

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
DECEMBER 13, 2012**

(Approved: 1/10/13)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 10:02 a.m., Thursday, December 13, 2012, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chairman Kevin Tanaka: Good morning. I'll now call the meeting of the Board of Variances and Appeals to order. It is now 10:02. Let the record show we have a quorum of five to start.

B. APPEALS

1. **RODNEY KILBORN appealing the Director of the Department of Parks and Recreation's decision to not allow a stand up paddle surfing event at Hookipa Beach Park located off of Hana Highway, Haiku, Maui, Hawaii; TMK: (2) 2-5-004:025 (BVAA 20120010).**
 - a. **Appellant's Exhibit List**
 - b. **Subpoena To Glenn Correa, Director of Department of Parks and Recreation**
 - c. **Subpoena To Billy Amoral, Recreation Leader III, Department of Parks and Recreation-East District**
 - d. **Appellee Director, Department of Parks and Recreation, County of Maui's Witness List**

Chairman Tanaka: Procedurally, James, if you wanna kinda give us a preview?

Mr. James Giroux: Thank you, Chair. There's gonna be some procedural matters that we're gonna have to discuss, but just for everybody's information, today we have a quorum of five which is a bare quorum, which means that today when we start the hearing, the Board of Variances is the hearings officer. And if we can complete this case by 1:30 before we lose quorum, this Board can make a decision on the case as the facts are presented. If we go past 1:30, what's gonna happen is that we are going to lose quorum, then this will merely be a committee which will have to do a report to the Board of the whole. And the Board of the whole will then make a decision on the facts and transcripts, and the procedure gets a lot more complicated as far as filing findings of facts, conclusions of law, stipulations, and objections, and exceptions to those facts. So what we would like to do is try to get all the facts on the record and try to get to deliberation by 1:30. If we could have the parties make their appearance?

Ms. Kapua`ala: Excuse me, Mr. Chair. Mr. Giroux, actually we have until 12 o'clock today. We will

be losing quorum at 12:00.

Mr. Giroux: OK.

Ms. Mary Blane Johnston: Good morning. Deputy Corporation Counsel, Mary Blane Johnston, appearing on behalf of Appellee, the Director of the Department of Parks and Recreation, Glenn Correa, who's . . . (inaudible) . . .

Mr. Rodney Kilborn: Good morning. I'm here to appeal . . . (inaudible) . . . to the Parks and Recreation Director. Is it OK if I have my wife to be part of this session? Help with the . . . (inaudible) . . . ?

Chairman Tanaka: If you could identify yourself for the record?

Mr. Kilborn: My name's Rodney Kilborn.

Chairman Tanaka: Thank you.

Mr. Giroux: As far as procedurally, I just wanna make sure on the record, is there any issues as far as the exhibits or witnesses that we need to clarify before we get started from the County?

Ms. Johnston: . . . (inaudible) . . .

Mr. Giroux: Or let me just put it this way—have the parties exchanged their exhibit and witness lists?

Ms. Johnston: Yeah, I just – I've given Mr. Kilborn some sort of rebuttal to his . . . (inaudible) . . .

Mr. Giroux: OK. Are the parties gonna need time to review those documents?

Ms. Johnston: Why don't you give him a minute to review it?

Mr. Giroux: From the County, how many witnesses are you anticipating to call?

Ms. Johnston: Not including cross examination . . . (inaudible) . . .

Mr. Giroux: Just your case . . . (inaudible) . . .

Ms. Johnston: Four.

Mr. Giroux: Four? And, Mr. Kilborn, how many witnesses are you anticipating to be calling today?

Mr. Kilborn: Two, at least—Mr. Correa and Amoral.

Mr. Giroux: Are the parties satisfied as far as reviewing of the exhibits that are gonna be presented in this case? Have you had a chance to review the exhibit list and the exhibits?

Mr. Kilborn: Yes, I understand. I'm OK with it.

Mr. Giroux: County?

Ms. Johnston: Yes, I've had a chance to review them. They're fine.

Mr. Giroux: Is there any objections as to all of the exhibits that are being presented to be entered into the case? Or is there any need to reserve objections to those exhibits?

Ms. Catherine Kilborn: Quite frankly, there's quite a bit here in terms of small print. You know, very cursory review. So we'd like to . . . (inaudible) . . .

Mr. Giroux: OK. What we're gonna do is . . . what we can do is if there's any objection to having the document actually come in to the record, we would like to make that clear. But you're not waiving your right to cross examine and ask questions about the information within the document. What we're just trying to do is making sure that at the get-go we have a full picture of what we're going to be allowing as being the record of the case.

Ms. Kilborn: We don't see any problem with that.

Ms. Johnston: OK. If I can respond to that? The exhibits we have are mostly for convenience. There are five. One is the Department of Land and Natural Resources' administrative rules which the Board can take judicial notice of. And I've just provided copies so you could have them right in front of you. There's a form for the special event pre-application request form, a blank form, which there's already one that Mr. Kilborn has put in that's filled in. There's that same form that was filled in by Mr. Kilborn but it's complete. The one that he put in as an exhibit was not completed. It was missing the attachment . . . (inaudible) . . . And the other two is a section of the Maui County Code, recreational area regulations that provides the basis for his complaint and his appeal. And then the portion of the Maui County Charter which describes what the duties, and functions, and so forth are of the Director of the Department of Parks and Recreation. So they're not evidentiary documents. They're mostly just here's the law that affects this case.

Mr. Giroux: OK. If there's no objections, then we're gonna proceed pursuant to Chapter 90 . . . the exception to Chapter 92. The Board is gonna be using its adjudicatory functions, which means that we will not be taking public testimony. We will be starting the case and chief. And two issues that we need to clarify before we start that is how long do the parties need for their opening, and how long do the parties need for their closing. I've estimated that the opening should be about five minutes, and the closing should be about ten minutes with the appellant, with the ability to reserve any remainderment if he wants to have a rebuttal to . . . during your closing. Is that time satisfactory to both parties?

Ms. Johnston: Yes.

Ms. Kilborn: Yes.

Mr. Giroux: OK. And just to explain the closing as far as because you're the appellant, you have the burden of proof of providing evidence, and the burden of persuasion. So at the closing you can choose how to divvy up your own time. You can split it in half, or you could just use one minute, and then use nine minutes after rebuttal, whatever you choose to do. But understand that it's

gonna be a total of ten minutes.

OK. So we're gonna start with our opening. And again, your opening statement is not evidence. It's just a summary of your case so that we can understand what we're here for and what are the issues we need to look out for. So the appellant, you can begin and you have five minutes.

Mr. Kilborn: My case is that I just like to be here and get an explanation why the permit was denied and to follow through. And hopefully at the end of this meeting, we can come to a conclusion, and hopefully we can get the permits in our hand, and move forward, and that's about it. Basic. But yeah, I prefer her. She's way more . . .

Mr. Giroux: We'll let you split your time. You're way under time so . . .

Ms. Kilborn: Yeah, he's quite nervous. I think my husband's case is that he believes that the permits were erroneously denied. He was not provided satisfactory reasons as to why the permit was denied. His belief is that he followed all of the requirements, and that this particular case is connected to the last event which occurred in which there were quite a few requirements that were unusual and which resulted then in a meeting in which it was stated even prior to the application was submitted that the permit would be refused without any substantial reason. And so it is his belief that as a citizen of this community, a taxpaying resident, who has fulfilled the obligations set forth by the County in order to obtain a permit that without satisfactory reason or some kind of law violation indicated by the code that he should be granted the permit.

Chairman Tanaka: Thank you. Ms. Johnston?

Ms. Johnston: From the opening comment, it appears that the appellant is going to be asking this Board to basically order that a permit be issued for the events. And I just will be pointing out that this is not a relief that this Board can give in this case for reasons that will become clear as we go through the evidence.

Part of mid-August of 2012, individuals wishing to hold commercial for profit events on County property followed the procedure set out in the Maui County Code, Section 13-04. The process required the applicant to fill in a form providing information or to provide information, make a request, and then have a checklist completed of meeting certain requirements. And we'll be pointing to that checklist as part of our testimony.

The . . . Mr. Kilborn made the request. The checklist was gone through. And the decision was made by the Director that his request would be denied to hold a stand up paddle competition at Hookipa Beach in the area of the Pavilion. Ultimately . . . He was denied initially. He was ultimately allowed for reasons that will be testified to by the County witnesses to produce the event in February of this year 2012. And he was told at the time that he would not be given a permit in the future to hold a stand up paddle event in that location. In mid-August of 2012, the Department of Parks and Recreation changed its procedure for processing requests by individuals or companies who wish to use County property. They provided a form called, "Special Events Pre-Application Request," and a copy of this form is . . . the blank form is Exhibit 2, County's Exhibit 2. Mr. Kilborn was advised as he had been previously that the event at Hookipa that he was proposing would not be approved. However, he did fill in the pre-application form. And based on the information and

review of the existing rules and regulations especially, the Department of Land and Natural Resource restrictions on the use of area off Hookipa Beach for ocean recreation activities, he was not permitted. He wasn't denied the permit. It's just that they didn't process it after that, saying no, we're not gonna process it because our decision is that we're not gonna issue a permit.

The County . . . It was based . . . this denial was based upon valid concerns about the wisdom, safety, and suitability of a stand up paddle competition and location proposed by Mr. Kilborn. It was suggested to him that there were other locations on Maui that he could apply that would be suitable and that could be subject of a permit. The County's witnesses will be explaining the basis for the determination by the Parks Department not to propose . . . not to approve the proposed stand up paddle competition, as well as to provide rebuttal testimony to certain comments that have been made in the documents that have been presented to you by the appellant.

We believe at the end of this session, and we appreciate all of you giving us extra time to review this matter, that it will be clear that the Director's decision to not process, further process the request for a permit as for the proposal that was given by Mr. Kilborn for a stand up paddle competition to be held in February of next year was correct and appropriate. Was not . . . was based on valid concerns of safety, valid concerns of legality of holding the event in the location proposed, and therefore, there was no neither abusive, discretion, or arbitrary and capricious decision-making in this case. Thank you.

Chairman Tanaka: Thank you. OK. Mr. Kilborn, you can start with your first witness.

Mr. Kilborn: I'd like to start off with Glenn Correa, Director.

Chairman Tanaka: Mr. Correa, I need to swear you in. Do you swear to tell the . . . (inaudible) . . . ? Please raise your right hand. Do you swear to tell the truth about the testimony you are about to give?

Mr. Glenn Correa: I do.

Chairman Tanaka: Thank you. Mr. Kilborn?

Mr. Kilborn: I would like to ask the Board if it's OK if I have my wife come up here and proceed with the questioning.

Chairman Tanaka: No problem.

Mr. Kilborn: Thank you.

Ms. Kilborn: Good morning, Mr. Correa.

Mr. Correa: Good morning.

Chairman Tanaka: Sorry, before you start, yeah, please state your name for the record, please.

Ms. Kilborn: Oh, sure. I'm Catherine Kilborn. May I ask who made the decision to deny the

contest? Was it you, or a committee, or a group?

Mr. Correa: I make the final decision on the pre-app.

Ms. Kilborn: Can you please tell us what factors were considered in making this decision?

Mr. Correa: One of the main factors of denying the pre-app is the area that Mr. Kilborn wanted which is known as the Pavilion. It's zoned for surfing. That's the main concern. And that's determined by the State.

Ms. Kilborn: Since I don't have the same kind of understanding or zoning that you . . . can you explain other than surfing what the concern really is? I'm not sure when you say "concern" what you're referring to.

Mr. Correa: Our concern is just what I stated that the Pavilion area is zoned for surfing, swimming, and body boarding.

