

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
APRIL 22, 2014**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:00 a.m., Tuesday, April 22, 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: It's April 22nd, 9:00 a.m. At this time, the Commission will now take testimony, public testimony for those individuals who cannot be present at this meeting when the agenda item is taken up by the Commission. If you wish to testify now you can do so, but you will not be allowed to testify when the agenda item comes before the Commission unless you have some new or additional information to be offered. You'll be allowed a maximum of three minutes to present your testimony.

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

Natt Shand - Item E-1, Hawaiian Cement, SUP2 and CP  
Tom Boomer - Item E-1, Hawaiian Cement, SUP2 and CP  
Kenneth Tavares - Item E-1, Hawaiian Cement, SUP2 and CP

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

Chairperson Lay: Next we have John Kaona? John, do you wish to testify?

Mr. John Kaona: No, that's okay.

Chairperson Lay: Okay. Does anyone else wish to testify at this time? Again, this is if you testify now, you won't be able to testify when your agenda item comes before us again. Seeing none, public testimony is closed and moving onto our first agenda item.

Mr. Spence: Good morning, Commissioners. The first few items on your agenda this morning are holdovers from the April 8th meeting. The first one, Communication Item is the Maui Lani Village Center requesting a time extension and amendment to Condition 32 of Project District Phase II approval, and our Staff Planner is Mr. Danny Dias.

**C. COMMUNICATIONS** (previously on the April 8, 2014 agenda) (Commissioners: Please bring your materials with you.)

1. **MAUI LANI VILLAGE CENTER, INC., requesting a time extension and amendment to Condition No. 32 of a Project District Phase II approval for the construction of the Maui Lani Village Mixed Use (VMX) project located on approximately 56.9 acres of land along Maui Lani Parkway and Kuikahi Drive, TMK: 3-8-097: 002 thru 081, Kahului, Island of Maui. (PH2 2007/0002) (D. Dias)**

**Condition No. 32 reads: "That as represented by the applicant, and agreed to by the Department of Public Works (DPW) Maui Lani will agree to expedite the design and construction of the initial two lanes of Maui Lani Parkway (MLP) between Kuikahi Drive and Onehee Avenue together with the extension of Onehee Avenue to intersect with the MLP. Maui Lani will complete the MLP improvements by December 2013 subject to approval by the SHPD and the Burial Council. Said completion shall be a condition of the Phase II approval but shall not be a condition of occupancy or subdivision approval for the VMX District. (Recommended by Department of Public Works (DPW))."**

Mr. Danny Dias: Good morning, Chair Lay and Members of the Maui Planning Commission. I'll keep this very brief. Mich Hirano has a short power point presentation. But essentially what's before you today is a time extension in order for Maui Lani to build an access road and let me just have you turn to Exhibit 4 in your report. Basically what we're talking about is this bold road here that doesn't exist now. They were supposed to have built that I believe in December of last year, but the VMX project hasn't been built as much as they've expected in 2008, so they're asking for a time extension. The time extension that they're proposing is also included in the report and I'm just gonna turn it over to Mich, take about what...

Mr. Mich Hirano: Good morning, Chair Lay and Commissioners. My name is Mich Hirano with Munekiyo & Hiraga. And we are presenting Maui Lani on this time extension request before you this morning. We've prepared a brief power point just to give a little overview of the conditions that are before you with respect to the time extension.

Why are we here this morning is twofold. Maui Lani is requesting a time extension to fulfill a Condition No. 32 of a Project District Phase II Approval for the Maui Lani Village Mixed Use Project obtained in 2008. Condition No. 32 requires extending Maui Lani Parkway from its current intersection with Kuikahi Drive to Onehee Avenue together with the extension on Onehee to intersect with Maui Lani Parkway by the end of 2013. We call this, "the project" as we move forward.

At that time, when Maui Lani's Village Mixed Use Project was going through the entitlement process Maui Lani anticipated building out the majority of its residential land between 2009 and 2013. However, as you know due to the downturn in the economy that happened right after the approval or just...you know, it was sort of starting in 2008 as early as 2007. With the economic downturn basically there were no single-family homes in Maui Lani that sold during that period. It was very, very quiet. And as such, Maui Lani is requesting a time extension to meet this condition.

I'd like to just go over some of the area for the Commissioners. This is the Maui Lani Master Plan it bounded in the south by Kuihelani Highway, and as well Kaahumanu Avenue is on the northwest. It's approximately 1,200 acres and in 2008, this portion which we call the Village Mixed Use was

in for approval and entitlement. Part of the Village Mixed Use is a VMX Commercial Center and as well, a residential component.

This Maui Lani Parkway, Kamehameha Avenue which ends at the western portion boundary of Maui Lani Project District and then this is the extension of Maui Lani Parkway. This is the intersection with Kuikahi Drive and it intersects here with Waiale Road. When Maui Lani built this area out, they improved the expansion of the Parkway to Kuikahi, built Kuikahi Drive and signalized Kuikahi and Wailea [sic] Avenue. Part of the justification for this extension, the Onehee extension, this is the intersection with Kuikahi Drive and that would extend Maui Lani Parkway to the northwest and again, Onehee which terminates at this point would be extended to join. This was predicated on the fact that this portion of the Project District and the residential component would be completed which would then justify this roadway connection.

However, as we said, this area has not been built out, and currently there is this Traditions that is being built out right now, it's a residential component by DR Horton and then in the future the next section that will be built out is Maui Lani, is the Parkways single-family development which is under contract with Towne Development or Towne Realty. The brown areas are areas that are slated for future residential development but have not been built. Right now Maui Lani Project District has about 1,200 units of the 3,800 approved capacity in the residential component.

The requested amendment and as you have in your package the condition reads in terms of the Parkway extension, Maui Lani Parkway extension, Condition No. 32 was amended and this was in consultation with the Department of Public Works based on a Traffic Impact Analysis that was done with Austin Tsutsumi in terms of assessing the regional traffic that's generated from the single-family and the commercial projects that would generate the traffic that would require the expansion of an extension of the Onehee/Maui Lani Parkway piece of roadway.

So as it was worked out, this is the amendment that is being reviewed by the Planning Commission as recommended by the Department of Planning and Maui Lani Partners has made a request for an amendment to this that is before you and I'd just like to go through this. Condition 32 as recommended reads as follows: That as represented by the applicant and agreed to by Department of Public Works, Maui Lani will agree to design and construction of the initial two lanes of Maui Lani Parkway in the area between Kuikahi Drive and Onehee Avenue along with construction of an extension from Onehee Avenue to Maui Lani Parkway when—and these are the triggers that would require this improvement—a) The Maui Lani Project District residential component builds out an additional 350 units, Planning Department had inserted “or” and the applicant is requesting that this be amended to “and” and we'll go through the reasons for that. b) That Maui Lani VMX is constructed and occupied to 85 percent of its proposed capacity. So this is really the grounds upon the nexus as it were for this roadway improvement. It's based on the residential component being built out as well as the commercial component being built out and that was what the TIAR had analyzed. And the third piece of this is, or signalization or similar improvements to the operational capacity of the Kamehameha Avenue/Maui Lani Parkway intersection are completed and the Department of Public Works determines that further traffic measures are warranted including but not limited to the Maui Lani Parkway to Onehee Extension.

So again, just going back this piece is in operation. There's Pomaikai Elementary School. There's a proposed regional park or the regional park that will be turned over to the County, an 18-acre

parcel. This is the area that will be improved and that's under Item C of that condition. Maui Lani and the County are working together to signalize this intersection and make roadway improvements that would greatly facilitate traffic through Kamehameha Avenue and Maui Lani Parkway. So this is the signalization that is most critical to improve that traffic condition.

The requested amendment that Maui Lani is proposing, the changing of "or" to "and" 'cause if you look at the conditions it means that either one of these would trigger the improvement as well as C. And what Maui Lani is requesting is that it be really the nexus for the trigger be tied to both the residential component and the commercial component because that is the generation of traffic that would impact that intersection for Maui Lani's improvement.

So the change of the word "or" as found in the Planning Department's recommendation to read "and" is acceptable to both Department of Planning and Public Works. We understand Planning will not object to this. We've discussed it with Public Works as well.

And the reason for the change is to make the condition consistent with the Traffic Impact Assessment Report which was...which considers both traffic generated by the residential component and the commercial component. The traffic analysis that Austin Tsutsumi did in 2012 concluded that the signalization of the Kamehameha Avenue and Maui Lani Parkway intersection currently underway by Maui Lani in terms of it under design delays the need for the project. The project could be needed by the time Maui Lani's residential increases by approximately 350 units and its VMX commercial component is built out to 85 percent capacity. And as well, Maui Lani continues to do annual intersection monitoring reports that will be provided to the Department of Public Works to evaluate the need for the project. So Public Works still has the, in terms of this condition, the flexibility if things are advancing and that intersection is not working as efficiently as it is proposed because of increased traffic, they can trigger further improvements and Maui Lani is obligated to do that. So it doesn't...I think it still works for all parties to make sure that intersections is working as planned and if further mitigation is warranted then that will be carried out.

So as we mentioned, both the Department of Planning and Public Works do no object to this amendment that Maui Lani that Maui Lani's proposing and the revised condition still allows the Department of Public Works to determine future traffic mitigation measures as may be warranted including but limited to the Maui Lani Parkway to Onehee extension. So thank you very much for consideration to our requests and we're available to answer any questions the Commission may have.

Chairperson Lay: Commissioners, at this time I'm gonna open up to public testimony. Does anyone wish to testify at this time? If so, step up to the mic and identify yourself and you have three minutes. Seeing no one, public testimony is closed. Commissioners, questions? Commissioner Wakida?

Ms. Wakida: I'm not sure who else is here representing the project but I can ask Mich. Mich, who else is here with you?

Mr. Hirano: Dave Gleason with Maui Lani Partners, Steve Miller with Maui Lani Partners, and Matt Nakamoto with Austin Tsutsumi, the traffic consultant.

Ms. Wakida: Well, okay I'll ask you but maybe one of the other gentlemen would like to answer this.

Mr. Hirano: Yes, I could direct that.

Ms. Wakida: My question is what the people that are currently buying into this--

Mr. Hirano: The Maui Lani project?

Ms. Wakida: Yes. What were the residents told about these...this extension that was being originally promised?

Mr. Hirano: Dave Gleason.

Mr. Dave Gleason: Good morning. Dave Gleason with Maui Lani Partners. We have had many community meetings in regard to the community plan. So there hasn't been a lot of attention put on that particular extension. I'm not so sure that the residents actually want that extension because it would actually bring some through traffic through Maui Lani that currently isn't being accommodated because it's not a through road. The dead end now is right there at the entry of The Bluffs and The Island Subdivision in Maui Lani. So to answer your question, there hasn't been a whole lot of comment in regard to that, but I think there would be some in regard to the increased traffic through the neighborhood if in fact it was something that was gonna be going through in this time, time frame.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Okay, but to verify you haven't actually gotten any comments from the residents, but my original question was when they bought the lot were they given a map that showed this extension was going to be made?

Mr. Gleason: Yes, they were.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Commissioner Ball? Oh, ...(inaudible)...Mich?

Mr. Hirano: I'd like to comment that this is the master plan so when people buy into Maui Lani they know what the future development will be, but I think there's also a phasing component that is part of the old master plan in terms of its implementation. So I don't think people expect everything to be built at once, but there is a phasing plan in terms of how the Project District will be built out.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Let's see, I have a few questions. If the design already completed for that road? Is that ready to go? ....(inaudible)...stuff plan that and do all that sort of thing or...

Mr. Gleason: No, it's in preliminary design. It has been designed in a sense but not from a

construction perspective. No construction drawings.

Vice-Chair Ball: So if this request is made then is that gonna delay that now even further or is that still gonna be...being processed as the time goes on?

Mr. Gleason: It would take the time to do the construction plans and get the permit. It answers your question back to the first question that came up. In regard to our roadway agreement which has been disclosed and we have a roadway agreement with the County. That particular extension for Onehee and Maui Lani Parkway was predicated on the development of the Browne parcel, we call it Phase 9, so that does...we're certainly in agreement with our roadway agreement with the County. This came up I guess about five years ago when the economy was good and there was an anticipation that we would be building out quicker, more quickly and that's when Public Works Department decided that this would be a good add-on and we agreed that that would happen if in fact things were moving forward as it was anticipated, and obviously did not.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Continuing on my question. How long will that take?

Mr. Gleason: I would guess two years. We had been working...to answer a little bit, I know where this is headed I guess in regard to the timing of it. We have been working with Public Works on a lotta roadway issues in Maui Lani and that's been going on for a couple years. This has been a subject that has been coming up. There was very strong support for the deferral and we have actually tried to get it on the Planning Commission's docket for some time now.

Vice-Chair Ball: Well, I drive this road at least five times a week, sometimes six. All over this Maui Lani area. I disagree with you, your testimony saying that it's not needed because everybody that I talk to that lives in Maui Lani says they want that connector road to get through Wailuku instead of going on Waiale which is a total mess right now and then that intersection of Waiale where it's a free for all basically and I've discussed with Public Works about doing something there also. I think it is needed and it should be built, may not...maybe just the one all the way to Maui Lani Parkway. Maybe not the Onehee extension yet. I don't know if that's a compromise or if we can work something out, but a lot of people head all the way up to Kuikahi make the right, come all the way back to Maui Lani Parkway to go to Safeway or Kaiser or whatever it is, Baldwin High School that whole area there.

Let's see Towne Development is building 250 homes right now down in the intersection of Kamehameha and Maui Lani Parkway and they're moving right along.

Mr. Gleason: They have about eight constructed at the moment.

Vice-Chair Ball: Right. And they've sold quite a few others. So I see that selling out sooner than later let's say. The economy has turned around where home sales are now a little more brisk than they were a year or two or three ago. So I see that 350 number coming a lot sooner and maybe a lot sooner than 20 years also for this whole design issue. I don't know if you follow me where I'm going with this, but—

Mr. Gleason: Let me add, Keone—

Vice-Chair Ball: Go ahead.

Mr. Gleason: The extension of Maui Lani Parkway is not scheduled to go all the way to the top. It's not gonna go up to other end of The Island Subdivision and connect into the Baldwin area. That is not happening. That will be tied to the Phase 9 in our roadway agreement. This particular connect only goes to Onehee therefore there really would be no need to extend Maui Lani Parkway and have a dead end. You see as you mentioned, you might have a middle ground with Onehee, but that's—

Vice-Chair Ball: Right. It still gives an alternate route as opposed to going all the up to Kuikahi making it, and come back, and come back, and come back. You go to Onehee, you go to Papa Avenue and you come up Kaahumanu or whatever it is. Right now that intersection is very dangerous 'cause every time I go there I see skid marks to your fence. Always, always, always. The fence goes up. It gets knocked down the next day. It's a bad, you know, turn right there whether that means anything. But I'm...I worry about delaying this any more cause then it delays the other phase and so on and so forth. I mean, that road...there's a lot of people that use that road, you know, believe it or not. I mean, it does back up every afternoon and every morning. The signal may help it or may not, but—

Mr. Hirano: Can we just go over the signalization and the laneage because I think that that, and I'd like to have Matt Nakamoto, traffic engineer just discuss that and you can ask questions again on that, but I think the roadway signalization intersection improvements are very major. They're gonna really improve that intersection.

Mr. Matt Nakamoto: Good afternoon, Matt Nakamoto from Austin Tsutsumi Associates. Yeah, so really the planned signalization of the intersection as well as the proposed turning lanes at Maui Lani will greatly increase the capacity of the intersection. One of the issues really is that all-way stop control of four-way stop control as they have it now is the least efficient form of control because every car that comes to the intersection needs to stop coming from every which direction. So yeah, and we analyzed the operations there. We know that right now there is queuing along Maui Lani Parkway that can go quite far. You know, roughly...by observation, roughly in the range of many 1,000 feet maybe up to even 2,000 at its worst point for brief periods. And so we analyze the situation with all the different laneage and which is the addition of the left-turn lane and the right turn lane for both the eastbound and westbound approaches along Maui Lani Parkway...Oh, okay. Yeah, sorry.

So this is Kamehameha Avenue right now with the existing laneage and then this is Maui Lani Parkway which currently in the eastbound and westbound directions only have shared single lanes through this all-way stop control intersection. So we analyzed the operations of the intersection with increased traffic at the intersection as a result of future growth as well as signalization of the intersection and we find that we can meet the thresholds set forth in the roadway master agreement which is level of service D or better. And I recognize, and we include in the report the fact that existing, some of the approaches are operating at level of service F due to the fact that there's no signal there.

Vice-Chair Ball: Question on that drawing there. So Kamehameha Avenue that goes across, is that a single-lane representation. What does that represent the—

Mr. Nakamoto: It's...yeah, I know it's a little bit light, but right now they have a left-turn lane as well as a shared through right lane for both northbound and southbound.

Vice-Chair Ball: 'Cause most of those people make a left-turn out of there.

Mr. Nakamoto: Yeah, so when put in, when you put in the traffic signal then you can allow for left-turn phases to accommodate the left-turn movements as well.

Vice-Chair Ball: Right. I'm just hoping that the storage lane is long enough for all the people that are turning left.

Mr. Nakamoto: Yeah, yeah, it will. So...you know, and the nice thing with a traffic signal is that you get to control and balance out how much time each movement has whereas right now, if you're on the heavy side you're screwed because you don't have enough time to get through.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Yeah, several questions. On is that particular intersection I'm concerned about the school children, Pomaikai that have to go across that area and there's no signal light actually it's just a four-way stop, four-way stop going through.

Mr. Nakamoto: Yes.

Mr. Higashi: And usually when you build a subdivision the infrastructure is already put in so that you will accommodate whatever traffic that goes through and looking at what your proposal is with 350 homes, et cetera, you know it might be two, three years from now, but yet at the same time you have students that cross that area every day and it's not safe. So my concern is why aren't you building that because you not only have Maui Lani residents through there, you have all of Kahului going through that area 'cause that's a convenient way of getting back home. And so it's a tremendous, especially like end of school or ...(inaudible)...7 o'clock or 2 o'clock you have a major problem there.

Mr. Nakamoto: Yes. So I just wanted to differentiate between—what our current request is to delay the extension of Maui Lani Parkway to Onehee Avenue and extend Onehee Avenue to Maui Lani Parkway. This current...this signalization and widening that is on this drawing is actually in the works right now and we're working towards getting it completed. And so, and then also to address the pedestrian concern, yeah right now there's no signal there. With the signal we'll be able to put in the phasing for the pedestrians to cross.

Mr. Higashi: So when is that anticipated to be installed?

Mr. Nakamoto: Right now we're in the design phases working with the Department of Public Works. So I would anticipate, you know, maybe within, possibly within—

Chairperson Lay: Public Works wish to comment on that?

Mr. Nakamoto: Yeah, maybe defer to Public Works, sorry.

Chairperson Lay: Rowena?

Ms. Dagdag-Andaya: Well there is a, Rowena Dagdag from Public Works. There is a process. We still have to own the road first. So right now as Matt had indicated there is a design phase, we're still working on that and then we also need to own the road because we don't own it right now. It's still under the ownership of Maui Lani. So once the road dedication is put into place, design is completed then we need to go in for funding because it's a cost share between the County and Maui Lani. So, you know, depending how quickly we can move along with the road dedication, you know, I would defer having Maui Lani answer that. But you could anticipate maybe about year or a little more than a year before that can happen.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: While you're warmed up. It kinda has nothing to do with this, but it has something to do with it, the Waiale intersection by the cemetery?

Ms. Dagdag-Andaya: Right.

Vice-Chair Ball: I mean, this will feed that and not make it better. It will make it probably worse because it's gonna get now more people quicker to that intersection, and not only that intersection, but coming out of Kehalani also, the left turn out of there, I know it's very difficult in many occasions. Do we have any plans for any of that? 'Cause it's gonna get worst too now that they've...they're gonna repave that ...(inaudible)...

Ms. Dagdag-Andaya: Yeah, that we do have...that's another one that's in design, the Waiale/Waiinu extension, at that "T" intersection where the cemetery is located and Maui Lani Parkway. That's another one that has...that Maui Lani also is working on. So as far as that, you know, I don't, I can't recall offhand where we're at with that particular project. Maybe Maui Lani can provide some information. But that's another section that's really key here.

Mr. Gleason: Hi, I'm Dave Gleason. Yes, we have been working with Public Works for some time now on the Waiale/Waiinu intersection. There are some issues, engineering issues that I know that Public Works has really been toiling with and they are...there's that strip mall right on the end and know that there are property issues in regard to putting the standards for the signal. We are ready, willing and able to design that standard for the corner. We're waiting for some property, ownership issues to clear up that Public Works has been working on with Memorial Park as well as with the property that's at the end there. So again, we are working on it. We would be designing it once we get the green light from Public Works to do that.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: That intersection there it's not in the design stage. Now when she quoted a year, it's a year to complete the design stage and then proceed to do the work am I correct?

Mr. Gleason: Which intersection? This one?

Mr. Freitas: Yes sir.

Mr. Gleason: This one. You're probably not too far off. But we have been trying to get the design down as quickly as possible. We have been working with Public Works for quite some time. We went in for dedication of roads many years ago and I'm not sure if you're all aware that sometimes dedication process has been very slow. We do appreciate the cooperation we're getting from the current Public Works Department in that regard, but we went in for the ownership issues in '09 when we first submitted for dedication. So that is an issue, but we are working as fast as we can to get it designed, but part of this has been the slow down in regard to getting the roadways dedicated.

Chairperson Lay: If I might comment on that also. For me it's a lot of urgency because of the school.

Mr. Gleason: Yes.

Chairperson Lay: You've got houses coming up, you've got eight just about completed, with new houses come new children at an intersection that they can walk to school. So for me it's important that we take care of this as soon as possible for the kid's safety.

Mr. Gleason: We totally agree with you. We wanna get it done as quickly as we can.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I wanna come back to the two lanes because in your original approval, for approval for this project it said in Condition 32 that you, that the Maui Lani will agree to expedite the design and the construction of the initial two lanes, expedite it, not do it when you get a certain number of residences built and so on. So I wanna know why this...I mean, I've heard what Mich says about the economy, we all understand that. But regardless it says here, you will expedite the design and construction and I wanna know why Maui Lani hasn't done that?

Mr. Gleason: I don't have a very good answer for that other than the fact that it was predicated on the advancement of housing and commercial and our industrial property and it stood still for about four years.

Ms. Wakida: However, those predications are not listed in the conditions. The conditions are that this particular design and construction will go ahead.

