

**MAUI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 24, 2013**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:00 a.m., Tuesday, September 24, 2013, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chairperson Lay: Planning Commission is now called to order. Today is September 24, 2013 at 9:00 .m. Public testimony will now be taken at the start of the meeting on any agenda item except for contested cases under Chapter 91, HRS in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the Maui Planning Commission. Public testimony will also be taken when the agenda item is taken up by the Maui Planning Commission. Maximum time limits is three minutes for your testimony. Any person testifying at this time will not be allowed to testify again when the agenda comes up before the Commission unless new or additional information is offered. Please advised that applications for the community plan amendment, state district boundary reclassification, change in zoning and conditional permit require the approval of the Maui County Council. In order to be notified of future agendas of the Maui County Council, please notify the Office of County Council...Council Services. So we're now open to public testimony for those of you who would like to testify right now. Seeing none, we're closing public testimony. Our first agenda item.

Mr. Spence: Good morning, Commissioners. First off, I'd like to say, welcome back from HCPO those of you who went. I thought it was a very good, very good conference, very Hawaii County centric , but it was just such a great perspective and some really interesting speakers. Our first public hearing item is Mr. Kyle Ginoza, the Director of Environmental Management seeking an SMA Permit and Shoreline Setback Variance for a revetment for...to protect the Kahului Wastewater Treatment Plant. Our Staff Planner is Mr. James Buika.

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

1. **MR. KYLE GINOZA, Director, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI requesting a Special Management Area Use Permit and Shoreline Setback Variance at the Wailuku Kahului Wastewater Reclamation Facility's existing, 450-foot rock revetment, to construct an extension of the existing rock mound revetment by 1,350 feet, consisting of a 1,100-foot extension to the west with 125 feet landward returns at each end. The crest of the existing revetment will be raised three (3) feet. The revetment extension will be covered with excavated sand. Excess excavated sand will be placed on the beach located at the facility. (SM1 2012/0004) (SSV 2012/0003) (J. Buika)**

Mr. James Buika: Good morning and thank you. Good morning, Chair, Commissioners, Corporation Counsel, Planning Director, Public Works Deputy Director. My name is Jim Buika. I'm a Planner with the Planning Department. I'd like to begin today by providing the Commission with

some brief opening remarks about the project and to frame the project from a planning context for the proposed action. Following my initial remarks with the Chair's permission, I will ask the applicant, and the applicant's representative to give a presentation, description of the project, description of the environment and the mitigation involved and following that presentation with the Chair's permission we will be ready to answer any questions from the Commission and proceed as usual, if that's fine?

Chairperson Lay: That's fine.

Mr. Buika: Okay, thank you. Commissioners, today's item before you is a very important project to the County of Maui. The Department report in front of you is for both a Major SMA Permit and a Shoreline Setback Variance since a large portion of the project will take place within the shoreline setback area. Today we have the Director of Environmental Management and his engineering team as well as the applicant's representative and some environmental consultants here today and I will allow, with the presentation, I will allow the consultant to introduce the team here. Today they are here to answer any question you may have about the project.

The proposed action is to extend the existing rock revetment westward to protect the entire wastewater reclamation facility. Right now, approximately 450 feet of the rock revetment has been, had been previously built and this project is to add to that. And purpose of the project is to protect the reclamation facility from shoreline erosion. Right now the reclamation facility remains vulnerable to continuous shoreline erosion and the shoreline out in front of the wastewater treatment plant is, it is eroding and it's eroding at a rather rapid rate. Just to note, the project is not technically a tsunami protection project. There have been under previous permits quite a bit of tsunami mitigation hardening done to the various critical components within the wastewater treatment facility. So really, today what we're focusing on is a, is the shoreline erosion component.

Today's permit request was preceded by a lengthy Environmental Impact Statement review process which included various studies of the local environment. The project actually started back in 2005. It commenced in earnest in 2008, and various studies have been completed over the past five years to complete the environmental impact statement. One year ago tomorrow, on September 25, 2012, the applicant presented the project to you in a Draft EIS format. From that meeting, you had posed eight questions to the applicant to be addressed. Those questions are listed in Exhibit 2, the letter from the Planning Department and responses to those questions. And the applicant will address your specific questions again in the presentation to you today.

The Final EIS was accepted by the Department of Environmental Management this year on May 8, 2013, and it was published in the Office of Environmental Quality Control, Environmental Notice and did not have any legal challenges to it. The Commissioners were also transmitted approximately a month ago, a CD of the Final EIS for your review.

The EIS process was actually very instructive in that various proposed alternatives were explored and through the EIS process a different alternative than the original alternative was chosen and that was to rather than to put the rock revetment out at the water's edge around all of the property, the project is moving the revetment back, quite far back on the west side of the project into the, into the beach profile. The revetment will be buried and because of this there is a major mitigation

component to it to save, preserve over two and a half acres of existing beach out front. So in total, some of the added expense for this proposed alternative is actually costing additional dollars and it is preserving the environment which will be presented to you.

Again, this is a Shoreline Setback Variance and the project actually spans different environments. It spans building within, within the beach profile, within the Shoreline Setback Variance, then it crosses over into building the revetment on the water's edge and then towards the existing rock revetment which will be explained again. It will be out in the water. So the portion of the project today that we are dealing with is in the Special Management Area only. Because of these different environments where the revetment is being built, there are different, there's a State and Federal jurisdiction or there's a State jurisdiction that is also being built in, so additional permits besides the variance today and the Major SMA Permit are required by the County to move forward on that part. So the western end approximately 900 feet of the project will be, is being considered today as part of the SMA Permit. And the importance of that is that this allows if this permit is granted, it allows the project to be initiated while the County seeks the other required State and Federal permits for working at the shoreline and in the water.

So these conclude my introductory remarks and I would like to turn it over to the applicant. And I would just like to conclude by reiterating that the purpose of the project is to protect our public infrastructure, our critical public infrastructure that is at risk from coastal erosion and that it does pose a danger, in the situation right now, poses a danger to health, safety, and welfare of the public. And the applicant today will demonstrate that the County has chosen the best shoreline option to protect the facility as well as to protect the environment. So, again, this concludes my opening remarks and with the Chair's permission, I'll ask the applicant to do their presentation for you.

Chairperson Lay: Sure, go right ahead.

Mr. Buika: Okay, thank you. I'd like to introduce Ms. Colleen Suyama who will do the presentation from Munekiyo & Hiraga, who is the applicant's representative and I'll ask here to introduce, formally introduce the team members here available today. Colleen?

Ms. Colleen Suyama: Good morning, Commission Members. My name's Colleen Suyama with the consulting firm of Munekiyo & Hiraga. With me today also from the firm is Mich Hirano, one of the principals. In terms of a project team, from the Department of Environmental Management, we have the Director, Kyle Ginoza as well as Eric Nakagawa and Juan Rivera, two of his engineers. From Moffett and Nichols, we have our coastal engineer, Rob Sloop. In terms of our marine biologist and water quality consultant from AECOS Inc., we have Susan Burr, and our from Xamanek Researches, we have Erik Fredricksen here.

In terms of the project if you would look at the site plan, the project is east of Kahului Harbor located here and west of the continuation of the Kanaha Beach Park. It is also north of the Kanaha Pond Wildlife Sanctuary area and south of the Pacific Ocean. It is located at 188 Amala Place.

The four major sections of the wastewater treatment plant is: 1. The retention pond which is used now for overflows from the injection wells when needed; 2. The operations building; 3. Is the

tanks is where the sewage flows through; And 4: Which is the headwork building is where the sewage comes into the plant. These are the four major parts of the site. As stated by Jim, there is an existing 400-foot revetment on the east end of the property along the shoreline. This was built in 1979, by the United States Army Corp of Engineers and it was part of a larger project at that time which was to build a 1,500 revetment along the entire shoreline but due to financing, the County and the Corp was only able to building the 450-foot revetment at that time located here.

In terms of the Department of Environmental Management, I would like to turn it over to Kyle Ginoza to make some remarks to the Commission.

Mr. Kyle Ginoza: Good morning, my name is Kyle Ginoza, Director of the Department of Environmental Management. In 2006, we completed a Central Maui Study to evaluate the mid and long term plan for the Wailuku-Kahului Wastewater Reclamation Facility and in 2006, we went in front of the County Council to evaluate those options and we looked at whether we fortify the facility in place or to consider relocation of the facility. And as a result of that discussion, the Council passed resolution I think 06-12 which said, which basically guided the Department to fortify the facility in place. And so since that time over the last seven years, the Department has spent on the order of about \$28.8 million on various projects to fortify the facility for tsunami protection efforts. And this project which is the, this revetment project is the last project that we have which targets this basically plan or vision to fortify the facility. And so like I said, we spent 28.8 million. This is the last project and it's a vital project in finishing the fortification. If you have any questions let me know later. Thank you.

Ms. Suyama: The reason why we are here today is as mentioned by Jim is that to obtain a Special Management Area Permit and Shoreline Setback Variance from the Planning Commission. In terms of the need for this project, the wastewater treatment facility site has ongoing shoreline erosion at the average annual rate of 2.4 feet per year. This translates that it's estimated that within six years, critical infrastructure at the facility will be threatened. Since the Commission review, the Draft EIS on September 25, 2012, ongoing shoreline erosion has continued.

If you would look at the top photo this was taken in 2011. This is the site, the existing revetment. As you can see the existing beach at that time was wide and gently sloping and you can see the vegetation that was along the shoreline. In 2003, we went back out to the site on the bottom photo, this is the revetment, and as you can see the widening of the beach has been shortened and the slope is now a steeper slope due to the ongoing erosion. Some of the trees that were visible along the shoreline at that time has since died and fallen into the ocean. As you can see this is the vegetation line similar to this vegetation line here. So as you can see the beach is way nearer. You know, the widening of the beach has narrowed. In terms of the project description, what they're proposing to do is extend the shoreline line protection west of the existing revetment. The extension will be approximately 1,350 feet, and this is the continuation of the revetment that was proposed originally in 1979. They will also align the extension as far inland of the shoreline as possible. They will create new landward returns at the end of the revetment. They also to propose to raise the crest of the existing revetment by three feet and this is to accommodate projected sea level rise within the area. And the excavated sand would be used to bury the extension so that once it's constructed virtually mostly all of the revetment would be under the sand so you would actually be seeing like a natural landscape and also they will also preserve lateral access along the

shoreline.

This is the site plan of the proposed improvements. This is the existing revetment, the 450-foot revetment on the east side. As noted, they would be raising the crest of the existing revetment by three feet. Then they were proposing to extend the revetment as far inland as possible as well as building the returns on both ends of the project. Also, once the revetment is buried, the new revetment is buried this would allow the public to still continue to have lateral access across the property as well as the existing lateral access is available behind the existing revetment would be maintained. So public access would still continue. The only time that public access may be hindered, is during the construction period.

This is a typical cross section of what the proposed new revetment would look like. Once excavation is completed they will then put a lining of filter fabric lining, a layer of bedding stone, and then two layers of armor rock would be placed. And once construction is completed, then the excavated sand will be used as much as possible to reestablish that beach profile that was there. This is a section of the existing revetment. What they're proposing to do is remove some of the top stones putting some more new bedding as well as raising the revetment by an additional three feet.

In terms of the Planning Commission's previous review, as stated the Draft Environmental Impact Statement was brought before the Commission on September 25, 2012 for comment. The Commission commented and on the Final Environmental Impact Statement was published on May 8, 2013. You were given a copy of the report, and in the report there was a letter dated April 22, 2013 which addressed all of the Commission's comments and that was on Page 99 of the Final Environmental Impact Statement. Since that time of the publication as noted by Jim, the appeal period ended on July 19, 2013. We checked the court system there were no appeals filed on the EIS.

In terms of the Maui Planning Commission's Draft EIS comments, there were seven comments that were made by the Commission. One was to explore additional alternatives which consisted of T-Groins, growing coral as an alternative, and a hybrid seawall or what they used to call the Hayashi Seawall was also asked to be considered. You asked whether there was any contingency plan at the Wastewater Treatment Plant should be a failure. You also asked, you know, how archaeological remains and cultural artifacts were to be handled. Because the United States Army Corp of Engineers also is considering dredging Kahului Harbor, you asked the applicant to consult with the United States Corp of Engineers regarding the possibility of using those dredged sands and just for your information, they did contact the Corp. It turns out that the Corp has not done any permitting on this project and as such it will coincide with the anticipated construction date for the project. You also asked about the potential sources for boulders as well as the possibility of using the existing boulders at the lime kiln plant. The lime kiln plant was definitely not considered because removal of the boulders would require additional permitting and it also brought into question that there may be additional environmental impacts by just removing those boulders that would need to be considered. The Final EIS also reviewed the regional impacts to beaches, the harbor and Kanaha Pond. All of those things were addressed in the April 22nd letter.

In terms of other permit approvals, you know, as mentioned by Jim there are other jurisdictions that are required to get permitting. Anything seaward of the mean high or high water mark is under both

the State and the Federal jurisdiction. As such, these additional permits are required. First of all, we need a Department 404 and 408 Permit to do the rehabilitation of the existing revetment as well as the new construction. Those permits have been filed with the Army Corp of Engineers and is currently under review. We also need from the Department of Health, a 401 Water Quality Certification. We need a Conservation District Use Permit from the Board of Land and Natural Resources, and we also need a Coastal Zone Management Federal Consistency Review from the Office of Planning. All of these permits have been filed with the appropriate agencies and all of them are currently under review. We're hoping that once we get the SMA Permit and the Shoreline Setback Variance these permits will coincide with the construction initiation process.

In terms of the background of this project, as mentioned before, when the Commission reviewed the Draft Environmental Impact Statement, the original proposal, this is the certified shoreline at that time was to just extend the revetment along the existing scarp or the eroded bank, but due to the comments that came back from the agencies as well as the Commission, the Department of Environmental Management took a different approach. What they propose to do now is to realign the revetment as far inland as possible and this is all part of their mitigation measures that they're proposing is realigning it. This realignment as noted by Jim is gonna cost approximately \$1.3 million additional cost to the whole construction. They also, approximately two acres of land that is seaward of the revetment eventually, you know, if erosion continues will be lost. So what the Department of Environmental Management is saying is that they're giving up the utilization of those two acres as part of the mitigation measures that are being proposed. Also, as part of mitigation as noted before all the excavated sand would be replaced above, over the revetment and hopefully the permitting agencies would allow it to be on part of the beach.

In terms of the shoreline setback line, we did...this is the certified shoreline. There are two methodologies used by the Department to determine what is the setback. One is the erosion rate which is the dotted line here and the other one is using the average lot depth. In this case, the average lot depth turned out to be the greater setback and that was certified at 131 feet by the Department of Planning.

In terms of summary of the mitigation measures, one, they're proposing to align the shoreline protection extension as far inland as possible. They propose to cover the extension with the beach quality sand. They also propose to raise the crest of the existing revetment to address sea level rise and they also propose to maintain lateral public access. In terms of construction mitigation, there is a Best Management Plan that was prepared by Moffett & Nichols dated January 2013, and in that Best Management Plan they're proposing both BMP plans for endangered species such as daily monitoring of the beach for nesting Green Sea Turtles as well as measures to prevent contamination of the marine environment. They also propose Best Management Plans for the upland area consisting of storm water management for erosion and sediment control and this is like a typical measure such as, you know, providing silt fencing. They also propose site management measures to prevent contamination of the environment and this would include like how they do their material delivery to the site as well as how they store their materials during construction to ensure that sediment does not get into the marine environment. They also propose to do ...(inaudible)...a Water Quality Monitoring Plan which was prepared by AECOS, our water quality specialist, and there also is an approved Monitoring Plan from the State Historic Preservation Division. They propose to implement that monitoring plan during construction.

In terms of the excavated sand, as noted they will be used to bury the existing...the proposed shoreline protection extension and this would, you know, keep much of the sand in the littoral zone.

In terms of the Special Management Criteria which has been met, the shoreline protection extension will not have any substantial adverse environmental or ecological effect with appropriate mitigation conditions. It is consistent with the objectives, policies and guidelines of the Hawaii Revised Statutes 205A as well as the SMA Rules of the Commission. And finally, it is consistent with the County General Plan and zoning for the County.

In terms of the Shoreline Setback Variance, the criteria has been met as follows: 1. Undue hardship would result from ongoing shoreline erosion if it was continued. It would then begin to threaten some of the critical facilities of the plant; 2. Unique circumstances exist due to the ongoing shoreline erosion; 3. Practical alternatives to protect the critical County facility has been investigated and this has been found to be the most practicable alternative and it has been determined to be a reasonable use of the land.

