

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 10, 2014**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:10 a.m., Tuesday, June 10, 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: ...bare quorum today. It's June 10th and it's about 10 after 9:00. We're gonna open up with public testimony right now. So if anyone wishes to testify on an agenda item that's coming up because they have to leave early, please step up to the mic and you have three minutes to testify. But remember if you do testify at this time, you'll be unable to testify when the agenda item does come before us later on. We have Chris Thevenard do you wish to testify at this time?

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.

The following individuals testified at the beginning of the meeting:

Christine Thevenard - Item F-2, Unfinished Business, Ms. Ann Fricker, STPH
Dave DeLeon - Item C-1, Public Hearing, Council Resolution 14-15

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

Chairperson Lay: Does anyone else wish to testify at this time? Seeing no one, public testimony is closed and moving onto our first agenda item.

Mr. Spence: Good morning, Commissioners. We're at Item No. C-1, Public Hearings, and this is moi, transmitting a Council Resolution No. 14-15 referring to Planning Commissions a proposed bill to amend Sections 19.12.020 and 19.37.010 and Staff this morning is Mr. Joseph Alueta.

C. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 14-15 Referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend Sections 19.12.020 and 19.37.010, Maui County Code, pertaining to Transient Vacation Rentals in the Apartment District. (J. Alueta)**

Mr. Joe Alueta: Good morning, Commissioners. My name is Joe Alueta. I'm Administrative Planning Officer. Quick refresher on the process of how you amend Title 19. There's two methodologies. One is a Director or Administrative initiated in which I would come before you with

the Department's proposal to amend Title 19. The other methodology is via reso from the Maui County Council in which by Charter it requires that the three commissions review all of the changes being proposed before transmitting back to the County Council. As in with both methodologies, you are making a recommendation to the County Council on a proposed bill.

Today we have a resolution that was initiated by the Maui County Council. I believe at the request of the...as the Real Estate Agents of Maui to clarify this. I've kinda outlined, I'm not gonna read my report verbatim. It's pretty short. I'm sure all of you have spent many nights reading this report. It's pretty straight forward. There was a bill back in 1989 that clarified or and restricted the use of apartments to being long-term rentals, okay. They made it clear that these long-term rentals that this ordinance that restricted units to being long-term occupancy whether rented or lived in did not apply to existing structures or projects that either had a building permit for that structure, a Planned Unit Development, right, heard that term before, and we've seen it amended several times before recently, but Planned Unit Developments and/or if you were granted a Special Management...a valid Special Management Area Permit for that structure. So the Department has been administering that change in the law or that exclusion I guess from the requirement in the law that structures within the Apartment District be used for long-term occupancy only. And we basically, every time somebody comes in, we go through and research when was this structure built? Was it built prior to this date? Did it have a valid building permit or SMA or Planned Unit Development?

So this law basically clarifies, it does not change any methodology... doesn't change anything within our Department as far as processing. If somebody comes to get clarity, can they do a short-term rental on this property? We would then research to see whether or not this property was built, had an SMA or was in the Planned Unit Development project and was zoned...and this again, for only Apartment zoned lands.

We also take it as, in the enforcement of it is that you can't take...if you have the right to do a short-term rental in an apartment building you can convert short to long-term at any time. You cannot expand the short-term rental meaning if you have...currently have a 12-unit apartment complex and you want to add on another 10 units, you can add the 10 units if your density allows but those units would not be allowed to be converted to short-term rental, okay. If the building burnt down in Apartment District, you would be rebuilding with a brand new building permit, you would not be able to continue the short-term rental operation, okay. If you were in a Planned Unit Development and it was zoned Apartment and the structure burnt down, right, you could rebuild and continue the short-term rental because as long as it showed on the site plan in that Planned Unit Development that those were, those apartment units were located there on the property. Okay, so there's a slight difference and I explained it in my staff report how we interpret each one of those.

So we also do not allow for...the way we interpret this ordinance and some people have asked for this to be clarified within the ordinance, some of our Staff Planners is that if the use or the short-term use of a short-term rental can only be for habitable structures. So if you have an old building, an old apartment and there is an office or reception area, you cannot convert that reception area to a short-term rental. Or if you had a laundry facility, a building or storage, you could not convert that to short-term rental even though it was built prior to 1989. It only applies to habitable structures at the time. That's how we, the Department has, and some people have asked that that be clarified within this bill also.

Again, as indicated all this does is make it clear within 19.12 which is the Apartment District under what conditions and basically reiterates what's said...the exclusion that was done in 1989 under that previous resolution.

The Department also is recommending that 19.32 on the Planned Unit Developments and if some of you may remember we had a recent amendment, you know, basically it's called the Puamana Bill that amended to make it clear that short-term rentals were allowed within Planned Unit Developments and it pretty much applied to I believe only Puamana at the time. And that's on our Page 2 of the memo report and incorporates that Puamana Bill but also incorporates the language that's occurring here for the exception on Apartment zoned property. So that's the Department's recommendation. We are recommending supportive of the bill but we're also recommending a small amendment be also be done to 19.32 to be clear. So again, there's three areas of the Code that is currently being proposed. The Council is making recommendations that 19.12 which is the Apartment District to be amended to clarify on short-term use within older apartment buildings, 19.37 which is the restriction on TVRs that also be amendment, but also we're recommending that 19.32 also be amended as an add-on to the Council's bill. And that's pretty much all I have. Is there any questions?

a) Public Hearing

Chairperson Lay: At this time, I'm gonna open up to public testimony. Does anyone wish to testify on this agenda item?

The testimony was received at the beginning of the meeting:

Chairperson Lay: We have David DeLeon.

Mr. David DeLeon: Aloha, I'm Dave DeLeon representing the Realtor's Association of Maui on Item No. 14-15. This proposal is about notice and clarity in Chapter 19 of the County Code. Its goal is to make it clear that the Code...that in the Code both short-term and long-term uses are allowed in certain Apartment zoned properties that have been entitled to those land uses since 1989. You refer to these properties as Minatoya properties because in 2001, Corporation Counsel opinion by Richard Minatoya reconfirmed this entitlement for these properties. This proposed action is not about new entitlements or changing any existing entitlements. It will not take away or give any new entitlements or rights to any property. If you're short-term, if you're currently allowed to do short-term in Apartment zoned on that property you will continue to do, and if you're not allowed to do short-term after this you will continue not to do. Likewise, the condominium CC&Rs will not be affected by this action. So in a sense this is a housekeeping measure and we basically see a puka in the law and we seek...see it for clarity and for notice purposes to fix it. So that's why we're bothering with this.

Resort grade condominiums are a key real estate commodity in Maui County. Real estate agents handle these transactions on a daily basis. One of the concerns raised by buyers is when they look in the County Code under the Apartment zoning, they do not see the short-term rental or resort uses permitted. When they would seek clarity from the Department, depending on when in the last two decades they asked, they got different answers. That's because the actual history of this issue has gotten buried over time and because the County Code does not address it. We believe it's

important to address this issue because it clarifies the status of over 83 condominiums, condominium properties in Maui County. They amount to one-third of the County's condominium stock and includes thousands of units. Because of their allowed short-term use, these properties actually generate more vacation related business than our hotels do. As such they are an important element of our visitor economy and a large part of Maui County's property tax base. They're such an important element of economy we believe it's imperative that the status is clearly stated in the County Code.

The history of this issue is well-know and documented but 50 years from now these relatively obscure actions of a County Council in 1989--

Ms. Takayama-Corden: Three minutes.

Mr. DeLeon: --may not be so easy to research and document. RAM believes it important to clearly set out in the County Code the status of this important element of our economy for the buyers, departments, and anybody else in the public can easily ascertain these allowed land uses.

Chairperson Lay: Please conclude.

Mr. DeLeon: As noted, this is about notice and clarity. Mahalo.

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

Mr. DeLeon: Thank you.

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

Chairperson Lay: Seeing no one, public testimony is closed. Commissioners, questions? Commissioner Ball?

Mr. Ball: You know, you were talking about if it burned down or whatever, that doesn't apply to a single unit though, right? Let's say there was a fire at--

Mr. Alueta: No. If they wanted to renovate.

Mr. Ball: Kamaole Sands or something, and it was just a single unit that was totally gutted. So that would not...and then they rebuild it, that wouldn't apply to?

Mr. Alueta: Yeah, I think Kamaole Sands is zoned Hotel.

Mr. Ball: Huh?

Mr. Alueta: Isn't it zoned Hotel?

Mr. Ball: I think it's Apartment.

Mr. Alueta: Oh, it is.

Mr. Ball: But in your scenario let's say a single unit was.

Mr. Alueta: Right. No, it would have to be the whole structure. So repair and maintenance would still be allowed under it. It's just if there was a hurricane or--

Mr. Ball: Remodel and all that kind of stuff?

Mr. Alueta: Yeah, correct.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Under the long-term definition, I don't know if we wanna address this now, but most of the long-term rentals become semi illegal because they go to month to month and under the definition of long-term it has to be six months or longer?

Mr. Alueta: Yeah, 180 days I believe is the term that's required. I think the way the County has viewed it is like, you know, if there's a six-month lease that's pretty much gonna cover them. Some people have like if you have a long-term rental say you start out with a one-year lease and then you already had that one year and then they kinda roll over into a month to month, that's normally considered acceptable because of the--

Mr. Ball: Previous.

Mr. Alueta: --because they already had been occupying it for more than 180 days already. I don't... I think it's if you start out with trying to rent it as a month to month only and signed leases for a month to month, but most people, and as a realtor you know the loophole has always been you sign a six-month lease. So that's, that what's, that's what this law was done, was trying to in 1989 they clarified that in the Apartment District the use had to be a long-term rental.

Chairperson Lay: Commissioners, any more questions? Seeing none, thank you. Can we get the Department's recommendation at this time?

b) Action

Mr. Alueta: We are recommending support for the proposed amendment with the inclusion of the Department's addition of amending 19.32. So No. 2, approval with the proviso with amendments to the Maui County Council.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Motion to approve as recommended by the Staff.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Ball, seconded by Commissioner Medeiros. Any

discussion on the motion? Seeing none, we'll call for the vote. Oh, let's get the Department's...motion.

Mr. Spence: The motion is to recommend approval to the County Council.

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

Mr. Spence: That's five ayes.

Chairperson Lay: Motion carries. Thank you.

Mr. Alueta: Thank you very much.

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

**VOTED: To Recommend Approval of the Proposed Bill to the County Council with Amendments.
(Assenting - K. Ball, J. Medeiros, J. Freitas, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Spence: Commissioners, the second public hearing item. Ms. Paula Daian. I'm trying to pronounce her name right.

Ms. Callentine: Paula Daian I believe is how she pronounces it, Will.

Mr. Spence: Okay, requesting a Short-Term Rental Home Permit in Paia and our Staff Planner this morning is Ms. Livit Callentine.

2. MS. PAULA DAIAN requesting a Short-Term Rental Home Permit in order to operate the Marlin House Short-Term Rental Home located in the R-1 Residential District at 165 Maoli Place, TMK: 2-6-065: 061, Paia, Island of Maui. (STPH T2013/0018) (L. Callentine)

Ms. Livit Callentine: Good morning, Commissioners. Livit Callentine for the Maui Planning Department. What I just handed to you with a notation that it's for Item C-2 is a letter from a Ms. Tina Hoenig, who lives in Maui Lani in Kahului. So she has expressed concern about this particular short-term rental, but she doesn't appear to have a property within 500 feet nor even in the same community. So I'm not quite sure what her connection to the property is and then the second letter is on the backside of that same letter and this is a letter from Mr. Paul McLean dated June 9th, received yesterday and is a follow up to his earlier letter of August 12, 2013 and he expressed some concerns about a gazebo on the property that is not shown on the site plan. And people using the gazebo and causing disturbances in the early morning and late evening. I had the opportunity to speak at length with the applicant last night and also with Mr. McLean and I believe we have come to a resolution on this issue which I can probably present to you in...as we go through the application a little bit. But just to let you know these have been passed out and that there has been further, further discussion on them which I will share with you.

So this is a three-bedroom, a proposal for a three-bedroom short-term rental home. Maoli Place is a cul de sac of similar older single-family homes on smaller sized lots. This lot is 6,363 square feet. That's the common size in that area.

