that one, yeah. The change to Condition No. 6, just say that the compliance report shall be reviewed --well, right now, it says a compliance report shall be reviewed and approved by the Department prior to establishment of the use. Well, obviously the use has been established. So now it's just clarifying that the compliance report shall be submitted to the Department along with the request for a time extension. So at the next time extension we review their compliance report and do the same thing like we did this time.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Joe, two years ago, we did two things. We needed a Special State Land-- State Land Use Commission Special Use Permit and we needed a Conditional Permit. This time you're only asking for the SUP?

Mr. Prutch: We're asking for your extension of the SUP because that's, that's your purview. The Conditional Permit in the old days, the Conditional Permit would have gone to the Council for extensions. Now under the new Council--the new rules for Conditional Permits, the Conditional

Permit under certain criteria is allowed to be extended by the Director. And the one thing I know that they had to do was to submit a notice of application extension to the neighbors and if there was any complaints or any opposition whatsoever, I think it was just if there's one, I don't recall, but then it would get bumped up to the Planning Commission for approval of the use, the extension. However, in this case because they didn't get any complaints from that asking for, for if there's any opposition, the Director has the authority to approve--extend the approval of the Conditional Permit. So once again, similar to what you guys just did with the B&B, you guys do the Special Use Permit, extend that, that's your purview, and then the Director would, would go ahead and extend the Conditional Permit and just use the same time period as you, as you did for the Special Use Permit.

Mr. Mardfin: Let me follow up on that.

Mr. Prutch: So that is somewhat new 'cause in the old days, yes you guys used to review and we would ask you to approve the Special Use Permit extension and recommend approval of the extension to the Council for the Conditional Permit.

Mr. Mardfin: And even though on our agenda this is not a public hearing, there was public notification of the neighbors because of this extra wrinkle?

Mr. Prutch: For the Conditional Permits, yes. I can't remember, do you recall? Do they submit it to the 500-foot list or just to the adjacent neighbors, I don't recall, but it is--the notice of the Conditional Permit request to extend is sent out to the neighbors for I think a 45-day review period and then in that time if we get opposition then my understanding is, we submit it to you for your approval. If we don't get any opposition then the Director has the prerogative to go ahead and extend the Conditional Permit on behalf of the Council.

Mr. Mardfin: So that hasn't yet happened?

Mr. Prutch: No, the Conditional Permit sitting, waiting for the Special Use Permit. We can't extend the Conditional Permit if you guys aren't gonna extend the Special Use Permit.

Mr. Mardfin: Okay, got it. Thank you.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: On those similar lines, you've talked about if the Director wants to approve. What if the Director denies the applicant? What's the applicant's recourse to? I guess, what my point is it could either benefit the applicant to have it go directly to the Director or it could be to their detriment and who the Director?

Mr. Prutch: Well, yeah --

Chair Hiranaga: I think Corporation Counsel wishes to say something at this point.

Mr. Prutch: Yeah, I can't speak on that. Okay.

Mr. Hopper: Well, the approval section says if the application for time extension does not qualify for review and approval by the Planning Director, the application for time extension shall be processed in the same manner as the original application. So I think they would basically have the ability to go directly to Council and ask them is what it sounds like. Otherwise, that would be an appealable decision to the Board of Variances and Appeals. But I think what's it's saying is if, if they don't meet this criteria for a time extension and only certain ones meet that criteria. Then they would have the ability to have it processed regularly. I believe that's what the Council did, and of course, that was the Council's decision to allow the Planning Director to extend Conditional Permits. So it wasn't as if that was something they weren't aware of. They did make that decision to tell the Director, hey, you can extend under these circumstances, otherwise, it's gotta come back to us.

Mr. Prutch: Thank you.

Mr. Ball: I got another question.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: On 13 with the EPA Rules. Is that system now, is that compliant with EPA Rules, the conversion?

Mr. Prutch: Well, my understanding is that they installed a new system, a septic system, not a cesspool and that it was--well, the engineering letter did state that it's certified as approved. I don't know how to determine if it's EPA approved or not. I'm not sure if maybe the applicant has something to say about that. I just have a letter from the Department of Health saying it has been certified and that it's approved for use and it's a septic system not a cesspool. So I can't speak to that. If it's up to EPA standards I would assume so nowadays if its gotta be a septic system, but I'm not sure.

Chair Hiranaga: You're Joe, the Planner not Joe, the plumber?

Mr. Prutch: Yes, that's for sure. Yeah, sorry I don't know. I don't know the answer to that.

Chair Hiranaga: I have a question. My recollection, I believe I was on the Commission when this came before the Commission was the--this is zoned Ag is that correct?

Mr. Prutch: Yes. Yes, it's all Ag.

Chair Hiranaga: And my recollection and it may be incorrect was that, was there a 50 percent requirement for a farm plan?

Mr. Prutch: Yes, there is and they've got, I can't remember the number, but they had at least the 50 percent in Ag use, either in--they had a lot of fruit trees, they had a little bit of a garden, they had chickens and now they've extended that and added the herb garden since then. So whatever they had back then they still have at least that plus a little bit more with the herb garden.

Chair Hiranaga: So your representation to the Commission is that they meet the 50 percent Ag

use?

Mr. Prutch: Yeah, yeah because they did so back when they got the Special Use Permit. They would had to in order to be able to. We would have needed the farm plan in order to be able to approve the Special Use Permit.

Chair Hiranaga: My recollection at that time was they did not meet the 50 percent usage, but if you're saying they do now, then that's irrelevant, but that was I believe one of my concerns. I didn't review the minutes.

Mr. Prutch: I don't recall, I'm sorry.

Chair Hiranaga: Yeah, yeah, okay. My other question or concern is the request for a ten-year extension because there's a pending TVR ordinance before the Council and if it's adopted, is it the Planning Department's position that as these TVR Conditional Permits come up that they should come into the fold and just obtain a TVR Permit assuming the Council passes that ordinance?

Mr. Prutch: Well, assuming the Council passes the --

Chair Hiranaga: Wouldn't you wanna phase these out and just say --

Mr. Prutch: I would think, I would think some of them probably will be phased. I don't know if all of them have to. I don't, I haven't -- I'm not that familiar with the STR Bill to know if they're gonna require phasing out the TVRs and requiring them to become STRs. I don't know if--and they may have the option of continuing on with the Conditional Permit. I'm not sure at this point until STR passes that bill or until Council passes the STR bill.

Chair Hiranaga: So that would be one concern I guess I have about a ten-year extension is, a five-year extension would then give the opportunity if the STR Ordinance is passed that they come into the fold and apply under that particular ordinance.

Mr. Prutch: Yes, and they could. I'm assuming depending what the legislation is for the STR Bill, but I'm assuming there's gonna be the opportunity for the TVRs, existing TVRs to transfer to an STR Permit. I would assume that will be the case, and if they choose to do so, I'm sure they could easily do that and we would have to process this at the time. And if they don't choose to do that, they wanna continue on their Conditional Permit then they'll just continue on doing the things they've been doing.

Chair Hiranaga: From a cost of government perspective, I would think the STR is being proposed in a way to help the reduce the cost of government by--because the costs to process a CUP is probably greater than something being processed under the proposed STR?

Mr. Prutch: Hopefully. I don't know yet, but hopefully.