Mr. Gleason: No, we agreed to it. I have to admit that we agreed to do it, as I mentioned previously the initial request or the obligation that we had was to build this section when we get another phase of Maui Lani not this particular one. At the ...(inaudible)...hour when we were going for subdivision for our VMX project it came up that this would be needed and this was a Public Works decision at the time this goes back about five years ago before the current administration and we had very little to do other than to agree to it because we wouldn't have gotten our subdivision although we didn't feel it was necessary.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Maybe a question for Public Works on that. Is there any possibility for collaboration between the County and Maui Lani on that?

Ms. Dagdag-Andaya: We always are. In fact we...Maui Lani provides us with reports annually and we monitor that intersection quite frequently as well. We've had several discussions with Maui Lani. So there is a lotta collaboration that takes place.

Vice-Chair Ball: And I'm not talking about this one, I'm talking about the one that--

Ms. Dagdag-Andaya: Oh, Waiale and Waiinu?

Vice-Chair Ball: --is the subject...(inaudible)... Sorry, the Onehee/Maui Lani Parkway extension. Why they're here is what I'm talking about.

Ms. Dagdag-Andaya: Oh okay, the Onehee and the Maui Lani?

Vice-Chair Ball: Right.

Ms. Dagdag-Andaya: That...(inaudible)...

Vice-Chair Ball: I think that to stop at Onehee is kind of a waste of time. You might as well just finish the rest of it, all of them at the same time and maybe even get rid of the Onehee part and just go all the way to Maui Lani Parkway. But anyway, what's your answer as far as collaboration. I mean, if they're saying well, it's financial you know, I don't know, can we get this thing done or what?

Ms. Dagdag-Andaya: Again, it's based off of their traffic impact report and the analysis that their engineer provides and the analysis that our engineers provide. They use a set of standards to make decisions. So it...that comes into play when trying to determine what the best mitigation measures are and what is necessary at the...at those areas and at the time of projected development. So there's a lot of factors that go in. But yeah, again as I stated we do annual reports or they provide us with annual reports we monitor--

Vice-Chair Ball: Yeah, and I realize that also, but you know we know this subdivision is being built today, right. I mean, they're building those houses right now. There's contracts that are signed. They're finishing those houses and people are moving in, right? The commercial place is moving, you know, it's being built, they're trying to sell those and what not and this thing is not like ready to dig dirt tomorrow. I mean, we're planning, right? We gotta plan for this. So I'm saying you gotta think about this now to get that road down in three years from now maybe, right? We gotta start today. So, I mean, I don't know.

Mr. Gleason: Keone, you're talking about the extension of Maui Lani Parkway all the way to the top?

Vice-Chair Ball: Even though Onehee, but and then forward, I mean...

Mr. Gleason: Possibly eliminating Onehee, but–

Vice-Chair Ball: Right and just go all the way across.

Mr. Gleason: I mean we certain can talk to Public Works about it.

Chairperson Lay: Okay, with the Maui Lani project how much is the capacity at right now, you guys had mentioned earlier, what is it, 15 percent?

Mr. Gleason: Twelve hundred. I think we're currently are at approximately 1,200 units, and we have 3,800 in the original permit.

Chairperson Lay: And the percent of that, how much percent is that of your build out that you're projected? 'Cause you're saying at 85 percent, you'll make that change, right?

Mr. Gleason: Well, 85 percent of 3,800. Oh, 85 percent of the VMX.

Chairperson Lay: What are we currently at right now? Please come up and identify yourself.

Mr. Gleason: Steve's our project manager for the VMX, Steve Miller.

Mr. Steve Miller: Steve Miller, Maui Lani Partners. We have about 23 to 25 percent of the residential component is built out, right now of Maui Lani. Of the commercial area approximately 30 percent of it is built out. To take it to the 85 percent which the condition is based on and was based on the traffic report, it adds about another 400,000 square feet. And in terms of the residential, the 350 it was actually they estimated it as 10 percent of the allowable density at Maui Lani which was 370 units because we have 3,700...3,750 maximum build out.

Chairperson Lay: So with this change you're looking at...we're only at one-third. Right now we're looking at like one-third of the proposed development before we initiate the roadway change, right?

Mr. Miller: Right.

Chairperson Lay: I have a question, quick one for the traffic analyst?

Mr. Nakamoto: Matt Nakamoto, Austin Tsutsumi and Associates.

Chairperson Lay: This roadway, with this roadway they put in how much will it relieve the traffic?

Mr. Nakamoto: You know, what I would say is that, it would more serve for local circulation if anything because when you really look at it, you'll be coming from south to north, you're pretty much gonna be going down Kam Avenue and turning onto Maui Lani Parkway to access Onehee Avenue anyway. So whether or not the car is gonna go through the Kam and Maui Lani intersection as left-turn or as a straight movement, they're still going through the intersection.

Chairperson Lay: But as it is now that would be most of your residential...people that would be coming out through there, right once these houses are built, right?

Mr. Nakamoto: Can you...are you talking about the houses that are gonna be...

Chairperson Lay: Yes, the ones that haven't been built yet.

Mr. Nakamoto: I would say that they could come out onto Kam Avenue. I'm not sure exactly what the exact plan is for that subdivision. Yeah, so they would exit onto Kam Avenue.

Chairperson Lay: Okay, thank you.

Vice-Chair Ball: There's Kam and there's Maui Lani Parkway exit.

Chairperson Lay: Okay, Commissioner Freitas?

Mr. Freitas: Question for the developer, when do you—

Mr. Gleason: Dave Gleason.

Mr. Freitas: When do you anticipate the build out of 85 percent, 10 years from now, 5 years from now, do you have a...I'm sure you have a projection of when it would be built out?

Mr. Gleason: It's hard to say because of the market, but 5 to 7 years very possibly.

Mr. Freitas: Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, my question is actually for the traffic engineer. When you did your traffic study does that include construction traffic?

Mr. Nakamoto: It's...doesn't explicit—oh, Matt Nakamoto, Austin Tsutsumi and Association—it doesn't explicitly include construction traffic.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I'll have to agree with the traffic consultant on that Onehee section, it's kind of not needed. Also the...because you can use a lot of other roads to access that area like Kam Ave and the kinda set up you have, so maybe going back to our whole thing about eliminating that connection and just going all the way up. Also, the other unintended consequences that traffic will run in front of Maui Waiena School now if you create Onehee. You know, it's gonna be heavily traversed. That will be another consideration because a lotta kids walk to that school too, so you know, from all over Kahului. So I mean, for me I would...if that thing went away it would be fine, but and just make that connector all the way up to Wailuku, to Maui Lani Parkway, finish the Maui Lani Parkway and not connect it Onehee, but...and I only say that because I drive that road so much that I see that...(inaudible)...the way they're moving around. I lived in the area forever too. Anyway that's my two cents or five cents.

Chairperson Lay: Commissioners, any more questions? You wish to address that?

Mr. Gleason: yes, I'd like to just again reiterate what Keone had just had mentioned Commissioner Ball that our original request, the original one that we're going in for as a condition it talks about the extension of Onehee to Maui Lani Parkway. Commissioner Ball has just said that being from a Maui Lani resident's perspective he didn't see the benefit from that particular connection. I agree with that, and that's why again we're here. And I also would consider looking at what Commissioner Ball's request was in regard to working with Public Works to consider all the options to extend Maui Lani Parkway all the way to the top.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Maybe another question because I believe that Onehee connection also is gonna require a lot of development if you will because I think we're gonna need a tunnel and I mean, it parallels the golf course so there's gonna be some crossing infrastructure, you're gonna get some crossing issues, right with—

Mr. Gleason: Yeah, there'll be considerable engineering involved yes.

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

Ms. Wakida: Well, I have a question I guess for maybe it's our Planning Director. The recommendation that came from the Department was on a, b, and c under No. 32, was "or," "and/or" and the applicant wants to change, no is that correct? Applicant wants to change it to "and". And what is the Department's feeling on that?

Mr. Dias: I would say our recommendation still stands at "or". Just because we do want, you know, certain triggers. But it's really up to the Commission. We won't object to the word "and". You know, because there is "c" which is sort of our catchall and it allows the Department of Public Works to then say, you know, we want this extension at any time. On top of that the Department of Public Works is okay with the word "and" so we sort of deferred to them because it was originally that Department that recommended this condition in the first place.

Chairperson Lay: Corp. Counsel?

Mr. Hopper: Danny, just to clarify you're looking, you're looking at changing "or" between a and b, but between b and c it still be...well, a and b would be changed to "and", but then b to c would still be "or".

Mr. Dias: Would still be "or".

Mr. Hopper: So if c happens it would trigger it. But a and b would both have to happen.

Mr. Dias: That's correct. That's what the applicant is requesting.

Mr. Hopper: Yeah, okay.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yeah, a question for Public Works. My essential problem is that when this application came in they made certain promises and said this is what we promise to do. And now six years later they say, oh well we wanna renege on those promises which was to expedite the design and construction of an extension. So I want...I mean, does Public Works say, oh yeah, we made a mistake we shouldn't have had that condition it's okay to change it now. Because I have a problem with countermanding, you know original approvals and original conditions for an approval of a project. So and you look at traffic studies and say, well traffic studies have changed. But that wasn't the point at the beginning. They said this is what we're going to do. So where does Public Works, how do you answer that?

Chairperson Lay: Rowena?

Ms. Dagdag-Andaya: Well, I can't speak on behalf of our predecessors but in looking at the condition I think it's fair because it sets up a trigger for when the traffic measure is to be put in place. We have the number of units to be established, the percentage to be built out and you know, whether or not the traffic signal goes in as opposed to a specific date and using the words expedite. So I think the way, I mean, the way I look at it is when you word the conditions, it has to be crafted in a way that it sets up the condition so that it's measurable and attainable. So when you use words like, expedite and then...and sometimes you can project like in here it says, by December 2013 but as mentioned earlier when market conditions don't match up to that it's really hard to...you know, if you don't have the development there, is the measure or the traffic improvement gonna be needed at that time/ So you know, just thinking about Commissioner Ball's suggestion about opening up that entire length of Maui Lani Parkway as opposed to opening up that Onehee extension you know, that's something that we can definitely consider. I think that's not a bad idea at all. So...and now the way the condition is set up, you have the a, b, and then c where c says you have the traffic signal and once the traffic signal goes in and I think it reads something like as it determines that further traffic measures are warranted including but not limited to the Maui Lani Parkway to Onehee extension that part there in there that says where Department of Public Works determines that further traffic measures are warranted. That pretty much allows us to put, to make that consideration of opening up the Maui Lani Parkway. I don't think we had that in the original condition before. It didn't give us the discretion to suggest other traffic improvements but this new condition does.

Chairperson Lay: Okay, Rowena so what determines for you to step in, Public Works to step in? I mean, is it complaints, accidents, I mean, what actually makes this process faster or if something happens?

Ms. Dagdag-Andaya: Again, you know, there's a lot of factors one of which is making sure that, you know, working towards getting that intersection signalized. So all the road dedication because there's an agreement that we cost-share the improvements a lot of it has to deal with ownership issues. So there's this, there's the Waiinu traffic signal that needs to be put in place. So as we can move forward with that, I mean that's going to help. And like I stated before, we do annual monitoring of the subject intersections. We have discussions with Maui Lani. But I think the way it's set up right now is is fair and something that we can work with.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Question for Rowena. Why in 2009, they applied for the ownership issue why is it not settled? What's the problem?

Ms. Dagdag-Andaya: I think there's...you know, I have very little involvement in this but my understanding is that there's some punch list items that need to be completed, ownership items that also need to be dealt with. And maybe Steve or Dave can explain a little bit more. But you know, these are things that we work with. It's one of our priorities and we want to get it done so there's a lot of collaboration with Maui Lani to try to get it completed.

Mr. Miller: Steve Miller again.

Chairperson Lay: You wish to comment on what she's saying, elaborate on it?

Mr. Miller: Having to do with the dedication question and Mr. Freitas' question about the length of time. I was the primary person working on the dedication of the new roads, the Maui Lani Parkway extension and Kuikahi and it wasn't until...and those were submitted, they were new roads and we submitted them for dedication within weeks of when they were completed because they were new and they had just been inspected and they met all County requirements and they weren't going to require repairs. At the end of the day we, because it took from 2009 until 2013 to get them dedicated there were repairs that we had to make that's a fairly significant expense. But I wanted to point out that it was really thanks to the new mindset of Public Works and David Goode's help and Mike Hopper's help that we were actually able to get that back on track. So now these other roads which are following Kamehameha Avenue and Maui Lani Parkway, the old Maui Lani Parkway which feed into that Kamehameha Avenue intersection were again submitted in 2009 but we did get a, thanks to David Goode again, we got a punch list from Highways Department and from DSA, I'm meeting with Highways Department this afternoon at 1 o'clock to meet their new inspector. We've been waiting for the departments to agree on who will be the County's inspector before we can actually do the punch list. So we're trying to expedite that as fast as possible. The design for the intersection of Maui Lani Parkway and Kamehameha Avenue has been ongoing for well over a year. Generally we are waiting on comments from the Engineering Department on what and how they want, what they wanna do and what they wanna see and then we respond. So we're expediting that as fast as possible and certainly cognizant of the whole community's desire to get that intersection signalized. So the impact of the extension to Maui Lani Parkway and Onehee which is the subject of our request for time extension is really on whether it will relieve or change the traffic impact at Kamehameha Avenue intersection. So the thinking through the process of the TIAR is get that intersection signalized first and then see what happens with the traffic. If it eventually gets to the point where it reaches capacity the Onehee extension might relieve it some, but at the end of the day the traffic analysis didn't show that it would relieve traffic at that intersection. Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I got a question for the Commissioner. I agree with Keone, you know, on you know the ...(inaudible)...it makes a lot of sense and this extension and everything that Onehee thing, you know if we grant the extension it will eventually it will be built, but I think it's needed you know, down the road. I think that Keone is right, the Parkway thing should be addressed first, but it's still needed so why not...if we don't grant the extension, you know, what happens there? Could you

explain that part to me?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Excuse me for being late to today's meeting so I didn't catch the first part of the presentation, but it seems we're discussing the recommendation right now instead of answering questions or asking questions of the applicant. The question that I have is the time frame is not determinant of the extension. It's not like we're saying it's a one-year extension or a two-year extension or to some determinant date in the future. What we're saying is it's going to be extended until one or all of these three things happen which makes it very fuzzy. So what I think we should do basically is if the Commission has questions at this point ask those questions and then have a discussion on the recommendation because we haven't had the recommendation at this point.

Chairperson Lay: Okay, thank you. Commissioners, any questions or comments? Corp. Counsel?

Mr. Hopper: Just for the applicant. I know you mentioned there's a master roadway agreement. There's a conditions of zoning and Land Use Commission conditions. Just wanna be sure guys took a look at that and that there's if this does get amended is there anything else that needs to be amended as well like anything in the Master Roadway Agreements or other conditions or is this pretty much the only thing? You know, because this being I guess the most restrictive as far as time, the only thing that needs to be amended?

Mr. Hirano: In terms of the State Land Use District Boundary Amendments that went through they pretty much parallel the County's conditions and all conditions in terms of the Change in Zoning have been met and it's the Project District Phase II conditions that we're...the applicant is working on. The Master Roadway Agreement still stands in terms of, you know, the phasing of roadway improvements throughout Maui Lani so we feel that this is project specific.

Mr. Hopper: But this condition is not parallel by the LUC condition, right?

Mr. Hirano: No.

Mr. Hopper: But you don't also have to amend something like this on the LUC?

Mr. Hirano: No.

Mr. Hopper: No, okay.

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

Vice-Chair Ball: I think Jason had a question that wasn't answered?

Chairperson Lay: Oh, excuse me.

Mr. Medeiros: I just was waiting for the answer to my question. What happens if it's denied?

Mr. Spence: Well, first they applied before the condition was set to expire so you know, we honor that, that they applied in a timely manner. I'm not sure. They would be technically in violation of the conditions. They'd probably have to come back for another Phase II Approval with this Commission to rectify that which is in so many ways what they're doing here today. So we're either gonna deal with it now or we would deal with it later through another application. Because it's probably what they would be applying for at that time.

Mr. Medeiros: So it would take a lot longer for the road to be built?

Mr. Spence: Yeah, well, you would just be seeing the same thing again.

Mr. Medeiros: Okay.

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

Mr. Dias: Thank you, Mr. Chair. I know there's still that question between "and" and "or", so our recommendation is gonna be as it's written with the "or" between "a" and "b". And so the Department recommends to the Maui Planning Commission approval of the time extension and amendment to Condition No. 2 of the Maui VMX Project District Phase II Approval.

Mr. Freitas: So move.

Mr. Medeiros: Second.

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

Ms. Wakida: Yes, I'm gonna vote against the recommendation because I would much prefer to see a time extension of say five years without the conditions and if Public Works and Maui Lani decide that this extension is...was badly crafted to begin with and they wanna have a new proposal to extend Maui Lani Parkway then they can come up with that within that time and rethink the whole road business. But I'm not happy with all of these additional conditions of dwelling units and so on.

Chairperson Lay: Corp. Counsel?

Mr. Hopper: To clarify, what was the "and" "or" wording in this particular motion?

Mr. Dias: We're sticking with what's in writing which is "or".

Mr. Hopper: So "or" for all three?

Mr. Dias: Yeah, so if, you know, so we would need an amendment...

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

Mr. Medeiros: Yeah, I seconded Jack's motion because I just think that they do need the time, you

know, They do need an extension. And I wanna see it built out, you know, I don't want them to start all over again and it take a lot longer. However, I would want them to consider Commissioner Ball's idea of building out, which one is built out first.

Chairperson Lay: Commissioners, any more comments or questions on the motion? Commissioner Hedani?

Mr. Hedani: This is just a comment that I was on the Commission in 2008 when this was first approved, and from that perspective, you know, the time frame was the determinant was set at a certain time. At the time, I don't think anybody anticipated that the entire market would drop out in 2008. I, for one, saw my 401k go from 120 to 60,000 so it lost half its value almost overnight, yeah and it's not something that you recover from quickly. So I think granting an extension is appropriate at this point. The project is developing well. Its occupancy is progressing well in terms of the development itself. Although slower than they had hoped, slower than we had hoped from the standpoint of Commissioner...Richard Higashi's concerns about the safety of the intersection. I think if the Commission wanted to and you're concerned about the time frame you can adjust it from the standpoint of adjusting the 350 to 250 or adjusting the 85 percent to 50 percent or something that makes it trigger quicker than what is recommended at the current time. But in general I think granting an extension is something that we have to do at this point because the time has already expired.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I guess this is, I'm looking at Rowena on this, but there is that provision now that they can change the road design, right? Am I correct in understanding that?

Ms. Dagdag-Andaya: We can take a look at that, but I don't...I think this might be a question for Mike about if whether or not we'd have to change the roadway, the agreement?

Vice-Chair Ball: Eliminate Onehee maybe, maybe not then--

Ms. Dagdag-Andaya: Yeah, I'm not--

Vice-Chair Ball: Until the next five years, but...

Ms. Dagdag-Andaya: Right, 'cause I think that was part of our...the Roadway Agreement with Maui Lani that portions of the traffic improvements be done in portions. So I don't know if that has to be amended or changed if you wanted us to take a look at that. It just popped into my head. So I don't know if...

Mr. Hopper: We've got a unique situation with this because there's a master roadways agreement and that's been actually made a condition for I think the Council may have put that in as a condition of zoning. So, and I don't know how specific it is as to this particular improvement. It may or may not be and it may be possible to amend them, but I mean it's always possible it may require going back to Council though or something like that. So, but I mean as far as doing that it may be a little more complicated than your average if it was just a subdivision amendment or something like that just to get that out there, but I'm sure with this particular roadway.

Chairperson Lay: Commissioners, any comments or questions on the motion? Do you wish to add to that Mich?

Mr. Hirano: If it's time certain, I think the applicant then would be amenable to have the conditions simplified to another five years, and then work on that if that's a concern and, you know, wanting something more definite in terms of time. And, you know, I just offer that as a possibility if it would make resolution and, you know, easier for the Commission to understand the...you know, what the implications are and what the requirement will be.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I kinda like the condition because it makes sense as far as traffic's concerned because that's what we're talking about.

Mr. Hirano: That's correct. It does.

Vice-Chair Ball: Because the more people that move in there, the more traffic you're gonna have.

Mr. Hirano: That's correct, yes.

Vice-Chair Ball: You don't have any housing, you're not gonna have much more, but...so I don't I don't mind.

Mr. Hirano: Okay.

Chairperson Lay: Commissioners, any more questions or comments on that motion? If not, can we get the Director to repeat the motion?

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

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Those opposed?

Mr. Spence: One nay.

Chairperson Lay: Motion passes. Thank you.

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

**VOTED: To Approve the Time Extension and Amendment to Condition 32 of the Project District Phase II Approval as Recommended by the Department.  
(Assenting - J. Freitas, M. Medeiros, K. Ball, M. Tsai, W. Hedani,  
S. Duvauchelle, R. Higashi)  
(Dissenting - P. Wakida)**

Chairperson Lay: We're gonna take a 10-minute break, reconvene at 10:20 everyone.

A recess was called at approximately 10:10 a.m., and the meeting was reconvened at 10:21 a.m.

Chairperson Lay: Our next agenda item?

Mr. Spence: The next item is under Director's Report, Item D, there are three items under that are also deferred from April 8<sup>th</sup> meeting. These are notifying you of...well, time extensions for SMA Permits. No. 1 is KAK II LLC requesting a one-year time extension and our Staff Planner is Ms. Candace Thackerson.

**D. DIRECTOR'S REPORT** (previously on the April 8, 2014 agenda. Commissioners: Please bring your materials with you.)

**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 requests administratively:**

**a. KAK II, LLC requesting a one (1) year time extension on the Special Management Area (SMA) Use Permit condition to complete construction of the Ke Alii Kai II (aka Moana Estates) Subdivision and related improvements at TMK: 3-9-019: 004, Kihei, Island of Maui. (C. Thackerson)**

**The Applicant's consultant states that the Applicant needs to complete the construction of the remaining six (6) homes.**

Ms. Candace Thackerson: Thank you. So we're here to waive review of...well, they're requesting a waiver of review for the time extension and to let the Director grant that administratively for Special Management Area Use Permit for the Ke Alii Kai II as known as Moana Estates Subdivision and this is located in Kihei. It's SM1 2003/0013. The applicant's requesting one-year time extension because they're pretty, fairly certain that they will be able to finish it. The applicant's here and the consultant would like to say a few words first and then we'll open up to questions.