Ms. Kilborn: OK. So please tell me then why an original . . . the original contest which was held was permitted since you're saying that the zoning was inaccurate? And can you please say why that explanation was not provided at the time of the request or the statement when we met regarding the zoning? At no time did anyone say that this area was not zoned or considered appropriate for the activity.

Ms. Johnston: I just wanna object. It's a compound question. You need to ask him one at a time.

Ms. Kilborn: Sorry, I'm not a lawyer.

Ms. Johnston: And I'll object that she's testifying. So if you could just ask questions. I know you're not an attorney and it's not that easy.

Ms. Kilborn: Sure. OK. OK. So can you say why that was not stated originally--the zoning issue?

Mr. Correa: I believe it was stated.

Ms. Kilborn: Can you say where and when this was stated?

Mr. Correa: I believe at a meeting in our Parks' conference room that you and Mr. Kilborn was involved.

Ms. Kilborn: Right. So I'm trying not to testify as well as question you, so I apologize for taking a few minutes to think about your response. Would you agree that one of the statements you made at that meeting regarding not issuing a further permit had to do with how many activities occurred at the park at that time?

Mr. Correa: I don't remember all the statements I made but I believe, and you folks know that Hookipa's a very busy area, and for safety purpose, we have to very watch what's going on in that area.

Ms. Kilborn: Would you agree that there's a difference between special event use and regular use of the park?

Mr. Correa: Yes.

Ms. Kilborn: Would you then say that safety concerns during a special event might be mitigated in terms of the requirements and then it would be considered a safe event?

Mr. Correa: I don't understand the question.

Ms. Kilborn: The question is related to the idea of safety. My question is, during a special event, because the permit allows a special use, public is not allowed in the area, would you agree that safety issues are mitigated in that circumstance?

Mr. Correa: Well, I believe . . . I mean, the public still can be in the area but it's up to the people who running the event. Make sure that the safety concerns are taken cared of.

Ms. Kilborn: I'm sorry. You misunderstood my question. The question is, do you believe that during a special event where public does not have access as long as it's arranged by the event producer that it is a safe event? That safety issues are mitigated?

Mr. Correa: At Hookipa?

Ms. Kilborn: Yes.

Mr. Correa: And that's why I'm saying, the State has a very big part of the safety zones in that area.

Ms. Kilborn: So my question again is during a special event where the circumstances are different than normal public use, would you say that the circumstances are different and separate and therefore safer?

Mr. Correa: And I going say again, whoever have a event at Hookipa, they are responsible to have a safe event. We also have lifeguards there to make sure that the public is safe also. So . . .

Ms. Kilborn: All right. I'll leave that question to rest.

Mr. Correa: All right.

Ms. Kilborn: Since I don't think I'm stating it clear enough for you. Was there an event held there, a stand up paddle board contest held there?

Mr. Correa: Yes, by you folks.

Ms. Kilborn: OK. Was there an evaluation and recommendation made by Parks and Recreation employees?

Mr. Correa: Yes. It was a very good event.

Ms. Kilborn: So can you share what the evaluation and subsequent recommendation was?

Mr. Correa: I believe the event that you folks had at that time, and you folks know this, that we were against having that event, but because you folks already advertised, and bought things, I took it upon myself to say, OK, have the event.

Ms. Kilborn: So you're saying that in that circumstance, you could choose to ignore the zoning requirement?

Mr. Correa: I, at that time, believed that because you folks spent all that money on advertising and purchasing things, I felt that I would allow that event to go.

Ms. Kilborn: So that's a yes, then.

Mr. Correa: Not on that issue of safety.

Ms. Kilborn: The question was whether or not you can choose to ignore the zoning requirement.

Mr. Correa: I did not ignore the zoning area. I'm saying that I took it upon myself because you folks spent that money to let you folks go ahead for that one and only time. And that was told to you people.

Ms. Kilborn: Is the Parks and Recreation obligated to follow Chapter 13, Article 4, in making its determinations?

Mr. Correa: Yes, that's the duties of the Director.

Ms. Kilborn: When the original SUP event was held, was the operation or was the facility used in any illegal or disorderly manner?

Mr. Correa: I don't believe so.

Ms. Kilborn: Did the event create a dangerous or intolerable situation?

Mr. Correa: No.

Ms. Kilborn: Were any applicable Federal, State, County laws or regulations violated?

Mr. Correa: Yes.

Ms. Kilborn: And are you referring to the zoning?

Mr. Correa: Yes.

Ms. Kilborn: Could you share with me what you know about how the . . . what the Parks and Recreation does to insure that stand up paddle board surfing does not occur on a regular and daily basis in the area of the Pavilion?

Mr. Correa: I can't say that every day that we monitor who goes in and who goes out. But I'm saying the event that happened, OK, was held in one area that's zoned for surfing by the State.

Ms. Kilborn: Isn't it true when we met that your stated reason for not wanting to allow the event had to do with statements of experts who you consulted regarding the event?

Mr. Correa: Yes, the experts is my staff that advise me of what should happen and what should not happen.

Ms. Kilborn: So can you please tell us who were those experts?

Mr. Correa: The names?

Ms. Kilborn: Yes, please.

Mr. Correa: William Amoral, Roxanne Teshima, Lisa Almeida.

Ms. Kilborn: And can you please say . . . to state to everyone what those concerns were?

Mr. Correa: I need to bring them up. Can I bring them up?

Ms. Kilborn: Does that mean that you don't recall what the concerns were?

Mr. Correa: There's a lot of concerns I go through, so can I bring the witnesses up to specify?

Ms. Kilborn: I am not in charge of this proceeding, so I don't know whether this is permissible, but I would like to know from you what you believe what the concerns were. And then if you feel that you've not accurately represented what you considered, it's up to this panel to decide whether that's appropriate or not.

Mr. Correa: So the issue is the event that we denied is what you're talking about?

Ms. Kilborn: Correct. When we met, we tried to determine what the concerns were.

Mr. Correa: We did not meet.

Ms. Kilborn: I'm not . . . I'm talking about when we spoke after the event occurred. You asked what were the concerns. You stated experts. So I'm asking you to say what the experts advised you on in terms of concerns.

Mr. Correa: So I'm asking you, are you saying the event that happened?

Ms. Kilborn: Correct.

Mr. Correa: Not the one that we denied?

Ms. Kilborn: Correct.

Mr. Correa: OK. The one that happened.

Ms. Kilborn: Yes.

Mr. Correa: My people told me that it went on smoothly with no problems.

Ms. Kilborn: Can you say why . . . can you tell us why you originally decided with the second application before it even occurred why the statement was made that it would be denied in the future?

Mr. Correa: Because of the concern that we have about the safety and the zoning.

Ms. Kilborn: OK. So my question is what were the safety concerns?

Mr. Correa: OK. For the fifth time is the zoning in that area known as the Pavilion is set for surfing. Until the State determines that SUP can be approved in that area, we'll stick by our decision that only surfing, swimming, and body boarding can be in that area.

Ms. Kilborn: I'm sorry. I'm identifying safety as an issue of danger or some other item. So you said safety and zoning. Could you please identify the safety issues as separate from the zoning issues?

Mr. Correa: Well, we have reports that not during an event time when the public can go in there and SUP where the surfers are, we have reports that the surfers don't like the idea. They get in arguments. And sometimes they even get to the point of where they wanna fight each other. That's not on the event issue. So when we have an event coming up, it's like you folks wanted in the Pavilion area, we look at all these reports, and make sure that we on the same page with what the State wants which is surfing.

Ms. Kilborn: Are you saying then the safety issues had to do with conflicts between surfers and stand up paddle surfers? That's your safety concern?

Mr. Correa: Yes. Part of that is my safety concern, but part of that is making sure that something don't happen. So that's why we look at our procedures to make sure that if something we believe might happen, we don't wanna have it.

Ms. Kilborn: Do you know what happens with regards to stand up paddle board surfing?

Mr. Correa: What you mean by what I know about stand up paddling?

Ms. Kilborn: The event or the action itself—the activity? Are you aware that there are separate activities with regard to stand up paddle boards? Are you aware of the difference?

Mr. Correa: Between surfing and stand up paddling?

Ms. Kilborn: No, the difference between stand up paddle board surfing and stand up paddle board, period, as in distance running?

Mr. Correa: I see people stand up paddle and not catching waves. I see stand up paddlers catching waves. Is that what you mean?

Ms. Kilborn: That's correct.

Mr. Correa: OK.

Ms. Kilborn: Would you agree that someone on a board with a paddle who's catching a wave is surfing?

Mr. Correa: It's not for me to determine. It's the State. You find out from the State if that's . . . whoever gonna . . .

Ms. Kilborn: I'm asking you the question.

Mr. Correa: I ain't going answer that because I don't believe I'm the professional expert in this area.

Ms. Kilborn: May I ask who . . . what professional might provide that testimony regarding that activity?

Mr. Correa: Then you gotta check with the State to find out if they gonna allow with their experts to know if they gonna allow stand up paddling in that area.

Ms. Kilborn: May I ask who you consulted with regards to the disallowance of stand up surfing in this area? Who did you contact specifically and speak to?

Mr. Correa: Well, I know that the State gotta be the ones to determine if stand up paddling is allowed anywhere. Has that been determined?

Ms. Kilborn: Are you asking me a question now?

Mr. Correa: Sure.

Ms. Kilborn: I'm sorry. That's kind of a reverse. I don't know. That's not for me to know. The point really would be for you to say or for you to respond to my question regarding who made the decision that that's not surfing, what's the differences between using a paddle to catch the wave and using the arms. So it's a simple question. Would you agree that someone on a board who catches a wave is surfing?

Mr. Correa: I believe you can catch a wave standing up with a paddle or standing up without a paddle.

Ms. Kilborn: Correct. That's surfing. Thank you. No further questions.

Mr. Correa: You answer my question.

Ms. Kilborn: I'm sorry. I think I'm the one doing the questioning.

Chairman Tanaka: Ms. Johnston, do you have any cross examine?

Ms. Johnston: Yes, do you have our exhibits in front of you? Each of you were given copies of five exhibits from the County this morning. Referring to the State regulations, would you look at Exhibit 1?

Mr. G. Clark Abbott: Please speak into the microphone, please?

Ms. Johnston: OK. I'm sorry. Could you look at Exhibit 1 please? In there . . . OK. Mr. Correa, Exhibit 1 is entitled, "Division of Boating and Ocean Recreation Administrative Rules." Is this the State rules you're referring to?

Mr. Correa: This is the rules was brought up and brought up to me by my staff.

Ms. Johnston: OK. This is a portion of those rules, Subchapter 9, North Maui Ocean Recreation Management Area. See that on the first page?

Mr. Correa: Yes.

Ms. Johnston: OK. And if you look at . . . down where it says "Hookipa Restricted Zones?"

Mr. Correa: Yes.

Ms. Johnston: OK. And when you say that it's a State rule, this says "Zone A is designated for swimming and surfing only. No person shall operate a sail board or other water craft within this area." Is that the rule you're talking about?

Mr. Correa: Yes.

Ms. Johnston: OK. And if you look at the . . . there's some maps that are attached. You go further into that exhibit. There's a map entitled, "Hookipa Bay Exhibit WW," on the bottom right-hand. This is for everyone if you're having trouble finding it. First, there's a map of all of Maui and then the exhibit is WW. This is a map of Hookipa, correct?

Mr. Correa: Yes.

Ms. Johnston: OK. And the rule I just read from referred to Zone A which is limited to swimming and surfing. Do you see that--the zoning?

Mr. Correa: Yes.