There is one permitted short-term rental home operation within 500 feet of the property which is why you are reviewing it today. That one is at 30 Kuponono Street. As of the date of this report there are between 20 and 30 short-term rental home operations in the community plan region. I actually was not able to verify whether it was 20 or 30 and it can change day to day depending upon what other planner's working on an approval that I don't happen to know about. So approximately 32 percent of the 88 permits that have been...the number, of maximum number of short term rental home permits in this community plan region have been granted.

You can see in Exhibit, Exhibit 5 shows you all of the short-term rental home permits and proposed permits and the B&Bs all show Exhibit 5 if you haven't had a chance to look at that yet.

The application meets the restrictions and standards of Title 19, Chapter 19.65.060 and the criteria that you use to review this type of application are as you know, first the number and distance from the subject parcel to other permitted short-term rentals and as I mentioned there's one approved short-term rental within the 500-foot which you can see on Exhibit 5.

The 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 or area. So there are two protests that have been received and a second letter from one of the two protesters initially. This Mr. McLean lives directly behind and abutting this property and his neighborhood is a zero lot line neighborhood. So he's actually placed his rear of his home about six feet from his rear property line. This gazebo that he raises an issue about is approximately seven feet from the adjoining property line on the property that is the subject of this short-term rental home permit. It is not...the gazebo...Mr. McLean was correct this was not shown on the site plan. I received an amended site plan this morning. I have that to show you. And if you look at Exhibit 8 that is...shows you a testimony map. Also on Exhibit 8 within the 500-foot boundary there's another property by an owner named Greg Mebel who...it's not shown on the map 'cause I just got the letter this morning but it is a letter of support which will go into the record.

Mr. Ball: Where does that person live?

Ms. Callentine: I wish I had a...if you look at the loop road that is in the center of this subdivision, he's up on the boundary. Can you see this at all this dark black square?

Mr. Ball: Uh huh.

Ms. Callentine: Okay, here's right up here. So in short, I spoke at length as I said to Mr. McLean. By the way the applicant is here along with her sister and she doesn't really wish to say anything unless you have any questions for her. She did ask me to convey that the, the reason that she wants this short-term rental home permit is that she and her husband has an extensive family that live all over outside of the state of Hawaii and even outside of the country and they come to visit frequently. She's got young kids and her father wants to come and visit his grand kids. And so this home is primarily a home for her family to visit. And when they are not visiting, she would like to

be able to rent the home. That's why a B&B wouldn't actually work for her because she doesn't live in this home. But if she...also if she, if she were to rent out this home long-term rental it wouldn't be available for her family and it would dissuade the family from being to spend time together. So I wish to convey that on her behalf. So, Ms. Daian is willing to remove the gazebo and the other thing that Mr. McLean referred to was the barbeque grills that had been installed and were right along the property line and that people were congregating and speaking there. So she is perfectly willing to remove both the gazebo and the barbeque grill which I have an amended site plan which I can show you. So this would be as it existing. And in addition to her providing that site plan this morning she also wrote a letter which is dated today to Mr. McLean and she is reiterating how much she wants to be a good neighbor that she...and I believe her. I've talked with her at length. She has no desire to have any disharmony in the neighborhood and wants nothing but the best between her and her neighbors. So, I have both this letter and the letter from Greg Mebel to distribute to you. So I'm gonna do the same thing which is I'm gonna pass 'em around as two separate piles and ask that you take one of each.

Ms. Daian had accounted, recounted to me last night when I called her as soon as I got this second letter from Mr. McLean, I was surprised because I thought that all the issues had been resolved. So I called her right away. She was very responsive. She explained that she had no idea that this gazebo was causing a problem. She had invited...she had gone to see, personally gone to see Mr. McLean shortly after I provided her with his letter and she said that she spoke with him and offered to remove the gazebo or offered to remove the lights on the gazebo so that it wouldn't be used at night in the dark and that he told her, well no, you don't need to take it down, that's okay. So I...but she did go ahead and follow up and take out the lights anyway. So I did wanna follow up with Mr. McLean to just to verify that that was indeed the...what he had heard in the conversation. And he did actually agree with me, agree with her that she did offer, but he felt bad about making her take something down. So he didn't want to make her take it down. She also is very interested in having anyone call who has a problem with anything on the property and so far she hasn't received any phone calls from any of her neighbors or anyone else complaining about any issues on the property. And her point of view from there is, how can fix something if I don't know if it's a problem? So with that, I would turn it back over to you for discussion. Thank you very much.

a) Public Hearing

Chairperson Lay: At this time, I'm gonna open up for public testimony. If anyone wishes to testify please step forward. You have three minutes, identify yourself. Seeing no one, public testimony is closed. Commissioners, questions? Commissioner Freitas?

Mr. Freitas: Question. Was the gazebo illegally built or was there a permit for the gazebo or was it on the property prior to them purchasing?

Ms. Callentine: I'm going to ask that the applicant answer that question.

Ms. Paula Daian: Yes, hello. My name is Paula Daian. Good morning. Yeah, we built the gazebo for the purpose of having shade in the garden that's the main purpose for the gazebo. And actually at the beginning we put a structure...we wanted to put some plants because we didn't have like a tree to give us shade. And then later on we put a little roof so as to have a little bit more like cool down. But because it's a 9 for 9 I didn't do any permitting for that. It's a 9 for 9 structure. Yeah.

Mr. Freitas: But you had electricity. So had to have to put–

Ms. Daian: No, we put Christmas lights on. It came from the house. So that is what we disconnected. But there's no electricity in the gazebo. It was only like to make...the main purpose was to put shade in the garden. It's really hot during the day, and yeah, we through it was nice if we have a nice vine with flowers on.

Mr. Freitas: Thank you.

Ms. Daian: Yeah.

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

Mr. Tsai: Where do you reside?

Ms. Daian: I live in Haiku. Haiku area. I'm like eight minutes away from the house.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Is the house now rented long-term?

Ms. Daian: No, no, no. I have family come in. So that house is occupied by my family.

Mr. Freitas: So the house is vacant now or–

Ms. Daian: Well, yeah, and I have family coming actually tomorrow. So, yeah, it's not vacant. And like Livit, I explain Livit and you know, we have big family and they live really far away. And I want to say this because this is important for me. That house I want to keep it for my parents. My dad was in a big depression that me and my sister we move here. And now he's doing really happy. I have grand– he has grand kids and I want to keep that house for them. And if they are not here, I'm going to put family or I'm going to keep it vacant, but that is going to be a house for my family. So yeah, no matter what is the decision today.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Ma'am you had said that you wanna keep this for your family.

Ms. Daian: Yeah.

Mr. Tsai: But you also wanna rent out short-term. So what do you–

Ms. Daian: Well, I want to do both because they come like five months a year my family and you know, it would be great if I can rent it out legally and do it like short-term and give them the flexibility for them to come whenever they can. I'm not ...(inaudible)...like saying okay, it's like six months during the year. Then you know, I have...(inaudible)... okay, you know, I want them to feel free to say okay, you know we are willing to go this time and that time and have them open for them.

Mr. Tsai: My question, actually you kinda answered it, so you're planning to rent out basically half the time. So you're saying if they come five, you're gonna rent out seven months out of a year?

Ms. Daian: Yeah, yeah. It would be between like five to seven months I'm going to rent it out, but because they come, and sometimes they come twice a year. Most of the year they come twice a year, you know. It's important for me to have the flexibility for them so they can come whenever they feel to if they are willing to do the big sacrifice already to travel all the way.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: How long have you owned the property, ma'am?

Ms. Daian: Sorry?

Mr. Freitas: How long have you owned the property?

Ms. Daian: Since my daughter was born so, it's like four years.

Mr. Freitas: Thank you.

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

Mr. Medeiros: Have you ever lived on that property at any time or I guess for Livit?

Ms. Daian: Me?

Mr. Medeiros: Yeah.

Ms. Daian: Not me, but my sister yes. She lives there sometimes. I live with my husband and my family in Haiku. So yeah.

Chairperson Lay: Commissioner Ball?

Mr. Ball: What is the occupancy? What would be the max occupancy for this structure?

Ms. Daian: Thank you.

Ms. Callentine: So the maximum occupancy of a short-term rental home is two persons per bedroom. So there are three bedrooms so that would be six persons and let me just double check 'cause the short-term rental is different from the B&B. So that is six guests including children over the age of two years old. So I guess there's no restriction in the Code for any children under the age of two years.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Another question for the applicant, please? Hi.

Ms. Daian: Hi.

Mr. Tsai: What is your plan as far as minimum stay or I mean, are you looking for, do you have a target market?

Ms. Daian: Actually my main purpose here is I want that place available for my parents whenever they come, and yeah, and then you know, it's like I don't really have a like what's my minimum or you know? I prefer to have people stable as much as possible, so maybe rent it to other family that come to visit, other family members or since like that, but yeah, I want to have that house like ...(inaudible)... for my family.

Mr. Tsai: I think, I think the concern here too is that making sure if you were approved to do this that you know you gotta be a good neighbor and make sure I guess—

Ms. Daian: I am a good neighbor.

Mr. Tsai: But also as far as the kind of people you rent to. I mean, are you gonna personally interview them and making sure that they're...you know, you're gonna have house rules, quiet rules times and all that?

Ms. Daian: Yeah. Yeah, yeah, yeah for sure. I want to have good people. My mom and my dad is living in that house so for sure I want to have people that are nice. We take care of that home like our home. So, it's my parent's home so for sure we want to have good people there.

Chairperson Lay: Director?

Mr. Spence: Thank you. Just to add to Commissioner Tsai's comments. The ordinance requires that there be house rules with certain quiet times and that's universal across all short-term rentals. If the Commission, not saying you should approve or not, but if you choose to approve this rental, you could make a requirement that, you know, guests sign the house rules as a part of the rental or meaning that they, you know, they've read it. Or you could make the requirement, I don't know how we would follow up on it, but you could make the requirement that the owner, you know, inform everybody personally to, you know, as far as the neighbors in being considerate and all those kinds of things.

Mr. Tsai: We currently have a standard template for house rules regarding quiet hours and—

Mr. Spence: Yes, there's a standard provision by the law, but then, you know, individual owners can add to that. I mean, what's in the law is like a minimum then adding certain house rules maybe.

Ms. Callentine: May I make a suggestion? So the applicant is required to post the house rules and they have been posted as I verified with a recent site inspection. I'm just checking to see where the condition is stating that the house rules have to be posted. We may not have actually made that a condition.

Mr. Spence: It's already a requirement.

Ms. Callentine: Yeah, it's a requirement. So I don't see that we've made it a requirement. However, I think that's an excellent suggestion and one of the things that I'm quite certain all of these vacation rental operations do is sign or require a signature of a contract of some sort with their potential guests. So that would be a place where we might think about amending the code itself or our rules where we actually do put a requirement that there's a mention of the house rules in the contract.

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

b) Action

Ms. Callentine: Yes, I have not gotten clarity from you as whether you would like the condition, a condition added regarding removal of the gazebo?

Mr. Spence: They can do that...(inaudible)...

Ms. Callentine: Okay, but just, yeah we gotta cover that. So the Department finds that the application complies with the applicable standards for a short-term rental home in compliance with 19.65.030 of the Maui County Code and which is listed in the accompanying Department report for this project. The Maui County Planning Department recommends approval based on 23 standard conditions which I won't read since you've seen them so often. If you so choose, I have developed a potential wording for a condition 24. When the Chair asks I will share that reading with you.

Mr. Freitas: I move to deny the application.

Chairperson Lay: We have a motion of denial.

Mr. Ball: Second.

Chairperson Lay: Seconded by Commissioner Ball. Discussion on the motion? Commissioner Medeiros?

Mr. Medeiros: I will support the motion mostly because short-term rentals to my knowledge was brought together so that it could help people supplement their income and you know be able to, you know, survive on Maui the high cost. But she already said that no matter what the decision here is they will keep the property. So I see no reason to allow for them to have a short-term rental because there basically isn't the need for it.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I made the motion to deny on couple issues. One is we do not have enough long term rentals on the market especially in that area. There is people that is paying what do you call \$1,000 for one room to live in and basically on the applicant's testimony where she said that this property is primarily for their parents and for their parents and they just wanna rent intermittently. I believe that on her testimony this is primarily for family and it's gonna sit vacant if it's not rented. I felt that

the need for long rental is much greater than the need for short-term rental.

