

**MAUI PLANNING COMMISSION
REGULAR MINUTES
APRIL 9, 2013**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Ivan Lay at approximately 9:02 a.m., Tuesday, April 9, 2013, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Vice-Chairperson Lay: ...Commission is now in order.

B. INTRODUCTION OF NEW MEMBERS - Sandra Duvauchelle and Jason Medeiros

Vice-Chairperson Lay: At this point, I'd like to welcome two new Commissioners. We have Jason Medeiros and Sandra Duvauchelle.

Ms. Duvauchelle: Duvauchelle. Actually that's probably closer to correct, but Duvauchelle.

Vice-Chairperson Lay: Well, welcome on board and you're gonna be reading a lot along with us.

Ms. Duvauchelle: Thank you.

Vice-Chairperson Lay: Public testimony will be taken at this time. For those of you who wish to testify on any agenda items, you can do so at this point. You'll have three minutes to testify, but if you do testify at this point, you won't be able to testify when the agenda item comes before us again unless you have something new. Do we have any testifiers this morning?

Mr. Ball: I don't think we should let the new people get off that easy. We need to have a little 30-second commercial.

Vice-Chairperson Lay: Okay, we're closing public testimony. And now we're going to Item C which is election of our officers for the 2013-2014 year. Commissioner Wakida?

Ms. Wakida: I was just gonna follow up with Commissioner Ball. Maybe our two new Commissioners could tell us just a little bit about their background?

Vice-Chairperson Lay: I agree with you. If you could do that for us? Let's start with Jason, Mr. Medeiros?

Mr. Medeiros: My name is Jason Medeiros. My name is Jason Medeiros. I work presently as a business agent for the ILWU. Born and raised here. I'm here mostly because you know, when you're born and raised here I wanna help out, and that's what I'm here for to help out. Make no mistake as I stated before, I do love our land. I do love our water. But I also love our people. And I really believe that working class people is a very important part of the equation with the survival of this island. That's about it.

Vice-Chairperson Lay: Thank you. Commissioner Duvauchelle?

Ms. Duvauchelle: Good morning. My name is Sandra Duvauchelle. I'm a general building contractor. I'm also a licensed real estate agent. I've also done some civil work in blasting and demolition. And I'm here, I've raised my children here, and I want to give back to the community.

Vice-Chairperson Lay: Thank you.

C. ELECTION OF OFFICERS for the 2013-2014 YEAR

Vice-Chairperson Lay: At this time, I'm gonna go into the election of our officers for the 2013-2014 year. Nominations are open.

1. Chair

Vice-Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I nominate Ivan Lay for Chair.

Mr. Ball: Second.

Vice-Chairperson Lay: Nominated by Jack, by Mr. Freitas, and seconded by Commissioner Ball. Commissioner Wakida?

Ms. Wakida: I would like to nominate Warren Shibuya. This is Warren's last, fifth and last year on the Commission and I know that he would...he's been a major contributor to our meeting over the last four years. He has some thoughts about what he would do if he were...can I share a couple of these that you emailed me?

Mr. Shibuya: Sure.

Ms. Wakida: He would like to incorporate the Planning Department and Public Works Department in their presentations so that, so that we could better understand what our decision...better make our decisions. And he also will encourage more site surveys by the Commissioners so that we have more hands-on experience with that the projects that are coming before us. So those are a couple of the things that he shared with me. And I so I nominate Warren Shibuya.

Mr. Giroux: Yeah, nominations don't need seconds, but the votes will be taken from the order of nomination.

Mr. Freitas: I move that nominations be closed.

Mr. Medeiros: Second.

Vice-Chairperson Lay: Moved by Commissioner Freitas and seconded by Commissioner Medeiros. At this time...

Mr. Spence: Commissioners, we're taking these in order and by nominations. Would everyone in favor of Ivan Lay being the Maui Planning Commission Chair please raise your hand? One, two,

three, four, that's five in favor of Ivan.

And everyone in favor of Warren Shibuya being Chair would please raise your hand. You have two in favor. So congratulations, Mr. Chairman.

Chairperson Lay: Thank you.

Upon being put to a vote, Ivan Lay was voted as Chairperson.

Ivan Lay - Five votes (J. Medeiros, J. Freitas, S. Duvauchelle, W. Hedani, K. Ball)

Warren Shibuya - Two votes (P. Wakida, W. Shibuya)

2. Vice-Chairperson

Chairperson Lay: At this time, we'll do the nominations for the Vice-Chair. Nominations are now open. Commissioner Wakida?

Ms. Wakida: I would like to nominate Warren Shibuya for Vice-Chair.

Mr. Freitas: Second.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd like to nominate Wayne Hedani for Vice-Chair.

Chairperson Lay: Any further nominations?

Mr. Freitas: Move nominations be closed.

Mr. Medeiros: Second.

Chairperson Lay: Moved and seconded.

Mr. Spence: Okay, all those in favor of Mr. Shibuya being Vice-Chair, please raise your hand? That's six in favor of Warren. All those in favor of Wayne Hedani? That's one, so congratulations Mr. Shibuya, Mr. Vice-Chairman.

Upon being put to a vote, Warren Shibuya was voted as Vice-Chairperson.

Warren Shibuya - Five votes (J. Freitas, S. Duvauchelle, W. Hedani, K. Ball, P. Wakida, I. Lay)

Wayne Hedani - One vote (J. Medeiros)

Chairperson Lay: Our next agenda item is the Orientation Workshop.

Mr. Spence: Good morning, Commissioners, Mr. Chairman and Vice-Chairman. This is something

we do every year. We have an orientation for the Commission. It's this time every year we get new Commissioners, we go over the, you know, what the duties, the powers, et cetera and you know, it's just an ongoing training thing that we like to do for the Commission. So with us this morning, we have Ms. Ann Cua, one of Senior Planners in the Current Division. She's actually a supervisor within that Division, and you'll be seeing her quite a bit. So go ahead, Ann.

D. ORIENTATION WORKSHOP NO. 1

1 Opening Remarks - Ann Cua

Ms. Ann Cua: Good morning, Mr. Chair. Congratulations, Vice-Chair. Most of you know about our training, our orientation. It's a helpful tool for all of us, Planners included, to just kinda go over some of the basics. This year, we've simplified it based on some direction from our bosses so that I think it will be easier for you to wrap your hands around it. So, I'm just gonna briefly talk about how the day is going to go.

We're gonna start with the Overall Planning Framework and Kurt Wollenhaupt from our office will be taking you through that. The Update of General Plan Process, Simone Bosco is here from our Long Range Division. She will be covering that for you. And then we're gonna go into County Zoning which you deal on every single application that you review and Danny Dias is gonna be taking you through that. And then, actually we're gonna add in it as part of zoning, we have separate section that we're gonna take some time out to cover with you is Bed and Breakfast and Short-Term Rentals, and you know, that is some of our most recent legislation that you've been dealing with pretty much on a, you know, meeting by meeting basis and you're gonna be...it's not gonna stop. You're gonna be seeing a lot more short-term rentals. You'll be seeing B&Bs. So we've taken that separately and we're gonna be going over that with you and Gina Flammer, who is probably the Planner that's most knowledgeable about that issue is going to be taking your through that. And then we're gonna take you through Hawaii Revised Statutes, Chapter 343, the Environmental Assessment process. You have one on your desk today. You see these quite frequently as well. So we're gonna take you briefly through that process. And then we're gonna end the say with, or hopefully we can wrap this all up by lunch, 'cause we've speeded things up a little bit. We're gonna go over the County of Maui Sexual Harassment Policy which we have to go through with you, and finally your attorney...oh, excuse me, on the Sexual Harassment Policy, Allan DeLima is gonna be taking you through that from our office, and then on Legal Issues, your Corp. Counsel, James Giroux is gonna be covering that with you. And that's how we'd be winding it up for today.

A couple of years ago, we decided to split up your training because we used to do it all in a day and we'd break for lunch, we'd come back in the afternoon and we'd go another few hours, and it is, it's a lot of information. So a couple years ago, we decided to break it up. So this is the first part of your training. The next part of your training is gonna be in a couple weeks on April 23rd, and that meeting is gonna be focused on Shoreline Issues. So we're gonna have two Planners from our office, Jim Buika, and actually Tara Owens who works in our office, but she's actually the UH Coastal Hazard Specialist and she is gonna be, she and Jim will basically be taking you through that subject matter on April 23rd. So with that, I'd like to introduce our first presenter Kurt, and he will start us off this morning. Oh, and what we'll do is we will take questions at the end of each topic, and then we'll move on.

2. The Planning Framework - Kurt Wollenhaupt

Mr. Kurt Wollenhaupt: Good morning, Members of the Maui Planning Commission. It's a pleasure to be with you today to begin our training. I'm gonna be talking about the Planning Framework. They any presentation there might be three things that you're gonna take away from this, well, I'd like to start out with 7 to 10 years. That's a good number to think about. How long does it take to go from raw land to completion with sticks in the ground in Hawaii, almost 7 to 10 years. Land use in Hawaii is probably the most regulated of all the 50 states perhaps even more so than California. It's a complex process and sometimes both the people who are the applicants, the residents, the constituents think it's a maze.

Just in case any of you might wanna handy dandy pocket outline of Planning, I have some right here to put in your pockets. Management decided to take this slide out but it come in handy when you have nothing else to do. So I'm gonna pass these out. And while that little handout is kinda complex, actually that's what we're gonna talk to really today going through it. To start out with, the Hawaii State Constitution, that's the really, that's an ultimate document, and it really outlines the structure of State and County government and it's really from this that the government gets it authority to really control development and also to understand how personal liberties are protected throughout the state.

State and County agencies they're guided by two statewide planning documents, the Hawaii State Planning Act of 1978, and also Governor Abercrombie's New Day Comprehensive Plan that outlines sustainability and efficiency and also protecting the land.

Now why is the State Planning Act really of importance at all? It was signed back in 1978. It's to try ensure coordination among agencies. Why it's important is that Hawaii is really unique. In all the 50 states through Act 100, its General Plan was converted into a statute. So it's a comprehensive State Plan. The State Plan deals with implementation, conformance, and is the most significant for land use control in Hawaii.

You'll be looking at every project really under the guidance of the Constitution and the State Plan and in the reports that you'll be seeing, oftentimes there'll be an analysis of how the project fits in with the goals and objectives of the State Plan.

Moving downward, planning is like a funnel. You've got the Constitution that sets the base, and now we have to go down into how the County controls planning. Chapter 2.80.B of the Maui County Code regulates the County's General Plan, community plans, Countywide Policy Plan, and Maui Island Plan. So in essence, planning here is from the top down, we have our Constitution and the State Planning Act, and then we gradually move down in the specificity. We're pleased that we have the Countywide Policy Plan that Simone Bosco is going to be talking about. That really sets the goals and objectives for all of the islands of Maui and Molokai and Lanai. From that we have the Maui Island Plan, and Ms. Bosco will be going into detail about that, but that's really the guiding document for where growth is gonna happen here on Maui. And that was recently adopted in 2012.

It's a really a radically new document that for first time looks at urban and rural growth boundaries, and you're gonna be seeing a lot more in our reports about how projects are in compliance with the new Maui Island Plan. Finally, there's a very detailed community plan. There's seven of them. They cover Kihei-Makena, Wailuku-Kahului, Paia-Haiku, Makawao-Pukalani-Kula, West Maui,

Hana, and Kahoolawe. These are really critical documents. They're adopted by ordinance. They're developed by each of the people in their community plan regions and they are absolutely critical to where development is governed throughout the discretionary review process.

Danny Dias is going to be talking about County zoning, and he'll be explaining some of the details about all the different permits you'll be seeing. As Ann Cua had said earlier, the Coastal Zone Management Program, that will be...that's our shoreline protection program you'll be looking at in detail in a couple of weeks and Joseph Prutch will be talking about our Environmental Impact Statements and the process by which projects are reviewed from an environmental impact standpoint.

We next come to State Land Use Law. Now, why do we have this in here? In the years proceeding 61, 1961, right after statehood. The State of Hawaii passed its Land Use Law. Now why did they do that? Well, there's a lot of interesting and I'd really recommend any of you getting this book, *Regulating Paradise*, it's an outstanding book that talks about the history of land use planning in Hawaii, where's it's going, where it's been. There were in '61 private land holding interests, centralized State government in Honolulu and they saw what was happening in Hawaii. Land was being taken for development of tourism fundamentally changing the face of Hawaii. We have the Big 5, we've got Alexander & Baldwin, agriculture is still in the forefront, but now tourism is coming. So out of that concern, in '61, the State for the first time ever in the U.S. decided to take all of the lands in Hawaii and put them into four categories. Of course, Agriculture and Conservation are the two big ones, Rural, just less than 1 percent of all lands, and Urban at 5 percent of the land. So what this essentially means is that all lands in Hawaii first off, have a boundary amendment. They're one of these four, Ag, Conservation, Rural, and Urban. The State Land Use Commission which I'll talk about in just a minute, has control over how these lands are designated. And we'll be going into detail about this process, but the key point is that from 1969 to 2011, lands which have a boundary of Urban, have only gone from 3 to approximately 5 percent. So what's our key point, 95 percent of all lands in Hawaii are still in Ag or Conservation. So when you're driving through Honolulu you might wonder about that. In fact, some people might wonder about that here on Maui, but this is a key point that still, even today, 95 percent of the lands are in Ag or Conservation. Conservation land is a little bit different. That's reviewed under the purview of the Department of Land and Natural Resources. So we can see that we have to be ever prevalent, but still 5 percent of land even today is only classified in Urban.

That gets us to the State Land Use Commission. They're a group of individuals who meet on a regularly biweekly basis. As many of you may know, they've been meeting very frequently in Maui for all the different projects we have here. It's their responsibility to look at lands which for the most part are in Ag and want to become Urban. So, how do you take land from Ag to Urban. You have to apply for what they call a Land Use District Boundary Amendment. If the land is greater than 15 acres, it has to go the State Land Use Commission. It is a quasi-judicial process which Mr. James Giroux is intimately familiar with from having been multiple times recently. If, however, the land is less than 15 acres, the people on this Planning Commission, they will process the application and make their recommendation to the Council. Again, this is really one of the critical milestones for any project to get their land changed from Ag to Urban in order to set the process for future development. In addition, there's something called the State Special Use Permit, that allows for uses not permitted in State Ag and Rural Districts. Probably the most common one would be under 15 acres for somebody who wants to do a short-term rental home. That's not specifically

allowed in Ag Districts. So this Commission is responsible for looking at uses which are unusual, but they consider reasonable and do not negatively affect the Ag operations. If the land is greater than 15 acres, it does require a Land Use Commission approval. This Commission will hold the public hearing and make the recommendation to the State Land Use Commission.

So sometimes it's helpful just to kinda put it all together. Here's a project in North Kihei. This is a project of about 600 homes that's currently before the County's Land Use Committee. This was zoned Ag. The community plan is Ag, and the District Boundary originally was Ag. So you've got, Ag, Ag, Ag. The applicant, A&B Properties went to the State Land Use Commission and had this parcel approved for conversion from Ag to Urban. So they've gone through the hoop of going to the State Land Use Commission. It's now urbanized from the district boundary perspective. The Planning Commission here, they reviewed the project and they made their recommendation to the County Council in order to change this to a mixture of Multi-Family and Single-Family homes. So this now currently, this body acts as a body which recommends approval or denial to the County Council. This project then goes to the Mayor for review and then consequently, the Mayor sends it to the Chair of the Land Use Committee. Right now, it's in Bob Carroll's Land Use Committee. There's a few issues about traffic that they're working out, but then after those issues have been solved to the satisfaction of the Chair, it will then come before the Land Use Committee in review.

Here's another project that's been in the news recently. It's Kahoma residential. This is in Lahaina. The red area marked there is a proposed area for 68, 100-percent affordable home. It's adjacent to the Kahoma Stream. Similar to the other project, this was...has a district boundary of Ag, this is also a special project in affordable housing called a 201H-38. Won't get into too many details on this. However, with affordable housing, the zoning and the community plan do not necessarily have to be consistent in order to move the project forward. So the County zoning on this is Ag, and the community plan is Open Space. However, because it's a 100 percent affordable, the project can continue to move forward assuming the State Land Use Commission takes the land from Ag to Urban which after about 10 meetings they were able to come to concurrence and this area is now district boundaried for Urban. It does have its Council approval of the 201H-38, a 100-percent affordable presumably it will move forward as some of the affordable housing in Lahaina.

Finally, the Commission really serves as the heart of the planning but it's with the resources of many, many, many volunteers with expertise in a lot of areas that this Commission has assistance with. We've got the Urban Design Review Board that looks at project design and provides recommendation here. For the most part, they do look at projects within the Special Management Area. That's the special area along the coast. Perhaps in the future they'll be able to look at more and more projects.

The Arborist Committee looks at special trees, requests for exceptional trees. If an individual wants to do landscaping plans that are not necessarily in concert with the requirements, the Arborist Committee will take that on.

We've got the Hana Advisory Committee that reviews applications in the Hana Community Plan region. They will conduct the public hearing and provide recommendation to this body who will then offer the final opinion on most projects for approval onto the Council.

And then we have the CRC, Cultural Resources Committee that looks at special architectural

design, historic and cultural issues throughout the island with probably a special emphasis in Lahaina. So that really concludes the framework. As you can see regulating paradise here is a complex task and that's really the, that's the mission of this group is to balance development needs with environmental needs and in doing so, we have Simone Bosco, who's going to take a look at our new Maui Island Plan and how that helps to manage the planning process. So I guess, do you have any questions?

Ms. Wakida: Well done.

Mr. Ball: Does the State Land Use Committee have to vote unanimously?

Mr. Wollenhaupt: No, they don't. But for a District Boundary Amendment they need six affirmative votes.

Mr. Ball: Okay, so the 10 meetings they just go till they get it or at what point do they say we've had enough meetings and we're not gonna approve this?

Mr. Wollenhaupt: They have a year to make their decision which actually works to everyone's favor. Once a petition has been filed, they've got a year to make that decision. So what happened in the Kahoma Residential is, they had the hearing, come to conclusion, they have a vote, they only get four affirmative votes, it fails to pass. So it's done. However, the petitioner, West Maui Land files a Motion for Reconsideration, it's rare, and it's even more rare that they ever grant it. They virtually never granted it, but in this case they did. They then continued to have deliberation, and then they took another vote after a couple more meetings and they recommended approval unanimously. So that's how the State Land Use Commission—

Mr. Giroux: Chair, just as a note, you know, I was the attorney on that one and procedurally, it's being funny here advising a Committee and then being over there an advocate and seeing how the rules work. One of the things that really, you know, because of the necessity for a super majority in order to vote, I mean, as an advocate for the County I really thought it was important that all Members of the Board be present before they considered that, but they didn't. You know, they said, well, we got seven people here and we took a vote and there was two people missing.

Mr. Ball: Is it a super majority of Members present or...

Mr. Giroux: It's just a super majority, six votes. They need six votes no matter who shows up. It only takes five to have a meeting. So that really puts a petitioner in an awkward position because if you have a volunteer board that is showing up with a bare quorum, you still need that one vote to actually take action. So, and in administrative law there's a lot of those situations, you know, and that's why I encourage this board to, you know, I mean, if there is an important vote that needs to happen that, that everybody show up in order for due process to actually work. Otherwise, it kind of looks like a joke. You know, you're going wait a second, you're supposed to be taking action, but non action makes action. Non action is not affirmative, but yet we're gonna have to do an affirmative order to justify our action. And it doesn't really bring confidence to the system. You know, so I really encourage everybody to look at those agendas, look at the actions that need to be taken and really put your vote on the table. You know, whether you're for or against it, it doesn't matter, but the process doesn't seem to work unless everybody participates. And that's something

in the past I've had to advise, you know, we've had split four to three votes, and my advice is always, let's...it's gonna be deferred until we at least get everybody here and then we have action because we don't wanna be making major decisions by non action. If you're gonna deny something it should be done by an affirmative vote of...and all members who can be present should be present. And that way the public has confidence that we're doing our job. You know, because you don't want government to be doing its job by omission. It just really, you know, after being on the other side of that, you really get a feeling in your stomach that you're like, this doesn't feel right, you know. So I just encourage this board to really take that into effect because you are dealing with due process rights. You're dealing with Constitutional issues. You know, Federal Constitution and State Constitution issues. So your votes are really important whether for or against. It's just important.

3. Update of the General Plan - Simone Bosco

Ms. Simone Bosco: Good morning, Commissioners and welcome to the new Commissioners. That's quite a commitment. Well, I was asked to simplify the presentation. So I'm not sure how far into the details I'm gonna get, but we've been very busy in our Division trying to update the General Plan. I'm gonna go a little bit into the Countywide Policy Plan and the Maui Island Plan, but I want to assure you folks that actually this Commission is...has done a lot of the work in the last seven years and it will be a little bit of time before we see a new comprehensive plan come before this board. So this is purely educational and so it's very brief. So I won't take too long.

About the Long Range Division, what we're responsible for is comprehensive planning. We have a Planning Section, we have a Cultural Management Section as well which has the Cultural Resources Planner, and we also have a GIS Section. GIS Section serves the entire Department. However focuses very specifically on General Plan updates.

And what do we do? We basically update 11 separate documents which is what the General Plan is. It's 11 separate comprehensive plans which guide...which set policy for growth and development in the County. We also...that includes the community plans. We have nine community plans in the County, six on Maui which is this Commission will be paying close attention to. We also have the Cultural Resources Management activities which looks at historic preservation issues and tries to regulate the how we treat our historic resources including living culture. We also undertake projects to implement the General Plan, special projects which could include setting new policy for how we, how we develop the County and also it could include establishing new laws and ordinances.

I went over this just briefly before. The General Plan is a bundle of 11 plan documents. It provides in terms of timing a blueprint for growth and development for the 20-year period. Okay, so it looks long range which is why we're Long Range and into the future. So we look at population growth, we look at what the community will need down the line as well as currently and every 10 years we're required to update the plans. So each plan every 10 years theoretically should be updated and that includes the community plans, that includes the Countywide Policy Plan, and the Maui Island Plan.

We also provide direction to decision makers like yourselves on how to meet current and future community needs and it's very comprehensive. It's not just land use. I'll get into that a little bit

later, but it crosses into a lot of different areas of people's lives on Maui and, well, throughout the County. It includes things like education, economic development, infrastructure planning, and so that's where you get the term, comprehensive. It ...(inaudible)... a lot of different areas of people's lives and it tends to essentially increase the quality of life here in Maui.

All of the plans provide a policy framework, okay, so that I'll get into that a little bit later, but we set policy, legislative policy for growth and development. And we're mandated by the Charter to update the General Plan and community plans. Section 8-8.5, in your free time you can look at the Charter and see what our rules and responsibilities are as a Department. And also, the process for updating the General Plan is defined by the Maui County Code 2.80B which is an ordinance in the County Code which provides...it basically outlines the process and the content of the General Plan. A little bit more about that, 2.80B also establishes what committees we need to form. Committees such as your Commission, but we have committees very similar to how this body works. They're volunteer...volunteers from the community. They apply for the position and they are tasked to represent really the County and all it's different aspects to make recommendations to this body on what's important for the County. The 2.80B also requires public participation, so our Division will go out to the communities, for example, if it's a community plan, we'll go out to that community and we'll grab their, their mana, their wishes and their desires and try to capture them and bring them forward to each decision making body and actually represent what the community wants. This is a very important element. It also takes the most time and the most money, but we emphasize that a lot. So we really want to hear what the community wants. We also have the...the 2.80B helps to explain what each body does, such as your, your body, the Commission. We have a law that requires this body to make recommendations to the County Council. Right now, we don't have a community plan coming to you, but in the future we will, and at that point, we will go into further workshops on how to go through that community plan so that this body could make recommendations to the Council. Okay.

Going forward, this is the General Plan, the 11 documents. At the top we have the Countywide Policy Plan. It provides broad policy framework for the entire County. I worked on that project and that involved going out to the outer islands as well. And each island had their own recommendations to the Planning Commission. We are blessed to have Warren with us who actually served on the Maui General Plan Advisory Committee and the Planning Commission in that capacity, so he has a history with this project. Anyway, the Countywide Policy Plan is very broad. It establishes kind of the framework for the rest of the General Plan. Going down below that we have the Maui Island Plan which was just recently adopted in December of last year and that plan addresses growth and development on Maui. Its focus is regional island wide planning. So we look at issues which cross community plan lines. So things like infrastructure, water use, and we also have the most important element of the plan which is urban growth boundaries and those boundaries are intended to direct growth to certain locations on the island. Okay, and you'll see, you'll see this coming up in staff reports. The Planners, the Current Planners would be looking at if projects are consistent with the Maui Island Plan not only in terms of the urban growth boundaries but also in terms of the policies that are within the plan, okay. The Island Plan also establishes priorities for Capital Improvement Program budgeting and their implementation. So we look at how the County is investing its funds and which one of the key aspects of directed growth is that it helps to prioritize where we direct those investments. And then we have the nine community plans, and those sorta go down to a deeper level of detail and they tend to look at the local character of the communities and urban form and design principles. And so we get even closer down into things

like how the roads are formed and where we want certain uses in each community.

The role of the General Plan, this slide is intended to just kinda show how the General Plan affects all the different regulatory aspects and planning aspects in the County. On the left, you'll see that the General Plan sets direction for land use and regulations. So, so we, the policies in the General Plan provide direction for well, how do we zone the lands, how do we regulate the lands through ordinances and through maps and we also have the land use permit...the land use permits coming into play. So the current planners when they're looking at the applications will consult the General Plan as a whole. They'll look at the Countywide Policy Plan, they'll look at the Island Plan, they'll look at the community plans, they'll look at those policies, the maps, and they'll, they'll evaluate if the project is actually consistent with the General Plan, and then you'll see those recommendations come to you in the staff reports. That's how you know the analysis is done.

On the right side of this slide, you'll see that the General Plan helps define how we invest County funds and I touched on that a little bit earlier, but it helps to prioritize where capital projects will go and which ones are perhaps, take a higher priority. We also look at the six-year Capital Improvement Plans every year actually, and see how it's consistent with the General Plan policies.

