

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 28, 2014**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:11 a.m., Tuesday, January 28, 2014, 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: If I could ask everybody at this time if you have a cell phone to put it on silent so we don't have any interruptions. Thank you. Public testimony...oh, at the discretion of the Chair, public testimony may also be taken when the agenda items are discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead of not testify when the agenda item comes up if you have some place to go. Today is January 28<sup>th</sup> and it's a little after 9:00. We had a little problem with the parking outside and we're glad you can all attend. Our first agenda item?

Mr. Spence: Oh, do you wanna take public testimony?

**B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Chairperson Lay: Oh, excuse me. Does anyone wish to testify at this time. If you do, please step forward to the mic, identify yourself, and you have three minutes to testify.

Mr. Spence: And before we start, I'd like to note that the Commission practice is to allow testimony before specific agenda items to come up just to accommodate people who need to take off for whatever. If you testify now and then the agenda item comes up, you will only be allowed to have one time to testify either now or when that item comes.

The following individuals testified at the beginning of the meeting:

Jonathan Aber - Item C-2, Steve and Janna Schlag, Short-Term Rental Home Permit  
David Moser - Item C-2, Steve and Janna Schlag, Short-Term Rental Home Permit

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

Chairperson Lay: Does anyone else wish to testify at this time?

Unidentified Speaker: ...have an opportunity to testify?

Chairperson Lay: When the agenda item comes you'll have an opportunity to testify at that time if you're waiting for that. At this time public testimony is closed. Our first agenda item.

Mr. Spence: Good morning, Commissioners. Your first public hearing item this morning is Mr. Wallace Macaskill and Kenneth Stoddard regarding a B&B Permit to operate a four-bedroom on Ilikahi Street in Lahaina. And our Staff Planner this morning is Ms. Livit Callentine.

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

- 1. WALLACE MACASKILL and KENNETH STODDART requesting a Bed and Breakfast Permit in order to operate The Ilikahi, a four (4)-bedroom bed and breakfast home operation located in the R-2 Residential District at 441 Ilikahi Street, TMK: 4-6-006: 004, Lahaina, Island of Maui. (BBWM T2012/0002) (L. Callentine)**

**This bed and breakfast home application is being referred to the Maui Planning Commission for review and action because the property is located within 500 ft. of a previously permitted bed and breakfast home operation.**

Ms. Livit Callentine: Thank you, Director. And I think I should say happy new year to the Commission 'cause I don't think I've seen you since we turned the clock. So anyway, nice to see you all again. I've missed you.

So yes, this morning we are considering a bed and breakfast home at 441 Ilikahi Street in Lahaina. Now this home has come before you, this application has come before you because there is one permitted bed and breakfast home within 500 feet of the project and that is the Old Lahaina House at 407 Ilikahi Street which is approximately 390 feet from this project.

So first I wanna just say just this morning you were handed a document that looks like this to go with your staff report. I brought it over and the difference if you'll note on the inside cover of the second page of this document there is a list of exhibits that will help us as we go through this application. You'll see the first box is exhibits that were included in your department report which you received previously in the mail. The second box is exhibits that were submitted after the department report was mailed. And that consists of a updated neighbor comment map which is Exhibit No. 9, an updated neighbor...we'll actually not an updated, but a new neighbor comment table Exhibit 13. Second letter of support from a neighbor. Another letter of...a first letter of support from another neighbor, a fourth letter of opposition from a neighbor. And a first letter of opposition from another neighbor. So we'll get into that later, but I just kinda wanted to orient you to what you're seeing in this second slim volume you got this morning.

So as the Director said this a bed and breakfast home and it is in the Urban District. The property is zoned R-2 Residential and the community plan designation is single family. The neighborhood is characterized by similar single-family dwellings. The site plan is shown in Exhibit 1 of your report that is our report to you dated January 28, 2008. Exhibit 2 is the floor plan. And Exhibit 3 provides photographs of the site and the dwellings. The location map is shown in Exhibit 4. And then if you look at Exhibit 5 that is aerial photos of the property at different scale. We'll get to that in a moment so you don't have to try to track it all down right now.

But as an overview what's on the property right now there are two dwellings on the property. Each dwelling contains four bedrooms. So there's a total of eight bedrooms on the property. And if you look at Exhibit 2 of your report--it looks like this--this exhibit, I put this red outline around the two houses because this is a very tricky floor plan and site plan, and let me walk you through it. So, have you all turned to this Exhibit 2? You see what I'm looking at? Okay, so if you look at the left-hand box with the red border around it, it's labeled main dwelling. Then you look at the right-hand box and that's labeled dwelling 2. Okay, when this property was permitted with a...with building permits some years ago, it was the owner at the time was issued two building permits for two main dwellings and then a third building permit for an accessory dwelling. When the inspectors from DSA went and inspected the homes they found that the accessory dwelling exceeded the allowable size so a compromise was crafted by parties previous to all of us. The compromise was that a continuation of the roof was created so the accessory dwelling which is shown, which was what is shown on this plan as No. 1, up in the upper-left quadrant of this drawing that was an accessory dwelling. Then there is below it what's labeled owner's unit which is a two-bedroom unit, and then next to it there's a one-bedroom, is one bed-room that's labeled No. 2. All of those were combined legally with a fourth building permit which actually combined those into one dwelling. As odd a sit seems, and let me tell you it took me quite a bit of time to unravel this. We were all scratching our heads over it actually, but we finally did become clear through...we actually were able to obtain original building plans when the property was constructed. We've consulted with DSA and with Zoning Division and that is what we, we deduced. And so that right-hand half of the, that page that's noted Dwelling 2 is actually one dwelling according building permit records. So the proposed bed and breakfast will take place in four bedrooms. Two of these bedrooms in each of the two dwellings. If you're still looking at Exhibit 2, the floor plan, you'll see Room No. 1 and Room No. 2 are shown in the main dwelling, and Room No. 3 and Room No. 4 are shown in Dwelling 2. There are seven parking spaces on site which you would be able to see in Exhibit No. 1. The dark area on the lower portion of that drawing shows you numbered parking stalls 1, 2, 3, 4, 5, 6, 7. So there are seven spaces. There are only six spaces required for this B&B. Two are for the main dwelling and one for each of the B&B rooms. Parking spaces are shown in Exhibit 1 as I said before, sorry.

Okay, so there is one permitted B&B within 500 feet as I mentioned earlier. There are two permitted short-term rental homes within 500 feet. Next door to this property is and for this you might find it helpful to turn to Exhibit No. 6. Exhibit No. 6 identifies the subject B&B. It also identifies right next door a short-term rental home which was approved under Conditional Permit then as you follow around there, you see it, the approved Old Lahaina House. You see an approved short-term rental home named Maui Sandy Beach. Those are all within 500 feet of the property. Then outside that 500-foot border, there are two additional proposed short-term rental homes, the Tropical Garden Vacation and the Blue Sky Villa further down.

The West Maui Plan allows for a total of 88 B&B home permits. As of January 1, 2014, only nine B&B permits had been granted and remain active in the West Maui Plan region. By way of comparison, the West Maui Plan, Community Plan, allows for 88 short-term rental home permits and 23 of these have been approved in the first half of the year...or at the first of year, excuse me. At the first of the year.

The application was transmitted to the Police Department and the Real Property Tax Division. We had comments from neither. There are no open requests for service on record. You'll find letters from neighbors in Exhibit 8 in our report of January 28<sup>th</sup>. And in Exhibits 14 through 17 in this

morning's packet. We received five letters in support from owners owning property within 500 feet of the applicant's parcel. There were four letters of objection filed. This morning's packet includes an updated neighbor comment map which is Exhibit 9, and there is an updated in that small packet again that you got this morning, if you look at Exhibit 9 which is the third sheet, this is an updated map showing in red arrows pointing downward, these are the properties where there were objections raised. The green arrows pointing up are the properties where support was recognized. I'd like to point out that three of the properties adjacent to the proposed bed and breakfast home are in support of the project in addition to more just south of the project are in support. And then the fourth property if you were to look at that, the subject property as having four sides which it does, the fourth property between it and Ilikahi Street is the other...the short-term rental homes that's approved and...So two of the four neighbors opposed to the project are at the outskirts of the 500-foot boundary. You'll see that as three and four in the red arrows and two are well within the boundary of the 500-foot boundary.

The neighbors express concern. What are they, what are they concerned about? They are concerned about parking on the street. They are concerned about proliferation of permitted and unpermitted B&Bs and short-term rentals in the neighborhood. And they are concerned about the potential for impact on community character and quality of life. The applicant's/owners live on the property. There are policies in place. You see that in Exhibit 10 of the report. The proposed B&B complies with Chapter 19.64 of Maui County Code and provides one additional parking space beyond that required. When it comes to parking by the way, B&Bs are required to have more parking than short-term rental homes are. The applicants wrote a response to the neighbor comments. In Exhibit 12, the applicants confirm the availability of parking, offer assurance of their intention to comply with all rules and regulation and maintain sound and happy relationships with their neighbors.

Also, I conducted a site visit of the property and I confirmed that the applicants are not operating a B&B on the site. I would like at this time to introduce one of the applicants who is here. Mr. Wallace Macaskill, and he will be available to answer any of your questions as well I. After your discussion, I can give you the recommendation.

Mr. Wallace Macaskill: I'd like to introduce myself as Wallace Macaskill, one of the owners of the property. And I'd like to take this opportunity to thank the Maui Planning Commission for your time today and also to Director Spence and to Livit, our Planner. At this time, if there are any questions that you have I'd be more than happy to answer them for you.

Chairperson Lay: Commissioners, we're gonna hold up on questions till after we have public testimony in case any issues are brought up.

Mr. Macaskill: Thank you.

**a) Public Hearing**

Chairperson Lay: At this time, we're gonna open to public testimony. Does anyone wish to testify at this time? Please come up to the mic and identify yourself.

Mr. Tom Brayton: Good morning. My name is Tom Brayton and my wife, Chris and I live right next

door to this property and we also have a long-term rental property that adjoins the property. I'm sorry, I didn't bring 15 copies of this. I didn't know there would be that many people here. I brought 10. But anyway the proposed B&B is the yellow property, the flag lot, and I live at the blue property which adjoins it. This is my full-time home and then I have a flag lot right behind my property that's a rental that I've had the same people in there, long-term rental for five years. I'd like to say that both my wife Chris and I are very much in support of the B&B.

To us, a B&B is the best renter or the best neighbor we could possibly have other than a single-family home. And obviously with that eight bedrooms it was never going to be...or very unlikely going to be a single-family home. A B&B means there's always somebody on site. If there's ever an issue, there's someone for us to call and somebody there that's probably gonna deal with the issue before we have to call. A B&B is just a good neighbor. When travel, we try to stay in B&Bs whenever we travel. The first time we came to Maui we stayed in a B&B and we ended up buying property here as a result of the wonderful experience.

People that stay in B&Bs tend to be a little bit older, a little bit more mature. They tend to be couples. They tend not to stay long. If you get a bad neighbor, they're there for three years and they're gone. So for Chris and I, and for our rental property which adjoins 50 percent of the proposed B&B, we're for this and to point out that if you look at the map of where the four rental units are, they're hugged up right next to our property. One of those rental units is...my house is six feet from the lot line, theirs is six or eight feet from the lot line, so they're very, very close unlike some of the other properties that are farther away. So I think more than any other home in Lahaina this affects us, and we're very much in favor.

Chairperson Lay: Commissioners, any questions for the testifier? Commissioner Shibuya?

Vice-Chair Shibuya: Yeah, thank you very much for your testimony. Is there a community CC&R or association in this area that all of your are associated with or...

Mr. Brayton: Well, there's a neighborhood watch group that started and was very, very active and it's now as probably with most neighborhood watch groups it's not so active. But it's mainly now an email group. If somebody's aware of a break-in in the neighborhood, they send an email and let everybody know. Like my bike was stolen. I sent an email and as a result of that, one of my neighbors spotted the bike and I got my bike back.

Vice-Chair Shibuya: Good. So there's no formal association then?

Mr. Brayton: No.

Vice-Chair Shibuya: Thank you.

Chairperson Lay: Commissioners, any more questions for the testifier? Seeing none, thank you very much. Does anyone else wish to testify at this time? Seeing none, public testimony is closed. Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: Thank you. This question is, probably Livit can help me with this. I'm trying to make sense of one of these maps.

Ms. Callentine: ...see if I can find it real quick here. Do you know which one you're looking at?

Ms. Wakida: Exhibit 2.

Ms. Callentine: Okay.

Ms. Wakida: You have two owner's units. Which...who occupies the owner's units?

Ms. Callentine: You know, I'm gonna actually answer that. The impression that I've been given and when I've done a site visit is that the owners will live primarily in the unit that's in the left-hand side of the drawing and they will also make use of the right-hand end of the dwelling for an office and that's what I know for an office. So I think that question if you have...you know, we could hold that or we can have Mr. Macaskill come back up and answer that question.

Ms. Wakida: Yes, that would be good.

Ms. Callentine: Okay.

Chairperson Lay: Mr. Macaskill?

Mr. Macaskill: ...(inaudible)...

Chairperson Lay: Just identify yourself again please too?

Mr. Macaskill: I am Wallace Macaskill. Just to rely to your answer that is exactly the case. We will live in the left-hand side which is our home and then on the opposite side we're going to use that as an office area because we anticipate that we'll need quite a lot of space for our cleaning materials, office and things that need to run the B&B. And we feel that it's better for the neighbors's concern and for us to manage the guests if they sort of within the property rather than on the exterior borders. So that's the plan for this.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: The owners units on the right approximately how many square feet is that?

Mr. Macaskill: Off the top of my head I think it's about 750 feet. The one, this one over here?

Ms. Wakida: Yes.

Mr. Macaskill: Yes.

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

Mr. Hedani: I guess this is for Livit. On Exhibit No. 2, what does the red line between the three units on the right, and the three units on the left represent?

Ms. Callentine: That's on Exhibit 2? Yes, okay. What I wanted you to understand and maybe I didn't make it clear before. The red lines, there's a red lines around one dwelling and red lines around the second dwelling. The red lines do not represent any building lines at all. They are just representational to let you see that these are two separate dwellings.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Livit, what I see is six units on one lot with eight bedrooms.

Ms. Callentine: That's exactly what I saw. Honestly I'm a big skeptic and that's exactly what I saw. And so I went out and I went through every single room. I went through every single building permit. I am very clear now that although it's perhaps unconventional, it is absolutely the way that the property is viewed by Public Works and by our Zoning Division. These are two separate dwellings because they have been connected. Maybe you didn't hear me in the beginning I said there were two building permits issued for two main dwellings and one building permit issued for one accessory dwelling and subsequent to that the owners that owned the property combined one of the main dwellings with the accessory dwelling and that was the portion of the property that's on the left-hand side of the property and that's now one dwelling even though it looks like it's three dwellings.

Mr. Hedani: So in your eyes...well, let me ask it in another way.

Ms. Callentine: Sure.

Mr. Hedani: If there's only one lot and this is only one lot, how many buildings are allowed on it and how many buildings exist?

Ms. Callentine: This is R-2, there are two dwellings allowed. There's no limit to the number of...well, depending on the size of the lot...I've actually encountered as long as the minimum square footage on the lot per dwelling is available on the lot...like if it was a half acre lot in R-2, you could put more than two or three or four, you could put six dwellings on the lot perhaps if you had at 7,500 square feet per dwelling. This lot is 19,000 square feet. So there's no limit to the number of accessory dwellings they could have, not dwellings, but buildings although there's a carport. I didn't see any storage buildings so they can have dwellings unless they had enough room to have more, yeah.

Chairperson Lay: Director?

Mr. Spence: Just a comment. I'm just confirming what Livit is saying. The Zoning Code says one house per certain amount of square footage not per lot, but say in this case R-2 it's one house per 7,500 square feet. So R-3 minimum would be 10,000, R-1 would be 6,000, and then you're allowed to have, if you have room left over you're allowed to have your ohana as well. But you're only allowed one ohana per lot.

Mr. Hedani: Okay, what I see in this picture is somebody that basically pushed the limits of what you could actually build on the lot to maximize the number of dwellings, yeah.

Mr. Spence: Right, and that's not the fault of the applicant. The previously owner lawfully built whatever is on the property. So these are lawfully existing residences. Whether the previous owner pushed it or not, they're lawfully existing.

Mr. Hedani: Okay, and they were brought into a lawful condition by connecting the buildings?

Mr. Spence: No, they were already allowed because of what we had just discussed. It's a 19,000 square foot lot. They could build, I don't know, my math.

Mr. Hedani: Three units.

Mr. Spence: Yeah, they could probably do three units. So they have two, so they're fine.

Ms. Callentine: They'd need 21,000 for...they'd need like 22,000 for three units. Here's where I think we're getting confused if I could clarify? These two main dwellings which did consist of everything that's in the right-hand side of this page that's in—marked off in red on the right, that was one main dwelling. One the left-hand side, what is shown as the owners unit and No. 2, was the second main dwelling. What is shown as No. 1 above was a permitted accessory dwelling. However, when it was constructed it was not constructed according to plan. It was too large. So they were either going to cut it off, tear it down or connect it. I do not know what kind of a conversation transpired between Public Works and the Suzuki Family who owned it at the time and built it. But that is, that is the solution that they arrived at. I can really understand how it's confusing. Well, I absolutely understanding your needing to go through this.

Chairperson Lay: Commissioners? Commissioner Ball?

Mr. Ball: The parking on Exhibit 1, is that in or what's happening with that?

Ms. Callentine: Yes, it's in. Let's see if I got a photograph of it.

Mr. Ball: With a follow up on that there's a letter from Ms. Kanemitsu stating that there's a jeep that parks, I don't know somewhere on the street and why is that if there is ample parking there?

Ms. Callentine: Well, I was not able to confirm that there was jeep that parked on the street because...that anyone can say whatever they want to would we know...

Mr. Ball: Maybe the applicant can speak to that?

Ms. Callentine: Sure.

Mr. Macaskill: Wallace Macaskill again to reply to that. I was approached a few times also asking about a jeep that parked on the street. To my knowledge we had no long-term tenants that had a jeep and I've since discovered it belonged to a lady that did a long-term rental about three doors down and the lot that the jeep was parked on is quite a big lot so from time to time one does notice a few cars there, but I've been very, very particular whilst we were in the process with our long-term tenants because we have quite sufficient parking on site. So I feel that we never at any time sort



of subjected our neighbors to people parking on the street. And I was very, very conscious of keeping that controlled.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Just kind of unrelated but ADA does that apply to this at all? I notice some of the pictures it has....

Ms. Callentine: The County does absolutely no enforcement of ADA. That is a Federal mandate. It's actually enforced through the courts.

Mr. Ball: No, but do we have to comply with that B&B?

Ms. Callentine: No, it's not in our Code. We do not have to comply with it.

Chairperson Lay: Director?

Mr. Spence: Because it's a single-family residence ADA is not applicable. For public accommodations where you're talking about a hotel or a supermarket or a Planning Commission hearing room—

Mr. Ball: Or B&B? No? No, okay.

Mr. Spence: No. ...(inaudible)...single-family residence ADA would not apply.

Mr. Ball: Okay. I just thought maybe the commercial use of it would change that, but apparently not.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Mr. Macaskill, let's say you have this approval. You're gonna probably need some outside help, let's say landscaper or some cleaning agencies to come and help you where would they park?

Mr. Macaskill: Where would they park? Well, we do have an extra space on the property. We actually only have one car and in the B&B Ordinance you have to allocate to spaces for the owners, but we actually only have one. So we actually even if the bed and breakfast was at full capacity, we'd have to spare parking places. So if we did employ cleaners we certainly could accommodate them. We do have landscape people that come once a week at present, and they always park on the property whenever they come.

Vice-Chair Shibuya: Okay, that's the assurance I like. Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, Mr. Macaskill, you had four homeowners in the area opposed? Did you meet with any of those homeowners to discuss their concerns?

Mr. Macaskill: I have met with one of the ladies that wrote a letter I think quite some time ago in the application process, and I assured her that we were very, very conscious and we had enough parking on our property so to satisfy her concerns about parking. And she's good friends with the people that have short-term ...(inaudible)..rental opposite her. So they know her very well, and I was introduced to her through that so I was able to assure her that we certainly as a neighbor want to make our neighbors happy. We don't want to cause problems for them. The other—

Ms. Wakida: Excuse me, who would that person be you're talking about?

Mr. Macaskill: It was Lena Kanemitsu.

Ms. Wakida: You talked with her?

Mr. Macaskill: Yes. The other people I haven't actually met because I think they're further out of for the 500 feet radius and I never had the opportunity. Because it's quite a very friendly community and I often our walk our dogs down at the beach so you meet a lot of people. And I do know quite a lot of the people that live in our community but I've never had the opportunity to meet those other people.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Normally I ask those questions about the fire protection, Livit mor Mr. Macaskill can tell me where the fire hydrant is locate. Where on the map? Maybe you can point it out to us and whether you do have some smoke alarm or some sort of extinguishers located.

Mr. Macaskill: Part of the home inspection report requires that all bedrooms have to have a smoke and firm alarm so these have all been installed. I test it regularly once a month and then we have fire extinguishers in each...in the main dwelling and in the accessory dwelling in the probably common hallway and these are very clearly marked for the guests if they do come. And we've also provided an additional small fire extinguisher within each bedroom so that there's sufficient coverage.

Vice-Chair Shibuya: Right, because when you do have guests they're not familiar with the surroundings and in the emergency they need some route or some means to mitigate so that they can escape.

Mr. Macaskill: And it's certainly part of our policy to once the guests check-in, it will be one of the first things that we make them very aware of is where the fire extinguishers are and the emergency fire escape.

Vice-Chair Shibuya: And back to the fire hydrant, where would that be?

Mr. Macaskill: The fire hydrant?

Vice-Chair Shibuya: Yes.

Mr. Macaskill: The fire hydrant in each, in the main dwelling in the breezeway or the main passage

we have a fire extinguisher.

Ms. Callentine: Excuse me, I think what you're asking about is a County hydrant?

Vice-Chair Shibuya: That's correct.

Ms. Callentine: I didn't see, I didn't look for a hydrant. That's not a requirement of the ordinance. I did not look at –

Vice-Chair Shibuya: Well, it's a requirement for me.

Mr. Macaskill: Yes, there is one on the street.

Ms. Callentine: You're following your ordinance Commissioner. The ordinance does not require a hydrant. He wouldn't go turn on a hydrant. His guests wouldn't go turn on a hydrant. That would be the Fire Department.

Vice-Chair Shibuya: Is it accessible to the Fire Department to perform the protection that he needs. He's now no longer a resident. He is now–

Ms. Callentine: He is a resident.

Vice-Chair Shibuya: When he has the bed and breakfast, he now no longer a resident, he is a commercial operator. Now the standard of care in my mind has ratcheted up. We need to care for your customers.

Ms. Callentine: Well, certainly. And I will just say that I won't address the question of whether this is a commercial property or not because we've talked about that a lot and I don't think it's my place to repeat what's been said in the past. I will say that regarding the fire hydrant and fire protection the building permits would not have been issued if Fire hadn't approved. Fire has to review and sign off on all building permits. So you can actually be assured if a project has building permit, it's been reviewed thoroughly by Fire Department.

Vice-Chair Shibuya: Livit, can you provide me that information later?

Ms. Callentine: What information would you like?

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

Mr. Macaskill: It's on the–

Ms. Callentine: Can you, wait, just can you show me where? Okay, we're gonna see if we can kinda figure it out?

Mr. Macaskill: It's almost directly opposite our driveway on the street, Ilikahi Street.

Ms. Callentine: Okay, so he showing on Exhibit No. 4, the yellow marking around the little house

is his property and he is showing a dot directly across Ilikahi from his house which I would wager is about a 100 feet from his property.

Vice-Chair Shibuya: Okay, using Exhibit 9.

Ms. Callentine: You're looking at Exhibit...I as looking at Exhibit 4.

Vice-Chair Shibuya: I know.

Ms. Callentine: Let's see, you're looking at Exhibit 9?

Vice-Chair Shibuya: Yes.

Ms. Callentine: Okay, let's go there, okay.

Vice-Chair Shibuya: Is it by the letter "L" or is it by the letter "I". Is it by the letter "S".

Ms. Callentine: Okay, directly opposite the drive on Ilikahi.

Vice-Chair Shibuya: Okay, thank you.

Ms. Callentine: Again, if you notice the boundary is 500 feet, I'm guessing that's approximately 100 maybe 150 feet.

Chairperson Lay: Director wishes to comment at this time?

Mr. Spence: On the one hand Livit is correct that there would not have been a building permit granted unless, you know, there was fire access and within required distances to the fire hydrant. On the other hand, I understand the Commissioner's request for that information. And so maybe we should just make it a practice to note that in the future.

Chairperson Lay: Public Works wish to comment at this time?

Ms. Dagdag-Andaya: Carolyn and I just checked Google street view and there's a fire hydrant located at 444 Ilikahi Street.

Ms. Callentine: There is one?

Ms. Dagdag-Andaya: There's a fire hydrant. It's right across. I think it's across from your property.

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: We got that resolved.

Ms. Callentine: Does that satisfy your concerns, Commissioner Shibuya? Are you okay with that or do you want me to follow up with you still?

Vice-Chair Shibuya: No, that's perfect.

Ms. Callentine: Thank you for the suggestion. We'll include that the next time.

Unidentified Speaker: Good job, Carolyn.

Ms. Callentine: I would have done the same thing if I could have done that and this at the same time.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, another question for the applicant please? You had the opportunity to rent out this, some of this long-term. Why have you chosen not to do that?

Mr. Macaskill: I think the main reason that we've had to...we made quite a large investment in buying this property and we need to...to be able to relocate to Maui from Australia we needed to have a business where we could actually work in the business and because we've made a big investment we feel that a B&B allows us to earn the income we need and it allows us to work in the property, you know, doing the bookings, the ...(inaudible)..., maintaining the property, doing some of the clean, so that is the main reason.

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

Mr. Hedani: This would be for Livit. I have a letter that was handed to us this morning from Steve Keahi?

Ms. Callentine: Yes.