Ms. Karlynn Fukuda: Good morning, Commissioners. My name is Karlynn Fukuda of Munekiyo & Hiraga, Inc. I am here today to represent Towne Development of Hawaii, the applicant for the project. In the letter that we submitted back in January of this year requesting the one-year time extension request at that point there were six homes remaining the 90-home subdivision to be completed or sold. And I would like to give you an update, as of that January letter, five of the homes have been completed and are in escrow...sorry, five of the homes have been completed and are either sold or in escrow and there is one remaining home that is under construction, and they are anticipating completion of that home by August of this year. So they are actively moving to complete the subdivision. I'm here to answer any questions you may have. Thank you.

Chairperson Lay: Commissioners, at this time I'm gonna open up to public testimony. Does

anyone wish to testify at this time? Seeing none, public testimony closed. Commissioners, questions? And again, we have a pretty big agenda today so if we can get the ball rolling on this?

Mr. Medeiros: So move.

Vice-Chair Ball: Second.

Chairperson Lay: If we have no questions, lets move onto the Department's recommendation?

Ms. Thackerson: The recommendation is to change the condition to read, "The construction of the project shall be completed by February 28, 2015," so that would be a year from the expiration of the last one, and the rest of it reads the same and to let the Planning Director go ahead and approve that administratively.

Mr. Freitas: So move.

Chairperson Lay: Motion by Commissioner Ball, oh by Commissioner Freitas.

Vice-Chair Ball: Second.

Chairperson Lay: Second by Commissioner Ball. Any discussion on the motion or questions? Seeing none, oh Commissioner Hedani, excuse me?

Mr. Hedani: Does that mean we're waiving our review and deferring to the Director?

Chairperson Lay: Yes. Any more questions or discussion on the motion?

Vice-Chair Ball: Great presentation.

Chairperson Lay: Can we have the Director repeat the motion?

Mr. Spence: The motion is to for the Commission to waive their review and let the Director administratively extend it.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Thank you very much.

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

**VOTED: To Waive Its Review of the Special Management Area Use Permit Time Extension Request.**  
**(Assenting - J. Freitas, K. Ball, M. Tsai, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)**  
**(Excused - J. Medeiros)**

Chairperson Lay: Our next agenda item?

Mr. Spence: Okay, Commissioners, the next one is Westin Maui Resort & Spa requesting a two-year time extension on an SMA Permit. And again, this is a request to either waive your review and let the Director do it or if you want to. Our Staff Planner is Mr. Keith Scott.

- b. WESTIN MAUI RESORT & SPA requesting a two (2) year time extension on the Special Management Area (SMA) Use Permit condition to initiate construction of the renovations to its lobby and porte cochere at TMK: 4-4-008: 019, Kaanapali, Lahaina, Island of Maui. (SM1 2008/0020) (K. Scott)**

Mr. Keith Scott: Thank you very much. Good morning, ladies and gentlemen. As mentioned, this issue is to whether or not you want to waive review and allow the Department to administratively process a two-year time extension for the Westin Kaanapali. The project is to renovate the porte cochere and the lobby. It's a SMA Use Permit SM1 2008/0020. It was originally approved by the Commission April 28, 2009. They had three years to initiate the construction. June 22, 2012, the Commission waived review and the Department administratively approved a two-year extension to April 30, 2014. The request now is for an additional two-year extension. There have been no changing in the Special Management Area and Karlynn Fukuda of Munekiyo & Hiraga and the Westin team is here to expand upon that and answer any questions you might have.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I just wanted to disclose that the Westin Maui is a member of Kaanapali Operations which we operate. So I'll be recusing myself from voting on this item, but I would like to particular in discussion.

Chairperson Lay: Okay. So noted.

Ms. Karlynn Fukuda: Good morning, Commissioners. It's me again, Karlynn Fukuda of Munekiyo & Hiraga, Inc. We are here today representing the Westin Maui in their time extension request for a two-year time extension to initiate construction on the lobby and porte cochere improvements at the Westin Maui. I would like to note that at the end of last year we filed a Draft EA, Special Management Area Use Permit and Shoreline Setback Variance application for master plan improvements at the Westin Maui to include a parking garage and other improvements such as improvements to the ballroom and the spa areas. And because of this, at the time when this lobby, porte cochere project had been proposed the economy had started taking a downturn as we heard about earlier today and so at that time, the Starwood management had been willing to do limited improvements to the Westin. They wanted to reinvest in the property but money was tight at that time and so this lobby, porte cochere project was what they were willing to approve and have the Westin move forward.

However, since that time, there has been additional movements and the economy has improved and so planning then began on the overall master plan improvements which is a larger project for the parking garage, the ballrooms as I mentioned. And so, what the Westin would like to do is do the construction all at one time. They are committed to moving forward with this lobby, porte

cochere improvements. It also included some improvements to the office area within the lobby for the front office staff as well as storage areas for the bellmen up front. So they're still very interested in doing this improvements, but again they would like to do it, you know, concurrently or you know, maybe just prior to actually hopefully starting the improvements to the master plan so that the inconvenience to the guests is kind of compressed into one time frame. They're not, you know, constantly going through construction. And so they would like to ask for a two-year time extension. We will be working with the Planning Department. We are working with the Planning Department and this body will see that separate EA, SMA, Shoreline Setback Variance application that I mentioned, hopefully this year, and we'll proceed with the project if we receive the approvals. So...thank you. I also have with me Derek Fletcher, who is the Director of Engineering at the Westin if you have questions with regards to operations. Unfortunately Gregg Lundberg was here two weeks ago, the General Manager is traveling and so he could not be here today. Thank you.

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

Ms. Wakida: Yes, Karlynn, could you tell us briefly in the original, I guess it was 2008 approval what kinds of renovations did the application include?

Ms. Fukuda: So the renovations that they were looking at that time as I mentioned were improvements to the front office area to give them a little bit more space within the lobby...I'm sorry, the check-in desk area. They were also going to redo the porte cochere which that covering area as you actually arrive into the entry and realign the driveway. There were landscaping improvements that they were looking at as well. And then there were improvements to the bellmen, the bag storage area at that front area also. And then there was a...there were cultural pavilions that they were looking at doing...if you're familiar with the Westin there is quite a few pools in that front entrance area and they were looking at putting in cultural....a cultural pavilion and some haies in that area as well.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Thank you. So you're saying that the porte cochere was part of the original. 'Cause I thought you said some place in here where it wasn't part of the original plan?

Ms. Fukuda: It was. It was a lobby porte cochere improvements for the Westin.

Ms. Wakida: Was part of the original?

Ms. Fukuda: Yes.

Ms. Wakida: Okay.

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

Mr. Hedani: Karlynn?

Ms. Fukuda: Yes.

Mr. Hedani: I'm probably part of the problem that the applicant has. I know we've reviewed and approved the original improvements in...Kaanapali Operations reviewed and approved the original improvements that were proposed to be put in. Subsequent to that they came to us with a proposal for a parking garage and other improvements which has not completed the review process through Kaanapali Operations at this point yet. So you're not proposing time extension request include the parking garage because this Commission hasn't seen the parking garage project yet?

Ms. Fukuda: That's correct. We are not requesting that at all because there is no existing SMA Permit for the parking garage. We are strictly asking for a time extension on the lobby porte cochere improvements.

Mr. Hedani: So that's a separate project that will be reviewed separately?

Ms. Fukuda: Yes, the parking garage, yes, will be reviewed separately by this body at a later date.

Mr. Hedani: Thank you.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: So is the two years gonna be enough then because you wanna do these together, right, the parking structure and the porte cochere?

Ms. Fukuda: Ideally yes, and we are hopeful that the master plan within two years will be ready to initiate construction, but I don't wanna make any assumptions here.

Vice-Chair Ball: Right, but you see that the design and that for the stuff Wayne has to do is in that time frame, is on that track?

Ms. Fukuda: Yes.

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

Mr. Scott: Thank you, the Department's recommendation is the Commission waive review and allow the Department to process the extension administratively.

Chairperson Lay: Call for the question.

Mr. Medeiros: Move to accept the Department's recommendation.

Vice-Chair Ball: Second.

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

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

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

Mr. Spence: That's seven ayes.

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

**VOTED: To Waive Its Review of the Special Management Area Use Permit Time Extension Request.  
(Assenting - J. Freitas, K. Ball, J. Medeiros, M. Tsai, S. Duvauchelle, P. Wakida, R. Higashi)  
(Recused - W. Hedani)**

Mr. Spence: Commissioners, I would just note, Mr. Scott is...I think this is your first time through the Commission?

Mr. Scott: Yes.

Chairperson Lay: Welcome aboard.

Mr. Spence: He brings with him just a very, a very long career in planning and we're fairly thrilled in the Planning Department to have him here. So you'll see him more.

Chairperson Lay: Okay, looking forward to it.

Mr. Spence: Okay, Commissioners the next one is Wailea MF-7, LLC requesting a two-year time extension also on an SMA Permit whether to waive your review or whether you wanna see it and we have again with us, Ms. Candace Thackerson.

- c. WAILEA MF-7 LLC requesting a two (2) year time extension on the Special Management Area (SMA) Use Permit condition to initiate construction of the Wailea MF-7 Multi-Family Residential Project at Kai Malu Drive at TMK: 2-1-008: 116, Wailea, Kihei, Island of Maui. (SM1 2006/0038) (C. Thackerson)**

Ms. Candace Thackerson: Hello, again. So this is to waive review, to amend Condition No. 1 to allow a two-year time extension of a Special Management Area Use Permit for the Wailea MF-7 multi-family residential project at Kai Malu Drive, Wailea. The applicant is here, Grant Chun. So if you have questions or anything, you can probably direct them to him.

Mr. Grant Chun: Good morning, Commissioners. My name is Grant Chun from A&B Properties. If there are any questions, I'll be happy to entertain them.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I have a question. This was approved back in two years ago, correct? That's why

you guys coming back?

Mr. Chun: The extension was approved two years ago, yes.

Mr. Tsai: Right and the reason for another extension?

Mr. Chun: The request is for extension on the date for commencement of construction. So of course, a number of factors have delayed the start of construction. Mainly it's been the economy. Of course, we're also in numerous processes in the context of construction plan review, NPDES Permit review, et cetera. So we have been working earnest to secure all the necessary ancillary, nondiscretionary permits for the project, but it's taken some and we are therefore asking for an extension on the start of construction.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Are you pretty confident Grant with this two-year extension and you guys are gonna be able to start?

Mr. Chun: That's our goal actually with the...what we hope will be for long sustained improvement in the marketplace. Our goal is to begin in two years. This project is besides having its SMA, we've gone through the Planned Development Step 1, 2, and 3 with the Department. We've got water for the project. We've actually been pretty aggressive in terms of securing and setting the stage for moving forward on this project.

Chairperson Lay: At this time, Commissioners we're gonna open up to public testimony, If anyone wishes to testify at this time, please step forward, identify yourself and you have three minutes. Seeing no one, public testimony is closed. Commissioners, do we have any more questions or comments? Commissioner Wakida?

Ms. Wakida: Yes, for Candace. How many time extensions...see this was originally came forward in 2006. How many time extensions have been applied for?

Ms. Thackerson: I think this is their third.

Ms. Wakida: Third?

Ms. Thackerson: This is their third request, yes.

Ms. Wakida: And could you please repeat what progress has been made in the last eight years?

Ms. Thackerson: The architectural and civil design of the project along with the plan review, coordination and approvals have been sent to the government agencies for their review and sign off. So they have finished up their civil drawings and their design drawings which when they come forward with the SMA Permit they usually don't have all of the design like finished out so that takes some time after the permit's been approved, but they know they have an SMA Use Permit. They can go forward with those detailed drawings. The domestic and irrigation water meters to serve the project have been secured so they do have water for the project. The NPDES general permit was

secured for the project construction. So that's their noise pollution and things like that like they have to get that all secured before they can initiate construction and their affordable housing requirement was fulfilled.

Ms. Wakida: On any of those things where they were necessary to come to the County for permits and so on. Has there been any significant reasons for holdup?

Ms. Thackerson: Can't speak to the other departments. I would always say Water is quite a holdup. Rowena, do you have anything Public Works on that? No? Not more than business as usual unfortunately. I can't say that the Planning Department held up any of these.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I guess this question is for Grant. Grant, refresh my memory what do you estimate the construction time period once the groundbreaking takes place?

Mr. Chun: How long will the construction of the project take?

Mr. Tsai: Yeah.

Mr. Chun: Probably about two years.

Ms. Thackerson: I think in their permit it allows five years from the date of initiation of construction. For the SMA Permit is that what you're saying?

Mr. Tsai: Yeah.

Ms. Thackerson: Yeah, we usually give 'em you know five years to initiate. Well, depending upon the planner we craft those conditions depending upon the size and scale of the project and then from the time that they initiate, we usually give 'em five years to finish, to completion.

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

Ms. Thackerson: Recommends that the Director...that the Commission allow the Director to go ahead and grant their request administratively for a two-year time extension to initiate construction which would move Condition No. 1 to April 30, 2016.

Mr. Freitas: So move.

Mr. Higashi: Second.

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

Ms. Wakida: Yes, I'll vote in favor of the motion. However, I hope it's the last time they come before the Commission for an extension. I don't like to see these projects just sitting on the table

with these entitlements and then things don't happen. I mean, they may have been a lot of stumbling blocks in the way, but I'd like to see this get moving.

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

Mr. Hedani: I concur with Commissioner Wakida's comments. And I've been waiting for about four years now for the Kahului Town Center to get going and it's still not moving anywhere as far as I can see and I'm just hoping that the company is not just banking on entitlements and not moving ahead with projects.

Chairperson Lay: Commissioners, any more 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 and allow the Director to administratively grant the time extension.

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

Mr. Spence: Okay, so that's eight ayes.

Chairperson Lay: Motion carries.

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

**VOTED: To Waive Its Review of the Time Extension Request.  
(Assenting - J. Freitas, R. Higashi, J. Medeiros, K. Ball, M. Tsai,  
W. Hedani, S. Duvauchelle, P. Wakida)**

Mr. Spence: Commissioners, we're on Item E. We're all the way to Public Hearings. So the first public hearing item is Mr. David Gomes of Hawaiian Cement requesting a Special Use Permit and a Conditional Permit for a batching plant in Honokowai, Lahaina. Livit Callentine is the Planner for this project.

Chairperson Lay: Commissioners, if I may? This might take a while and right after we have Mr. Roger Casey and Louise Edmonds, they've come in all the way from Australia and I'm wondering if it would be all right, if we could take them first before we do the cement on your discretion?

Mr. Tsai: I would move to move up Casey.

Chairperson Lay: All those in favor.

Commission Members: Aye.

Chairperson Lay: Okay, let's move them forward so we can take care of them first. Thank you.

Mr. Spence: So the second one, Mr. Roger Casey and Ms. Louise Edmonds requesting a Special

Use Permit and Livit Callentine is the Planner for this one.

Ms. Callentine: I'm going to need a few minutes.

Chairperson Lay: Livit, do you need 10 minutes or...

Ms. Callentine: No.

Chairperson Lay: Okay.

**2. MR. ROGER S. CASEY and MS. LOUISE EDMONDS requesting a State Land Use Commission Special Use Permit in order to operate the Hale Polai Short-Term Rental, a three (3) bedroom short-term rental home in the State Agricultural District at 75 Piialii Street, TMK: 2-7-036: 005, Haiku, Island of Maui. (SUP2 2013/0007) (L. Callentine)**

Ms. Livit Callentine: Good morning, Commissioners and my name is Livit Callentine. I am Staff Planner with the County of Maui Planning Department and the matter before you this morning is a State Land Use Commission Special Use Permit to operate a short-term rental home in the State Agriculture District and in the County Agriculture Zoning District on approximately two acres of land in Haiku.

The applicant's names are Roger S. Casey and Louise Edmonds, and they are represented today by Margit Tolman. I understand Mr. Casey is not present, but Ms. Edmonds is here in the audience if you have any questions of her. The applicant's representative, Margit Tolman is prepared to do a short power point presentation. I thought at this time that would be a good way to give you an overview of the project. So if you'll allow me to, I'd like to go ahead and yield the floor to Ms. Tolman so that she can present this presentation. Chair is that okay with you?

Chairperson Lay: Yes it is.

Ms. Callentine: Okay, thank you.

Ms. Margit Tolman: Aloha ka kou. Good morning, Commissioners my name is Margit Tolman. I'm with ERA Pacific Properties, the property manager of the subject property and I assisted with the application. I'm happy to present a little power point presentation for you.

The name of the property is Hale Polai which means silent night. The property's located in the Haiku Makai Subdivision. You see the Hana Highway, on the left side is Maliko Gulch and the access to the subdivision is from Haiku Road and we see the "A" is the subject property pretty much in the middle of the subdivision. This is a different illustration of the subdivision within 500 feet, currently there's no approved or application for short-term rental. The next subdivision up the hill is Haiku Hill which has currently four approved short-term rentals. This is the aerial view of the property. It's a few years old. At that time, there was on the partial of the property used for farming.

Elizabeth Edmonds and Roger Casey bought the property on Maui as a future retirement home. If you have questions in regard to timing then they are able to move here. Elizabeth is in the

audience today.

This is the entrance of the property from Pii Alii Street. It's a gated property. The house sits back on the, from the road and it's very private surrounded by Areca palm trees. The driveway to the house and on the right side is the residence of we see parking for guests. It's a very large space probably can accommodate easily four cars.

The Haiku Makai Subdivision has 28 lots. Many of the lots are through vacant land. It's a very quiet and peaceful neighborhood and mostly owner-occupied tenants occupying homes. Elizabeth and Roger are visiting the island very frequently when they can come, they are residing in Australia right now, they are here on the property and work on their land. They have during the years made a lot of friends in the neighborhood. One close neighbor is Mary. She will be the closest neighbor to the house and affected by any activity. She's also present today.

Another air view of just of the subdivision. This short-term rental income will be very helpful to continue the farming on this land. You will see more pictures what is implemented and the future use it's very costly. The time Roger and Elizabeth are not here we will try to fill with some vacationers and it will just help for the cost of the farming.

This is the current farm plan. On the white side would be Pii Alii, the driveway to the house. The lower property is now planted mostly with flowers which are already mature and currently sold on market and at stores. This will give you just an overview, the existing farm before 2013 was below 40 percent, now we are at 53 percent of the land is used in agriculture.

The agriculture activity...(inaudible)...flowers which are currently already sold on markets and stores. Second is coconuts. There are more than 40 coconuts and about 30 percent is mature and carries coconut. Fruit trees are some mature, some got planted last year that will take a little while until we can harvest.

This shows you early planting stage of the property that's about a year ago. Just maybe six months later, the plants are growing just magical, it was already we had after six months first harvest. This is a pretty current picture and Elizabeth's passion are the flowers and is proud how the farm flourish. This gives you just a variety of the flowers planted. Different varieties of heliconia and ginger, bird of paradise. And this is harvest time. This was maybe two or three months ago.

Secondary are coconut trees, 46 coconut trees, 30 percent is mature. The coconut tree carries about 60 to 70 coconuts a year as an average. If all trees mature at one point, there will be just an average of little below 3,000 coconuts a year and there is a really high demand for coconuts. Actually we have to be careful that they don't get stolen from the land. That's how the demand is. And just to tell you about Roger and Elizabeth they are just amazing people. I know them for seven years. They are the kind of people that I can do it. So on the left side you see them, Elizabeth on the trees, they are harvesting their own coconuts.

And have a variety of fruit trees, avocado, lots of bananas, grapefruit, lemon, kaffer lemon tree, lemon trees, some are getting into the stage of can already harvest not in a big scale. The other tree, some trees are still young and could take a few years.

This shows you the farm sales from 2011 which was focused on coconuts until the flower farm got implemented and you can see the coconuts is gradually increasing. 2014, the number is only for the first three months. So far this year we expect 500 percent increase in income comparing to the last year. And customers are Mana Food, Haiku Grocery, and for the flowers,...(inaudible)...Protea Farm, Kihei Farmer's Market, Hookipa Haven is my business in Paia, we are buying fresh flowers for our guests.

Fire Department, next fire station is Paia, 4.6 miles. It's a 10-minute drive. The closest fire hydrant is on Haiku Road and this standpipe is almost next to the driveway of the subject property. Thank you very much for your consideration and for your patience. Mahalo.

Ms. Callentine: Commissioners, so that was our presentation on the project by the applicant's representative and the Department has no objections or concerns with the information that was presented in that power point. We think this is a good project. There was one letter of testimony submitted in all and it was by someone who was in support of the project that's shown in the Exhibit 8 of report and if you approve this State Land Use Commission Special Use Permit today, very shortly, the Department will review and most like approve Short-Term Rental Permit on the same property to begin their operations of the short-term rental home. I did conduct a site visit over the last several months and verified that the home is not in operation as a short-term rental and is as is presented in the staff report and in this power point exhibit for you today.

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

**a) Public Hearing**

Chairperson Lay: If anyone wishes to testify, please step up to the mic, identify yourself, and you have three minutes.

Mr. Kent Hiranaga: Good morning, Chairman Lay, Commissioners, and Director Spence. My name is Kent Hiranaga and I am here to testify in favor of the Edmonds-Casey application for a Special Use Permit. I just would like to start by commending all of you for your community service. I believe all of you are doing a really good job in your serving the people of Maui. Thank you very much for your time and effort.

I've known the Caseys for many years. I believe they're probably a role model as far as a potential short-term rental operator. Currently they use the house for personal use. They have four children that are I guess either adults or near adults so they pretty much just circulate in and use it primarily for ocean activities. They're active kites, surfers, and bikers and they've actually taken quite a keen interest in the farming activities and just not doing it to meet the farm plan requirements but actually enjoying raising agricultural products and selling them. So I ask for your support. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? Thank you very much, former Chair. Commissioner Freitas?

Mr. Freitas: Yeah, I'd like to make a comment. I am totally against short-term rentals and the reason is that we do not have enough property on the market to be rented to the people. The cost

of rentals is ridiculously high and the reason is because the inventory is so low. So I do not support short-term rentals and they are in direct competition with the hotels and that employ a lot of people and generate a lot of money for our economy. Basically I look at short-term rentals is where the renter is purchasing the house for the owner and that's my ...(inaudible)...comment, my personal opinion.

Chairperson Lay: Commissioners? Commissioner Ball?

Vice-Chair Ball: I have a question. Who takes care of the agriculture when the applicants are not here?

Ms. Tolman: My name is Margit Tolman. We have a landscaper who is coming on a regular base and depending on the work what needs to be done, but since Roger and Elizabeth are coming so frequently they are doing the harvest process. So when they are not here, it's just the maintenance on the property.

Vice-Chair Ball: So they come back to harvest then?

Ms. Tolman: Yes.

Chairperson Lay: Okay, we're still open at public testimony. Does anyone else wish to testify at this time? Please step up to the mic, identify yourself and you have three minutes.