Ms. Johnston: OK. Is that the location that Mr. Kilborn has proposed . . . well, first of all, was that the location where the event that was held in February of this year held?

Mr. Correa: Yes.

Ms. Johnston: OK. And is this also the area that Mr. Kilborn is proposing for the event he wants to hold in 2013?

Mr. Correa: Yes.

Ms. Johnston: OK. And just so it's clear, so your concern is that under the State's rules that stand up paddling competition has not been recognized as an event that can be held in this area?

Mr. Correa: Yes.

Ms. Johnston: OK. And your staff advised you of this that the State had not approved stand up paddling competitions?

Mr. Correa: Yes.

Ms. Johnston: Or kite boarding?

Mr. Correa: Yes.

Ms. Johnston: And this was one of the concerns you had in making your decision that the proposed event in 2013 would not be approved?

Mr. Correa: Yes.

Ms. Johnston: OK. And was Mr. Kilborn advised that he could submit the request or an application to have a stand up paddling competition in other areas on Maui?

Mr. Correa: I believe that the meeting we had in our conference room it was brought up that another area that can happen is in Lahaina.

Ms. Johnston: OK. And has he submitted a request or an application or pre-application?

Ms. Kapua`ala: Mimi, please speak into the mic.

Ms. Johnston: Oh, I'm sorry. As far as you . . . has Mr. Kilborn submitted a request to hold a stand up paddle competition in other spot other than the Hookipa Pavilion area?

Mr. Correa: No, not to my knowledge.

Ms. Johnston: And has he been informed that there are other areas he could hold a competition in County of Maui?

Mr. Correa: I believe so, if he can get permission from the State.

Ms. Johnston: OK. Do you have any idea why he hasn't submitted an application for another location?

Mr. Correa: I don't know.

Ms. Johnston: OK. What is your . . . what is your . . . state your position with the County of Maui?

Mr. Correa: Director of Parks and Recreation.

Ms. Johnston: OK. And how long have you been in this position?

Mr. Correa: Six years.

Ms. Johnston: OK. Just generally, what are your responsibilities as the Director of Parks and Recreation?

Mr. Correa: Operate and maintain recreation facilities.

Ms. Johnston: OK. And what do you understand your duties and obligations are under the Maui County Charter as Director of Parks and Recreation?

Mr. Correa: I believe to develop and implement recreation activities for the community.

Ms. Johnston: OK. And do you understand as part of your job that it's also to make evaluations of whether events are appropriate to be held in a certain place as opposed to another place?

Mr. Correa: Yes.

Ms. Johnston: OK. And Mr. . . . when was Mr. Kilborn, if you remember, first told that another stand up paddling competition would not be approved for the Hookipa Beach area?

Mr. Correa: I believe Mr. Kilborn was notified as soon as the first one was approved.

Ms. Johnston: OK. So he knew before he ever submitted the application that it would not be granted?

Mr. Correa: Yes.

Ms. Johnston: OK. I don't have any further questions.

Chairman Tanaka: Is that it, Ms. Johnston?

Ms. Johnston: Yes.

Ms. Kilborn: May I redirect?

Chairman Tanaka: OK. Either way, you may redirect or the Board will have an opportunity to question the witness.

Mr. Giroux: Let me clarify. If you wanna cross now, you won't have a chance to cross after the

Board asks questions. So if you wanna wait till the Board asks questions, and then cross on everything, that would probably be more efficient.

Chairman Tanaka: OK. Board Members, any questions for Mr. Correa?

Mr. Rick Tanner: Yes, I have a question. As the Director of Parks and Recreation, you are obliged often, maybe daily, to make judgement calls?

Mr. Correa: Yes.

Mr. Tanner: OK. Going back to the first event, your testimony was that you made a judgement call there. And you made an exception to the rules based on the fact that the applicant had already spent a tremendous amount of money, made purchases, advertised, and so forth?

Mr. Correa: Yes.

Mr. Tanner: So my question is, had that not been the case, if they would've followed a different procedure if they had not promoted, they had not spent money, they just simply came and sought a permit for this, would your judgement call had been different?

Mr. Correa: Yes.

Mr. Tanner: OK. So clearly what you're saying is, an exception to the rule was made in that case. After the event took place, you made it clear that exceptions weren't going to be going forward. That you made a judgement call based on the fact that they had already spent money. You're stating now that had that not happened, then you would not have made that decision, and that was made clear to them at the time?

Mr. Correa: Yes.

Mr. Tanner: That's my question.

Chairman Tanaka: Thank you. Board Members, any other questions?

Mr. G. Clark Abbott: Yes, Director, was any formal or written statement given to them stating just what you said that there would be no further permits denied or accepted? I mean, did you formally decline it in writing?

Mr. Correa: I formally declined it in writing.

Mr. Abbott: You did? Do we have copies of that?

Ms. Kapua`ala: Mr. Chair, I have up on the smart board, Exhibit D of the appellant's – the appellant's Exhibit D.

Mr. Abbott: "D" as in "David?"

Chairman Tanaka: Yeah, I read that. It's a one sentence response.

Mr. Abbott: No, that's fine. Thank you.

Chairman Tanaka: OK. Mr. Correa, I have one question. You have as part of the exhibits is this Division of Boating and Ocean Recreation from the DLNR, is there someone specific at the State whether you or your staff consulted as part of your decision? Or is it . . . ? Well, I guess that question first.

Mr. Correa: You want the name from the State?

Chairman Tanaka: No, I mean, is there someone that you do actually correspond with?

Mr. Correa: Yes.

Chairman Tanaka: OK. Is that typical on a regular basis or whenever something like this comes up or . . . ?

Mr. Correa: Most of the time when these events come up that involves the State, we have to go through these procedures.

Chairman Tanaka: Yeah, yeah. OK. Yeah, I just wanted to clarify that when something comes up you do consult with the DLNR as far as what their input is.

Mr. Correa: Yes.

Chairman Tanaka: Thank you. Board Members, any other questions?

Mr. Bart Santiago: I just want a clarification. Mr. Correa, you mentioned that Mr. Kilborn could possibly locate a different area on Maui that he could hold this SUP event somewhere in Lahaina? Is that clear or is that true?

Mr. Correa: Yes.

Mr. Santiago: Are you aware if there any areas that have been rezoned differently on Maui to allow for that type of activity?

Mr. Correa: That's why I believe the State is trying to work on some kinda bill to establish this and I believe it's statewide that they trying to figure this thing out. And the Lahaina area, the State controls that area, so I believe if they go there with the State permission.

Mr. Santiago: But you're not aware that there has been areas that have been rezoned to allow for SUPs?

Mr. Correa: No.

Mr. Santiago: Clearly, the laws were written in 1988 had probably not anticipated SUPs.

Mr. Correa: Yes. And if you folks remember, Hookipa used to be the surfing capital of the world. Just was surfing. And then after that came wind surfing, and kite surfing, and stand up paddling.

Mr. Santiago: Are you aware of any rezoning throughout anywhere in the State that would allow SUPs?

Mr. Correa: Not to my knowledge.

Mr. Santiago: I suspect this is not a unique situation that we have here on Maui for stand up paddle surfing . . . (inaudible) . . . Just a comment.

Chairman Tanaka: OK. Any other questions? If you'd like to redirect?

Ms. Kilborn: If you would refer to Exhibit H, please, which was the original, the first meet? And I'd like you to point . . . I'd like to point to the top, "The facilities being requested," which states "At H`Poko Point or Hookipa Beach Park, you will note that at this time," or this is not the . . . the zoning that was pointed out by your counsel stated that . . . I'm speaking to you, Mr. Correa, stated that the area that is zoned is specifically Pavilions. Is that correct? At the very top, "H`Poko Point, Hookipa Beach Park." The zoning in question you state was specifically the Pavilion section?

Mr. Correa: I believe if it's stated "Hookipa Beach Park," which is a facility, the area that they had the stand up paddling is the Pavilion area.

Ms. Kilborn: OK. My question is, is the zoning that you referred to specific to just the Pavilion area? That's a yes or a no, the zoning question. Is it just about Pavilions?

Mr. Correa: For surfing, the Zone A is for surfing. There's Zone B, and Zone C, and D, I believe.

Ms. Kilborn: If I could get a direct answer, I might be able to understand your answer. The question is, is the surfing zoning specific just to the Pavilion area in the Hookipa Beach Park area?

Mr. Correa: Yes.

Ms. Kilborn: OK. Thank you. So if you look at the second application which is Exhibit B, there were two requests. One was for Hookipa Middle and the other it says, "or Hookipa Pavilion." Was there any consideration given to the fact that Mr. Kilborn identified another area within that park and outside of your zone consideration for this event?

Mr. Correa: So . . .

Ms. Kilborn: Would you like me to repeat my question?

Mr. Correa: Sure.

Ms. Kilborn: OK. The application asks for one or another location. One location is Hookipa Middle which is outside the zoning area of Pavilions. Was any consideration given to the application based on this factor since you stated that your decision was made based on zoning?

Mr. Correa: My decision was made that the applicant was to be . . . have his event at the Pavilion and was zoned for surfing. This Middle area, which is Hookipa Middle as you're describing, is also to me that you cannot have stand up paddling.

Ms. Kilborn: Is that how . . . ? You stated that the Middle section is zoned B, is that correct?

Mr. Correa: There's A, B, C, D. B is the Middle, yes.

Ms. Kilborn: Correct. So is the Middle section designated for swimming and surfing only?

Mr. Correa: "Zone B is designated for surfing when at least five or more persons are engaged in surfing within the zone."

Ms. Kilborn: Does this area not allow other activities such as kite boarding, wind surfing, etc.?

Mr. Correa: "No person shall operate a sail board within the zone, within the surf break area."

Ms. Kilborn: It says nothing about paddle boards? Just sail boards, correct?

Mr. Correa: That's why I'm saying paddle boards is not determined in that area.

Ms. Kilborn: The question is it's not a sail board, correct?

Mr. Correa: I don't know if it's a sail board or kayak, whatever.

Ms. Kilborn: OK. I'm gonna ask you my original question. When reviewing the application, was any thought given to the request to hold the event not at Pavilions but in the Middle?

Mr. Correa: I believe by looking at this pre-app, if it's the Middle or the Pavilions, surfing is allowed only, my belief is.

Ms. Kilborn: Have you been to the Hookipa Beach Park?

Mr. Correa: Yes.

Ms. Kilborn: Have you observed activities in the Middle to the point of the park?

Mr. Correa: I can visualize the area and I see a lot of activities going on: surfing, kay . . . not kayaking but wind surfing, swimming.

Ms. Kilborn: OK. Thank you. So you're saying to me that when you thought about the location, you determined it was the same zoning as the Pavilion area?

Mr. Correa: For SUPs?

Ms. Kilborn: It's a zoning question.

Mr. Correa: Oh. My determination of the zoning I believe is A and B is for surfing. And you go down and read some more and all the restrictions says in Zone C and Zone D.

Ms. Kilborn: You would agree, though, that other activities other than swimming and surfing are allowed in Zone B?

Mr. Correa: I believe the public can swim, kite surf, surf, wind surf in the area.

Ms. Kilborn: OK. Thank you. So other activities are allowed. That's all I have. Thank you.

Chairman Tanaka: Board Members, anything else? Any other questions for Mr. Correa? Mr. Correa, thank you.

Mr. Correa: OK. Thank you.

Chairman Tanaka: Your next witness?

Mr. Kilborn: Billy Amoral, please.

Mr. William Amoral: Good morning.

Chairman Tanaka: Good morning. Mr. Amoral, I need to swear you in. If you can raise your right hand? Do you swear to tell the truth about the testimony you're about to give?