Ms. Callentine: May I speak Mr. Chair?

Chairperson Lay: Go ahead.

Ms. Callentine: One thing I'd like everyone to keep in mind is that I need to know the basis of if you do vote to deny I will need to know exactly what the basis according to the Code. If this home sits empty half of the year, it's not achieving the goal of long term rental. It's sitting empty and it's being used by the family the rest of the time, so that...I actually absolutely agree with you that the...that there is a shortage of long term rental on the island. Everyone that I know that rents tells me about it. And I agree that I'd like to see the County approaching it in some way, but to deny one property owner on that basis when they're...when they've applied for and meet the criteria for a short-term rental home permit is not something I'm very comfortable with.

So, another point that was actually brought up between myself and the applicant and then when I spoke with one of the protesters was that regardless of who occupies the home that kind of family noise where you're sitting out gathering and talking...talking story, drinking a little beer, going on and on, you know, whatever, you know, people congregate and they have families and they talk, they have friends over, they have parties, we all do, so that could happen regardless of who is it is. So I'm questioning whether that impact in of itself is...we have no evidence that that impact would be greater...

Mr. Hopper: Commissioners, I just have a...this is...we're in deliberation right now. I think something that would assist is reading the standards again to maybe provide some additional information for Staff in addition to what's been stated. There are a couple sections to look at. There's a section of the Short-Term Rental Home Permit Law that states, short-term rental homes shall conform to the character of the existing neighborhood in which they are situated. Prior to issuing a permit the Department or applicable planning commission shall consider the following, one of them are the CC&Rs of the area, another is existing land use entitlements and uses, another is the applicable community plan, another is community input, and another is potential adverse impacts including excessive noise, traffic and garbage.

In addition, there is another subsection that says, the Department or appropriate planning commission may consider but is not limited to the following factors in reviewing and approving or denying an application: the number and distance from the subject parcel to other permitted short-term rental homes, the 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 or area, existing or past complaints about rental operations on the property, existing or past noncompliance with government requirements in the degree of cooperation by the applicant to come into compliance and correspondence received by the Department in the form of protests.

Again, this is some guidance for the Commission to assist Staff in addition to reasons given that I think if some more was put on the record that would further assist Staff in potentially preparing a denial order if that's what the Commission's vote is.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yes, there was no letters supporting this. There was two letters, that what do you call, opposed to this. One was cleared up, what do you call, from the direct neighbor.

Ms. Callentine: This morning you did receive Commissioner, a letter of support from someone within 500 feet.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Well, this is kind of a hard decision for me. With the motion on the floor I think that based on the circumstance it's hard for me to envision this being a viable long-term rental because like the applicant says she's only going to be renting out five to seven months a year where I don't know how is that gonna help with the, you know, local rental situation. That itself I think presents a problem. And then also, I think by outright denying this application, I'm not comfortable with that. So, I think I'm gonna vote against the motion.

Mr. Spence: Yeah, so probably what we should do Commissioners is I would recommend you take a vote and if it fails then we can have a motion. If it fails, you can have a motion for deferral.

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

Mr. Spence: Let me restate the motion.

Chairperson Lay: Yeah, go ahead.

Mr. Spence: The motion is to deny the permit.

Chairperson Lay: Let's call for the vote. All those in favor of denying this proposal?

Mr. Spence: That's three ayes.

Chairperson Lay: And there's one no.

Ms. Callentine: That's not enough.

Mr. Spence: Yeah, so long as there's one no.

Mr. Tsai: ...(inaudible)...

Chairperson Lay: Motion fails.

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

**The Motion to Deny the Application FAILED.
(Assenting - J. Freitas, J. Medeiros, K. Ball)
(Dissenting - M. Tsai)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Ball: Motion to defer this item till a future meeting.

Mr. Medeiros: Second.

Mr. Hopper: Wanna take a recess?

Mr. Ball: Yep.

Mr. Spence: Yeah.

Chairperson Lay: Yeah, let's take a 10-minute recess at this time.

Ms. Callentine: In the midst of a motion? Okay.

Chairperson Lay: Reconvene at 10:15.

A recess was called at approximately 10:05 a.m., and the meeting was reconvened at approximately 10:15 a.m.

Chairperson Lay: ...order. We have a motion on the floor to defer. Any discussion on the motion? Corp. Counsel?

Mr. Hopper: You needed to have five members vote to take action approval or denial and since that's not possible, item's going to need to be deferred until the next meeting. So that's where we're at right now.

Chairperson Lay: Let's call for the vote. At this time I'm going to call for the vote deferring this to our next meeting, available meeting. All those in favor?

Mr. Spence: That's five ayes.

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

**VOTED: To Defer the Matter to the Next Available Agenda.
(Assenting K. Ball, J. Medeiros, J. Freitas, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Ms. Callentine: Can I please read into the record who made the second on that motion. I do not have that on my notes.

Mr. Medeiros: I did.

Ms. Callentine: Thank you. Thank you, Commissioners.

Chairperson Lay: Our next agenda item?

Mr. Spence: Commissioners, we're on No. D, New Business, Ms. Christine Conlon-Kemp, Director of the Milowai Maalaea AOA requesting a Environmental Assessment Determination on a Final EA in Maalaea. Mr. Keith Scott is our Staff Planner.

D. NEW BUSINESS

- 1. MS. CHRISTINE CONLON-KEMP, Director of the MILOWAI MAALAEA AOA requesting an Environmental Assessment determination on the Final Environmental Assessment (DEA) prepared in support of the Shoreline Setback Variance application for the proposed seawall repairs at the Milowai Maalaea project, 50 Hauoli Street, TMK: 3-8-014: 022, Maalaea, Island of Maui. (EA 2012/0006) (SM1 2012/0008) (SSV 2012/0004) (K. Scott) (Maui Planning Commission previously reviewed and commented on the Draft Environmental Assessment at its May 28, 2013 meeting.)**

The EA trigger is the Shoreline Setback Variance.

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

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

Mr. Keith Scott: Good morning, Commissioners. As indicated in the agenda this is on the Milowai Maalaea seawall repair and you're considering the Final Environmental Assessment. May 28, 2013 this Commission reviewed the Draft EA and offered its comments and the Commission and other agencies comments were incorporated into a Final EA which was distributed to you May 27th of this year. Jordan Hart and Brett Davis will be making the presentation for you and they have a coastal and structural engineer both are available for questions should you have them at the end of the presentation. After the presentation you would need to take one of three different actions, accept the Final EA and issue a Finding of No Significant Impact or FONS, the defer the Final EA for some additional information that you might request or request that an EIS or Environmental Impact Statement be prepared. With that, I'll turn it over to Mr. Hart and Mr. Davis.

Mr. Brett Davis: Good morning, Commissioners. My name is Brett Davis. I'm a planner at Chris Hart & Partners. We're passing around a copy of the presentation for you. So the project team here today is Jordan and myself from Chris Hart & Partners. Mr. Bob Wood is available, the applicant. Walter Vorfeld is our structural engineer and Jim Berry is the coastal engineer.

Just to give you a recap of where, where we're at. We're in Maalaea at Milowai, the red circle there. Here's a closeup picture. Parcel is 1.2 acres in size. Here's an existing site plan. We shared with you when we were here for the Draft EA so this hasn't changed. Here's some photos of the seawall. The section in the corner there is the most problematic and the Milowai has had a fence up there for some time now and here's some photos show the progression and then this here. Here's some more photos of the top of the seawall, and a photo looking out toward the harbor with

the breakwall. These photos show the length of the seawall looking towards Kihei and then back towards the harbor.

In the Draft EA we discussed four alternatives and during our presentation at the Commission last time, the revetment had the most discussion and the preferred alternatives so we'll discuss those two in more detail.

With the revetment there was a significant need for a large footprint on the property. It also involved excavating potentially some of the land in the ocean that is the jurisdiction of the State and we just felt it was a much more costly alternative and also much more disruptive than repairing the existing seawall. The Commission asked us to look at the Mahana revetment wall. Here's a few photos that I took. These were taken in October of 2013. And you can see some of the area above the revetment is exposed from the high wave action they get there and here they've put up some wooden panels and some fencing to try and stop the erosion from coming over top the revetment.

Again, this is our preferred alternative is to repair the existing seawall. Here's a cross section of what the repair plan is. We've got a layer of urethane grout that will be injected underneath the wall. Here's a weep hole that will help with drainage from behind the wall. This is will be a reinforced concrete and then this will be a fill material and then eventually a cap on top.

Primarily the comments that we got on the Draft EA were related to shoreline access and so the applicant has agreed to propose in putting up signage along the shoreline. And that concludes our presentation. If you have any questions, we're here to answer and again, the structural engineer and the coastal engineer and the applicant are also here. Thank you.

Chairperson Lay: At this time, I'm gonna open up to public testimony. Does anyone wish to testify at this time? Seeing no one, public testimony is closed. Commissioners, questions? Commissioner Ball?

Mr. Ball: There was a fairly good photo up there, I'm looking at Page 11, I guess or a photo of...yeah, that one, so I guess at the final...when this is completed it's gonna look like this, right? I mean, we're not pulling it back or pushing it forward or putting sand in front of it where those rocks are or anything like that?

Mr. Jordan Hart: That's correct. This same wall is just gonna be basically bolstered and reinforced in the same location. And so just to add, that's the why the rock revetment isn't an ideal alternative because that requires demolition, excavation and then replacement with boulders where this plan just requires the stabilization and firming up the existing wall that's primarily in place.

Mr. Ball: Because my primary concern would be that the surf break right out there because we don't wanna change anything that change that, so...

Mr. Hart: No, that's another reason that we didn't want to get into the revetment section is that we'll be able to work primarily behind the wall on the proposed scope, but with the revetment scope we'd have to be getting into the water. Now we wouldn't be getting two freight trains or anything like that at all, but we wouldn't even wanna try to go makai any further than we're doing.

Chairperson Lay: Commissioners? Commissioner Ball?

Mr. Ball: On the shoreline access, there's o shoreline access from this complex in, right?

Mr. Hart: There has been no previous requirement. Basically what was asked for was lateral access and so what the applicant is offering is to call it out, but it had never been something that was supposed to be given and was not being given. It just...the property...this is their lawn up to the wall which was existing, you know, prior to the construction of the condo complex and so there was just a number of comments asking to basically delineate lateral access which the applicant is happy to do.

Mr. Ball: So let's say on this photos where would that sign go and then where would they expect people to walk laterally on the rocks or on that wall or on the grass?

Mr. Hart: Yeah, it's assumed that it would basically be...you can see that there's a rock structure there, you know, something around that vicinity basically a line of signs just depicting that there's a lateral access way. There's a section between the wall and the signs on the lawn area where people are welcomed to walk. And currently they do use this area and the association has a policy of not kicking people out but there's fishermen and various people that use this area up and down the shoreline and they don't have any warning signs or telling people to get out and so on. It just, it says nothing currently, but now they'll put signs in.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: No.

Chairperson Lay: I have a question. How wide are we talking about from that wall there out? Are we talking seven feet coming back into our lawn area or just to give a general idea?

Mr. Hart: Excuse me, were asking the width of the lateral access or the wall?

Chairperson Lay: Yes.

Mr. Bob Wood: Bob Wood, Board President. We're happy to place the signs wherever you would like them to be. Currently have we have no restriction at all on people coming. You can't see it from here but there's access on this side. It's actually a drainage ditch which people walk down. And then on the other side, it's our building and the next building and so people park on the street and will access between those two buildings. And the property on that side actually has a sign stating something and the property on this side of us states something about not going through their property, but our property we've never had a sign and we have fishermen out there and people use the steps right there, sometimes. It's pretty jagged but some of the surfer people use that. And then they also, this way there's a little area, you saw it in one of the pictures where the jetty comes in, where the surfers will come and will go out there. And then right there, they get right down in there. Right now we have this one sign and we put that up because the hole got to be about...right now...last I measured it, it's about 24 inches. The wall has pulled away and that's why we put that sign up and then we put that plastic material to try and ...because at night and during the day people are out there all the time. Of course, the park is right...you see those two trees, and that's

the little park that's there and that's used on a regular basis. People come and go and often times they'll park in our parking lot and then just walk down to it and so we've never put a restriction on anybody's access one way or the other everybody behaves themselves and it's never been an issue. We used to have the Water Front Restaurant and that was right, just past that sign was where the restaurant was, of course, that's been closed now for three years, and it doesn't look like it's going to open. I mean, not the Water Front of course, but any restaurant I doubt will, it may, but...So anyhow that area there is just...this last Sunday there were people on the grass and on their chairs and we don't...as long as people aren't destroying anything or you know, causing any problems we've never said a word to them. So we're happy to put up some signs but as of now, people know, the locals know very much they can come down.