In terms of construction, as noted the original cost before we started was estimated to be \$4.5 million. Because of the inland alignment, the additional cost is now at \$1.3 million so we're looking at total estimated cost of \$5.8 million to construct this revetment. Council has approved the funding for this project. They are anticipating trying to start construction...initiating construction in early 2014, and it is estimated that it will take about 12 months to complete.

Thank you. Our team is available for any questions from the Commission.

Chairperson Lay: Commissioners, at this time, I'm gonna open up for public testimony before we ask our questions.

a) Public Hearing

Chairperson Lay: Does anyone wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions? And please, let's ask two questions at a time that way everybody has a chance to ask questions and try not to make it a ping pong match where we're going back and forth. Commissioner Wakida?

Ms. Wakida: I see Tara sitting over there. I wonder if I could ask her a question?

Mr. Tara Owens: Hello, Commissioners. I'm Tara Owens, University of Hawaii, Sea Grant.

Ms. Wakida: This statement was made just towards the end of the presentation that there would not be substantial environmental effects from this project and I would like your comments on that if you're prepared to do so?

Ms. Owens: Well let's see if I can summarize. There are known impacts from putting shore protection structures on beaches. We've discussed them here at this Commission before. So, the three impacts that are generally associated with these types of structures are that you have...one of the impacts is flanking erosion on the adjacent properties around the structure. One of the ways

that the applicant has proposed to mitigate that is by building landward extensions on the structure that will hopefully protect the property with some longevity, but there will continue to be erosion of the adjacent properties and some point there may be, there may be a point where, where the continuing flanking erosion will have an impact on the adjacent beaches or on the property itself where additional protection could be required.

Another one of the impacts of building shore protection structure is that you impound sand behind the structure so the sand that would normally be able to naturally renourish the beach will now be impounded behind the structure. On one of the explanations in the EIS about this particular issue is that you know, the shoreline can only continue to retreat, retreat to certain point anyway because the facility exists there. So the amount of sand that's being impound its probably incremental given the massive amount of erosion that we've seen historically.

And the third impact of these types of structures is that you have increased wave reflection off of the structure itself. That's partially mitigated in this case by moving the structure inland which will give, will buy us some additional time for the beach, but ultimately we will experience more than likely we'll experience beach loss in front of the structure probably within the time frame of a couple of decades, maybe 50 years. It's, you know, time frame unclear because we don't know exactly how erosion will continue in the future, how quickly it will continue in the future. And so structures themselves can increase wave reflection on the beach and that's what ultimately leads to beach loss. So those are the types of environmental impacts and some of those have been mitigated to a degree.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: One more follow up. One of the mitigations was to bring in sand to cover the revetment up to a point. How...have you seen that done before and how successful is it in terms of sand being brought in covering something and then staying there?

Ms. Owens: The applicant is maybe best to answer this question. My understanding at this point there will be no external sand being brought and placed on either beach or the adjacent beaches. What is proposed at this point is to take any excess sand that's available from the excavation that's necessary to build the revetment and stockpile it for later beach uses and maybe the applicant wants to add to that.

Ms. Suyama: I think it's best for Rob Sloop, our coastal engineer to address your question.

Mr. Rob Sloop: Hi, thank you. I'm Rob Sloop, coastal engineer with Moffett & Nichol. What Tara said is exactly right in all those cases. First one, it's a flanking erosion. The erosion on the adjacent beaches will continue. We aren't impacting that erosion rate at all. So those beaches will continue to pull back. We've added a 125 feet to each end of the revetment in order to account for that and we think that's a reasonable amount for now. This is the same story as the sea level rise. At this point, you wanna make a reasonable investment, monitor, and then continue to look at it, and if you need to extend to those back in the future make that investment at a future time when you know the facts. The second one, the impounding of sand behind the structure that's correct as well. That's why we pulled the structure back so it's actually right against the plant's

infrastructure so we can't go any farther. And three, the wave reflection. We have moved it inland and we are using a sloped revetment that's covered with sand so that will minimize that reflection. That's why we didn't go with a seawall option which would tend to maximize that. And then the last one, she's correct, but we are not bringing in any sand that's not on the site.

Chairperson Lay: Go ahead, Commissioner Wakida.

Ms. Wakida: You kinda lost me. You said you're gonna cover the revetment with sand?

Mr. Sloop: Correct.

Ms. Wakida: And where's the sand coming from?

Mr. Sloop: Right. We're placing a fairly massive rock wall upland and all of that sand that comes out of there where the rock is going to be, we've tested it, it's beach quality, that's good sand and we'll be using that on the beach.

Ms. Wakida: And I think my question was though can you expect that sand to stay there?

Mr. Sloop: We can expect it to stay there. We can expect...we're not changing the physics of the ocean at this point. We're not changing the beach slopes, we're not changing anything. We are putting additional sand out on the dune. We're pushing that sand out. The erosion rate while it's touching the sand probably won't change, but we're putting sand out there and buying more time. So short of doing something off shore like a breakwater or something like that that interrupts the energy of the waves, we aren't changing the physics of the ocean.

Ms. Wakida: Thank you.

Chairperson Lay: Mr. Shibuya? Commissioner Shibuya?

Vice-Chair Shibuya: Since you're up here Rob—

Mr. Sloop: I knew this would happen.

Vice-Chair Shibuya: I was just wondering in your estimation, you're expertise, is the sand from Paia, Sprecklesville moving towards this area and then from here going someplace else? Is it migrating in this direction?

Mr. Sloop: Yes, it is. As a part of this study and then as a part of an associated regional sand management study that we did with the Army Corp it definitely...that sand is coming this way. Historically, there was enough sand for it to keep all the beaches full and healthy, but the huge loss of sand from the lime kilns created a sand deficit in the area. Now there's just not physically enough sand to make it around a lot of the little points and a lot of the headlands and we believe that a lot of the sand that is coming down this way is actually ending up offshore of Kahului of the Harbor.

Vice-Chair Shibuya: Okay, and then we spend some money to dredge it?

Mr. Sloop: Well, what they're dredging is actually just interior in the harbor and the two things about that, yes, the environmental time, it's not going to work out with the permits. The second one is, is that a majority of that sand has been mixed with very fine sediments which wouldn't be beach quality. And the third reason we weren't able to coordinate with the Army Corp on that is that the type of dredge, the equipment that they're planning to use wouldn't be conducive to able to take that and put it back on the beach because it's a...they have an existing permit to just dump it offshore and it's a bottom dump dredge, so that's...it's impossible to get that over to the beach and dump it.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Just a follow up on this one. On the design, since we know that the sand is moving from Paia, Sprecklesville downward toward this location, the design does not allow for some kind of groin to catch some of this downward movement of the sand or lateral movement of the sand. Why was this not considered?

Mr. Sloop: It was considered. We did very...two different sets of study on whether these groins or breakwaters and those things. The problem is right now the rate of sand that's moving down because of the loss of the total volume in the system, the rate is very, very small. The second reason is that a groin in terms of protecting the plant, a groin does nothing for overtopping or tsunami protection or runup, you know, it's the wrong direction. And third, we actually, we actually found in some of our historical analysis that the existing—try to find an aerial, just an aerial—that the existing breakwater you can see the existing revetment there, I'm sorry, it's actually acting a little bit as a groin right now to protect the upstream beaches. So what's happening is, is the sand is coming down. It's not getting around the existing revetment to nourish this beach and this sand is actually headed off toward the harbor, so if we put sand on this part of the beach, that will actually help that downstream beach, but it won't help the upstream beach.

Vice-Chair Shibuya: Yeah, I was just looking at the revetment, the turnabout if you went straight towards the ocean also and just extended it like a horn, would that help in a very short distance?

Mr. Sloop: Out in this distance?

Vice-Chair Shibuya: On the northeast end of the revetment. That's the part that is proposed to be built.

Mr. Sloop: This?

Vice-Chair Shibuya: Extend, yes. Follow your red line. If you moved a revetment, a possible extension of the revetment there would that help in capturing that lateral movement of sand?

Mr. Sloop: Well, you can see, unfortunately we don't have this here. You can see that the beach is actually stopped right there. So you actually have a little bit of...You that turn back is actually acting as a groin and as it...as this beach erodes here, it will act more and more like a groin.

Vice-Chair Shibuya: Okay, thanks.

Chairperson Lay: Okay, Rob, while I got you there. Quick questions on this. Okay, with your sand movement you're gonna start in the early of the year which is our winter season. With your sand movement for me what I've seen initially is during the winter time you've got a lot of sand being taken away and then in summer time we've got the sand coming back. But you're starting the project in the earlier part of the season which is great because everything's exposed but you're gonna lose the sand that you will potentially use to bring back later one. So I'm wondering is your start time all right?

Mr. Sloop: We're actually targeting start, we're hoping to get this permit and then we are hoping that all of our other permits come in, we're working with them, you know, the other agencies actually later in the week, but we're not planning on an actual start date until spring or early summer. And then we like to allow the contractor as much leeway to work on the site as he can in order to make it cheaper and in order, you know, for him to utilize his expertise. So what we're, what we're hoping that we'll do is when there's not a lot of sand in this area or when he's got the time, he's gonna need to work the tides in this area. So, you know, in the upland it really doesn't matter what time of the year we're working. It's really only this 400-foot stretch and so we wanna allow him...that's why we're giving him a year, we wanna allow him a full year to go in and do that part of the work when it's best for his type of gear and those types of things. So with a whole year's availability, we believe they'll be able to do that.

Chairperson Lay: Okay, thank you.

Mr. Sloop: You're welcome.

Chairperson Lay: Commissioners any more questions? Commissioner Hedani?

Mr. Hedani: Hi.

Mr. Sloop: Hi.

Mr. Hedani: I appreciated the fact that you folks have gone to a sloped revetment on the proposal, I think that's helpful. The question that...and I appreciated the fact that you did the analysis on the T-head groins and beach renourishment. Was the discarding of that alternative purely a function of cost?

Mr. Sloop: No, absolutely not. The T-head groins were mostly...well, there were several issues. One is, you know, having the perpendicular parts or the shore parallel part was interesting because it does intercept the wave energy before it actually gets to the beach. It would have created probably, you know, three or four little pocket beaches in here. The extra, the extra expense of the extension seaward just weren't warranted from a sediment transport point of view, how much sand that we were trying to catch. And then there are coral reefs out there that we would be putting this on which we thought was an environmental penalty and we all know that this is a very, very popular recreational area and we didn't want to lose kites on the rocks out there and windsurfers and kayakers and those kinds of things, so a combination of those. And we had a fairly extensive

alternatives matrix of all these ideas and then all of the different considerations and it really did point to ironically the solution that they came up with in 1976, which was to put a revetment there. And I wanted to emphasize that what we're proposing today isn't the cheapest, but we actually have looked at it and decided that the County...the County has decided that they're willing to pay the additional 1.3 million, sacrifice two acres of land, and pull that revetment back in order to make it more environmentally sound. Yes, sir?

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: At the lowest point of the revetment wall at high tide what is the difference?

Mr. Sloop: The present elevation, well, I can say relative to where, where it is, 'cause it's relative to mean sea level. At the lowest point at high tide of the revetment it's about 10 feet off the water. The present, the present revetment, we're adding three feet to the present revetment out there and that is going to be the same horizontal line that goes throughout the site. So relative to what you know on the ground, it's going to be three feet higher. Oh, there it is. So relative to mean sea level, I'm sorry, the top of the revetment was 12 so if you add, you know for high tide is about 10, in the areas where we are putting in sand, we're putting another two feet of sand on top of that. So the, one of the main reasons that we are raising the existing revetment is to accommodate sea level rise and depending on which scenario you believe, this additional three feet in the highest scenario should have us covered sea level rise wise, it's good one, sea level rise wise to about 2090 and if you take the lowest projection, this will cover us, it's two times higher than the projection for the year 2100. We also, I know part of the design, during the design process we had the tsunami, and we did see damage. We lost a fence, some of the rock was displaced and there was overtopping and you know, small rocks were actually placed all the way onto the road. So this addition of three feet should decrease the velocity, overtopping and volume from a tsunami.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Rob, I appreciate the design of the revetment, I like it. I look at the photo here on Figure 8, Page 24, on the final EIS and it shows actually on the words, erosion, accretion, erosion, you actually see fingers of white which is the actual movement of sand that has migrated not only laterally but has gone out seaward and I can just...

Mr. Sloop: Sure, sure. Those are actually historical channels and cuts in the reef. Whether or not those are, you know, that there's sand actively migrating towards there or whether they're just full historically is a matter of question because we don't know, you know, we don't know how long it took, how deep they were or how long to took to till 'em, so we can't say whether or not they're still filling or whether or not they're full.

Vice-Chair Shibuya: Yeah, and that's why I'm, you know, suggesting perhaps you might wanna consider some kind of groin to capture that or at least retain that or hold it closer to the shore. You guys know the design of it. I'm just saying there's some kind of alternative maybe put a big boulder that's eight feet in diameter or something out in the ocean.

Mr. Sloop: These are big, these are pretty big boulders already.

Vice-Chair Shibuya: But it is to dissipate, destroy some of that or create some turbulence before the wave energy hits the shoreline or the revetment.

Mr. Sloop: You know, having an offshore breakwater for this is, is a better way to break up the energy, you're correct. However, we don't feel that...we didn't feel that the cost and the environmental impact of putting that out on the reef warranted it. So the idea is to get your protection in the...bring it right up next to where you need it, and that's...in general that's a very...this is gonna be one of the first well-planned, managed retreat shoreline protection design in the islands that I'm aware of. And it's what everyone is going to from a planning standpoint in terms of pull your properties back, protect them locally and keep as much sand out into the system as you can.

Vice-Chair Shibuya: Yeah, the suggestion is not either or.

Mr. Sloop: Okay.

Vice-Chair Shibuya: I'm just saying supplement. Okay, thank you.

Mr. Sloop: Well, I would propose in this case one of the conditions that we are going to be satisfying is that we're gonna be monitoring the beaches. We're gonna be monitoring water quality, and monitoring beaches and in the case that there is, you know, there is a corrective measure to be done, I'd suggest that we examine that now. Unfortunately, time wise, we are, we are at risk at the plant. We are at risk now. So no matter what we decide to do in the future, increase the turn backs, change sea rise, I suggest you monitor and make those investments at that time when you have all the data.

Vice-Chair Shibuya: Okay.

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

Mr. Medeiros: Yeah, I really like the plant. I really do. And I especially like the part about you ...of the recreational part, the windsurfers and things like that, not enough attention has been made to accommodate us water rats. And I think that, you know, if you continue doing it this way and trying to take care of not only the County's needs but the local boys who like going in the water, you know, it's a good thing. So thank you.

Mr. Sloop: Well, thank you. Fair disclosure. I'm a big kite surfer and I've actually lost a kite on that revetment so I'd really like to see some sand over it for next time I blow it.

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

Mr. Hedani: I'd like to get Tara's comments on the T-head groin option. Tara, I heard the response you know that he had and I just wanted to know whether or not you concur?

Mr. Owens: I, I concur, I concur with almost everything that, that Rob said to you just now. Penny's...let me just get back to Penny's question. Penny's question really was is, what is or is there an environmental impact? The simple answer to that, I think I gave a more complex one is the beach will be lost. The flip side to that is that the treatment facility has to be protected. So we're, I guess, collectively trying to come up with the best solution. If your question is should we implement T-head groins along with that, the revetment, to protect the facility?

Mr. Hedani: I guess, I guess my question was would the T-head groins be a, an alternative to the buried revetment that they're proposing? Would it do the same amount of protection to the plant that what they're proposing would do?

Ms. Owens: This question always seems to come up in difficult situations like this where we have either a facility or a habitable structure that's being threatened by erosion and the unfortunate bottom line answer is that in most cases if your goal is to protect what's on the landward side what's being impacted by erosion in this case a facility and sometimes it's a home, almost always from an engineering perspective the only way to guarantee protection is to build a shore protection like this. There are some cases where you may have actually enough wiggle room in terms of enough dry beach width and time to propose other alternatives such as groins. For example, like what has been happening at Stable Road on the north shore where we've implemented groins to trap sand to protect the habitable structures behind it. I think, I think what Rob is saying and I think I have to agree in this case, there are, there are parts of this facility like some of the injection wells that potentially could be impacted within the next few years from erosion. So to guarantee protection of those facilities be probably the best solution. In the short term, would be the revetment that's being proposed. Unfortunately, that also means that in the future a beach is going to be lost.

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

Ms. Wakida: I have a question, not for Tara, but for Mr. Ginoza.

Ms. Owens: Okay.

Ms. Wakida: And these are more sort of global questions. I appreciate the effort that's gone into this and it does seem like a reasonable solution for the short-term. When is this facility expected to reach capacity?