Mr. Amoral: Yes, I do.

Chairman Tanaka: Thank you.

Mr. Kilborn: Good morning, Billy.

Mr. Amoral: Good morning, Rodney. How you doing?

Mr. Kilborn: I'd like to know when you first, you know, when an applicant come up to the Makawao District to get the permits, you know, to apply for the application, what are the procedures that I . . . if I was to come? What are the procedures that I need to . . . ?

Mr. Amoral: I'm not sure I'm understanding what you're asking. Basically, any individual is able to go to a district office and pick up a pre-app.

Mr. Kilborn: Yes.

Mr. Amoral: For an event that they are intending to happen.

Mr. Kilborn: OK. So when you do get a pre-app there's a checklist that . . . ?

Mr. Amoral: No.

Mr. Kilborn: OK. During the first event that we had in February, application, did I . . . would I have to receive a checklist from you of a criteria of the things that I need to do before it goes down to Makawao District?

Mr. Amoral: You're confusing what transpired. During your first appearance before us, the checklist that you were given was protocol by the department. By the next . . . It evolves. Our permitting has been evolving because of the various things, the various different things that we need to deal with with our Special Events. None of them are the same, basically. With that said, by the time you came for the second event, we had progressed into having our applicants fill up a pre-app which helps the department or helps ourselves because it gives us an idea of what you're intending to do. OK. So we look at the pre-app and at that point, make some kind of a determination whether we can have this event at this place or cannot have it. Basically, what Mr. Kilborn is asking, from my . . . from our . . . I'm the first line of the permitting process. OK? I cannot make a determination yes or no. All I can do is look at the permit, look at the permit first, or in his case, in the second case, look at the pre-app, determine if everything that is on the pre-app is listed for submittal and that's all I At the district level, all I would do is make a determination on the facility. Is the facility . . . the event proposed at this facility, is it OK? That's what I would do. So there's two different things. When he first came in, the procedure had changed to what we are using currently.

Mr. Kilborn: So under this Exhibit H of the additional requirement, so I come in 60 days out to apply for the application?

Mr. Amoral: Yes.

Mr. Kilborn: Was my application according to the exhibit was all . . . ?

Mr. Amoral: Which one are you referring to?

Mr. Kilborn: For the first event.

Mr. Amoral: Yes.

Mr. Kilborn: Yes. So with this said, after this it would go down to Makawao Division for a final approval?

Mr. Amoral: No, it's not approved in Makawao. None of the district When he says "Makawao," he means the district level. It's not approved on the district level.

Mr. Kilborn: So where does it approve at?

Mr. Amoral: It goes to Special Events.

Mr. Kilborn: And who's in charge of Special Events?

Mr. Amoral: At this point in time, I believe Roxanne.

Mr. Kilborn: So after receiving this, my insurance, complying with all what is needed from your

district, it'll go down to Roxanne?

Mr. Amoral: Correct.

Mr. Kilborn: To get final approve?

Mr. Amoral: Correct.

Mr. Kilborn: So with this said, I had completed everything. I complied.

Mr. Amoral: You have met the district requirements.

Mr. Kilborn: Requirement. So at one time when this were going through, didn't we have a discussion that—maybe it's inappropriate before I ask this but—you were not sure why it was taking long and why it was disapproved?

Mr. Amoral: What are you referring to? The first one or the second?

Mr. Kilborn: The first event. I'm talking about the first event. It's leading up to where . . .

Mr. Amoral: The first event, like I said, we don't make the determination on the district level. That's made with Special Events. So I wasn't able to tell you yes or no.

Mr. Kilborn: OK. Now, at the first event when I did apply . . .

Chairman Tanaka: Excuse me, Mr. Kilborn. Sorry, we . . .

Mr. Kilborn: Yeah, I asking the question.

Chairman Tanaka: No, no, no. It's just we need to take a three-minute break, sorry.

Mr. Kilborn: OK.

(A recess was then taken at 11:07 a.m. and the meeting reconvened at 11:12 a.m.)

Chairman Tanaka: Thank you very much. We're now back in session. Sorry. Mr. Kilborn, you may continue.

Mr. Kilborn: OK. Thank you. Rodney Kilborn.

Chairman Tanaka: Sorry, before we get started, we lost our County attorney. We'll wait till she gets back in. OK. Here we go. OK. Mr. Kilborn, now you may continue.

Mr. Kilborn: Billy, hello. Is the district aware of the zoning?

Mr. Amoral: Yes.

Mr. Kilborn: So can you explain to me how is that?

Mr. Amoral: What you mean "explain to you?"

Mr. Kilborn: OK. It says . . . Hold on. Hold on, one second. I cannot read her writing.

Ms. Kilborn: In the awareness of the zoning requirements, how is this information transmitted to an applicant?

Mr. Amoral: Could you repeat the question?

Ms. Kilborn: Sure. How does an applicant understand the zoning requirements?

Mr. Amoral: You know, that's a little gray area, to be honest with you. The State . . . we cannot supercede State law. The State is currently addressing that issue. So we are awaiting their decision. We can show you what is in black and white; however, I can't answer your question.

Ms. Kilborn: OK. Since you were aware of the zoning requirement, did you communicate the zoning restrictions to Mr. Kilborn?

Mr. Amoral: No, I did not.

Ms. Kilborn: It was stated in earlier testimony that there was an exception made due to monies being spent. Would you agree that this failure to communicate the zoning restrictions resulted in Mr. Kilborn going ahead with all of the preparations for the event?

Mr. Amoral: Could you repeat the question, please?

Ms. Kilborn: Because the zoning requirements were not made clear, would you agree that Mr. Kilborn went ahead and prepared for the event since his belief was that as long as he met the County requirements that the permit would be approved?

Mr. Amoral: I'm still not exactly under . . .

Mr. Tanner: Which event are you talking about? The first one or the second?

Ms. Kilborn: The first. I'm trying to make a link. So I'm talking about the first one. And if I might clarify the purpose of the question? It was stated that an exception was made because of money being spent. The application process started 60 days ahead, correct?

Mr. Amoral: Correct.

Ms. Kilborn: Correct. And would you agree that Mr. Kilborn made every effort to comply with all of the requirements set forth in order to hold the event?

Mr. Amoral: As far as the district is concerned.

Ms. Kilborn: But the district was aware of the zonings. So is any effort made in the awareness of the zoning restrictions to communicate to an applicant what areas would be more appropriate within the park?

Mr. Amoral: I'm still not quite understanding.

Ms. Kilborn: Did you say to Mr. Kilborn, "Your application states that you want Pavilions? This is a certain zoning for surfing only?"

Mr. Amoral: No, because that's not a district determination.

Ms. Kilborn: Not a district determination. Who would communicate that determination within the powers that approve permits?

Mr. Amoral: Special Events.

Ms. Kilborn: Special Events. Would you . . . this is an opinion, so would you agree that stand up paddle board surfing is a surfing activity?

Mr. Amoral: I don't have that knowledge to comment yes or no.

Ms. Kilborn: Have you ever seen . . . ? So when you went to look at the event, correct, you were the person who evaluated the event? The first event?

Mr. Amoral: . . . (inaudible) . . .

Ms. Kilborn: Correct. Did you observe the contest?

Mr. Amoral: Yes, I did.

Ms. Kilborn: And what did you observe the contestants doing?

Mr. Amoral: Paddling a board and catching waves.

Ms. Kilborn: Catching waves, surfing waves.

Mr. Amoral: Small little waves. It was very tiny that day.

Ms. Kilborn: OK. So you did see them. When you say "catching waves," you're indicating that they were surfing the waves on a board?

Mr. Amoral: If you can call it that. I'm not too versed in the proper terminology of what you're using. To me, you're kinda mixing one, two things. My understanding, surfing is on a board with your hands as a propellant where SUP is using a paddle as a propellant. So there is that difference. I'm not sure exactly what you're asking.

Ms. Kilborn: I'm asking you if the primary activity other than how one propels oneself forward, the

actual activity of surfing involves standing on a board and using the board to do maneuvers on a wave.

Mr. Amoral: You asked me to . . .

Unidentified Speaker: Three questions.

Mr. Amoral: Yeah.

Ms. Kilborn: I'm trying to . . . Well, excuse me. I'm not an attorney, but . . . (inaudible) . . .

Mr. Amoral: My opinion? You're asking for my opinion?

Ms. Kilborn: Well, what I'm trying to determine is whether or not the activity is a surfing activity.

Mr. Amoral: I have no idea.

Ms. Kilborn: OK. Well, that seems to be an elementary decision that needs to be made regarding this request. So I'm just trying to get to whether or not this is a surfing activity. So I'm just asking you if it's zoned for surfing, was the activity you observed a surfing activity on a stand up board?

Chairman Tanaka: In your opinion. I mean, that's . . .

Mr. Amoral: I don't have an opinion.

Ms. Kilborn: OK. No further questions.

Chairman Tanaka: Ms. Johnston?

Ms. Johnston: Yes, it was made clear to Mr. Kilborn even before the first . . .

Mr. Abbott: Microphone, please.

Ms. Johnston: I'm sorry. It was made clear to Mr. Kilborn before the first event in February of this year that there would not be a repeat of this event in successive years, correct?

Mr. Amoral: Correct.

Ms. Johnston: OK. . . . (inaudible) . . .

Chairman Tanaka: Thank you. Board Members, any questions for Mr. Amoral? I actually do. I just wanted to reconfirm that . . . your procedure between the two events, your procedure changed. So the pre-application came around in between the two events?

Mr. Amoral: Correct.

Chairman Tanaka: Correct. OK. Now, as far as . . . there have been references made to a Zone

A, B, and C versus Pavilion, Middle, I don't know what else.

Mr. Amoral: H`poko Point.

Chairman Tanaka: Yeah, so you're . . . I mean, pretty much you interpret Hookipa Beach Park . . . I mean, whether it be . . . there is no distinction between A and B, or B and C, or just other than location and of course, the definition of five people and ten people.

Mr. Amoral: There are no parameters out in the water, if that's what you're asking.

Chairman Tanaka: Yeah. So when you review it in the application when it's . . . whether it says Zone A or Pavilion, you interpret it as the area of Hookipa Beach Park? Is that correct?

Mr. Amoral: Hookipa Beach Park would be a general area name. Within Hookipa Beach Park, they have . . . the State has determined zones or areas: A, B, C. One is called Pavilions. That would be the closest to the Hana side, the north side. Then we have in the Middle, obviously, Middles or Pavilions. At times it's a little confusing because again, there are no parameters in the water separating the zones. It goes from Pavilions to Middles to H`Poko Point. H`Poko Point is Hamakuapoko Point. That is not County property. That is still under A&B.

Chairman Tanaka: OK. Yeah. That's all I had. Board Members, any other questions? Mr. Kilborn, do you have any redirect for Mr. Amoral?

Mr. Kilborn: Ask him one question in here about the evaluation, yeah, for last year February 18th or 24th. In your evaluation, you were sent down there by your Park and Recreation Roxanne, district.

Mr. Amoral: What is that . . . (inaudible) . . . ?

Mr. Kilborn: For the evaluation at the event . . .

Mr. Amoral: Yes.

Mr. Kilborn: You were asked to be there to evaluate . . . (inaudible) . . . ?

Mr. Amoral: No, I was on my own.

Mr. Kilborn: So you came on your own and evaluated?

Mr. Amoral: Yes.

Mr. Kilborn: OK. Didn't you state that you recommend that the SUP event that's coordinated by myself, Rodney Kilborn, that you recommended that we should have more events?

Mr. Amoral: Yeah, it's recreational.

