

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 28, 2013**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:00 a.m., Tuesday, May 28, 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.)

Chairperson Lay: Planning Commission is now called to order. The Planning Commission will now take testimony, public testimony for those individuals who cannot be present at this meeting when the agenda item comes up before the commission. If you wish to testify, you can do so now, but you won't be allowed to testify when the agenda item comes up before the Commission unless you have some new or additional information to be offered. You'll be allowed a maximum of three minutes to testify. Does anyone wish to testify at this time? If not, we're gonna close public testimony. And for those of you with cell phones, please turn off your cell phones or put it on silent. Thank you. Mr. Director?

Mr. Spence: Good morning, Commissioners.

Commission Members: Good morning.

Mr. Spence: Our first item is Mr. Paul Mancini of Mancini, Welch & Geiger. This is for the Polynesian Shores Settlement for SMA and Shoreline violations. It's been a long journey to get to this point, but...so we're presenting the settlement to the Commission this morning.

**B. COMMUNICATIONS**

1. **PAUL MANCINI, ESQ. of MANCINI, WELCH & GEIGER, attorney, representing the ASSOCIATION OF APARTMENT OWNERS OF THE POLYNESIAN SHORES appealing the Planning Director's Notices of Violation (NOV 2012/0007, 0008, 0009, 0010, 0011, 0012, 0014, and 0015) for failure to obtain Shoreline and Special Management Area approvals for certain improvements and to abide by condition Nos. 2 and 12 of the Special Management Area Minor Permit and Shoreline Setback approvals (SMA 2011/0116 and SSA 2011/0085) to remove other improvements located on the Polynesian Shores property at 3975 Honoapiilani Road at TMK: 4-3-008: 002, Lahaina, Island of Maui. (APPL 2011/0005) (APPL 2012/0001-0008) (J. Buika)**

**The subject improvements include stairs at the north and south ends of the Property, a seawall/revetment, and a deck and barbeque area including stairs.**

Mr. Paul Mancini: Good morning. My name's Paul Mancini. I represent the Association of Owners of Polynesian Shores. There are three board members here today, Ms. Gross is the president of the board. And seems like normally I'm with you here under really complex matters. As the Planning Director indicated this has been a long ordeal. I don't want to belabor it any longer, but

I thought I might just give you a little bit of overview as to why this has been so complex. This is sometimes not that uncommon with other problems in the County when a property is developed in the early 70's as this was developed and the developer puts in some improvements on it and a homeowner's association takes over those improvements with some degree of naivety moving forward of it. And here there, as the resolution agreement will narrate to you there is a deck put in and some pathways to the ocean way back in the 70's. They were improved over time. For a long period of time, extremely long period of time it was perceived that this property, these improvements were on State property. The tax map key showed the State of Hawaii being the owner of that property. The State had provided certified shoreline a number of times and the structure of the deck was there and there had been no problems so the owners felt that they were okay in maintaining them. The problem occurred in about 2011, I believe, when the County and the State said, you don't have an easement to do this. You don't have any property rights to do it, so that's when I got involved and I was asked to proceed and get an easement from the State of Hawaii.

We were processing an easement and low and behold, the State determines it's not their property. The surveyor had made a mistake. The tax map key for 30 years was erroneous and the property didn't belong to the State. So I got involved and other series of events trying to find out who owned the property and went to the title company and came out found that Maui Land and Pine owned it. When they sold the property they may have intended to transfer that property to a reserve or the government but they never did. They created an additional lot in the shoreline and properties surroundings Polynesian Shores has the same issue, has the same issue with property they thought was theirs and belonged to the State didn't. Luckily I had gone to Maui Land and Pine and suggested they provide a deed to the property to Polynesian Shores which they did and that lead to a Chapter 2, not processing this with the State, but coming back to the County and trying to beg forgiveness for the sins of the past and move on. And then we had a series of events after that trying to take...taking down the stairs, the County wished some boulders be removed. They couldn't remove the boulders and then the story got a little complex. But after, after all of that, we did remove everything. Everything is taken out and wish to thank the Staff, Jim Buika and Will for the help...(inaudible)... the board and finally getting this resolved and I ask you if you could approve our Settlement Agreement, we would really appreciate it and we're still working with the Department trying to find an area for our barbeque. Right now there's no barbeque area. We're working with the Staff. And I'd be happy to answer any questions on that. I know, I've over simplified a little more complex problem, but I try to give you a flavor of the complexity on it. Any questions I can respond to?

Chairperson Lay: We're gonna do public testimony first and that way if any pertinent suggestions come up we can address them and at that point we'll go back to the Commissioners and open it up for questioning.

Mr. Michael Hopper: Mr. Chairman?

Chairperson Lay: Go ahead, sorry, excuse me.

Mr. Hopper: Michael Hopper with the Maui County Department of Corporation Counsel representing Department of Planning. Only a couple of things to add. One is that your rules require any settlement of Special Management Area fines to be brought forward to you and approved by the Commission that's why this Settlement Agreement is before you. And in addition, there actually

was an appeal filed with the Planning Director on this case, and to add to what Mr. Mancini said, this Settlement Agreement would also resolve that appeal as well. So in addition to the fines in the agreement that would also settle the appeal that's been filed in this case. So I just wanted to add those two matters prior to public testimony. Thank you very much.

Chairperson Lay: At this time, we'll open it now to public testimony if anyone wishes to testify. Seeing none, we're closing public testimony. Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: Mr. Mancini, this is just for clarification. Because I'm not, I'm not clear on the area in dispute. Is it...I mean, I understand the whole Polynesian Shores property, but looking at this, is the area in dispute the area that's marked here beach that there's a strip with little.

Mr. Mancini: Yeah, actually, actually, it's a good...this is a tax map key and the crossed hatched area shows the area in dispute. And you can see how that, that reserved lot basically envelops the whole big whole coastline and that was a problem when the property was initially subdivided, Maui Pine owned it and they sold they property for development to the mauka properties from there. And that area, that area there was never part of the deed and it was when the tax map got identified back when Maui Pine did it, it said government reserve on it. And it was never transferred to the government. Nothing happened. So all of those properties that surround that area there have the same type of problem.

Ms. Wakida: Okay, so the area that's...it has cross marks on it, that's where the improvements were done and the barbeque and the steps and-

Mr. Mancini: That's a correct statement, yes.

Ms. Wakida: -and so on right?

Mr. Mancini: Yes.

Ms. Wakida: Okay.

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

Mr. Shibuya: I just wanted to find out on the civil fine of \$15,000 what is involved in that? Is it the severity of the infraction, the length of the time, how is this manifested? How is this derived?

Mr. Spence: There's a lot of factors that go into determining the amount of fines. Part of it is the severity of, you know, the violation. Part of it would be, I mean as you suggested the length of the time, the cooperation of the property owner and in this particular case you know, it was fairly serious. You know, we've worked it out and they expended considerable amount of money correcting it, and the board became very cooperative so we reduced the potential amount to 15,000.

Mr. Shibuya: Oh, so it was larger than 15,000?

Mr. Spence: It could potentially be much larger.

Mr. Shibuya: Oh, thank you.

Chairperson Lay: Commissioner Wakida.

Ms. Wakida: Director, in looking at these violations did they just go out there day after day and submit the same violation and then you've got one on November 11<sup>th</sup> for failure and then the one on the 12<sup>th</sup> for failure to abide. How does this work exactly? Am I reading this correctly? From the 7<sup>th</sup> to the 15<sup>th</sup>, and then there's duplications of violations.

Chairperson Lay: We have someone who wants to...

Mr. Spence: Yeah, we have Deputy Corp. Counsel, Mike Hopper.

Mr. Hopper: Thank you, Commissioner Wakida. Those numbers are actually not dates. Those are the number, the number of the violation. So 2012/0008 is that NOV number itself. I believe they were all served the same day, but yeah, it's a bit confusing and they're all numbered that way 'cause they were all, those were...I think that generally means that No. 8 violation of the certain class given that year, I'm not sure, but they were all served I believe on the same day. I don't think those are...those are not actual days or anything like that, but that is confusing I understand.

Ms. Wakida: Okay. Chairperson, one follow up.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So when there's two violations that say the same thing like No. 14 and 15, if they're all served on the same day, why are they down twice?

Mr. Hopper: One, Commissioner Wakida, G and H, G says, violation SSA. That's the shoreline setback area. That's a separate set of rules under the Planning Commission and HRS 205A., 2012/0015 is Special Management Area. Those are two different sets of rules and the violation was issued under each set of rules.

Ms. Wakida: I got it. Thank you.

Chairperson Lay: Commissioners? Mr. Director, if you could let us know what our action on this so we have a better understanding?

Mr. Spence: Basically under your rules you need to make a motion to accept the settlement or if you disapprove the settlement then I'm not sure where we would go from there.

Chairperson Lay: Corp. Counsel wish to comment on that?

Mr. Giroux: Yeah, because of all of the pending actions, if it's not approved, it would end up in having possibly contested cases in the future which this board would be acting as the quasi-judicial capacity.

Chairperson Lay: Commissioner Shibuya.

Mr. Shibuya: So I'm assuming as I read this Resolution Agreement that both parties are, have come to this agreement and both parties accept all these terms?

Mr. Spence: That is correct.

Mr. Shibuya: Oh, great. Then in that case, then in my...Chair, can I make a motion?

Chairperson Lay: Yes.

Mr. Shibuya: Yes, that we approve the propose Resolution Agreement and there's no other action that needs to be taken.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Shibuya, seconded by Commissioner Medeiros. Any comments on this motion? Commissioner Hedani?

Mr. Hedani: Just a question I guess for Mr. Hopper. Where does the...at this particular point in time, is there a beach reserve and who owns it?

Mr. Hopper: I think maybe Mr. Mancini could better answer that question as far as the ownership.

Mr. Mancini: Very good question. There's no beach reserve. The property involved in that area that's on the tax map key is owned by Maui Pine. Interestingly enough we have represented a couple owners who had similar problems and we had gone to Maui Pine and got those areas deeded by Maui Pine to the adjacent landowner, not all of them. So pieces of it are owned by Maui Land and Pine currently and a few are owned by individual property owners such as the Polynesian Shores right now. Interesting problem.

Chairperson Lay: Any more comments or questions? If not, we'll call for the vote. Those in favor raise your hand.

Mr. Spence: Seven ayes.

Chairperson Lay: Motion passed.

**It was moved by Mr. Shibuya, seconded by Mr. Medeiros, then**

**VOTED: To Accept the Approve the Proposed Resolution Agreement  
(Settlement Agreement).  
(Assenting - W. Shibuya, J. Medeiros, K. Ball, M. Tsai, W. Hedani,  
S. Duvauchelle, P. Wakida)  
(Excused - J. Freitas)**

Mr. Mancini: Thank you very much for your time. We thank the Staff for their help in the project too.

Chairperson Lay: Next agenda item.

Mr. Spence: No. 1 under New Business, Commissioners is No. 1 is Christine Conlon-Kemp, the Director of Milowai Maalaea AOA requesting comments on a Draft EA for seawall repairs at Maalaea and our Staff Planner this morning is Ms. Anna Benesovska.

### **C. NEW BUSINESS**

- 1. MS. CHRISTINE CONLON-KEMP, Director of the MILOWAI MAALAEA AOA requesting comments on the Draft Environmental Assessment (DEA) prepared in support of the Shoreline Setback Variance application for the proposed seawall repairs at the Milowai Maalaea project, 50 Hauoli Street, TMK: 3-8-014: 022, Maalaea, Island of Maui. (EA 2012/0006) (SM1 2012/0008) (SSV 2012/0004) (A. Benesovska)**

**The EA trigger is the Shoreline Setback Variance.**

**The accepting authority of the Final Environmental Assessment is the Maui Planning Commission.**

**The public hearing on the Special Management Area Use Permit and the Shoreline Setback Variance will be scheduled after the Chapter 343, HRS process has been completed.**

Ms. Anna Benesovska: Good morning, Commissioners, Chair Lay. My name is Anna Benesovska and I'm the Planner assigned to this project. We also have Mr. Jordan Hart here today representing the project on behalf of the Milowai Condominiums. Today before you is the Draft Environmental Assessment (DEA) for the proposed seawall repairs at the Milowai Condominiums at Maalaea. This document explores potential environmental impacts of the propose seawall repair and is an informational document only.

It was published at the OEQC website on April 23<sup>rd</sup> and its 30-day public comment period concluded last week. The Department transmitted the DEA to 14 agencies and received six responses and three fairly minor comments to date. Mr. Hart will be summarizing agency comments in his presentation to follow shortly.

The Department's task today is to collect your comments and questions regarding this Draft EA and transmit them to the applicant who is then responsible for addressing your comments and questions and potential requests for more information in the Final Environmental Assessment, in the Final EA. The Maui Planning Commission is the approving agency for the Final EA, and at this time, the Department anticipates finding of no significant impact for this applicant action.