Mr. Kyle Ginoza: Again, I'm Kyle Ginoza. Right now, we're right at about half capacity. Depending on the velocity of development it's really who knows when it would reach capacity. I mean, we design for it as it gets closer but without knowing how fast development will develop we won't know when it will reach capacity. What we do currently is as new projects come along that we hadn't planned for or we don't think it's best to connect to the facility, we advocate that those developments create their own treatment facility. So for instance, the A&B Waiale Project instead of connecting to our facility, they're gonna create a regional or a treatment plant at their facility or in their project, sorry.

Ms. Wakida: Some place in here, it's the date 2029 was given when it would reach capacity? Is that, is that still a reasonable number to you?

Mr. Ginoza: Depending on what, how fast development occurs. I mean, that's...we work with the Planning Department in looking at what, what anticipated developments there are. So yeah, it could be on that order.

Ms. Wakida: That concerns me because that's only 16 years away. And while we need to protect the existing facility, I'm a little concerned that the County isn't taking enough steps for the long range plan. In here was...the County voted down a study by an Arizona firm, maybe you can elaborate...to a proposed long-term solution and they decided to abandon that. Are you...know what I'm talking about?

Mr. Ginoza: I'm not...is it from the 2006 study or is it more current?

Ms. Wakida: Let's see it was...well, there isn't a date here. It just says the County Council through resolution 6-12 made a decision not to pursue the alternative with the PERC Water of Arizona for relocation.

Mr. Ginoza: Basically what they're advocating is a relocation of the facility.

Ms. Wakida: Yes.

Mr. Ginoza: Which is kind of, it's kind of different from...basically whether we have a relocation or not, we'd have to fortify this structure because we have basically four transmission lines coming into this facility so one from Paia, one from the airport, one from Kahului, and one from Wailuku.

Ms. Wakida: Yes.

Mr. Ginoza: And so whether we relocate the facility or not, if we do relocate the facility, we'd in essence turn this facility into a pump station so we'd still have to protect the facility.

Ms. Wakida: No. Yeah, and I—

Mr. Ginoza: What...so we are—

Ms. Wakida: I agree. No, I don't have a problem with that. I do see that there's a need to protect this. I guess my concern is, is your Department or is the County actively pursuing a relocation plan?

Mr. Ginoza: What we're looking at is not so...I mean, we continue to look at potential for relocation and currently...I mean, we just went through another evaluation since the 2006 study of, you know, what it would take to relocate and what we're looking at is, if we do relocate, it would be on the order of say \$200 to \$250 million to do another relocated facility which would result in basically on a order of doubling the base charge for sewer users. And you know, so that's what we've been in discussions with the County Council. In October 2012, was my last discussion with them to give them an update of the analysis we performed looking at how the industry has evolved. And so instead of just looking at relocating the facility that's there, that's functioning that we've been spending millions in trying to protect, we've looked at, one, as developments come in would it be

better for them to do their own facility which is what we're advocating as well as we're currently in a study looking at another regional type facility. So you know, we have one in Kihei, we have one in Lahaina, we have one in Kahului. We're looking at one potentially in the Maalaea area which would serve that area that as development goes towards the southern isthmus.

Chairperson Lay: Commissioners, if I may, right now we're working on this management for this protection of this facility itself. We're not venturing outward at this point, so if we can just focus on this then we might be able to get through this.

Mr. Ginoza: Okay so the bottom line is we are, we are looking at it. We're trying to concentrate development, I mean, infill development as connecting to the facility and any kind of more sprawl would be either a new plant for the County or a new plant for each development. So we are...it is top of mind for the Department and we are in continued discussions with the Council to keep the public updated.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: The reason, I'd like to explain, I brought this up and I realize it's peripheral to the topic is because I was looking down the road at perhaps a condition to this application. It concerns me that several times in here it said, they feel this plant will reach capacity in 2029, and that's 16 years away. Sixteen years is not very long, and you're gonna look back and say, what were we doing? What were we thinking? We're just fixing a facility that has limited capacity and we're not making serious plans to take care of this. So that's why I brought it up. It was sort of to, to see if there could be a condition and that would be something I'd have to ask Mr. Spence about. But I was trying to find out how seriously they were actively pursuing future plans. So, and I'm not sure I got a good answer to that, but a little bit of reassurance.

Mr. Ginoza: Yeah, every...pretty much every year I go to the Council and kinda give them an update to see if it's reaching the point where, you know, as...like I say, we can, you know, from now try to project will it reach capacity in 20 years, but then next year there's again, not too much development then it kind of gets pushed out. So it's not something that we, we just...did a 2006 study and we don't look at it again until it reaches critical state. I mean, we are...it is top of mind for the community, it is top of mind for the County and the Council and so we do have that regular discussion with the County Council as we kind of really in preparation for the next, the upcoming fiscal year budgets as we look at, you know, what is a priority for the community. So I, I don't know how that will be crafted into a condition. I can guarantee you that that is something that is, is a priority for the Department and we try to keep the policy makers abreast of where we're at.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Maybe I can ask the question, Penny's question in a different way, in 2000...FY 2009, it states that 182,000 gallons were daily used that you process. That's what you processed then. What is your processing rate now?

Mr. Ginoza: As far as how much?

Vice-Chair Shibuya: Gallons.

Mr. Ginoza: It's on the order of about 4 million gallons per day I think and our capacity is about 8.

Vice-Chair Shibuya: Oh.

Mr. Ginoza: I don't know what the 182,000, maybe that's what we reuse. Right now we reuse for dust control about 182 and processing water about 182,000 gallons per day.

Vice-Chair Shibuya: Oh, so hasn't really changed that much reuse.

Mr. Ginoza: No, no, no.

Vice-Chair Shibuya: And how many wells do you have in operation right now? Injection wells?

Mr. Ginoza: I believe we have eight.

Vice-Chair Shibuya: All operational?

Mr. Ginoza: Yes.

Vice-Chair Shibuya: And do you need any replacement of these because they may be...the percolation has a problem or the capacity is limited.

Chairperson Lay: Commissioners, at this time we are working on the wall, you know.

Mr. Ginoza: I mean, for, I mean, right now, I mean we go through a continual maintenance program, and yeah, I mean, I don't have specific information on which wells need maintenance right now versus not, but right now, I mean, we, we have all eight wells.

Vice-Chair Shibuya: okay. Yeah, I'm just trying to help determine capacity and operational longevity of this facility. Thank you.

Chairperson Lay: I have a question. So long has the facility been open?

Mr. Ginoza: Since the mid-70's.

Chairperson Lay: So basically that's what, 40 years?

Mr. Ginoza: Yes.

Chairperson Lay: And with our development we're looking at more towards the outside of the growth that we have nowadays, right. So your satellite facilities might be a little better in the long run afterwards because of the distance of the run.

Mr. Ginoza: Yeah, so basically we're looking at infill development as being served by the plant and

any kind of, you know, external developments really trying to be more satellite facilities where as you can imagine when you have a regional facility and you're bringing all the sewage to one place, to try to reuse that water you then have to transmit it back out versus if you have more satellite facilities it promotes the ability to reuse water. So that's kind of where the County is heading toward that, you know, it's not functional for somebody like located maybe like a block from here if there was vacant land to not connect to our facility and make their own plant. So for infill, we'll accommodate with the plant, but more on the outskirts or, you know, somewhere else, we're looking at like I said, either another regional facility or in the meantime just advocating these bigger developments having their own facilities.

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

Mr. Hedani: I'm not sure if this is for Kyle or for the representative from Moffett & Nichols. I'm looking at Figure 24 where you have a plan view of the revetment alternative. And where the revetment alternative connects to the existing revetment—that's not...that's not the picture of it. I'm looking at this, where it's an actual photograph. But the question that I had is, is the revetment pulled as far mauka as possible away from the shoreline?

Mr. Sloop: Yes, right in that area there is, there's an existing small turn back and we've tried to blend into that as best that we can. What we didn't want to do is we didn't want to create a sharp turn. Nature hates those kinds of things and it's...in order to even do that, we would have had to change the slope of the revetment which would have impacted more of the beach and so we did try to blend it as smoothly as we could. 'Cause you can imagine in 20 or 30 years from now, if this is, you know, if we experience the same erosion, this is going to be in the water and we didn't wanna create of these of abrupt strange changes where the waves would tend to attack it.

Mr. Hedani: So as far as pulling it, pulling it toward the plant, that's as far as you can pull it?

Mr. Sloop: That's as far as we could pull it without creating a very large wiggle right here. So we've taken, we've taken this arc and tried to draw a smooth line here so the resulting structure in the future ends up being relatively neutral to the shoreline.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: With that picture up, Mr. Ginoza, I have another question for you. Kyle, can you point out on this map where the injection wells are?

Mr. Juan Rivera: My name is Juan Rivera. I am an engineer with Wastewater Reclamation. The injection wells are located here. I don't know the exact number but it's one, two, three, four, there's one here, five, there are two more here along, one here, this is the one that's the most threatened by shoreline erosion. After the 2011 tsunami, the shoreline was eroded within 20 feet of that structure. That's another injection well here, and the last one is this one here. So basically to answer the question whether the revetment was pulled inland as far as possible, yes. This is the edge of the revetment, it's right behind the injection wells here, the line of injection wells.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Sorry, thank you. I'm looking at a water quality report that seems to indicate that the water quality along—if I'm reading it correctly—along that shoreline is high in a lot of things that it shouldn't be high in. Kyle, I don't know who to ask this question of.

Ms. Suyama: Susan Burr from AECOS, the firm that did the water quality report is here and she could address your questions.

Ms. Wakida: Thank you.

Ms. Susan Burr: Hi, I'm Susan from AECOS. We took three sets of samples from the area. We found it to be high in nutrients specifically nitrate nutrients, turbidity and TFS, and also the Department of Health has listed the beach as impaired for nutrients.

Ms. Wakida: And can you attribute this to the injection wells?

Ms. Burr: The whole, the Department of Health has the whole coastline as listed as impaired.

Ms. Wakida: Thank you. I don't know what else to ask after that, get to far afield here.

Ms. Burr: There are many sources, potential sources for nutrients. It seems like groundwater, whatever is entering the ocean water from the groundwater is what's causing the high nutrient levels.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioners any more questions? Seeing none, can we get the Department's recommendation?

b) Action

Mr. Buika: Thank you. Jim Buika with the Planning Department. Just quickly to summarize for the record. Prior to the Department's recommendation looking at the conclusions of law, the Department has determined that the Shoreline Setback Variance application complies with the standards and criteria for development in the shoreline setback area as set forth in Chapter 203, Shoreline Rules for the Maui Planning Commission, Section 2, Purpose and the HRS, Chapter 205A, as amended, and listed in the accompanying Department report for this project. Also, the Department has determined that the application also complies with the applicable criteria for approval of a variance in the shoreline setback area as set forth in Chapter 205A, Shoreline Rules for the Maui Planning Commission, Sections 12-203-15 which are the specific criteria for approval of a variance. They're listed there. I won't go through the approval criteria. And thirdly, the Department has determined that the Special Management Area Use Permit application complies with the applicable standards for the Special Management Area that are listed on Page 3 of your report, the A through L criteria. And so that concludes the conclusions of law.

Regarding the recommendation, the Maui Planning Department recommends approval of the Shoreline Setback Variance application request subject to five required conditions as required by

Chapter 12-203-15 which are the criteria for approval of a variance. These are required. These required conditions include that the applicant maintain and require safe lateral access to and along the shoreline for public use. That the applicant shall implement the best management practices plan dated January 2013 to minimize risk of adverse impacts on beach processes. Three, that the applicant minimize risk of structures failing and becoming loose rocks or rubble on public property. And four, that the project shall comply with Chapters 19.62 and 20.08, Maui County Code related to Flood Hazard Districts and erosion and sediment control respectively.

Furthermore, the Maui Planning Department recommends approval of the Special Management Area Use Permit subject to the following four standard conditions and nine project specific conditions. There is a typo there regarding the project specific conditions that I will change from 19 to 9. The standard conditions I won't read them, but there are four. They deal with first initiation of the project, second, time extension, third, compliance with the plans that are in the SMA application, and four, is a required preliminary compliance report to the Commission.

The nine project specific conditions include listed as No. 5. That the applicant shall obtain a Department of Army Permit prior to initiation of construction seaward of the certified shoreline. Project specific Condition No. 6. That the applicant shall obtain a Department of Health, 401 Water Quality Certification prior to initiation of construction seaward of the certified shoreline. No. 7. That the applicant shall obtain a Department of Health, National Pollutant Discharge Elimination System Permit prior to initiation of construction. No. 8. That the applicant shall obtain a Conservation District Use Permit from the Board of Land and Natural Resources prior to initiation of construction seaward of the certified shoreline. No. 9, relates to, I'll just read it. That during construction the applicant shall implement the best management practices plan dated January 2013. Condition No. 10 is regarding the monitoring and assessment on the project. That the construction...That during construction the applicant shall implement the applicable monitoring and assessment plan dated January 28, 2013, and revised on February 4, 2013. Just three more to go here. Project specific Condition No. 11, is that the...That during construction the U.S. Fish and Wildlife Service and National Marine Fishery Service recommended best management practices shall be implemented as identified in the Final Environmental Impact Statement. Further, during construction the contractor shall implement additional best management practices to protect marine species as listed in the Endangered Species Act. Specific Condition 12. That the construction...That during construction the applicant shall implement the general archaeological monitoring plan dated December 4, 2007, and approved by SHPD on January 31, 2008. And finally, the last condition, No. 13. That the shoreline setback variance authorizes only the construction of the shore protection extension structure, which is the revetment, landward of the certified shoreline. Improvements for the existing revetment and use of the excess excavated beach quality sand to cover the extension. Any excess sand shall be stockpiled on the parcel and made available for future shoreline projects. That's the end of the conditions.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report prepared for the September 24, 2013 meeting and the Department's recommendation report prepared for the same meeting as its findings of fact, conclusions 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. That concludes my recommendation.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'd like to make a motion at this time to recommend that this Commission approve the Shoreline Setback Variance application request with the following five mentioned required conditions, the standard conditions, project specific conditions as read by Staff. This is actually in compliance with the Council's ordinance, I guess, 06-12.

Mr. Medeiros: Second.

Vice-Chair Shibuya: Yes, and also to ensure...did you wanna do the SMA too?

Chairperson Lay: We'll take it one at a time.

Vice-Chair Shibuya: Okay, this is just the setback variance. Okay.

Chairperson Lay: A motion by Commissioner Shibuya, seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: I'm not sure whether this discussion is relevant to this or this next one, but I'm looking at a letter from the Department of Environmental Management to Maui Tomorrow that specifically state that this project is expected to reach capacity in the year 2029 based on historic growth trend. And I don't know if it's appropriate or not to ask for a condition or a friendly amendment to require the County to actively pursue alternate...I'm not sure how to even phrase it, alternate relocation efforts. What I'm concerned with is that the County is focusing right now on the immediate problem as they should, but I'm a little concerned that they're not...if this gonna reach capacity in 16 years there is not going to be any...they're gonna look back and go, well, gee what were we sitting around doing nothing for? I'm only attempting to put a little pressure on the County to do something other than just fix what we already have.

Chairperson Lay: So you're looking for a condition or a verbal commitment or...

Ms. Wakida: May I ask the Planning Director for a little help here?

Mr. Ginoza: Can I make a comment?

Mr. Spence: No.

Mr. Ginoza: Oh.

Mr. Spence: Just give me one second.

Chairperson Lay: Director?

Mr. Spence: I think the concern for a condition would be better taken up with the SMA permit so the motion right now on the floor is for the Shoreline Setback Variance. That said, we can just discuss it, you know, at that time as well, I'm sure Kyle has things to say about that, but I'll also just

say that every time, almost every budget session with Council these very questions are asked. So this is not something that the County's not doing anything on. This is under constant scrutiny from within the Department and by the County Council.

Mr. Ginoza: Kyle Ginoza. We are actually required by law to...by DOH to have...once we hit a certain capacity to start the design or the planning process for getting more capacity. So it's not something that...it's something that is under community scrutiny, but we're also required by law. So we're trying to stay in the forefront before we're hit by the law that follows it. It is a law.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Yeah, I just wanted to add onto Director Kinoza's comment that the wastewater treatment facility here in Wailuku-Kahului area is not the only solution. And in fact, I point out that we have one in Kihei and the other one in Pukalani, these are separate facilities that take care of the neighborhood areas and this is an alternative that Director Ginoza mentioned too. So it's not that we're just stuck on the Wailuku-Kahului waste treatment facility. There are other locations as the developments do come up this increased capacity can be provided through their own neighborhood areas.