Mr. Kilborn: Yeah. OK. So say like Zone C, Pavill, because you . . .

Mr. Amoral: A, you mean.

Mr. Kilborn: A, correct. So I did file an application. I also filed for Hookipa for this upcoming event or this coming 2013, February, on my application, right?

Mr. Amoral: Yes.

Mr. Kilborn: On that application, I also indicated "Middle" which we seen in the exhibit, in your application. So now that you're saying that because it was C, it's a safety concern. If I was . . . I don't see it was denied to getting the permits for this coming February if we move it to the Middles. Is it still being denied if I file for an application for Middle?

Mr. Amoral: You kinda lost me on that one, Bobby.

Mr. Kilborn: If I wanted to file an application . . . On the application, I filed for Pavills, yeah, zoning, and also applied for Hookipa, either/or, to get the permits. Now that because of safety issue with Zone C, which is not making sense for myself, would it be OK to get permits approved for Zone C or B?

Mr. Amoral: That'll be determined by the State, not by us.

Mr. Kilborn: OK. I just wanted to get that clear. Thank you. That's it.

Chairman Tanaka: Thank you. Board Members, any other question?

Mr. Abbott: Just one, please, Mr. Chair. When was the actual filing for the request or application for this event in question? When did you file the papers?

Mr. Amoral: Which one?

Mr. Abbott: For the one that they're trying to get—the 2013.

Mr. Amoral: August 8th, I believe.

Mr. Abbott: Because all I have here is on August 22nd, he received a message that it had been denied. I want to know when before that it was actually submitted.

Chairman Tanaka: So basically, you're questioning that the procedure changed on or about the exact time that the application was made for the second event?

Mr. Abbott: Possible.

Chairman Tanaka: Yes.

Mr. Amoral: It was changed prior to that second request.

Mr. Abbott: Because I don't have any dates going because I don't know when the request were

changed or when the requirements were changed.

Chairman Tanaka: OK. Mr. . . .

Ms. Johnston: Exhibit 3 of the County's exhibits is the complete form that Mr. Kilborn submitted for the second event.

Chairman Tanaka: OK. So it's by weeks, days, that the procedure changed, correct?

Mr. Amoral: It wasn't a lengthy period of time.

Chairman Tanaka: Yeah. OK. So I mean, it was a close . . . it was close.

Mr. Amoral: It wasn't due to the fact of his first application that it progressed into our pre-app.

Mr. Abbott: Oh, no, I understand.

Chairman Tanaka: Yeah, yeah. Mr. Amoral, if you can verify as far as you know anything, the communication . . . apparently verbal communication between the department and Mr. Kilborn after the first event that future events would not be allowed? Can you confirm that?

Mr. Amoral: Yes.

Chairman Tanaka: Thank you. Any other questions? Thank you very much, Mr. Amoral. Mr. Kilborn, you had . . . ? Is that the extent of your witnesses?

Mr. Kilborn: Yes.

Chairman Tanaka: Ms. Johnston, your witnesses.

Ms. Johnston: OK. I think I'd like to call Roxanne . . .

Mr. Abbott: Microphone. I'm sorry, but I can't . . .

Ms. Johnston: I'd like to call Roxanne Teshima.

Chairman Tanaka: I need to swear you in. Can you please raise your right hand? Do you swear to tell the truth about the information you're about to testify to today?

Ms. Roxanne Teshima: I do.

Chairman Tanaka: Thank you.

Ms. Johnston: OK. What is your position with the County of Maui?

Ms. Teshima: I'm the Special Events' Coordinator for the Parks Department.

Ms. Johnston: OK. And how long have you been in that position?

Ms. Teshima: Twenty years.

Ms. Johnston: OK. What are your responsibilities with the Department of Parks and Recreation?

Ms. Teshima: I supervise the Permit and Enforcement Section.

Ms. Johnston: OK. Please describe what process a person applying to hold an event at a County beach followed prior to mid-August of 2012 when the new pre-event application form came out.

Ms. Teshima: I'd like to refer you to Exhibit B. Exhibit B, and it's the special event pre-application request that was filled out by Mr. Kilborn. And it's a three-page form. And if you refer to page 3 on the very top, it states the purpose of the form, and it also addresses the procedures of our permits. And it states:

This form is a means of information gathering by the department at an early stage to aide in determining whether an event application, with all the requirements, should be submitted to the department. This pre-application request is not a reservation of any park or facility, Rather, it is the beginning of a three-stage process: pre-application request [which is this form].

Then it goes to a RecWare application, permit application, and then it goes through the permit issuance or non issuance.

If a recommendation to proceed for this pre-application occurs, the application process, including payment and fees, must begin within seven days of the pre-application or it will be void. Please note that the Maui County Code prohibits advertising until a permit is issued. As such, until final approval by the department, no monies should be expended for the event.

So that is our procedure. And prior to August . . . As you know, we have over 10,000 requests for permits for all of our facilities. And it's constantly coming . . . everybody's constantly coming in with new events. And so we . . . this form was used—is used—to see if the events are suitable for the specific parks applied for. And a lot of times, it's not. And that's when we recommend that they find another suitable site for the event.

Ms. Johnston: OK. If you turn to . . . She referred to the exhibit that was submitted by Mr. Kilborn. We've submitted the complete application that was put in. It's County's Exhibit 3 which has the map that shows the location. The one that Mr. Kilborn put in that she referred to doesn't have the map specifically that this is at Hookipa and areas of Zone A. And it also shows the signatures. And maybe . . . do you have a copy of the County's exhibits? Exhibit 3? Yeah. Could you explain on the signature pages what the notations mean on the signature page of the application for this event that he's here today for?

Ms. Teshima: The signatures include—first, it goes through the district, and then it goes to Special Events Office, and then the Director approves it.

Ms. Johnston: OK. And the district supervisor, who is that? Who would that be?

Ms. Teshima: In this case, it was Billy Amoral on behalf of the supervisor.

Ms. Johnston: Then under Special Events, whose initials are those?

Ms. Teshima: That's mine.

Ms. Johnston: OK. And then the Director, correct?

Ms. Teshima: Correct.

Ms. Johnston: OK. And the notation that somebody has written in, is in your handwriting where it says, "My understanding is that SUP events are not permitted/allowed at the requested site?"

Ms. Teshima: That's Billy's.

Ms. Johnston: Billy. OK. OK. So once this form was processed, was this form given back to Mr. Kilborn—a copy of this form?

Ms. Teshima: Once the Director either approves it or denies it, it goes back to the district. The district notifies the requestor whether it's to proceed with the permit process or it was denied.

Ms. Johnston: OK. Why did the department develop this form and start using it in August of this year? I mean, what was the purpose of having this form?

Ms. Teshima: It was to do an assessment whether it was . . . the event was appropriate for the park site.

Ms. Johnston: OK. And the determination was that it wasn't in Mr. Kilborn's case, is that correct?

Ms. Teshima: Correct.

Ms. Johnston: OK. This form and the determination does not . . . is not a denial of a permit is it?

Ms. Teshima: No, it's not.

Ms. Johnston: OK. What is the effect of this?

Ms. Teshima: This determines if it's suitable for the site whether we can proceed with the permit process or not.

Ms. Johnston: OK. All right. And why did the department develop this form? What led you to . . . the department to create this form?

Ms. Teshima: It's so that a form of communication . . . Previously, we used to request that the requestor does a letter in writing advising us where they'd like to have their event at. And we wanted more details to make a correct assessment because a lot of times, we're not aware just through, you know, one paragraph what exactly they're having. So we wanted a form that would

give them opportunities to fill in the blanks and address our questions as we felt was necessary to make the analysis.

Ms. Johnston: OK. And was there . . . ? The time, what is the timeframe required to process this pre-event application as opposed to the work that has to be done to actually process for a permit?

Ms. Teshima: Special Events' permits, normally, we ask for at least 90 days in advance if it's less than three consecutive days. If it's more than three consecutive days, for a Type 5, we're obligated to do a resolution that's passed through County Council. So we request even half a year or a year in advance to go through this process.

Ms. Johnston: OK. So is one of the purposes that this notifies the applicant in a rather rapid manner of whether or not their proposed events gonna be deemed OK with the County or gonna be processed to a permit? Do you understand my question? OK. Let me phrase it a little bit differently. How long does it take to process the pre-event application, usually?

Ms. Teshima: Normally within a couple weeks or so, but it just depends because a lot of them are new events and we need to look into different factors depending on what it is.

Ms. Johnston: OK. OK. So is this a way to let the person applying know sooner rather than later that they are not gonna be approved for whatever they're proposing?

Ms. Teshima: Correct.

Ms. Johnston: OK. Has Mr. Kilborn filed a request or a pre-event application to hold his stand up paddle event at some other location in the Hookipa location that he . . . is attached to this one?

Ms. Teshima: No, I don't think so.

Ms. Johnston: OK. And also, Mr. . . . do you have knowledge of whether or not Mr. Kilborn was advised early on even before . . . maybe even before the first event that he would not be approved for a second event?

Ms. Teshima: I was told that he was advised, yes.

Ms. Johnston: OK. Do you have his exhibits in front of you? OK. Could you look at Exhibit J, please? On the first page, if you go down, and this is a document prepared by Mr. Kilborn, correct, as far as you know?

Ms. Teshima: Yes.

Ms. Johnston: OK. If you look down the page, it says:

2-14, meeting with main district office and others. Verbal approved for permits after I have made some adjustments to new requirements. Roxanne states that Parks and Recreation are not going to allow any SUP event at Hookipa after this one event. No justification given.

Do you see that?

Ms. Teshima: Yes.

Ms. Johnston: OK. Do you recall having advised Mr. Kilborn that he would – there would be no second . . . approval of a second SUP event at Hookipa?

Ms. Teshima: To tell you the truth, I know we spoke to Mr. Kilborn a lot and I wasn't the one who determined that that would be . . . I wasn't in that agreement when he and I guess other higher officials agreed that that would be a one-time event. I just was repeating what I learned from our Director that he agreed that it was a one-time event. And then, that's how we proceed.

Ms. Johnston: OK. And these, I point out, these are his notes as far as . . . (inaudible) . . . ?

Ms. Teshima: That's his notes, yes.

Ms. Johnston: OK. I don't have any further questions.

Chairman Tanaka: Board Members, any questions for Ms. Teshima?

Mr. Santiago: A quick question. So annually, you process ten thousand applications for special events?

Ms. Teshima: Our department has ten . . . over ten thousand requests, yes.

Mr. Santiago: And you've been doing this for 20 years?

Ms. Teshima: Yes.

Mr. Santiago: In that time, was this . . . was the event this year in February, was that the first time that you folks have approved a SUP event?

Ms. Teshima: At Hookipa, correct.

Mr. Santiago: Anywhere on the island?

Ms. Teshima: Well, we did approve a different kind of SUP event which was from one point to another point, but it wasn't that wave-riding kinda SUP at Hookipa. Did I answer your question?

Mr. Santiago: Yes.

Chairman Tanaka: Board Members, any other question? I have one question. Ms. Teshima, the pre-application procedure, just to clarify, you said that about a two-week process, typically? Is that . . . ?

Ms. Teshima: Yes. We like to send it out as soon as possible but of course, sometimes we're not sure about certain aspects, so we need to do research, or ask our experts in our department or

outside of the department. So it's like we recommend everybody to come in 90 days beforehand, but our County Code states that they need to pay us 60 days, so we're assuming there's this one month window that we need to be certain that we can meet our rules, rule requirements.