Upon the completion of the EA process at a later date the MPC will hear SMA Major Use Permit and a Shoreline Setback Variance for this proposed seawall repair. And now without further delay,

I invite Jordan Hart to give you an overview of the proposed project and the Draft EA document.

Mr. Jordan Hart: Good morning, Commissioners. My name is Jordan Hart from Chris Hart and Partners. Why don't I just go ahead and start the presentation. The project today is the Milowai seawall repair Draft Environmental Assessment review. We have Mr. Bob Wood in the back representing the Milowai Owners Association. We have myself and Raymond Cabebe from Chris Hart and Partners and we have the structural engineer, Walter Vorfeld, who designed the seawall repair scope.

So basically the Planning Department will provide formal comments on the Draft EA in addition to the Maui Planning Commission's comments. On April 23, 2013, the Draft EA was published in the Office of Environmental Quality Control, OEQC's Environmental Notice. The permits that will be required are a Special Management Area Use Permit, Shoreline Setback Variance, Flood Development Permit, building permits, an easement into the shoreline because a portion of the seawall does basically go into the State's property, potentially an NPDES Permit and a potentially a permit from the Department of Army.

This is Honoapiilani Highway. This is the project site here. Existing Maalaea small boat harbor. Here's an oblique aerial photograph of the project site. The seawall runs from the breakwall at the Maalaea Harbor to the east here. Here's the TMK map. Here's the existing breakwater. This is the shoreline survey map. Basically this structure here is the seawall. The Milowai Condominium, there's 43 units. The property area is 1.24 acres in size. It was initially constructed in 1975. Support facilities include manager's office and laundry. Amenities include a pool, ocean lawn, barbeques, outdoor shower, onsite parking in garage and surface parking.

For the project scope the only area that's being addressed or taken action on is basically just the repair of this front seawall area here. So as a background on the project, the property was originally purchased by Wendell and Myrtle Crockett in the 40's and there was no seawall. It was an existing sand beach at that time. William Crockett is their son. Upon returning from the Army in 1948, there was no seawall existing. In approximately 1952, the Maalaea Small Boat Harbor was constructed by the Territory of Hawaii and the revetments were added between 1955 and 1959. Upon William's return to the island in 1956, the seawall was completed. Basically it was estimated it was built some time basically following the revetment of the Maalaea Harbor basically by adding that structure there, it changed the dynamic of the ocean and the dynamic of their property.

So this is a photograph of the seawall itself. This area here is where some of the soil is separating from the back of the seawall and the seawall is starting to slump. This area here is where one of the larger cracks is developing. This is the Maalaea energy generation facility from MECO. In the background there is Haleakala. Okay, so these are site photographs from May 26, 2011. Here's the crack here. This is from December and it's just showing slight progression and basically with any major event or wave action, the wave water goes up behind the wall and interferes with the soil back there. So this is kind of a progression of the gap. This one here is taken from a different angle, the different time of the time so while it looks like this is the more drastic photo, this is just actually shadow, it is actually growing. So this is an example of a revetment. This is at the Maalaea Harbor here and this is the relationship and location. This is a caution sign added by the project to basically warn people not to get stuck in that hole. These are shots up and down the existing seawall.

So basically the alternatives for the Draft EA. There's a series of decisions that can happen. No action. So basically do nothing, leave everything as is and over time, the wall will basically collapse and then the ocean will start to threaten the structure itself. Beach nourishment which would be basically bringing in beach quality sand and putting it on the beach. This will be costly, and basically by looking at the configuration of the way things are laid out now, there's an existing sand beach, well, let me try and go back to an aerial photograph, there's an existing small pocket beach here that's staying inside the harbor breakwall, and there's some sand here, but it basically...there hasn't been a lot of sand sticking in this whole string here. Haycraft Park there's quite a bit up here at the end of Hauole Road. The other option is revetment and so revetment is what's similar to the breakwall at Maalaea Harbor. So large boulders stacked in front of the property, and the preferred alternative is just to basically patch up the existing wall that's there. That would probably be the most...the least invasive, most cost effective, quickest thing to do. So again, preferred alternative is basically to get authorization to repair this length of the wall. So for the repair scope, I'm going to call up Walter Volfeld, who's our structural engineer. He'll just kinda explain what the proposed method of repair is.

Mr. Walter Volfeld: Good morning, I'm Walter Volfeld, structural engineer. Been here on Maui for approximately 23 years. I will, let's see let me take a look at the picture. Okay, this portion here is meant to indicate the existing wall. That's the stones and mortar and so on that is in place. This portion here is meant to indicate a reinforcement of the underlying granular material that is supporting the bottom of the wall. In other words, the wall's foundation is actually being supported by this material here which is being eroded as we speak. There is a product available that can be injected into granular soils filling in pores as small as a sixteenth of an inch or less. When it sets up it basically cements the granular material into one solid mass. So what I'm showing here is very crucial to the repair method of the repair of this wall because if we can't solidify the material that the wall is sitting on then there's really no point in reinforcing it because eventually the shoreline will be down here, and you know, move way up towards the building. Losing support for the wall will result in the wall collapsing even if we do this reinforcing that I'm showing back here. So this is very, very important part of what we're trying to do. The material that's injected is injected under pressure with a probe to a depth of approximately, this is held small, shown small because there's not enough room on the page but it can go down as deep as two or three feet. We're thinking 12, 18 inches of solidification is probably gonna be sufficient for this.

Once that's accomplished...well, let me back up, this whole process will be accomplished from the back side of the wall. So if you take everything that's shown in here. This is gravel, this is concrete, this is reinforcing steel, this topsoil put back, everything that's shown in here will not be there. We will excavate a trench behind this wall during the course of construction giving us access to the back of the wall whereby we can actually remove loose boulders, et cetera, also giving us access to the bottom of the wall so the installer of this product actually has, doesn't have to start from up here, he can actually start down there which makes his probing a heck of a lot easier because they won't find rocks or anything in the way in the top four or five feet. Once that's in place, we will place a curtain of reinforcing steel behind the wall and pneumatically apply otherwise known as gunite or shotcrete a reinforced concrete blanket so to speak, vertical blanket that will be shot into under pressure the cracks and crevices and pores between the rocks thereby bonding to this wall basically filling in the loose material and solidifying it on the backside and becoming an integral part of the stone wall. The reinforcing will make this strong enough so that it will not crack as long as this bond is maintained from rock to cement or concrete, the reinforcing will keep this in tact and



basically it's like a continuous splint on the back of the wall for the entire length.

After that's done, this dark line around this column is a material called a filter fabric. It does not degrade over time, it's typically made from spun, woven polypropylene and you could actually...it contains fine material and does not allow the fine material to move through it thereby when we backfill this with sand, we will have this blanket coming up the face of the concrete and laying out over the top of this wall temporarily. We have it coming up and laying in the yard temporarily. We'll backfill the sand material and pack it in, and then we will lay the blanket back in over the top overlapping it 12 to 24-inches creating a continuous, for lack of a better term sausage of sand that is wrapped in this blanket. Water draining will enter this very easily 'cause the sand is gonna be quite porous. The sand will not move because it can't go anywhere because it's contained by this blanket. What's not shown in this detail, it was omitted by mistake is weep holes which we intend to install through the concrete wall and the stone wall at a spacing of probably eight-foot on center that will take any accumulated water in here and remove it out into the ocean. This is a solid mass, this is a solid mass, this is a filtering permeable drainage mass and the weep holes coming through here will allow this water to discharge. The fact that we have solid mass underneath the wall and solid mass behind it, we are now preventing sea water from creeping in under the wall, getting behind here and then as the tide goes back down it sucks soil back out from underneath the wall slowly but surely this wall is sinking into the ground. There's one portion of it, oh that covers the distance of about 30 or 40 feet right now that in the two years that I've watched has significantly deteriorated. In the last six months we had that big south swell last week, in the last week it's significantly deteriorated in the corner portion. More boulders have fallen. There is a portion that is in threat of eminent collapse. And it could be tomorrow for all we know. I hope I've made this clear. Does anybody have any questions about this picture and how it's intended to work?

Mr. Hart: Okay, thank you very much. So to proceed...so as a brief summary of agency comment letters received so far, so basically DAGS and OCCL called for a shoreline certification because of the existing seawall. The Department of Business, Economic Development and Tourism had comments regarding climate change, development of the shoreline setback area and public beach access. Department of Health had comments relating to the impacts to water quality, the potential for an NPDES Permit, community noise control, DLNR obviously has various divisions. Basically the comments received related to seawall repair work, allowing for a lateral beach access, consideration of flood hazard risks, drainage runoff and nearshore water quality, and DHHL had comments regarding shoreline access and the Army Corp of Engineer stated that a Department of Army Permit may be necessary. So we need to continue consultation with the Department of the Army and DLNR, OCCL to determine whether or not a permit from the Department of Army is required, but we're trying to address that in the Final EA.

These are...I'm sorry, these were comments...these are early consultation comments that were solicited prior to the filing of the Draft EA, and these are comments related to the filing of the Draft EA for clarification. So Office of State Planning they wanted us to mitigation measures to basically maintain and enhance public shoreline access, consider climate change. Department of Health, again, NPDES, consult with Department of Army. Comments regarding community noise control. They have a series of standard conditions on their website that they refer everyone to and they did refer us to those. Basically no comment from the Department of Public Works, County of Maui. Department of Accounting and General Services from the State of Hawaii had no comments on the Draft EA, but they did make comments on the early consultation comments. And basically the

Department of Health, Office of Environmental Quality Control is a part of the Department of Health and we've been in consultation with them to through the EA publication process. And so that pretty much sums up the agency comments received to date. So as a summary, the EA identifies potential impacts and provides mitigation measures. All the agency comments have been received for early consultation and for the Draft EA. We're going to address all of the comments received and update our Final EA and have that published and again, as the planner said, it's anticipated that there will be a finding of no significant impact for the project but that requires your input here, and that's the end of our presentation.

Chairperson Lay: Commissioners at this time, I'm gonna open up to public testimony and then go back to us for our questions. Does anyone at this time wish to come forward and do public testimony? Seeing none, we're closing public testimony. Commissioners, any questions? Commissioner Ball?

Mr. Ball: Curious on the method of, of that was just explained to us and if that was used anywhere else on Maui?

Mr. Hart: I'll call up, Walter Vorfeld, our structural engineer.

Mr. Vorfeld: There are--

Chairperson Lay: Please when you come forward, just identify yourself again for the record.

Mr. Vorfeld: Oh, I'm sorry. Walter Vorfeld, structural engineer. I believe it has been used on Maui. The gunite concrete applied to the back of the wall, I can't think of a specific location but a number of engineers and installers that I've talked to about these kinds of projects have indicated that as being a repair method that has been used behind seawalls. The drainage bag, sausage, behind the wall has been used. I did that personally in a situation down at Spreckelsville where we had sink holes developing behind a large seawall that had been there for quite a while. Sink holes as deep as 7, 8 feet and 10, 12 feet wide. We had an emergency repair on that. No, I take that back, it was not an emergency repair, we got permits from the Planning Department and the Building Department to do it. We repaired in the soil for about 75, 80 feet of approximately 160 feet of shoreline and the condition worked where we did the work, it just had the problem move down the line to where we didn't do the work. But consensus within Planning Department...our permit expired, we couldn't keep on going, we had stopped hadn't done anything, the permit expired and we couldn't pick it up again. The second time around it was not as easy to get a permit to do what we were trying to do and we never did get one. The owner chose to do a replenishment with clean sand. As the sink holes opened up, he would fill them back in again with clean sand, and in that sense it was an indirect replenishment of beach sand because it was migrating or syphoning out below the wall and going onto the beach.

The last part on the bottom, I do not believe it has been used for seawall repair on the island of Maui. It's been used for similar situations on the Big Island, and it's been used for exactly the same situations in other states. The documentation that I've been provided by the manufacturer of the product has given me some information with regard to seawalls in harbors that were having problems and other situations like that. It stops water is what it does. It takes granular material, cements it together. It's basically a reasonably dense urethane foam product that has substantial

variation in terms of what the set time, two products come together as a liquid, it then become a solid. It can as short as four to five minutes or it can be as long as 90 and that is controllable condition. If you want it to not migrate away from where you're intending to use it, you dial it down and you have it set very quickly. It is very, very thin. I'm not sure whether ..(inaudible)... is the word or not, but it actually can move into pores between sand and gravel and rocks and so on filling in very, very tiny cracks as well as filling in large, large voids between bigger pieces. Once it's set up, they haven't had the product around long enough to say that it will live or last forever, but they know they will warrantee for 50 years as staying in place. It hasn't been around for 50 years, but they know it will stay that long. Once it sets up, it is inert. The mixing takes place in a container that a pump so that just the mixed product is being injected through a probe into the ground and with the set time being held to very, very short periods, the other thing that I understand about it is when it hits water it turns into a tiny little popcorn like material if it's not in a confined condition in a void between a bunch of rocks, if it was just loose, when you shoot it into a bucket, it turns into little popcorn like kernels that then set and float away or are gathered up and retrieved. So in that sense, I believe it's a better product than trying to use cement grout because the tendency and the problem with cement grout is along the shorelines that there's always going to be movement of water. You have high tide, you have low tide. You can't instantly accomplish your work. And concrete doesn't set instantly and it's always going to be a problem of cement paste and the material leaching into the water and doing damage to reefs and stuff. I'm told that this material does not mix with water. It doesn't like water. It turns into these little popcorn like kernels, and if you have let's say for example, you had...I don't know what they're called but they float and the contain oil, if you had something like that during the process sitting outboard of the wall while you're doing this and any of this material happen to get...leave the base of the wall, it would be very, very easy to just gather it up and then you just take it away. So it's actually a product that will have little, if any, probably no impact on the environment. And that's a claim that's been made. It's been used by the State of Alaska in a fishery slater and I would imagine the State of Alaska is pretty tight on the environmental situations. But I don't know of any situation here in the State where this has been used specifically for seawalls, but the applications that it has been used in indicate to me that it's--could be a very, very good solution and might actually be far reaching in terms of some of the ongoing problems we have all over this island relative to seawalls. Does that answer your question?

Mr. Ball: Follow up?

Chairperson Lay: Commissioner Ball?

Mr. Ball: So at the end of this project it will, it's my understand that it's gonna look kinda just like this?

Mr. Hart: Substantially the same. I just wanted to add another thing about basically installation. We did receive a comment from Department of Land and Natural Resources, Office of Conservation and Coastal Land. We have to expand our BMPs, our Best Management Practices and basically that will be the construction phase, erosion mitigation measures and so we're gonna have to work that out further and that will be expanded on in our Final EA. So comments regarding trapping materials during installation and things like that will all be hashed out and you know, well resolved before our Special Management Area Permit hearing.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: What is the distance now between the building and the shoreline?

Mr. Hart: It's approximately, I believe it's 38 near the building and approximately 30 fronting the pool. So let me show you an aerial. So at the corner, if you look at the series of lines here. This represents the edge of the building. It's approximately 38 here, and it's approximately 30 here, and these are two nearest locations. And that's kind of a...that distance actually ties into the explanation of why the revetment would be difficult because a revetment you'll have to use approximately 13 feet of area, and so between having 30 and having approximately 38 cutting 13 out of that basically is gonna make a very limited area between the ocean and the property...the structure fronts.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: The concern I have with the repairs is that to me it...while the engineering seems pretty, it's interesting, it seems like a band aid. This problem is not going to get better with erosion. I mean, you're right on the front line of the, looks like the erosion area according to this coastal map, a lot of it's going on in your area. And it seems like there should be a more long-term solution proposed and it's something that would mitigate the wave action 'cause that's not gonna go away. It's just gonna get worse.

Mr. Hart: Well, a few things I would like to bring up. The first thing is that the seawall was necessary to be added after the installation of the harbor, and so this property is actually the front and center with the harbor. So that's...this revetment is actually within the property line of the Milowai. So there's no escaping that really. Like when anytime waves hit that wall, they're gonna come back in towards the property and you see this area here, that's going like this, like I don't perhaps there could be an engineer that could recommend some action out here in the ocean. I don't know with a 43-unit condominium complex if they can, you know, undertake large projects like that. But you're right this definitely isn't a issue that's gonna go away and wave action will continue on the wall forever, and at some point even this repair on the wall is gonna collapse. That being said, you have a bunch of people who live here and they have property here and you know, they're just trying to manage their location. But it definitely is, it's, you know, this will be the most recent repair work that will happen on this wall.

Chairperson Lay: Commissioner Shibuya

Mr. Shibuya: I just have a question relating with the proposed repair. Now there's two parts to this. One is a proposal is to prepare the seawall and the second one is to put in all this revetment which is sloped. Is that correct?

Mr. Hart: Well, as a requirement of an Environmental Assessment you need to provide a series of alternatives. You have your preferred alternative, but you also need to basically explain what could happen there or what other people had done on similar projects. And so revetment is something that has happened in other places and there actually are other revetments in Maalaea, but basically because of the...because of the need to stay mauka of the shoreline in the County's property as opposed to basically getting permits from the State of Hawaii and leasing the land to put your

structure in the State land, you'll have to consume a large area of space between their existing structures and the ocean and that kind of makes that section unfeasible. Another thing that will have to be happen is a whole lot more excavation. You'll have to basically dig out all the material and then you'll place the boulders there where the material had been. So that will be a significant amount of work. So this seemed like the easiest way to repair the situation without causing the most...highest level of impacts to the area.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: So the elasticity of this material it seems like it's a fiberglass or whatever is compound epoxy type material. Under the existing stone wall is that, does that have a elasticity?

Mr. Hart: You know, that's kinda a question for our structural engineer. Perhaps Walter could come up and answer that?

Mr. Vorfeld: Walter Vorfeld, structural engineer. The best way I can tell you what the product is when you drive along the highway and you see those big black tall dust fences, that's what it is. It has a little bit of stretch because it is a spun fabric as opposed to a woven fabric. Spun is just like spun cloth. There is a little bit of stretch to it. But there's only a limited amount of stretch. Can I address another question that came up earlier? I think I can shed some light on Ms. Wakida's question?

Chairperson Lay: Sure.

Mr. Vorfeld: The product that we're using can be injected to a depth of two or three feet below the wall. What we've actually seen out there as being an underlying substrate below this wall further up the line is cemented sands. And I don't...when I say cemented sands, it's done naturally over time by way of geology. We actually believe that at a depth of two feet or so below this wall is layer of this harder material. The wall is on softer material, rocks and sand and gravel and that's really what's causing the problem is that material is migrating. But at a certain point below that wall is good sound material that if the original construction had been extended to that, we wouldn't be here today. The product we intend to use is with the best effort we can going to reach that sound material, grab a hold of it and cement everything above it to the bottom of the wall into a similar consistency, a very hard situation. So yes, this is band aid, but it's a band aid that we think will last quite a while because what's under the wall will no longer erode. It will not lose support in the future.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: My question was not so much the sausage belting that's running vertical behind the seawall, but what is the elasticity of this material that's placed underneath the seawall?

Mr. Vorfeld: Oh, you mean the injected material?

Mr. Shibuya: Injected, yeah.

Mr. Vorfeld: Okay, I'm sorry. I wasn't aware that you were asking that. It's not going to be much

different that the elasticity of the material that was already there because it's going to be a very small percentage of the total volume, okay. If you had a bucket of sand and it was confined, and you pushed this probe into that sand, you can actually inject this material into the pores between the sand and it would expand slightly and solidify. Under confined conditions, it can't really expand and change the volume very much. What it does is it becomes harder because it's confined. Elasticity is probably greater than the linoleum on the floor. I've seen a couple pieces of it. You can...it snaps when you break it. It doesn't squash like foam. It actually pops and snaps. It's fairly brittle, but it has good bonding characteristics. So when it grabs a hold of sand and gravel it holds onto it. And the best, the best thing I can equate it to is mixing up a batch of concrete with gravel and sand and so on with cement paste in it and waiting for it to set. It takes the place of the cement that is concrete. And because we don't wanna use that process...and there is fine grout you could try and inject into the pores between the sand, but that grout has a greater tendency to elude itself and move into the ocean and we think that cause more damage. Does that answer your question?

Mr. Shibuya: No, partially because I just want the owners to understand that it doesn't have the elasticity...I'm mean I guess the tensile strength probably.

Mr. Vorfeld: I think what you're trying to say is it probably doesn't have the compressive strength to support the weight of the wall, but it does.

Mr. Shibuya: As long as you keep it thicker.

Mr. Vorfeld: If we can inject it into fine material, all granular material all the way down to the top of cemented sandstone it will serve to solidify that loose material that would otherwise wash away and create a basically an extending of the foundation of the wall right down to hard rock. It's not hard rock, but it's sandstone.

Mr. Shibuya: Yeah. I like that concept and I like the alternative of saving the owners expenses here, but I'm also looking ahead like Commissioner Wakida in terms of long term solutions that has more permanency to it and adjust with the changing of the ground level because the ground level may change too.

Mr. Vorfeld: I wish I had a sample of something that had been cemented together. If I did have a sample of that to show you I think you would be confident that this is a very long term solution. You can't chip it apart with a hammer.

Mr. Shibuya: Okay, maybe in the Final EA, you can bring a sample.

Mr. Vorfeld: Okay, I'll talk to the manufacturer and see if I can get something like that.

Mr. Shibuya: Yeah, I mean, it's just—

Mr. Vorfeld: Or one of the installers here on the island can probably provide me with something like that.

Mr. Shibuya: Sure. Without going through a large expense, just a small amount.

Mr. Vorfeld: I think an installer would do it for free.

Mr. Shibuya: Okay, thank you.

Chairperson Lay: I have a question in line with that. You say when it touches water earlier in your statement it goes into a popcorn state, right? Your wall is beneath the water level. How do you prevent this from that mix occurring?

Mr. Vorfeld: It does it in...it will do that in unconfined condition. In other words, if I took the nozzle and put it into a bucket of water, okay. It would not form just a big blob of something. It forms tiny little granular pieces that float to the surface. In a confined condition, it expands in the voids, it doesn't migrate out.

Chairperson Lay: So it pushes the water out in that area?

Mr. Vorfeld: Exactly. It's exactly right.

Chairperson Lay: Oh, Commissioner Shibuya?

Mr. Shibuya: Okay, now I had the I guess some bad experiences in that area. Following a storm or rain and mauka of that is I believe HC&S fields and I notice that the water runs down that Halau, Holua?

Mr. Hart: Oh, I'm sorry. I thought it was Hauole Street.

Mr. Shibuya: Hauole Street.

Mr. Hart: Yeah.

Mr. Shibuya: Right. Okay, it runs down there and there is a drainage ditch right next to your property or maybe that's part of-

Mr. Hart: It's an easement and it's...excuse me, it's an easement and it's partially on the property. If you look at the tax map key here, it's shown as the dotted lines so it straddles both property lines.

Mr. Shibuya: Okay. And so who has the responsibility of maintaining that?

Mr. Hart: Oh...

Mr. Shibuya: I mean, you can just mention that in your Final EA.

Mr. Hart: That's fine. We can do that. That's no problem. Absolutely no problem.

Mr. Shibuya: Right, and because there is this sheet of water that comes down and it comes across your property too. And because you have a limited impermeability I'm concerned in terms of what's gonna be held on site as well as how you're gonna treat this I guess going into the drain and how you're gonna filter it and I can see some of the problem because just looking at your illustration

here, the lawn actually slopes down right to the crack area.

Mr. Hart: Right.

Mr. Shibuya: And you have seepage coming from the back side not from the front side.

Mr. Hart: Well, I was there yesterday and it definitely is coming from the front side as well. We do have moisture coming from the mauka side. But I would add that that the problem area...if you look at the easement there, the easement runs out into Maalaea area and the problem area is what would be east of the breakwall in this location. So there isn't a extremely close location relationship between the areas of the wall that are having the most trouble and the drainway, but we can definitely have an expanded discussion of who...you know, the details of that agreement and how it's established.

Mr. Shibuya: Sure.

Mr. Hart: Okay.

Mr. Shibuya: Yeah, that's all I want in terms of...because I'm concerned about hydrostatic pressure that's created by this storm water seeping down and then it just presses that seawall and pushes it out. The proposed action here, I don't know if it will work and I'm concerned with Commissioner Wakida's solution, say wait a minute, it may not have the solution because you have this pressure moving the...or against this repaired wall versus a revetment of rocks which has more flexibility and can accommodate something like this. But you know, you can address that in your Final EA.

Mr. Hart: I definitely this whole system is a work in progress. We have a licensed structural engineer who's designed a wall. We're consulting with all the State and County agencies and you know, it's just...we haven't received comment from any agency stating that our, that our design, you know, that we should basically analyze other designs and potentially apply some of those. So I definitely understand, there's definitely questions that we all have, and we're basically trying to address, you know, the issue at hand.

Mr. Shibuya: Okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: How many units in this condominium complex?

Mr. Hart: Forty-three.

Ms. Wakida: So it's not a lot of owners to-

Mr. Hart: No.

Ms. Wakida: -to absorb the cost of this is it?



Mr. Hart: No, it's also on leasehold if that, you know, brings anything into it. The Crockett family is the owner of the property and the Milowai is, you know, the owner of the structure.

Ms. Wakida: This is just a minor question. I was sort of interested in the coastal engineering report trying to understand as much of it as I could. If I could refer you to Page 19?

Mr. Hart: Okay, I should state that we don't have representative from Sea Engineering here so I will be doing my best to interpret their report with you.

Ms. Wakida: All right. All I'm asking is, and maybe this can come up later, I'm not sure what I'm looking at on Page 19.

Mr. Hart: I see.

Ms. Wakida: I'm wondering if it's a graph that didn't get filled in or if...

Mr. Hart: Oh, yeah. It was interpretation that was place holders, but I can clarify that in the Final EA.

Ms. Wakida: Because I was interested in...it said wave height plot and I was interested in that, but I didn't see anything plotted on it.

Mr. Hart: Yeah, I did notice that as well. We will address that in the Final EA.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: On your revetment alternative could you mention the size? I know you mentioned like 160-pound boulders but something that's visually comparable to the Maalaea breakwall.

Mr. Hart: Restate that, sorry?

Mr. Shibuya: On your revetment alternative that's a pile of rocks that is sloped rocks, it's probably gonna be right next to the Maalaea breakwall, okay because that's your property too. If you do choose that alternative or that alternative is chosen, the construction of that boulders, the size of the boulders may be visually different.

Mr. Hart: Okay.

Mr. Shibuya: So if you can have the same treatment then it would like it's one integrated project.

Mr. Hart: Okay.

Mr. Shibuya: That's all I'm looking at.

Mr. Hart: Okay, if the preferred alternative is unacceptable and we are, you know, pushed towards

the revetment process then I don't see why that would become an issue.

Mr. Shibuya: Yeah, okay. Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Jordan, you folks are working with Sea Engineering now?

Mr. Hart: Not...they did the report, and they're, you know, participating on the project, but it's not a direct back. We haven't needed to talk to them about their report in the last couple months or anything like that, but when we receive comments we'll have to re-engage and discuss with them again.

Mr. Hedani: Okay, 'cause from my experience in working with Sea Engineering on other projects they have a permanent solution for this problem, yeah. It's what Warren described as a slanted revetment. The slanted revetment would possibly reestablish the beach in that area over time and at the same time protect the structures mauka of the...mauka of the boundary line from wave damage. They're the ones that invented the process that worked for The Mahana condominiums in Lahaina. They put in a slanted seawall, a revetment, a slanted revetment. I think it was a two to one ratio of slant to the revetment and that installation that they did 30 years ago has worked for 30 years without them investing another dime in it. When the storm waves come, it protects the building, the beach disappears. When the normal waves return the beach reestablishes itself and it covers the revetment. My concern is that the wall as it's built, you know, was built at a time when we didn't know of better alternatives and it's an old-style wall with an old-style solution to a problem that they did like they did it back then. The property is probably a victim of Maalaea Harbor where the wave is bouncing off of the harbor wall and eroding the shoreline to the south of the harbor. So to some degree the State has some responsibility possibly of helping people that get affected by their developments. What I'd like to know is if there was a beach there before what did it look like? Because when I look at the pictures that you have it looks like the ocean is doing a heroic effort to try to reestablish a beach right where your wall is.

Mr. Hart: Yeah, we can try and show some aerial photographs from pre harbor era in the Final EA. I believe that there was sand previously. You can see--obviously there's the area of Kealia Pond coming towards the Maalaea Harbor there's a lot of sand and you can see Haycraft Park has a lot of sand and there's a couple other locations here. So there is sand and you know, like I said, I was just there yesterday and if you look along this area here, there's a lot of sand under the water. So yeah, I agree that there was definitely a change. It's probably related to the harbor but I couldn't speak to exactly what took place, but we can provide additional information on what the scenario was prior to the harbor.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: As a follow up, a slanted revetment can be probably be designed to accommodate the request for a lateral access along the shore and so the question is how is the comment--if you look at all of the public beach from Haycraft Park all the way to the Kealia Condominium on the other side of Maalaea Bay, the beach stops where all of the condominiums are and the rocks start where the condominiums are and there is a better way. There is a better solution that could help bring

back the beach, protect the property, the owners would probably be overjoyed if their rock revetment was replaced by a sandy beach over time. The other question that I have is where is the closest beach access?

Mr. Hart: Okay, so just to revisit the first, your first comment first. We will, you know, rehash our discussion with Sea Engineering and they do have comment regarding a revetment and that is one of our alternatives and so we'll basically provide expanded information there. The nearest beach access--well first of all, the extent of the harbor parking lot is here so you can access this beach from the harbor here. There is also a formalized beach access, I'm sorry, two properties down. There's a access from the road to the ocean here with beach parking here. And then basically there's defacto beach access through the drainage easement and I'm not sure if the property owner wants to talk about, you know, how they handle people coming to the ocean or not. You wanna just...Bob, do you wanna talk about that at all?

Mr. Robert Wood: Robert Wood, board president for the Milowai. Currently now people park on the street there. We just had the big surf and lot of surfers out there. So they do access along that that gully there which we have no problem with. The owner though of the land is Mr. Crockett. We don't own the land so he would have to be the one who would have to, you know, do whatever, you know, discuss with him, but we have no problem. Yesterday we had a couple of families right out front there and having a picnic and we've never made an issue of that. One of our concerns though is little kids were running around and that's--that hole that between the wall and the ground is about 18 inches now and so our concern is these children are running and they're sometimes the parents aren't paying attention, so we have a safety concern here that if somebody could fall into that hole and could get hurt. So that's one of the reasons we are wanting to get the wall fixed from that perspective.

The second thing I would just note is the wall is rapidly deteriorating and we started this over two years ago and our concern is if we aren't allowed to work on it there will be no wall to fix. So it's moving in that direction. And just in the last six months it's just changed...the waves never stop of course. And we have 43 units, but five are in foreclosure so there are 38 owners trying to pay for this. And we wanna do what's right. We've spent over \$60,000 to date just in the paperwork and the different reports. And so...and of course, we love the ocean as much as anyone else so we wanna do what's right there as well. So we're just trying to do whatever we can, but our concern is the longer it goes the higher the price tag and there's a point where 38 owners are...it'll just be beyond our ability to do this. But as far as people accessing our property, we've never made an issue of that and...but as I said, the safety issue is one of the issues now. That's why we put up a sign and then we put up an orange barricade there to try and stop, but people are out at night walking along that and...

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: What is the landowner's responsibility or liability here?

Mr. Wood: Well, our ground lease states that we are responsible for all repairs so Mr. Crockett doesn't have any responsibility from what I can see to fix the wall. But if someone falls in the hole, and we'll note the hole is exactly where the State...where this wall passes onto the State's property. It's right on a corner and if you look you'll see it's the State actually and so if someone were to get

hurt, I don't know, I'm sure the association would be drawn into it, I'm sure Mr. Crockett would be drawn into it, I assume the State would be drawn into it and maybe the County. I don't know. That would be...but at this point, Mr. Crockett is doing nothing in terms of that, but you know, he would have to answer those questions.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Jordan, I'm not sure if it's immediately adjacent to this property or several properties down, but there's a condominium that's done like a tiered, a tiered set of walls with one of the tiers being like a pedestrian path that provides lateral access along the shoreline.

Mr. Hart: I believe that's here. It's a...I believe it's immediately abutting. It's this location here.

Mr. Hedani: Yeah, from my perspective, I've fished that entire area and what they've done is provide lateral access essentially for the public and in some form, I think, you know, lateral access along this shoreline should be reestablished.

Mr. Hart: Okay, so the reason I wanted to call the owner up is basically just so that they could establish that their position is, is to have an open area for people. It's not formally recorded anywhere that we've seen so far but they have a practice of not interfering with anyone. There's no signs that say people can't be anywhere. To revisit the issue of an additional access path, the goal here was to do the most limited amount of action possible. Now that's our proposal. So if it becomes additional proposals that that, you know, there should be a more aggressive action, you know, that's a comment from the Planning Commission and so on and agencies.

Mr. Hedani: Right. From my perspective, the County's position in the past has been to try to establish accesses to the ocean at intervals of 1,500 feet. So what I would like to see is how that relates to what we have here in terms of the distance, north and south to the nearest public access.

Mr. Hart: ...problem.

Chairperson Lay: One of the comments I have is with this if we do do this injection of that mix that turns into popcorn after that we do do this retaining ring that prevents any foam from escaping out into the ocean so it is captured and you know, not let out into the ocean and you know, raise havoc among the sea life.

Mr. Hart: Yeah, as I wanted to kind of reiterate. The Department of...the Office of Conservation and Coastal Lands, one of their comments on our Draft EA was that we expand our best management practices so that relates to the installation phase and mitigation of any kind of materials or sediments escaping. So we'll have a completely established plan and we'll go over it with DLNR, OCCL and Public Works can review it as well, and basically just try and establish an outline for how we would trap or prevent any of those materials from escaping.

Chairperson Lay: Okay. Commissioner Hedani?

Mr. Hedani: I'd like to see a cost comparison between this alternative and the slanted revetment alternative.

Mr. Hart: Okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I would like a little clarification on the rock revetment alternative also...and is it not a hardened revetment, I mean, not a like a seawall hardened revetment but a boulder revetment and I was wondering if that was what Mr. Hedani was referring to, a large boulder type revetment.

Mr. Hart: I'll show you a photo. So this, this is a revetment.

Ms. Wakida: Yes.

Mr. Hart: Right, so that's what's being discussed.

Ms. Wakida: Thank you. I would like to also see that alternative explored so that gradually the seawall as it crumbles is replaced with something like this.

Mr. Hart: Okay, so it sounds like something like a combination of alternatives. Something like a combination of the revetment alternative and the preferred alternative as a fifth?

Ms. Wakida: I...yes. Well, I'm just looking at the Sea Engineering's suggestions and the picture anyway just looks like a hardened seawall surface at a slant. That's not what we're seeing here.

Mr. Hart: Yeah, there...well, if you look at the photo they show in their report, they show an example of a revetment and it's quite similar to the photo that I had of Maalaea which is why used it. They show on their Page 31 of their report they show example of a rock revetment structure in Guam.

Ms. Wakida: Yes.

Mr. Hart: Right. It's quite similar to this revetment. Okay, okay, I understand. This is slightly, this is slightly steeper, but it just was in my power point, so I thought it would be a easy photo to refer them to. Okay.

Chairperson Lay: Commissioners? Mr. Medeiros?

Mr. Medeiros: I like the rock revetment too. Did anybody ever go to Kahana and take a look at that?

Mr. Hart: Well, no. Well, I'm not sure if Sea Engineering has already reviewed that property, but we didn't do a site visit there to address it in our report.

Mr. Medeiros: May I suggest that you go at least to look?

Mr. Hart: Sure. What was the property name again?

Mr. Hedani: Mahana.

Mr. Hart: Mahana. Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: If you go there right now what you're gonna see is sand beach. You're not gonna see the revetment 'cause it's buried.

Mr. Hart: Okay.

Chairperson Lay: Director, if you could go through what we're here for today on this project?

Mr. Spence: I'm sorry?

Chairperson Lay: Oh, if you just run through what we're gonna be voting on or approving here?

Mr. Spence: The Commission this morning is just making comment for the Draft EA, and Anna has been taking those down. Perhaps you'd like to summarize?

Ms. Benesovska: I would. Thank you very much. I would like to summarize your comments and just make sure that we get everything captured appropriately. So I'm hearing that the Commission would like the applicant to further expand on the alternative of a rock revetment and specifically a slanted revetment as designed at the Mahana. Do you wanna use stronger language is this, is this appropriately put? Or do you wanna change it to being a preferred alternative or how strong do you wanna be about having the applicant explore this revetment alternative?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: You know, from my perspective, what I'd like to see a cost analysis of what that would cost.

Ms. Benesovska: Okay.

Mr. Hedani: From my perspective it's a permanent solution. What we're looking at kinda seems like a temporary solution that's eventually gonna fail.

Ms. Benesovska: Understood. So they need to explore this revetment in more detail and include a cost comparison between the current preferred alternative which is just the repair of the wall and the installation of the slanted revetment?

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Just add it to Commissioner Hedani's slanted revetment, I think that has probably the better merit there because you're dealing with energy, ocean energy and maybe part of that Final EA can include a short discussion on how you're gonna mitigate that ocean energy.

Ms. Benesovska: Thank you. We had a comment from Commissioner Medeiros. He would like the applicant to visit the Mahana location to...and learn more about that solution. We have a

comment from Chairman Lay about the inclusion of best management practices and especially with respect to materials seeping into the ocean. Commissioner Hedani asked for lateral access. Explore the current lateral access situation and how does it fit the formula of having shoreline access every 1,500 feet or did you wanna be more stronger with respect to the shoreline access?

Mr. Hedani: What I'd like to see is the project establish lateral access along the shore.

Ms. Benesovska: Okay, so the project needs to establish lateral access along the shoreline.

Mr. Hedani: Right. The current wall...the problem with the current wall is as the sea level rises it's gonna be sitting in water. You're not going to be able to traipse makai of the wall to get from point A to point B laterally. The alternatives would provide that or another alternative that they could look at is what the project next door did was establish a path on their property that the public is allowed to use. The problem with an informal situation like that is that board presidents change, board members change, and the policy could change over time or they put up fences and say, oh by the way, nobody can come through our property anymore. We don't want you falling over our water into the ocean. So what I'd like to see is the establishment of lateral access along the shoreline which is a goal that's a policy for the County as well as they evaluate where the closest proximity to establish dedicated public accesses are.

Mr. Medeiros: I strongly agree.

Ms. Benesovska: Okay.

Chairperson Lay: Back to my comment. If we can, if we can just add a little stronger language stating that they will capture any material that comes off of this, fixing of this project.

Ms. Benesovska: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Anna, just for the applicant's information, you know, the State recently did something along Honoapiilani Highway at Ukumehame where I thought they had put in a vertical wall which would have destroyed the beach that preexisted that improvement. What they actually did to my surprise was they put in a slanted revetment. And when I last inspected the area because I was still ticked off about it was that the beach was covering up the rocks and I was surprised, yeah. I think they still made the wall too high so you can't see the ocean from the highway, what you see is concrete at least from my car, but they actually did do a slanted revetment that worked and so my criticism of them was unwarranted actually.

Ms. Benesovska: Okay, for the current preferred alternative, Commissioner Shibuya suggested a concern about the hydrostatic pressure of the seawall...onto the seawall caused by the drainage in the area coming from mauka sugar cane fields. So the comment here is to explore that and essentially show how the proposed solution deals with that potential hydrostatic pressure caused by this runoff.

And back to the slanted revetment in that alternative, Commissioner Shibuya asked to also consider

the size of boulders and you know, be sensitive to the revetment that's already existing there in terms of potentially having it match.

Further Commissioner Shibuya asked to...the applicant to bring a sample of the material used to inject...to be injected into the seawall to the Final EA hearing just for further education for the Commissioners. And also to expand on how that material provides the strength for the foundation of the seawall. And I believe this is, this is all I captured or if I omitted something, please let me know.

Chairperson Lay: Commissioners, any comments on our comments? Commissioner Tsai?

Mr. Tsai: For the Final EA I think she asked the coastal engineer for this, I guess to-

Ms. Benesovska: You're right. You're right. I do have this listed here. There's a graph that's missing from the coastal engineering report, Page 19 and it needs to be included.

Mr. Tsai: And 20.

Ms. Benesovska: And 20, Page 19 plus Page 20 needs to be provided in the Final EA. Thank you.

Chairperson Lay: Call for the question for approval of those comments.

Mr. Spence: I'm not sure we need a...

Mr. Giroux: You should vote just to adopt those comments.

Mr. Spence: Okay.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I just have a minor concern here and that deals with runoff. Because this property has such a large impermeable area, the parking lot is concrete, the building itself is concrete and so it sheets off or contributes a lot of drainage and where does this drain go? In 1975 when it was constructed there was not a concern that whatever water you had they could just drain it off into the adjoining properties or the ocean. I just wanted to know how we're treating this today because today's standards are a little different.

Mr. Hart: As discussed in the preliminary drainage report for the project as the project was constructed in 1975, the storm water is collected in collection basins and it's conveyed into the drainageway that runs through the property and it's added to the mauka drainage flow that runs into the ocean.

Mr. Shibuya: Right, understand. Thank you.

Chairperson Lay: Do you want us to run through the comments again?

Unidentified Speaker: No.



Chairperson Lay: Okay, good answer. Commissioner Tsai?

Mr. Tsai: Motion to adopt the, I guess, all the comments from all the Commissioners.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Tsai, seconded by Commissioner Medeiros. Any further comments? Let's vote on the action. All those in favor?

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion passes.

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

**VOTED: To Adopt the Comments from the Commission.  
(Assenting - M. Tsai, J. Medeiros, K. Ball, W. Hedani, S. Duvauchelle,  
P. Wakida, W. Shibuya)  
(Excused - J. Freitas)**

Ms. Benesovska: Thank you, Commissioners.

Chairperson Lay: At this time, we're gonna take a 10-minute break and reconvene at 10:35.

A recess was called at 10:25 a.m., and the meeting was reconvened at 10:38 a.m.

Chairperson Lay: Next agenda item. Director?

Mr. Spence: Good morning, Commissioners. Okay, we're on Communications, number D. Our first one is Alice Jordan and Bob Flint requesting a five-year time extension and to amend the project scope for a one-room bed and breakfast in Makawao and our Staff Planner for this project is Ms. Livit Callentine.

#### **D. COMMUNICATIONS**

- 1. ALICE JORDAN and BOB FLINT requesting a five-year (5) time extension and to amend the project scope to establish a one bedroom bed and breakfast operation on their State Land Use Commission Special Use Permit in order to continue to operate the Wild Ginger Falls Bed and Breakfast in the State Agricultural District on approximately 2.263 acres of land at 355 Kaluanui Road, TMK: 2-7-002: 121, Makawao, Island of Maui. (SUP2 2009/0009) (L. Callentine)**

Ms. Livit Callentine: Thank you, Director, and good morning, Commissioners and also I'd like to say aloha to the new Commissioners that I haven't had a chance to meet yet. So thank you for serving on the Commission. I know you get a lot of rewards from it. We hope that you do. So yes,

my name is Livit Callentine for the Maui Planning Department and we also have the applicants, Alice who goes by Sunny Jordan and Bob Flint with us today. The project before you is a request for a five-year time extension of an existing Land Use Commission Special Use Permit for a bed and breakfast in the State and County Agricultural District. The request is also for a name change from the Wild Ginger Falls B&B to the Ginger Falls B&B. They don't want to be wild anymore. And if you read your report, you know why. So relocation of the B&B operation is proposed to the owner's main dwelling now the only dwelling on the property due to the loss of the cottage in the flood of February 2013.

There is an implemented farm plan on the property and in spite of the steep slope surrounding the property approximately 45 percent of the 2.3-acre parcel is planted including 200, 13-year-old coffee trees which were shown as Exhibit 2 in your report. I'll now present a brief slide show so Commissioners can just get an idea of what the project was when it was approved for those of you who hadn't seen it and the proposed amendments.

So the Planning Commission approved the Special Use Permit in 2009, and in October of the same year, the Director approved the Bed and Breakfast Permit. The approval was for a one-bedroom B&B in a detached cottage on the ag land. The current request for time extension was filed in October prior to expiration of the SUP. The amendment was filed in March of this year after the flood happened in February, and the B&B extension and amendment will be processed administratively should you approve this amendment and extension.

So the amendment is, it consists of...the reason there's an amendment request of course is that it was swept away in a flood, the cottage was. I've been out to the site, it's flattened. I mean, it's pretty dramatic because this was quite a lovely cottage and I'll show you a couple of before and after pictures. So the amendment is in order to locate the same size unit, a one-bedroom to the owner's main dwelling. They are in construction of this unit, and this unit does not include a second kitchen. So it's just got a little wet bar area whereas when it was in the cottage they were allowed to have a full kitchen. So you'll see the construction process so, this is a located approximately here. It's at 355 Kalananui [sic] Drive in Makawao, but it is in the Paia-Haiku Community Plan. Kaluanui, yeah.

Again, so it's at a very steep, if you're familiar with this portion of Kaluanui Road it is extremely steep going down the hill here and then making a really sharp hairpin turn here. And Maliko Gulch is running here and running through the property and crossing Kaluanui right about here. Again, this is a look at the topography of the region. This is just a shot of the property showing you what they have to contend with as far as the geology of the land.

Overview of the cultivated land, 200 coffee trees, assorted palms, landscaping, banana trees, and citrus. Just an example of a straight up shot of some of the agricultural uses on the property. And most of it except for the dwelling...the home lot and the driveway area and where the cottage was...everything else is pretty much straight up all around the property. So this is a shot looking at the...a portion of the owner's home and I'll show you where this is when we look at the site plan. Again, another shot of the owner's residence. Now this was the approved site plan, so that portion of the owner's residence we were just looking at is this portion right here. It's also got an attached what was at the time referred to as a child's playhouse and is, you know, actually I didn't ask what the current of this is, but if you wanna ask the applicant they can come up and speak to you. So

...and this is a workshop. This is where the cottage was located in the approved SUP.

So the proposed site plan, again, the owner's residence here. No more cottage which was here. And now this area of this...is still storage, this area of the dwelling. And then this end is the proposed B&B unit. So this is what the cottage did look like. Really sweet. And this was the approved floor plan with very simple little one-bedroom, bathroom, kitchen, living area, sitting area, and a screened lanai.

Now the proposed B&B floor plan very similar. Bedroom, living room, lanai, this actually was an earlier plan, I apologize. This is not a full kitchenette. The site plan has been amended to remove this U-shape configuration, and the one that's actually in your report is an amended site plan if you wanna look at that in one of your exhibits. So here's this...it's under construction. I was on a site visit to the property last week and this is about as far as they've gotten. Again, this is from the outside and these are the, gonna be piers for the exterior deck.

So as far as the Planning Department's amendments, I mean, analysis, sorry. The applicant is in compliance with the conditions of approval of the Land Use Commission Special Use Permit. We find that substitution of a one-bedroom unit within the owner's dwelling is substantially similar to the former location in a detached cottage and the Department has no concerns about the proposal. Further agricultural uses on the property will continue and guests of the B&B will enjoy homegrown coffee. Thank you, and we will now be happy to answer any of your questions.

Chairperson Lay: At this time, I'm gonna go to public testimony for anyone who wishes to testify at this time, you can come up and testify. Seeing none, Commissioners, open to questions and comments. Commissioner Wakida?

Ms. Wakida: Hi, could you please go back to your topographical map?

Ms. Callentine: Certainly.

Ms. Wakida: So it really doesn't speak to the B&B section of this, I'm just curious. This property looks like it's located at the bottom of the gulch is that right, Maliko Gulch?

Ms. Callentine: For that question, I'm going to defer to the applicant except to say it's...I don't know if it's the exact bottom. It's certainly in the vicinity of the gulch. The gulch runs through their property, but I don't know if you could really...I don't think you'd say that it's the exact bottom, but if you would like, we can have the applicant come up and answer that. Would you like that?

Ms. Wakida: Certainly.

Ms. Callentine: Okay.

Ms. Sunny Jordan: Good morning, I'm Sunny Jordan and it's actually kind of at the beginning of Maliko Gulch. Maliko Gulch starts up above, goes through our property on down and continues I don't even know a mile or two down to the ocean and it ends down there.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So...apparently there's a falls that comes down.

Ms. Jordan: There's a bridge on Kaluanui, and the water comes from above and goes under that bridge and drops into a pool and goes on down. It's very infrequent.

Ms. Wakida: Is it?

Ms. Jordan: Yeah.

Ms. Wakida: 'Cause you certainly have suffered some severe damage at this...

Ms. Jordan: That was unusual.

Ms. Wakida: Was it?

Ms. Jordan: We've never had the water go over the banks. We've never had that.

Ms. Wakida: And you've owned the property how long?

Ms. Jordan: Twenty-four years.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioners? Commissioner Hedani?

Mr. Hedani: Sunny, what concerns me about this is that when you operate a hotel or when you operate a B&B which is essentially a hotel for transient visitors. Transient visitors don't have any understanding of the dangers in an area so you have a higher duty to insure their safety and well-being while they're staying in your property. And by that higher standard, I think we're fortunate that they weren't in the cottage at the time it was swept away because they would have died, and the million dollars in insurance that the County requires in our permits wouldn't have covered us. I, you know, I have a real difficulty with approving something if there's a possibility that not only that the cottage but the main residence could be affected by future flooding.

Ms. Jordan: The water, the way that it comes...I'm sorry, there's no picture to show that but the way that the property it slopes quite a bit down. There was no water that came up even close to the home. We had flooding from the water overflowing the bridge that came around our home, but as far as from the stream, it's quite a ways down and where the new B&B is proposed is way up above the water level. It's way above it. It wouldn't...there's no...there would never be a possibility of water getting into that area.

Chairperson Lay: Director?

Mr. Spence: Thank you, Mr. Chairman. I'm a little familiar with the property. I would say where the cottage was swept away it's probably 10 feet in elevation higher than the base of the gulch where the stream bed would be. The house, Sunny and Bob's house is probably 20 feet in elevation higher than that. So in living there for 24 years and they've only seen it, you know, come up to the

cottage site once, you know, we're talking...if it went up another 20 feet to the home, we're talking...we have bigger things to be concerned about with, you know, than operating a bed and breakfast. So it's...where their house is located would be considered pretty safe.

Chairperson Lay: I live right above your property. I have been there for about 35 years, if not longer. I've only seen it happen twice and I think a lot of it the effect of the rubbish coming downstream hitting the bridge and creating a damming effect 'cause usually it flows good. You know, even with heavy water it flows good.

Ms. Jordan: Right, right.

Chairperson Lay: That was the first time I seen it in a long time in February. I have to go traverse a long way to get back home that night. But, yeah, I hardly ever seen it happen. Commissioner Shibuya?

Mr. Shibuya: Sunny, can you tell me where this in relation to the slope of the proposed one-bedroom? Where is it located in the terms of the height because the Director mentioned it will be 10 feet from the base of the stream and the house is about 20 feet from the streambed?

Mr. Spence: Yeah, and I don't mean...Mr. Chair?

Chairperson Lay: Director.

Mr. Spence: I mean, 10 feet and 20 feet in elevation, okay--

Ms. Jordan: See the property line on the left it goes...that one, that's kinda where the...that's where the stream is. And then there's the home and then the big rectangle building at the end of that is where the new B&B will be and that's...all of that whole section is considerably higher than the area where the cottage was which dropped down. It was...it's hard to tell on a flat map because...and then the walls around are as you come down the driveway there's a vertical walls. There's behind the...on Kaluanui and then there's the rubber trees on Kaluanui and then the stream and the waterfall from there.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Could you go back to your agricultural plan? That one, yeah. Okay, the coffee and everything, you sell the coffee beans, right?

Ms. Jordan: We don't. We provide it to our guests and use it for our own use. I suppose we could, but...

Mr. Medeiros: The palms is it for sale? You get any revenue from the cultivated land?

Ms. Jordan: At this present time, we do not. My husband does it all at home. He pulps it, and he dries it, and roasts it, and it's kind of handcrafted smaller batches of it. And we do like to provide it to our guests and we give it them as sometimes as gifts.

Mr. Medeiros: Okay, I just was curious about it.

Chairperson Lay: Commissioners?

Ms. Dagdag-Andaya: One thing I wanted to add, Commissioners...Rowena Dagdag, Public Works, is that our engineers went out too, as well as our Director went out to the B&B some time ago right after the flooding had occurred and they've identified some potential improvements that we'd like to undertake in the next couple months. We're still kind of working through those solutions, but we will be working with the B&B owners to see what we can do to help them.

Chairperson Lay: Commissioners? No more questions. If we can get the Department's recommendation?

Ms. Callentine: Thank you, Commissioners and Chair. So the applicants submitted a timely request for extension of an amendment to the State Land Use Commission Special Use Permit. Conditions of approval have all been satisfied. Furthermore, there have been no complaints on the property or operation since the approval was granted. The Department hereby recommends that the Maui Planning Commission approve the proposed time extension and amendments subject to the following amended conditions. And the only condition that has been amended is the first condition which it would extend the time should you approve this request as presented to October 31, 2017, subject to further approval by the Planning Director. Now, just to let you know, typically since this was approved in 2009, we're now writing conditions of approval for the Special Use Permit so that the Director can approve time extensions. But at the time that this was approved in 2009, we had not made that alteration in the process. So now, further approvals will...further requests will be reviewed by the Planning Director. However, the Planning Director may forward any time extension requests to the Planning Commission if he so desires. And the other change is just to the wording of Condition No. 4, the insurance condition. Just kinda a housekeeping thing that we've done just to remind people to send their insurance certificates. They're required to send them in every year. And so that was a change to Condition No. 4. All other conditions as was originally approved. Thank you very much.

Chairperson Lay: Call for the question?

Ms. Wakida: Do we have a motion?

Chairperson Lay: No.

Unidentified Speaker: What are voting on?

Mr. Spence: It's the...Commissioners, what you would be voting on would be the request for time extension and a-

Ms. Callentine: And the amendment to the site plan.

Mr. Spence: Yes.

Mr. Medeiros: I move we accept the amendment and the time extension.

Chairperson Lay: Motion by Commissioner Medeiros.

Mr. Ball: Second.

Chairperson Lay: Second by Commissioner Ball? Any comments or questions?  
Commissioner Wakida?

Ms. Wakida: Just a comment sort of piggybacking on Mr. Medeiros's question about the farm plan. Just a reminder that this is ag land and that ag is supposed to be the primary activity when something like this comes up that ag supports what's going on not bed and breakfast supports ag. So I am just emphasizing that the owners need to keep the ag portion of their property very viable.

Ms. Callentine: Yes, Commissioner Wakida, thank you. They do recognize that and the Department also recognizes this is a two-acre parcel that's mostly vertical. So I think they're doing a commendable job considering those characteristics of the property.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Livit, has there been a topographical survey of the property so we can confirm the elevations of the residence above the level of the stream?

Ms. Callentine: Not to my knowledge.

Mr. Hedani: So we're kinda guessing as to the elevation of the...of the house at this point?

Ms. Callentine: Well, Director Spence may have seen one earlier when he was the planner perhaps, but I haven't seen one so I...

Mr. Spence: I'm pulling from memory when I did a site visit as a consultant.

Mr. Hedani: My only concern from—

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: —my only concern is because, because of what's happened to date, we should be cautious in terms of approving this particular location until we're certain about the facts relative to the location of the proposed B&B--

Ms. Callentine: Right.

Mr. Hedani: —as opposed to the cottage which isn't here, yeah? I think we're just really, really fortunate that nobody died in this case. My first inclination would be to vote against it. The second inclination would be to confirm what the elevations are so I would actually suggest deferring this until we can confirm that one way or another.

Ms. Callentine: I don't know whether...and thank you for the comment, I don't know whether Public Works does any...when they are reviewing and issuing building permits if they look at elevations,

but I put the photo of the construction up just to show you and as Director Spence said, this portion of the main dwelling is significantly higher than the elevation of the cottage. There is absolutely no doubt in my mind that that is true. I couldn't tell you exactly how many feet and I don't know whether in the subject, in the course of reviews for additional permitting that would come up. Maybe Deputy Director Dagdag could answer that.

Ms. Dagdag-Andaya: For this particular one I'm not sure. I can't really say right now. I can find out, but...

Ms. Callentine: With your permission, the applicant would like to respond if you care to hear from her?

Chairperson Lay: Sure.

Ms. Jordan: Sunny Jordan. There was one factor that we didn't discuss and it wasn't so much the water coming or overflowing and flooding the area. Is the power of the water rolled boulders from the edge of the stream into the cottage and knocked it off its foundation. So the water didn't need to be really all that high. It doesn't take much to take something away, but it did flood the area, but the height of the water wasn't as high as...I mean, it wasn't anywhere near, didn't go anywhere near where the proposed cottages, and it is also built up a good three feet on a concrete slab if that helps.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Do you know what the elevation of the proposed B&B is relative to the streambed?

Ms. Jordan: It least 15 feet I would guess, but I'm not an engineer, so I'm not...

Mr. Hedani: So nobody knows at this point?

Ms. Jordan: Correct.

Chairperson Lay: On that same matter, so besides moving the cottage has there been any more improvements that I guess address the water flow to make sure that it doesn't go in that direction again?

Ms. Jordan: Well, that comes from the stream. You know, it's 10-inches of rain is a lot if it happens in one week. There was 10-inches of rain in over five hours. It just stopped over Piiholo and just dumped and it's kind of biblical. It's kind of something that's never really happened. We had a 100-year storm about six years ago. Everything was in the paper, a 100-year storm and we didn't have a problem. It didn't overflow the banks. It was...this was, I don't know. I hope it never happens again. It's never happened before like that. I don't think there was debris blocking the stream, I think the water was just...could have been both, I don't know. But there is a problem with water coming over the road that overflowed the bridge and Mr. Goode from Public Works said that there's perhaps a problem with the grade of the road. It took that overflow water and dumped on us, but that didn't contribute to the waterfall and the flood.



Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I just have a follow up question with Sunny if you wouldn't mind?

Ms. Jordan: Yes.

Mr. Shibuya: Where the proposed B&B is gonna be located, is it closer to the stream, further away from the stream than the one that was swept away?

Ms. Jordan: Much further away from the stream.

Mr. Shibuya: Much, and when you say, much can you give me some kinda numerical numbers? Approximate?

Ms. Jordan: Well, it's probably...if the stream is here and the cottage is here, it's probably twice the distance.

Mr. Shibuya: Twice the distance. Okay, and the height would be much higher than or a little higher than where the cottage was?

Ms. Jordan: Yes, easily 10 feet higher than where the cottage was.

Mr. Shibuya: Okay, thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Back to the ag portion again. And this is just a suggestion, you know, my problem is there are so many of these bed and breakfasts, you know, on ag property. Okay, now for me and this is just me, it's supposed to be ag, okay. If you had some kind of plan, my idea is, I don't care if you're making money or donating it to Foodbank, as long as there's an ag plan to use the land. You're doing right, but you're not following through.

Ms. Jordan: But I do have a farm plan. It was submitted and approved.

Mr. Medeiros: What are you doing with the products? That's the part that I'm concerned about.

Ms. Jordan: But you mentioned that it didn't matter if we made money from it.

Mr. Medeiros: Yes, well I mean, do you...

Ms. Jordan: See one of the problems with the property because it's vertical and the slopes are 90 degree angles our property goes up those so that's included in the two and a quarter acres. Have of the streambed is, our road down into the property is on the property. There's no building on it. Our soil, it used to be a rock quarry so the soil is really inferior and it has been graded as what is it? It's like the same as a'a lava flow. It's that level. It's the lowest level of quality of land. It's in our report. And so it's so what we do is we have planted on the areas that we can. We have our home, we have our parking, we have, you know, we did have the B&B and then we planted

where we could around that and submitted the plan and a lot of it, you know, we give, with our guests they walk and we talk...we have all these different heliconias and things planted and we take them around and show and introduce them to all kinds of different tropical plantings that they've never seen in their life and so there is that...

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I have to be in agreement with Commissioner Hedani's concern. Given the circumstances, I would like to see some sort of, you know, topographical survey or study to see what we're looking at and also maybe in conjunction with Department Public Works or the County is doing to help alleviate some of the issues because I hate to see your B&B you get swept away even though you may have another biblical...I'm not saying you will, but it's better to be cautious than not.

Ms. Jordan: Would anyone like to come out and see for themselves?

Chairperson Lay: Director?

Mr. Spence: Sunny perhaps for the information of the Commissioners, you were pointing out where the stream flows. I believe it was...

Ms. Jordan: Oh, wait. Kaluanui...okay so it's right here.

Mr. Spence: So the stream follows that sort of--

Ms. Jordan: So this is Kaluanui Road and it goes onto Baldwin.

Mr. Spence: And the falls were where?

Ms. Jordan: Right about here.

Mr. Spence: And so the stream follows that curve?

Ms. Jordan: It follows that curve. It drops considerably and this goes down toward the ocean.

Mr. Spence: The way that the water came over the bridge and under the bridge, you can see that the...you were saying that it was the force of the water going over the bank because it wasn't because of the rise in the water so much as it was...the stream was essentially aimed in the direction of the cottage.

So the water is flowing like this, sort of in the direction of the cottage. Okay, it's not because of the volume going height wise, it overflowed the stream into the cottage. Normally the stream goes like this. The proposed...the house and the shop and the addition here is not in line with that so that's...you know, it's not in the line of fire in other words. So that's just for clarity for the Commissioners.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Director, can you...okay, where the house is, is still currently it's right there, right? But my understanding from the applicant that the water did come up close to the house?

Ms. Jordan: No, not from the stream at all. It never...it didn't come up any closer, it didn't come up any higher than here. 'Cause it really, it gets quite, it starts going uphill. When you walk from the house down it's quite a slope to the cottage. But the water that came around the house was when it overflowed the bridge and it had no place to go but down the road and then it went through the rubber trees on Kaluanui and poured down. So that water around, surrounded our house was from the overflow of the bridge. But that didn't even go down.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I'm just confused. Where's the rubber trees?

Ms. Jordan: They're right along Kaluanui Road. They're big rubber trees all along Kaluanui Road and here's the bridge. So the water overflowed and then it ran down the road because the direction of the road, the way the road is sloped it had no place to go but on our property and then it went down, down, down, down and then it tore down our driveway, took out our driveway and then water came down from ...(inaudible)...

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Where on the map is the garage?

Ms. Jordan: This is the garage. This, ...(inaudible)...is this little building back here. This is the garage.

Ms. Wakida: And the ceramics studio?

Ms. Jordan: Well, it's not a ceramic studio, it's just where he has his glazes and things stored in the warehouse.

Ms. Wakida: According to your article you had mud and water in those areas.