Mr. Hart: If I could add to that all, none of the agencies specifically commented or requested a width or anything like that too, so we're just...this is just being added on the fly and so we're just replying to it.

Chairperson Lay: The only thing I'm worried about is if change of ownership and that sort of thing where that might be denied in the later years where someone else takes over then we lose that public access in that area.

Mr. Hart: Okay, well you know, we're not opposed to having that be a condition or anything like that and we're proposing, we're making the representations before the Planning Commission that the signs will be added so they'll be required to keep them. So that's how we're addressing them.

Chairperson Lay: Okay. We're gonna have to recess right now, five-minute break, losing quorum.

A recess was called at 10:30 a.m., and the meeting was reconvened at 10:37 a.m.

Chairperson Lay: We've got bare quorum today, so if someone has to leave, an emergency just give me a little notation, you gotta use the restroom or phone that way we can get ready for it. Okay, do we have any more questions on the agenda item? Can we have the Department's recommendations?

Mr. Scott: Yes, the Department's recommendation is to accept the Environmental Assessment, the Final Environmental Assessment and issue a FONSI. Note that approval or issuance of the FONSI does not approve the project. They still need to go through the Shoreline Setback Variance and other procedures.

Mr. Tsai: So move.

Mr. Freitas: Second.

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

Mr. Medeiros: Yeah, I'll be supporting the motion mostly because these people are you know good neighbors to the community with them allowing people to ...(inaudible)...access to the property unlike their neighbors, you know. I personally want to send a message you know, if you're gonna

be good neighbors the community and keep this Commission smiling you will leave this hearing smiling too.

Chairperson Lay: Can we get the Director to repeat the motion?

Mr. Spence: The motion is to accept the Final EA and make a Finding of No Significant Impact.

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

Mr. Spence: That's five ayes.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Accept the Final Environmental Assessment (FEA) as a Findings of No Significant Impact (FONSI).
(Assenting - M. Tsai, J. Freitas, J. Medeiros, K. Ball, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Hart: Thank you very much.

Mr. Spence: Commissioners, we're on Item E, Communications. Items 1 through 5, oops, excuse me, 1 through 4, okay, back up one again, 1 through 3 are Ameron International Corporation requesting to transfer State Land Use Commission Permits and Conditional Permit from Ameron to Pohaku Paa, LLC and Mr. Paul Fasi will go over these requests.

E. COMMUNICATIONS

- 1. AMERON INTERNATIONAL CORPORATION dba AMERON HAWAII requesting a transfer of the State Land Use Commission Special Use Permit and the County Conditional Permit from AMERON INTERNATIONAL CORPORATION to POHAKU PAA, LLC for the Kihei Concrete Batching Plant located at TMK: 3-8-004: 002 (por.), Kihei, Island of Maui. (SUP2 2005/0001) (CP 2005/0001) (P. Fasi)**
- 2. AMERON INTERNATIONAL CORPORATION dba AMERON HAWAII requesting a transfer of the State Land Use Commission Special Use Permit and the County Conditional Permit from AMERON INTERNATIONAL CORPORATION to POHAKU PAA, LLC for the Honokowai Concrete Batching Plant at TMK: 4-4-001: 108 (por.) and 4-4-003: 001 (por.), Honokowai, Lahaina, Island of Maui. (SUP2 2011/0002) (CP 2011/0003) (P. Fasi)**
- 3. AMERON INTERNATIONAL CORPORATION dba AMERON HAWAII requesting a transfer of the State Land Use Commission Special Use Permit, the County Conditional Permit, and the County Special Use Permit from AMERON**

INTERNATIONAL CORPORATION to POHAKU PAA, LLC for the Puunene Quarry at TMK: 3-8-001: 001 (por.), 3-8-003: 004 (por.), 3-8-003: 020 (por.), and 2-8-003:021 (por.), Puunene, Island of Maui. (SP77-271) (CP-2008/0005) (CUP2001/0001) (P. Fasi)

Mr. Paul Fasi: Good morning, thank you. This item was before the Planning Commission when it originally had its approvals. So today basically what we're doing is we're transferring the permit titles to a entity, local entity, Pohaku Paa, LLC which is a Hawaii-based limited liability corporation. Ameron International Corporation is a Delaware-based corporation so we're transferring the title from a Delaware-based corporation to a Hawaii-based corporation.

We're doing three things today. We need an approval from the Maui Planning Commission on two Special Use Permit, State Land Use Commission Special Use Permits and a County Special Use Permit. The second thing we're doing is we need a recommendation of approval from this body to the State Land Use Commission, and the third thing we're doing is we're requesting that this body waive review of the Conditional Permits so the Director can administratively make change of titles from Ameron to Pohaku Paa. And the Department considers these modifications nonsubstantial and it doesn't effect the permits in any way nor the operations gonna change. They're not requesting any other amendments other than a title change. We do have Mike Munekiyo, the applicant's representative here as well as Eric Yoshizawa from Ameron here. If there are no questions for the Department, thank you.

Chairperson Lay: At this time, I'm going to open up to public testimony. Does anyone wish to testify at this time please speak up, come up to the mic and you have three minutes. Seeing on one, public testimony is closed. Commissioners, questions? Commissioner Ball?

Mr. Ball: Just for clarification I guess. They're basically selling to this other company or are they changed the name of their company to this?

Ms. Fasi: It is being sold entirely, operations and facilities.

Mr. Ball: I guess I have another question.

Chairperson Lay: Commissioner Ball?

Mr. Ball: This new entity are they in that business or are they...what's the make up of that?

Ms. Fasi: I'm gonna defer that to the applicant.

Mr. Mike Munekiyo: Good morning, Commissioners. My name is Mike Munekiyo. I think Eric Yoshizawa is very familiar with the nature of the new owners. I'll have him respond if that's okay?

Mr. Eric Yoshizawa: Good morning, Commissioners. My name is Eric Yoshizawa speaking on behalf of Ameron Hawaii. And in answer to your question, Commissioner Ball, Ameron Hawaii has been a wholly owned subsidiary of Ameron International. And the Hawaii division is being part of a sale or ownership transfer. The tranferee is Pohaku Paa, a Limited Liability Company in Hawaii. Let me just say that Pohaku's headquarters are in Honolulu. The owner of Pohaku is Bill Mills. Bill

is a Hawaii resident and businessman, founder and chairman of the Mills Group headquartered in Honolulu. So the...we feel that we are moving to local ownership. It's something that we look forward to doing. Our employees tend to be long tenured. They tend to work their entire careers with the company. We very much like to see this continue and by somebody who understands the local conditions, the market, and has some feel for our business.

Chairperson Lay: I have a question. Okay, with Ameron there's been a lot...they've been very responsible, and that's why a lot of these permits have gone through again and again because of the responsibility. And with that how can we be assured that this responsibility is carried over with the new ownership?

Mr. Yoshizawa: Okay, first off, the management team and the people in place remain unchanged. And the owner has expressed his intent to move forward in the same manner. We expect that we'll be held to the same obligations in conducting our business as we have been and certainly that's the expectation of the management team that works, will be working for Pokahu.

Chairperson Lay: Are we retaining all our employees too, that will be my second question?

Mr. Yoshizawa: Yes, employees will not be...no one will lose their position as a result of the ownership change.

Chairperson Lay: Okay, thank you. Commissioners, any more questions? If not, can we get the Department's recommendation?

Ms. Fasi: Upon evaluation by the Department the Department finds the request to be nonsubstantive and a normal business transaction and therefore, the Department supports the title transfer and requests that this body approve the Department's recommendation in full as requested. Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I make the motion to accept the Department's recommendation for all of the recommendations.

Chairperson Lay: We're gonna take this...we're probably gonna take this in three parts, right?

Mr. Spence: Certainly because there are Special Use Permits involved and Conditional and a County Special Use Permit probably what we should do, the Commission can take each one separately or my thought is maybe take all the Land Use Commission Special Use Permit in one motion because you are the approving body for those Special Use Permit as well as the County Special Use Permit. And then the Conditional Permit is separate because it's going to be the County Council that approves that or denies it.

Mr. Medeiros: Fair enough. Let's do it that way.

Ms. Fasi: Thank you, Director. There is one Land Use Commission Special Use Permit, SP77/271, this is the one docket that you will be making a recommendation to the State Land Use

Commission. This one still has to be approved by the State Land Use Commission. There are two Special Use Permits that the Director is referring to and these are the SUP2s you see on my June 10th letter to you, and those are the two permits that this body will approve. So two Special, State Land Use Commission County approved Special Use Permits, and one State Land Use Commission Special Use Permit that has to go to the LUC.

Mr. Medeiros: So move.

Mr. Freitas: Second.

Ms. Fasi: Thank you.

Mr. Spence: And just for clarification that's...is that all the Special Use Permits?

Mr. Freitas: Yes, yes it is.

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

Mr. Hopper: This is with all conditions?

Chairperson Lay: Special Use.

Mr. Hopper: All the Special Use?

Chairperson Lay: Yes. Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is to approve the transfer ownership of the three, the two Land Use Commission Special Use Permits and the one, County Special Use Permit, is that right?

Ms. Fasi: It's the other way around Director. It's two County Special Use, Land Use Commission Special Use Permits, and one State Land Use Commission Special Use Permit.

Mr. Spence: Pardon me, Commissioners. The agenda says there's two, there's SUP2 2005/001, there's SUP 2011/0002, and then there's CUP 2001/0001. So there's two Land Use Commission Special Use Permit and a County Special Use Permit.

Ms. Fasi: That is correct.

Mr. Spence: That's my understanding of the motion.

Mr. Freitas: And that's the motion.

Mr. Hopper: And to clarify the transfer will not effect the existing conditions. It's to be transferred and the conditions are recommended to stay in place as written?

Ms. Fasi: That's affirmative.

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

Mr. Spence: That's five ayes.

Chairperson Lay: Motion carries.

State Land Use Commission Special Use Permits and County Special Use Permit

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

**VOTED: To Approve Transfer of the State Land Use Commission Special Use Permits (SUP2 2011/0002, SUP2 2005/0001) and the County Special Use Permit (CUP 2001/0001), as Recommended by the Department and Recommend Approval of the Transfer of the State Land Use Commission Special Use Permit (SP77-271) to the State Land Use Commission, as Recommended by the Department.
(Assenting - J. Medeiros, J. Freitas, K. Ball, M. Tsai, I. Lay)
(Excused -P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Spence: So would the Commission wanna deal with the...make a recommendation to the County Council on the Conditional?

Mr. Medeiros: So move.

Mr. Freitas: Second.

Chairperson Lay: Motion by Commissioner Medeiros, seconded by Commissioner Freitas?

Ms. Fasi: Director what was that motion?

Mr. Spence: For the Conditional Permit. Making a recommendation to the Council.

Ms. Fasi: This body is waiving its review of the Conditional Permit so the Director may issue the title transfer administratively. So the Department's requesting a waiver of the Conditional Permit review.

Mr. Spence: Okay, my apologies. We don't normally deal with this many permits all in one.

Mr. Fasi: Five of them.

Chairperson Lay: Maker of the motion agrees and second too? Any discussion on the motion on the floor? Seeing none, can we get the Director to repeat that.

Mr. Spence: The motion on the floor is for the Commission to waive review of the Conditional Permit and let the Director administratively do that.

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

Mr. Spence: That's five ayes.

Chairperson Lay: Thank you very much.