Chairman Tanaka: OK. And then this filled out your exhibit, County's Exhibit 3, the third page, so it goes through the process of going I guess in this case, Mr. Amoral to yourself and Mr. Correa, correct? There are three initials, your three initials. So once that is completed, so the determination was made that the process would stop? They wouldn't even . . . I mean, a non issuance, I guess, is the term?

Ms. Teshima: They wouldn't start the permit process, yes.

Chairman Tanaka: OK. And communication back to the applicant is done how?

Ms. Teshima: Through the district.

Chairman Tanaka: So back to . . . is it back to Mr. Amoral?

Ms. Teshima: Correct.

Chairman Tanaka: And then Mr. Amoral should . . . is the one who needs to notify the applicant?

Ms. Teshima: Yes.

Chairman Tanaka: OK. Thank you. Board Members, any other questions?

Mr. Giroux: I got a couple questions. So as far as Exhibit 3, you don't know if that document got back to Mr. Kilborn? Exhibit 3 is the application after all of the Directors had signed it?

Ms. Teshima: I believe he does . . . he did know about it and Billy Amoral notified him.

Mr. Giroux: Was it mailed to him or . . . ?

Ms. Teshima: I would ask Billy.

Mr. Giroux: The other question is, as far as the communications with DLNR, was there anything in writing from DLNR stating that they looked at the activity within Zones A, B, and C any differently as far as the stand up paddle boards?

Ms. Teshima: What occurred is that we're aware of issues at Hookipa. And issues meaning between the surfers and SUP individuals. And what we wanted to see when we looked closer at the State rules regarding that area, we wanted them to clarify for us where . . . what . . . about stand up paddling, where would it be suitable in that zones or outside of the zones. Where would it be suitable for that type of event? Until it's clarified, it's hard for us to say it's gonna be a safe event because we're not the experts. The State is the experts in that category. We're . . . so that's why we're asking regarding stand up paddle events that the clarification would be necessary. And they are working on it, from what I understand.

Mr. Giroux: And how are you . . . ? I'm asking for that clarification. I mean, is it a request for an interpretation of their rules? Or is it . . . how are you, between the State and the County, asking for this clarification?

Ms. Teshima: The State is working on that issue right now because I know they had some public hearings and they're addressing . . . because it's a statewide issue.

Mr. Giroux: OK, but, I mean, they have rules right now. So as far as . . . are you asking the Attorney General to interpret this? Are you asking DLNR to interpret this? Who's asking the State to interpret their rule because obviously, you're trying to comply with the zoning, right?

Ms. Teshima: You're asking me if we wrote to the Attorney General? The answer is no. We didn't write to the Attorney General.

Mr. Giroux: What about . . . at what level in the DLNR are you talking to as far as how they're interpreting this rule? It's a rule, right?

Ms. Teshima: It's a rule per your exhibit, yes, correct. We don't take part in the rule development with the State, but we do know that the State is working on it as far as defining the activity and defining where it would be safe to do it. And we do know also know that there's issues out in the water that we don't want to escalate those issues. So the safe way to do it is to wait for the State to determine and clarify the activity, and where it would be deemed a safe area for that activity before we give out event permits for the activity.

Chairman Tanaka: Board Members, anything else for this issue? If there's no other questions from the Board, Mr. Kilborn, do you have any redirect? Thank you, Ms. Teshima. Ms. Johnston, your next witness.

Ms. Johnston: I call Rodney Kilborn to testify.

Chairman Tanaka: Mr. Kilborn, you may raise your hand. Do you swear to tell the truth about the testimony you're about to give?

Mr. Kilborn: Yes, I do.

Chairman Tanaka: Thank you. Ms. Johnston?

Ms. Johnston: OK. Mr. Kilborn, you knew before you put on the first stand up paddle event at Hookipa that the County would not be approving the second event, is that correct?

Mr. Kilborn: No, not at the first initial, no. You're talking about the first event in February? You're talking about this upcoming?

Ms. Johnston: The event in February of 2012.

Mr. Kilborn: No, I was not aware of it before I signed the application.

Ms. Johnston: OK. I'm talking . . . Maybe my question is confusing. At the time you applied to do the event in February of 2012, you were initially turned down, is that correct?

Mr. Kilborn: That's correct.

Ms. Johnston: OK. And then eventually, you were allowed to hold the event, correct?

Mr. Kilborn: Yes.

Ms. Johnston: And you were told at the time or around the time that you were holding the first event that it was a one-time thing, correct?

Mr. Kilborn: Yes.

Ms. Johnston: OK. And that's reflected in some of the exhibits that you have that you were told at the time?

Mr. Kilborn: Yes.

Ms. Johnston: OK. Why then did you reapply for this event when you had already been told that you would not . . . it would not be granted?

Mr. Kilborn: I applied because the definition of stand up paddle and the definition of surfing is no different. I applied because to help to share with you guys, with the County and Parks to educate them that stand up surfing and paddle surfing has no different significant. I also applied to help to identify body surfing and what is stand up surfing. The only thing I see different here and what made me to continue on is that if you take the paddle away from the surfer, he has the same equipment and the same area as the surfer without the paddle. If you take away the surf board and you leave the paddle for the guy standing out there on the reef, explain to me what is the definition? What's the difference? I came back and seeing this to be not explainable for me to not coming back to apply for . . . (inaudible) . . . But again, I'd like to finish this.

Stand up surfing is one of the fastest growing sport in the world. Maui is the one that is leading the way. We have the world champion here. We have the best of the best. We have the young, the youth, that is building into in this bigger area that we need to be consider. The event that we running or what we'd like to try to be here for Maui is a stand up series not just held at Hookipa but throughout the Island of Maui. It's already been done on every other island but Maui, the birth of most recent, yeah, activity that we not support it. And if we not gonna support this event, me, as a kupuna here in the State of Hawaii, Maui, and many others, we going feel the effect to our children. And this is not about me. It's not a making profit thing. This is an amateur contest. This is not a pro event. We spending our time for 14 and under, 50 to dead. That's the division that we call "Older People." This is for them. This is not for Glenn or any of you guys sitting back here. This is for our kids, our keikis. So this is what making me come back to face your nice, handsome people, and also you good-looking gentlemen here because I've been doing this for over 30 years and servicing the public. And this what making me come back.

Ms. Johnston: OK. You . . . the County has not told you that no stand . . . that they would not

approve any stand up paddling competition, is that correct?

Mr. Kilborn: That's correct.

Ms. Johnston: OK. That there are . . . and you just indicated there are other places that they could be held, correct?

Mr. Kilborn: At the appropriate time, when the season. We have two seasons: winter and summer.

Ms. Johnston: OK. And you haven't made any application to have a competition anywhere other than Hookipa?

Mr. Kilborn: Yes.

Ms. Johnston: OK. Why not?

Mr. Kilborn: Well, it's the first year, it's our start. It's the initial from starting at Hookipa. So our next thing after February . . . We trying to work first in February because that's the winter time. That's the only time that we can see swells during that time on the north shore. Summer, south side. It's very like . . . unlikely that you have . . . you going run one successful event because there's no swells at that time of the year. So I'm basing on that.

Ms. Johnston: OK. If you . . . you knew since February of this year that Hookipa . . . the County would not approve Hookipa for your contest, correct?

Mr. Kilborn: Yes.

Ms. Johnston: You had that in your own notes there.

Mr. Kilborn: Yes.

Ms. Johnston: OK. Are you planning on submitting another application to have a stand up paddle event at some other location?

Mr. Kilborn: During the summertime, yes.

Ms. Johnston: Could you look at Exhibit H in your exhibits?

Mr. Kilborn: My exhibit?

Ms. Johnston: Yes. OK. And this is a . . . it's been testified to as a form that's used by the Department of Parks and Recreation, correct?

Mr. Kilborn: Yes.

Ms. Johnston: OK. Have you seen a form like this for your current application?

Mr. Kilborn: What exhibit is this?

Ms. Johnston: H.

Mr. Kilborn: I'm sorry. Not for this event here.

Ms. Johnston: OK. So you've not provided any of this information?

Mr. Kilborn: No.

Ms. Johnston: Or proof of this, OK, for this event, correct?

Mr. Kilborn: Correct.

Ms. Johnston: And it's your understand . . . it's your understanding that the determination on the other form, the pre-event application form, was that you would not be able to apply for a permit, correct?

Mr. Kilborn: Yes.

Ms. Johnston: OK. And what is the basis for your understanding that you would not be able to apply for the permit?

Mr. Kilborn: I don't see any reason. I can't find any reason.

Ms. Johnston: OK. Is it true you were . . . as you say you already knew back in February that the County wouldn't approve it? And didn't they tell you that it was because of it's not appropriate, a suitable place for an event?

Mr. Kilborn: I was told many other things besides stand up surfing at Pavills. I was . . . February of . . . Yeah, they told me five days before the event that they won't approve any SUP, correct.

Ms. Johnston: OK. And what is your understanding of why you . . . after originally being denied to hold the first event in February of this year that you were then allowed to have it after all?

Mr. Kilborn: Can you say that again? My mind went a little . . .

Ms. Johnston: OK. All right. Initially, they told you couldn't hold the event at Hookipa in 2002, this year, correct?

Mr. Kilborn: Correct.

Ms. Johnston: 2012. What is your understanding as to why they changed their mind and you were able to hold that event?

Mr. Kilborn: I thought they would be more understanding by learning about what is SUP surfing. The length of time in between then and now, yes.

Ms. Johnston: OK. Did you take any steps, or did you talk to anyone to see if they would help change the department's mind on that?

Mr. Kilborn: I spoke to Troy Hashimoto.

Ms. Johnston: OK. Can you identify who Troy Hashimoto is?

Mr. Kilborn: Troy Hashimoto is the secretary to Councilmember White.

Ms. Johnston: OK.

Mr. Kilborn: And I spoke a lengthy time with him and . . . 'cause we had meetings with Nicholas, which is from the Department of Land and Natural Resource that was in April to August, April, I think it was about stand up paddle and surfing. And there was a public . . . (inaudible) . . . And we had like 40 stand up paddle people there, maybe like three non stand up paddle that was against it. So the numbers was significantly more for stand up paddle than against. We spoke at that time also with State DLNR.

Ms. Johnston: OK. What is your relief you're seeking from this Board in your appeal?

Mr. Kilborn: My relief is that take a good look at it. Take a good look at what we doing. Take a good look of who we are. You know, our society is sick right now. Talking about not in general, us, here, but the world itself. Enough of the negativity. By creating and bringing good things to our youth, the youth is the key. Whether it's soccer, football, any kinda youth sport, that's what we need to keep our kids busy. It's not enough here. Stand up surfing, you're seeing it more keikis, more children, out there and doing it than surfing from what I evaluate. You go Hookipa, you got stand up surfing there right now possible going on at also, at Zone A. So we need to look at that. We need to look at the future, which is why I coming here.

Ms. Johnston: OK. The Maui County Code section you cited for the basis of your appeal was referred to the denial of a permit.

Mr. Kilborn: Yes.

Ms. Johnston: OK. Are you asking this Board to issue a permit?

Mr. Kilborn: Consider to look at it and make a fair statement.

Ms. Johnston: OK. Do you know if they have any power to do that?

Mr. Kilborn: You know what? Power is significant and if we don't know how to use that power, we in trouble. So it's a hard question for me to answer.

Ms. Johnston: OK. Well, let's assume they don't have the power to do that. What then is the relief you're requesting from the Board?

Mr. Kilborn: I'll walk away feeling strong, yes, no matter what decision the Board come up with. My

inside to you, everyone in here, am I gonna grudge? If that's what the question is, no. I'm not the kinda person.

Ms. Johnston: OK. I don't have any further questions.

Mr. Kilborn: Thank you.

