

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 10, 2015**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:04 a.m., Tuesday, March 10, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chairperson Lay: The Commission is now called to order. It's March 10th at a little after 9 o'clock.

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.

Chairperson Lay: We're gonna up the public testimony for those of you who wish to testify at this time because you have to go somewhere else on the agenda item that we have today you may do so. You'll be given three minutes for your testimony and I'm gonna follow the list that we have here. I'll ask you if you wanna testify, if you wanna testify let me know, if you don't or wait till your agenda item comes up. The first testifier Grant Chun?

The following individuals testified at the beginning of the meeting:

Grant Chun - Item C-2, Kihei Community Association's letter regarding expanding the SMA Boundaries in South Kihei.

Francis Lydon - Item C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling

Pam Daoust - Item C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling

John Finnegan - Item C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling

David Dantes - Item D-1, Proposed Moratorium on STRH or Proposal to Reduce the Cap

Paul Laub - Item D-1, Proposed Moratorium on STRH or Proposal to Reduce the Cap

Mike Moran - Items C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling, C-2, Kihei Community Association's letter regarding expanding the SMA Boundaries in South Kihei, and C-3, Discussion on South Maui Citizens for Responsible Growth letter regarding SMA for SDOT Piilani Traffic Improvements on Ohukai Road

Sydney Smith - Item D-1, Proposed Moratorium on STRH or Proposal to Reduce the Cap

Eve Hogan - Item D-1, Proposed Moratorium on STRH or Proposal to Reduce the Cap

Annette Niles - Items C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling, and D-1, Proposed Moratorium on STRH or Proposal to Reduce the Cap

Kathleen Perreira - Item C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling

Mercer "Chubby" Vicens - Items C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling, C-2, Kihei Community Association's letter regarding expanding the SMA Boundaries in South Kihei

Mark Hyde - Item C-3, Discussion on South Maui Citizens for Responsible Growth letter regarding SMA for SDOT Piilani Traffic Improvements on Ohukai Road

Christy Fujiwara Gusman - Item C-1, Maui Demolition & Construction Landfill, Inc., Declaratory Ruling

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

Chairperson Lay: Our next testifier is Greg Stratton.

Mr. Stratton: I'll wait till the item.

Chairperson Lay: Thank you, Greg. After Greg we've got Charlie Jencks.

Mr. Jencks: I'll wait for the item.

Chairperson Lay: Our next testifier Tom Blackburn.

Mr. Blackburn: I'll wait.

Chairperson Lay: Does anyone else wish to testify at this time? Seeing no one, I'm going to close public testimony and move onto our first agenda item.

Mr. Spence: Good morning, Commissioners. The first agenda item under Communications is the Maui Demolition & Construction Landfill at Puuhele. They're requesting a Declaratory Ruling regarding the final closure elevation. This isn't...Commissioners, this is not to discuss all the conditions and whether they have fulfilled them or not. I mean, with the exception of the height. This is...what we're doing here today and Kurt Wollenhaupt could probably...will explain a little bit more, but what we're here to decide...the Commission passed a Special Use Permit. It's the Commission's permit, it's not the Planning Director. So the question here if they they're exceeding the height allowed or not. And by way of just a little bit of explanation of my history. I was the original Staff Planner when the DeCoites came in for their Special Use Permit and through contested case. And I would say that this...you know, I too, have a question on the height that's you know one of the reasons we're here, but I also recognize what a valuable asset this has been to our community and the construction industry in keeping our own County landfill open for an extended period of time. So with that Mr. Wollenhaupt.

C. COMMUNICATIONS

- 1. MAUI DEMOLITION & CONSTRUCTION LANDFILL, INC. AT PUUHELE requesting a Declaratory Ruling regarding final closure elevations for the Maui Demolition and Construction Landfill on approximately 14.8 acres of land zoned agriculture located at TMK: 3-8-005: 002 (por.), Puuhele, Maalaea, Island of Maui. (DR-2015/0001) (SUP2 1998/0005) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good morning, Members of the Maui Planning Commission and also Members of the audience. Just to let the Commission know in the audience today is Mr. Frampton who is the consultant for the project, Mr. DeCoite, Mr. Koga of Alexander & Baldwin, and Mr. Horikawa who is representing the petitioner today. Also, on-call for your questions would be our Director of Environmental Management, Kyle Ginoza who will be here to answer questions when we get to that point. Mr. Kai Wright of our ZAED Division is also here today.