Mr. Hedani: And he talks about a number of illegal operations in the neighborhood identified by tax map key and lot number I guess on Ilikahi Street and Wainee Street and I count like five requests for service on Ilikahi Street and four on Wainee Street. A request for service, does that represent a formal complaint logged with the County?

Ms. Callentine: Yes, that is a formal complaint and it would...to the best of my knowledge, the last time I actually asked, the main complaint goes into a central coordinating agency either the Mayor's Office or perhaps Public works where it is then repeated and given different codes and sent out to different departments for review. So most likely these complaints if they were all about short-term rental homes, and I did glance through them. I didn't do a detailed history of them, but they would most likely be handled by our Zoning Division.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: This letter that Commissioner Hedani's referring to is from Keahi, right?

Ms. Callentine: Yes it is.

Ms. Wakida: And he is stating in his letter that he opposes another B&B correct?

Ms. Callentine: What he's stating in his letter is that he is opposing another B&B, correct.

Ms. Wakida: You have him listed on your comment table as...oh, no every mind, I got my colors mixed up.

Ms. Callentine: He...Steve lives at...his property is shown as in the red arrow and it's labeled No. 4 on Exhibit 9, the updated Exhibit 9.

Ms. Wakida: Right, okay yes. No, I just misread the colors on there.

Ms. Wakida: Never mind. Thank you.

Ms. Callentine: Yeah, no. I read his letter very carefully and I read through it to see what he's written that I could apply to this project. You know, he's written sort of a global, a global discount of opposition I should say to all short-term rental homes and B&Bs in his neighborhood. He has not listed any specific complaints with this project at all. He has only listed like a global complaint and I can understand his frustration. I also would like to point out that on the very last page, there are two photographs that he's attached. These are photographs of Wainee Street parking. Parking on Wainee Street. It's not even near this project. And again, he's very frustrated with parking. There's lots of people including myself are when I go to Lahaina, very frustrated there. But again, this letter while important, it's not specific to this particular project.

Chairperson Lay: Commissioners any more questions? Seeing none, can we get the Department—oh, Commissioner Hedani, excuse me.

Mr. Hedani: Livit, you know, when I look at this application, I see and color photographs that are included in it, yeah.

Ms. Callentine: Yes, sir.

Mr. Hedani: And I look at the floor plan for the site.

Ms. Callentine: Can you tell me which exhibit you're looking at? Are you looking at the...okay, so you're looking at this one.

Mr. Hedani: At the back of the packet.

Ms. Callentine: So Exhibit 2?

Mr. Hedani: Exhibit 1, Exhibit 2, and the photographs at the end.

Ms. Callentine: You're looking the photographs, okay that would be Exhibit 3. Okay, and I'm sorry what was your question, I missed it.

Mr. Hedani: I didn't ask the question. You didn't let me finish.

Ms. Callentine: My apologizes Commissioner.

Mr. Hedani: What I see is a very dense development. I see maximized construction. I see very beautiful landscaping that's very dense and at night would be very dark. For an unfamiliar person to be in Suite 1 at the farthest corner of Exhibit 1, if there were to be a fire on the site and the buildings are all connected the fire would spread very rapidly through the entire structures and to escape from Unit 1 onto the street concerns me, in the dark. When there are few avenues of escape from the structure itself. How do we address that?

Ms. Callentine: Okay, one of the ways...okay, there's two predominant ways that we address that. Number 1, we require smoke detectors in all of the bedrooms, we also required fire extinguishers within 75 of each guest room and yeah, those are the two main ways. Yeah.

Mr. Hedani: My concern is that a fire extinguisher is not gonna help you if the building is fully engaged. What you need is a way to get out of there safely. And the structures are so close together and so enclosed by landscaping that you cannot run into your neighbors road, you know, out the back window because there's only one way out basically and that's through the driveway which is gonna have six cars in it, along the driveway. We had a case where we approved legally, appropriately, according to Building Codes, a structure for an operation that was subsequently washed away and went down the river. Fortunately nobody was in there.

Ms. Callentine: Yes, I remember that one.

Mr. Hedani: In this particular case, I'm concerned about the safety of the people that would be occupying this where they're not familiar with. They are awakened by smoke in the middle of the night, they cannot find their way through a dark, heavily landscaped yard in order to survive.

Ms. Callentine: Okay....

Mr. Hedani: Maybe the owner can address it?

Ms. Callentine: Yes, I'm sure he will, and then I'd just like to mention too, the third way, I neglected to mention in my ticking off, the third way is that each room has a escape route plan posted inside the room. That's a requirement of the Code and I don't include all of that in my staff report but I do have it in the application. So, yes, would you like to hear from the applicant?

Mr. Macaskill: One topic that I'd just wanted to comment on--

Chairperson Lay: Please step up to the mic please? Come to the mic.

Mr. Macaskill: One thing I wanted to mention just in terms of the fire escape, we have a lot of garden lighting at night which stays on the whole night and in the breezeways or the passageways that connect each room we have very, very good lighting. So our guests at all time certainly would be able to find their way to the driveway. It wouldn't be dark. So that's certainly something that we have made sure is available to guests. And as Livit said, we have a exit plan for each bedroom. Because each bedroom will be unique. So it is a very, very detailed plan how they need to exit the building in the quickest and most effective way.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Are there two escape routes for each bedroom?

Mr. Macaskill: The bedrooms on the main dwelling have one exit route and on the accessory dwelling there's a different route for those two bedrooms. They're not all able to use the same because of the...the two-bedrooms are on different dwellings.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: For most commercial establishments--

Mr. Macaskill: Right.

Mr. Hedani: And this would be a commercial establishment, most commercial establishments that I'm familiar with, you need a minimum of two escape routes from every space.

Mr. Macaskill: Well, their certainly would be two escape routes, certainly through the main access area that they would normally use and then also the garden pathways are very well-lit so you certainly would be able to find your way out. And that is something that is detailed on the exit plan for each bedroom. There is a backup option to the main exit route.

Chairperson Lay: Director wish to comment?

Mr. Spence: Just commenting in general on residential construction because we really hammered this out with the Fire Department both when we did the B&B Ordinance, but then also when, again when we went to through the short-term rental home permit, the Fire Department commented that you need two escape routes. They count the windows as one of those. And so you have the door, whatever, out of the room, but you also have a window and it's required to be a certain size so somebody could break the glass and crawl out. So these being residential construction, meeting Building Codes, having received the proper building permits they would of necessity have to have those two escape routes out of each room. And I don't know if that exactly meet your concern, but those things are built into place.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, my concern basically is that from a residential code standpoint it's easy to understand. You know, you understand what your house looks like. You have a family escape plan for your house. You're familiar with everything in the house. In this particular case you're dealing with people that will not be familiar with the residence, not be familiar with the area, possibly be confused if it's...if part of the building is burning, you know, that covers their normal escape route and might now be able to survive a situation like that because of the density of the construction and the proximity of all of the buildings and I'm just not convinced that there is a safe route for them to get out of the building and to safety if there were to be a fire. I'm gonna give you an example, on Exhibit No. 2, if Unit No. 3 became fully engaged and was burning, everybody is safe, got out of Unit No. 3, the owner's office nobody is occupying it, nobody is concerned about that, those two buildings get fully engaged, how do the 1, 2, and 4 escape to safety?



Mr. Macaskill: If I could just for example point to Bedroom No. 3, they would have access or an escape through the lanai area which is that white area or where it says breezeway there's actually a door that exits there too. So they definitely have two options that would immediately take them onto the driveway. Similarly for No. 4, they would access through their lanai down the breezeway or they would exit straight through and down the garden path. And I know the photographs make it look very dense but there must be a least five or six feet of very dense vegetation, very thick dense vegetation and we have irrigation systems that run every night and there's certainly adequate access for a permit to be able to come through there should there be a fire and the other alternative is blocked. As part of our Bed and Breakfast application process we also had to get a certified inspector that came to the property and they are very, very rigorous and thorough with the amendments or anything that we had to change. We had to change some of the handrails and there were different parts of the property where had to make modifications and I think Tom from Certified Inspections is very, very qualified in terms of making sure that we have covered all the safety aspects that are required. Is there any other question?

Chairperson Lay: If I may, okay, looking at our pictures we have a aerial photo of the layout of your property. On your breezeway do we have an actual photograph of what the breezeway looks like just to get an idea on what they would have to go through in case there is a fire? 'Cause we have an aerial view but we don't have a, I guess something to relate to?

Mr. Macaskill: The breezeway is like an internal hallway. It's tiled and it's lit and it's quite a wide area. It's probably, double the width of this desk.

Chairperson Lay: About eight feet wide, long, eight feet.

Mr. Macaskill: Yeah. So it's a very...and certainly you know you can easily accommodate probably two or three people walking abreast down the breezeway so there's plenty of space. But I don't believe there's a photograph in the exhibit that actually shows that.

Chairperson Lay: Okay. And your garden paths that all in the back areas 'cause our breezeway is in the center between the two buildings which is your owner's unit and your, like is your Unit No. 2 the breezeway is going through there, but behind the owners unit is that where your garden path comes through too as far as an alternate route?

Mr. Macaskill: Sorry, could you just point to...

Chairperson Lay: Regarding our left-hand side you have your owners unit, right?

Mr. Macaskill: Yes.

Chairperson Lay: Behind that on your left-hand side of that is there a pathway through there or is it...

Mr. Macaskill: Yes, there's basically pathways throughout the property.

Chairperson Lay: Okay.

Mr. Macaskill: It's almost like, you know, a maze with all those pathways, they're numerous and it follows the border of the property, and then in between all the units. And I think some of the photographs Livit has got on here—

Chairperson Lay: I saw that it was stepping stones.

Mr. Macaskill: For example that would be in front of our house and that runs along the boundary line of our cottage and No.1.

Chairperson Lay: Okay. So there is possibly of maybe even over more than two ways to get out?

Mr. Macaskill: Certainly. There's probably about six or seven ways if you had to.

Chairperson Lay: Okay. Commissioner Hedani? Mr. Hedani?

Mr. Hedani: Wallace, does the fence enclose the entire property?

Mr. Macaskill: Does the fence enclose the entire property? On two sides we have a full fence, and on the other boundaries we have a hedge.

Mr. Hedani: Which boundary has the hedge?

Mr. Macaskill: Which boundary has the hedge? It's actually the boundary that I share with my neighbor, Tom Brayton so it would be...it would run on the boundary with Bedroom No. 1 and No. 4 are. So that is a hedge. And along here is a hedge and on the southern end is the tall wooden fence.

Mr. Hedani: Is the hedge something you can go through?

Mr. Macaskill: I do believe if you actually –

Mr. Hedani: If your life was in danger...(inaudible)...hedge that you can go through.

Mr. Macaskill: Yeah, I do believe you could get through it.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Question for the Director. Okay, there's been a lotta talk about safety and I do realize that they do have escape plans and they meet the requirements of the Fire Department. However, looking at the picture it is a very dense project and what I wanted to know is could we ask them to come with more escape routes because the cost would be minimum. All they would have to do is look it and plan it and be able to show the people the different escape routes. If we did pass this and require them to come up with a better plan even though they met the minimum requirements is that possible?

Mr. Spence: Certainly as a part of the applicant the applicant is required to provide escape plans and put them on the back of every bedroom door and you know, as the owner/proprietors they, you

know, they inform everybody that, you know, hey these are your escape routes et cetera. I have not personally reviewed the escape plans, but certainly we can, we can review what they have and if it's, you know, not explicit enough we can certainly say, hey, you know, Mr. Macaskill, you need to revise it or whatever or clarify it. So you know, we can, we can certainly do that.

Mr. Medeiros: Yeah, 'cause I'm looking at the aerial photographs it is a dense property and Commissioner Hedani is right that there, in a case of an emergency as fire, people might get trapped if they don't know where to go. Now, if I was asking for them build a fire escape of something that would be a nominal cost. And if I thought it was that dangerous I would. But you know, it's just that people who are unfamiliar with the property don't know where to go. All they have to do...All I'm asking for is for them to come up with a plan and to advise these people of the different escape routes not just the one, two as required by law. You know, let them know of something happens, you know, we are interested in protecting you.

Mr. Spence: Perhaps...I know, and maybe Mr. Macaskill could advise us, you know, fill us in a little bit more on what he does or what he plans to do when guests start staying there. But normally a bed and breakfast operator you know, they meet the people, they'll you know fill out the contract for their stay. There's something, usually something of an orientation. Perhaps as a part of the conditions for this permit we could say, the owner/proprietor will orient all guests as to escape routes in the case of fire.

Mr. Medeiros: Would that require a motion?

Mr. Spence: Well, we haven't reached that point yet, but-

Mr. Macaskill: I just wanted to comment and say that was certainly our plan when a guest does check in that we will definitely spend time with them orientating them in the property and taking them to their respective bedrooms. And because the gardens are so beautiful, we actually want to encourage our guests to walk through the gardens. So as part of that orientation process we certainly would take them around and I think as you've all pointed out it will be very important at that stage to highlight to the guests that are several options for a fire escape if one ever needed that and we certainly can even though we've on the fire escape plans in each bedroom we have designated two exits for them, but we could as we've discussed, even highlight more and I think at the orientation when we walk them around the property, we can highlight that specifically.

Chairperson Lay: Thank you. Let's kinda keep this organized and please be recognized before step forward and hope in this discussion. Commissioners, any more questions or comments?

Mr. Medeiros: One more.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd like to address the Keahi complaint. You know, you will have enough parking for your guests?

Mr. Macaskill: Yes.

Mr. Medeiros: On, on site?

Mr. Macaskill: Yes, we have seven designated parking spaces. So even if we were fully booked, we certainly can accommodate all our guests for parking.

Mr. Medeiros: Okay, that's a good thing. May I suggest you write the Keahis and let 'em know that you are good neighbors?

Mr. Macaskill: Yes.

Mr. Medeiros: Okay.

Mr. Macaskill: I certainly will. Thank you.

Mr. Medeiros: It's good to get to know your neighbors even if they live one street down. You know, it's Lahaina. It's the way.

Mr. Macaskill: It certainly is a very, very friendly community and we've been very impressed of how friendly people have been in our neighborhood.

Mr. Medeiros: Okay.

Mr. Macaskill: Thank you.

Chairperson Lay: Commissioners, anymore questions? Seeing none, can we get the department's recommendation?

**b) Action**

Ms. Callentine: Thank you, Chair. The application for a bed and breakfast home, we find that it complies with Section 19.64.030 Maui County Code which covers the restrictions and standards for bed and breakfast homes and this was discussed in our Planning Department Report to the Maui Planning Department dated January 28, 2014 for Docket No. BBWM T2012/0002. Accordingly, the Department recommends approval. In consideration of the foregoing the Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the January 28, 2014 meeting and the additional exhibits distributed on January 28, 2014 as the 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.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Move to accept the staff recommendation.

Mr. Freitas: Second.

Vice-Chair Shibuya: And including the 17 conditions.

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

Ms. Wakida: I'm gonna vote in opposition to this motion for three reasons. One is this is a family neighborhood. It's only a block from the application that we saw a couple of weeks ago. Mr. Macaskill is right it's a very friendly area. It's a working class neighborhood. There's been some opposition. I feel that it was the applicant's responsibility to try and address that opposition and to them personally, knock on their door or make amends if he could. And I'm a little concerned about the use of the property. There's under Dwelling 2 there's an owners unit that was claimed to be 750 square feet, I think that might be little disingenuous. It's two bedrooms, two baths and I'm a little concerned about the use of that property. So I won't be supposing the motion at this time.

Chairperson Lay: Commissioners, any more discussion? Commissioner Shibuya, oh Commissioner Hedani? He's giving you the floor.

Mr. Hedani: I'm gonna be voting against this particular motion also and the reason I'm doing that is because I'm concerned about, I'm concerned about the density of the construction on the lot and the possibility that people could get hurt in the event of a fire, a major fire on the property. Landscape lighting is nice. When there's a major fire the power goes out, you don't have landscape lighting at that point. When there's a major fire you don't turn on your irrigation system to put the fire out. If it's dark, heavily landscaped, fenced in there's limited ways to get out and that would be a problem to somebody from my perspective who is unfamiliar with the property, unfamiliar how to escape in order to survive. The other reason I'm opposed to it is because there have been, and if you look at this exhibit that was handed to us this morning, this letter from Mr. Keahi, 10 complaints regarding, 10 formal complaints regarding illegal B&B activity for multiple properties in this neighborhood, for illegal B&B activity for multiple properties in this neighborhood. If you look at his letter you'll see that one person owns three homes and that's identified Boonstra House on Ilikahi, Boonstra House Pink Palace on Ilikahi and Wainee Street Boonstra. The problem with legal as well as illegal short-term rentals and B&Bs is that they generate a lot of money. They generate so much money that you can never get enough of a good thing. You have an operation going. It works legally or illegally. You generate a lot of money, you buy the house next door, and you repeat, you do the same thing. That generates more money and then you repeat, you buy another house next door and that does the same thing. That from my perspective has always been a concern of mine that it can consume entire neighborhoods like that. We have 10 complaints that are on file with the County. I don't know how you guys follow up on that in terms of enforcement or shutting down the operations if they're not permitted. But for me, it's a problem. Not with this particular applicant, but the project as it's proposed to me has enough concerns that I would vote to provide that limited number of legal B&B operations be made available to some other locations possibly safer.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I'm supporting the motion because he's complied with everything that the County requires. I don't think he should be penalized for people that is running illegal bed and breakfasts. I don't think that's a reason for denying this applicant because he has complied with 'em. And I think if they go after the illegal bed and breakfasts and get 'em off, what do you call, I think that

would be the proper thing to do. And Mr. Keahi's complaint does not address this particular applicant as being in violation that's why I made the motion to support it.

Chairperson Lay: Commissioner Medeiros, you wish to say something?

Mr. Medeiros: I will vote in support of the motion. I echo Commissioner Freitas input on this. I don't think it's right for us to deny an application based on somebody, somebody's illegal activities. That is wrong. We should go after the illegal ones. They are trying to, you know, run a legal operation. While I did have some concerns like Commissioner Hedani about the fire safety, the owner had verbally committed to look into it and find and advise his guests about escape routes and things like that. And if he's running a business, you know, and he seems like a nice guy, he's gonna wanna protect his interest, you know. The density part, yes. It is a dense thing. I know that we denied one in the general area the last time, but the complaints that we receive was complaints generated against the project itself. The complaints that I see from Mr. Keahi is like a shot gun blast, you know, I mean you just...you're just against B&Bs and short-term rentals, you know. But in this case with B&Bs you have the owner there and if he lives there, he's gonna wanna take care of his property, you know. That's why more times than not I'm in favor of B&Bs because people have a tendency of taking care of their property. And if they're there full-time they will. Commissioner Shibuya was right, this is a business. You know, once he opens up a B&B if it passes it will be a business and he will be held accountable. You know, he won't be just a homeowner anymore. But I will support the B&B application.

Chairperson Lay: Commissioner Medeiros, you did wanna do a motion earlier and I don't know if you still wanna do it where the orientation would cover safety routes out of the building and safety procedures for this?

Mr. Medeiros: Yes.

Chairperson Lay: Are you still?

Mr. Medeiros: Yeah, could I make a friendly amendment?

Vice-Chair Shibuya: As a friendly motion go ahead.

Mr. Medeiros: I'd like to make a motion that the owners required to formulate an escape plan to provide for the safety of his guests.

Chairperson Lay: Safety procedures.

Mr. Medeiros: To be approved by the Planning Director.

Chairperson Lay: A motion by Commissioner Medeiros? Anyone second?

Ms. Callentine: Can the Staff read that motion back just to make sure I understood it?

Vice-Chair Shibuya: Sure go ahead.

Ms. Callentine: That the owner is required to provide an escape plan to be provided to the guests.

Mr. Medeiros: More intensive escape plan.

Ms. Callentine: I'm sorry?

Mr. Medeiros: More intensive escape plan.

Mr. Spence: Than what we usually require.

Mr. Medeiros: Yeah.

Mr. Spence: And Commissioner Medeiros, would you like the owner operator to explain those plans during their orientation for the guests?

Mr. Medeiros: Yes. You and everything, and his...all of his plans and everything needs to be approved by the Planning Director. He doesn't have to come before us.

Vice-Chair Shibuya: It's acceptable to the maker of the motion. Second. Thank you. So if we add that into the recommendation?

Mr. Spence: Okay, well, we had a formal motion to do that. Commissioner Shibuya did you?

Chairperson Lay: Second.

Vice-Chair Shibuya: We accepted it. Well, I would assume now we can vote on it.

Mr. Hopper: Well, I would suggest yes, that's essentially a motion to amend the main motion at this point.

Vice-Chair Shibuya: That's correct.

Mr. Hopper: So I think you have a motion on the floor which is to approve with the 17 conditions. This sounds like Condition No. 18--

Vice-Chair Shibuya: Yeah.

Mr. Hopper: --basically as set forth. So I think the best way to treat that is a motion to amend the main motion and take a vote on that motion right now.

Chairperson Lay: Okay, so we're gonna make a motion on the motion to amend the motion?

Ms. Callentine: Who seconded it? Did you second Mr. Shibuya?

Vice-Chair Shibuya: Yes, yes, I did.

Chairperson Lay: All those in favor?

Mr. Spence: Of the amendment.

Vice-Chair Shibuya: Of the amendment.

Chairperson Lay: Oh, excuse me any discussion on that motion?

Mr. Tsai: Actually this is a question for the Director. Do we have any process in place in the system right now to address the illegal B&Bs?

Mr. Spence: Yeah, people can, people can file complaints with our office. I'm not...you know, the list was provided to us. I'm not familiar with those complaints whether, you know, the RFS numbers of anything like that. The one that Mr. Keahi brings up, The Pink Palace and all that, the Boonstrum, Boonstran, whatever...you know, I can find out what happened with that. But I concur with, you know, the comments of some of the Commissioners. You know, we've been encouraging people to come forward and apply because other people choose to continue to operate illegally should not be a reflection on the people that, you know, are making an effort to be legal. I can follow up on some of these and find out.

Chairperson Lay: Any more discussion on the motion of the motion to amend the motion? Seeing none, all those in favor?

Mr. Spence: That's six in favor of the amendment.

Ms. Wakida: I abstain since I'm going the neighbors to-

Mr. Hopper: Again, silence is an affirmative vote. So you can certainly against it, but there's no abstentions permitted.

Mr. Hedani: You should call for the nays.

Mr. Spence: That was six ayes. Is there a nay?

Ms. Wakida: No, I wanna go on record as abstaining.

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

**VOTED: To Add an Additional Condition, "That the owner be required to formulate a more intensive escape plan to be approved by the Director; and that this plan be explained to his guests during their orientation. (Assenting - J. Medeiros, W. Shibuya, J. Freitas, K. Ball, M. Tsai, W. Hedani, P. Wakida - Abstained) (Excused - S. Duvauchelle)**

Chairperson Lay: Okay, any more discussion on the original motion?

Mr. Spence: So the original motion is to approve as recommended by Staff and as amended.



Vice-Chair Shibuya: So there's 18 conditions.

Mr. Spence: Eighteen conditions.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Discussion on the main motion?

Chairperson Lay: Discussion on the main motion.

Mr. Hedani: I think Penny is right on this particular case. The neighborhood that's identified is a working class neighborhood. It was identified I think at one point as affordable housing. What we've seen today is evidence that a lot of the properties within this area are being operated legally or illegally as short-term rentals for bed and breakfast or short-term rental. When a hotel is built, it's required to provide affordable housing. When a B&B approved, it's not required to provide affordable housing although it provides the same impacts that a hotel provides in terms of demand for service employees that service the unit itself. It does the opposite, it takes in this particular case housing that's available for affordable housing takes it out of that inventory, converts it to transient accommodation rentals and compounds the problem that we have with providing affordable housing for the residents of the island.

I think we need to be careful in terms of where we put bed and breakfasts and where we put transient vacation rentals. To try to identify areas where there's no impact to the surrounding neighborhood. In this particular case I think there is impact, I think you won't find local people coming up here and testifying before the Planning Commission because it's not their style, but you have complaints that have been put in writing and given to us and I think it's incumbent on us to follow up on those complaints wholeheartedly and I think it's giving me at least a sense of where the community is coming from in this particular area. And I'm not comfortable with approving this particular application.

Mr. Freitas: Can I make a comment?

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I agree with you Wayne that we are taking inventory out of the what do you call long-term rentals. I agree with you 100 percent. Where this lies is the Council has to make some changes because this gentleman has invested I'm sure money and/or...and not him other people and they have complied with everything. Now if he had a neighbor right next to him complaining I would what do you call not support this. But when you have no direct complaint with the applicant and he is complying with everything that is required by the County I don't feel he should be penalized for other people's wrong doings.

Chairperson Lay: Any more discussion? Let's call for the votes. All those in favor? Those opposed?

Mr. Spence: Two nays. Motion carries.

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

**VOTED: To Approve the Bed and Breakfast Permit as Recommended by the Department as Amended.  
(Assenting - W. Shibuya, J. Freitas, J. Medeiros, K. Ball, M. Tsai)  
(Dissenting - P. Wakida, W. Hedani)  
(Excused - S. Duvauchelle)**

Chairperson Lay: Congratulations. Let's take a 10-minute break. Reconvene at 10:40 or make it 10:50.

A recess was called at 10:40 a.m., and the meeting was reconvened at 10:51 a.m.

Chairperson Lay: Next agenda item?

Mr. Spence: Commissioners, the second public hearing item is Steve and Janna Schlag requesting a Short-Term Home Permit on Mahi Pua Place in Lahaina, our Staff Planner this morning again is Ms. Livit Callentine.