Mr. Mark McKenzie: Thank you. My name is Mark McKenzie. I live two houses down at 145 Pii Alii. I wrote the letter I believe that you have in your file there. I've known the Caseys since they've moved in and I would just like to reiterate that they're great neighbors. I really support their efforts and also the agricultural portion in the last year. It's been an amazing addition to the neighborhood just the plants, just the beauty from the entire property. Thank you.

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

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

Ms. Elizabeth Edmonds: Good morning, I'm Elizabeth Edmonds formerly known as Louise Edmonds, but I go by Elizabeth.

Ms. Wakida: Thank you. You heard Commissioner Freitas' comment about short-term rentals and I concur with that sentiment because those of us who live here full-time and who raised our families here are very aware of the housing problems. So my question to you which was brought up already is why you don't rent this property long-term?

Ms. Edmonds: Oh, because we love Maui and if we could we would live here absolutely the majority of the time but at this stage in our lives we can't and that's a bit unexpected but we're constrained so we come here as often as we can. And when we're not here if we can have somebody in the house, to have someone in the house is also helpful, and yes earning the revenue

off that then helps us cover the costs of the farm which are expensive.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: So you come to Maui approximately how often?

Ms. Edmonds: We'd be here in total probably edging up towards five months out of the year. We definitely want to move to more than six months more like six to nine months, but realistically we realize that that probably won't happen for another couple years.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Yes, I have a question. Your community have a CC&R covenant that specifies whether they agree to having rental units in the two-acre parcels in your community?

Ms. Edmonds: We do have a CC&R. Our understanding and I very much looked into this when we bought the property in 2007 is that the CC&R is completely inactive in terms of a community group and I do have my neighbors here. Mary's my adjacent neighbor who is referenced in the slide, Mark and Pat live just next to Mary. I don't think we've ever had community meetings. Regardless within the CC&R, my recollection is there was no comment about whether or not you could rent the place out. The one comment ...(inaudible)...note was you can't raise chickens, but the chickens don't seem to mind. So answer to your question there was no restriction that I recall in relation to renting.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: My next question to that is is your property the first one requesting a rental, short-term rental unit in your community although there are...there's at least one B&B.

Chairperson Lay: You have to speak into the mic and identify yourself for the record.

Mr. Higashi: I heard.

Ms. Tolman: The subdivision has one approved bed and breakfast but outside of the 500 feet.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And for the applicant, Louise. Can you repeat again, I couldn't quite catch, when you're not here who runs your farm and runs...and does the harvesting and so on?

Ms. Edmonds: Right. Primarily my husband and I do the harvesting, but when we're not here, Check It Out Landscaping does a lot of the gardening work so they do the basic maintenance, palm fronds, lawn, but we get to do the weeding and the harvesting. I do have a Younker Farms that's a protea farm and when I'm not here James Younker from the farm up in Kula, he comes down on Sundays and harvests some of the flowers, but not much. It's hard work when we get here. It's

good, but it's hard work.

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

Mr. Hedani: Elizabeth, I like what you've done with the property in terms of greening it and making it productive. I kind of feel the way Jack feels that people that are trying to make it in agriculture just can't make essentially on a two-acre farm. 2,990 coconuts when the price of coconuts goes to about a \$1,000, a coconut, you should be able to make it.

Ms. Edmonds: We're looking forward to that. Drink coconut water.

Mr. Hedani: Yeah, that's not your fault. But I like what you've done with the property and good luck.

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

**b) Action**

Ms. Callentine: The Maui County Planning Department recommends approval of the Land Use Commission Special Use Permit subject to the six standardized normal conditions that we would apply to a project of this kind which you'll see highlighted in your reports in the green section. And typically we don't read through each one of these conditions unless you request it.

Mr. Medeiros: I move to accept the recommendation.

Chairperson Lay: Motion by Commissioner Medeiros.

Vice-Chair Ball: Second.

Chairperson Lay: Second by Commissioner Ball. Any discussion on the motion? Commissioner Hedani?

Mr. Hedani: You know Livit in the representation that's made to the Commission it shows 2,800 feet to the nearest short-term rental, but the applicant testified that there is a B&B operating within 500 feet. Do you know where the B&B is?

Ms. Callentine: Yes, the B&B, Exhibit 5B, I believe you're referring to...

Mr. Hedani: Right.

Ms. Callentine: There we go. It's either this parcel or this parcel and I actually, it was lolani...no, lolani Cottages.

Ms. Tolman: lolani Cottages, right here.

Ms. Callentine: It's this one right here. We didn't show that on the map. I didn't...

Ms. Tolman: No, it's outside.

Ms. Callentine: Oh, it's outside. Sorry, it's outside the 500-foot. So we didn't include the B&Bs because this is a review of a Land Use Commission for a short-term rental not a B&B and there's no restrictions on the number of B&Bs. So anyway, but it would fall right in this area just above the word, "approximate".

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just as a comment from my perspective when we're reviewing short-term rentals, what I would like to see in the exhibit because to me this is a misrepresentation of the impacts in the area. What I would like to see is both short-term rentals and B&Bs identified within the 500-foot radius or that entire map that you're displaying in this particular case.

Ms. Callentine: Okay.

Mr. Hedani: Because it doesn't give us a complete picture of the impacts to the neighborhood.

Ms. Callentine: Okay, does the rest of the Commission share that desire?

Mr. Spence: We can do that.

Ms. Callentine: Okay.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Yes, I have a question to Staff according to the Paia-Haiku Community Plan it talks about that particular area to be specifically agricultural use. I don't see any place in there that talks about rentals.

Ms. Callentine: And what's your question?

Mr. Higashi: My question is you're approving rental in an area that the Paia Community does not specify. In fact they have another section, Objective and Policy, No. 3, prohibit hotel resort development within the region. It's not hotel or resort but it's similar to a commercial rental situation.

Chairperson Lay: Director?

Mr. Spence: Commissioner Higashi, you're correct that it's designated Agriculture on the community plan and State Agriculture and County Agriculture Zoned. According to our zoning, we have the...in order to operate a short-term rental or a bed and breakfast you need to get a Land Use Commission Special Use Permit and as a part of...is one of the permits needed. So that's what they're doing here today. The way that the community plan is written, you know, this is...it's for your consideration on this whether you approve or not, but I mean, this is the way our law is written that they must get a Special Use Permit and this is the approving body for that.

Mr. Higashi: The reason why I asked the question is because according to the schematic drawing of the Haiku area there's quite a few rental units. I think if you look at Maui County the Haiku area is really compacted with a lot of rental units and I don't know whether this kinda opens up Pandora's box for other units to be included in that area as well. That's why I asked the question about the CC&Rs being one.

Mr. Spence: Yes there are quite a few rentals in the Haiku area. This is a matter of long discussion with the County Council and previous Planning Commissions and specifically we've... I forget how long ago, first was the Bed and Breakfast Ordinance passed 2006, something like that and then more recently, Short-Term Rental Permit Ordinance. There was... up until, up until these ordinances were passed there was no way for these operations to become legal. And so now the Council has created these ordinances and we're encouraging people to come in and people who are operating without these permits are most definitely operating illegally. They have to come in for permission and we're glad that people are coming forward and applying.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I'm voting against the motion and the reason why I'm voting against the motion it's not because of how they applied and how they... I'm voting against the motion because of the rental market. You know, a studio apartment for \$1,000 for somebody making \$10 an hour that's all that is available I think is ridiculous. Until the inventory pick up I cannot support this short-term rental.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Normally, I have the same sentiment as Jack. However, being that they're using the property four to five months ago there goes a long term rental idea. Looking at the presentation they actually are doing something with the property. You know, and like Wayne said, you know, unless it's a \$1,000 a coconut they're not gonna make, you know, any profit out of it. But the making and attempt to utilize the agricultural aspect, they're not just doing the minimum just so that they can qualify. They seem to have the support of their neighbors and while I normally would vote no. This time I will support this particular project.

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

Ms. Wakida: Is there a motion?

Chairperson Lay: Oh, no motion?

Unidentified Speaker: There was a motion.

Chairperson Lay: Yeah, we have a motion. Yeah.

Mr. Medeiros: I moved to accept the recommendation.

Vice-Chair Ball: I seconded.

Chairperson Lay: Okay. Commissioner Hedani?

Mr. Hedani: Livit, what is the rental income stream that comes from a short-term rental in a location like this?

Ms. Callentine: Oh gosh, I cannot answer that question. I have never operated a short-term rental.

Mr. Hedani: Can Margit answer that question?

Ms. Callentine: She could probably attempt to make an estimate or a range for you.

Ms. Tolman: Thank you. My name is Margit Tolman. We haven't really established yet the rental rate on this house because we don't rent it right now, but comparing with other properties it will be probably about 350 to 425 a night.

Mr. Hedani: Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I think basically you know, that's the point, yeah \$350 to \$400 per night as opposed to \$400 a month to rent some place to live or room some place to live. The problem that I'm stuck with is that the County Council which is the Legislative Branch of the County which decides the laws of the County has anointed short-term rental homes with holy oil and it's legal according to the County Council based on the number of units that they've established for every given area, yeah. I think if anything the message this Commission should send to the Council is if you're gonna approve short-term rentals, if you're gonna have a high number of short-term rentals, if you're gonna impact the neighborhood to where nobody can afford a place to rent, to stay, then they need to get their act together in terms of zoning land for housing, approving projects that will provide housing for residents of the island that need housing, rentals as well as apartments and everything else. Because the way it's going they really need to take a second look at the short-term rental law and figure out if this is in the best interest of the community. But from perspective, I give a lot of weight to the comments that came from former Commissioner Hiranaga in this particular case that these people represent the type of people that you would like to see operating a short-term rental if there were a preference and I'll be supporting the motion on that basis. But I think you know, it's with reservations because the impact that Jack is talking about is real.

Chairperson Lay: Thank you. Commissioner Wakida?

Ms. Wakida: I will...I'll be voting against the motion. And my reason has to with the farming aspect of it. I really expect an applicant to come in with a real robust farming plan in order to sort of mitigate the short-term rental business because the State Land Use specifically discourages the use of anything other than ag in Ag Districts. They've got a beautifully landscaped piece of property. They do some, in my observation, minimal type of farming. But I think the applicant should have made a much bigger effort to put together more farming activities. They've got a lot of land and grass and for me to be convinced that this is a good fit for an agricultural neighborhood, that's the reason I'm voting against the recommendation.

Chairperson Lay: Director?

Mr. Spence: As a comment, and I'm listening to the comments of the Commission, I would just...I would note a couple things. One, the County Council though they...I would agree that they were in favor of at least providing a permit mechanism. For something like this within the Ag District it's up to this Commission. The Council may have been in favor but they gave the decision making ability on the Special Use Permit to the Planning Commission, and so that's, you know, your volunteers and more of a local representation on the ground kind of thing, you're not elected officials. As far as this particular subdivision, this...at some point this subdivision and a few others are going to be zoned Rural. And the reason that is, is this is not really in a lot of people's view including my own that this is not an agricultural, agricultural subdivision. There's you know, it's mostly composed of two-acre lots, the character is much more large lot residential with some farming going on. If you were to drive through this particular subdivision and others like it, the homes are very nice. I would hope to someday to be able to afford a home so nice. But it's much more of a residential neighborhood than it is a agricultural neighborhood. This isn't what you're gonna find on Omaopio Road or certainly not you know like our agricultural park or places like that. It's residential in character. So that's you know, why eventually this is gonna be zoned for Rural where you can do agriculture but you don't have to pretend to be a farmer. So just a comment this particular area.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I, too, share the concerns of Commissioner Hedani and Freitas. I think we do have a issue here with lack of inventory in the marketplace for just the working families to be able to afford and have a place to live. We've had so many short-term rentals come before us asking for approvals and we're pretty much approvals to them. And I'm sure we're gonna get more. So this is definitely an issue we need to address I think on a bigger level. This particular case I think I have to say they've done pretty much everything in my eyes correctly and I don't think they should be penalized in this case and you know, which the issue is bigger scale. So I am gonna support the motion.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: You know, one additional comment that struck me when I was looking at this particular application, if you look on Page 11 of the application under Paragraph E, on the third paragraph, it says, "according to the application as a two-acre lot, and as demonstrated by all other lots in the subdivision (none of which are actively farming) it is difficult to implement a fully operational profitable agricultural business." The entire subdivision according to this report is not actively farming and that's why in this particular case I would agree with the Director that the subdivision should not be classified an agricultural subdivision. It should be classified Rural and it should be taxed at a Rural rate basically. But I think what the applicant has done in this particular case is a nice effort.

Chairperson Lay: Commissioner's any more discussion on the motion? Seeing none, can we get the Director to repeat the motion?

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

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

Mr. Spence: That's five ayes.

Mr. Hedani: Those opposed?

Chairperson Lay: Oh, those opposed, excuse me.

Mr. Spence: Three nays.

Chairperson Lay: Thank you.

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

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

Chairperson Lay: Commissioners, you wanna take a five-minute break?

Mr. Ball: Yes.

Chairperson Lay: Okay, five-minute break everyone, reconvene at 11:30.

A recess was called at 11:25 a.m., and the meeting was reconvened at 11:32 a.m.

Mr. Spence: So Commissioners, so we're back to No. 1 on Public Hearings. Mr. David Gomes, I'm going slow...requesting a State Land Use Commission Special Use Permit and a Conditional Permit to continue the operation of the Hawaiian Cement Honokowai Concrete Batching Plant. And Livit Callentine is the Staff Planner.

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

- 1. MR. DAVID GOMES of HAWAIIAN CEMENT requesting a State Land Use Commission Special Use Permit and a Conditional Permit to continue the operation of the Hawaiian Cement Honokowai Concrete Batching Plant on approximately 1.0 acre of land in the State Agricultural District at TMK: 4-4-002: 039 (por.), Honokowai, Lahaina, Island of Maui. (SUP2 2013/0021) (CP 2013/0004) (L. Callentine)**

Ms. Livit Callentine: Thank you, Mr. Chair, I mean, Mr. Director and greetings again to you. For the batching plant at Honokowai operated by the Hawaiian Cement there are two permits being considered today. One of them is a State Land Use Commission Special Use Permit which you will be voting on either to approve, deny or defer and the Conditional Permit which you will be voting to recommend approval or denial to Maui County Council if you take action on the Special Use Permit. I'd like to point out that this morning I placed before you a couple of packets of letters that were received late yesterday and earlier this morning. Both some in favor and some not...some concerns from mostly residential neighbors. And then also just moments ago, I placed before you

a table of reading of decibel readings in the area which the applicant's consultant will explain when she does her presentation. So at this time, I would like to yield the floor the applicant's project team for a slide presentation of the project and I believe to begin with Cheryl Okuma of Munekiyo & Hiraga, Inc., will be starting the team off. Thank you.

Ms. Cheryl Okuma: Thank you. Good afternoon, Chair Lay, Commissioners. On behalf of Hawaiian Cement we certainly appreciate the opportunity to be here before you on this project and I am Cheryl Okuma from Munekiyo & Hiraga. Here today with us from Hawaiian Cement is the General Manager, David Gomes and Mr. Dan Sparks who is the safety officer. The civil engineer is Kirk Tanaka and from Munekiyo & Hiraga is myself and Karlynn Fukuda.

We're before you here today as Hawaiian Cement seeks a State Special Use Permit and County Conditional Permit for the continuation of its current, existing concrete batch plant located in Honokowai. This next slide gives you an idea in terms of where the project is located. Just to the south of the intersect of Lower Honoapiilani Road and Honoapiilani Highway.

In terms of the land use entitlements for this approximately one-acre parcel which is one-acre of a larger parcel actually it's designated as Agricultural by Land Use District and so therefore we're before you here on this request for a Land Use Commission Special Use Permit. It is a Project District 3 in the West Maui Community Plan. It's County zoned R-3, Residential and we're here before you today on this request for County Conditional Permit.

A little bit in terms of project history. In 1970, the Honokowai concrete batch plant started operations just west of its present location and across Honoapiilani Highway. It was in 1985 that the concrete batch plant was relocated to a site near Honokowai Marketplace just a bit to the north of its current location and that time a State Special Use Permit was granted. In 1987, the Plant was relocated to its present location which is approximately one-acre. And I'll be showing you some slides a little after in terms of the project site and project area.

But continuing on, the site access is off of Honoapiilani Highway through a gated road and the structures for the concrete batch plant include a series of concrete foundations, silos, conveyor system, tanks for water and storage, collection hoppers, a fenced sump area as well as dust fencing, and there are sand and aggregates that are stockpiled on the area. This gives you an idea in terms of project location. This is where the Honokowai concrete batch plant is. As you can see it's just off of Halawai Drive. This is Honoapiilani Highway. This concrete batch plant is you know, adjacent, surrounded by the Lahaina wastewater reclamation facility to the north, a County Public Works baseyard further up and then the Ameron batch plant in this area of location. There's a number of various light industrial uses just adjacent and nearby. There are a variety of shops and businesses like auto and motorcycle shops. And then here's the Honua Kai Resort and Spa and of course, you know, the resorts along the coastline area as well.

This is the site plan for the concrete batching plant. This is the access road. Of course, off that intersect of Honoapiilani and Lower Honoapiilani Highway through the gated area down this access roadway which there's by the way recycled asphalt material that was laid on this access road for dust control, and it was in December, January of this year that the applicant did place a dust fence all along here, all along this project site, 12-foot high. I do have a picture of that. The main entrance is here. And as you can see on the location, you know, the piles for aggregate storage,

sand pile, fine gravel, coarse gravel piles, there's the drainage sump, and then of course, here is the various equipment of the concrete batch plant and this is where, you know, the mixing trucks, the trucks would come to load up.

This is that 12-foot high concrete...I'm sorry, the dust fence that was installed along the property, 12 feet high and it was placed there to address a neighbor comment regarding dust control and it does provide... there's in addition to dust control, this provides a damper for the noise mitigation.

And this is an aerial. This is the area of the concrete batching facility. This is an old picture, so you know, the dust fence is up there, but it is up there today. And here you can see the series of various equipment for this concrete batching facility.

Now there's a number of criteria in terms of the Special Use Permit and just going over that. The first one is was that the use cannot be contrary to objectives of the Hawaii Revised Statutes, Chapter 205A, as well as this Commission Rules.

Ready-mixed concrete is a perishable product and has a setting time, and as such a batch plant that's nearby the construction site allows the delivery of quality concrete to meet the various industry standards and customer specifications. And in this case, you know, the applicant has a number of customers from private to public, Federal, local, State customers. The Honokowai batch plant in its location assures that there's timely delivery of concrete to the West Maui region because as mentioned, it is perishable. It does have a setting time.

Next criteria is that the use adversely affect the surrounding property. This concrete batching operation has been on site for over 25 years surrounded to the east, north, and south by fallow agricultural lands as well as light and heavy industrial uses just to the west. The batch plant is near commercial and government facilities that exist there today which is the Lahaina wastewater reclamation plant that I pointed out in the prior slide.

This is a request for continuing operation and so no additional improvements are being proposed. Dust emissions are controlled through various measures. Dust barriers that surround the aggregate storage hoppers at the batch facility. The dust fence that was mentioned. The final design to control and minimize fugitive dust emissions in accordance with Department of Health requirements.

The next criteria, the use does not unreasonably burden public agencies. In this case, there's no impact to the school's police or fire services. And there is a water meter, one-inch meter provided by the Department of Water Supply on Halawai Drive approximately 20,000 gallons per month of water is used for a variety of measures, dust control, the production of concrete, as well as equipment wash down.

Now storm water runoff flows to the fenced sump that I pointed in the prior slide just to the west. And it sheetflows generally in that westerly direction. Truck traffic averages about one to four trips a day in recent years. And trucks are deployed from Hawaiian Cement Puunene facility to the Honokowai concrete batch plant and this is based on customer demand. As concrete is perishable, without this batch plant Hawaiian Cement may not meet certain concrete specifications with respect to all of its cement deliveries if it were to deliver them from the Puunene facility. As well the

Honokowai batch plant with that truck trips would certainly be reduced and relieve the roads.

The next criteria, unusual conditions, trends and needs have arisen since the district boundaries and rules were established. West Maui is seeing an improving economy and growing population and with that comes the need for quality concrete.

The next criteria is that land upon which the proposed use is sought is unsuited for uses permitted within the district. As mentioned, since 1987, the concrete batching operations have been on this site and it is surrounded by other nonagricultural uses as has been mentioned the Public Works baseyard, the Lahaina wastewater facility and the number of businesses that are adjacent to and surround the facility. The adjacent agricultural lands have been fallow for over 10 years on this site which is zoned for R-3 for residential use by the Maui County Zoning.

Now in terms of the County Conditional Permit this is the criteria. That the existing concrete batching plant is not significantly detrimental to the public interest, convenience and welfare and is in harmony with the area in which it is located. It's been over 25 years since this Honokowai batch plant has met the community needs, the public and private projects that have occurred and do occur in that area. The plant is compatible with the neighboring commercial government uses of light and heavy industrial uses. And as concrete batching basically involves, you know, the mixing of cement with water and aggregate, nonhazardous material are used on the site.

The storm water control plan of Hawaiian Cement includes best management practices such as the handling of materials, the storage of fuels, lubricants, chemicals, the daily cleanup that will occur on site and this storm water control plan is in accordance with the State Department of Health NPDES Permit requirements. The plant in this area provides Hawaiian Cement with the flexibility to assure the high quality or delivery of high quality concrete to the West Maui region.

In terms of the next steps, as far as the application for Conditional Permit which you have before you that will be reviewed by the County Council for action. And the recommendations from this Planning Commission on that Conditional Permit application will then be forwarded to the County. Thank you.

Chairperson Lay: Commissioners, at this time I'm gonna open up to public testimony. Does anyone wish to testify, please step up to the mic, you have three minutes.

**a) Public Hearing**

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

Chairperson Lay: First on the list we have Natt Shand. Do you wish to testify at this time?

Mr. Natt Shand: Yes.

Chairperson Lay: Okay, please step forward, you have three minutes and identify yourself.

Mr. Shand: Good morning. My name is Natt Shand. I'm with Nordic PCL Construction and I'm here to testify in support of Hawaiian Cement's request for a State Land Use Commission Special

Use Permit and County Conditional Permit to continue the operation of Honokowai concrete batching plant located in Honokowai West Maui.

For over 25 years Hawaiian Cement's Honokowai batching plant has been on property that is located nearby the County's Lahaina wastewater plant, County baseyard and commercial business. Located on the mauka side of Honoapiilani Highway, the Honokowai concrete batching plant serves the West Maui region with concrete for private and public projects.

Having the concrete batching plant near the project sites is important in order to assure that there is quality concrete that meets specifications. Concrete mix that does not meet specifications due to long truck travel time affects the quality of the product and cannot be used for construction projects. As a general contractor, Nordic PCL has utilized the Honokowai batch plant on several of our projects we've been involved with on the west side of Maui including the Ritz Carlton Residence Club at Kapalua Bay and our current project the Maui Hyatt Residence Club.

As someone who has been in the construction industry for 10 years and is familiar with this plant, I ask the Maui Planning Commission to approve Hawaiian Cement's request for the Special Use Permit and Conditional Permit for the continuing of the operation of the Honokowai batching plant. Thank you for your time and consideration.

Chairperson Lay: Commissioners, do you have any questions for the testifier? Seeing none, thank you very much. Tom Boomer do you wish to testify at this time?

Mr. Tom Boomer: Good morning, my name is Tom Boomer. I'm President of Structural Concrete, Bonding and Restoration, also owner of Boomer and Associates, a consulting firm. I'm currently on the Board of Directors of the Condominium Council of Maui and past chair.

Hawaiian Cement asked me a user of their facilities and materials to testify as to the value and need of the Honokowai Plant. My main business, Structural Concrete is the repair and protection of concrete structures. We have for 28 years repaired Maui's concrete, waterproofing, cracking, what have you.

One of the biggest things that we come across is wavy concrete generally related to long transit times. If you're pouring a lot of concrete and get trucks backed up, you got a 30 to 40 minute drive, 20 minutes on the site, the concrete starts crusting over, problems begin. It's actually a good thing for my business but it's bad for the concrete industry in general.

I wholly support and would appreciate the Commission's serious consideration of keeping that plant open. It is a necessary function for doing heavy construction work on that site both commercial as well as residential. That's all I have to say.

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

Mr. Boomer: Thank you.

Chairperson Lay: Next we have Kenneth Devedes [sic]. Does Kenneth wish to testify at this time?

Please identify yourself.

Mr. Kenneth Tavares: Good morning, my name is Kenneth Tavares and I work with Jag Construction. It's a masonry company. We've been in business for about 20 plus years. We do a lotta concrete work in Lahaina. We did for the County the Napili well water tank, the Lahaina tennis court walls, and various residential and driveway projects and retaining wall projects on the West Maui. I just wanted to say a little about Hawaiian Cement to testify that in closing this plant will be detrimental to the community of Lahaina and various companies with all the delays of bringing the concrete trucks from Kihei to Lahaina. The time delays and the cost is growing for the labor cost. So I just wanna say, you know, we like to see this plant still be in operation for the various people in Lahaina and our company. Thank you.

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

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

Mr. Thomas Cook: Good afternoon, Chairman, Director, Board Members. My name is Thomas Cook. I'm here to give testimony in support of this application. I'm a general contractor, masonry contractor also. Recently completed the Lahaina wastewater solar power project. We did all the site work and the concrete work. We purchased the concrete from Hawaiian Cement which was right adjacent to the facility. So I've spent like two months at the Lahaina wastewater plant and I just wanted to let you know that this in my opinion this plant is in a excellent location. It's right next to the wastewater plant. I didn't find it to be very noisy. It was extremely convenient to be able to get the concrete from there, the scheduling. So that's just a little personal experience from that.

I wanna hopefully educate you board members about the importance and the sensitivity of delivering ready mix concrete. West Maui, we have extreme challenges in the highway as you all know. The bottleneck at any time it's really hard to predict how long it's gonna take to get over there. I don't know if you're aware of this, but a State inspector, County inspector, Federal inspector will look at the ticket how long it took for the concrete to be delivered and it can actually be rejected. Okay, if you're doing a big monolithic pour of concrete, a monolithic pour when it all has to be poured at once, it's just critically important that you can get that product. The West Maui highway it's just too much of a, of a variable. So it's not my...it's my strong my opinion that it isn't just a convenient item. Our community really needs that plant over there as part of the infrastructure to be able to provide the product and concrete is ...(inaudible)...Thank you.

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

Ms. Wakida: There's...I don't know if this would be a question you could answer or not, but my question is I would like somebody from the business to describe their wash down methods for their trucks?

Ms. Okuma: Sure.

Mr. David Gomes: Sure. My name is Dave Gomes. I am the general manager for Hawaiian Cement, Maui Concrete and Aggregate Division. May I just have some clarity on what you're asking for in terms of wash down, when you say wash down?

Ms. Wakida: When you bring your trucks back and wash them down, is that correct?

Mr. Gomes: Wash down the external parts of the truck is that what you're asking me for?

Ms. Wakida: Well, what parts do you wash down, maybe I should find out?

Mr. Gomes: Okay, in our line of business there's two ways we wash down. Wash down is the external at the end of the day we clean the truck. All that activity is done at our main Puunene facility and not our remote locations. During the batching process when we introduce the product into the truck for mixing, the driver has to go to, go to what we call a wash down rack to basically make sure that the load is adjusted properly for consistency sump. So they'll be some very basic in the back area of the fins, but primarily adjusting that load so that when we leave and show up to the customer's site it's at the right consistency. So that facility...there's a place located right adjacent to our sump hole that that activity takes care. But there is no washing of our trucks externally at that facility.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I guess just another question for David. Just about how much time do you have when we're talking about perishable concrete? I mean, what are we looking at five hours, ten hours?

Mr. Gomes: Yes, a general rule of thumb is 90 minutes from the time of batch to the time of placement is 90 minutes in our industry.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: David, I've noticed in the past where I do a little bit of scrap and I've noticed in the past where you folks have had several of your units where the drums just...the concrete just get hardened and you gotta destroy the whole back of the drum. And I think one time it was a automobile accident or something on Lahaina. And you cannot get that out once it's hardened, yeah?

Mr. Gomes: No. Thank you for painfully reminding us of that episode. No, yes, we cannot, thank you. It is...once it's hard it's done.

Mr. Freitas: Money lost.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yeah, David please stay. I see that you've put up a dust fence but you're asking for a 20-year permit. Would you be agreeable to putting in more landscaping and I ask this because

while you can't see this from the highway, the community in the next 20 years is gonna get closer and closer. You put up a dust fence, but that's just a temporary item. Would you be amenable to a more ambitious landscaping plan to include around your perimeter because they will mature over the next 20 years, large trees, irrigation to put up a substantial hedge. There's many along highway you can take a look at for ideas in order to have your operation less offensive to...we have a couple of letters from people who are, have concerns...just be less offensive to the surroundings, the people if they move closer? Would you be amenable to something like that?

Mr. Gomes: The answer is yes. And on the previous slide that we're showing an overview, I believe it was Slide 8 which was an old Google map. There was a rather large overgrowth of trees and that was there on purpose to help mitigate what you're talking about. The challenge that we have today is that our dust fence is on our boundary line or just within our boundary line. And we have to be careful that...with the placement of the hedge. So if it goes on in our boundary, we have a tendency or a opportunity to damage the fence. Once the hedge grows and goes through the chainlink it damages the cloth which defeats the purpose of the dust, but we would certainly be willing to look at it and even working with our landlord, property owner to see if we could put it on the opposite side of our property line. Absolutely.

Ms. Wakida: Yeah, I would like to see a lot more landscaping so that that will I think help to prevent controversy down the road from people that's in high rises across the way and so on. I mean, if it's out of sight, it's out of mind because I think your cement plant is important for West Maui.

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

**b) Action**

Ms. Callentine: Thank you, Mr. Chair. So the Department does recommend which we find that the proposed use which is a continued use meets the criteria for the issuance of a Conditional Permit. These has been and will continue to be in harmony with the area in which it has been located for the past 18 years. Further, the proposed continued use is not detrimental to the public interest, convenience or its welfare. So...further for the State Land Use Commission Special Use we find that the application is in compliance with the requirements for a Land Use Commission Special Use Permit. Currently we're recommending eight conditions for the Land Use Commission Special Use Permit. It seemed like maybe the last bit of discussion about landscaping you might wanna craft another condition so you can think about that. We are also recommending that you recommend approval to the Maui County Council with a basic outlay of six conditions and those are outlined for you on Page 5 of your recommendation.

Mr. Tsai: So move.

Mr. Medeiros: Second.

Mr. Freitas: Second.

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

Ms. Wakida: Yes, I would like...I'm not sure of the process. I need a little help to add another amendment about improving the landscape to include large canopy perimeter trees and a substantial hedging, but I...

Ms. Callentine: Is it that you would like for the landscaping to provide a visual barrier? So that might be incorporated in that the applicant will install landscaping that when mature will create a visual barrier surrounding the 1.18-acre parcel, portion of the parcel that they are using for the plant is that what you hope to accomplish?

Ms. Wakida: Yes, I think so. And I always wanna throw in my large canopy trees to help offset the carbon footprint an industrial area like this incurs.

Ms. Callentine: Did you wanna put that in the language of the condition something about large-

Ms. Wakida: Well, I don't know how kosher this is.

Mr. Spence: Okay, first off, okay was the motion for both permits?

Mr. Tsai: Right, yes.

Mr. Freitas: Yes.

Mr. Spence: So, I don't know if procedurally Mr. Hopper wants...would rather see them taken one at a time?

Mr. Hopper: Well, you can do it either way just be aware that the recommendation is to recommend approval to the County Council for the Conditional Permit with the conditions recommended and the motion for the Special Use Permit is to grant it with the conditions, but with the understanding that if you're gonna place a condition it should be on the State Special Use Permit.

Mr. Spence: Right.

Mr. Hopper: If you wanna recommend a condition it would be for a Conditional, and if you wanna do both, one would be a recommendation. So I think you could take them both, but we need to be careful as far as when you start amending things if you're gonna include the condition, we can do it, but we just have to keep track of which permits you are recommending what on. Because you have one where you can condition yourself and enforce, and one where you have to recommend to the Council to put a condition on and for them...and for the Department to enforce that one. You can take them separate if you like. The motion was to do them both and I think that that's okay.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I'm familiar with that area because I did some work at the wastewater plant. I think, what do you call, I don't think we need a motion, I think they should be able to handle the ...(inaudible)...because that's a pretty tight area.

Mr. Spence: Well, my recommendation and we would need a motion to amend the motion to

approve. If the Commission wanted to do a landscaping condition on say the State Land Use Commission Special Use Permit I would recommend let us work with the applicant on what would be appropriate because yeah, one...an acre site for a facility like this is not very large and if you start getting 20, 30, 40-foot canopies on the property you're eating up that site really quick. I mean, I understand the intent of it. At the same time, your one-acre site is gonna go down really quickly, foliage, you know, as those trees mature.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Okay, well I think if...because we're looking at a 20-year permit if we can get the assurance from the proprietor, David that he will do what he can to, but yes?

Ms. Callentine: It's very, very hard for staff to then enforce something that's not there. So it's not enforceable if you just leave it at the hope and wish that something will occur in my experience.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Hawaiian Cement has been around for as long there's been dirt and they're a good company. And I heard Gomes said that they would look into it and I take a man by his word and his word is good with me. He said he would try to make things work, and that's good enough for me.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, as the maker of this motion I do fully support, you know, Commissioner Wakida's idea of ....(inaudible)...most industrial establishments, but I think this one will be a case of practicality for me because of the way they operate and I think that my concern also too is if we focus too much on the greenery, you know, with the operation I'm concerned with just survival of the plants because of how they operate. And I think I'm really fine with, you know, what they're doing and the location and so forth, so...

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I'd like to recommend that the applicant and the Director work, what do you call, this foliage issue out and I'm sure they can come with a-

Mr. Spence: Would you like to recommend that as a condition?

Mr. Freitas: Yes, as a condition that you work it out, between the Director and the applicant.

Mr. Hedani: I second it.

Mr. Spence: Okay.

Chairperson Lay: I have a motion. I have a second.

Ms. Callentine: I have a drafted, crafted a draft condition which could be modified Commissioner

Freitas' recommendation if the Commission so desires, and I have checked with the applicant and...I will. First I wrote it under the impression that it would be part of the conditions. That the applicant will provide landscaping around the western perimeter of the project area such that when mature will provide a solid visual barrier and will include large crown shade trees to the satisfaction of the Planning Department.

Chairperson Lay: Director wish to comment?

Mr. Spence: I think we'd like to stay away from the large crown, that particular requirement, but that landscaping will be worked out between the Planning Department and the applicant.

Mr. Freitas: That was my recommendation.

Mr. Hopper: So everything except for the shade tree language.

Chairperson Lay: Yeah.

Ms. Callentine: All right. Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Livit-

Ms. Callentine: So sorry, go ahead, sir.

Mr. Hedani: What is the long-term plan over the next 20 years for Lot 15?

Ms. Callentine: Which is the lot which this parcel is on. Well, that is-

Mr. Hedani: The lot that's above it that overlooks it.

Ms. Callentine: Okay, I don't know. Honestly, I don't know. I think it's been...Will, do you know?

Mr. Hedani: Is it R-3 because the existing zoning for the lot-

Ms. Callentine: The lot above it, okay.

Mr. Spence: I know it's community planned Project District.

Mr. Hedani: Project District.

Mr. Spence: It's gonna be quite a large project there eventually. Commissioner Wakida brings her trusty West Maui Community Plan.

Chairperson Lay: Good job, representative to the west side.

Mr. Hedani: Livit, Livit?

Ms. Callentine: Yes sir.

Mr. Hedani: Well, my concern basically...let me just explain my concern.

Ms. Callentine: Okay.

Mr. Hedani: My concern basically is over the next 20 years the lot that's overlooking this particular parcel is going to be looking down for 20 years onto an industrial, a heavy industrial batching plant and that the language should exclude western boundary or eastern boundary--

Ms. Callentine: Yes.

Mr. Hedani: Because the western boundary is the side that's facing the rental car lot and the rental car lot doesn't particularly care what they're looking at in terms of the batching plant.

Ms. Callentine: It was my understanding the western boundary also face the resort area and the Honua Kai projects where most of the concerns were expressed.

Mr. Hedani: So the complaints are coming from Honua Kai?

Ms. Callentine: Yes, I believe the two or three letters that you received in your packets this morning were from Honua Kai. By the way, the applicant I think may wanna bring up the testing that was just done yesterday on decibels. This is a little late in game though, so I'm not sure if this an appropriate thing to do.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: There's a motion on the floor.

Ms. Callentine: Yes.

Mr. Spence: Yes.

Chairperson Lay: Commissioner Ball?

Ms. Callentine: So yes the question is, I'm sorry, whether there's landscaping installed around the perimeter of the one-acre site or whether it's only one side or the other, I think the applicant's preference--

Mr. Ball: I think if we address the west side is fine because any developer that's gonna come in and develop the surrounding area can address that on their own. We cannot predict what's gonna happen 20 years from now for these guys to put up stuff that's a waste of time. If we got complaints on the west side, they're willing to do it, then do it.

Mr. Freitas: Yes.

Mr. Ball: Worry about the future in the future for the other developable side for the developers of

that side to do that.

Mr. Freitas: Call for the vote.

Chairperson Lay: Repeat the motion on that one?

Mr. Spence: The motion is to approve the Land Use Commission Special Use Permit with a condition that the applicant do landscaping as I understand around the western edge in coordination with the Planning Department and that this Commission recommend approval of the Conditional Permit to the County Council.

Mr. Hopper: Livit, could you please read the language of that condition just for reference?

Ms. Callentine: Yes, so this would be Condition No. 9, that the applicant will provide landscaping around the western perimeter of the project area such that when mature will provide a solid visual barrier and to the satisfaction of the Planning Director.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: The current dust fence is around which sides?

Ms. Callentine: The western side.

Ms. Wakida: The western side.

Ms. Callentine: Facing the ocean, yeah. So that's a good question. Would it go inside or outside of that?

Chairperson Lay: Okay, this time I'll call for the vote. All those in favor of the motion?

Mr. Spence: Okay, that's eight ayes.

Chairperson Lay: Congratulations.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Department with the Additional Condition: That the applicant will provide landscaping around the western perimeter of the project area such that when mature will provide a solid visual barrier and to the satisfaction of the Planning Director; and Recommend Approval of the Conditional Permit to the County Council as Recommended by the Department.  
(Assenting - M. Tsai, J. Medeiros, J. Freitas, K. Ball, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)**

Chairperson Lay: Let's take a lunch-

Mr. Hopper: That was for the amendment?

Mr. Ball: For both.

Mr. Spence: Those are for both.

Mr. Hopper: But that was just for the amendment or to approve with the amendment?

Mr. Spence: That was to approve with the amendment.

Mr. Hopper: Okay. Normally we have the amendments and we vote on that and then...and that's to recommend approval of that condition for the Conditional Permit? You didn't have that as a condition on the Special Use Permit.

Mr. Spence: No, it was on the Special.

Mr. Hopper: And not as a recommendation of the Conditional Permit.

Mr. Spence: That's correct.

Mr. Hopper: All right. As long as that's what everyone understands.

Chairperson Lay: Calling for lunch. Reconvene at 1 o'clock.

A recess was called at 12:09 p.m., and the meeting was reconvened at 1:05 p.m.

Mr. Spence: We're on F, Special Management Area Appeals. The one and only item on the agenda is Mr. Isaac Hall, attorney for James Bendon, Robert and Margaret Kaplan, Cyrus Monroe, and Peter Siracusa submitting an appeal regarding the issuance of an SMA Exemption for the milling and resurfacing of Runway 2-20. Mr. Paul Fasi is the Staff Planner on this. How do you want to proceed?

Mr. Hopper: ....(inaudible)...

**F. SPECIAL MANAGEMENT AREA APPEALS (To begin at 1:00 p.m. or soon thereafter.)**

- 1. 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)**

**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**

**No timely Petitions to Intervene were filed on the subject appeal.**

**The Commission may take action on the following matters:**

- a. Appointment of the Hearings Body/ Hearings Officer.**
- b. Appointment of a Mediator if the parties wish to enter into mediation.**
- c. Selection of presiding officer(s) to conduct prehearing conference(s) to establish deadlines for the orderly conducting of the contested case hearing if the Commission is the hearings body.**
- d. Determination of first prehearing conference date and time**
- e. Selection of date(s) for contested case hearing if the Commission is the hearings body.**

Mr. Paul Fasi: Good morning...good afternoon, Commission. I'm gonna be very brief and the SMA5 Exemption was reissued by the Department, more appropriately we do not consider this to be a development and the Exemption is Exemption No. 6, repair or maintenance or interior alterations to existing structures and the Department's analysis, the runway is a structure. It is a repair and maintenance of a structure, pure and simple, and so the Exemption was issued by the Department appropriately.

Chairperson Lay: Have the parties come up with any understanding on how you want to proceed?

Ms. Mary Blaine Johnston: Deputy Corporation Counsel Mary Blaine Johnston appearing on behalf of the Department and I'd like to have the other people that are here today identify themselves.

Ms. Julia Verbrugge: Hi, Julia Verbrugge representing the Department of Transportation.

Chairperson Lay: If you can come up to the mic too please, so we can get it on the record.

Mr. Marvin Moniz: Hi, good afternoon. I'm Marvin with the Department of Transportation, Airports Division Manager.

Mr. Gene Matsushige: Yes, good afternoon. Gene Matsushige, Engineering, Department of Transportation, Airports.

Ms. Johnston: We have had a chance to discuss procedurally how we would like to proceed. I think first of all we would make a request that the Commission appoint itself the hearings officer for this particular case rather than appointing somebody else as a hearings officer. So that would be the first request. And then we've come to some ideas about possibly doing mediation we'd like to

share with you.

Ms. Julia Verbrugge: Hi, Julia Verbrugge from the AG's Office representing the Department of Transportation. We...I've been talking to appellants' counsel, Isaac Hall about mediation and we are amenable to a mediation. We talked about two possible names, John McConnell and Joel August, and either one is fine with us. Isaac and I talked about whichever one the Commission approves, but after talking to Corp. Counsel I think because the issue is that we really need to start repaving Runway 2-20 as soon as we can, we really want to keep it safe. So we are hoping that we could do mediation within two weeks. So we're hoping one of those two people will be available for mediation. I think whoever is available should do it out of those two, and I hope Isaac agrees. So, but we would request that mediation be as soon as possible, hopefully within two weeks. And on top of that, for the actual hearing date we would request, we would respectfully request a hearing date as soon as possible because as I understand it, I think the, I think the permit exemption was granted around July or August of last year and we already have a contractor who signed on and he's ready to start working. So this is the only thing that's holding it up. So I would respectfully request, not only after mediation occur within two weeks, hopefully, but that the hearing be as soon as possible, and then the third request I have is that, I respectfully request that we have some sort of schedule to file dispositive motions. We can...(inaudible)...of efficiency in this case.

Mr. Isaac Hall: Good afternoon, Chairperson Lay and Members of the Maui Planning Commission. My name is Isaac Hall for the appellants. This appeal was filed to the exemption of the SMA Permit for the runway repair project. We support airport safety projects and are not seeking to delay and have nothing to delay this particular airport safety project. However, here as part of this project what's not really discussed in the application is that Runway 2-20 will be closed at night from 12 o'clock till 7 o'clock every night and that the aircraft that would have been taking off and landing on Runway 2-20 are instead gonna land and take off on Runway 5-23 which causes severe adverse noise impacts to Kahului residents and to the Spreckelsville residents and these noise impacts have never been studied.

But let me say, first off back off a little bit, jet aircraft have never taken off and landed on a regular basis on Runway 5-23, it never happened. It's happened during emergencies, but it hasn't happened on a regular basis. This is at least a 10-week project where they land and take off every night during that 10-week time causing these impacts, jet aircraft over Kahului and in Spreckelsville. DOT did not do any noise study of what those impacts would be. My clients have experienced on those occasional times what it's like to have a jet take off over Spreckelsville or over Kahului and it's horrible, it's horrendous. We think that there should be some study. There should have been a study of those impacts. There still is time to do a study. But ...(inaudible)... there are reasonable mitigation measures and we've been around all this time to talk about those mitigation measures if they'd wanted to earlier.

We had one good meeting way back in September of 2013 where I met with Marvin Moniz and the engineer and the DOT head about possible mitigation measures and they included not having, not using jets at night, having those aircraft operators use something other than jets, lease them for this period of time, they revise their schedules so that they are not taking off in the middle of the night, landing in the middle of the night. There are a whole bunch of measures that could be implemented. And you may not know, actually some of these big aircraft that land and take off at Kahului, you know the ones the fly distances to the mainland they make less noise than the air

cargo flights used by Aloha Air Cargo. They're flying the noisiest aircraft that land and take off at Kahului Airport. So we're talking about some noisiest aircraft that land and take care off there. Landing at 1 o'clock, 3 o'clock, 4 o'clock at night taking off. So we...the other kinds of things, litigation measures that are possible are kinds of measures that have been implemented at other airports like at Logan Airport there's a kind of share the burden where they don't land and take off over the same communities every night. They spread it around.

The other things Airports told us all along is well, you know, we cannot vary the schedule because bread's gotta come, the newspaper gotta come in, and I think myself, well you know, we gotta balance these things if we're gonna have a reasonable mitigation measure. Is somebody getting a newspaper on time the same or worse? How do you balance that out against waking a whole community of people up two or three times every night for 10 weeks?

Anyway we do support mediation especially with an experienced mediator 'cause I think through mediation particularly if...I realize...I think Aloha Air Cargo is probably the one party we really do need to have involved in some capacity in this mediation. In talking with Ms. Verbrugge who represents the State, the State's evidently amenable to try and get them to participate if not in person at least by telephone. They're the ones whose aircraft is causing the most noise. If they're gonna have to get involved one way or another and there's a potential for them to get involved in mediation which gives me some hope that mediation will work. So, I support mediation. We have been ready, willing and able. We haven't delayed any of this. We didn't fill a second exemption. We didn't choose to schedule this when this got scheduled. We would have participated in mediation six months ago if it had been scheduled six months ago, but we do think mediation is a good idea.

As between John McConnell and Joel August as mediators, they're both excellent mediators. We'd accept either one of those as mediators. I don't, and without...I'm not trying to...I don't think this is an appropriate case for the Commission to handle. I think it be better for whichever one on those people that you don't choose as a mediator that you choose that person as a hearing officer. I think it would be better to you know, choose one of them as a mediator and choose the other one as a hearing officer and have it heard by one of those people because there are a lot of technical issues, airport noise and technical kind of issues may be handled that way. So I differ in that. I think I would encourage you to choose one of those people as mediator and the other as the hearing officer. I don't mind an abbreviated schedule like Ms. Verbrugge said. We're prepared to agree to do that. I think the prehearing conference is not scheduled for today so it's not really an appropriate time to talk about prehearing issues, but we're...like I said, I pleaded that we will cooperate in an abbreviated fast schedule because we're as sensitive to the safety issues as anybody else. Thank you.

Oh, I just...finally, here haven't been any objections to our appeal so I don't think it's time to...for anybody to object to the appeal itself. Thank you.

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

Ms. Wakida: Yeah, can the person for Corporation Counsel, in regards to Mr. Hall's suggestion,

can you tell me why we need both a hearings officer and a mediator? I thought it was one or the other?

Mr. Hopper: Well, your rules and you could look at amending this if it's an issue for you, they require that the mediation can't be don't by the hearing officer. The mediator has to be someone other than the hearings officer is what it says in your rules.

Ms. Wakida: Perhaps you can clarify then the process. First, a hearings officer, and then a mediator/

Mr. Hopper: Well, you could appoint both. It depends on what you wanna do. If you want to appoint for example, one of the hearings and then appoint yourself, one of these hearings officers to do a mediation and then appoint the Commission as the hearing body to decide the case, you could do that. You could also appoint one person to be the mediator and if mediation doesn't work out then another person from the list could be a hearing officer to actually decide and make a recommendation—not decide, but make a recommendation back t o you as a Commission on the action. So you have to have someone beside the hearing officer or I'm sorry, yeah, beside the hearing officer to be the mediator and eventually in any of this the Commissioner's going to end up having to make a final decision whether it goes to hearings officer for a recommendation to you or you hear it as a hearings officer yourself and then make your own decision. The rules...if here's gonna be mediation, the rules requires that that has to be done by somebody other than the hearing officer itself.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Have we checked with August or McConnell on their schedule, availability?

Ms. Fasi: No, we haven't checked with them yet. We didn't know which person you will decide upon and then we will check his or her schedule and schedule it appropriately. Hopefully they'll be available within two weeks.

Vice-Chair Ball: It would be helpful if we knew...if they are both available. Our point was available or not, I don't think no one cares, but I don't know if you have to come back and we'll say we'll go with this guys or....

Ms. Fasi: I couldn't give you an answer at this time.

Chairperson Lay: We're at a point when they schedule it from there. So Commissioners, you've checked our agenda, or Commissioner Hedani?

Mr. Hedani: Well, I kinda agree with Attorney Hall that we shouldn't act as the hearing officer on this SMA. We should have either Judge McConnell or Judge August to serve as mediator/hearings officer. Unless we're attorneys over here that know how to handle.

Ms. Johnston: The contract, the work is supposed to start next month is my understanding of the contract. And when I said that it, we would agree to mediation of the two names that are agreed Judge McConnell and Judge August, we don't know what their schedules are. They may be

traveling. So that's why we would like either one of them that could be available to be able to be the mediator so we can get going right of way. We request that the Commission be the hearings officer rather than having another layer to go through and these processes could take weeks and that's what we try to do is to expedite the hearing and the final conclusion by asking the Commission that the Commission in this case appoint itself the hearings officer. So I would say let's got with the mediator. We try to set the mediation within the next couple of weeks. If that doesn't work we can come back at the next meeting and we'll come before the Commission. They also filing challenges to the whole appeal but they haven't done so yet. But just because it's not in front of you now doesn't mean that they're not going to be challenging whether or not these people even have a basis for bringing to appeal and have the Commission rule on it. So what I would encourage you to do is to identify either one of the two that we've agreed to, make yourself the hearings officer and set up, I guess ...(inaudible)...schedule then for the...(inaudible)...

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: So in the motion can we say, can we say which one is available? So they don't have to come back if one says, well no I'm taken for a month.

Mr. Hopper: Is this list with the highlights, are those the members or the individuals that are available or how is that? Does the Department have any information on availability of the hearing officer?

Ms. Fasi: All the highlighted names are available and they've agreed to be a hearings officer or mediator.

Mr. Hopper: Just not necessarily within two weeks as State's--

Ms. Fasi: Not necessarily.

Vice-Chair Ball: So my question is can we say, okay talk to either one and whatever one agrees then go with that one. Well, we pick August and then he can't do it, so now they gotta come back and then we'll say okay, well now go back to talk to McConnell. Can't we just get...(inaudible)...to say...

Mr. Spence: I think the Commission should voice a preference on who they'd want and then if that person isn't available say, you know, who your next choice would be.

Mr. Hopper: And if there's a time frame, I mean, it sounds like they're all available. If the Commission wanted the mediation to happen and be completed by a certain date that would seem to be the only limitation here, but if they're all available, it sounds like they could all do it, just we're not, you're not sure what the schedule would be. So if the Commission has a certain time frame I would specify that as well or I mean, I don't know if the parties have comments on that, but that was...I mean I think any of these it sounds like based on the Department are available, it's just you're not sure which schedule they would be able to meet.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: The hearings body, the hearings body, we could appoint ourselves as the hearing body, right? Not necessarily have to be stuck with a hearings officer, right?

Vice-Chair Ball: Correct.

Mr. Medeiros: I would be leaning more towards that than you know, going through the whole process and then the hearing officer makes a recommendation and then we make our decision based on his recommendation. Why don't we hear 'em out, hear the whole thing out and make our decision based on the proceedings not just the recommendation?

Chairperson Lay: Director?

Mr. Spence: If I could comment? Part of that decision and I'm not saying which way the Commission should go or choose or anything, but part of the decision is I'm not sure how long the process will take if for...if it would require any special meetings of the Planning Commission and the availability of Commissioners. So that's, that's sometimes not always why you would choose a hearing officer because that, that person is generally available where this body may not be. I mean, if this body is available that's ... (inaudible)...Again, I'm not pushing one way or another, I'm just bringing that to your attention. It may be time consuming.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Do we have to decide or can we just appoint the mediator and then if they can't work it out then they'll come back or we wanna decide mediator and either us as the hearings--

Mr. Hopper: Hearings body.

Vice-Chair Ball: Hearing officer or...

Mr. Hopper: Today is at your pleasure. You can, if you...if the body would like you could appoint a mediator with instructions to report back within a certain if possible and then decide after that to appoint a hearing officer or further proceedings after the mediation is completed. That's an option or you could do both. I mean, you've got a list of several different actions that you could do today and I think any of them, you know, you can take or decide not to take.

Ms. Verbrugge: Hi, this Julie again for the State. If I may, we strongly prefer that in addition to selecting a mediator or the preference we would request that the hearings body be selected. Our understanding is that it's quicker with the Commission. We just wanna take the quickest route possible because we think that's it's very important to repave that runway. It's the major runway of Maui, so...and we only have two runways and so we really want to repave that runway. So if the Commission could consider that, I would be grateful. Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I'd like to be a little clear on the process, forgive me I'm not sure. Let's say we recommend a mediator and they mediate and then whatever conclusions they come to, comes...then the next step is it goes to a hearing officer?

Mr. Hopper: Well that would depend, Commissioner Wakida. If there's mediation and the parties come to a settlement the appeal may be dismissed subject to a settlement agreement. If the parties unsuccessful in the mediation then yes, the next step would be to report back to the Commission or have that be known and then either the hearing officer or this Commission have the remainder of the hearing after the mediation process is complete.

Ms. Wakida: So the mediation could be the end of the line?

Mr. Hopper: I mean, that's the hope of ordering mediation is that the parties comes to an agreement but that may or may not happen.

Chairperson Lay: So without a time frame the mediation can just go on? I mean, is there a time limit as far as the mediation or do we set that time limit?

Mr. Hopper: If the Commission, I'm unaware of a past case where the Commission's ordered mediation like this or that, you know, the parties can agree to that as well. I believe that if you placed a time limit, I mean, which is kind of difficult because you're not sure of what the hearing officers or the mediators availability would be then I suppose you could do that and say that the mediation shall be completed by a certain time. And then set a date for the, you know, for the parties to report either the Commission or to the Department as the Commission Staff the status of the mediation and have it be completed in a certain time frame. Frankly for this I would think that the parties could have a...I mean, they could speak to it, but could expedite the mediation such that, you know, I don't know if there's a time frame where they can think they could complete the mediation where you think it's gonna either be yes or no through mediation process if, you know, there's a reasonable time. I think that should probably be done in conjunction with the parties and see what their thoughts are on that.

Mr. Hall: Can I say something?

Chairperson Lay: Isaac?

Mr. Hall: By statute the mediation has to be first. Has to happen before any contested case. But my understanding is the Department pays for a mediator for one, eight-hour day. And what happens is once the mediator gets appointed, he's gonna call us up and say I want your premediation statements by "x" date and then the mediation happens for eight hours, and if you reach agreement, great. If you don't, move onto the contested case. So it's not, it isn't a long, drawn out project...process, by its nature.

Mr. Hopper: So you could order that it be for at the most one, eight-hour day.

Mr. Hall: Well, I would ask that you go through that 'cause I know in some situations in the past if things are going really well, the Department has said, I'll give you another four hours. 'Cause it's better if you're almost close to an agreement to spend four more hours on a mediator than two weeks on a contested case hearing. I mean, that's what I've heard. I think Clayton is agreeing with me. But I mean, I don't...they don't go way beyond two days. I haven't seen that. Clayton knows.

Mr. Yoshida: Yeah, I think that happened with the Grand Wailea expansion where Glenn Kosaka

was the mediator and the parties had several mediation sessions and the Department was willing to pay for the extra hours for the mediation. And they did finally reach a settlement of their differences.

Mr. Spence: And I think...and I apologize everybody I think the rules say, one mediation session. It's not specific to eight hours. But like I said, I don't have it in front of me, but yes if it looks fruitful, I think the Department would pay for more sessions. But if, at the end of say, whatever mediation session, it's not going anywhere then... (inaudible)... come back and you talked about a contested case. And we're, well you know, we would be in favor of mediation too. The shortest way to reach some kind of agreement.

Mr. Hopper: Okay, the Commission can appoint a mediator and then appoint the hearing officer in the event mediation is unsuccessful and then you've done what you can for now. I mean, that's an option. If the parties have concerns about the timing of the mediation they can express them. If they've got suggestions as to the wording of the appointment if it as to be done within a certain period of time, but frankly for now, I'm not sure with the availability of the potential is at this stage so that may be a bit difficult to have it done by, you know, a two-week period without knowing their availability, but if you wanna set a time frame, I think that's within the Commission's purview. Absent that, I think it sounds like a process that's worked before where the parties can agree to, you know to get a date and complete by a certain time frame, but you know, if the parties have concerns they can obviously voice them and if you wanna look at minimum or maximum time frames I think the Commission can consider that.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: With that, I will try to attempt to a motion here that we can discuss. That the mediator be Judge McConnell, hearings officer be the Commission and that they report back two weeks after the start of the mediation after the Department. That way if we start, it doesn't have a time frame until they start. And they said, it sounds like they can get it done in a couple of days.

Mr. Medeiros: Second.

Chairperson Lay: Motion by Commissioner Ball, seconded by Commissioner Medeiros, any discussion on the motion? Commissioner Wakida?

Ms. Wakida: Should we in the motion appoint McConnell and if he's unavailable, then have a back up like August otherwise...

Vice-Chair Ball: Didn't we discuss that already and ... (inaudible)...

Mr. Hopper: So you said, two weeks from the date it starts.

Vice-Chair Ball: From the mediation, right.

Mr. Hopper: Right, so are we sure that Judge McConnell is available. I mean, maybe not in the next two weeks, but he's available at some point or should we appoint a back up as well in case he's not available at all. Should appoint a back up.

Mr. Spence: They do.

Chairperson Lay: Director?

Mr. Spence: Maybe when would the parties be ready to start mediation? So we would have a start date. If the, you know, and that would help with the selection of a mediator if that person is available within the time frame, you know, by the parties then we could go to the next.

Ms. Verbrugge: Hi, the State is ready to go at any time and, sorry I don't wanna beat a dead horse, but we really...we want to work in good faith to try to work this out, so that's why we are in favor of mediation but we would like it a parallel track. A mediation not to hold up the hearing date, but we would like to give it a shot. We're optimistic. Thank you.

Chairperson Lay: Isaac, you wish to say something? Mr. Hall?

Mr. Hall: No, no we've been ready this whole time. I think what's required is who's been appointed. If the mediator gonna call us up saying he wants prehearing statements, file prehearing statements, we have your mediation. I think it's important...what's important is to have one of these experienced mediators and not some less experienced mediators and you're addressing that and I appreciate that. And I think the State's gonna have to need time to try to get Aloha Airlines involved too, so it's not something that could happen tomorrow but it can happen as quickly as they want.

Chairperson Lay: Commissioner Duvauchelle?

Ms. Duvauchelle: Questions for Corp. Counsels, so we could an end date, add it onto Commissioner Ball's motion that to report...meditation to begin and to report back to us by...completed by 5/26?

Mr. Hopper: Well, I think Commissioner Ball's motion was two weeks after the start of the mediation. He did not put a start date for the mediation on it, but requires a reporting back for the mediation. If you want to put an end date to the, you know, a deadline for the parties to complete their mediation, I think that's within your purview. I mean, you know, if they are having real trouble doing it by then I suppose they can come back before you and request an extension of that, but I don't see a problem with the Commission stating a drop dead date for the mediation to end.

Ms. Duvauchelle: And if, you know, with agreement I'd like to add that then to Commissioner Ball's motion...(inaudible)...

Mr. Spence: And that was an end date of?

Ms. Duvauchelle: May 26th.

Chairperson Lay: I have a question again with Corp. Counsel. Okay, so what they're saying a mediation at the most will take one day, right? So wouldn't it be once we've got this mediation date, wouldn't it be safe to say within our next meeting after that. And that way if it is, we want everything to be done quickly that we can do it in that essence or...

Mr. Hopper: Those are all options of the Commission I think.

Chairperson Lay: That way we can get the process going a lot faster. And in case, they end right after our meeting then we have to wait two more weeks before we get it going, I'm not sure, I mean...

Vice-Chair Ball: And that's why I put it at the two weeks 'cause I figured if it was a day or two that they mediate, it's up to them to know when we're gonna meet, to get it done. Instead of we following them to say, oh hey we're gonna be, you know... So it's up to them to get it done before, when we leave, the timing is up to them. Us change our schedule, ... (inaudible)... I think. If we give them that long time frame as we've done.

Chairperson Lay: So we now have a motion on the floor, first and seconded, and any more discussion on that motion?

Mr. Spence: Could we have a...we could probably have a motion... (inaudible)...

Ms. Duvauchelle: Yes, and as far as the end date goes, I'm flexible if you would like to make that on the May 26th meeting or but I think we should put an end date and not leave it open ended.

Mr. Spence: You should probably make a motion whatever your preference.

Mr. Hopper: So it would be two weeks after, but no later than, no later than our end date that you're proposing.

Ms. Duvauchelle: May 26th.

Chairperson Lay: Does the maker of the motion agree with that? Separate motion, excuse me, yeah.

Ms. Wakida: She needs a second.

Chairperson Lay: I need a second then.

Mr. Hopper: This is to amend the main motion.

Ms. Duvauchelle: Then I will make a motion to amend the main motion to add an end date of May 26th for mediation to be completed or agreed upon and report back to us. Does that make sense?

Mr. Hopper: So the wording would be two weeks after, but no later than May 26th?

Ms. Duvauchelle: Yes.

Mr. Hopper: They need to report back to you by that date?

Ms. Duvauchelle: Yes.

Chairperson Lay: I need a second.

Mr. Medeiros: Does that mean on the May 26th meeting, if need be we would be hearing it?

Mr. Spence: We would be...we would have a report back to the Commission on the 26th.

Ms. Duvauchelle: She's saying the 27th.

Mr. Medeiros: On 27th. Okay, but would we be hearing it if need?

Chairperson Lay: We have a motion on the floor. We need someone to second the motion.

Mr. Tsai: I'll second it.

Chairperson Lay: Okay, Commissioner Tsai seconded. Commissioner Wakida?

Ms. Wakida: I don't think we need an end date. I think the parties are as anxious as anybody to get moving on this. I think they're capable of coming back to us as soon as our calendar is available for them. And I think we can leave that up...(inaudible)..

Chairperson Lay: Any more discussion on that motion? Okay, we're gonna vote that. You wanna report the motion.

Mr. Spence: The amendment was to--

Mr. Hopper: ...(inaudible)...May 26th deadline for reporting--

Mr. Spence: Right. There was a May 26th deadline for reporting back, May 27th excuse me, deadline for reporting back to the Commission of the mediation.

Chairperson Lay: All those in favor?

Mr. Spence: That's ayes.

Chairperson Lay: Oh, all those opposed?

Mr. Spence: One, two, there, that's four opposed.

Chairperson Lay: Motion fails.

Mr. Spence: Okay, so we're back to the main motion.

Chairperson Lay: Back to main motion. Any more discussion on the main motion?

Mr. Tsai: Did we wanna add August as the back up?

Ms. Wakida: Yes.

Mr. Spence: If I have the main motion correct to appoint Judge McConnell as the mediator and now you're saying Joel August as the backup.

Mr. Tsai: That was said...(inaudible)...

Mr. Spence: Okay. So, Judge McConnell as the mediator and what was the rest of it?

Unidentified Speaker: Commission as the hearing officer.

Mr. Spence: Commission as the hearing officer.

Vice-Chair Ball: And they need to report back to us two weeks after they start mediation.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: So does the motion say, Judge McConnell with Judge August as the backup?

Chairperson Lay: Yeah.

Mr. Hopper: You would want to amend the motion if you wanna make...I would...for to keep things procedurally correct, I mean, I would ask for a...I think you should ask for a motion to amend that original motion to add Judge August as a backup in the event that Judge McConnell is unavailable. Since that's what you did for the drop dead date.

Chairperson Lay: So we need a second on that motion also. Commissioner Hedani?

Mr. Hedani: Perhaps the maker of the motion and seconder would agree to that addition?

Mr. Medeiros: 'Cause that would be friendly amendment.

Chairperson Lay: Okay.

Vice-Chair Ball: If that's okay with Corp. Counsel?

Mr. Hopper: Is there a unanimous consent with that?

Chairperson Lay: All those in favor? And that was just an amendment to the motion?

Mr. Hopper: That's correct.

Chairperson Lay: And now any more discussion on that amendment of the motion. Commissioner Wakida?

Ms. Wakida: I'm sorry, what did we just vote on? Did we vote on the friendly amendment?

Mr. Hopper: What you just did was add Joel August as backup hearing or backup mediator in the event that Judge McConnell was unavailable. And that's the change that you made to the main

motion.

Ms. Wakida: Oh, I understand. I thought the maker made the change.

Chairperson Lay: Now we go back to the main motion. Do you wanna repeat the motion?

Mr. Spence: Okay, the motion is to appoint Judge McConnell as the mediator with Judge August as the backup person. The Commission as the hearing officer. The parties will report back to the Commission within two weeks of start of mediation.

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

Mr. Spence: Okay, that's six ayes.

Chairperson Lay: Those opposed?

Mr. Higashi: I abstain.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just as a comment. When the State's attorney comes back before the Commission could you request that she not chew gum when she's testifying before the Commission?

Chairperson Lay: All right.

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

**VOTED: To Appoint John McConnell as the Mediator with Joel August as the Alternate Should Mr. McConnell not be Available and the Commission to be the Hearings Body. Also, that they report back to the Commission with two weeks after the start of the mediation.  
(Assenting - K. Ball, J. Medeiros, M. Tsai, W. Hedani, S. Duvauchelle,  
P. Wakida—Abstained - R. Higashi)  
(Excused - J. Freitas)**

Chairperson Lay: Our next agenda item? That's it.

Mr. Hall: Thank you very much.

Mr. Spence: Okay, Commissioners, we're on Item G, Kahana Sunset AOA requesting an EA Determination of a Final Environmental Assessment prepared in support of a Community Plan Amendment, Shoreline Setback Variance and our Staff Planner is Mr. James Buika.

## **G. NEW BUSINESS**

- 1. KAHANA SUNSET AOA requesting an Environmental Assessment (EA) Determination of the Final Environmental Assessment (FEA) prepared in**

**support of the Community Plan Amendment and Shoreline Setback Variance for the proposed Kahana Sunset shoreline and site improvements located at 4909 Lower Honoapiilani Road. TMK: 4-3-003: 015, Kahana, Lahaina, Island of Maui. (EA 2012/0002) (CPA 2012/0003) (CIZ 2012/0007) (SM1 2012/0003) (SSV 2012/0002) (J. Buika)**

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

**The EA triggers are the Community Plan Amendment and the Shoreline Setback Variance.**

**The public hearing on the Community Plan Amendment, Change in Zoning, Special Management Area Use Permit, and Shoreline Setback Variance will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Jim Buika: Thank you, Director, Chair, Commissioners. My name is Jim Buika, Planner with the Planning Department. I'd like to thank you all for your contributions and expertise to the people of Maui County. We appreciate it. With me today for the Kahana Sunset Final Environmental Assessment I have Raymond Cabebe from Chris Hart and Partners representing the applicant. I have the applicants here from Kahana Sunset AOA, and several of the engineers to describe the project to you today.

With the Chair's concurrence I would like to do three things upfront. First is to present the purpose of the Final Environmental Assessment in the context of past work and this current project. Second, present the three options before you today regarding your deliberation about the Final Environmental Assessment, and then third, will be to allow the applicant's representative, Mr. Cabebe to give you a short presentation about the project to reorient you to the project since it's been a year since the Draft Environmental Assessment has occurred. Is this okay to proceed, Mr. Chair? Thanks.

First the purpose of this agenda item is for the Maui Planning Commission to take action on the Final Environmental Assessment which has been distributed to you. The purpose is for the work that is in the shoreline setback area as well as outside shoreline setback area. Some of which has been completed as part of three SMA Emergency Permits since 2009...2009, 2010, 2013 that were issued by the Planning Department to structurally stabilize two buildings that were undermined by wave action at the shoreline both in 2009, then in 2010, and then 2013. It's good just to ignore the slides for the moment. I'll just talk to you briefly.

At that time, the Maui Planning Commission back in 2010 had asked the applicant because of these repeated Emergency Permits to come up with a plan for strategic retreat from the shoreline. And so part of the project that is in this Environmental Assessment here before you is some concepts for a strategic retreat from the shoreline and some of the...most the work being done is moving back farther outside of the shoreline setback area. Not completely outside the setback area but it's a good first attempt in terms of the coastal hazards.

So to the benefit of the project there will be also be a major drainage that will be repaired. That goes well beyond the project into some of the public works areas, the roads and to the watershed behind it, and the applicant's engineers are here to briefly discuss that. Any questions you may have.

And then very importantly to the benefit of the public, a long overdue public shoreline access will be created for the first time in Keoninui Bay. The Department commends the Kahana Sunset AOA for adding the public shoreline access. We'll present that to you. Unfortunately over time the entire Keoninui Bay has been walled in by seawalls and it has had an impact on the shoreline and this project here is an attempt by one of the parcels, probably the largest parcel on Keoninui Bay to strategically retreat somewhat. So even though the project isn't fully complying with the Coastal Zone Management Act it is a good start planning in the right direction. Thus from the Department's perspective the work being completed under this project is lessening the impact on the shoreline and beach processes and again, it's a step in the right direction. So those are just some opening remarks about the project.

Second, the applicant, Kahana Sunset AOA is requesting a Finding of No Significant Impact from the Commission for the Final Environmental Assessment today. The Environmental Assessment was triggered by work completed in the shoreline setback area requiring a variance from the Maui Planning Commission Shoreline Rules and also a community plan amendment to Hotel which Mr. Cabebe will explain to you. The Maui Planning Commission is the accepting authority for this EA and the Draft EA was reviewed by you at its regularly scheduled meeting on February 26, 2013. So over a year ago. At that time, the Commission had requested additional information on nine different topics which are addressed. The Draft EA was also sent out to other agencies and the comments are addressed in the Final EA.

So today you have three options. Option one regarding the Final EA is to accept the Final EA and issue a Finding of No Significant Impact. In this case, the Commission determines that the proposed action will not have a significant impact on the environment and that the potential impacts have been adequately mitigated. As such, the Commission issues a FONSI Determination at its regular meeting today and then this determination will be published in the Office of Environmental Quality Environmental Notice for publication for 30-day legal challenge. If we pass through that legal challenge, then we'll come back to you one more time with the Major Permit and the variance for review by the Planning Commission. The second option is to defer the Final EA for additional information. And we defer to get additional information and go through the same proceedings again. The third option is to prepare an Environmental Impact Statement if you as a body do feel that there are significant environmental impacts from these actions then we can prepare an Environmental Impact Statement which just means that we do some more research and that we would conclude that there are environmental impacts. Doesn't mean that we can't go on with the project, it just means that we recognize there are environmental impacts and we would deliberate over the best options in the future during the SMA process.

So this concludes my introductory remarks and with the Chair's permission I would like to allow the applicant to share the project with all of you especially for our new commissioner, welcome. Thank you for help on the Commission. So I'll present Raymond Cabebe who will present the rest of the applicant's team here today. Thank you.

Mr. Raymond Cabebe: Thank you, Jim. Good afternoon Commissioners and Chair Lay. My name is Raymond Cabebe and I'm with Chris Hart & Partners representing Kahana Sunset AOA for this project. As Jim said, this is a Final Environmental Assessment in support of an SMA Permit, a Shoreline Setback Variance, also Community Plan Amendment and Change in Zoning. Our presentation today basically is going to be an overview of the project. Many of you have seen most of it, but I'm just gonna go quickly through it for the benefit of the new Commissioners. We'll go over the existing site, the proposed actions and some of the agency comments and the conclusion.

Today, we have representing the Kahana Sunset AOA, Jackie Scheibel who is the Long Range Planning Committee. She's the Chairman of it and Mr. Bob Scheibel, who's the Board President. Jordan Hart is also here from our office, and we also have Dr. Mark Siah who is the civil and coastal engineer and Dr. Kumar Siah, the structural engineer.

This is the location of the project. Aerial view of the project with the surrounding area. The tax map. The project has 79 units. It's on 4.4 acres. Constructed in 1971 with all those amenities shown there. This the layout of the property showing the buildings. They're labeled A through F going in a counterclockwise from the top. There's also a support building here with the resident manager facility, office and laundry and the ocean is to your left area.

It's community planned for single-family, also zoned for R-3, and that's the reason why we're asking for the Community Plan Amendment and for the Change in Zoning is to make the land use designations consistent with what is actually happening there. There's a variance that was granted in 1968 that allowed them to build it as a apartment, condo, hotel and in those days you know Apartment zoning, long-term....short-term rentals were allowed.

This is a brief history of what's happened there. Like I just said, a variance was granted in '68, constructed in '71. The seawalls were constructed from '75 up to let's see '96. In 2003, there was repairs to it. Like Jim said, 2009 and 2010 there were Emergency Permits with another Minor Permit in 2012 to do some repairs. And last year there was, it was noticed that there was some undermining of a portion of the wall, so there was another Emergency Permit that was approved for that and we'll go through that in detail later on his presentation.

This is some of the photos. This is in front of the A building so the north side of the property. If you take the steps down this is the A building here. And this is looking towards the A building from the beach and this is looking towards building F from the beach.

There's also some drainage improvements that's gonna be done on the property and this is the outlet that's right here. And you can see the condition of the wall here, cracked. This was taken two years ago, so I'll show you some more current pictures of this. Here's the steps that is currently there that comes down to the ocean from the property. This is in January 2014. It's getting worse. They have it cordon off so people don't go there for safety concerns. This is like last week. It's getting...it's washing out more, so just to show you the urgency of this...the SMA Permit that we're trying to get for them. The drainage improvements really need to be done really soon.

Now this is the site showing the ocean on the bottom here, this is building A here, building F on this side, and there's actually five parts to this project. The demolition, the reconstruction of the seawall that's in the central wall, the drainage improvements, we're gonna replace the drain, a 300-foot long

drain that comes from up here down to the ocean. There's landscape improvements. There's a change in zoning and community plan amendment and the finally there's the shoreline access path that's gonna be constructed.

For the shoreline improvements there's 114 feet of wall that's gonna be demolished and 125 feet reconstructed. It's gonna move back about 10 feet. The walls are gonna be moved back about 10 feet, but the stairs it's about 30 feet inland. So there's a shower that's around in this area right now, it's gonna be relocated more inland also. This is the sea...plan of the old seawall. This is still here, the steps are still here, but this part of the seawall has eroded. It got damaged and was removed. This is the new configuration of the seawall. You see the red is the new seawall. You can see barely the outline of the existing seawall, and the existing steps and you can see the relationship of how much they're moving back. This will create a larger beach. It adds about 5,000 square feet of beach to the area.

This is the F building existing seawall and the new seawall will attach right here to it and extend out. These are our sections, cross-section of the seawall and touching those stairs. And if you have any questions about that, we have the engineers here for the...he can explain more about it.

This is the drainage. As you can see the drainage comes, there's drainage that comes off of the road and actually drainage that comes from upland areas is about...there's 44 cubic feet per second that comes off of the upland areas that enters the property and then outlets out here. From the road there's about nine, there's 9.12 cubic feet of drainage. It comes off directly off the road also enters the system. And the property itself contributes 11, about 11 cubic feet per second. Cause you know, coming off of the property it's like about 82 percent of the drainage off property and coming through the system in the outlet right here. So the proposal is to replace this drainage line here. This has been there since the '70s and so it's failing. You can see the failing on this end and in the middle part here it's also failing. It's about 300 feet long, it's 36-inch diameter. This part of the drainage system is also gonna be up sized from 6:00 to 8:00 and the inlets here and the inlets here, we're gonna be filtered also.

And moving onto the landscape improvements, there's a...the landscaping actually just comes down to this area here, so there's gonna be a short retaining wall that's gonna be constructed to expand the lawn area. And it's the new, latest planting putting in there. The community plan amendment is from Residential to Hotel and the Zoning is from R-3 to H-M Hotel. This matrix shows the Kahana Sunset listing and what was allowable in 1971, existing R-3 conditions and then the...what the proposed H-M on the...what it comes to what's there now. So as you can see transient vacation rentals aren't allowed in R-3. They're doing it right now because of the variance. H-M will allow them to do it without a variance. As far as minimal areas, it meets all the minimum areas. It's meets the height maximum for H-M and the lot coverage and floor areas also meets those. ...(inaudible)...side yards, front yards and...(Inaudible)...yards and for parking also.

Now this matrix shows a comparison to other zoning designations, A-1, A-2, H-1, H-M, and H-2, and this is the reason why H-M was selected because it gets into HHM conditions between than any of the other zoning designations. In Apartment zoning transient vacation rentals are not allowed so that eliminated A-2 and A-3. The height, the maximum height is two-stores and Kahana Sunset is three stores. So H-M was selected. H-2 would also be compatible but you know, it's a higher density, taller buildings, not appropriate for what Kahana Sunset is right now.

The shoreline access path will come from Lower Honoapiilani Highway...Road. Entrance are up here and extends down here to the beach with steps coming down here. It's about 250 feet long. It follows the natural contour of the property. It's gonna be six inches of crushed stone and it ranges between 38 inches and 60 inches. There's gonna be six-foot high fence to set it off from the rest of the property and with landscape planting also. The stars were as part of the Emergency Permit last year were constructed. Let's go to the emergency work. As you can see this is before the emergency work was done. There's undermining under this part of wall. This is an old part of the wall that when they reconstructed the F building wall, they left this part here. It's like of like a fortress and the old stairway does that nobody used anymore. It was being undermined. You can see here, being undermined here again. And also the soils under, under the wall was being washed out to the ocean and so what happened we went to the State and got a permit. Also to the County to get a Emergency SMA Permit to construct, reconstruct that part of the wall, remove the encroachments and as part of that action. Since all the...they mobilized all the equipment down there at the shoreline, they also got permission to construct the stairs for the shoreline access. This is before the encroachments were removed and this is the after. You can see a little bit. And this is the building F that corner of the property before and this is the new access to the ocean here.

This is the sections of the new stairway coming from the corner of the F building down to the shoreline and this is the plan of the...showing the patch coming down here, the stairs here. There's an existing rock wall on this side along their property line. And there's gonna be the new six-foot high fence and a planting buffer.

The permit said they're gonna be required to get the SMA Permit and the Shoreline Setback Variance from this body. From Public Works, we're gonna have to get a building permit and grading permit. The flood permit comes with the building permit. Eventually we'll go before the Maui County Council to get the community plan amendment and change in zoning and also from the DLNR we need to get a right to entry to do the work on the shoreline and in...after that's done we'll go back to the State resurvey the shoreline, determine where the shoreline is, and get easements for whatever encroachments remain after that work.

Got some agency comments, we went through these the last time and so we won't go through them in detail. From the Commission we did get some comments regarding the density which we, you know, why...the question was why H-M Hotel zoning and I think we talked about that earlier in this presentation. And went into more about what the encroachments are and how that's gonna be dealt with as far as with the State. As far as lighting, the project is gonna comply with the County Lighting Ordinance. And shoreline access we showed you how the shoreline access path is gonna work. The Planning Department also recommended that we have a community meeting which we did have in July, last July and invited all the property within 500 feet which were about 233 of them. And the Planning Department also wanted us to go into more detail about the alternatives and suggest more alternatives and they're in the Final EA. And to, more detail about the drainage also, so that's also in the Final EA.

This is the time line, it was a, as Jim said, it was published on February 8, 2013 and reviewed by this Commission February 26, last year. We got a letter from some residents of Napili Villas. They were concerned with the Hotel zoning, and we addressed them, to say that Kahana Sunset wasn't planning to, you know, rebuild or anything, their primary reason for the rezoning was to bring their property into compliance. And we had our community meeting In July. We submitted a Final EA

in August to the Planning Department. They asked for some revisions. We resubmitted that in January and we sent out the Notice of Application, SMA application on March 28, actually it was published on March 28, the SMA application, then we sent out the notices for the Community Plan Amendment and Change in Zoning on March 31<sup>st</sup>.

So we believe this Final EA addresses all of the concerns and the impacts and we're asking for a determination, a Finding of No Significant Impact and that concludes our presentation. We're open for questions.

Chairperson Lay: Commissioners, at this time we're gonna open up to public testimony. If anyone wishes to testify at this time, please step forward, identify yourself and you have three minutes. Seeing no one, public testimony is closed. Commissioners, questions? Commissioner Ball?

Vice-Chair Ball: Disclosure. My sister owns a unit in this complex, but I have no financial interest in at all, but I do know the complex very well. ...(inaudible)...yes, originally it was probably built too close to the shore, the shore went away or something, but I can attest that it is undermining and very hazardous if a big swell comes into so, so I guess you know which way I'll be voting.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Thank you. Mr. Cabebe, is this property...are the condos individually owned?

Mr. Cabebe: Yes.

Ms. Wakida: All of them?

Mr. Cabebe: Yes.

Ms. Wakida: And are they fee simple or leasehold?

Mr. Cabebe: Fee simple.

Ms. Wakida: So if let's say, I'm gonna just pick a number, I mean, a letter, let's say A building wanted to get torn down and get rebuilt that would require permission from all of the owners and each of the units to do that, is that correct?

Mr. Cabebe: I believe so, yes. Any kind of action like that would also be, you know, have to come to this, probably to this Commission.

Ms. Wakida: Oh, yes, but I mean before it even gets that far, you'd need the consensus of all the owners too.

Mr. Cabebe: Yes, that's correct.

Ms. Wakida: Okay.

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

Ms. Wakida: Yeah, I'm just gonna sorta harp on the zoning change request a little bit. Back in the beginning your original request was for a two-story modified building. I'm just looking at what was in your documents here, but it is three stories, right, Kahana Sunset?

Mr. Cabebe: Yes.

Ms. Wakida: I wonder if anybody, you or anybody that you brought with you has any history of this? Was it always a three-story building or was there another story added?

Mr. Cabebe: It was always a three-story building I believe.

Ms. Wakida: Always a three-story building?

Ms. Cabebe: This is Jackie Scheibel.

Ms. Jacqueline Scheibel: The original architect, his name was Mr. Suzuki and I have the original plans in storage. The plans have never been changed. We've had two separate owners who wanted to modify the plans. They wanted to...one wanted to extend a bedroom on the second story...two of the buildings are townhouses and the rest of the buildings have one bedroom below and then a two-bedroom unit above it. And so the two-bedroom unit opens from the other side, and the one-bedroom unit opens from the opposite side. So that's how they're constructed. So there are, you know, we're six buildings with four of them being three stories and two of them being two stories, and you can't make any modification per our bylaws without...it's just, it's not allowed. And so, the question about could there be, you know, a building built taller than three stories, could not happen per our bylaws. And you know, we've been very, very careful about that because we like the fact that the buildings built, you know, kinda settled down into, into what is like a small little hill. We also like the fact that we're able to push everything back and up so that we're gonna have more beach and it's essentially going—we're widening the courtyard and we really like this new plan. And so...but there's not going to be a way that it can be changed per our bylaws.

Ms. Wakida: Thank you.

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

Ms. Wakida: Guess it's just gonna be me. Okay, maybe Mr. Cabebe could answer this. What is the current variance read? In other words, you said the property now has a variance.

Mr. Cabebe: Yes.

Ms. Wakida: So what is that, what's entailed in there?

Mr. Cabebe: It's in...if you have the big book, it's Appendix C.

Ms. Wakida: I'm sorry, which Appendix?

Mr. Cabebe: Appendix C as in Charlie.

Ms. Wakida: Okay, and...

Mr. Cabebe: And it's about half-way down it's a letter, it's a letter to Meyer Ueoka...well, it's actually from Meyer Ueoka to the Planning Commission.

Ms. Wakida: Right.

Mr. Cabebe: And it says the owners and developers to construct a two-story modified building with a 40 percent density plus club facilities with one parking stall for every two units. Further a sketch of the proposed structure shall be submitted for approval not later than February 20<sup>th</sup>.

Ms. Wakida: Okay, and is that an open-ended variance? In other words, does it last forever?

Mr. Cabebe: I guess there's no, there's no time limit on it.

Ms. Wakida: So, from the beginning...what I'm trying to get at here, this...you say this has been a short-term rental property from the beginning so was there a...some kind of variance in the beginning that allowed him to do that? It's not in this letter, but you know of any other documents or have these short-term rentals been operating illegally from '60...from '71?

Mr. Hopper: For the first time short-term rental homes were prohibited in 1981. Prior to 1981 there was a court ruling for Puamana actually that determined that short-term rentals unless expressly prohibited or allowed in Residential zoning. So before 1981 there wasn't a restriction on short-term rental home use. In 1981, the County Council passed for the first time a ban on transient vacation rentals and that's in the Code. And then so, from 1981 on, they were banded in Residential and Apartment and in 1991, they got banned in Apartment with some exceptions. So again, a court ruling, Intermediate Court of Appeals, and I don't necessarily agree with the decision, but it happened a while ago and the County's been abiding by it was that with respect to Puamana could not, the County did not prohibit short-term rental home use before then and so if they were operating prior to the '60s and got a variance...I mean they would have been allowed to operate before 1981 even if they were in Residentially zoned area but they would...then they'd have to get a variance and then after 1981 when the ban came in they would have been considered a nonconforming use had they not gotten the variance, and the nonconforming use would have made them approved continued operation from then on. There's a couple Corp. Counsel opinions on that that from a while ago, but anyway...

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, what I'm...I guess I'm trying to get at is an option. I'm not at all happy with changing the zoning. An option that they can continue as they are without having to do that. And so a nonconforming use application would satisfy that? Perhaps the Director can help me out?

Mr. Spence: Well, there's no such thing as a nonconforming use application. I mean, you either are or you're not. Perhaps another way to say what Deputy Corp. Counsel Hopper is saying is once upon a time I had a legal use, and I was really operating legally under the law and then the law changed to make, to make it illegal. Well, being grandfathered in, you know, you can continue that use so long as you keep doing it. So since whenever before '81 they were operating as short-term

rentals and they have not discontinued that use since that time. So they can continue operating so long as they...they can continue operating short-term rentals so long as they have not discontinued that use for more than one year. I mean, all those units would have to stop.

Mr. Hopper: And the unit would have to prove, each unit would have to prove that they didn't stop for more than a year at a time and that can be very burdensome, but they also have a variance, right/

Mr. Spence: That's my understanding.

Mr. Hopper: Yeah, so the variance would run with the land generally.

Ms. Wakida: So if they did not get a change in zoning to H-1 they could continue as they are?

Mr. Spence: Yes they could.

Ms. Wakida: Okay.

Mr. Cabebe: Can I make a point too also, they were also being taxed as Hotel Resort, so they're already paying the taxes, you know, as a hotel.

Ms. Wakida: Okay.

Mr. Spence: And just for clarity for the record, there is a variance for that use?

Mr. Cabebe: Not specifically for that use. It's not specific in the variance itself.

Mr. Spence: Okay. And I would just note sometimes variances have expiration dates and sometimes they do not.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Raymond, I was the one during the first EA, you know, in the first EA review that requested an analysis of providing public beach parking. The proposal that you have come up with shows a very nice public access path along the edge of the property with no parking on the property. Every Hotel zoning that we have in Kaanapali is required to provide 10 stalls of parking for public access at least in Kaanapali at every application that they've made before this Commission. How do you resolve not providing parking based on the proposal that's being ...(inaudible)...

Mr. Cabebe: If you look at our parking analysis in here they have like 1.3 stalls per unit, and that's pretty tight already. And we looked at, you know, what they could do and it didn't look in terms of where the access is located and where the parking would be on the property, you'd have to park on the property. You drive down. It's like about, you know, it's a very steep driveway when you go in there. I don't know if you guys are familiar with that. But then...so you drive down, park on the property, then you have to walk back up to the road and then access the...you know, go through the access. So it's not practical in that sense. And along the road there's parking that's...I'll say

it's available, but it's not legal. It's actually there's no parking on the makai side of Lower Honoapiilani Road by ordinance, but people park there. We have photos of people that park there daily and people just do it. I guess it's not enforced, whatever, but there's quite a bit of parking on the street and you know, it's characterized as a neighborhood path. It's for more for the people that live around there 'cause there's...presently there's no access to the beach at all, you know, unless you jumped off Haukoi Point and swam to it or something like that or if you knew one of the owners along that beach and you know they let you through their property. So this is the only point of access and you know, and it's not meant to be a full-service beach park you know, where you have all the amenities of a typical beach point. It's just, it's a access, you know, get down to the beach. And so that's how we looked at it. And you know, as far as you know parking on the property wasn't a practical...we don't think it's a practical thing to do.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Okay, let me make sure I understand this, yeah. There's illegal parking on Honoapiilani Highway that people use, park the cars and that's the recommended parking for beach access?

Mr. Cabebe: No, I'm not recommending that. I'm just saying it's available.

Mr. Hedani: Okay, let me ask the question in a different way. The EA basically says that there's a 10-foot wide shoulder on the mauka side of Lower Honoapiilani Highway Road that can be used for parking or is used for parking. That means they walk across the road to get the beach parking path, possibly get run over by cars in the process, and would be able to access beach parking as a result of that?

Mr. Jordan Hart: Do you mind if I reply? This is Jordan Hart from Chris Hart & Partners. To clarify, the area we're talking about is on the makai side of the road. And we did have a meeting with Public Works and discussed this. We also met with the people who are part of a slower road movement for the Honoapiilani Road and we what we actually proposed is that the no parking restriction be removed and that the basically the Council just enact an action to stop prohibiting parking there because there is a adequate space for people to make use of it. It's being used currently and we also feel that it's, you know, safe for the purpose as is it being used currently. And so it's not to perpetuate illegal parking but basically that the parking be made legal for that purpose.

Mr. Hedani: So the intent is to have improved parking on Lower Honoapiilani Road that would serve the beach access?

Mr. Hart: Whether or not it be improved was not really what we were getting at but basically that the prohibition of the parking on the shoulder be removed.

Chairperson Lay: Rowena? Rowena do you wish to comment on that?

Ms. Dagdag-Andaya: I know we had a discussion with the applicant and the applicant's representative and you know, I can't...sorry, Jordan I can't recall but that is something that can be considered. That would have to go before our Traffic Safety Council for review before we bring that to the Public Works Commission. But in addition to that, there is a Lower Honoapiilani Road

Phase 4 Project that we have in planning. It's been, it's been in for a long while now but there's a lot of things that still need to be worked on. The size of the right of way, the size of the travel way shoulder, sidewalks, bike path or a bike lanes and parking. So all of those need to be considered. But that's not happening right now. What we do have in this year's Fiscal '15 Budget is improvements for the drainage. So that includes a retaining wall and other improvements, the inlets, but as far as parking we don't...we haven't really explored that yet.

Mr. Hart: If I could add to that if possible? So our point again is that the...a space exists. It's currently being used. We have photographs here showing the parking that's going on. And so, you know, I park there when we've done site visits myself illegally. And so we're not basically opposing the improvement of it, but just that the prohibition be removed for this purpose because it does meet the need and we did analysis our project site and it is because of the topography and the location between the access point and the actual parking that's not really very practical in addition to the parking requirements that the actual tenant or residents have for their own units. So that's kind of our complete answer.

Chairperson Lay: Keone you still—

Vice-Chair Ball: I'm thinking right now.

Chairperson Lay: I have a quick question on that. Okay, residents are they given, we've got 1.3 stalls per resident, right? How does that pan out as far as every three residents, we got four residents we have another stall, do they bid on that extra stall or does certain parking get a stall?

Mr. Hart: They're unassigned, but they're fully utilized.

Chairperson Lay: Director?

Mr. Spence: I would just like to make a comment too. I'm not sure how to resolve the whole parking issue or anything but right now there is no public shoreline access. None, parking or not. What they're proposing to do is provide that. I mean, even in this case some shoreline access is gonna be better than none. Part of the goal of the Special Management Area Law and your Commission Rules, Hawaii Revised Statute, 205A is...part of the goal is to give access to the shoreline. So they're proposing to do this even if it's imperfect. We would consider it a large improvement over what currently exists.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I'm encouraged to hear that you're gonna try and change that if that's what you're saying to remove that restriction on the parking on that side because that would help a lot for access to that because we park in...you know, my sister has a unit in there and we park in there and sometimes, it's you're scrambling for parking in there if it's, you know, during the peak season of vacation rentalers. So I know parking in there is at a premium. But if you had, you know, people were allowed to park up on the highway, the lower highway that would help a lot because then they walk down the driveway or whatever, but...

Mr. Hart: If I could add? So our thought had been that we're going to the Council level for

discussion and decision on these Change in Zoning, Community Plan Amendment. The Council makes decisions like this. Basically what we were looking for was consensus that this is an appropriate suggestion, perhaps recommendations or support from Public Works and Planning and basically present to the Council and say, you know it's a perfect fit for what's going on here, can you also adjust this ordinance while addressing our Change in Zoning and Community Plan Amendment.

Vice-Chair Ball: And I don't know about perfect, but it definitely would help the situation like Will said, you know. It's better than building the path that no one can walk down because of the lack of parking your car or whatever.

Mr. Hart: That's what we concluded.

Vice-Chair Ball: Yeah.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Well, I'd just like to throw into this for consideration. We have to keep in mind pedestrians that walk along the shoulders. If parking is permitted on one side and the other side is enforced to be left open for pedestrians because it's a very difficult area for pedestrians and there's a lot of foot traffic along there. If cars are parked along here, pedestrians have no place to go, that area is about the width of the car. So we have to keep that in mind.

Vice-Chair Ball: And I don't see it as a major parking lot, you know, like there's not tons of people that are gonna show up that maybe I don't know...

Chairperson Lay: Jim, do you wish to comment?

Mr. Buika: To pick up on the Director's comments and the discussion here about the parking. You know, I've been up there many times and some of the questions lead to, that there are some open spots in the complex. If the Chair and the Commission are amenable to it, maybe the Department can work with them as part of the Major Permit to see if they can designate maybe one, two or three of those spots as visitor parking or beach access parking as part of their project.. And they can...people do...they have always, Kahana Sunset has always let people walk down their driveway and access the beach. It's just not a formal access like the walkway would be. So if there was some minimal parking that would help. I mean, that would help in...we could see parking is tight but the Department can work with the applicant if that's amenable to...I haven't discussed with the applicant, but we can hold discussions and see if it's possible if the Director is...thinks it's a good idea?

Chairperson Lay: Well, at this time I think we work on this EA, you know, look what we got here and if anything else comes after this we can follow up on the parking.

Mr. Buika: It's true. This will come back as the Major Permit so we can take your comments into consideration when we come back.

Mr. Spence: That was sort of my thought that...I mean, what's before the Commission today is this

Environmental Assessment. They're going to come back for a Major SMA and they're gonna have some time between now and then to figure out how to, you know, get more direct answers on the parking and talk to Public Works more maybe, and however that may be, but this will come back before the Commission. This is not something you need to decide on today. What's before the Commission today is the acceptance of the Environmental Assessment or not.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Okay, I just, I think the plans for the seawall and so on are just fine. I have no problem. My only quarrel is with the Change in Zoning. I would like...I have no problem with Kahana continuing business as usual, and partly by the comments by Ms. Scheibel I believe, is the name, that it would take almost an act of God to tear a building down and put it up again for six stories. However, I always think about what the consequences of my actions here will be 20 years down the road and I just can't anticipate all the variables. So I look like, I'm not in favor of the Change in Zoning.

Mr. Hart: If I could address that? The last time we visited the Planning Commission the recommendation was that the height be limited to three stories and the applicant is open to that. It's completely expected that the Council is gonna provide Conditional Zoning and not just complete Hotel Zoning and so it would be the Planning Commission's discretion to make a recommendation to the Council to limit the heights to three stories and the applicants you know has been open to that and established that in our Final EA as well.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Thank you, Jordan. I did read that. However, it said that could be overturned if it was brought back to the Planning Commission. They'd have to have a public hearing, but you know...

Mr. Hart: If I could clarify? If the Council approves the zoning height limitation at three stories, it could only be changed by the Council which would require us coming back through you with your recommendation for approval up to Council and so on.

Mr. Spence: If the Council...by changing zoning that's a legislative act. And so just to change that if the Council says, if this body makes a recommendation, the Council for three stories and the Council adopts that, then the only way to change that would be to go back to through the whole process, the whole multi year process back to Council to say we want something other than the three stories. It's a long arduous trek to go change zoning or change a condition on zoning. And you still, again, and you have to also remember that you will be voting. This Commission is the final authority on the SMA and the Shoreline Setback Variance. So, you know, still have a major say in this...the development of the property.

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

Mr. Hedani: This is just a comment basically. Originally when we looked at the project and we looked at the question of beach access parking, the idea was to designate several stalls, you know, like Jim is suggesting, one, three, five stalls, whatever it is that we decide on ultimately. Designate those as public access stalls, create an easement from those stalls to the beach using existing

walkways. Essentially you don't have to put in any improvements, you just draw a line on the sidewalks that you have that gets to the beach and that would provide direct access to the ocean from those designated stalls as opposed to creating stalls where you cannot get it from the location that's being proposed. So I don't know if that was discussed or analyzed.

Mr. Buika: So noted. I mean, that was just a comment, right, and we will take those comments into consideration.

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

Mr. Buika: Thank you. First the Department's conclusion, and then our recommendation. Upon reviewing the Final Environmental Assessment, the Department concludes that the project as proposed and also as partially completed as an emergency action with mitigation measures does not pose a significant impact to the environment relative to the significant criteria stated in Section 11-200-12 of the Hawaii Administrative Rules. These are related to the Environmental Impact Statements.

The Department's recommendation. The Department recommends that the Commission accept the Final Environmental Assessment and issue a Finding of No Significant Impact Determination at today's meeting. At a future meeting the Maui Planning Commission will first conduct a public hearing, and second review the Special Management Area Use Permit application and the Shoreline Setback Variance application. This concludes the Department's recommendations and remarks about the project's Final Environmental Assessment. Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Question. So right, before us is just the EA, right, not the Change in Zoning or can we do that too?

Mr. Spence: Just the EA.

Mr. Buika: This is just the...looking at it from the environmental perspective for the Environmental Assessment. The zoning will come with the...later on, later on to you as a recommendation to the Council one way or the other.

Mr. Medeiros: Then I move to Accept the recommendation.

Chairperson Lay: Motion by Commissioner Medeiros? Do I have a second?

Vice-Chair Ball: Second.

Chairperson Lay: Second by Commissioner Ball. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: I don't...my understanding is if we say yes, we approve a no significant impact and this goes onto the Council, right?

Mr. Hopper: You know, again they need a SMA Permit, a Change in Zoning, and a Community Plan Amendment.

Mr. Buika: And a variance. A variance.

Mr. Hopper: Yeah, right, but that's the BVA.

Mr. Buika: It comes back here first.

Mr. Hopper: Oh, the Shoreline Setback.

Mr. Buika: Shoreline Setback Variance.

Mr. Hopper: But the Commission gets to review and comment on the Change in Zoning before it goes to Council and hold the public hearing for the Change in Zoning, correct?

Mr. Buika: Yes.

Mr. Hopper: After this?

Mr. Buika: Yes.

Ms. Wakida: My obvious concern is would like to see it written in the EA that they...well, you said they were...they didn't say exactly that they will only go three stories, 'cause they give us these charts that say that the zoning is six stories. But I would like to see it more specific in here so it's clear that three stories is the maximum.

Mr. Buika: There is...in the Final Environmental Assessment there is a statement that says that the applicant is willing to limit the...in the zoning to limit the height to three stories. So it is actually...it's a one-liner. It's underlined somewhere if somebody can find it.

Chairperson Lay: At this point Commissioners, we're either accepting this or we're not.

Ms. Wakida: Right but I want to accept...I'm sorry.

Mr. Spence: There will be...the proper place to put conditions on something will be with the Change in Zoning, you can recommend to the County Council and with the SMA there will be conditions on that and this is the final...(inaudible)...authority. I think for the purposes of this Environmental Assessment this is a disclosure document that says that the Environmental concerns have been mitigated or you know, there's Finding of No Significant Impact. When they come back for other permits it becomes a different matter. And that's the place where this Commission routinely conditions on things and makes recommendations to the Council. I think for today, I mean, you have a bunch of residents here all listening to the concern that you know, the building not go more than three stories. I think they're gonna have to address that somehow in the application that comes back before this body.

Mr. Buika: Just one more comment. I found the citation here on Page 18, the first paragraph, in

the body there, it states there is no intention of expanding the number of units nor is there an intention to build higher than what is presently configured three stories. Kahana Sunset will consider a limitation of any future development to existing heights as a condition of approval. So it is in the Final Environmental Assessment here on Page 18, first paragraph.

Ms. Wakida: This states, draft.

Mr. Buika: In the final.

Chairperson Lay: Any more discussion on the motion? Director you wish to repeat the motion?

Mr. Spence: The motion is to approve the EA. To make a Finding of No Significant Effect.

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

Mr. Spence: That's seven ayes.

Mr. Buika: Thank you.

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

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

Chairperson Lay: Commissioners, you a 10-minute or 5-minute break now? Let's do a 10-minute break then. Coffee up and come back.

A recess was called at approximately 2:48 p.m., and the meeting was reconvened at approximately 3:03 p.m.

Chairperson Lay: And at this point, we're gonna be going out of order to accommodate some people that are here.

Mr. Spence: We have a...what's up next is a Orientation Workshop and then Acceptance of Action Minutes. What we wanna jump to is Number J-1 for Mr. Joseph E. Kenny from the mainland. I mean, he's here from the mainland. Manager of the Matthew G. Norton Company and MGN Hawaii land Investments requesting a two-year SMA Permit time extension and Staff Planner again is Mr. Keith Scott.

## **J. DIRECTOR'S REPORT**

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

**requests administratively:**

**MR. JOSEPH E. KENNY, Manager of the MATTHEW G. NORTON COMPANY and MGN HAWAII LAND INVESTMENTS, LLC requesting a two (2)-year Special Management Area Use Permit time extension on the period to complete construction of the Keawakapu Beach Lots/ Clapp Residence at 3180 and 3190 South Kihei Road, TMK: 2-1-010: 011 and 031, Kihei, Island of Maui. (SM1 2008/0002) (K. Scott)**

Mr. Keith Scott: Thank you very much and it's a pleasure to be back here, Commissioners. As mentioned, we're looking at...what we're doing today is you're deciding whether or not to waive review of this project and to allow the Department to administratively process a two-year time extension for Keawakapu Beach Lots. The project is to construct two new single-family residences under SMA Use Permit, SM1 2008/0002. It was approved by the Commission on January 27, 2009 and initiated construction of 3180 South Kihei Road, August 5, 2009. The permit allowed five years after initiation to complete both houses so that would expire August 5, 2014. The house at 3180 South Kihei Road is already completed. The house at 3190 is under construction but it won't be completed by August 5, 2014. There are no changes in the Special Management Area and Mr. Joseph Kenny, the applicant is here to more fully address any issues or answer any questions you might have.

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 Wakida?

Ms. Wakida: I have two. Is the applicant here, Mr. Scott?

Mr. Scott: Yes he is.

Mr. Joseph Kenny: Hi, I'm Joe Kenny the applicant.

Ms. Wakida: Thank you, Mr. Kenny. Will these two homes be used as permanent residences? What will be your plans for them once they are built?

Mr. Kenny: The first home is built and is occupied and it's used as a family retreat, and the second home is the same plan essentially. There are no short-term rentals. We've been on this beach for 40 years. So it's a long-term home for the family.

Ms. Wakida: Thank you.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Perhaps, and this is just a clarification. I'm looking at this picture that's in our packet.

Mr. Kenny: Right.

Ms. Wakida: I'm wondering what this is, is that construction or is that—

Mr. Kenny: No, that's just finished. It's just to...that's the edge of the infinity pool up on the right-hand corner and off on the right, off on that little bit of rockery, it's just decorative rockery that was put in.

Ms. Wakida: Oh, it's decorative, okay.

Mr. Kenny: Yeah.

Ms. Wakida: Thank you. It looks like a sink hole.

Mr. Kenny: Oh, no, no, no.

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

Mr. Scott: The Department's recommendation is that you waive review and allow us to administratively process the application.

Mr. Medeiros: So move.

Vice-Chair Ball: Second.

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

Mr. Spence: The motion is for the Commission to waive review and let the Planning Department administratively process the extension.

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

Mr. Spence: That's six ayes.

Mr. Scott: Thank you very much.

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

**VOTED: To Waive Its Review of the Special Management Area Use Permit Time Extension Request.**

**(Assenting - J. Medeiros, K. Ball, M. Tsai, W. Hedani, P. Wakida, R. Higashi)**

**(Excused - J. Freitas, S. Duvauchelle)**

Mr. Spence: Okay, Commissioners, we're back to Item H, Orientation Workshop No. 1. Number one on that list is opening remarks by the Planning Director.

## **H. ORIENTATION WORKSHOP NO. 1**

### **1. Opening Remarks by the Planning Director**

Mr. Spence: I would just say, thank you Commissioners. Thank you, Mr. Higashi for being here. We hold these orientation workshops for all the Commissioners and both for new Commissioners, but also as reminder for the more experienced ones that are here. And we just...we try to go over some of the basics of you know, what the Commission deals with and what the Planning Department deals with and the issues that are in front of the Commission.

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

Mr. Jim Buika did a power point presentation regarding Coastal Zone Management, the Special Management Area Rules, and the Shoreline Rules of the Maui Planning Commission. A hard copy of the power point presentation is on file in the Department of Planning.

Ms. Tara Owens did a power point presentation regarding sea level rise and the future of the shorelines. A hard copy of her power point is on file in the Department of Planning.

Chairperson Lay: We have two items that we have to run over quickly because we're about to lose quorum Commissioners.

Mr. Spence: So Commissioners, and I'm sorry to rush. Item J-2 on the Director's Report.

## **J. DIRECTOR'S REPORT**

- 2. Maui Planning Commission requesting that the Hana Advisory Committee to the Maui Planning Commission provide its comments on the following matters prior to review by the Maui Planning Commission:**
  - a. Mr. William Spence, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council on Ordinance No. 3941 relating to Short-Term Rental Homes pursuant to Section 16 of Ordinance No. 3941. (G. Flammer)**
  - b. Mr. William Spence, Planning Director transmitting the Planning Department's Report with comments, recommendations, and proposed amendments to the planning commissions for review and transmittal to the Council relating to Chapter 19.64 of the Maui County Code relating to Bed and Breakfast Homes. (G. Flammer)**

Mr. Spence: This is ...(inaudible)...Items a and b to send to the Hana Advisory Committee two things. One is the review of the Short-Term Rental Home Permits or Ordinance, and the other is

related to the Bed and Breakfast Homes. So what we wanna do is send...the Council requested changes after we tried these for a certain amount of time. They requested that we get recommendations back to them and a report and so what we wanna do is take these out to Hana, the Hana Advisory Committee and you're the authority to say, to defer items to that Committee.

Chairperson Lay: Motion for that? Commissioner Wakida?

Ms. Wakida: Yes, I would be happy to make a motion for that. Would you like both items on one motion?

Mr. Spence: Sure.

Ms. Wakida: Yes, I move to move the items to the Hana Advisory Committee for their consideration.

Mr. Higashi: Second.

Chairperson Lay: Motion by Commissioner Wakida, seconded by Commissioner Higashi. Do we need to repeat the motion? Commissioner Hedani?

Mr. Hedani: Have they taken away the cap?

Mr. Spence: No, it will come back to...we're trying to be expeditious.

Chairperson Lay: Any questions on the motion? Call for the vote. All those in favor?

Commission Members: Aye.

Mr. Spence: That's five ayes.

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

**VOTED: To Refer Items 2a and 2b to the Hana Advisory Committee to Provide Their Comments to the Maui Planning Commission.  
(Assenting - P. Wakida, R. Higashi, J. Medeiros, W. Hedani, I. Lay)  
(Excused - J. Freitas, S. Duvauchelle, K. Ball, M. Tsai)**

Chairperson Lay: Did you guys have a chance to look at our SMA Minor Reports?

- 3. SMA Minor Permit Report circulated with April 8, 2014 agenda**
- 4. SMA Minor Permit Report (Appendix A)**
- 5. SMA Exemption Report circulated with April 8, 2014 agenda**
- 6. SMA Exemption Report (Appendix B)**

Chairperson Lay: Everybody had a chance to look at it. All we need is an approval.

Mr. Spence: So there was a motion to approve.

Mr. Medeiros: Second.

Mr. Spence: Second.

Ms. Wakida: Was there a motion?

Mr. Spence: To approve the...acknowledge receipt of the SMA Minor and SMA Assessment.

Ms. Wakida: I so move. I didn't know. I heard the second, but-

Mr. Spence: Okay.

Chairperson Lay: Okay, all those in favor.

Commission Members: Aye.

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

**VOTED: To Accept the SMA Minor and SMA Exemption Reports (Items 3, 4, 5, and 6).  
(Assenting - P. Wakida, J. Medeiros, W. Hedani, R. Higashi, I. Lay)  
(Excused - J. Freitas, S. Duvauchelle, K. Ball, M. Tsai)**

Mr. Spence: Then there's Acceptance of the Action Minutes and Regular Minutes.

- I. ACCEPTANCE OF THE ACTION MINUTES OF THE MARCH 11, 2014 AND MARCH 25, 2014 MEETINGS AND REGULAR MINUTES OF THE NOVEMBER 26, 2013 MEETING** (Previously circulated for the April 8, 2014 agenda. Commissioners: Please bring your materials with you.) **ACCEPTANCE OF THE ACTION MINUTES OF THE APRIL 8, 2014 MEETING.**

Chairperson Lay: So we have a motion?

Mr. Medeiros: So Move.

Mr. Higashi: Second.

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

Mr. Spence: Five ayes.

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

**VOTED: To Accept the Action Minutes of the March 11, 2014, March 25, 2014, and April 8, 2014 Meetings, and Accept the Regular Minutes of the November 26, 2014 Meeting.  
(Assenting - J. Medeiros, R. Higashi, W. Hedani, P. Wakida, I. Lay)  
(Excused - J. Freitas, S. Duvauchelle, K. Ball, M. Tsai)**

Mr. Spence: Okay, that's all the action items.

**J. DIRECTOR'S REPORT**

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

**a. May 13, 2014 meeting agenda items**

Mr. Spence: The May 13<sup>th</sup>, Commissioners, there's gonna be two public hearing items, Gregory Schneider of Genessee Capital requesting a two-year time extension. This actually we're getting an extension of an SMA Permit, you're gonna have a public hearing. The second one, we're gonna transmit...we're proposing a small amendment to the Short-Term Rental Home Ordinance for the Commission's consideration. There'll be some Unfinished Business and then there's gonna a Communication item where Mr. Robert Holland is submitting a Motion for Reconsideration for the Commission's denial of his Short-Term Rental Home Permit. I believe, I think we're gonna have a Decision and Order for you to sign as well. And then we're gonna have another Orientation Workshop and there'll be a couple other extensions.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just wanted to compliment the Chair on working through 16 items on our agenda today, expeditiously.

Chairperson Lay: Thank the Commission on that. Thank you very much for your help. Call for adjournment.

Mr. Medeiros: So move.

Ms. Wakida: Second.

Chairperson Lay: Thank you everyone. Meeting's adjourned.

**K. NEXT REGULAR MEETING DATE: MAY 13, 2014**

**L. ADJOURNMENT**

The meeting was adjourned at 4:12 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions

## **RECORD OF ATTENDANCE**

### **Present**

Keone Ball (in attendance at 9:08 a.m. and excused at 3:09 p.m.)  
Sandy Duvauchelle (excused at 2:48 p.m.)  
Jack Freitas (in attendance at 9:12 a.m. and excused at 12:09 p.m.)  
Wayne Hedani (in attendance at 9:27 a.m.)  
Richard Higashi  
Ivan Lay, Chair  
Jason Medeiros  
Max Tsai (in attendance at 9:13 a.m. and excused at 4:03 p.m.)  
Penny Wakida

### **Others**

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