Chairperson Lay: And if I may, right now we're doing is we're protecting a structure that's there already existing. If something did happen to this facility it would be pretty catastrophic. So it's a good thing to get this going before we get anything else...before we move onto something else. Commissioner Medeiros?

Mr. Medeiros: I agree with you on that. Right now, I think that we're putting the cart before the horse. You know, while I can share, I mean, I admire what you're trying to do, but you know, the bottom line is, there is a need for...to protect this facility. There's a need right now, and that's what is in front of us. What's gonna happen when they reach capacity as a representative of labor, yeah, it concerns me because all construction would stop once it reaches capacity so a lot of the people that I represent would be out of work. I think that right now that that is the property of the Department of Planning and the Council not the Commission, you know, because it's not before us, you know, so I would recommend, I seconded the motion and I will be voting to accept it.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, from my perspective I think it's absolutely critical that we do something at this point. I think the Department has taken a responsible approach to the problem. It's not a perfect solution. You know, if money were no object, we'd have T-head groins and beach nourishment and everything else out there in addition to the revetment, but I think first things first, the proposal that they've made has optimized the revetment alternative in terms of its design and implementation and I'll be supporting the motion.

Chairperson Lay: Any more discussion? Commissioner Wakida?

Ms. Wakida: I agree that the current design and what's before us is something that we need to move on. I was just looking at long range concerns.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Commissioner Freitas, maybe?

Mr. Freitas: No.

Mr. Shibuya: I just had a comment and maybe invite the community if we do pass this setback variance that they may consider volunteering and planting some trees or shrubs to catch the sand as it blows in and perhaps develop a sand dune and that's another way of capturing the sand not only waiting for the water to bring it in, but as it dries on the shore it blows in just like Kihei.

Chairperson Lay: Commissioners, any more discussion? If not, can we have the Director repeat the motion?

Mr. Spence: The motion is to approve the Shoreline Setback Variance.

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

Mr. Spence: That's five ayes.

Chairperson Lay: I don't have to vote. Motion carries, passes.

Shoreline Setback Variance

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

**VOTED: To Approve the Shoreline Setback Variance, as Recommended by the Department with Recommended Conditions.
(Assenting - W. Shibuya, J. Medeiros, J. Freitas, W. Hedani, P. Wakida)
(Excused - K. Ball, M. Tsai, S. Duvauchelle)**

Chairperson Lay: We're gonna take a 10-minute break. Oh, SMA, excuse me. Mr. Shibuya?

Vice-Chair Shibuya: I'd like to make a motion to approve, that this Commission approve the Special Management Area Use Permit and shall be enforced pursuant to our regulations, 12-202-23 and 12-202-25 of the Special Management Area Rules of the Maui Planning Commission.

Mr. Freitas: Second.

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

Ms. Wakida: Well, Director Spence and Mr. Ginoza have given me I think sufficient reassurance that they are...they're not just letting the Council veto ideas that come up like this Arizona one, but they...and by law, as Mr. Ginoza said, they have to revisit it, so I will be voting in favor of this.

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

Mr. Hedani: So the motion is to approve as recommended by the Department, right?

Chairperson Lay: Yes.

Mr. Hedani: Okay.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Yeah, I will also be supporting this motion.

Chairperson Lay: Any more discussion? If not, can we have the Director 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 five ayes.

Chairperson Lay: Motion carries. Thank you.

Special Management Area Use Permit

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

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

Mr. Spence: I would note Commissioners that Mr. Buika did work really hard on getting all this done in preparation of this report.

Mr. Buika: Thank you.

Chairperson Lay: It shows. Thank you very much, Jim. Recess for 10 minutes. Come back at 10:40.

A recess was called at 10:30 a.m., and the meeting was reconvened at 10:41 a.m.

Chairperson Lay: ...back in session. Our next agenda item?

Mr. Spence: Okay, Commissioners. Your second public hearing item for this morning is Ms. Teresa Waters requesting a State Land Use Commission Special Use Permit for the Lahaina Animal Farm Short-Term Rental Home. And our Staff Planner is Ms. Livit Callentine.

2. MS. TERESA WATERS requesting a State Land Use Commission Special Use Permit in order to operate the Lahaina Animal Farm Short-Term Rental Home, a three (3) bedroom short-term rental home in the State Agricultural District at 108 South Lauhoe Place, TMK: 4-7-012: 008, Launiupoko, Lahaina, Island of Maui. (SUP2 2012/0033) (L. Callentine)

Ms. Livit Callentine: Thank you, Director. Good morning, Commissioners. Good to see you again. And as the Director said, we are here today, we are gonna be reviewing an application for a State Land Use Commission Special Use Permit for a short-term rental home in the Agricultural District. This project happens to be a very good example of true agricultural use. The property is almost six acres in area and the land classification is B which indicates it's suitable for pasture and grazing. The soil is a stony, silty clay and the land is at approximately 7 to 15 percent slope throughout. A farm plan has been approved by the Planning Director and it's been fully implemented. The applicant, Teresa Waters is carrying out agricultural activities on about 90 percent of the property with about four and quarter acres dedicated to animal husbandry activities including grazing and pasture and exercise and housing and the like and another three quarters of an acres planted in various fruits and ornamentals. These were described fully in your exhibits, in Exhibit No. 6. Ms Waters raises heritage and rare animal breeds including miniature horses, donkeys, goats, pigs, sheep, poultry, tortoises, and fish. And I tried to get her to actually bring a miniature horse in to show you because they're so adorable, but we didn't think that would be quite appropriate. She conducts agricultural classes on the property and she also operates a petting zoo for children as well as hosting field trips for community schools. Approval of the Special Use Permit will allow Ms. Waters to maintain and expand the agricultural uses of the property and she anticipates up to three people will be employed if she operates the short-term rental home.

Earlier this year, Ms. Waters did host a commercial wedding on the property, and when I determined that...we advised her that she would need a conditional permit in order to conduct weddings and she has agreed not to conduct any further weddings without a conditional permit and amendment to a special use permit.

There's one permitted short-term rental within 500 feet. However, because this short-term rental application was submitted prior to December 31, 2012, it is not subject to your review.

The Police Department had no concerns. They had a couple of questions about building permits as did the Department of Planning, and these were satisfied and we've determined all building permits have been obtained for the property as built. The Department of Finance did not respond to our request for comments neither did the State Land Use Commission and the Office of Planning had no comments. And there were no letters of opposition or protests from neighbors. The Planning Department anticipates approving a permit for the short-term rental home upon your approval of a special use permit. Ms. Waters is here with us today and would, I believe, like to say a few words about her project and she and I will both be available for any questions that you have. Thank you.

Ms. Teresa Waters: Aloha, Commissioner Members. I'm Teresa Waters, and this is just maybe a 16th of the animal farm but I wanted to show you this 'cause when I bought the property in 2004 it was just all weeds, and we used to call it little house in the weeds now it's little house in the

prairie. So I've done a lot of love, put a lot of work into it. My goal was to have a full circle is actually to give back to the community which we've had all, most all the schools do fieldtrips there which has been very rewarding for us and very important for them. The petting zoo is my main farm plan and it's just amazing. Also, for sustainability, I do raise everything from pigs and sell pigs, to goats, to...it's like Noah's Ark without the boat. So we're really trying to do sustainability there. Teach the kids and adults, you know, how to garden, how to raise animals, interact with animals and so it comes full circle and when I heard that they were allowing agricultural properties to do a vacation rental for me it was a blessing because I never knew I would have over 40 animals upon aquaponics, but these kids, they just keep growing and growing and their gardens and so this would actually help me offset the costs to the petting zoo. So it's full circle. And so when vacationers would rent the house they could also learn about sustainability, animal husbandry, and have a good time with their, usually three generations, grandparents. You know, we collect all the scraps, we don't throw anything away, so from the dinner they help feed all the pigs in the morning, and they really get a good idea, you know, that Maui is a beautiful place, but it's also not just about beaches, it's about, you know, the community and they really like the fact that they get to mingle with the local like school kids and everything that are there. So there's a lot more to say, but I think I'll just leave at that and if any of you have any questions.

a) Public Hearing

Chairperson Lay: At this time, we're going to open it up to public testimony. If anyone wishes to testify, please step up to the mic and identify yourself and you have three minutes.

Ms. Jan Hendrix: Hi, my name's Jan Hendrix. I'm her neighbor immediately to the north and I am testifying here in support of the application. She is great. She's a fantastic neighbor, totally considerate, thoughtful. We communicate about what's going on, traffic, and you know, people wise and she didn't say it explicitly but she...she does volunteer...I mean, she gives the school the tours. She doesn't charge the school for that. So I mean, she does a lot of charity and volunteer work. So I think it's awesome.

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

Ms. Hendrix: Thanks.

Mr. Tom Croly: Tom Croly. And I had the good fortune to visit with the applicant and see her property and I did help her in putting together the application. There's a wide breadth of different vacation rental opportunities and this is a really beautiful one and I fully support it. The idea that someone can both have the beautiful ocean views afforded by that location but also interact in a real farm, in a old MacDonald kinda way. It's really beautiful and I would appreciate your support of this application. Thanks.

Chairperson Lay: Commissioners, any questions for the testifier? Seeing none, thank you. Does anyone else wish to testify at this time? If not, we'll close public testimony. Commissioners, any questions?

Mr. Freitas: Yeah, I'd just like to make a comment. I am what do you call, I am not happy with short-term rentals because the rental needs for, what do you call, for the public is very great now because people have lost their homes and there is none. But saying that, I will support this short-term rental because of the ag program. It is well set. This is probably the first true ag program that we have seen come through, come before this Planning Commission.

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

Ms. Wakida: To the applicant, please. I'm looking at an aerial photo of your property and there's a proposed short-term rental and then over to the left is the barn, is that right?

Ms. Waters: Yes.

Ms. Wakida: And is someone living in there?

Ms. Waters: Oh no. No, no, no. It's full of tractors and surfboards and actually feed 'cause we have 12, 10 bins of feed for each animal plus supplements and hay and so, no. It's an actual real barn.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Where do you live?

Ms. Waters: I actually live in Kaanapali. So I'm 10 minutes away.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Teresa, you know, I'm looking at again, the aerial photograph. There's an area that's designated in red next to the area designed in yellow is that some kind of a drainage easement or is that part of your property or somebody else's property?

Ms. Callentine: Commissioner, I can answer that question for you. This is an aerial photograph taken from...using pictometry software that the Department has access to for Maui County. You can various views from straight down onto the parcel to oblique view. This particular...the red is indicating parcel lines and they don't completely line up with where the parcels actually are so these are parcel lines that may be askewed just a bit. Did that answer your question?

Mr. Hedani: No. My question is, is her property in the yellow or does include—

Ms. Waters: It's in the yellow. So there's the...the developer actually...it's a electrical easement or water easement. So it's a easement pathway.

Mr. Hedani: Okay, the concern that I have is when you look at the picture from above, yeah, most of your property is in green which is a good thing. It means that there's planting there and there's no erosion that's occurring. My concern is that when you have bare soil existing on the property and when there's a really heavy rain all of that runoff carries the sediment eventually down to the

sea, pollutes the ocean.

Ms. Waters: Yeah–

Mr. Hedani: And so the only, the only comment that I would have is to try to minimize the amount of exposed soil that you have on the property that's not, that's not in planting.

Ms. Waters: Yeah, and when I look at this picture, I actually don't...I replanted all this grass and everything there and I'm always looking for more. So I have very minimal dirt there. So any dirt I see I put something in there. And actually what's gonna happen with some of it, I see where you're talking about like to the left area the schools are gonna actually put their gardens there. So that's what we're gonna be doing with that, but yeah, we don't a little house in the weeds, we want the green acres.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Is this is a one-story house or a two-story house?

Ms. Waters: One-story house.

Ms. Wakida: So these are...

Ms. Waters: It has...the way that it's built, it's like a New England house so there is some storage on the top level. But no, we don't access it.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Commissioner Shibuya: I'm looking at Exhibit 5, and this is a aerial view of your property. I'd like you to just give me a general idea on the slope. Is it like so, like so, how is it?

Ms. Waters: It is like so. Very...I'm lucky, actually it–

Vice-Chair Shibuya: Oh, so the top is the lower end?

Ms. Waters: No sorry. Most of the top is here, but it's very gradual. I'm fortunate with that. It's a very gradual.

Chairperson Lay: The top of your page.

Vice-Chair Shibuya: Yeah, top of the page is the lower side.

Ms. Waters: Yeah. Yes, correct. That's right.

Vice-Chair Shibuya: Oh, okay. I just wanted to understand that.

Ms. Waters: Good eye.

Vice-Chair Shibuya: And also, where's the honey bees located and how many hives do you have?

Ms. Waters: Right now, I have one hive. It's actually pretty difficult to get bees here. I get 'em from Mark and Leah upcountry, and the beehive is, okay, you see where, where the barn area is?

Vice-Chair Shibuya: Okay, that's--

Ms. Waters: Yeah, so you see all the...there's actually a garden in back there and it is right at that point, the bee area, can I show it...I can I just point it to you?

Vice-Chair Shibuya: Sure.

Ms. Waters: So it's right here. That way they don't get bothered.

Vice-Chair Shibuya: Okay, and the farm animals don't get close to them?

Ms. Waters: No, that wouldn't be a good thing.

Vice-Chair Shibuya: Well, I used to raise honey bees and they don't like horses.

Ms. Waters: No, they don't and horses I don't think like them either, mutual.

Vice-Chair Shibuya: And of course, children who move fast are subject to be chased.

Ms. Waters: They don't...the children don't go up in there and that's why that one bare area that's where the gardens are. So we're really trying to keep the bees. They really need a peaceful spot.

Vice-Chair Shibuya: Yes.

Ms. Waters: And so yeah, we got 'em in the most peaceful spot we could possibly imagine.

Vice-Chair Shibuya: They're excellent security guards.

Ms. Waters: Yep, and it takes 250,000 flowers for a quarter teaspoon of honey. So we really try to get all that across because it's pretty amazing.

Vice-Chair Shibuya: Where's your source of fresh water for them? They love fresh water.

Ms. Waters: So I have a pond.

Vice-Chair Shibuya: Okay, now how fresh is that? The reason why I'm asking is because you have bacteria and then you'll infect your honey and effect your quality.

Ms. Waters: So the whole farm is organic and the pond is full of dragonflies which is actually a really good sign. I do have some experts that come in and look at the algae and another one just came in the other day on the petting zoo and just was complimenting how clean the water is in the

pond.

Vice-Chair Shibuya: Okay, good sign. Thanks.

Chairperson Lay: Okay, Commissioners again, please let's hold for two questions so everyone gets a chance and if no one is asking, we'll go right back to you. Any more questions, Commissioners? Seeing none...oh, Commissioner Shibuya?

Vice-Chair Shibuya: Let's see, when was this structure permitted? It was earlier mentioned I guess in here as a garage or something and then later on it's now a structure for the short-term rental.

Ms. Waters: So my house, I've...you know, I've been here for 27 years. My daughters are 26, 22, and 17 and they all sorta moved out last November. So it was an ohana, but what happened is, it's so windy in Launiupoko, I didn't know that when I bought it in 2004, so we actually just put two walls on the carport so they made redraw the whole house as the main house not just the ohana, so that's where that came and Mikael Jorgensen did that, and it was approved like six months ago.

Vice-Chair Shibuya: Okay, thank you.

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

Vice-Chair Shibuya: I assume you have your GET and TAT license.

Ms. Waters: I do.

Vice-Chair Shibuya: Good. Thanks.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation?

b) Action

Ms. Callentine: Okay, the application for a Land Use Commission Special Use Permit complies with the applicable standards for an unusual and reasonable use within the State Agricultural District for reasons stated in the Maui County Planning Department's report to the Planning Commission dated September 24, 2013 for Docket No. SUP2 2012/0033. The Maui Planning Department recommends that the Maui Planning Commission approve the Land Use Commission Special Use Permit subject to six conditions. And I won't read each one of the conditions. If you have any questions about those, I would certainly like to hear them. In consideration of the foregoing, the Maui Planning Department recommends that the Planning Commission adopt the Planning Department's report and recommendation prepared for the September 24, 2013 meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Planning Commission.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I'd like to move to accept the Land Use Permit for short-term rental.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Freitas, seconded by Commissioner Medeiros. Any discussion on the motions? Commissioner Wakida?

Ms. Wakida: I'd just like to make a comment. I concur with Commissioner Freitas, boy, this is the kind of short-term rental application I like to see an actual working farm.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Launiupoko. This is a sore spot with me. I would like to tell you that this is one of the few plans from that area that I am in total support of. You know, you are actually utilizing Ag zoned land and I just wanna thank you.