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

Mr. Mardfin: This is actually for our Chairman, and possibly Commissioner Domingo. I looked back at the minutes and you too, I made the motion to approve the Conditional Permit, but both of you voted in opposition. I was wondering--I don't recall what the grounds were. You've expressed what your grounds might of been.

Chair Hiranaga: Ground, a ground, not all of them. But you looked at the minutes?

Mr. Mardfin: I didn't get the minutes. All I have is the action minutes.

Chair Hiranaga: Oh I see. No, I think my concerns are satisfied except I've expressed my current concern.

Mr. Mardfin: And your concern?

Ms. Domingo: I'm fine.

Chair Hiranaga: Actually you should not be asking questions of Commissioners, but we'll let it go for you.

Mr. Mardfin: I was just hoping that if people wanted to express themselves it might trigger their memory.

Chair Hiranaga: Any other questions, Commissioners for the applicant or Department? Seeing none, I'll open the floor to a motion. No, Commissioner Mardfin?

Mr. Mardfin: I move we accept the Department's recommendation for the time extension request of the Land Use Commission Permit subject to the conditions as in the report.

Chair Hiranaga: Is there a second?

Ms. Wakida: Second.

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

Mr. Mardfin: I'd liked to move an amendment that this turn from a five-year extension to a ten-year extension.

Chair Hiranaga: Is there a second? Seeing none, the amendment--the motion for the amendment fails. Any other discussion? Commissioner Mardfin?

Mr. Mardfin: I'd just like to say that I would have been very strongly in favor of a ten-year, even that's not the motion. I'd have been very much in favor of a ten-year because they really did do the right things. They shut down when they applied originally. They seem to be really good, you know, sort of the ideals of what we want in these sorts of things. However, I do take the Chairman's position that if there's a bill before Council maybe five years is, is fine because hopefully it will turn into a fairly automatic five-year extension. So I can live with this.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I'd just like to commend the applicant on a couple of things. First of all, your community outreach where you have your pastries and coffee get together I like that. I also like the fact that you have a retired forest ranger, you know, taking care of the area in such a pristine area, you have somebody who's knowledgeable of this kind of care taking. I like that.

Chair Hiranaga: Any other discussion? Seeing none, I'll call for the vote. Deputy Director if you could restate the motion?

Ms. McLean: The motion is to approve the time extension as detailed in the staff recommendation for a period of five years.

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

Ms. McLean: It's seven ayes.

Chair Hiranaga: Opposed? None. Motion carries.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit Time Extension for Five (5) Years, as Recommended.
(Assenting - W. Mardfin, P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball)
(Excused - W. Shibuya)**

Mr. Prutch: Thank you.

Chair Hiranaga: Communication B-4. Deputy Director?

Ms. McLean: Thank you, Chair. This is a further update on the status of the mediation and written settlement agreement between the parties on the Grand Wailea's SMA Permit application for a 310-room addition. You received prior updates at the last two meetings. Ann Cua is the Staff Planner.

4. **Further update on the status of the mediation and written settlement agreement between the parties on the Grand Wailea 310-Room Addition Special Management Area Use Permit application: (prior updates provided at the February 14, 2012 and February 28, 2012 meetings.):**
 - a. **MR. ISAAC HALL, attorney for SHAWN HORWITZ, TERRI ZAGER, CRAIG ZAGER, TIM CONNER, KENNETH HAWKINS, ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, JEFFREY MANDELBAUM, NINA S. YOSHPE, ANDRE MAGNINOT, R. TYLER WHANN, DEBORAH CROSS, and MURRAY**

JAFINE with respect to ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE submitting a Petition to Intervene dated September 8, 2009 on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua) (Public hearing on SMA Use Permit was conducted on September 22, 2009.)

The intervention request was granted at the November 23, 2010 Maui Planning Commission meeting and Glenn Kosaka was selected as the Mediator.

- b. MS. DANA NAONE HALL, Intervenor Pro Se submitting a Petition to Intervene on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua) (Public hearing on SMA Use Permit was conducted on September 22, 2009.)**

The intervention request was granted at the November 23, 2010 Maui Planning Commission meeting and Glenn Kosaka was selected as the Mediator.

Ms. Ann Cua: Still morning. Good morning, Chair, Members of the Commission. You've received status updates at your February 14 and February 28 meetings and the request to the Department was to kinda keep this on the agenda. So you know, we could kinda see where they're at. The parties are both here to kinda update you on where they are at in terms of the settlement agreement which you've been told they've actually reached a settlement agreement for some time now and they've just--they're just going through the final details. We advised you at the last meeting that once the settlement agreement is signed by both parties and received by the Department, this

matter would be brought back to the Commission for action. And we're assuming that there's going to be some minor changes to the project based on the settlement agreement and those would be presented to you to allow you to make your decision. So with that, I would like to probably have the parties come and advise you and me as to where they're at with regard to--how close they're at to getting that signed agreement to the Planning Department.

Chair Hiranaga: I guess for the record, the mediator is not present?

Ms. Cua: No. From the last meeting, we didn't have--need to have the mediator here. They're done with mediation. What was explained to you at the last meeting by or the meeting before by the mediator was that he did conduct the mediation session. It continued to the next day. They did settle, and he had given the parties time to--amount of time to get the settlement agreement to him and he reported to you that as of February 14th when he stood before you, he still did not have the signed settlement agreement and even though he understood the parties were close. So we felt there was no need for him to be at the 14th meeting because, you know, obviously we'd have to pay him to come here. And really, it was with the parties at that point just trying to get the agreement signed. And so, we also did not feel, I mean, he hasn't been involved really since the mediation was concluded. So there's really no need for him to be here. It's pretty much the parties who have been talking and need to let all of us know where they're at and how close they are at to getting the Planning Department that signed agreement.

Chair Hiranaga: All right, thank you. At this time we'll have the applicant come forward and provide any comments they wish to make?

Mr. Jay Hanlon: Thank you, Commissioners. Jay Hanlon for Pyramid Project Development--Project Management, I'm sorry, the developer. As of my conversation with Mr. Hall last night, we were what I would call inches from the goal line. I think this morning he's been on the phone with some of his clients on the mainland, so frankly he's probably in a, in a better position to tell you whether we're still inches from or at the goal line. But we are that close. I will say, there's two different settlement agreements and some of the stuff we're dealing with particularly in one of them relates to native Hawaiian burial issues and the regs and those sorts of things are quite complicated. So what may look from the outside like, you know, okay, it's been another two weeks, what's going on? I can tell you that Mr. Hall and I have really both worked very hard and very diligently together to get this done and we are, I say, you know, that close to done and he can probably give a, a more up to the second update about just how close that is.

Chair Hiranaga: All right, thank you. The intervenor's representative please come forward.

Mr. Isaac Hall: Good morning, Commissioners. My name is Isaac Hall. I represent the Hoolei intervenors and intervenor Dana Naone Hall on the settlement agreements. I wanna thank Pyramid's representatives particularly Ed Riley for participating personally and by telephone in helping us resolve some of the issues that we had that even though we felt we reached an agreement during the mediation process with Mr. Kosaka, there were still some substantial issues that we needed to talk over and he made himself available and that helped us get over those. And we are still inches from the goal line, but I mean, inches. We have settlement agreements that are drafted and I would say there are two or three sentences in each of those settlement agreements

that we're still working on, but they're not--we should be able to get through them in the next couple of days, then we need to get the exhibits. We need to get them signed and then we'll be done. But from my perspective, we're dealing with the coastal zone management area that needs to be protected and we've got one chance to do it right from the intervenor's perspective and I wanna make sure we do do it right and I'm sure we can do it in the next couple of days.