I put this slide in here just to kind of touch in with what, how we work internally. We work with the other divisions. There's a feedback loop that goes on in the Department. We have Zoning and Enforcement which essentially they're looking at enforcement of the laws. And then we have Current Planning which is mostly looking at applications coming in from the community and applying the regulations that...to that project and then the Long Range Planning and we talked together and try and determine, well, what's working, what's not and then what we do in Long Range is to try and update the laws and the policies to, you might say, create a more, more effective process for the community and to ensure that the community's needs are being met. So it's just a loop going on inside the Department and we try and talk to each other about everything. Just wanted to touch on that.

I'm going to talk a little bit about the Maui Island Plan just 'cause it's so new and it's something you guys may not be familiar with. The primary purpose of the Maui Island Plan is to establish a managed and directed growth plan to accommodate population and employment growth in a manner that is fiscally prudent, safeguards the island's natural and cultural resources and enhances the built environment and preserves land use opportunities for future generations. Okay, so the key point is directed growth. If you take anything else away from my presentation, remember that, we are trying to just manage the growth so that we protect what this island cares about and we provide for enough land for the community's growth. That's the key purpose of the directed growth strategy within the plan.

There are a lot of other areas that the Island Plan addresses like I mentioned. We have nine separate chapters and they go into population, housing, heritage resources which is, includes cultural resources, and the environmental issues. We have economic development, infrastructure and public facilities, land use, and then of course, Chapter 8 is the directed growth chapter which includes urban growth boundary maps and also we have protected areas, and those areas the County has set policy for protection of certain lands that they value. Okay, so the protected areas are on diagrams. They don't have the same regulatory strength as the urban growth boundaries. However, we are asked to look at those diagrams during each proposal to see how, how it

affects...how that proposal affects the protected areas, and you'll see that coming up in the staff reports as well. There's one guiding policy that will probably receive a lot of attention and it's the protected area policy.

So this slide captures the comprehensive aspects of plan making. It looks at all the different areas that we handle. Growth boundary, just a simple a definition. A growth boundary is a regulatory tool that establishes where future growth is desired. It also helps to coordinate the timing and placement of supporting services and infrastructure. There are three urban growth boundaries or I should say growth boundaries. There's an urban growth boundary, a small town boundary, and a rural growth boundary. Okay, and during your work, you will begin to understand how each of those carry different characteristics. And in the plan itself, we define those characteristics and we define how to implement those boundaries. In other words, what kind of projects fit in each of those boundaries. Okay, so you'll see that coming forward.

Growth boundaries encourage revitalization as well because we're directing growth to existing areas as well as some limited new areas. They also encourage infill and infrastructure investment. They discourage sprawl. They encourage cost savings through coordinated and inefficient infrastructure investment. They support alternative transportation which is a big one right now. We wanna look at all different kinds of modes of transportation including pedestrian transportation, bikeways, and so forth. They support or they increase housing choices near jobs for the labor force which is again, underneath that directed growth principle. A little bit about the protected areas. These are areas that warrant additional protections and are the subject of considerable public interest. There are five types, preservation, park, green belt, greenway, and sensitive lands. Each of those types of protected areas is defined in the Maui Island Plan. I won't go into those today.

And I'm almost finished. I just wanted to touch on the legal effect of the General Plan. Again, the entire General Plan, all 11 documents is it a guideline or is it a law? And that question comes up quite frequently and it's both. It can be both. And just to explain what I mean by that. When you look at the policies within each of these plans, they're worded differently. In each case they could have different kinds of language. For example, if a policy has very strong word like restrict or prohibit, that is a very, very strong word and that is intended to be law and regulatory. Whereas there are other types of policies that are worded like encourage, support, promote, and then so on. And those are more advisory in nature. They're promotional, they're aspirational policies. Okay, so when you're going through your, your work, you might wanna pay close attention to how the language is constructed in that policy statement. The urban growth boundaries in the Maui Island Plan are regulatory. Okay, those are, those are actually law, so we need to make sure that the applicants are complying with those boundaries because they are entitlements. So in each case, you start to get a feel for what's, what's hard and fast? For example, on the mapping for the community plans, that's regulatory, that's law. So if something is designated Park or Open Space, we wanna look for consistency. So...and also, all the agencies are required to comply with the General Plan. In 2.80B we have language that request that all agencies look at the General Plan and see are they complying or are they consistent, are they aspiring towards making what the General Plan says happen?

And I'm going to wrap this up here. Just to summarize, once again, the take away points, Long Range Planning does comprehensive planning for 11 different documents. We also have special projects to implement the General Plan. The tools we use are public engagement. We reach out

to the community. We reach out to these big general advisory committees, the Planning Commission, and finally the Council, and we have technical studies that we do to give a basis and to give a technical foundation for our work, a number of technical studies across the board, and we also use GIS which is Geographic Information Systems to do the mapping for these plans. And its main challenge is to meet current and future needs for the community and to keep what we value most in tact and to manage change. Change will happen. It's just your choice how you manage it. So that is my, my presentation. Any questions?

Chairperson Lay: Any questions, Commissioners? Commissioner Freitas?

Mr. Freitas: When will the General Plan go into effect?

Ms. Bosco: The General Plan is in effect now. Each plan has been adopted. Already what you do in your work is look at the last adopted plan for guidance. So for example, the Maui Island Plan was just adopted. It was effective in December so it is already in effect. Okay, so the Current Planners will look at all of these plans and evaluate them against proposals.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Follow up question? When the General Plan was accepted in December, now that's the date that it goes for the next 10 years or the time that it took to present the General Plan when it said, 10 years, we're now looking at a new plan, does it start from there or from the date that it goes into effect?

Ms. Bosco: Thank you for asking that question. First of all the General Plan is 11 different documents. The Maui Island Plan is one of those just adopted in December. So regarding that plan, it is effective now. There is a 20-year scope for that plan. It's looked at again, in 10 years. But every year, every year after July 2014, okay, we can accept amendments. Okay, amendments means certain proposals can be brought forward to the County Council for consideration. This body will not look at a single amendment until after July 2014, okay. So when we have our next orientation if we have one within that time frame, you'll probably get a different story because you'll be looking at potential amendments to the Maui Island Plan. Okay, does that help?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Simone, has the Maui Island Plan been distributed to all of the Commissioners?

Ms. Bosco: No, it has not. We're in the process of actually publishing it. So when we do get a final published plan, we will distribute a copy of that to you folks.

Mr. Hedani: When is that anticipated?

Ms. Bosco: That I'm looking at hopefully very soon within the next couple of weeks. Very soon. We're very close.

Mr. Hedani: Thank you.

Chairperson Lay: Mr. Spence?

Mr. Spence: There is a scanned version online on the—on the County Council's part of the website under the resolutions and ordinances. We can get the Commissioners that link, but what we're working on is getting a really nice, clean, readable copy both electronically and in print. And we'll get that available to you. The scan quality is not the best, but in the meantime if you wanna look at that. I would also add to Commissioner Freitas' question, the Maui Island Plan has been adopted as Simone was saying, but you also have the nine community plans that are in process. Seven of those are just on Maui so that would fall underneath the Maui Island Plan. There are...those are about 10 years old and they...we are headed toward updating those. There's gonna be some conflicts between the Maui Island Plan and the existing community plans, and we just gonna have to deal with those on a case by case basis as they come along.

Ms. Bosco: Yes, thank you. Yes, right now we're doing Lanai, and next we'll be doing Molokai, and then West Maui. So that's the order for the next three community plans.

Chairperson Lay: Commissioners Shibuya?

Mr. Shibuya: Simone, this question is primarily even though I am asking you, I think maybe the Director may answer this question.

Ms. Bosco: Sure.

Mr. Shibuya: In the process of updating the GPAC, the General Plan Advisory Committee drafted out after many hours and years of testimonies from the public and then it came to this Planning Commission and this Commission was subjected to many hours of public testimony again. There were some revisions and finally it was approved by the Planning Commission and was sent to the Council for review and approval. They, in turn, went to the Planning Committee, and spent a lot of time and hours of public testimony too. During the time that they were trying to revise it, in fact, at that same time, we had a shift in the Planning leadership from Director Hunt to Director Spence. And I'm not pointing fingers or anything, but I'm just saying there were some changes and significant changes in the General Plan that the GPAC had seen, the Maui Planning Commission had approved, and all of a sudden now it doesn't look like what I had helped draft. What is the process in terms of future, if we go through this process, I'm talking about integrity now, in terms of the value of the public's opinion at the time that you ask for it, and all of a sudden it becomes law there was some changes. Perhaps there's a way in which we can advise and consult such as the GPAC members, as well as the Planning Commission could have been brought in and discussed with the Planning Committee members on the rational, but it was never done. We were never invited. In fact, many of the GPAC members did testify to the Planning Committee. How would you like to...how is the better way of fixing this system? I see it as a broken system.

Ms. Bosco: Director? I can answer, but I will defer to my Director.

Chairperson Lay: Director?

Mr. Spence: And I did, in 2011, as part of my responsibilities as Planning Director, you know, this plan was in process. I understand it went through a very lengthy process and when it got onto my

desk and looking at some of these things that are in it and well...let me back up a little bit. And this plan was within the County Council at that time. My job as Planning Director by the Charter is to provide advice to the...to this Commission as well as to the County Council. When I see things in the plan like prohibit short-term rentals anywhere except for the resort areas, I go, you know, that's...one, it's preempting the legislative process that the County Council should undertake. We spent six months doing that, you know, adopting an ordinance and it wasn't limited to just the resort areas. You know, it became an island, actually a County wide ordinance. You know, so when I see a planning document that is headed towards being a regulatory document, a plan is... a plan you have your goals, objectives, policies. It's supposed to guide you into a direction. It's not supposed towards making laws, towards making regulations. It's not supposed to be regulation itself. So when it says something like prohibit vacation rentals outside...anywhere but, you know, just within the resort areas, I'm going why is that a part of a plan? That's so specific for what supposed to be a plan from 30,000 feet that's supposed to provide guidance towards making regulations. This isn't, this isn't the place for those kinds of statements. And I found any number of statements that were so regulatory in nature and a lot of those things were crafted by very well intentioned people, but without an understanding of what the regulatory framework actually is. So when I see things like that my recommendation to the Council was to change. So as went through the document chapter by chapter, I proposed, I made recommendations to the Council on what I believe would be a better way to say things rather than in the most restrictive sense.

We also got to something like the protected areas that Simone talked about, I think all of us in this room really wanna see the character of this island preserved. But when you get into something like a growth boundary, and all of a sudden you're saying well, you can't build anything on this property, that may be the desire of the community, but you're also running into private property rights and the way that the...the compromise came out was that, okay, we have these areas that everybody wants preserved, at the time of development let's go talk to the County Council. Is this a property the Council wants to buy or is it a property that we can work with the property owners to develop, say a portion of it or however, you know, the decision is made? The goal is still the same to preserve the property but how we get there is another matter. I think you've...we've all heard about Montana Beach. That was a property that was designated Open Space. You know, that's why we spent however many years in court because it was designated Open Space. You know, the County paid a lot of money for that. We're trying...there's other litigation going on over these very things and when you see these kinda thing going down a track within our plans and you're going we're just inviting litigation. You know, we have to sort of rethink those. 'Cause there was a lot of things that came up to the...at the County Council level that probably should have come up during the Planning Commission level, and actually at the GPAC level. And I wasn't there, I don't know why, but you know, having done the first round of community plans and seeing the subsequent things that have taken place, and the issues that come up, I felt it was my duty to bring those to the Council's attention. It was ultimately up to the Council, and the Council disagreed with in many cases. So...

Ms. Bosco: And I just wanna add, we do try and represent all of the recommendations from each body.

Mr. Spence: Yes.

Ms. Bosco: All of those go to the County Council. And this, the responsibility of Staff is to allow for as inclusive a process as possible. So each perspective is forwarded to the County Council as

well as opportunities for testimony. And certainly, things change. At each level of this process, the plans have changed and that's just because of the process. You hear from everyone.

Chairperson Lay: Director?

Mr. Spence: Just one more comment along with Simone's thing. This exact same thing happened during the last round of community plans that each one of the plans changed substantively between what the Citizens Advisory Committee did, it changed a lot at the Planning Commission level, and then it changed a lot again, at the County Council level. And then as Simone said, it's just a part of the process. I don't necessarily think it's such a great process, but that's what exists right now.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Just a comment in a sense that, had the GPAC as well as the Planning Commission been invited to discuss with the Planning Committee as well as with the new Director some of their thoughts, perhaps it would be more representative and more accepted in that respect, but I don't believe that when we go through a public process in which we invite volunteers, we invite testimonies, and then we come up with a draft and all of a sudden, some one individual changes or a group of individuals changes other than the appointed individuals or the groups such as the Planning Commission or the GPAC makes the changes, then it has a public appearance of something's going wrong or something's happening that the public needs to know. And I think the transparency here in the next time that we do this, hopefully we'll have those that actually did the drafting come and discuss it with the lawmakers or regulators.

Chairperson Lay: Thank you, Mr. Shibuya? Any more questions, Commissioners?

Ms. Bosco: Okay, we can move on.

Chairperson Lay: Right now, we'd like to take a recess. We'll take a 10-minute break. We can reconvene at 10:20.

Ms. Bosco: Okay, thank you.

A recess was called at 10:10 a.m., and the meeting was reconvened at 10:20 a.m.

Chairperson Lay: And we're back to our Orientation Workshop.

4. Zoning - Danny Dias

Mr. Danny Dias: Good morning, Commissioners. My name is Danny Dias, and I'm a Staff Planner with the Current Division. I'll be talking to you folks about zoning which is by far the most important topic of today. Just joking. I'll actually be providing a brief overview of what the term "zoning" means, what it entails, its relation to the Maui County Code, and ultimately how it affects your role as Commissioners.

In a nutshell, zoning representing the granting to local governments the right to exercise some control over the use of privately owned land. Zoning ultimately provides some order and

consistency in the use of land. For example, if you're driving on this island what you'll notice is, you know for a length of time there'll be, you know, residential houses, and after a while then they might transition into apartments and then a school, and then you know, maybe some businesses. That's not a coincidence. You know, there's some order and consistency and that's where zoning comes in.

In some places on the mainland, I believe Texas, some places in Texas for example, where you don't have zoning laws. Theoretically, if you had maybe say five lots lined up in a row, on one you could have a 50-story office building, next door you could have a single-family home, next door a school, next door a bar. So zoning, you know, it's important in providing that consistency. The key point is zoning limits and restricts the uses of land in order to shape land use patterns. In the State of Hawaii we have Chapter 46 of the Hawaii Revised Statutes which allows zoning at the County level. In the County of Maui we have Title 19 which is our Zoning Code. The text is divided in Articles, Chapters, Section and Subsections, and there are five Articles in Title 19. The two most relevant are Article 1 which is Interim Zoning. I won't get into that. It's rather short, about two or three pages, and then we have Comprehensive Zoning which is what we all probably think of zoning. It was adopted in 1960. It was created in order to regulate land use in a manner that encourages orderly development in accordance with State Statutes, the County Charter, and the General and community plans which Simone just talked about.

Comprehensive Zoning includes a number of Zoning Districts which you are most familiar with such as Residential, Apartment Districts, Commercial and Industrial, and Public-Quasi-Public, and Park Districts. Keep in mind that zoning is a tool used to implement General and community plans. Now, just because your property is zoned something, doesn't necessarily mean that you're stuck with that you're stuck with that zoning designation or that the uses allowed in that zoning designations, you know, you're stuck with those. You can change your zoning or you can obtain permits that allow you to do something that isn't outrightly permitted. It's not a quick and easy process but it is possible and these permits are reviewed by the Planning Commission.

So first we have a change in zoning. The change in zoning process is found in Chapter 19.510 of the Maui County Code. It allows for change from one zoning district to another. So for example, from Residential District to Business District. As far as your rules is concerned, the Commission conducts the public hearing on the application. And makes a recommendation to the County Council for change in zoning is the final authority. Key point in change in zoning is that CIZs are powerful tools for land use management and must be reviewed in the context of the community plan.

Now changes in zoning as I mentioned, they're permanent changes. So once you change your zoning, you know, your property is going to be that until you theoretically come in and change your zoning again. So in some cases, a landowner or an applicant doesn't wanna permanently change the zoning on their piece of property and in those cases, you could get a Conditional Permit. So say for example, you know, you're stay-at-home mom or whatever, you're watching your kids, you wanna...you know, you're a hairdresser and you wanna run a little business out of your home, but you're in the Residential District. Running that type of business isn't outrightly permitted. It isn't considered a special use, but you could theoretically operate that business if you get a Conditional Permit. Now why would you get a Conditional Permit versus a change in zoning, well, you're not sure if you're gonna permanently, you know, run that business. It might be for a few years, you

might wanna try it out. So in that case, you would get a Conditional Permit. And the intent of the Conditional Permit is to provide the opportunity to establish uses that are similar or related to those uses permitted within the given use zone and it's for a limit period of time. So Conditional Permits do have time limits. For Conditional Permits, the Planning Commission conducts the public hearing on the application and makes a recommendation to the County Council. County Council has the final say. Key point is that Conditional Permits must demonstrate that the proposed use is similar, related or compatible within a given zoning area.

Next up we have County Special Use Permits. That's also found in Chapter 19.510. The County Special Use Permit allows for certain special uses in a particular zoning district. Special uses are actually listed in Title 19. So if you look under like say, Residential, you'll have your outrightly permitted uses. That's things that you can do without having to come to the Planning Department or the Commission. For example, in Residential you have under permitted uses, single-family home. You can go ahead and build a single-family home. You don't need permission from us. But under Special Uses you may have like daycare centers for more than say, 10 kids. In that case, it's allowed but you do have to get a County Special Use Permit which is something that the Commission would review and with County Special Use Permits, the Commission has the final say. This is an example of a project that recently obtained a County Special Use Permit. It's a residential treatment facility for eating disorders and this is located in Wailuku. So as you can see it's basically, you know, a single-family home in a sense, but the use is beyond just a single-family residence. It's allowed, but you do have to come before this Commission for approval.

Next up we have Planned Development. The Planned Development process is described in Chapter 19.32. Planned Developments are approved through a three-step process. Step 1 is a review of the conceptual site plan. So basically a developer will come in and, you know, let's say a 10-acre piece of property and say, this is sort of our vision for this piece of property. It's not set in stone at that point, but generally it's conceptual. It's an idea that they have and that comes to this Commission. Step 2 involves the review of a sketch plan. And that's, you're starting to get a little more specific at the Step 2 process. The plans at that point should include drainage, streets, utilities, grading, landscaping, open spaces, et cetera. And then the third step is the final step which at that point, it's actual construction or building plans. So at that point it's very specific and that's exactly what you're planning on doing. A public hearing is not required for any of these steps. And then an example of a Planned Development is Puamana before you hit Lahaina. This was approved by the Commission in the Early 1970's.

Lastly, we have Project Districts. Project Districts are outlined in Chapter 19.45. The intent is to provide for a flexible and creative planning approach rather than specific land use designations. Examples of Project Districts would be Kehalani up here and then Maui Lani. So planning Project Districts are almost like zoning within zoning. You know, you take a 100-acre piece of property, you say, okay, this is the, you know, Kehalani Project District, but within there, you have, you have some flexibility for land use designations. And Project Districts are approved through a three-phase process. Sort of similar to Planned Developments. Phase 1 establishes land uses and standards for the Project District through an ordinance, and the Planning Commission will conduct the public hearing, but it is the County Council who is the final authority on the Phase 1 process. Then you have Phase 2 which involves approval of a preliminary site plan for the Project District. The site plan must conform to the standards and development contained in the Project District ordinance, and the Commission is actually the final authority when it comes to Phase 2 Approvals. And

Phase 3 is sort of Planned Developments, that's like your final building plans and so forth and that's something that the Planning Department approves. And like I said, one example is Maui Lani. As you can see here, you know, this whole area is Project District but within, you may be able to see it on your slides in front of you, but you know, you have park area, you have school areas, golf courses, residential areas and so forth. So take home message is Project Districts provide opportunities for flexible and creative planning. And that concludes the zoning portion of our presentation. Thank you.

Chairperson Lay: Any questions, Commissioners? Commissioner Hedani?

Mr. Hedani: Danny, why is the Project District abbreviated as PH instead of PD?

Ms. Cua: I can answer that.

Chairperson Lay: Ann? Ms. Cua?

Ms. Cua: The reason for that is when we were developing the KIVA system and you know, we started with certain permits, Planned Developments came first in the list. That's the truth. And Planned Developments were PD and when we got Project District, we went, oh my gosh, what are we gonna use for Project Districts? So we used PH. But that's, that's really exactly what happened.

One other thing, real quickly I just wanted to mention, on Project Districts, one major difference from anything else that we do is that when you hold a public hearing, we have to go out to the community plan region. So we can meet in here if you're reviewing Maui Lani and Kehalani, but if you're reviewing like Pulelehua, Kapalua Mauka, you remember for those of you who have been here for a while, we had to go out to the community plan region. So that is one distinction on the Project Districts. And if we have an application for a Project District in another community plan region, you can expect that we're gonna be coming to you, and you know, checking your calendars because it's gonna have to be usually a special meeting. We have to take you out there. We usually do a site visit because it's usually a big project. So that's...you know, that is something that you can be aware if we're doing a Project District that's not in the Wailuku-Kahului Community Plan region.

Chairperson Lay: Director?

Mr. Spence: And just a comment on Project Districts in general, they may be very small like Kula Lodge is a Project District, it's you know, whatever, 3 or 4 acres, and you get very large ones like Maui Lani, and everywhere in between. I think the advantage to them is you are essentially writing a zoning ordinance for that piece of property. So like in the case of Pulelehua, they wanna do more of a new urbanism kind of project with mixed uses and little bit higher densities around the commercial areas and a mix of different kinds of single-family, multi-family housing, and those are things that perhaps our zoning code, just our regular straight Title 19 zoning, won't allow those things. It's very difficult to do. So in the course of writing a ordinance for a Project District, you know, you can build in those kinds of flexibility. So that's...you know, in that sense, Project District may be more desirable as you know, planning...(inaudible)...goes forward and we wanna see newer more advanced kinda planning takes place. The disadvantage of course is it takes along time. You know, with the three different steps, you know, once you're at the Council, regular zoning, you're

pau, you can go ahead and get your grading permit and all that. Project Districts, okay, once you get to Council, well, that's one part of it, then you have to go do all your, you know, more specific site design and bring it to the Planning Commission, and you review it and that takes quite a while. And then once we actually get the construction plans, then we have to review it again for compliance with what the Planning Commission and the ordinance. So it's a very long process, and our Zoning Codes could just jump, you know, to allow that kind of flexibility in the first place, but that's another planning issue.

Chairperson Lay: Before we go on, I'd like to remind everybody to please speak into the mic clearly, we're having some sound difficulties. I wanna use the optimum of you guys voices. Commissioner Wakida?

Ms. Wakida: This is a question for our Planning Director. Where does the Wailea 670 fall in this Planned Development, Project District?

Mr. Spence: It's a Project District. They have their zoning at Council, and Ann...

Ms. Cua: I can talk about that, Chair.

Chairperson Lay: Ann Cua.

Ms. Cua: They did get zoning through the County Council so Will is correct, their Project District zoning. They came into you and you saw the Draft EIS, the Final EIS. It's now basically sitting on my desk waiting for the Project District Phase 2 application to come before, before you. But there's a number of conditions that have to be satisfied before it can do that. So it's gonna, it's gonna come to you even before the Project District application comes to you...it's going to come to you before that to try and satisfy a couple of the conditions that have to be satisfied before that Project District application is gonna come to you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So we still have a community meeting coming up then out there? You said that the Commission meets in the community affected?

Chairperson Lay: Speak into the mic, please?

Ms. Wakida: Excuse me. The—

Ms. Cua: Yes, yes.

Chairperson Lay: Could you repeat the question?

Ms. Wakida: Yes, the question was is this Planning Commission then going to need to have a meeting out in the Wailea area as part of the Project District?

Ms. Cua: In the Kihei area.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Quick question for you. How far long...how far away you think 670 is from breaking ground?

Chairperson Lay: Ann Cua?

Ms. Cua: I think a long while because they have right now the whole issue of the affordable housing which is wrapped in another project that that's being delayed right now. So I think it's gonna be a while.

Chairperson Lay: Director?

Mr. Spence: We also have a challenge to the adequacy of the EIS. So that's in court at the moment, so it's gonna be a while.

Chairperson Lay: Any more questions, Commissioners? If not, we'll carry on.

5. Bed and Breakfasts and Short-Term Rental Homes Permitting - Gina Flammer

Ms. Gina Flammer: Good morning, Commissioners. Can you see me okay? I'm kinda short. You can see over the...Well, my name is Gina Flammer. I'm a Staff Planner with the Department. I'm here today to talk to you about the basics of Bed and Breakfast Permits and Short-Term Rental Home Permits. With the passage of the Short-Term Rental Home Bill last year, this body, you're gonna be seeing more of these permits as time goes on. We've also done a lot of outreach and then we're gonna be having an upcoming enforcement program. So all those are gonna contribute to more people wanting to and needing to come into compliance.

So the most recent Short-Term Rental Home Bill was passed last year. However, in 2008 we did a pass a updated Bed and Breakfast Bill. So currently have about 61 bed and breakfasts. I'm gonna go over that permit first with you. Bed and Breakfast Permits, we've approved about 65, but because the permit doesn't transfer with the property, some of those properties have sold and they're no longer carrying a permit.

The key point is that with the bed breakfast, the owner must live on the same property. They must live on the same lot so they can either live in the house and rent out rooms in their own house or they could live in the house and rent out their cottage or they could live in the cottage and rent out their home.