Conditional Permit

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

**VOTED: To Waive Review of the Transfer of Conditional Permits (CP 2005/0001, CP 2011/0003, CP 2008/0005) and Allow the Director to Administratively Approve.
(Assenting - J. Medeiros, J. Freitas, K. Ball, M. Tsai, I. Lay)
(Excused -P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Spence: So the last one would be the Land Use Commission Special Use Permit that the Land Use Commission Approves. So we would making a recommendation.

Chairperson Lay: To approve.

Mr. Freitas: So move.

Mr. Medeiros: Second.

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

Mr. Hopper: Just to clarify that the Land Use Commission looks at it as a decision. They do require your approval. They will be reviewing your decision. They cannot have any conditions that are any less restrictive, but they don't consider it a recommendation. They consider it a decision and they also have to make a decision. So just a note that I don't that changes anything, but just a note for the record so when this gets to the Commission, they're clear on the action.

Mr. Spence: So this actually approving the transfer...(inaudible)...

Chairperson Lay: The maker of the motion and seconder of the motion approve that?

Mr. Freitas: Yeah, done.

Chairperson Lay: Let's call for the vote. All those in favor?

Mr. Spence: That's five ayes.

Chairperson Lay: Thank you.

Transfer of State Land Use Commission Special Use Permit

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

**VOTED: To Recommend Approval of the Transfer of the State Land Use Commission Special Use Permit (SP77-271) to the State Land Use Commission, as Recommended by the Department.
(Assenting - J. Freitas, J. Medeiros, K. Ball, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Fasi: Thank you for your efficiency.

Mr. Munekiyo: Thank you, Commissioners.

Chairperson Lay: Commissioners, it's about 10 to 11:00 anybody need a break? Okay, moving onto our next agenda item.

Mr. Spence: Commissioners, Item E-4, Mr. Scott Crawford, the Chair of the Hana Advisory Committee to the Planning Commission transmitting the Commission's recommendation for Anya Paivikki Rutiz and Richard Rutiz for a Land Use Commission Special Use Permit for a bed and breakfast. And Staff Planner is Ms. Gina Flammer.

- 4. MR. SCOTT CRAWFORD, Chair of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting the Committee's recommendation on the request by MS. ANYA PAIVIKKI RUTIZ and RICHARD RUTIZ for a State Land Use Commission Special Use Permit in order to operate Anya's House Bed and Breakfast, a one (1) bedroom bed and breakfast located in the State Agricultural District at 41049 Hana Highway, TMK: 1-6-005: 026, Hana, Island of Maui. (SUP2 2013/0024) (G. Flammer)**

Ms. Gina Flammer: Hi, good morning. I'm gonna show you a power point but I'm gonna pass something out. So I'm gonna put up the power point then give you some handouts.

Okay, I've got three different items today. This is for this afternoon's item but it gives you a chance over lunch to take a look at the maps. What we're doing today is a different permit. This is a State Land Use Special Use Permit for a bed and breakfast home in Hana called Anya's House.

So just to show you where it is, you can see down by the national park. In your staff report is a map that shows you where the TMK parcel is and then I'm gonna show you some photos of it. It's a one-bedroom. Not a whole lot of photos of the inside. There's not much to it. Let you see the view that's in the packet as well. And then what we're really here for is the Ag permit, the State Land Use Special Use Permit. So this is a copy of their farm plan. The red area shows kinda where the project area is up in the corner, but you can see everything on the property is planted out or it's in pasture. And what's really important here is your Exhibit 6 that shows you the different types of agriculture. I know you're used to seeing tables but the numbers kinda struck me especially it was a long tour of the property but you know, we're looking at 35 avocado trees, 40 plus coconut trees, 32 papaya, lots of noni, 79 citrus, you've got four acres of grazing. The total area under cultivation is 15.6 acres. It's quite a bit.

And then just to show you some pictures. Again, it's really hard when you have such a large space and so much ag to really show you what's there, but I did my best with the photos. There's also receipts that are in or there's some income also with this property. They sell to Ono Farms out there. And as I did the tour it was really nice to hear them talk about diversified agriculture and planting what sells and planting for the future too. So that was...the Hana Advisory Committee said this is probably the best application they've seen in terms of agriculture and they'd like to see more of it. So in addition, they've just started some beekeeping also.

Okay, and this is one of the few applications I've had where there's been no comments from any of the agencies including the State Office of Planning. Same with the Police. There were no comments, no public comments. There no protest letters. There were four letters of support. There were three testifiers in support at the hearing. Two of them were neighbors and the applicants told me later they weren't sure why the neighbors were there. They were really kind of nervous. And then the neighbors got up and said, oh they're so wonderful. It turned out to be a very good experience for them.

So we went out to Hana on February 20th, and the Hana Advisory Committee reviewed this application. Again, they said they'd like to see more agriculture like this and then they voted unanimously to recommend approval. In your letter I describe a little bit more some of the discussion that went on with it. That's basically here, I have Anya in the audience should you have any questions for her.

Chairperson Lay: At this time I'm gonna open up to public testimony. Does anyone wish to testify on this agenda item? Seeing no one, public testimony is closed. Commissioners, questions? I'd like to comment. The Hana Committee is pretty ruthless and for them to say, you know, it's looking good on their part, it's one of the better agriculture developments there it's a good...to me, it's a good thing. That Ward Mardfin out there, he's pretty precise on everything. Commissioner Medeiros?

Mr. Medeiros: I agree with you. Hana Advisory Committee is a lot more brutal than we can be, and if they're okay with it, I'm good with it too.

Mr. Tsai: Move to approve as recommended.

Mr. Freitas: Second.

Chairperson Lay: Motion by Commissioner Tsai, seconded by Commissioner Freitas. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

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

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

Mr. Spence: That's five ayes.

Chairperson Lay: Motion carries. Congratulations.

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

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

Ms. Flammer: For your next item, you guys are blowing through your agenda this morning. They are at about Paia right now. But we do have F-2, the applicants for that that is here right now if you'd like to go ahead with that?

Mr. Spence: Mr. Chairman, would you like to take Item F-2? The next one, Item No. 5, the other one from Hana they haven't arrived yet.

Chairperson Lay: Is that all right with the Commission?

Commission Members: Yes.

Chairperson Lay: That's fine.

Mr. Spence: So Commissioners, this is Item F-2, falls under Unfinished Business.

F. UNFINISHED BUSINESS

- 2. MS. ANN FRICKER requesting a Short-Term Rental Home Permit in order to operate the Kuau Point Short-Term Rental Home located in the R-1 Residential District at 115 Aleiki Place, TMK: 2-6-012: 073, Paia, Island of Maui. (STPH T2013/0021) (G. Flammer)**

This application is being reviewed by the Maui Planning Commission because there is at least one permitted Short-Term Rental Home operation located within 500 ft. of the subject property.

Public hearing was conducted and the matter was deferred at the April 8, 2014 Maui Planning Commission meeting.

Ms. Gina Flammer: Actually I was gonna say a couple words. The applicant's doing the presentation this time. I just wanna remind you that this was discussed at the April 8th meeting. We had a deferral at that time. What I passed out today, since that time we've had two B&B applications come in for the neighborhood. That's why I gave you an updated sheet so you can see everything that's going on. At the time that we discussed it on April 8th, one of the permitted short-term rentals was expired in the neighborhood. When it goes through renewal, you're gonna hear all about this on July 8th when we go over the Short-Term Rental Bill and process. We have a process where the permits are issued for one-year and the Department initiates a renewal. Often that takes longer than the permit expiration date. We've realized there's many, many steps so some of our permits show expired in the computer but they're not. They're still active, they're waiting for the Department to finish that up. That's what happened with one of them. So went

ahead and included it on that map so you can see. So there's currently three permitted short-term rentals. There are no B&Bs in the neighborhood and there is two pending bed and breakfast homes in this neighborhood. The applicant is going to come up and give you a power point and then we can questions afterwards.

Ms. Ann Fricker: Hi, it's nice to be here again. Yes, I'm Ann Fricker and I'm the applicant, but I really represent, my husband and I represent our family. My parents first came to Hawaii 50 years ago and fell in love with it and 32 years ago bought the property that we're discussing. They really loved the beauty of Maui. They are...my father's a lifelong photographer, my mother a painter, and my brother has become a photographer also and is actually very involved in taking photographs of Hawaii as my husband will explain.

We're a fairly large family and we would really love to share this house as my parents wished that we could. We won't be able to do it without a Short-Term Rental Permit and my husband will help explain why that is. We had somebody come this morning as you know who lives in the same neighborhood and we're very aware of the problems that the neighbors, some of them anyway are feeling about this and I'm very sympathetic actually to the person who spoke. I wanted to make it clear, I know that these permits are just for a year and I think obviously that there's a lot of transition going on into how it's all going to work this neighborhood.

I just wanted to tell you that we greatly admire and respect the neighborhood. It's most important to us that we not upset it in any way. And we are committed to feedback from our neighbors and doing everything we can to maintain the aloha spirit of the neighborhood. Thank you.

Mr. Skip Sandberg: I'm Skip Sandberg, Ann's husband. We wanted to talk about the project and talk about the neighborhood. It's an older neighborhood, newcomers, all income brackets. It has a public access for windsurfing so there's some of the new faces that people might see are a lot of windsurfers who launch from there. And local residents had been accustomed to visitors. Probably all of you know Kuau, but for the slide, it's right off the Hana Highway, you turn at the Kuau Mart and it's a no outlet area. There are three streets that go down to the ocean and on the ocean is Aleiki where we are. It's a closed neighborhood, people walk around, we walk around, we get to know our neighbors.

Chris who spoke this morning is, I think she's in the house with the white car on the right and the two new bed and breakfast signs that came up are directly across the street. Our house is at the end of the road and our sign has been up for 10 months when we started the application process in September. Those signs just came up for bed and breakfast I think within the last three weeks. On Aleiki our house is behind the wall. Before we ever considered a vacation rental permit the first thing that we did was we talked and met with all of our immediate neighbors and explained what we were doing and got their blessing. And in the letters of support, there are letters of support from our immediate neighbors. Our house is private, off the street, it's on almost a half of an acre. You can see our sign up on the right that's been up for 10 months. After we decided to go through with the project, Ann and I would walk the neighborhood to explain what we're doing to our neighbors. We're in the middle, all the green dots are people that we explained it to and didn't have a problem. One of our neighbors, the red dot, Richard Ferrari sent a letter in concern that we were investors and that...he didn't like that. We talked to him subsequently, we hadn't met him. He is often off the island. Ann had a long talk with him and explained that the house has been in the family for 32

years and we hope to use it as a family. He said, he didn't have a problem with it, so that's the way it was. One of those green dots is from Chris' house. We understood from Tim Chris that they didn't have a problem with it. Across the street, the two white empty areas are for the bed and breakfasts. We didn't run into them.

Our house is one-story, it's 2,000 square feet, concrete block. The way mom and dad liked it. We're on the ocean. There's a constant roar from the sea so people that might stay there it's a muffled sound. There's another view of our house. It's a 100 feet setback from the street so there's privacy and it makes it quiet. And within our almost half an area acre there is ample parking and then a garage, driveway, and we've augmented the lawn so there's parking for seven cars. There would be opportunities for plenty of parking within the area. Our house is one that we think is ideal for families and that would be our target, a target tenant would be hopefully families, maybe grandma and grandpa and mom and dad and kids or something like that. But we're looking for families. And this is more on the inside of the house.

I wanna point out that it has never been a short-term rental. It's never been an illegal short-term rental. In the background for the house as Ann mentioned, mom and dad got it as a retirement home 32 years ago. Mom passed away in 2009, and dad passed away. And basically the house is, has been what they have left to our family which is three children. Ann and her brother and she has a sister. Mom and dad when they got the place. So our situation and why a vacation rental is that we are now three families with the house and between us and Ann and I have two children and her brother and wife have two children. And she has a sister and husband who have a fear of flying. It's an extreme fear of flying and they've never been on an airplane in 45 years. They live in California and for us to share the house so that the three families can have some benefit from it, as a short-term rental our family could have the house for four months, Jeff's family could have it for four months and her sister, Jenny could have the benefit of four months of rental from it. And without that, they would have absolutely no benefit from the legacy that mom and dad had passed on.

