MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 12, 2012

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:02 a.m., Tuesday, June 12, 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: ...June 12, 2012. This is the Maui Planning Commission meeting. We have quorum of seven Commissioners. I'd like to call the meeting to order. At this time, I'll open the floor to public testimony for any agenda item. Is there anyone here that wishes to provide public testimony at this time, please come forward? Seeing none, public testimony is now closed. Agenda Item B-1, Public Hearing, Senior Planner Yoshida?

Mr. Clayton Yoshida: Thank you, Mr. Chairman. Clayton Yoshida, Administrator, Current Planning Division. Good morning, I'm subbing for the Planning Director who is at the special Council General Plan Committee meeting on the Growth Boundary Maps for the Upcountry region and the Deputy Director who has returned from two and a half weeks of vacation. So our first item is the Public Hearing from the Director, Will Spence proposing amendments to Chapter 19.30A, Agricultural District of the Maui County Code regarding utility pedestal walls. Staff handling this is our Administrative Officer, Joe Alueta.

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

1. MR. WILLIAM SPENCE, Planning Director, proposing amendments to Chapter 19.30A, Agricultural District, of the Maui County Code regarding utility pedestal walls. (J. Alueta)

Mr. Joe Alueta: Good morning, Planning Commission. The proposed amendment deals primarily with establishing an exception in the Agricultural District to allow for utility pedestal walls. Currently walls within the Agricultural and Rural Districts are limited to like four feet of height within the setback area. Within the Agricultural District you have 25-foot front yard setback. We did have--where you have like large agricultural lots, sometimes some of the people who are--if they build their "Ag dwelling" in the area they prefer to put their utilities on a pedestal wall out where the MECO or the telephone company or cable company can service it more readily without driving all the way onto the property. It's purely a personal choice by it, but apparently has become quite controversial in several areas--subdivisions where they have done that. We did have this back in, I believe, '09 it became the hot topic ...(inaudible)... I guess '09. We did go before the Council during some other items to address the enforcement issues became that controversial. Council asked us to come up with some kind of ideas to rectify the situation or at least allow for some type of exemption.

The solution was going over the manual from MECO as far as how utilities or sizing of it. The Department felt 7 x 7 utility pedestal wall. We wanna clarify I guess somewhere in there this is only

one per lot. We're choosing a 7 x 7 because that, you can't really complain about that as far as because you should be able to put three meters onto the size of this pedestal wall and that's from my talking with MECO engineers. And so this should be able to get anything that's dealing with cable, telephone and primarily electrical service to the property. And so this would be allowed within the setback front yard or side yard setback of a property. Exhibit 1 is the proposed language. So the amendment basically would add utility pedestal wall--would an exception, "except for utility pedestal walls, utility shall not exceed seven feet in height and seven feet in width and shall not obscure sight distance for roadways or driveways." We're also amending to reflect again, the change in name of the Public Works Department back to Department of Public Works. Are there any questions?

Chair Hiranaga: Questions, Commissioners? Commissioner Ball?

Mr. Ball: So Joe, were you gonna change this then to say only a single wall or a single pedestal?

Mr. Alueta: That's to be--I'll work it over with Corporation Counsel. If that's, if that's the desire of the Department, the intent of the Department. In talking with or hearing some of the concerns from I guess Commissioner Wakida who called about it, I'll talk over with my boss, but I think I agree with her concerns. And her concerns at the time was, one, it should be reflected that only one per lot as well as there should be a definition of a utility pedestal wall in Title 19, in 19.04, and that's pretty administerial. Working with Corporation Counsel, we'll come with something pretty generic. And then also, just --making a slight modification to indicate that shall be only one per lot. Somewhere around, except--where it says, "except," except for one utility pedestal wall per lot. We could just add it right there.

Chair Hiranaga: Questions? Commissioner Shibuya?

Mr. Shibuya: Joe, can you tell me the type of material that would be composing--composed of this wall or a pedestal? Is it crushed rock, is it CMU, is it solid concrete rebar, what is it?

Mr. Alueta: Either one. Mostly it's CMU. Typically it's CMU or it could be cast in place, but those are pretty hard to do.

Mr. Shibuya: And does it have a structure above it like a wooden house to hold the meter in?

Mr. Alueta: It can. It just has to be a utility wall meeting MECO standards. MECO standards uses this and this is what we based our amendments on. And so, they have standards of clearance both in front of it and on the side of it. And so all of walls that we've seen they're either attached to an existing wall, but in the Agricultural District you can't. It has to be of a certain height and so most people--the four-foot wall would not meet that. So most people, if they're choosing again, this is a choice to put it down within the setback. I mean, your options are when you build a house, you typically have the meter installed on your house, okay. Or you have an option of putting the utility pedestal wall outside of the setback. Meaning 25 feet into your property and then put the utility wall up, okay. And then this is for those who have chosen to put it down on their boundary line or within that 25-foot setback for whatever reason. And again, we're making the wall, enough to at least accommodate three utilities or meters on it. But yeah, it would be--typically it's a straight wall, flat wall.

Mr. Shibuya: And it would be applicable not only in Agriculture but it will be applicable in Residential as well as Apartment area would it not?

Mr. Alueta: No.

Mr. Shibuya: No?

Mr. Alueta: This amendment is only dealing with the Agricultural District. We may come back later on for the Rural District but that has not been decided yet. In the Residential District, we currently do not have a height limit on walls. So in the Residential District or within the Apartment District you could have--your wall could be any height. It's only in the Agricultural District and in the Rural District that we have a wall height limitation within the setback area.

Chair Hiranaga: Any other questions? Corporation Counsel wishes to comment.

Mr. Giroux: Joe, I just wanna throw a couple things out here just make sure we're catching a whole, a whole ball here. When we were dealing with this back in '09, I think there was some definition--we were trying to clarify definitions because we were trying to interpret the original law and seeing how it would, we could interpret it in order to make a just result. One of the issues was that within the Agricultural District that yard setback had something in it that said that there was no structures except for walls under four feet. And when I see this seven-foot here, it's throwing a red flag out for me.

Mr. Alueta: And that's why it says it right here in this definition where it says, the maximum wall height, wall shall not exceed four feet within the yard setback in areas measuring from finished grade, okay, whichever is lower at the top of the wall except for utility pedestal walls.

Mr. Giroux: But doesn't the yard setback definition need to be modified in order to allow that? Because you're gonna have an internal inconsistency.

Mr. Alueta: I believe that this section here is the maximum wall height within the setback that's what it says here.

Mr. Giroux: Well, it's telling you how high you can have the wall, but you have another definition saying you can't have a wall that high.

Mr. Alueta: No, it says not to exceed within the yard setback if you read the definition right now.

Mr. Giroux: Okay, I just wanna make sure that we're catching the whole ball here.

Mr. Alueta: Okay.

Mr. Giroux: Because I don't want the lawyers have to go back and be creative again. I mean, this was the--this was the whole problem is that we have definitions that are saying what's a structure, we had people within the Department define structure and then what's a wall. Then we had people in other areas defining what walls were. So when, just because we have it in our standard doesn't

mean that the whole Code is usable at that time. If we don't look at the whole Code and say, what other parts of the Code are affecting the interpretation of this, this section? Because you can't have a section in the Code saying you can't do something over a certain height, and saying you can have walls, and for this exception you can have walls over this height.

Mr. Alueta: Okay.

Mr. Giroux: I just want us to be on board with that, that discussion 'cause to make sure that we're not fixing half the problem.

Mr. Alueta: No, no, I agree with you and I think again, the intention is and I think the discussion here today is to allow for a utility wall, right, within the yard setback of limitation. The discussion over whether or not a utility wall is a wall or a structure within the setback has already been determined and we've already clarified that and we've made that interpretation that it is. Therefore, that's why we're doing this amendment. The only section that I found, and again, is this section here within the Agricultural District dealing with this wall and setback issue. But again, the intention of the discussion today is to allow an exception to that and if another section of 19.30A needs to be amended we can deal with that as more of a technical issue, but the intention is to allow for an exception of one 7 x 7 utility pedestal wall within the yard setback within the Agricultural District.

Mr. Giroux: Okay. I totally agree and I understand, and what I want the Department to do is look at your definition of wall. Don't call a pedestal a wall if the definition of a wall does not meet the definition of pedestal. Look at your definition of yard setback and do not give a limitation on height in your yard setback if you're gonna give an exemption to the wall height. And if you clear all of that up, I think we've solved the problem. I think this is the nail that nails it. But until we do the finish work, I think you're gonna find contractors, homeowners, real estate agents running into this wall, no pun intended, because I'm glad that the Department has agreed on the interpretation, but I think the law needs to agree on the whole solution. And I think we really need to do that because this has caused tremendous problems in this County, tremendous and it's not the County's fault. I mean, people went and built stuff and they may or may not have needed permits. But somehow in our chiseling out this issue, I think that if we're gonna find a solution, we need to do the finish work and that is looking at the definitions and making sure when you look at the definition and you look at the Code that there's an seamless transition because it's really difficult to get in change in the law when the law doesn't change its definition. And I just wanna look at that and make sure we, as a team, catch that before it gets to the printing press.

Mr. Alueta: Yeah, and that's fine. The first issue is getting through to the public to understand what the concept is, and then the details of you're talking about again, I believe that we've already worked out those details. The determination that a utility wall is a wall. The utility pedestal wall is a wall and it is a structure. That whole discussion, Mr. Corporation Counsel, has already been decided and the solution to that and to allow for an exception to a wall is this. So I'm not --

Mr. Giroux: Okay, I'm just saying it's a great opportunity to stop interpreting and actually put the law in writing and get it done. I mean, we have an opportunity to do it and if this is the opportunity, I would hate to be the attorney sitting here saying, yeah, I saw it happen and we didn't fix it all the way. And I just wanna make that--I wanna see that. I just wanna see it. And if it's already done, great. But just doing administrative interpretation of the law doesn't set the law straight because

administrators change. So if this is the opportunity, I'd like to see it done. That's all I'm asking and if it's done, then case made. We can move along.

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Joe, is a pedestal wall--can a pedestal wall be connected to an existing four-foot wall? Or is it freestanding?

Mr. Alueta: It's typically freestanding. And it's up to--I don't think I would--I would have a problem with it being connected to it. It's just that we're allowing for this one section of the wall to be of this size and providing that it's mounting the utilities.

Ms. Wakida: So you're not envisioning somebody building a four-foot wall and then going up seven feet for seven feet for the utility portion?

Mr. Alueta: It's possible, but remember the difference is that a structure of a utility pedestal wall is different than a regular wall. The footing for a contractor is different, okay for to meet the MECO standards and that's why we're using the utility pedestal wall.

Ms. Wakida: But you're envisioning this as a freestanding wall then?

Mr. Alueta: Typically it is.

Ms. Wakida: Should that be--do you think that should be the requirement?

Mr. Alueta: No. Because I believe that you can tag into a wall, a four-foot wall into it, but getting MECO to agree of it. You have to have the inspection for this utility wall is completely separate. Has to be inspected not only by the County, more importantly it's inspected by MECO because if tagging--again, if you're tagging into a public utility.

Ms. Wakida: One last question and this following up with Corporation Counsel. Is part of the problem calling this a wall instead of just calling it utility pedestal?

Mr. Alueta: No, it's--I'm trying to define it all. It's a wall. A utility pedestal wall is a wall. And we're defining it separate from a normal boundary wall because it has separate structural detail and it's also being used to mount utilities in separate design and that's why we're calling it out separately making it an exception. It's a wall. Because it's a wall, it would normally be subject to this four-foot height. And we're only saying that the portion of a wall that is designated to be the utility pedestal wall, right, can be greater than four feet and not to exceed seven feet. I mean, Corporation Counsel and the argument was made, was attempted to be made that these utility pedestal walls were not structures and were not walls. But regardless of that or irregardless if you're from Upcountry, it's a wall. We have already determined that's a wall.

Chair Hiranaga: Just for clarity, you could have a four-foot boundary wall and one section might be three-feet higher that would be considered the pedestal, but it's incorporated into the boundary wall? Is that why you're calling it pedestal wall?

Mr. Alueta: Correct. If it's used to mount the utilities.

Chair Hiranaga: Right.

Mr. Alueta: And again, it has a separate structural detail from the wall itself.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Joe, can you refer to the definition of wall in Chapter 19? What does it say today? I don't have it.

Mr. Alueta: I don't have it in front of me, but it's a solid--I'm not going to quote it, but it does not allow--allows less than 50 percent of light and air because that's what a fence is. A fence allows for 50 percent light and air to go through it and a wall does not. It's more of a solid surface. And for structural reasons that's how--for building permits, you don't -- you can have a fence of up to six feet high, but as soon as you get a wall over six feet high or fence, you have to get--you have to get a building permit. Public Works is nodding so I'm close enough ...(inaudible)...