The other important thing for you guys to understand is that almost all of these permits are reviewed administratively. The Council, I don't know if anyone was listening to last Thursday's testimony, the talk a lot about streamlining. They really look at things from the public's perspective and with this permit...I'm gonna talk about the short-term rental homes, the major of them are reviewed by the Department. But Council wanted some to come to you. Like we talked about with the one you just saw at your last meeting, they really want you guys to make the tough decisions. So they put in

certain triggers for when it will go to you. The first one is when there is another one operating within 500 feet distance of the application. It's a permitted B&B that triggers this requirement. And the purpose of that is they wrote it right in the bill, they want to retain the character of the neighborhoods. So they're gonna leave it up to you folks to take a look at each individual application when there's more than one in the neighborhood. I wanna stress, however, this trigger, it's only a trigger. It's not a requirement. It's probably one of the things I hear the most about the bill. Some confusion is, it's not...the bill doesn't say you can only have one within 500 feet. The bill says that it's a trigger for you to look at it and that's because some neighborhoods may be more tolerant. You may wanna have them in some neighborhoods. Some neighborhoods may be less tolerant. They really leave that up to you.

The second one reason you're going to see these is protests. Now for bed and breakfast is 30 percent of everybody within 500 feet, all owners. So when that happens it will come to you. You did...this board has only, this Commission's only seen one for bed and breakfast that triggered that. And the reason they want that is because if there's that many protests they want you guys looking at it. It's your job to protect not only the character of the neighborhood, but also the peace and quiet of the neighborhood. So usually that's...it's the protests where you're gonna have previous problems that are gonna pop up and you're gonna see that.

And then lastly, you have two other requirements. If there was a variance obtained, and you did see one in January where somebody had a variance for a single-family dwelling that had multiple kitchens. So because of that it comes to you to approve and that's 'cause it's a little bit different. They just want some extra review.

And then finally there's a provision for Hana. When there's four or more bedrooms proposed, it first goes out to...you refer it to the Hana Advisory Committee, you're gonna see some of those today, and then the public hearing, Kurt talked about this, the public hearing is held out in Hana. It's easier for Hana residents to go and testify at their own meeting, and then also at that time, they give a...that body gives a recommendation to you.

So right now, as I said, we have 61 approved bed and breakfast. Think there's been a total of 65. This board has only six of them and that's because most of them are approved administratively. So we've had four that did the trigger for 500 feet. That being said, as time goes on, you're gonna see more and more of those, that's just the way it works with the bill. We had one variance, the kitchen I talked about and then we had the one that was 30 percent or more protests.

Now what you do see with these is Kurt talked about that we have three layers of zoning. Every property is gonna have a State designation and they're gonna have County designation. When these permits come in, they're permitted under Title 19, however, they have to adhere to their State zoning. So if they're in the Ag District, it's not an outright permitted use in the Ag District. There's actually a clause in the State law that says if there's an Ag Tourism Bill, but our County does not have that. So at this point in time, any use coming in for bed and breakfast or short-term rental, if it's in the Ag District is required to get a State, get a Land Use Special Use Permit because of that State zoning. So that is what you guys see. And just to give you a little trick, you don't have to take lots of notes today, but whenever we give you staff report, one of the first sections is gonna have the applicable regulations. It's a great way just to orient yourself with what am I reviewing, what am I looking at and what are the criteria that I'm using. That's...it's usually Section 3 of your report, but

it'll all be listed out in there. So when you get these State Land Use, it'll tell you exactly what you're looking at, and we'll go through that with you too, when we come up, and always ask questions of the Planner if you're wondering. I think we have over 40 different permits. Hard to...even for Staff, so please ask us questions about the particular one you're looking at.

Okay, so short-term rental homes, the cousin of bed and breakfast. So this Commission did review the bill in 2011. Council spent six months line by line going through everything. They made a lot of changes. Don Couch came and talked to you when had a longer orientation in January and he did tell you the Council had an intent for you to make those tough decisions on these. But he also told you that they put a clause in the bill where it's gonna come back to them in two years which is really nice. It's hard when you're writing a bill to know exactly how it's gonna be implemented and where the kinks are. So within two years, so that would be...it was passed in May of 2011, no, 2012, so coming up probably in about year, six months to a year, you will review this short-term rental home ordinance again, and we hope to bring the bed and breakfast back at the same time so we can kind of align those two bills. And at that time we can make changes. So as we're going through these permits, you know, let us know, you know, what do you wanna see and start thinking about that.

So the big difference between a short-term rental home permit and a bed and breakfast is the owner does not have to live on the property. However, Council wanted to see some responsibility, they wanted a manager. So that manager can either be a professional manager, who's a real estate, a Hawaii State licensed realtor or that manager could be yourself if you live within 30 miles or it could be a family member who lives within 30 miles. The licensed manager, even the realtors have to all have an office or a home within 30 miles, and there's two reasons they did that. One is they want somebody there within an hour if there's a complaint, and then they wanted a professional because they wanted all the money flowing through a professional.

They put in...the Council also added a new provision to short-term rentals, it's not with the B&Bs, and that is they...it's a one-year permit basically. However, if there are no complaints either to the Police Department or the Planning Department, we can go ahead and the Department can auto renew that. We initiate the process. Very different than we do with other permits. Yeah, and Council was looking at the public and their experience as they go through this permitting system.

Again, just like bed and breakfast, short-term rental homes are mostly reviewed by the Department and a few exceptions. They added a couple of these triggers for your review. They used the same ones as the B&B, but then they also recognized that they really wanted to weigh the closer neighbors' protests. So the provision that they added is if there's two or more adjacent or across the street owners that protest, it automatically comes to this body for review. Also, if there's 30 percent of if we can see the provisions there. You had one of these all ready for a short-term rental home in February. I think it was the Sloan application. The reason they came before was because of this first trigger right here.

The 500-foot rule, there was a waiver put in until the end of this past year. So you're not gonna see the first couple maybe, but you'll start seeing them after that. Any application that was received before the end of 2012 that was waived. Also, again, if a variance is granted or out in Hana if you have more than three bedrooms, it's gonna come to this body.

So the bill has been very successful in terms of bringing people into compliance. Right now, we have a 131 applications, and once we start our enforcement program, we're gonna have a lot more. You're gonna continue to see them. As we get more and more, and you're gonna have other ones popping up within 500 feet you're gonna see more of them.

And you're gonna see more of the State Land Use. I think Kurt told you 95 percent of all land in the State of Hawaii is either in the Agricultural or Conservation District. So that 40, I think we're at 45 percent of the Ag in the State, if you come in for a bed and breakfast or a short-term rental home, you're gonna need the State Land Use Permit and that...you review all of those.

So far you've reviewed in terms of short-term rentals, you've reviewed one, the adjacent neighbor, I just talked about that with the February, and then you've also approved three State Land Use this year, one in Makawao and we had two other ones, Haiku. That's probably where you're gonna see most of those State Land Use. Most of those properties are zoned Ag out there. So just as a reminder, you're gonna see many more Land Use State Permits than you are bed and breakfasts or short-term rental homes. And just as a reminder, I know Kurt went over it, I can't stress it enough, but that the Land Use Special Use Permit is all about for any use not permitted in the Ag District. When I do these kind of presentations, I show everybody what is permitted. There is actually a wide variety of uses permitted on the Ag District. Instead of rezoning, over the years they have expanded the definitions. So you have seen, I just went through our files and looked at what have you looked at recently. Often you look at cell towers, so I think the law has changed a little bit so not every single one comes to you. Concrete batching plants aren't outright allowed. You guys see those. The West Maui Boys and Girls Club. That's not a use allowed on Ag land, so you saw that permit.

So again, you're gonna see the B&B and short-term rental homes too if they're not outright allowed. They're a little different when you're looking at a State Land Use Permit for a bed and breakfast or a short-term rental home. Unlike a concrete batching plant we will require farming for this type of use. And what we do is the Department requires a fully implemented farm plan. So when you get this application, that farm plan will have already been verified, it will be implemented, and you'll be seeing pictures of it as well as the written description. So that's the end there. Thank you.

Chairperson Lay: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Thank you. Gina, is there any interest in putting more teeth in the farm plan?

Ms. Flammer: I don't know. That's not really my area.

Chairperson Lay: Director, you wish to comment?

Ms. Wakida: Or in taking another look at the criteria perhaps?

Mr. Spence: The farm plan and the rules that were promulgated for farm plans are to regulate farm dwellings. And you know to follow along with 19.30A, it says, you know, the majority of the land, we interpret that as 51 percent of the land needs to be in some kind of agriculture. We may change that a little bit because it's...we're coming across a number of properties that are essentially gulches and not farmable in that sense. So we're gonna be looking at number of things. The idea around

farm plans and bed and breakfasts or short-term rentals on Ag land is, okay, so what is...again, we're going back to what is the use of this property? Is it just a house that was built as a, you know, vacation rental, it's just for a place for people to stay or is it part of a farm or, you know, so we've been, we've been looking at that carefully as far as making sure that there is agriculture taking place on the property. So it overlaps into the short-term rentals and bed and breakfasts, but it really stands alone. For every short-term rental or bed and breakfast in the Ag District that you see and you see the farm plan, we've probably processed 20 farm plans, 30 farm plans for everyone that it comes to the attention of this Commission.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I think my concern in the area of what's defined as agriculture. Things that we see, I sometimes think their agriculture is no different from what's going on in my own yard and I live in a subdivision. So, and in light of these...the letters that we get from Jesse Souki always has that paragraph in there that the short-term rental should be supplemental to the Ag, not the Ag supplemental to the Special Use.

Chairperson Lay: So you have a question?

Ms. Wakida: I know that...that goes back to what the farm plan is.

Mr. Spence: It's a definite shade of gray. It's a...I know that's not the answer. I mean, I wish, I wish the definition of agriculture, I can look out at somebody's yard and go, hey we have 10 head of cattle, you know, they're farming three acres of onions, and that would be easy to determine. There's all kinds of things in between that, you know, that's a little bit harder to say. You know, and we run into these things. Like I said when we do 20 or 30 farm plans to everyone that, you know, this Commission sees, I mean, there's a bunch of 'em we wrestle with. Is this really farming or is this really not.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, this whole farm plan is a joke because people come in, they present the farm plan and then they do enforcement. The minute they get their permit, this whole farm plan should be, what you call, scraped and relooked at and redefined.

Mr. Spence: And that's part of the discussion too. If it isn't working then and there's definitely parts of it that aren't maybe we should look at it in a different way.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Second question. Is there hotel room tax paid on these bed and breakfasts?

Mr. Spence: Which tax?

Mr. Freitas: The hotel room tax that all of the hotels are required to pay when they...somebody check into...(inaudible)...

Ms. Flammer: I'll go ahead and answer that. Yes, we require that they have a transient accommodations tax license and then we require a tax clearance form when they come in. Actually if they're operating we require it up front, but when they come in for renewals, we wanna see that, those payments as well as GET payments.

Mr. Freitas: Thank you.

Mr. Spence: They lose, they also lose homeowners' exemption, and there's ongoing discussion...I mean, if there's real farming going on, you know, is there some kind of ag discount or...they're not taxed at a hotel rate. It's a commercialized residential.

Ms. Flammer: Bed and breakfasts are currently taxed at a commercialized residential rate which is four and half. It's in between the Residential for long-term and the homeowners' rate, but they lose their homeowners' exemption. The Council, it's the Council Budget Committee that will set the rate for short-term rental homes. So they have not done it yet. We have heard from the Finance Department, however, that they're using the Hotel rate currently, but the Budget Committee will be, they're charged with establishing that rate during this budget session.

Mr. Freitas: And what is the Hotel rate?

Ms. Flammer: I think timeshares is 11, Hotel 9, 9 ½, somewhere around that, and Commercial is 8.

Mr. Hedani: 9.5.

Mr. Spence: And part of the argument is that, well, in a hotel you can have a nightclub and restaurants, and you know, they have art galleries and all the rest of those things. And bed and breakfasts, you know, you can't...it's not exactly the same kind of use.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I concur with...as a comment, I concur with what Jack said about the definition of farm lands and it's, it's just not working the way it was designed to do, yeah. And relative to what Jesse Souki includes in his letters that he sends to us, their Commission was the one that approved all of the stuff in Launiupoko which is a total joke when it comes to agricultural operations, yeah. And you have a farm dwelling on a 30 percent slope on the side of the mountain that's at 600-foot elevation to see above everybody else's head and not a stick of agriculture in the ground, you know it's not working, yeah.

The other question that I had really was when you analyze a short-term rental and B&B, do you identify not only the other short-term rentals within 500 feet, but the other B&Bs within 500 feet as well because the impacts are the same?

Ms. Flammer: We asked Council about that because we could have written the bill any way we wanted to. And Council decided they wanted to keep them separate. So the only trigger for a short-term rental home permit is another short-term rental within 500 feet. The only trigger for a B&B is if another B&B. Now that was their decision. In the staff report, I think we've talked about

providing you with some comprehensive information.

Mr. Hedani: Yeah, 'cause I would say, you know, if they're gonna review the bill within in...I'm sorry-

Chairperson Lay: Go ahead.

Mr. Hedani: --if they're gonna review the bill within two years or whatever, that a recommendation should be that the impact be identified as the trigger, yeah, instead of the classification.

Ms. Flammer: Oh, I understand. We can put that in as your one recommendations when it's time, yeah.

Chairperson Lay: Any more questions? Commissioner Shibuya?

Mr. Shibuya: I just wanna query the fellow Commissioners is, is this the will of this group that you would be interested whenever they identified the bed and breakfast or the short-term rental that they include within that 500 feet area both bed and breakfast and short-term rental units? The reason why I'm saying this is that, if we are to review the neighborhood's conditions and their, the climate in which they want to maintain, then we only look half of the thing of this bed and breakfasts within the 500 feet or do we look at bed and breakfasts and short-term rentals so that we have a bigger picture of the density of this impact here within that community?

Chairperson Lay: Director, you wish to comment on that?

Mr. Spence: I don't mind providing that information to the Commission as far as decision making criteria. I don't wanna exceed the...what the law says about it. So we'll have to be very careful about that.

Mr. Shibuya: Yeah, the intent is really to sense the density or the amount of commercialization within this residential or agricultural area.

Ms. Flammer: I think we also try to include the number of bedrooms. I think the last report we went through, some were six, some were two, just so you'd get a sense of the properties.

Mr. Shibuya: Thank you.

Chairperson Lay: So does the body want that information?

Ms. Flammer: Thank you.

6. Environmental Assessments (EA) and Environmental Impact Statements (EIS) Chapter 343, HRS - Joe Prutch

Mr. Joe Prutch: Good morning everyone. I'm here today to talk to you about the environmental process, environmental review process that we do as the Planners and you guys review, the Commission when it comes to you. I'll discuss the Environmental Assessments which is referred

to as EAs, and the Environmental Impact Statements, EISs.

Now first off. The Chapter 343 is what regulates the environmental review, Hawaii Revised Statutes. It was adopted back in 1974. So this plan, this environmental review process have been going on for almost 40 years here in Hawaii. So it's well established. The idea of Chapter 343 is to encourage the conservation of natural resources and to enhance the quality life.

Now a few of the development projects that come through the Planning Department do require the preparation of EA or EIS, but not all of them. The Chapter 343 process assures the public the right to participate as well. And the agency charged with administrating Chapter 343 is the Office of Environmental Quality Control.

So how does Chapter 343, HRS, apply to projects? Well, there are, first of all, like I said, not all projects require EA and EISs. There's many a projects that comes to you guys does not require environmental review as you know of course. The Chapter 343 process...oh, first off, I'm sorry, there are nine triggers. The law establishes nine triggers that require compliance of Chapter 343, and in a minute on the next slide I'll list all those triggers so you can see what triggers environmental review. There's typically two types of actions that the triggers come from. The two types of actions are either an agency or the County might propose a project or the applicant, consultant, somebody else is proposing a project.

Also, if a project does trigger Chapter 343, there are also 10 exemption classes that the County uses that a project may be exempt from further Chapter 343 review such as, I'll list off some of the, some of the ones that we use more frequently in the Planning Department. Repairs or maintenance of existing structures, if there's minor repairs or maintenance of an existing structure that has triggered for Chapter 343 review. It can be exempt from further environmental review and the project can move along. Number two, replacement or reconstruction of existing structures or facilities. The third one, construction and/or alteration and modification of a single, new, small facilities. Number four, minor alterations in the conditions of land, grading and whatnot. Number six, construction of minor structures, accessories to an existing facility can be exempt. Interior alterations, kinda make sense to be exempt, and demolitions of structures that are not within a historic site. Those can be exempt as well

Now, you guys are all asking and wondering what are the nine triggers? These are nine triggers that will trigger the environmental review. The first one is the use of State or County lands or funds for a project. The proposed use within a shoreline area. The use within a historic site as designated in National or Hawaiian Register. An amendment to County General Plan. A community plan amendment application that comes forward that triggers an environmental review. A proposed waste water facility, waste energy facility, land fill, oil refinery or power generated facilities, or as I like to call it, the Shibuya ones, those all require environmental review. And the other one here you're probably not gonna see or won't see use of conservation district land, possibly not very often. Reclassification of conservation district lands, helicopter facilities and I don't think you'll ever see this one, Waikiki area of Oahu.

Now just because a project meets one of these triggers, it does not automatically mean an EA or an EIS is required as I mentioned with those exemptions. So when a project comes in we see that it triggers, they're gonna use State or County funds or it's within a shoreline area. We see that it's

Chapter 343. We go to our exemption list. For example, a single-family on a shoreline property. It meets trigger number two, use within the shoreline area. However, there is an exemption, exemption class number three, which is the construction of single, new small facility which actually exempts a single-family residence that's less than 3,500 square feet. So in that case, a 3,000 square foot home on a shoreline property, no environmental review. Not necessarily environmental review. Thirty-five hundred, one square feet, it comes through the environmental review process. That's the way it goes. Obviously, you won't see a 3,501 square foot. You'll see a 3,499 square foot house.

So if a project meets one of these nine triggers but there are no significant impacts that are anticipated, then the consultant or applicant will draft, will prepare a Draft Environmental Assessment. Now that prepared...that Draft Environmental Assessment will come before the Planning Commission, in the cases that it comes before the Planning Commission. It doesn't always come to you. Sometimes there's other accepting agencies, but I'm talking about what's coming to the Planning Commission here. So you guys will review the Draft EA and we, as the Staff Planners, will distribute that environmental document to you well ahead of time because they can be pretty thick sometimes. So that you guys have time to go through it, formulate your comments and then when the project comes before you for review, your job to go ahead and make your comments. If we can answer your comments or your questions, then fine. If there's comments you have that we cannot answer, we jot 'em down as the Planner, we forward that all onto the consultant, your questions, your comments, and then it's the consultant's job to...sorry, it's the consultant's job to respond to all those comments from your body as well as agency comments from others and public comments as well. All that stuff goes to the consultant, the consultant responds. When they finally have all the responses together, sometimes it could take quite some time, then they issue a final environmental document. And that Final EA includes all the comments from you, all the comments from everyone else, and all the responses from the consultant. That document comes back to you again, and we'll schedule another meeting with you, and then it's your job to review that Final EA, and mostly review the comments you made, and review the comments to your...I'm sorry, the responses to your comments, are they adequate, did it answer your questions, is it...can be accepted? That's the job you guys do with the Final Environmental EA.

So at that point, we ask you to accept what's called, sorry I can't ...a FONSI. Not that Fonzie, but a FONSI. It's hard for me to say FONSI without thinking of "The Fonz." A FONSI is a Finding of No Significant Impact. Sorry. So a FONSI is a Finding of No Significant Impact. This is what you guys will make if you accept the Final Environmental Assessment. And then we go ahead and draft the document we send it to OEQC. OEQC then initiates a 30-day, a 30-day challenge period is initiated. Where if anyone wants to challenge this environmental document, they can. Thirty days go by, there's no challenge then the environmental document is accepted and approved and it's all pau, and then the permit process can continue. So a lot of times, you'll have a EA for a project that is a Special Use Permit or DBA or something or Community Plan Amendment or something. You'll go through the environmental process first. Iron things out, weed things out, tweak things here and there, and then you'll get the project afterwards and you'll go through review of the project like you normally would. So you might see for example, the Auwahi Wind Farm Project. You might see it three, four, five times before the project itself is actually approved. So you'll get lots of time in there to review.

For the...I'm sorry, the Environmental Impact Statement, for the EIS, the procedure is essentially

the same. The EIS would come to you as a draft document. You guys would make your comments. It would go back to the consultant, they respond, the Final EIS would come to you, you guys may accept it. Now when you're accepting a Final EIS, you're not, you're not accepting as a FONSI. You're not doing the Finding of No Significant Impact because with the EIS, well, actually...I'm sorry, I'm getting ahead of myself, that will be the next slide. With the EIS the difference is there's a 60-day challenge period with OEQC rather than a 30-day challenge period.

Since I was getting ahead of myself, now I'll compare what an EA versus an EIS. That's what I was getting to. Essentially they're very similar. Both documents must address impacts on the surrounding environment caused by a proposed development. Both documents must consider mitigative measures which are actions used to prevent or lessen or counteract any possible impacts. And both must identify alternatives for the proposed action.

So how it differs. The EIS is a little more of a detailed disclosure document that contains an analysis of significant impact that cannot be mitigated. Oftentimes there are impacts, I'll use the wind farm as an example, that was the most recent EIS you saw, most of you saw, and essentially there's gonna be tall wind towers, 400-foot tall towers. Well, as far as the aesthetic planes, aesthetic views, you can't mitigate against that. You can't put a hedge out in front of it to mitigate the views. It's there. It's gonna be 400-feet tall, you're gonna see it. So if you accept the EIS for this Auwahi Wind Farm, you're actually accepting it knowing that there are gonna, there's gonna be a significant impact that can't be mitigated. However, usually you're accepting this, like in this case, you're accepting it because the overall value of the renewable energy for the community may outweigh that aesthetic impact. So with EIS there are impacts and they're gonna either be accepted or not depending on whether you accept the document or not. Essentially that ends my presentation for EAs and EISs. Be happy to answer any questions. And then when we're finished here, we have a very special guest in the audience that would like to say, hi.

Chairperson Lay: Commissioners, any questions? Commissioner Shibuya?

Mr. Shibuya: It's not a question, it's more of a comment. And the other aspect of this significant difference is because of the height of the Auwahi Wind, you also have a reduction of the number of wind turbines.

Mr. Prutch: Yes.

Mr. Shibuya: Okay, so that was another consideration and was a mitigation in this particular case.

Mr. Prutch: Okay, and yeah, thanks for bringing that up. That was one of the points I was gonna make. Through this environmental process what can happen through your review, the public's review, the agency review, the whole idea of the environmental is to...well obviously try to mitigate any environmental impacts, lessen the environmental impact, but along the way, as Mr. Shibuya mentioned, the wind farm started out with 15 wind turbines at first. That's what they were proposing. Through the process and the aesthetic impacts and whatnot and the cultural impacts and all that stuff, they were able to lessen the number of wind turbines by increasing the power of the turbine and the technology allowed for that as well, but essentially were able to lower it down to eight and still get the same amount of electricity out of those eight as they would have 15, but lessen the impact on the land and the aesthetic views. So through the environmental process that

stuff occurs as it may not occur otherwise.

And the special guest is Mr. Ward Mardfin.

Chairperson Lay: No more questions? Oh, Commissioner Hedani?

Mr. Hedani: Joe, just as a matter of information, when we spoke to Roz Baker and Angus McKelvey about a beach nourishment project that we're working on for Kaanapali, their advice to us was to prepare a full-on Environmental Impact Statement because the Legislature apparently took some action that would require EISs instead of EAs on certain projects. So you might wanna check with their offices to see what that change was.

Mr. Prutch: Yeah, I'm not familiar but I can ask the SMA team, I'm sure Tara or Jim Buika or somebody's...

Mr. Hedani: And for the edification of the Commissioners, for us that cost went from \$600,000 to \$800,000 just to prepare the EIS on moving sand from out there to over here.

Mr. Prutch: Yeah, big difference. There's a cost value in an EIS as opposed to a EA as well, yeah.

Chairperson Lay: No more questions? And your special guest?

Mr. Prutch: He was here. Mr. Ward Mardfin. He must of stepped out. He stopped by to say hi to you guys, but we'll move on and he'll be here to say hi everybody afterwards. Sorry, my special guest is Allan. He's coming.

7. County's Policy Against Sexual Harassment - Allan Delima

Mr. Allan DeLima: That's the best introduction I've ever had to do this presentation. Good morning. My name's Allan DeLima and I'm the Administrative Officer for the Planning Department. And I'm here this morning to give you a brief overview of the County's Sexual Harassment Policy. And this is probably not gonna be the most exciting presentation you will have had all day, but I'll compensate you by making it the most brief, and this is where being Portuguese comes in real handy because I talk really fast.

Now this is what the County's Sexual Harassment Policy looks like and you should all have a copy in your binders. Not the way I normally start this off. Now the definition of sexual harassment. It means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or an employee to another officer, employee or a private individual. All personnel must refrain from the following conduct – making unwelcome sexual advances or requests for sexual favors; making remarks of a sexual nature, using gender based or sexually abusive language and sexual innuendos; visually displaying materials of a sexual nature; physical contact of a sexual nature; and any other similar actions.

Mr. Giroux has probably heard this presentation like 30 times already. So he has no excuses whatsoever. Now the County of Maui has a zero tolerance policy against sexual harassment, and will not condone or tolerate sexual harassment in the work place. This policy is applicable to board

and commission members as well as County officers and employees.

The process for filing a complaint. An individual who feels subjected to sexual harassment should immediately make a complaint to his or her supervisor. For board or commission members who feels subjected to sexual harassment, they should make the complaint to his or her Chairperson. If the Chairperson is the alleged offender, the report shall be made to the County's Equal Employment Opportunity Officer, the EEO. And the County's EEO Officer is the Director of Personnel Services. And options for filing complaints, they may be filed with the Planning Director, the Planning Deputy Director, Board or Commission Chairperson, the Director of Personnel Services, again, who is the County's EEO Officer, the Hawaii Civil Rights Commission, the Federal Equal Employment Opportunity Commission. Now you're encouraged to first seek internal remedies before using these outside agencies. We pride ourselves in keeping our own house clean. Now a complaint maybe informal, verbal or written, an unsigned allegation, or it can be a formal, written, and signed allegation.