Ms. Waters: Thank you.

Chairperson Lay: I, too, like to comment. Nowadays we have very few choices in agriculture and I'm very appreciative that you're showing our young children today that there are choices out there in agriculture be it raising horses, sheep, growing plants. It's giving them a firsthand view and you sharing it with them of things they can do, and I thank you on that. Director, you'd like to 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 five ayes.

Chairperson Lay: Motion carries. Congratulations. Thank you.

Ms. Callentine: Thank you, Commissioners.

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

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

Chairperson Lay: So the easy stuff you guys don't let me vote, huh?

Mr. Spence: So Commissioners, your last public hearing item is William and Connie Lawler requesting a Bed and Breakfast Permit. Not a short-term rental but a bed and breakfast. In order to operate Maui Ocean Palms B&B in Maui Meadows, and it's in the State Rural District and our Staff Planner is Mr. Joseph Prutch.

3. **WILLIAM and CONNIE LAWLER requesting a Bed and Breakfast (B&B) Permit in order to operate the Maui Ocean Palms B&B, a two (2) bedroom bed and breakfast in the State Rural District at 1136 Kupulau Drive, TMK: 2-1-018: 072, Maui Meadows, Kihei, Island of Maui. (BBKM T2013/0001) (J. Prutch)**

This matter is being brought to the Maui Planning Commission because there is a permitted B&B operation located within 500 ft

Mr. Joe Prutch: Can I have just one minute, please? For some reason my presentation is not on the computer any more. Okay, I'm back. Shall I go or shall I wait? Okay, so what you have before you today is a Bed and Breakfast application to operate the Maui Ocean Palms B&B consisting of two bedrooms in the owner's main residence located in the State and County Rural District in Maui Meadows on approximately half-acre at 1136 Kupulau Drive in Kihei, in Maui Meadows. The reason this B&B is before you today is because there is an adjacent B&B existing, obviously within 500 feet. So therefore it comes to you for your action rather than administratively through the Planning Department.

Okay, like I just said, the proposed B&B is within 500 feet so therefore it has to be reviewed and acted on by the Planning Commission. That's why we're here today and there is a Bird of Paradise Bed and Breakfast, it's a two-bedroom bed and breakfast that exists next door to this on the south side. I'll see show you an image in a minute. That was approved in 2009. Just went through a renewal earlier this year, and it renewed for five years because they had no RFS complaints and they had no police record calls. So that one is in good standing.

I had some nice drawings and aerials and everything for you to see. Okay, she's gonna tinker with that. I'll go ahead. The regulations for a B&B of course are in 19.64 in the Maui County Code. There are 19 restrictions and standards which the Planning Department reviews before being able to approve a bed and breakfast so we've gone through those 19 criteria and satisfied those so that we can recommend approval to you. It's spelled out in your staff report and how every restriction and standard is satisfied.

The project was routed to two County agencies, the Police Department and Real Property Tax. Real Property Tax did not respond. The Police Department did respond, but they had no comment and that letter is included in your report.

In Kihei-Makena Community Plan, you're allowed...the Code, the B&B ordinance allows for 100 bed and breakfasts in the entire Kihei-Makena Community Plan. So far to date, there are 22 approved B&Bs in Kihei-Makena. So we're, I guess, 22 percent of the way there and there's three that are pending. So if this one gets approved and two others we would have 25 total B&Bs in the Kihei-Makena area. In the Maui Meadows area there are specifically nine bed and breakfasts and I do have 'em on the map which you guys have for a total of 28 bedrooms. I counted them all, there's 28 bedrooms. With this approval, if you approve this today, we'd end up with 10 B&Bs and a total of 30 bedrooms just in the Maui Meadows region.

You have the plans. It is a two-story house. The guests would be staying in the two bedrooms on

the top floor having the main portion of the house I guess if you will. The owner, the two owners and their child will live downstairs in the one-bedroom portion and be able to utilize the kitchen upstairs as well. There is a pool on the property for the guests to use and the applicants to use of course as well. Like I said, there is one B&B within 500 feet. The closest B&B after that, my measurement was about 800 or 900 feet away so there are a couple more that are within a 1,000 feet but there's only one adjacent.

The parking requirements are two for the owner which they have in a garage and two for the guests since there's two bedrooms. They have those spaces available in the driveway to be able to keep cars on site, not off site.

Testimony wise, there was a...in your packet, in your staff report, we received two letters in support and two letters in opposition and one letter for clarification. And the two letters from opposition was from the same property owner. The one that required clarification got his answer from the applicant and eventually actually submitted a letter of support as well which you received as a additional document. You should have received five letters of support from various neighbors and people that associate with the applicants. And one letter from the applicant to one of the...the opposition person asking for a meeting. So those letters were submitted to you after-the-fact.

At this point, Mr. Lawler and Mrs. Lawler are here. I know they would like to come up and give a short little presentation or a few words to say if they may. And then of course, I'm available to answer any questions, and sorry, I couldn't get my power point working. It's just not recognizing my thumb drive. So if I can bring up Mr. Lawler, is that okay with you?

Mr. Lay: Yes.

Mr. William Lawler: Good morning, Chairman, Commissioners. My name is Dave Lawler. I'm here with my wife, Connie Lawler. We're the owners of 1136 Kupulau in Maui Meadows. My wife is a school teacher at Kihei Elementary School. I am an audio engineer, and we were married on this island, been coming here for years. My company did the audio installation at the Maui Arts and Cultural Center in 2006 of all the current audio systems being used there. So of course, we're really excited. We moved here on Valentines Day last year full-time because our long-term renter moved out. We're very excited to be part of the community, to give back to the community, and I just wanted to tell you that, you know, we have studied and reviewed all the conditions that would be in place for this permit. We take them very seriously. We intend to comply with them. We intend to run a very professional upscale business. We will prescreen all of the guests. We're looking for people who want to come and enjoy an alternative vacation experience and experience, you know, a part of the island that they wouldn't be used to in the hotel zone. We will also not be interested in parties, weddings, any large gatherings. And therefore, we feel that having a bed and breakfast where the owners are on site, where the applicants are screened and, you know, we'll be strictly adhering to the quiet time as stated in the ordinance, that we'll maintain the maximum control and least amount of impact on the neighborhood. We have a gated property and the vegetation is very mature. You cannot see houses from our house or looking the other way to our house as shown in the documents, the six-page document we gave you. So I thank you for your time and I'll let my wife Connie have a few words. Thank you.

Ms. Connie Lawler: Hi, good morning. I just wanna say, thank you. And as a school teacher I manage about 25, 10-11-year-olds, so I...between my husband and I, I'm sure that we can manage four people that come and visit us and we can show them the true Hawaiian experience over the weekend when I'm not teaching. Thank you for your time and your consideration. We will do our ultimate best to follow all the regulations that are required upon us, and thank you.

Mr. Prutch: And if I can, I'm sorry, the graphic would have helped, but you have it in your packet. Just wanted to let you know where the opposition letter came from so you have an idea where that was. If you look at Exhibit-

Chairperson Lay: Fourteen.

Mr. Prutch: Yeah, 14 would work or Item 14, you can find that. So the B&B, the existing B&B is on the corner of Kupulau and Kumulani, that's the Bird of Paradise. The applicant is the one adjacent to that directly north. So there would be two side by side in this case. The opposition letter came from the property that backs up to the other two of those properties, No. 46 it looks like is where the opposition came from and I know the gentleman is here to provide testimony.

Chairperson Lay: So the page after Exhibit 6, I got a pretty big map, what number would that be?

Mr. Prutch: Item 14 it says.

Chairperson Lay: What number is that, the complaint?

Mr. Prutch: Oh, the opposition comes from property No. 46 which is directly behind the existing B&B and the proposed B&B. Sorry.

Chairperson Lay: Got it.

Mr. Prutch: Can you see that? And of course, we have conditions, standard conditions of approval which I can go into later, but essentially the standard conditions we would issue on a bed and breakfast that didn't come to the Planning Commission, it's the exact same conditions and we are proposing a two-year approval for this rather than the normal three simply because there was some opposition. If there's no opposition from neighbors we essentially give them a three-year trial, a three-year permit and away you go. If there is opposition we can lower it down to two or one. So we just suggested two in our approval letter, but that's for the recommendation.

a) Public Hearing

Chairperson Lay: At this time, I'm gonna open it up to public testimony. If anyone wishes to testify you can step up to the mic, identify yourself, and you have three minutes to testify.

Mr. Allan Hyde: Thank you, Council members. My name is Allan Hyde. I'm the owner of the property at Lot 46 on Item 14. You know, a lot of people know my opinions about B&Bs. I've had conversations with Mr. Spence over this, Mayor Arakawa, and Don Couch. I'm not against B&Bs. What I object to is B&Bs adjacent to each other. Unfortunately, the map couldn't come in through,

but I can see into these facilities. These pools are there. One of my other neighbors, Frankie Goldman is here and they own a B&B. And what makes this very difficult is neighbors who you feel are your friends, when there is a B&B that perhaps does infiltrate noise to my property it's very difficult to say anything to those friends. They're your friends. They're your neighbors. So you make a very uncomfortable situation when you don't want to. You cherish their friendship. You want their friendship. But sometimes, yes, the noise, gets out of hand. When you have pools which the existing B&B is about 80 feet to my front door. Their pool adjacent is about maybe a 100 feet, maybe 95 feet to my front door. So in Maui Meadows it's a valley, you hear everything. So sometimes, children run, they scream, they're on vacation this is what happens. Adults are out late at night, they're on vacation. With respect to Lawlers their pool is about 110 to 125 feet away from the Goldman's pool, it's another pool. Now with due respect with what the Lawlers have said about having weekend visitors, this is a B&B. This could be stays to one week, two weeks, it's a business, I understand that, but at the same time, stacking two B&Bs next to each other really doubles the amount of intrusion that can put a big impact to me.

In addition, I feel one of the things that the Council is really not considering is my property value. What is my property value worth when I have two commercially zoned businesses behind me? It's like pulling off the freeway if you will and there's a Motel 6 and another hotel there. Now I understand that they're there, they are supposed to regulate, and yet, they probably do a good job, but still it's double the noise. So therefore, what I say is that B&Bs are fine for Maui Meadows, I just think that the distance between the B&Bs should be spread out and not bundled together right on top of each other. So with that, I'm asking you to while they have met all the conditions as I'm sure Joe says, one of the conditions that's not really being looked at is the impact of my property. So with that said, I thank you.

Chairperson Lay: Commissioners, any questions? Commissioner Freitas?

Mr. Freitas: Yes, the B&B that backs to your yard now, are they very noisy? Are they causing you problems? Should they be cited?

Mr. Hyde: Sir, they're my neighbors. I happen to like them very much.

Mr. Freitas: Yes, but my question is are they causing you problems now?

Mr. Hyde: No.

Mr. Freitas: Thank you. Thank you, sir.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Mr. Hyatt, do you have a rental unit on your property?

Mr. Hyde: I rent full-time an ohana unit, yes I do.

Vice-Chair Shibuya: Oh, okay. And how many members do you lease it out to?

Mr. Hyde: A husband and a wife who own a cleaning business on Maui.

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: Director?

Mr. Spence: Commissioners, if you look at Exhibit 13, you can see—

Chairperson Lay: A good aerial photo.

Mr. Spence: —yes, an aerial view, you can see all the homes that are...(inaudible)...

Mr. Prutch: To let everyone know that the aerial is on the screen now. I got it finally to work.

Mr. Hyde: There's no laser pointer? Am I allowed to comment or...

Mr. Shibuya: Yes.

Mr. Hyde: Oh, I'm not allowed.

Vice-Chair Shibuya: I'm just gonna ask you a question.

Mr. Hyde: Oh, I see. I'm sorry.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Mr. Hyde, you wanted to explain something.

Mr. Hyde: Yes.

Vice-Chair Shibuya: Can you please explain it?

Mr. Hyde: I don't need the microphone. I'm okay.

Chairperson Lay: You need a mic if you're gonna say anything.

Mr. Hyde: Oh, I see. Oh, okay, I'm sorry. My voice was probably loud enough. This is my home here, okay. The way the sound carries in here everybody who lives in Maui Meadows, I don't know if any of you live in Maui Meadows can attest to how the noise gets impacted directly into that place. It's very noisy. I know Joe knows about the noise. Many of you may know about that. But you've got the two pools literally that far apart. They are so close. So if the Goldmans have a family--it's a two-bedroom--if they have a family with two, maybe three children and they're in the pool, and the Lawlers have a two-bedroom with a family maybe two or three children, they're in the pool. So you have potentially six children. Now the children are on vacation again. We all know they run, they screen, they play the Marco Polo game, two pools right next to each other. For me, I think that's a bit much. It's just we're looking for potential issues to happen.

Chairperson Lay: Any more questions?

Vice-Chair Shibuya: Thank you.

Chairperson Lay: Seeing none, thank you very much. Commissioners, any more questions?
Commissioner Shibuya?

Vice-Chair Shibuya: I have a question for our Staff Member, can you tell me on Item No. 14, it shows TVR rental, illegal TVR, another B&B and it's not listed on your chart. How many--yeah go ahead.

Mr. Prutch: That is because...this Item No. 14 is a map that the...Mr. Hyatt, the opposer, put together. So it's his statement that are some TVRs across the street that are operating. But if they're not...there are no approved B&Bs or short-term rentals across the street. So if they are operating, they're operating illegally and we don't, we don't have any verification on that. So the only ones we know about are the B&Bs and the short-term rentals that we have permits for and there's a map in there too that shows where all those are. This one shows everything. This shows green dots there are all the existing bed and breakfast permits that are in Maui Meadows, and the pink ones are the actual short-term rental permits that were approved, and they're only allowed to have five, so that's done. So you won't see any more pink dots in Maui Meadows at this time, and B&Bs, well, we'll see as that grows.

Vice-Chair Shibuya: Okay, it doesn't show ohanas does it?

Mr. Prutch: There's lots of ohanas in Maui Meadows, but no, I didn't do that much detail. I just looked up to see how many bedrooms were in Maui Meadows for rent. That was my extent of the search.

Chairperson Lay: Any more questions, Commissioner Shibuya?

Vice-Chair Shibuya: As a Staff member I was looking at the ordinance and it says no more than six bedrooms within 500 feet. So how many bedrooms are we talking about here?

Mr. Prutch: Well, I don't think it says, six bedrooms within 500 feet, I don't believe, no. Six bedrooms is the max per bed and breakfast. So technically, all these B&Bs here could have six bedrooms. I don't think they do, they average out to about three by the map I did. This one's proposing to do two bedrooms. The one adjacent to it, the Bird of Paradise is also two. So in that little section on that corner there would be four bedrooms for rent to guests.

Vice-Chair Shibuya: Plus now you have Mr. Hyatt saying he has an ohana.

Mr. Prutch: Yes.

Vice-Chair Shibuya: So that's another bedroom, two bedrooms.

Mr. Prutch: Those are long-term renters, but yeah, sure. And the bed and breakfast, the Bird of

Paradise is a two-bedroom cottage, ohana, if you will. This one's within the main house.

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

Ms. Wakida: I have a question for the applicant.

Mr. Lawler: Hi.

Ms. Wakida: Hello. In our packet is a rental agreement--

Mr. Lawler: Yes.

Ms. Wakida: --for Maui Ocean Palms. This is for this property, correct?

Mr. Lawler: Yes.

Ms. Wakida: So did you have this as a short-term rental recently?

Mr. Lawler: Not recently. We purchased the property in 2006, and at that time we went to the County and real estate agents.

Chairperson Lay: Excuse me, I'm sorry. We didn't close public testimony. We're still in public testimony. Sorry. So I'm gonna have to go back to public testimony if anyone else wishes to testify at this time, please come up to the mic and testify. My apologies on that.

Ms. Frankie Servetti Coleman: Hi, good morning. My name is Frankie Servetti-Coleman. My husband and I moved to Maui over 30 years and we've raised our three children and now our two grandchildren here. I've been on several boards, the Montessori board, the Isana Condo Association, the ARC of Maui, and I'm currently on the Horizon Academy board. We have the privilege of being the owners of the B&B, the Bird of Paradise Cottage located at 663 Kumulani in Maui Meadows. We just got our license renewed till 2017, and our guests are very considerate. We welcome them with a local basket of local fruits and vegetables. We educate them on buying local about, you know, about recycling, and about conserving. My husband's an avid water man and he enjoys taking them out to the ocean, educating them at the ocean, and we are very blessed to have it. Many of our guests are returns. A lot of our guests are only two people. We do not have very many children. And I think that...sometimes on Sundays, I have a severely handicapped autistic daughter and on Sundays, her and some of her friends come and swim, and they're a little noisy on Sundays, but you know, it's just children. And I, I recommend that the Lawlers get their B&B permit.

Chairperson Lay: Okay, Commissioners, any questions for the testifier? Seeing none, thank you very much. Does anyone else wish to testify at this time? Identify yourself and you have three minutes.

Mr. Tom Croly: Aloha, I'm Tom Croly. I assisted the applicant with his application. I'm also one of the bed and breakfast owners in Maui Meadows and I walk the neighborhood and have a good

feel for my neighborhood and such. I've observed the last testifier's B&B in operation for the past three years and have never observed anything out of the ordinary, excessive noise, parking, any issues that that one might attribute to an improperly run B&B. A properly run B&B is going to seamlessly integrate into the neighborhood. They're not going to create any impact, zero additional impacts than would the owner of the house.

I visited Dave and Connie's home and met their beautiful daughter, Marisol, four-year-old daughter and I cannot imagine a scenario where this family would allow anything to get out of hand and create impacts for their neighbors. I can imagine Marisol having a five-year birthday party that might drive me nuts to have those kids in the backyard, but that has nothing to do with a B&B. The rentals that they propose are in the home that they will be living in. They and their guests will be in the same structure.

The Council did discuss the spacing of B&Bs when they created the bed and breakfast ordinance. And they did not put in a requirement that they must be spaced 500 feet apart. They only put in a requirement that this body review any applications when there are two B&Bs to be within 500 feet of each other. My B&B happens to be within 500 feet of another one and I'm gonna give you the same testimony that I did then which is, if I was creating an impact, it's no reason to deny that person's B&B. It would be to come back to me and say, we're not gonna renew your license because you're creating a problem in your neighborhood. From what I see here, we've got a well-operated B&B. I have no reason to believe that the Lawlers won't operate one just as well in their home. Thank you for the time.

Chairperson Lay: Commissioners, any questions for the testifier? Seeing none, thank you very much. Does anyone else wish to testify at this time? Seeing now, we're now closing public testimony. Commissioners, questions or Director?

Mr. Spence: I know Penny had a question.

Ms. Wakida: Yes, of the applicant. Anyway, excuse me, getting back to this rental agreement that's in our packet. So at one time it was short-term rental?

Mr. Lawler: Shall I explain?

Ms. Wakida: Go right ahead.

Mr. Lawler: Okay, great. So we purchased the house in 2006 at the same time we were doing the work in the MACC which was interesting. And we went to the County and we purchased it from real estate agents and we've talked to property managers and everybody encouraged us to rent short-term and the permits for the B&Bs were not available because the ordinance wasn't done yet, and they said make sure you get your licenses, you know, collect and remit your taxes and we will let you know when the permit becomes available. Well, we did that until the end of...about a year and three-quarters, I guess it was end of 2007-ish and then the new Mayor came in and they started enforcing the ordinance and so we shut down the short-term rental. We got a very high profile property manager and rented it long-term for a party of one which we didn't meet for a year or two later. He was there three and a half years. So there was professional on island management. He

actually was the manager of a company on island that did the same thing, they managed rentals either long-term or vacation rentals in the vacation rental zone. We figured he would be an ideal candidate. He rented for three and a half years at which point he moved to the north shore and terminated his lease and we came over and decided that...because my wife wanted to teach here, we would move over here which we did on Valentines Day of 2012, and here we are. So the contract you're seeing is, I don't know 2006-2007.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: But...excuse me, it still is online.

Mr. Lawler: I don't know where that came from. Mr. Hyatt found there somewhere so it's...

Ms. Wakida: No, I'm saying it is. I've seen it two days ago online.

Mr. Lawler: I don't know what to say, it's not active. It hasn't been a short-term rental property since the start of 2008. So I guess it's just living out there online. If you go to our website, you'll actually see that it's still a long-term rental website when the property manager was looking for tenants.

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

Ms. Wakida: Again, Mr. Lawler. Your...I'm looking at your floor plan-

Mr. Lawler: Yes.

Ms. Wakida: -and your planning to rent the upstairs is that correct?

Mr. Lawler: Yes, the two bedrooms upstairs would be the two...(inaudible)...bedrooms.

Ms. Wakida: And the kitchen. And then you plan to live downstairs, correct?

Mr. Lawler: Mainly. We'll be sharing the kitchen, but our bedroom's downstairs. There's a living area and two offices. One's mine, one's my wife.

Ms. Wakida: What about your daughter? Which is her room?

Mr. Lawler: Well, she'll be downstairs with us in a room. She's only four, so she's small. As you can see the lower area is 1,250 square feet. So there's lots of room to, you know there's a fold out couch in the sitting area you can see there and it has a big deck that goes out to the pool, another 1,400 square feet, so it's quite a large area. It's larger than we need.

Ms. Wakida: So your daughter doesn't have her own room?

Mr. Lawler: No.

Ms. Wakida: Thank you.

Mr. Lawler: You're welcome.

Chairperson Lay: I have a question while you're up there. On this overview map that we have on Exhibit 13, where we show your property, there's a tree line, who owns that tree line that's going between you and the Hyatt's property?

Mr. Lawler: All the mature vegetation you can see on the six-page handout that we did is owned by us. The fences are owned by us, the walls are owned by us, there's rockwalls, different areas, and it's all...the plumeria trees, they're all as you can see, and the house was built in '76, so it's mature stuff.

Chairperson Lay: So this looks like some pretty heavy foliage, right, this area?

Mr. Lawler: Very. We maintain that you can see the houses to or from our property. As you can see as evidenced by those pictures.

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

Vice-Chair Shibuya: Just for public safety here, where are the fire extinguishers?

Mr. Lawler: I don't know if there's an exhibit in there, but it's in the kitchen, it's in actually in the fire plan map which is on the top floor right in the middle. There's also one in the laundry room which is on the left side down the hall, and there's one also in the pantry closet which is just down the hall on the other end just before the bathroom. The one on the fire plan is in the kitchen that shows the exits.

Vice-Chair Shibuya: Are there any extinguishers on the first floor?

Mr. Lawler: The bottom floor?

Vice-Chair Shibuya: Yes.

Mr. Lawler: Yes, there's several on each floor and one in the garage as well.

Vice-Chair Shibuya: Where's the closest fire hydrant?

Mr. Lawler: Great question. Right out front. If you look on the site plan, it's on the...that would be the northeast corner of the property. Right at the survey stake. Okay, that's one right there. So if you just look at your lower right corner right there where your finger is. That's where it is, right out front. We're happy about that.

Chairperson Lay: Commissioners, any more questions? Seeing none, can we get the Department's recommendation?

b) Action

Mr. Prutch: Okay, so this application, this application for a bed and breakfast home permit complies with the Maui County Code, Title 19.64.030 per the 19 restrictions and standards for reasons stated in the Maui Department's report to the Maui Planning Commission dated September 24, 2013. The Maui Planning Department is recommending approval based upon the following 17 standard conditions for a bed and breakfast with the Condition No. 1 stating that the permit is valid for two-year period through September 30, 2015. Again, in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for today's meeting, September 24, 2013, as their findings of fact, conclusions of law, and decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission. Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd like to move that we...make a motion that we adopt and approve the bed and breakfast application.

Mr. Freitas: Second.

Chairperson Lay: Motion by Commissioner Medeiros, seconded by Commissioner Freitas. We have any discussion on the matter? Commissioner Wakida?

Ms. Wakida: Yes, I have a question about No. 6, of the conditions, Joe.

Mr. Prutch: Yes.

Ms. Wakida: It says that the B&B shall not operate any time the owners are away unless they designated an on island representative. How long of a period can they be away?

Mr. Prutch: Well, with this one, the condition used to read that the B&B home shall not operate during any times people are gone period. That's what originally it was. And we had some issues with one B&B where she wanted to take off and go back to California to go see her sick mother because she couldn't leave her B&B. So what we came up with, more of a policy with Director Spence is we came up with an idea of we need to allow a little flexibility for that especially for medical conditions, something happens, somebody needs to go away. They need to go away and you're not going to cancel the guests that are coming, you shouldn't do that. So we came up with this new condition to allow some flexibility. Unfortunately, we don't really have a specific time, but what we do when we discussed this in our policy meetings with the Director is the short-term rental allows a temporary manager for up to 45 days that they can designate. So we kinda did the...kind of assumed the same thing with this that we would allow somebody to have up to 45 days to either vacation or sick leave or something like that. Unfortunately, we just...we didn't include in the condition.

Ms. Wakida: Is that 45 days total a year or is it 45 days and then come back for a week and then another 45 days?

Mr. Prutch: I think the idea was per year.

Chairperson Lay: Director?

Mr. Spence: I don't recall in our discussions whether that was consecutive days or 45 total, but we have run into a couple of instances where people need to go off island for....(inaudible)...and plans were made, et cetera, so...(inaudible)...some flexibility. I would say at some point that the short-term rental and the bed and breakfast ordinances are gonna go back to Council and they're gonna essentially marry the two and just make, you know...where they're same, the requirements will be the same and where they need to differ, you know, they'll specify that as well. So the 45-day thing will probably stay in and then apply to bed and breakfasts.

Mr. Prutch: And in the past if I can add onto that, I've had a few emails or letters come my way from applicants that, you know, do send me something saying, hey we're gonna be going away for a couple weeks, blah, blah, blah. Here's the contact person, here's their phone number, here's who's taking care of place. That's what we end up getting on our end. So if anything does happen and someone calls, we'd at least have somebody to contact.

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

Chairperson Lay: Okay, I have a question on that too. So with these people going away, someone else is gonna take over, are the neighbors notified about who this contact person is in case they're away in case there is any complaints?

Mr. Prutch: Well, the condition does say that the applicant shall notify all owners and recorded lessees adjacent to and across the street from the B&B of the duration of the absence and the contact information for on island representative, so yes, they do.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Joe, I'm looking at what is labeled as Item 14 on the exhibits and it shows six operations which are either TVRs legal or illegal or B&B essentially surrounding the house of the complainant in this particular case who is objecting to the B&B. How in good conscious can we recommend approval of another B&B next to him given that scenario?

Mr. Prutch: The only thing I can say is those are not...those illegal TVRs or possibly TVRs we don't know for sure. We can't verify that those are actually operating as TVRs, we don't know this. This is what the opposition, Mr. Hyatt suggested in his letter that there are TVR activities happening across the street. We can suggest to our Code Enforcement Officers to go check on these and enforce, but other than that we know of a B&B next door and we know of a few B&Bs that are down the street a ways and those are the ones we know of because those are permitted.

Mr. Spence: I would, I would emphasize that. We cannot verify whether this is accurate or not. If Mr. Hyatt would like to file RFSs with our Department we will go out and, you know, we'll do the research and enforce ordinance.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: In my case, I found it very problematic. I reviewed the documents here and I really am impressed with the homeowner and making the accommodations for the guests and it's just one of the beautiful types of settings just outstanding. The only unfortunate part is in terms of density. This is the issue which is very problematic with me. I find it very difficult at this point to approve it so I would like to have Staff, I would like to at least defer this until information from Staff can be provided as to the number of bedrooms that are being occupied or rented out surrounding this area. Mr. Hyatt, I think, has a valid request here and I think the intent here is to minimize the impact and although he is also renting out his ohana, he is maintaining control of it and so, like the Director says, if there is a request for service (RFS) filed by Mr. Hyatt then perhaps we could get the data and I could make a better judgement on this.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yes, what do you call, I seconded the motion. One of the reason why I second the motion the property was very well maintained. This reflects on the people that are applying for the bed and breakfast and I could allege that Mr. Hyatt has the TVR because he has a ohana. Now alleging that people have stuff without proof I think is wrong. I think in Mr. Hyatt's case, he should have at least come here with proof that he had these people was going. So I am...so I'm totally supporting the bed and breakfast.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'm in full support of this bed and breakfast. When I look at a home-based business it is to supplement incomes. The owners are working, active members of the community and straight up, we don't pay our teachers enough so they need their income supplemented. And as far as kids making noise, I'm a local boy, you know, kids make noise. It's the quiet ones that I worry about. If there are quiet kids, I go, oh, oh, that's all I got to say.

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

Vice-Chair Shibuya: I'm gonna have to vote against it even though I really don't want to vote against it. I would like to defer it, but since the motion was made to either accept it or deny it. I'm gonna have to vote against it because I would like to have more data.

Chairperson Lay: Joe, did you have something to say?

Mr. Prutch: Yes, I mean, as far as bedrooms, I did let you know, how many B&B bedrooms are in that territory. I didn't look up the short-term rentals, I know there's five of them. I don't know how many rooms those are, but there are nine B&Bs, there are 28 bedrooms in the Maui Meadow region that are being rented to tourists. So we know that for sure. If this one got approved there would be two more so there would be a total of 30. There's no other property within 500 feet of the proposed other than the Bird of Paradise. I mean, there's nothing else within 500 feet, short-term rental or B&B. And I did kind of a crude, I don't know how many houses are in Maui Meadows but I started counting and gave up when I got to 400 so there's quite a few homes in Maui Meadows.

I don't know the exact number but...how many? Oh, 625. Okay, so I stopped at 400. So 625 homes in Maui Meadows. There are nine B&Bs and five short-term rentals that are permitted. Of course, there probably can be some illegal operations and until our Code Enforcement gets out there for the short-term rental which they will at some point soon, this is what we have. And the applicant put together, I believe you got it, this Excel spreadsheet with the green and yellow. He did a lot of work on this and he looked up through our KIVA system and found out how many were approved and what are pending and where they are in proximity to one another. And if you look in just Kihei, north and south, I mean, there's a few places where there's a couple that are 225 feet away. There's one where there's two adjacent. There's one where there's 85-foot away, 45-foot away and then of course, you get to Paia-Haiku and I think there were some places where there was six or seven of them adjacent one another, and of course, I think at your last Planning Commission you had a short-term rental with four of them side by side in Paia-Haiku. So that's gonna happen in some areas and I guess it really depends on the neighborhood and what they decide for their community and what they want. But there is, there is precedent for other B&Bs and short-term rentals that are adjacent to one another, this isn't the first time.

Chairperson Lay: Commissioners? Commissioner Wakida?

Ms. Wakida: Joe, do you know if the owners have a second home on Maui?

Mr. Prutch: No, I don't, but I can find out. No, they don't have a second home in Maui. I believe they –

Ms. Wakida: Or own other rental property or?

Mr. Prutch: No, they don't have any rental property either. They manage some rental properties as you saw in the exhibit from Mr. Hyatt. My understanding is that they actually manage those or help somebody out with their property management for those two, but they do not own 'em. And I looked 'em up on Real Property Tax, they're not the listed owners on those. I double checked.

Chairperson Lay: Commissioners, any more? Commissioner Hedani?

Mr. Hedani: I actually recommend that we defer this item until a meeting when you can get a full Commission here with nine members. Given the existing information that I have I find it very difficult to support this particular application only because of the proximity of the B&B next to it. At the last meeting, you know, we had a TVR, a short-term rental application that had four short-term rentals next to each other within 500 feet. They were adjacent to each other and we approved that. The reason the Council has put in a provision that it has to come before the Commission when it's within 500 feet is so that this particular Commission can exercise its judgement on disbursing the impact of the B&Bs to a neighborhood. If we don't care as a Commission whether or not there's one, two or six B&Bs next to each other and if the Department which is responsible for enforcing against illegal TVRs is not taking action on...to me we already have constructive notice that there's three TVRs operating within this area then why bother to bring it to the Commission? I can't support the application on that basis.

Chairperson Lay: Okay, back to the motion on the floor. Any more questions or any discussion?

If not, can we have the Director, please repeat the motion?

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

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

Mr. Spence: Two ayes.

Chairperson Lay: Those opposed?

Mr. Spence: That's three nays. Motion does not carry.

It was moved by Mr. Medeiros, seconded by Mr. Freitas, and

**The Motion to Approve the Bed and Breakfast Permit, FAILED.
(Assenting - J. Medeiros, J. Freitas)
(Dissenting - W. Hedani, P. Wakida, W. Shibuya)
(Excused - K. Ball, M. Tsai, S. Duvauchelle)**

Chairperson Lay: Do we have another motion on the floor at this time? Commissioner Shibuya?

Vice-Chair Shibuya: I'd like to make a motion to defer until we can get an accounting of the bedrooms surrounding this 500-foot area that are actually rented or leased out. It doesn't make any difference if the resident is maybe on property or may not be on property, but the real property home or the rooms are being commercialized. I would like to have that kind of accounting or inventory especially for this particular case.

Mr. Medeiros: I'll second it.

Chairperson Lay: Motion by Commissioner Shibuya, seconded by Commissioner Medeiros.

Mr. Prutch: I just wanna make sure I understand. You're asking for the number of bedrooms within 500 feet whether long-term or short-term?

Vice-Chair Shibuya: Yes. It doesn't make any difference.

Mr. Spence: And I was gonna say after the motion was made, I was going to comment that one, we...I mean, we can possibly look at, I mean that's an incredible amount of work for the Department to go property by property and count the number of bedrooms. But second of all, it is none of our business and we do not have access to for instance, the tenant agreement with Mr. Hyatt, he's renting to two, but the he has two bedrooms. We don't have any access and it's none of the County's business what his lease agreements are and the terms of those leases and we would have to go property by property. In other words, there's no way we can find out what that information is. We can do the best research we can to see what other rentals are in this neighborhood because they advertise. We can go search those things, but as far as how many other bedrooms, and what those lease agreements are, we can't tell them.

Chairperson Lay: So we're still in discussion on the motion as put before us. Any more questions, Commissioners or comments? Commissioner Freitas?

Mr. Freitas: I am gonna support this motion because I think after the, what do you call, the effort that they put forth and they did everything legal, I felt that they should have got their approval because people allege that somebody is illegal, I don't think we as a Commission we should take alleged, we should...into consideration. We should take facts. You come here, here this is an illegal bed and breakfast, the police had been there, and not assuming that there is, people allege because if we start doing that, I think we lose credibility.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Yeah, I voted to approve it, but if that was not possible I wanted to keep this request alive by allowing them to get the information they needed to make a better decision and maybe Wayne is right, maybe we should have more Commissioners here to make the decision. In either case, I think that they deserve a shot at, another shot.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'm not against this application. I fully support this application. I think this is one of the outstanding applications. However, it goes against the intent of density in my mind that if you have too many right next to each other, then it's problematic for me. Its' too dense for that neighborhood.

Chairperson Lay: Commissioners, any more comments? I'd like to say that I have a very difficult time with this also, but the applicant has done everything that they should be doing. The density in the area is we've said that there could 100 in this area, in this Wailea District because two popped up right next to each other and there's alleged other people around it, I find it like, Commissioner Freitas said, difficult to base my decision on something that's alleged. The documentation I would like to see in front of me is just the ones that are, are good, and then we can deal with whatever problems occur, you know, or information that comes up before us, we can deal with it that way, but deal on things that we don't see or know for sure about is difficult for me. And just curious if, I know we said no, but I don't know how you guys, we're gonna vote on this. Commissioner Shibuya?

Vice-Chair Shibuya: On this other side of this argument here. In the absence of information I find it very uncomfortable to support it, and that's where my problem is. We don't have the data. And if you do have illegal type of operations, yes, the County stands to be criticized and I personally would be criticized and I stand for it. I need the data. I wanna be sure and put it on the table.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I seconded by the motion for the deferment because more information was needed. I support that, you know. Get them the information that they need so that they can make the best decision that they can. Just keep it alive, just don't deny them the application.

Chairperson Lay: Joe?

Mr. Prutch: I do know for a fact that there are within 500 feet there are 57 properties that are located there. Of course, I don't know how many bedrooms are in each one. You can assume three if you want. Maybe they all have ohanas, maybe they don't, I don't know. If they do, they probably have two bedroom max. So I don't know if you can do the math there, but I'm not quite sure what that will do for you. I mean, there's bedrooms, there's long-term people living there. There's people that are renting and there's some that are short-term, I don't know. But it is important to show too, that there's 57 properties. Only one of them created opposition, I mean, I would say an adjacent neighbor of course. So that's much stronger that somebody that lives on the 500-foot line, but that equates to about, what is about like two percent of the 57 properties. I know you like numbers so there's the numbers.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: A question. The motion on the floor is to defer?

Vice-Chair Shibuya: Yes.

Mr. Spence: The motion on the floor is to defer until the Planning Department can find out how many bedrooms total are within 500 feet and I forget the rest of it, and that's information we cannot provide the Commission, and how many are rented out long-term, short-term, whatever. We cannot find that.

Mr. Hedani: So you would have no way of correcting this, providing the information requested?

Mr. Spence: That's correct.

Chairperson Lay: Commissioners?

Mr. Spence: We would have a couple of recommendations. We can...the Commission could defer and we could research these other properties that are alleged to be illegal or...so that's one option. Another one would be perhaps to grant the permit for a period of a year and try it out and see if there's any complaints after a year. The Commission has done that before when there have been other complaints with immediate neighbors.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: As the maker of the motion, I'll amend it to make it easier, to defer and the motion is to defer obtain more information and this in terms of how many bedrooms are being rented out and you can determine this either by survey or by looking on the internet.

Mr. Giroux: Chair, can I just clarify?

Chairperson Lay: Corp. Counsel?

Mr. Giroux: To make this task accomplishable let's look at one of the things you need to do to determine the density is there's different products on the market. There's legal and illegal. The ones that are legal are...the County has access to the bed and breakfasts, the TVRs, and the short-term rentals, and the conditional permitted type of uses. The County has access to that information. And I believe the Planning Department can get you that. What's gonna be harder is to find out how many rooms is encompassed by all of those uses, and I think that's what you're asking for?

Vice-Chair Shibuya: Yes.

Mr. Giroux: So they would have to go into the tax map keys and look at how many units or look into the permit and see how many units are allowed. If you narrow it down to that task, that in itself is a huge task, but I believe it's accomplishable. The next level is, how many advertisements out there are there for illegal TVRs in that neighborhood or in that 500 feet radius? And at that point they would be guessing as to how many bedrooms are being used for that illegal purpose because they don't have access to the permit. There is no permit. So if a five-bedroom house is being used illegally for a TVR, we don't know if it's one unit, two units, five units. All we know it's a house, five bedrooms, illegal TVR. That's all they could tell you at that point.

Vice-Chair Shibuya: Okay.

Mr. Giroux: And even to a certainty they wouldn't be able to tell you that it is an ongoing TVR. Using the information they have they would probably be looking at advertisements that may or may not be active or they would be looking at complaints that have been filed with that Department. So knowing that, that information that you're asking for is not going to be "the best information" it's gonna be the best information that the County has at the time.

Vice-Chair Shibuya: Okay.

Chairperson Lay: So Commissioner Freitas first.

Mr. Freitas: Yes, I'm addressing my colleague. Would you consider withdrawing your motion and redoing a motion to give them a one-year permit? This way anything that would pop up in a year, it's 12 months it goes real fast, would you consider doing that?

Vice-Chair Shibuya: I considered that, but in this point in time as the maker of the motion I would take a database type of consideration. I take Corporation Counsel's advice and I would like to at least do a research on what data they have available, but not the number of bedrooms. Is it doable?

Chairperson Lay: Director, would you like some clarity?

Mr. Spence: I'm not...I'm still not clear on what information...are you wanting information on what's illegal within 500 feet or what is legal?

Vice-Chair Shibuya: What is legal and what is...and what have you found to be illegal within that

500 feet not bedrooms, just units.

Mr. Prutch: If I can? I'm mean, the legal ones are up on the map, we know that. I pointed out that there were 28 bedrooms with the B&Bs. I did not look at the short-term rentals. I'm sorry about that, but there were 28 bedrooms in the B&Bs scattered amongst nine properties. If this one got approved there would be 10 properties in Maui Meadows with 30 bedrooms so an average of three bedrooms per unit.

Vice-Chair Shibuya: No, but this whole area is not within the 500 feet.

Mr. Prutch: No.

Vice-Chair Shibuya: All I'm looking at is just the properties within the 500 feet, what is the density within that 500 feet?

Mr. Prutch: There's one existing bed and breakfast within 500 feet.

Vice-Chair Shibuya: Not bed and breakfasts. It also has short-term rentals.

Mr. Prutch: There are no existing short-term rentals within 500 feet, no legal ones. The only thing existing legally either a B&B, a Conditional Permit or a short-term rental, is the B&B next door, the Bird of Paradise. That's all that is within 500 feet.

Vice-Chair Shibuya: Well, that's all I'm asking for. I just want the data. So they can both be motioned down. But I'm staying with the motion saying that I would like to defer this action until the Staff can provide additional data for the amount of parcels, and I've amended it based on Corporation Counsel's advice that the data that is available in the database and to include short-term rentals as well as B&Bs.

Chairperson Lay: Commissioner Medeiros, you're the one who seconded this motion are you complying with that too?

Mr. Medeiros: Basically what you're asking Warren is for any legal or illegal within 500 feet, right?

Vice-Chair Shibuya: Yes.

Mr. Medeiros: Okay, so...now they already said that they can get you the information of the legal ones.

Vice-Chair Shibuya: Yes.

Mr. Medeiros: To get information on the illegal ones, when I seconded the motion I was looking at the legal ones, okay. To get information on the illegal ones, you know, would be in my opinion, you know, too much work now that's their kuleana, that's enforcement, okay. And getting the information on the legal ones, yes, we need that, but they already told us that there's no legal TVRs within the 500 feet. Only allegations that there are illegal ones.

Vice-Chair Shibuya: Well, there is allegation or at least suspect that there are TVRs here, and I don't know the fact on that and then to find the illegal ones possibly you can identify those that have been advertised but they don't have a permit and that's all it is.

Chairperson Lay: For clarity you're asking for the number of legal and illegals within 500-foot radius?

Vice-Chair Shibuya: Foot radius of this proposed area.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'd support that particular motion. I think what we're looking for is we already have constructive notice that there's suspected TVRs, six of them in this area. I think the Department needs to check those six residences to see whether or not there's a legal or illegal operation going on at that site, report back to the Commission and go from there.

Chairperson Lay: So at this point, we're still seeing if Mr. Medeiros—

Mr. Medeiros: Yeah, I'll support that.

Chairperson Lay: Okay. Commissioner Freitas?

Mr. Freitas: I have a question. Now if this motion goes through can I amend it for corporation, this is for corporation, amend it that we allow them to have a one-year permit because I don't think they should be punished for illegal dwellings? Could I amend the motion, friendly amendment?

Mr. Giroux: I don't know if it would be a friendly.

Mr. Freitas: Or an unfriendly amendment.

Mr. Giroux: If the Chair allows...it's kind of tricky because the deferral...I guess we should ask the Department on how they—

Mr. Freitas: Okay, I have another question. If this get, deferral get voted down can I come back and make a motion? Okay, fine. Let's do it.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: No, I was just going to respond to Commissioner Freitas. Once the decision is to defer that's the decision of motion if that thing is accepted then we'll just wait for the data to be provided then we can make a decision as to whether we want one-year, two-year or three-year types of terms.

Mr. Freitas: For Corporation Counsel—

Mr. Giroux: Let me just clarify. I'm not the parliamentarian, but if the Chair allows?

Chairperson Lay: Corp. Counsel?

Mr. Giroux: I'll walk you folks through this. The motion on the floor is to defer to have data. If the motion fails, a new motion could be put on the floor for a motion to collect data crafted with some type of approval, but the County has a real hard time with these condition precedent type of approvals, it's not very clean. I would, you know, I would just put on the table if the motion failed that you approve the permit with a one-year, you know, with a one-year time. But you have to separate the two motions.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: The reason I support the motion to defer is the applicant it's not fair for them necessarily to come to a meeting we have bare majority of Commissioners that are here in order to make a decision. And I understand that a death in a family is a reasonable reason for not making it to the Commission meeting, but I think one of the things that all of the Commissioners need to take into account is that if you have two unexcused absences at a Commission meeting you can be voted off of the Commission by the rest of the Commissioners. I believe that's in our rules, unexcused absences and it's the Chair's responsibility to determine whether an excuse is acceptable or not acceptable. And I think it would be fairer to applicants to have a full Commission to hear this particular case.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I think, you know, just the deferral does not stigmatize the applicant. It is means of obtaining data and information so that we can make a proper decision in terms of how dense is this community and perhaps maybe when we have it scheduled it again to hear it, the community may after hearing this on Akaku might wanna come to the hearing.

Chairperson Lay: Commissioners, any more discussion on the motion? Joe?

Mr. Prutch: Sorry, if you defer, if this motion does pass, I'd prefer of course, that you defer to a date certain so that the applicant does not have to do a 500-foot notice again. And we have two upcoming dates. It's up to the Director I guess but there's October 8th and October 22nd are the next two meetings. Now, I don't know what the schedule looks like yet or anything, and I asked the applicant if he's available for those two days and it looks like he is. So if you do defer, please pick a date so that we have a definite date.

Vice-Chair Shibuya: Question is, when can you get the data?

Mr. Prutch: Well, we already have the data on the existing ones of course. To be able to get the data on the possible illegal ones in the area, I'm guessing all I would do is a search on the VRBO or something for Maui Meadows vacation rentals and see if I can locate some that are in that area and be able to find out where they are and possibly how many rooms they're renting out, but I don't think it would take too long to do. Either that or I'll contact Code Enforcement 'cause I think they've already done this process, so I should be able to get a list from Code Enforcement that they've already processed.

Chairperson Lay: Director?

Mr. Spence: Code Enforcement is really good at doing internet searches not just the VRBO, but ...B&B, and private owner sites, and they're good at that. We can come up...we can at least, you know, find out about these six alleged.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd like to make a friendly amendment if you don't mind. I'd like to ask that we schedule it for the 22nd to allow the Commission time to do their research and I think the 22nd, four weeks would be sufficient time for them to get us the informed they want since they were available for both dates.

Vice-Chair Shibuya: Okay. Department saying okay?

Mr. Spence: Yes. I mean, certainly we'd have that research done by then. We could have it done by the 8th.

Vice-Chair Shibuya: I prefer the 8th.

Mr. Medeiros: Let's go with the 22nd, I wanna vote on this.

Vice-Chair Shibuya: Fine, 22nd. I'll accept the friendly amendment then.

Mr. Medeiros: Thank you.

Chairperson Lay: Any more discussion on the motion?

Mr. Spence: And...I mean, I know you're gonna ask me to repeat the motion. I wanna be clear on the maker on the motion what the exact information you're looking for. We know the legal rentals. We know what's there. So you're looking for illegal vacation rentals or bed and breakfasts within this...within 500 feet?

Vice-Chair Shibuya: Yes. Within 500 feet of this applicant.

Mr. Spence: Okay.

Vice-Chair Shibuya: That's keeping it not within the big neighborhood, just this one area.

Mr. Spence: Okay.

Chairperson Lay: Any more discussion on the motion?

Vice-Chair Shibuya: Zoning is very good at this.

Chairperson Lay: Joe?

Mr. Prutch: If I can just make a comment on too. I was just thinking about this, and I'm like, wait a minute. This deferral for looking up the illegal operations that may be out there, maybe...you know, what if the information comes back and there's 10 of them surrounding this property? My question is, why should the applicant be hurt for coming in and applying for a permit while the 10 of them are just operating with who knows if they're paying taxes or anything. That's the one concern I have.

Chairperson Lay: I have to agree with that too because this applicant's coming and we're saying he can't do it because illegals by you. It has nothing to do with you.

Vice-Chair Shibuya: No, no, no.

Chairperson Lay: So we're basing it on what is legally there and are you able to do that there? So that's how I'm seeing this whole thing also.

Vice-Chair Shibuya: That's correct.

Chairperson Lay: So at this point if any more discussion? If not, let's repeat the motion, Mr. Director?

Mr. Spence: The motion is to defer till October 22nd so the Planning Department can do research on if there are any other illegal vacation rentals or bed and breakfast within a 500-foot radius.

Chairperson Lay: Call for the vote, all those in favor?

Mr. Spence: That's five ayes.

Chairperson Lay: Motion carries.

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

VOTED: To Defer the Matter to the October 22, 2013 Meeting In Order for the Department to do Research on Whether There are Any Other Illegal Vacation Rentals or Bed and Breakfasts Within the 500-Foot Radius. (Assenting - W. Shibuya, J. Medeiros, J. Freitas, W. Hedani, P. Wakida) (Excused - K. Ball, M. Tsai, S. Duvauchelle)

Chairperson Lay: We'll take a recess, lunch right now till 1:20 everyone, 1:20 I'm giving you two more minutes.

A recess was called at 12:20 p.m., and the meeting was reconvened at 1:25 p.m.

Chairperson Lay: Planning Commission is now called back to order. On our next agenda item we have Communications. No. 1, Mr. Scott Crawford, Chair of the Hana Advisory Committee to the Maui Planning Commission transmitting their recommendation on the request by Terry and Michael Kristiansen for the State Land Use Commission Special Use Permit in order to operate the Entabeni

Cottage, a one-bedroom bed and breakfast home on a property situation in the State Agricultural District at Hana Highway, Hana, Maui. Gina Flammer is the Planner.

C. COMMUNICATIONS

- 1. MR. SCOTT CRAWFORD, Chair of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting their recommendation on the request by TERRY and MICHAEL KRISTIANSEN for a State Land Use Commission Special Use Permit in order to operate the Entabeni Cottage, a one(1) bedroom bed and breakfast home on property situated in the State Agricultural District at 370 Hana Highway, TMK: 1-2-004: 011, Hana, Island of Maui. (SUP2 2012/0011) (G. Flammer)**

Ms. Gina Flammer: Good afternoon. You'll notice that the date of the report is March 28, 2013. This is a Hana application. It was one of the very first applications that I received. It was July of 2012, I think is when we got it. So we had to wait till we had enough to go and get a quorum at the Hana Advisory Committee. You saw three from the meeting, that Hana meeting at your last one and then we haven't scheduled the next three but those will be coming to you shortly. We're also going out to Hana this Thursday and we have four applications on that agenda. So they're slowly but surely making their way to you. So what I'd like to do is just take you through this with a power point so you can see the pictures and then at the end I'll go a little bit into the report.

Okay, so we have Entabeni Cottage. It's a studio unit as you'll see, but we issue our permit based upon bedrooms so it's classified as a one-bedroom. It's a 800-square foot accessory dwelling. It was the first dwelling on the property. The owners lived there on and off and then they came back lived in there while they built their main home which is also just a one-bedroom. It's located in Nahiku. It has an implemented farm plan. They have an active nursery which is really interesting. I did include in there some of the farm income and as part of the nursery, they have a botanical display area that I found it was really nice to be able to go and actually see what a mature plant looks like instead of just the small plant. They also pride themselves on sustainability which is really nice and they kind of share that mission with their guests. So you can read a little bit about that in the report under the written description.

So I'll show you the photos of it first. Here's the building from the front, and then you can see the back, and then here's the view that the guests have off the back. I tried to do the best since it's just one room. I included their written description as Exhibit 3. You'll notice that they talk about 38 different types of palms, several hundred different varieties of plants and flowers. I had them include the nursery income here even though they did submit tax information. I didn't put that in the report. We ask about what the surrounding neighborhood is like. They're very large lots. EMI does own the lot right near them. What they have, she did talk a little bit about that. Lots of different varieties of chickens and eggs and I'll show you what some of the other stuff that's on there, the shade building as well. The farm plan is included in there. It's the original farm plan from 2004 when they built the main house. On it parts of it shows future, but when I did go out most of the future stuff has already been done. It did meet the qualifications even way back. They listed in there all the different types of crops they have, what their green house vegetables and herb plantings are. She also listed for me the plant list that they have. This is probably one of my

favorite site visits. I learned quite a bit. And she also has Hawaiian plants in there. I should say, both of them do. Then she does some tours also. She'll do them for the guests but also she does them independently and then they do, do some tropical horticulture education. The applicant Michael Kristiansen was the Director of the Honolulu Botanical Gardens, I think from the mid-80's to the mid-90's so he brought a lot of that education with him.

And then I'm just gonna show you some pictures and you can see what the grounds look like. What I'm showing you now is the display area so when people come to buy plants, they can take a look what they look like. The guests are also welcome to walk around and look at the area. I'd tell you what all the different plants are, but I only know some of them. They do have markings on many of them. You can see the little sign right there, not parking sign, there's plant signs that are down there. There's a wide variety. I might have taken a lot of pictures of the flower just 'cause they're so beautiful, but there's also a lot of different types of palm trees, and then I'll show you where the fruit comes in in just a minute. There's a...you have some fruit trees also that are out there. There's some of the different varieties, the palm trees. And then here we have some of the work area where they propagate the plants, grow the plants. And then we start getting into some of the herbs and then vegetable garden that's in the shade structure.

In terms of agency comments, you'll notice that the State Office of Planning, that's the Department of Business, Economic Development and Tourism didn't have any comments on this one. Probably one of the more interesting Real Property Tax comments I've ever seen. They wanted to conduct an Ag inspection and when they were done they increased it to almost the entire property, so I was kinda glad that they came in for the permit and had an opportunity to really get all the Ag properly valuated. There were comments, no disturbances that the police found. And this is one of the early ones when the Police were doing really thorough not just a check of the records, I think...did they come out? Yeah, they actually came out to the property also.

And then for the testimony, we had three letters of support from neighbors within 500 feet and there's not that many lots. There was also a letter of support from the Hana Business Council which you might find interesting. And then at the Hana Advisory Committee they made a recommendation of approval, and some of the comments included former Planning Commissioner Ward Mardfin is now on the Hana Advisory Committee, he had known of the applicant's work at--oh, I didn't...I thought I fixed the typo--at the Honolulu Botanical Gardens. He does ask everybody why they don't rent long-term and I think it's a good question because renting long-term is a permitted use and kind of what makes it a special use is the fact that they're renting for a shorter period of time. And in this particular case, they have some family on the mainland. I know they have son, two grandchildren. I think they just had a second grandchild here on this date, actually March 28th is when she was out there, so they'd like to leave it open for the family to come. It's also a very small area. It's only 800 square feet studio unit and it's also 70 feet from their main house. So they prefer to have the family come, and when it's not rented, they rent it short-term. One of the members, they praised them and then asked, you know, can you do more for our community, and so then he talked a little bit about what he's already done for the schools. And then there was another testifier that testified about his involvement in the community and the importance of having those jobs right there locally out in Nahiku.

And then I wanted to show that they did add more PV panels recently. They are off the grid completely. And then I have Terry Kristiansen here with me today, one of the applicants if you have any questions. Thank you.

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

Ms. Terry Kristiansen: Beg your pardon?

Chairperson Lay: Do you wish to say anything?

Ms. Kristiansen: No. Other than I'm certainly hoping to get a positive response from all of you. I'm Terry Kristiansen. If you have any questions?

Chairperson Lay: Thank you. Now we'll open up to public testimony. If anyone wishes to testify at this time, please step up to the podium and you have three minutes to testify. Seeing none, thank you very much. Commissioners, do we have any questions for the applicant? Seeing none, can we get the Department's recommendation?

Ms. Flammer: Okay, sure. You'll notice that we have the same seven standard conditions that we do for all bed and breakfasts that are obtaining a State Land Use Special Use Permit. You'll notice the last one is that the farm plan has to remain implemented. I don't think we're gonna have a problem with this one, but we do require evidence when they come in for renewal. So in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the March 28, 2013-Hana Advisory Committee meeting as it's findings of fact, conclusions of law, and decision and order and authorize the Director of Planning to transmit said recommendation to the Maui Planning Commission.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Move accept the Staff recommendation.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Shibuya, seconded by Commissioner Medeiros. Any discussion on the motions? Commissioner Medeiros?

Mr. Medeiros: I'd like to commend you on your work. I am a big supporter of Ag and any time you have a real farm asking to supplement the income I will support it every time.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: The motion is to recommend approval to the Planning Commission or I --

Ms. Flammer: No, I said the end for Hana Advisory Committee. It's to accept the Director's report. I have to get with James and get the exact wording when we bring them from Hana. It's to accept

the Director's recommendation and the Hana Advisory Committee's recommendation.

Mr. Spence: Commissioner Shibuya is that what you meant?

Vice-Chair Shibuya: Yes.

Mr. Spence: Excellent.

Chairperson Lay: Can you repeat the motion, Mr. Director?

Mr. Spence: The motion is to approve the Planning Director and the Hana Advisory Committee's recommendation.

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

Mr. Spence: That's four, that's five ayes.

Chairperson Lay: Motion carries. Congratulations.

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

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

Chairperson Lay: Okay, moving onto our acceptance of the Action Minutes from the September 10, 2013 meeting and Regular Minutes from the August 13, 2013 meeting.

D. ACCEPTANCE OF THE ACTION MINUTES OF THE SEPTEMBER 10, 2013 MEETING AND REGULAR MINUTES OF THE AUGUST 13, 2013 MEETING

Mr. Lay: Did all the Commissioners get a chance to look over these minutes?

Ms. Wakida: I move.

Vice-Chair Shibuya: Second.

Chairperson Lay: Motion to accept, and seconded by Mr. Shibuya. All those in favor say, "aye".

Commission Members: Aye.

Chairperson Lay: Motion carries.

It was moved by Ms. Wakida, seconded by Mr. Shibuya, then

**VOTED: To Accept the Action Minutes of the September 10, 2013 Meeting and Regular Minutes of the August 13, 2013 Meeting.
(Assenting - P. Wakida, W. Shibuya, J. Medeiros, W. Hedani, I. Lay)
(Excused - K. Ball, M. Tsai, S. Duvauchelle, J. Freitas)**

Chairperson Lay: Director's Report.

E. DIRECTOR'S REPORT

1. **Pursuant to the Special Management Area Rules of the Maui Planning Commission, notification to the Maui Planning Commission of the filing of the following Special Management Area (SMA) Appeal on September 6, 2013:**

ISAAC HALL, attorney for MAUI AINA COMPANY, LLC, JOSH STONE, and MARTIN BRASS in their capacities as managing members of MAUI AINA COMPANY, LLC and CHRIS and ANNIE MCNEIL submitting an appeal dated September 6, 2013 of the SMA Minor Permit issued by the Planning Director for an addition to the Paia Inn at 93 Hana Highway, TMK: 2-6-002: 027, Paia, Island of Maui. (APPL 2013/0006) (SM2 2013/0087) (SMX 2013/0234) (E. Wade)

Mr. Spence: Commissioners, the first one was just to notify you of an appeal and SMA Permit, SMA Minor Permit that we granted. Isaac Hall, you've seen him pop in and out today, is representing the appellant and so this is just to inform you. No action need to be taken.

2. **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. **Mr. EDWARD THIELK requesting a two (2)-year time extension on the Special Management Area Use Permit to initiate construction of the proposed repair, renovation, and construction of improvements at the Mana Foods Store, TMK: 2-6-005: 002, Paia, Island of Maui. (SM1 2004/0024) (L. Callentine)**

Mr. Spence: The second on is to notify you of my intent to process a two-year time extension for a proposed repair, renovation, and construction of improvements at Mana Foods, Paia. If you have any questions, Livit Callentine is here to answer.

Chairperson Lay: Commissioners, any questions? Seeing none—excuse me, Commissioner Hedani?

Mr. Hedani: Move to acknowledge receipt and waive review.

Mr. Medeiros: Second.

Chairperson Lay: All those in favor say, "aye".

Commission Members: Aye.

Chairperson Lay: No opposed? And those opposed?

Mr. Spence: None.

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

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

- 3. Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing and make recommendations on the subject applications:**
 - a. ANJA PAIVIKKI RUTIZ and RICHARD RUTIZ requesting a State Land Use Commission Special Use Permit in order to operate Anja's House Bed and Breakfast, a one (1) bedroom bed and breakfast located in the State Agricultural District at 41049 Hana Highway, TMK: 1-6-005: 026, Hana, Island of Maui. (SUP2 2013/0024) (G. Flammer)**
 - b. TORMOD ISETORP requesting a State Land Use Commission Specials Use Permit in order to operate Ekena, a three (3) bedroom short-term rental home located in the State Agricultural District at 290 Kalo Road, TMK: 1-3-009: 013, Hana, Island of Maui. (SUP2 2013/0018) (G. Flammer)**

Mr. Spence: And the third thing is there are two items, one bed and breakfast and one, short-term rental. This is for the Commission to designate the Hana Advisory Committee to conduct the public hearing and make recommendations on the first one, I'm not going to try to Anja Rutiz and Richard Rutiz, it's a bed and breakfast. And second one is Tormod Isetorp. Commission just needs to recommend that the Hana Advisory Committee hold the public hearing.

Ms. Wakida: Do you need a motion?

Chairperson Lay: Yes.

Ms. Wakida: I so move that we direct this to the Hana Advisory Committee.

Mr. Hedani: Second.

Chairperson Lay: Motion by Commissioner Wakida, seconded by Commissioner Hedani. All those in favor say, "aye".

Commission Members: Aye.

Chairperson Lay: Those opposed? Motion carries.

It was moved by Ms. Wakida, seconded by Mr. Hedani, then

VOTED: To Direct the Hana Advisory Committee to Conduct the Public Hearing and Make Its Recommendation to the Planning Commission on the Subject Applications.
(Assenting - P. Wakida, W. Hedani, J. Medeiros, W. Shibuya, I. Lay)
(Excused - K. Ball, M. Tsai, S. Duvauchelle, J. Freitas)

4. Planning Commission Projects/Issues

Mr. Spence: Planning Commission Projects and issues, I have nothing to report.

5. EA/EIS Report

Mr. Spence: EA/EIS Report, I have nothing.

6. SMA Minor Permit Report

7. SMA Exemptions Report

Mr. Spence: You've received in your packet, Item 6 and 7, the SMA Minor Permit Report and SMA Exemption Report.

Chairperson Lay: You have any questions on those reports, Commissioners? Can we have a verbal acceptance of these report? All in favor?

Commission Members: Aye.

Chairperson Lay: Those opposed? Acceptance of the reports.

The SMA Minor and SMA Exemptions Reports were unanimously accepted by the Commission by a verbal vote.
(Assenting - J. Medeiros, W. Hedani, P. Wakida, W. Shibuya, I. Lay)
(Excused - K. Ball, M. Tsai, S. Duvauchelle, J. Freitas)

8. 2013 Hawaii Congress of Planning Officials (HCPO) Conference - September 18-20, 2013, Kona, Island of Hawaii

Mr. Spence: I'm not sure why the HCPO Conference is on here. I hope everyone who went had

a wonderful time.

9. Discussion of Future Maui Planning Commission Agendas

a. October 8, 2013 meeting agenda items

Mr. Spence: Discussion of Future Planning Commission Agendas, you can see on your...on the memo from Clayton Yoshida, there are gonna be two public hearing items, a short-term rental home and then Communications requesting a use determination for a Wailuku HI5 Recycling and Redemption Center. That's all I have.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: If you will give me a few moments I'll run through some of my notes on the HCPO. Is it okay?

Chairperson Lay: Go right ahead. I wasn't there.

Vice-Chair Shibuya: One of the take aways was I wanted to have somebody from the utility confirm this for me is 50 percent 2010 electricity rates when up because of Japan switching from nuclear power to fossil fuel, and so that, in Hawaii our electric bill just went up 50 percent because of that.

Another one, just take away on the tour. I went to that tour which the NELHA which is a Natural Energy Laboratory Hawaii Authority and they're now producing not only cold water type of O tech power generation but they actually are raising abalone and the abalone specie is actually from Japan because it's smaller in size, it's tender. You don't have to beat it up. If you got the abalone from California you would have to beat 'em up before you could chew into 'em. So this one is about I would say four inches in diameter, very tasty. I went on that thing and they gave us a free sample of that and it's just wonderful. It was great. It was like a opihi.

Chairperson Lay: I heard they're very popular and doing really well. They actually the competition coming over and flying by and trying to get some secrets from theirs one, taking photographs. That's how successful they are getting.

Vice-Chair Shibuya: That's correct. Yeah, we did have security around that area and we even had to sanitize ourselves. We had to step in iodine solution, and wash our hands. So it was really great because bacteria was a problem with the...(inaudible)...it was an excellent tour. I paid my own way on that one because the County just paid for the two days and this was actually a day before. And thank you very much boss, for letting me do this. I wanted to do it.

Also, there's on the ranch, the ranch is from the shoreline to mountain, it's called the ahupuaa and so from zero elevation to 7,000 elevation they have their own water catchment and their own well. And the well water reminded me of when I grew up in Kula, it was sorta yellowish color. It's exactly the same color. And so—it's just...the toilet is not dirty it's just that that's the color of the water.

And also they have a nonconforming type of issue. The ranch houses and the church were actually

scrounged from other sources and they put things together and so if they went in for permitting and tried to make improvements, they would have to go for permitting, well, these structures don't conform to the actual code. Yeah, so anyway, I'm just telling you that. Don't go squealing on them now.

Chairperson Lay: I think you've taken care of that.

F. NEXT REGULAR MEETING DATE: SEPTEMBER 24, 2013

G. ADJOURNMENT

Chairperson Lay: Commissioners, do you have anything else? If not, thank you very much and meeting adjourned.

The meeting was adjourned at 1:45 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Jack Freitas (excused at 12:20 p.m.)
Jason Medeiros
Wayne Hedani
Ivan Lay, Chair
Warren Shibuya, Vice-Chair
Penny Wakida

Excused

Keone Ball
Sandy Duvauchelle
Max Tsai

Others

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