We've introduced ourselves with our children on the left. And her brother Jeff and Sandy Machida's family on the right. Some of you may know of Jeff. Jeff is a photographer who has done considerable work on Maui. He was interested in the beauty of the sugar mills years ago and he spent 20 years photographing the sugar mills and the water systems in Maui. He photographed the Paia Mill before it was dismantled and sent to Asia. He photographed Puunene, the workers in Puunene in the mill, the workers in the field, and he photographed the camp that used to be there. He photographed the water works. And he also thought it important to document what was remaining of the old mills. He photographed the Wailuku Mill before it as all paved over. ..(inaudible)..., Haiku Mills before they were covered with graffiti and many of the other mills, Kipahulu and others around the island. His work has been displayed at the MACC and the art critic for The Maui News described it as a poignant exhibit important to the past and the present and the future of Maui. His work is in the Honolulu Contemporary Museum in their permanent collection and Library of Congress, and I say this to give background that we're not investors that are in this and we're not, we're not just visitors to Hawaii.

One of the interesting questions one of the Commissioners asked me when we were here in April was do you plan to move to Maui surprised me and I gave a very honest answer that my wife and I talk about it every time we're here, but we don't have current plans to move here. And as I

reflected on it, we think of ourselves as living here part-time. Last year, I spent five months here. This year, we've spent four months here. Our car is here, our clothes is here. It's home away from home. And I get confused when I go back to California is that home away from home or is it here? So our...as Ann mentioned, our strong feeling is to do this in a way that has a consideration for the neighbor, neighborhood. We wanna rent the house as a house. This isn't a bed and breakfast. It's not something that's gonna have...we wanna minimize the turnover, seven-day minimum. We have found an experienced local property manager, Norm and Cathy Clark who are experienced in screening tenants. We want to be careful who this is rented to and they have total discretion. We're not looking for this to be a party house. We have no swimming pool, no hot tub, no sound system. So that's our intention. Our family has it four months, we hope to use it as much as we can. Jeff's family has it for four months. And her sister Jenny's will never be able to stay here. So mahalo for your attention. Thank you.

Chairperson Lay: Okay, at this time, I'm going to open up to public testimony. Does anyone wish to testify at this time, please step forward?

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

Ms. Christine Thevenard: Good morning, how's everyone?

Chairperson Lay: Good morning.

Ms. Thevenard: My name is Christine Thevenard, and I'm a 30-year home owner and resident of Kuau, Paia and I'm here now just to mention I think it's "F" on your agenda. And I'm here to basically ask you not to hand out any more transient vacation rental permits in my neighborhood. The character of my neighborhood has been drastically changed and a large part of it due to the inability of the County to actually enforce against the nonconforming high density homes as well as illegal and legal transient rentals in the neighborhood. And with all of this kinda rolled up into having subpar streets, no parking, very little parking, high traffic, and no sidewalks, it just...you know, there's a lotta strangers in the neighborhood and the community is definitely impacted or I should say what's left in the community. So much of the time I just think of myself as a grumpy old neighbor at this point because I've seen so much change. But in all fairness I think handing out more permits in the neighborhood really frays the community. Or you might wanna consider rezoning our small community into resort to kinda level the playing field so everyone has the right to make a go of a lucrative business in our neighborhood without having just the few first people that have come to apply, the ones that are able to have lucrative business. It's a pretty drastic one or the other thing but it's really driven me to come down here to testify about what's happened in the neighborhood. Believe me, that's the short version. I've been writing pages and pages of letters for weeks now and was more impacted just because there's two more transient vacation rentals that are just applied right across the street from me and I already have an existing legal permitted rental right behind me that has a home and a cottage. So, I mean, I've been there a long time and have all these transient rentals around me and it's nothing that I really thought that I'd bought into that neighborhood when I did buy. So I just want you to consider when you do handout any more permits in little Kuau community, the little community behind the Kuau store that you'll maybe take a ride through the neighborhood--

Ms. Takayama-Corden: Three minutes.

Ms. Thevenard: --or you know, just give it some consideration. Thank you so much for all your time. Good to see those that I haven't seen in a long time.

Chairperson Lay: One moment. Commissioner Freitas a question?

Mr. Freitas: In relationship to your property. Where is this property located?

Ms. Thevenard: The one that's up for today?

Mr. Freitas: Yes, ma'am.

Ms. Thevenard: It's probably, okay, let me count. One, two, three, four, five properties away.

Mr. Freitas: Thank you.

Ms. Thevenard: Yeah, and I'm open to any questions that anyone has. I feel like I'm pretty well versed in my neighborhood.

Chairperson Lay: Commissioners, any more questions for the testifier?

Mr. Ball: I have a question.

Chairperson Lay: Commissioner Ball?

Mr. Ball: What is your main concern? Is there a lotta noise or is there just a lotta...

Ms. Thevenard: It's no community. It's like a lotta strangers in the neighborhood as well as the noise. I mean, I'm sure you guys have heard it all with vacation rentals. And I do understand that we have a level of control by filing complaints, but we're in Hawaii and pretty sure everyone already knows that very, very few people file complaints. I don't file complaints. This is the best I can do and it took a lot of courage for me to come up here. But no one wants to turn in their neighbors here. I mean, this is Hawaii. We have a lot of aloha for our neighbors here. So for...it's a tough catch-22 to have to rely on the citizen or the neighbor to monitor a neighborhood. That's...and I'd have to say traffic's a huge concern in the neighborhood and the density. I mean, so many other things have lead up for me to come here to this point but a lot of it is nonconforming residents which has really made our neighborhood very high density. And some of those are doing illegal vacation rentals. And from...I mean, and some of the legal vacation rentals are even, you know, as soon as the County is there and gone, you know, the lock offs are, you know, a couple of kitchens here, couple kitchens there.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yes, young lady. Do you have a ohana on your property?

Ms. Thevenard: I have a single-family residence on a 12,000 square feet. We're zoned R-1 and I've been there a long time. It was zoned Interim and it got voted into R-1 versus like building very 12,000 square foot. So yeah, I'm probably one of the few homes that is like under developed.

Mr. Freitas: Yeah, one of the few. Thank you.

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

Ms. Thevenard: Okay, thank you. You're welcome.

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

Chairperson Lay: Seeing no one, public testimony is closed. Commissioners, questions? Commissioner Freitas?

Mr. Freitas: I like the concept, I like the property, I like how you folks have inherited the property and you folks are keeping it in the family and it's a long-term deal. I am a person that is totally, not totally, but I object to short-term rentals and the reason is there, you heard in the past that we don't have enough... (inaudible)... but this property here I can support and because how it was presented and what haven't. For my information generally, I hear of a lot of short-term rentals, what is the rental rate you're going for if you would be kind enough to answer?

Mr. Sandberg: That's a good question. We haven't set the rate. Our target is to attract families. Our ideal people will be mom and dad and grandpas and the kids that currently go to Wailea and they are a family that needs to have two suites, two rooms in a Wailea hotel. And they're looking for another completely different experience in Maui to live in the north shore and to have a different feel for it. For those people that are accustomed to getting two rooms in a Wailea hotel the average for Wailea hotel rooms is 400 a piece. So if we're attracting them, they should be thrilled with a place like ours that would be comparable at 800 a night. So that's kinda the rule of thumb. We know that we would make adjustments for people that would be there longer term and probably adjustments for the holiday season, so...

Mr. Freitas: Thank you.

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

Mr. Medeiros: I think I was the one that asked you if you ever intended to move to Maui. You know, like I Jack I support the project and everything. However, again I would like to ask you to move to Maui because if we're gonna have people coming to Maui, you're the type of people we want, okay. So just move over here full-time.

Ms. Fricker: Thank you.

Mr. Sandberg: Thank you.

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

Ms. Flammer: Okay, the Planning Department recommends approval subject to the following 23 conditions that are listed in your recommendation. So with that in mind, in consideration of the

foregoing, the Department recommends that the Commission adopt the Department's report and recommendation that was prepared for the April 8th meeting, 2014 as its findings of fact, conclusion of law, and decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the Commission. Thank you.

Mr. Medeiros: So move.

Chairperson Lay: Motion by Commissioner Medeiros.

Mr. Ball: Second.

Chairperson Lay: Second by Commissioner Ball. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is approve as recommended by staff.

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

Mr. Spence: That's five ayes.

Chairperson Lay: Thank you very much.

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

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

Ms. Fricker: Thank you.

Mr. Sandberg: Mahalo.

Chairperson Lay: Our next agenda item?

Mr. Spence: Okay, Commissioners, under Unfinished Business this is notifying Planning Commission pursuant to your rules of the intent to process a time extension request administratively for the Department of Transportation, Airports Division and the Staff Planner is Mr. Paul Fasi.

F. UNFINISHED BUSINESS

- 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) (deferred at the January 28, 2014 meeting)

Mr. Paul Fasi: Thank you. This item was reviewed by this body on January 28th. It was deferred due to a concern regarding the lack of a connection between Aalele Street and the new bypass road and there was some discussion over the lack of an overpass, underpass at the Hana Highway intersection.

The applicant is going to amend their request from a six-month request to a one-year request. The Department would like to amend that request and ask this body to increase that time extension from perhaps 18 months to a year. This project has been in the queue since 2009. Five years ago and nothing's happened yet. So if you could grant them the a 18-month to two-year time extension to initiate construction I won't have to come back in six months to do this all over again.

There are some representatives here from DOT Airports, as well as Karlynn Fukuda from Munekiyo & Hiraga representing the applicant. Also, we have David Goode from Public Works here and I think we have all the appropriate personnel here to expedite this decision making process. Thank you.

Chairperson Lay: At this time, I'm gonna open up to public testimony. Does anyone wish to testify? Seeing no one, public testimony is closed. Commissioners, I know we have a number of things on our agenda, so we're gonna have to pick it up 'cause we might be losing one of our Commissioners after lunch which means we won't have quorum. So going with that, moving on. Questions, Commissioners? Seeing none, can we get the--

Mr. Ball: I have a question.

Chairperson Lay: Commissioner Ball?

Mr. Ball: So with that are we not...I mean, I know it's not their issue, but I can never get whose issue that these connections are? We have...that we have request for information on and so if we...if we grant this extension then it goes to the Director for review or are we just saying...

Mr. Fasi: No, the extension is granted by you and it ends and stops right there. You are approving the time extension.

Mr. Ball: So if they don't get here, if they don't get it started in 18 months they'll be back?

Mr. Fasi: Then we'll come back for the third time extension approval.

Mr. Ball: Okay, and so what's the, what's the reason for the extension now?

Mr. Fasi: I'm gonna leave that up to Karlynn to answer that question. It's probably related to contract signing and financing, but I'll leave it to Karlynn to answer that. Thank you.

Ms. Karlynn Fukuda: Karlynn Fukuda of Munekiyo & Hiraga, Inc. To answer Commissioner Ball's question back in January when we appeared before the Commission on this time extension request we had initially asked for a six-month time extension because the project had already gone out to bid, we were in the...or the DOT was in the process of awarding the contract. Subsequently since then, and I won't go into all the details but generally what occurred was there were challenges to the contract awarding and DOT went out and had to rebid the project because of procurement requirements. So that rebid, I believe they're opening bids this week and they hope to have a contractor secured. That said, there could still be challenges to this rebid of the contract, but DOT Airports is certainly interested in moving ahead because the first phase is already under construction if anybody's driven past the...on Hana Highway in the last three, four months, you'll see that that first phase well under construction and so the second phase which the SMA Permit is for would basically connect from where the roadway would end on the first phase to the airport. So the connection that we show here, you know, DOT Airports met with Public Works after the January meeting and the plans that we provided to the Commission or to the Department shows now that there is a connection that will provide access to the Old Haleakala Highway from the airport access road. So I believe that had been, and I won't speak for Public Works, but that was our understanding.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Hey, Karlynn without going into all the details you had mentioned something about the procurement process, any of the issues have anything to do with funding? I mean, we have the funding in place is this just other issues?

Ms. Fukuda: Yeah, that's my understanding--

Mr. Tsai: It's not money...I mean, it's not...

Ms. Fukuda: Right, but there is the concern about the money lapsing as well. So there is a time frame that DOT is under to actually encumber the funds. So but that relative to the challenges of the first bid it wasn't related to funding issues. So there is...and that's why DOT is of course, interested in getting this project moving, you know, number one, because Phase I is well under way. We don't want a road to nowhere. And number two, because there is a deadline for them to utilize the funds so they wanna get this project underway as well.