The investigation process. The investigation will be conducted in an unbiased, fair, and discrete manner. There will be all the appropriate safeguards to maintain confidentiality and protection from embarrassment that the law allows. An individual who is found after an investigation to be an offender shall receive the appropriate warning or discipline. Any disciplinary action prior to the implementation will be reviewed by the Director of Personnel Services and approved by the County's EEO Officer. There shall be no retaliation or discrimination against an individual who has made a complaint, conducted an investigation, or acted as a witness. Retaliatory conduct is illegal and constitutes a separate violation. Well, I promised you all brevity. Do you have any questions? If not, thank you very much for your attention.

Chairperson Lay: Commissioners, no questions? Thank you.

Mr. DeLima: Thank you.

8. Legal Issues - James Giroux

Mr. James Giroux: All right, most of you know me, I'm James Giroux with Corporation Counsel. And I think I've been here about seven years, so Allan's right, 7 times 5 would be 35 times I've heard his presentation. And I think most of you have heard this one twice already, but I'm just gonna do the Sunshine Law. I have to do that because of a consent decree basically making sure that everybody's been trained and understands the importance of the Sunshine Law. And then I'm gonna go over ethics from our Charter. Then I'm gonna go over some takings issues and that's an excerpt from a longer training that I have about our case law overview. So don't feel like you got ripped off because you got the short version on this one. I'll put it on my blog.

What is the Sunshine Law? The Sunshine Law is Hawaii's open meeting law. It governs the manner in which all State and County boards must conduct their business. What is the general policy and intent of the sunshine law? It's to have open governmental process to public scrutiny, conduct business as openly as possible. Sunshine law is to be liberally construed in favor of open meetings. Exceptions to the sunshine law are to be strictly construed against closed meetings. Absent as specific statutory exception, board business cannot be discussed in secret.

Opening meetings. Every meeting of the board is open to the public, and all persons are permitted to attend. All interested persons shall have an opportunity to submit data, views or arguments in writing on any agenda item. All interested persons shall have the opportunity to present oral testimony on any agenda item. The board may make reasonable time limits of oral testimony, and I think those limits have been stretched too, I think we got two minutes, three minutes, one minute. So I think currently this board is using about three minutes?

Chairperson Lay: Yes.

Mr. Giroux: We find that to be defensible.

One of the things that is mandatory is notice. And that's written public notice at least six calendar days before the meeting, list of all items to be considered at the meeting, the date, the time, the place, and no additions, once agenda is filed, unless two-thirds vote of all the members to which the board is entitled. So that's different than who are present. It's entitled. So if you have bare quorum, it's very difficult to add new items to the agenda. No items shall be added if it is of reasonably major importance and action thereon would affect a significant number of persons. That's really important because you can want to put something on the agenda, you can get your two-thirds vote, but I at that time would have to comment on whether or not, you know, I feel that it would affect members of the public and if we would possibly get challenges for would they want to be here, would they wanna give...would they want to have notice that an issue affecting them was put on the agenda? So if that happens we can go into executive session and we can discuss that.

Another thing is minutes are mandatory. At minimum you gotta have the date, time and place of the meeting, members of the board recorded as present or absent, substance of all matters proposed, discussed or decided, and a record of any votes taken. Any other information requested to be noted by members and a public record to be made available within 30 days of the meeting. We have verbatim minutes, so those are recorded, but we also have action minutes which comply with this. The issue sometimes comes up whether or not because our minutes are so voluminous sometimes can we actually get them out in 30 days. The laws says that, well, our procedure is we usually come to you to have it approved and then sent out. But the law says, well, if they're available then they have to be available within 30 days. So that's just one of the procedural issues that sometimes comes up regarding our minutes.

This is really important, what is a meeting? HRS 92-2, states, "meeting means the convening of a board for which a quorum is required in order to make a decision or to deliberate towards a decision upon a matter over which the board has supervision." More than two members of a board cannot gather to discuss board business. There are exceptions, and one of 'em is the investigative exception which we'll go into later.

In order to interpret that definition, one of the important things is to understand what is board business? And it says, "matters over which the board has supervision, control, jurisdiction, or advisory power and that are before or are responsibility expected to come before the board." Usually there's...for this board, it's just really important to understand that there's projects out in the community that may come before you, and that's where the analysis of reasonably expected to come before you. If something is pending a district boundary amendment, but then it will also

morph into a zoning issue, and then later on morph into an SMA issue, you gotta understand the process in order to comply with this law because you may think, oh, well we saw the EIS, we're done. No, that was...that's the beginning of a phase of reoccurring events that the project may come before you again, and again, and again. So it's just to understand that it's a reasonableness standard.

You're members of the community, projects are always going on, but it's to understand what are the projects that are going to reasonably come before you in the future in order to understand am I or am I not discussing board business? This is really key, if anything within the law, this is what I really want you to have a grasp on is the permitted interaction because it really covers the gamut of the law. And a easy way is to look at the number of members involved. So if you look at the top, it says two board members. Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought. Nevertheless, it would be contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one on one meetings. So what it's saying is, you run into another member on the board, you guys can talk. You can talk about what's coming up on the agenda. You cannot discuss in a manner that would make the other person feel that they have to commit or that they are committing on a position to vote in any way. You cannot then go to another person and have that same discussion. That would be a serial communication circumventing the spirit of the Sunshine Law. And I think it was Honolulu City Council came under scrutiny for that practice because members would jump from office to office getting commitments to vote and that was seen to be in violation of the Sunshine Law.

We have an investigative exception. And this involves two more or more but less than quorum. Quorum for you guys is five. So you can put together an investigative committee. The scope of the investigation and scope of authority as defined at the meeting of the board, all findings and recommendations presented to the board at the meeting of the board and deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation are presented to the board. So what that means is that, your first meeting on the agenda it says, we're going to create an investigative committee. At that meeting, you can vote to put the number of people you want onto the board and then you vote to figure out what the scope of their authority is. They're going to go and investigate a project. They're going to go and do certain things, one, two, and three. You lay it out. They're supposed to come back and report to you. At the next meeting, on the agenda, it says the report of the investigative committee that went to do, dah, dah, dah. They come back, they give you a report. At that meeting, you cannot deliberate or take action. That meeting is for the purpose of the community to come and hear what the committee reported so that at the next meeting you'll have on your agenda, deliberation and action based on the investigation of the investigative committee. And then at that time, you can...the community can give their input, you give your discussion and then you can vote.

So I've had a lot of, you now, boards say, well, why don't we use our investigative exception more often? And from what I just explained to you, you can see that it really isn't a streamline, fast track, methodology. It actually ends up pulling things out. So what we rely on is for a lot of material and input from the experts, Public Works, Planning, and we rely on a lot of documentation. But we also do field trips. We go out, we site visit, and the community, we treat that as a meeting and the community comes along and they can hear and see what we're doing. The problem is is that if

we're going to go to some place dangerous then we have to think about how we're gonna deal with that. But that's whole other story.

So this is a new one, this is just this year I believe. They saw a need to make a change in the law, and this the acceptance of testimony at canceled meetings. When there's a lack of quorum, board members present can receive testimony and presentation of agenda item. They may ask questions as long as no deliberation or decision meeting at a canceled meeting. They must create a record of the meeting, and that the next duly noticed meeting there can be deliberation and decision making after the members receive copies of the testimony and presentation and receive a report about the testimony and presentation from the members who were present. So it's very similar to the investigative committee, and I think this is very important because I have advised a lot of committees where a lot of resources have been used and we end up in places, rural places where the community does show up, but we don't have the amount of members to have a meeting, and this allows us to at least take testimony and continue with the process.

This is another new one. This is the attendance at informational meetings or presentations. And this again, two or more but less than quorum. And you can attend informational meetings like legislative hearings, conventions, seminars, community meetings, speciality training, as long as they're not specifically directed at the board members. All of this wasn't to only be for you, it's more of a community or you know, a lot of commission, planning commissions are going to get together and they're gonna have a, you know, a convention or something like that. And when you're at this type of event, there's no commitment to vote on a matter made or sought. So you're not gonna be talking about board business or trying to get people to commit to board business votes either way. And at the next meeting, you gotta have a report.

This is one of our exceptions. The executive meeting and this meeting is closed to the public. In order to go into executive session, you have to take a vote at an open meeting and two-thirds of the members present must be in favor of going into executive session. And the main one we use, there's about five reasons why you go into executive session, but the one where I'm saying, chair maybe we can go into executive session is to consult with the board's attorney on questions and issues pertaining to the boards powers, duties, privileges, immunities and liabilities. And it's usually when somebody in the public says I'm gonna sue you, then I'll be like, hey, we gotta talk about that.

The other exception is your contested cases and that's when you're exercising your adjudicatory functions governed by HRS Chapter 91. Your SMA process is a contested case. However because of the policies and objectives in 205A, we usually have open sessions when we deal with that. An exception might be if there's an intervention and there's a hearings officer. That hearings officer is allowed to then continue that case as if it's an adjudicatory case, and the public doesn't get to come and testify and participate. It is then considered to be a personal matter between the intervenors and the applicant and the board is either the hearings officer or they've hired a hearings officer. And interesting enough it's the Land Use Commission is one of the only boards that cannot use this exemption.

So just to let you know, I'm not the sunshine law sheriff. I have never arrested anybody or used my powers but there is enforcement. The main thing is that we don't want your decisions to be turned over. If you decide something, we do not want somebody challenging it for a Sunshine Law violation and then having the courts get involved and then having decision fail and have to go back

or start over again. So avoidability is probably one of our largest concerns especially for Corp. Counsel because we wanna see this process work, we wanna see it streamlined, we wanna see it effective.

The other issue is an injunction. If somebody say that they feel that the sunshine law has been violated and they think that eminent harm is gonna be affected, they can try to convince the judge that an injunction needs to be placed on the permit, and all work stops. The other level of this is that a person can be guilty of a misdemeanor and if found guilty they can be removed from the board. So there's different levels of enforcement, and usually from me, I mean, you'll just hear a kind warning that if, you know, I see three guys talking about board business I'll just remind you guys let's keep it not about board business or, you know, it's really important that this type of law is self-governing. You wanna be interested enough to know that when it feels like you're going into that territory that you can self-police and you can decide, you know, what would be the ramifications if this was on Akaku. But other than that, my job really is to help, you know, facilitate the process, the open process and make sure that your guys work is supported in the court of law. Any questions on sunshine?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Jim, there's an exception for election of officers for the Commission?

Mr. Giroux: Yes, there is a...and again, I'm giving you guys the short cookie on this, so there are a lot of...lot more exceptions and choosing of officers is also one of those exceptions.

Chairperson Lay: I have a question about the legislative hearings. You know, five of us show up at the hearing at County Council or something and we're not sitting together does that still fall into play?

Mr. Giroux: Well, what it says is you can attend, but it's gotta be less than quorum. So if four people go, then it should be okay. If five people show up, then there could be challenges. So it's very, you know, you should look around the room and see or better yet is, if there's a chance put it on the agenda and choose people to go and represent. But there's nothing that can stop you as a private citizen from going. It's just that at the time, what's the ramification going to be? And that's where it's really hard to advise because first of all, we don't know if five people are gonna show up, if there's no discussion at our meeting. And if the five people show up is it evident that somebody would actually notice that you are all from the Maui Planning Commission. But for me, I'm very conservative, I would wanna avoid that risk. I would try to get that discussion on the record first. But like at a legislative hearing, I don't think the public even gets a chance to talk sometimes, right? So that's another issue. But I think that, you know, as these matters come up because this is very new, what we would do...you can ask us, you know, say hey, you know, this is the meeting that I'm going to and we can try to get OIP on the line and get their take on it too and try to basically get you the best advice we can because we wanna preserve your ability to participate in activities as a private citizen. That's your First Amendment right, but we also wanna protect you from being able to participate in the future on those matters at this Commission because you were appointed to be.

Chairperson Lay: Commissioner Tsai, do you have a question?

Mr. Tsai: Yeah, I was just wondering if we're just legally safe because under clause no. 4 it says, if there's no commitment to vote on the matter is made or sought. I mean, if we're just attending a "Council meeting" of some sort and we don't even talk to each other, wouldn't that be...would that fall under that?

Mr. Giroux: And again, this is new, so I would have to look at that and say, well, is that a factor or is that determinative? Is that something that's, you know, when they have the comma and the and, is that just one of the things you also cannot do is not get a commitment to vote because if you look at the other exception where if two people can talk, you can talk about board business, but you just can't get a commitment to vote, it's very similar.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: How is the convention that commissioners attend every year, how that's, where does that fall in this?

Mr. Giroux: Yeah, it would be under the conventions and seminars.

Ms. Wakida: But if the entire group here goes, that's more than five.

Mr. Giroux: Yeah, we'd have to talk to OIP about what their position on that is.

Ms. Wakida: Because last year I think there were five of us there. So...I take that back, maybe I don't know.

Chairperson Lay: Any more questions, Commissioners? If not, moving on.

Mr. Giroux: Okay my next topic is takings and basically what takings is, the taking clause of the Fifth Amendment of the United States Constitution made applicable to the states through the Fourteenth Amendment provides, "nor shall private property be taken for public use without just compensation." What that doesn't say is that the government can't take your property. What it says is that the government can take your property, it just has to pay you for it. And it has to pay you just compensation, a reasonable price. And what's happened is, is that this law this takings law has...it's very complicated, it's more, it's changed on us while we were trying to practice with it, but it's important to understand the concepts involved and one of the principal purposes of the takings clause is to bar government from forcing some people alone to bear public burdens which in all fairness and justice should be borne by the public as a whole. And what that means is that you just don't want one person to be having to either pay or give land or services that the whole, the whole community should be participating in.

However, the Supreme Court has carved out a little exception into this law. And basically what I'm gonna do is try to explain that, and two very important cases came down. One is we call the Nolan and the other one we call the Dolan and it says, "although the outright takings of an uncompensated permanent public access easement would violate the takings clause, conditioning appellants rebuilding permit on their granting such an easement would be lawful land use regulation if it substantially furthered government purposes that would justify denial of the permit." So what it's saying is that the government actually participate in a type of takings if they could forbid the permit

outright. So in *Nolan v. California Coastal Commission* which is a commission very similar to yours, it says, "the government's power to forbid particular land use in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner even a concession of property rights so long as the condition furthers the same governmental purposes advanced as justification for prohibiting the use." And that's a huge statement because it totally contravenes the common thinking of what the government can do.

But in doing that, they carved out a test that we basically have to analyze and one portion of that is your rough proportionality test. And *Dolan* states, "whether the city's findings are constitutionally sufficient to justify the conditions imposed on *Dolan's* permit, the necessary connection required by the Fifth Amendment is rough proportionality. No precise mathematical calculation is required but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact." And what it's basically saying is, is what we're taking from the individual does it have a connection to the impact that that development will create. And it doesn't have to be in a mathematical certainty. It just that we have to do, we have to look at it and try to do the math and it could be rough math.

So a simplified version of the *Nolan Dolan* test and again, this is when you're requiring somebody to give up land in order to get a permit. It's that do we have legitimate state interest and is there an essential nexus, is it necessary, and what we're taking, is there a rough proportionality to that impact of what that development is going to do? And to help you out is usually you come into this in the context of your Special Management Area law, and if you look at your objectives and policies of 205A, and there's quite a few of them, those are all examples of a legitimate state interest. The State Legislature said that these are things that you as a body are to review and to try to preserve. And the way that you effectuate that is that you come up with conditions and the commission can put conditions on the granting of the Special Management Area Use Permit as long as the conditions are reasonable and further the policies and objectives of 205A. And that's consistent with the *Nolan* and *Dolan*. So again, this is the short version, but there's also other scenarios that takings can morph into, but I'm not gonna confuse the issue, but it's just that if you are looking at conditions that seem to be taking away a private right or an ability to use private property, you have to use this test and do that analysis to see whether or not those conditions are defensible. Any questions?

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Is this like adverse possession?

Mr. Giroux: It's in the same arena. The government is put into position is if it wants property it has several choices. You buy it, you condemn it or you take it as part of a permitting process. And that's the arena where on the private side they would look at all of that as possibility of taking if the government doesn't compensate for it. And again, this, the third prong in your permitting scheme is actually an exception to the takings clause. So we have to meet the test in order to get into that exception because there's not really going to be a compensation. In a condemnation basically the battle is usually on value. So that's where the...you get the two appraisers and you got the battle of the experts and one says it's a million, one says it's ten million. The courts have to figure it out and what methodology are your appraisers using and is it, you know, has the market changed since? So it's really a moving target for the government to deal with condemnation.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: So in taking they would set the value, they would say this...we value this property. You would not have like in adverse possession where you would have appraisers on both sides and reach a determination of the price?

Mr. Giroux: Yeah, the battle in the takings would be to convince the courts that it's not a takings. So that way there is no issue of price. But the issue comes up in proportionality. How much land is being taken and that's where the courts would say well, you know, you're just asking for that sliver so people can walk to the beach or are you asking for half the property so people can have a view of the beach and that's, that's where the battle would be.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I just wanna expand on what James is talking about in terms of taking the property and for the government use of that property and in exchange for some monies amount, a fair value. Another way that this board has done it was trade, transfer of development rights. In the Maui Medical Plaza situation here that the owner wanted to provide for the environmental protection of the wetlands area. They in turn are providing \$2 million I believe worth of services to another area wetland area in Waihee I believe.

Mr. Giroux: Right.

Mr. Shibuya: Go ahead, James.

Mr. Giroux: And that will raise...there's a new case just coming out and they haven't published it but from the Supreme Court that is analyzing that type of takings whether or not that that's allowable because what we're talking about today is land, actual land. What the Koontz case is going to be looking at is, can we use the same Nolan Dolan test on exactions, what they, you know, they call exactions because what you're doing is you're taking money from the project and using it to enhance another property in order to, to basically mitigate possible damage to the wetlands, to the birds and such. So again, my hopes is that we can continue to use this test because I think it is easier than doing other types of balancing totality, you know, they come up with all of these tests, once it gets to the Supreme Court, you don't which one you're supposed to use because people are using, you know, premises as to what are we dealing with? Is it a takings, is it a regulatory takings, is it an outright takings, on and on and on. So...

Chairperson Lay: Any more questions? James, before you continue, our special guest did you wanna say something at this time, Ward?

Mr. Mardfin: Congratulations.

Chairperson Lay: Come up to the mic please, and identify yourself?

Mr. Mardfin: Thank you, Chairman Lay. My name's Ward Mardfin. I was on this Commission about a year ago. And I congratulate you all for being on the Commission and new Members of the Commission do a great job. You may see some things with my name on it coming up because

I just got appointed to the Hana Advisory Committee to the Planning Commission. So from time to time I may be involved down the road if it deals with Hana.

Chairperson Lay: Congratulations.

Mr. Mardfin: Good to see you guys.

Mr. Giroux: Thanks for driving out, Ward. Okay, next...onto the next, Ethics and then lunch. We're looking at the Maui County Charter, Article 10, Code of Ethics and basically there's some prohibitions there. There's prohibitions about accepting gifts. About business transaction or activity or have a financial interest which may tend to impair independence of judgement in the performance of official duty. And then the third one is the failure to disclose financial interest.

As far as accepting gifts, one of the important things to look at is to see first of all is somebody giving you something. Second of all, why are they giving it to you. That doesn't mean you cannot receive gifts. It means that you have to understand why that person is giving you that gift. If it can be perceived that you're giving you that gift in order to influence your duties...roles and duties on the board then that's gonna be a red flag, and you're gonna have to do something about that and not accept the gift. What we come up with a lot is our business transactions and a lot of times we have to again, analyze that as how is that transaction going to be perceived to impair your independence of judgement and in the performance of your official duty? So we've had people disclose that, oh you know, I sold this person property, but the permit's not about the property, it's totally different. So in those cases, it's good to disclose that I have had business transactions but this is not out...(inaudible)...just to be safe. However, if it seems like that transaction is an ongoing transaction and might be affected by the business in front of you then you have to cut...you know, recuse yourself, don't vote. If these types of issues come up, you can call me, we can talk about it. If we don't come up with a resolution, we can get you to the Board of Ethics and they can do an opinion and they can actually clear you, say, yep, as long as you do this, this, and this, you should be fine. You can participate. And sometimes people do that only because there's like ongoing, but you know, if there's something that if in your mind you're saying wait a second this is kind of in the gray area, a lot of times it's better just to get that opinion get that out of the way, and then you don't have to worry about that in the future.

If there is a violation, there are penalties. There is a fine, and you can be removed from office. So it's very important that you walk conservatively in that area. Your own rules, Maui Planning Commission Rules 12-201-25 states that whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the commission, the effected member shall promptly make a full disclosure of the circumstances to the commission. If a commission member has a financial interest in any matter that may be affected by an action of the commission, that member shall be disqualified from voting and all actions relating to such matters. So basically we've been following that pretty well. You know, members have let us know when there's, you know, possible, you know, interest and things like that. So what this rule doesn't state is that you can, you can actually continue to participate in discussion especially if you're privy or you have understanding of technical issues before the board, you're not completely cut out. As long as that disclosure is on the record and everybody understands what that disclosure means. And again, when in doubt get an advisory opinion from the Board of Ethics. And here's the reason, if any officer obtains an advisory opinion from the board and acts accordingly or acts in accordance with the opinions of the

board, the officer shall not be held liable for violating any of the provisions of this article. So basically the board, once it makes its opinion, basically that clears you of that liability. Any questions?

Chairperson Lay: Questions, Commissioners? If none, at this time we'll break for lunch and reconvene at 1 o'clock.

A recess was called 11:57 a.m., and the meeting was reconvened at approximately 1:05 p.m.

Chairperson Lay: Next Agenda Item is E-1. Our Director isn't here right now, and I was wondering if Candace will go ahead and give the intro on this? Thank you.

Ms. Candace Thackerson: Good afternoon, Commissioners. Congratulations to Chairperson Lay and Vice-Chair Shibuya and a warm welcome to Commissioners Duvauchelle and Medeiros. This is Mr. Barry Helle on behalf of Old Wailea Blue, LLC, requesting a Special Management Area Use Permit for the proposed renovations and expansion to the existing golf shop and restaurant buildings as well as the addition of six single-story commercial, office, and retail buildings. This is located at 100 Wailea Ike Drive, TMK: 2-1-008: 118, Wailea, Island of Maui.

E. PUBLIC HEARING (Action to be taken after public hearing. To begin at 1:00 p.m. or soon thereafter.)

- 1. MR. BARRY HELLE on behalf of OLD WAILEA BLUE, LLC requesting a Special Management Area Use Permit for the proposed renovations and expansion to the existing golf shop and restaurant buildings as well as the addition of six (6) single-story commercial, office, and retail buildings. The existing parking lot will also be expanded from its current 56 parking stalls to 286 stalls located at 100 Wailea Ike Drive, TMK: 2-1-008: 118, Wailea, Island of Maui. (SM1 2012/0001) (C. Thackerson)**

Ms. Thackerson: This item is under your review because Wailea Old Blue LLC is located with the Special Management Area requiring a review of the project under HRS 205. However, the parcel is not located along the shoreline and therefore the action does not trigger compliance with HRS Chapter 343 or Chapter 203, Shoreline Rules for Maui Planning Commission.

The entire parcel is quite large and the State Land Use District is Urban. The Kihei-Makena Community Plan designation is Park, specifically Golf Course, Single-Family Residential, and Business-Commercial with the County zoning of Open Space, again specifically Golf Course, BR Resort Commercial, and R-3 Residential District. However, only a portion of the parcel is being utilized for this project. And the designation, the community plan designation of the parcel part is Business Commercial and the County zoning is BR, Resort Commercial.

The applicant, Wailea Old Blue, LLC proposes to construct six-single story commercial, office, and retail buildings as well as expand the existing two buildings located at 100 Wailea Ike Drive. The project site was originally developed in the 1970's as the pro shop and restaurant for the original Wailea Golf Course. The entire project site was graded and shaped for development at that time.

While the golf operations were relocated to another site, this property was used primarily as a restaurant and also as real estate office. Improvements on the subject property currently consist of two buildings totaling 9,981 square feet and an 56-stall parking lot. There is a significant portion of the property that has not been built upon but was graded and planted in grass for ease of maintenance trees and other ornamental landscaping back in the 1970's.

The new construction will add approximately 28,000 square feet to the parcel. In addition to the buildings, the parking lot will be expanded from its current 56 parking stalls to 286 parking stalls with appropriate landscaping. An end result will be that the Wailea Old Blue Golf Course operations will relocate back to this site. To accommodate the golf operations, the project will expand a paved area to be designated as the cart staging area. The expansion of the parking lot will also allow the golf course to designate a portion of the golf course to be operated as a driving range. The project is designed to be built in three phases. The first phase will partially expand the parking lot, add all improvements around Buildings A and B, and include the construction of Building C as indicated on the project site plans. The second phase will include construction of Buildings D and E. And the final phase will fully build out the parking lot and construct a three-structure complex designated as Buildings F, G, and H. The total project cost is not known at this time, however, it will be in excess of \$500,000. Hence the trigger for the SM1. The total number of employees and hours of operation are not specifically known at this time, but are anticipated to match the existing character of the Wailea Resort area. The project was reviewed by nine government agencies as well as the Maui Electric Company, the Wailea Community Association, and the Wailea Ekolu Village Association of Apartment Owners. There were no significant concerns and any comments received by agencies were able to be mitigated by conditions to the project. The State Historic Preservation Division has approved the Archaeological Monitoring Plan as submitted by the applicant, by letter dated November 20, 2012, and deemed that no historic properties will be affected. Both the Wailea Community Association and Wailea Ekolu have given their approval for the project and the letter for the Wailea Ekolu, I distributed to the Commissioner prior to this meeting. The project was also reviewed by the Urban Design Review Board at their regular meeting on February 5, 2013 and recommended approval to the Maui Planning Commission subject to three design related recommendations which the applicant has since incorporated into their project. The applicant is here and has a short power point presentation with the details for the design, layout and construction of the proposed project.