Chair Hiranaga: Thank you.

Mr. Hall: Thank you.

Chair Hiranaga: At this time, according to the agenda, an action may be taken regarding deadlines for the submittal of written settlement agreements or some other action may be taken. Based upon what's been represented by the applicant and the intervenor to the Commission I really don't see a need for it unless there's some type of opposition that the board not take any type of action to establish a deadline. Commissioner Mardfin?

Mr. Mardfin: Would it be appropriate to ask them to come back in two weeks and give a update report? If they're inches that they might be there.

Chair Hiranaga: Well, I guess my concern is, you know, if they have a settlement agreement prior to our next meeting, we really don't need them here to tell us that because these individuals work on the clock. It cost money for them to show up here. It costs somebody money to show up here. So, I can--I feel comfortable with the representations made to the Commission that they are inches away. So in two weeks, I have a pretty good feeling that we won't be told it's still up in the air.

Mr. Mardfin: Could I ask our planner what her judgement would be on that?

Ms. Cua: Well, I think the goal of this Commission if I recall back when they granted the intervention, and you know, sent the parties off asking them to please try and expedite was that, you know, this Commission would be the one finally, you know, if they were able to settle, being able to act on the permit. Where we stand right now, you have one meeting left on March--Carolyn, what is it, March...

Ms. Takayama-Corden: March 27th.

Ms. Cua: March 27th. Deadlines for that meeting for me and for the Department is--if it was going on that meeting which is last meeting for Commissioners Ward and Sablas, I would have had to have gotten my report to Clayton by 6th. It would be reviewed by the Director and Deputy at this point, now as we speak and then I believe I would need to get the signed report to Carolyn by Thursday for mail out on Friday. That's the, the time constraints. I'm willing to do whatever it takes to get that, but I've already missed the 6th deadline, and so I don't know when--I need, this is what I need, I need a signed agreement and I need revised plans of, you know, what has changed. And, what I told the applicant is what I would want to make it easier is the same project description that you were given in your report when we initially came and conducted the public hearing. I'd want them to work off of that. And I'd want them to highlight exactly where the changes are. 'Cause I think that just makes it easier for everybody. It makes it easier for you 'cause you've seen it. It

makes it easier for us. It makes it easier for both the parties to see, okay, this is what it was and based on the settlement agreement, this is what the applicant is now saying because we're not--you know, we're not party to the intervention, but if it's changed the project and now the applicant is representing to all of us that the project has changed in some way, shape or form, I just thought that would be the easiest way to communicate that. So you know, that is something I would be waiting for from the applicant.

Mr. Mardfin: Ms. Cua, my question was, in effect my question was, I probably didn't state it very clearly, two weeks ago you asked us to have them come back here to show progress. I presume that the reason for that was to keep them under some sort of pressure to continue it out, and if you think that that pressure is no longer needed to get them to go those last inch or two, then that's fine and we can wait for the final report. If you think that the pressure of a time deadline of two weeks from now to make sure that they close the gap, maybe not have the written settlement for us, but for them, two weeks for them to say, yeah, we've done it and we'll be on your agenda in a couple of weeks or ...

Ms. Cua: I mean, in light of how this project has evolved, I don't think it's a bad idea to keep it on. I mean, if if we find out that--I mean if for some, by some miracle I get the settlement agreement this afternoon or tomorrow and I'm able to get what I need then maybe what's gonna--maybe what's gonna be posted on the agenda is action on the project. At the very least, it should maybe be just another update.

Mr. Mardfin: Yeah, I'm not--I'm not asking that we get the final settlement agreement.

Ms. Cua: Right.

Mr. Mardfin: I was just asking whether having it on the agenda for two weeks from today to find out the status might be helpful--if you think it would be helpful or not.

Ms. Cua: You're just asking me, which you are, I'd say yeah, I would keep it on.

Chair Hiranaga: Okay, thank you. Commissioner Ball?

Mr. Ball: Maybe to solve the problem of, of both sides if they could just submit something in writing to us on this? They don't have to show up and wait around all that. Say well, we're still working on it, we're now half an inch away instead of an inch, whatever.

Ms. Cua: That's fine. And I'm fine reading something that they give me. What I don't want to have happen, I don't want to be in the position where I'm gonna have to based on what both of them may tell me, come to this microphone and tell you something and then later, you know, be told by one of them, but you didn't actually represent this correctly. So I would have no problems if I have something in writing, especially if that signed by both of them saying, this is what we're okay with you saying, then I have no problems reading it. I just don't wanna represent them 'cause I'm not the one--I'm not having any discussions with them. It's basically between the two attorneys. So that's what my comfort level will be.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Ann, with your concerns about any changes. Can we ask them whether there will be any changes that might affect it at this point?

Ms. Cua: We know that there will be. I mean, I know that there will be. I can't tell you all the changes, but I know that based on the intervention and the scope of the intervention and the mediation, that there, there are gonna be some changes. I don't think they're significant, but you know, I know there are gonna be some changes. And you, of course, can ask the parties, but I think, you know, probably --

Chair Hiranaga: We will.

Ms. Cua: --it's a little premature now until they finally settle.

Chair Hiranaga: So at this time, does the applicant or intervenor wish to comment on this particular issue of setting deadlines for action? Again, the Chair's position would be not to set a deadline.

Mr. Isaac Hall: This is Isaac Hall. I forgot to thank Mr. Hanlon 'cause both he and I have been working almost every day to get this thing done and I wanted to thank him too. I don't --I think we're gonna be able to submit the signed settlement agreement before the next two weeks, so I don't -- I don't think we need more than that. I mean, one way to do it would be just--if they're in, we don't have to come.

Chair Hiranaga: Does the applicant wish to comment?

Mr. Hanlon: I'd agree with that. I think, I think it's almost a certainty that they'll be in before the next two weeks and frankly hopefully this week. So I agree with Mr. Hall, if they're into you, then hopefully that will suffice. And if not, we show up and tell you what's going on.

Chair Hiranaga: Okay, thank you. So I guess if there's -- my understanding of what's been represented at this time is that we'll leave this item on the agenda and that there's no opposition to that. And in the meantime, if we're notified by the parties involved that agreement has been made, then we can remove it or just table it I guess or something.

Ms. Cua: Yeah, Chair, depending on when we're notified, we may not be able to remove it, but I'm just, I'm fine with updating you, you know, if we have a--we do have a settlement and that would take care of it. At least it'd be on the agenda. We can let you know.

Chair Hiranaga: All right, is there any objection? Commissioner Mardfin?

Mr. Mardfin: It's not an objection, it's a comment. I agree with you. I think that's a good way to proceed. It'll be on the agenda. If they've gotten stuff in we won't be able to get the final stuff at that meeting, but we'll get a report from Ann, yes they've met it, we've got the stuff in. If not, we'll expect to hear from them both. Is that what you had intended?

Ms. Cua: Yes.