Mr. Tsai: Okay.

Chairperson Lay: Deadline date?

Ms. Fukuda: So based on the information from DOT Airports it's June 30th of this year, but the opening of the bids is concerned action that will encumber the funds.

Chairperson Lay: Commissioner Ball?

Mr. Ball: Okay, so this intersection if you will, is that ingress/egress intersection or is that just a ingress intersection with the red circle around it?

Ms. Fukuda: I believe it's a two-way intersection but let me confirm that with DOT. Yes, it is a two-way intersection.

Mr. Ball: Okay, so while we have somebody here from DOT maybe semi unrelated matter, let's talk about Hana Highway and Old Haleakala Highway. It's my understanding that Old Haleakala Highway is going to be eliminated at some point anyway. Sinking a lotta money into that underpass there and once again, the underpass should be at Hana Highway not a area where it services a limited number of vehicles as opposed to Hana Highway which we're creating another Dairy Road there now with the multiple light situation. So DOT can answer that 'cause no one seems to be able to give me an answer for that Hana Highway new airport access roadway.

Ms. Fukuda: So the portion that's under construction right now that includes the Hana Highway intersection that is being done by the Highways Division of DOT. The portion that is beyond that and heads to the airport that's being done by the Airports Division.

Mr. Ball: Of DOT.

Ms. Fukuda: Of DOT. So there are two different pots of money that are being utilized in order to construct the roadway. So the portion that includes the intersection to...at Hana Highway is being done by the Highways Division and that is Federal Administration funds.

Mr. Ball: And I understand that, and I don't really care about where the money's coming from I care about that who's to answer to that intersection 'cause I never gotten that and I've never talked to anybody about that and they're still under the heading DOT.

Ms. Fukuda: Right.

Mr. Ball: Whether they're the Airports Division...I mean, somebody's gotta be talking to somebody saying let's get together on this?

Ms. Fukuda: Right. It's the Highways Division and that...the reason why the pots of money are important are because they can't co-mingle. They can't be mixed up. So, you know, what DOT Highways got for the construction of the first phase of the airport access road is what they could get from the Feds. You know, it wasn't for the underpass or you know it was...

Mr. Ball: I will guarantee you a parent that's sitting there at 5 o'clock in the afternoon going through those lights could care less about where the money is coming from okay. They're gonna care that I gotta stop here because they built the underpass over at Old Haleakala Highway 'cause it's ridiculous so that's what I'm looking at is planning for the future, right? Why are we making all these stop lights. It's Maui's answer put a stop light and then we'll deal with later, later, later, later. We're building a major new road here and we're putting lights on it, intersecting with a major other road. I know it's not your problem, but I'm trying to get to somebody that can answer to that. How they came up with that solution and where was the input from--

Ms. Fukuda: So if I might suggest you know if the Commission so desires you could send a letter to the Director of DOT and request information on that portion although it's not part of this project, you know, to get the clarification that you're seeking.

Mr. Ball: Thank you for that suggestion.

Mr. Spence: Commissioner Ball?

Chairperson Lay: Director?

Mr. Spence: Would you like the Planning Department to write that letter?

Mr. Ball: That would be great. I'd appreciate that.

Mr. Spence: Okay, Paul doesn't have enough stuff to do.

Mr. Ball: No, he doesn't.

Chairperson Lay: Under, over or stop. Commissioner Tsai?

Mr. Tsai: I totally in agreement with Commissioner Ball's assessment there. I think there needs to be some type of ... (inaudible) ... check on decisions such as this that you know, involve future and just access because I agree that just needs to be looked at and we need some answers.

Chairperson Lay: Director of Public Works?

Mr. Goode: Thank you, Chair. If I could just add a little bit on this for your consideration maybe in your letter is that, you know, there is a full EIS was done for that project and an EIS was done for the master plan for the airport, and actually when we reviewed those documents in the context of making sure this, try to get this connection in that you see before you today which we very glad to see. And it was interesting but the issue of the overpass or an underpass at that intersection was discussed in the EIS and alternatives were looked. And there was actually opposition at the time to the overpass or the underpass however you look at it, visual reasons, et cetera. So it was something that was looked at in the EIS and indentified but in the end what's being built there today was the preferred alternative is my recollection is what was selected in the EIS. So I think when you write that letter you might wanna take a look at those documents again just to make sure. There was a public process for it. It was just a very long time ago.

Mr. Ball: Yeah, things have changed.

Chairperson Lay: Director Freitas, I mean, Commissioner Freitas?

Mr. Freitas: I'd like to address Mr. Goode. We hear this always there were objections to it. Who the heck objected to it, you know what I mean? A minority, 10 people, 20 people, where this objections come from? When you ask for clarification what you get, well there was objections to it that's why we did it this way. Let's give a little bit more reason. It was done this way because somebody in the department didn't like it, but he objected to it. Let's start, what do you call, having these people stand up and take responsibility.

Chairperson Lay: Commissioners, any more discussion? Can we get the Department's recommendation?

Mr. Fasi: The Department recommends that this body accept and approve the Department's recommendation for a two-year time extension on this project and all other conditions remain applicable and enforceable. Thank you.

Mr. Freitas: So moved.

Mr. Tsai: Second.

Chairperson Lay: Motion by Commissioner Freitas, second by Commissioner Tsai. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is to recommend approval of the time extension, 18 months or two years?

Chairperson Lay: Two years.

Mr. Spence: Two years.

Mr. Freitas: Two years?

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

Mr. Spence: That's five ayes.

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

**VOTED: To Recommend Approval of a Two (2)-Year Time Extension of the Special Management Area Use Permit as Recommended by the Department.
(Assenting - M. Tsai, J. Freitas, J. Medeiros, K. Ball, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Fasi: Thank you.

Ms. Fukuda: Thank you very much.

Mr. Spence: We're back to Item E-5, Mr. Scott Crawford, Chair of the Hana Advisory Committee to the Maui Planning Commission transmitting their recommendation regarding Gale and Michele Notestone for a B&B in Hana. And the Staff Planner is Ms. Gina Flammer.

- 5. MR. SCOTT CRAWFORD, Chair of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting the Committee's recommendation on the request by GALE and MICHELE NOTESTONE for a Bed and Breakfast Home Permit in order to operate the Hana by the Bay Bed and Breakfast, a three (3) bedroom bed and breakfast home (B&B) located at 4888 Uakea Road, TMK: 1-4-014: 005, Hana, Island of Maui. (BBHA T2013/0002) (G. Flammer)**

This matter requires Maui Planning Commission review because there is a permitted

Bed and Breakfast operation within 500 ft, of the subject property.

Ms. Gina Flammer: Okay, good morning again. I know we're not in Hana so I wanna introduce our applicants. I know our Director just read their names, Gale and Michele Notestone. This is our Fire Captain in Hana and the paramedic in Hana. So you won't see that on the record but they wanna keep those, those people in Hana.

Okay, so today we're looking at a Bed and Breakfast Permit for three bedrooms. Oh, it's right here. It's along Uakea which is kinda the heart of Hana. It's on the way to the bay and I'll talk a little bit more about this as we go on. I'm gonna go into a lotta detail. It's the same presentation I gave the Hana Advisory, but it's also a good example of how to look at an application when you have more than one within 500 feet. It's probably the only time you're gonna see all these different pieces come together like they do quite with this one.

So the application is for two bedrooms in their main house and for their one-bedroom ohana. I've got some pictures just to give you an idea what it looks like, and here's the cottage. Okay, this is Uakea Road it goes right along the water and then it ends up, you can take a left and go right down to the bay. It's a neighborhood that is actually talked about in the community plan as being the urban area of Hana.

So how do you define the character of the neighborhood? How does the Department, how do you guys take a look at that when you're reviewing applications? Well, if you look at the law it says that the B&B home can't create any greater impact than what was there before and that's where you deal with the trash and the noise and the traffic impacts. And it has to conform to the character of the neighborhood. So when you take a look at the character of the neighborhood here, we see that the neighborhood has existing permitted and nonconforming legal vacation rentals. It has a mix of zoning and a mix of community plan designations right there. In the Maui Island Plan it's a Directed Growth Boundary, a small town and then the community plan itself speaks to rentals in this area.

I put in here, it's a fancy map. It was made for a special presentation. You don't have a copy in your staff report 'cause it's in color, but you can see all the different types of zoning. Our community plan designations that are going on in this area. They're Service Business Residential which is kind of a blend. For some of the parcels you do have to do a community plan amendment for that. Some of the parcels were designated but then they have to continue to go through the process, and then you also see some multi-family that's right along this street.

So in the Hana Community Plan policy one of the objectives is to discourage transient rental accommodations uses outside of the Hana urban area. Now we've talked about this with the Advisory Committee. I mean, does that mean you don't want them in other areas, does that mean you want them all in the urban area? It's a little bit unclear, but at least for application we know that they're talking about this particular area.

And then I wanted you to see the Small Town Growth Boundary as well. And then here's kinda an overview where you can see the parcel. So you can see where the ocean is, you can see where the apartment building is. There's a church...owned by the church, further down the way there's an existing nonconforming. So you have the Hana Kai Maui Resort Condominiums. They're all legal. It's A-1 zoning, it's got a Multi-Family community plan designation. You can see where it is

right there. You got Joe's Place which is one of the nonconforming legal ones. It's gone back prior to the 90's they've been renting right there down the way.

And then we talked about this earlier, what are the specific criteria for B&Bs? They're a little different than short-term rentals. We're gonna update laws as we go on through the year, but right now it gives you these four that are in your staff report. And then I went through and kind of analyzed these. There were no protests. There are two other B&Bs within 500 feet. There were no protests. This is not an existing rental. There's no violations on the property building or other. So those are the two permitted B&Bs within the 500 feet. You can see where they are. It's the Bamboo Inn and then the Hana Bay Bed and Breakfast. The Hana Bay's been there forever. They did come in for a permit, but they probably would have qualified for a legal nonconforming. I think Council members used to stay there years ago. And then there's also two short-term rentals that are right along the road, but outside of the 500-foot circle, and that's those right there.

Okay, the Hana Advisory Committee, they like to know what's going on. So I always tell 'em what's going on in the whole community plan region and I give 'em an update. So that's what you have right here for both the B&Bs and the short-term rentals. Again, this one had no agency comments. It didn't get routed to State Office of Planning because it's not Ag. And then we did have with the public comments, you know, there's two neighbors...to mailings that go out to the neighbors. They were no protests that came back and there were two letters of support that came in. And then again, that same meeting February 20th, we went to the Advisory Committee. As you'll notice as you read the minutes or the letter there was a lotta discussion about a lotta different things, but not the application. So we had some good discussions about stop signs, things in the public right of way. What did matter to this is they did ask the applicant's you know, Ward always ask them why aren't you renting long-term and they explained they've been renting long-term. They've had problems collecting rent. They wanna stay. I mean, they can't put their own mortgage in jeopardy so that's why they're turning to this, and then they're putting two bedrooms inside their own house as well. The Committee unanimously recommended approval with this one as well. Thank you.

Chairperson Lay: At this time, we're gonna open up to public testimony. Does anyone wish to testify at this time? Seeing no one, public testimony is closed. Commissioners, questions? Okay, can we get the Department's recommendation on this then?

Ms. Flammer: The Department recommends approval subject to the conditions that are listed in the staff report.

Mr. Medeiros: So move.

Mr. Ball: Second.

Chairperson Lay: Motion by Commissioner Medeiros, seconded by Commissioner Ball? Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is to approve the B&B Permit as recommended by staff.

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

Mr. Spence: That's five eyes. Congratulations. Sorry about the drive.

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

**VOTED: To Approve the Bed and Breakfast Home Permit as Recommended by the Hana Advisory Committee and the Department.
(Assenting - J. Medeiros, K. Ball, J. Freitas, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Hopper: ...(inaudible)...wanna do, if we're gonna lose quorum instead of training, I can do the training another day. It's up to you.

Mr. Spence: I thought training would be better if everybody was here? I few more.

Mr. Hopper: Well, that too, and also I don't want you to lose items that you gotta take action on. Yeah, why don't you do that, 'cause it's a recommendation.