Mr. Barr Helle: Good afternoon, everybody. I am Barry Helle. I'm the general manager of Wailea Old Blue. I spend most of my time as a manager managing the golf course, so the development's a little bit outside the normal, but this project is something that we've been wanting to do for quite some time and it's an honor to be here before you today. I do wanna quickly introduce some of our team just briefly. The owner, Mr. Ron Allred is here today. Leo Miller is our architect on this, and we also have a couple folks from SSFM Engineering, Fiona and Mike, they will handle the drainage and the traffic portion of our presentation here today. We've actually started working on this project several years ago, and when Ron and the Leo, the architect and I talked about this in its early concept, we really understand that Wailea is a special place. It's a master planned resort community and virtually anywhere you're at in Wailea you do get that sense of a residential community even if you're along Wailea Alanui which is the main commercial corridor for the resort, you still get that sense of that you're in a residential area. And as we've looked at this project and how we can enhance it and take advantage of what we have there, we've always kept that in mind, but we wanna maintain that feel. There's a responsibility that goes with it, and I think we've done

a good job in the design phase of it.

Just moving along here real quickly. As Candace has already mentioned, you know, it's 100 Wailea Ike Drive and as Wailea Old Blue, we are the applicant and the owner of the property. Project summary. The project area is primarily the 6.6 acres. It is zoned BR Resort and as Candace had mentioned it was the original clubhouse for this—for our golf course back in the 1970's. And one of our major goals in doing this project is to relocate our golf operations back to this location. It's something that the people of the Wailea community have wanted for a long time. It's the right location. Circumstances many years ago moved it away, but it's the right thing to move the...move our golf operations back to this, to this location.

This building that is there, Buildings A and B was the very first building ever built in Wailea. So for your history buffs, the first thing ever built in Wailea was the Blue Golf Course, what is now the Blue Golf Course and this was the original clubhouse and pro shop. So before any homes, condos, hotels, this was it. So it's really our desire to kinda go back to the future on this project and go back to that original location. So that's one of our focal points is to relocate our operations back there. We do wanna expand the commercial space there and take advantage of what was originally conceived by the original developers which were Alexander and Baldwin back in the day. And then, well to do this though, we need to improve the parking and expand on the parking lot. Next slide. I just wanna mention too, as Candace said, we do have the support of the community association that was presented to you. Just a side note, when the WCA Design Committee reviewed this project, they came to me afterwards with their approval, but Larry Clark who's the chairman of that committee and oversees it, he pulled me on the side and he told me that of all the projects that they've reviewed over the years, they really liked this one because it takes advantage of the original architecture and theme of the parcel. So it was something that was a little bit different for them. We also have the Ekolu, our neighbor to the mauka side of our project, we have their support in this project. We're very happy to note that. From the beginning of our...when we first conceived this and through our planning process we have met with them numerous times. We listened to what they had to say and incorporated in their ideas and their desires into our, into our program. So they have been pretty much onboard from the beginning and we're very happy to say that.

This is a map of Wailea. Up at the upper right corner, you see that we have Piilani Highway coming down. Got Piilani Highway up here and then this is Ike Drive coming down. Over in this area is the Shops at Wailea, and then our project site here along Ike Drive. Point of this map too is, is to show you that on basically on three sides of our project is our golf course, to the north, the south, and even on the makai side is our golf course property and even on, further on the makai side, you've got Wailea Alanui and you've got the Shops at Wailea. Their large commercial property is across the street. And then Ekolu is right up in this area and that is the one complex that we've been working closely with on this project.

As Candace has pointed out, we have a building—two buildings that share a common breezeway, about 10,000 square feet. We have 56 parking stalls. If you go back to the 1970's that was all that was required of the project to have a golf course and a restaurant there was 56 parking stalls. That's not enough to accommodate a golf course today. Just for the golfers alone, we need over 90 stalls. So we definitely have a need to expand the parking lot on the site. Currently we have some tenants in the building. We have Manoli's Pizza Company, the Andaz Resort, their management office is there temporarily as they complete construction of the new hotel in Wailea.

We also have a couple of tenants that will be opening here in the next couple of weeks which is The Reef which is Snorkel Bob...marine art gallery. We have Snorkel Bobs. As soon as Andaz moves out, July 1st we're slated to move in Wailea-Makena Urgent Care will be a very needed medical facility within Wailea. Something that the hotels and the guests there and the homeowners in Wailea have all been wanting. And then we do have space set aside for our golf course operations also, although it's not operational at this time until we make some improvements.

Just quickly some views of what our project is. This is from Alanui looking mauka. It's kinda light, but you can see the buildings up in here. This view plane will not change at all as our future expansion is on the mauka side of the existing property. This is looking southeast from Wailea Ike Drive right off the drive into the project. You can see the architecture that exists now is single-story buildings and all of our expansion will be single-story buildings. So that shows that. This is basically you have your back to the Shops at Wailea looking mauka. Again, this side of the property will not be impacted by the project. This is looking southwest from Wailea Ike Drive and just a note on this property, future buildings there will be some street side buildings, two smaller ones over in here. There'll be a smaller one down in this area as part of the expansion. But again, on that side of the property, you've got the four-lane road of Wailea Ike Drive coming down and our golf course across the street. This is a shot kinda looking down the middle of Ike Drive, you can see that it's got this big, wide median in the middle as a buffer. This down at the bottom looking over, very much open space. The area's got a real park like feel to it, and again, that was something that we wanted to maintain and Leo can talk a little bit more about that in a moment. This is from the mauka side of the property out in front of Ekolu and you can get the sense that Ekolu is elevated up above our project. In this area, for future, on this side of the parking lot we'll be over here plus the two buildings I mentioned will be on the roadside. Then we have this huge grass lawn that's out in here and we will be putting a three-building, cluster of buildings out in that area too. But again, you can see, again a view from up by Ekolu that it looks out over the property and not down right through it or whatever. So that was something that we really took into heart.

This is just a quick look at the existing site plan. This is the parcel right in here. This is the existing parking lot. The existing building is right in here and then our expansion actually will be in this area and then out onto the golf course a little bit which by...because this is part of our fairway here. This is allowed by County rules to expand out onto the golf course because those parking lot...that part of the parking lot will be designated for the golf. So it's an amenity to the golf course so it's totally allowed within the County rules on this side. So this is the parcel as it will be when we reach full build out.

And as Candace mentioned, we are gonna be building this in basically in three phases. Our existing building are right here, Building A, Building B. This is covered with a breezeway. Part of it we're gonna expand with some expansion on this side, and then part of our golf course operations will be right in here, so gotta expand there, and then a lot of the expansion in one is parking as you can see. And then Blue area, this would be Phase 2. This would be Phase 3. Phase 1, we're hoping to have pretty much completed by the end of the year if we can move on track. Phase 2, the blue area, would be in primarily next year. Actually part of next year and then on into 2015, 2016, and then the Phase 3, the final build out would be probably in 2017. So we'd have no problem meeting the guideline that we have to do this within five years. That is our desire to move forward on that. So with that, I'd like to ask Leo Miller to come up and he can talk a little bit more about the architectural aspects of the development.

Mr. Leo Miller: Good afternoon, my name's Leo Miller. I'm the architect on the Wailea Blue project. One of the things that we really emphasized in the design from the start is to maintain the single-story park like atmosphere that's created essentially sitting in the golf course and to try and maintain that same kind of a clustered small building feeling as you drive by on the road. The project was broken up to not only maintain that existing character but not to create the character that you might find in a typical strip shopping center in this kind of a location. The clusters and the architecture on the buildings are reminiscent of the existing buildings. Long, low horizontal clusters and nothing over 18 feet tall in the entire project. This is the four sides of the existing Buildings A and B pretty much the way they are now. We've got some very small editions that we're doing to this building or to these two buildings. And then we've recently done some rehab on the restaurant and we're going to be moving the golf operations back to this location. It's something that's kinda near and dear to the hearts of the folks in the neighborhood to get that golf operation back there. The new buildings like I said are small. There's...they're horizontal. They have a lot of the same open beam entrance details that the existing buildings have. The trees in these sketches are actually from photographs of the actual trees on the site that are there now and we've nestled the buildings in between them as much as possible. This is the final phase which is the largest, but again it repeats the open air area way, the plaza between the buildings and creates the indoor, outdoor shopping kind of experience.

This shot is from the Wailea Ekolu project up above and it points out, you can kind of see one of the buildings in the photographed that we photoshopped in the landscape that we've agreed to put in between us and our parking and their project which is a hedge of the areca palms and then the parking lot also has a center almost hedge of the Hawaiian kou tree which isn't going to get so large that it gets up into their view of the ocean, but it will shelter them from the view of the automobiles and the building.

We're also working to maintain as much as possible all the environmental elements of what people are doing today and what we think is very important and those things go from...we've recently renovated all the public facilities there. We've used waterless urinals. We've used low flush toilets, automatic shut offs on lavatories. The hot water is within just a few feet of the point of use so that everything there is just the latest technology all the way though. The open air restaurant and bar is wonderful and obviously uses nothing but nature for the air-conditioning. We've got the arrangement with the golf course that all of our landscaping will be connected to their brackish water system so we won't be using domestic water on the landscaping. We're exploring the use of photo voltaic especially in discussions we've had about the possibility of using photo voltaic for the recharging of the golf cart batteries which is a fairly substantial use of electricity and would be a great use for this as long as we can get that to work. Our site plan has pedestrian and bicycle connections. Let me see if I can...I guess I need to go back to get that for you. In...let me grab this pointer. We've got a bus stop that's existing here. This has a sidewalk, the full length of the road. It's all shaded by the existing really large vegetation. We've got an automobile entrance here and for the kind of north bound traffic, but we've created pedestrian connection at this point and another one up at the D and B buildings. So there's good pedestrian connections directly from the street. Each of the clusters will have a bicycle parking facilities to be able to encourage that. We're going to be putting in an electric car recharging station. Oh, we've agreed to and the site already has this but we've continued with it, all the exterior lighting including the parking lot is down lighting so you don't ever get anything shining up into the sky and messing with that. So that's basically where we are. Like I said again, the clusters, the single-story, the small scale of the building and staying in

character with the existing project. Hopefully you'll have a few questions if towards the end of this and we'll bring on the traffic and drainage here. Thanks.

Mr. Mike Packard: Good afternoon. My name's Mike Packard. I'm a traffic engineer with SSFM. I'm gonna discuss the traffic impacts of the project. Just to cover the base methodology. This is very standard traffic engineering analysis. Back in 2012 we started by doing traffic counts at the significant intersections and the study area, from there calculated the existing vehicular delay at those intersections. We forecast through to the future at the time 2016 full build of the area. That would be without the project. We then forecast the project related volumes, added those to the future and anticipated the impacts and determined mitigation needed to alleviate any impacts that are caused by the project.

Here's a little diagram. This one a little harder to see but the graphics aren't as important. Just to give a little base on levels of service to define level of service that goes from A through F. This is both at signalized and unsignalized intersection. D is considered an accept...D or better is considered acceptable with minimum delays and so that is what the project is aiming to maintain for the impact to intersections. As Barry showed earlier, this is the map of the project site and circled are the study intersections for the project. The primary intersections that the project will be gaining access through are off of Wailea Ike Place. Off of Wailea Ike Drive, at that location there's about a 100-foot median there separating the two directions of traffic going mauka-makai. And therefore, these were considered two separate intersections because they operate as such and that there is small space for vehicles to queue in the middle to make ease for left-hand turns or for other type of movement that need to made, U-turns or what have you.

From this graphic, I show the existing vehicular delay in the area. What this shows at the signalized intersection of Wailea Ike Drive and Wailea Alanui all acceptable A through C level of service and at the three unsignalized intersections most operations are A through C. Wanted to point out here that at Wailea Ike Drive and Kalai Waa Street the northbound left movement in the p.m. peak hour is currently at B, and that's reflective of the amount of traffic that's along Wailea Ike Drive not so much the traffic that's coming off of Kalai Waa Street as you can see in the volume capacity which shows a .07. This intersection is mauka of our project area and it's not being used for access to our project, but since it was along Wailea Ike Drive, I included it in the analysis just to address potential impacts. The existing clubhouse for the project is actually further to the south and so currently vehicles accessing the project off of Piilani Highway would travel down through this road. So with the relocation, we'll actually be removing some of the vehicles that would previously be coming on and off of that road.

Here I show the level of service for the future 2016 conditions. This is without the project. What this takes into consideration are the future growth in the area in addition to the other significant projects and if you're aware of the proposed development in the area there's some rather significant projects that are in and around that are projecting to add thousands of vehicles to various peak hours in the area. And so for this analysis I show what the conditions would be with the addition of those surrounding area developments. Now, as you know, many of these developments are in different levels of development and so until things are completed and the volumes are actually realized, this is only as good as the assumptions that are put into the project to get a general feeling as to where we'll be. With this still...actually Piilani Highway at Wailea Ike Drive is planned to be signalized at that point. It's going to have an additional leg headed mauka so currently the 90-

degree turn will be turned into a signalized intersection. All operations on the two signalized intersections and this includes dual lefts and dual rights being added at the Wailea Alanui Drive current signalized intersection. All those operations are level of service D or better. It's considered appropriate. The intersection...the existing ones at Wailea Ike Place north and south, are A through D and then the intersection at Kalai Waa Street, the one Just mauka of our primary access will be lowered to level of service F in both the a.m. and p.m., and I want to point out again, that this is without our project. This is just the general growth in the area as anticipated through my best guesses and assumptions to come up with those future volumes.

So then here I wanna show the future width project, vehicular delay. This includes the full build out of a project as Barry mentioned, this project's planned over three phases and so after each phase, a different amount of traffic will be added to the project area and could be assessed at that time to see the impact of the project in the area. With the addition of the project, the two intersections, the two signalized intersections at Alanui Drive and at Piilani Highway both remain level of service D or better. The two intersections at Wailea Ike Drive and Wailea Ike Place north and south, they suffer a little bit of impact due to this being the primary access to our project. There are two accesses being proposed or exist currently. One's a right turn which is just mauka of the Wailea Alanui Drive signalized intersection. That's a right-in only and then just mauka of that is the primary intersection with Wailea Ike Place and that's where the majority of our access will be coming from, coming to and leaving from. And then further down, the Wailea Ike Drive at Kalai Waa Street retains its poor level of service and even though our project will be removing traffic from accessing off of Kalai Waa Road itself, the addition of traffic along Wailea Ike Drive just further retains the poor level of service that existed previously.

So with this impact that I have proposed with the full build out what we've proposed in our project is that the primary intersections of the project driveways at Wailea Ike Place, north and south, that they both be signalized when warranted. When we did our signal warrant analysis for the two intersections we did them separately as individual intersections. The Wailea Ike Place south pass signal warrants for the 2016 full build analysis, the Wailea Ike Place, north, did not pass but with those two intersections being so closely together I didn't believe that one could operate as a signalized intersection without both being signalized and to properly work, they really would need to be through a shared controller so that it operates similar to a ramp interchange in that you don't ever have vehicles queuing in the center because with the existing 100-foot distance in between there, there's just not enough space for enough vehicles to queue up through there. I also wanna point out that since one of these intersections passed signal warrants without the other one passing warrants, this shows that it is on a fine line and my analysis took into account our full build in addition to the full build of the projects in the surrounding area. Currently along this stretch there's only the one signalized intersection down at Alanui with the rest of the corridor not having signals. For side street movements off, onto Wailea Ike Drive currently vehicles have to wait to find their gap in traffic to turn on but that's an accepted and expected movement when turning off of a side street onto a more populated four-lane road. So I wanted to say that probably best judgement to wait until the actual signalization is warranted to install signals just to not add additional delay to the street in case the surrounding developments don't build out as quickly as expected or this project doesn't add the projected traffic as we've calculated through the report. Here I wanna show the level of service projections with those two intersections being signalized. They're all at level of service A or B which is more than acceptable since I noted level of service D is considered acceptable. So this would be operated with no problems.

So in summary of all that, there's phased development for this project and therefore, every couple years a different phase will be adding different levels of traffic to the area. This will have the different impacts and at those times the projects and added traffic can be analyzed to see if new warrants are passed to see when those signals actually would be needed.

Project related impacts were identified at the Wailea Ike Place north and south, and the proposed mitigation is to signalize those when warranted. In addition to that, I believe with the signalization we can add crosswalks at those intersections which currently there are no crosswalks between the signalized intersection down at Alanui and all the way up at Piilani. Therefore, this will add a needed, a necessary connectivity for pedestrians and bikes in the area which Wailea Ike Drive is already a very pedestrian friendly and that there's sidewalks with tree lined canopies which is a...although it has a some grade, not the easiest for bikers but it's a nice walking area and this will add a connectivity to cross to the other side of the street. And then with the addition of pedestrian crossing signals and crosswalks and the signalization of the intersection, projecting a appropriate intersection of level of service A or B as I showed in the previous slide. Thank you. Pass this onto Fiona who will speak about the drainage.

Ms. Fiona Van Ammers: Good afternoon, Commissioners. My name is Fiona Van Ammers and I'm a civil engineer with SSFM. Today I will be reviewing the drainage. So today, we'll be reviewing several different things. The first thing would be the drainage design criteria. The criteria used to do the conceptual drainage master plan. I'll review the predevelopment conditions, the post development conditions which is based off a full build out of the project so that's Phase 1, 2, and 3. And then we'll review the method for controlling the peak runoff flow due to the full build out of the project. And then I'll review the water quality method.

So in this slide you'll see a list of the drainage design criteria based off the County of Maui standards. These criteria were used to do the conceptual drainage master plan. I wanna note that the project team has met with the Department of Public Works, Engineering Department and the Director's Office and we have confirmed on the drainage criteria and the proposed conceptual plan. Another thing that I wanna note is that in the preliminary drainage report which I think you guys have reviewed the reoccurrence interval that was used to study the drainage was a 10-year, one-hour storm. And this was based off the criteria of the project being less than a 100 acres. But since that initial drainage report, the design for the drainage has evolved and now included a detention basin so that triggers the 50-year storm.

So in this slide you'll see the existing conditions. The first thing to notice is that the project area is established at 8.9 acres and this is something slightly different from the drainage report. In the drainage report, the acreage was about 7.6, but since the design has developed, it's now including the basin area so that has increased the project area for the drainage design at 8.9 acres.

So this is the area that is used to calculate the runoff. So for a 10-year storm the estimated flow is 7.7 cubic feet per second and the 50-year storm is 10 ½ and that's the existing conditions without the project being built out. If you look at the site plan, you can see some existing swales around the site. They converge and they outlet to an existing culvert. I think it's a 24-inch pipe on the road.

So this next slide is the proposed conceptual drainage master plan and the most improvement thing to know is that this is based off the full build out of the project. So that Phase 1, 2, and 3 in its

entirety. For each phase of development it's proposed that additional engineering analysis will be done to determine the requirements for each phase, but this is kinda giving you a big picture look at the project. So the important thing to note here is that the net increase in runoff from a 50-year storm is 12.2 cubic feet per second, and that's the criteria that we used to size the basin and that's per the County standards. The other thing to note is that the project will use swales to capture the runoff and convey it to the detention basin. The detention basin will outlet to the road using the existing culvert.

So to determine the detention volume required, you take the net increase in runoff from the 50-year storm which is at 12.2 cubic feet per second and you get a volume, and that volume is approximately 13,500 cubic feet of detention. So that's the volume you need to control the runoff from impeding adjacent sites. So right now the proposed detention basin is 20,800 cubic feet. That's almost one and a half times the amount of volume that we need. Here you'll see a cross section of the detention basin and this is very schematic but we proposed that the detention basin would be a maximum of three feet deep with a one foot of free board. So that means that your standing water would not be over two feet in depth. We're proposing gentle slopes, nothing more than 1.4 on the side slope, so it's gonna be more of a depressed basin, grassed area within the golf course. It's not gonna be noticeable. It won't require any kind of security fencing or barriers.

Okay, so the next thing to think about is the water quality. So the County of Maui has issued new standards on water quality and this project proposes to mitigate the runoff and control the quality of the water. The project will use the adjacent landscape areas so runoff will flow from the parking lot into the landscape area. Water will percolate and filter through the densely populated landscape. If there's overflow or additional runoff, it will go to swales which will meander through the project. Using the...by increasing the time that the water flows through the site, you're gonna get more percolation and more time for sedimentation of the particles and contaminants in the swale. So by the time it gets to the basin it's already gonna be cleaner than it was when it left the parking lot. When it gets to the detention basin, it'll be detained for some time and at that point, you're gonna get sedimentation of the particles and contaminants. So by the time it reaches the outlet which goes to the County system, the water quality should be pretty good. That's the intention.

So to summarize, the main points here are that the project is gonna be built out in phases, but this plan is for the full build out of the project so at each phase engineering will be done to determine their required drainage improvements, but it'll be based off this conceptual plan. We'll mitigate the net increase in the 50-year storm, and we'll manage the water quality and there should be no adverse impact to the project.

Mr. Helle: That basically concludes our presentation. The overall goal again for our project is to relocate our operations back to its original site. We've done this with making sure that our architecture matches the existing development that was there and that throughout this project we have had strong community support from our neighbors within Wailea and we thank you. Our team is available for questions and answers if you would like.

Chairperson Lay: Commissioners, we gonna hold off our questions until after public testimony. Right now we're gonna have public testimony. Testimony is gonna be for three minutes maximum. I'm gonna call out your name. When you come to testify please speak clearly into the mic, identify

yourself, and this is just on Item E-1. The one that they just presented before us. We have Mr. Hidalgo.

a) Public Hearing

Mr. Juveval Hidalgo: Good afternoon, ladies and gentlemen. My name is Juveval Hidalgo. I have been in business for the past 21 years operating my hair, nails, and bridal services salon from the Fairmont Kea Lani Maui. As you know, the Fairmont is upgrading their spa, and my lease has been terminated because of it. Apparently because they don't have a space for me to continue my business out of the hotel. Now, I have about 12 employees and of course, my employees are very local families with kids that go to school. My employees have been with me for the past 15 years and rely heavily on the services they provide to our clientele the income to support their families. I believe that this new addition to the Old Blue Golf Course in Wailea is very crucial to our business and to the community of Wailea to which we provide most of our services and from which we get most of our income. We did a survey and asked all our clientele how do they feel about relocating our business to the Old Blue Golf Course and the response was very, very positive. Most of the comments relating to that location they would say, that location would be great for us since we can just walk to the salon and back to our house. So this has become our slogan, walk to the salon and back to your house. Our clientele and residents of Wailea...for clients and residents of Wailea this is very convenient for them. I believe that the need to continue to provide our services to the local community is a plus to the Wailea Resort, and the tax dollars that it would generate is a positive to Maui County. Imagine how many people would not have to drive, and I call it the walk to get their beauty services done. Thank you very much. Mahalo nui loa.

Chairperson Lay: Commissioners, any questions for our testifier? If not, thank you. Our next testifier is Mr. Rainsford.

Mr. Jeff Rainsford: Good afternoon, ladies and gentlemen. My name's Jeff Rainsford. I work at guest services for Wailea Old Blue. I'm part of the union and on behalf of our co-workers and myself we're really excited to get this move done. I think it be beneficial for golfers and you know, it be a good thing to have the golf course, like Barry said, the pro shop in the middle of the golf course where it used to be. That way players can do a nine-hole golf round instead of 18, and you know, it would be really good for the course to have this done. So we're giving our full support on this project. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? Thank you. Next testifier is Mr. Izon.

Mr. Rod Izon: All right, good afternoon everyone. My name is Rod Izon. I'm a seven-year employee with the Wailea Old Blue as well as a member of the ILWU. As my co-worker said earlier and the rest of our co-workers and I are very excited for the move. It will greatly enhance our daily operations. This being a centralized location as well as ever changing Wailea, we gotta change with that and just by being centralized will help us out a lot. Thank you.

Chairperson Lay: Commissioners, any questions for our testifier? None. Are there any more people that wish to testify on this agenda item? Please identify yourself?

Mr. Paul Mancini: My name's Paul Mancini. I normally don't testify as a public witness but this is a bit of a deja vu for me. I'll tell you why. I lived in Kihei in the early '70's, very early '70's and at that time there wasn't much in Kihei. I lived behind Azeka Store. And we had Azeka Store, we had Suda's and the Maui Lu and really not much else at that time in Kihei there was very little if any development. Actually none in Makena and Makena had its own eclectic group out there at the time, but at a certain point in time along came Wailea and I remember it well because I used to travel out to Keawakapu and there wasn't much in Keawakapu at that time at all. Ann and Jack Texeira lived there and I'd visit them. And I ran into somebody grading a golf course at that time, this would have been the early '70's. It was Fran Sebros and Fran became a good friend all these years, and I asked him what he was doing. And he said, we're building a golf course here and we're building a club house. And he started to tell me about it and he was nice enough to build a set a golf clubs for my son. So I've stayed close to him all these years. A couple a years later I joined the Carvalho Administration and Elmer had a point at that point in time about Wailea, and this was really before it wasn't much in Wailea. He wanted it to be not the typical destination area. He wanted something of a residential character. He wanted the hotels off the streets. He wanted open space, and he wanted a sense of place and openness and not a lot of strip mall motifs that you see. And that was the first club house and that was sort of the hub of Wailea for many, many years. And it was the club house and Dicky Furtado had the steakhouse there and it had a nice feeling. It had a sense of place of openness. The reason I say this, and the point I'm trying to make is, sometimes you wanna go back and look at what was there in the past and you wanna basically reinvent what there in the past, and I think this project does it. I think it takes the low buildings, it keeps the open space and it doesn't look like strip mall. It looks like a park with a nice setting. And as I said, I usually don't speak and Ron's been my client and my friend for maybe 15 years so obviously I got a little bit of a conflict, but I do have a long, long history with that area. And when I think about Suda Store and it would be nice to recreate Kihei back in the '70's. Sorry to take so long, but thank you for your time.

Chairperson Lay: Any questions for the testifier? Mr. Mancini, if you could sign our sign up sheet? Is there anyone else wish to testify at this time? Step up to the mic, and identify yourself.