Ms. Johnston: The Board Members may, though.

Chairman Tanaka: OK. Thank you. Board Members, any questions?

Mr. Santiago: Mr. Kilborn, I applaud you. I applaud you for your conviction. And you were not nervous at all. The passion shows. It's amazing. And I would be remiss if I didn't read this because I've been looking at this. This is Wikipedia. It says:

Stand up paddle surfing (SUP), stand up paddle boarding or in the Hawaiian language, Hoe he'e nalu, is an emerging global sport with a Hawaiian heritage. The sport is an ancient form of surfing, and has reemerged as a way for surfers to paddle longer distances.

Chairman Tanaka: Sorry. OK. Sorry, Bart, at this point procedurally, we're asking questions of Mr. Kilborn. In during our deliberation or discussion . . . yeah. Sorry, but just procedurally, Bart.

Mr. Santiago: Oh, sorry.

Chairman Tanaka: OK. Board Members, any other questions?

Mr. Abbott: No, not from me.

Chairman Tanaka: Yes?

Mr. Giroux: Rodney, did you get a copy of Exhibit 3? I think it was the application signed by all of the staff and Director? The pre-app.

Chairman Tanaka: The third page of that . . .

Mr. Kilborn: No, I have it.

Chairman Tanaka: So, Mr. Kilborn, as far as your, I guess, the word would be "denial," or "non issuance," or to stop the process of applying for the permit, you were notified . . . according to you, you're saying it's only verbally that you were notified other than I guess it's that single . . . an e-mail that you received from the Director?

Mr. Kilborn: That's correct.

Chairman Tanaka: Your Exhibit D?

Mr. Kilborn: That's correct.

Chairman Tanaka: OK. Any other questions?

Mr. Santiago: I guess the question is, you did not receive this denial?

Mr. Kilborn: Did not receive denial. Only received the e-mail I think it was in August 24th or October.

Chairman Tanaka: October 18, 2012.

Mr. Kilborn: That's correct.

Ms. Johnston: Just for the record, that would be his Exhibit D. Is that what you want, just identification?

Chairman Tanaka: Yeah. OK. Thank you. Mr. Kilborn, at this point, we'll call for a redirect. So if you have any statement, any other statement that you would like to give?

Mr. Kilborn: I like your comment. I would like to see that. I just like you guys dig into your heart at this . . . (inaudible) . . . We all good people in there. We no need this mess. This is not good. Bring healing. That's all I ask. Thank you. That's it.

Chairman Tanaka: OK. Thank you. Ms. Johnston, any . . . ?

Ms. Johnston: OK. All right. I have no further witnesses.

Mr. Abbott: Mr. Chairman, she has nothing further ado.

Chairman Tanaka: Alrighty. Thank you. With that, I would like to recall Mr. Amoral. Mr. Amoral, just a reminder that you are still under oath.

Mr. Amoral: OK.

Chairman Tanaka: OK. We have a specific question for you. We have in the County's Exhibit 3, the three . . . I guess, it's four, that has your initials, Ms. Teshima's initials, and the Director's initials. Now, at this point, it is . . . it has been determined by all those who within the County, within . . . that the permit process would stop. That they would not be able to . . . The pre-application process has stopped and it would be a non issuance. Now, what was your, or, if any, communications back to the applicant at this point?

Mr. Amoral: Once I was informed that the application would be denied, I called Mr. Kilborn and told him such.

Chairman Tanaka: OK. So it was just a verbal. Nothing documented that . . . ?

Mr. Amoral: Not from the district, but it came from administration. In black and white, it came from administration, the denial.

Chairman Tanaka: OK. And that's a typical case scenario that when in this case it's a non issuance, so you'll just call the applicant back saying, you know what, for whatever reasons or . . . ?

Mr. Amoral: Correct, because the district is just the very bottom rung of the ladder.

Chairman Tanaka: Yes. OK. So . . . well, because you're sitting here, I guess the question would be, administration would actually on a County letterhead saying, you know, to Mr. Kilborn regarding application, you are denied. So do you know if that exists?

Mr. Amoral: No, sir. But if I can say one thing? It was a unique, first time type of thing in my experience.

Chairman Tanaka: Because the process was new?

Mr. Amoral: Right. Not only the process was new but just the denial itself. Through the districts, most things are cut and dried. You know, it's a surf meet that we've had. We have most annuals that we deal with. So it was a first time type of thing. And it was . . . at that point in time, it goes out of the district and back to administration. Did I answer your question?

Chairman Tanaka: Yes. Thank you. Board Members, that was a question I wanted to ask.

Mr. Giroux: I guess just to clarify, this document wasn't mailed out by you?

Mr. Amoral: No.

Mr. Santiago: Is it protocol to mail it out or no?

Mr. Amoral: As I said, this . . . it was a unique situation that we were in. And being the bottom rung of the ladder, I didn't feel comfortable with submitting anything to Mr. Kilborn besides calling him and letting him know that it had not been approved.

Mr. Tanner: So you personally called him to let him know that that was . . . ?

Mr. Amoral Yes.

Chairman Tanaka: OK. Anything else? Thank you very much. We're at that point for closing arguments. If you're ready, Mr. Kilborn? We are working under a time constraint. We're coming down the stretch. We got 27 . . . sorry, 22 minutes left.

Mr. Kilborn: Make it quick so we can go out and eat. My closing, I believe that there is no evidence to suggest that SUP surfing is a non surfing event. SUP, the activity of an SUP surfing is not restricted to the type of board used, nor does it require the board to be propelled by hand only. SUP surfing is a surfing event and therefore should be allowed. There has been no statement or evidence to show that there are any safety concerns. . . . (inaudible) . . . safety . . . sorry . . . (inaudible) . . . safety concern and to the fact that the event in a surfing . . . (inaudible) . . . and denied is inappropriate. In addition, the Park and Recreation has stated that the primary reason

for not considering the event is a zoning issue. At no time was this reason shared. I believe that surfing accomplished on a paddle board is still surfing. And that public . . . I mean, the Park and Recreation has interpreted the SUP surfing activities incorrectly as there is surfing.

Surfing is defined as a surface . . . surface water sport in which the wave rider rides on a forward base of the wave. A body boarder, towing, SUP are all surfing activities. I think I . . . I'd like to reinstate that again. Surfing is defined as a surface water sport in which the wave rider rides on a forward base of the wave. Body boarders, towing, SUP (stand up paddle), are all surfing activities. That would be my closing statement. Thank you.

Chairman Tanaka: Thank you. Ms Johnston?

Ms. Johnston: Yes. Very briefly. This appeal has been brought pursuant to Maui County Code, Chapter 13.04. The Section 13.04.125, Appeals, says, "Standard of appeal." The Board of Variances and Appeals may affirm, reverse, or modify, in whole or in part, any decision or order of the Director provided that you find one of the following:

1. That the decision to not to continue to process Mr. Kilborn's application was based on a clearly erroneous finding of material fact or erroneous application of the law; or
2. Arbitrary or capricious in its application; or
3. A clearly unwarranted abuse of discretion; and
4. A reversal or modification of the decision or order will not jeopardize life, limb or property.

I think it's clear that Mr. Kilborn has established none of these bases as operative in this particular situation. There have been . . . first, we know that under the DLNR, Administrative Rules, unless . . . find that stand up paddling competition is surfing and not something else, it's not permitted by the State Administrative Rules in the only two areas he's applied to hold it. So based on a clearly erroneous finding of material fact or law, we have a philosophy about what stand up paddling is. We don't have any law. The Department of Land and Natural Resources has not yet determined that. But the way that their rule stands now clearly to grant the permit would . . . that would be an error of law by the part of the department.

Two, there's no showing that what the department did was arbitrary or capricious. They have indicated that they can consider applications to hold this, the event, at some other place, but that they want to comply with both the administrative rules that are in place as well as their lack of knowledge of exactly how the future of the State is going to interpret these rules.

Three, a clearly unwarranted abuse of discretion, I think it's very clear from the testimony that this decision was considered. He was given the one opportunity because of the reasons that Mr. Correa cited recognizing an investment and so forth to hold it, the first one. But he was told from the get-go, we can't allow another one in this area.

And then I think the reversal of the issue about jeopardize life, limb, or property is not an element here.

So I would ask the Board to find . . . You know, I asked him whether . . . He's provided none of the information that's required. The checklist has not been done for . . . to prove that he has complied with all the requirements including insurance. That's Exhibit . . . it's Exhibit 8, just a form for the court . . . for this Board to find that he's entitled to a permit. Would be bypassing all the requirements that he's required to meet. So clearly, that can't be the relief given. I think that just about everything's been said about this it can that the department used his . . . Mr. Correa, in his capacity as the Director. It's provided for under the Maui County Code, which I've included a section that . . . this is Chapter 6 that governs the Department of Parks and Recreation. His powers, duties, and functions are:

1. Plan, design, construct, maintain and operate all parks and recreational facilities administered by the County.
2. Develop and implement programs for cultural, recreational and other leisure activities for the people of the County.

His decision that this event should be not held at this place at this time clearly falls within his discretionary powers to make a determination based on the authority that's given to him by the County Charter.

I would ask the Board to deny the appeal. I think it's very clear that Mr. Kilborn can come back with a different kind of proposal that can be treated differently by the department. Thank you for your attention.

Chairman Tanaka: Mr. Kilborn, any other rebuttal?

Mr. Kilborn: I'm sorry?

Chairman Tanaka: Anything else that . . . you get the last word, so to say.

Mr. Kilborn: Yeah, I like that. The . . . I applied. I've done everything as I could. I followed every requirement. As far as protocol to get what is needed by the County, I've done. To receive a disapproval and almost a disapproval for the first event was like five days out of the event. It was a struggle. Nobody can operate like that getting sponsors, or put things out there in advertisement in five days. And for the second event, as you seen, that's the only thing, one piece of paper he gave me which was denied and nothing else was given. So it was already . . . before I even got that piece of paper and how I got it, I had to go down to the County and tried to find him, which I was denied verbally not to give me the application. Amoral had stated that on the phone. I asked him why. He wouldn't know. It was all here and there. It just was a crazy ride. And I like to walk away as I said before, feeling strong whether which way you choose. And you guys will make the difference for what SUP is today. Maui needs it. I not speaking as one. I talking about thousands of SUP behind me. If you let it go this time, it's a black eye for Maui. Don't . . . And these guys are great people. Thank you.

Chairman Tanaka: Thank you. Just . . . Board Members, here's our dilemma. We've got 15 minutes to wrap this up. Now procedurally anyway, if we do not accomplish our goal—so let me speak as quickly as possible here—rather than using . . . continuing on later without a quorum, we would like to do a defer because potentially, the process could drag on a lot longer. So let's . . .

OK with that being said, discussion back to the issue at hand. If I may start?

OK. Mr. Kilborn, you . . . I'll echo Bart's sentiments. I applaud you. We all see your passion. It is not . . . this Member's feeling that the BVA is not your . . . is not the board to solve this issue. So I encourage you to whichever way, whichever result at the end of this session, I encourage you to continue in your quest. I do not paddle board. I do not surf. So I do . . . I can't . . . I don't understand, I guess, or share your passion. I do understand the need to move forward. In my day, there was no such thing as sail boards, wind surfing. It was either divers or surfers. So as we move forward, we . . . new things will come up. Paddle boarding is fairly new. A few years down the road, there may be something else that comes along. But in itself, the problem is, is there are specific documentation that refers to surfing and nothing else. So for myself and for the Board, the definition of surfing is almost irrelevant.