Chairperson Lay: Okay.

G. WORKSHOP NO. 3 conducted by the Office of the Corporation Counsel

- 1. Contested Cases**
- 2. Legal training on concepts of nexus and proportionality and their application to the permit process**

Mr. Spence: Commissioners, we're on Item I-1, this is Mr. Edward T. Dewey of The Shops at Wailea requesting Planned Development Step III Approval for construction of the Island Country Market at The Shops at Wailea, and our Staff Planner is Mr. Danny Dias.

I. DIRECTOR'S REPORT

1. Pursuant to the provisions of Section 19.32.020.C of the Maui County Code, Planned Development, the Planning Director notifying the Commission of the Planning Director's review of the step III unified site and building program on the following application:

MR. EDWARD T. DEWEY of THE SHOPS AT WAILEA, L.P. requesting Planned Development Step III Approval for construction of the Island Country Market at The Shops at Wailea, an approximately 13,480 sq. ft. free-standing grocery store building with a 2,998 sq. ft. mezzanine level for storage, landscaping, and related infrastructure improvements at 3750 Wailea Alanui Drive, TMK: 2-1-008: 074, Wailea, Island of Maui. (PD3 2014/0001) (D. Dias)

Mr. Danny Dias: Thank you, Will. Good morning, Chairman Lay and Members of the Maui Planning Commission. I'll take just a minute. This is pretty simple. The Department is asking the Commission to waive Planned Development Step III Approval for the Island Country Market for two reasons. One, you guys just reviewed this project I believe it was on February 25th. Second

reason is nothing has changed. So this is the exact same project that you folks reviewed and so for efficiency purposes we would appreciate it if you could waive PD3 review. Thank you.

Chairperson Lay: Open up to public testimony. Does anyone wish to testify on this agenda item? Seeing no one, public testimony is closed. Commissioners, any questions? Seeing none, can we get the Department's recommendation?

Mr. Dias: We ask that the Commission waive Planned Development Step III Approval for the Island Country Market project. Thank you.

Mr. Medeiros: So move.

Mr. Ball: Second.

Chairperson Lay: Motion by Commissioner Medeiros, seconded by Commissioner Ball. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is for the Commission to waive review of the Step III Approval.

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

Mr. Spence: That's five ayes.

Chairperson Lay: Motion carries.

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

**VOTED: To Waive review and Allow the Planning Director to Take Final Action on the Planned Development Step III Application.
(Assenting - J. Medeiros, K. Ball, J. Freitas, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Ball: H.

Mr. Spence: Acceptance of the Action Minutes for May 27th.

H. ACCEPTANCE OF THE ACTION MINUTES OF THE MAY 27, 2014 MEETING

Mr. Freitas: So move.

Mr. Ball: Second.

Chairperson Lay: Motion by Commissioner Freitas and Commissioner Ball acceptance of the minutes. All those in favor raise your hand?

Mr. Spence: Five ayes.

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

**VOTED: To Accept the Action Minutes of the May 27, 2014 Meeting.
(Assenting - J. Freitas, K. Ball, J. Medeiros, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

Mr. Spence: Okay, Commissioners, Directors Report, SMA Minor Permit Report and Exemption Report. Those are just for you to acknowledge receipt.

2. SMA Minor Permit Report (Appendix A)

3. SMA Exemption Report (Appendix B)

Mr. Medeiros: So move.

Mr. Ball: Second.

Chairperson Lay: Motion by Commissioner Medeiros and Commissioner Ball. All those in favor?

Commission Members: Aye.

Chairperson Lay: Motion carries.

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

**VOTED: To Accept the SMA Minor and Exemption Reports.
(Assenting - J. Medeiros, K. Ball, J. Freitas, M. Tsai, I. Lay)
(Excused - P. Wakida, W. Hedani, S. Duvauchelle, R. Higashi)**

4. Discussion of Future Maui Planning Commission Agendas

a. June 24, 2014 meeting agenda items

Mr. Spence: Commissioners, future Planning Commission regular agenda items for June 24th. Item A you're gonna have a public hearing for Stanford Carr Development on behalf of Harry and Jeanette Weinberg Foundation for an SMA Permit on Kahoma...the Kahoma Village 201H project. You do have a petition to intervene on it. The second one, General Growth Properties requesting an SMA Permit for the renovation of Whaler's Village.

Mr. Ball: Can I ask a question on that on the petition?

Mr. Spence: Oh, on the petition to intervene?

Mr. Ball: Yeah. What is that group PPKAA? What's their interest in that?

Mr. Hopper: This is a petition that they've filed with the Commission?

Mr. Spence: Correct.

Mr. Hopper: Yeah, that's a contested case, I'd recommend that we...I mean, the Commissioners should be given copies of that petition.

Mr. Ball: Okay.

Mr. Spence: You'll be getting your copy.

Mr. Hopper: And yeah, and then during the hearing you can certainly ask any of the questions of those parties that you would like.

Mr. Ball: Sounds good.

Mr. Spence: And then the third public hearing item is Mr. Timothy John Heheman of HeMan Services requesting a Special Use, State Land Use Commission Special Use Permit and Conditional Permit to operate a landscaping baseyard in the Ag District.

And No. 4, Dennis and Cynthia Hudson requesting a B&B Permit for the Maui Hale Olina Bed and Breakfast.

Chairperson Lay: We have a site visit on the 17th too, huh?

5. June 17, 2014 at 9:30 a.m. - Site Inspection of the following application (please meet at the site.)

STANFORD CARR DEVELOPMENT, LLC on behalf of the HARRY and JEANETTE WEINBERG FOUNDATION, INC. requesting a Special Management Area Use Permit for the development of the proposed Kahoma Village 201-H Project and related improvements located on approximately 21.6 acres on the northeast corner of Front Street and Kenui Street at TMK: 4-5-008: 001 (por.), Lahaina, Island of Maui. (SM1 2012/0007) (D. Dias)

The proposed Project will provide a total of 203 residential units of which 101 will be single-family dwellings and 102 will be multi-family units. The 102 multi-family units shall be residential workforce housing units. Park space is also contemplated within the project.

Mr. Spence: Yes, you have a site visit for that Kahoma Village 201H project.

Mr. Ball: I will not be attending that.

Mr. Tsai: I will not be attending that either.

Mr. Freitas: I will not.

Chairperson Lay: Gonna have to check on quorum for that one.

Mr. Freitas: You got three no.

Mr. Spence: We'll check on the quorum.

Mr. Tsai: You don't need a quorum for that, right?

Mr. Freitas: I don't think you need a quorum.

Mr. Hopper: But before you take action you would need to have a report back from the Commissioners that were at the meeting. But you might as well...I wouldn't have the site visit unless you have a quorum. I would schedule the site visit to a time that you have a quorum otherwise why would you do the site visit.

Mr. Freitas: Penny's going.

Mr. Spence: Okay, we'll poll the Commissioners, the other Commissioners.

Chairperson Lay: Can we email on that one?

Mr. Spence: I believe we can.

6. June 26, 2014 contested case hearing at 9:00a.m. on the following appeal:

ISAAC HALL, attorney for JAMES BENDON, ROBERT and MARGARET KAPLAN, CYRUS MONROE, and PETER SIRACUSA submitting an appeal dated December 19, 2013 of the issuance of an SMA Exemption for the milling and resurfacing of Runway 2-20 at the Kahului Airport at 1 Kahului Airport Road, TMK: 3-8-001: 019, Kahului, Island of Maui (APPL 2013/0012) (SM5 2013/0350) (SMX 2013/0324) (P. Fasi) (Matter was previously discussed at the April 22, 2014 Maui Planning Commission meeting)

The Commission and the public were notified of this appeal through the January 14, 2014 Maui Planning Commission agenda.

Pursuant to the Maui Planning Commission's Special Management Area Rules and its Rules of Practice and Procedure, the parties in the subject appeal are:

- a. Appellants - James Bendon, Robert and Margaret Kaplan, Cyrus Monroe, and Peter Siracusa**
- b. Applicant - State Department of Transportation, Airports Division**
- c. Appellee - Department of Planning**

Mr. Spence: Then 6. June 26 contested case hearing, Mr. Isaac Hall on the appeal for the resurfacing of the airport runway.

Mr. Freitas: There's no injunction on that, right? They're still going ahead with it am I right?

Mr. Spence: My understanding is that they've reach some settlement. So that will be coming back. That's my understanding. I can't--

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I have a question for the Director. Years ago on these contested cases, they always...the Commission ruled that there was a settlement agreement was supposed to be brought before the Commission and the last one that was done they said no. Could somebody check to that and see if that's in our rules as far as the settlement agreement so that we know what is being done?

Mr. Hopper: I can answer that. It depends on the context of the agreement. If it's for a SMA violation like there's fines being paid, the Commission has to approve that, and we've had those come before the Commission before. If it's a settlement in a contested case, the rule's a bit different. It talks about the Commission...I think it says has to inform the Commission of the settlement, but if a...as part of the settlement the person dismisses the case before the Commission, there's nothing else before the Commission at that point. It's kind of a withdraw of the settlement agreement.

Mr. Freitas: I understand. This happened maybe six years, six, seven years ago maybe even longer and there was a contested case where there was quite a bit of money paid to be settled and the Commission at that time ruled that Commission rules that when there would be monetary payment that they would be informed of what was...who was paid and how much.

Mr. Hopper: Well, some of the difference also could be if it's like an appeal if it's not something...an appeal versus like an intervention. Sometimes you have a permit that you have to decide on and there's an intervention, the intervention's resolved but then the Commission still has to decide the permit and do conditions and in that context the Commission still has it, and I think had a report to it in one of the cases years ago, had a reporting requirement that it put in I think as a condition of that granting that permit it said, you've gotta report back to the Commission, I don't know if it was quarterly or yearly or something like that. That's a little different than a case where there's an appeal, someone files an appeal where the Commission never decided on a permit, if it was like a director decision and there's an appeal filed and then as part of that settlement, the person who filed the appeal withdraws the appeal. It's very difficult for the Commission to be able to review the settlement agreement if the appeal is dismissed and there's nothing more before the Commission.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I think you're misunderstanding it. We reach a settlement agreement we are gonna pay Max \$2 million to settle their agreement. Now when that agreement is settled, we get a copy that Max was paid \$2 million and that was the final settlement. That's what was done back then when I watched this Commission meeting. I'll try to get the date and when this thing was taking place and when the ruling was made because I think the Commission voted that any monetary settlement that was made that the Commission would be informed that the amount that was paid out.

Mr. Spence: Yeah, I remember that...(inaudible)...

Mr. Hopper: It was a specific condition to that project.

Mr. Spence: I know sometimes when...and I believe that's...I understand the case that you're talking about and I believe if what Mr. Hopper is saying...if there's something before the Commission, if a contested case is granted by the Commission and they go ahead and they go to mediation and they come to some kind of agreement, the Commission gets to review that agreement. Sometimes intervention will be filed and if the Commission never...if the parties decide that they're gonna settle outside of the contested case, there's nothing before the Commission for them to review because it wasn't...there was no contested case granted. So that...whatever agreement remains private between the parties.

Mr. Hopper: Yeah, we can look into what happened in the past. I think it was, I think the agreement required that they report all the money that went to the group and I thought that was a Commission condition, but I could be wrong. This was a while ago. I remember the case because—

Chairperson Lay: WMPA.

Mr. Hopper: Yeah. But it could have been...right, and they definitely had to come before the Commission any money that was paid out. So, but I don't remember all the background on that one. That was a while ago.

Mr. Spence: That completes your agenda.

Chairperson Lay: Commissioners anything else?

Mr. Spence: Reschedule training.

Chairperson Lay: Oh, and we're gonna reschedule the training. And other than that Planning Commission's over. Thank you guys.

J NEXT REGULAR MEETING DATE: JUNE 24, 2014

K. ADJOURNMENT

The meeting was adjourned at approximately 11:53 a.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Keone Ball, Vice-Chair
Jack Freitas
Ivan Lay, Chair
Jason Medeiros
Max Tsai

Excused

Sandy Duvauchelle
Wayne Hedani
Richard Higashi
Penny Wakida

Others

Will Spence, Director, Planning Department
Mike Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
David Goode, Director, Department of Public Works