Mr. Mardfin: I have no objection then.

Chair Hiranaga: Without objection, we'll defer this to the next meeting. Seeing none, thank you. Next agenda item, C. Deputy Director?

Ms. Mclean: Thank you, Chair, that's acceptance of the Action Minutes of the February 28th meeting.

**C. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 28, 2012 MEETING
AND THE REGULAR MINUTES OF THE NOVEMBER 22, 2011 MEETING**

Chair Hiranaga: Motion to accept?

Ms. Wakida: So move.

Chair Hiranaga: By Commissioner Wakida. Seconded by ...

Ms. Domingo: Second.

Chair Hiranaga: Commissioner Domingo. Any discussion? Seeing none, all in favor say, aye.

Commission Members: Aye.

February 28, 2012 Action Minutes

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

**VOTED: To Accept the Action Minutes of the February 28, 2012 Meeting.
(Assenting - P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball,
W. Mardfin)
(Excused - W. Shibuya)**

Chair Hiranaga: Opposed? Motion carries. Next agenda item --

Ms. McLean: If we could just check, Carolyn, we didn't have November 22nd?

Ms. Takayama-Corden: I emailed it out to them.

Ms. McLean: Oh, it was emailed. Mr. Chair, it is posted for you to approve the Regular Meeting Minutes of the November 22nd meeting. Those were emailed out to the Commission.

Chair Hiranaga: Okay, we already voted on it. So moving onto the --

Ms. McLean: That was just for the February 28th Action Minutes.

Chair Hiranaga: Oh okay. So motion to accept Regular Minutes of November 22nd? All in favor say, aye. Oh, we need a motion, sorry.

Ms. Wakida: So move.

Mr. Ball: Second.

Chair Hiranaga: Motion by Commissioner Wakida, seconded by Commissioner Ball. Any discussion? Seeing none, all in favor say, aye.

Commission Members: Aye.

November 22, 2012 Regular Minutes

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

**VOTED: To Accept the Action Minutes of the February 28, 2012 Meeting.
(Assenting - P. Wakida, K. Ball, D. Domingo, L. Sablas, J. Freitas, I. Lay,
W. Mardfin)
(Excused - W. Shibuya)**

Chair Hiranaga: Motion carries. Next agenda item, Director's Report. Deputy Director?

Ms. McLean: Thank you, Chair. The first item on the Director's Report is a notification to the Commission of the Director's intent to process an administrative time extension request for Elleair Hawaii for a two-year time extension on an SMA Permit to complete construction of the Maui Palms Hotel Redevelopment Project. Gina Flammer is the Staff Planner, and filling in for her today is Kurt Wollenhaupt.

D. 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:**

Elleair Hawaii, Inc. requesting two (2)-year time extension on the Special Management Area Use Permit condition to complete construction of the Maui Palms Hotel Redevelopment Project at TMK: 3-7-003: 007, Kahului, Island of Maui. (SM1 2001/0012) (G. Flammer) (deferred from the February 28, 2012 meeting.)

Mr. Kurt Wollenhaupt: Good morning. Gina couldn't be with us today, so she kindly gave me the project. Indeed as the Assistant Director indicated that the Commission's role today is to decide whether or not to waive review. Should you choose to waive review then you'll be accepting the project for the two-year extension for a completion of construction to January 31, 2014 as noted in the report. Should you have or wish to make a series of more complicated questions, review then

you would choose not to waive review which would then allow you to put other conditions on the project. It's my understanding from Gina that at your last meeting on February 28th, that you deferred the item due to some time constraints and that there was a question that you wished to have answered on the drainage situation. The applicant has provided a letter regarding additional information on that drainage and Mark Roy from Munekiyo and Hiraga along with their experts on drainage are here to illuminate some questions that you may have. So it's at your discretion how you wish to proceed. There's no formal report given by Staff on this matter as it's a matter of waiving or not waiving.

Chair Hiranaga: Does the applicant wish to add additional comments to their letter dated March 6, 2012?

Mr. Mark Roy: Good morning. Mark Roy with Munekiyo and Hiraga speaking on behalf of the applicant, Elleair Hawaii, Incorporated. Thank you for allowing us to be here again today. We do have the project civil engineer with us today, Wendy McLain of SSFM International, and as I'm sure Commissioners have seen, we had a drainage packet submitted out to the Commissioner Members about a week ago by mail, and I think by email as well. So we hope that you've had the opportunity to review our information and response to the question that was raised on the floor at the previous meeting. And if it's okay, I'd like to invite Wendy McLain to just give you a very brief summary of ultimately the evaluation that was completed during the course of putting that together. Thank you.

Ms. Wendy McLain: Good morning, Commissioners. My name is Wendy McLain. I'm a civil engineer and LEED accredited professional with SSFM International. You've had the opportunity to look at the package and I just wanted to walk you through it as well. I just wanted to walk you through the evaluation that was provided. We broke it down into the existing conditions, the proposed development as well as looking at the current design and some options to address the concerns that were brought up by the Commission.

The existing condition, it's a 4.27 acre site located at the corner of Kaahumanu and Kahului Beach Road. The existing conditions are such that the high point of the site is actually right near the shoreline setback and most of the drainage although the project is located adjacent to the harbor, it does drain away from the harbor towards Kaahumanu Highway. The slopes are fairly gentle 0 to 5 percent slopes and elevations changing from 8 to 16 feet. From most of the site right now drains via sheetflow, the majority of it towards Kaahumanu and enters into the State drainage system which is located on Kaahumanu via sheetflow into their catch basins that are located there. It then proceeds to the corner of Kahului Beach Road and then exits into the harbor via a storm drain outlets there right at the north western corner of the property.

The current design we met the County storm drain standards to accumulate-- or excuse me, store the net increase of the ten-year flow. And we did so by providing 1,300...1,307 cubic feet of storage, subsurface storage that would then be percolated. And the remaining of the site then does continue the existing drainage patterns which are sheetflowed towards Kaahumanu Highway. This provides a net reduction in the ten-year peak runoff of about 7 percent.

Now to address the Commission's concerns about the increase for the 50-year. The hotel did ask us to evaluate that and we provided that evaluation in the packet that you have. The resultant to

retain a 100 percent of the 50-year flow is nine times the storage that was provided in the current design. It's 11,460 cubic feet. What that equates to is about 240 linear feet of 60-inch diameter--I'm five feet, so you can kind of imagine a five-foot diameter pipe. The owner felt that this was infeasible, and asked us to look for some additional options. So with that, we really tried to look at the intent and my understanding was that the Commission's interested in protecting the water quality of the harbor. So with that, really looked at well, how can we do that? What are really the concerns? And typically when you're looking at water quality from a sustainable design perspective, you're looking at the quantity of water which I believe is really where the question came from the 100 percent retainage of the 50-year as well as the quality of that water that's being discharged. So to address the quantity of water, we looked at providing the net storage of increasing it from the County standard of storing the net difference of the 10-year storm, we looked to see, well what would it take to store the net difference of the 50-year? So bumping it up so that essentially the off site discharge that would be seen, you would see no difference of the off site discharge from the 50-year storm. And in addition to that then, the water that would sheetflow off the site on this 50-year storm, we're looking at treating a 100 percent of that off site drainage so that the quality of the water leaving the site is improved from the existing condition. And the owner is willing to make that commitment, to volunteer to make that commitment to address the concerns of the Commission. Are there any questions or can I provide any further clarification on that?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: So my understanding is with this new offer that you're collecting and treating but you're not retaining?