Continuing on here, to the Department of Parks and Recreation, the pre-app I think is . . . was . . . is genius. You created up a process that helps streamline things. I applaud that whoever came up with the idea and for your staff and your administration to start it. But I will say that it's . . . as part of it, I will encourage you to take the next step and say, well, let's make sure the last step in that process is communication back to the applicant. If . . . everything in writing. It's hard because we've had . . . this Board has heard where . . . that the . . . some they said this, he said that. We don't have anything documented. If you had something as maybe the last step to add to your pre-app process is a form that's returned back to the applicant saying that, you know, thank you very much, we are sorry, you are denied for these reasons. I think that would've helped Mr. Kilborn in understanding that you couldn't move forward, but these are the reasons why, and here it is, it's in written form, and there are no . . . nothing is hearsay.

And also with . . . to the Department of Parks and Recreation, I would encourage you to again, and to have it being documented, that let's communicate with the DLNR, and say you know what? Let's . . . this is their definition of surfing. This is . . . I recognize sail boarding, and kite surfing, and paddle board so that there is no gray area when it comes to your decisions. You don't have to try and come here and try to justify that this is what we meant. I know that's a timely process but . . . and I know that the DLNR is very short staffed and it's not something that's easily done. But I encourage you, please, start that process with the State. OK. That was my two cents. Any Board Member? Anything?

Mr. Tanner: Yeah, Mr. Kilborn, I also admire your conviction. I've done a fair amount of paddle boarding and paddling, not so much surfing. I believe that you may ultimately be successful in bringing paddle boarding competitions to Maui, changing some zoning, or definitions. I just do not believe that this is the venue. I don't believe that this Board has the authority to define what surfing is. I don't even believe that the Department of Parks and Recreation of Maui County has the ability to define what surfing is. Does it need to be defined? No question about it. And it seems clear that the DLNR has taken that up. I hope they find in your favor. You guys have worked very hard to get a couple of witnesses to admit that it's the same thing, unsuccessfully. And for myself personally, certainly there's similarities but there's also some drastic differences. And we're not just talking about the recreational activity of surfing for paddle boarding, but we're talking about competition. And I've seen surfing competitions, and I've seen paddle boarding competitions, and those are drastically different types of competitions.

I believe in this case, the Parks and Recreation is kind of in a position of—how I would put this? No good deed goes unpunished. You did not want to see a Maui County citizen lose an investment in something that they've done. In fact, you've changed some rules to say don't invest in this, promote this event, do any of these things until you've gotten a permit. And I think that's very important. And I applaud the department for making those changes. But in the case of the first event, you made a judgement call. You allowed it to happen. It ended up being a good event. And hopefully, in the future, we'll see much more of those types of events, but I believe we have to wait for the DLNR to make their determination. I hope that determination's in your favor. In this case today, I do not believe that you've met the burden of proof that would allow this Board to support your position in this.

Mr. Abbott: Yes, if I may, Mr. Chair? I also would like to applaud you and thank you for your time, your zeal, and your obvious love of what you're doing. And I think it's fantastic. You're unfortunately, as we all are, stuck in the middle of a battle of semantics, and bureaucratic boondoggling, and rule-changing, and paper shuffling, and who and whatever is going on, but I wish you the very, very best of luck. I really do.

Chairman Tanaka: OK. Bart, you had any other comment, any other question, any other discussion? OK. OK. Procedurally, we . . . as the Board itself, we have quorum to make a decision. So with that, I'd entertain a motion.

Mr. Tanner: I'd make a motion that the burden of proof has not been met, and that the Board not support the appeal.

Mr. Abbott: Second.

Chairman Tanaka: OK. It has been so moved and second. Any other discussion? No. With that, I'll ask for a . . .

Mr. Giroux: Just to clarify, the motion was put to affirm the decision of the Director?

Mr. Tanner: Yes. You want to reword the . . . ?

Mr. Giroux: No, that's fine. I just . . . (inaudible) . . .

Ms. Kapua`ala: Mr. Giroux, should the reason stating why that the applicant has not met the . . .

Chairman Tanaka: Requirements.

Ms. Kapua`ala: Requirements based on 13.04.125 of Appeals for the Parks and Recreation's . . . can that be stated why?

Mr. Tanner: I believe that the Parks and Recreation is within their authority to enforce their understanding of the zoning for this area, and does not have the ability to interpret or define other activities. Therefore, I would support the Parks and Recreation's position to deny the permit.

Mr. Abbott: Second.

Chairman Tanaka: OK. It's been moved and second. All those in favor, please say aye. Chair votes aye. Any opposed?

It was moved by Mr. Tanner, seconded by Mr. Abbott, then

VOTED: To support the Parks and Recreation's position to deny the permit.

**(Assenting: R. Tanner, G. Abbott, P. De Ponte, B. Santiago,
K. Tanaka.)**

(Excused: R. Shimabuku, J. Haraguchi, B. Vadla, T. Espeleta.)

Chairman Tanaka: **OK. So the appeal has been denied. The Director's decision has been upheld.** Thank you very much, Mr. Kilborn. Good luck to you, sir. Procedurally, I just . . . since we are still being recorded, that is the one and only item. This afternoon's meeting has been deferred because of lack of quorum. We'll schedule it . . . Trish?

Ms. Trisha Kapua`ala: We're . . . we have a really tight schedule starting January 10th. We have three items already scheduled. On January 24th, we're scheduled to go to Lanai. We have two items already in February. So the applicant has requested and the staff will support this—a special meeting . . . a special meeting be scheduled. And perhaps we can take care of the Maui Brewing Company which has been canceled today for lack of quorum at 1:30. And also, we could take care of possibly, their final post hearing procedures?

Chairman Tanaka: Ms. Johnston?

Ms. Johnston: Yes?

Chairman Tanaka: We need to . . . procedurally, we need you to file the decision and order.

Ms. Johnston: Yes, I will. I talked to Trisha about . . . (inaudible) . . .

Chairman Tanaka: And the usual that the applicant will receive and I guess have the opportunity to argue. Otherwise, that . . . I mean, procedurally, I mean, it'll be . . . should be quick at our next meeting whether it be the special meeting or the January 10th meeting.

Ms. Kapua`ala: Yeah, we're talking about possibly doing a special meeting to take care of the public hearing item that was canceled today at 1:30. So I'll let you know. I mean, I would like the Board since you're all here to try and come up with a special meeting date to help the applicant or Maui Brewing Company to be heard. Otherwise, we're not gonna be able to have time for him until February or March.

Mr. Abbott: Here we go again.

Ms. Kapua`ala: And then, Mimi, if we could work together to try and get something before.

Ms. Johnston: I noticed on your 1:30 agenda, there are two other cases . . . two other: the Strini Case and . . .

Ms. Kapua`ala: Oh, yes, because the Strini Case was taken off the agenda for 1:30 . . .

Ms. Johnston: OK. So I don't need to be . . . Those were just stipulations that were filed.

Ms. Kapua`ala: Yes. Yes.

Chairman Tanaka: Yeah, it wasn't . . . to dismiss.

Ms. Johnston: So you're not getting a free lunch from the County after all? Is that what the bad news is?

Chairman Tanaka: We're all in a rush.

Ms. Johnston: Oh. OK.

Mr. Abbott: He's got a plane . . . (inaudible) . . .

Chairman Tanaka: Yeah, I'm on a flight tonight.

Mr. Giroux: So, Mimi, we just wanna make sure that you get Mr. Kilborn a copy of that proposed decision and order.

Ms. Johnston: I will.

Mr. Giroux: In a timely manner so that if he does have any objections or exceptions that he'll have an opportunity to . . .

Ms. Johnston: Trisha's gonna give me the last part of the transcript, right?

Ms. Kapua`ala: OK. So you would like the last part of his . . . ?

Ms. Johnston: Just the ruling . . . just the ruling part is all . . . (inaudible) . . .

Ms. Kapua`ala: Just the ruling?

Ms. Johnston: Yeah.

Ms. Kapua`ala: Not the closing?

Ms. Johnston: Yeah.

Ms. Kapua`ala: OK. Thank you.

Chairman Tanaka: OK. Now, there are five of us here. As far as do we need to . . . I guess it's hard to determine a date when there's only five of us.

Mr. Giroux: Yeah, it doesn't need to be this five.

Chairman Tanaka: Yeah, it doesn't need . . . yeah.

Mr. Giroux: But the Members who do vote on it need to review the transcript and record.

Chairman Tanaka: Yeah.

Ms. Kapua`ala: OK. So is it better to be taken care through e-mail?

Chairman Tanaka: Yeah, I guess that's our only option. OK. And then the special meeting, be aware that this should be a fairly slam dunk because for one, it's been in the newspaper, it's being supported by the County, so it's just . . . this is procedural.

Mr. Abbott: Is this the Brewing thing?

Chairman Tanaka: Yeah. So . . . well, via e-mail will determine who's gonna be here. OK. Well, and actually . . . OK. Anything else?

Mr. Abbott: Yeah, do you have any new business? Is that later?

Chairman Tanaka: Yeah, do we . . . does anybody have . . . ?

Mr. Abbott: I have some if we . . . but it's not on the schedule.

Chairman Tanaka: Discussion?

Mr. Abbott: Yeah. I would like to put into the public record in the minutes why we are not getting mileage as is required by the County Charter. We're supposed to be paid mileage for these meetings. It was explained to me earlier that's been a budget crunch, but now that it's available, we should be reimbursed.

Chairman Tanaka: It wasn't available and now it is?

Mr. Abbott: No, it was available then somebody cut it off.

Mr. Tanner: How would mileage work?

Mr. Abbott: To and from your house, back and forth.

Chairman Tanaka: I don't know. I wasn't aware of that.

Mr. Abbott: Well, I wasn't. It was made aware by me . . . by somebody from the Board of Ethics who's a real Scrooge. She wants to know when she's gonna get paid.

Mr. Joseph Alueta: Mr. Chair? My understanding is that mileage is paid for those who do not live or work . . . for others who do not live or work within the Wailuku area. And those could claim. But I believe the rules say that it "may be granted mileage," so I'm gonna discuss it over with my bosses and see whether or not . . . But Tremaine has gone in some proactive measures has drafted up

some mileage forms because you gotta do it by the month. So we'll have you sign it, and if we can get it approved, we'll get it approved for this month, and then we'll . . . If not . . . but I'll bring it up with my management to see whether or not they . . . They cannot do it retroactive. So that's why . . . I could . . . that's why she wanted to give you some for December. And if we . . . rather than wait for a decision, have you fill out the form, if they say, yes, we'll just sign off for December, yes.

Chairman Tanaka: Yeah, for me that'll be about 70 cents. OK. OK. Anything else? I guess still part of the record, this special meeting, OK, this is something, Rick, please be aware of that when via e-mail and we decide the special date, unless we have a hard time getting quorum, I will not attend because I have actual personal relationship, personal, so that would . . . I would rather not be . . .

Unidentified: For the Maui Brewing?

Chairman Tanaka: Yeah. So . . . but it's not a conflict of interest. It's personalities.

Mr. Alueta: Drinking their beer does not qualify . . . (inaudible) . . .

Chairman Tanaka: Because I drink too much, no. OK. So we'll figure it out as we go along. OK. If that's it, meeting adjourned. Thank you very much.

There being no further business to come before the Board, the meeting adjourned at approximately, 12:30 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice-Chairman
Bart Santiago
Gene "Clark" Abbott
Patrick De Ponte

Members Excused:

Bernice Vadla
Jacqueline Haraguchi
Ray Shimabuku
Teddy Espeleta

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Others:

Joseph Alueta, Acting Planning Program Administrator, Planning Department

Trisha Kapua`ala, Staff Planner, Planning Department

James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel