

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

**A. CALL TO ORDER**

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

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

Chairperson Lay: The Commission is now called to order. Today is July 9, 2013. We have a pretty full agenda today everyone, and I hope you all had a really wonderful 4<sup>th</sup> of July weekend 'cause I did.

At this time, we'll take public testimony for those who wish to testify on a agenda that's gonna be a little later today in case you can't make it or you have work to go to. A maximum time limit of three minutes will be placed on your testimony. And if you testify at this time, you won't be able to testify when the agenda item comes before us because...unless you have something new. Our first agenda item? Oh, excuse me, does anyone wish to testify at this time? We have three, four people signed up. Do you wish to testify now or when the agenda comes up? When it comes up. We've got Paul Laub, Simon Russell, Mike Newbro and Malia Vandervoort. You wanna testify later?

Ms. Vandervoort: Where is it on the agenda?

Chairperson Lay: It's towards the end. It might be an hour or two from now.

Mr. Spence: ...(inaudible)...

Chairperson Lay: Oh, longer than that.

Mr. Spence: That's gonna be in the SMA Minor Report. I would suggest...That's gonna come up at the SMA Report which is at very end of the agenda. You're welcome to stay for the whole day. If you wish to testify now, the Chair has opened the floor for public testimony on any agenda item.

Chairperson Lay: Come up to the mic and identify yourself, and the time limit is three minutes.

The following individuals testified at the beginning of the meeting:

Mike Newbro - Item F-5, SMA Minor Permit Report, SM2 2013/0069, Rock & Brews  
Malia Vandervoort - Item F-5, SMA Minor Permit Report, SM2 2013/0069, Rock & Brews

Their testimony can be found under the item they testified on.

Simon Russell - testified in support of transient vacation rentals in general

His testimony follows:

Chairperson Lay: Does anyone else wish to testify at this time? Please identify yourself.

Mr. Simon Russell: My name is Simon Russell. I'm the vice-president and legislative chairman for the Hawaii Farmer's Union as well as a small businessman in Haiku. I come here to testify in support of transient vacation and short-term rentals on agricultural land. On the behalf of the Hawaii Farmer's Union we believe that if someone is paying ag tax rates on their land and ag water rates and they're bonafide farming then they should be allowed to rent their facilities as they see fit. And I've provided some written testimony. I hope you had some time to look at it. There's some valuable information in here especially on the last page. I provide links. One of them is a U.N. Special Report called, "*Agriculture at a Crossroads*". It's a wonder white paper put out by the United Nations Agriculture Committee, I can't...it's a very long acronym but it's a group of 400 scientists, agriculture scientists and they spell out a fact that 90 percent of all the farms on earth are two hectares or less, and 70 percent of the food on earth is grown on these farms. So most of our farms in the world that produce food for humans are two-acre farms and we should keep that in mind. Because the big farms, the agribusiness corporations they're growing food for animals believe it or not. Most of the food grown in large monocrops are animal foods.

So I think that whatever the State can do to nurture small family farms should be done. And it's a fact that every dollar spent on towards agriculture creates around \$4 to \$7 of economic activity especially with regards to agritourism. You know, I, myself, am involved in the agritourism industry to some extent. I'm helping agriculture lots become compliant with the zoning ordinance and the regulations by planting 51 percent of usable area in ag. That's my business. It's called Hui O Malama Aina and that's what we do. Is we nurture our land in mostly organic practices which have a minimal impact on the environment I might add and improve the quality of life for our citizens here by growing food and other things. I plant orchards and things on these properties that are in need of rehabilitation because since the, you know, Maui Land and Pine and other large industrial agricultural operations are going out of business in the near to medium term, we're gonna have to do something with all those lands and they're still zoned Ag so, what I personally would like to see and the Farmer's Union would like to see is these lands rehabilitated and put back in the food production. Chances are they all are gonna be two-acre lots in the end or you know, maybe less, maybe more. But we wanna support is small and medium family farms on these lands. And I might add that we're a part of the Nation Farmer's Union which was founded in 1902, and at its peak had 6 million members in the United States. So we have, we have reached into the National Legislature and the U.S. Congress as well as the State Legislature. I'm the legislative chairman, and I just wanna conclude that we, the Farmer's Union support vacation rentals on Ag land as long as the people are in compliance with the Zoning Ordinance of using it for ag. So thank you very much.

Chairperson Lay: Commissioners, any questions? Commissioner Freitas?

Mr. Freitas: Sir?

Mr. Russell: Yes, go ahead.

Mr. Freitas: Do you have a farm?

Mr. Russell: You know, I grew up on Kauai and we were unable to do ag tourism on our lot and my

family sold their land. And then I moved to Maui where my brother and I have a six-acre farm in Hana. So yes. My family has land. I personally am not on the title.

Mr. Freitas: How much revenue do you generate off of your farm? Can you, do you, your farm does it support your living without any other income?

Mr. Russell: Not yet. I would like to, you know, and I think ag tourism is a big answer to that question of generating the revenue I will need to subsist on my land, having the option to rent out a small room to visitors which by the way farmers have done for thousands of years.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, Mr. Russell I applaud your efforts on trying to get people to comply at 50 percent in Ag. How do you define in Ag? Is this food production only? Is it food and flowers?

Mr. Russell: Oh, that's a great question, Commissioner. I'm actually sitting on a panel advising Don Guzman on what the definition of Ag really is and a lot of people have different opinions and if you look in the Dictionary it just means, farming means people who grow things. It could be flowers, it could be fruits, it could be trees, could be a nursery, production nursery. Myself, I define Ag as food production but everybody is different. So I think it's up to the person who's growing, and I think if you're growing something then that's ag. Personally, I would like to see more food production because Hawaii is the least food secure place on the planet. We're the farthest away from anywhere and if we don't wrap up our food production, we're in trouble. So I think vacation rentals are one way to help farmers grow more food.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Mr. Russell, I support ag, but it's a joke. You cannot use two acres for ag and generate enough money to live. I think it's a big farce. I don't support what do you call vacation rentals on ag land. I don't think it should be. So as far as I'm concerned, I will not support vacation rentals on ag land because people who are purchasing...this is an opinion, people are purchasing land and they're using the vacation rental to what do you call, actually purchase, pay off their land. I live on two acres. I cannot generate enough money to even support-

Mr. Russell: Well, I understand your point, Commissioner Freitas. And most farmers aren't gonna make enough money to sustain themselves in Hawaii. My mom went bankrupt. I swore after we went bankrupt after Hurricane Iniki on Kauai that we would, I would not be a farmer. I went to college, I got a computer science degree, I worked for the military for a while, and now I'm back to farming because I love it and farming in my opinion is a lifestyle and if the government doesn't have policies to support these small farmers then they're gonna go extinct and we're always gonna rely on the mainland for our food supply. So in the meantime while we're trying to ramp up our food protection to lower our costs, we have to support the agriculture as it is which is I agree is minimal, but I disagree with you that you can't make a living on two acres. Like you go down to Vince Mina's farm it's about a quarter mile from here, he's on 2,000 square feet and he's making like 60 grand a year growing...he's using aquaponics and some other technology to...he grows greens and spouts

almost enough for the whole island ....500 pounds a week which isn't that much, but he makes a living. It's just one way to do it. Yeah, I agree if you have cows or you're trying to run a dairy or grow a corn crop or something, yeah you can't make the money on two acres. But now with aquaponics and hydroponics and greenhouse technology. My mother and I made 66,000 a year on six acres.

Chairperson Lay: Thank you, Mr. Russell. Point was well made. Thank you very much.

Mr. Russell: Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Define bonafide agriculture.

Mr. Russell: I would say someone who has it in their heart. You know, that's their intention. They're with the spirit of the law which is to grow 51 percent of their property that's usable in ag according to Hawaii State Law to me that would be bonafide that their intention is to use the majority of their property for agricultural uses be it flowers, fruits, vegetables, animals. If you have a duck house and a little fence around it, I would say that would be...on your whole property that would not be bonafide but if you're actually growing some production that would be bonafide. Whether or not you can make enough money to pay your mortgage, I don't think should be part of the consideration. You can't. It's not possible in my opinion when you're heavily in debt to actually farm your way out of debt. It has to be subsidized either by the taxpayer or by some supplemental revenue like TVRs.

Chairperson Lay: Any more questions?

Mr. Russell: That's just my opinion. I've been thinking about this for 10 years, so...

Mr. Medeiros: You know, the thing about it is there's a big difference between a farmer and a gardener.

Mr. Russell: Oh yeah.

Mr. Medeiros: Okay. There's a big difference between a gardener who has a vacation rental where basically all of his efforts go into the vacation rental aspect of their property and nothing towards farming.

Mr. Russell: Let me respond Mr. Medeiros. If someone like that has 51 percent of their land in ag they're gonna be providing a lot of jobs for somebody. Because I have...that's what I do, I have a few clients that have these lots and they are doing vacation rental but they provide jobs for me, for my crew.

Chairperson Lay: Commissioners, we're gonna have to hold off on the questions at this point, okay. I think we thoroughly ran through everything and the points were well made.

Mr. Russell: Thank you honorable Commission. Mahalo. I have to go do a board meeting. I wish

to stick around, but aloha.

Chairperson Lay: Aloha. Does anyone else wish to testify at this time? Seeing none, public testimony is now closed. Our first agenda item?

Mr. Spence: Good morning, Commissioners. Our first Public Hearing item, we're here to discuss an ordinance for the Maui County Code to add the definition of a wet bar and we have with us this morning, Mr. Joe Alueta.

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

**1. MR. WILLIAM SPENCE, Planning Director, transmitting A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04, MAUI COUNTY CODE, TO INCLUDE A DEFINITION OF "WET BAR." (J. Alueta)**

Mr. Joe Alueta: Good morning, Commissioners. My name is Joe Alueta. I'm your Administrative Planning Officer. Met all of you last time. As I talked about last time there's two ways of amending Title 19. One is either through Council Resolution which we've had before and then or through a Director initiated change to Title 19, and that's what we have today. Today is more of a, kinda like a quickie house cleaning or housekeeping matter that we're trying to get it. It's not a very...it's not amending a whole section like normally where you see I'm revamping the whole title. This is just changing the definition and adding a definition or modifying a definition. And the...hopefully you've all had time to read my lengthy page and a half report on the item.

Mr. Ball: Riveting.

Mr. Alueta: Riveting drama. I'm sure you all had a good night's sleep. I kinda laid out, you know, basically just to give you some background, you know, how the County defines a dwelling or single family. What we consider to be a dwelling unit, and then how we currently define kitchens. Okay, what we're proposing to do is amend dwelling unit and in the dwelling unit definition is where you have the limitation on kitchens where you can have only one kitchen in a dwelling unit. So that's how we...so that dwelling unit will be for single-family dwelling unit or for like a multi-family dwelling unit. Okay, we're all...in that definition we're also adding, "may contain a single wet bar".

Now the issue that we're trying to resolve is, we're trying to make it easier for those who are legitimately trying to do a wet bar. What happens is when they come in for a we call a "wet bar", red flags go up because we have people who come in with five wet bars. And because we don't define what a wet bar is, it's an attempt to circumvent the definition of kitchen. Now the County could be draconian and very fascist which I prefer and just say, and just say your wet bar is a kitchen and that would be it. We would say, that wet bar looks like a kitchen therefore, we're done. You can't have it. But we're not trying to do that. We're trying to work with people who are, you know, there are...believe it or not majority of the people are honest in County of Maui, 96 percent, and so we are trying to allow for them when come in for their building permit, hey you got one wet bar, it meets our definition there's your kitchen. Boom, we approve...we review the plan, you meet all of the rest of the code of Title 19, and we send them on their merry way rather than say, well we gotta do an inspection. Is there electrical? I mean, there's a lot of things. They come in and put in like several wet bars and it just raises red flags. So this way for those who are really trying to do a wet bar and a kitchen in their single-family house we can move them along. And then for those,

we set up parameters for those, for the rest of the people and it's clear cut. You can only have one wet bar and one kitchen and it kinda eliminates that. It's not gonna end the illegal conversion or after the fact or something like that, but it does make the law a littler clearer for us in that aspect and that's the goal of it. I mean, we could get into the minutia of what are you gonna do now, and we could spend a lot, we could spend at least a weekend discussing that, but I just wanna make it clear that the goal is try to make at least make a step in the right direction of clarifying how the law is. Make it easier for the plans reviewer, make it easier for the drafts people to know what they can and can't put on their plans and make it easier for the inspectors when they go out to inspect these homes to determine whether or not someone's got a wet bar or a kitchen.

And that pretty much summarizes. I mean, hopefully you read it. I read for the record I'll read the wet bar definition that we are now proposing and that is, it means, "a room or a portion of a room other than a bedroom or kitchen used for the preparation for serving of drinks. Wet bars are limited to a single compartment sink of 1.5 square feet or less, under counter refrigeration, and mixing or blending appliances. No heating or cooking appliances such as microwave ovens. Toaster ovens shall be allowed. No 220 electrical or gas propane fixtures shall be allowed". So that's pretty straight forward. I have all the other definitions from Big Island, Kauai. I even have the National Planning Dictionary and we're kind of in that ball...I mean we're all defining single-family or dwelling unit the same way. We all have our slight variations of how we're defining kitchen and many other code municipalities also exclude wet bars or butler pantries from the definition of a kitchen. You have any questions?

Chairperson Lay: Commissioners, at this time I'm going to do public testimony in case anything comes up that we might wanna ask questions about and I think it's gonna be rather quick.

**a) Public Hearing**

Chairperson Lay: Does anyone wish to testify at this time on this agenda item? Please identify yourself.

Mr. Tom Croly: Hello, Commission. My name is Tom Croly and I've become aware of this situation as I've tried to help advise people who want to get a bed and breakfast permit in some cases. And this is the first that I've heard of of the new definition and I'm...I have some concern that the new definition only be used going forward for new construction as opposed to previous construction. I'll give you an example. I've run into situations where I've seen someone who has had an approved set of building plans they basically built two kitchens, okay. There's no doubt about it. One that there were both kitchens, but one of them was defined as a wet bar, one of them defined as a kitchen. The second one though that was defined as a wet bar, it didn't have a stove, okay. So they ended up with counter tops and everything that looked like a kitchen, okay. Now under this definition that was wet bar is no longer a wet bar. My question would be, okay those building plans were approved for that person. They were stamped by the County and approved. Now is that person going to at some point be told you have to remove what was approved because this...there's this new definition. That's one question.

The other, the other concern that I have and this is the first that I've heard of this definition is being as restrictive as to say you can't have a microwave. Every wet bar that I've ever seen near somebody's t.v. room or whatever pops their popcorn there in a microwave. That's not, you know,

uncommon to have, to have a microwave as part of a wet bar. It's also choosing to define the size of the sink. And again, I don't know if that's good or not. You know, whether we say a sink should be no more than one square foot or two square feet and it's defining the size of the refrigerator and again, I've seen some of these that were approved where they have double wide refrigerators and clearly that's not the intent, but are we going to say the refrigerator can't be more than three feet tall if you have a four-foot tall refrigerator which I happen to have one in my office that's four-foot tall, that's now not, you know, fine. So there's some unanswered questions that this brings into play with respect to past approved things and also how tight is it going to be enforced? So thank you.

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

Mr. Spence: Comment on a couple of things. You want finish with testimony or do you want me to comment on this?

Chairperson Lay: Let's comment on that and then we can continue.

Mr. Spence: Okay, like Joe explained we come across, you know, the building permits have to come through the Planning Department for conformance with zoning. And we've looked at an awful lot of set of plans that have a game room with a full bath and a wet bar and it looked remarkably like a completely other unit. I know realtors come across this all the time. I've come across this. We have some really lovely, lovely multimillion dollar homes with, if you look at the pictures of the house, you know, four or five wet bars, uppers, lowers, granite counter tops, double well stainless steel sinks, dishwashers. I mean, I would love to have such a wet bar in my own house. It would be an improvement over the kitchen that I have. So we see a lot of homes getting built like this, so how do we say...how do we look at a set of plans and go, it sure looks like you're building a multi unit dwelling, you know, either specifically for a vacation rental or you know, as basically an apartment building that, you know, just within the framework of a single-family, a large single-family dwelling. So in helping this, in adding this, we're hoping to be able to review plans better and from this point going forward we have something to enforce. We have something that you know, at least check plans ..(inaudible)...

One of the questions was will people who received a building permit for their wet bar will they now be told that they have to change it? No. When the County signs off on a building permit, when it's signed off on that building permit, you know, they can build according to plan, if they're gonna change something then you know, with the, say with this wet bar, you know then there's a change to that and if laws change you bring it up to whatever current code. So the homes that we've signed off on the building permit with five wet bars, they can keep those until such time something changes and they wanna modify or whatever then they'll have to be brought up to code. So we would consider them legally nonconforming. They were built legally but they don't conform to the current law assuming this is passed.

In looking at this, this proposed definition, we as Joe said, we looked at American Planning Association material, we looked at Kauai, we also looked outside of the State and there was several things in common when different municipalities went to define a wet bar. One of them was the size of the sink. I mean, it's not in every single one. I mean, the definition...(inaudible)... but one of the things that comes up over and over is the size of the sink, one of the things that came up over and over was the refrigerator, you know, at least an under counter. Also, no 220 and no gas. In other

words, you can't put a stove in there either gas or electric. So you know, so we just incorporated these different elements that we found that are commonly used around the country ... (inaudible) ... definition as far as microwaves and toaster ovens that is going to be extremely difficult to enforce. You know, they're just gonna move it and put it back, you know, when the inspector comes but the thing is you put people on notice this is supposed to be a wet bar, it's not supposed to be a kitchen. So does that answer... provide a little more information on the intent?

Chairperson Lay: Thank you, Director. Does anyone have any questions for Mr. Foley[sic], Commissioners? Excuse me, not for you, back to our testifier, 'cause we cut him short. We cut him short. Not for you. Do we have any questions for our testifier? None, okay. Does anyone else wish to testify at this time? If not, we're closing public testimony. Commissioners, any more questions on this agenda item?

Mr. Spence: The Commission's ... (inaudible) ... is to make a recommendation to the County Council. If you wanna see something changed in this, if you like it as it is, you know, motion to recommend approval to the Council. If you wanna see something changed, fine. You're making a recommendation to the County Council in changing a land use ordinance.

Mr. Alueta: On Page 2 of the memo report there's your four options of what you can do.

Chairperson Lay: And I did mean Mr. Croly, you guys, just to clarify that all right, excuse me.

Mr. Spence: Not a problem.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Joe, I like the intent of the definition for the wet bar. I really like this one. I would like to express it a little differently. Rather than saying no heating or cooking appliances such as microwaves, toasters shall be allowed. You guys must love the word, "shall". I would prefer saying, if you really want to use the word, "shall", "it shall not be allowed" or "no heating or cooking appliances such as microwave ovens or toaster ovens are allowed".

Mr. Alueta: Okay.

Mr. Shibuya: I mean, because the sentence before you start off with wet bars are limited. So I'm just saying... and 220 electrical outlets or gas propane fixtures are not allowed.

Mr. Alueta: Okay. I can work with Corp. Counsel on that to make sure. Again, this is pre Corp. Counsel and they'll put it in the exact. I just wanna convey the meaning, if you understand what I'm trying to say?

Mr. Shibuya: Yes.

Mr. Alueta: I'm not an attorney, thank God. And so I try to write it as simply, as simply as possible, you know, I'm trying to write the law so if it... and then the attorneys are gonna put it in their language and so we'll let them....



Mr. Shibuya: Yeah, I just wanna keep it simple for the people.

Mr. Alueta: Okay, all right. Sounds good.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Make a motion to approve the bill for an ordinance amending Chapter 19.04 to the Maui County Council and a definition of wet bar.

Mr. Tsai: Second.

Chairperson Lay: Motion made by Commissioner Ball, seconded by Commissioner Tsai.

Mr. Alueta: Clarification. Did that include the amendment to dwelling unit also?

Mr. Spence: Yes.

Unidentified Speaker: Yes.

Mr. Ball: Yes.

Chairperson Lay: Any comments on this? Commissioners, any comments? Director would you like to repeat the motion?

Mr. Spence: Motion is to recommend approval to the County Council for the change in the definition of dwelling units that it contain a single wet bar and also add the definition for ...(inaudible)...

Chairperson Lay: Okay, call for the vote. All those in favor.

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion passed.

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

**VOTED: To Recommend Approval of the Proposed Bill to the County Council  
with the Amendment to Definition of Dwelling Unit.  
(Assenting - K. Ball, M. Tsai, J. Medeiros, J. Freitas, S. Duvauchelle,  
P. Wakida, W. Shibuya)  
(Excused - W. Hedani)**

Mr. Alueta: Thank you very much.

Mr. Spence: Commissioners, your second public hearing item this morning is Ms. Ahulani Von Hamm requesting a State Land Use Commission Special Use Permit for Haiku Malu, a short-term rental home on West Kuiaha Road, and the Staff Planner this morning is Mr.

Danny Dias.

**2. MS. AHULANI VON HAMM requesting a State Land Use Commission Special Use Permit in order to operate the Haiku Malu Estate Short-Term Rental Home, a six (6)-bedroom short-term rental home located in the State Agricultural District at 1555 West Kuiaha Road, TMK: 2-7-012: 053, Haiku, Island of Maui. (SUP2 2012/0017) (D. Dias)**

Mr. Danny Dias: Thanks, Will. Just to let you folks know we might have to take a little recess later if that doesn't warm up in time. But let me take a few minutes to introduce this project. As the Director mentioned, this project is for the Haiku Malu short-term rental home in Haiku. Today what is before you is the Special Use permit.

Just some information on the area. As of today, there are no B&Bs within 500 feet of this property. However, there is a short-term rental home within 500 feet exactly across the street and that short-term rental home is called Haiku Nani and that was reviewed and approved by this Commission at your February 26<sup>th</sup> meeting. Overall there are about 22 approved short-term rental homes within the Paia-Haiku Community Plan area, 16 are located in Paia, and six are located in Haiku. And just as a reminder, the limit in the Paia-Haiku Community Plan is 88. Before I hand this over to the applicant's representative, I wanna go over a couple things that are probably kind of obvious to you as you, as you looked at this report. The first is, the fact that there are two full-sized dwellings on this property. I think a lot of us, you know when see ag we expect the second dwelling to be limited to a 1,000 square feet. In this case, there are two full-sized dwellings. And the reason why, and we included some information on that in the report but the reason why this property has two full size dwellings is because of the age of the property. The first dwelling was built in the 70's, the second dwelling was built in the 80's, and during that time you could have two full size dwellings. It wasn't until I wanna say around the mid-90's that when our Ag ordinance came about then you know, the second dwelling was limited to a 1,000 square feet. So that's the first issue that you might have saw.

The second one is the farm plan. I know there's a lot of talk about, you know, how mature the trees have to be, how much money you're making so forth and so on. If you look at the pictures of the farm plan, it's fairly obvious that it's pretty new. There are, about half of it is mature. Those were existing trees and so forth, but half of it is fairly new and the reason for that is, similar to the two main dwellings, they were never required to do a farm plan, so they were sort of grandfathered in. They weren't required to do a farm plan. When they came in for their Short-Term Rental Home Permit about year ago that's when we said, well, before we take this to the Commission, you know, we would like you to do a farm plan. So that's why, you know, they went ahead and did that and that's why a lot of trees are fairly small because they were all planted within the last year or so.

So with that, I was gonna hand it over to the applicant, but if we could have some time to get this thing set up so we can do about a five-minute power point.

Chairperson Lay: Commissioners, at this time, we'll take a 10-minute break then. Come back at 10 to 10:00 a.m.

A recess was called at 9:42 a.m., and the meeting was reconvened at 9:55 a.m.

Mr. Lay: Planning Commission is back in order. Our projector isn't cooperating with us today, so what we're gonna do is we're gonna turn the computer towards us and Commissioners, we're gonna also look at the paperwork they gave to us on this agenda item, and we can follow that way.

Ms. Margit Tolman: Good morning, my name is Margit Tolman, I'm a realtor with ERA Pacific Properties. The property manager of Haiku Malu Estate and I also help with the permitting process. And I'm sorry, we have some technical problems. I hope this will work and it's small, but it will give you an idea about the property.

Haiku Malu Estate is beginning, is a dedication and there's a future. And I'd like to talk about a little bit about the history. I know time is of an essence. The location of the property is at 1555 West Kuiaha. It's sitting back from the main road. It has a nice driveway, very visible to the traffic. The area is agriculture, but seems to be more rural. This neighborhood some, some agricultural activity, but more rentals in the neighborhood. There's a nursery just behind, adjacent to the property. This is the driveway from West Kuiaha. As you can see it sits back very private and is still very easy accessible. There's a fire standpipe, I think you call this right by the driveway.

Here's a little bit history about the property. It got sold in 2010. Ahulani Von Hamm is the owner and we have Ahulani here for any questions you might have. The property was in very sad shape. As you can see on the homes they were abused, abandoned and needed a lot of repair as well the property itself. There was a fruit orchard original, but nobody took care of it, so it was not in good shape.

This is one picture of the yard or how the property how it looked mostly abandoned cars, tall cane grass and it was a three-year project to clean this property and to put the house into a condition for humans to live in.

The dedication 2010 Ahulani Von Hamm and her ohana dedicated themselves and the available funds to restore the homes and the fruit orchard. There's a deep connection to the land. It was owned by Ahulani's dearest friend, Kapiolani Miller, she was the daughter of Virginia Cox.

2013, this is what you see today. After three years of hard work, nurturing, it's a beautiful piece of property again. These are the two homes. Old, older style ranch homes. And they will keep it in this style to have something to show to later generations how people lived in the 70's.

And here we have the farm plan. You can see this is the driveway to the property. Here is a designated area for coconuts. We had about five mature coconuts and had the first harvesting two weeks ago. And we planted mostly Samoan coconuts and this will be for production.

This area is a fruit orchard and we look at the existing fruit trees, the mature trees, some are 40 years old and we see how we can nurture them back. They carry fruits this year. And we filled the fruit orchards where pukas, you know, between the trees and they would take three to four years to mature to have production. In the lower area is a native plant project, only this native plants for education and cultural use. Here's the list of exotic fruits plantation. It shows you that we have 28 mature trees. We added 165 plants so far. Different fruit types of pineapple to lychee, sapote, mountain apple, avocado, we have now five breadfruit tree on the property. This is a little bit small for you to see but I have a before and after picture just to show you. This is a amazing project and

I'm really proud of the owners how much work they put into this land to put it back to a very nice property with a fruit orchard.

This pictures were taken about three weeks ago. Mature trees have got harvested and sold. Our grapefruit trees, the mature grapefruit tree is full of fruit, our mountain apple is flourishing, has flowers and the fruits are growing. As well avocados. We have two new banana patches, soursop, jaboticaba and by the way we had our first harvest and on your goodie table I put samples of our first jam and jelly and fresh macadamia nuts.

And this is a list of indigenous and endemic plants the education is for tenants staying there to get close to nature to the plants used to go in this area. And we will use it mostly for cultural events for halaus to gather or to deliver what they need. These plants are planted new about six months ago. They grow without water. We have no irrigation on this property. It's up to the Haiku rain. But everything seems to be very happy from lehua trees to our ... (inaudible)... and the ohia trees and uki uki. And this shows you the driveway to the homes, the coconut orchard. This is a picture just before we planted the coconuts. Thank you very much for your attention. If you have any questions, I'm available, as well, Ahulani, her daughter Laurie. We have our farm planner here who planted the orchard and this ends my presentation. And the samples are on your goodie table and I hope you enjoy.

Mr. Lay: Thank you. Commissioner's we gonna go to public testimony first in case any items might come that we have questions on.

**a) Public Hearing**

Mr. Lay: At this time, we'll open up to public testimony. Does anyone wish to testify? Mr. Croly?

Mr. Thomas Croly: Thank you. I'm Thomas Croly. Thank you, and I am here testifying on my own behalf. I don't know the applicant, but some of you probably know that I'm the member of the public who was most involved with the changes that were made to the Bed and Breakfast Ordinance in 2008, and in the Short-Term Rental Ordinance which became law last year. I followed this ordinance through two administrations and through Commission and through Council and I'm well-versed with the ordinance.

To that end, I sincerely thank this Commission for doing their part in reviewing and granting the 10 STR permits and the 3 B&B permit applications brought before the body during this past year. I thank you for treating the applicants with respect and recognition that they're before you only after a very long, arduous application process. Most of the folks that you're seeing now started their permits the minute the thing became law. It took them a while to compile everything and get it submitted to the Planning Department and be able to meet all the requirements of the Planning Department. But most of the folks that you're seeing now are about a year into their process.

In future meetings, I expect this Commission is going to be seeing many, many more applications. So will need to be reviewed by this body because they're in the Ag District. Some will be reviewed by this body because they're within 500-foot of another operation and some will be reviewed by this body because there may be neighborhood objection that meets a certain threshold. In that case, it will be up to you to kind of be the judge as to how to best determine who's telling the truth and

what the effects are going to be and so forth.

But in the bigger picture what's the kuleana of this Commission with respect to these permits? When the Council created this ordinance, they basically said, any property owner who can meet the criteria laid out in the ordinance shall get a permit. They sought to limit the potential impacts that could be generated by these operations by building many provisions into the law. For example, the 400 total permit limit was selected to alleviate any fears that this would displace housing for residents. In Maui County we have about 40,000 residential properties. So if 400 of them are used for short-term rental that's about 1 percent and that seems like a reasonable number that the Council chose there. They also said, they didn't want properties being built specifically for this purpose. So they made a five-year requirement on the property has to have been built or the building has to have been there for five years before someone can come forward and apply, and I think that addresses some of the concerns that I've heard raised by this Commission that the purpose for that home is only short-term rental. The home was pre-existing. It got its approvals to be built--

Ms. Takayama-Corden: Three minutes.

Mr. Croly: --prior to it being, the application coming forward as a short-term rental. Now, the farm plan is the thing that gets talked about the most.

Mr. Lay: If you could summarize?

Mr. Croly: Okay, as quickly as I can. It's really important to understand that the farm plans that you guys are looking is part of the requirements for building the structure. The first thing they have to do is file a farm plan. Then after they've built their structure, if they want to come forward for a short-term rental permit or build a second structure they have to have that farm plan implemented and have the inspection done there. But it's not the kuleana of this Commission to determine whether or not that farm plan is adequate that's already been done.

Mr. Lay: Okay, thank you.

Mr. Croly: Okay, I do have more to say, but I understand--

Mr. Lay: Any questions, Commissioners? Commissioner Ball?

Mr. Ball: I have a question. You know, this kinda the first time this has come up where the dwelling size ...large. Now in the discussion when you were developing this in that group was there any comments to this sort of situation where you have two large structures on the property 'cause typically we've seen, you know, the main house and then like a 1,000 square-foot or less.

Mr. Croly: Right. Good question. With respect to impacts, okay, what was discussed when the ordinance came about was this six-bedroom limit. And then when it went to Council they said, okay six bedrooms, no more than two people per bedroom. So the maximum impact that they could see would be 12 people on a property. Now whether those...whether that house is bigger or smaller, you're still limiting it to six bedrooms and not more than 12 guests. So that was how the Council saw to, to limit. You may, I've run into properties that have three or four dwellings on a given

property because they were built years ago, before we had, you know, the zoning laws that we do and so forth. The Council said, you can only use a maximum of two of those dwellings for short-term rental use. So they said, okay, there may be some of these nonconforming properties out there that have a lot of, you know, bulk on them, we don't want them fully converted to short-term rentals, six-bedroom maximum, two units maximum.

Mr. Lay: Any more questions, Commissioners? Commissioner- oh, Commissioner Ball?

Mr. Ball: Six bedrooms total of the two?

Mr. Croly: Correct. Correct. Not six in each, six bedrooms total on the lot, yes.

Mr. Lay: Commissioner Shibuya?

Mr. Shibuya: Tom, I just appreciate you sharing your mana`o with us. I have a problem in terms of a large, small scale hotel lodging as this appears to be versus a regular hotel or a resort type accommodation. Then I have the other side which is a bed and breakfast or a smaller scaled down lodging facility. Do you see this as...what do you see it as?

Mr. Croly: You know, when I got involved in this it was because I had a three-room bed and breakfast and I wanted to get it permitted for myself. Okay, so I got sucked into this, this whole thing in helping people--helping this law get through, and helping people get through this law. I came to understand that not everyone fit the same criteria that mine was so the box that I was in was if it, you know, a house and a cottage and two bedrooms everything should be cool. It was the Council that decided that six bedrooms was going to be the limit. If they wanted to go beyond that six-bedroom limit, they'd have to come forward for a Conditional Permit and that would be subject to greater level of review than this ordinance. So again, the size of those rooms, I'm not sure, you know, whether this property is significantly larger, I haven't really reviewed the specifics of this property, but the size of those rooms really shouldn't come into play provided that we're staying within the bounds of the law and the law said, six bedrooms, no more than 12 people.

Mr. Shibuya: Okay, thank you.

Mr. Lay: Mr. Director?

Mr. Spence: And just a comment on Mr. Croly's response. The County Council...this was part of the discussion at Council regarding the Short-Term Rental Ordinance is the Council considers these as a residential use. Don't consider this as a hotel use. Hotels you can have restaurants and bars and what I term as bad art galleries, you know, all kinds of retail and gift shops and whatnot. Short-term rental homes you cannot. It's basically a home. It has one kitchen. It meets the definition of a home. So that's the...oh, where was I going with the other one...but yes, what Mr. Croly is saying is pretty much correct. On the farm plans, you know, this particular property pre-exists 19.30A which was in 1998, so you know, the size limits of the residences did not apply. We have a whole lot of those around the County where you will have two dwellings, more dwellings that are even larger than 1,000 square feet on a single property that are, you know, we just had the discussion on legal nonconforming. They were legally built when the law said you can, you know, you can have these. So they're legal dwellings. It's only since 1998 with the passage of 19.30A

to we just say two dwellings per lot and one can't be more than 1,000 square feet. So there's a lot of these properties around the County that have two or more full size dwellings on a property. It's just rare that this Commission gets to see it. It's quite common to have properties around the County with more than one legally built dwellings on it or excuse me, more than two and maybe full size dwellings.

Mr. Lay: Commissioners, any more questions for our testifier? Commissioner Ball?

Mr. Ball: And are these structures able to be rented out to separate parties at the same time?

Mr. Croly: Again, the Council chose to speak to that said that each dwelling must be rented out to a single party. So if you're approving a permit that is for two dwellings, okay, three bedrooms in one, three bedrooms in another, there can be two different parties renting out each of those two dwellings. Most of the operators that I know don't set it up that way because they find that they don't wanna set up conflicts between the, you know, the two parties. Usually in most cases, one person rents out the whole, the whole property.

Mr. Lay: Commissioners?

Mr. Croly: Thank you.

Mr. Lay: Thank you. Does anyone else wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions to our Planner or our applicant? Commissioner Wakida?

Ms. Wakida: Danny, maybe you can answer this question. Who farms this land? In other words, who is the actual farmer?

Mr. Dias: I'll let the applicant address those details.

Mr. Lay: Please identify yourself again.

Ms. Tolman: Thank you. My name is Margit Tolman. I happy to answer your question. Our farm project manager is attending this meeting today, it's Mr. Zack Vandebush and if you have specific questions about the farm, please direct to him. I'm not a farmer, but I'm involved in the project.

Mr. Lay: Please identify yourself.

Mr. Zack Vandebush: Hi, my name is Zack Vandebush and I've been managing this property for four years now.

Mr. Lay: Commissioner Wakida?

Ms. Wakida: Does that mean that you are, you do the actual farming?

Mr. Vandebush: I've done the planting of the property. I do the maintenance on the property as far as the grounds are concerned.

Mr. Lay: Commissioner Wakida?

Ms. Wakida: It says that you planted coconut trees. What is the plan for those coconut trees?

Mr. Vandebush: For production, for market, for small store sales.

Ms. Wakida: Small store sales of what?

Mr. Vandebush: The coconuts themselves.

Ms. Wakida: You're gonna sell the coconuts?

Mr. Vandebush: The coconuts, the coconut water, yeah, the coconut meat itself can be turned into coconut candy as we know here is big.

Ms. Wakida: Do you have a market for that?

Mr. Vandebush: I'm involved with someone who does the small farmers markets as well as other land, people who own farm land that sell to say, Mana Foods and other small stores on the island.

Ms. Wakida: Right, but I mean, do you have a market for actual coconuts that you would harvest?

Mr. Vandebush: Yes, yeah, the small farmers markets have a good market for that. I mean, the coconuts are just a small portion of the fruit production. I mean, there's a lot of different fruit trees on the property.

Mr. Lay: Commissioner Medeiros?

Mr. Medeiros: Would you consider yourself a farmer?

Mr. Vandebush: I grew up a farmer. I went to school for horticulture. I've done farming on apple orchards. I've...when I was a kid I did cows, milked cows and I've worked in British Columbia on cherry orchards.

Mr. Medeiros: With this project are you a farmer?

Mr. Vandebush: Yes, I would consider myself all of the above, a farmer, horticulturalist, a landscaper, a gardener, everything.

Mr. Lay: Commissioners? Commissioner Wakida?

Ms. Wakida: The Director of Planning, the State Director, Jesse Souki included a letter in the packet of information we got and he says that the existing farm plan application does not indicate any existing farming activities. Do you wanna speak to that?

Mr. Vandebush: The plans have just been in place to start the production and the sale of the food itself, the fruit.



Mr. Lay: Commissioner Wakida?

Ms. Wakida: So when do you expect this to be fruitful? When do you expect there to be some, some income or economic value as Mr. Souki has indicated?

Mr. Vandebush: Small sales can begin as soon as possible. I mean, there's Brazilian cherries that have just started to flower, there's jaboticaba that's ready to pick, there's a lot of different fruits, the grapefruit tree is nearly ready, the citrus is blooming right now quite largely.

Mr. Lay: Commissioner Shibuya?

Mr. Shibuya: This is one is probably with the presenter. There was a sign that should be posted. Is there a sign with this special permit clearly noted in the entrance of 1555 West Kuiaha Road?

Ms. Tolman: The application sign?

Mr. Shibuya: Yes.

Ms. Tolman: It's posted right by the entrance, yes.

Mr. Shibuya: It's clearly visible?

Ms. Tolman: It's visible right on the corner of 1555 West Kuiaha.

Mr. Shibuya: Yeah, I'm addressing various standard care concerns and one would be the location of smoke detectors if you have any within the structure?

Ms. Tolman: Smoke detectors?

Mr. Shibuya: Yes.

Ms. Tolman: We had a safety inspection and everything was done up to standard.

Mr. Shibuya: Smoke detectors?

Ms. Tolman: Smoke detectors, yes.

Mr. Shibuya: Are present?

Ms. Tolman: Yes, of course.

Mr. Lay: The Director would like to comment.

Mr. Spence: Just to address Commissioner Shibuya's questions on the smoke detectors. Those are actually... those are not required by the Special Use Permit, but those are required in order for them to get a Short-Term Rental Permit. They must meet these standards that are written out in the law for the smoke detectors and safety issues and staff will go do a site inspection to make sure

that those things are in place, the escape route signage, the fire extinguishers, those things must be there before we can issue a permit. So that standard of care is in place.

Mr. Shibuya: Okay, maybe a short sentence could be included in the next report.

Mr. Spence: Okay.

Mr. Shibuya: This is fine.

Mr. Spence: Okay, yeah, that would be, that would be good.

Mr. Shibuya: Yeah, thank you. I do have other concerns here too.

Mr. Lay: Commissioner Shibuya?

Mr. Shibuya: Because it's in the Rural area, Agricultural area, you have guests that arrive at night, do you have motion detector lights or some sort of means of surveilling the area, ensuring people's privacy as well as protection?

Ms. Tolman: We do have motion lights in front of the homes. So if a car is driving up to the homes, the motion will trigger the lights outside and as far as check-ins, our guests have all information they need to have my phone number, they call from the airport, I'm checking them in, make sure they arrive safely and I explain about the property and I live in Haiku about maybe 10 driving minutes away. I also manage the other property on West Kuiaha so I have two properties very close by.

Mr. Shibuya: Okay, on the pool, maybe Director can tell me if this is part of the inspection. If you do have a pool, should it be fenced in or somehow protected against possible intrusion by some youngsters?

Mr. Spence: There is no requirement. You know, that no more requirement than would a regular single family home. But since we are granting, the County is granting a Special Use Permit and part of the requirement of that permit is that they carry insurance that's to cover accidents or falls or whatever that may occur on the property. The property is inspected for safety and so it's so long as it meets the standards we consider that safe enough. I mean,...let me explain that a little bit. When the property is inspected it's by a certified home inspector or by the County building inspectors. As we've been discussing this all kinds of things that are built out there without building permits and some of it's rather interesting and not very safe. We won't grant a permit for that. It must pass this certified home inspection or inspection by the County to ensure that it's safe. So for instance, the swimming pool would have to meet regular standards, but as anything, nothing is required beyond that more than what a regular single-family residence would have required. So no, there's no fences required, no gate or anything like that. I believe the applicant's rep...

Ms. Tolman: This property, the pool is fenced. I just wanted to--

Mr. Spence: Oh, in this case it is fenced?

Ms. Tolman: Yeah, we have a fence and it's locked.

Mr. Ball: Exhibit 16...(inaudible)...

Mr. Shibuya: It does say?

Mr. Ball: Exhibit 16, the bottom photo shows that.

Mr. Shibuya: Oh, okay, thank you.

Mr. Lay: Commissioner Wakida?

Ms. Wakida: One of your slides said that you educate your tenants. I'm interested to know how that's done.

Ms. Tolman: I do not manage a lot of properties and it's really a passion for me. A passion to be host to show guests around, the joy in their eyes opening a coconut it's just amazing. And I'm pretty often on the property. I see guests, they have questions, they want to know where to go, where to eat, our service is very personal.

Ms. Wakida: No, I meant your educating them with the trees and the flowers and so on. You personally take the guests around and you do all of that on the property?

Ms. Tolman: Yes, I do. Yes, it's part of my job and also Zack who's, you know, frequently on the property.

Mr. Lay: Commissioner Wakida?

Ms. Wakida: It would...I would like to make the suggestion that it would be to the benefit of visitors and to the owner to create a brochure of their property--

Ms. Tolman: Yes, they're working on this.

Ms. Wakida: --of their property with pictures and list what they have.

Ms. Tolman: We're working on those. We have right now we put little signs by the plants with the name, the Hawaiian name and the Latin name.

Mr. Lay: Commissioners, any more questions? Commissioner Shibuya?

Mr. Shibuya: It's more of a comment and suggestion here. Since this facility is such a large facility and I'm a proponent of energy sustainment for Hawaii and Maui, particularly Maui, I'd like to draw your attention to the HRS 269-91 which establishes the renewable energy sustainment of 40 percent by 2030. I don't know whether you have energy conservation which is another aspect of it to have 30 percent reduction by that time or at least as soon as possible. What are some of your initiatives first, on energy conservation, and secondly, do you have anything in mind in terms of generating renewable power?

Ms. Tolman: Yes, I talked with the owner about future plans. The first plan would be putting solar

power for hot water. The second plan is photo voltaic as long as the grid can handle it. Right now Haiku is closed as far as I know, but the plans are there. It just needs to generate a little bit income to get to that point, but we have these plans already.

Mr. Shibuya: Thank you very much for being--

Mr. Lay: Commissioner Wakida?

Ms. Wakida: This is to the Director, after farm plans are approved, is there anybody that monitors these over the years say for any of these short-term rentals?

Mr. Spence: The short answer is no. There are several thousand properties in the Ag District that have farm plans or that that have had that requirement to monitor them for either short-term rentals or just for, you know, just as part of our function would be very difficult to do. What we do is, in a case like this where there's a discretionary permit being required, we do make sure that the farm plan is implemented even if they're young trees, you know, you have to start fruit production or some kind of production at some point in...and that's always small. You know, and just as for dwellings within the Agricultural District we require a farm plan with the building permit and before they build their second home, we do physically go out and see that that farm plan has been implemented. So whether it's planting trees or you know, if they're raising livestock or whatever, we'll go out and see that that's actually being done before we issue the second building permit.

Mr. Lay: Commissioners, any more questions? If not, could we get the Department...oh, Commissioner Shibuya?

Mr. Shibuya: Oh, go ahead and get the recommendation.

Mr. Lay: Can we get the Department's recommendation?

**b) Action**

Mr. Dias: Thank you, Mr. Chair. The Maui Planning Department recommends that the Maui Planning Commission approve the State Land Use Commission Special Use Permit subject to six conditions.

Mr. Lay: Call for the question.

Mr. Freitas: I move to accept the recommendation of the Planning Department, and one of the reasons why I'm supporting this thing is because it has two existing buildings on the property. I feel that the garden ain't big enough, but that's my problem.

Mr. Ball: Second.

Mr. Lay: Motion by Commissioner Freitas, seconded Commissioner Ball. Any comments? Commissioner Shibuya?

Mr. Shibuya: I am very supportive of this request. I applaud the owner for taking the initiative,

taking care of the aina. This is a tremendous undertaking and I hope you will have that opportunity to get a return on your investment. Thank you very much.

Mr. Lay: Commissioner Medeiros?

Mr. Medeiros: I will reluctantly support this although my problem is my problem, but more emphasis is put on the vacation rental than the farming part, I have a problem with it. So I'll reluctantly support it.

Mr. Lay: Any more comments, Commissioners? If not, we'll call for the vote. All those in favor?

Mr. Spence: Seven ayes.

Mr. Lay: Motion carries. Congratulations.

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

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

Mr. Lay: Commissioners, you wish to move on or you want a short break? Okay, moving on, next?

Mr. Spence: Okay, Item C-1, Jeff and Sharyn Stone requesting a time extension of their Bed and Breakfast Permit. I have a conflict with this one. I will be recusing myself and Mr. Clayton Yoshida will be taking my place.

Mr. Lay: Mr. Yoshida, you wish to say anything?

Mr. Yoshida: Well, again, this is the request by Jeff and Sharyn Stone for a five-year time extension on their State Special Use Permit for the continued operation of a four-bedroom bed and breakfast known as the Huelo Point Lookout Bed and Breakfast located in the State Ag District at 222 Door of Faith Road in Huelo, Island of Maui. The Staff Planner is Joe Prutch.

## **C. COMMUNICATIONS**

- 1. JEFF and SHARYN STONE requesting a five (5) year time extension of their State Land Use Commission Special Use Permit for the continued operation of a four (4)-bedroom bed and breakfast known as the Huelo Point Lookout Bed and Breakfast located in the State Agricultural District at 222 Door of Faith Road, TMK: 2-9-007: 058, Huelo, Island of Maui. (SUP2 2001/0027) (J. Prutch)**

Mr. Joe Prutch: Good morning, Commissioners. This is a, as Clayton mentioned, this is a SUP renewal for Mr. and Mrs. Jeff and Sharyn Stone. Sharyn Stone is here today, so she'll be available

to answer questions and elaborate a little bit on the ag use. The original State Land Use Commission Special Use Permit was approved back in August of 2009. You have a copy of that in your staff report as Exhibit 1, and with an expiration date of August 2012. There's also a B&B Permit which was approved administratively and that also expires on August 31, 2012.

The project is located at 222 Door of Faith Road. It's makai of Hana Highway in Huelo. It's about two acres in size with a farm dwelling, an accessory farm dwelling, carports, shed and swimming pool, and of course, it contains fruit trees, herb and salad garden and flowers. Back in 2009, the farm included about a 100 coconut, banana, papaya, lilikoi, figs, macadamia nut, star fruit, mango, avocados, on and on, salad greens, and supplies fresh ingredients for the property. They also supply the fresh ingredients to the B&B guests as well. Since 2009, the applicant had been expanding on the farm and I'll let her go into that after I'm finished. She'll be able to get you a little definition or explanation of what's happened since then. The farm plan was approved in 2009, with 51 percent of the property being agricultural production and then since then it may have expanded a little bit from that point.

The applicant has satisfied all the conditions of the SUP. The six standard conditions and the one project specific condition which was placed by the Commission three years ago or four years ago, I'm sorry. That condition was Condition No. 7 which reads, "that the applicant takes precautions to ensure that the water serving the B&B operation is safe and wholesome and not detrimental to the health and safety of the B&B guests". The reason for that condition is because they are on their own private water. They're not on the County's water system. The applicant has taken precautions by use of exterior string filters, reverse osmosis on all the water to the property, and also they regularly change the water filters.

What staff is requesting is amendments to the standard conditions. Condition No. 1 of course is the time period for the permit. So we're asking for a five-year extension on that one. And also to allow the Director to extend the permit in the future if there are no major issues, changes or complaints because of the proposed use. We've been doing that on all the SUPs that have been coming forward to you. Condition No. 2, we're requesting the deletion of that because it is a...it is not a standard of condition of approval for an SUP2 any more or I believe that was a condition of an SUP2 for over 15 acres. So that mistakenly got put on four years ago. And we're requesting to add Condition No. 4, which is just our catchall condition that we put on every project that comes before you, just simply says, "that full compliance with all government requirements shall be rendered". It's just a catchall for everything. And then of course, Condition No. 5, we're asking to change the requirement from five copies of a compliance report down to two. We just don't require as many compliance reports to send to other agencies as we used to. Now we only send essentially to Police and Real Property Tax. Anyways, we don't need five copies of those reports any more. They just get recycled.

The conclusion is that as the conditions of approval have been met and no complaints have been received regarding this time extension or the use of this house as a B&B, the Department is recommending approval of the time extension for five years with the amendment to the conditions as described above and is listed in your staff report. That's my presentation for now. If I can, I'll let Sharyn Stone come up and she'll kind of elaborate a little bit on the ag use and what's she's done since four years ago if that's okay. Thank you.

Ms. Sharyn Stone: Aloha, Maui Planning Commission, Commission Members, sorry. I'm Sharyn Stone, and I and my husband, Jeff, own Huelo Point Lookout, one of the first legal B&Bs on the island. We have an approved and fully implemented farm plan. Huelo is our home and has been since November 1992. When we bought it, it was a mess. The main crop was California grass. Originally the land had been planted as a macadamia nut farm, the Waipio Bay Nut Farm which I'm sure you would agree would have been the most unfortunate name for a bed and breakfast. Let's have a romantic weekend at the nut farm darling. No, we changed it. When we bought there were only two surviving mac nut trees, both of which were horizontal because no one had planted any windbreaks. We're on Huelo Point we get the full force of the tradewind.

Let me tell you two things. One, we had our work cut out for us. Two, when we first saw this property, our immediate thought was not, wow, wouldn't this be a great B&B? Our first thoughts were, this land was once beautiful, how can we bring it back? I've always been green. I had my first veggie garden when I was 11. I was a tom boy. Flowers were for sissies. Since the day we bought this land it has been organically managed. Not a single spray of Round Up. Not a single use of a nonorganic fertilizer. We spray for bugs. We use cedar and rosemary oil only. When we first arrived, the landscaping apart from the horizontal mac nuts consisted of four cocos. They were just starting to develop the trunks. We've since planted almost a 100 more as Joe had mentioned. The original trees now have 25 to 30-foot trunks. Our trees are maintained and trimmed regularly by our neighbors who do this in exchange for the nuts which they in turn take to Twin Falls Fruit Stand. That's the typical circle of aloha that goes on in our neighborhood. Twin Falls, by the way, I think charges between \$5 and \$10 for a coconut.

We planted windbreaks at first using wiliwili, but of course, lost all of those to the gold wasp. We replanted using a mix of palms, bamboo, and good old panax and what was ever, whatever was already there which was Christmas berry. We used that windbreak to support a giant lilikoi canopy, two varieties. We regularly control for invasive species inkberry, fireweed which is just starting to make an appearance and shiffalera. Part of our farm plan involved ag conservation, an accepted use. We planted what's called a "pioneer species", nitrogen fixing trees and shrubs and ground cover some of which have a limited life span, for example, acacia, gliricidia, sesbania, pigeon pea, but they serve multiple functions. They're a windbreak. They also feed nitrogen to the soil both directly through root nodules and less directly when leaves and branches are composted and used as mulch. The gliricidia for example you can compost regularly and you feed it to your fruit trees. Siberian pigeon pea also produces pea pods which serve as chicken food. Chickens, free range amongst the trees, of course, contribute to soil fertility and I don't think you need me to explain the virtues of chicken poop. We run a chicken tractor, a small chicken cage about 4 x 8 feet it's mobile so you can move it every few days up and down the rows between the trees. And yes, we planted fruit trees, citrus, oranges, lemons, limes, tangerines, avocados, mango, figs, soursop, star fruit and of course, bananas, at least 10 different varieties. We lost our papayas to ring spot, but we're trying them again. I go to Mana and grab a non GMO papaya, save the seeds, and pop them in. We're just starting to plant those between the rows of established trees. I am a certified permaculturalist so I'm a great believer in planting biodiversity not monoculture which depletes the soil. We also grow some structural bamboo, malingensis and oldhamii are the species we have which we use the plant stakes, growing frames, trellises, and windbreak wall. And of course, we grow the decorative heliconias and anthuriums. I'm a bit of sissy at heart somewhere it would seem.

The first thing that guests see when they walk in is a giant flower arrangement and also a fruit

basket. Pretty well everything comes from the property except pineapples which for the life of me I can't seem to grow to a decent size but that's what Maui Gold's for, right? We also have organic herb garden and salad garden all labeled so guests can see what's what. For anything we can't provide, we support the Santos Family Farm just down the road from us, Mana Foods, and the little Haiku Grocery Store. Our money stays local. Occasionally if we have excess produce we'll either trade with neighbors or take it down to the Food Bank. Down the road from me lived a great guy who grows the biggest and best oranges and mangoes you have ever seen. He's protected from the tradewinds. We trade for organic eggs. We don't produce enough in quantity to be commercially viable, please note this is not a requirement of an approved and implemented farm plan. Although I do remember playing with the idea once. I took two giant buckets of perfect organic limes and lemons, about 75 pounds of them, to one of the local health food stores. I got a whopping \$15. Guess how much it cost me in gas.

I remember talking to Bob Carroll about ag land many, many years ago. My Ozzie accent can't do him full justice, of course, but he said, ag land that's special, yeah. That's sacred. I've never forgotten his words. We hold this land in trust and our intention is to leave it better than we found it. So far, I think we're doing a good job and I hope that you'll agree with me. Thank you.

Chairperson Lay: At this time, Commissioners, we're gonna open up to public testimony. Does anyone wish to testify at this time? Seeing none, public testimony is closed and Commissioners, questions to the applicant or our Planner? Commissioner Ball?

Mr. Ball: Question to Staff on the document, the To/From document from the Maui Police Department recommending a denial because the sign wasn't up, is that a, what can you say to that?

Mr. Prutch: Yeah, that was...I don't know which officer that was but just misunderstood. When the B&B comes up for the first time, of course there is a sign out front to advertise there's a B&B in place. When we get to the renewal stages, we don't require them to put a sign up. So this officer was misunderstanding that he thought they needed to have a sign up.

Chairperson Lay: Joe, Exhibit 3, just want some identification here. What's Rainbow Lookout?

Mr. Prutch: These are her--well, the names for her different, the different, I guess, bedrooms if you will, of the place, of the home. The home is--it's kind of a strange look, strange layout, the home is connected by what is it, like covered walkways, almost like long hallways connecting. The Lookout Cottage is the main house with the kitchen and then walkways, the walkways connect the house to that Rainbow Lookout which if I remember one or two? One. So one bedroom. So the guests can stay there and kind of, it's kind of like they're in their own little spot, but they're connected to the house and they can go to the main house, the Lookout House for kitchen facilities, and you know, morning fruit and that kind of stuff.

Ms. Wakida: And we does the applicant live?

Mr. Prutch: Lookout. They live in the Lookout House.

Ms. Wakida: I'm not clear. So are there, what, four houses on this property?



Mr. Prutch: There are three houses that...well, one house but it's connected...the Lookout House, the Rainbow Lookout and the Star Lookout are all one house, they're just connected those covered walkways. The Haleakala Cottage down in the bottom is a ohana unit. I believe that's a studio if I remember right.

Ms. Wakida: And so which of these is involved with the B&B?

Mr. Prutch: The house is for the B&B...so the entire house. There's four, I'm sorry, there's four bedrooms total. There's one in the Haleakala Cottage, there's one in the Lookout, there's one in Star Lookout and then one in the main house. So four bedroom plus a bedroom for the applicant of course.

Ms. Wakida: So the kitchen's in the Lookout and the Rainbow, Star, those just have bedrooms or do they have kitchens as well?

Mr. Prutch: Just bedrooms. They do have the little—oh one of them, sorry, the Rainbow Lookout has the wetbar area in it. The Star Lookout is just bedroom.

Ms. Wakida: For me it would be helpful in the future to have a couple of pictures on these renewals. I don't need the whole presentation like we get on the original but just one or two to kind of get it.

Mr. Prutch: I'm sorry, I can do that. I always think, you know, it was already disclosed in the first but you weren't here for that, so...

Ms. Wakida: Thank you.

Mr. Prutch: Okay.

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

Mr. Shibuya: Joe, can you expand on the water system? You actually have ground water well which they use and you also have septic as well as cesspool. How do they interact? Or is there any safety feature or factor involved?

Mr. Prutch: Okay, I'm gonna let Ms. Stone come up and talk about that.

Ms. Stone: The septic system is on the other side of the property. It serves Haleakala Cottage. We operate directly from the deep water well which is a 130 feet below the ground. And the previous owner thought the water quality was so good that he was actually going to bottle it. But any outside water source, of course, has to be always treated as if. So we will string filter it. We have string filtered the whole house and each unit has reverse osmosis water, and of course, you get the little red warning light on those if it's time to change the filters and they are very well kept. And obviously I am alive and kicking and I'm drinking the water everyday as is the rest of the neighborhood and it's really excellent water.

Mr. Shibuya: Okay. I just downloaded the Maui 2005 Ground Water Contamination Report from

the Department of Health and I'm just more concerned that you are not impacted because you're gonna have guests now.

Ms. Stone: Sure, sure, sure.

Mr. Shibuya: And just wanna make sure you–

Ms. Stone: Yeah, we tested the water last year and it was fine.

Mr. Shibuya: It was fine?

Ms. Stone: Yeah, yeah. And we'll do that regularly because that's one of my concerns too. It was all pineapple land, but it was only under pineapple for two years I believe. So our impact should be minimal, but yes, we're always watching it.

Mr. Shibuya: Okay, because they have contaminations here listed and for, this is Haiku?

Ms. Stone: Huelo.

Mr. Shibuya: Haiku is TCP is the problem. Okay, thank you.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendations? Thank you.

Mr. Prutch: The Department's recommending to the Commission approval of a State Land Use Commission Special Use Permit time extension with amendments to the conditions as stated and as shown on the report. The Department's recommending the Commission adopt the Department's report and recommendation prepared for today's July 9, 2013 meeting and authorize the director to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Commission.

Mr. Freitas: So move.

Mr. Tsai: Second.

Chairperson Lay: Motion by Commissioner Freitas, seconded by Commissioner Tsai. Any comments?

Mr. Freitas: One quick comment. I think this was done very well. This is how these what do you call, agricultural land should be done.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I will support this because rarely do we see people coming before us that are actually farmers, small scale, yes. Economic value minimal, but they are actually farmers and they just want a bed and breakfast to help out. I like this.

Mr. Prutch: Thank you for that.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I'd like to concur. I think that they are doing what the gentlemen at the beginning, Mr. Russell said about fulfilling a spirit of being a farmer, that under bonafide agriculture. They may not be making a living at it, but their spirit of farming is there.

Chairperson Lay: Okay. Let's call for the vote. All those in favor? Oh excuse, me. We got the recommendation?

Ms. Wakida: No, I understand. Do we want Clayton to repeat what the motion is?

Chairperson Lay: Oh, can you repeat the motion? Thank you.

Mr. Yoshida: The motion is to approve the time extension request as recommended by the Department.

Chairperson Lay: All those in favor? Motion passes.

Mr. Yoshida: Seven ayes.

Chairperson Lay: Thank you very much. Congratulations.

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

**VOTED: To Approve the Five (5)-Year Time Extension of the State Land Use Commission Special Use Permit as Recommended by the Department (Assenting - J. Freitas, M. Tsai, J. Medeiros, K. Ball, S. Duvauchelle, P. Wakida, W. Shibuya) (Excused - W. Hedani)**

Chairperson Lay: Commissioners, let's take about a seven-minute break and get back at 11:00.

A recess was called at 10:54 a.m., and the meeting was reconvened at 11:03 a.m.

Chairperson Lay: Our next agenda item?

Mr. Spence: Thank you, Commissioners. The next agenda item is Chris and Susan Gebb requesting a five-year extension of their Special Use Permit for a bed and breakfast in the Ag District, and our Staff Planner is Mr. Joseph Prutch.

- 2. CHRIS and SUSAN GEBB requesting a five (5)-year time extension on their State Land Use Commission Special Use Permit to continue to operate the Windward Garden Bed and Breakfast on approximately 1.1 acres of land in the State Agricultural District located at 435 Hoolawa Road, TMK: 2-9-001: 042, Haiku, Island of Maui. (SUP2 2009/0006) (J. Prutch)**

Mr. Joe Prutch: Okay, good morning again everyone. Just for clarification, I did the same thing to, it's Chris and Susan Gebb. Four years ago I did the same thing.

Mr. Spence: I stand corrected.

Mr. Prutch: Okay, we have another Special Use Permit renewal for a bed and breakfast on Ag land. This one I believe you'll see is also another one with pretty extensive ag and good bed and breakfast operation use. No complaints at all. No police calls. None of that stuff. This was another, another good B&B operation that's been in operation since 2009. They got their approval back in November, 2009 with an expiration date of November 2012. They applied for their renewal and we're here today to try to get that renewal. The B&B is located at 435 Hoolawa Road in Haiku makai of Hana Highway. It's only a 1.1 acre agricultural land with a main house, three-bedroom main house and a small accessory farm dwelling that the applicants live in. They rent out the three-bedroom house. And with that 1.1 acres, they actually do quite a bit of farm operation and they're one of the few, they actually do make income. The applicant, Mrs. Gebb, she actually runs Gebb Foliage and has been running that for I believe over 10 years now. She takes her specialty flowers and different things that she grows on the site and she actually sells those to, I think it's ASA or ASA Flowers, wholesale forest in Wailuku, and she'll get up here and she'll explain a little more about the farming operation and how it's changed since 2009. She's adapting more to food production and less of flowers, but I'll let her explain what she's been doing since then.

The applicants, they've satisfied all the conditions of the SUP and provided the documents to the Staff. Once again, they had a specific project condition on their SUP, Condition No. 7, and theirs was very similar to the last one, although it does have a little bit addition to it. I'll read it to you. It says, "the applicant takes precautions to insure that the water serving B&B operation is safe and wholesome, not detrimental to the health and safety of the B&B guests, and the applicant shall have the water quality, the private water system tested," this is the different part, "the applicant shall have the water quality of their private water system tested on an annual basis. Copies of those tests shall be submitted with the Department with the compliance report at the time the permit extension is requested". The applicant did do this. This is different. The last B&B you just looked at had a very similar condition except, they weren't required to, to do the annual reports. So one of 'em got approved differently from this one. That's just the way it went back in 2009. The applicant has made different water sample tests performed by Hawaii Food and Water Testing since 2010. I listed the numbers. They do, they do testing on Total Coliform, HPC which is Heterotrophic Plate Count, and E.coli when necessary. My understanding is that the Total Coliform is a positive number then they have to do testing for E.coli.

Now with this water testing I've listed the four or five different testing they've done since then, and what I wanna say about this is if there's any questions of the water testing the applicant might be able to answer a little bit more than I can 'cause I've been trying to do some research on this and what I found was, our County Department of Water Supply, they didn't want to respond to this and respond to the counts and the numbers because it's not their kuleana to do so. It's a private water system. It's not a public system. So I couldn't get an answer out of them. I went to the Safe Drinking Water Branch of the Department of Health at the State and I finally got an engineer to respond. I couldn't get an answer. And the engineer responded by saying that the annual testing of one or two bacterial parameters means very little and certainly does not mean the water is safe

and wholesome for human consumption. This is his response in Exhibit No. 8. He also states that the Department of Health does not have jurisdiction to review and approve these tests from B&Bs. So once again, I have all these tests with these numbers that really for me those numbers don't mean a whole lot. I don't...I'm not a water specialist. I don't know what these numbers mean. I just...they're numbers, and unfortunately I can't get a response what these numbers mean because the Safe Drinking Water Branch cannot respond because it's not a large enough system is my understanding. Once it gets to a certain stage where you're serving more people and you become a public water system then the Safe Drinking Water Branch gets involved and there's probably all kinds of testing that goes on. Because of this, I'm requesting that Condition No. 7 be revised to remove the requirement for the annual water testing similar to the condition we just had of Sharyn Stone before this.

I'm also, beyond that of course, there's the standard condition, Condition No. 1 I'm asking to amend the date to five years, and also to allow the Director to extend the permit if there's no major issues just similar to the last one. Condition No. 2, requesting deletion of that condition, and it's no longer a standard condition of approval. Just like the last one. Also, to add Condition No. 4, the catchall statement that says, "that full compliance with all other government requirements shall be rendered". And Condition No. 5, for compliance reports, once again just requesting two copies of the compliance report rather than five. We don't need the extra copies, and they just get thrown away. And the conclusion, I guess, I can leave for later and I know Ms. Gebb, Mrs. Gebb wants to come up and she'll explain to you a little bit about how her ag has changed in the past four years and what she does and how she actually derives income from a small property, 1.1 acres. Okay, thank you.

Ms. Susan Gebb: My name is Susan Gebb. I own Gebb Foliage. Before there was a Windward Garden there was always Gebb Foliage. I became a flower designer in the 90's for an events company. After managing that company for years, I was inspired to go home and plow up the land and plant everything that the florists were needing. I, over the years did contract growing and had standing orders with Maui Floral, Paradise Flowers, Teena Rasmussen, Feast at Lele who ordered 500 ti leaves a week, Old Lahaina Luau 800 ti leaves a week, Tihati Productions monstera and large tropical foliage. So I developed a niche market based on my knowledge of the market and actually I was quite successful. I often grossed \$2,000 a month which was pretty darn good for a middle-aged lady at home growing stuff and I had an assured market. So gradually over time I became known for my foliage and my specialty foliage and I still do specialty installations mostly for ASA in ballrooms, for large weddings. Specialty foliage I mean sagos, cycads, birds nest fern, variegated ginger, things that most people don't grow. So like I said, I developed a niche market. And as we developed Windward Garden and we began to open our doors which was our family home, we lived in Huelo for 35 years, it is our family home. Our children were born and raised there. They went through all the schools.

People began to ask us about our farming and we realized that the nature of the traveling public was changing in that they wanted more than ecotour. They wanted farm to table. They had not much interest in sitting at the beach anymore because they had done that I think. So as I was showing people around the orchids and the trees, I was realizing that they wanted to be eating our pineapples and of course, we were always serving bananas and papayas which we raised and which we've always raised. But we have expanded to grapefruits, surinam cherries, lilikoi, a 175 pineapples which are extraordinarily easy to grow we found, star fruit and we've increased our

flower production because when guests come in they like to see big, beautiful tropical flower arrangements which I do fresh every few days. Small flower arrangements in the rooms and small flower arrangements on the tables where they dine. So I'm switching my emphasis somewhat to a food production because of the requests from our guests who want to see farm to table and are very interested in ecotravel.

And one other thing I'd like to say is we are completely solar powered installation. And we do get people who also would like to see how a large home can function on solar power and they are looking at our system hard. We get physicists, we get scientists. They want to know can they have a garage door opener too.

So that's just...oh, one other thing, 50 percent of farmers in the State of Hawaii, I participate in the survey annually for farmers are women over 45. You should not underestimate our abilities to pursue these niche markets and grow orchids at home, basil at home, become a contract grower, everything you grow is purchased before it even blooms. So if you can appreciate that, you can see the direction that Windward Garden is selling. Thank you.

Chairperson Lay: Thank you. Commissioners, at this time I'm going to open up to public testimony. If anyone wishes to testify, please come forward and identify yourself. Seeing none, we'll open up to questions, Commissioners, to our Planner and our applicant. Commissioner Freitas?

Mr. Freitas: I have one for the planner. Why do we put this water restrictions on when the State and the County, you cannot get it tested? Why does it even come up?

Mr. Prutch: Well, I think if I remember right it was 2009, I was the Planner for this project as well back then, I remember, I remember a lot of discussion with the Commission. I don't know if anyone was here back then, maybe Shibuya, anyways, I remember a lot of discussion about the water and how do we verify its safety and whatnot because it's not public water system? Kind of went round and round and my understanding if I remember correct was we basically came up with this condition on the fly between myself and probably the Director at the time and we came up with a condition to try to satisfy the Commission's concerns for the water that it's going to be safe and wholesome. But we didn't know at the time was by asking them to do some annual testing we didn't really know what that testing was at the time or who would review it, only we found out later when we got the reports in from the applicant and I sent 'em off to Water and Safe Drinking Branch and I can't, I can't get anyone to respond to it. So at the time we conditioned this, we really didn't know what, we just knew that the Commission wanted to see something to provide some assurance to them that the water would be safe and that's what we came up with and now that we're getting the tests back, we just finding out it's numbers and we don't really know that that really qualifies it as completely wholesome. There's a lot of different testing my understanding is that you would have to do not just the, not just the coliform. That's just a basic test. There's all kinds of different testing that could be done.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: Joe, in this particular case I was looking in Haiku and one of the items of the hazards was TCP and in this particular case, the hazard probably will be the closest hazard would be the cesspools and I don't know how close the cesspools are to the water well and/or the depth of this

water well. If it's very shallow then it be of concern. Can I know what the depth is?

Mr. Prutch: I do not recall that. I'll have to ask either Susan or Christopher to come up.

Chairperson Lay: Please step forward and identify yourself.

Mr. Chris Gebb: I'm Chris Gebb, the proprietor, co-proprietor. The well was built in 1978 prior to the requirement for well drilling permits. And it was registered as a water use with the Water Commission in a timely way. It was drilled to a 164 feet. Over the years, siltation has reduced the depth of the well to about a 100 feet. The water level itself is at 42 feet. So we draw the water from about 85 feet depth. We've been all drinking it since 1978 including my visitors, my long-term tenants and my family and we've had no ill effects from it. And I had it tested five times and the...without quantitative standards, the people from the well testing agency informed me that it was one of the cleanest samples that they'd ever tested. So without any quantitative standards I just accepted that on face value and I've been drinking it and providing it to my visitors.

We have posted signs saying the water is not potable because the lack of clear cut standards and we've also taken to serving bottled water to our guests.

Mr. Shibuya: Oh, okay.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: If I can follow up? You could possibly use reverse osmosis with a UV light for bacterial purification.

Mr. Gebb: That would be an option, certainly to enhance the purity.

Mr. Shibuya: Yes, that's correct.

Mr. Gebb: I feel fortunate that I've had old-timer testimony including pineapple farmers who actually worked the area and there have been no use of pesticides or soil fumigants in our aquifer.

Mr. Shibuya: Understand.

Mr. Gebb: We're grateful for that. It was one of the big reasons that we moved out to Huelo. We lived next to a pineapple farm in Haiku for five years and it was a lot of spraying and soil fumigating going on and as organic gardeners we found that very difficult to live with and that's why we moved out to the cleaner, unpolluted area where we live.

Mr. Shibuya: Understand. Thank you.

Chairperson Lay: Commissioners, any more questions? If not, get the Department's recommendations.

Mr. Prutch: Yes, the Department is recommending to the Commission approval of the State Land Use Commission Special Use Permit time extension with the amendments as spelled out in the

report and as spelled out to the Commission as well with the proposed changes as shown. In consideration of the foregoing, the Department's recommending the Commission adopt the Department's report and recommendation prepared for today's July 9, 2013 meeting and authorize the Director to transmit said findings of fact, conclusions of law and decision and order on behalf of the Commission.

Mr. Freitas: Move to accept the Planning Report.

Chairperson Lay: Motion by Commissioner Freitas.

Mr. Ball: Second.

Chairperson Lay: Second by Commissioner Ball. Any comments? Commissioner Wakida?

Ms. Wakida: Well, I'm impressed with this application because here they've got 1.1 acres and this applicant has found a niche market, has researched it, has made it a success, and just wish we could see more of this kind of farming activity for future applications.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Mr. and Mrs. Gebb, I support farmers and I support both of you.

Chairperson Lay: Director, would you like to repeat the motion?

Mr. Spence: The motion is to approve the time extension as recommended by Staff for Mr. and Mrs. Gebb.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Approve the Five (5)-Year Time Extension of the State Land Use Commission Special Use Permit as Recommended by the Department (Assenting - J. Freitas, K. Ball, J. Medeiros, M. Tsai, S. Duvauchelle, P. Wakida, W. Shibuya) (Excused - W. Hedani)**

Mr. Prutch: Thank you, all.

Chairperson Lay: Our next agenda item.

Mr. Spence: Commissioners, No. 3 in Communications is Dr. Ben Azman on behalf of Urgent Care West Maui requesting a use determination to operate a medical office in the B-R Commercial Resort District. Our Staff Planner, is still this morning, is Ms. Candace Thackerson.



**3. BEN K. AZMAN, M.D. on behalf of URGENT CARE WEST MAUI requesting a use determination in order to operate a medical office in the B-R Resort Commercial District at the Fairway Shops, TMK: 4-4-008: 017, Kaanapali, Island of Maui. (ACC 2013/0002) (C. Thackerson)**

Ms. Candace Thackerson: Hello. We do have the projector that got brought in, the old projector, but I don't think I really need to be using it. We probably will have to take a break after though so they can set it up for the workshop later. I have here another letter of support that I would like to pass out to the Commission. ...former one from Lori, but this one's from Mike White.

So this is for a use determination, ACC 2013/0002 for Urgent Care West Maui requesting a use determination in order to operate a medical office in the B-R Resort Commercial District at the Fairway Shops, TMK: 4-4-008: 017 in Kaanapali. A use determination approval may be obtained from respective planning commission as specified in various chapters of Title 19, Maui County Zoning Ordinance for certain specific, similar or related uses provided that no conflict arises with the intent of the specified zoning district uses.

This is zoned B-R Resort Commercial and under permitted uses for B-R Resort Commercial, we have things like camera shops, coffee shops, information centers, novelty stores, real estate offices, travel agencies, taxi cab station, bars, nightclubs, et cetera. We don't have medical office listed on there. But the last example says, "other uses of similar character providing foods, services or facilities primarily to transient visitors may be approved by the Commission as conforming to the intent of this title subject to such terms and conditions as may be warranted and required by the Commission".

I had a map showing it, but I'm sure you'll all familiar where the Fairway Shops are. Dr. Azman is here and he is currently operating under a former Accessory Permit. We now call them use determinations but that's why you see the ACC lettering. It's back from 1997. It's 97/0002 and he is the West Maui Health Care Center and he is currently located at the Whaler's Village which is I think right across the street from the Fairway Shops. So he's just relocating his business over to a different parcel and that actually triggers a new permit because permits don't go with an ownership. They follow the use in that parcel as determined by the Commission.

He received an extension from the Commission on July 14, 2004 to operate until July 31, 2014. So he is currently in good standing with his current permit. He will be relocating to 2580 Kekaa Drive in Lahaina, and he's expecting to open in January of 2014. Both parcels are zoned the same thing, B-R Resort Commercial.

I had some pictures here showing other businesses that are in there. There's a spa and massage place. There is a chiropractic office. So even though this use is not listed as permitted in the Code there are other businesses in the Fairway Shops that also have their own use determinations to operate within there that are similar to Dr. Azman's.

So the Fairway Shops are an existing developed resort commercial area of approximately 35,000 square feet encompassing various shops, restaurants and retail stores. His proposed hours of operation will be seven days a week, 8:00 a.m. to 9:00 p.m., and he will be providing medical

services to visitors and residents in the West Maui area. Adequate parking is available, and I included the parking analysis in your report that our Zoning and Enforcement Division did. Existing water and sewer capacity installed within the Fairway Shops are adequate to handle the proposed use, and no changes to the storm runoff from the site will occur as a result of this proposed use. He's just going to be taking over one of the empty tenant spaces.

Other regulations that would apply to this later should this body approve the use determination. Dr. Azman will need to come in to get a Special Management Area probably a Minor or an Exemption Permit depending upon the scope of his work for the tenant improvements to the space because it is located within the SMA. And any signs for the proposed business must conform to the existing comprehensive sign plan that the Fairway Shops has, CSP 2002/0014, and there is no trigger for compliance with Chapter 343, the Hawaii Revised Statutes. Questions from the Commission regarding this project?

Mr. Lay: Does the applicant wish to say anything at this time?

Dr. Ben Azman: Chairman Lay, and Members of the Commission, I sincerely appreciate this opportunity for you folks to hear my application. I last came before the Commission in July of 2004, sat through the entire of meeting and the Commission took pity on me and although the Department was recommending a five-year extension, they granted a ten-year extension taking into account the fact also that this is probably the only County where a doctor has to go through this process to be a resort commercial area. Mr. Randy Piltz was a Commissioner at that time and he was in the audience, you know, he probably remembers that. So I thank you very much for this opportunity to hear my application.

Chairperson Lay: At this time, we'll open up to public testimony. Does anyone wish to testify? Please identify yourself. You have three minutes.

Mr. Paul Laub: Thank you. I'm Paul Laub. I have been a...my family have been patients of the doctors for about 24 years and I have to say it's been really, really excellent service. We have a definite need in the west side for medical help. And I can also say this man is a particularly good doctor. So anyway, that's all I have to say. Thank you.

Chairperson Lay: Any questions for our testifier? Does anyone else wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions to the applicant and our Planner? Commissioner Ball?

Mr. Ball: What is the term of the lease? How long is that lease?

Dr. Azman: The term of the lease at the Fairway Shops is 10 years.

Mr. Ball: Okay.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Be operating under Urgent Care West Maui, do you have any association with the Urgent Care in South Maui or is this completely separate?

Dr. Azman: Completely separate, you know, it's a different DBA.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Dr. Azman, what is the process for hazardous waste disposal?

Dr. Azman: I presume you're referring to medical waste disposal. We do have a company by the name of T L Mau that comes on a weekly basis. We do have sharps containers, biohazardous materials containers. They pick it up, they bring it over to Maui Memorial Hospital I believe, Maui Memorial Medical Center where it's incinerated. This is done on a weekly basis.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And does that include, not just your medical...does that include like patient dressings and things like that?

Dr. Azman: If the dressings are contaminated with body fluids, yes.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: These hazardous material it includes the needles is that what it is?

Dr. Azman: Absolutely, absolutely.

Mr. Shibuya: Yes, thank you.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I guess the question's what do you anticipate the amount of patients you're gonna be able to accommodate or see on the—I don't know what the measurement is—daily basis or what you currently see?

Dr. Azman: It varies. Probably in this economic about 30 patients a day. It varies quite a bit depending on the season.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: My question is obviously we hear in the news a lot about the need for a hospital on the west side...I guess what I'm trying to say is do you feel like this is enough capacity to handle the high demand or growing demand of West Maui?

Dr. Azman: That's a very controversial issue. My personal feeling is anybody who wants to build a hospital should be allowed to. I'm not so sure that the economics of it is such that the hospital could be financially viable, but again, that is an issue for the developers of the hospital to decide on.

Chairperson Lay: I have a question about your schedule. You've got seven days a week, at what

8 to 8?

Dr. Azman: 8 to 9, 300–

Chairperson Lay: And it's you alone?

Dr. Azman: Oh, no, no. I would not be, I would not be able to come to this meeting if that was the case. No, I have with me one full-time doctor and one working half-time. There's also a chiropractor at the office with me and that's how we're able to stagger our shifts so that we open 365 days a year.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: And more of the curiosity thing and not necessarily with you, but expired pharmaceutical items what happens to them? I'm not saying...you probably dispose of it through that disposal unit would you not?

Dr. Azman: Correct. With the exception of controlled drugs where the State Department of Health, the Narcotics Enforcement Division is supposed to come by and pick it up. So, you know, we don't stock very much so there's very little expired ones, we're just waiting for them to pick it up.

Mr. Shibuya: Okay, because these are controlled item.

Dr. Azman: Controlled items.

Mr. Shibuya: So chain of custody is...

Dr. Azman: Yes, correct.

Mr. Shibuya: Okay, thank you.

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

Ms. Thackerson: The Planning Department recommends that the Maui Planning Commission find the proposed use to be an allowed use in the Resort Commercial area on the subject property and in conformance with Title Section 19.22.020 of the Maui County Code. The Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the July 9, 2013 meeting as its finding of fact, conclusion of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Mr. Tsai: So move.

Ms. Wakida: I was just going to read the motion.

Mr. Tsai: I was going to say so move as recommended by Staff.

Ms. Wakida: I'll second it.

Chairperson Lay: Motion by Commissioner Tsai, seconded by Commissioner Wakida. Any comments on the motion? Commissioner Freitas?

Mr. Tsai: He's voting.

Chairperson Lay: Director could you repeat the motion?

Mr. Spence: The motion is to approve as recommended by Staff.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion passes.

**It was moved by Mr. Tsai, seconded by Ms. Wakida, then**

**VOTED: To Accept the Department's Recommendation that the Proposed Use to be an Allowed Use in the Resort Commercial Area on the Subject Property and in Conformance with Title 19.22.020 of the Maui County Code.**  
**(Assenting - M. Tsai, P. Wakida, J. Medeiros, J. Freitas, K. Ball, S. Duvauchelle, W. Shibuya)**  
**(Excused - W. Hedani)**

Ms. Thackerson: Thank you.

Chairperson Lay: Congratulations.

Dr. Azman: I thank you all very much.

Chairperson Lay: Good to have you out there. Okay, moving onto our next agenda item? Pose the question if we're gonna break for lunch or are we going to go into the next one? Okay, moving along.

Mr. Spence: Commissioners, Item No. 4 in Communications is Mr. Jason Wexler requesting a Step III Planned Development Approval for the Wailea SF-11 Project. Jim Buika is the Staff Planner. Okay, Clayton is approaching the microphone.

**4. MR. JASON WEXLER requesting a Step III Planned Development Approval for the Wailea SF-11 Project, a sixteen (16) single-family residential lots only and related improvements at TMK: 2-1-008: 118 (por.), Wailea, Island of Maui. (PD3 2013/0001) (SM1 2008/0011) (J. Buika)**

Mr. Clayton Yoshida: Yes, good morning, Mr. Chairman, Members of the Commission. This

request is before you for a Step III Planned Development Approval for the Wailea SF-11 Project. It is a...Wailea is a Planned Development and the project has already received Step I and Step II Approvals. Due to the streamlining measures approved by the Council in April of 2011, the Commission may review and take final action on the Step III request or waive its review and allow the Director to take final action. We find that the proposed Step III plans are in conformance with the approved Step II Planned Development Approval, but I guess it's up to the Commission whether they want to take final action or waive its review and allow the Planning Director to take final action.

This has happened only once before after the streamlining measures have been approved and this was for the Andaz Hotel at Wailea where the Commission waived its review and allowed the director to approve the Step III Approval.

Chairperson Lay: At this time, I'm going to open up to public testimony.

Mr. Yoshida: I guess the applicant is here, Jordan Hart and Brett Davis.

Chairperson Lay: Does the applicant wish to say anything at this time? No? We're gonna open up to public testimony. Does anyone wish to testify at this time, please come forward. Seeing that there's no one, we're closing public testimony. Commissioners, do you have any questions? Commissioner Wakida?

Ms. Wakida: Clayton, will you please summarize succinctly, I don't need a long explanation of what happens in Step III that's different from Step II?

Mr. Yoshida: Step III is pretty much the final construction drawings. Step II is more the preliminary site plan and typically that's done in conjunction with an SMA Permit as was the case here. So Step III is pretty much, you know, the final plans before subdivision, final subdivision.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And in this particular application, have there been any changes from the preliminary, any that you wanted to point out any significant changes?

Mr. Yoshida: No, not that I'm aware of. What is being proposed is consistent with the Step II and SMA that the Commission had granted back in November...October of 2009.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I'm more concerned in terms of the public having any concerns or need to have brought up any items of controversy. I haven't heard anything. Have you heard of anything to this effect that's...the natives are being very restless that we need to have a hearing?

Mr. Yoshida: It hasn't come to my attention there's been any concerns from the neighbors realizing again this is just for a 16 residential lots only subdivision. It's not for the above ground construction. It's just subject to the infrastructure improvements and subdivide into 16 lots.

Mr. Shibuya: That's why I'm more concerned in this risk of having a public opposing this, but at this

point I see no problem and I'm more inclined to support the Director having passing this through.

Chairperson Lay: Commissioners, any more questions? The Department's recommendation is?

Mr. Yoshida: I guess it's up to the Commission whether they wish to take final action on the Step III Planned Development request or waive its review and allow the Planning Director to take final action.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: I would propose at this time I guess that this Commission waive its review and allow the Planning Director to take final action.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Shibuya, second by Commissioner Medeiros. Any comments on this motion? Seeing none, can the Director repeat the motion?

Mr. Spence: The motion is for the Commission to waive their review of its review and let the Planning Director do so. Motion is for the Planning Commission to waive their review and let the Planning Director to do...(inaudible)...

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

Mr. Spence: Seven ayes.

Chairperson Lay: Motion carries.

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

**VOTED: To Waive Its Review and Allow the \_Planning Director to Take Final Action Pursuant to the Provisions of Section 19.32.020.C, Maui County Code.**  
**(Assenting - W. Shibuya, J. Medeiros, J. Freitas, K. Ball, M. Tsai, S. Duvauchelle, P. Wakida)**  
**(Excused - W. Hedani)**

Chairperson Lay: Now we've reached the part of our Orientation Workshop. You guys wanna start for 20 minutes or take a lunch break and be back at 1:20, 12:40? Excuse me.

Ms. Wakida: How long is the workshop and what does Tara wanna do?

Ms. Owens: I'll wait, ...(inaudible)...about an hour, but we'll be doing half-hour segments, and we do have to set this up.

Mr. Ball: Can we do the acceptance of the minutes and move forward on that?

Mr. Shibuya: Director's Report we can do that.

Chairperson Lay: Moving along, Director's Report.

Mr. Ball: You wanna do the minutes?

Chairperson Lay: Start with Item E. Okay, acceptance for the minutes?

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE JUNE 25, 2013 MEETING**

Mr. Ball: Move to accept minutes if there are no changes.

Mr. Medeiros: Second.

Chairperson Lay: Motion made and seconded. All those in favor, verbally.

Commission Members: Aye.

Chairperson Lay: Those opposed? Motion carries.

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

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

Chairperson Lay: Now moving onto the Director's Report.

Mr. Spence: First item in the Director's Report it's me notifying you the intent to grant a two-year time extension for the Garcia Family Subdivision and improvements in Makena, and Candace is still here if any of you have questions on that?

**F. DIRECTOR'S REPORT**

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**
  - a. SAM and JON GARCIA requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Garcia Family Subdivision and related improvements on approximately 5.49 acres of land located at TMK: 2-1-007: 067, Makena, Island of Maui. (SM1 2002/0016) (C. Thackerson)**

Chairperson Lay: Commissioners, any questions of Candace?



Ms. Candace Thackerson: Is this the Makena time extension request that we're on? I can go over it briefly. So this is the second time extension request for this project. The project was originally approved in 2008 even though it's stated 2002. So it was approved March 25, 2008. The Maui Planning Commission granted it a time extension in 2011 until March 31, 2013, but they applied before the deadline, the 90-day deadline. And so this will only be the second time extension for this project. If so granted by this body the new deadline to initiate construction will be March 31, 2015. The applicant in his letter discusses the reason for the request, you know, being the water availability act. There hasn't been any changes in the area. I went down and did a site visit of it to go take a look 'cause I know that some of the Makena properties are starting to move forward on some of their things. And the property directly to the south is starting to move forward with their project. They just cleared the trees and they're doing some grading. But at the time of approval by this Commission they were aware of the other project. They were all approved at the same time. So there's nothing new occurring down there that this body did not know about at the time of approval.

The applicant has submitted the original approval letter as well as a site plan and a letter addressing the drainage concerns. Unfortunately, they're not here right now, but I'll answer to the best of my ability.

Chairperson Lay: Commissioners, any questions? Seeing none, we're moving on to decide whether we waive this review for this time extension request or review the time extension request at a future meeting.

Mr. Freitas: Waive the review. I move to waive the review.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Freitas. Second by Commissioner Medeiros? Any comments?

Mr. Ball: Comment.

Chairperson Lay: Commissioner Ball?

Mr. Ball: So what does that mean? I guess this is different than allowing the Director to make the determination, right, like the last one we just did?

Ms. Thackerson: No, this is a time extension request for the SMA. So yeah, you'd be granting the Director the authority to just grant a two-year time extension. If applicants want any more than two years, then we come back with a full report for you guys or if you see something in this that strikes your attention and you would like the staff to come back and bring it back up again then we do more of a full-blown staff report and reopen the conditions, but this would just be granting them two more years to try to initiate construction.

Chairperson Lay: Okay, Commissioners. Call for the question, do you wanna?

Mr. Medeiros: Yes.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: No question. You got a motion on the floor.

Mr. Medeiros: Second.

Unidentified Speaker: You want to resay the motion?

Mr. Spence: The motion is to...is for the Commission to waive their review and allow the Director administratively grant the two-year time extension.

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

Mr. Spence: Seven ayes.

Mr. Ball: I voted no.

Mr. Spence: Oh, okay, six ayes.

Chairperson Lay: Opposed?

Mr. Spence: And one no.

Chairperson Lay: Motion carries.

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

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension.**  
**(Assenting - J. Freitas, J. Medeiros, M. Tsai, S. Duvauchelle, P. Wakida, W. Shibuya)**  
**(Dissenting - K. Ball)**  
**(Excused - W. Hedani)**

Mr. Spence: Item b, is Mr. Rick Armour also requesting a two-year time extension to their SMA Permit, the Kalama Hills Subdivision and again this is for the Commission to knowledge receipt of the request and decide whether to waive the review or hear the full time extension request.

- b. MR. RICK ARMOUR requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the 12-lot Kalama Hills Subdivision and related improvements at TMK: 3-9-017: 023, Kihei, Island of Maui. (SM1 2005/0042) (C. Thackerson)**

Ms. Candace Thackerson: So this one slightly varies from the last one. This is for the 12-lot Kalama Hills Subdivision. This is also the second time extension request for this applicant. However, I handled the first time extension request before this body back in 2010, and the

Commission actually asked to see it, did not waive review, wanted to review the project. They reviewed it at that time. Went over the issues with it just being the burial I believe, if you look at Exhibit 3, there is a burial site on the project. They wanted to just review that, talk to the applicant, make sure that the applicant updated their drainage plan. At the time, the Chair was Kent Hiranaga and he wanted to make sure that they updated their drainage plan so they asked for it to come back as a full project and granted them a three-year time extension request because I guess they felt that since the applicant came back and did the whole report again they'd grant him an extra year. So the applicant is again asking for this time to waive review of the two-year time extension for this project. So the date will change to be June 30, 2015 to initiate construction.

Mr. Ball: Do we have a reason why?

Ms. Thackerson: Oh, yeah. I pretty much think that Kihei and Makena seem to be water. Water tends to be the biggest issue with a lot of projects especially with the Show Me the Water Bill being enacted at the time when all these were getting approved. Even though the water availability ordinance has been softened, they still haven't been able to secure a long term source of water supply. It's kind of a interesting catch-22 because the County is really the one who's in charge of the source of...the main source of water supply unless an individual developer feels like he wants to build a well. And I don't think they wanna do that for a 12-unit subdivision. So when they asked that at the last commission and that's why they wanted to review the project, the documents that I presented for that reasoning was a study done by the Water Department on ways that they were looking into getting water to South Maui. I mean, it was pretty extensive report like 85 pages that I had given to the Commission and that's not even in really the Planning Department's hands or the applicants, but it showed what the Water Department was thinking of as far as...like ways that they can get water to South Maui.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Candace, you think in two years they'll be able to get the water?

Ms. Thackerson: That's a tough question. Personally or...?

Mr. Freitas: No, what do you call, with your knowledge of what's—

Ms. Thackerson: I don't work in the Water Department unfortunately and I can't get them to weigh in on it except to give me that study. It's kinda like asking DOT when I think they're gonna open Piilani Highway to Upcountry. They told me it was in their 2050 Plan. I don't know what to say to that. So when the Water Department gives me a study that says they're actively looking into it for the growth of Kihei I can only take them at their face value.

Chairperson Lay: Commissioner Ball?

Mr. Ball: But there were no specifics then in there like two year or...

Ms. Thackerson: They had five or six...I can give you a copy of that report if you'd like to see it. They had five or six different options that they were exploring, but it was all based on fee analysis studies and things like that. I mean, it was very vague. They could not pinpoint one thing that

would really provide water to the area.

Chairperson Lay: Commissioners, at this time, we're gonna open up to public testimony if anyone wishes to come forward? Seeing none, public testimony is closed. Any more questions, Commissioners? Seeing none, Department's recommendations? Oh, decide whether to waive review or to review the time extension.

Ms. Thackerson: Yes, that the Commission, yeah, authorizes the Director to grant the two-year time extension, to waive review of seeing the project.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I move that the Commission waive its review on the time extension.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Wakida, seconded by Commissioner Medeiros. Any comments? Seeing none, if the Director can repeat our motion?

Mr. Spence: The motion is for the Commission to waive their review.

Chairperson Lay: All those in favor?

Mr. Spence: One, two, three, four ayes.

Chairperson Lay: Those opposed?

Mr. Spence: And that's three nays.

Chairperson Lay: I'm going to vote in favor of this motion also.

Ms. Thackerson: Thank you. And Commissioner Ball, I can get you that report.

Mr. Ball: Thank you.

**It was moved by Ms. Wakida, seconded by Mr. Medeiros, then**

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension.**  
**(Assenting - P. Wakida, J. Medeiros, J. Freitas, W. Shibuya, I. Lay)**  
**(Dissenting - K. Ball, M. Tsai, S. Duvauchelle)**  
**(Excused - W. Hedani)**

Chairperson Lay: Okay, gonna take a lunch break now and come back at five to 1:00.

A recess was called at 11:53 a.m., and the meeting was reconvened at 12:59 p.m.

Chairperson Lay: Next agenda item? Okay, we went through the Director's Report, Item F, and we had one more item on that F-2. I'm wondering if we can go through that quickly, Commissioners? I don't know if Chris Hart's representative here?

Mr. Wollenhaupt: They're here.

Chairperson Lay: Yeah, let's run through that.

**2. June 28, 2013 request letter from MR. JORDAN HART, President of CHRIS HART & PARTNERS for the scheduling of a workshop on various land use entitlement applications for a community plan amendment (CPA) and change in zoning (CIZ) for the proposed Maui Research & Technology Park (MRTP) Master Plan Update at TMK: 2-2-024: 1-9, 14-18, 31, 32, 34, 36-46 and 2-2-002: 054 (por.), Kihei, Island of Maui. (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good afternoon, Members of the Maui Planning Commission. As the Members are probably aware of Maui Research & Technology Park has presented a petition to the State Land Use Commission and that's to amend the Land Use District Boundary consisting of 253 acres from the Ag District to the Urban District. So that's part one of the three part process. The Land Use Commission will be considering that in a public hearing at the end of the month down at the Research Park. We're presuming that after this decision is rendered assuming that it's a positive decision for a change in the district boundary then the applications for a change in zoning and a community plan amendment will come to the Planning Commission and then onto the Council.

Chris Hart & Partners and their staff did request the possibility of having a workshop because what they're requesting is it's not just typical change in zoning. It's actually a change in zoning with a form-based code. Something completely new to Maui County. Pretty new to most of Hawaii. So the Planning Department does see some merit in having a seminar, not too different of what we're gonna have in just a couple of minutes here. What's a form-based code, why might it work, what are some of the questions that you as Planning Commissioners may wanna ask in reviewing the project at a later date, and probably there would need to be some overview of what the project is but this would not be a prehearing hearing. It would be kind of a seminar. So the representatives of Chris Hart to explain what they were thinking, and I can answer any other questions that you may have.

Chairperson Lay: Let's listen to Chris Hart's representative.

Ms. Jennifer Mayden: Good afternoon, Chair Lay and Commissioners, I'm Jennifer Mayden, Senior Planner with Chris Hart & Partners. The Planning Department had the idea of doing this workshop to introduce the master plan and form-based codes to the Commission prior to our hearing for a change in zoning and community plan amendment and our client is very happy to accommodate the workshop. And as Mr. Wollenhaupt has portrayed to you, we do believe that it would be very important to do an overview of form-based codes, what they are, how they work, how it could benefit the project and the County and not completely divorce it from the project, do a slight overview of the project and the master plan update, but as Kurt said, without it being a prehearing hearing.

We really appreciate you taking the time to listen to our request today. I want to note that this will be a significant expense to the applicant but they are very willing to do this. We are...we will bring in our master planning consultant, Calthorpe & Associates from California for this workshop, but we definitely appreciate you considering our request today.

Chairperson Lay: Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: So just to clarify, you wanna bring in your Calthorpe Associates to do an overview of form-based code and you're gonna use, also present it in conjunction with the project, with your project?

Ms. Mayden: It wouldn't be a detailed presentation of the project. We wouldn't go into the real fine details of the project and impacts and such. We would keep it very overview but focus on the master plan update and what the future vision for the Research & Technology Park is as it's different from what it is today. But the goal would be to educate the Commission as well as the Planning Department on form-based codes the difference from traditional zoning and how form-based codes can benefit the project as well as the County as kind of initiating –

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And how long were you anticipating this to take?

Ms. Mayden: I think it would probably be similar to your afternoon workshops. I wouldn't see it being longer than three hours and that would be including questions, answers. We can definitely accommodate what the Commission would desire.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Can you do this workshop completely divorced from the project?

Ms. Mayden: We could if that was the Commission's desire. I think there would be a benefit to having a little connection to the project so that you can have something tangible when you're thinking about form-based codes and their benefits, but if it was the Commission's request we could.

Ms. Wakida: Yes, I can't...can you use other projects as examples rather than your own?

Ms. Mayden: We could use examples and show how it has worked in other areas.

Mr. Giroux: Chair, can I just, quick comment?

Chairperson Lay: Corp. Counsel?

Mr. Giroux: The only caveat I can say is that as far as...because the matter that's gonna be part of a workshop is going to be an agenda'd public item that the board would refrain from any conclusionary remarks or opinions based upon what they were learning through the workshop. That's the only, you know, caveat I can say is...being human nature the way you guys have been

reviewing EISs, all I can say everybody's got an opinion, but it's just that you have to be very cognizance of holding that opinion until all of the information is presented. I guess that's what's the part of the discussion on the table today. So just to clarify, you know, what the request is asking for and what...I think it's very important that because form-based zoning is gonna be the future of planning and Maui has not really seen a lot of it, I think it's important for you to see what is form-based zoning and how does it apply to zoning applications on Maui, and how different it is from Euclidean zoning which we are very used to. So I think in that respect, you know, I would encourage some type of seminar or workshop, but I also on the flip side, the caveat is, is that if it is going to be exposing this project to prescrutiny that the board would have to refrain from coming up with conclusionary remarks or opinions that might expose you to being recused from making future remarks about the project.

Chairperson Lay: So you're saying that a mock project might work best for us?

Mr. Spence: If it was just a general discussion of form-based zoning and how it differs from Euclidean zoning. You know, Euclidean zoning we have the long list of permitted uses which a lot of that you find in form-based as well, but you know, ours is so structured, this is your permitted uses, these are your special uses, these are your setbacks and this is your height. But form-based you're talking about where the building is placed on the lot, the appearance of it, parking is in back, you know, dimensions and forms, it's basically it's when this Commission reviews SMA Permits and you're reviewing the design of a project, you know, a lot of that design is built into the zoning itself. And so, instead of arguing with people and no, we'd rather have you do this or that, it's built right into the zoning, they have to do it as a part of the zoning. It embodies a lot of the new urbanism that you know, we're all trying to go towards, and so it's going to be a trend, it already is a trend and Maui is, you know, there's a lot of internal discussion about going that way as well. So I think it would be useful to have the workshop if it was a very general workshop as Corp. Counsel is recommending.

Chairperson Lay: One more question, Mr. Director. So, Director, if it goes before the State Land Use at the end of this month, how long do you think before it comes before us?

Mr. Spence: I'm not sure.

Mr. Wollenhaupt: Well, they're having their first meeting on July 25<sup>th</sup> and 26<sup>th</sup> actually done at the MR&T Park, the Land Use Commission. Will they render a decision on that day? That depends...I'm getting shaking heads probably not.

Mr. Spence: Yeah, we can't do it for the high school. It would be hard to do.

Mr. Wollenhaupt: So that will push them in sometime into August to render a decision. The Planning Department would like to have that decision included. I'm not sure the applicant, they would probably like to move more quickly, but there would be public hearing notice so that at least 30 to 40 days, so I would say, October maybe when you would get the public hearing on the change in zoning and also on the community plan amendment because there'll have to be reports written and everything. So we're already in July, August, September. I would say maybe in October. So it would be good, helpful to have...if you wanted to have some kind of a workshop, it would be helpful to have it somewhat before, at least you'll know what kind of questions to ask.

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

Ms. Wakida: I don't have a question. I have just a comment or an opinion actually. I would be interested in an overview. I, however, want it completely divorced from the project. I don't think it's kosher to have an extra look-see at a project that's gonna be coming before us and I would like to see this overview workshop done during planning commission's regularly scheduled day.

Chairperson Lay: Steve Parkins [sic], would you like to say something?

Mr. Steve Perkins: Yeah, good afternoon, Mr. Chair and Members of the Commission. My name is Steve Perkins. I'm with Maui R&T Partners, LLC. And I just wanted to amplify a bit on Ms. Mayden's comments in that we're perfectly happy to bring somebody out, but we're also ready to proceed within the normal confines of Planning Commission meetings. This is...what the Commission and the Department feel is necessary. We can do it either way. We're perfectly willing to do it. I think it that it would be better for our schedule and our budget if we just proceeded with the Planning Commission frankly. But if it's your pleasure for us to have this workshop, then we're perfectly willing to do that as well in whatever form or fashion you want us to have it.

Chairperson Lay: Questions? Commissioner Medeiros?

Mr. Medeiros: Okay, this one is to the Director. Is this a way that it will help streamline projects whether it can move forward or die quickly? No, or move forward.

Mr. Spence: For this particular project, no. It's not-

Mr. Medeiros: No, I'm talking about form-based.

Mr. Spence: No, there's going to be...there's a section in our Code on how to process permits and changes in zoning applications. We're probably gonna be presenting something to this Commission and ultimately to the County Council before that, you know, independently of form-based zoning. We already have a draft written and we're just ironing some things out and that will help streamline. Form-based zoning in itself does not streamline permitting. It just says, you know, how...it's just the regulations by which all the developers have to comply just like they do now. It's just different regulations that we're gonna build into it. If the County goes down the road...what R&T Partners are gonna do, they're gonna apply for zoning for their project only. As the County goes forward with form-based zoning, there's...you know, we will build into it streamlining provisions on, you know, as far as how permits are processed and the like.

Mr. Medeiros: So down the road it will make the process easier?

Mr. Spence: For everybody. I mean, we'll build into it the environmental reviews, but we'll also build into it, you know, more surety for builders large and small.

Chairperson Lay: Commissioner Ball?

Mr. Ball: I have a few questions, I guess for starting with Corp. Counsel on the...do you see any violation of Sunshine Law with this?



Mr. Giroux: Well, the Sunshine Law basically would be covered by the six-day notice if it's a workshop. So the issue necessarily wouldn't be the Sunshine Law, but if the agency, the Commission were to enter into debate and discussion, and even decision making without a public hearing that could be a major, major problem. And that's why the caveat about keeping opinions as opinions to oneself until all information is gathered is every important.

Mr. Ball: I guess that leads me to my next question and maybe for the Director is, why isn't the Department heading this workshop and why do we have a private entity presenting this workshop?

Mr. Spence: You're having a private body do this because they are going to be applying for zoning for their project. So just like if you were to come forward and ask for Single-Family Zoning or if Single-Family Zoning was a foreign concept to everybody here, they would probably be requesting a workshop to familiarize, you know, everybody with the concept. In this case, form-based zoning is a new concept to Maui County so they're, they're proposing it.

Mr. Ball: That, and I guess that leads me to my third question is as far as it pertains to the education of something new, I'm totally for it. Should it be coming from the Department maybe and not from the Chris Hart & Partners, no office to Hart & Partners, just the chain of command that it should follow that we should be getting educated by our governmental department not a private entity, and yes, we should be educated on this because it's something new. And maybe it should be not called a workshop but more of a presentation or something like that because workshop tells me like back and forth type of thing like Corp. Counsel was warning against, right, the back and forth. We should just be being told kinda like, we're gonna have in this seashore presentation. It's more of a this is what it is and it's a lecture or something like that, not the back and forth, but more of a presentation by the Department saying, okay this is something new you guys need to know about and this is what it all means because I can definitely see the concern having somebody that's involved with the new zoning coming to present the new zoning to us from the outside looking in, be like wait a minute, wait a minute, what's going on here. But if the Department's educating us, maybe with some help from them would be I think a more viable solution to getting educated for this new zoning.

Mr. Spence: I understand the thought and the County...I'll just say, the County is not ready to pursue form-based zoning at this time. This particular applicant--like I said, there's a lot of internal discussion on this--the applicant, they are pursuing it and they are pursuing it in a very narrow scope of the R&T Park right now has its own special zoning anyway. It's unique to anywhere else in Maui County Code. So what they're doing is they're changing...they're desiring to change the zoning to something else unique. So that's...

Mr. Wollenhaupt: Oh, I was just gonna maybe align you on why we're even having this discussion. I just perhaps thought it might have, might be something good for an educational process. However, I think I don't want the Commission to think that this was something that's coming from the applicant so much as I just thought well, maybe this would be something good from the standpoint of understanding. So the Department can move forward on the project and then have it presented in a typical zoning, CIZ, CPA fashion without having the workshop or the discussion and we can put together some information on what form-based codes are just for you to read about. So that's also quite fine. I don't want to think that the applicant's pushing for this, it was more...so that just clarifies the history.

Chairperson Lay: Commissioner Ball?

Mr. Ball: But the zoning exists, right?

Mr. Spence: This type of zoning exists.

Mr. Ball: So the Department should be able to educate us--

Mr. Spence: Yes, we should.

Mr. Ball: --on that, right? I'm not making fun of you.

Mr. Spence: No, I know.

Mr. Ball: I'm just saying that it should be coming from you because it exists and--I mean, I know Kurt's trying to help us here but with the applicant so it's, you know, more practical like this is what, you know, this thing is talking about, but...

Mr. Spence: I mean, it can certainly come from us if the Commission desires. As our normal course of things, here you have a private body proposing something and that's one thing. If when we propose changes to Title 19 or your Administrative Rules or something, we're the ones that are normally present that to you if we're changing something within our County Code. The County's not...we aren't proposing, we don't have any draft ordinance for you to consider as the Planning Department. Right now they have a draft ordinance of what they want you...they will want you to consider for their project.

Chairperson Lay: Commissioner Tsai?

Mr. Spence: But I mean, it can come from us if you want.

Mr. Tsai: I concur with everybody's assessment here and I also agree with the fact that we could use such lecture to educate us on this matter, but my concern right now is actually having to do with what Corp. Counsel talks about. If this is supposed to be a back and forth workshop there's to be a dialogue going it be very hard for us not to have any opinions regarding this specific development and that's where I think Commissioner Wakida brought up a good point is how do we not have a ties, any sort of ties to this particular development and while still having withholding our own opinions. I think that's gonna be a challenge.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Director, is form-based code so complicated that it takes a whole entire workshop to present? My question is, can't the applicant just give us a half an hour or whatever of this in advance of their presentation of what it is they're gonna come before us with, the CIZ or whatever?

Mr. Spence: Well, certainly...and I understand the Commissioner's concerns that you would be looking at something that would be applicable to one project at this time. There's any number of ways we can do it. If the Commission wanted the Planning Department to have a form-based

workshop, that's fine. If you wanted...yes, I do think it would take some time to present the concepts and digest them. You know, they could do it as a part of their application. There's a lot of options I think on how it could be done.

Ms. Wakida: What do you recommend since you know what form-based code is?

Mr. Spence: I know that—

Chairperson Lay: Director? Oh, Jennifer go ahead.

Ms. Mayden: I just wanted to say that Commissioner Wakida's suggestion that it be the day of the public hearing, we would be amenable to that. That would...we could definitely provide an overview of form-based codes. It would be as detailed and perhaps there wouldn't be that back and forth of questions as much but if that is what the Commission would desire we can accommodate that.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Is it so complicated, Director, that we're gonna need a lot of time to digest it?

Mr. Spence: I think it deserves consideration. It deserves some time to consider it and digest it.

Mr. Giroux: Yeah, if I could just interject. As far as from the legal standpoint when you're looking at zoning, we always look at zoning a property as far as the TMK, and then we look at the Code, the Title 19, and say, well, what are the words that make that work? So what's complicated is that in your form zoning the words that you're gonna be looking at if they don't transform into something in your mind, it's really hard to say what to put down as words, you know, and I think that's where ...it's like the Indian standing on the shore of America watching a big ship come by and a lot of the Indians didn't see that boat even though they were standing on that beach. And I think that's, that's what it takes. You need to see the ship a few times to understand that that's what you're gonna be asking to comment on because it's, it's new. I mean, it's just new. So, the more times you see the words on the paper that are telling you this is what your new village might look like, it's gonna help you out when you're trying to build that new village. And that's why as your attorney I'm encouraging because you are gonna be making suggestions, change that word, make that word different, but what does that word do when you transform that into your zoning? You know, how does that take away or add to the village? And that's the hard part because with Euclidean zoning it's really easy, you just look at the list, oh, barbershop, dot, dot, dot, throw it down in the zone where you put barbershop. That's where your barbershop goes. It's a lot easier, but I think with your form code, you're working with palette that's a lot more fluid and it makes it for a more dynamic village. So you really have to understand what your text is as compared to what your TMK map looks like. So I don't know if that's helping anybody, but I mean...because I've had to try to learn it on my own too, so with my background in land use and law, I'm just saying I would try to give everybody the ample opportunity to learn about this concept and the more wax you take at it, I think the better, the better comment would come from it.

Chairperson Lay: Commissioner Duvauchelle?

Ms. Duvauchelle: So if they're willing we could take advantage of the education and leave the

project generic? I guess it's a question for the—

Ms. Mayden: Yes, if that's your desire we can do that. We can leave the project out of it.

Chairperson Lay: Well, for me the more information I can get on something, the better, the more knowledgeable I am of it.

Mr. Spence: Jen, I think we should involve Staff with this too.

Ms. Mayden: Yeah, thank you, Director. That be great.

Chairperson Lay: So as far as action, it's asking for a date/time and are we looking at that now or should we let that fall into play?

Ms. Mayden: We don't have a proposed date. We were looking at August or September and we'd be happy to do it on a regular Tuesday meeting.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Depending on our schedules coming up, could it be part of our regular planning day?

Mr. Spence: Yeah, absolutely. We can work with...You can see our Administrator.

Chairperson Lay: Clayton?

Mr. Yoshida: Well, I think if it's gonna be part of a regular meeting, if you vote afternoon on a regular meeting date, the earliest would be August 27<sup>th</sup> because we already noticed the public hearings for August 13<sup>th</sup>, we have three and there's a settlement agreement to approve and the Haleakala Waldorf High School at the Hui No`eau and this Kaanapali Fresh at Whaler's Village Use Determination to have a farmers market at Whalers Village. So those are, you know, more time sensitive. For the 27<sup>th</sup>, we have right now, two public hearing items. One is for this Lao Valley Bed and Breakfast Special Use Permit in the Ag District and the other is for this Bank of Hawaii building in Kahului at the corner of Kamehameha and Puunene Avenue, so the SMA. So we can devote the afternoon of the 27<sup>th</sup> for this workshop if, you know, all the parties, we can fit all the pieces together and they can bring in their consultant from California.

Chairperson Lay: So August 27<sup>th</sup> sound good to the Commissioners? Okay. Now, moving on. Back to agenda item D.

Mr. Spence: Mr. Chairman, the next item on the agenda is one we passed over, Item D under Communications, excuse me, Orientation Workshop No. 2. This was previously scheduled for April 23<sup>rd</sup> and May 14<sup>th</sup>. We have Planner Jim Buika and Tara Owens, Sea Grant Agent discuss this with the Commission.

**D. ORIENTATION WORKSHOP NO. 2** (previously scheduled for the April 23, 2013 and May 14, 2013 meetings)

1. **Coastal Zone Management Introduction - Jim Buika, Coastal Resources Planner**
2. **Sea Level Rise and the Future of Our Shorelines - Tara Owens, Sea Grant agent**
3. **Special Management Area (SMA) Rules - Jim Buika, Coastal Resources Planner**
4. **Shoreline Rules - Jim Buika, Coastal Resources Planner**

Mr. Jim Buika: Thank you, Director. Good afternoon. Thank you, Chairman, Commissioners. My name is Jim Buika with the Planning Department and I will defer the first section of our shoreline training and Special Management Area training to Tara Owens, who works here in the Planning Department supporting the Planning Department. She is the University of Hawaii Sea Grant Agent and Tara will start out with a discussion of managing Maui's dynamic shorelines and then I will have one presentation on topics 2, 3, and 4, the Coastal Zone Management Act, HRS 205A, the Maui Planning Commission roles under both the Special Management Area Rules for the Maui Planning Commission and the Shoreline Rules for the Maui Planning Commission and we can take questions and answers as we go along or at the end. So thank you for having us this afternoon. I'll turn it over to Tara Owens. Thank you.

Ms. Tara Owens: Good afternoon, Chair and Members of the Planning Commission. Thanks for the introduction. My name is Tara Owens. I'm affiliated with the University of Hawaii, Sea Grant Program. Most of you know me from previous sessions, but for the two Commissioners who don't, I'm actually co-located here and sit right next to the Planners in the Planning Department who do mostly shoreline planning. So we work very closely and so therefore we're gonna kind of tag team today for today's lecture which is all about shorelines.

I think mostly these orientations are targeted at our newest Commissioners and hopefully the repetition gives our seasoned Commissioners some additional clarity on items and I always try to include new case studies, new photos, kinda keep it interesting.

So most of you have probably seen this before. It's a clipping from the Maui News reporting that Maui has lost more than four miles of sandy beach in the past century. That represents the amount of shoreline that's completely gone where we once had sandy beach there no longer is sandy beach. There's many, many more miles of shoreline that would be considered in a degraded state. And a lot of this information can be summed up here. It comes from this report which was published by the U.S. Geological Survey and the University of Hawaii and it says that 85 percent of Maui's shorelines are experiencing long-term erosion, 76 percent of Maui's shorelines are experiencing short-term erosion. Maui's beaches are experiencing the highest rates of erosion for the Hawaiian Islands. So that's of the islands that have been studied which includes Kauai, Oahu, and Maui. Maui is having the most erosion and Maui has the highest percentage of beach loss.

And this is something I haven't shown you before because this was published recently in this journal, *Shore and Beach* and it's an article that was written by a fellow from the U.S. Army Corp of Engineers, who's been studying beaches as they relate to economy. And it's interesting there are a lot of facts, a lot of statistics that are fairly interesting, but what's important here to us is that, I guess travel and tourism is one of...the U.S.'s only profitable exports. And when you reach down further in that category, beaches are the major attraction for the travel and tourism industry. And

then since beaches are so important, what is also evident is that beach renourishment, where we're restoring beaches to previous healthy conditions increases tourist numbers and provides a good return on investment. So it's a lot of bang for the buck essentially in the form of tax dollars that come into the U.S. And it turns out that some countries are investing a lot of money in restoring beaches and an example that's highlighted in the article is Australia, particularly the Gold Coast of Australia. So I have photos here comparing Waikiki Beach which actually has been recently renourished to the Gold Coast of Australia where a lot of money has been invested in restoring beaches. So beaches are important to our economy and I think it's something I think it's important to think about in terms of protecting them and restoring them. And so the author concludes that without a paradigm shift in attitudes toward the economic significance of travel and tourism and the necessary infrastructure investment to maintain and restore beaches, the U.S. will continue to relinquish a dominant world by lead in the most important industry.

That said, this Legislative session a bill was signed by the Governor that is going to allocate some funding toward doing planning and environmental assessment for possible future beach restoration in Kaanapali. So hopefully we'll see more of that into the future. Some investment in this type of effort.

So back to the basics, Hawaiian beaches are typically narrow and steep. They're narrow because we're on a volcanic island in the middle of a very deep ocean and there's not a lot of sand available on the beach. And a lot of this, you know, because we all live or grew up on Maui, but our sand origin is mainly carbonate, the yellow white sand that we have. It comes from living organisms like coral and algae, different types of coral, shells of mollusks, clams, and then we have some black, green and red sand beaches, those come from terrigenous sources on the land and near they're brought down to the shoreline through alluvial flood plains. But I always make this point because we've dated, we've dated some of the sand around the Hawaiian Islands and we know that it's very old. It could be anywhere from probably about 500 to 4,000 years old which means it's been there for a long time and it also kind of implies that what we have is what we have and once it's gone, it's not easily replenished. There's some modern production of sand from the coral reef but it's very slow production. So it's important, it's very important to protect what we have.

We have different, you know, different geologic structures, beach forms. Generally you can kind of classify the beach one of two ways. You have fringing reef or beaches where there is no fringing reef, and the geology has a lot to do with how the beach behaves. How sand moves on and offshore or along the shoreline, right. In areas where you don't have a fringing reef, you have generally a larger shore break. That would be somewhere something like Big Beach. So geology is important to coastal processes.

And then, you heard the statistics on erosion for Maui. Maui has eroding beaches and it's important to also note that sometimes it's a lot of erosion is chronic meaning the shoreline is steadily moving in a landward direction and often times also, shoreline can be temporary, it's a seasonal condition. And so there are several places on Maui, I'll show some examples where the beach can change rapidly from one season to another from having a nice wide beach to a very narrow beach and that's always something to be aware of so that we don't react to short-term erosion situations with, you know, unnecessary solutions. And there are three basic causes of beach erosion and we'll look at each of these a little bit in detail.

The first is human impacts to sand supply, the second is currents and seasonal waves, also that would include storms like hurricanes, and sea level rise. So human impacts would be things like stabilizing the shoreline with hard structures like seawalls or revetments. So this is sort of a cartoon of what happens. We have a natural beach, sea level and then you have a dry beach and often times there's a berm and then you move on up into the dune area. And if there's sand available and there's nothing that gets in the way, even as sea level rises, and shorelines retreat landward, the beaches will maintain themselves. If in many cases, not every case, but in a lot of cases if you put a structure in the way like a seawall, a couple of things happen, you impound sand behind it. So now that sand is no longer available to renourish the beach naturally. The seawall causes sort of a situation where there's a lot of focused wave energy right along the shoreline at the structure so waves are coming in, they reflect off of the structure and all of that energy that goes back out to sea carries sand away with it. So the beach starts to narrow and dwindle away. And then the third impact that is often seen that you can't see in this cartoon right here is what happens along the adjacent properties where there is no shore protection, no seawall, and then the a lot of times the waves will refract around the structure and cause a limited area of focused wave energy which can kind of cause increased erosion at the adjacent properties. So a lot of times what you'll see, we have plenty of examples on Maui where shorelines are hardened extensively so typically one seawall will often lead to another and to another because of this erosion on the flanks of the structure. Every situation though is different and every scenario has to be analyzed appropriately. And this is just a real life example of that. This is actually I believe North Shore of Oahu so we have a shoreline that has been stabilized by a revetment. A revetment is usually just a sloped shore protection structure usually made out of big armor stones versus a, when I say seawall, I typically am referring to just a vertical usually concrete structure. But they serve similar purposes. And the unstabilized shoreline is continuing to retreat landward but there is still a beach. So in this case, you protect one or the other. You can protect the beach or you can protect the property. And it's often very difficult to do both. On Maui we have a lot of existing seawalls and it seems at this time that we're seeing a lot of seawall failure. So these are a lot of seawalls that were built in the '50s, '60s and '70s prior to any kind of regulation and also probably before we knew what the true impacts were. The planners are actually receiving a lot of applications for seawall repairs around the island of existing walls. It's something that we deal with on a pretty regular basis. Okay, so human impacts, that was human impacts, and sand mining is another human impact that I didn't mention but as part of Maui's history where beaches have been mined and that's no longer legal but it has contributed to our erosion history. So human impacts.

The second cause of erosion was seasonal waves. Everybody's familiar with our seasonal wave regime. We get, you know, tradewind waves, we get North Pacific swell during the winter, we get southern swell in the summer time, sometimes we get Kona storms coming from the south. So what happens on any given beach depends on season and also depends on the orientation of that particular stretch of shoreline where it is on the island. And you know, we have lots of examples. This was an example from a couple years ago at Baldwin. Baldwin is one of those beaches where you, we observe major seasonal fluctuations in the beach and the east end of the beach there erodes very rapidly during the summer time and can retreat by as much as a 100 feet or more. And sand in that case is moving up and down, east to west along the beach, and this was two years ago when the comfort station was undermined. Kaanapali, you have another classic example where we can see, we observe a lot of seasonal change in the beach. One particular major event occurred in the summer of 2003, so you can see between March and July you have a nice, wide beach then almost no beach, and the beach recovers again, and it's very common for Hawaiian

beaches.

We also have storm histories. This figure here shows, you see the Hawaiian Island and then the green, yellow, and red lines you see are historical hurricane tracks across the islands. So remember Iniki which impacted, largely impacted Kauai. Here was the path of Iniki and we've at Dot and Iwa, and of course, when we have these storms, we have changes to our beaches, erosion. So here's just one example. This is Keawakapu Beach in the Kihei area, South Maui. So focus your eyes here, this is the Mana Kai Resort, here's Sarento's Restaurant and here's another set of condos. We have a nice, wide beach today, but this was after Hurricane Iwa, and then you know, we had a situation there, but the beach eventually recovers.

So human impacts, seasonal waves, currents, storms, and the third cause of beach erosion is sea level rise. And so this is something you hear about quite often in the media these days. There is new science every single day, new models about what's happening with climate change and what, what the resulting sea level rise might be. But there are two major processes that change sea level. You have global rise in the water level. That happens because the ocean's getting warmer and warmer water takes up more volume so it expands when sea level rises. And it also is because we have the glacial caps of north and south poles melting and contributing more water to the ocean. Then there are relative changes or local changes in sea level rise. So you can what are called isostatic adjustments of the plates upon which our land sits. So here's our lithosphere and the ... (inaudible) ... we have the Big Island, Maui, Oahu, Kauai. Big Island is still forming, still growing. There's new land every single day and as it cools, it compacts and the Big Island is actually getting heavier so it pushes down on that lithosphere and it kinda brings Maui down with it, and as a result, the Big Island and Maui have higher rates of sea level rise, 1.6 inches per decade, 1 inch per decade compared to Oahu and Kauai. So when I said at the beginning that Maui has higher rates of erosion than the other islands, this may be one of the contributing factors to that.

And so in terms of what to expect, there are still ranges of predictions for what we expect to see in the future in terms of sea level rise. We know by looking at our tide gauges what we've seen in the past, Hawaii sea level has risen 6 inches over the past century. That's an average for Hawaii so it's a little higher for Maui. It's more on the order of 9 to 10 inches. And the going rate now for future predictions is the global mean sea level rise is predicted to rise 3 to 9 inches by 2030, 7 to 18 inches by 2050, and 19 to 55 inches by 2100. And there are lots of new studies that are predicting that Hawaii may see something much worse than that, but a lot of, a lot of new studies, I won't get into the details, we could spend an entire hour talking about climate models. But the point I always like to make is okay, 3 to 9 inches, doesn't sound like a whole lot, but the image that I showed you of Kaanapali in 2003 where we went from wide beach to no beach in a matter of months, that situation happened because we had a sustained south swell and we also had what's called mesoscale eddies that cause a rise in local sea level rise for a short period of time. And sea level was measured to be up by about 6 inches that summer around the Kaanapali area. So 6 inches raises up the water just enough to where the waves go just a little further inland and cause that increased beach erosion. So 3 to 9 inches actually can really have an impact right along our shoreline, but it's something we have to think about as we're, you know, planning future development.

We received sea level rise maps. This is a draft version of a map for Kealia Pong that was provided by the University of Hawaii to the County. It shows different increments of sea level of rise, one



inch...or 1, 2, 3, and 4 feet. This basically just shows you, where the water might go based on the topography, the elevation of the land. It doesn't show you how the rise in the sea level actually might affect erosion. Also this was...sea level rise layers for Hawaiian Islands were just recently released in the NOAA Digital Coast Sea Level Rise Bureau which is something you can find online and you can actually go, zoom into Maui or any of the other Hawaiian Islands. There's a little slider bar here so you can, you can kind of pick your scenario from zero up to 6 feet and look at what the impact or the extent of inundation might be related to sea level rise. But again, we don't know exactly how that will manifest in erosion impacts. But some studies have shown that there's a 150 times erosion multiplier where sea level rises along sandy shores. So you have a three-foot rise, then beaches would recede by 450 feet. This is probably extreme for Hawaii because it certainly depends on your terrain and the slope of the beach and we have pretty steep beaches here. But the point is, a little bit of vertical can translate to quite a bit of horizontal impact.

So this is where you guys come in and the Planners and it's this...you know you're often dealing with response or planning to avoid having to respond. And so there's a range of responses but there aren't that many options when you think about it. We're pretty limited. So the range of response could go from, you know, do nothing which would be allowing buildings and homes and other kind of infrastructure to fall in the ocean which is not very realistic. To the other extreme which is hard stabilization building permit permanent structures like rock revetments and sea walls, then we're you know, hopefully we can focus our effort are on these midrange options. So managed retreat, I say that, I actually consider our current shoreline setback policy, form of managed retreat so we are actively doing that. Adaptation maybe we start elevating homes on greater basis than we do.

Beach renourishment. We've talked about how that at the beginning can be really important restoring beaches important for our economy and for the natural resources as well. And then there are other types of erosion control options, groins, temporary sand bags. Commissioner Wakida was just showing me a picture before the session of some photos she took on Oahu of some offshore structures that were meant to control erosion. So there are options and we've been using some of these on a very limited scale. So our shoreline setback rules, Jim's gonna get into that in a lot greater detail. But they were adopted in 2003, and they've done a really good job helping to create that buffer between development and the shoreline for new development that's occurred since that time. It's existing development that really brings us the challenges.

And one thing I just wanna point out without getting into too much detail Jim, but here's how our setbacks are calculated today. We have...it's the greater of A or B, the erosion-based setback or the lot depth-based setback. Don't need to get into the details of it, but what I want to point out is, we still have a minimum setback of 25 feet in some cases applied to properties, and there has been some discussion on the Planner, among the Planners on possibly making some recommendations to change that. If you think about it, 25 feet is 5 feet from being what the State considers eminently threatened. So if a habitable structure is 20 feet from the shoreline, it would be considered by the State to be eminently threatened and yet we're citing some structures only 5 feet further mauka of that, so there is an opportunity for change and the Planners have been doing analysis of what that could look like or what that would...the implications of that would be.

We're facing some tough decisions these days. There have not been a whole lot of new hard structures authorized I think since the shoreline rules were passed in 2003. But we have several

in front of us today. One is the Hololani shore protection proposal that actually this Commission has reviewed and will be reviewing again in the future. Six-story condominium right at the shoreline and has been eminently threatened in the past and is now protected by a temporary sand bag revetment for the time being.

You'll notice going around the island to the west side there's been a couple of new structures being completed. These were HDOT projects to protect the highway from ongoing erosion. This is Ukumehame Project. This is the one ongoing right now at Launiupoko, and then we also have the wastewater treatment plant in Kahului which has an application for a proposed revetment as well. So big tough decisions that we're facing.

One of the other erosion control options I mentioned is beach nourishment. We have a few examples on Maui. One of them is at Sugar Cove. This area was renourished for a people of 20 to 30 years and in that case this is prior to beach renourishment and this is after beach renourishment. This is about what that area looks like today. This is north shore Maui. We also have the more recent Stable Road project which is also on the North Shore, Sprecklesville area where we first attempt on Maui ever to utilize offshore sand to renourish the beach.

This project was funded entirely by six homeowners and it cost them about a \$1 million. So one thing like I said, I mentioned at the beginning that I would like to see is you know, maybe, maybe further subsidies for homeowners in the future by the State or maybe even the County so that beach renourishment becomes a more financially feasible option for homeowners to protect their homes, but also, protects the resource. So there's of course, with any option including beach renourishment there are pros and cons. With beach renourishment it's you know, right now it's very expensive. It's hard for homeowners to do because of the expense. We have limited sources of sand. There's some inland sand. We've attempted to get offshore sand. We need, we need more research on that. There can be water quality concerns, turbidity during the times that these projects are ongoing, and stability. Renourishment isn't a one-time thing. It's something that it's, it's usually gonna be something that has to be continually managed in the future. You add sand to the beach but it isn't gonna stay there. But if we don't, we're losing tourism dollars in the long run probably. We resort to other options that might not be desirable such as shoreline hardening. We don't have as much protection from storm and ecosystem damage and we usually have loss of shoreline access as well.

And something else we're doing on a fairly wide scale and expanding on Maui is dune restoration. This is really important because dunes are the savings account for the beach. When we have high waves, they come up, they take sand away from the dune, bring it off into the nearshore and the water gets shallower, waves break further away from shore, protects the beach and then eventually the sand gets back up onto the beach and back up into the dunes. We have a pretty extensive program around Maui of restoring dunes. If you see down in South Maui sand fences and signage, that's what's going on down there. More of that, what they discovered after Superstorm Sandy in the Northeast was that beaches where dune restoration had been a component, the communities there fared a lot better in terms of damages than areas where they just did beach renourishment or they did neither beach renourishment or dune restoration. So it's a lot of bang for the buck, easy to do and it's very cheap.

There's sort of a prescription we have for this. We have a whole program. We have a volunteer

group that implements our program and they do a lot of good work. I won't go into all the details of it, but we have several very successful stories. This was one from Kahana Village on the westside. There was unauthorized sand bags there. State required the applicants to remove them, and they were fearful of the outcome of that because there was perceived protection from those sand bags so what we offered to them instead and we worked, myself and the Planners worked directly with them on with doing a dune restoration. We added sand to their dunes, revegetated, and they probably have more protection than they did before and they are thrilled with the outcome. It's beautiful and it's protected. Another extensive at Charlie Young Beach. If you haven't been there in a while, go visit, it looks like a different place than it did two or three years ago, and many other projects throughout South Maui. And that is the extent of my presentation. I'm happy to answer any questions or we can move right ahead into Jim's presentation.

Chairperson Lay: Quick questions. Commissioners, any questions?

Ms. Wakida: I have a quick question.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Just on the slide of Launiupoko?

Ms. Owens: Yes.

Ms. Wakida: 'Cause I drive by there all the time. What's on the beach side of that?

Ms. Owens: Yes, what you see, right down here, they're called LKO bags actually. They're basically big geotextile bags that are filled with sand and they're there in place as a BMP, Best Management practice to prevent silt going into, and sediment going into the ocean. It's something new that DOT implemented for this particular project after the Ukumehame project where they ran into some substantial water quality challenges with clay and other silty sediment going into the ocean.

Ms. Wakida: No, but is that a vertical structure there?

Ms. Owens: Oh, okay. Well, that's just...the bags that you see there are temporary as their, you know, BMP, and then what is, what is actually being created there is a basically a vertical concrete wall that they're building in forms along...you'll see it. You know, they have concrete forms and they pour concrete into them.

Ms. Wakida: Is that a Federal project?

Ms. Owens: State DOT project.

Ms. Wakida: Okay, 'cause that didn't come before us. I know one other one up the street did, but they're putting in a vertical wall there?

Ms. Owens: Those two projects are unique in that the DOT declared emergency and the Governor issued Emergency Proclamations for them because the road was being undermined, and it's the,

you know, one thoroughfare to the west side. And when an Emergency Proclamation is issued by the Governor, the rules that are in place for the Special Management Area and Shoreline Area are waived.

Ms. Wakida: Well, I just wanna make one comment. I mean, they've been working on that thing for two years so they had ample time to put in a proper revetment.

Ms. Owens: I mean, maybe Will comment. We actually have had the opportunity to have some of these discussions with them, you know, and partly because of these, as a result of these two ongoing projects and community concerns over the long-term ramifications and you know, the possibility of planning for moving infrastructure and things like that. So we have had those conversations. It's a challenge.

Mr. Spence: I don't think there's a whole lot we can do about these projects. There's gonna be some future ones we're discussing with DOT.

Chairperson Lay: Commissioner Shibuya?

Mr. Shibuya: On this second slide that you had, you said miles lost and we are losing the most. When you say miles, it's actual lengthwise miles.

Ms. Owens: That's correct.

Mr. Shibuya: But you don't say anything about square miles or the area lost.

Ms. Owens: That's right. That would be a little harder to measure.

Mr. Shibuya: Okay.

Ms. Owens: But it is, you're right, it's just length, so you're accounting for that other dimension of what--

Mr. Shibuya: ...(inaudible)...inches could be a foot.

Ms. Owens: Yeah. So these are areas where we once had beach and we no longer have any beach. That's what constitutes those four miles. There are many other areas though where beaches have narrowed substantially and we're not counting them yet as lost beach.

Mr. Shibuya: Are we planning to measure areas lost like putting up GPS sites so that we can sort of measure, survey?

Ms. Owens: It would be good if we could do much more detailed surveys of beaches. Of course, that's quite a bit more time intensive and more on the research project side of things. I actually have a student, I teach at Maui College, and I have a student who I've been working with and we've been surveying Baldwin Beach for the entire year. So the whole surface of the beach from the dunes out to wading depth in the water, and seeing some very interesting results there. So it can be done, but it's labor intensive.

Mr. Shibuya: Like satellite pictures would you be able to overlay them?

Ms. Owens: Yes, and that's exactly how these studies are done. But we just monitor the movement of the shoreline landward over time, but you can also from those historical photos measure beach width. And some of those studies if you go to the original reports you can read there is some quantification of the changes in beach width as well as movement of the shoreline. So I could pass some of those to you if you're more interested?

Mr. Shibuya: Yeah, I mean, I'd like to see area. What are we doing about those fast eroding areas? Those are the ones that I'd be looking and how do we mitigate those, how do we stop it or slow it?

Ms. Owens: Beach renourishment.

Mr. Shibuya: Okay.

Ms. Owens: Thank you.

Chairperson Lay: Commissioners, any more questions? Thank you, Tara.

Ms. Owens: You're welcome.

Mr. Buika: Well, thank you. So now, again, my name is Jim Buika, the lead Shoreline Planner for the County of Maui, Planning Department. What I'd like to do is cover your Special Management Area Rules for the Maui Planning Commission and the Shoreline Rules for the Maui Planning Commission in the context of the Coastal Zone Management Act which is the Federal Coastal Zone Management Act which evolves down to the State HRS 205A, Coastal Zone Management Act which authorizes the Maui Planning Commission, the Molokai Planning Commission, Lanai Planning Commission to have your own sets of rules for administering the Coastal Zone Management Act at the local level.

So as I said the Coastal Zone Management Act authorizes counties to develop and administer SMA Rules and the Shoreline Rules and we have both of those, the SMA Rules and the Shoreline Rules, Chapter 202 and Chapter 203 which the Maui Planning Commission is the authority. So the Maui County Charter designates the Planning Commissions, Maui, Molokai, Lanai as the authority in all matters relating to the Coastal Zone Management Law for the islands. This is Section 8-8.4, Maui County Charter. So the SMA buck stops here. It does not go to the County Council as many other projects do that pass through the Planning Commission.

So the goal of our rules, the SMA Rules is, is to further the policy of the State which is to preserve, protect, and where possibly restore the natural resources of the coastal zone. As you know, as Tara presented, the coastal zone is constantly being threatened by natural forces, development pressures, et cetera. So in all cases, as many cases as possible, we try to mitigate the impacts on the coastal zone and to actually preserve, protect, and restore where possible. This again, is a project that Tara alluded to on Kamaole I Beach Park. It's a vegetation removal. She referred to it as Charlie Young. So if you are familiar with those landmarks, Kamaole I to Charlie Young Beach we have taken out about 30 years, 40 years worth of vegetation. Here's an example of a Hau plant

that was removed from State parcel showing how the beach is, beach profile has changed. So it's really beautiful. We've added about a 150 feet of beach there that is State property that the homeowners mauka along the shoreline had encroached, had watered and planted, and so we've changed the profile of the beach. So this has been a joint project with the homeowners, the Planning Department, Parks and Rec. So a nice win-win.

So the purpose of our rules again is to preserve our shoreline, but also to set up a permit system for development, special controls through a permit process to assure that allowable developments are designed and carried out consistent with the objectives and the policies of the Coastal Zone Management Act and I have a slide on the objectives and policies later on. And what are called in the Coastal Zone Management Act, the SMA Guidelines. So our general guidelines are these through the State Law. We want to...we seek to minimize coastal impacts, so, where reasonable. So we're seeking to minimize. We can't, every time you put a shovel in the ground we're gonna have some impact, we want to minimize those impacts. Certainly we do not want to dredge, fill, alter coastal areas, reduce beach size, impede public beach access and coastal recreation. We attempt to limit the loss of coastal view planes. We want to limit adverse effects to water quality, fisheries, wildlife and habitat and loss of existing and potential agricultural uses to along the shoreline and in the SMA.

So the bottom line really is through the Coastal Zone Management Act, through your SMA Guidelines and through your rules, the Maui Planning Commission SMA Rules we seek to minimize where reasonable adverse impacts to the environment. So the SMA Rules are really are environmental policies, are environmental rules for projects and it's within the Special Management Area. So these guidelines from the State Law listed here are adequate access to publicly owned beaches, recreational areas, wildlife and natural reserves, kind of repeating this, adequate and properly located public recreation areas, adequately controlled, managed, and minimize impacts from pollution and runoff. That goes to all of our drainage, all of our pollution control that we add into projects. That's a big one. Minimize adverse effects to water resource, to scenic resources, recreational amenities and fifth, minimize risk to proposed structures from coastal hazards, but we want to protect the environment, we wanna protect the development within the Special Management Area as well especially from coastal hazards.

So this is an important slide that shows you were the Coastal Zone Management Act, 205A, here I'll circle it here for you in the Maui Planning Commission. So it fits within the State Constitution along with the going to left to right, the four main boxes there are Hawaii State Planning Act which is our General Plan, our communities plans which our Long Range Division manages. Our Land Use Commission where the State Land Use Commission and some Special Use Permits are managed by the County. We have our zoning rules, Title 19, Maui County Code, and then parallel with that is our environmental rules, the Coastal Zone Management Area and the two brown boxes underneath that are SMA Rules and our Shoreline Rules which I'll explain. And again, the Maui Planning Commission is the authority for these environmental rules.

So the SMA Rules provide authorities to the Commission and the Planning Director and any proposed action within the SMA according to the law requires an assessment by the authority whether the authority be vested in the Maui Planning Commission or the Planning Director. The Commission is the authority for SMA Major Use Permits. So we only see...so you only see a limited subset of the SMA projects that come through. So the larger ones, the public hearings, the SM1

projects are coming through and we'll have a few of those on upcoming agendas. Then the Director is the authority for SMA Minor Permits which has a dollar value to those under \$500,000, SMA Emergency Permits, and SMA Exemptions. So there are...so we divide up the work to conquer because there are a lot of smaller, minor permits that come in that we don't need to take your time for. They're pretty ...(inaudible)... and we have some good, good criteria for evaluating them. Every project is based on the same evaluation criteria according to the SMA Rules just that, the Planning Department does the smaller ones, the Maui Planning Commission manages the larger ones.

So here are the types of permits. These are some of the types of permits, the major one we talked about. The criteria for a major permit is a project that has a valuation of over one-half million dollars which requires a...it is a new development. So those require a public hearing which is coming forth to this body. The public hearing, the legal requirement is to notify owners within 500 feet via certified mail and we, the Maui Planning Commission can recommend conditions to avoid, minimize, and mitigate impacts. So we look at the project, we try to again, minimize impacts to the coastal area where reasonable. And so you can place conditions on those projects.

A Minor Permit is smaller, less than a half-million dollars. It does not require a public hearing, but it can have conditions to avoid, minimize, and mitigate impacts. So those are managed by the Planning Director and the Planning Staff.

Then there are Emergency Permits. These are special. These are emergency situations where we have a situation where eminent and substantial harm to public welfare is at risk. The Director...the process for that is in the SMA Rules, the Director can give oral approval, but a report is submitted to you at the next regularly scheduled meeting about any Emergency Permits. I've brought various Emergency Permits to you for review and it is a conditional permit and it will only last for half a year. They need to come up with a more permanent solution to the emergency situation. This is up in the Napili area. Several years ago the Kahana Sunset AOA where we had a lanai collapse on a building in front of the shoreline here. You can see the eminent danger right here. So we issued an Emergency Permit to stabilize it and protect the structure. People were moved out for a number of months while this was done. This is ongoing. So as a condition when I brought the Emergency Permit to the Commission several years ago, the Commission asked for a long-term strategic plan for the property. So they are moving forward and the Environmental Assessment is underway. We actually did look at the Draft Environmental Assessment. The new Commissioners will look at the Final, and we'll have an SMA Major Permit and a Variance for this property up in Napili area.

As part of this, we are gaining a shoreline access and that's part of the SMA Rules, the Coastal Zone Management Act says. So all the way it's, the far end of the picture there is, is looking up to the street. There's no access to the bay here I don't, I'm not giving you all the context to the project but the AOA, Kahana Sunset has agreed to put in a public access here as a quid pro quo for a lot of the work that's being done. They're moving a lot of materials out of the shoreline and there will be much more access to the beach. So this is on a voluntary basis and it's moving forward as part of the long-term strategic plan. So that's just one example there.

This was in another Emergency Permit where this seawall had failed, the lanai had failed behind it. These old seawalls, this is Honokowai area north of Kaanapali, Makani Sands, they had some

structural problems. We were able to strengthen the seawall behind there. A lot of these seawalls were placed on a sand bed. There's been erosion, a lot of liquefaction of the sand behind it and big problems. So as part of this project also, we have a...we've gained a shoreline access to this area of the beach where if you know Honokowai area there it's seawall after seawall, revetment after revetment. There really is no access here. So we gained, gained a little bit as part of this project here. So again, that, that's attempting to meet the goals of the Coastal Zone Management Act.

The other permits besides Major, Minor, and the Emergency Permits are Exemptions. And an Exemption to the SMA Rules is defined as not a development such as a...there's category of these exemptions. I'll give you some of the common ones. Single-family home is an exemption. However, we do not issue an exemption for an SMA within the Planning Department until there's been...we've worked with the applicants and make sure there's a lot of mitigation protecting the environment, the coastal zone involved. After an SMA Assessment has completed and the proposed action is determined to have no adverse impacts only is when we do an exemption such as we've mitigated drainage, view planes, we've dealt with any archaeology, any of the historic, cultural impacts, also looking at the natural and coastal resources and looking at cumulative impacts.

So a lot of times, the project will come to the Planning Department. It will take six months to a year, sometimes a year and half, two years to work back and forth with a project. A lot of times by the time a project comes to the Commission, projects look a lot different than they were proposed because the Planning Department, the personnel that bring them forward, worked back and forth to add mitigation to the project to make sure that all of the objectives and policies of the Coastal Zone Management are met. So we've had questions in the past, how come we're always presenting...we're recommending approval for projects. Well there's no sense in recommending denials for projects coming all this way with the applicant bringing it forward to you. So a lot of times those denials are projects that can't be changed to minimize impacts, never see the light of day in the Maui Planning Commission. So by the time it comes here, it's usually for approval because mitigation is built into the project. And so we're following our criteria which I'll show you here. So...and there are some that can be denied due to adverse impacts and inconsistent State Land Use, General Plan, community plan or zoning. All minor and emergency permits as well as the Exemptions are reported to the Commission at its next regularly scheduled meeting. Your agenda there has a list of sm2s. Those are the Minors and some of the Exemptions. So you see a list, and the Commission as well as the community can file an appeal on any those exemptions or minor permits within 10 days of going public. And the SM2s, the Minor Permits are also published on the Department of Health Website, the Office of Environmental Quality, what's called the Environmental Notice. So they are published also for the public to view.

So again continuing along the line, the reasoning looking at Exemptions versus a permit, an SMA Exemption cannot have conditions because it is exempted from the SMA Permit application process versus in contrast an SMA Use Permit may have formal conditions to avoid, mitigate or minimize adverse impacts on coastal resources, so an SMA Exemption cannot, we cannot list conditions in the Exemption although we do mitigate prior to exempting it if you follow that line of reasoning. There are 17 categories of exemptions which I'll go over some of those, and a proposed action may be exempted if it includes measures to avoid, mitigate and minimize adverse impacts. One example, a very important one is approval from the State Historic Preservation for archaeological



monitoring during all ground altering activities. So even though a single-family home is going in, we want to make sure that there is, if they are digging on a parcel that could have artifacts or potentially iwi, there will be an archaeological monitoring will be part of that project.

And in contrast an SMA Use Permit may have that formal conditions, and you've probably seen some. We have some standard project conditions that we place on SMA Permits as well as some project specific conditions. So this is just a list of common exemptions that are in the State Law, the Coastal Zone Management Act, single-family residence not part of a larger action. So one single-family home on a parcel. Then these types of things are the things we approve or exempt behind the scenes. Structural and nonstructural improvements to single-family residences, repairs, maintenance of roads and highways, existing roads and highways, routine dredging of streams as maintenance, repair and maintenance of underground utilities, repair and maintenance of existing structures and demolition of some structures that do not...that are deemed not to have any historic significance. So you can see those are regular type of maintenance projects that do not come before you and are exempted.

So looking at the assessment and evaluation criteria, how do we evaluate these projects? In your rules there are 12 criteria and again, adverse effects may exist but are minimized in light of compelling public interest such as public health and safety as well as economic development. So there's one section, Section 4 in the SMA Rules or in the Coastal Zone Management Act that talks about we need to balance development with the environment. So it's constantly a balance between development and the environment. So, the assessment criteria for any project that comes before us are we have 10 or 12 different criteria that every planner goes through no matter what, and you'll see these in your report. Involves an irrevocable loss of a natural or cultural resource. We don't wanna take out a heiau, we don't wanna take out a beach. We don't wanna, you know, take out important, important natural or cultural resources. Significantly curtails the range of beneficial uses of the environment, limits access to beaches, you know, if we build this development, the public will not have access. That would be significant, curtailing beneficial use of the environment. Conflicts with the State and County's long-term environmental policies and goals. I'll go through these quickly. Substantially affects the economic or social welfare of the community. Involves substantial secondary impacts and increase the affects on infrastructure, large development demanding water, demanding major infrastructure. In part, is part of a cumulative affect and involves a commitment of a larger action. Substantially affects, a rare, threatened or endangered species of animal or a plant or its habitat, contrary to State Plan, County General Plan, County Plan Zoning, Subdivision Ordinances. Detrimentially affects air and water quality or ambient noise levels. And then, affects environmentally sensitive areas such as the flood plane, shoreline, shoreline, tsunami zone, erosion prone coastal waters, fresh waters, and substantially alters natural land forms and existing public views to and along the shoreline. And then the 12<sup>th</sup> one is refers back to the Coastal Zone Management Act is, contrary to the objectives and policies of the Coastal Zone Management Act. So with that `12<sup>th</sup> criteria, we need to look back at the Coastal Zone Management Act and look at the objectives which there are 10 which pretty much mimic those criteria that I just went through. We look at potentially impacted resources. The recreation resources, historical and cultural, just go down those, scenic and open space, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection and access, and marine resources. So we look at those initial 12 criteria and then go back to these objectives and review that, each project according to these to make sure that there's no substantial cumulative impact from the project.

So that's it on the SMA Rules. I don't go over the SMA boundary. There was one slide. It is the SMA area is a pretty much follows the major highways along the boundaries of the Maui island. It's thinner in some areas than others, but it is very limited and in its area.

So the Shoreline Rules are the companion rules with the SMA Rules. So they're the Shoreline Rules for the Maui Planning Commission, Chapter 12-203. So these is a subset of the SMA, right along the shoreline, development along the shoreline. So we have these rules. Again, there are—going back to the Coastal Zone Management Act, there are a few of these objectives which impact the shoreline. The coastal ecosystem, coastal hazards, beach protection and access are the main ones, also marine resources. So the brown highlighted ones are the ones that are emphasized here.

There are objectives in your Shoreline Rules. They're called the Shoreline Setback Objectives. We have a setback area which is the area Tara talked about which is between the high water mark and a buildable area moving back from the shoreline where we try to minimize any development. So we have those shoreline setback objectives. Obviously, we wanna move out of harms way, minimize impact from coastal hazards, plan for the obsolescence of structures in the shoreline setback. There are a lot of older structures that are old that are...hopefully will become obsolete and development can move away from the shoreline as we have more coastal erosion. We want to ensure shoreline access, and limit the types of structures and activities in the shoreline setback area. So those are our general objectives of what we're doing there.

As far as actions under the, for the Maui Planning Commission under your Shoreline Rules, we have four actions, three are done by the Planning Director. One is just determining the shoreline setback, approving small projects or structures or actions in the shoreline setback area such as barbeques or minimal landscaping, minor things in the setback. And then the major one, next time I'll be bringing before you a Shoreline Setback Variance which is the third one here which is the Maui Planning Commission's. It requires a Chapter 343 compliance. It requires an Environmental Assessment or an Environmental Impact Statement. It requires a public hearing and which requires notification of all homeowners within 500 feet and it requires a state certified shoreline. So a variance is a variance from the Shoreline Rules. It is placing some development along the shoreline that is not allowed by our rules. So it's a variance. So we'll have one coming next time before you. And there are denials where we cannot...there are criteria for these such as illegal seawalls. They cannot prove nonconformity that hardens the shoreline or prevents sand transport, blocks public access along beaches and recreation and encroaches on State owned land such as beach reserves. So when we're limiting the use and lateral access of beaches, we deny those as much as possible. So those are our Shoreline Rules, the purpose here.

There are some permissible structures under the Shoreline Rules. They are called minor structures or activities. They have to be...cost less than \$125,000 and then they have these criteria. We make sure they do not adversely affect beach processes. The ebb and flow of the waves, the sand. Does not artificially fix the shoreline such as a seawall. Does not interfere with public access, and does not block public views. So those are...so if they are minor structure activity and they don't do those things, then we potentially can allow one of those to move forward in the setback area. Any new structures in the setback area because it is right at the shoreline must be elevated one-foot above our base flood elevation according to the FEMA rules, at least one-foot above base flood elevation. On pilings or columns. The County must be held harmless with no liability and the

project or the structure cannot harden the shoreline in any way.

So the Commission's role in approving Shoreline Setback Variance. Variances may be granted for structures necessary or ancillary to different types of projects such as, you know, we have drainage improvements, maintenance. Sometimes we need big concrete bulkheads, what do you call 'em, bulkheads at the drainage at the shoreline. Publicly owned boating, water sports facilities such as harbors, they're obviously in the shoreline setback area. Public facilities, repairs, improvements or utilities are allowed. Private facilities or improvements that are clearly in the public interest. Protection of legally habitable structure or public infrastructure is allowed, and then some private facilities or improvements which do, again do not affect beach processes, do not artificially fix the shoreline and would result in a hardship if not approved. So the hardship criteria is important for a private developer or homeowner to come in to ask for something in the setback area. They need to show hardship and it cannot...and hardship does not include financial hardship.

So there are some mandatory conditions. There are five of them that any variance coming forth needs to have these, that the project still must maintain safe lateral access for the public to and along the shoreline. Minimize the risk of adverse impacts to beach processes, minimize the risk of any structure from failing. Comply with flood hazard rules and minimize adverse impacts on public views to and along the shoreline. So those are mandatory conditions for any variance that you would approve. So you'll see those in our approval for a variance.

So our Shoreline Rules provide for a determination of a shoreline setback area and I'll just conclude this, Tara had mentioned that there are two ways that Maui Planning Department determines a shoreline setback area. These have been in place since 2003, about 10 years now, so the shoreline setback area is an area along the shoreline that regulates the use and activities of the land at the shoreline to protect health, safety, public welfare, provides minimum protection from coastal natural hazards and ensures that the public is able to use and enjoy the shoreline resources now and into the future. There are two methods for determining shoreline setback, an annual erosion hazard rate which is done by the Planning Department or an average lot depth. So that, that setback area can range from 25 feet minimum in small lots like up in Lahaina, less than 100 feet deep or it can be up to a 150 feet where we have erosion along the shoreline, where we have a big 600-foot lot where we have a hotel. So we would keep the front 150 feet open. So that's our goal with the shoreline setback area and that's all I'll say about it here, but usually that's already precalculated by the Planning Commission [sic] by the time it comes to you.

In conclusion, you know, our shoreline is very important. Tara gave some statistics about tourism and the economy. Obviously recreation, we love our shoreline fishing and food, cultural practices and it is why we're here in Maui for sure, part of the reason why we're here in Maui. Our shoreline is threatened with coastal erosion that is accelerating. That's why we really need to look at our shoreline projects from a scientific point of view, look at the impacts of projects. That's why we're very grateful to have the assistance of University of Hawaii Sea Grant Program and access to many other scientists here in Hawaii. And again, kinda of the bottom line through our Coastal Zone Management Act, through our SMA Guidelines and then our SMA Rules and our Shoreline Rules we seek to minimize where reasonable adverse impacts to the environment. So, and again, thank you for your expertise, your time on Major SMA projects. It's very important that you deliberate and try to add mitigation and look at our coastal ecosystem and do as much as we can to preserve it. A lot of the coastal projects, the Maui Coastal Zone Management Team that falls to myself, to

Anna Benesovska, who many of you met is a CZM Planner, Tara Owens, who's a Coastal Hazards Specialist at UH Sea Grant, and Jeffrey Dack, he'll be presenting I guess the Kihei High School to you next time or the time after. He's our Environmental Section supervisor. So we handle most of it. We can answer any of your questions at any time, Commissioners. Get in touch with us, we can answer your questions about specific projects or the rules help you out as much as possible.

This is farther down, this is Kamaole III dune walkover that was a collaboration between the Planning Department, the tourism authority got \$20, \$25,000 grant, the Department of Parks and Rec down on Kamaole Beach III, we were able to build access from the parking lot through the park and along the steep incline we have a nice dune walkover. Tara consulted on the reason for this is because the dunes are being degraded by people walking over them. This helps preserve the dune, gives access to the ADA. Something that we are very proud of. Some of the projects, South Maui, especially we have three or four ADA access projects going in. And that's what it's all about, right, is getting people down to the beach and being able to give back and do these good kind of projects. So again, thank you for your time, your expertise. That's my presentation. This is up in Penny Wakida's neck of the woods here, Airport Beach, kinda one of my favorite photos of managing, you know, development with the shoreline here. So I'll leave you with that and answer any questions. Thank you for your time and attention.

Chairperson Lay: Commissioners, any questions? Commissioner Shibuya?

Mr. Shibuya: Jim, you probably, and Tara, you probably heard me say this again, Kanaha Pond, we have couple of streams that are blocked. Then all of a sudden the Mayor says, oh we're gonna fix the pump, and I don't believe the pump has actually been fixed, to pump sea water into Kahana Pond, but all it is is to clean up the stream and open up the dunes, but of course, the Corp of Engineers has some kinda say about cleaning up the dunes in front of the streams, so you would get a natural circulation of water without using any energy if we maintained it. Any comment?

Mr. Buika: I don't know everything about Kanaha Pond, but I do know the pump is working again. It is the responsibility of the Department of Forestry and Wildlife. It is maintained at about a foot and a half level. The pump, it pumps about a million gallons a day. The pump had broken and there was a reason they didn't repair it because of the impact on some of the nesting season there. So it was done in a I think in a progression that was meant to protect the habitat as much as possible and I agree from the pond all the way to Kanaha Beach Park it's a very environmentally sensitive area. Over the last several years, our Planning Director and our Staff have worked very closely with Parks and Rec and we are, you know, moving forward on managing the area. It is a very sensitive coastal ecosystem, and we're moving forward slowly, but surely. So I think the pond is back to where, the plan level. I think it's an ancient fishpond. I don't know all the details of it, but Department of Forestry and Wildlife, what's the name, Fern Duvall, Fern Duvall is the expert on that, and we can get you more information on that.

Mr. Shibuya: Okay, thank you.

Chairperson Lay: Any more questions, Commissioners? If not, thank you very much, Jim.

Mr. Buika: Thank you.

Chairperson Lay: Let's take a 10-minute break too right now. You guys wanna? No?

Ms. Wakida: We just have few items left, right?

Chairperson Lay: Yeah.

Mr. Spence: Okay. We're going to Director's Report.

## **F. DIRECTOR'S REPORT**

### **3. Planning Commission Projects/Issues**

Mr. Spence: Nothing for Planning Commission Project or Issues. We kinda had that discussion previously.

### **4. EA/EIS Report**

Mr. Spence: Nothing for EA/EIS Report.

### **5. SMA Minor Permit Report**

### **6. SMA Exemptions Report**

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

Mr. Mike Newbro: Name is Mike Newbro. I live in Paia, and been a resident of Maui here for close to 15 years. I had provided a letter to...give my opinion of the valuation of improvements going toward the former Jacques location for a new tenant known as Rock and Brews. And my background is commercial development. I do construction management. And was asked by some of the people that were involved in the community to take a look at the plans and a conservative estimate my expectation is that the value of the improvements there would be closer to a \$1 million. And my concern is that they are not getting community review or scrutiny as to their use and not going through what would normally be a major SMA for improvement value in excess of a half million dollars. So it's a use...the site is definitely in need of renovation and I'm not at all averse to business locating in Paia, but I am concerned that by not going through a major SMA that they are not getting the public input that should be required for an improvement of that type and I see it being the first of many more to come with major changes to Paia that could have significant impact on trying to maintain the integrity of the small town that we all love so much.

So, I would...I would like to have a better understanding as to how the valuation was done. My understanding and a little bit of background checking I've done is that there was a mainland contractor and architect for Rock and Brews that provided the valuations. There is a local architect that has basically reviewed but taken the valuations at face value and I think I would be very, very surprised to see improvements done there for the numbers that they've quoted at \$420,000 I think was the latest number, somewhere in that range. My understanding is they're still going through review by the various agencies and there are other changes being requested by agencies that are bumping the number up higher already. So I think clearly the numbers are gonna be much closer

to a \$1 million if not more when it's all said and done. So thank you for your time.

Chairperson Lay: Commissioners, you have any questions for the testifier? Seeing none, thank you very much. Oh, excuse me, we have a question. Commissioner Wakida?

Ms. Wakida: Actually I have a question for the Director. The item that this gentleman is testifying for is on the Approved Minor Projects this means that the project SMA Permit is already approved?

Mr. Spence: I believe that's the case. What I'm doing is, I'm not texting my wife, you know, what we're going to have for dinner. I'm e-mailing Staff to be here at the end of the day to explain, you know, what the valuation was, how it was calculated and I figure the questions are gonna come up so let's Staff who directly dealt with this be here.

Ms. Wakida: Okay, thank you.

Ms. Malia Vandervoort: Good morning. My name is Malia Vandervoort. I am on the board of directors of the Paia Merchants Association and the word, "merchant" does not exclude the community of Paia and surrounding areas to that association. I'm here to support...I don't know if there's much more that I can add that Mike Newbro hasn't already said except for, you know, the process in which or lack of process in our opinion that has taken place with the approval of the SMA Permit has not been adequately described or valued. I want, you know, everyone to know that we actually have written letters to the Planning Department expressing our concern and really wanting definitive answers to how the valuation was derived at and we have been not really satisfied with that all. There's been no hard numbers, no, you know, give us something where this number come from and it has not been forthright. So we, you know, we're prepared to take this as far as we can. And we would like you all just to consider all this information and there's e-mails that have been sent to you this morning that will have some more additional copies of letters and information and I don't wanna ramble so thank you for your time. Good day.

Chairperson Lay: Commissioners, do you have any questions for the testifier? Seeing none, thank you.

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

Mr. Spence: We do have the SMA Minor Permit Report and Exemptions Report. Is there any questions on that? I know there was some discussion earlier in the meeting and we've brought Ms. Erin Wade came in to answer any questions the Commission might have.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Just a general question to Erin, I guess. Apparently it's been brought to our attention this morning that there has been, I don't know if there's considerable objection but at least we saw two people this morning and could you tell us some more about the people in Paia that are objecting to this permit and how many there are and so on?

Ms. Wade: I guess I wouldn't be able to comment on that. I don't really...I don't know who in specificity or how many people would be objecting. I know that our Department's rule is to, you

know, accept the SMA application and review it for completeness. This one actually went to the Urban Design Review Board for review and comment and of course, public comment. And then the Department requested additional revisions beyond Urban Design review.

I think the comment that was brought up was the valuation this morning. So we did receive a letter from the Paia Merchant's Association as well as one from Mike Newbro, who I believe was here this morning, requesting that the valuation of the project be reviewed. So the...in 205 it says that the Public Work Director shall make that determination whether the valuation is correct or not. So they submitted a valuation for 385 for the entirety of the project and the Public Works Director concurred. The applicant did supply a detailed analysis of their construction, documents, and a budget for what that would be. They increased the valuation to 435, but still underneath the \$500,000 threshold that would trigger the SMA Major Permit. So both the building...the building permit valuation matches what was originally submitted and so does the consultant's review of what the actual construction costs would be. So at that point as far as the Department's role that's our level of review and analysis in terms of whether the Department...or whether the project could be constructed or not. There isn't for SMA Minor Permit a larger or more inclusive community input process beyond the Urban Design Review Board which was a discretionary process also. That's speaks to how the process unfolded.

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

Ms. Wade: Okay, you're welcome.

Mr. Spence: Thanks Erin.

## **7. Discussion of Future Maui Planning Commission Agendas**

### **a. July 23, 2013 meeting agenda items**

Mr. Spence: Commissioners, moving to Item 7 on Future Commission Agendas. Next time, we'll have a public hearing on an SMA Permit and Shoreline Setback Variance speaking of Mr. Jim Buika, and the workshop we just had, to have a retaining wall within the shoreline setback area in Kahana. And then the next one we're gonna take up is the community plan amendment and zoning for the Kihei High School. We're looking forward to that one. It's gonna be a big one. Number 3, the third public hearing item is a Special Use Permit for a short-term rental in Makawao on Meha Road. The high school one is gonna be...(inaudible)...So Mr. Chairman, I don't have anything else to add.

Chairperson Lay: No comments, Director. Concerns anyone? Commissioner Tsai?

Mr. Tsai: Mr. Director, are we gonna update this based on the lecture we're supposed to...(inaudible)... on the 23<sup>rd</sup>, right, the agenda for 23<sup>rd</sup>?

Mr. Spence: As far as form-based zoning?

Mr. Tsai: Yeah.

Mr. Spence: We haven't set a date for that. We will, we will put that on a future agenda.

Chairperson Lay: Other than that, Planning Commission is adjourned.

**G. NEXT REGULAR MEETING DATE: JULY 23, 2013**

**H. ADJOURNMENT**

The meeting was adjourned at 2:53 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Keone Ball  
Sandy Duvauchelle  
Jack Freitas (excused at 11:53 a.m.)  
Ivan Lay, Chair  
Jason Medeiros  
Warren Shibuya, Vice-Chair  
Max Tsai  
Penny Wakida

**Excused**

Wayne Hedani

**Others**

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