Mr. Charles Alman: Members of the Commission and ladies and gentlemen, my name is Charles Alman. I live in Golf Estates. I've been...I came to Wailea, Maui first time in 1972. We lived here. We've owned property here for 30 years. And I brought with me today a map of Wailea. I'm surprised these gentlemen didn't show a complete map of Wailea. This is all of Wailea. And what we're going to see here, I've been coming here for a good many years...at the corner of Wailea Ike and Wailea Alanui there's an enormous amount of foot traffic there and this is, of course, the shopping center is sandwiched in between two giant hotels. And we spend about four months...I spend four months here every year in Golf Estates. There's an enormous amount of foot traffic at that intersection. My prediction is that somebody is gonna be killed there, maybe on a regular basis because you've got all that traffic coming up Piilani, going down Wailea Ike or Wailea Alanui, and that traffic light is gonna have to be two or three minutes because you have enormous traffic. It's probably one of the busiest intersections in all of Maui. Plus the foot traffic there is so intense. I have heard this discussed at all, but this has so many flaws in it. I think you should hold another meeting so that the people in Wailea really know what is going on.

Now last evening I was eating with two gentlemen, they've lived here for many, many years, they're both in business here and we were talking about this and we looked at this map, and I said we're

going to a meeting tomorrow, but this meeting, I think is inconclusive because you must get more feedback from the people who live in Wailea who are gonna be directly involved. Now I don't know where everybody is gonna park for all these new development buildings. Now there's already a complaint by the shop owners at the shopping center there of not enough parking space. Now I've gone in there many times and really had to look around for a parking spot. If you're going to ...(inaudible)... a lot more traffic in there, you're gonna have every shop owner there in Wailea, the new shopping center complaining that this new group is taking your traffic. I think this new group should be required to put in their own big parking lot. May have to take three or four of those six acres. I think this whole thing is inconclusive-

Chairperson Lay: Please conclude your testimony.

Mr. Alman: I beg your pardon?

Chairperson Lay: Please conclude your testimony, you've gone three minutes.

Mr. Alman: Well, the other gentlemen they have, what, half an hour?

Chairperson Lay: That was the presentation.

Mr. Alman: I appreciate your notifying me. Just be sure I get that map back because I can...I visualize how...let me tell you, I've been a businessman for many years. My company is listed on the New York Stock Exchange for 30 years or 25 years.

Chairperson Lay: Okay, thank you

Mr. Alman: I don't think the people in Wailea are getting a full story of what is going on. And I think the lawsuits are going to keep this group busy for a good many years.

Chairperson Lay: Thank you very much.

Mr. Alman: Thank you. I wanna be sure I get my map back.

Chairperson Lay: Any questions for the testifier? Commissioner Wakida? You have a question, sir. Excuse me, you have a question from one of our Commissioners.

Ms. Wakida: Thank you for testifying. You had a concern about foot traffic, and you had a concern about not enough parking. Was there another, a third concern that you had or were those the two major ones?

Mr. Alman: Well, they're not talking about the safety factor. The safety factor here is very important with all the traffic we got. And I think...you know, I'm 92 years of age, and I can see this coming. You're gonna have a fire storm on the parking if somebody gets killed up there, visitors and so forth. They're out there all the time. That's a busy intersection. I don't know of any intersection in all of Maui that has as much foot traffic, busy foot traffic as that intersection. I think the people making this proposal are not giving you the full story.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So, and to the parking, you are suggesting that there isn't, there's insufficient parking for the employees as well as the patrons of the proposed shops going in?

Mr. Alman: Well, I haven't heard any discussion about new parking to accommodate this new building site. ...(inaudible)...old parking across the street there that's a fairly sizable parking lot.

Chairperson Lay: There's parking. They did cover some parking issues on that. Is there anything else?

Ms. Wakida: I was just trying to clarify what this gentleman's concerns were.

Chairperson Lay: Thank you, sir.

Mr. Alman: There's danger there.

Chairperson Lay: Thank you very much.

Mr. Alman: Thank you for your time.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioners, we have a situation where a couple of our testifiers are gonna have to leave earlier today on one of the agenda items that's coming up next. So what I'm gonna do is I'm gonna recess this agenda item and move forward to our next agenda item so our testifiers will have a chance to testify. They have work obligations and would like to testify. So we're moving onto Agenda Item E-2.

Mr. Ball: So we're just gonna testimony and go back to this?

Chairperson Lay: Yes, we're gonna come back to this right after.

Mr. Spence: Commissioners, we will return to...and I apologize to the applicants because we do have this time constraint for people who came to testify. We will be returning to the Old Wailea Blue presentation and deliberations in just a moment. But right now, we're going to do is take up Item E-2, Ms. Sheila Schesinger requesting a State Land Use Commission Special Use Permit in order to operate the Piilani Short-Term Rental Home in the Ag District and that's located in Haiku. Our Staff Planner is Mr. Kurt Wollenhaupt, and he's gonna give a overview of the request for a Special Use Permit.

- 2. MS. SHEILA SCHLESINGER requesting a State Land Use Commission Special Use Permit in order to operate the Piilani Short-Term Rental Home in the State Agricultural District on approximately 3.92 acres of land located at 110 Kane Road, TMK: 2-7-012: 117, Haiku, Island of Maui. (SUP2 2012/0009) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good afternoon, Members of the Maui Planning Commission. Thank you for the indulgence on allowing the testifiers to testify in a timely manner. I will just give a very brief overview. This is the request to operate a short-term rental home in the Ag District on 3.92 acres of land located at 110 Kane Road in Haiku, Maui. The request is by Susan Schlesinger, the applicant, and Ms. Kathryn Clark is acting on her behalf as the consultant to the project.

The applicant is requesting a State Land Use Commission Special Use Permit to operate a five-bedroom short-term rental home named Piilani in Haiku. The process for a short-term Special Use Permit is a notice of the application of the short-term rental went out to neighbors within 500 feet. There was not significant enough opposition to trigger a public hearing for that part of the project. However, as this is on Ag land, a State Special Use Permit is required to look at the agricultural components. I'll be getting into more of that and a much more detailed overview on the ag permit. In addition, there'll be an extensive power point presentation from the applicant and there'll be time, but in order to allow the testimony to proceed, some of the ladies and gentlemen in the audience are going to give their comments on it.

Chairperson Lay: We're now open for public testimony. It's Agenda Item E-2, our first testifier is Michael Greene.

a) Public Hearing

Mr. Michael Greene: Hello, my name is Michael Greene, and I live right next door to the Schlesingers probably closer than any of the other neighbors. First thing I would like to say is they've demonstrated a very generous communal spirit. They allow my daughter and my granddaughters to use their facilities there. I've been in the house in question that they're gonna rent. It sits back from all the existing borderlines. I've never heard anything or you can't even see into their property. I don't understand why anybody would complain. As far as I'm concerned, it's a go and I really, again, wanna say, I don't understand why anybody would complain. It's beautifully laid out. There are, I don't know what the Ag provisions are but they have a lot of fruit trees. It's a spectacular place, and it again, I don't—it sits far back enough. I've never heard anything. I can't even see into their property. And they've been good neighbors. Thank you.

Chairperson Lay: Questions for the testifier? None, thank you very much. Our next testifier is Arturo Wesley.

Mr. Arturo Wesley: Good afternoon, my name is Arturo Wesley. I live in Haiku and I operate a landscape and property management, sorry, maintenance business. I actually work for Mrs. Schlesinger, and she takes great care of her property to make sure that it looks nice. And I find that all of the properties that I work at that are vacation rentals, the owners want their properties to look nice and it's been my experience that when properties go from vacation rental back to long-term rental many times the landscaping is neglected and therefore, doesn't look so nice. I don't see any reason why this should not get a permit because I don't see any negative impact on the community by allowing the vacation rental.

Chairperson Lay: Any questions for the testifier? Commissioner Medeiros?

Mr. Medeiros: You're a maintenance contractor, right?

Mr. Wesley: That's right.

Mr. Medeiros: Okay, how much of that land is actually used for agricultural purposes. I mean, your job.

Mr. Wesley: Yes, for agriculture of the four acres probably two acres which have fruit trees on them should be ag, considered agriculture. I'm taking a guess.

Mr. Medeiros: Okay, so having fruit trees...(inaudible-microphone malfunction)...and these fruit trees that's a part of the farming...

Mr. Wesley: Well, I maintain the property and do all the work on it. I don't really know if it's run as a business or not.

Mr. Medeiros: Okay, so it's not an agricultural business. You're just taking care of the maintenance of the property?

Mr. Wesley: Correct. That's right. But there are fruit trees on the property.

Mr. Medeiros: I've seen the pictures, you do a good job, okay,...you make it good.

Mr. Wesley: Thank you.

Chairperson Lay: Any more questions, Commissioners? If none, thank you. Next testifier is Steve Sobaje?

Mr. Steve Sobaje: Good afternoon, I'm Steve Sobaje and my property borders the vacation rental on the south side. And I agree, you know, it is a beautiful property, and I give the owner credit for maintaining it, but you know the reason we moved to Haiku is to live in a quiet neighborhood where we all know each other. You know, all the neighbors know each other and talk story, the kids play, and that's not the case. You know, we...I've met the owner once. She lives in New York apparently and she owns a business on Maui and that's really what it is. And it's a little disappointing. We didn't move to Haiku to live next to vacation rental and that's the bottom line and several of us in our subdivision feel the same way. Guess I'm the only that showed up, that...there's like four or five of us. That's all I have, really and there's only been a couple of times when there were guests who made a lot of noise. We didn't complain. That's how I feel. Thanks for listening.

Chairperson Lay: Commissioners, any questions for our testifier? Seeing none, thank you very much. Our next testifier is Karen Notley.

Ms. Karen Notley: Good afternoon, my name is Karen Notley. I live right down the road from Sheila's house. In fact all of her guests would have to drive right past my house to get to around to her house. Her property is impeccable. Anybody in the neighborhood that is improving their property, beautifying their property makes my property more valuable. I'm all for it. She's a fabulous neighbor. She's considerate. She's responsive. Any issues that the neighborhood has

had, she's responded to. I can call her on a dime and she calls me back immediately. I don't feel like, and I would probably be right in...be the most impacted aside from the Greens that live next door. I have no problem with it all. I welcome it. I'm willing to share my neighborhood with guests and tourists and I think it's a great thing for the neighborhood. I don't think you can find a better place than Haiku to have a vacation rental especially in this neighborhood. The locals down the road are a lot louder than any tourists that will come in there or the roosters or the dog. So bring on the guests. It's great for our economy. It's fabulous for our neighborhood and she has an impeccable property and she should share it. So I'm all for it.

Chairperson Lay: Commissioners, any questions for our testifier? Seeing none, thank you very much. Excuse me, Commissioner Hedani?

Mr. Hedani: Is she a good farmer?

Ms. Notley: I wouldn't know if she's a good farmer. I don't go down to her property too often. She's a neighbor that lives way in the back, but we all, we all use our land to some degree. I mean, I live on agricultural land too. I have a huge garden in the back. I have fruit trees. I have banana trees. I utilize my property to the maximum ability. I might be selling the bananas, but my kids sell eggs on the end of the road and we have chickens and we have the whole area has quite a bit of farming that we're self-sustainable anyway.

Chairperson Lay: Director?

Mr. Spence: May I suggest the questions regarding the farming and everything, you know, the applicant will be able to address those and I understand that you have a farm plan, an approved farm plan.

Mr. Hedani: My only reason for my comment is the references that the testifier was making before the Commission was relative to property values in the area and how it can increase the property values through the use of vacation rentals which related to back to what Warren was talking about when he was talking about the word, prohibited in the Maui Island Plan as opposed to restricted or controlled.

Ms. Notley: My correlation though of say the farming and tourism in the area, anybody that beautifies their property which a vacation rental owner would do is going to increase the value of the neighborhood because they're constantly improving their land. So to that end, it's good for the neighborhood.

Chairperson Lay: Any more questions? Seeing none, thank you very much. Does anyone else wish to testify on this agenda item? Seeing none, public testimony is closed.

At this point we're gonna go back to our previous applicants and continue where we left off. And we just finished public testimony so at this point we're asking our Commissioners if you have any questions for our applicant or our Planners? And thank you very much for accommodating to the situation.

Continuation of:

- 1. MR. BARRY HELLE on behalf of OLD WAILEA BLUE, LLC requesting a Special Management Area Use Permit for the proposed renovations and expansion to the existing golf shop and restaurant buildings as well as the addition of six (6) single-story commercial, office, and retail buildings. The existing parking lot will also be expanded from its current 56 parking stalls to 286 stalls located at 100 Wailea Ike Drive, TMK: 2-1-008: 118, Wailea, Island of Maui. (SM1 2012/0001) (C. Thackerson)**

Chairperson Lay: Commissioner Ball?

Mr. Ball: I have a question for someone. There was some testimony during the traffic analysis about traffic lights being implemented in different phases, but if we approve this today, when would those phases come about?

Mr. Spence: I think that's a good question for the applicant. I have a question provided the Planning Commission approves this I'll have a question on the phasing myself and the completion of the project.

Mr. Packard: This is Mike Packard again. I'm the traffic engineer with SSFM. How I presented it was that in my professional opinion that you do not install a traffic signal until it's warranted. The Manual on Uniform Traffic Control, MUTCD, actually requires warranting, a signal to be warranted before it's actually installed. That's not to say that signals aren't installed when they're not warranted, but from Federal regulations that's how they govern and decide upon the need. The fact that no signal is warranted currently suggests that there's no need for one now. I did not take the projected traffic and put it onto existing traffic to understand that level of impact, but as with all traffic reports, all of these various levels are based on assumptions. So back to your question about the phasing, I can't ascertain when it will hit that level because a lot of it actually has to do with surrounding area. My client doesn't control the surrounding area development but it will add traffic along the primary road which will ultimately worsen the delay on all intersections whether or not they do their project or it is fully realized. So how you build it into the requirements, I don't believe that's for me to address, but in my professional opinion, you don't install until it's warranted because otherwise you could be doing a disservice to adding delay in the area.

Chairperson Lay: Commissioner Ball?

Mr. Ball: And I fully agree with that. That's why I asking more the Department and I understood what you were saying in your testimony, but I wanted them to answer, you know, if we approve this today, then when is this...what's the trigger? When does this happen, you know, and maybe I'm looking in the wrong way?

Chairperson Lay: Deputy Public Works?

Ms. Dagdag-Andaya: Thank you, Chair, and I do agree with Michael regarding the signal warrant. For our Department what we do, what we probably require for this particular project is just an

analysis or an assessment on the level of service at the time of construction. And so kinda similar to like a warrant check, a signal warrant check. That way we can determine whether or not the mitigation proposed is appropriate. So like for example, if a signal is warranted, if it's appropriate for that, at that phase of development. Michael also alluded to other developments that are happening in the area. So those developments also have their own requirements or their own warrants to complete as well. So, you know, in looking at...I guess one of them could be...(inaudible-microphone not working)...So like I was mentioning an assessment at the time of construction would probably be more appropriate for us.

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

Ms. Dagdag-Andaya: Right.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: You heard that gentleman testify about foot traffic?

Mr. Packard: Yes.

Ms. Wakida: What, what sort of study did you do for foot traffic and what is your response to his comment?

Mr. Packard: His primary concerns were at the existing signalized intersection which has pedestrian signals and crosswalks across all of the controlled legs. The other...there are other developments in the area that are proposing improvements to that intersection which include the addition of double lefts and double rights off of the primary road. With regards to his concerns about pedestrian traffic, there's...there are pedestrian signals there. It's a signalized intersection so therefore it's fully controlled already. The signals have been, have been updated to reflect latest ADA and MUTCD requirements for length of time. There are pedestrian push buttons, therefore, it's pedestrian activated signal which are at ADA locations as well. Outside of a grade separated interchange which would be the equivalent of a pedestrian overpass over the road which is in the realm of \$1 to \$2 million there's very little that can be done to mitigate any further than what exists at the intersection already. My client's primary impact from my analysis was to traffic operations up at the Wailea Ike intersection and for that, we're proposing the signal which will include crosswalks and pedestrian activated crosswalks which will further enhance the pedestrian and connectivity of the area. Therefore, it's my impression that my client's actually improving pedestrian liability of the area.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I guess this question's for Public Works again. The reference that you made regarding the continued construction around the area like Piilani and Wailea Ike Drive being...having traffic lights put in, can you verify that and then perhaps a time line? Because seems like a lot of the stuff is going simultaneously or in the near future.

Chairperson Lay: Deputy?

Ms. Dagdag-Andaya: Chair, you know, without having that information in front of me, I can't verify it at this time as to the time line or the as to when these improvements will take place. I'll need to kinda take a look into it and get...provide more information.

Mr. Tsai: Thank you.

Ms. Thackerson: Candace Thackerson, Staff Planner. I just wanted to bring up because I remember before this body it was either last year, about a year and a half ago, Staff Planner Gina Flammer brought before you improvements to Wailea Alanui and Ike, Ike Drive. And that time this body discussed the double turns on both sides and why the State was not gonna extend Piilani Highway down through. We held a public hearing on that. Many of the people came out from Wailea and spoke on their concerns about the traffic and this body did review and approve the improvements that were proposed to the double-right and the double-turn off of the...by the Shops of Wailea right there where it meets at the corner and that was, don't quote me on it, but I think it was about a year and a half ago because I was here that day too for a different project.

Mr. Packard: I think I can clarify which project. Honua`ula which was completed in 2010. It's included in their requirements that they do this mitigation. That project per se is adding upwards of a 1,000 vehicles in an hour, in the P.M. peak hour as which my project is adding about a 150.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: In your professional opinion, I'd like you to respond to this alternative to pedestrians. If you have all the signals going off, I mean stopping all the traffic and have the pedestrians crossing all at once in various directions then pedestrians stop and all the traffic begins again. Do you think that this would help the flow of traffic and pedestrians?

Mr. Packard: So that's called a barn dance and-

Mr. Shibuya: That's right.

Mr. Packard: Those exist in Waikiki.

Mr. Shibuya: That's right.

Mr. Packard: And if you...to think of the traffic and the conflicts in Waikiki, pedestrians outnumber vehicles. That's also applicable because along the primary road it's a one-way road for which you are only stopping vehicles therefore headed in that one direction. The amount of delay that would be added to vehicles if you allowed pedestrians to cross all at once would be exorbitant, and the cycle length to which the testifier alluded to would be pushing limits of two to three minutes which would therefore have a negative impact on pedestrians because it would be two to three minutes of them waiting at each corner before they are actually allowed to cross. Also, pretty much sets any of my analysis out with regards to the delay that would be impacted to vehicles which even if that's not the primary reason for any additional mitigation, the impacts to pedestrians would be, would be fairly severe in that they would be required to wait even longer.

Mr. Shibuya: Okay, thank you.

Chairperson Lay: Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: I have a question, but not for this gentleman to the I think the architect? I don't know if I'm stealing Mr. Shibuya's thunder but I have question on photo voltaic uses. You say you are, I forgot how you put it on your slide, but you were promoting the use I think of photo voltaic and you're looking at it to recharge your golf carts. I was wondering why...since your buildings are flat roofed I was wondering why you weren't just standardizing it and putting it all on the roofs?

Mr. Miller: well, there are probably many buildings in the future that would be good for the photo voltaic. What we're trying to analyze right now is the efficiency in the buildings that are under the canopy of trees and to see, see what difference that makes. The reason that we're gonna look at it for golf carts in particular is because that section of the building opens directly to the golf course to the south and to the west and it's a very good section of flat roof to use it and that's where the golf carts are located. But we're analyzing it for the entire project. Each building will be analyzed to see the benefits of using photo voltaic on it.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And is, is there some...are you looking at how you can hook up the charging stations also for cars?

Mr. Miller: For cars? Yes. We're gonna analyze it for all the electrical needs in the project. The reason I mentioned was the golf carts was because the particular section of building they're in which is underneath the existing building that was the original golf cart shortage area has a very large flat roof with the large lanai area and open restaurant area that we have on that side of the building. Previously, it was flip flopped and the restaurant was on the other building, but now that has such a large roof area, it's a place to look at it and determine the feasibility.

Ms. Wakida: Thank you.

Mr. Miller: Thank you.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Mr. Miller, again.

Mr. Miller: Yes?

Mr. Shibuya: You are aware of the two different types of inverters, the micro inverter which is more shade tolerant, and of course the, single string inverter that is not?

Mr. Miller: Yes, uh huh.

Mr. Shibuya: Okay.

Mr. Miller: And the micros may work well in the areas of our smaller buildings. One, because they're smaller buildings, and two, because they are under the canopy of the existing monkey pod and other trees. I've just never seen any testing on it to tell me whether or not it was feasible and that's what we'll do.

Mr. Shibuya: Okay, thank you very much.

Chairperson Lay: Commissioners, any more questions? Commissioner Hedani?

Mr. Hedani: I guess I would be remiss to past Commissioner Hiranaga if we didn't ask this question. On the drainage report that was submitted for the project I notice that you were concentrating on the 50-year storm. In a 100-year storm how much of the water would still be retained within the retention basin that you're creating?

Ms. Van Ammers: Fiona Van Ammers, SSFM. I haven't done that analysis. I would have to do that and get back to you, but I would guess that the proposed drainage basin which is more than one and a half times the 50-year storm would probably at least hit 75 percent of the 100-year storm, but I would have to follow up on that.

Mr. Hedani: I guess...follow up?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: How much of the additional change or increase in runoff is being retained in the basin?

Ms. Van Ammers: With the proposed concept that...the proposed concept is using the County's standard which is the net increase in a 50-year storm. So the increase from existing conditions to the proposed conditions will collect all the new runoff caused by the project improvements.

Mr. Hedani: Okay, I just can't ask the question like Hiranaga would ask. Just let's leave it at that.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I just...while you're on hydraulics, go ahead Candace?

Ms. Thackerson: Were you trying to ask that all pre and post development runoff will be captured and retained onsite?

Mr. Shibuya: That's part of it.

Mr. Hedani: I guess the question is how close to get to that?

Ms. Thackerson: Yes, I believe for the 10-year and for the 50-year they're capturing all of the pre and post development runoff onsite as the basin is 1.5 times the size, but we weren't sure about the 100-year. Pre and post, yeah, Public Works, they met them. So maybe Public Works can speak to that?

Ms. Dagdag-Andaya: Okay, our drainage rules address the post development runoff created by the project. So they took the project acreage and they used the calculations that are in our drainage rules. When we looked at the project with the applicant, you know, we...Engineering was satisfied with what the conceptual drainage plan looks like. And they're also including things like water quality features or water quality mitigation as well to address our storm water quality rules. But as far as the retention, I would say it's pretty close. It's sized really well, so...and then we'll take a look at it, of course, at the time of construction in detail once again.

Mr. Shibuya: My concern is not so much as onsite because you've assured me on that. There's those folks or properties that are above on the slopes of Haleakala above your area that may contribute to some runoff. Have you considered that and are there some mitigation or swales or gulches or some way to minimize the impact on this property? I mean, your property unfortunately is on the lower end and I just don't want you to be on the short stick.

Ms. Van Ammers: Yeah, so as a part of your drainage study, you typically would review the extremities or areas that are impacting your project. We...there is actually an existing swale at the top of the property which collects runoff and...yep, there you go. There's one, and redirects it into these existing culverts and existing swales. So at this time we don't anticipate any negative impact from upstream properties because the site already is able to handle the existing that's coming. So it shouldn't have an impact on our project.

Mr. Shibuya: I just don't want damages to occur to this investment.

Ms. Van Ammers: Yes.

Chairperson Lay: Any more questions, Commissioners?

Mr. Medeiros: I have one.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd just like to know if it's okay if I call up one of the workers to answer this question? I know you ask me if I had any questions.

Chairperson Lay: What do you mean by one of the workers? Somebody that is gonna testify in a professional manner?

Mr. Medeiros: One of the testifiers, not the presenters.

Chairperson Lay: No.

Mr. Medeiros: No, cannot.

Chairperson Lay: No, it would be done during public testimony.

Mr. Medeiros: Okay. This one deals with traffic. When you did your studies, I'm sure you've driven down that intersection in question by the Shops of Wailea and just down the street. I drive that

intersection every day. What's your assessment of the pedestrian traffic there? You know, I mean, is it heavy usage as compared to vehicular?

Mr. Packard: Mike Packard of SSFM. I'm aware of the intersection. I've driven the intersection. I've participated in the field review and the traffic counts of the area. I unfortunately don't have the Appendix which has all the pedestrian numbers for the area, but when we do our traffic counts, we do them for a.m. and p.m. peak periods as was determined from the 24-hour counts in the area. For those counts, we include pedestrians and those are input into the traffic model that determines the impacts and level of service and operations. When the intersection was analyzed for delay to vehicles it was taken as pre time which means, it was the assumption that a pedestrian push button had been pushed to cross each leg that crosswalk and ped signal exists. So therefore for the analysis, it's actually analyzing worse case conditions and so they level of service which is vehicular level of service is reflective of when pedestrians are crossing at all legs at all times. You really only get further delay to pedestrians when there is such a large number at corners and that there is an actual delay in their start up time to be able to cross. That there are so many at the corner that similar to vehicles, you have to wait for the person in front of you to step off the curb before you can therefore move yourself. But that's countered by the fact that there's a walk hand which is between five to seven seconds. That accounts for the fact that to clear the corner intersection. My analysis of this intersection is that there is not, does not warrant the need for increased walk time or don't walk time to accommodate levels of pedestrians that are of that significance. The testifier who has concerns about the crossing, my answer to that would be perhaps that's an enforcement issue with regards to making sure that vehicles yield to pedestrians when crossing an uncontrolled turn. Which I believe the right turn heading northbound, heading...making the northbound right, I believe that's a yield controlled and therefore, you would have to have a signal to have a full stop.

Mr. Medeiros: Okay, 'cause I drive that every day. I work at the Grand Wailea, okay. And the foot traffic is minimal, but there's a lot of old folks. So you know, while it's minimal, the crossing time might need to be addressed because it's old folks. Okay, and you know, I'm getting right up there in age and going be slowing down just like them pretty soon, okay. Now it's just something that I would like considered. I don't think that it's something that you guys have to do, but it's something that should be considered for the old folks. And that's why I was gonna ask those workers if they saw people at that corner 'cause I sure haven't. I mean, I've seen some people there, but the only people that I see there really with problems are the old folks because you know, they take their time.