- 2. STEVE and JANNA SCHLAG requesting a Short-Term Rental Home Permit in order to operate Azure, a four (4) bedroom short-term rental home operation located in the R-3 Residential District at 45 W. Mahi Pua Place, TMK: 4-4-018: 015, Lahaina, Island of Maui. (STWM T2013/0011) (L. Callentine)**

**This short-term rental home application is being referred to the Maui Planning Commission for review and action because at least two written protests from owners or lessees of record of two or more lots adjacent to or directly across the street from the proposed short-term rental home were received by the director within the prescribed 45-day time period. Further, fifteen percent or more of the owners and lessees of record within five hundred feet radius of the proposed short-term rental home lot submitted written protests to the director.**

Ms. Livit Callentine: Hi again, Commissioners. I don't know how I got so lucky this time, but it's a pleasure to see you again. So this we're gonna turn to Chapter 19.65 in the Code to help us with the review of this project which is a Short-Term Rental Home application. It's in the Urban District. You are reviewing this project because two triggers for Commission review are present. One is that there were objections from two or more owners of lots adjacent to or directly across the street from the proposed short-term rental home; and two, of the 47 lots within 500 feet 15 percent or more of the neighbors, of the owners objected.

Now I've handed out an updated Exhibit 10 with a map of the updated neighborhood neighbor comments and an updated Exhibit 11 with a table of neighbor comments which we'll go into in a little bit. Now that is, this is the map. They're just front to back one sheet which was on your desk this morning. If it's by itself and it says Azure at the top, you got it. All right, so these came...had

to be updated last night. So we will go into this a little bit later on, but I just wanted to make you aware of this handout and in addition, you were provided by mail, I believe this ended up getting. No, I don't think this got mailed to you, it's another one that is a...it says, Item C-2, Exhibit List, Additional Testimony and Submittals and this was sent to you by email and then is on your desk this morning in a hard copy.

The project location map is shown in Exhibit 1 of our report dated January 28, 2014. Exhibit 2 shows you the site plan and Exhibit 3 is the parking plan. The floor plan is shown as Exhibit 4. Photographs of the site and dwelling are provided in Exhibit 5, and you'll see aerial photographs of the neighborhood and the property in Exhibit 6 of the report. There is one dwelling on the property and it contains four bedrooms. Again, you'll see where how it's laid out and the floor plan in Exhibit 4. There's a three-car garage attached to the home as well as room for another two cars in the driveway, at least two cars, maybe three, but I know at least two cars. Whereas, only three spaces are required for a short-term rental home of this size meaning the number of bedrooms. Normally...oh, anything under four bedrooms they're not required to provide any more than is required for the single-family home. But they once they hit four bedrooms they have to add an additional parking space meaning that they would be...they are required to have three parking spaces. So the property is zoned R-3 Residential and the West Maui Community Plan designation is single family. The neighborhood is characterized by similar single-family dwellings or vacant lots intended to be developed for single-family dwelling. The property is located in the middle of a cul de sac on Mahi Pua Place in the Lower Pinnacles neighborhood. Lower Pinnacles is a gated community within another gated community known as Kaanapali Golf Estates and the lots are still in the process of being sold and/or developed. And if you look at Exhibit 6 of our report, if you turn to that, and that's right after the photographs, it is two aerial photos. One atop the other on one sheet, Exhibit 6. And I've lost my place, okay. So the top photograph shows the neighborhood and it shows quite a number of vacant lots. Of course this photo is probably taken in 2011 so there's been some additional homes built since then but I don't have a more recent aerial photograph. I should mention that the whole area is steeply sloped to allow each property to take advantage of the magnificent views toward the Pacific Ocean and the Island of Lanai. The K...the Kaanapali Golf Estates which I'm now going to call "KGE" if you'll bear with me so I don't have to keep saying that over and over again, but the KGE Community Association's CC&Rs specify that leasing of units shall be done in their entirety and that no subleasing is allowed. Further, according to the CC&Rs all leases must be in writing for an initial term of no less than 30 days. According to the applicant they will comply with these CC&Rs. The West Maui Community Plan allows for a total of 88 short-term rental home permits. As you heard previously, 23 of these have been handed out in West Maui and B&Bs only nine B&Bs are currently active in West Maui. This is shown in Exhibit 7 of the report. Although Exhibit 7 is a much zoomed out image just to give you a sense of the concentration is. So Exhibit 9 shows there are no permitted or pending short-term rental homes or bed and breakfast homes for that matter within 500 feet of this project. There are two short-term rental homes permitted between 2,600 feet and 0.713 miles from the property. Additionally, approximately 3,000 feet away from the project there is a pending short-term rental home application that is identified on Page 11 in our report. Page 11 not Exhibit 11, but Page 11. I don't really think you need...that's just for your reference. You don't really need to look at that right now.

The application was transmitted to the Police Department and the Real Property Tax Division of the Finance Department. The Police Department provided a response saying that they had no comment that's in Exhibit 8. There are no open requests for service on record on this property. If

I might take a moment to also mention that this addendum that you were provided like the previous application it does provide a list of exhibits that were provided in the report itself and then a list of exhibits that are provided in the supplemental handout.

So you'll find an updated neighbor comment map as I mentioned, Exhibit 10, and an updated neighbor comment table, Exhibit 11 in your handout this morning. The first batch of letters from neighbors is shown in Exhibit 12 which is in the report of January 28<sup>th</sup>; and the second batch in Exhibit A through G and Exhibit I in the packet that was emailed to you yesterday and provided to you on your desk this morning. We received 13 letters of objection from neighbors owning property within 500 feet of the applicant's parcel and one of these was subsequently withdrawal. There were three letters of support filed, but only one was from a owner of property within 500 feet. One was an anonymous letter of support and the other was filed by the Basketball Maui Association which has benefitted from housing, visiting, coaches, trainers and players who have come to Maui to share their skills and to train Maui residents, predominantly youth I believe. So they had written expressing appreciation, but they don't live anywhere...they don't operate anywhere near this home.

I'd like to point out a few prominent features on the updated neighbor comment map, Exhibit 10. It might not be apparent at first glance just so you get an orientation. Notice the two red lines, the red dotted lines in the upper right quadrant of the area within the green circle. The green circle of course indicates the 500-foot boundary. These two dotted lines indicate two sets of private gates indicate two sets of private gates, gates that are guarded and you can only get into them if you have the code. The left-hand side leads you into the Lower Pinnacles neighborhood. The right-hand side into the Upper Pinnacles neighborhood. Access through those gates is restricted to owners and authorized guests. Although there are 47 parcels within 500 feet of this home, I counted only 21 properties in the Lower Pinnacles. So the other 26 properties unless they are authorized they cannot get into the Lower Pinnacles neighborhood. Still of the 21 properties that I counted eight have registered concern.

The neighbor letters expressed concern that the short-term rental home will not comply with the CC&Rs, the the owner has established a history of prior short-term rental operations without a permit, that there is a record of prior disturbances regarding prior short-term rental operations. That there is potential for guests to park on the street, and there is a threat to the neighborhood character.

The application conforms to the Hawaii State Plan and the Urban District. It complies with the Countywide Policy Plan and the West Maui Community Plan. The applicant as proposed complies with 19.65 regulates short-term rental homes. Additionally, although not required the application appears to comply with the KGE CC&Rs. I have read them and I have a couple portions which I have included in one of these handouts and I'll bring that up when we get to it.

So zoning is analyzed in detail on Pages 10 to 13 of the Department's report. I'm gonna summarize the criteria that you need to look at which is provided in Section `19.65.060(a)(3) as guidance to the factors to consider in reviewing, approving or denying an application. First, the number and distance from the subject parcel to other permitted short-term rental homes. Now in response to this I have found that there are no other approved or pending short-term rental homes within 500 feet of the subject property, and as I already reviewed there's several that are much further away, the closest being 2,600 feet from the property and that's shown in Exhibit 9. The number and

substance of protests is the second criteria. Number and substance of protests for the short-term rental home application and protests related to the cumulative short-term homes in the larger neighborhood area. And in response to that and as an analysis we have found that while the number of protests is greater than we would like to see ideally, the substance of the objectives will be mitigated by the applicants. Many of the submittals are actually form letter if you can notice that in Exhibit 12. Many of the properties are owned by part-time Maui residents. Referring to the updated Exhibits 10 and 11 you were handed this morning, you'll know that six of the 12 properties and on this list everything bordered by red is the protests which I'm sure you picked up on that imagery. And then everything bordered in green is the folks who voted...who wrote in favor of the project. So you'll note that six of the 12 parties how filed objections appear to maintain primary residences in other states or countries. Many of the concerns expressed are about potential problems that could just as easily occur as a result of a long-term renter or an inconsiderate owner. Short-term rental homes do not defacto, create more negative effects or impacts and other uses. They might, but they might not.

I conducted a site visit and it was apparent that there was no street parking allowed not even possible because of the width of the street. Also, there's more than enough parking on the property. Five spaces where only three are required by Code. The applicants will manage the property and they maintain an office approximately 27 miles from the project at 230 Hana Highway in Kahului. The applicants also maintain another location at 82 Luakahi Street in Kihei which is about 29 miles away. Exhibit 18, provides a description of the proposed rental operations and information on the neighborhood. The manager designation form and the house policy these were submitted as part of the application.

Now the applicant wrote a detailed response to the neighborhood comments and I provided that to you in Exhibit 13. The applicants conform their intention to comply with all rules and regulations and to maintain cooperation and quiet enjoyment in the neighborhood. They promise to actively screen the guests, limit the number of vehicles to two, and to maintain cooperation and quiet enjoyment in the neighborhood. They promise to actively screen the guests, limit the number of vehicles to two, and welcome suggestions from neighbors. The third criteria that the Code tells us we are to consider is existing or past complaints about rental operations on the property. Although many of the objectors complained of short-term rental operations it appears to the Department that the applicant ceased renting, short-term renting in May of 2013 when a six-month lease was executed. This lease is provided in the handout that you received. It's labeled Exhibit D. One of the complainants claimed to provide proof of ongoing short-term rental with the party who signed the six-month lease. This is the party who signed the six-month lease and they were being identified as a short-term renter. That is shown in Exhibit C and D. The applicant stated in Exhibit 13 that they were aware of only incident where the KGE security was called. They said it consisted on an elderly guest conversing with his adult son in the kitchen. The complaint was that the sound of their voices and background music was carrying down the hill and disturbing the neighbors below, Dr. And Mrs. Yalam.

The forth criteria you are to consider is existing or past noncompliance with government requirements and the degree of cooperation by the applicant to come into the compliance. The Zoning Enforcement Administration Division of the Planning Department issued a Notice of Warning about a year ago. Recently the Zoning Division confirmed to me that the warning was closed and that no further enforcement action was being taken. The KGE Community Association also issued

several Notices of Violation and fines between the period 2010 and 2013, but as you'll note in its most recent letter dated October 31, 2013, the KGE Community Association rescinded the fine and deleted the violations. You will see that in Exhibit 19.

The applicant responded truthfully on the Short-Term Rental Permit application saying that they had operated in the past and it appears they have ceased short-term rental operations and entered into a six-month lease on the property as mentioned previously. They represent that since that six month lease expired on November 30, 2013 they have not rented the home. They have used it for their daughter who was visiting over the holidays and for their own family enjoyment. In addition, the applicant has demonstrated and made a wholehearted effort to remove unauthorized property listing from vacation rental websites as evidence is presented in Exhibit 20, G, and H. Indeed, they even went so far as to file complaints with the states of Hawaii and Georgia about the unauthorized listing in their home and they have received confirmations from some of them as you'll see in these exhibits stating that the vacation rental website company was removing their listing. On my site visit to the property I confirmed that the applicant was not operating a short-term rental on the site at that time.

Now finally, you are to consider correspondence received by the Department pursuant to Section 19.65.030 (n)(1), Maui County Code. This section states that short-term rental homes shall conform to the character of the existing neighborhood in which they are situated. So does this home conform? According to the applicant the short-term rental home will comply with the CC&Rs. The home will be rented to one party at a time and for 30 days or more and that would be recommended Condition No. 23. The applicant has requested—no, let's do that—on my site visit I observed that the neighborhood conveyed a feeling of isolation and seclusion as if none of the homes were actually occupied. I saw no people walking or cars on the street. The only sound was that made by landscaping equipment. As I mentioned earlier, excessive noise disturbance could be caused by owner-occupants or long-term renters. Short-term rental homes do not in and of themselves create more negative impacts than any other uses. So Steve and Janna Schlag, the applicants are here with us today. And I believe they might like to introduce themselves and perhaps say a few words about their project and of course, they would be happy to answer any questions. Thank you for your time.

Chairperson Lay: Please introduce yourself?

Mr. Steve Schlag: I'm Steve Schlage.

Chairperson Lay: One second.

Vice-Chair Shibuya: Just a minute—

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I just want to make a disclosure here. One of the signatures or signers of the letters here of the Kaanapali Golf Estates Homeowner's Association is Howard Hanzawa. I do know him personally and socially. We both actually, he and his wife and my wife we actually serve, provide community services together and it will not detract...detract me from reviewing this process.

Chairperson Lay: Okay, thank you. Go ahead.

Mr. Steve Schlag: I'm Steve Schlag and this is my wife, Janna. I'm a long life resident of Maui and we're long time contributors to the Maui community. I started a local business here in 1976, and we bought our lot in the golf estates in 2004, and subsequently built our home. We recognized what a fine community Kaanapali Golf Estates and the Pinnacle...(inaudible)...We're thankful for each member of the Commission and for Livit. Frankly, we we're in awe of the detail and the process that that we witnessed. It's nothing short of amazing the amount of work that I see that goes into this process. So I thank all of you.

Chairperson Lay: Thank you.

**a) Public Hearing**

Chairperson Lay: At this time, I'm gonna open up to public testimony. Does anyone at this time wish to testify on this? Please step up to the mic and identify yourself and you have three minutes.

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

Mr. Jonathan Aber: Understood. Thank you.

Chairperson Lay: Go ahead.

Mr. Aber: Director, Members, thank you for having this hearing. My name is Jonathan Aber, A-B-E-R. I am the Vice-President and Treasurer of the Kaanapali Golf Estates Community Association. I'm also the Vice-President of the Pinnacle Homeowners Association. That is the sub association within the golf estates that this applicant and we're talking the short-term vacation rental permit at 45 West Mahi Pua Place. As everyone is well aware, the County ordinance is very specific and this applicant's application, and you must give deference to the CC&Rs in your, in your judgement.

We were actually quite surprised when we were handed a registered letter. We all had registered letters from the applicant as part of this process because we're within the affected area. That the County would even have any jurisdiction or right to hear this application. But any event we're told through counsel, Clay Sutherland that the County is not party to our CC&Rs and therefore has every right to hear this application. That said, counsel has also informed us that irrespective of what the Planning Department decides with this application, our CC&Rs still have the right to be followed and enforced and that's why I say again, I think it's with wisdom that your ordinance requires you to take our CC&Rs into account when you consider this application.

Now you've received many letters in opposition to this applicant's short-term vacation rental permit and only a few in support. I submit to you those few in support are simply in the same situation renting their homes illegally. Your draft report I have read it a couple of times. It mentions in three or four places the absence of a police report. It leaves the reader with the impression that there are no issues. Now, I'm told by Planning it's a requirement that you ask whether there's been any police reports and there have been none, but what the document fails to say is that we have private

security and in front of you is the number of times that our private security has had to respond to issues related to this applicant's illegal renting over the past year. So I would hate that the ... (inaudible)... from your granting this permit-

Ms. Takayama-Corden: Three minutes.

Mr. Aber: -is that our homeowners would start calling the Police Department and take valuable resources off the streets of Maui. Thank you

Chairperson Lay: Commissioners, any questions for the testifier?

Mr. Ball: I have a question.

Chairperson Lay: Commissioner Ball?

Mr. Ball: So what does this security report say then?

Mr. Aber: Well, the security report says there's been 14 phone calls regarding the disturbance at this home from short-term renters. And it says, trash cans left on the street. That's simply not left on the street. That was six to eight trash cans after there's been a short-term vacation rental there that then get blown all over the neighborhood and they're in driveways, they're in yards and it's... and some of them are left half full, the trash gets blown over the neighborhood. And this is not a once occurrence. This is many, many times and it's you know Newton's third law of physics quite honestly. You got all these letters not because this applicant was a good neighbor. The third law of physics says for every action there's an equal and opposite reaction. These neighbors are simply reacting to this applicant's continued illegal rental of their property.

Chairperson Lay: Commissioner's any more questions? If not, thank you very much.

Mr. Aber: Thank you.

Chairperson Lay: Does anyone else wish to testify at this time? Seeing none, public testimony is closed. Oh, excuse me. We shall reopen it.

Mr. David Moser: I'm sitting behind the pole. My name is David Moser. My wife, Phyllis and I are the owners of 59 West Mahi Pua Place which is the property immediately adjacent to the applicant property. And I listened carefully to my neighbor, Mr. Aber's testimony and I'm completely in support of his testimony. I have nothing to further to add, but I wanted to add my support to his comments. Thank you.

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

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

Ms. Carol Yalam: Hi, my name is Carol Yalam. I'm a Maui resident. I live at 48 West Mahi Pua Place in the Kaanapali Golf Estates. I'm a 71-year-old grandmother trying to enjoy my golden years in the beauty and serenity of KGE. I'd like to talk about noise and me. I live directly across the



street from the Schlag residence but at a lower elevation. We all know that noise travels doen. This is usually a very quiet neighborhood. Over the past several years, Schlag's illegal renters have made a lot of noise at the pool which is in the front of their house facing my house. Kids and young adults play noisy water games as they would at a resort hotel. Their noise floats down and into my home. When I've gone over and ask the renters to quiet it down, Mr. Schlag has harrassed me and threatened me with legal action. I do have it writing.

If the home were to be occupied by one family year round the children would be in school during the day and their parents would be working. So noise would not be an issue from Monday through Friday as it now. I understand that Mr. And Mrs. Schlag won and live in a lovely home in Kula. They also own two multimillion dollar condos in Wailea, the biggest boat in the Lahaina Harbor along with two Dolphin Art Galleries with loads of expensive artwork. They say they want to sell their home as soon as possible. The majority of neighbors on our street are opposed, strongly opposed to short term rentals in our neighborhood. I also understand only a very limited number of short term rental permits will be issued. Why not give this permit to an applicant in need who is not selling tis own. Thank y ou.

Chairperson Lay: Commissioners, any questions for the testifier? Commissioner Hedani?

Mr. Hedani: Ms. Yalam, can you tell me more about the threats that you've....

Ms. Yalam: Yeah, I have it. Would like, would you like me to read it out loud?

Mr. Hedani: Circulate it or read it.

Ms. Yalam: Circulate it or read it?

Mr. Freitas: No, read it.

Ms. Yalam: Dear Arnold and Carol, I just–

Ms. Callentine: I'm sorry. Let me just let you know because you do have a copy of this and let me point it to you...point you to it, sorry. Point you to it so that you can follow along. You will find this in–

Chairperson Lay: Excuse me, can't interrupt. Let the testifier continue.

Ms. Callentine: Oh, okay.

Ms. Yalam: Dear Arnold and Carol, I just received a call from the Christiansens who were quite troubled to find you trespassing this afternoon on our property that they currently rent. Why would Carol think she has the right to enter our property through a heavy wooden gate without knocking or asking permission. Children swimming in the pool were visibly shaken at their privacy being violated. This shall serve as your notice that you are no longer welcome on our property. The Maui Police Department has been notified . An injunction against harassment will be filed and I, after meeting with my legal team will decide tomorrow what other action is appropriate.

The reason, the reason I walked over I had broken my toe two nights before. I was in great pain. I couldn't reach them, so I walked, pounded on the gate, screamed hello, hello, hello. They were making so much noise nobody heard me so I pushed the gate open and asked them to quiet down which they did after I left. Thank you. Any other questions?

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

Mr. Tsai: Ma'am can you point out which one's your house on the map?

Ms. Yalam: It's directly across the street.

Ms. Callentine: You would see them, the Yalams as No. 5 on Exhibit 10, updated 1/27/14.

Mr. Tsai: Thank you.

Ms. Callentine: Got it?

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

Ms. Yalam: Thank you.

Chairperson Lay: Does anyone else wish to testify at this time? Please step up to the mic, identify yourself.

Mr. Carl Corson: I'm Carl Corson, president of the Pinnacle Association, the sub association within KGE. We have a long original CC&Rs against this type of operation. ...(inaudible)...is within the 2,600 feet and the applicant is well outside of the golf estates. To my knowledge there's no TVRs been applied for or approved in the golf estates. We would like to keep that way. We all knew that when we purchased there. And I believe that if this is approved there are lots of illegals doing the same thing and this will just open the gates that we want to do the same thing. Mr. Aber testified earlier that he had 11 service complaints that were handled by our security not by Maui Police Department but in fact I believe KGE has 222 cases that they have served within our community trying to curtail the short-term rentals. I received a letter this morning from Mrs. Schlag, a note, after some introductions, very nice ones, she said, as you know, we applied for short-term rental permit and did say with the support of the Maui County Planning Department. We've only done this to be able to quietly and respectfully rent until we can sell and have actively had our home listed for the last five years. We've been encouraged by the many showings we've had in the last month. For the golf estates we believe it's a short-term issue that will go away once owners like us can afford our homes, unload our homes to buyers that have no need to lease. This is short-term fix. It's also an acknowledgment that they have been breaking these rules for ever since they've been in there. They moved in their home about two weeks or two months after I moved into mine and long-term, full-time occupant of...resident of Maui since 1994, and my original home is in the Hillside. Like the Schlags I built the home at the same time, did not sell my other home. I have leased it to make ends meet. One was to a tenant for two years. One was a tenant for one-year. Didn't do any less because it's against the rules. It's been against the rules. We'd like to keep it that way, and for that, I think that the request should be denied. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? Commissioner Wakida?

Ms. Wakida: Good morning, thank you for coming.

Mr. Corson: Yes ma'am.

Ms. Wakida: You and the Schlags built your homes around the same time. What year was that?

Mr. Corson: Moved in...I moved in June 2007. They were within months of that, maybe slightly later.

Ms. Wakida: Okay, thank you.

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

Mr. Corson: Thank you.

Chairperson Lay: Does anyone else wish to testify at this time? Please step forward up to the mic, identify yourself.

Mr. Arnold Yalam: Good morning gentlemen and ladies. My name is Arnold Yalam. I live at 48 West Mahi Pua Place in the Pinnacle, Kaanapali Golf Estates. I am a member of the board of the Pinnacle and I'm on the board at Kaanapali Golf Estates. As my wife testified earlier, I live directly across the street from Schlags and I have observations having lived there since 2007 that are somewhat in conflict with what the Schlags have testified to.

The Schlags have engaged in short-term renting procedures for the past five to six years. They rent to multiple guests at the same time. Generally it's two families. Usually four adults and multiple children or it's a multi-generational family, grandparents, parents, children. There are usually two or three vehicles. The stays are generally four to ten days not 30 days as has been testified and certainly not six months that he testified to with the Christiansen rental agreement. They have claimed financial hardship as the motivation for operating this rental in a residential area. I can state that there are 10 houses in this that have been built in this part of the Pinnacle. Two of the houses have sold in the past 18 to 24 months each for over \$3 million. So that there has been ample opportunity for the Schlags to relieve themselves of this financial burden. I believe that they, that his house is being operated as a business as the rents that are generated from this house amounts to thousands of dollars per night.

The neighborhood is not a vacation neighborhood. It is a permanent full-time residential area. I live..I'm a permanent resident of Maui although I occupy the house about seven months of the year. So I have ample opportunity to know what's going on. Maui has a regulation where residents within a 500-foot radius have to be noticed about temporary vacation rental application and indeed the response to their application has been overwhelmingly negative.

Ms. Takayama-Corden: Three minutes.

Chairperson Lay: Please conclude.

Mr. Yalam: Okay. The overwhelming wishes of the residents are for the County not to approve this application. Thank you for your consideration, appreciate it.

Chairperson Lay: Commissioners, any questions for the testifier? Commissioner Shibuya?

Vice-Chair Shibuya: Thank you very much Mr. Yalam for serving on your board, your community association boards. I know that sometimes it's a thankless job, but you're doing good. In your capacity as a board member, do you know that your community requires that short-term rentals or any such stay be passed through or approved by the board?

Mr. Yalam: Are we aware of that 30-day rental period?

Vice-Chair Shibuya: Yes.

Mr. Yalam: Yes. And we are in the process actually of changing that to 180-day rental. It's on the docket for the next meeting.

Vice-Chair Shibuya: I see.

Mr. Yalam: I wanted to address something that you said earlier about how Howard—

Vice-Chair Shibuya: Hanzawa.

Mr. Yalam: —Hanzawa. He had been with Kaanapali Development, but the management of the Kaanapali Golf Estates, KGE has been turned over to the residents as of 2013. So Howard is no longer involved.

Vice-Chair Shibuya: Okay, good. I was just concerned in the sense that the board has taken action or is in the process of taking action to 180 days as a minimum stay?

Mr. Yalam: It is on the docket for the next meeting ...(inaudible)...

Vice-Chair Shibuya: Okay. I did want to ask because it's gated you have to have special types of codes to enter?

Mr. Yalam: Residents are issued clickers to open the gate. Vendors have a limited...there are a limited number of passes per house to access the gate and the other way to get in is to use a code which rings the phone in the house. I believe the Schlags have their phone forwarded to their cell phones so that they can admit people if they press the code.

Vice-Chair Shibuya: Okay, that's sorta...and to get these privileges of exclusiveness, I'm sure the dues are very high because you now have manpower providing for management services as well as for security is it not so?

Mr. Yalam: At the present time there is only a roving security guard. There is no manned gate.

Vice-Chair Shibuya: Okay. Thank you.

Chairperson Lay: Commissioners, any more questions for the testifier? Seeing none, thank you very much. Does anyone else wish to testify on this agenda item? At this time we are closing public testimony. Commissioners, do you have any questions? Commissioner Freitas?

Mr. Freitas: Yes, I have a question for Mr. Schlag. Why is your property listed as an LLC and not in your personal name, sir? Is there a reason? I haven't seen that before.

Mr. Schlag: Yeah, I didn't think it was listed as an LLC.

Mr. Freitas: I seen as operating as an LLC, okay thank you.

Mr. Spence: Comment?

Chairperson Lay: Director?

Mr. Spence: Just for the Commissioners information, you can have a short-term rental home under an LLC or a corporation so long as the members are natural persons.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: How many lots are vacant in the subdivision?

Mr. Schlag: On the lower Pinnacle, again there's the upper Pinnacle and the lower Pinnacle I think right now I just mentally go through it and think, one, two, three, four, five, six, seven, eight, nine, maybe nine or ten are vacant.

Mr. Freitas: So it's not a build out...(inaudible)...

Mr. Schlag: Oh, no. No.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Mr. Schlag, a previous testifier said that you built your home around the same time he did in 2007 is that correct?

Mr. Schlag: Uh, huh.

Ms. Wakida: And did you like in your home then?

Mr. Schlag: Yes.

Ms. Wakida: And for how long?

Mr. Schlag: Six months to a year roughly.

Ms. Wakida: Six months...

Mr. Schlag: To a year.

Ms. Wakida: To a year.

Mr. Schlag: Uh huh.

Chairperson Lay: Commissioners, any more questions?

Ms. Wakida: And then—

Chairperson Lay: Commissioner Wakida/

Ms. Wakida: Sorry. Go ahead did you wanna add something/

Mr. Schlag: Well, I was only going to say, I did respond to this, the incident report at some time. I don't know if that's right now or...

Ms. Wakida: Well, I'll just finish up with your occupancy.

Mr. Schlag: Sure.

Ms. Wakida: So after you'd lived their for a short term then you rented it out is that correct?

Mr. Schlag: Yes.

Ms. Wakida: Okay.

Chairperson Lay: Commissioners? Commissioner Tsai?

Mr. Tsai: Mr. Schlag, I just...I see a little bit of a, I won't say inconsistency in terms of you're presented that basically you're trying to sell your house and due to financial difficulties and so forth, but I'm also seeing a letter of support from Basketball Maui saying you're actually donating your house for the NBA stars and coaches and speakers, so are you?

Mr. Schlag: We serve the community in any way we can. Sometimes at our financial peril.

Mr. Tsai: So you're actually are donating your house?

Mr. Schlag: Yes.

Mr. Tsai: Okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: According to some of the input in the report, it looks like your unit at least was

occupied or unavailable for seven days. In other words, it was occupied or unavailable for seven days, so there had been somebody in there in 2013 for a week, lets say or two weeks both short rental period, correct?

Mr. Schlag: Probably.

Ms. Wakida: Right. And then another comment, lets see, anyway, from you I think saying that you had rented it for a week or two. You were aware though of your CC&Rs that said you had to have 30 days or more.

Mr. Schlag: Yes ma'am.

Ms. Wakida: I see.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Did you receive any letters from the association saying to cease and desist on operating that?

Mr. Schlag: Yes. Janna can probably better respond to that.

Chairperson Lay: Please identify yourself please?

Ms. Janna Schlag: Hi, I'm Janna Schlag. Yes, I believe the association provided all those letters to you in their exhibits. Yeah, it's in the department's exhibits.

Mr. Ball: How did you respond to those?

Ms. Schlag: Some of the...and this is a point of I think, contention...some of the, and misunderstanding with my neighbors in terms of our response because a lot of the letters were addressing to internet ads and those internet ads we adamantly and continue to maintain were not ours. However, we do admit to short-term renting. I'm happy to answer how that may have happened. I believe that companies that were very aggressive initially in helping us sell and lease our home, when we discontinued that relationship they took down the ad at our request, but later I believe they sold our home to third-party vendors.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: How many years were you doing short-term rentals before the County made you aware of the short-term rental problem?

Mr. Schlag: Two or three years. Sorry, probably two or three years.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Schlag: Which was a combination of six-month short-term rental and six-month rental.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I, too, have questions about the LLC part you know. This is a residential neighborhood as you are fully aware of that, right?

Mr. Schlag: Yes.

Mr. Medeiros: Okay then you start a company for your—the short-term rental.

Mr. Schlag: It's not an LLC.

Chairperson Lay: Yeah, they're not.

Mr. Schlag: We don't have a title in LLC. I think that was a miscommunication. The house is in our name.

Chairperson Lay: The Director wishes to comment.

Mr. Spence: And I apologize if I...I said ownership by an LLC or corporation is permitted under the Code. I did not mean to imply at all that their ownership was an LLC.

Mr. Medeiros: Okay, I stand corrected. Just, you know, this is a neighborhood. You have neighbors. I grew up here on Maui. Why can't you communicate with your neighbors? You know, everything can be worked out. But it seems like there's no communication between you guys.

Mr. Schlag: We have reached out to our neighbors over and over again.

Mr. Medeiros: And with no resolution?

Mr. Schlag: Well, we're here to I guess try to get to a resolution.

Mr. Medeiros: Okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Mr. Schlag, why have you chosen not to rent your house long-term?

Ms. Schlag: We have vehemently tried to rent our home long term. We've been moderately successful. As I mentioned, the Christiansens have come back for several years but only for five or six months. We don't have...we have other interests for month long rentals and we feel confident that we would be able to work with the Yalams in that keeping noise to a minimum and having a 30-day minimum to our permit.

Chairperson Lay: Commissioner Wakida?



Ms. Schlag: And we will continue to try.

Ms. Wakida: But have you advertised your house for rent for long term say a year?

Ms. Schlag: Absolutely.

Mr. Schlag: Yes.

Ms. Wakida: And that was when?

Ms. Schlag: I continually repost on Craigs List among other things. I've helped like Maui Leasings, I've tried to do everything possible to do that I know. I'd be open to suggestions.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Are you actually...you're still actively trying to sell your house currently, right?

Mr. Schlag: Yes.

Mr. Tsai: And how long have you been trying to do that?

Mr. Schlag: For a number of years and I think you know, Dr. Yalam mentioned you know two houses have sold and I guess the, sort of the preferential side of the street is on the golf course. So we're back from the golf course. We don't quite have the view that the houses that have sold and that's what's been holding us back a little bit.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: This is for, I guess for Steve, how do you intend to manage the property if it was granted?

Mr. Schlag: If you wouldn't mind if, if you wouldn't mind if Janna would answer that because she's actually managing?

Mr. Hedani: Sure.

Ms. Schlag: Your question was how do we intend to manage the property? Yeah, I would like to as much as possible control and interview every guest that enters my home. I do, I would hope if we're approved I would use one or two highly trusted agencies in which these agencies would allow me to also interview to make sure that the type of guests that would be staying in my home is also pursuing quiet enjoyment, that it would match the character of the neighborhood. I would also make sure...make aware each guest of the CC&Rs, of the quiet hours, of codes of conduct that we consider to be respectful, as them to please limit pool noise. Obviously I can't control two girls giggling in the pool, but do I understand the point taken with a child in a pool. Furthermore, they need to sign a four-page legal contract. I'm sure you've heard this before and they agree, and we collect a large security deposit, and as they agree to abide by these codes of conduct and neighborhood rules, and then furthermore we talk to the guests prior to arrival reminding that only

two vehicles are allowed that no additional guests or visitors are allowed on the property. We also point them to a binder that has information again on the CC&Rs, importance of quiet hours, the speakers—we have no speakers inside or outside of our home. We've purposely chosen low volume television sets so that conversation level is only 70 decibels. We have done other things like...I guess we've posted the house rules as well, the neighborhood rules. We adamantly try to emphasize and communicate this to our guests several times and we have the ability to make corrections. We're on the property several times a week as well checking in with our guests.

Mr. Hedani: Okay, my specific question actually has to deal with management of the property in the event of complaints.

Ms. Schlag: Yes.

Mr. Hedani: You actually live in Kula?

Ms. Schlag: No.

Mr. Hedani: No?

Ms. Schlag: Kula is a home.

Mr. Schlag: Kihei.

Ms. Schlag: We live in Kihei. We're renting a home in Kihei.

Mr. Hedani: You have a residence in Kula?

Ms. Schlag: Yes, we do have a residence that we're actively trying to lease and sell in Kula as well.

Mr. Hedani: Okay, my concern was that if you're living in Kula then it's difficult to respond to complaints about noise from Kula from your neighbors rather than being five or ten minutes away. You're indicating that you're gonna contract with another agency to manage the property?

Ms. Schlag: They have oversight managers nearby. So if I'm not able to—

Mr. Hedani: That's identified in your application?

Ms. Schlag: I'm within 30 minutes of my property and I would want to provide obviously our phone numbers to any neighbor who had...we've never been called by our neighbors directly, and we would like to respond to our neighbors direct concerns and complaints so that we don't have a misunderstanding like we did in Exhibit C.

Mr. Schlag: Let me try to clarify that. We're a half-an-hour away in Kihei. Janna manages the property. The two of these top agencies that we use for gaining rentals also have onsite people on the west side. So if something comes up and somebody needs to be there like in 10 minutes then we would call their person, if not, we would handle it ourselves 'cause they have people right on the west side.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'm sorry, what agency are you using?

Mr. Schlag: Luxury--

Ms. Schlag: Hawaiian Beach Rentals.

Mr. Hedani: Hawaiian Beach Rentals would be your property manager?

Ms. Schlag: Yes.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: You had stated that you have had these posting, illegal postings on the website which you had no control over for evidently it's been going on probably for several years. How do you address these agencies when they come up to you and they say, look I have a guy outta New York that is willing to come over there and stay for three weeks, do you pay 'em a commission or what do you say, go away or do you--

Ms. Schlag: I'm no longer interested in working with those agencies.

Mr. Freitas: No, I understand not no longer.

Ms. Schlag: Or any clients ...(inaudible)...

Mr. Freitas: Did you work with them when they were--

Ms. Schlag: Yes, in the beginning.

Mr. Freitas: Okay, thank you.

Ms. Schlag: They requested photographs and offered help.

Mr. Freitas: Okay, thank you.

Mr. Schlag: I just wonder at some point in time if I can address?

Chairperson Lay: Let's...if there's any more questions.

Mr. Schlag: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: This would be for Steve I guess. I'm troubled by a response that comes through your attorney or with advice from your attorney to any neighbor complaining about noise coming from your residence. How do you explain that?

Mr. Schlag: Well, I mean, I wrote that probably out of...I did not contact my attorney and I think I wrote that out of complete frustration. I mean here we, here we had a six-month rental that complied and we have a couple of little kids in the pool I guess that are enjoying a sunny afternoon and Mrs. Yalam barges through these big wooden gates and starts yelling and screaming at our, at our clients and their children. And I—

Unidentified Speaker: ....(inaudible)...

Chairperson Lay: No, you're out of order.

Mr. Schlag: So I wrote that saying because we've had a friendly relationship, I wrote that letter probably just out of frustration saying you know, this has gotta end.

Mr. Hedani: Okay, my concern is that when you're operating a business in a neighborhood that's designed to be residential and then you get a complaint about noise that the response is to declare the person persona non grata on the property and indicate to them that they're not welcome and it's trespassing on your property.

Mr. Schlag: Well, they didn't contact us. They didn't contact us. Security, the proper channel, if there's a problem, is to notify security. None of that happened. So like I say, I did not contact my attorney, but it was just out of frustration that I wrote that.

Chairperson Lay: Commissioners, any more questions or comments? Director, you wish to say something?

Mr. Spence: I'm just...you wanted to explain the list of whatever, incidences?

Mr. Schlag: Yes, if I could. I mean, I just received this. It would have been nice to have had some notice. Of all these listings I can tell you that I am familiar with one of them. KGE, no matter where you are in KGE it's a very, very strict place. There's security, there's roving security and I'll just give you an example of how, how KGE works. We received a letter from KGE, a certified letter with a photograph of these trash cans that we had out in front of our house. And of course, I said, these aren't our trash cans. It had been a very windy day before that. We were assessed a fine. We took a picture of trash cans, sent it back to KGE. They acknowledged that yes, in fact they weren't our trash cans, it was a windy day, they'd blown down from up the street and they were in our yard, but that's how KGE responds. You get a letter. Whenever there's a...whenever security is called, and like I say, I'm very surprised to see these, whenever security is called and we did have one incident that we're aware of in 2010, it was five after 10:00 I think it's been referenced at night, people were talking, security was called and of course, the next day and by certified mail, we get a letter, we're talking about excessive noise, we're talking about fines. That's what happens when you're out of line. That's happened twice officially. So the fact that it appears here that excessive noise and security's been called, we're not aware of any of these and we would be because the way it works is security reports to KGE and the next day or the day after you have a certified letter with a fine. So I'm familiar with one of these incidents.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Since you bringing up the trash can problem, when you've got a rental whose job is it to put the trash cans out?

Mr. Schlag: The person who's there.

Ms. Wakida: And then so they know when your pick up day is?

Mr. Schlag: Yes.

Ms. Wakida: And then whose job is it to bring 'em in?

Mr. Schlag: Theirs if they're there and if not, then we're there to do it, and we are acutely aware of the schedule and how strict it is. They must be in that day. Can't be there overnight. Can't get 'em the next morning. You gotta put 'em in that day.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I just wanna sympathize in terms of how strict some of these communities can be. I started out my life living in a military compound and that's very strict because if there's any violation your commanding officer knows about it, and then the next morning you face the commanding officer. Your lawn, they actually use a ruler and they measure it, okay, and I'm responsible for my lawn even though it's shared. So it can be very strict, but true I don't have to pay the dues of the community. In your gated community it's almost like a military compound. You do have this privilege of quietness or privacy and then you pay for all these amenities. And then if you do, then your neighbor has the expectation of having the same benefits too. So it's a two-way consideration. And it's very troublesome when you have these nice communities and I'm saying you have a very nice community. It's just that we probably need more opportunity to have face to face Commissioner Medeiros somehow mentioned and with that, perhaps maybe we can iron out some of our differences, not duke it out but you know, we're doing it in a very civil way. Okay, well—

Mr. Schlag: I understand.

Vice-Chair Shibuya: Thank you.

Chairperson Lay: And if I might comment in that direction also. I mean, we've seen where we've been worried about rentals taking over a certain area and in this case we're looking at an area that's saying no. So I mean, there's a number of complaints going on here and I'm just curious on how we're gonna address that in the future. Any more questions or comments?

Mr. Hopper: Thank you. I just wanted to make a comment that noting in the short-term rental home ordinance it states that the Director and Planning Commission shall not be bound by any private conditions, covenants or restrictions upon the subject parcel. CC&Rs are required to be considered by the Commission, but I wanna note the Commission doesn't have any authority to determine compliance or noncompliance with CC&Rs. That's a private matter. Again, it's a factor to be considered, but the Department's not qualified to determine compliance with CC&Rs and CC&Rs may change. And even if a permit is granted, CC&Rs could even subsequently be changed to either disallow the use or after the permit's granted does not mean that the person can do the use

under the CC&Rs. They may still be subject to private enforcement. This is a County Zoning compliance issue. It's not a private CC&R compliance issue as with all these permits and so I just wanted to get that out there for the record that the Commission's decision is not a determination on whether or not the property is or is not in compliance with the CC&Rs because those are private documents.

Chairperson Lay: Commissioner Ball?

Mr. Ball: So under that then what would be the recommendation of the Corp. Counsel as far as...what weight would we put on those as far as...I mean, we can't put any weight per se, but we have to consider. But, so we're kind of in a quandary as a Commission then that...

Mr. Hopper: Well, you would, you would be required to consider the CC&Rs, but your determination is based on the standards in the Code. So if the CC&Rs would reflect on either the character of the neighborhood or standards that are in the Code on whether to grant or deny a short-term home permit that can be factored in, but there's not a per se determination that if something is not consistent with CC&Rs, it cannot be given a short-term rental home permit, but whether or not to grant one...another requirement is that you receive correspondence from the association on this issue as well, and that's part of the application required and I do also see that there's 30-day minimum period for rental, but as far as CC&R compliance I just wanna be clear the Department doesn't have the authority to determine compliance with CC&Rs. They're independent. The County has no authority to amend them either. So they could be amended in the future and the Department really has no authority to interpret CC&Rs as far as what they mean because the County did not write them, the County does not enforce them and I just wanna get those as a matter of record the Council wanted you to consider CC&Rs as a factor in determining compliance. And I'm not saying that's not a difficult task for you to do. But it's...I just wanted to note that because there was earlier discussion of the CC&Rs.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, I understand that the County does not enforce private CC&Rs, but we are allowed to consider them or we should consider them in terms of this particular applicant. Mr. Schlag, were you aware of the CC&Rs at the time you purchased the residence?

Mr. Schlag: Yes.

Mr. Hedani: And you are aware that there was a restriction on short-term rental?

Mr. Schlag: Yes.

Mr. Hedani: And you went ahead and had short-term rentals anyway?

Mr. Schlag: Some. Yes.

Chairperson Lay: Director?

Mr. Spence: My understanding is that the CC&Rs currently say 30 days?

Mr. Schlag: Correct.

Mr. Spence: So I wanted that clear for the Commissioners.

Mr. Schlag: And we have indicated we abide by that. We are just returning to what we bought into.

Mr. Spence: Just so the Commissioners know the CC&Rs in your consideration say 30 days. It's not a prohibition on short-term rentals ...(inaudible)...

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, regarding that I'm seeing a series of warnings, I guess violations from KGE regarding your short-term rental and also...(inaudible)...How did you correspond with KGE and also did you pay for any of the fines?

Ms. Callentine: May staff answer that? I won't answer it in entirety but I wanna just bring you back to something that I mentioned in my overview which is that on, I believe October 13, October 31<sup>st</sup> something like that, I could find it, the association did write a letter which I obtained and that letter in October 2013 rescinded the violations and...rescinded the fine, and deleted the violations. You probably wanna know where that

Unidentified Speaker: Exhibit 19.

Ms. Callentine: Exhibit 19. October 31, 2103. But I would like to just mention that because Staff has also seen this list of alleged incidents for the first time this morning as well as you and so we haven't had any time to analyze this or evaluate it or confirm it so we can't make any comment on it at all.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I think this particular case is the only instance I've seen where an entire subdivision is changing their CC&Rs in order to address a problem. Because the applicant is indicating they'll comply with the 30-day requirement, the subdivision is changing the CC&Rs to go to 180 days because of the problems that they've encountered. In the event the subdivision CC&Rs are changed to a 180 days is that something you intend to comply with?

Mr. Schlag: Yes, but I must say it...I'm told it's on the docket I guess, but I understand it's very, very difficult to go back and change CC&Rs. You don't wave a magic wand. They're very difficult to do, but yes, we'll comply with whatever.

Ms. Schlag: I just wanna point out that I'm not sure exactly how all that works, but in terms of taking a vote among all the homeowners and a certain majority I believe, and then legal and attorneys. I know our legal contract that we bought into says 30 days. I don't know if that creates a hornet's nest for the association. But this short-term rental permit is only for one year. As far as...from my understanding it's a limited use and that's...I'm not sure if, even if it was changed on the docket, I'm not sure how it works, maybe Dr. Yalam would know when it would be implemented. I'm not sure when...if it were immediately approved, so when it would be implemented I guess is I'm not sure.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Would you contest the change of the CC&Rs because you bought into a contract?

Mr. Schlag: Sure. I would not be voting for it.

Mr. Freitas: Would you acquire legal counsel or legal advice?

Mr. Schlag: I don't think so. I think it's simply a vote and I would vote. And I know a lot of people would not vote for more control.

Chairperson Lay: Corp. Counsel wish to comment.

Mr. Hopper: Just a comment. Future amendments of the CC&Rs they may happen and the owners will have to abide by them, but at this point I think the current version of the CC&Rs are in the record and you've got your criteria to go under and which is one of the perils of considering that frankly because it can always change. Again, that's a private enforcement matter. So I just wanna note that for the record. We're looking at, we do have CC&Rs here right now that are provided as a matter of record and I think that that's...that's what we have, and again, things may change in the future and they will be required. The County permit will say what it says and then the private requirements are going to apply separately.

Chairperson Lay: Okay, just to note everyone, Commissioners that it is lunch time. I'm not sure if you wanna continue this—

Mr. Freitas: Continue.

Chairperson Lay: —after lunch or—

Mr. Freitas: Now. Go for it.

Mr. Tsai: Go for it. Recommendation.

Chairperson Lay: Any more questions? Commissioner Hedani?

Mr. Hedani: You know, in Howard Hanzawa's letter that he had he identified 180 days as the County's requirement for rental in residential areas and I guess this would be a question for Corp. Counsel. Is it a violation to rent for less than a 180 days in residential zoning?

Mr. Hopper: ...get Zoning Enforcement's take on that. They're the experts there, but I do believe that long-term residential use is defined in the Code as a 180 days which is the required usage. I believe that's correct. But again, Zoning Enforcement, I would want to have that confirmed that it's a 180 days.

Mr. Spence: That is correct. That's considered a long-term residential use and I also note, you know, how many people do we know that are renting month to month from their landlord so that's, you know, that happens as well. That's a topic of discussion many times over.



Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I move to deny?

Mr. Spence: You want the recommendation?

Chairperson Lay: Let's get the Department's recommendation.

Mr. Medeiros: Sorry.

**b) Action**

Ms. Callentine: I just wanted to point out too that the letter from Howard Hanzawa was written August 5, 2011 which was prior to the short-term rental ordinance having been enacted.

Okay, Commissioners, the recommendation for this project is...the analysis and recommendation. First the application for short-term rental home has been found to comply with Section 19.65.030, Maui County Code which covers the restrictions and standards for short-term rental homes which was discussed in our Planning Department to you dated January 28<sup>th</sup>, and the additional information provided yesterday by email and this morning as hard copy. Accordingly, the Department recommends approval for one-year and we would condition that subject to further extensions by the commission as a noticed public hearing as a way of giving them a trial run. In consideration of the foregoing the Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the January 28, 2014 meeting and the additional exhibits distributed on January 27<sup>th</sup> and 28<sup>th</sup>, 2014 as the 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.

Mr. Spence: And I would note Commissioners the recommendation by the Planning Department was so they would—the minimum length of rental would be 30 days. So in consideration of...you know, we're not trying to find compliance with the CC&Rs but we did look at all the different aspects of this and would...the recommendation to the Commission was for the 30-day minium rental.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I move to deny.

Mr. Hedani: Second.

Mr. Freitas: Second.

Chairperson Lay: Okay, I got a motion to deny by Commissioner Hedani. Any discussion on the motion to deny? Commissioner Wakida?

Ms. Wakida: I will support the motion. I am concerned about the 11 protests. It seems pretty overwhelming. I always look at the community that's already in place when these things come up. And the applicant also seems to have a less than sterling history in their former rentals with very

short-term rentals. So I will be supporting the motion to deny.

Chairperson Lay: Commissioner Medeiros, you made the motion would you like to comment on why you're denying this motion?

Mr. Medeiros: I plan to. I was just letting everybody else go. Okay, anybody else wanna chime in first? No, you go first?

Chairperson Lay: Commissioner Medeiros go ahead.

Mr. Medeiros: Okay, my motion to deny this application is based on the neighborhood. I did consider the CC&Rs. Yes, I do know that's 30-day minimum now. It may change, it may not. However, a short-term rental in my opinion does not fit in this neighborhood. If the applicants would make some peace with the neighbors and the association or whoever they gotta make peace with, you know, we actually wouldn't be here and it would probably run right through. I guess because of all of the complaints, I just wanna preserve the integrity of the neighborhood even though I will never be able to afford to visit a place like that let alone live there.

Chairperson Lay: Any more? Commissioner Hedani?

Mr. Hedani: Yeah, my basis for supporting the motion is that the character of the neighborhood is defined by the CC&Rs. CC&Rs I think should be considered, and the number of complaints that have been filed are significant. To me, when you buy a property, if you know what the CC&Rs are you comply with them. If you know what the CC&Rs are and you decide that you're not gonna comply with 'em and you're gonna rent because that's what you're gonna do then it's a problem. It's a problem in this particular case from the time the property was purchased until they were officially an applicant with the County of Maui. I think the golf estates rescinded their fine in this particular matter because they determined that their basis on which they established their fines being the internet ads was incorrect. And I think it was correct for them to rescind the fine at that point. But it doesn't alter the fact that the applicant has knowingly operated a short-term rental in violation of the CC&Rs from the time he purchased the property.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I see this as a very embarrassing situation for me. I can understand CC&Rs, I can understand ordinances and codes, however, the biggest problem here is the behavior. Behavior of the parties, behavior of neighbors, behavior of the members of this community and you know, we selected or they selected to invest in the property as well as in the land and they have the right to live as they see fit. But within...they need to live within acceptable standards that is also considerate of the other neighbor or their fellow members for their community. If you have gated communities you have this exclusiveness from the regular general population. However, that doesn't mean that you are exclusive to yourself and you can operate in yourself domain. We each have to understand ourselves. It's a smaller community that we have this gatedness that we need to walk across, talk story, get to understand them, and get to understand us or share a little bit aloha with us. I live in a community that has the same kind of patrol and the patrol is called the Gestapo. And this is, this kind of list in terms of excessive noise, trash cans, loud party noise, trash cans left out on the street, this is a typical kinda complaints that come in, but I think the parties need

to able to discuss it. And whoever's make the accusations or pointing it out you need to discuss it because their standards may be different. They say, oh your trash can needs to be out of sight, well, out of sight for who? Do I live it in my garage, enclosed garage? You know, and that's not what I have my garage for. I have it for my car. I leave it outside, so I need to put a fence. So is the fence three feet? Okay? It's okay, but the top foot and a half is still exposed because in the early years the trash cans were less than three feet tall. Today's trash can by the County is almost four feet tall. So that's the kinda situation we don't humanize it, we don't talk about these differences. We need to understand some of these interpretations of how we want to live together in a very peaceful way. And so that's why I feel very embarrassed in a sense. I feel for the community. I feel for the applicant, and you know, it comes down to we have to or I have to make a judgement call and I hope that person involved in can discuss it and work it out. Thank you.

Chairperson Lay: Any more discussion? Commissioner Freitas?

Mr. Freitas: Yeah, real quick. I'm voting denial of the application. When you have that many neighbors complaining and when you blatantly read a contract and go against it, that's enough for me. Thank you.

Chairperson Lay: Any more discussion? If not, let's call for the vote. Oh, let's get the Department's...

Mr. Spence: Commissioners, the motion is to deny the permit not as recommended by staff. The motion, it's for denial.

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

Mr. Spence: That is seven ayes. So the application is denied.

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

**VOTED: To Deny the Short-Term Rental Home Permit.  
(Assenting - J. Medeiros, W. Hedani, J. Freitas, K. Ball, M. Tsai,  
P. Wakida, W. Shibuya)  
(Excused - S. Duvauchelle)**

Chairperson Lay: Okay, we're gonna take a lunch break. We'll reconvene at 1:15.

A recess was called at 12:15 p.m., and the meeting was reconvened at 1:15 p.m.

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

Mr. Spence: Commissioners, we are on agenda item D, New Business. This is Mr. James--I'm gonna try this really good--Argyropoulos? I see nodding heads. Yay. Requesting comments on a Draft Environmental Assessment for Shoreline Setback Variance and our Staff Planner is Mr. James Buika.

**D. NEW BUSINESS**

- 1. MR. JAMES P. ARGYROPOULOS requesting comments on the Draft Environmental Assessment prepared in support of the Shoreline Setback Variance for the Argyropoulos Shoreline Setback Mitigation project to remove the existing remnant seawall/debris along the shoreline and construction of a hybrid revetment/seawall to mitigate the severe erosion fronting the project site at 475 Hana Highway, TMK: 2-6-009: 005, Kuau, Island of Maui. (EA 2013/0003) (SM1 2013/0015) (SSV 2013/0004) (J. Buika)**

**The entity who will decide on the acceptance of the Final Environmental Assessment is the Maui Planning Commission.**

**The EA trigger is the proposed work being conducted in the Shoreline Area.**

**The public hearing on the Special Management Area (SMA) Use Permit and Shoreline Setback Variance will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. James Buika: Thank you, Director. Good afternoon, Chair and Commissioners. My name is Jim Buika, Planner with the Planning Department. On behalf of my Director and the people of Maui I'd like to thank all of the Commissioners for your expertise and time commitment serving on the Maui Planning Commission. This project is an important project that the Planning Department does support especially from a life safety perspective that the applicant and the applicant's representatives will explain and demonstrate today.

I have personally been out to the site several times through the years and understand it fairly well. We have the property owners here today, Mr. James Argyrolpoulos and Mr. Niko Argyrolpoulos who will be joining us shortly. And then we have their authorized representatives and consultants, Mike Summers, Stacy Otomo and Kiumars Siah, the structural engineer to answer your questions.

Our purpose today is to review the Draft Environmental Assessment for the project. So what I propose for the Chair is to have Mike Summers come up and do a short power point presentation. We have a short five-minute video from a helicopter perspective looking at the shoreline also that will help to explain the project and provide a good shoreline perspective and then following the presentation I'll turn it back over to the Chair to conduct Q & A and public comment, et cetera.

Chairperson Lay: That's fine.

Mr. Buika: Fine. I'll begin with just a couple of opening comments. So the Planning Commission is being asked to be the accepting authority to provide comments on the Draft EA. And just, I know you all know this, but for the record the review of the Draft Environmental Assessment, the planning process here today following our brief presentation and Maui Planning Commission will be asked to ask questions about the Draft EA focusing on the potential impacts to the environment and to ask the applicant to include information in the Final EA, anything that you feel needs to be further studied, explored, researched. Note that this Draft EA is just an informational document at this

stage and at a future date depending on our preferred alternative, the Maui Planning Commission will hear a Special Management Area Major Use Permit as well as Shoreline Setback Variance for this action. The Final EA will answer all of the Maui Planning Commission and other agency comments to the satisfaction of this Commission and other commenting agencies. And you will again see this a second time and approve the Final EA. And you are the accepting authority on an anticipated finding of no significant for this applicant ...(inaudible)...

Some additional introductory notes, the Planning Department will provide formal comments on the Draft EA in—to the Maui Planning Commission comments also, some of our own comments. Beginning in a week or two on February 8<sup>th</sup>, the Draft Environmental Assessment will be published in the Office of Environmental Qualities Environmental Notice which is online for public comment. And the Department's role today in today's proceedings is to insure that all your questions get recorded and transmitted to the applicant for response as part of the written record. So I'll attempt to capture your comments, your questions, and at the end maybe we'll read those back. So at this point, I'll ask Mike to come up and talk about the project, Mike Summers.

Mr. Mike Summers: Mr. Chairman, Members of the Commission. Thanks for having us here today. We appreciate your time and focus on this project. My name is Mike Summers and I'm a land use planner. My firm is Planning Consultants Hawaii and today we're here to present to you a pretty complicated project. It's a challenging coastal situation and fortunately we've formed a pretty good consultant team here to try to address the current condition. Now what I'm gonna be doing is just taking you through the power point which is essentially a summary of the Draft Environmental Assessment and I see it on your desks so hopefully you've had a chance to look at it. As we go through this presentation I'll ask the owner who's here today with us to introduce himself that would be James, the property owner, his son Nico and so they'll get up and they're gonna introduce themselves to you. And then I'll take you through the presentation. We do have the support of our structural engineer and I'll ask him to come up and explain the preferred alternative to you in more detail than what I would do. And then we do have Stacy Otomo who's our civil engineer.

Again, Jim indicated that you know, the purpose of this presentation is just to make you familiar with what we're proposing at the property, to get your feedback. After we receive your feedback, we'll take your comments back, we'll address them along with the agency comments.

So as far as just kinda like the status right now, Jim is sending this application out to agencies for comment. We're gonna get, we expect a number of comments. We'll go through the next two or three months addressing those comments including the comments that you'll be giving us today and then we'll be essentially producing a Final EA. You folks will review that again. Hopefully issue us a finding of no significant impact and then we'll be scheduling Planning Commission for the SMA Permit and the Shoreline Setback Variance. So, I'm just gonna have James come up and Nico and just have them introduce themselves.

Mr. James Arguopoulos: I was hoping to say good morning, but I'm going to say good afternoon. My name is James Arguopoulos and I've been coming to Maui since 1968, and still my favorite place in the world. You know, I bought the house for me and my family in 2004, and I just would hope you know, I'm hoping that you will be able to expedite an environmental and safety problem we have. We'll work with you and we have a really good team of people together to address primarily the environmental and safety problems on the property.

Ms. Wakida: James, could you speak a little bit louder?

Mr. Arguopoulos: Oh, I'm sorry. I'm saying I'm hoping that you will help us expedite this problem that we have and we have a really good team of people together to help us primarily with the safety and environmental problems on the property. You know, we have people who are trying to go to the beach or lot of surfers and my one son was one of them and there's really a big problem with that whole area there. So I just wanna again thank you for time and I appreciate your, you know, helping us with this reviewing. That's it.

Mr. Nico Arguopoulos: Hello, good afternoon. My name's Nico Arguopoulos and I've just enjoyed so many good times in Maui at this property with dad surfing over the years. And this is something that we wanna have and I wanna be able to share with my kids one day. And there is a real problem with the safety and as you'll see in this presentation, we've gotten some really positive feedback from coastal with Jim Buika and Tara Owens and we're looking forward to your comments and getting through this process. So thank you.

Mr. Summers: So essentially this project is really twofold. The first part of it is to remove remnant debris that are along the shoreline. And the second part would be to actually construct the shoreline structure. Can you remove...yeah, that would be great, thanks. So when you, you know, as we go through this process you can think about the project in the context of these two different activities taking place.

The project's located at 475 Hana Highway. It's two houses to the east of the blue tile house, about 3,500 feet from the intersection of Baldwin Avenue and Hana Highway. The project's 17,581 square feet. There is an existing single-family residence and an ohana unit on the property. As we go through this presentation we'll see some aerial photographs as well as our video presentation. We'll get a good understanding of the relationship between those houses and where the shoreline is. County zoning is R-1 Residential. The community plan is single-family. And as I mentioned, we do need an SMA Permit. We're gonna require a Shoreline Setback Variance, State Conservation District use Permit, Flood Development Permit, Grading Permit, Building Permits.

And again, the project location you can see the project is located right here. It's three houses down from the blue tile house and you can see the intersection here with Baldwin Avenue and Hana Highway, about 3,500 feet. It's mostly residential in that area. We are next to a pretty pristine sandy beach. It's about 150 feet to our west.

I'm just gonna kinda skip over this existing conditions because as we go through the photographs I'll explain that. This is the existing topo map of the property. The subject is a long, relatively narrow lot and it's just for kind of perspective, this is about 235 feet, 220, 225 feet. It's about 78 feet wide. The main house is towards the rear of the property. There's an ohana unit here. And this is the property line along the shoreline. Now, of course, the ocean's here and what you see in here, and we're gonna actually zoom on this, there's a bunch of existing shoreline rubble. And so, again, just putting this into perspective this is our property line. This is the actual shoreline. You can see where the erosion's taken place. And it kinda comes out like this. Now these are existing remnant pieces of a prior seawall that was constructed many, many years ago. And you can see just from looking at this, these remnants, and this will show up in the photographs are actually separated from the shore at this point.

So this is the existing condition and essentially we're looking at a bank that's about 18 feet high and there's a puka. You know, you expect that, you know, the actual shoreline is about 78 feet wide there's a puka in the shoreline that's about 40 feet wide and then erosion is occurring on both ends of that as well. So we're saying, we're essentially looking from the east of the property line all the way across. So the property line is back in here. There's fencing to keep people away from this cliff because it's very, very unstable. Okay, and you just look at this photograph you can see what the, you know, what the major problems are. You really have five things going on here. The first is it's really safety hazard. Obviously, you know, the cliff itself could be a safety hazard but it's an especially large safety hazard because that cliff is falling away and sloughing off and there's really no...you know, we don't really know when the next major event's gonna happen. So it poses a risk to not only the folks that live up there, but it also poses a risk to the people that are using the beach. And that actually gets exacerbated because you have existing rubble along the shoreline. And so, you can see the existing remnant pieces of the shoreline structure, the hardening structure that have separated from the shoreline and just from this photo you can see how difficult it would be to walk along the shoreline. So what folks are doing and you're gonna see this in future photographs is they're walking through here underneath the rubble back along the contour of the bank here, and of course, we can't really project when that might fall. So it's a serious safety issue.

Obviously from this perspective you can see that it's also not a great environment for walking up and down the shoreline and we'll see more of that. So the shoreline access is pretty hindered by the existing condition. It's also an environmental issue because this is a silty clay loam. It's also an environmental issue because this is a silty clay loam, it's a very clayish red dirt material and when it rains and when you have the erosion events all of that material ends up in the near shore waters which is obviously not good for near shore water quality. And then it also obviously is an impact, is in issue to the property owner. He's lost a considerable amount of property just in the last few years from the erosion.

And this is looking from the shoreline at the existing bank. You can just see the overall scale of what's going on there. Right in this area we have a lot of broken up rubble and then the kind of intact rubble, and again, this is about 18 feet high. At some point this is gonna fall over. We're not sure when. This will fall over and then it's kind of, you can see where the bank is getting cut into from further erosion. That shows up on another photo. Next.

Again, the existing shoreline condition, the old structure. You know, if you're trying to scale this rock it's pretty challenging. I mean, you can do it, but it's certainly a pretty inhospitable environment for folks that are walking up and down that beach. And before you turn if we can go back. We're gonna see more pictures of this, but this is a channel. You have a little reef shelf that exists right here and from the beach park, you know, obviously people swim off the beach, but you get surfers and some swimmers that come in and they come into this little channel here and the surfers will paddle through here and then they'll go out into Tavares Bay, it's a popular surf spot. Next.

So this is the existing route that one would take when they're hiking along the shoreline. They're gonna come from west to east primarily from the beach park over here. They'll walk over the existing kind of structures that are in place on the neighboring properties, they'll come underneath this structure, along the bank and right through there. Next.

Here's our team we're actually doing a site visit with the County staff looking at the existing

conditions. These are the existing kind of in place boulders that have fallen down. They're not boulders, they're you know, they're cemented wall, but those are just laying essentially on the beach. And then on the background here you can see the large boulders that have been placed along the shoreline. Next.

And this is what you would experience walking through the cave. You would come in, walk over some stairs. We're gonna show you the stairs in the next slide. Walk over the existing fallen trees and then through the rubble which will get you to the other side. Next. And so this is just looking down from on top of that, from you know, on top the property and you can see that there's some existing stairs. You may have picked that up on the topo map and then you come through here. Next.

So this is a good aerial. It just gives you a pretty good indication of what the existing character of the shoreline is like. This is the subject property and you can see that you know, this is an area where there's been a lot of erosion, episodic erosion and a lot of boulders placed along the shoreline. It's a hardened condition. Most of the soils in this area are the clay type soils. And then of course, you got Kaulahau Beach Park to the west which is, you know, an important resource for the community for recreation purposes. Next. And here we're zooming in on the subject property. Next.

The existing character of the shoreline, you know, we have some...you know, this was a manmade, you know, remnant debris right here and these are just boulders that have been placed along the shoreline. Next. And this is the existing channel that we'll get to see in our video presentation how that's used by surfers. Okay, next. And this is where you would exit that channel, swim out and do your surfing. And a nice shot of the beach to the west. And looking to the east, and this is where the hardening, you know, would start taking place, and again your channel's right here. Next. So we're gonna just jump over to the video presentation. It gives you a very good perspective.

Okay, so...why don't you pause right there...so this is a great presentation. This really gives you a good feeling for what it's like down there. But again this is the ohana unit. This is the main house. This is the erosion that's taken place. This was done like a week ago. Some of it was done during the very high water event that we had over the last few days and again, you can see the erosion that's taking place and the existing conditions. Next.

Panning out. See the neighboring properties. Pause right there. Again just the scale of what we're talking about. Now the homes themselves are not threatened at this time. It's really a health and safety issue for folks that are using the property and the beach users. We're zooming in. We can see the erosion pretty clearly here.

Mr. Ball: Can I ask you a quick question while you have that video up?

Mr. Summers: Yeah, why don't you pause it.

Mr. Ball: Are you gonna fill in that, the property line back to let's its original site?

Mr. Summers: Right.



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

Mr. Summers: Yeah, we'll explain that as we go through, yeah. Next. Again, the character of the shoreline in the area it's a hardened shoreline. Will you pause it there? You know again, right now you've got fencing along the property line. It would be...you'd basically be taking your life into your own hands if you were to go over the fence because at any moment that could collapse. You can actually see irrigation piping that's coming out. See how far it used to go, you know, at one point this was all connected. I mean, it's pretty dramatic down there. Next.

Now this is during the high water event when we had 40-foot surf. So you can see it's pretty high tide. Right now there's probably considerable sedimentation that's taking place. You can see a surfer paddling with the skegs up, try not to damage 'em. Very popular ingress, egress to the breaks, the channel that we're talking about. Guys like to come down here and fish. Kaulahau Beach Park.

Okay, so we'll just kinda go through what our goals are here. Obviously looking at the structure if we're gonna go through this process we wanna have a structure that is going to be durable, but we also want a structure that's going to be compatible with the environment not exacerbate conditions et cetera.

So structural durability while being consistent with our design objectives. Obviously we want the structure to have minimal impact on neighboring properties. We wanna be cognizant of its visual impacts both along the shoreline and from the ocean. We want to enhance lateral access along the shoreline. We wanna minimize impacts to coastal water quality and nearby beaches.

Now as far as project benefits it's pretty clear that the project would mitigate against further erosion of the shoreline. We'll actually talk about how we would do that. We wanted to address the safety concerns for both the property owner and the beach users. We wanna mitigate soil erosion into the near shore waters. And we'd like to enhance lateral access along the shoreline.

Now we looked at five, actually six alternatives in the document. We looked at the no action alternative. Constructing a conventional vertical reinforced concrete wall that would be your kinda typical seawall. We looked at tiering that concrete all to mitigate the massing of the structure. We looked at using shotcrete which would again be a wall, but it wouldn't be a reinforced concrete wall. We looked at tiering that shotcrete wall and then we looked at a hybrid revetment seawall fronting the shoreline and of course, we at the no action alternative.

Now the no action alternative really isn't a favorable alternative because it really doesn't accomplish what we're setting out to do which is to mitigate again public, health and safety issues. Its obviously gonna continue to exacerbate the erosion into the ocean. The existing erosion does present a threat to the neighboring property owners. And of course, it's eating away the applicant's property. So it's really not a viable alternative. We looked at a convention vertical reinforced concrete wall. Now this is a very durable structure and one pretty strong advantage kind of in favor of the vertical wall is that we wouldn't necessarily have to encroach into the State jurisdiction and it would also consume less of the applications property. But you know, the vertical wall would require an extensive amount of excavation. It would require some encroachment into the property to east. It would require shoring or may require shoring at the western neighbors. Those are two major

drawbacks. It would create a greater chance for near shore water impacts because you'd have the force of the waves hitting the vertical wall and then bouncing back off into the channel. If you construct it in a concave fashion to follow the contour that's there the wave energy would be forced into that pocket. So if you were to basically build kind of in a concave fashion then you're channeling the wave energy into the concave portion of the structure. We'd have a concern about that from the durability perspective. And then of course there's vertical massing along the shoreline. It would be very out of character of what's there right now.

I'll just kinda quickly go through this. This is the...it's actually tiered alternative of the vertical seawall and basically you're going in this alternative you're following the contour of the existing puka and with this alternative you'd be specifically terracing it and it would consume into the applicant's property about 34 feet. This obviously a much softer approach than the pure vertical structure and it does consume more of the applicant's property. And again, you can see the relationship of the existing stairs and the existing remnants out in front of the applicant's property. And so this is what that would look. You essentially have a three-foot toe. The wall goes up 19 feet, this is a vertical wall and then it's reinforced. You got a guardrail that's 42 inches high. And again, you could do the same thing but tier it and it essentially has the same advantages only it also mitigates the massing of the structure. So it certainly be a more visually appealing structure, but the disadvantages are the same as the first option, and this is what that would look like. Again, we've got your three-foot toe, the wall goes up, terraces in five feet...these are each five feet, it comes up to 19 feet.

The third alternative would be to construct a vertical anchored shotcrete wall and there are a lot of advantages to using the shotcrete. Unfortunately, and I'll explain this, it really isn't viable if we remove the debris that is along the shoreline. But the shotcrete would require minimal excavation along the neighboring properties because you're essentially just applying this stuff to the existing bank. No encroachment into the neighboring properties, less potential for sedimentation during construction, no encroachment in the State jurisdiction, preserves...(inaudible)...space, it's the least costly, but it's less durable. It has very...a significantly shorter life span. The concave design again if you were to follow the contour that's there it really would focus that wave energy into the pocket. That's a significant concern especially with shotcrete. It would have greater vertical massing especially the one that doesn't tier. And then it's not viable if you remove the shoreline debris. So this is what that would look like. And again, if you would like this explained in greater deal we can have our engineer come up and explain what that all means. But essentially you're looking at the shotcrete being applied and it being anchored in with anchors here.

The fourth alternative would be tier that wall to essentially mitigate against the massing of the structure. Same advantages as the third option only again, it's more visually appealing. Disadvantages obviously would require more yard space because you're bringing it up and into the applicant's property. It's less durable, shorter life span, and again, not viable if the shoreline debris are removed. And so this is what that looks like. You can see how it comes up, it terraces in, it comes up, and terraces in.

And then the preferred alternative is to use both a revetment and a seawall. And the advantage to this alternative is that it is a very, very durable structure with a long life span. Has very good, it absorbs the wave energy very well. So the waves are gonna hit that structure, they're gonna penetrate into the revetment and then they're gonna come back out. It reduces the amount of

excavation along the side and yard property lines. It's gonna provide a 10-foot toe which will be level so it will essentially be like...I shouldn't say...it's not gonna be like a sidewalk, but it will literally be 10-foot of level area with boulders that you could walk on that would be relative easy compared to the existing condition. And then the design itself is more in character with the existing conditions cause as you saw from the aerials it's all boulders down there and what you're doing with the revetment is placing boulders. Now it does encroach into the State jurisdiction. That triggers a State approval so it's a longer permitting process. The applicant will have to apply for an easement from the State. And when I say it encroaches into the State jurisdiction what it's doing is it's going back out to the applicant's property line. So we're not going beyond the property line. We're staying within the property line but we're taking the revetment back up from the property line. There is extensive excavation required with this option. And it's gonna require careful implementation of BMPs so that we don't impact near shore water quality while the construction is taking place. Shoring required at the western neighbor and there's a larger footprint and greater loss of rear yard space relative to the vertical seawall options.

Okay, now I'm gonna have our structural engineer come up and explain these next two diagrams in greater detail.

Mr. Kiumars Siah: Good afternoon. I'm Kiumars Siah. I'm the structural engineer for the project. As Mike mentioned, we had basically, we considered when I looked at the project I considered conventional seawalls that all of you are familiar with and then something that is not so conventional that I hope is going to be conventional in the future. From the structural point of view obviously a reinforced vertical reinforced retaining wall or seawall would be the best because it's most durable. But we had that disadvantage is it's not in character with the side. It's not good for the shore, shoreline processes and so what we decided to do, what I thought of why can't we combine the advantages of two types that we are familiar with. We are all familiar with revetments and how friendly it is as far as the coastal processes is concerned. Combine that with a tiered retaining wall at the very top to get the advantage of both. The first one that means the revetment will give us all the advantages of a structure it dissipates energy the best that we can. It is in character because it's not grouted, it's not cemented, it's in line with the other area adjacent properties and it is...you can basically install it going back to the property line as it was before. Because what we have right now we have a lot of remnants, loose remnants and solid remnants that are outside the property line. We can get that and we can...by the first part of it, by the revetment part which we are providing a 10-foot toe we can provide that lateral access as well. So basically we get all the benefits of what we know for shoreline protection structures and the least adverse impacts of all the structures. So this is what we came up with a hybrid structure that I understand actually is going to be and I hope that that is going to be taken up by other designers as well. They have done maybe a few here and we hope that by doing this we are encouraging others to take the same thing. So basically we are going to dissipate energy much more efficiently. We are going to provide lateral access at the toe of it. We are going to be aesthetically, well with everything obviously, pleasing from the ocean side and we are going to provide the lateral access. Those are the advantages. If there's anything specific that you want I'd be happy to.

As you see here basically this is where what it consists of. We have the revetment part which consists of two layers. We start the filtered layer the smaller size and the armor layer at the top as you see I included a 10-foot at the very bottom. We can get away with four or five feet but I intentionally increased that so I could provide a lateral access for the people who go there surfers

and then we provide a one to one and a half which is allowed by the shore design manual. And then on top of it again we go with five feet I provided another 10-foot so that if there's any water it can basically dissipate more water. So the reason I'm emphasizing ...(inaudible)...10, 10 is basically to say the intent was not to gain as much land for the owner because we could have gone five-foot at the bottom, five at the top, the intent is get a good design that works and works for the public as well as engineering...(inaudible)... and the owner. And at the very top you have a conventional retaining wall with a stone veneer very pleasing ...(inaudible)...

Mr. Summers: The property line is right here. So the property line--

Vice-Chair Shibuya: Mic?

Mr. Summers: Oh, sorry. The property line just for reference sake is right here. The 10-foot toe and then you can see this is where the bank is right now just so you understand kinda how that works. It's a 1:5 slope. And then we did look at --

Mr. Siah: I'm sorry, if I may? It's important to know that that part that you have the bluff as stated is only about 40, less than 40 percent of the entire width. But if you go with this design as you see, we extend almost to the entire width of the thing so again emphasizing the fact that the reason was not to gain more. On this side we are gaining some. On the other side we are taking--here is the property on the rest on the 60 percent of...(inaudible)...we are taking that part out, this part. We are moving this all the way to here.

Mr. Summers: Okay, and we also looked at some other alternatives installing sheet pile, creating an unconsolidated rock pile which is just dumping more rocks on the shoreline, conducting beach nourishment which isn't viable at that location, and relocating the residence and obviously there's no reason to relocate the residence.

The Environmental Assessment addresses the impact of the project on the physical environment. Our public services and site infrastructure, coastal hazards, and socio cultural environment. And we will not be impacting or will have minimal impact on climate, topography and soils, flora, fauna, invasive species, light pollution.

Now the project could have an impact on near shore water quality during the construction phase. So that is an area where we'll have to be very careful with our BMP plan. We'll look at installing silt fences, absorbent, geotubes around the project site. We'll look at watering of course, of barren areas, stockpiling during construction and very importantly avoiding construction and very importantly, avoiding construction during the winter season when you have more rain, more high surf events. Obviously along with near shore water quality we have to be careful of not impacting our marine organisms, our turtles and fish, the reefs, et cetera. So again, BMPs are important during construction. There could be air quality impacts during construction with all that excavation so again we need to have good BMPs in place, installation of wind fencing. Again, covering open body trucks, regular watering and sprinkling soil mounds in barren area. Noise during construction that would be an issue. We wanna do the construction during normal daytime hours if a noise permit is requirable first get one. Next. We should not have an impact on medical services, police, fire, electrical, cable, water service, storm and site drainage, wastewater. Now we could have an impact during the construction phase on traffic. So we will definitely look at how we're gonna store

and stage construction equipment and you know, debris. We may wanna use traffic controllers to direct construction vehicles into and out of the site. Of course we wanna wash the dump truck or truck wheels and gravel to get the direct of those wheels. Next. Solid waste, there will be debris that we'll be removing from the shoreline to the extent that we can we will recycle those debris. We understand that there are folks that build walls, you know, for residential properties they may be interested in having some of these debris for their projects and the debris that we can't recycle like that then we'll have to take to the Maui County Landfill or DeCoite Landfill.

As far as coastal hazards, the structure will be constructed to withstand wave and storm surge such as we've had during this winter swell. The structure will mitigate further shoreline retreat. It will mitigate further collapse of the existing bluff and escarpment and it should not exacerbate erosion on neighboring properties. Next.

It's important to note that there are no sand dunes in this area. This would obviously be a very difficult project if we were placing a structure in front of sand dunes because sand dune replenish our sandy beaches. And we do not expect an impact on Kaulahau Beach since the beach is removed from the site and the site...the beach is south, doesn't extend all the way out to the site. So there should be no impact.

Project will have no impact on population, economy, and obviously a little bit of construction phase jobs. Archaeological resources, we are recommending that archaeological monitoring be done during construction. We have soil type, the existing erosion, et cetera doesn't lend the project site finding burials, but nonetheless just to be careful, we should have archaeological monitoring conducted. Visual resources, obviously the project will change the visual character of the existing shoreline. And we went through this, right now you have existing boulders that have not been placed. They're basically dumped boulders so this will be more an engineered solution so that will change the character of the shoreline a little bit. Next.

And again, how that would work, you see the property line it's gonna be flat, you get that nice 10-foot toe, a 1:5 slope going up into the applicant's property and then a terracing and then the wall at the top. Next. And so again, the existing character. Next. And you can imagine that the toe would be out about here, it would go about 10 feet in. You're already coming up the slope here at this bank and then you gradually kinda coming up. And all these debris and all this rubble gets removed.

Social, cultural resources as you saw from the video this is an important recreation resource for surfers, swimmers, fishermen. We believe that we're gonna enhance the recreation along the coastline by mitigating further sedimentation of the bay, enhancing lateral access along the coastline but mitigating further sedimentation of the bay, enhancing lateral access along the shoreline, creating a surface that people can walk on that's safer. Then again, one of the concerns would be that if the structure actually created more wave energy in that channel and that's one reason why this revetment is kinda ideal alternative is because it will not project the wave energy back into the channel. Next. Just, let me just, again you can see that the debris that are being removed. This is all the clutter that you see along the shoreline. Next.

Relationship to land use plans and policies. So in the Draft EA we talk about the Hawaii State Plan, Countywide Policy Plan, the Maui Island Plan, community plan, zoning and Beach Management

Plan. Next. And the Beach Management Plan discusses shoreline hardening and basically it says, you know what we don't wanna do hardening where we're gonna have a negative impact on our beaches. This project will not have a negative impact on our existing beaches. The plan encourages that where you do have erosion and you do have beaches that are going to be impacted by shoreline hardening that you look at relocating your structure. In this case, our structure is significantly removed from the shoreline. And we're also protecting nearshore water quality. Next.

So here we are, we're finished. We can take any questions that you might have.

Chairperson Lay: We gonna have public testimony first. If anyone wishes to testify at this time, please step up to the mic? Seeing none, public testimony is closed. Commissioners? Any questions? Commissioner Ball?

Mr. Ball: There is some photos back on the shoreline with some of the things that fell in. Can you show that and then kind of go with what you're going to pull out as far as that old wall that's...

Mr. Summers: Well, why don't we go back to the topo map first, and then we'll work up then to the photos. So this right here is a cave that you look at. The guys are walking over the stairs. They're walking through the cave and are coming out on the other side. And then you saw the rubble here, saw the rubble here, and then the boulders are up here. So essentially we're removing this piece of rubble and we're removing this rubble as well. Now I had mentioned during the presentation that the shotcrete wasn't a viable alternative and there's really two reasons for that. One, this structure actually does provide some protection of the shoreline. Without being removed, that shotcrete is pretty exposed to the ocean. That's a concern of ours. Secondly, when you actually have to get down here to remove this structure you're gonna have to do a significant amount of excavation to get the trucks into a position to break up that mass and then haul it out. So that's basically disturbing the entire bank. So you now have nothing to put the shotcrete on. So that's why that's not viable. But again, to answer your question this is big piece of rubble that you saw, the tunnel going through it and then the other pieces of the rubble. Let's just take a look at the photograph. So that's a big piece of rubble. There's the tunnel. There is rubble that's on the other side right here. There it is. Next. On the other side, those are those pieces that you saw to the east.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: My question's for Jim. I have...I'll ask you a couple of questions and then you can sorta maybe swap 'em around and answer them all together. Firstly, if somebody's property is being eaten up by the ocean and they lose that property are they just out of luck? I mean, you don't suddenly own the beach or the air. Secondly, I want a clarification between the certified shoreline and the property line, you know, how you determine the property line when you've got all this erosion so does the property line change? And secondly, where does the certified shoreline become and which trumps which?

Mr. Buika: The certified shoreline actually in terms of ownership trumps the property boundary line so when you lose property into the ocean, that portion that becomes the ocean becomes conservation land and the owner still pays taxes up to that property boundary line but they can actually relinquish, they can change the boundaries of their property line to the State certified

shoreline. So they can give up that piece of property that has been eroded and lost to the ocean so they don't have to pay taxes on that any more. So technically it's the State. It becomes the State property at that point. So the State certified shoreline trumps the property boundary and becomes the...that portion of that line on the property.

Ms. Wakida: Because he refers to a linear boundary as opposed to following the shoreline.

Mr. Buika: Yes, so what...they did explain that they will be building the revetment partially up to their property boundary even though it's still...it's partly now the State's conservation land so the State most likely will ask them to purchase an easement for that piece of property that they lost to do the work and they will require a Conservation District Use Permit because they are putting that toe of the structure in the actual shoreline. Obviously it's not a usable piece of shoreline right now but it is, it would technically be State property. So...

Ms. Wakida: Thank you.

Chairperson Lay: Commissioners? Commissioner Hedani?

Mr. Hedani: Jim, I wanted to compliment the applicant on the preferred alternative that they've selected. I think they've identified all of the issues quite clearly and from my perspective come up with the best solution possible under the circumstance, yeah. One of the questions I had is how do you handle the transition along the property, the side property lines where the wall hits the neighboring property's area?

Mr. Buika: It's a good question. Hold on I'll ask Mike and Kuimars possibly to answer that for you.

Mr. Siah: Again, Kuimars Siah. I want to understand your question correctly so that I be able to answer. You're asking how the access would be or how the structure will be?

Mr. Hedani: Basically I understand that the structure is coming this way 10 feet coming up, 10 feet on the top. How are the edges gonna be handled in relation to the topography on each side?

Mr. Siah: If you go to the cross section that shows or at each end there are two, two walls, vertical walls and I call them end walls. Perhaps if you look at...right here, go back. You see at the very end, where it says the 37, right there. You see that portion as Jim is showing, this portion that's a vertical wall that comes up. And this is another one, right here. Because obviously we cannot go sloped to the other properties. We can come down but if we come down basically we won't have any flat surface, so we have to have an end wall. That end wall, east wall and the...(inaudible)...wall. That answer?

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Could you go to, I think it was either the next slide or the previous slide that showed that, yes. What is the winter, generally the winter wave height up in this picture?

Mr. Siah: The wave height for the maximum prevalent wave for Kahului area is four and a half.

Ms. Wakida: But in this particular—

Mr. Siah: That's considering everything, surge and everything else. This one it would be what is that, three feet. So basically it would be somewhere here with the surge and everything else. But under normal conditions it doesn't even go up. It would be somewhere here. So when the people in normal condition they can walk on that area. That's the reason for that elevation.

Mr. Summers: You saw in the video presentation that piece of footage that was filmed with the water coming up and getting very close to the bank as shot about four days ago when we had surf of 30 to 40 feet on the north shore. And so again, the bank is right here and you could see the water coming up and lapping into the bank. That's a very high surf event.

Chairperson Lay: I have a question for the engineer. So I've surfed a lot different conditions, different places and I've seen where this type of shoreline on the inside creates a backwash. I know it's...you're saying that when only it reaches that point you get that backwash, but energy going up, is energy going up, and I'm just wondering why in the beginning part you didn't have something that disburse the wave's energy like a simple little dip where you got your wave coming over, the wave will actually curl on itself to break down the energy.

Mr. Siah: Here you mean?

Chairperson Lay: Yeah, you're look at the water is just gonna jump, go up and then it's gonna come back down which means you're gonna get another force in an opposite direction going back down. And you've got that...I know that area well. You've got that reef front in the front so it actually has to go over that reef channel area.

Mr. Siah: Yes.

Chairperson Lay: But you're gonna get a lot of action with this there, a lot. Your pictures that you showed when it's 40 feet you're gonna go up that. So you're gonna have an energy that's going back out that way and I'm saying, is there any way you can design something that disburse, uses the waves own energy to smother itself you know in your design here. Here you got an energy going up and an energy going down.

Mr. Siah: One of the points that I touched on this is not a cemented revetment. This is where basically the rocks and —

Chairperson Lay: Okay, I got your picture now. It's not a smooth surface?

Mr. Siah: No, no.

Chairperson Lay: You're looking at—

Mr. Siah: It's ungrouted, uncemented. That's where it gives you the mechanism for dissipating.

Chairperson Lay: Okay, so I see how it disburse itself. Okay, I see that now. Okay, thank you. Commissioner Tsai?



Mr. Tsai: For the engineer again, please? Can you clarify, I can't really see it from this angle here the material used above and below the revetment?

Mr. Siah: This one and that one?

Mr. Tsai: Yeah.

Mr. Siah: Most of them are stones but they're different sizes. The first one is called filter, filter lay and the top one is the armor layer.

Mr. Tsai: How big are those typical size?

Mr. Siah: The size, I can give you the weight and the size can be, you get it. The weight for this design is about 5,200 pounds for each of those for the top ones. That makes it about three to three and a half feet if you can imagine something like completely spherical. And the bottom one, almost one-tenth of the top ones because obviously if you take...and the reason for that is the lower ones should be smaller so that the particles of the soil cannot be basically eroded and on the very bottom, actually on the bottom of this there's another geotextile fabric which is almost not necessary but it's a very good practice. You put the geotech and then you provide the filter, that's actually the ...(inaudible)...size. Filter layer and then armor layer.

Mr. Tsai: Good job. Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Okay, I listened to all of the technical aspects and everything, but I have a question for the boy with the stick. Okay, I'm an old man so I get to call you a boy. Okay, I recognize that you're a young man. Now bottom line you're in the water, you wanna protect your surf spot and everything is this plan over here where it protects your playground?

Mr. Arguopoulos: For me?

Mr. Medeiros: Yeah.

Mr. Arguopoulos: I mean, I've been fortunate enough to surf by whole life and really got hooked on surfing in Maui actually on the other side at Thousand Peaks and Launiupoko and so for me the surfing side of it is huge. And as you could see by the presentation we went through a lot of ulterior plans to really come to this one which will, you know, I understand the backwash comment because backwash can completely change a wave. So I think we're really, the key here is it's gonna be a lot safer for everybody because you can see surfers and everyone is accessing this already so it's gonna be a lot safer. We're gonna provide lateral access for people to get there and at the same time not have the erosion, not have no danger, not effect the surf. So I think this is really, this is the best plan to do there and to protect our playground and the community's playground. And that's why we came up with this and tried to hire the best team. You can see by the really thorough presentation.

Mr. Medeiros: Okay, 'cause I just wanted to know, get the opinion from the person that's gonna be

out there. You know, I wanna protect your break, you know?

Mr. Arguopoulos: Definitely. No, I completely agree and it's a great question. Something we put a lot of thought and time into so we appreciate that.

Mr. Medeiros: Okay, thanks eh.

Mr. Arguopoulos: Thank you.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I do have a question in terms of what they're doing here is trying to resolve the erosion problem and what we're not looking at is somehow looking in the ocean and the energy that's coming in, we're not mitigating it, we're not defusing it, we're not redirecting it, we're not making it less forceful in this area or the other areas. What do you suggest that we have to lessen the force that's coming to the shore? I see an expert in the audience so I see.

Mr. Buika: Well, I think everyone understands that we have 40-foot waves that come up on this north shore. I've been out there when all the properties are vibrating from the waves coming in. And there is quite a bit of reef right off of there. I think the reef does break it up. You see the reef right off of there already. You know, there might be options I think in other less high energy environments for some sort of offshore structures. Obviously we could have looked at putting rocks or breakwaters out in that surf zone, but from what I understand of this environment I don't think it would be a viable alternative or a desired alternative. As you can see there's quite a large bluff. It's all armored, pretty much all armored. This would continue the armoring. It would break up that backwash as much as possible. So other areas less high energy environments I think possibly protect the shoreline. Plus the other, the other key piece here is really don't...it's a health and safety here. It's not really protecting a threatened structure. Maybe you know, putting a revetment or seawall right in front of a threatened structure still brings all that energy right up to that threatened structure but there's nothing like that here. So I don't think we really need to worry about it. I think we'll stabilize the shoreline with this, this solution here. So there are alternatives off shore but I think not in this environment. It's too high energy an environment.

Vice-Chair Shibuya: Yeah, I was trying to lessen the high energy that's coming from the ocean because it's gonna threaten this runup. You're putting a revetment of rocks.

Mr. Buika: Right.

Vice-Chair Shibuya: It runs up. It eats up the energy and thereby making the wall, the revetment, the vertical portion of it last longer.

Mr. Buika: Right. I think if we had a beach environment that we were trying to save something off shore would be more important to try to lessen the energy so that the waves aren't taking that beach away. Right, if we had a revetment there, it would be practically impossible to keep the beach in front of it.

Vice-Chair Shibuya: Yes.

Mr. Buika: But here we don't have any beach. We have the nice beach around the corner so I don't that's...that we have to protect any sandy beach resource like that. So that would be my opinion.

Vice-Chair Shibuya: Yeah, because I like option 5, you know, whatever.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yeah, as long as you're talking about the wave action and so. Can you explain the reasoning behind removing rocks and things out there? It's my way of thinking that would just help to break up the wave action and any hunks of concrete would be somehow helpful.

Mr. Buika: Well, I think the reason for it is it...first of all, it won't be our decision. It'll be the State's decision because it would be part of the granting of the shoreline, the certified shoreline. So the State will make that determine. I think it's dangerous. It's dangerous having all that rubble there. As you saw, you can see, because you know, there are kids. I've been out there when there were families. There are kids playing underneath those unstable rocks out there. It's easy to get around the corner so there are families, kids and we just can't have that. I think it would clean up the shoreline, improve the safety and still I think the engineering solution is dissipating the energy and doing what we need, so...

Ms. Wakida: Well, the one...maybe I'm not getting a good picture, but what we see in these drawing it looks like these rocky areas are outside his linear property line. I mean it looked...am I mistaken this is not out in the-

Mr. Buika: It is out in the ocean. It's still the...the State would require the homeowner to remove those. They would be called encroachments. They did come from the property. They're now on State land. So it is the property owner's responsibility. The property owner does recognize that and is willing to clean up the shoreline as part of the project if required by the State. So that will be part of...they are doing the State certified shoreline right now. It's gonna go into the Board of Land and Natural Resources and they'll determine what needs to be done out there. So they may allow some to say. They most likely they will ask that a lot of that be removed.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Jim, in your opinion is there any other things that can be done to improve the project?

Mr. Buika: No, I don't think so. I think it's a good alternative. I mean, you would actually have the...you know, the lateral access and the stabilization of that environment is being complete. I completely agree with their project in my opinion and I think it's a good solution for that environment. It's tough, touch environment right there and needs stabilization.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Jim, I was trying to get a sense from the pictures but we didn't...either they went too fast or we didn't have a good one, that whole shoreline there first of all are other parts of that shoreline armored with some sort of seawall or something?

Mr. Buika: Yes. Most of them are...it's armored with rocks just...unconnected rocks thrown over the shoreline. Probably done a long time ago by a lotta the property owners.

Ms. Wakida: Yes, because it looks like this particular piece of property is getting more damage than the others and I was wondering what was the reason for that.

Mr. Buika: Yes, because the makeshift seawall that I think was hand done with no rebar or anything with small little stone cobbled. It basically was a cobble seawall that was kinda patched up. We have talked with some of the other people, Roger, a local who is a consultant and who knows the area did explain that it was just...it was done over time by the homeowner to minimize the runoff, the erosion and then the whole thing just failed just because it...it had no, it had absolutely no structural integrity. So it's just...yeah, it was never an engineered solution as a lot of the original shoreline, original seawalls are.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I see a problem in a sense that it's not only from the shore, the ocean energy, but also hydrostatic problem. The water from the mountain side is coming down and is it exiting, is it crossing this property?

Mr. Buika: We can ask Stacy Otomo the—

Vice-Chair Shibuya: And somehow we can mitigate or capture or somehow treat that so that it doesn't get under the planned revetment?

Mr. Buika: Good question. I'll let Stacy Otomo the civil engineer on the project who's looked at those issues.

Mr. Stacy Otomo: Good afternoon, Chair, Members of the Planning Commission. My name is Stacy Otomo. To answer your question Commissioner Shibuya, the runoff currently sheetflows mauka to makai as you can see where the big erosion occurs. It flows over that into the ocean. In this particular case it's gonna continue flowing over that vertical component but when we get into the design phase we definitely wanna work at that interface between the ground and the back face of the wall so that we prevent erosion from happening right at that point. And if you look at the previous photos, the bulk of that area is lawn so the runoff coming down is well vegetated in the yard.

Vice-Chair Shibuya: Okay, thank you.

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

Ms. Wakida: One more question. Jim is there other stairs planned for this revetment?

Mr. Buika: I don't know, I'll ask...Mike do you know if there are stairs planned?

Mr. Summers: Not at this time, but you know, there has been some conversation back and forth with the property owner about access down to the shoreline. If we were to propose stairs then we

would wanna show that in our Final EA and document that. But at this point, the plans that we're showing we are not showing stairs, but that is a good question because that has been a topic of conversation.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Okay, I notice in the audience we've got a shoreline specialist that used to work with Maui County before. I was wondering if I could ask Dr. Chip Fletcher if he wouldn't mind sharing some of his thoughts, mana`o, impressions of this project with us?

Ms. Callentine: You mean Thorne Abbott?

Vice-Chair Shibuya: Thorne Abbott, I'm sorry.

Mr. Thorne Abbott: Thank you very much for the honor and privilege to speak to you Dr. Shibuya. I defer to the expertise of the Staff Planners because they've been following this project. I just wanted to sit in because this was a problem back in 2002, 2003, 2004 when I was here, so--

Vice-Chair Shibuya: That's right.

Mr. Abbott: So I wanted to see what they proposed as a solution, but I humbly appreciate the honor to testify, but I defer to their experience.

Vice-Chair Shibuya: Okay.

Mr. Abbott: Thank you.

Mr. Spence: Thorne, could you identify yourself?

Mr. Abbott: Thorne Abbott, coastal planner.

Mr. Spence: Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Jim, I just was looking at an interesting statistic maybe you could shed some more light. In our book it's on Page 5-12 and 13. And it says that transects 18 and 20 and this would be the shoreline I think for the proposed...where the subject property is shows no movement of shoreline over the past 50 years and I think that's very interesting. It says...unless I'm reading this out of context somehow, and I'm not suggesting that we don't have a problem here. I'm just saying it's an interesting piece of information. The last paragraph on Page 5-12 and then pictures on Page 5-13. And so--

Mr. Buika: Yeah, those three transects are on the edge of their eastern property onto the next property where there are boulders. So basically this is showing your shoreline erosion rate where you would have some sort of probably beach. There was a beach. If you look at the Figure 5-9 you can see the white line which was one of the original remnant--right there on that same page, right

there, right there--actually there was a larger shoreline or there was a wider sandy beach off of that shoreline. What happened in World War II was a lot of that sand was mined extensively along the north shore so it lost a lot of, you know, the kupuna talk about that being a sandy shoreline at one point.

Ms. Wakida: But apparently in the last 50 years it hasn't lost any.

Mr. Buika: No because it's armored. Probably the armoring along that to the property next to it there. These would be transects from aerial photographs that University of Hawaii put together.

Ms. Wakida: Right. It's an interesting anomaly anyway.

Mr. Buika: Would you like that further explained in the Environmental Assessment? Or why is that or just have it analyzed a little bit. It's just an observation.

Ms. Wakida: A little bit see to see if...yeah, I mean, if there's any more recent information about the erosion there.

Chairperson Lay: The Director would wish to comment at this time?

Mr. Spence: No, I just...it's interesting discussion. I mean, you know what happened in World War II and all that stuff, I mean I find it fascinating myself. I'm just thinking about the comment that--I'm wondering if the Commission ... (inaudible)... comments for the EA that they want analyzed because we'll turn these into a letter.

Mr. Buika: Right. The one comment that I picked up just to interject Director is really about the stairs. Would you want a...would you want to see an alternative of if there was access from the property that top down to the shoreline, no?

Ms. Wakida: No, I don't--

Mr. Buika: You had mentioned the stairs. That was really the only thing as far as adding to the Environmental Assessment as far as all the questions that you've asked so far. Unless maybe we can recap if there is anything.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I just still have some questions about removing rocks from the shoreline area. I'd like a little more information on that that it still just seems counterproductive and I'd like that explained a little better.

Mr. Buika: Okay.

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

Mr. Hedani: This is actually more a question. Jim, when I look at that diagram that you have up is there a representation of the end blocks on that diagram in section?

Mr. Buika: I'll let Kuimars Siah, the structural engineer answer that question.

Mr. Hedani: I see a dotted line across the top and I'm wondering if that's the top of the--

Mr. Siah: Actually that...that if you continue it that's part of it. If you continue it all the way to this area.

Chairperson Lay: Speak into the mic please, too.

Mr. Siah: Right there. If you continue this line coming here and coming down. That would be dash, dash, dash, dash here. No, basically a vertical wall that you can all see the outline of it. Basically it retains...the reason for it is retains the soil on the adjacent properties.

Mr. Buika: If you'd like--

Mr. Hedani: Yeah, I understand. My only comment on that would be that the end block walls would appear to be significant structures from the standpoint of visually...visually there'll be significant structures. I think the positive thing about it is you probably would stop any potential for damage to the adjacent properties because it would basically act as an end block on wave energy going sideways. So I think that that is beneficial to some degree. It's visually I think maybe a problem a little bit but I don't know that there's another solution at this point.

Mr. Siah: That's a very astute observation I think because on one hand we don't have any control over the adjacent property. We have to preserve and we have to make sure there's nothing...and that's as you said, that's the only way that we can do.

Mr. Hedani: Right. I also notice that there's a similar erosion problem on the adjoining property next door. So the solution there would be to replicate what you have here next door once they come back to that conclusion.

Mr. Siah: Actually if I may, I want when I first came here one of the reasons is as I sort of touched on. I hope that that would be the case because that would make both the lateral access, both the improvements to the shoreline erosion processes that's the hope that basically if they start doing something they replicate... (inaudible)...preferably they hire us, but it doesn't matter. If they do the same design it would help everybody. It will have the owner of that property. It will have the beach goers, the surfers, basically you could continue that same lateral access.

Mr. Hedani: Right.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I know this is...it takes an assumption that the water, the wave would not go over the edge, on the top edge, but I can't assume that and so I'm saying if the water goes over the edge, over the top, it has to come back down because that's the natural slope from mauka to makai. And so when...on the backwash when it comes back, have we addressed how we're gonna handle that? Because you were talking about erosion, right? And somehow mitigating the undermining of that of that hydrostatic pressure coming in and taking that revetment away.

Mr. Siah: Again, I want to make sure that I understood the question. Are we talking about the runoff?

Vice-Chair Shibuya: No, the vertical retaining wall. If it, the wave goes over that?

Mr. Siah: That height is about 20 feet.

Vice-Chair Shibuya: Okay.

Mr. Siah: And the maximum runoff which means basically the highest, it's somewhere over here. It doesn't even get to the top of that wall.

Vice-Chair Shibuya: It doesn't top off?

Mr. Siah: It does not.

Vice-Chair Shibuya: Okay. I'm just...see, I have a funny feeling that that's the assumption that it will not go over that vertical part where you have that post sticking up.

Mr. Siah: Yeah....no, it doesn't get there. Actually if it did I would have it continued up and higher.

Vice-Chair Shibuya: Okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Thank you. Jim, was it said that there was some response by Tara in this? I don't remember seeing it.

Mr. Buika: This is just being distributed right now.

Ms. Wakida: Okay.

Mr. Buika: So Tara will comment on it, officially comment and also Tara has been out to the site several times with me so she's well aware of the project, yeah.

Ms. Wakida: Yes, I'm always interested in her take on things.

Chairperson Lay: Commissioners, any more comments?

Vice-Chair Shibuya: Maybe Jim can summarize some of those comments?

Chairperson Lay: Thank you. Just go ahead and...yeah, the comments that we've had so far.

Mr. Buika: Okay, I will summarize at the request of the Chairman. Actually I only have three potential additions to this Environmental Assessment. They were mostly questions. These would be Commissioner Wakida asked for more information regarding--I can't read my own handwriting--to, oh, more information to reasons why we are removing rocks from the shoreline area. Explain it better. So the reasons why. One. Two would be, two would be to follow up on



Commissioner Hedani's question about the end walls? Would you like them to include a diagram of the end walls since they are not in it. Is that...would that be necessary? Would you like that?

Mr. Hedani: I guess a visual representation of where the end walls would be.

Mr. Buika: Okay. Okay, we'll make sure that's covered. I think there is a diagram in there.

Vice-Chair Shibuya: Yeah, it's...(inaudible)...

Mr. Buika: Yeah, there is, okay.

Mr. Hedani: And maybe some consideration as to if there is a way to address the visual, the visual impact of the end walls. I don't know that there is. Other than putting a design on it.

Mr. Buika: Okay. Okay, good that's a good idea. Further address the visual impact of the end walls and we'll get...look for solutions. That one, and then the follow up...and then the only other one I had was, as from Commissioner Wakida was about adding Tara's comments which they will come. So really only two comments on the end walls and then asking for more information about the removal of the rocks.

Chairperson Lay: I have one about the end walls, addressing Hedani's comments on that. I mean, just how it will affect the neighbors because you know at the cutoff point you will get who knows what the effect will be on that cutoff point. Will it increase their erosion or help erosion?

Mr. Buika: Okay, how will the end walls affect the neighbors?

Chairperson Lay: Yeah. Commissioner Hedani?

Mr. Buika: Neighboring properties.

Mr. Hedani: This is a question for the structural engineer. I like the design. I think it'll last 50 to 100 years--

Mr. Siah: I thank you.

Mr. Hedani: --once it's put up. The question that I have is if the sea level rises by three feet over the next 100 years the water line would move and cover the toe basically of your wall if it moves up by three feet. Would the slated portion of the revetment survive at that point?

Mr. Siah: I believe so. Actually that three-foot is the global on the wall that they are submitting and they are estimating it to be much lower for Hawaii. We're one project where they used nine inches, 75 percent of a foot for additional. If we stay within that one-foot definitely, even with the three feet in 100 years if that's...that will remain. One advantage of this revetment, uncemented as Mr. Chair was saying is that it's very forgiving. It adjusts. If there's any even more than it was designed for...in addition to the design force, it doesn't collapse. It basically needs adjustments. It settles. It moves a little bit. So in that regards it's again, helpful for us.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I would like a brief, maybe one or two paragraphs Jim talking about the possibility of mitigating the strength of that ocean water coming into the this area. I know it's very rough out there, but somehow we can deflect it, defuse it or somehow create the energy to fight against itself to mitigate the force coming on shore. And I think the comment is really for the State to consider not for us to consider because we don't have kuleana in that area.