Ms. Jordan: Yeah, that was from...that was from what came off the road. That's what came over the bridge, poured down, as I said, came down, just funneled right down our road, took out 18-inches of our road and all that mud and debris went down into the...all around us.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Excuse me, one more clarification. The building where you are proposing the bed and breakfast is currently what?

Ms. Jordan: It's right there.

Ms. Wakida: Yes, what is that building?

Ms. Jordan: That's storage. It's a big warehouse storage.

Ms. Wakida: Oh, I see. And what was the...did that get filled with mud and water too from the road?

Ms. Jordan: It did. It got...the water funneled through and that's what the Department of Public Works is working on. They're gonna figure out a way that that won't happen again. Whether it's to lower the road on the other side of the bridge and create a causeway so the water goes that way instead of on us. It should never have happened.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I guess it's a question for our Public Works Director. Do we have specific plans in place how to alleviate possible flooding or overrun of water?

Ms. Jordan: It was just a suggestion.

Ms. Dagdag-Andaya: Yeah, it was a suggestion as Sunny had mentioned and right now we're looking at other suggestions. We're also needing to kinda discuss this a little bit in-house and with Corp. Counsel so...in terms of liability, but this is something that we're trying to work on. So one of the suggestions was removing the rubber trees and instead of a guardrail putting up a low wall. I can't remember what the other suggestions were, but this is still something that we're trying to figure out.

Mr. Tsai: Any more questions? If not, if the Director can repeat the motion?

Mr. Spence: The motion is to approve the time extension and the site plan, the modification of the site plan.

Chairperson Lay: Call for a vote. All those in favor?

Mr. Spence: Three ayes.

Chairperson Lay: Those opposed?

Mr. Spence: That's three noes.

Mr. Shibuya: I will, you know, with reservations, I withheld my voting so it's an affirmative, right?

Mr. Spence: So that be four ayes. It's not enough to pass.

Chairperson Lay: Okay, once again, I am going to vote and I'm gonna tell you why I'm voting in this direction. I pass by this road all the time. I've seen...I've been there 35 years if not longer. We live right above. I've seen changes. I also know the layout of your property. It is box shaped, but it is like also like a bank on a race track where you have this bank on the backside. So there is protection with their house being in that area that's lifted up. It is lower where that river area is so the water flow is in that direction, and with them...like they said, the main concern is that flow that

came from the road, going down their road that's where they had that flooding in that higher areas. I've only seen that twice in my whole lifetime there. So that's like an act of God. So I don't if preventative measures what can you do when there's a flood that lasts that long anywhere for anybody? So with that, I'm in favor of this project. I'm voting yes.

Mr. Spence: That would be five ayes. And just for the record, Sunny and Bob only considered me as a consultant. I never did work for them. I'm just speaking from my knowledge of the property. So they unfortunately never did hire me, but...

**It was moved by Mr. Medeiros, seconded by Mr. Ball, then**

**VOTED: To Approve the Five-Year Time Extension and Amend the Project Scope on the Land Use Commission Special Use Permit as Recommended by the Department.**  
**(Assenting - J. Medeiros, K. Ball, S. Duvauchelle, W. Shibuya-abstained, I. Lay)**  
**(Dissenting - M. Tsai, P. Wakida, W. Hedani)**  
**(Excused - J. Freitas)**

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Now that the project's been approved, I think the Department should consider requesting the applicant to provide them administratively a topographical map so that we can determine for sure what the elevation of the proposed accommodation is from the streambed because we have been put on notice. I mean, the first cottage is gone. We're on notice, yeah. If something happens, you know, I know I've heard 10 feet, I've heard 30 feet above the streambed, somebody should know what the elevation of the proposed accommodation is over the streambed and that should be put into the record so that the County's collective derriere is covered.

Chairperson Lay: And also would you like copies of that for everyone else here so you guys are a little more feeling better about it?

Ms. Callentine: Can I just clarify? A topographical map won't show the structures, the improvements. I think you maybe wanting a topographical survey?

Mr. Hedani: Yeah, a topographical map that identifies the elevations of the ground above the streambed along with the dwellings so you know how many feet above the streambed that you are. All of our minutes are gonna end up in court if something happens just so you know.

Ms. Callentine: Thank you, Commissioners.

Chairperson Lay: Okay, we'll take a five-minute break here. Just a little quick one so we can move on and hopefully finish up before lunch.

A recess was called at 11:19 a.m., and the meeting was reconvened at 11:26 a.m.

Chairperson Lay: Planning Commission is called back to order. Our next agenda item is?

Mr. Spence: This is Communication No. 2. This is Ms. Gwen Ohashi Hiraga, project manager with Munekiyo & Hiraga, Inc. This is submitting the 2013 Annual Report regarding disbursements of funds in the Settlement Agreement with West Maui Preservation Association or WMPA in association with the Honua Kai Resort project, and our Staff Planner is Mr. Joseph Prutch.

2. **MS. GWEN OHASHI HIRAGA, Project Manager of MUNEKIYO & HIRAGA, INC. submitting the 2013 annual report regarding the disbursement of funds in the Settlement Agreement with the West Maui Preservation Association, Inc. (WMPA) pursuant to Condition No. 32 of the Special Management Area Use Permit and Step 2 Planned Development approvals for the proposed Honua Kai Resort, North Beach Park, and related improvements at TMK: 4-4-014: 006 and 008, and 4-4-001: 010, Kaanapali, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

**Condition No. 32 reads:**

**“That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information.”**

Mr. Joe Prutch: Good afternoon everybody. This is the Honua Kai Annual Report, part of the Settlement Agreement. The Planned Development and the SM1 was approved back in 2005. One of the conditions is that an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the settlement agreements for your information. There used to be two intervenors. It was Charlie Fox and WMPA. Charlie Fox funds have all been paid in full I think two years ago. We're pau with Charlie Fox, but the WMPA money is still being paid.

So far what I have calculated is the amount to be disbursed to WMPA was about 2.1 million. The amount disbursed so far is about 1.2, so there's still about \$887,000 remains and from last year's report to this year's report, I saw that it was about \$192,000 was paid for the Mill Street Extension Traffic Study. Gwen's not here, but Colleen Suyama is here from Munekiyo, so she's gonna come up and give you a report and she'll be able to answer any questions and she has a representative from Honua Kai here as well. I didn't get his name, but he'll mention his name when he comes up. Thank you.

Ms. Colleen Suyama: Good morning, Colleen Suyama with Munekiyo & Hiraga and I have Steve Sewall with me representing Intrawest. The annual report has been submitted to the Commission and we're available for any questions that the Commission Members may have?

Chairperson Lay: At this time, I'm gonna open up to public testimony. Anyone wishes to testify, step forward, identify yourself and you have three minutes for your testimony. Thank you.

Mr. John Skenderian: Thank you for the opportunity. My name is John Skenderian. I'm a realtor, West Maui primarily. More of a question and bit of a concern in that as I see that Honua Kai is a

permanent, long-term project, hopefully if it's well-built it will be there for many, many years. And the traffic it creates is also a permanent issue that when the occupancy is high back like it was in '05 and back now, traffic going up Lahainaluna Road is very intense. I drove my son, I'll drive my grandchildren up the road. I don't know how many of you have experienced the Lahainaluna Road corner or the school corners even after the bypass has been opened. The traffic issue has become a real concern at the main corners in Lahaina. Having said that, this money that's been distributed for not the Mill Street Extension which was originally earmarked for specifically, the three schools to provide mobility for the parents and the teachers and public to use those roadways is going towards what's called Kuhua Street Extension which is different and the spirit of it is different. And the Kuhua Street Extension in its EA specifically calls out that it's a temporary measure and that the congestion will continue and the bottlenecks will continue at those corners in Lahaina. Now shortly after Honua Kai opens up the GPAC creates a transit corridor as part of the Maui Island Plan. And the transit corridor specifically is requesting that no further development is put in that would necessitate future condemnation to accommodate the transit corridor, but the Kuhua Street Extension that's being funded by the money for Honua Kai is contrary to that. It's a vehicular roadway and the corridor specifically says a non-vehicular roadway. Well, when I bring it up, I'm told that on specifically the lahaina station runs right through where the Kuhua Street Extension runs through. So long term planning has approved a project and this is a third or fourth generation map deferred to the West Maui Plan, the committee of which is not yet put together, I'm told it'll take five years to put the West Maui Committee together, and oh, it won't be 50 years before the transit corridor is built. Well, what is long range planning if it's not 5 to 50 years? Why would be funding a project that's insufficient by definition will leave us with bottlenecks?

Ms. Takayama-Corden: Three minutes.

Mr. Skenderian: When we have a approved long-term plan that's not being funded and being ignored. Thank you for your time.

Chairperson Lay: Any questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Thank you very much, Mr. John Skenderian. That's your name?

Mr. Skenderian: Yes, thank you.

Mr. Shibuya: We appreciate your inputs on that especially the integration of future plans for transportation including the mass transit corridors as identified there. I would encourage you to join the community development plan group if it's possible because we need residents with that vision to incorporate many of the parts together for the community. Thank you very much.

Mr. Skenderian: Thank you. I'd be honored to do that.

Chairperson Lay: If you can, please sign in at our sheet over there, sign in. Is there anyone else who would like to testify at this time? Step forward, identify yourself.

Ms. Lesley Skenderian: Good morning, Lesley Skenderian, wife of John. Would like to know if I could get a copy of last year's report and this year's report?

Mr. Prutch: I can get copies of those for you if I can get your email address.

Ms. Skenderian: Thank you. Curious. That's it. Thank you.

Chairperson Lay: Please sign in also. Anyone else to testify at this time? If not, public testimony is closed. Commissioners, do we have any questions or comments? Commissioner Wakida?

Ms. Wakida: Maybe Colleen can answer this question. Apparently there's ongoing income to this association, right? It says it's .25 percent of the sales of the units?

Ms. Colleen Suyama: Right, that's my understanding is that the resales, the sales, original sales and then the resales were supposed to be put into this, you know, WMPA finances.

Ms. Wakida: Right, so they constantly have some replenishment of funds, right?

Ms. Suyama: For WMPA.

Ms. Wakida: For WMPA.

Ms. Suyama: Right. But we have no control over what WMPA does with that money and I believe the Commission several times have asked for the West Maui Preservation Association to be here to address what are they using the monies for as well as who is on their board of directors and I don't believe they've ever come before the Commission.

Ms. Wakida: Can you...one other question?

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Kinda clear up the relationship between the West Maui Preservation Association and Honua Kai Resort and this?

Ms. Suyama: The only relationship is when the original SMA permit was being applied before the Commission, the West Maui Preservation Association and Charlie Fox both intervened into the SMA application. And as part of a settlement agreement between Mr. Fox and WMPA, they had agreed to certain terms so that the intervention could be withdrawn and the project could go forward and that's where the Commission when they approved the SMA Permit made a condition that there would be an annual reporting to the Commission as to what's transpiring in terms of the funds that are being given. So every year the Honua Kai, Intrawest does this annual report that is filed with the Commission saying that based upon the settlement agreement these were all the monies that were given to WMPA, the West Maui Preservation Association. This was the monies that was set aside for roadway improvements because the Commission had also required things like roadway improvement, the synchronization of the street lights on Honoapiilani Highway. They had to put so much monies for that. They had to also put monies for the Mill Street Extension that the Skendarians were talking about in which there was supposed to be this alternate linear roadway parallel to Honoapiilani Highway that was gonna be between Honoapiilani Highway and the bypass road and that's what the Skendarians were talking about that Mill Street. It was called the Mill Street Extension. There was no specific alignment. Originally they were thinking about following



the cane haul road. The original cane haul road and what had happened in the planning of the roadway alignment is that there were a number of community meetings that were held in West Maui to talk to the people that were gonna be directly affected like the people on Kuhua Street, the people at the Aholo Subdivision, the County of Maui, Parks and Recreation Department because there were alternative alignments that were provided and based upon the input of the community, the Kuhua Street Extension was decided to be the one that would satisfy most of the concerns that all of these groups had. And because it was no longer following the Mill Street cane haul road and it was actually an extension of Kuhua Street it was renamed Kuhua Street Extension rather than the Mill Street Extension because it was no longer following Mill Street. That's the only difference, but the Commission had required this money being placed as part of the condition of the SMA permit for this Mill Street Extension and that's what the, you know, the monies...the study has been done is for that extension.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So the money that continues to come in is then being sent over to—

Ms. Suyama: WMPA.

Ms. Wakida: West Maui Preservation. That money is continuing to go into these extension studies?

Ms. Suyama: No, there were only specific funding that was put for the Mill Street Extension, for a future extension of the bypass from Keawe Street to Kaanapali. There were some monies that were put in and the synchronization of the street lights on Honoapiilani Highway.