Mr. Packard: So with regards to providing timing provisions for, for elderly or people with additional needs there's actually, in the most recently accepted METCD which is 2009, although Hawaii only recently accepted this year, it increases or decreases the speed at which an average pedestrian is accounted for what was previously four feet per second is now three and half feet per second. And it's provided that any intersection that is worked on, that traffic signal, pedestrian crossing timings are updated to reflect that slower crossing speed, and therefore, with the additional improvements that are coming at this intersection with other developments that would theoretically be addressed through that, and that accommodates both the METCD and ADA, Americans with Disabilities Act suggested improvements to provide for slower crossing pedestrians. Furthermore, I believe there's actually a pedestrian push button in the median for crossing Alanui, and therefore, by having that pedestrian push button in the median there, you have a refuge area and so if a pedestrian does not feel that they can make it across the entire road in that set given time, they

could stop in the middle and be on a raised curb protected area. But I have to admit that I don't fully exactly remember whether that exists. I believe it does.

Unidentified Speaker: Yeah, there's a—

Mr. Packard: There is a raised.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Okay, to get away from the traffic question, I have a question for the applicant. What's your estimated project cost?

Mr. Helle: Barry Helle. At this time, we still don't know. We're gonna have to go out to bid at some point. At this time, Leo, you got any comment? Yeah, we just don't know at this time.

Mr. Tsai: So you have funding secured?

Mr. Helle: Yeah.

Chairperson Lay: Any more questions, Commissioners? Commissioner Hedani?

Mr. Hedani: Barry, you heard the comment about parking expansion. Can you identify what the total expansion in parking?

Mr. Helle: Sure. So basically on this diagram here...the property as it exists right now has 56 parking stalls. When it's all said and done, it'll have 286 parking stalls. So we are adding a significant amount of parking to the site. You know, all along the perimeter with the, with the building clusters up in these areas. But when it's all said and done, we will be adding 286 parking stalls to the site which is basically a number that we've achieved looking at the County requirements, how much parking is required based on the square footage and the usage of our building. So based on what we are projecting to go in here as far as office space and also whether it's retail and when we did this, we estimated our parking requirements on a worse case scenario. So when you have retail that needs, you know, one stall per 100 square feet or an office that's 100 to 500 square feet. We took it at the worse case scenario. So there is ample parking. I understand where the gentleman was coming from, but maybe just...maybe we didn't clarify that as much as what we should have. But based on County requirements, again, looking at the worse case scenario. We meet the County parking requirements.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: It's more of a comment than a question, but I just wanted to compliment your treatment of the water as it left the parking lot into the intercepts within the landscaping. I thought that was a very innovative method of handling pollution coming off of the lot.

Mr. Helle: Thank you.

Chairperson Lay: Commissioners, any more questions? If not, I do. I have one. Your

development is gonna be in three phases, right?

Mr. Helle: Correct.

Chairperson Lay: And you're projecting it to be completed in five years is that a feasible amount of time for you to complete this project?

Mr. Helle: Yes, it would be. It would be.

Chairperson Lay: And there was a question that was asked about the funding. You weren't sure about the funding. Even if you broke up the phases you're still aren't sure the cost that would be incurred on this?

Mr. Helle: Without going out to bid and getting a firm, you know, cost per square feet we wouldn't be able to throw out a number. I mean, it's a significant number. But we are prepared to move forward.

Chairperson Lay: Commissioner Ball?

Mr. Ball: ...(inaudible)... follow up on that. I mean, without having a number you can't really secure funding for this, but you have a funding source or...

Mr. Helle: Well, in doing it in phases, the game plan would be and we are talking to, you know, financial institutions and in our Phase 1, we are nearly 100 percent leased. I mean, we're close. We're not quite there yet. We have two spaces, but based on the income that's gonna be coming in from Phase...from our current buildings that will provide the revenue source to secure financing to build the next phase and then just go to the next phase after that. So basically using the revenue that will be generated from the current tenants to qualify for financing future...for the first phase of development. Use that revenue to qualify again and move on. And we have talked to financial institutions and we don't feel that there's gonna be a problem with that. We've had very positive responses.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: When the traffic hits the point where the signals are warranted, is the project willing to fund the signalization of the intersections that feed into the shopping center?

Mr. Helle: If that is...if that's what it takes, yeah.

Mr. Hedani: If it's a requirement.

Mr. Helle: We also would like to approach other development that will be coming...like Alexander and Baldwin's got a project right across the street from us, kitty corner. Fair is all fair, we think, you know, if it comes down to it, we should share, but we are, you know, prepared to contribute to our fair share of that.

Mr. Hedani: Okay.

Chairperson Lay: Commissioners, any more questions? Can we get the Department—

Ms. Wakida: I have a question for the Director. Does this...suggestion about paying or paying a share of the signalization. Should that be a specific condition, a project condition?

Mr. Spence: I'm not sure because we have any number of other improvements that are going in that Candace brought up for other projects. You know, this would be a contributing project, but I'm not sure what the fair share would be or how we would—

Ms. Wakida: Perhaps then it just goes on what's represented during the meeting. Is that how that would be viewed? Since he has stated that they would be willing to pay their fair share?

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I'd like to make a condition if you know...

Chairperson Lay: Let's wait till we get to our recommendation, Mr. Shibuya?

Mr. Shibuya: Okay. Commissioner Ball?

Mr. Ball: It was my understanding in previous testimony by Public Works that as the permits came in, it would be the Public Work's position to require that as the project progressed, correct?

Chairperson Lay: Deputy?

Ms. Dagdag-Andaya: Thank you, Chair. We would first of all, ask for an assessment on the impacts to the level of service and then at the time, you know, determine whether or not that the signal is warranted. So it would be, you know, it would be dependent on what the assessment.

Mr. Ball: The signal will be dependent on the...the permit would be dependent on the signal then?

Ms. Dagdag-Andaya: Permit...it depends. I mean, 'cause we don't know what the warrant would say.

Mr. Ball: If it was warranted?

Ms. Dagdag-Andaya: Right. If it was warranted.

Mr. Ball: Then you would say—

Ms. Dagdag-Andaya: Because we don't know—

Mr. Ball: —...(inaudible)...before this gets passed.

Ms. Dagdag-Andaya: Right.

Chairperson Lay: Any more questions, Commissioners? Department's recommendations?

b) Action

Ms. Thackerson: The Planning Department recommends approval based upon the 12 conditions as listed in the report. In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the April 9, 2013 meeting as its findings of fact, conclusion of law, and decision and order, and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chairperson Lay: Motion?

Mr. Tsai: Yeah, so move to approve based on the Department's recommendation.

Mr. Medeiros: Second.

Chairperson Lay: Motion made by Tsai, and seconded by Commissioner Medeiros. Do you have any comments on the...any comments? Commissioner Shibuya?

Mr. Shibuya: Yes, as I mentioned, I would like to make a project specific condition and that will be No.13, that the renewable energy generation and energy conservation methods be incorporated into this project where possible, to the minimal levels of the Hawaii Portfolio Standards.

Mr. Shibuya: I second.

Chairperson Lay: Seconded by Commissioner Wakida. All those favor of this condition, raise your hand?

Mr. Shibuya: No, no, you –

Chairperson Lay: Oh, discussion, excuse me. Discussion on the condition?

Mr. Shibuya: I'll start in terms of, I'm making this a recommendation for this specific condition is because it's not listed here. It's not mentioned that renewable energy generation nor energy conservation methods even though they discussed it, I'm sure they can achieve it. The minimum levels of the Hawaii Portfolio Standards are 30 percent conservation. They'll easily make that. And in terms of the energy generation. It calls for 40 percent by 2020 and that's easy. I think they can do that by the roof space that they have available, it should be more than adequate to accommodate.

Mr. Spence: Clarification on the motion. Because in previous meetings, your recommendation was that they consider doing this.

Mr. Shibuya: That's right.

Mr. Spence: Okay.

Mr. Shibuya: It's the same thing.

Mr. Spence: Okay.

Mr. Ball: I guess for further clarification is they "may" not a "shall."

Mr. Shibuya: They may.

Mr. Ball: Right.

Mr. Shibuya: Yeah. They should consider it.

Chairperson Lay: So that's not even following their condition?

Mr. Spence: Commissioners, what happens when you make a condition on a permit, well, one of the things is if say for instance, this condition goes forward and the applicant has to consider alternative energy and photo voltaic et cetera, what would happen is when they...they write the compliance report, you know, prior to building permit, they would say, okay, we did consider this, we have enough roof top to do it and we'll go ahead or no, we don't have enough roof top, but we can do this amount. I think they will provide the Planning Department with an explanation on how they consider and that's, you know, pretty much the best they can do it. They must consider it and report back to the Planning Department on how that they did that.

Ms. Thackerson: Can I please have Commissioner Shibuya repeat that for the record so I can write it down and incorporate it, word for word. And if you'd...that the applicant may consider?

Mr. Shibuya: No. That the applicant consider that renewable energy generation and energy conservation methods be incorporated into this project where possible minimally to the levels of the Hawaii Portfolio Standards.

Ms. Thackerson: Okay, that the applicant consider that renewable energy generation and energy conservation methods be incorporated into this project where possible, minimally to the level of the Hawaii Portfolio Standards.

Mr. Shibuya: Yeah, to the levels.

Ms. Thackerson: To the levels.

Mr. Shibuya: Yeah.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Question for Will? Is cost a consideration also, not only roof space or whatever?

Mr. Spence: I think that would a part of their analysis that they would report back to the Planning Department. If it's infeasible, you know, there's-

Mr. Ball: On any account?

Mr. Spence: Yeah. They would report back and that would be part of their explanation and their consideration.

Chairperson Lay: Any more questions? Commissioner Shibuya?

Mr. Shibuya: What's interesting is that, our Code does not...it provides for installation, against heat that's radiated from the sun, but to penetrate into the interior area, but it doesn't have any credits for the panels that are on the roof because they actually shade the interior and keep the interior cooler. So that's something to consider.

Chairperson Lay: Commissioners? Candace, could you repeat that condition for us before we vote on it?

Ms. Thackerson: That the applicant consider that renewable energy generation and energy conservation methods be incorporated into this project where possible minimally to the levels of Hawaii Portfolio Standards.

Chairperson Lay: Those in favor of this condition?

Mr. Hedani: What do you want us to do? Raise your hand?

Mr. Spence: That's seven ayes. To add that condition.

Chairperson Lay: Okay, the condition is added. Any more? Commissioner Hedani?

Mr. Hedani: Candace, I'd like to see a condition added, No. 14, that would ask the applicant to contribute to the signalization of Wailea Ike intersection at the project on a fair share basis with surrounding properties as determined by the Department of Public Works.

Ms. Thackerson: I mean, that would...let's ask Public Works and the applicant if they're agreeable to...well, let's get the wording right on it.

Mr. Hedani: Right.

Ms. Thackerson: So that the applicant, and this would be probably at time of construction.

Mr. Hedani: I thought you took it down as soon as I said it?

Ms. Thackerson: Oh yeah, I'm not...I'm not a stenographer, wouldn't that be nice.

Mr. Hedani: That the applicant contribute its fair share contribution toward the signalization of Wailea Ike Drive at the intersection of the project with Wailea Ike Drive. There was two signals that was suggested by the applicant. One on the inbound and one on the outbound roadway. My recommendation is that they pay a fair share which probably would be 50 percent of that entire signal system for the north bound or maybe the mauka bound rather than a makai bound lane.

Mr. Spence: It went a little long.

Ms. Thackerson: Yeah, it's a little bit of a long condition.

Mr. Hedani: Sorry that wasn't, that wasn't the amendment. That was the description of the fair share in my head.

Ms. Thackerson: Once again, if I was a stenographer. That the applicant shall contribute its fair share of monetary contribution to the signalization of the traffic light at Wailea Ike Drive and the project intersection.

Mr. Hedani: Does that work for you Barry? At the time it's warranted.

Ms. Thackerson: At the time it's warranted. And you also wanted something in there about with the other surrounding properties, right?

Mr. Hedani: Right. Its fair share contribution with surrounding properties.

Mr. Shibuya: I'll second it.

Chairperson Lay: Deputy?

Ms. Dagdag-Andaya: Well, my only comment to that is, we're seeing some of those kinds of conditions with projects today and especially when you're trying to get other projects on board, it makes it a little bit challenging. So I would be kinda cautious as to how this condition is crafted. I know for our department we would...we feel that it's appropriate that at the time of construction that an assessment be done to determine whether or not the impacts are such that it would warrant the improvement. So in the event that there's nothing happening. I mean, we can't really say that the other developers are going to commit. It's like almost making somebody else come in with that fair share cost, and maybe Planning Department has some other things to add, but it does cause a little. I mean, it does become a challenge after a while.

Chairperson Lay: Director?

Mr. Spence: I certainly agree with the intent of the proposed condition. I think all the developments in that area should be contributing towards its fair share. Maybe to put the concern a little bit different than the Deputy Director, we could add this to this permit, but we have all these other permits that don't have this condition, I don't know how you get them to contribute...the other developments to contribute if they don't want to. So where does it leave this developer?

Chairperson Lay: Commissioner Ball?

Mr. Ball: I would vote against that motion because a couple of things. If the traffic light needs to be installed, it needs to be installed and a stack of money is not gonna help somebody cross that street. If it's warranted by Public Works it needs to be built and I'm not sure what trumps...if this would trump Public Works and say, well, the condition was we just gave money to it, we didn't have to install it is where that might go down the road. But if it's warranted, they should, they should add it at that time. And this may just put a pile of money on the corner instead waiting for other piles of money to come in. So that would be my concern with that. I vote not in favor of that.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: The reason for putting this in is if the project generates sufficient traffic that the signal is warranted at the intersection it should address that impact through a contribution for the cost that, problem. Whether Public Works accepts, whether Public Works accepts the money or doesn't, I guess is up to Public Works. I don't think the little old lady that lives down on South Lono Avenue in Kahului should be paying for a signal in Wailea when projects in the Wailea area can and should fund the signal in and of itself. So what this is intended to do is ask them for a contribution to the cost of the signal when it's warranted at the time it's warranted and leave it to Public Works to figure out what that share should be.

Chairperson Lay: Commissioner Ball?

Mr. Ball: My thought was that it was requiring the development to pay that not the little old lady on Lono. The requirement was gonna be of that development saying you want this building permit you gotta put this light in because you're gonna have a huge impact on the traffic on Wailea Ike Place.

Mr. Hedani: I didn't hear that.

Mr. Ball: And not having County tax funds paying for that. That's what I understood from Public Works that they would require that as the next phase comes up.

Chairperson Lay: Deputy?

Ms. Dagdag-Andaya: That's correct. No, yeah, it would be... 'cause if you go into that fair share it does cause some... yeah, creates some challenges. We're seeing that with some projects so either if it's warranted for the project then it would be their responsibility. Now if they wanted to work with other folks or with other developers then I would, maybe they can go ahead and do that, but for us to require that it just be a fair share, it becomes hard to manage, I think.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Are these State highways or roadways versus County roadways?

Ms. Thackerson: I'm sorry, from what I... 'cause I routed it out to State DOT. This application was sent to State DOT and Maui Office DOT. The State Office refused to comment because they only were concerned about Piilani Highway 'cause that's their jurisdiction and they said this was too far from Piilani Highway to warrant any comments from them. So it's all, it's all County, DOT.

Mr. Shibuya: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Let me just ask a question and I might withdraw my motion. Is it Public Works understanding that the applicant would pay for signalization on Wailea Ike Drive by themselves at the time it's warranted?

Ms. Dagdag-Andaya: I believe, I mean, that's part of their mitigation so it would be with their responsibility.

Mr. Hedani: Is that the applicant's understanding?

Chairperson Lay: Identify yourself?

Mr. Helle: Barry Helle, Obviously, we would rather pay a share but if, if it's required that it's...you know, to put in the signalization then so be it at the time that it's warranted.

Mr. Hedani: I withdraw my motion.

Chairperson Lay: Deputy? Actually, Director? Excuse me.

Mr. Spence: We do have a draft traffic mitigation fee ordinance. I mean, it would resolve this very question then everybody would know what they have to contribute towards, towards this rather than, you know...because I think it's not fair for one applicant to foot the whole bill. Everybody should share. We'll just look into that and see where we are at Council and push that forward. I just wanted to let the Commission know with this, this is in mind, we're trying to create an equitable way to deal with this very thing.

Mr. Hedani: Okay, my only comment is that what I heard was that they'll be required to pay a 100 percent for that intersection. And if that's the case, then we don't need an amendment to the staff recommendation.

Chairperson Lay: Commissioners, any more comments on our motion or recommendation? Yeah, motion was withdrawn. Call for the question.

Mr. Spence: You want me to restate motion?

Chairperson Lay: Yes, please restate the recommendation, Director?

Mr. Spence: The motion is, the amended motion is to approve the SMA Permit as recommended by Staff with the 13th condition to...that they shall consider the alternative energy, et cetera, et cetera, that Candace read back into the record.

Ms. Thackerson: Would you like me to read it one more time? Since I wrote it down so diligently. That the applicant consider that renewable energy generation and energy conservation methods be incorporated into this project where possible, minimally to the levels of Hawaii Portfolio Standards.

Chairperson Lay: Call for the vote. Those in favor?

Mr. Spence: That's seven ayes. Motion passed.

It was moved by Mr. Tsai, seconded by Mr. Medeiros, then

**VOTED: To Approve the Special Management Area Use Permit, as Recommended by the Department with an Additional Condition Regarding to Renewable Energy.
(Assenting - M. Tsai, J. Medeiros, K. Ball, S. Duvauchelle, W. Hedani, P. Wakida, W. Shibuya)
(Excused - J. Freitas)**

Ms. Thackerson: Thank you.

Mr. Helle: Thank you very much.

Chairperson Lay: Gonna take a 10-minute recess right now, reconvene at 3:10.

A recess was called at 3:02 p.m., and the meeting was reconvened at 3:10 p.m.

Chairperson Lay: Going back to the E-2 agenda item. We just finished public testimony. And Kurt would you like to do a better presentation of this project?

2. MS. SHEILA SCHLESINGER requesting a State Land Use Commission Special Use Permit in order to operate the Piilani Short-Term Rental Home in the State Agricultural District on approximately 3.92 acres of land located at 110 Kane Road, TMK: 2-7-012: 117, Haiku, Island of Maui. (SUP2 2012/0009) (K. Wollenhaupt)

Mr. Kurt Wollenhaupt: Thank you. Thank you, Members of the Maui Planning Commission. We're gonna try something a little bit different today for the new Members especially. I'm gonna give a little...you had a general background on the State Special Land Use Commission Permit. I'm gonna give a little background on why this permit applies to the application for Sheila Schlesinger in Haiku. We call this the Land Use Special Use Permit, and Gina Flammer, who worked diligently on this Short-Term Rental Home Ordinance likes to call this the Ag Permit.

You're acting today as the Land Use Commission because the project is on acreage less than 15 acres. A Land Use Commission Special Use Permit may be obtained when certain unusual and reasonable uses within the Ag District other than for which the District is classified may be permitted providing certain criteria are met. So in the red down there, the Planning Commission today is going to act as the Land Use Commission for this project. When the ordinance was passed by the Council, they specifically allowed short-term rentals in the Ag District. They knew that agriculture encompasses many different forms. Agriculture today is not just mechanized farming on large parcels. It's not just pineapple farming. It's not just grazing. It can take many different forms and the reality is that many of the Ag parcels have been subdivided into two, three or four acres.

So with a Short-Term Rental Permit on Ag there's a two-step process. First off, is the applicant has to apply to have a short-term rental house. If that was all that we had today, this could have been approved administratively because there was not a sufficient number of protests to trigger a

hearing. So if this had been in Haiku...I mean, if this had been in Kihei, if this had been in Paia, if this had been in Lahaina, this project would have been approved. But because it was on Ag, we take the separate additional step to look at this from an agricultural perspective. Consequently, a Land Use Commission is permitted for any use not outright permitted. This concludes cell towers in Ag, microwaves, concrete batching plants, B&Bs, STRs, Haleakala Visitor Center, the Alii Lavender Farm and the West Maui Boys and Girls Club. This is a permit that you're going to be seeing time and time again.

So how do we review a Land Use Special Use Permit? We have five criteria. The first is that it's going to be an unusual and reasonable use. Short-term rentals are allowed in the Ag upon making findings. The first one is that the use is not contrary to the objections of HRS 205 and 205A. What that simply means is that having a short-term rental house on your property does not preclude agricultural operations. It's simply an adjunct operation. The short-term rental house, the ag. The two are not mutually exclusive. They can coexist together. So the importance of the implemented farm plan, the State Office of Planning in speaking with the County we had to determine what level of Ag, how are we going to look at Ag? What is Ag? It can't be commercialized, commercialized property for tens of thousands of dollars that simply doesn't work on a two or three-acre parcel. So with the State Office of Planning and the Planning Department and the Commission, it's been determined that an implemented farm plan existing on a property does suffice and meet the conditions of the Ag Ordinance and the State Land Use Commission 205.

So how this works is that the applicant comes in, they give our Zoning Administration Enforcement Department a copy of their Ag plan. The...Rulan Waikiki and her Staff go out to the property to see does this requirements, is there 50 percent in an Ag-type operation, have they done this, and is it implemented? So we've decided that for these short-term rentals and for B&Bs we are asking that the farm plan be implemented and approved, in today's case, you will see that they have met that requirement. This is a letter that came from the State Office of Planning. They asked us how are we gonna review these and their recommendation was review them similarly to the bed and breakfast homes. So that is what we are doing. So the implemented farm plan demonstrates compliance. Again, an improved and implemented farm plan can take many, many, many different types and styles. It can be aquaculture which actually this applicant is doing in raising koi. It can be flower farming. There is not, there is not a minimum amount that they have to make from it. There's no requirement to make 20,000, 30,000. It could be a vanilla bean farm. And the word, "farm" has to be taken into context that different farms mean different things to people. In some places, it could actually mean conservation. Have they set aside land on their property that's never going to be touched? This just shows, there's a letter that comes, there's a farm plan approval and there's the farm plan.

As I said, there are five criteria. The first is, does it meet HRS 205? The second is, will the desired use not adversely affect surrounding properties? That's why we do the public hearing notice. That's why we allow the neighbors to testify for or against the project. We look at is it going to unreasonably burden public agencies? Again, these project are short-term rental homes which are to be used by one group of people. It's not been considered that the use of the short-term rental is not going to unreasonably burden more than if a family lived there full-time. Have there been unusual conditions and trends since the District Boundaries were established? Well, actually since 1961 there have been considerably different issues. Back in '61 all of this area was in probably grazing. Actually this area was probably grazing. There was no pineapple right here. We don't

believe. But agriculture was king. Now we do recognize that tourism and agriculture can coexist tourism is an equal leg of the economic stew over Hawaii. That is a really different change. And finally is the land...(inaudible)...that is unsuited for the uses that's permitted. Now this word, "unsuited" is it unsuited for mechanized agriculture ...(inaudible)...probably true, but it is suited for, again, a marriage of a single-family home with agriculture. So that was just kind of a introduction to try to help you understand what this permit's all about.

Now I'm gonna bring up--this is the slide show that the applicant is doing. And now specifically on this project it's for a request for a five-bedroom, short-term rental home by Susan...oh by Sheila Schlesinger, I'm sorry, Sheila Schlesinger and Kathryn Clark is helping her with the application, and actually Kathryn and her husband are the designated managers to be on-call 24-hours in case there are any issues with this operation. It's Located at 110 Kane Road in Haiku, in the State Ag District. The surrounding uses are in Ag. As we talked about this morning this is a not in any specific growth boundary in the Maui Island Plan and the surrounding uses are Ag and Residential. In fact, just today one of the gentlemen who testified actually who didn't want this, their name of their development is called Haiku Country Estates. So we get a sense that these are developed properties. This one in particular has done a truly remarkable job of adding to what was before just essentially grazing land that was there.

The criteria for the Land Use Commission is what I just described the five criteria. Procedurally this application on June 11, 2012 the applicant mailed the notice of application to the owners within 500 feet. That mailing did not trigger any need for a public hearing. On February 21st, the Maui Planning Department mailed a notice to the applicant and appropriate agencies telling them of this scheduled hearing and in March 1st, the applicant mailed a letter to adjacent owners within regards to this meeting on the State Land Use Commission Special Use Permit. There have been no police reports on this. I've checked. There have been no complaints. There have been no requests for service which is another type of complaint that comes to the Zoning and Administration Department regarding noise, regarding any sort of complaint. The State Office of Planning, this letter is written in there, we again, as I have indicated they requested that a implemented farm plan has been provided which it has.

Just to give you some sense, this land is classified as C which was in the...it's the in middle range. A to E, A being the best, E being the worst, this is C. It has in the past most likely been just used for grazing. There's no indication that pineapple was done here. There's no indication sugar cane was done here. Photographs of the past indicate pretty of just grass and ranch land. Importantly, the applicant did supply a farm plan and unilateral agreement. The farm plan was approved as farm plan 2012/0084. The Zoning and Enforcement Division has indicated it's been implemented. The applicant and manager will be talking in detail about this. The farm plan comprises 57 percent of the total area of the 3.9 acres. I believe Mr. Medeiros did ask that question earlier about how much of this was in some type of ag operation and the percentage is 57 percent. Just to break it down there's a palm grove of 15 percent. Some of these palms were originally to be used at the Grand Wailea. They're getting so large now it would be difficult to transport them. Ms. Clark in her presentation will be telling about the Jade and the different types of flowers that are there. There's a fruit orchard, there's koi pond that fits into the aqua farming part of this and then pine, bamboo, and rubber trees comprise about 10 percent. It has met all the requirements of the inspections from the Building Department. And the testimony that has been received is in the book. There'll be discussion on the testimony. You've had, of course, testimony today from adjacent property owners

regarding this project. I'll be happy to discuss any of that in detail, but at your indulgence, I would let Kathryn Clark and Ms. Schlesinger do their power point to talk about their specific project.