Chairperson Lay: Commissioners, any more comments? Seeing none, thank you.

Mr. Buika: Thank you very much.

Mr. Spence: You wanna take a brief break or you're gonna go--

Chairperson Lay: Let's take a 10-minute break then, let's make it five, yeah, five is good.

A recess was called at 2:45 p.m., and the meeting was reconvened at 2:56 p.m.

Chairperson Lay: ...call back to order. Our next agenda item?

Mr. Spence: Okay, Commissioners we're in Item E, Communications. Ms. Melanie Adams requesting a transfer of State Land Use Commission Special Use Permit for Makawao Union Church and a 20-year time extension to continue to operate a preschool and Staff Planner is Ms. Livit Callentine.

## **E. COMMUNICATIONS**

- 1. MS. MELANIE ADAMS requesting a transfer of the State Land Use Commission Special Use Permit from THERESA KAY MILLER to MELANIE ADAMS and MAKAWAO UNION CHURCH and a 20-year time extension to continue to operate a preschool, ALOHA KAI ACADEMY (formerly Anuenue Preschool) within the existing church facilities at the Makawao Union Church located in the State Agricultural District, TMK: 2-5-004: 011, Makawao, Island of Maui. (SUP2 940010) (L. Callentine)**

Ms. Livit Callentine: Aloha, Commissioners. I'm glad to see you again. So this is a great project. It is a simple project. It would be even simpler if we had already changed the condition of approval prior to allow the Director to approve time extensions. However, this project also requests...also involves a transfer. So this is a preschool at Makawao Union Church that has been operating for two decades. It was operated by Theresa K. Miller for those first two decades and then in the beginning of this year, Melanie Adams started operating it along with her partnership with the Makawao Union Church. So this involves a transfer to her. So it's just one licensed preschool to another in the same location. Ms. Adams has experience doing this as she operates the Holy...the preschool at the...for toddlers and preschool classrooms at the Holy Rosary Church and which she had done for the past three years. We have received a notarized authorization for transfer from Ms. Miller to Melanie Adams and Makawao Union Church along with the proper notarizations from the

church itself because the church owns the land which is about two acres. So the applicant's also requesting a 20-year time extension which we'll get into just in a split second.

The preschool is licensed by the State Department of Human Services. Is required to be licensed I should say. Right now they have a provisional license which expires on the 31st of January so we rushed this to get it in before you before they expire so that the kids will continue to have a place to go hopefully. So they do have a provisional. Let's see, they don't need a food establishment permit from Department of Health because they provide foods that are prepared elsewhere. They have the necessary insurance. Then going quickly through this, let's see...the Planning Department actually because this also involves a transfer, we felt it might be prudent to go ahead and authorize a time extension of 10 years again even though the last one was 10 and we might say well, now it's been 20 years the school's been operating so, you know, if it was the same operator we might say, oh yeah go 20 and we wouldn't be opposed to you recommending or approving a 20-year term, but we felt it was prudent to recommend a 10-year term. So I have Melanie Adams and her major support team of her husband, James Adams here today and she has also brought Pastor David Schlicher, who is the Makawao Union Church representative. I'd like to have Melanie have a chance to introduce herself to you and then if you have any questions, we'd be happy to address them. Melanie?

Ms. Melanie Adams: I'm Melanie Adams and currently I am the teacher, preschool teacher, director and owner of Aloha Kai Academy at the Holy Rosary Church and I was able to see quite a few of you a few years ago when we did the special use permit starting up with that. When we took over the program here at this church we did not know the special use permit was lapsing. And because of the way that that all came out that's...we apologize for putting it in here at the last moment. But we really appreciate all of your support. This is a wonderful location for children. There are two classrooms. There are five teachers who work at this school. I will be directing this program as we move forward here and it affects about 50 families that are Upcountry and there are no other programs for them to really absorb in the middle of a school year this group of children. And we also appreciate Makawao Union Church and their great support of everything that we've done. In the short little two-week break we did major improvements that we felt were necessary. I honestly taught this site before I opened Aloha Kai Academy and so I knew what things I would like to see changed that we tried to make those improvements of. And we're so looking forward to making great things happen for kids here in the future. So thank you.

Chairperson Lay: At this time I'm gonna take public testimony. Does anyone wish to testify at this time, please step forward? Seeing none, we're closing public testimony. Commissioners, any questions? Commissioner Wakida?

Ms. Wakida: I just have two for Melanie, please. Is this...the Makawao...let's see, Aloha Kai Academy is that considered a church preschool or is it nondenominational?

Ms. Adams: It's nondenominational.

Ms. Wakida: Okay. But do you happen to know if any families are members of the church and if so approximately how many?

Ms. Adams: Can you tell me how many? We have probably four, four or five children that attend.

Yeah, I'm not sure, but when I'm looking at all of the numbers I think it's about four or five children who are, whose parents or grandparents attend Makawao Union Church go there now.

Ms. Wakida: Okay, thank you.

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

Vice-Chair Shibuya: My typical fire hydrant question.

Ms. Callentine: No.

Vice-Chair Shibuya: Yes. I'll let you go first before I ask...I point out something.

Ms. Callentine: Well, okay as a risk of incurring your wrath which I hope not to do I will let you know that up until this particular version there was an ongoing condition regarding Fire Control comments. I actually called the Fire Prevention Bureau and asked them what they would like to see in this condition. What they would expect of the Department. If they had any additional comments, and I was told very, very plainly we inspect childcare facilities every year. It doesn't matter if you give 'em a permit or not. We will inspect because of the type of facility they are.

Vice-Chair Shibuya: That's correct.

Ms. Callentine: So any additional permits that this body or other bodies grant to the facility it makes no difference to the Fire Department. They're gonna make sure it's safe. And to answer your question, I have no idea where the fire hydrant is.

Vice-Chair Shibuya: No problem because--

Ms. Callentine: I'm not even sure there is one out there.

Vice-Chair Shibuya: Well, in 1994 on the report by the commission there is this statement on Page 7 that the Water Department gave a conditional that it should not be approved if water is...continues to be inadequate. And they are serviced right now with a two-inch water line. That's it. No fire hydrant.

Ms. Callentine: Yeah I didn't--

Vice-Chair Shibuya: And--

Ms. Callentine: Oh, I'm sorry.

Vice-Chair Shibuya: --whether we've improved on it or we've done something towards improving the fire protection capability. Okay, I can go to the next item. You mentioned that you had drapes in the auditorium of this facility. Are the drapes certified fire proof? In high schools they have auditoriums and the Fire Department is seeking for fire proof certification on the drapes.

Pastor Dave Schlicher: That question has come up before. We have been told that they are fire

proof.

Vice-Chair Shibuya: Okay.

Pastor Schlicher: My name is Dave Schlicher. I serve as the Pastor of Makawao Union Church.

Chairperson Lay: Thank you.

Vice-Chair Shibuya: Thank you.

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

Mr. Hedani: Livit, why is the permit in the name of a person versus...oh, a person and the church versus the church?

Ms. Callentine: In the past, it's my experience...this is the first time I've worked on this permit even though it's been around for 20 years, but in the past it looks like the permit was actually granted to only the person Theresa K. Miller. This time, I think the church wanted to partner with the applicant but I would defer to them as far as why they decided to jointly apply.

Ms. Adams: This was one of the things that I noticed when I went into this. And also make note that the Holy Rosary Church Special Use Permit is also just...it was...and I was, you know, new to the whole Special Use Permit thing so it was just in the name of Aloha Kai Academy. And when I was going through the documentation for this and the situation, the church itself that was one of the first things I asked them is what's the status on the Special Use Permit and they thought that they held it. But they just...then we found out that it was the Certificate of Occupancy. And so as I am going forward coming into this I thought well, you know, this is a community church. I don't know how many of you know what a community church, Makawao Union Church is but they are all about serving the needs of the community, the Upcountry community and it is well used. And they wanted to make sure that these children were going to be in good hands going forward. And I wanted to make sure that if anything happened to me, with Aloha Kai coming that Makawao Union Church could let another great, wonderful person come in there as well which is why when I applied for this I added Makawao Union Church to it so that they would hold that and they would always know what the status is.

Mr. Hedani: Thank you.

Chairperson Lay: Commissioners? Commissioner Shibuya?

Vice-Chair Shibuya: Another fire thing. I was looking at your photos and it appears that you have carpets. Are these fire resistant treated?

Ms. Adams: Yes, the carpets are fire resistant treated and the carpets are...all the other carpets that we have area carpets in the larger class rooms, it's vinyl flooring and area carpets and all of those have fire approval as well.

Vice-Chair Shibuya: Are they certified in other words?

Ms. Adams: Yes, certified.

Vice-Chair Shibuya: Yes.

Ms. Adams: Yeah.

Vice-Chair Shibuya: Thank you.

Chairperson Lay: Commissioners? Seeing no more questions, can we get the Department's recommendation?

Ms. Callentine: Most gladly. Based on the foregoing findings of fact or findings and analysis and previous findings of fact, conclusions of law and decision and order adopted by the Maui Planning Commission on September 13, 1994, March 25, 1996, September 8, 1998, and January 13, 2004, the Planning Department finds that the Aloha Kai Academy Preschool is similar to Anuenue Preschool and are still...are applicable to the project therefore the preschool use is still deemed as an unusual and reasonable use within the State Agriculture District and the current request for transfer and time extension is justified. Pursuant to the foregoing, the Maui Planning Department recommends approval of the applicant's request for a Land Use Commission Special Use Permit transfer and time extension subject to conditions. We do recommend that we bring the remaining conditions of approval up to current standards and requirements. Just doing some housekeeping measures here. You probably read these. Amending Condition No. 1 to allow the Planning Director to approve future time extensions, deleting Condition No. 2 regarding State enforcement. Deleting Condition No. 6 regarding compliance with Fire Prevention Bureau requirements at the request of the Bureau. Renumbering the remaining conditions and so in the list of conditions that you see and there would be six conditions. They've been...what's added is underlined and what is deleted is shown in brackets. And in consideration of the foregoing...did I say that already? I have that twice on there. Well, we would really like to have you accept this report and recommendation and authorize the Director to transmit the findings of fact, conclusions of law and decision and order on behalf of the Commission.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Question for Melanie. On the Holy Rosary Church preschool, if you will, how long have you been operating that?

Ms. Adams: Since January of 2010.

Mr. Ball: Okay, and then you started this one in '13?

Ms. Adams: Yeah, and I've also...I had Aloha Kai ...(inaudible)...on the mainland for 17 years. I moved here and worked as a teacher and really needed to have my own school. So, yeah.

Mr. Ball: Okay, thank you. And the reason why I ask that is because I'm looking at the recommendation of 20 years versus 10 years and so I'll recommend--

Mr. Spence: The recommendation is for 10 years.

Mr. Ball: Is 10, right, but we can change it?

Mr. Spence: Yes, you can.

Ms. Adams: Yeah, I just put that...we put that number in is that's how long this has been in operation as Makawao Union Church goes forward which is one of the reasons why they're on the name here as well that there will always be a program for children there because it's about the ministry of the Makawao Union Church that's part of what they want to see happen for the community.

Mr. Ball: I guess another question for whoever? How long did--

Ms. Adams: Theresa--

Mr. Ball: --Theresa have it for?

Ms. Adams: She had it for 19 years, years.

Mr. Ball: Motion to approve Special Use Permit and transfer for a time of 20 years to continue to operate the preschool within the church facilities.

Mr. Medeiros: Second.

Mr. Tsai: Second.

Chairperson Lay: Motion by Commissioner Ball and seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Hedani?

Mr. Hedani: Does the motion include all of the recommendations in the report?

Mr. Ball: Yes.

Chairperson Lay: Secunder agree? Any more discussion on the motion? Commissioner Shibuya?

Vice-Chair Shibuya: I'm gonna have to even though I support this extension I think the public service is really well performed. I like it. It's a good service that the community needs. I do have one problem. The problem is inadequate fire hydrant. And so just to let everyone know that we need to consider and start working toward getting a fire hydrant, I'm gonna not agree to this extension.

Chairperson Lay: Any more discussion on the motion? Seeing none, can you repeat the motion? Oh, Commissioner Medeiros?

Mr. Medeiros: I will support the motion mostly because it's a good thing. I understand Commissioner Shibuya's reason, reasoning about fire safety and everything, but when you have something good, you have to go with it and I think this is a good project. I think we should go with it. And I think that we should look into providing safety as a county not...it's not the applicant's

kuleana, I believe it's the County's kuleana to provide adequate safety measures for this operation.

Chairperson Lay: Commissioner Ball?

Mr. Ball: A comment I guess to Warren. The hydrant is only as good as the apparatus that is hooked up to it so in the case of a fire the Makawao responding to that and it would take I don't know, five to seven minutes and in that time, unfortunately that building would probably be burnt to the ground anyway. So with that being said, I don't see the relevance, but...

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'm just highlighting deficiency and that perhaps by my not supporting it because of this lack of fire hydrant and the capacity of the water line perhaps we can reconsider but the County can start planning ahead.

Chairperson Lay: Any more discussion on the motion? Seeing none, can you repeat the motion?

Mr. Spence: The motion is to approve as recommended by Staff except for 20 years instead of the 10.

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

Mr. Spence: Five ayes and one nay.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Approve the Transfer of the State Land Use Commission Special Use Permit as Recommended by the Department with a 20-Year Time Extension rather than a 10-Year Time Extension.  
(Assenting - K. Ball, J. Medeiros, M. Tsai, W. Hedani, P. Wakida)  
(Dissenting - W. Shibuya)  
(Excused - S. Duvauchelle, J. Freitas)**

Chairperson Lay: Our next agenda item?

Mr. Spence: Okay, Commissioners this is Ms. Kathryn Petty-Tubman of Re/Max Resort Realty requesting a Use Determination at the Marriott Hotel and our Staff Planner is Ms. Gina Flammer.

- 2. MS. KATHRYN PETTY-TUBMAN of RE/MAX RESORT REALTY requesting a Use Determination to operate a real estate information center and office primarily for the convenience of the Marriott Hotel guests at the Wailea Beach Marriott Resort Hotel at 3700 Wailea Alanui Drive Suite #225, TMK: 2-1-008: 061, Wailea, Island of Maui. (UD 2013/0002) (G. Flammer)**



Ms. Gina Flammer: Okay, good afternoon. Okay, once again it's easier to show you the project in pictures. You've got the report in front of you. This is Use Determination. I know some of you that have been here for a while, well, I remember when used to call them Accessory Use Permits. It's now a Use Determination that will be...there's no time limit on it. You've determined that that particular use is okay. So what we have before you today is an application for a real estate information center and office to be located at the Wailea Beach Marriott Resort and Spa. It's located right off of the main lobby. It's primarily to serve hotel guests. The applicant does have a second office at Dolphin Plaza for residents, and also I showed you the hours right there so you can see. And then I know you're all probably familiar with the hotel, you've been there, but I just wanna remind you about where we're talking about. We're talking about the Wailea, right near The Shops of Wailea. So you can see the area fairly heavily built up resort area. There's the site plan if you look up at the top and this is part of your exhibit. This is Exhibit 4. It shows you where the main building is and then where the suite is.

Just to refresh your memory this is what the lobby looks like when you pull up to the hotel. If you're looking to the back right over here is where the suite is. Looking from the other direction, I mean looking from the same direction to the right you're in the lobby now. And then here's just another when you've come all the way through the lobby where it is. If you look...this is what the unit itself looks like. There's pictures in the report too so you can see it it's a very small suite. Right across the lobby you have I think that's the Hertz rental car. And then I just wanted to give you a sense of what's available at the resort. There are other commercial type services there. You've got Starbuck's Coffee, a couple of retail shops, there's a wedding center, you got a business office that also serves hotel guests, and then resort activities right there in the lobby as well.

So what exactly is a Use Determination? You know, we do our best with the Code to think of permitted uses but you can't think of everything and your Code doesn't get updated all that often. In this particular case the hotel is the main use and then when you're looking at accessory uses you can kinda tell just from looking at the...what was permitted when...this was written quite a while ago. Like I say, we have smart people that write the Code so we allow for other uses but we just want this body here to be able to take a look and make sure that it's a appropriate use.

So when we're looking at the Hotel District many other districts have accessory use codes. This one in particular provides some criteria of what to look for and what they wanna see is that the use is primarily for hotel guests, people that are already there. They do put some restrictions. They go a little further than some other sections of the law. For this one, the first one, just does it qualify? Is it a large enough, of course, there's more than 20 rooms at the Marriott. And then also, the second one, are they...is it operated primarily as a service and for the convenience of the guests? And in this case, yes we can see that it is. And then the third is if you're talking about a very large use which isn't in this particular case.

So I do have with me today the applicant from Re/Max Resort Realty, Kathryn Tubman, and then also the Director of Finance from the Wailea Beach Marriott Resort and Spa, Jeff Browning is also here if you have any questions.

Chairperson Lay: At this time, I'm gonna have public testimony if anyone wishes to testify? No. Okay, public testimony is now closed. Commissioners, questions? Commissioner Tsai.

Mr. Tsai: So Gina--

Ms. Flammer: Good afternoon.

Mr. Tsai: --maybe you can clarify something for me here. It looks like Kathryn was operating from June of 2009 to October 2013. So we have a time lapse? What is going on?

Ms. Flammer: No. What happened is the hotel had a lease with the applicant. Wasn't aware of all these particular uses just assumed it was fine to have a real estate office. There was a request for service filed by a competitor. First thing the County does when that comes in is they take a look, they pull out those particular permitted uses. The RFS that came in actually wasn't exactly about the permitted use. It was more is she in conformance with her lease, something like that, but when the County gets it, we take a look at permitted uses. We don't see real estate office. We advise the applicant that you need to come into conformance. In this case, before she even applied she closed down the operation completely, moved everything out, was in compliance, and then she came in for the Use Determination.

Mr. Tsai: So the competitor or whatever or other office never moved in or occupied that suite?

Ms. Flammer: I'm not aware of what happened to the person that filed the complaint.

Ms. Spence: We're a weapon sometimes in competitive businesses. People turn each other in.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I just wanna make a question here. Does a hotel have a resident medical person on staff on residence on site?

Ms. Flammer: A medical person, you mean like a physician on call service they use or do you mean like a --

Vice-Chair Shibuya: Yes, physician on call or something. Is that part of a service because it would be a service for a hotel? If it's not...

Mr. Ball: Realtors are also doctors.

Vice-Chair Shibuya: Realtors are doctors, okay. I'm getting to the essentiality question.

Ms. Flammer: Well, the last one we saw was a medical facility. Last Use Determination on the west side are you thinking of the comparison or you're just wondering does the hotel have a suite with a physical urgent care center in it?

Vice-Chair Shibuya: Or a hospital physician or technician or somebody?

Chairperson Lay: Just wondering how this applies to this, Mr. Shibuya, your line of question on that?

Vice-Chair Shibuya: Essentiality. In terms of services for the visitor, I would think that the visitor would be more prone to having medical services than perhaps maybe real estate type of service.

Ms. Flammer: They might be, but it's not allowed outright. They'd have to come in for a Use Determination. They probably would also need a larger facility.

Vice-Chair Shibuya: Well, that's my point. You know, it's like a first aid station.

Chairperson Lay: Director wish to comment.

Mr. Spence: The point of this is, a real estate office is not an outrightly permitted use. It's the Commission that, you know, has to make that determination. I mean, where you can have, you know, bars and nightclubs and massage studios and gift shops. This is something that we find compatible with the hotel environment. However, it still requires the Commission's okay.

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

Mr. Hedani: Gina, what's a haberdashery?

Ms. Flammer: Isn't that a hat shop? It's a old-fashioned name for a hat shop. It gives a clue as to when the Code was written.

Mr. Hedani: Okay. I guess my question would be is there some effort that's being made to update this provision?

Ms. Flammer: I'll let the Director talk about the Hotel District.

Mr. Spence: We just passed, I don't think it's been transmitted. The Council just passed it. I think it passed out of Committee. Need to go through two hearings with the full Council and then it gets to the County Clerk and then back to us, but it's being amended to change a lot of the stuff.

Ms. Flammer: And from what I understand we're trying to be a little more broad so we don't bring these type of rules, small projects and take your time with it.

Chairperson Lay: So there might not be haberdasheries in the future?

Mr. Spence: You never...you know, I was told by a land use attorney in New York that haberdasheries were making a comeback.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Before I make the comment on that. But in terms of in Hawaii in the old days they used to make coconut hats if that qualifies. But anyway--well, I was wondering I know that the realtors on Maui have nice, glossy, very attractive types of magazines that they lay around and attract the visitor's interest, so whoever's interest there are. So what is the difference between having a magazine laying around or having somebody, a realtor on site.

Mr. Ball: Lots.

Vice-Chair Shibuya: Okay, can you explain, sir.

Chairperson Lay: This is all based on need, right? I mean, if they can do it, do it. I mean, if they're able to keep their facility open, they've got clientele coming in, they're making money, they'll stay open. If they don't, they won't.

Ms. Flammer: Right. That's the market. Yeah.

Mr. Ball: In the act of disclosure, Kathryn and I have done some, I think some transactions together. Definitely have shown each other's properties so we are in the same industry but it won't prevent me from--

Chairperson Lay: You were that competitor that was--

Mr. Ball: Yes, I did turn her in, but no hard feelings. No, just kidding. To answer Warren's question there is a lot difference between having just magazines and having the live people there, and it's sales process and that sort of thing. But we'll talk about that and rocket science together tonight, yes.

Ms. Flammer: I think one would be an interactive exchange.

Vice-Chair Shibuya: Yeah, yeah. It's okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just as a comment I'd like to thank the applicant for removing the use prior to this coming before the Commission.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I'd like to move that we accept the recommendation.

Chairperson Lay: Any more discussion on the matter first? Commissioners, anymore questions before we move on? No. Can we get the Department's recommendation?

Ms. Flammer: Are you ready? Okay. My analysis, the Department finds that the proposed use does meet the criteria set forth in the Code. The real estate office adjunct to the resort's main function of providing hotel accommodations. It has more than 20 rooms and the real estate office is to be adjunct to the main building, and it also will serve primarily guests of the hotel. So in consideration of the foregoing analysis, the Department recommends that the Maui Planning Commission find the proposed use for a real estate information center and office to be an allowed accessory use. The Department recommends approval of the Use Determination request and further recommends that the Planning Commission adopt today's findings of fact, conclusion of law, decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Mr. Tsai: Second.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Like to move that we accept the recommendation with a side note that if she does want to open a haberdashery...(inaudible)...she can at her option.

Mr. Tsai: Second.

Chairperson Lay: Okay, a motion by Commissioner Medeiros and seconded by Commissioner Tsai. Do we have any comments on the motion? Seeing none, can we get the Department's recommendation?

Ms. Flammer: That was it to go ahead.

Chairperson Lay: Okay, we're good to go.

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

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

Mr. Spence: That's six ayes.

Chairperson Lay: The motion carries. Thank you.

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

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

Chairperson Lay: What we got now?

Mr. Spence: Okay, Action Minutes, Commissioners, January 14th and the Regular Minutes of October 22nd.

**F. ACCEPTANCE OF THE ACTION MINUTES OF JANUARY 14, 2014 AND REGULAR MINUTES OF THE OCTOBER 22, 2013 MEETINGS**

Mr. Ball: Move to approve with no changes.

Mr. Hedani: Second.

Chairperson Lay: Have a motion by Commissioner Ball, seconded by Commissioner Hedani. All

those in favor of accepting the minutes say, "aye". Motion carried. Oh, those opposed? Motion carries.

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

**VOTED: To Accept the Action Minutes of the January 14, 2014 and Regular Minutes of the October 22, 2013 Meetings.  
(Assenting - K. Ball, W. Hedani, J. Medeiros, M. Tsai, P. Wakida,  
W. Shibuya)  
(Excused - S. Duvauchelle, J. Freitas)**

Mr. Spence: As a distraction, I did look up...I Googled haberdashery and it says, the sale of goods by a haberdasher. Then I had to look up haberdasher and it has to do more with men's clothing not only hats, men's clothing. So we're all been edumacated today. That was nonessential trivia for today. We're on Item G, Director's report.

#### **G. DIRECTOR'S REPORT**

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**

**STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION (DOT-A) requesting a six (6)-month time extension on the Special Management Area (SMA) Use Permit condition to initiate construction of the Kahului Airport Parking Expansion and Airport Access Road at TMK: 3-8-001: 019, Kahului, Island of Maui. (SM1 2008/0022) (P. Fasi)**

Mr. Spence: This has to do...the first one has to do with notifying the Commission of a time extension for the airport access road and parking expansion and the Staff Planner is Mr. Paul Fasi.

Mr. Paul Fasi: Good afternoon. The Planning Director is notifying the Maui Planning Commission of his intent to process the following time extension request administratively. On...let's see what was that date that they requested this, on November 27, 2013 the applicant came in to request a six-month time extension to initiate construction. They had to initiate construction by February 28, 2014 and that's not gonna happen, so they're requesting a six-month time extension. Earlier I passed out to you a power point presentation from Munekiyo & Hiraga. This was back in 2009. And this gives you the relevant slides of the project. So you have a pretty good idea of the scope of the project and why they're asking for a six-month time extension. This is their second time extension. The first time extension was for two years. So today, this is basically just to notify the Planning Commission that the Planning Director intent to process this administratively. We do have a representative from Munekiyo & Hiraga here representing the DOT, Airports and we do have Director David Goode here from Public Works. Thank you.

Mr. Spence: So Commissioners, this is...my intent to administratively...you can choose to say,

okay Director you can administratively grant the time extension or you may wish to say you wanna review it.

Vice-Chair Shibuya: Can we grant the extension?

Mr. Spence: No. No, you can say that you want to at a future date if you don't wanna waive your review.

Chairperson Lay: Commissioner Ball?

Mr. Ball: I brought this road up in previous ones when we were talking about the airport consolidate rental car facility and I still have the same questions and this might be a good time to address these where we have the Haleakala Highway intersection and the Hana Highway intersection and the proposal is to put a underpass at Haleakala Highway, Old Haleakala Highway I should say which services very minimal cars and do a stop light, another stop light I should say at Hana Highway where there currently is one in operation that I go through there rarely but when I do it's, you get up to speed and then you're stopping right there. There's already been major accidents there because of it and that sort of thing. So I think for me, I would say that they gotta go relook at that whole thing. I believe that the underpass, if you will, on the Old Haleakala Highway has no access to Costco so people would have to come all the way down this road anyway and go all the way back to back on Dairy which defeats the purpose of that because we know the majority of visitors come here will go to Costco and stock up on their goods. So I think that's one of the major issues of that.

And the Haleakala or sorry, Hana Highway crossover is another issue. I've talked to State Legislators from Maui and they all refer me back to the Department of Transportation. So it's in the DOT's hands to fix that. Maybe they can eliminate that light at the A&B intersection and bring them up and over and down something further down the airport access road, you know, so we don't have a light there. I mean, there's a major exit for people that live Upcountry and anybody that's trying to evacuate Upcountry or the like. Right, so they have all these lights in there, we're just gonna create another Kaahumanu Avenue extension with light, light, light, light, light, light and that's the State DOT's answer to us. And they always give me the same, well Maui didn't want underpass, overpass or something like that. Well, that was like 30 years ago when somebody said that. So times need to evolve and they need to get on this discussion with us. I would say bring it back then.

Chairperson Lay: Would our representative from the Public Works like to comment on that Mr. Goode?

Mr. David Goode: Thank you, Chair. Yeah, I guess we echo some of Commissioner Ball's concerns. The Administration in general for the last three years really hadn't focused on this. Really didn't know if you will about the proposed underpass if you will of Old Haleakala Highway going under the airport access road. And we are concerned too that folks leaving the airport don't have a direct access towards Costco, Costco gas, the industrial lots, the Airport Hotel, that would force them to go back all the way around Hana Highway back Dairy Road or send them back to the airport, we don't want them to go I would think and then back the existing way that we get there today. So, we've been working with the Airports a little bit on this.

I talked to the Mayor and a couple of things. One is as far as Old Haleakala Highway going around

the airport we don't need any more once this airport access road is done. I live Upcountry, I leave the airport I usually go around that way to get to Hana Highway and Haleakala Road. With the airport access road I wouldn't. I would just go to Hana Highway and make a left. Airports might need that road so I think that's important for Airports to decide whether they need that to continue access to the heliport or other facilities. But we certainly don't need it. We don't really need...see the need to build this overpass/tunnel to service a road that has very limited use in the future. There's more use on the other side you know, towards Costco there's plenty of use, and so we let DOT Airports know that we support some type of at-grade solution so that when you leave the airport you have a choice. You can go towards Old Haleakala Highway either direction and you can go...continue out the airport access road, obviously you wanna make that transition as smooth as possible so it doesn't delay people coming in and out of the airport. We feel there's a solution in there somewhere. We didn't dictate what it is, but we really felt strongly. I think the people would really support that.

Additionally, the overpass/tunnel will require...currently where this project picks up it's kinda where they're working right now, Hawaiian Dredging it goes from elevation 30 up to 50 above sea level to get the road underneath and then back down to 40. So that means as you're driving down Hana Highway there's gonna be this bump on the horizon. It's gonna necessitate something like 25,000 truckloads of material to build that and then 25,000 empty trucks to leave. So there's a pretty significant impact to all of us during construction, additional cost, additional time, et cetera that we think there's gotta be at-grade solution that could work and still have this project move forward, still I think they're clearly not ready to start construction yet. They can iron this thing out and ready to support them on that.

So at our...you know, we can talk to the Mayor, the Department's position we would prefer the Planning Commission take a look at this. No disrespect to the Director or you can tell the Director to work with us, but...Will?

Mr. Spence: Yeah.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Now given this is a second time extension I know this is DOT and we really question the reasons behind it. Maybe I can ask the lonesome representative to come up and give us some insights regarding this matter please?

Ms. Karlynn Fukuda: Good afternoon Chair and Commission Members. My name is Karlynn Fukuda from Munekiyo and Hiraga. To answer Commissioner Tsai's question essentially the contract has been awarded by DOT and what I was told by DOT was that the documents because of the procurement process would not be completed by February of this year so they need the additional time. In fact, they were looking at possibly by May to be done and have the contract awarded, notice to proceed issued and start it. But that's the reason why DOT has asked for only a six-month time extension request because they have a contractor and they are working out the details as far as the contract.

Chairperson Lay: Commissioner Tsai?



Mr. Tsai: I wasn't here when this was originally discussed. What is the estimated time of construction?

Ms. Fukuda: The estimated time of construction? You mean for the time period?

Mr. Tsai: Yeah.

Ms. Fukuda: That I can't recall off the top my head and the original project had originally proposed parking lot expansion to the existing parking lot. However with the Consolidated Rent-a-Car project that this Commission approved a few months ago basically that parking lot expansion is no longer going to move forward because the ConRAC will now replace where that parking lot expansion would be. But as has been noted by a couple of people today, Hawaiian Dredging has started work on the highways portion of the airport access road and so ideally DOT Airports would like to start construction on their portion of the road so that you're not looking at a road to nowhere for an extended period of time. So they, you know, are interested in getting started on construction I would say for sure this year so...

Mr. Tsai: Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Karlynn?

Ms. Fukuda: Yes.

Mr. Hedani: Do you know what Airports is doing as far as how this is gonna work in their eye? Is there gonna be an underpass for the Old Haleakala Highway or is that their plan?

Ms. Fukuda: That was the plan that had been proposed and approved in the SMA Use Permit for the project and the reason for that was that they wanted to have limited access onto the airport access road so that traffic could freely flow to the airport. So right now I believe if I'm not mistaken for sure there's two, only two access points besides the airport. You can get on the airport access road at the Puunene intersection. You can also get on...and that's the Highways portion so it was not part of this project. The other portion that you can get on or off is at the Hana Highway intersection as we've talked about before and then of course, as we looked at if you can kinda recall back at the Consolidated Rent-a-Car facility you'll be able to get to the airport access road from the airport itself. So there is an off ramp if I'm not mistaken to the cargo facility that's off before the airport so...and that underpass would also provide, you know, direct access from those traveling to the cargo facility to still get to cargo facility from the Old Haleakala Highway.

Mr. Spence: And if I could just--

Chairperson Lay: Director?

Mr. Spence: I was not at the Commission meeting when this SMA was first...okay, I'll just support the Administration's position that perhaps this should be a good thing for the Commission to relook at...questioning just the need for an underpass and maybe redirect some of those funds to the Hana

Highway crossing. You know, I share the concern of you know, continuous stop lights which is kinda defeats the purpose of a highway if you're gonna put stop lights all the way along it. That's my feeling.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Yeah,--

Mr. Spence: I should also say, we definitely support you know, Department of Transportation in their efforts to get these projects off the ground and stuff. We're thinking that some adjustments to the plan.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Yes, there's two different projects. One is the roadway from Dairy Road going to Hana Highway and they currently have the street lights there on Hana Highway. I objected to that as Commissioner Ball did because it does put a stop to the free flow of Hana Highway all the way to the harbor. And if we talking about the economy for Maui, we don't put stop lights for those who going to airport or to the harbor. We should be free flowing and so we need overpasses as much as possible. And they did originally have that. They even had overpass to the airport with the cloverleaf type of design and then they scrubbed it. And so I would like to relook at that portion as far as the Old Haleakala access road highway under the...at the airport area, that's fine. I mean I have no objections to that as long as we have the overpass or underpass type structure on Hana Highway.

Ms. Fukuda: Chair can I just make a point?

Chairperson Lay: Sure.

Ms. Fukuda: Just for clarity purposes, the Hana Highway intersection is not part of this SMA so just so that we're clear that those are two separate projects. So I just wanna make sure everybody understood that. Thank you.

Chairperson Lay: Commissioner Ball?

Mr. Ball: The Hana Highway is part of the consolidated?

Ms. Fukuda: No. It's part of the DOT Highways portion of the airport access road. So there are two separate divisions that are constructing the airport access road and it's because of funding sources that are being provide for the airport access road.

Mr. Ball: That goes to my follow up question. About the funding, are we at risk of losing funding?

Ms. Fukuda: Yes. Eighty percent of the funding for the projects are coming from Federal funds on the Highway portion. The State is kicking in 20 percent.

Mr. Ball: So what does that mean time?

Ms. Fukuda: Well, they've already started on the Highway's portion. That's the work that you see occurring right now. I cannot speak to how a redesign of that intersection would affect the project. I'm not sure. I will say that it's my understanding as I think someone had mentioned earlier when there was funding for this project say maybe 25 years ago or so and the whole road was gonna be done by the Airports Division when that project was I guess put off that money did go elsewhere to other airports. So...

Mr. Ball: I guess I need more clarification on who...when will we see who is responsible for that Hana Highway portion then?

Ms. Fukuda: You won't. There's no permits triggered.

Mr. Ball: It's just they do it?

Ms. Fukuda: Yes. They did an environmental assessment earlier—gosh I can't remember already, was it in 2010 or 2011 maybe—but that yeah, that was completed.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Yeah, in this particular case, I would, you know, defer to the Director to go ahead and grant the extension because the actual discussing of the underpass of the Haleakala Highway, the Old Haleakala Highway I think is moot at this point. I just...the risks of losing this entire roadway access road and circulation plan is just too much of a risk. I would say let's press on, address the overpass on the Hana Highway and a different issue. This is a different venue.

Chairperson Lay: Mr. Goode?

Mr. Goode: Thank you, Chair. Maybe if I could address Mr. Shibuya's concern 'cause they're legitimate. Certainly don't wanna lose the funding. Karlynn's correct, I mean they're two separate projects. This SMA is just, just shy of Hana Highway into the airport so that's the area we're focused on. However, I had...we had a very productive conference call with DOT Airports, I don't know if Karlynn's aware of that about a week and a half ago. The contractor who doesn't have a contract yet and obviously wants to have a contract participated in the meeting. They've hired designers on their own nickel to look at how to get at at-grade intersection. DOT Airports was supportive of looking at it. Obviously they have a time frame they have to try to perform under. So at this point, the contractor has initiated design work to look at how to solve this problem. DOT Airports did not indicate at that meeting that they had any immediate risks of losing funds. So my takeaway was that they have the contractor doing the work for them to look at it, they're interested in making it happen, they wanted to make sure that if it's as far as an amendment to the SMA it wouldn't require a new major permit which Will you could probably speak to. And it sounded like they wanted to, you know, in earnest take a look at it, and that's all that we're asking from the Administration side is take a good hard look at and see if they can come up with a viable alternative.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I kinda don't like to scrub the idea of the underpass. The reason why is if you

scrub it and pour an on-grade type intersection you're gonna slow down the traffic coming into the airport and the traffic going out and with another set of lights that's the least thing you ought to do at this point in time. So that's why I'm saying we should continue with the airport access road. We need to continue with the whole project as is.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I'm not sure who can answer this question, but I'm just gonna throw it out there. The option obviously is for us to review the time extension at a later date. If we decide to do that and agree to do that what we're losing anything in terms of time line because I guess the motor's still running. We're still gonna go forward with whatever has been happening until we review it is that correct?

Ms. Fukuda: Yes, I believe that would be correct. I mean, essentially what we're trying to do is keep this SMA permit alive. The last thing that we would want to happen is for the permit to expire and then DOT would be faced with having to redo a new SMA permit and so I think that seems to be the common interest that DOT would have, that the Administration would have and the Commission would have it seems anyway. I don't wanna make assumptions. But...because that's really the action that's before the Commission or that's being presented to the Commission is that the Director you know had intended to grant the six-month time extension so that construction could actually start, the permit then would then be initiated. If the request were to be denied for example, then you know, the permit would expire as of the end of February as I understand it.

Mr. Spence: The permit would not expire because you requested or I should say DOT requested the time extension in a timely manner.

Ms. Fukuda: Right, right. I'm just saying if the Commission were to review it, say they didn't wanna waive the review and then we later look at it and then deny the time extension request at a later date.

Mr. Spence: Oh, yeah. That's under the purview to deny it at a later date, but just rescheduling for Commission the permit is still alive.

Ms. Fukuda: Right.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: My take on this is, you know, I trust the Director to make the right decision for the County. Okay, if he grants the decision for an extension it's in the best interest of the County as far as you know, all of the other questions that were brought up it was handled. There were a lot of questions when it was passed the first time. And for me to vote to say, no you're wrong I wanna vote on it. You know, no respect. I'm leaning towards letting the Director do his jobs.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: From Puunene Avenue to the airport we currently go through Dairy Road and we've got several stop lights and then we go Hana Highway another set of stop lights and from

there you go Keolani, another stop light. We are asking now to surface intersection at Old Haleakala Highway and the new airport access road. One stop light, brand new stop light when we opportunity to go under and there's no stop light. We have the Hana Highway, we have a stop light. I think we need to really fix that at this point. We had an opportunity for direct access for the airport to and from the airport and we're nutsing it up with all kinds of surface intersections. I think we're losing it.

Chairperson Lay: Let me comment fast. Well, for me we've seen how Dairy Road is already. We'll do everything we can to stay away from Dairy Road and we wanna prevent that from happening somewhere else. So if we can address that to making it where we do have some free flowing traffic and there might be some problems getting to that area from that area but we need somewhere where we can get to some place a lot quicker than it is now because I'll completely go...I'll go Zippy's to get around Dairy Road because it's just so congested now. But needless to say I'm not the only brilliant guy that thought about that now so the back roads are getting crowded too. Even that back road by the airport by the airport is getting congested now. Before you get back there you'd be able to get up to Haleakala Highway. Now that road is all the way down by the airport...I mean, the cars are stacked up all the way down to the airport. So there has to be some free flowing area to me where we can get this some movement going which will alleviate a lot of traffic which will make the traffic less congested. Director?

Mr. Spence: So Dave, just for clarity the contractor is looking at making some possible modifications or...

Mr. Goode: Yeah, the contractor kinda recognizes the issue as it relates to getting to and from say Costco and the airport hotel, the industrial area and the airport. And so when I use the term "at-grade intersection" I use that term because it doesn't mean necessarily a signal. And one of the things they've looked at is they've hired a nationally recognized roundabout expert to see how a roundabout can be employed to handle...there's a number of different roads that come in there as well as having through access to the airport. So if you're coming in the airport you can just go straight through. So they're looking at other options that would really I think in my opinion make...has a potential of making it better and I hate throw away an option when it's right in front of you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: David my question is should be waive review and let the Director grant the extension. What clout is the County left with to initiate any other, any future changes? You said they're looking at roundabouts and one thing or another. I mean, why would they bother? Why wouldn't they just go ahead with what they have?

Mr. Goode: As far as the first part of your question as far as additional clout I'm not aware of any. Secondly, I think the reason they're doing this 'cause they see it doesn't make sense. Otherwise why would they do it? It actually probably gonna reduce the amount of the construction contract. So I don't think they're shooting themselves in the foot for a reason. It's because they don't think it makes sense as it's currently designed. But they're not convinced they have the right answer yet either. They wanna explore, they think they can do it rather quickly so that they can, you know, hopefully commence on a contract, might be a revised amount.

Chairperson Lay: Commissioner Ball?

Mr. Ball: With that information it would be crazy not to let them try to figure a solution out, you know, if we say we're gonna pass this then it's done they don't have a find a solution. We should force them to find some solutions, at least explore them. That's a service to the public that we would do having we know what the alternative is gonna be already. We have to try and come up with something different. I mean we've experienced it. Dairy Road is a tourist road. Now you're gonna make the local road with all those lights? Who are you servicing there, you know. These guys gotta come up with solutions especially if they're willing to look at it. We should let 'em look at it and do the time extension or whatever and then we or we review it later and then we see what they say. I mean, if we're just gonna say let's get...push this thing through and then you know, we're not servicing our public that we represent to me.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, just one last comment. What I thought I heard was both directors saying they wouldn't mind if the Commission took a look at this.

Mr. Spence: Well, and to clarify I think the both the directors would appreciate if the Commission did look at this.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I agree.

Chairperson Lay: Commissioner Shibuya?

Mr. Hedani: Actually I'm confused at this point. Hana Highway we don't have an overpass or underpass?

Ms. Fukuda: Correct.

Mr. Hedani: And the Old Haleakala Highway we have an underpass?

Ms. Fukuda: Correct.

Mr. Hedani: Is that what the situation is?

Ms. Fukuda: Yes, and the, you know, the portion that the Commission would actually be reviewing is only not at Hana Highway. It's actually in from Hana Highway but before the Old Haleakala Highway.

Mr. Hedani: Here's my perspective, yeah, if we can save millions of dollars by eliminating an underpass on a highway that's not necessary anymore they should look at that as an option. And if requesting the Commission to review it causes them to move in that direction then I think we should review it.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'd like to make motion that the Planning Commission review the access, airport access road.

Mr. Tsai: : Second.

Mr. Hopper: ...(inaudible)...time extension.

Vice-Chair Shibuya: Time extension, yes. Time extension.

Mr. Tsai: Time extension.

Chairperson Lay: Motion by Commissioner Shibuya, second by Commissioner Mr. Tsai. Any discussion on the motion?

Vice-Chair Shibuya: Yes, I think if you are talking about saving money versus effectiveness moving the traffic effectively and efficiently is number one in my mind that has to be done. Cost is a variable at this point. You can make the roads cheaper, but the problem here is that will it function. Will it handle the load? Will it handle and support our economy, that's all.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: No.

Chairperson Lay: Okay, everyone no more comments? Commissioner Medeiros?

Mr. Medeiros: Again, you know, with the funding issue I...if we're gonna lose funding for this because of any delays, you know, I don't wanna take a chance. I'm sure that...we're not making the decision on whether we're gonna look at it on the bypass or anything like that. What we're trying to decide is whether we're gonna have the Director grant the extension or not. If the Director feels that you know, it's not in the best interest of the County you know...and that way...and we don't lose the funding for it. It makes more sense for me, to me to leave it in the Director's hands to make that decision. You know...we won't be looking at the overpass and underpass, you know, so I don't know.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I'm looking at this here. So according to the first time extension it says here shall be initiated by February 28<sup>th</sup>. And given that we're end of January, not sure where our agenda is, I guess from second meeting in February would conceivably...you can put this agenda on that meeting. Interest of time.

Mr. Spence: Okay, we can...we'll certainly work with everybody on getting it back on the agenda as soon as we can. The February deadline, I mean, they're not gonna lose that permit if the Commission decides to review this at a future date. The applicant has timely requested

a time extension. So if government delays something that's not the fault of the applicant. So they're not gonna lose the permit.

Mr. Tsai: I don't see it –

Mr. Spence: But timeliness is important.

Mr. Tsai: I don't see that there is a chance to lose any funding because the project has been awarded, technically awarded just waiting for the documentation I guess, is that correct?

Ms. Fukuda: Well, and that's true I guess in terms of contractor has been selected, but I'm not sure with the proposed changes how that may effect the contract documents because it sounds, you know, Mr. Goode was saying that there could be a reduction in fees and so that's gonna change everything within the contract as well. So in any case, I think, you know, it would seem that in order for us to come back to the Commission that there would need to be some kind of review of whatever kind of alternative plans you know, may have been presented by the contractor. And I don't know what that time line is to be honest. I can follow up with DOT Airports and see what the timeframe is for that, but...

Chairperson Lay: Call for the vote? Repeat the motion?

Mr. Spence: I think we need a motion.

Chairperson Lay: Well, we got the motion already right? We have the motion, yeah?

Mr. Spence: The motion was to have the Commission review the time extension.

Chairperson Lay: All those in favor? Those opposed?

Mr. Spence: That's five ayes and one nay.

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

**VOTED: To Review the Time Extension Request at a Future Date.  
(Assenting - W. Shibuya, M. Tsai, K. Ball, W. Hedani, P. Wakida)  
(Dissenting - J. Medeiros)  
(Excused - S. Duvauchelle, J. Freitas)**

Ms. Fukuda: Thank you.

Chairperson Lay: Thank you.

Mr. Spence: Okay, Item G-2, EA/EIS Report.

## **2. EA/EIS Report**



**Circulation of the electronic version of the Central Maui Regional Park Final Environmental Assessment on the State Department of Land and Natural Resources' Central Maui Regional Park Project. The Commission will conducting a public hearing on the County Special Use Permit for this project at its February 11, 2014 meeting. (P. Fasi)**

Mr. Spence: We all of you distributed a–

Ms. Fasi: Yes, Carolyn did.

Mr. Spence: Okay, Carolyn has distributed an electronic version of the Central Maui Regional Park Final Environmental Assessment.

Mr. Spence: Item 3 you've received your SMA Minor Permit Report.

Vice-Chair Shibuya: Oops, oops, wait, wait, timeout. On the Final EA, the Central Maui Regional Park, can we have an executive summary of some of the points in this CD? Short. It doesn't have to be lengthy. It's just bullet points.

Mr. Ball: It's on the title.

Vice-Chair Shibuya: I know.

Mr. Spence: At the next Commission meeting you are gonna be seeing a Special Use Permit for the park. So you'll be getting a full report as well as, you know, whatever is on the CD. And I'm sure the EA has a description of the project.

Mr. Hopper: The EA might have an executive summary in it actually. Sometimes they're structured that way.

Vice-Chair Shibuya: Okay.

Mr. Hopper: So maybe if you put it in, maybe at the beginning or something there. Sometimes there are, but sometimes there aren't.

Vice-Chair Shibuya: Okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Why didn't we get a hard copy? Because I really find it, as you could see I need to have something to reference.

Mr. Spence: Mr. Fasi?

Ms. Fasi: To answer your question I believe this EA was done in...well, it says May 2013. I just received this. We never received the EA from the applicant. The Department never received the EA from the applicant because it was just a Special Use Permit at that time. The EA

process was already done. And the EA process that was completed and then we received the application for the Special Use Permit.

Ms. Wakida: Oh, I'm sorry. So we're gonna be getting a report then in the mail on the Special Use Permit.

Mr. Spence: Not the EA, but you'll be getting the Special Use Permit application.

Ms. Wakida: I got yah. Okay.

Ms. Fasi: And it's an excellent report.

Ms. Wakida: Okay. So we're not the accepting authority on this. It's pau?

Mr. Spence: Yeah, that's pau.

Ms. Wakida: All right. Okay.

Vice-Chair Shibuya: Okay, Minor Permit Report.

**3. SMA Minor Permit Report (Appendix A)**

**4. SMA Exemptions Report (Appendix B)**

Mr. Spence: Commissioners, you have your SMA Minor and your SMA Exemptions Reports.

Vice-Chair Shibuya: Mr. Fasi, don't run away. Maybe you can explain SMX MECO Kihei--

Mr. Spence: Paul?

Vice-Chair Shibuya: Don't run away. This is SMX 2013/0465, the MECO is the project and the permit name is Kihei BESS Demo Project Kihei. Planner is Paul Fasi. Can you give a brief what is that?

Mr. Fasi: The BESS project is a group of batteries for the grid that the engineering firm is testing to put on the MECO grid to see if it's gonna work or not. I can't give you any parameters or specifics but it's basically kinda a backup system to the MECO grid and it's a temporary test to see if it's even feasible to do. I believe the test is six months to a year. I did call the engineer and left him a message to call you, did he ever call you?

Vice-Chair Shibuya: No.

Ms. Fasi: Did he send you an e-mail?

Vice-Chair Shibuya: No.

Ms. Fasi: But that's basically it. It is a temporary test site. That's all it is

Vice-Chair Shibuya: Okay, I just wanted to get little bit more insight, so maybe you can ask him to call me.

Ms. Fasi: I will appeal to him again.

Vice-Chair Shibuya: Yeah, yeah. Thank you. And then there's another one here, MECO Maalaea Wells, replace wells from MECO. Which wells? Is this one of the hot water wells? I'm not sure. Hot water from the generators.

Ms. Fasi: I don't, I don't recall that offhand, I'd have to review it.

Vice-Chair Shibuya: Yes, I know.

Ms. Fasi: I will follow up on that one also.

Vice-Chair Shibuya: Thank you.

Chairperson Lay: Any more questions on our SMA and Exemptions Report? Those in favor accepting it, say "aye".

Commission Members: Aye.

Chairperson Lay: Those opposed? Okay, acceptance. Next?

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

### **a. February 11, 2014 meeting agenda items**

Mr. Spence: Okay, Commissioners, your next agenda, February 11<sup>th</sup>, you're gonna have four public hearing items. One, Special Use Permit for the Central Maui Regional Park. Another one for Mr. Tommy Okamoto requesting a Special Use Permit to operate the Maui Full Gospel Church, Full Gospel Korean Church. Number three, Ms. Lisa Pestana requesting a Special Use Permit for a short-term rental home in the Ag District. And then Number four, Troy and Dianna Nielsen requesting a Bed and Breakfast Home Permit, South Maui Hideaway on Kupulau Drive in Maui Meadows.

Chairperson Lay: And if I may I'd like to add in a letter in our next agenda meeting a little discussion on our Workforce Housing bill that's going before the Council. Let's have a little discussion, a letter be included in your packet.

Mr. Medeiros: I second that.

Chairperson Lay: Anything else? If not, Planning Commission is over.

**H. NEXT REGULAR MEETING DATE: FEBRUARY 11, 2014**

**I. ADJOURNMENT**

The meeting was adjourned at 4:15 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions

## **RECORD OF ATTENDANCE**

### **Present**

Keone Ball (excused at 4:13 p. m.)  
Jack Freitas (excused at 2:45 p.m.)  
Wayne Hedani  
Ivan Lay, Chair  
Jason Medeiros  
Warren Shibuya, Vice-Chair  
Max Tsai  
Penny Wakida

### **Excused**

Sandy Duvauchelle

### **Others**

William Spence, Director, Planning Department  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
David Goode, Director, Department of Public Works