Mr. Giroux: And Joe wasn't --

Chair Hiranaga: Corporation Counsel?

Mr. Giroux: Sorry, Chair. Wasn't that part of the problem is that people could build walls under four-foot high without permits. The problem is is that when they built their house and they built their wall the County went and inspected the house and not the wall. And then this six-foot wall was later found in the setback area. So they didn't have a permit to build it because you need a permit to build a six-foot wall, but if somebody built a four-foot wall, they didn't need a permit but it was still in the setback area. So the issue of maybe we should have a permit, if you're gonna have a setback area that only allows a four-foot wall, maybe a permit to build a four-foot fall in a setback so--

Mr. Alueta: You're mixing two different things and one is the building standards and one is the zoning standards. It may have met the building standards for the structure itself, but the zoning standards is separate. Its entitlement is separate from--and that's the reason.

Mr. Giroux: And that's reality but when somebody's building a structure and they're having County inspectors showing up at their property, there's an expectation that the County will have an inspection for that also. And that's what's not happening.

Mr. Alueta: Again, that's an internal issue that has been discussed and I'm sure the Zoning Administration of our Department has rectified that as well as along with the building inspectors to ensure that the public does not have that same type of confusion. Again, we're trying to alleviate Title 19 where this exception for the walls would be allowed because again, normally ...(inaudible)...off of these boundary wall exceptions it's only within the Agricultural and Rural Districts where wall heights within the setbacks are regulated, okay. And that's primarily for view corridors, ensure view corridors within this and to create somewhat of a more open areas within

these Agricultural and Rural Districts. And that's the reason for the instructions or the requests by Council when this matter was taken up was for us only to look at the utility--to grant some type of exception to utilities not to change the overall height or look at boundary walls as a whole within the Agricultural District. So...we trying to be narrowly focused to allow for what has been primarily the cause of the issue.

Chair Hiranaga: Okay. So procedurally you're asking the Commission for our recommendation to be sent to Council?

Mr. Alueta: That is correct.

Chair Hiranaga: And with those recommendations and comments, the Department and hopefully with Corporation Counsel will make whatever changes before it's presented to the Council?

Mr. Alueta: Yes.

Chair Hiranaga: All right, thank you. Any other questions? Seeing none, I'll open the floor to a motion. Oh, public hearing. Thank you, Administrator Yoshida.

a) Public Hearing

Chair Hiranaga: I'll open the Public Hearing at this time. Anyone here wishes to speak regarding this agenda item, please come forward. Seeing none, public hearing is now closed.

b) Action

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

Mr. Ball: What kind of a motion do you want?

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: I don't have a motion, I just have a comment that it seems like the bill is not ready for prime time if we cannot agree just amongst ourselves at this point as to whether or not the i's are dotted and t's are crossed.

Chair Hiranaga: Well then you should make a motion to defer this agenda item.

Mr. Hedani: Yeah, I think the recommendation was to make a motion for approval with amendments that would include the restriction to one per lot.

Mr. Alueta: That is correct. It would read, for Section 19.30A.030, District Standards, F, Maximum Wall Heights, walls shall not exceed four feet in height within the yard setback area as measured from the finished or existing grade whichever is lower to the top of the wall as defined herein except for one utility pedestal wall per lot. Utility pedestal wall shall not exceed seven in height and seven feet in width and shall not obstruct sight distance for roadways or driveways. This does not

preclude the construction of fences on top of the walls for safety purposes. Director of Public Works may permit greater heights of walls as needed to retain earth, water or both for health and safety purposes. That's how our proposal is.

Chair Hiranaga: Floor's still open to a motion.

Mr. Ball: Well I didn't--

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Didn't you say that you guys were gonna work that out? I mean, you kinda worked it out now, but you know, we'll pass this and you'll work out the finer points?

Mr. Alueta: Yes, after all the Commissions make their recommendations, the Department will draft or incorporate any changes needed, and then transmit them to Corporation Counsel for final form and legality.

Chair Hiranaga: Before it's sent to Council?

Mr. Alueta: Before it's sent to Council.

Chair Hiranaga: So we're just providing comments at this time, and one comment is you agree with the amended--recommended language or you don't or you're not ready to vote, you wanna defer it. Commissioner Shibuya?

Mr. Shibuya: I just wanna share the definition in 19.04.040 and it's talking about the wall. It's on Page 560. Wall means a constructed solid barrier of concrete, stone, brick, tile, wood or similar type of material that closes, marks or borders a field, yard or lot that limits visibility and restricts the flow of air and light. The other side is, utilities, facilities, minor. Minor utility facilities means transmission lines used directly to the distribution of utility services that have minor impact on adjacent land uses which include, but which are not limited to 23 kilovolt transmission substations, vaults, water wells, tanks and distribution equipment, sewage pump stations and other similar type uses. These are couple definitions and we're trying to use different words to fit the incorporation or the acceptance of pedestals now.

Mr. Alueta: That is correct. That utility does not--my utility does not apply to this.

Mr. Shibuya: Yes.

Mr. Alueta: It's only the wall section.

Mr. Shibuya: And so you'll have a definition for pedestals then?

Mr. Alueta: We're defining it as being a pedestal utility wall.

Mr. Shibuya: Right. So you'll have that incorporated?

Mr. Alueta: Yes. If need be, if it cannot be incorporated in some other existing definition.

Mr. Shibuya: Okay.

Mr. Alueta: But the intention again for this amendment is to allow for a seven by seven foot section of wall within the Agricultural District for the mounting of utilities. Okay, and that's the one exception from the four-foot height limit that is currently imposed in Title 19.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: I'll make a motion to approve the--I guess it's not approving--accept the new rule for the Agricultural District pedestal wall.

Chair Hiranaga: As amended?

Mr. Ball: As amended, yes.

Chair Hiranaga: A proposed change by the Department. Is there a second?

Mr. Shibuya: I'll second.

Chair Hiranaga: Commissioner Shibuya seconds. Any discussion? Seeing -- Commissioner Hedani?

Mr. Hedani: I had a question as to whether or not we can actually preserve sight distance with a seven-foot wall that's allowed to be placed up on the boundary of the premises?

Mr. Alueta: It depends on whether or not it's near a driveway. The sight distance that Public Works is concerned about is when you have a corner lot, if you put the thing at the corner or if they put it near a driveway. But it's--typically in the Agricultural District the lot width is quite long and then the driveway access can be moved down further up. So again, this just allows the wall to be within that 25-foot setback. So it could be setback 10-feet, right, and be outside of the --so that someone could be able to drive up to the edge of the roadway and not be impeded by that wall.

Mr. Hedani: Okay.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Also part of the problem comes in when MECO has their standards of what a pedestal is acceptable or not. It has to be strong enough, visible enough so people don't hit it like a utility pole is that what something it is? That it become a immovable object.

Mr. Alueta: Not so much that it has to be an immovable object. They have certain height standards and that is five-foot--the meter, the preferred meter height is 5'6" for reading, okay. And that's what they want it to be. Typically when you're mounting a utility equipment onto the wall, it has to be one, strong enough to handle that type of equipment and that's typically made out of

CMU or cast in place concrete. I have also seen utilities mounted just on poles meaning you have a temporary poles, but I've seen people basically build a metal grid, all right, and have that where their utilities are mounted to and that's not considered a wall because it's like an open grid. And if MECO accepts that, that's fine. But we're saying is that if you put it on a wall, this is your limitation.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Just a comment. I support Joe's proposal, but I also would like to see this concern that Corporation Counsel has worked out. We don't need the--if you still see that concern because we don't need to give the inspectors another whole bunch of headaches with vague language.

Mr. Giroux: Joe, I mean, are you authorized to add conditions to Title 19 in order to effectuate this part of the Code. I mean, is that part of your marching orders? Or are we only gonna look at this part of the Code? I mean, I'm having a hard time with that philosophy.

Mr. Alueta: I'm not sure what--I mean --

Mr. Giroux: Can we look at the definition, sit down and say, if this is the interpretation can we --

Mr. Alueta: No.

Mr. Giroux: --make it clear that that definition of a wall is not going to be absurdly misinterpreted, this definition of structure within the.setback. You know, I mean, it's great that you guys worked it out internally, but it's the public who has to use this law. They're the ones who have to build something and they have to open up this book and look inside and know before they spend money that they're gonna build what the County is gonna be okay with. So if we have that opportunity to do that, I think if we define what pedestal wall is and put it into Title 19 instead of the first time we see it is in 19.30A.030 without a definition. I think this would help MECO out, I think it would help the County out, I think it would help the public out. But if that's not what we're gonna do, then that's fine. But it's not solving the complete problem. And I'm asking is from the Administration side, I mean from Council side, if they're asking us to solve a problem, are we looking at the totality of the problem and saying this will make it go away?

Chair Hiranaga: Okay, thank you for that. I think we need to limit the scope of discussion for this particular agenda item which is Chapter 19.30A. Any additional comments regarding the motion on the floor? Commissioner Shibuya?

Mr. Shibuya: All I'm asking perhaps here is that some notation be made that because it's a utility pedestal wall that it requires MECO concurrence or inspection or approval or whatever word you wanna use. It's a utility item and it's utility-based standard that the County is also incorporating so whoever's doing this, whoever's planning to have this feature on their property then they are aware that they need concurrence or approval from both the County and the utility.

Chair Hiranaga: I think, you know, that all comments from Commissioners are within the minutes and so Joe is here and he will make note of those concerns. I don't think we need to incorporate it into the motion.

Mr. Shibuya: Okay, fine.

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Can we get, you know, can we get a commitment from the Department to include any clarifying language in the definitions as is being recommended by Corp. Counsel as part of the amendments to this bill?

Mr. Alueta: Yeah, as needed.

Mr. Hedani: Right.

Mr. Alueta: Yeah, we will, we'll obviously work with Corporation Counsel.

Mr. Hedani: In other words, just make Jim happy.

Mr. Alueta: Yeah. I'll deal with James after work today.

Mr. Giroux: We work well together.

Chair Hiranaga: Any other discussion regarding the motion on the floor? Seeing none, Administrator Yoshida could you restate the motion for clarity?

Mr. Yoshida: I believe the motion is to recommend acceptance of the proposed legislation subject to any revisions worked out between the Department and Corporation Counsel's Office.

Chair Hiranaga: And as proposed by staff, the couple word changes there. All in favor of the motion please say, aye.

Commission Members: Aye.

Chair Hiranaga: Opposed? Motion carries.

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

VOTED: To Recommend Approval of the Proposed Bill with Amendments to the County Council.
(Assenting - K. Ball, W. Shibuya, J. Freitas, I. Lay, M. Tsai, W. Hedani, P. Wakida)
(Excused - D. Domingo)

Mr. Alueta: Thank you very much.

Chair Hiranaga: Next agenda item is C, Director's Report. Administrator Yoshida?

Mr. Yoshida: Yes, we have a series of three time extension requests which the Director intends to process administratively subject to your SMA Rules. The first one is C-1a, request from Mr. Gregg Lundberg, General Manager of the Westin Maui Resort and Spa for a two-year time extension on the Special Management Area Use Permit condition to initiate construction of the Westin Maui Resort and Spa renovation project at 2365 Kaanapali Parkway, TMK: 4-4-008:019, Kaanapali. The Staff Planner is Joe Prutch.

C. DIRECTOR'S REPORT

1. MR. WILLIAM SPENCE, 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 following time extension requests administratively on the following:

a. MR. GREGG LUNDBERG, General Manager of the WESTIN MAUI RESORT AND SPA requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Westin Maui Resort and Spa Renovation Project at 2365 Kaanapali Parkway, TMK: 4-4-008: 019, Kaanapali, Lahaina, Island of Maui. (SM1 2008/0020) (J. Prutch)

Chair Hiranaga: Commissioner Hedani?

Mr. Hedani: Mr. Chairman, I'd like to recuse myself from voting on this particular motion. I have a conflict because the--Gregg Lundberg is the Director of Kaanapali Operations Association. So I will not be voting on this item.

Chair Hiranaga: So noted. Thank you. Planner Joe?

Mr. Joe Prutch: Good morning, everybody. Just give a brief summary since this was a few years ago. This project was approved back in April 28, 2009 by the Planning Commission. Essentially it's at the Westin Maui. There was renovation of a porte cochere to increase the size and to do some interior lobby renovations to basically give the Westin an entry level facelift.

The project was reviewed. The project was approved. It went through Urban Design Review Board. Their concern was just colors on the walls to the entrance of the porte cochere that was incorporated as a condition. It was approved with what was it, 16 or so standard conditions and 8 project specific conditions including three from proposed by Public Works Department. I've the applicant here and I have Mich Hirano here to answer any questions that you guys might have on this project.

Chair Hiranaga: Thank you very much. At this time, I'd like to open to the floor to public testimony. Is there anyone here wishes to provide public testimony on this agenda item please come forward? Seeing none, public testimony is now closed. Open the floor to Commissioners for questions?

Seeing none, --

Mr. Ball: I'll ask a question.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: The 16 conditions, any that we should consider to take off, to add some, are they relevant today?

Mr. Prutch: I believe, my understanding is they're still relevant. I don't think there's anything to take off because I believe they've made applications for building permits. Yes, so everything's still valid conditions. Something they'll have to work towards as they get ready to get building permits and move on. So the conditions still stand, it's just been a few years since they got approval and I'm sure because of the economic conditions they just haven't been able to move forward yet. But I know now they're asking for two years. So I'm assuming they'll be able to get the ball rolling and get things done in two years and not have to come back for another extension.

Chair Hiranaga: For clarity, this is a request to either waive review by the Commission or to defer the decision to the Director. So Corporation Counsel can comment but we're not at this time empowered to add or delete conditions to the SMA Permit. If you want to do that then we need to bring that extension back to the Commission. In the past, we've suggested that the applicant voluntarily do something which they've agreed to do but we haven't made it as an official condition of the permit. Commissioner Shibuya?

Mr. Shibuya: Joe, in your best estimate is two years adequate because I'm concerned. I'm willing to go three years.

Mr. Prutch: Well, that's what the applicant requested so I'm under the assumption that they're requesting what they need to get the project done. They're here if you want to ask them how they plan on going about getting it done in two years. But that's what they requested. They didn't request three so we're going with the two years that they're recommending assuming that's what they--they can get done. They might be able to provide a little clarity on where they're going and what their time line is.

Mr. Shibuya: Okay.

Mr. Prutch: I don't have that information.

Mr. Shibuya: Thank you.

Chair Hiranaga: Commissioner Shibuya, you realize a three-year extension you probably won't be on the Commission at that time?

Mr. Shibuya: Understand.

Chair Hiranaga: Okay. Any other questions? Commissioner Lay?

Mr. Lay: What are the reasons for the delay and for us to back this time frame?

Mr. Prutch: That I'll go ahead and refer it them to let them explain. Mich, do you have ...

Mr. Mich Hirano: Thank you, Joe. Good morning, Commissioners. My name is Mich Hirano with Munekiyo and Hiraga. There were three reasons given for the justification for the time extension request in the application. The first was the slow down of the global economy which impacted occupancy rates and the ability to finance the project. The second was that the Westin Maui is going through a master planning process right now. It's been going on for about five years. They're finalizing their master plan and the porte cochere and this renovation improvement was just put on hold until they completed their master plan so they knew what sequence the construction and the scope of the overall resort renovations and reconfiguration would be. So that was another reason that was given. And the second reason was that now they've identified that the porte cochere is a very important component in context of the overall master plan. That they're going for a building permit and they're going through design right now for this improvement and then submitting for building permit.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: Currently, don't you have any--they're fixing up the place right now, right?

Mr. Hirano: Pardon?

Mr. Lay: Is there anything going on right now at the Westin, where there's some improvements going on?

Mr. Hirano: There's a--I have Christopher Reed who is the Director of Operations right now and he could just speak on that.

Mr. Christopher Reed: Aloha, I'm Christopher. Currently we're doing the Aloha Pavilion renovation which is basically an outdoor/indoor meeting space and that's near completion. That was a $4 million project. One of the other reasons that wasn't mentioned of why we deferred the lobby project had to do with our land lease. So we needed an extension on the land lease for corporate to really invest the money into it which I'm happy to say we did secure. So we got an extension. So had 30 years, we extended it 25 years so we have 55 years on our land lease with Campbell. So they're very confident now to invest the money into the project.

Mr. Lay: Is there any more renovations going on besides that, I think it's the entertainment area that they were going on? Anything, work on the towers or anything like that?

Mr. Reed: No, not at this time.

Mr. Lay: Okay.

Mr. Reed: We're gonna be doing the Ocean Tower guest rooms starting in September and it's just a facelift, much needed face lift.

Mr. Lay: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Can you tell me in what stage are you at in terms of developing the plans to submit for a building permit?

Mr. Reed: I honestly can't say right now. We just are completing--it was a five-year plan that's been reduced to a three-year plan master plan. And so, the lobby renovation is definitely made the list and it looks as though it will be next year that we're gonna be starting that. But as far as the building permits I'm not quite sure until we get that official green green light and then we'll move ahead.

Mr. Shibuya: Who's giving the green light?

Mr. Reed: Corporate office, Starwood.

Chair Hiranaga: Any other questions? Thank you very much. At this time, I'll open the floor to a motion? Commissioner Lay?

Mr. Lay: I'll make the motion to approval.

Chair Hiranaga: Motion to waive review.

Mr. Lay: Yes, waive review.

Mr. Freitas: Second.

Chair Hiranaga: Seconded by Commissioner Freitas. Any discussion? Seeing none, if Administrator Yoshida could restate the motion?

Mr. Yoshida: The motion is to waive, for the Commission to waive its review on the subject time extension request.

Chair Hiranaga: All in favor so indicate by raising your hand. One more time please?

Mr. Yoshida: Six in favor, one abstention. Motion carries.

Chair Hiranaga: Motion carries. Thank you.

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

VOTED: To Waive Review of the Time Extension Request.
(Assenting - I. Lay, J. Freitas, M. Tsai, K. Ball, P. Wakida, W. Shibuya)
(Abstained - W. Hedani)
(Excused - D. Domingo)

Chair Hiranaga: Moving onto Item C-b.

Mr. Yoshida: Yes, Mr. Chair, the next item is a request by Randall Endo, Vice President of A&B Properties for a two-year time SMA Use Permit time eextension on the period to initiate construction of the Wailea Resort MF-10 Multi-Use Project at TMK 2-1-008: 121, Wailea. The Commission is asked whether it wishes to waive its review or review the time extension at a future meeting. The Staff Planner is Candace Thackerson.

b. MR. RANDALL H. ENDO, Vice-President of A&B PROPERTIES requesting a two (2)-year Special Management Area Use Permit period to initiate construction of the Wailea Resort MF-10 Multi-Use Project at TMK: 2-1-008: 121, Wailea, Island of Maui. (SM1 2008/0007) (PD2 2008/0001) (C. Thackerson)

Ms. Candace Thackerson: As stated, this is a time extension waiver review request for Wailea MF-10. This is the first time extension request actually for this project. The Commission granted approval for the SMA Use Permit and Planned Development Steps 1 and 2 on March 24, 2009. This is just a time extension for initiating construction and I believe they're waiting on some building permits. They still haven't secured all their tenant anchors which will then define a lot of the building permits and how they will be structured inside depending upon who your tenants going to be. So they just want a two-year time extension to work on that as well as securing a water source as they continue to do for many of the projects in Wailea. The applicant is here as well as Mich Hirano. So if you have any specific questions for them regarding, you know, reasons for time extensions. They're here. They're here to answer those for you.

Chair Hiranaga: All right, thank you. At this time, I'll open the floor to public testimony. Is there anyone here that wishes to provide public testimony on this agenda item please come forward. Seeing none, public testimony is now closed. I'll open the floor to questions from the Commissioners? Seeing none, I'll open the floor to a motion? Commissioner Freitas.

Mr. Freitas: I move that we waive the time extension for the SMA.

Mr. Lay: Second.

Chair Hiranaga: Moved by Commissioner Freitas, seconded by Commissioner Lay. Any discussion? Commissioner Shibuya?

Mr. Shibuya: Just a question. If once we defer it for the Planning Director's Review, how long does it take from that point to get it approved with the extension?

Mr. Yoshida: I would say, most times it's within a week because it's just a time--it's a time extension extending the time.

Mr. Shibuya: And there's no changes.

Mr. Yoshida: Right.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: The Director still reviews the application. It's not a rubber stamp correct?

Mr. Yoshida: I guess the Director has reviewed the application previously and is notifying the Commission of his intent to issue administrative approval should the Commission waive its review.

Chair Hiranaga: Okay, thank you. Any further discussion? Seeing none, Administrator Yoshida, if you could repeat the motion?

Mr. Yoshida: The motion is for the Commission to waive its review of the subject time extension request.

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

Mr. Yoshida: Seven, seven ayes.

Chair Hiranaga: Any opposed? Seeing none, motion carries.

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

VOTED: To Waive Review of the Time Extension Request.
(Assenting - J. Freitas, I. Lay, M. Tsai, W. Hedani, K. Ball, P. Wakida, W. Shibuya)
(Excused - D. Domingo)

Chair Hiranaga: Administrator Yoshida?

Mr. Yoshida: The third time extension request is from Randall Endo, Vice President of Wailea MF-7 LLC for a two-year time extension on the period to initiate construction of the Wailea MF-7 Multi-Family Residential project at Kai Malu Drive, TMK 2-1-008:116, Wailea, Island of Maui. The question before the Commission again is whether to waive or not waive its review of the time extension request and the Staff Planner is Candace Thackerson.

c. MR. RANDALL H. ENDO, Vice-President of WAILEA MF-7 LLC requesting a two (2)-year Special Management Area Use Permit time extension on the period to initiate construction of the Wailea MF-7 Multi-Family Residential Project at Kai Malu Drive, TMK: 2-1-008: 116, Wailea, Island of Maui. (SM1 2006/0038) (PD1 2006/0004) (PD2 2006/0004) (PD3 2007/0004) (C. Thackerson)

Ms. Candace Thackerson: The time extension review request for MF-7, Wailea MF-7 is a multi-family unit as opposed to the other one which was multi-use. This is the second time extension request for this project. Although this one is very extensive with all the various Project District

Phase Approvals they're going through as well. The building permit application was submitted in 2007, so there's been some holdup on the building permit side with the State Historic Preservation District [sic] as well as DSA and Department of Water Supply. Department of Water Supply has had some changes there too, so some of the plans will need to be reapproved as the one-year construction approval phase time has lapsed there as well. They're asking for a two-year time extension to wrap up a lot of these loose ends. The applicant is here if the Commission would like to question them further.

Chair Hiranaga: Open the floor to public testimony. Is there anyone here that wishes to provide public testimony at this time, please come forward? Seeing none, public testimony is now closed. Open the floor to Commissioners for questions? Commissioner Tsai?

Mr. Tsai: In regards to this development here, I assume the economic conditions have something to do with the delay or just purely based on what you're saying permits and stuff?

Ms. Thackerson: The applicant can better answer that, but I believe in the letter they outlined both of those as a reason, but if you'd like to clarify that?

Mr. Randall Endo: Good morning. Good morning, Commissioners. Randy Endo, on behalf of A&B Properties. So it would be combination of both things. We have been working pretty hard and we're actually fairly close to getting building permits for this project. Although the urgency to get everything done has sort of dropped with the downturn in the market. So we've been plugging away trying to get the building permit, but obviously it's not as high a priority as other things, that you know we're trying to get started. But we do, we do believe in this project and we do wanna complete the building permit and it is on--fairly high on our list of things to actually get started in the near future.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Mr. Endo, can you tell me or reassure me that two years is enough 'cause I'm thinking due to the complexity of this project, a three-year time extension would be more appropriate, but you're closer to the action so can you comment on that?

Mr. Endo: Do we need a different approval for a three-year extension or can it be administratively done? I think that's part of the reason for why it's requested as two years. If we could get three years, it would be--we'd be happy to get that. It would be a safer thing.

Chair Hiranaga: Also, I have a concern regarding proper notice. If the notice is to grant a two-year extension and there's discussion about a three-year extension was appropriate notice given to the public?

Mr. Yoshida: Can you repeat the question?

Chair Hiranaga: My concern is on appropriate notice to the public since the agenda item is for a two-year extension there seems to be some discussion about extending that beyond that posted term? Would proper notice have been given because, you know, you post it for a two-year

extension and then the Commission grant or actually we're just here to waive review so ...

Mr. Yoshida: I believe, and Corporation Counsel can correct me, pursuant to the SMA Rule amendment, the issue about waiving or not to waive is only for a time period of two years or less. So that is how it is noticed. If the applicant wishes to come in for a time period longer than two years then the waiver issue is not an issue. We would have to come in and notice it as such and the Staff would have to do a staff report, et cetera.

Chair Hiranaga: Does Corporation Counsel concur?

Mr. Giroux: Yeah, that accurate.

Chair Hiranaga: Thank you very much. Any other discussion or questions? I have a question. I was looking at the drainage report prepared by Sato Engineering and in basic terms is the drainage system designed to retain the County minimum standard of the increase in surface runoff generated by the improvements? I couldn't quite tell. There was several statements within the report that seemed to be conflicting. What is it?

Mr. Hirano: Mich Hirano with Munekiyo and Hiraga. Lori Fong from Sato and Associates, the civil engineer is here so she can address it. But that drainage report was submitted with the grading permit when they applied for the building permit and grading permit. That could be--that was reviewed based on this time extension request as well. Lori?

Ms. Lori Fong: Hi, I'm Lori Fong from Sato and Associates. In your drainage report we have met and actually exceeded the Code where we have to retain or capture the increase of the runoff between the existing and developed conditions on the site. Currently in our calculation between the existing and the original we have an increase of 9.63 cfs, it's about 10 and we capture on site about 15.43. So we capture one and a half times more than the Code requires.

Chair Hiranaga: Is that stated somewhere in this report?

Ms. Fong: No, it isn't.

Chair Hiranaga: Could you just restate what you just said?

Ms. Fong: Okay, the Code requires for us to, to retain or capture the difference between the original and the developed conditions on the site. We currently have calculated the existing runoff to be 16.17 cfs, and the original or developed is 25.80 cfs which is an increase of 9.63 cfs that we capture on our site in those retention basins 15.43 cfs which is about an increase of 1.5 times the Code that's necessary.

Chair Hiranaga: So what happens to the approximately, I guess it's, what, 10 cfs from the pre development surface runoff. Does that go into some type of a settling system or is there filtration?

Ms. Fong: It currently gets put into two retention basins we have on site, but we're gonna put two retention basins. It's actually instead of the 10 it's gonna be 15 that we retain on site. So we

capture actually on the whole site, 56 percent of the entire site runoff.

Chair Hiranaga: Post development.

Ms. Fong: Yes.

Chair Hiranaga: And what happens to the other 44 percent?

Ms. Fong: It gets--because due to the constraints of our site we have the gulch on one side and we have the golf course on the other side, it will run off into either the gulch or the golf course.

Chair Hiranaga: Do you have some type of a settling sump to allow the particles to settle?

Ms. Fong: From what is retained, we have it in the retention basin.

Chair Hiranaga: So the 44 percent is that just flowing into the gulch untreated or ...

Ms. Fong: Correct, well, through the landscape.

Chair Hiranaga: So does the water flow into your retention basins, and you have a spillway that it reaches a certain point and it starts spilling out of it.

Ms. Fong: Correct.

Chair Hiranaga: So the 44 percent does not--is not directed directly through to the gulches --

Ms. Fong: Correct.

Chair Hiranaga: It goes through the basins first, it's just the basins have a certain capacity?

Ms. Fong: The basins have a certain capacity, but the 44 percent just falls off from the landscaping. It gets--the runoff gets treated through the landscape.

Chair Hiranaga: So it doesn't go through the basin?

Ms. Fong: No.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: How many retention basins did you say?

Ms. Fong: We have two.

Ms. Wakida: Two?

Ms. Fong: Correct.

Chair Hiranaga: Commissioner Tsai?

Mr. Tsai: Assuming the two-year extension is sufficient this looks like a sizeable project obviously, what's your estimated timeline for completion?

Mr. Endo: Well we're hoping that we would initiate construction within six months of getting all of our building permits. So assuming we can get our building permits in less than a year, we could hopefully break ground and initiate construction in less than two years. As for when we would actually complete, you know, it probably take a couple years after that. So it's still a ways, a ways out but compared to some of our other things it's not that far off. I'm sorry, Randy Endo, A&B Properties.

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

Mr. Shibuya: I just wanna clarify the drainage coefficient. What was your stated coefficient again?

Ms. Fong: Lori Fong with Sato and Associates. The coefficient, are you meaning the coefficient for between like the pavement and the landscape or like the weighted coefficient?

Mr. Shibuya: Well, no, each one. One for the settling area, the retention basin 'cause that's where the water's gonna go. So how fast does it?

Ms. Fong: Well, the coefficient that we used for landscape is 0.35.

Mr. Shibuya: Okay, thank you.

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

Mr. Freitas: Move to waive review.

Chair Hiranaga: Is there a second? Seconded by Commissioner Hedani. Any discussion? Seeing none, if the Administrator Yoshida could restate the motion?

Mr. Yoshida: The motion on the floor is for the Commission to waive its review of the time extension request.

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

Mr. Yoshida: Seven ayes.

Chair Hiranaga: Opposed? Motion carries. Thank you.

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

VOTED: To Waive Review of the Time Extension Request.

(Assenting - J. Freitas, Hedani, I. Lay, M. Tsai, K. Ball, P. Wakida, W. Shibuya)
(Excused - D. Domingo)

Ms. Thackerson: Thank you.

Chair Hiranaga: If there's no objection from the Commissioners, I'd like to defer Item D to the end of the meeting and we could just go through Items E and F before we break? No objections? Administrator Yoshida?

Mr. Yoshida: Item E is the Acceptance of the Action Minutes of the May 22, 2012 meeting and the Regular Minutes of the March 13, 2012 meeting.

E. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 22, 2012 MEETING AND THE REGULAR MINUTES OF THE MARCH 13, 2012 MEETING

Chair Hiranaga: Motion to accept.

Mr. Hedani: So move.

Mr. Ball: Second.

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

Commission Members: Aye.

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

VOTED: To Accept the Action Minutes of May 22, 2012 and the Regular Minutes of the March 13, 2012 meeting.
(Assenting - W. Hedani, K. Ball, J. Freitas, I. Lay, M. Tsai, P. Wakida, W. Shibuya)
(Excused - D. Domingo)

Chair Hiranaga: Moving onto Item F. Administrator Yoshida?

Mr. Yoshida: Thank you, Mr. Chair. Under Director's Report, the first item is Commission Projects and Issues.

F. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

a. Amending the SMA Boundaries

Mr. Yoshida: We don't have any change in status regarding amending the SMA boundaries. I guess some Commissioners did request that this placed on, continued to be placed on future agendas.

2. EA/EIS Report

Under Item 2, we did circulate to you the Draft Environmental Assessment for the Puunene Heavy Industrial project, subdivision project. This is scheduled for your review and comments at your next meeting on June 26. We have two--we have an SMA, I mean, a Final EA on that Waiko Industrial Subdivision project that's scheduled for the July 10 meeting. And we also have the Draft EA for the Hester project out in Kahana where we did a site inspection last February. This is scheduled for your July 10 meeting. And then hopefully during the lunch period we'll circulate the Final EIS for the Honua'ula Wailea 670 project, four volumes which is scheduled for your July 24 meeting. So that's all we have to report on the issues of EAs and EISs.

3. SMA Minor Permit Report

4. SMA Exemptions Report

5. Discussion of Future Maui Planning Commission Agendas

Mr. Yoshida: We have circulated the report on the, reports on the SMA Minor, SMA Exemption as well as your July 26th meeting agenda items.

With respect to Commissioner Shibuya's questions on those PV arrays at the Kihei Aquatic Center and the Kaunoa Senior Center believe it's the initiative of the Administration to try to use more alternative energy type methods at our County facilities. I guess they've had some kind of review during the last year and this is sort of the implementation of that. With respect to the demolition of the--the SMA Assessment for the demolition of the housing structure at Montana Beach, well I guess after the County acquired the lands, the Parks Department formed a advisory committee which also involved Planning. There were several ideas as to what to do with the house. And the end result was that it should be demolished. So the Parks Department is in for an SMA Assessment to demolish the house. Are there any other questions from the Members on our SMA Minor and SMA Exemption Report?

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: No, no, mine is more a comment on the discussion of future Maui Planning Commission agendas. Can I make a comment?

Chair Hiranaga: Sure.

Mr. Shibuya: Okay, at this time, I'm concerned that the Director is making some revisions to the General Plan, the Maui Island Plan that was approved by this board, this Commission. And they're making changes to it but not advising us and I would appreciate having some kind of feedback as to a summary of some of the changes that were being recommended to the Council.

Chair Hiranaga: The Director is proposing changes He's not making changes.

Mr. Shibuya: That's correct. That's all I ask.

Mr. Yoshida: I can bring your concern to the Director and you know, see what he wants to do.

Mr. Shibuya: Thank you.

a. June 26, 2012 meeting agenda items

Mr. Yoshida: Are there any other questions on our regular meeting items for the June 26th? It is kind of a heavy agenda with two Council Resolutions, a Draft EA, time extension, Bed and Breakfast Special Use Permit time extension, and the Public Works comments on their proposed rules for the Design of Storm Water Treatment Best Management Practices which came out of the Drainage Workshop that they held for you.

Chair Hiranaga: No further discussion on those items, I'll call for a ten-minute recess. We'll convene at 10:25 and resume with the Agenda Item D.

A recess was called at 10:15 a.m., and the meeting was reconvened at 10:25 a.m.

Chair Hiranaga: Next item is D, Completion of Orientation Workshop No. 2. First up is James Giroux, Ex Parte Communications. James Giroux is now leaving the agenda.

D. COMPLETION OF ORIENTATION WORKSHOP NO. 2 (Deferred from the May 22, 2012 meeting.)

1. **Ex Parte Communications (J. Giroux)**
2. **Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
3. **Ethics**
4. **Recent U.S. Supreme Court decisions on takings issues.**
5. **Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
6. **Hawaii Supreme Court Decision regarding the Topliss case (SMA)**
7. **Hawaii Supreme Court Decision in the case of Paulette K. Kaleikini v. Laura H. Thielen, in her official capacity as Chairperson of the Board of Land and Natural Resources, Board of Land and Natural Resources, and the Department of Land and Natural Resources.**
8. **Other Relevant Hawaii Supreme Court Cases**
9. **Intervention and Settlement Agreements**

Mr. James Giroux: Good morning. Thank you, Chair. Thank you Members. Some of you have seen this before. I've done some modifications, but what I'm gonna do is I have two things that are left over from my orientation that I didn't go over and one of them is your contested, the contested

cases and the other one is I did a little bit of an update on case law review. So let's see, this isn't machinery so bear with me.

So part of your powers and your duties is that you are a quasi adjudicative board and what that means is that you take on the role of doing what judges do on a daily basis, but I want you guys to look at is what you, what is entailed in a contested case. And just so it's not a surprise, but I think most of you have actually had to do contested cases in the past on other boards or on this board. Our contested cases are governed by our Hawaii Administrative Procedures Act, HRS Chapter 91. And basically your rules also govern how you are gonna proceed with you're doing a contested case. Your Maui Planning Commission Rules, 12.201.39, says, "all proceedings in which action by the Commission will result in a final determination of the legal rights, duties or privileges of a specific party or parties and which is appealable pursuant to Section 91-14 HRS, as amended is a contested case." So a lot of times you hear the lawyers discussing is this a contested case or not? For your purposes, anything dealing with the SMA is assumed and by the, by the Supreme Court has been ruled as a contested case. So it's no mystery that if you're dealing with an SMA that that's a contested case. Whether or not we're doing the formal procedures or not. So a Special Management Area Use permits are contested cases. The Supreme Court has held that the proceeding before the Planning Commission was a contested case is obvious as the permit applicant sought to have the legal rights, duties or privileges of the company relative to the development of land and which it held an interest declared over the objections of other land owners and residents of the area. So that was Mahuiki. We call it the Mahuiki Case.

Once something's a contested case there's certain requirements. And one of the basic requirements is of notice. That means that the persons whose interests are involved need to be noticed and what we do with our SMAs is we also do public notices. One of the rights is that it's the submission of evidence, the person who is --whose rights are being challenged has the right to bring forth evidence and have you review it. Part of that is a cross examination and rebuttal of evidence. And that just means you're asking the witnesses questions. And a lot of times if a lawyer is involved they'll ask questions and the body also asks questions to test the evidence. The party initiating the proceedings shall have the burden of proof including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. So again, in the SMA cases, you're not asking for proof beyond all doubt or proof beyond a reasonable doubt or anything like that. It's a preponderance of the evidence. So there's a lot of testimony from the applicant, from their consultants, paperwork, you're given reports, all of that is part of the evidence that needs to convince you that a project is, you know, meets the criteria as set forth in whatever permit that they're trying to get.

So one of the requirements is that the decision maker shall personally consider the whole record of such portions thereof as may be cited by the parties. So that's a, so if you miss a meeting that you should review the transcript, look at any exhibits that were presented. That way you can still participate in the decision making. Every decision and order adverse to a party must be in writing and accompanied by separate findings of fact, conclusions of law, and basically that's just your decision put down in writing so anybody afterwards can understand what the decision making was. The findings of facts are usually the facts as presented and the conclusions of law is your application of those facts to the law. Did the facts presented convince you that the criteria was met? And once that is developed, then it's served on the parties so that they can do what they

want with it, and usually if it's not what they want, they go to court and they get a judicial review and that's the final process.

So what the judge sees is that conclusions of law and the findings of fact and that's how they're going to review an Administrative Appeal. So once you get judicial review, that's an administrative agency's finding of fact will not be set aside on appeal unless they shown to be clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or the Appellate Court upon a thorough examination of the record is left with a definite and firm conviction that a mistake has been made. So basically what the judge does he gets your findings of fact, conclusions of law. If it makes sense, if five people voted for it, the assumption is that it will make sense. He also reviews the transcript and looks at what evidence was presented. If it's clear that there's an error, then they will get involved. But otherwise there's a--the judicial temperament is that they are going to leave the important decision making to you because you're the expert. This is your realm of expertise especially the SMA and things in that realm.

As a general rule, an Administrative agency's decision within its ...(inaudible)... of expertise is given a presumption of validity and one who seeks to overturn the agency's decision bears the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequence. So that's when somebody appeals your decision they do have a hard road to follow. I mean, the courts are really going to put that burden on them to show what kind of error was made. Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceeding or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative finds, conclusions, decisions or orders are--and this is the list. Number 1. In violation of the Constitution or statutory provisions. In excess of the statutory authority or jurisdiction of the agency or made upon unlawful procedure or affected by other error of law or clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or arbitrary or capricious or characterized abuse of discretion are clearly unwarranted exercise of discussion. So what does that mean?

Basically on the top you have violations of constitutional law and in our case review we're gonna go over some of those constitutional issues and that's why because we need you to have a firm understanding of what the constitutional rights are that are involved. The other one is statutory provisions. When you're working with the SMA it's always 305A, and we're gonna go over some of the case law that's come out of that area. If you're in excess of your statutory authority or jurisdiction, this is a huge--when I'm advising boards and commissions, that's one of the biggest parts of my job is to make the board understand that's that is within your jurisdiction, that's not within your jurisdiction. Whatever the parameters of the statute that gives you the authority within the Charter, within the statute or within the Constitution puts things in your jurisdiction. If they're not in your jurisdiction and you make decisions based on it, the courts will overrule that and probably remand it for further decision making.

Unlawful procedure meaning that if somebody has a due process right and we violate right. If they had a--they were given a--they were supposed to be given an opportunity to be heard, we cut them off, we didn't listen, we sent them home, the courts would probably say, hey you know what, you need to hear them out. They have the burden of proof. They have the right to present evidence.

You didn't receive it. Go back. Do it over.

Affected by other error of law. Just a misinterpretation of your own rules or of statutory law would be that in that category. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record and we went over that already. It's basically making a decision, the facts are right in front of you, but you make a decision contrary to the fact and that's where the courts would get involved.

Number 6. Arbitrary or capricious or characterized abuse of discretion or unclearly warranted exercise of discretion and that's my favorite. I call it the willy nilly decision, and that means that, you know, basically if people are making decisions not based on any fact but probably based them purely on emotion and that's where we have to ask ourselves have we looked at the record, have we looked at all of the evidence presented and have we applied the law? If you do that, you avoid number 6.

Things to remember. When dealing with a contested case, you are exercising your adjudicatory function. You must remain impartial and not openly make conclusionary remarks until all of the evidence has been received. Your decision must be based on the evidence on the record and avoid any statements that may be mistaken as an attack on somebody's race, sex, gender or religion. So basically what I advise boards and commissions is listen to the whole case. You guys get a report, people testify, the public testifies. People get asked questions. Wait till all the evidence has been presented and maybe wait for a motion on the floor before you start giving you know, the type of conclusionary remarks that would be expected at the end of the hearing, not in the middle, not near the end, but actually at the end where you do have the right to, to make those decisions and say, that a person did or did not meet the criteria or the project does not meet the criteria of the law and that's where those statements should be made and it should usually be made during the time that you're already the deliberating and all of the evidence has been presented to you. Any questions?

Mr. Freitas: Can a judge throw out an appeal?

Mr. Giroux: Yeah, the judge basically what they do is they--the person files--they have 30 days to file an appeal of an administrative decision. They file their opening briefs, they file answers, there's a lot of procedural things that it gets in front of the judge. The County represents the board and an attorney would go in there and look at the case and see whether or not there's some way procedurally to dismiss the case. Basically there's Motions to Dismiss. There's Motion for Summary Judgement meaning that there is no basis of fact or law to appeal the case. At that point, the judge can make that decision that they're going to, to do that. Once the person who's appealing passes that benchmark then the judge looks at the whole record and tries to figure out whether or not all of those criteria are met for any decision that he's gonna make. And I think, you know, as far as this board goes, the only things that we have seen come back are the interventions whether or not, you know, deny or grant an intervention. I think from the six years I've been here, outside of the intervention process, I think this board has--all of their decisions has stood.

Moving right along, so we don't lose any of you. I kind of want to give you just an overview of what the law is out there. This is not a treaties and it's not definitive in the area, but I think it's going to

be helpful as far as some of the conversation that occurs during meetings and we hear the lawyers stand up and say, oh this is a takings or you're violating the RLUIPA and I think you need to kinda understand the background and know that your lawyers understands what their lawyers are talking about. So it doesn't confuse you or take you away from your basic decision making process that you should understand that you have the power to do. So takings it's a, the concept from the Constitution. The Takings Clause of the Fifth Amendment of the United States Constitution made applicable to states through the Fourteenth Amendment provides, "Nor shall private property be taken for public use without just compensation." It does not say public property cannot be taken. It says, private property, if it's taken, has to be paid for. So that's what people are saying, hey, you know, you've regulated my property, I can't use it. You should pay me something. Then that becomes a debate. One of the principle purposes of the Takings Clause is to bar the government from forcing some people alone to bear public burden which in all fairness and justice shall be born by the public as a whole. One of the things that we look at when we're looking at takings cases is that essential nexus. Although the outright taking of an uncompensated permanent public access easement would violate the Takings Clause conditioning appellants rebuilding permit on their granting such an easement would lawful land use regulation if it's substantially furthered government purposes that would justify denial of the permit. And that's a little complicated way of saying that if the government can show that it absolutely is going to use that property for something that is to the public interest then it's showing that it has a nexus to what it's doing. It's not acting arbitrarily and capricious. It's just that a lot of our law has gone so far that even taking property for development and then selling it to a private owner has been seen as ...(inaudible).. the government's right to do that for rehabilitation purposes. The government's power to forbid particular land uses in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner even a concession of property rights so long as the condition furthers the same governmental purpose ...(inaudible)... as justification for prohibiting the use. So what it's saying is that--if the government can prohibit the use altogether, somebody says, hey I wanna do a permit to do a project, and the government actually has the power to say no, absolutely you're not doing it all then it can make concessions as far as taking portions of that property to further the public purpose. And in Nollan v. California Coastal Commission they're in a similar situation that you guys are always in is that you're dealing with coastal access, coastal view, and coastal preservation. So that is seen as a nexus in government power to preserve those resources.

The other part of the test is called the rough proportionality test. So once you meet the nexus test, then you go over to the rough proportionality. It says whether the city's findings are constitutionally sufficient to justify the conditions imposed on Dolan's permit, the necessary connection required by the Fifth Amendment is rough proportionality. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact. So what you're doing is you're saying okay, well, we need to have some type of logic here that says that this one person isn't going to be giving more than is necessary. And again, it's not a mathematical calculation but there has to be thought put into it that justifies that. If somebody's putting in a hotel and you take half the property for coastal access, the courts are gonna say, well what, what part of that is going to go into furthering that purpose and is actually having parking and a accessway sufficient? So taking half the property, yes, that might be a taking because you're not gonna pass the rough proportionality test.

Another thing to look at is what, what other properties have given the same type of access and what kind of properties have given in the same area those types of things? So there needs to be discussion on the record about that. So to sum it up, the Nollan, what we call the Nollan-Dolan Test is first of all, you get your legitimate paid interest and what you're doing with 305A, all of the purposes and policies of 205A are within your scope of legitimate paid interest because the State has already deemed those policies and objectives to be important. Once you do that, you establish your essential nexus is what you're doing connected to those policies and objectives?. And once you pass that test, you go to your rough proportionality. Is the exaction that you're asking for proportional to the impact that that person's causing?

So little bit review into your SMA Law, the Objectives and Policies of 205A are examples of legitimate State interest. Among the CZMA's stated Objectives and Policies are the protection, preservation, restoration, improvement of the quality of coastal, scenic and open space resources and the designing and locating of new developments to minimize the alteration of existing public views to and along the shoreline and Jim will get more into that. An interesting aspect of the SMA Law is the denial. The law has come out under Topliss v. Planning Commission that before any denial of a Special Use Permit is made you have to do an analysis. So this says, even if a development is shown to have a substantial adverse effect in accordance with this Statute HRS, 205A, the Commission is required under HRS 205A-26(2)(B) to determine whether that effect can be practically minimized and when minimized, is clearly outweighed by the public's health, safety or compelling public interest. The Commission may impose reasonable conditions to achieve the minimization. So if you're ever, if this board is ever in a situation where you're getting five votes to deny an SMA application, this discussion has to be made. What are the impacts that are in violation of, of the Policies and Objectives of 205A, and what are the possible conditions that would minimize those impacts? And that discussion has to be made. If the record is void of that discussion, the courts are going to say, go back, do it again, get it on the record of why that denial is occurring.

And we'll be looking at this in the future is the conditions. The conditions that are placed on SMA permits. And the thing to focus on is that the Commission can put conditions on the granting of the Special Management Area Use Permits as long as the conditions are reasonable and further the Policies and Objectives of 205A, and I think the Staff will further comment upon that whether or not we're looking at conditions that are actually in line with 205A.

The Commission cannot delegate its duties. And this is coming out of the Alaloa Case v. us. The Commission must make findings that the development will not violate the Policies and Objectives of HRS 205A prior to the issuance of the SMA permit. That means that you can't say to the developer well, go do a study later and conform to that study. If you're gonna make them do a study, you make them do a study, then you review the study, then you make conditions that will further the Objectives and Policies of 205A in conformance with that study. And in this case, it was an archaeological report. The Commission has an affirmative duty to protect cultural resources and the Commission is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible. And this is some language out of the Alaloa Case. It's in order to protect cultural resources, developers should be required to retain qualified archaeologists to determine significance of various archaeological sites upon lands to be developed and prepare written report regarding preservation or salvage of historical resources and

archaeological sites prior to the issuance of the SMA permit. And that was the whole crux of Alaloa was that they, they made them do it after not before the SMA was granted.

In order to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible, the Commission must make specific findings and conclusions as to the following: Number 1. The identity and scope of valued cultural, historical and natural resources in the area including the extent to which traditional and customarily, customary native Hawaiian rights are exercised in the area. And Number 2. The extent to which those resources including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action. And Number 3. The feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiians rights if they are found to exist. So one of the important things to look is that is there Cultural Impact Studies, and what the scope of those impacts, and will the development impact those rights prior to granting the SMA permit?

So this is the big one that we always get threatened with. It's the RLUIPA case and usually if we're looking over things that involves churches, religious organizations, things like that, we need to understand this law. And I think we've had a growing experience with this because I think a lot of people have come before you arguing RLUIPA when they really haven't met the test or the standards as presented under the law. So we're gonna go over this. It's the Religious Land Use and Institutionalized Persons Act of 2000. It can be found 42 USCA, Section 2000, and we're just gonna summarize a little bit. RLUIPA prohibits the government from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person including a religious assembly or institution unless the government demonstrates that imposition of the burden on that person, assembly or institution: a. Is in furtherance of a compelling interest. And b. Is the least restrictive means of furthering that compelling interest. And I think we've had people expounding RLUIPA saying that they didn't need to get a permit at all because they're a religious activity and that's not accurate. That's not an accurate portrayal of the law. You still have to go through the system, you still have to ask the government for that permit. It's just that the government has to act in a responsible way and do the analysis before giving or denying that permit.

RLUIPA applies if the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations under which the government makes or is permitted under the law to make individualized assessments of the proposed use for the property involved. And what that say, is if, if you're gonna give a permit. So the court determines whether the challenged action involves an individual land use assessment. And usually if you have an applicant, they have a parcel of land, it's usually an individual land use assessment. If it does, the court must then determine whether the action imposes a substantial burden under RLUIPA. Not just a burden or an infringement but actual, substantial burden and that's another thing that has been misquoted under this law is that people will come in and say that you're infringing on my rights because you're not letting me do this. Well, the law says if that infringement is a substantial burden. So there's another--they're leaving out another part of the test and misstating the law.

The substantial burden, the plaintiff in a land use case challenging the denial of a use permit bears the burden of proving that the government's authority denial of the application imposes a substantial burden on its religious practices not just a mere inconvenience. A substantial burden

must place more than an inconvenience on religious exercise. To impose a substantial burden, a land use regulation must be oppressive to a significantly great extent. That is a substantial burden on religious exercise must impose a significantly great restriction or onus upon such exercise. If the plaintiff establishes that the land use regulation or denial of the use permit imposes a substantial burden, the government authority must then show that the restrictions are narrowly tailored to accomplish a compelling government interest.

And compelling government interest is usually looked as health, safety or welfare. And what a lot of your zoning laws are is based on health and safety. So it's very important that that is part of the analysis. People have come in and said, well, just because I can't meet my fire requirements or I can't meet my water requirements doesn't mean I can't do the activity I wanna do. Well, absent fire protection or water that's a pretty compelling interest that we want people who are doing activities in areas where everybody who does that activity will be safe.

One of the sections of this law involves discrimination. RLUIPA prohibits discrimination. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on a less than equal terms for the nonreligious assembly or institution. So if somebody has a--some type of organization that's allowed to do an activity on a property and you're allowed that activity, but then the next permit comes in and because it's a religious activity, but it's the same activity and you don't allow it, then we're gonna have this discrimination raised as far as why are you treating one group of people different than another merely because of religion?

The other part of the RLUIPA is exclusion. No government shall impose or implement a land use regulation that either totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assembles institutions or structures within a jurisdiction. So if you take all of Central Maui and say, we're not gonna allow religious activities, you're probably gonna get caught with the exclusion. It's whether or not that that land use is appropriate in that area that if there's no--if there's no space for it in the area then you're gonna be looking at this portion of the law that says, well, you need to make space. And that's it. Any questions? Jim's gonna take it from here and get into the SMA Law.

Chair Hiranaga: Thank you, James. Jim just curious, how long is your presentation?

Mr. Jim Buika: Approximately 15 to 20 minutes.

Chair Hiranaga: And how many other presenters are there?

Mr. Buika: I'm the only one. I'm just gonna do two portions of the session that were postponed from the May 22nd meeting.

Chair Hiranaga: And then we're done?

Mr. Buika: Yes, as far as training. No other training.

Chair Hiranaga: Thank you.

10. Special Management Area Rules (J. Buika)
11. Shoreline Area Rules (J. Buika)

Mr. Buika: Thank you, Commissioners, good morning. My name is Jim Buika. I'd like to recognize our Planning Program Administrator, Corporation Counsel, Public Works, our new Commissioners and our returning Commissioners also. Thank you for your expertise and time commitment to the people of Maui County. We all realize it's not easy and it is a major commitment on your part, so thank you so much for the work that you do.

I do believe you have a set of slides in front of you that you can refer to for your reference. And just to go over the presentation outline. We had at the May 22nd Commission meeting we had completed the managing Maui's dynamic shoreline with Tara Owens from the UH Sea Grant Program. We also had invited guests, Leo Asuncion and Shichao Li from the Office of Planning, Coastal Zone Management that talked about the State Law, Coastal Zone Management Act, HRS 205A and I'll transition from the Coastal Zone Management Act into the two topics that are relevant to this Commission which are the Maui Planning Commission roles under the Special Management Area Rules for the Maui Planning Commission and the Shoreline Rules for the Maui Planning Commission. So I'll cover these two topics together and we'll have time for a question and answer and appreciate the last time actually works out good splitting the two because we had a little more time for discussion than we normally do during training and I think it worked very well.

So I'll begin the presentation. First off, at the State level, the Coastal Zone Management Act which we have covered authorizes counties to develop and administer the SMA Rules or the Special Management Area Rules and the Shoreline Rules and these are stated in front of you. They're Chapter 202 and 203. And this is granted via the Maui County Charter which designates Planning Commissions for Maui, Molokai, Lanai as the authority in all matters relating to the Coastal Zone Management Law for the islands. So the SMA Law, the buck stops here. It does not go to the Council. So you are the deciders on SMA permits. So I'll go over the goals, the guidelines and the purpose of the SMA Rules and then I'll go into the more prescriptives, how you do your work here

So the goal of the SMA Rules is to further the policy of the State which is set by the Coastal Zone Management Program and as James had mentioned it's to preserve, protect and where possible restore the natural resources of the coastal zone. So this is our ultimate goal when we're looking at the SMA. This is two photos here of Kamaole I Beach Park it's a vegetation removal and this is a kind of a unusual instance but we're proud of it. It's furthering the goal of the SMA Rules where we're actually restoring natural resources to the coastal zone and I'll explain here. I'm going to go to that small picture and blow it up here for us. So this was May 18th, and then on May 19th, what we did was we took out the hau there. But anyway, this was--what has happened along the coastline here is over 30 years. This is a County TMK. It's a beach park parcel and the individual homeowners, seven TMKs along South Kihei Road have encroached over 30 years, watering and creating this 150 to 250-foot wide swath of naupaka and various vegetation and basically privatized the beach parcel. So what we are doing in essence by removing all of that, under a State mandate from the Director of Board of Land and Natural Resources, is we're tripling the size of the beach. So we're actually meeting some of the goal here, and I'll show you in the next slide here. So this shows how we're able to actually restore some of the environment. So I'll go into the purpose of the SMA Rules here. This is a older picture of Kaanapali, Maui and this development here was built

before we had some of our shoreline rules anyway. So what is the purpose of our SMA Rules, it's as to create a management tools through a permit process to set special controls to assure that allowable developments are designed and carried out in a manner consistent with the Coastal Zone Management Objectives and Policies and the SMA Guidelines.

I'll go quickly over the SMA Objectives and Policies. We did cover them last time. So obviously under our new rules if we were building this condominium or hotel we wouldn't want to site it where it is because of what we know about coastal erosion and issues along the shoreline. So we'll go into the SMA Guidelines here which are set again at the State level from the Coastal Zone Management Act, under 205A, Section 26. So what the Maui Planning Commission seek to minimize, where reasonable are these following: We do not want to dredge, fill or alter coastal areas. We do not want to reduce the size of beaches. We want to minimize impediments to public beach access, coastal recreation. We want to maintain--prevent the loss of coastal view plane and prevent the loss of or prevent adverse effects to water quality, fisheries, wild life and habitat and loss of existing or potential agricultural areas. So it's very environmentally oriented and the bottom line is the Coastal Zone Management Act through the Maui Planning Commission and your guidelines seek to minimize where reasonable adverse impacts to the environment. So that's the bottom line is we're seeking to minimize, again as James said, we're not denying, but we're looking for the best solution in most cases.

Again, to reiterate these Guidelines ensure that we have adequate access to publicly owned beaches, recreational areas, wildlife and natural reserves. We have adequate properly located public recreation areas. Adequately controlled, managed, and minimized impacts from pollution and runoff. That's a big focus of the Maui Planning Commission. Minimize adverse effects for water resources, scenic resources and recreational amenities and minimize risks to proposed structures from coastal hazards. So you can see I underlined the words "adequate" and "minimize." Okay, every time we put a shovel in the ground, every development has some sort of an impact. What your focus is to minimize those impacts for future development along the coastline.

So let's look at the rules themselves. Coastal Zone Management Act and the Special Management Area are part of the planning frame work under the State Constitution going from left to right, the first gray boxes there, we have the Hawaii State Planning Act which is the General Plan and our community plans which are managed by the County. Land Use Commission, all of the District Boundary Amendments, Special Use Permits are mostly managed by the State unless it's under 15 acres. Zoning is managed by the County and then Coastal Zone Management Area to the right there is managed by the Maui Planning Commission under the SMA Rules and the Shoreline Rules here. So this is authority delegated to you and Molokai and Lanai. They each have their separate rules and their separate Commissions. So you're just doing it for Maui County proper. So that's what we're gonna look at right now very quickly.

So these SMA Rules provide authorities to the Commission and the Director, the Director being the Director of the Planning Department. So the rules say any proposed action within the SMA requires an assessment by the authority. So the Commission, you are the authority for SMA Major Use Permits. So you're getting a small slice of all of the SMA Permits that come in. The Director is the authority for Minor SMA Permits, SMA Emergency Permits and SMA Exemptions and that's

the bulk of the work, but that is delegated to us and it can reach you in some cases and that's where our Corporation Counsel and usually me we're kinda tied at the hip when we have these interventions or contested cases.

Mr. Tsai: I had a question. The previous slide please? I'm not really clear from that picture there. Are there any areas along the coastline that's not covered under the SMA? It looks like parts of, I guess, along the Pali.

Mr. Buika: The--show you where it's very, very thin. There is, usually what the SMA--the SMA is a boundary, okay, I failed to mention that, but it is an area of land that was back in 1977-78 designated from the--all the land makai of the coastal highway system for Maui County. So everything makai of the highway. Such as when you get up on Honoapiilani Highway up in Olowalu the SMA gets very thin.

Mr. Tsai: That's what I'm looking at.

Mr. Buika: Right. So that would be the area, I'm referring to is along here. I mean, this map is such small scale, again, it is, it's the highway. So it's Honoapiilani Highway up in West Maui. So it's everything on the coastal side, the makai side, but it gets very thin along the highway and actually we're eliminating a little bit of it, and Commissioner Hedani we actually had that discussion last time about for parts of West Maui is the SMA boundary in the right place. Some of the Olowalu area with development going on should we change some of the boundaries? You know, that's a debate that we can have. And there is a section in the SMA Rules where the Commission can change the SMA boundary. So there are provisions in the rules for changing the SMA boundary either making it less or making it greater. Thank you for that question. Certainly, if you have any questions, please ask with the permission of the Chairman, of course.

So the types of permits, we have three types of permits here. We have a Major Permit which comes to you through--a project would have to have a criteria of over a half a million dollars in valuation. It would require a public hearing which is a public hearing in front of this body. Owners within 500 feet are notified by certified mail of the public hearing. And that the SMA Major Permit that you approve would--can have conditions to avoid, minimize and mitigate impact. The second two sets of permits, the Minor Permit in white there is the only difference are the criteria of the $500,000 threshold. There is no public hearing, but a Minor Permit can administratively have conditions to avoid, minimize and mitigate impacts. And also there's what's called an Emergency Permit which can be granted by the Director through oral approval but this report must be submitted to the Commission upon final determination and the criteria is eminent and substantial harm to public welfare or to prevent substantial physical harm to persons or property. I'll show you two examples here quickly. And it is a short Conditional Permit for 180 days and they still need to go through the regular permit process. So this is up on the west side--

Mr. Ball: Jim?

Mr. Buika: Question? Go back or are we okay?

Mr. Ball: Yeah, back onto the Major and Minor. The only criteria is the dollar amount? If you're

a Major and Minor?

Mr. Buika: Yes.

Chair Hiranaga: Jim?

Mr. Buika: Yes.

Chair Hiranaga: I thought there was a catchall phrase that if the Director deems it to be a development you can bump it up to a Major at his discretion?

Mr. Buika: Yes, we can. There are--well, those would be--both the Major and Minor Permit would be deemed developments already. The Director actually can bump it, bump up any permit that has an impact. Okay, there are criteria for a Major and Minor Permit is that it has to be determined to be developments and I'll get into a little bit of what--I mean, development is what it means, basically development. It's any placement of a solid, liquid or gas, but that's fairly onerous. So anything you put in the SMA, that's fair onerous. Everything needing a permit including a single-family home that would be, that would be crazy to have every permit come to you. So developments, there are exemptions or there are exceptions to what is called a development. So first of all, a Major or Minor Permit are deemed development already. And part of the determination of development is even if it could be exempted, normally if the Director determines that there is a potential environmental impact or consequence that should be mitigated or isn't being mitigated by the applicant, then we can bump it up to the Planning Commission. We had one of those last year, the year before us, the Stice case out in Hana on Koki Point where they had--they were attempting to build a home out there which normally would be an exempted activity, but there was a series of potential environmental impacts. So--and it was a contested case, it came to you and we determined, you determined it should be a Major Permit, have a public hearing and be brought back to the Commission rather than be exempted. So I don't know if I'm answering your question but any development is either a Major or Minor Permit.

So shifting from the Major and the Minor just to the Emergency Permit, we're having a few more of these especially on the west side where we--this is Kahana Sunset up in Napili. We had determined that this was a life safety issue. They had to evacuate the building. This was two winters ago. What's happening is these old seawalls, a lot of these properties were built on beaches that were wide. They have a foundation of sand. They're being undermined. Now after 40, 50 years some of the older homes, so this is becoming more of a problem on Maui. So we allowed them, the Director allowed them to mitigate this, put this in and actually this is something that will be coming to you as a Major Permit and a Shoreline Setback Variance with a master plan for this entire area as a consequence of this permit. So even though we can issue them an Emergency Permit to do the work immediately to protect life and property, we still ask them to come back through the permit process. So this is a case or a permit that you'll actively be seeing this next year. It's going through an Environmental Assessment and a Shoreline Setback Variance process. So this entire lanai had collapsed at 3 o'clock in the morning. If it was in the middle of the day, it's very popular. There could have been a loss of life here. There was another building involved also. Another picture.

So as part of this Emergency Permit what we are doing and this is not a real good picture but you can see up that lighted corridor there, they are coming in with a master plan to actually take out a lot of illegal structures, open up the beach and the tough part about this bay, Keone Nui Bay up there has no public access. It's a beautiful beach, beautiful bay, it has no public access so as James was talking about one of the SMA criteria, Coastal Zone Management Objectives is public access to beaches, lateral and vertical. So they have agreed to build this. This is not built yet, but they are--you know, as part of the project, they're going to build a walkway through here down to the beach. So there will be public access. There's not too much parking. There is some parking there. So it's a start. So that will be a big improvement. So these are type of things that we're looking for and this is just voluntarily being done not as a condition of the project, but they are complying. So they realize there's no access.

Mr. Ball: You know the lateral access in that area, there's a wall that blocks that, not the Sunset but further down it's like a private homeowner's wall?

Mr. Buika: Yes.

Mr. Ball: And I don't know--

Mr. Buika: It's on the Hester property. I know it well. They are actually coming in. That's another Shoreline Setback Variance. They haven't come in yet, but they're gonna come in for a variance there and we're discussing with them about hopefully removing that wall because there is actually a access around that point. So that's another variance where their wall is collapsing in front of the home or their bluff. They have a 15, 20-foot bluff over there. It's collapsing. They're coming in for a variance and we would like to--or the Director would like, the Planning Department would like to improve lateral access into the bay. So that will be a second lateral access. I think we'll try to achieve something like that so, so it's a little premature to talk about something like that, but we're very well. I know exactly what you're talking about. There is a wall preventing lateral access along the lava bank up there, yeah. It's a ...(inaudible)...bay and it's a beautiful bay. We did a field trip up there, remember, February last year up to this bay. Some of the Commissioners did.

This is the second one we just did last year, Makani Sands, AOAO where this, the same situation where the you can see the old--this is the completed Emergency Permit here and this wall was just repaired on the makai side, and they actually had a huge, huge cavern underneath there. It was almost reaching the building and the water was going in underneath the seawall. To prevent it from collapsing, we did an Emergency Permit to keep it in place. And you can see the stairs leading down to the ocean here and I'll show you the same situation where this, the AOAO has agreed to create a lateral access with signage right through here out to the ocean because this is a section of Honokowai Bay, we're working Councilmember Elle Cochran to get more access into this area. It's just a seawalled area of old condominiums where there is no access to the ocean. As you can see there--I mean, this picture here, there's not too much of a beach, but locally it is a beach here so we would like to get better vertical access. So those are some of the small success stories through these Emergency Permits that are occurring.

So looking at, so those are the permits, Major and Minor Permits. So you deal with the Minor and then the Emergency Permit. So there's actually a category called an Exemption, it's an SM5 and

these are defined as the Chairman stated, as not a development such as a single-family home. However, there are two criteria. There are these exemption criteria, plus the planners in the Planning Department look at every one of these permits and they look at potential environmental impact. So we want to--we only exempt them after we are satisfied through the SMA Rules, through certain criteria that there are--that the proposed action is determined to have no adverse impacts on drainage, view planes, archaeology, historic and natural and coastal resources including cumulative impacts. So we don't just exempt them. We look at them very critically. Some of them take a year, a year and a half, two years to exempt because we're asking for more, more information, and asking for some mitigative action to minimize the impact.

And then there's the final category of denying a project because of inconsistency with State Land Use, General Plan, community plan or zoning or adverse impacts to the coastal resources. And these can, some of these denials can come to the Planning Commission.

So if we do issue Minor Permits or Emergency Permits as well as Exemptions, they are all reported to you. We do bring a--we do a presentation on any Emergency Permit. We have one in the mill right now, again, up on the west side that hasn't come in yet, but I've gone a site visit and we'll probably be bringing to you within a month just to let you know what's going on. But again, it's undermined. It's a huge, huge sinkhole underneath the seawall that is definitely threatening three major buildings. So we need to take care of that before something happens structurally to the building and to the people inside.

And again, once these permits are notified to you, they can be contested by the public over a ten-business day period. And that has happened in the past as you're well aware of. Mr. Freitas?

Mr. Freitas: Why does it take between a year and year and a half and longer to get the Exemption Permits? What would be the hangup?

Mr. Buika: Well, one thing would be if you're building a foundation of a home in Wailea or Makena that is known to have burials on the site and you have--you do not have any Archaeological Inventory Survey or any Archaeological Monitoring Plan. You would have to go back and as James, Corporation Counsel, showed in the case law, you need to do these studies upfront prior to issuing the SMA Permit or an Exemption. Other examples, often the Commission, I know for Major Permits is interested in drainage. A lot of times the grading plan or there's not proper drainage. There can be a lot of runoff. So we attempt to work with the engineers to add in a Preliminary Drainage Plan. Those usually don't take that long but sometimes they can. So it's a back and forth. First of all, we need to make sure we have all the information we need and then sometimes we require them to do these mitigation actions as part of the project. I mean, you can have a huge piece of land in Makena and build a large home with a lot of development activity and simply to exempt it outright without proper scrutiny through the SMA Law, is not doing justice to the environmental review. So we do have the 12 criteria that's coming up that I'll show you what are the criteria we use. So those are examples of, especially archaeology here if there is a no approved archaeological monitoring plan for the development then we cannot let it go forward especially they're gonna be digging a deep foundation for a house. So that's one example that often can take one or two years. Sometimes you need State Certified Shoreline. I have some permits going back to 2008, where a shoreline property requires a State Certified Shoreline. They

go out to do it and the State finds that there are shuffle board courts on State land. There are pools in State land and the owners have to deal with those encroachments that are on public property. So those are often permits that are held up in those instances. So those are some examples. Not many do, but some do. Any other questions?

So just an Exemption versus a permit again to clarify this a little more. An SMA Exemption cannot have conditions because it is exempted from the SMA Permit application process. Okay, we actually we do, we do--it's not exempted from the process. We have them--we have to do an assessment on it and again, we're looking at environmental impacts, but some of these categories of projects that are exempted. And in contrast an SMA Use Permit may contain formal conditions to avoid, mitigate and minimize adverse impacts on coastal resources. So one is not actually a permit. One is a permit.

There are 17 categories of Exemption Permits and a proposed action may be exempted if it includes measures to avoid, mitigate, minimize adverse impacts. Again, the example that I answered the question with is, for instance an approval of a State Historical Preservation Division requirement for an archaeological monitoring during all ground altering activities. So we just don't exempt the house, we exempt it after all mitigation is in place. So we still are doing mitigation on projects through this assessment process, if that makes sense. Hopefully that makes sense. And then an SMA Use Permit, a Minor or Major can have conditions. Special permit put on it.

So obviously, we can't--for every action we can't have a permit come to the Commission or Planning Department. So there are exemptions and here's just a short list. This is about half the list that are exempted. The single-family residence not part of a larger action is exempted. Structural and nonstructural improvements to single-family residence. So once the house is built, you can make changes. Repair and maintenance of roadways and highways. Routine dredging of streams is maintenance. Repair and maintenance of underground utilities. Okay, again, it's repair and maintenance, right? So they're already existing. Repair and maintenance of existing structures and then some demolition of some structures, ones that are deemed not historic or of value usually are allowed to be demolished. So those are some of the general exemption categories.

So I said when we--even if we get something that's under one of those categories, we go through an assessment and evaluation criteria. So this is the criteria that you use when you evaluate a project and also the Planning Department Staff. So there are 12 criteria in the Rules and again, what we're looking to do is there may be adverse impacts, but we're attempting to minimize them in light of compelling interest of the development on the island. And each proposed activity must be consistent with the SMA Guidelines which I went over. So these are the 12 criteria. I'll run through them quickly but this is what we look at. The first one is very important involves an irrevocable loss of natural or cultural resources. We're losing a beach. We're digging up a cemetery we haven't known. Cultural artifacts, we need to do something about it. We must mitigate it. 2. Significantly curtails a range of beneficial uses of the environment. Takes part of our island out of commission or part of the environment out of use. It fills in a wetland for instance. Now that's not allowed under that criteria. Conflicts with State and County's long-term environmental policies and goals. So we wanna be consistent. Quickly. Substantially affects the economic or social welfare of the community. We build a huge development and we don't put in

a park or we don't have adequate schools systems to manage the 2,000 kids that are expected from that development. So that would be an impact. Involves secondary impacts and increase effects on infrastructure. Again, we don't have proper infrastructure to manage that development. It's part of a cumulative effect or involves commitment to a larger action. Single-family home but maybe this guy wants to build 15 single-family homes. So that's a large act. It's part of a larger action. So they can exempt one single-family home, but we can't exempt15 and contiguous lots. Substantially affects a rare, threatened and endangered species of animal or plant or its habitat. This also is something that that can stop a normally exempted project from moving forward is we need to look at the sensitive habitat. Contrary to State Plan, General Plan or appropriate plans, community plan, zoning and subdivision ordinances, detrimentally affects air and water quality or ambient noise levels. And then the final, well, 10 and 11 affects environmentally sensitive areas such as the flood plane, shorelines, tsunami zone, erosion prone, coastal waters and fresh waters. Substantially alters natural land forms and existing public views to and along the shoreline. And then finally the 12th one goes back to the SMA, the CZM Law or the Coastal Zone Management Law contrary to the objectives and policies of the Coastal Zone Management Act. And again, that is--I'll put those up, that No. 12 is very important and these are the objectives that we discussed in the last training. I wouldn't read the details but in the darker side the impacted resources that we need to look at for every project are recreational, historic and cultural, scenic and open space, the eco--coastal eco system, economic uses, coastal hazard, managing development, public participation, beach protection and access and marine resources. So you can see they're all very coastal, environmentally-oriented and also public participation oriented. This is at the State level. So these are our guiding policies and objectives here that the SMA Rules fall under. But we still need to review those. So that's it for the SMA Rules. What I'll do is I'll shift for the last five minutes just on the Shoreline Rules. So you have another set of rules for dealing with just the shoreline environment, the shoreline setback area. The 25 to 150 feet along the shoreline. Chapter 12-203.

So again, looking at those ten objectives at the Coastal Zone Management level, what we're honing in on are the three darker ones, coastal eco systems, coastal hazards, beach protection and access. So we're looking right at the shoreline environment. And what Maui County does have is a very robust set of shoreline--well, we have some shoreline setbacks and we have some objectives for those shoreline setbacks. We have a variable way of looking at what our setback is depending on the depth of the property as well as the erosion rates out front. But our setbacks are very simple and very straightforward. Here's basically what we wanna do. We wanna move development out of harm's way. We have too much development in harm's way right now. Harm being coastal surge, hurricanes, tsunami, just an eroding shoreline. So we need to, if we can, we're putting in development on an empty lot, we wanna move it back as far as possible. We wanna plan for the ...(inaudible)... with structures in the shoreline setback. So we wanna limit the types of repairs that can be done to older properties that are in the setback area as much as possible. We wanna create a strategy of moving back away from the shoreline and Tara Owens talked about that in the last session. We want to ensure shoreline access both vertically from the road and laterally along the beach or bluff. And we wanna limit the types of structures--activities in the shoreline setback area. So you can see we're trying to minimize what's going on in the shoreline setback area.

And here again, under the Shoreline Rules there were some various actions that the Planning Director and the Maui Planning Commission can take. There are four of them. One is the

Shoreline Setback Determination. So any parcel on the shoreline, people there is actually an application where we can determine what the setback area is from the high wash of the wave to a line--drawing a line on the their property away from that shoreline property of where they are limited to development. They wanna develop outside the setback area and that's done within the Planning Department. Determines that the setback is properly calculated and located, it's valid for one year and usually needs a State Certified Shoreline Survey done with a surveyor coming out to determine where the high wash of the waves is.

The second is a Shoreline Setback Approval that can have conditions on it. So the Planning Department usually myself and our small coastline team can determine if you can put in a barbeque set or you can plant some plants or put in some pavers or a little walkway. We try to limit what can go in. Big permanent structures in the setback area are not allowed such as gazebos or pools or anything. Like any big property now, pretty much we're very much limiting what can go in the setback and we wanna build behind that setback line. Just because of the erosion that will happen over the next 50 years. We're trying to plan ahead.

So now, things that do come to you and there will be some variances that come to you, this is called a Shoreline Setback Variance, again with, has conditions. First it requests a Chapter 343 compliance which is an Environmental Assessment or an Environmental Impact Statement. It requires a public hearing and notification of all abutting landowners and it requires a State Certified Shoreline Survey. So these are things such as a building, structures that are not legal to be built in the shoreline setback area such as a seawall or a revetment or part of a house. If they want to do that, it triggers a public hearing and it requires a decision by the Planning Commission whether or not you are going to provide a variance. Allow them to vary from the Shoreline Setback Law and the SMA Rules for building something large. We'll have a couple of seawalls coming to you this next year. And as you'll notice we're not getting too many new development permits for SMAs. I don't know, even know if we've had one submitted to the Planning Department this year. They're all extensions in things you're seeing. But what we're getting more and more of are variances. So what's happening is we're attempting to protect existing development that was built a long time ago where the shoreline is eroded and now people wanna come in and protect that development. So these are decisions that are gonna come before you this next year. But usually you'll see an Environmental Assessment and a Shoreline Setback Variance and I'll go into that.

And then there can be a denial either by the Planning Director or the Planning Commission if you cannot approve a nonconformity such as an illegal seawall. Some seawalls are illegal. That hardens the shoreline or prevents sand transport, loss of public access to beaches or recreation and encroaches on State-owned lands such as a beach reserve. So these are some reasons for denial under the Variance Rules and the Shoreline Setback Rules. So the variance comes to you and requires an Environmental Assessment.

Now there are some things that are permissible. Minor structures and activity. If it's under a $125,000 and then the criteria that we use to allow it in the setback area is it doesn't adversely affect beach processes. The beach goes on unaffected. It's not artificially you fix the shoreline. There's no rocks, there's no seawall, there's no structures changing the shoreline. Does not interfere with public access. Does not block public views. So those are some of the criteria under the Shoreline Rules where we can allow minor activities in the setback area.

New structures if they are allowed have to meet certain criteria. They have to be elevated one-foot above base flood elevation on pilings or column. The County is held harmless with no liability and it does not harden the shoreline. So those are conditions that any new structure must meet that is put in the setback area along the shoreline.

So your role, the Commission's role in approving Shoreline Setback Variances and this is straight out of the Rules. Variance may be granted for structures necessary or ancillary to drainage improvements, maintenance, publicly owned boating, water sports facility, public facility that require repairs or improvements or utilities. Private facilities or improvements that are clearly in the public interest. So these are kinda the criteria we go through. Protection of a legally habitable structure or public infrastructure. And private facilities or improvements which do not adversely affect beach processes, do not artificially fix the shoreline and would result in hardship if not approved. So you can't just go willy nilly putting in a seawall. You have to--the burden of proof is on the applicant to show hardship if not approved. Okay, well my house is gonna fall into the ocean, that might be considered a hardship that would be determined by the Commission to the hardship. And this money because I'm gonna lose, I'm gonna lose $250,000 in property value is not hardship. Hardship needs to be beyond just the financial burden. So that's in the Shoreline Setback Variance Law.

So there are some mandatory conditions in the Shoreline Variance. We did last year, we permitted on the Lucas property, we permitted a retaining wall along right up next to Kahana Sunset area here that you went through. One of the questions came up well, why do we have these conditions in here when they don't make sense? Well, they're mandatory in the law and that's why the Department had to put these in. Maintain safe lateral access for the public to and along the shoreline or compensate for its loss. Minimize risk of adverse impacts. Beach processes, minimize risk of structures failing, comply with flood hazard rules and minimize adverse impacts on public views to, from and along the shoreline. So those are mandatory conditions for any variance that Maui Planning Commission would grant.

Mr. Ball: Question?

Mr. Buika: Yes.

Mr. Ball: You know, on some of those like Kanaha for example, there's a couple of sand bags, I mean those things are huge though, they're probably like across the table maybe little less width, ...(inaudible)... out in the ocean, very slippery and so that it's not kinda following what the safe lateral access, it actually blocks the access and makes it more slippery to get over. So those things like that and I can see what it's doing is trying to create the beach where it's, you know, it's. blocking for the beach goers over here. But once the beach does come back are those things supposed to be taken out or is there someone to watch that the thing's not affecting further down and it's not letting the sand go down. Like the old side--the northern section of Kanaha, I remember when I was younger you could drive on there and you could pass two cars on there and now there's no way you could even drive on that 'cause there's no beach. I understand some of it is erosion but is there anybody watching that it's not eroded because of the project going up further north from that?

Mr. Buika: Yes, to answer your first question about the sand bags. Usually sand bags are put out filled with beach quality sand as a protective measure. So what we are trying to do in a temporary fashion protect developments using sandbags until a more permanent solution comes in. Yes, sometimes the beach does come back in front of some of these sandbags. A lot of these beach cells, the beach process of sand moves especially on the west side, the sand moves with the wave pattern summer to winter to the north of the beach cell and then to the south. So we lose the beach. We gain the beach. So it's tough, and it's tough of the homeowners who are freaking out when there's no beach in front of their house and their homes are threatened. So there are some examples there where we just do have a new recent one where we had some because of a shoreline survey, Certified Shoreline Survey they had asked in 2004, to put in sand bags. It was denied by the shoreline planner here prior to me. They went in and put them in anyway. We didn't know it. So we have a State Certified Shoreline done. They were found. They actually have taken them out. They worked with our UH Sea Grant, Tara Owens, and actually they've refurbished the beach and the sand, they've added more sand in and they're happy as can be because the beach is back to the way it should have been and not with all of these sand bags there. So usually sand bags need to come out.

Either we do it with beach nourishment or put in some protective structure there. Our options are, you know, obviously we want a setback. That's our best option but a lot of times the existing development, we can't do that. So what are our options? Are either we build some structure in front of it which can affect properties down shore. We see that up and down the coastline. So those are the big decisions that should be explained and scientifically understood in an Environmental Assessment as part of the SMA, and we are doing that for parts of the Kahana section up there and that will be one of the Environmental Assessment that you will comment on very soon. That it can affect the entire beach cell and then cascade all the way down the coast and we'll lose the entire beach. That's something we're worried about. And that's why we do have expertise from Tara Owens to look at those issues and it's done in--picked up in an Environmental Assessment.

So we can build structures, we can setback or we can renourish the beach as we have in couple of cases. And where do we get that sand from? We get it from inland sand sources which are dwindling or such as Waikiki or Spreckelsville project, you mine it offshore which is very, very expensive. So right now, the beach nourishment option is expensive for homeowners like AOAOs and some of these bigger structures. It's more expensive than building a wall. So that's something that I'm very interested in pursuing, how do we make it kind a like solar panels, you know, where it's cheaper. It's a cheap option where we can fill the beach back out front rather than building a wall and eroding the beach. And then there's something else that I'm interested in exploring or the Department is interested in exploring is offshore intervention that we talked about a little bit last time. Offshore groins or reef balls or artificial reefs that will actually build the beach in front. We haven't done that yet here in Maui, but rather than building a wall at that property boundary, why not get permission, work through the permit process to build something offshore that will actually built and protect the property, create a reef, et cetera. So that's kinda where a lot the whole shoreline science and permitting and things are going with all of you, I think, in the next five years you'll see more and more of this. So this is Kanaha Beach area. This photo right here is part of the bluff that is pretty dangerous and we know it's not a solid bluff there, it's being undermined. So, I exaggerated the picture a little bit vertically here, but still that's what's happening out there

and other places.

So Shoreline Rules provide...(inaudible)... through this slide. They determined a shoreline setback area for the last nine, ten years. They were adopted in 2003, so they regulate the use of activities in the setback area in order to protect health, safety and welfare of the public. Obviously, we should never have built this structure where it is a long time ago, but if we had those rules in place we could have avoided this. Provide minimum protection from coastal natural hazards and ensure that the public use and enjoyment of the shoreline resources are preserved and protected for our future generations. I'm not going to go into the erosion setback methodology but there's an average lot depth and erosion, annual erosion hazard rate which our--we use two of those per any lot along the shoreline to figure out which one is larger and use that as our setback for any new development for determining what the setback area is there for minor structures and activities in the setback.

So I think that's--just some concluding remarks. Maui shoreline provides for tourism, economy, recreation, fishing and food, cultural practices and our quality of life. Our shoreline is threatened with coastal erosion that is accelerating. Our shoreline and coastal erosion processes are a system that needs to be studied and fully understood to make sound, scientifically-based planning decisions. We shouldn't do it TMK by TMK, but look at a system. And you know, through our Coastal Zone Management Act and through the SMA Guidelines and through our SMA Rules for the Maui Planning Commission what we're attempting to do, what your role is to minimize where reasonable, adverse impacts to the environment. So that's kind of what we're seeking in every one of our projects whether it's done at the Department level. Staff level or through the Planning Commission. So I'll leave you with this beautiful picture of the west side here and this is what we would love all of our coastline and where we'd like to be right now. But if you have any additional questions, thank you for your questions. I really, Chair, I only had 20 minutes but I had to answer some of those questions. We're still within lunch time. So I apologize for the extra minutes. Any additional questions? Chair, I'll turn it back over to you.

Chair Hiranaga: Questions, Commissioners? Commissioner Hedani?

Mr. Hedani: Jim, you know, of the one of the exemption categories that you had was highways, roads and highways. I can understand how they got the exemption in that particular case, but if you take a look at right when you get past the Pali at, just past Papalaua State Park before you hit Ukumehame Park, there's a segment of about a thousand feet of beach I think that's between the two beach parks where the State is working on trying to prevent their roadway from falling into the ocean. The concern I had in that particular case is that I think the seawall that they're putting in is kinda like a vertical seawall similar to what they had there before on the right-hand side and it's going to cause what's a beach to become a rock wall essentially. And was there a way to prevent that from happening in terms of the exemption process? You know, like Kent's suggestion was move the highway inland that's one solution. The other solution would have been, you know to do a wall that's not a vertical wall. Something that's like a slanted wall.

Mr. Buika: You know, there are several projects that are going along the highway there. This one, I'm not sure if--I'm a 100 percent correct if this is the same one, but the Department of

Transportation, State Highways is completing that project without an SMA review, without an Environmental Assessment under the guise of the tsunami. It's being done as an Emergency Permit. I know there is a project going up there. If you're interested, we have gotten letters from State DOT informing us after-the-fact that the Mayor and the Planning Director that this project is going on. I know that there was a similar project that had an Environmental Assessment and it was approved by the Planning Commission, but under tremendous debate. What type of wall, the height of it, the shape of it, exactly what you're saying and again, that was done with due diligence through the SMA process and really is what we're seeking. You know, unfortunately under these Emergency Declarations, the Governor has the opportunity to or can suspend environmental laws. But that is something that under our SMA Rules that, you know, our group is interested in looking at because we could have a larger hurricane. We could have major coastal storm surge where we have that problem all over the island and how do we deal with it? Do we just put in seawalls all around or do we look at each of these projects environmentally, delay them? You know, these are things we need to debate but right now we can suspend the rules. So something that's in the last couple of years we have brought to the Commission, I think while you were out for a little while off the Commission, we did have some of this debate. And we are going to present some of our findings, the Planning Department to you at a future meeting when we have time on some of these issues. So it is a big, big issue that it shows the efficacy of debating these types of projects through the Commission and through an Environmental Assessment. But yeah, the could have--right--I mean, I guess that's an emergency, part of the road was falling in, what are we gonna do? We could have put in sand bags and we could have looked at alternatives like just moving the road inland. So...

Chair Hiranaga: Okay, I'm gonna make--give the board, the Commission a choice. We can adjourn at noon or we can recess for lunch and reconvene with your questions at 1 o'clock? We can adjourn at noon or we can recess at noon and reconvene at 1 o'clock where you can continue your questions? Or you could ask Jeff of the record--Jim off the record your questions? If there are no objections then, I'm going to adjourn the meeting and I think Jim will stick around and you can ask him your questions. Commissioner Wakida?

Ms. Wakida: I will not be at next meeting.

Chair Hiranaga: Thank you for that. Administrator Yoshida?

Mr. Yoshida: So before you adjourn maybe Ann can report on the status of the much awaited Final EIS for the Honua'ula Project.

Ms. Ann Cua: As I understand it they are being delivered to us as we speak. So I don't know if you have to dash out or if you'll be eating your lunch here. Hopefully you'll be eating your lunch here and then we can give you your booklets before you leave. We have the cover memo ready to go. We 're just waiting for the books to be delivered here and we'll pass them on over to you.

Chair Hiranaga: All right. Thank you. So if there's no objections, I'm going to adjourn the meeting. Seeing none, thank you.

G. NEXT REGULAR MEETING DATE: JUNE 26, 2012

H. ADJOURNMENT

The meeting was adjourned at 12:00 p.m.

Submitted by,

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

RECORD OF ATTENDANCE
Present
Keone Ball
Jack Freitas
Wayne Hedani
Kent Hiranaga, Chairperson
Ivan Lay, Vice-Chair
Warren Shibuya
Max Tsai
Penny Wakida

Excused
Donna Domingo

Others
Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works