Ms. McLain: We are retaining. The retainage we increased from the current design which is 1,307 cubic feet and increasing that storage to 1,760 feet. So an increase of 400 and something cubic feet.

Mr. Mardfin: Which is ... percent roughly.

Ms. McLain: Yeah. Well, what that reduce--ends up reducing is a 7 percent reduction in the 50-year storm.

Mr. Mardfin: To?

Ms. McLain: Will reduce the net flow. Right now the 10-year flow would remain the same 'cause of where we are able--the physical constraints of where we're able to collect from, but the net flow would reduce down to 13.49 cubic feet per second. So we store 1,760 cubic feet.

Mr. Mardfin: What increase--can you give me a percentage? I'm ... doing the math in my head.

Ms. McLain: Okay.

Mr. Mardfin: Can you give me a, rough percentage increase in retention?

Ms. McLain: Oh, yes. Just a moment. Thank you for bearing with me.

Mr. Mardfin: That's okay. I just wanna ballpark anyway.

Ms. McLain: That's roughly a 35 percent increase in the storage.

Mr. Mardfin: So you're going from 7 percent up to 35 percent?

Ms. McLain: Well, we're talking different numbers there. The 7 percent is talking about the peak flow. The flow that's actually leaving the site.

Mr. Mardfin: Okay. Is that gonna change?

Ms. McLain: Yes, we reduced the flow by, by going from -- increasing it from the 10-year flow looking at the 50. 'Cause the County standard is looking at the 10-year return period, and we were asked to look at the 50-year return period.

Chair Hiranaga: Just for clarity, in your report, you're saying you're reducing the existing flow by 7 percent.

Ms. McLain: That's correct.

Chair Hiranaga: For the--is it a 1-year storm, 10-year storm?

Ms. McLain: Ten-year storm.

Chair Hiranaga: Ten-year storm. But by addressing additional retention on the 50-year storm, how does that impact the retention on the 10-year storm? Where's the increase in percentage?

Ms. McLain: It's challenging to answer this question. If you could look at the exhibit--

Chair Hiranaga: We're trying to compare apples to apples and not apples to oranges.

Ms. McLain: Yes, I understand and I understand the question. If you look at Attachment C...

Mr. Mardfin: Is that on your new report or the old one?

Ms. McLain: It's on the new one that was dated March 5th, Attachment C of the March 5th letter. If you look in the upper right corner you'll see the current design which includes the 1,307 cubic feet of storage which consists of a 30-foot long, 5-foot diameter pipe and a 23-foot long, 24-inch diameter pipe. That portion there is basically collecting the roof runoff as well as the landscaped areas and you'll see the dark dashed lines on the south side of the building that then extend down--it's capturing those portions north of that line. The area south of the line is being discharged via sheetflow and we're proposing if you look at chap--excuse me, Attachment E, we're capturing--we're extending the retention to capture the 50-year flow. And that when by lengthening those pipes from 30 to 34 and from 23 to 28. So that's the portion that we're looking at capturing to increase the storage. The remainder of the site would then continue to flow via sheetflow and then we would intercept it via trench drains and catch basins. So why I have a hard time answering

that question is that that portion of, of increased storage is talking about that area north of those lines that I'm talking about. The net flow that then leaves the site is then captured and then flowed through the treatment system that we have proposed along Kaahumanu Highway along the property line there. So to be able to assess the difference in the 10-year flows, I can speak to it from the decrease in the flow reduction rather than in the--or the 10 to the 50.

Chair Hiranaga: You're not--are you're saying you're not prepared at this time to make that transition or you're unable to make that--

Ms. McLain: Well, I'm saying that from the current design, we've increased the storage but it's addressing that upper area there. I don't have the number to explain, to be able to share with you the decrease in the 10-year from that portion.

Chair Hiranaga: But you could obtain the number, you just don't have now?

Ms. McLain: It would be nominal I would say because it's looking at the small area over there up in that northern quadrant and the majority of it is, is the portion that we're proposing to treat.

Chair Hiranaga: Commissioner Mardfin.

Mr. Mardfin: Yeah, I'm gonna narrow in on something and I may be looking at the wrong thing and if I am, tell me.

Ms. McLain: Okay.

Mr. Mardfin: I'm trying to compare apples with apples. I see on Attachment C near the bottom of the yellow inset, it says, the 7 percent reduction of the existing drainage runoff peak flow for the 10-year storm net peak runoff from 10-year storm equals 10.94?

Ms. McLain: That's correct.

Mr. Mardfin: I look at the same place on Attachment E, and I get net peak runoff from 10-year storm 10.94, in other words, no change. Is that...

Ms. McLain: That's correct. So it's 7 percent. That's why I'm saying that it's a nominal decrease.

Mr. Mardfin: Okay. So this isn't gonna change runoff at all compared to what you would already had?

Ms. McLain: No--

Mr. Mardfin: Except that you'll treat it?

Ms. McLain: It does when you're comparing to the 50-year storm. So with the 10-year storm comparison it doesn't make that big of a difference, but for the 50-year, we do decrease.

Chair Hiranaga: The 50-year storm is a higher magnitude.

Ms. McLain: Yeah, it's a higher magnitude storm.

Mr. Mardfin: I understand that. I don't understand--I don't see the--and I see in No. 13, .49 under your proposed. I don't see what the equivalent number would be on, on Attachment C.

Ms. McLain: And I apologize I did not run that calculation. So that might be part of the confusion there is to be able to compare the 50-year aside from there. But there is a reduction in the 50-year by increasing that storage.

Mr. Mardfin: I--you don't really have to answer this. I'm confused how you can have increased storage for a 50-year storm but no change in storage for a 10-year storm. To me, the physics of it doesn't seem to make sense, but I may just be dull on this one.

Ms. McLain: No, it just has to do with the statistical differences of the storm. You know, when you have a 50-year storm it's not necessarily five times that size.

Mr. Mardfin: Well, I understand that. That part's not a problem to me. My problem seems to be, you say for a big storm you'll be able to reduce the flow. I don't see why that doesn't translate into a reduced flow for a 10-year storm and yet you're saying for the 10-year storm there's no reduced flow. And I can't understand how a bigger storm wouldn't--if you can reduce from a big storm, why wouldn't that simultaneously reduce from a small storm, and I just don't get it, but let's --I'm not gonna dwell on it.

Ms. McLain: Well, I think the key point that we're trying to say here is that we did increase the flow to address the net 50-year and that we're proposing to treat the 50-year, all of the 50-year flow. So addressing the water quality by that and --

Mr. Mardfin: I get the treatment part, and I think that's a good thing, what I don't get is--and I understand why you don't wanna--you know, why it's expensive to do retentions. And I personally am willing to accept treatment in lieu of a whole lot of retention but you seem to be arguing that you're doing additional retention for a 50-year storm and I guess I don't understand the geometry of it why there isn't a comparable reduction in a 10-year storm. But there's some things I don't ever understand. I'm not my rocket scientist buddy here.

Chair Hiranaga: Any other questions, Commissioners? My question--I have a question. So, from a physical geographic standpoint there is no permeable surface on this property as designed or proposed that you could increase the sizes of retention basins. You're saying there's a physical constraint from increasing retention capacity besides, I mean beyond--excluding say, perforated pipe?

Ms. McLain: So we did look at--saw some comments and looked at one additional option where we could put in a flow control manhole. If you look at the Attachment E on that discharge outlet and take advantage of the storage that would be within the pipes that would be located along Kaahumanu Highway. And that would provide an additional 450 cubic feet of storage bringing the

storage up to 2,210 cubic feet and that would provide a net result increase of 15 percent reduction in the 10-year flow and a 13 percent reduction in the 50-year flow.

Chair Hiranaga: Do you want me to repeat my question? I asked you is there a physical constraint from you increasing retention basins on this site? When I say physical restraints meaning it's all hardened surface so there's no additional permeable surface you can incorporate into a retention system.

Ms. McLain: That's correct. Space is somewhat limited over there looking at the drainage patterns. We've captured the extent of what we can on the northern portion of the site via those 60-inch and the 24-inch pipes that are up on the northeastern corner. So the challenge becomes trying to capture the sheetflow that's coming from the southern portion of the site. And there is some landscaping space in there that we can provide some additional storage but it is quite limited.

Chair Hiranaga: Oh, because you said the high point is approximately where?

Ms. McLain: It's on the north side. So if you can look on the dashed line, on the drainage basin line up on the northern portion of the site. That's the high point.

Chair Hiranaga: Attachment C?

Ms. McLain: Yes, on Attachment C.

Chair Hiranaga: The dark?

Ms. McLain: The dark dash line. You see the--

Chair Hiranaga: Going north to south?

Ms. McLain: It's going from east to west. It's right near the cowl out for drainage area E.

Chair Hiranaga: Oh, okay.

Ms. McLain: The site flows towards Kaahumanu from there. So the nonpaved areas it would be available to capture that would be the median strip between the property line and the parking lot.

Chair Hiranaga: Has that been incorporated into your retention design, the median strip, the planting area?

Ms. McLain: We, under Attachment E, we show the red line, if you have a color copy. So we have 18 and 24-inch pipes there that would then be the interception of the offsite runoff would collect and then we would need to put a new storm drain connection onto the State drainage system.

Chair Hiranaga: Is that perforated pipe?

Ms. McLain: Well, that's what we were looking at as an alternative to provide some additional

storage is that we could put a flow control manhole on the 24-inch pipe that connects to the State system and then take advantage of the pipe that would be in there and make that a perforated pipe that then could store and release the water.

Chair Hiranaga: Thank you.

Ms. McLain: So that additional storage then would increase the reduction from 7 percent to 13 on the 50-year and from 7 to 15 on the 10-year.

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

Ms. Wakida: I have a question about these skimmer boxes.

Ms. McLain: Yes.

Ms. Wakida: On Attachment E are these going in where it says drain inlet with filter. Would that be where those are gonna be put in?

Ms. McLain: That's correct.

Ms. Wakida: Well, in looking at these skimmer boxes, they look like they're only gonna be as good as the maintenance on them because they're intended to remove trash and debris and from my observation there's a lot of trash and debris that could go down these--any drain during any rain. So what is the maintenance proposal on this?

Ms. McLain: The maintenance proposal is that that the hotel--and we did speak very in detail with the hotel about the commitment that they would be making ...(inaudible)... you're correct, it does require a rigorous maintenance. At a minimum I would expect a monthly inspection of the inlet boxes and then certainly following major storms would need to go out and inspect and clean them. It's typically done, it can either be done by hand or by Vactor trucks that can come out. The hydrocarbon filter sock would need to be replaced probably at least twice a year as well. So the hotel understands these maintenance requirements and has made the commitment to perform the active maintenance on that.

Ms. Wakida: Well, this question is probably--well, I don't know if Kurt can answer it since he's kinda a fill-in but, would this be a condition for, for this extension?

Mr. Hopper: Just as a note, this is a --

Chair Hiranaga: Corporation Counsel.

Mr. Hopper: --this is a decision of whether or not to review the time extension, correct?

Ms. Wakida: Correct.

Mr. Hopper: And the Commission has not acted to say it wants to review the time extension. So

I'm not sure exactly how there would be a proposal to add conditions if the Commission has not determined to review the time extension yet, because it's not reviewing the time extension.

Chair Hiranaga: Understood. So rather than, you know, placing additional conditions on the current SMA Permit, we could have representations made by the applicant to that effect which would be in the minutes.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I think in direct response to the Corporation Counsel, what we're trying to do is acquire information that will help us decide whether or not to waive review.

Chair Hiranaga: Correct.

Mr. Mardfin: That's why we're going into some of the details, but it's--we know the vote will be either to waive review or not to waive review. And we think that if we ask sufficient questions now, we'll probably be able to waive review or not.

Chair Hiranaga: Well, let's not go that far.

Mr. Hopper: Well, the discussion was based on is this going to be a condition? And I understand those questions being asked but if the issue or a condition being placed on it was being raised, I just wanted to note that for the record that this isn't actually a approval of a extension, it's the determination of whether or not to waive review.

Chair Hiranaga: Thank you. Any other questions, Commissioners? Commissioner Lay?

Mr. Lay: On your photographs of your grate inlet skimmer box is this a trough system where it's running like a ditch system or just a one contained--it's a separately contained areas for the water to go in and stay?

Ms. McLain: The skimmer boxes are designed as flow through. So we would be collecting it via trench drains and then trying to put it into bio swale type that would then carry the water. So intercept at the driveways, right and then collect it, discharge it into bio swales that then would enter into the inlet, the drain inlets that are shown on Attachment E, and then once it enters into the inlet then it passes through. And it has different gradations. The smaller gradation of the filter is at the bottom. It's stainless steel. I've installed these particular ones at several other projects and they performed really well. City and County of Honolulu did a study of several different inlets, skimmer type boxes and found these to perform at the top of the other products that are available. It's used extensively in California and particular San Diego which has similar corrosive environments as Hawaii and it's performed over a long periods of time there very well.

Mr. Lay: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I have a question but it's for our Deputy Director.

Chair Hiranaga: Proceed.

Mr. Mardfin: The thing that bothers me the most about this whole thing is not what they're doing, it's what was done by the former Director and I would like to make a comment or two and ask question or two. There on the material we got two weeks ago for our meeting two weeks ago, there was an August 17, 2009-memo, letter, from the Department of Planning signed by Jeff Hunt to Munekiyo and Hiraga saying in part, Part 2, construction shall be completed by January 31, 2012. This was when we gave them the first extension. And then it says, the last sentence was a sentence that the Commission had added at that point, "the applicant shall complete construction of the project to include improved drainage to ensure that both predevelopment and post development runoff are contained onsite for a 50-year, one-hour storm." I'm not concerned about whether they did or did not do that or --but the next sentence says, "following issuance of the August 4, 2009-approval letter, the Department conducted further review of the engineering and drainage reports included. After further additional consultation with the County of Maui, Department of Public Works, as Director," this is Jeff Hunt, "I am amending approval for the requested amendment to Condition 2 by striking the conditional language related to runoff that was added to the amended condition above." So he just deleted it. To the best of my knowledge, the Commission was never informed of that. And I guess I would like to know or be told, we don't, can't find out whether or not this has happened on one or more other occasions where things that the Commission has done have been unilaterally deleted by either the prior Director or our current Director and I am not happy to see this. Now, I have no idea whether Will Spence does this or not. I have no idea whether Jeff Hunt did this only this one time or on other occasions, but I strongly would suggest and that if it were done in the future, that the Commission would be immediately informed that the recommendations of the Commission were being changed.

Ms. McLean: Mr. Chair, I don't have the materials that you're referencing.

Mr. Mardfin: I would expect that you wouldn't.

Ms. McLean: Certainly if the Commission takes formal action to establish conditions on a project, unless it's specified somewhere as part of that approval, the Director doesn't have authority to just unilaterally strike a condition. I don't know the circumstances that led up to that. What conditions he's referring to and so forth. But it's the Department and the Director's responsibility to interpret the conditions to see if an applicant is fulfilling them or not. Sometimes there are areas of gray, but never to the extent of striking a condition altogether. I'd be happy to look into this particular one further because I'm intrigued.

Mr. Mardfin: I don't --

Ms. McLean: But I believe the applicant and the Staff Planner have a little bit more background on this particular one if you do wanna get into that. But in general, your understanding is correct, that no, the Director does not have the authority to strike conditions that the Commission established

or that the Council established.

Mr. Mardfin: In reading the letter, I mean, I can understand they get--and they've looked at retaining what we had asked them to do two years ago and they're saying it can't--they're not saying it can't physically happen, they're saying it can't --

Chair Hiranaga: Afford it.

Mr. Mardfin: --functionally happen --

Chair Hiranaga: Because they can't afford it.

Mr. Mardfin: --don't want to afford it. And I understand that and I understand working with Public Works and I think that's a good thing to do. I am mostly concerned that the Commission wasn't told back in August or September of 2009 that gee, we talked this over and we don't think it's a reasonable condition and we're--I mean, just inform the Commission if you're gonna subvert what we had asked for. I can understand it and I'd even vote for it. It's just--the feeling that things might be done that aren't really proper. We had, by the way, just to add to this, Will Spence a couple of weeks ago, handled it the proper way. We were looking at a particular project and we were gonna, we were at least considering denying approval. I think it was Baldwin House, but I don't recall exactly. And he said, well, if you deny it, I'm gonna go to the Council and recommend approval. Well, you know, I'm not happy with that, but at least he was straight forward with us, and what I'm asking on my next to my last meeting that, the Department be very straightforward with the Commission. My impression is they have been all along, but be very straightforward with the Commission. If you're gonna go against our positions, let us know at least. And I just want that word to be passed along to the Director. You know, I have respect for both the Director and the former Director. I have enjoyed working with everybody, but these should be transparent not hidden.

Ms. McLean: Thank you for that. I don't even--I will--just a second, I will let the Director know of this, but I do not have to give him that message, he knows that quite clearly. I have no doubt in my mind.

Mr. Mardfin: I think you're correct. And I mentioned to him about the issue where he said he wouldn't uphold what we said, and yeah, that's fine. I can live with that, just be straight with us.

Chair Hiranaga: Any other questions, Commissioners?

Mr. Wollenhaupt: ...(inaudible)...

Chair Hiranaga: I have a question. Rob [sic] were you on--how long have been on this project?

Mr. Wollenhaupt: We can illuminate on your topic if want?

Chair Hiranaga: Mark, were you present at the previous Commission meeting because I'm trying to recall what --I saw the minutes and it was pretty--it didn't have any discussion about the

additional retention.

Mr. Mark Roy: Mark Roy with Munekiyo and Hiraga and I would like to just clarify for the record this question did--was raised at the previous meeting and that was the prime purpose for the deferral that the Commission made was to allow --

Chair Hiranaga: I meant when the Commission made that condition, were you present at that--

Mr. Mardfin: In 2009?

Mr. Roy: I was present at that meeting and there was--I'll be clear, there was no discussion pertaining to any matter related to drainage at the 2009 meeting. There was no representation made by the applicant with regards to looking into this issue and the, the Commission at the previous meeting two weeks ago had deferred to allow review of the minutes and I think the minutes speak for themselves. But you know, beyond that issue we believe that the Department's letter was erroneous back in August 2009, and that language should not have been added to the approval of the time extension because the Commission unanimously waived review of the two-year extension. So it was the Director to move forward and administratively issue the two-year extension without any additional condition because what you've heard today from Corporation Counsel is the purpose of this meeting is not to attach additional conditions but you know, it's important from--for us to say today that we do recognize the underlying drainage concern. We don't wanna shy away from the drainage concern and the primary purpose for putting together this packet to the Commissioners last week was really to see what the applicant could do to really look at the issue that was raised, the 50-year storm whether or not it would be something that would be feasible to retain everything on site for the 50-year storm. The applicants looked at it. The applicant's civil engineer has thoroughly evaluated it. There are limitations and you know, cost of the improvements is, is obviously one of those important factors. This project at this point is fairly far along in the building permit process and we feel that we're fairly soon to have a building permit to essentially allow the new hotel ..(inaudible)... to be able to move forward with construction. So the solution that we've presented in the drainage assessment memorandum that came to you all last week, we really feel is a feasible solution on the standpoint of the applicant and one that really goes to the heart of the Commission's concern regarding drainage. We can redesign the drainage system to essentially collect and treat a 100 percent of everything that's coming off the site, but not only that, they've increased the ability to retain the increase associated with the development from the 10-year to the 50-year storm. So there is additional retention occurring now with the proposed design, but beyond that as well, they're maintaining the ability to actually improve existing drainage conditions by 7, by 7 percent so that ultimately what's leaving the site under a post development scenario will actually be improving existing situations and also will be having the ability to have it treated before it's sent on its way into the State's drainage system. So we hope that the analysis that was presented in the supplemental package last week is a thorough analysis. We believe it is and we're certainly, the owner is here today and it's certainly the owner's willingness to voluntarily commit on the record today to actually doing these proposed additional drainage revisions and essentially it's gonna involve revising the Building Permit applications currently in process with the County of Maui, but that's certainly a voluntary commitment. Beyond, you know, an SMA condition, we're willing to state that on the record today and, you know, have whatever supplemental correspondence with the Department to solidify that commitment. Thank you.

Chair Hiranaga: Questions? Just for clarification, your engineering consultant said, you could possibly perforate the pipe along Kaahumanu Avenue or is that in part of your revised plan?

Mr. Roy: There was one option that's being looked at and it's actually a storm ...(inaudible)... a flow control manhole and it essentially would, I believe, achieve a similar objective is that it would, it would allow that system to have some additional retention of runoff. So we would actually be going from a 7 percent additional retention to I believe a 13 percent for the 50-year storm reduction in flow. So that's something that the applicant is willing to commit to as well today.

Chair Hiranaga: Okay, any other questions? Commissioner Lay?

Mr. Lay: I have a question about the County's drainage system that you have down there that you want to tie into. Doesn't this drainage system go right into the ocean or is it a catch and retain, retainment area for the water that comes off of runoff from the Kaahumanu Avenue area?

Mr. Roy: I believe it's caught in a series of catch basins that are along the highway. And that, I think it's the State's drainage system versus the County's but what it does is it flows parallel along Queen--Kaahumanu Avenue and actually goes along Kahului Beach Road. And I believe there's an outlet structure somewhere along that roadway that essentially allows it to outflow into the ocean. That's based on the available information that the engineer has reviewed.

Mr. Lay: Okay, so--follow up? Your system essentially would be putting cleaner water back in where the County's one is directly right off the roads and going, you know, out in that outlet, you know, following that drainage system and going out into the ocean, right?

Mr. Roy: Correct. I believe it receives a number of different flows from different sources so this is one input of many that would accumulate in that system before it goes into the harbor.

Mr. Lay: Thank you.

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

Mr. Mardfin: I move we acknowledge receipt of the request for a time extension and that we waive our review of the time extension.

Chair Hiranaga: Is there a second?

Mr. Ball: Second.

Chair Hiranaga: Discussion? Just a--I have a comment. It's been ten years since this SMA Permit was approved. None of the Commissioners on this Commission have actually seen the proposed development. They're proposing reduction on height from four floors to three floors. I'm a little apprehensive about waiving the review because of the lapse in time of ten years. If the drainage plan had been much stronger in the increase in retention that might have alleviate some of my concerns, but I'll just defer to the vote of the Commission unless it becomes a --my need for my

vote, but it has been ten years. I know there's been financial challenges on this island, in the state and in the nation, but especially when none of the Commissioners here have ever seen the proposed development. It's been a long time.

Mr. Ball: Won't we be seeing the building?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Won't the building come through our Commission?

Chair Hiranaga: No, this is an extension of a current SMA Permit.

Mr. Ball: ...(inaudible)...

Chair Hiranaga: Yeah, so it does not come before us. Commissioner Mardfin?

Mr. Mardfin: I share your apprehension to some degree, but they are lowering the intensity of it a little bit. I can--and they gave us reasons that are related to the economy which sometimes I think are a little on the bogus side, but it is a tough time. I'd just assume give them the time extension and let 'em move on rather than try to overburden the project at this time. If they came for a third one and anybody here that's on it, if they come for a third one, review it.

Chair Hiranaga: Yeah, I would urge the applicant to move forward with their project and not come back for another two-year extension because I believe there will be some Commissioners here still on the Commission, myself excluded. I don't plan to re-op. So at this time, if there's no further discussion--

Mr. Wollenhaupt: Question on what you're voting. You said you wanted to waive review. Is that waive review with the representations made at today's meeting including or excluding the issue about the flow control manhole?

Mr. Mardfin: As our Corp. Counsel correctly pointed out, if we vote to waive review, we're waiving review. But the understanding is, that they've made a representation here. I would expect that the Director in deciding--the Director's choice will be to give them the time extension or not. I'm expecting the Director to take their representation into account when they give them the extension. Therefore, we do a clean waive of review but the Director's expected to put the condition on that they, they proposed today. And my--even though the minutes don't show it as you pointed out to me, I'm getting a real feeling of deja vu that this is what we did two years ago, that this was kind of added. We waived review expecting the Director would do this thing, but the minutes don't show that. I, as you pointed out to me correctly.

Chair Hiranaga: Corporation Counsel.

Mr. Hopper: Yeah, the Director wouldn't have any obligation to put that as a, as a condition. I mean, so it's -- just to let you know that, that when you waive your review, you're giving up that right. Now, you know, the Director has already made a recommendation and I don't really think it

necessarily has any new conditions, but yeah, once you waive your review then you are delegating this approval to the Director entirely that's correct.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Yes, I agree with that interpretation. That's exactly what this vote means. I just think that the Director is a wise person and will not look a gift horse in the mouth and being given an offer by the applicants will--there's a good chance that he will not look a gift horse in the mouth and he will accept the opportunity to, to improve this project by incorporating the new drainage proposal.

Chair Hiranaga: Well, just for clarity, there have been representations made by the applicant to the Commission, although those are not specific conditions, we are moving in good faith based upon those representations. Whether that has standing of law, that's to be debated, but they have made representations to us. So we just have to go with that and --

Mr. Wollenhaupt: I do believe the representations include the new item on the flow control manhole. That was something that ... today.

Chair Hiranaga: Do you want the minutes repeated back to you?

Mr. Wollenhaupt: Oh, no, no, no. It's just--

Chair Hiranaga: I think you can examine --

Mr. Wollenhaupt: --as a potential, a potential. Do you believe --

Chair Hiranaga: No, well, for clarity, Mark, I -- my understanding is you made commitment there for your applicant so if you wanna restate that?

Mr. Roy: Absolutely. That is the voluntary commitment from the standpoint of the applicant so they will be making the design changes reflected in your submittal packet plus they will be adding in a flow control manhole that's in the design.

Chair Hiranaga: That will increase the retention by up to possibly 13 percent?

Mr. Roy: Correct.

Chair Hiranaga: Yeah, that's what I heard. Any further discussion? Seeing none, I'll call for the vote. All in favor of the motion, so indicate by raising your hand.

Ms. McLean: Seven ayes.

Chair Hiranaga: Opposed? None. Motion carries.

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

VOTED: To Acknowledge Receipt of the Request, and Waive Its Review of the Time Extension Request.
(Assenting - W. Mardfin, K. Ball, D. Domingo, L. Sablas, J. Freitas, I. Lay, P. Wakida)
(Excused - W. Shibuya)

Mr. Roy: Thank you very much for your time.

Chair Hiranaga: Next agenda item is D-2. Deputy Director?

2. Planning Commission Projects/Issues

a. Revising the SMA Boundaries

Ms. McLean: Thank you, Chair. Under letter "a," there is nothing to update the Commission on revising the SMA boundaries.

Chair Hiranaga: Any discussion on Items D-2, 3, 4, 5 or 6 or 5?

3. EA/EIS Report

4. SMA Minor Permit Report

5. SMA Exemptions Report

Chair Hiranaga: No discussion. Moving onto D-6, Future Agenda. Deputy Director?

6. Discussion of Future Maui Planning Commission Agendas

a. March 27, 2012 meeting agenda items

Ms. McLean: Yes, I do Chair. There's a memorandum dated March 12th to the Commission from Clayton Yoshida outlining the items for the March 27th meeting. There are no public hearing items again, a resolution, two communications and a Director's Report.

Chair Hiranaga: Any discussion? Commissioner Ball?

Mr. Ball: Do we wanna consider starting this meeting a little later on the 27th due to the lunch that we're gonna have with the outgoing Commissioners? Seems like a short agenda, but --

Chair Hiranaga: Starting it later or earlier? Later?

Mr. Ball: Later so it coincides with the lunch otherwise we're gonna be done --

Ms. Takayama-Corden: Lunch is at 11:15.

Chair Hiranaga: No, we should just 'cause I think there's already been a noticing that the meeting starts at 9:00.

Mr. Ball: Okay.

Chair Hiranaga: We'll try to drag it out. Any other discussion? We've got five more minutes before noon? So if there's no objection, this meeting is adjourned. Thank you.

E. NEXT REGULAR MEETING DATE: MARCH 27, 2012

F. ADJOURNMENT

The meeting was adjourned at 11:55 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
Penny Wakida

Excused

Warren Shibuya, Vice Chairperson

Others

Michele McLean, Planning Department
Michael Hopper, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works