The other money, the sales money that we're talking about goes directly to WMPA. That was part of the settlement agreement that they get these funds from the sales and the resales of the unit and it's basically funding the West Maui Preservation Association which Intrawest has no control over.

Chairperson Lay: Okay, with this money that's being allocated that specifically for the street lights and the road improvements is it an ongoing thing where if that street lights ...(inaudible)...making payment for this change?

Ms. Suyama: No, there was specific funding set aside and I believe in the annual report to the Commission there is about \$35,000 left and they're gonna use that because there was a request from the DOT, the Public Works Department that they restudy the synchronization of the lights and that's what the money is gonna be used for later on this year is to reexamine that.

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

Mr. Shibuya: So the \$35 remaining that comes out with a difference that's pretty close from the difference. If you add up all these disbursements and then you come up with the 607,000 there's a difference of \$36.92. And I go, oops, how did you come up with that. Now there's some slippery math here, but you know, I'm not gonna quibble about that. Okay, so you give me numbers, I going add 'em up.

Ms. Suyama: Yeah, sorry.

Mr. Shibuya: Okay, sorry.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I have to plead horrible ignorance. Where is Kuhua Street?

Ms. Suyama: Right now based upon the community meeting that was held in Lahaina, the Director of Public Works had agreed to extend the comment period, 'cause the official comment period was over but he extended it to May 31<sup>st</sup>. So we are still receiving comments from the public. They have until May 31<sup>st</sup> to submit their written comments. Our company will then respond to all of the comments that have been received to date including Mr. Skendarian's comments and then that would be forwarded to the Public Works Director with a revised environmental assessment for his acceptance. In other words, the Public Works Department will look at the Final, Draft Final EA. They will decide on the responses to all of the comments and make a decision because the Director of Public Works will sign all of the responses.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I think my question was where is Kuhua Street?

Ms. Suyama: Oh, Kuhua Street, oh, I'm sorry. Are you familiar with the Pioneer Mill site?

Ms. Wakida: Yes.

Ms. Suyama: Okay, on the opposite side along the residential units that are along...across from the old mill site, that is Kuhua Street

Ms. Wakida: Oh, the one that runs up there along backside of the mill.

Ms. Suyama: Yeah.

Ms. Wakida: Okay.

Ms. Suyama: So it's like about a 20-foot wide roadway right now.

Ms. Wakida: Is it the one that they open up when they do...plantation days, it goes all the way across over to Emerald Plaza area?

Ms. Suyama: It could be. It could be.

Ms. Wakida: Yeah, okay. Thank you.

Chairperson Lay: Commissioners, if there's no more questions. We're just gonna...we're calling for a vote to approve this report to us. So all those in favor.

Ms. Wakida: Is there a motion?

Chairperson Lay: We're just approving this report.

Mr. Shibuya: Acceptance of the report.

Chairperson Lay: Yeah, an acceptance of this report. Commissioner Wakida?

Ms. Wakida: You know, this whole West Maui Preservation thing has always been a little mystifying and I don't know how we can get more information from them. I think we've requested it in the past and they haven't been real forthcoming. I don't know what our...if we have any right to be more forceful on that or not. Director?

Unidentified Member: Get on the board.

Mr. Spence: Yes. I don't know if the Commission has any authority. You would have authority over just the SMA Permit not over the board of a nonprofit. I know the Commission expressed frustration this time last year when they reviewed...you know, because the money was supposed to be paid for certain things and there's no accountability for, or no accounting for, you know, what's been paid to them as yet. So I'm not sure what to tell you. It was suggested somebody could get on the board.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I think if you, Commissioner Wakida, if you wanted to get their attention what you would do is entertain a motion to amend the original SMA to cut out the 0.25 percent allocation that goes to them and you would draw a reaction to them.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I was just wondering if Mr. Skendarian is a member on that board?

Mr. Skendarian: No I'm not and I was not invited to the public hearings that were--

Chairperson Lay: If you could come to the mic and so we can get this on record, please? Thank you.

Mr. John Skendarian: John Skendarian. I'm...I was...I'm an affected landholder to Kuhua Street Extension is how I was brought...this was all brought to me and I was not invited to the original three or four public hearings. I didn't find out about it till the surveyor was in my lot surveying and I asked what for and he said a project from KLMC. So I went over to chat KLMC and said what's going and Chad handed me a Mill...a Pioneer Mill subdivision map, and I went oh, this is for your subdivision. He said, yeah, part of it is. And so I took the Pioneer Mill subdivision map to Milton Arakawa when he was the Planning[sic] Director before David Goode and I said, well, this is the Kuhua Street Extension I'm confused. He said, what's this? I said, well at the bottom it says, it's the Pioneer Mill subdivision map. He said, well I've never seen this before. I don't understand that, I got very confused and I tried to follow it because the surveyor said that they're coming to

survey my property to take part of my property for Kuhua Street Extension and they're gonna put five lanes of asphalt down on Papalaua Street to take my property and property from West Maui Center and our access to make the roadway for Kuhua Street Extension under the guise of Kuhua Street Extension when it's really for the benefit of the same company that's administrating the funds for sold Honua Kai land. So they sold Honua Kai the land and Honua Kai goes we can't get it through 'cause the traffic. Go look, we give you millions of dollars to do traffic studies to mitigate the traffic up Lahainaluna Road call it Mill Street. Okay, now millions of dollars who administrates it, KLMC is the administrator of it. I don't understand. They pay KLMC to administrate facilitating a roadway system that's in their own words, they're the beneficiary of using these funds. Taking my land, the next neighbor's land, let alone to say the impacts it's creating. I've made quite a statement for Colleen's extension. The EA was 1,579 pages long. It came out...for some reason...(inaudible)...pushed very quickly all of a sudden. I'm notified three days before, sent a file that I couldn't open, had it printed, it was five phone books high. I spent the month reading it and rereading and rereading it, and finding nothing but puffery in it and contradictions to the Maui Island Plan leaving us with environmental impacts, aquatically, Hawaiian land impacts, things that can't be mitigated once that land is missing. Let alone to say they're gonna take the land away for their own use and then contrary to what the Maui Island Plan has stated. It's our long term plan.

Chairperson Lay: Does that answer your question, Commissioner Shibuya?

Mr. Shibuya: Yes, it does.

Mr. Skendarian: I will be involved and put as much time into this as anyone. My children and grand children and great grand children will use those roadways and utilize that area and so I'm available and I've studied that EA and know in detail about these things that are going on and you're right, it's slippery. The whole thing's been slippery. There's nothing that matches.

Chairperson Lay: Thank you.

Mr. Shibuya: Thank you very much.

Chairperson Lay: Commissioners, any more question, comments? Go ahead and identify yourself?

Mr. Steve Sewall: My name is Steve Sewall. I actually represent Maui Beach Resort Limited Partnership who was actually the negotiator who settled the settlement agreement. I actually did the original deal on this thing. I started the project in 2004. So if anybody needs any background on how WMPA and everything else works, I was there when the deals were all done. You know, what has just been said is not really totally true of what how this all went together.

While we came to this planning commission to actually get approval for our SMA and we were intervened on. And we did our best to try to resolve those interventions and what we're here today is a lot of the money that was spent to resolve those interventions and at that point in time, when the intervention was actually accepted, we were the guys that basically said all interventions should be made public once they're settled. Prior to that it was private and there were lots of...if you wanna talk about backroom deals that happened before us. So what we've tried to do including Mill Street was put on the table is a possible solution to traffic mitigation. We didn't own the Mill

Street corridor. That was owned by Kaanapali Lands. They were prepared to actually put that land if we funded the study work and that's how that deal was put together. We administer the funds so it's not like I've given them the money. The money is in my trust account. When they give me a bill, I look at the bill, I decide whether they've used the money appropriately and then we actually allow that money to be released to them. It's not this carte blanche thing that they're just drawing this money down willy nilly. It's all being definitely monitored and we basically take it pretty seriously where our money's going. We spent a lot of money on that.

Chairperson Lay: Commissioners, any questions?

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

Chairperson Lay: Commissioner Ball?

Mr. Ball: This comes up every year when we look at this approval of this document. So when you saying them, who is the them that you send money to?

Mr. Sewall: Well, we basically, Kaanapali Lands is managing the process if you want to say on Maui Beach's behalf.

Mr. Ball: What is this WMPA come in?

Mr. Sewall, WMPA, the West Maui Preservation Association was the intervenor that, one of the two intervenors, but they were the...had the actually, the more clauses were added to the final SMA because of them than Charlie Fox. What is in this document here, the traffic mitigation with respect to light sequencing, the \$250,000 that's to be sent on some phase of the future bypass road, and the Mill Street Extension were all part and parcel of that settlement agreement that was reached between Maui Beach and WMPA. So at that point in time, a totally third party being WMPA decided that those were realistic community wide mitigation measures that should be...we should be responsible for fulfilling as part of the agreement to approve the SMA. So that's what we're doing today, right? It's not...they weren't our doing. That was what the third party community involvement through this SMA deemed to be projects that we, the community, wanted to proceed with.

Chairperson Lay: Commissioner Ball?

Mr. Ball: And I remember in previous where the...I think this was the project where we had a whole bunch of community testifiers saying that, you know, that funds were being...they weren't being spent properly and we asked for the board to come up and they refused.

Mr. Sewall: This is WMPA.

Mr. Ball: I believe so, yes. And so there was some question about that from us which we really have no jurisdiction over, but since you're here and you have some knowledge about that group, you know, maybe this would be a good time to quell some of those rumors or you know...

Mr. Sewall: Well, unfortunately I can't really add much more to that. You know, we still have dealing with them on time to time on issues they don't think that we're actually maybe conforming

to specifically the letter of the law in the settlement agreement. But I've got no control nor contact with them with respect to how that money's being spent. The 25 percent that, you know, came up previously on resales in the project, we're not specifically doing the resales. We still have units that we're selling ourselves, but we're not you know targeting any of the resales on it. And it only does come off of resale units. It doesn't come off any of the first-time around sold units. So but I know those funds are still being distributed to WMPA, but I've got no knowledge of, you know, any use of those funds to date. So I don't know what they've been spending the money on, but it was more than just that 25 percent. We gave them a fairly significant amount of start up cash or whatever you wanna call it at the time that the settlement was done as well.

Chairperson Lay: Commissioners, any more questions? So right now we're looking for an acceptance of this report and we'll do a verbal one. All those in favor of accepting this report, please say, aye.

Commission Members: Aye.

Chairperson Lay: Those opposed? Report is accepted.

Mr. Spence: Commissioners, we're on Item E, Acceptance of the Action Minutes of May 14, 2013, and the Regular Minutes of April 9, 2013.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 14, 2013 MEETING AND  
REGULAR MINUTES OF THE APRIL 9, 2013 MEETING**

Mr. Shibuya: So move to accept.

Mr. Ball: Second.

Chairperson Lay: Motion and second. All those in favor say, aye.

Commission Members: Aye.

Chairperson Lay: Those opposed? Motion carries.

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

**VOTED: To Accept the Action Minutes of the May 14, 2013 Meeting and Regular  
Minutes of the April 8, 2013 Meeting.  
(Assenting - W. Shibuya, K. Ball, J. Medeiros, M. Tsai, W. Hedani,  
S. Duvauchelle, P. Wakida)  
(Excused - J. Freitas)**

Mr. Spence: Commissioners, we under Item F.

**F. DIRECTOR'S REPORT**

1. **Planning Commission Projects/Issues**
2. **EA/EIS Report**
3. **SMA Minor Permit Report**
4. **SMA Exemptions Report**
5. **Discussion of Future Maui Planning Commission Agendas**
  - a. **June 10, 2013 meeting agenda items**

Mr. Spence: You have the SMA Minors and Assessments Reports and as well as a memo from Clayton Yoshida for what's gonna come up on the June 10<sup>th</sup> meeting. Any questions?

Chairperson Lay: Okay we need a motion to accept the SMA Minor Report, a verbal one. All those in favor say, aye.

Commission Members: Aye.

Chairperson Lay: Opposed? Motion carries. On our June agenda if you guys will please take note is a Monday. I think we have a Kamehameha Day on that next day, so make sure you make that adjustment on in your calendar and don't show up here when nobody's here. Other than that, anything else? Thank you very much. Meeting's closed.

**G NEXT REGULAR MEETING DATE: JUNE 10, 2013 (Monday)**

**H. ADJOURNMENT**

The meeting was adjourned at 11:55 a.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Keone Ball  
Sandy Duvauchelle  
Wayne Hedani  
Ivan Lay, Chair  
Jason Medeiros

Maui Planning Commission  
Minutes - May 28, 2013  
Page 48

Warren Shibuya, Vice-Chair  
Max Tsai  
Penny Wakida

**Excused**

Jack Freitas

**Others**

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