Chairperson Lay: Okay, sure.

Ms. Kathryn Clark: My name is Kathryn Clark and I assisted the Schlesinger Family in putting together their application. I've actually known each of the three owners of this property so I was it from the time that it was an open field until it is what you see today. These are actually early pictures. This is what was on that land when the original owner first started to build. There wasn't even a mature tree. And this is what it is today. Even though some of the surrounding properties don't have a lot of agriculture, this property is fully planted. If you look at the entire area to the right, that area is strictly ag and we'll go into each of the items that are in there. The area to the left has a section for flowers and fruit trees and the property, the house and the pool and tennis court just occupy the middle slice of the property and here's that same picture but done in a way where it's labeled so that you can see the actual various activities that are on the property.

So this is the access to the property. It's down Kane Road. The property is gated. There's driveways to either side going to the neighbor's properties. It is a private road. So the agricultural activity on the property, it definitely produces enough flowers and fruit to go to market. That's never been Sheila's preference. She actually gives it all away and the freedom particular goes to workers, family, visitors and whenever we have something that is with a abundant fruit then it will go down to the Food Bank. Sometimes, we...you know, different seasons of the year we just don't have enough to make it a sizable delivery to them, but then at other times there is.

The aquaculture is sort of an interesting feature of the property because it started out as a hobby but we'll actually end up making more money than the agriculture ever would. And the size of the pond can accommodate the koi until they're approximately 18 inches and that's when they'll be sold.

She's also donated bamboo to some students from Huelo that were building a sustainable house model. So this is various fruit from the farm. Basically the lychee is sort of our pride and joy because every second year that tree seems to be covered to the point where you wonder why the branches don't break. But as...(inaudible)...a lot of people that have fruit, there's bananas, avocados, star apples, star fruit, oranges, lemons, limes, grapefruit, lychee, mango, papaya, and Surinam cherries, but there's also flowers everywhere. And we're frequently asked for flowers for May Day or graduations. We've also donated for weddings, baby luaus or for some of the churches. We do have an entire screened area that supports the jade, and so this is the time of the year when the jade starts to flower and of course, that's in high demand from people that are doing either graduations or May Day. The palm grove was the brainchild of the original owner and at the time if you recall, the Grand Wailea was calling up anybody they could find looking to buy palm trees at a \$1,000 a tree. So his thought was that well, if palm trees are that expensive we need to plant rows of palm trees and he did. Well, after the Grand Wailea did that, of course, everybody planted palm trees and now it's hard to even give them away. So there is an ad on Craig's List all the time. It does generate a few calls. A few have been sold, but they're almost at the point now where some of them are so big that nobody would even want to take them. So there is consideration to taking them out and starting something smaller. But it's important that these are not within the landscaped area of the property. This is that right section of the property that is just

ag. The gardens cut the grass in there, they clean out the dead flowers from the back row, but the rest of this is just fruit and palm trees. But the newest ag ventures, first of all, they planted a row of koa trees at the suggestion of a local guitar maker. How long it would ever take to make wood, we're not too sure but they're certainly growing quickly. But the aquaculture actually started out as a hobby. Started out as oh, it would be nice to have koi fish in the pond. Well, it turned out that the pond can support them to approximately 18 inches but that's when they actually become valuable. And so there was a gentleman in Haiku building a very large pond that wanted approximately 35 of these large koi. So while he was finishing his pond, unfortunately two of the neighborhood boys vandalized the pond including our really great golden koi. So they took the fish, they threw part of them in the bushes and they put the rest in a chlorinated swimming pool. So for those fish that was probably a really slow torturous die, but we've got more going now and so, we're hopeful that, you know, they'll grow as quickly as the others did.

We also wanted to address fire protection. The Makawao Fire Station would respond and I did speak with Kirk at the station. They're exactly 5.29 miles away. They would bring a fire truck with 750 gallons of water. He indicated that this was usually sufficient but we do have a monitored system at the property that would provide early detection as we found out when somebody was cooking bacon one day. We also have a Fire Department hook up right by the pool, and they indicated and they have seen it that they have the drafting ability to use the 40,000 gallons of water that are in the pool. So we thought that we had more than enough water for what was needed. He said if it was just the worst fire imaginable that if additional response was needed it would come from either Paia, Kahului or Kula and they would bring a hose across the property directly behind us from standpipe 209.

We also wanted to address the neighborhood concerns because they were very concerning to Sheila and her family. Within the neighborhood various...we spoke with almost every neighbor and several confirmed they have absolutely no problem. The green properties provided letters of support. Actually there were two neighbors that did come to testify as to that support, and three letters were provided from the subdivision above this one that indicated they were not comfortable with the use, but I do want you to note that their access is the blue road up on Kalia Way. They do not use the same street that Pililani would use. Pililani comes in along Kane Road. Although we wanted to address the concerns they weren't really based on impacts so it was difficult to resolve. One of the neighbors felt that Sheila didn't live on the property so shouldn't qualify for a permit. One of the neighbors was concerned about the agriculture, but in fact this property has more agriculture than most neighbors do. And Mr. Sobaje mentioned hearing the cars on the gravel driveway. Whoever lives there unfortunately the cars will make the same noise, but going forward, we're actually going to try smaller sized gravel thinking that maybe this will reduce the noise. The travel on the driveway right now is fairly chunky. So we're thinking that may help to eliminate that concern. This is the view from Pililani to the Sobaje property. It's very well screened. We don't look at them and they wouldn't be looking into the property.

This also shows, we looked at the property and thought if there was going to be noise on the property where would be? Well, generally when people are playing around the pool. So we wanted to show the relationship of the pool to the people that had concerns about the application. The closest one is Mr. Sobaje at 450 feet. So they're quite a distance away and it's highly unlikely with all the vegetation in between that they would hear any noise from the area of the property. They also were very concerned that the application showed a very large gravel parking lot. This was

something that Sheila inherited from the prior owner. He was a small publishing company and he frequently invited all of his staff to the property. To properly park everybody he put in this gravel parking lot. We have no problem chaining it off. We don't need the space. The fire truck however indicated they would use that if they had pulled into the property that would be where they would turn to get back out of the property.

So within the neighborhood, Sheila is here for four months of the year and with husband phasing into the retirement, they hope that that will be six. She welcomes any neighbors to come to her with any concerns. The three neighbors are on Kalia Way. They do not use Kane Road so no vehicle impact. There's somebody at the property almost every day, be it the gentleman that takes care of the pond, the gardener, the housekeeper or the pool service.

And she is a good neighbor. She's fully fenced the property so that her grandchildren or guest's children would not wonder onto neighbor properties. She's trimmed trees for neighbors, in some cases to open up their view, in other cases to open up an access for their property. She contributes to maintenance of Kane Road even though many other neighbors do not. Knowing Sheila as well as I do, I can honestly tell you she would never allow a party or a big gathering at that house. And when the property was vandalized, she went to the parents of the children not the police. She felt that was the neighborly thing to do.

And she also participates in the community. She's contributed to the Humane Society, the annual Visitor Industry Charity Walk, Makawao Union Church Youth Program, the Hui No'eau, Maui Arts and Cultural Center, Women Helping Women, and many, many flowers to local celebrations, and fruit to the food bank. Thank you so much for your consideration.

Chairperson Lay: You have another speaker?

Mr. Wollenhaupt: I think the applicant, Sheila, would like to address the Commission at the appropriate time.

Chairperson Lay: Sure.

Ms. Sheila Schlesinger: My name is Sheila Schlesinger. We, this is our 13th year on the property and prior to that we...we've been on Maui since 1989 on a regular basis. It started when my daughter when she was 16 worked as a mother's helper for a family in Paia, and she encouraged us to come over and since that time it's been a family retreat for us. In 1997, we lost our son and we left the beach area and decided that we wanted to come to Upcountry Maui and we were fortunate enough to be able to stay at Pililani. And then a couple years later the owner contacted us and said, we know how much this property meant to you and your family. It was a place of peace and relaxation and thinking and we really felt the presence of our son. And we were able to buy it, and my one daughter got in engaged there and she wanted to have her wedding there the next year and we thought that that might not be such a good idea because we didn't want to disturb the peace and tranquility of the neighborhood. So instead we had it, we rented a home in Makena but we employed all local area people to make the wedding.

The one thing that we realized is that not everyone that comes to Maui wants to stay in a hotel or a condominium and we feel that our home provides a very unique Maui experience. It's a wonderful

place for families to come and to congregate. You don't have to leave the property. It's just beautiful. It's just very, very special to us. It is some place that we really enjoy sharing and it's, it's our home. It's not an investment property. We live in a, the rest of the year in a small town 60 miles north of New York City in a town of 4,000 people which has very much the same...it's very rural. It has very much the same feeling as Haiku and we know how we love our town and we're just as involved in our town at home as we are in our home here in Maui. And because my husband's retiring we look forward to spending more than four months a year here. And as the years go by, our children and our grandchildren are spending more time here and all I can say is that we love our home and we wanna share it.

Chairperson Lay: Thank you. Commissioners, you have any questions for the applicant or our Planner? No questions? Commissioner Wakida?

Ms. Wakida: Yes, for the applicant. You spend...you said you spend four months of the year on the property is that correct?

Ms. Schlesinger: Uh huh.

Ms. Wakida: Who takes care...I mean, we've heard from your gardener, but as far...but he says he doesn't really do any of the farming, he just takes care of things. So who does your...who picks your fruit, who cuts your flowers and takes them wherever?

Ms. Schlesinger: Anyone that expresses interest in doing so. As far as the fruit trees, he does maintain the fertilization of the trees and the health of the trees and when the fruit is ready to be picked, it gets picked by him or his workers or our guests that are staying there or us or I have over the many years that we've been here I've got loads and loads of friends that are more than willing to come and take the fruit. I mean, it just doesn't fall to the ground and it gets thrown away.

Ms. Wakida: And the flowers?

Ms. Schlesinger: The flowers, we donate the flowers to churches and to anybody that wants them.

Ms. Wakida: But I mean, you're not here for eight months, so who's their contact person?

Ms. Schlesinger: Kathy and Norman Clark.

Ms. Wakida: May I?

Chairperson Lay: Anyone else have any more questions? Any questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Apparently have a beautiful area, a beautiful property but my concern is always that this is an Ag District. It's not a gentleman's country estate district. And as we're constantly reminded by the State, the ag business should supplement...the short-term rental business should be a supplement not the main industry on an Ag lot. The agriculture should be the main industry. So I'm always looking to see that that end of this is more than just gardening. More than just a landscaping kind of gardening. So, you're trying to get your koi business back up?

Ms. Schlesinger: Yes. Koi business and also the palm trees. The palm trees now are kind of too large to harvest but they're certainly...we thinking of just implementing other smaller palm.

Ms. Wakida: Right. But farming as far as farming I know that Kurt gave us a lot of definitions of farming, I don't know if I necessarily agree with all of them but, I like to see the rural nature of this area preserved and not just turned into a picture book for gentleman estates.

Chairperson Lay: Any more questions, Commissioners? Commissioner Tsai?

Mr. Tsai: If we approve this, you know, short-term rental permit, how are you gonna go about managing the people that you're going to rent this to? Are you gonna personally screen them yourselves? Are you gonna have a onsite property manager? Someone will take care of this?

Ms. Schlesinger: Yes, we have property manager, Norman Clark and his wife, Kathy helps him and they carefully screen all of the applicants who wanna stay there. We don't allow rock bands, we don't allow, you know, people who we think wouldn't be...we want families to stay there and they carefully screen the applicants. We've never had a complaint. And in all the years that the property's been there, there's never been a complaint. As I said, this is our 13th year there.

Mr. Tsai: What about, are you going to institute some type of quiet hours or something like that just as a courtesy to your neighbors?

Ms. Schlesinger: I think there are probably ordinances in place aren't there about quiet hours, after 10 o'clock or something you can't? Is it 10 o'clock or something like that? After 9 o'clock.

Mr. Wollenhaupt: To give the Commissioners a bit background here, this is again, a two-step process. Should the Commission affirm today's State Land Use Commission Special Use Permit then there will be a Short-Term Rental Home Permit with approximately 18 conditions signed by the Director which outline quiet hours such as I believe they're from 9 o'clock in the evening to 8 in the morning. It requires a State of Hawaii approved real estate agent or a direct family member to be on-call 24 hours. It requires specific signage with the location. So it's very...it's important to note the conditions in the State Land Use Commission Special Use Permit while there are only five of them, have to do with this permit which functions in concert with the very detailed Short-Term Rental Home Permit. So they will have to meet all of those requirements and the process for review of these short-term rental homes is vigorous. Not only do they have to insurance certificate, meet all the conditions, have a manager within one-year the short-term rental home then comes up for renewal. We will check with the Police Department, the Zoning Department, have there been any infractions of the law? If there have, if there have been two...if there have been complaints to adjacent neighbors that are legitimate then this Commission can see this all over again. So there are lots of safeguards built in this to give the people the opportunity and I think that was the whole mission of Council. Give people an opportunity to do a short-term rental home. So, that might help answer some questions.

Chairperson Lay: Commissioner Ball? Question for the applicant. You mentioned that your husband might be retiring soon and then what is your plan after that?

Ms. Schlesinger: He is retiring. That's definite. That's his plan. He is retiring and we'll be

spending probably six months a year here.

Mr. Ball: And would that be here at the residence or?

Ms. Schlesinger: Yes.

Mr. Ball: And how does that work? You're gonna book yourself in or it's a bigger property than just the five bedrooms or...

Ms. Schlesinger: Oh, no, no, no. It's just...it's a single-family dwelling that has five bedrooms, but when we're there we'll know well in advance when we're going to be there and then-

Mr. Ball: You'd book yourself in.

Ms. Schlesinger: We'd book ourselves in essentially.

Mr. Ball: Thanks.

Chairperson Lay: Commissioners, any more questions? Commissioner Shibuya?

Mr. Shibuya: Kurt, can you point out where the location of the standpipe is on Kailua or Kaila Way? Approximately where? I'm looking at your Exhibit 1. About there or there, you know?

Unidentified Speaker: Can I show you?

Mr. Shibuya: Well, everybody needs to see it too.

Ms. Clark: This doesn't quite show it. It's the house at the very bottom is fairly close to the street and it's right at her property line. So it would come right across Jean's property. So basically here's the house this is Jean, and it's right here.

Mr. Shibuya: That's about 400 feet?

Ms. Clark: Well, if it's 450 from there to there. I think it's probably less from here to here. So maybe 300, that's a guess.

Mr. Shibuya: Okay, thank you.

Chairperson Lay: Any more questions? If not, can we get the Department's recommendations?

b) Action

Mr. Wollenhaupt: The Maui Planning Department recommends to the Maui Planning Commission approval of the Land Use Commission Special Use Permit subject to the six conditions that were noted in the green pages for the recommendation. These are standard conditions that have been written into each of the previous Special Use Permits that this body has approved for short-term rentals. I have taken one Kuliki which is within the Haiku Community Plan area similar to this and

these were the six types of conditions that were approved. The only notable thing is that it will be valid until April 30, 2016. It gives the applicant the opportunity to operate for the one-year and then there's a two-year extension of the Short-Term Rental Permit that's essentially automatic unless there have been complaints to the property. So in light of that, the Department would recommend the Commission adopt the Planning Department's report and recommendation prepared for the April 9, 2013 meeting as its findings of fact, conclusion of law and decision and order and authorize the Planning Director to transmit said written decision and order on behalf of the Commission.

Mr. Ball: Motion.

Chairperson Lay: Motion by Commissioner Ball.

Mr. Ball: Motion to approve the short-term rental in the County Ag Zone and the State Ag District as recommended by the staff report.

Mr. Hedani: Second.

Chairperson Lay: Seconded by Commissioner Hedani? Any comments? Commissioner Wakida?

Ms. Wakida: I will be voting against the recommendation. I'm just not convinced that this is farming. What's happening on this property is about the same thing that happens on my property and I live in a subdivision. So, I'd like to see a more...a greater sense of farming.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, I think the difficulty that I'm having and I do have difficulty on these applications is that there appears to be a disconnect between a hotel operation and a farm operation. And the problem that I have basically it's not a problem with the applicant. I'm sure she's a genuine person, you know, that has a genuine love for the island at heart. I think it's the process that we've created and the situation that they're placed in that makes it a little bit of a lack of integrity in labeling. You know, it's a gentleman estate that's being used as a hotel, a short-term vacation rental, a transient vacation rental, a hotel operation essentially is what it is. To call it a farm, a farm dwelling, an accessory farm dwelling on the property and a use that's accessory to the farm intent is having the whole thing ass backwards frankly and it's...it lacks integrity in terms of just being honest with ourselves as to what it is. Agricultural Subdivision...and it's not this applicant's fault, it's an opportunity that presented itself because the system presented it to her.

The State Land Use Commission is just as much to blame for it as we are in approving it because we will. The subdivision that they live in was subdivided into parcels that no farmer can economically create a crop that will financially pencil out and be economically viable anywhere on this island with the exception of several crops that are not currently legal. But the problem that I have with it is, is we're looking the other way and we're saying it's a farm because it has fruits on it. Edible landscaping is what it has. It's not economically viable, so we're not gonna ask them to cross an economic hurdle because they can't do it. You can't sustain yourself on this land with a farm plan that relies on money from agriculture to sustain itself. The State Land Use Commission approved the system to subdivide large parcels of a 100 or more acres down into two-acre parcels by excusing itself by saying it's a family subdivision. A farmer wishing to donate his land to his four

children, therefore, he's subdividing his land into four pieces. Those children grow up and they wanna subdivide the land and bequeath it to their children so the 25 acres becomes five acres and so on until we get down to 3.98 acres which is what we have here. So the family subdivision has become essentially a gentleman estate subdivision which is what you see in that picture right now. The question about agriculture is, true agriculture, a farmer moves in next door, opens up a pig farm, an intensive pig farm in order to have a grain-fed pig operation right next door with all the smells and odors and squealing pigs, everything else, in order to try to make a farm work is gonna adversely affect this property to the point that he can't do that. You know, cannot do that because they'll object because your farm is not like my farm which is the gentleman estate farm which is a hotel. I just needed to get that off my chest. I'm gonna vote for the project.

Chairperson Lay: Any more comments, Commissioner's? Call for the vote. Those in favor?

Mr. Spence: Three ayes. Four ayes. And you're voting?

Chairperson Lay: Yeah.

Mr. Spence: The Chair votes aye.

Chairperson Lay: Those opposed?

Mr. Spence: Three nays. So the motion passes.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department.
(Assenting - K. Ball, W. Hedani, M. Tsai, S. Duvauchelle, I. Lay)
(Dissenting - J. Medeiros, P. Wakida, W. Shibuya)
(Excused - J. Freitas)**

Mr. Wollenhaupt: Thank you everyone for listening to my discussion. The reality of this honestly is you're going to be seeing these over and over again. So I understand your comments. We have a process with the farm plan when it's implemented, so it might merit discussion but that's the process in place. And I'm actually from Iowa originally and we do have a 5,000 pig farm next door to my house there and it makes a lot of noise.

Mr. Ball: Kurt, is there any consideration for a change in zoning at that time to like Rural?

Mr. Wollenhaupt: Well, that's a good point to bring up. Many of these or actually it's a little late now in the game so I'm going to pass this out, well you see here, I mean you see, see what is out there. The Rural designation would seem to be more appropriate for many of these areas. Maui Meadows is Rural. This really should be Rural, but it reflects the reality that you're going to see when requests come in Launiupoko which you're going to see in a couple of weeks, another short-term rental in Launiupoko and one of our Commissioners says what is the land good for growing there? It's stony and it grows stones. Well, it's tough to do farming in Launiupoko, but you're going to see

these because they are zoned Ag. So the Council passed a provision for people to allow to be doing this and yet they're on ag land. So we do run into a dilemma.

Mr. Ball: Because I see what Wayne's talking about.

Mr. Wollenhaupt: If this was zoned Rural, if this was zoned Rural this would have been like Maui Meadows. They come in, they meet all the requirements, they don't get enough protest letters, this would have been approved administratively.

Mr. Ball: Because they're only doing the ag required to do, you know, and it's kind of like—

Chairperson Lay: Let's keep order here.

Mr. Ball: Sorry.

Chairperson Lay: Commissioner Ball?

Mr. Ball: They're kinda caught between a rock and a hard place because they're like, well, I can't sustain myself on this, but yet, I'm required to make this farm because the ordinance requires me to do so. So they're kinda like I wanna make this thing that—

Mr. Wollenhaupt: It creates, it creates a difficulty.

Mr. Ball: Yeah.

Mr. Wollenhaupt: One possible solution is there in Ag Tourism Bill. If the County would adopt its form of tourism then the State has an Ag Tourism Bill that would allow such as these activities to occur without coming to a body like this. So it would be a right to do this. So it's an issue that's gonna come up again and again.

Mr. Ball: Yeah.

Chairperson Lay: Thank you very much, Kurt.

Mr. Wollenhaupt: Thank you.

Chairperson Lay: Moving along to our next agenda item, we approval of minutes of, let's see, acceptance of our March 25, 2013 meeting. The Action Minutes of our March 25, 2013 Meeting and our Regular Minutes of the February 12, 2013 Meeting.

**F. ACCEPTANCE OF THE ACTION MINUTES OF THE MARCH 25, 2013 MEETING AND
REGULAR MINUTES OF THE FEBRUARY 12, 2013 MEETING**

Mr. Hedani: Move to approve.

Mr. Shibuya: Move to accept.

Chairperson Lay: Moved by Wayne and seconded by Warren.

Mr. Shibuya: Okay.

Chairperson Lay: Verbal count of you...all in favor?

Commission Members: Aye.

Chairperson Lay: Those opposed? Acceptance of our meeting minutes.

It was moved by Mr. Hedani, seconded by Mr. Shibuya

**VOTED: To Accept the Action Minutes of the March 25, 2013 Meeting and Regular Minutes of the February 12, 2013 Meeting.
(Assenting - W. Hedani, W. Shibuya, J. Medeiros, K. Ball, M. Tsai, S. Duvauchelle)
(Excused - J. Freitas, P. Wakida)**

Chairperson Lay: Our Director's Report, Item G on our agenda today.

Mr. Spence: When, and for the new Commissioners, when there are applications for Special Use Permits or Change in Zonings or whatever out in the Hana area, the Planning Commission will designate, normally designate the public hearing to be held in Hana by the Hana Advisory Committee. So we have one, two...we have three applications that are for bed and breakfast, bed and breakfast, and one short-term rental out in the Hana area. And so what we would like is for the Commission to recommend that the Hana Advisory Committee...or actually delegate the public hearing to be held by the Hana Advisory Committee for these applications.

G DIRECTOR'S REPORT

- 1. Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing and make recommendations on the subject applications:**
 - a. MS. BRIANNA LEE EVERETT requesting a State Land Use Commission Special Use Permit in order to operate the Hana's Tradewind Cottage. A two (2) bedroom bed and breakfast home on property situated in the State Agricultural District at 143 Alahele Place, TMK: 1-3-009: 107, Hana, Island of Maui. (SUP2 2012/0034) (G. Flammer)**
 - b. ANDREW and ROBIN RAYNER requesting a State Land Use Commission Special Use Permit in order to operate the Kalo Ohana, a two (2) bedroom bed and breakfast home on property situated in the State Agricultural District at 120 Kalo Road, TMK: 1-3-009: 021, Hana, Island of Maui. (SUP2 2012/0027) (G. Flammer)**

- c. **RICHARD C. RAY requesting a State Land Use Commission Special Use Permit in order to operate the Hale Noa STRH, a two (2) bedroom short-term rental Home situated on property in the State Agricultural District at 175 Ulaino Road, TMK: 1-3-009: 091, Hana, Island of Maui. (SUP2 2013/0003) (G. Flammer)**

Mr. Ball: Second.

Mr. Hedani: So move.

Chairperson Lay: Moved by Wayne, seconded by Keone. We're gonna call for a vote on this. Those in favor, raise your hand?

Mr. Spence: That's six ayes.

Chairperson Lay: Those opposed? Motion carried.

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

**VOTED: To Direct the Hana Advisory Committee to Conduct the Public Hearings and Make Its Recommendations to the Planning Commission on the Three (3) State Land Use Commission Special Use Permit Applications for Brianna Lee Everett, Andrew and Robin Rayner, and Richard Ray. (Assenting - W. Hedani, K. Ball, J. Medeiros, M. Tsai, S. Duvauchelle, W. Shibuya)
(Excused - J. Freitas, P. Wakida)**

Chairperson Lay: Item 2?

2. Planning Commission Projects/Issues

a. Amending the SMA Boundaries

Mr. Spence: I will just tell the Commission that we have nothing to report to your regarding the SMA boundaries.

Mr. Ball: Surprise, surprise.

Mr. Spence: Yes, I know one of Commissioner Ball's favorite...

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

6. Discussion of Future Maui Planning Commission Agendas

a. April 23, 2013 meeting agenda items

Mr. Spence: EA/EIS Report. The document that you have in front of you for the Kahului Airport Consolidated Rental Car Facility, you have a Draft Environmental Assessment. If you are having trouble sleeping at night, you can open this up and review it. It's a lengthy document, but it's a very interesting project. This will be taken up at the April 23rd. So this is, you're getting copy to review, Commission will have questions as we went over today. This was for your review. If you have questions or comments that you would like to the applicant to address for the Final EA, and then this will come up...(inaudible)...

Chairperson Lay: If nothing further to discuss, meeting is adjourned.

H NEXT REGULAR MEETING DATE: APRIL 23, 2013

I. ADJOURNMENT

The meeting was adjourned at 4:00 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Keone Ball
Sandy Duvauchelle
Jack Freitas (excused at 11:57 a.m.)
Wayne Hedani
Ivan Lay, Chair
Jason Medeiros
Warren Shibuya, Vice-Chair
Max Tsai
Penny Wakida (excused at 3:56 p.m.)

Others

Will Spence, Director, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works