As was indicated by Director Spence, today's application is somewhat unusual in that it is a declaratory ruling according to the rules of the Maui Planning Commission. Any interested person may petition the Commission for a declaratory order as to the applicability of any statutory provision or any rule or order of the Department or of the Commission. Therefore, what the petitioner, that being Maui Demolition & Construction Landfill is requesting today is for this Commission to essentially determine and order what past Commission's intent was on the final closure heights for the Maui Demolition & Construction Landfill.

In this case, the Declaratory Ruling concerns the Decision and Order State Land Use Commission Special Use Permit 1998/0005 with a subsequent time extension granted in 2006. As you know, I've provided to the Commission with the record here which is obviously voluminous, but important to get a sense of the history here starting in 1995 when this landfill was originally approved. Subsequent to that, they let the permit expire. Consequently, the applicant then had to come back for the Commission in 1998 for the currently valid State Land Use Commission Special Use Permit 98/0005. There was a contested case hearing with the Maalaea Community Association granted intervention status. And then in 1999, the Commission did approve the landfill to where we see it today with an extension in 2006.

It's also important I think to get a sense of what is the petitioner asking, and I will quote this from their petition on Page 16, "the Petitioner", that being Maui Demolition & Construction, "is asking for a declaratory ruling that the Maui Planning Commission intended that the Maalaea Landfill would have a finished closing height of 176 feet above mean sea level when it issued SUP2 98/0005."

The Department does feel that this petition does have the required elements for the filing a petition and the Director did opine that the petition was complete, therefore this Commission be reviewing it today.

If you notice in the staff report that was issued what the Department is here today is to try to provide any answers from the record. It's for the Commission in the Declaratory Ruling to make a decision if they believe that the petitioner intent matches that which the Commission has already approved. So I can go into detail, but I do believe that the petitioner has a considerable Power Point presentation along with visuals that can at least set the stage for why we're here today for the Declaratory Ruling. And the reason that we even have this permit is because this is an ag land and a landfill would be considered a special use in the ag land. So I'm happy to answer any additional questions before we move onto the presentation from the Petitioner if you have.

Chairperson Lay: We're going to hold off for questions until the end after our presentation.

Mr. Rory Frampton: Mr. Chairman, I understand there's some people or at least one that wants to testify 'cause they were gonna wait until the...and then if I could request after the testimony could we take a quick break and I can get the computer set up if that's okay?

Chairperson Lay: See for me, if we go through the presentation some of the questions will be answered that some of the people might ask. So me, it's easier if the guys...if we see the presentation, they see what we got, and then we have questions open to public testimony after that and then it might be easier...you know, it might be resolved just in the presentation where we don't have extra people coming up and...

Mr. Frampton: That's fine.

Chairperson Lay: Okay, if that's all right?

Mr. Frampton: So you'll take public testimony after my presentation?

Chairperson Lay: Yes.

Mr. Frampton: Could I have just a few minutes to set the computer up?

Chairperson Lay: Sure. Let's take a five-minute break everyone, make it ten, ten-minute break.

A recess was called at 10:17 a.m., and the meeting was reconvened at 10:32 a.m.

Mr. Frampton: Yes, thank you very much, Mr. Chairman. Members of the Commission, my name is Rory Frampton. I'm a planning consultant and I'm here on behalf of Maui Demolition & Construction Landfill, Inc., and also here today we have the owners, Richard or otherwise known Chick DeCoite and his wife, Lorine. Cheryl Andrade, who's their Manager. Paul Horikawa, their attorney. And Joe Hernandez another consultant from Oahu that's assisted them with their landfill operations.

I'm gonna, maybe we could turn off the lights. I'm just gonna go through a slideshow and talk a little bit about the history of the project, the landfill itself. I will touch on the design a little bit and some of the environmental protection measures, and give a little bit of historical context and then of course, we'll focus in on the issue of the height which is why we're here today.

This is a...I'll start off chronologically so before the war, you know, as part of Maui's geologic history Puuhele as the name implies, Puu it was cinder cone. And there's the location of Puuhele is. This is the Honoapiilani Highway. This is a map from 1924. It's a USGS quad map, and that puu at the corner, that cinder cone you can see all those little contours, those circles, those are...I believe those are 10-foot contours and they rise up to a point and that point is at an elevation of 217 feet above mean sea level. So you can see historically, geologically the natural landscape there had a natural, a rise. During the military years, they really mined that thing. They mined it down from 217 feet all the way down to about 18 feet at the bottom. So about 200 vertical feet of material came out of that facility. Here's a photo showing a portion of the facility...of the pit as we used to call it. And this was the pit was the facility was under construction with the liner on the bottom. But you can see the vertical sides. There were very unstable. The pit presented basically an attractive nuisance for A & B Properties. The slopes were dangerous. People used to go down there and they would shoot guns and do target practice and dump stuff. And so it was really a problem for A & B Properties especially when Chubby came on board. You know, he had experience running a landfill or a quarry on Oahu and he looked at those slopes and immediately said we gotta do something about this. We can't have these vertical slopes like that. He got a quote from a contractor that said it would cost about \$8.5 million at the time to fill this up.

And you know, also at the time we were having problems with our existing landfill on Maui and a lot of people were not taking construction and demolition waste to the landfill on Maui and they

were dumping it all over the place. Richard DeCoite saw this problem and he Chubby talked about it and they basically came up with this idea of using this facility as a construction and demolition landfill. And it was...it's really I guess serendipitous. You know they came to me. I was working at Chris Hart & Partners and we looked, and we called the Department of Health up and we said, hey do you guys have a process for this type of facility? And he said, well funny you asked we just adopted brand new rules a couple of months ago. So this facility was the first C&D landfill in Hawaii. It was the first landfill on Maui that was built under the new EPA rules that regarded...I mean, required that you put some type of liner on the bottom of your facility so that leachate won't penetrate down to the groundwater. All of the municipal waste facilities on Maui up to this time including Makani, Central Maui, Waikapu and Olowalu, big facilities that collect all kinds of wastes they were not lined. They didn't have any kind of protective liner.

Construction demolition waste is a, as Chubby mentioned earlier, it's a subset of the waste stream. It's one small segment of the waste stream. It's considered less environmentally hazardous. You don't take in all your household waste and industrial waste and all the other type of stuff that comes out of or that's normally the part of the municipal waste stream.

Nevertheless, when this new facility was built and designed, it had to comply with the new EPA regs under Title 9 I believe it was. You can see the liner at the bottom of this facility. They actually...what you can't see here is a sump. At the very bottom there's a sump that could collect the water and they have a pipe leading down into so you can test the water and you can pump out any water that's collected. There's a 20,000 square foot area that has double lining on the bottom. The double lining consists of a plastic liner as well as another liner with a layer of clay on it. And that layer of clay where is such that if there's any kind of penetration or puka into the plastic, the clay actually swells up and it will seal up the puka. So there's a...on the bottom of the facility there's extra protection and you can see along the sides they're very steep. They have liners on the sides of the facility so that any leachate that might come there...leachate is defined as liquid going through waste. So any leachate that goes through there would hit the liner, go down to the bottom, collect in the sump, and then they have the ability to test that water and to pump it out. And the plans call for if there is any leachate, to take it out from the top and spread it over the top and let it basically, let it evaporate, but they keep it within the cell. There hasn't been hardly any leachate generated at all over the life of this facility and that's because the rainfall in Maalaea is only like 11 inches of rain a year, but the evapotranspiration rate is about 100 inches of rain a year so you just don't get a lot of infiltration of water. And that's how you could get generation of leachate is from rain going through the landfill.

There was a mention of a subsurface fire that did occur in 1998. That was unfortunate. It was believed to be had been caused by a hot load of material that came in and started a subsurface fire. It didn't have a lot of flames, but it was smoldering underneath and it did produce fumes and it was difficult for everybody involved that had to live through that. The operators went through substantial time, energy and expense to put the subsurface fire out and they did get it out. And at the time, the Department of Health was actually quite amazed that they did it that quickly. They did it through a combination of excavating material out, spreading it, putting water on it, letting that cool off and then reburying it. They also injected carbon dioxide and they would bring the big tankers from the gas company down inject carbon dioxide in the bottom and that would displace oxygen at the bottom of the pit and they did that over a number of years and it basically displaced the oxygen out and they filled the bottom of the pit up with carbon dioxide. So they did take...they

went...well, extraordinary efforts to put that out. They did put it out. There hasn't been a subsurface fire since.

There were two surface fires. Both of those fires started from one was believed to be arson. The other was from a Maui Electric lines. It wasn't from them, but the way they cover their cells and protect their rubbish with dirt. You know, they're allowed to bring in material and then they cover it and they keep it segregated into sections so that not all the waste is contiguous. So that if there ever is a fire it's protected by that dirt cover and it would be only limited to a certain portion of the facility. That prevented the surface fire that happened in the mid-2000s from going underground. So it was effect. The operators were very diligent at working to put out those fires. They helped with the fire tanker trucks. As Chubby mentioned, they've really done a lot in terms of running this facility up to the standards of the Department of Health.

Sorry, I just wanna make sure I don't miss anything here. I have a few more photos of this landfill, but what I want you to kinda notice here is look at the perimeter of the landfill and how it changes in elevation. It's not a flat...it's not a flat perimeter. It's not a perimeter that's all at one level. This is looking back towards the Wailuku direction and you can see the vertical cliffs. You can see the sides that have all different elevations on it. This is doing the prep work before the facility was built. Again, looking back kinda towards the Kihei side and the elevation up in this area near South Kihei Road is almost 150 feet. Over on this rim it's probably around the order of 110 feet. Again, this is looking kinda back towards Waikapu and you can see one ridge here and then in the back there's another ridge. And so there are...the whole perimeter has basically varying degrees of elevation. It's not one flat circular pit. Unfortunately, the when the landfill was designed and this is the figure that was used throughout all of the various approvals, it was a conceptual design that showed basically a flat perimeter of about 120 feet. These contour lines, this one right here is 125, it goes up to 140. And down here there's about 40 feet of fill. So importantly this figure they also wiped out all the surrounding topography. So it just shows the topography of the fill. And when I look at the figure I see a mount of about 20 feet on this side and about 40 feet on that side and relative to the existing grade.

This is what we're proposing and it has about anywhere from 10 to 20 feet on this northern side and these are 10-foot contours. So if you flip back and forth between these two maps, they look fairly similar in terms of the 10-foot contours on this side and the contours on that side. The difference is this map is a lot more accurate now. It has elevations. This blue line is the perimeter of the liner. They have elevations along the entire perimeter of the liner. It varies in elevations from about 166 feet over here. It goes...that's the 160 mark. It goes to 150, 140, 130, you know, and it varies all around the edge of the pit. But we believe this map accurately represent the concept that was portrayed by this original map. If you disregard those absolute elevations, I think the relative elevations to the existing topography is fairly close to what that map presents.

I do wanna mention before I get into...yeah, I do wanna mention that in the history of this project, you know, I was at all the hearings. There was a hearing in '95. There was a hearing in '98. There was a hearing in '99. And there was a hearing in 2006. And each one of those meeting there was substantial discussion on the floor with this body, with the Planning Commission. Hours and hours of testimony. If you go through the minutes you can look...just the 2006 minutes which was time extension it was almost a 100 pages of minutes. In all of those discussions there was no discussion by the Commission of what the height would be. There was no specific condition

contrary to an earlier testifier there was no specific condition regarding height on this facility. There was no condition that said your height had to be such and such. It was only in 2006 with the time extension did they say that the, you know, you have to build your facility based on your representations. And that's kind of understood when a guy, when a applicant comes up and presents their project you're supposed to pretty much do what you say. But there was no specific condition on height. There was no specific condition on capacity. It was very...it was very much related to you know, how you're accepting your waste. What you're gonna do in the event of a fire and all the issues that were very front and center at the time when you're opening a facility and operating the facility.

Well, here we are 20 years later. We're at the closure. The operators in 2011, you know, they started coming up to the ground surface and they were coming up...they were starting to go above ground surface and the engineer who was helping them said, hey this old plan, this old plan wrong. Those elevations can't be correct, 'cause you'd end up with a hole in the ground and I have some figures that show that. And so the Planning Department...well, based on the representations of the applicant's engineer, the Planning Department made a correction which provided two heights, the 176...basically it added 16 feet to this map. It gave 156 over here and 176 over there. The 176 still works. They're just below that right now. They've got about another 10 feet to get up to 176 in this portion of the facility. Unfortunately when they were provided that correction, they thought they had 176 across the top and they've operated for a couple years under the guidance of their engineer telling them that you got 176 across the top. That would be your final closure height. And so in this area of the facility they're actually at about 172 right now. So they've stopped. That's where they wanna finish. That's what they're asking. If you guys approve our request today, on the northern portion of the facility they would be done. They would just have to cover it. And down at the southern end they'd add about another 10 feet or so.

Now I just wanna...I'll show you some slides that illustrate what the problem is up here and what the problem is with the 140 and what the problem is with the 160. And I'm gonna show you a cross section that if you were to draw line right through this landfill, slice it in half and look at it from the side what it would look like. Or if you were to walk from here to there, basically what the elevations would look like. So if you start near the highway you know, around the 170 range you'd come to the edge of the pit which is about 166, the high edge of the pit. You go down into the pit, you come up on the other side, there's 156 on the other side. If you were to build the landfill as originally proposed, which disregarded the actual elevations of the pit, but just had this conceptual layer, you'd have a top of the landfill at 140. That's a hole in the ground. That's not good from an environmental perspective. Similarly with the 156, you would still have a hole in the ground. If you do that design that was shown just add 16 feet to the top of it. This is the shape of it and we would be still in the bottom of that pit.

What they're asking for today is something that would look like that. It's gonna be about 10 feet higher from the mauka side or the west side closest to the highway and about 20 feet higher on the downslope side. And again, this is an inordinate portion of the facility. This is the portion where they've gone to about 172 already. So again, that was right in this section and like I said, down in this section they're about 10 feet away from the 176 right now.

I'm gonna go now into the whole issue of the visual impacts and what was represented when the

permit was originally approved. I was a planner at Chris Hart & Partners and I did this analysis. I...you know, we went out to the site, we went up to the top portion over here. We got up on the highway and normally...I'll step back, with an SUP you're not required by law to look at impacts to visual resources not like the SMA. If you were in the SMA you would have to consider views to the ocean from the nearest roadway to the coastline. This is outside of the SMA. But of course, it's on a scenic roadway. If you drive from Waikapu to Maalaea there's wonderful views of the ocean in this vicinity and felt it was important to at least look at and discuss. I went up to this portion of the highway right below the bridge. This bridge I'll refer to a few times is Pohakeha Bridge. We went up here and we looked across where the facility was gonna be, and the engineer told me, he basically was pointing out the heights and he said, we'll be able to look over the top of that and still see the ocean and we won't impact it. And that's how I wrote these statements. And I'll just read these. There's only two paragraphs. These two paragraphs were not touched at all over the last 20 years. They weren't amended. They weren't replaced, but they were stuck...they were cut and pasted and put into all the different reports.

But in terms of the existing visual resources at the time in 1995, it said, The subject property could be considered part of a scenic view corridor from Honoapiilani Highway towards Maalaea, Kihei, and the Pacific Ocean. This corridor is relatively unobstructed along Honoapiilani Highway from Waikapu to Maalaea. At present, large kiawe trees abutting the south and west perimeter of the project create a visual barrier between the highway and the cinder pit. These trees also provide one of the few visual barriers to the ocean from Honoapiilani Highway in this area. So even then there were trees blocking the views to the ocean. That was the existing conditions. And I'll show you some videos and we can look at how that statement plays out.

In terms of impacts to visual resources, at present, in 1995, the cinder pit is shielded from view from public roadways mature kiawe trees. These trees will be left in place to provide suitable screening over the life of the project. The final elevation of the closed landfill will be approximately 160 feet above mean sea level. This elevation is below the existing elevation of Honoapiilani Highway between North Kihei Road and Kahekili (*sic*) Highway intersections and thus should not create an obstruction of ocean views from this roadway. Upon completion the project site will be landscaped in order to provide a passive open space and recreational area, and/or recreational area. So in that last paragraph the two points there that were the reason why we're here is when it said, it would be approximately 160 feet about mean sea level, well, those elevations were not quite accurate, and we needed a correction and that was the basis for the correction that the Planning Department gave in 2011. And really the phrase about being below the highway was so that it would not create an obstruction of ocean views from the roadway. And if the elevation of the highway from this intersection and the old intersection was right about here, it goes...it starts off in the 180s and it goes down and in this vicinity where you're looking out over the landfill it's above 176. The eye height elevation is about 183, 184. So from this side of the bridge you can look over a facility that's gonna be 176. Immediately abutting the landfill right here, when your views are not looking over the land...if you're looking toward the ocean, you're not looking over the landfill. But in this area, the highway is...the landfill is above the highway. But again, what we were looking at was from here looking across and so generally speaking the landfill at 176 would be below the highway as you're looking towards the ocean. So we again feel that the intent is met.

And now I'll go through some visual slides. This is just past bridge looking over the facility as it is.

This is as of yesterday. You can see the ocean views down through the highway corridor, Kahoolawe, Molokini and the Kihei coastline. This is looking over the facility. They're gonna add about three feet of cover to this portion. I'll zoom in on that. They'll add about three feet here just for the cover material and it's really kind of in this area in the forefront and you know, I think our opinion that it would not create an obstruction of ocean views from the roadway still would apply, certainly not a significant obstruction.

This is a little further down the highway. This is in December of 2014 there was stockpile material over there that actually went up to about 180 if you look through this little puka. But the rest of the facility is blocked by vegetation. You can't really see it and you can still have, you still have pretty nice ocean views. And then when you get to where the facility is on your side of course, your expanse of ocean views are looking that way. You're not looking sideways at the facility.

Just...it's interesting other people were mentioning landfills, other landfills on the island and I just have a few slides of those and I think the notion of a landfill being above grade is common place. In fact that's...I don't know of a landfill that I've ever seen or heard about that's below grade. You need that to get the drainage to slope off of it.

This is looking from Pulehu Road at the Central Maui Landfill. It's about a 40-acre footprint and it's about a 100 vertical feet from the existing grade. I'm just approximating. But you can see that's a pretty big mountain that you can see from miles away. You can see it from Haleakala Highway, Hana Highway, Pulehu Road. This was their expansion and you can see the flat top, the three to one slopes on the side with some access roads leading to the top. This is the Olowalu Landfill. It has about a 40-acre footprint right next to the ocean. No liner. Collected waste for decades from West Maui and they put it underground. I'm just glad it's in an area that doesn't get a lot of rain, but it's kinda scary. They have monitoring wells, I don't know what the results of the monitoring wells are, but that's the footprint of the Olowalu...I mean, the massing of the Olowalu facility. And then of course, the Waikapu Landfill which for years you couldn't really see because there weren't any roads nearby it. If you go to the Maui Lani subdivision you can see this and I'm estimating 60 to 70 feet of fill. And you can again see the slopes, the flat top. It's just kinda what...I mean how landfills are designed. The Maalaea Landfill is much smaller than this. They certainly could go this high, but they never intended to because of the sensitivity of the views in the area despite the fact that there used to be a puu there that went...that was 200 feet high. That's looking down through the Maui Lani and you can see the massing and the impact that that has. You know, this facility is gonna be nowhere near that with what they're proposing.

We do have detailed topographic data that they've done through aerial surveys if the Commission is interested. But what I wanna do now is just go through some...I figured the best way for you guys to look and just kinda discuss the impacts on views is to look at videos. So I did some drive bys and I'll just do three videos no longer than a minute each just doing drive bys so we can look at what the views look like from a car when you're passing by.

Mr. Frampton then started the video.

So this first...this is on Honoapiilani Highway heading towards Maalaea and the first traffic lights are Kuihelani Highway. So if you took a left you'd go to Kahului. So that's those first traffic lights

there, and I'll just let it run. I will stop it periodically like as we come to this intersection right now. These are the trees that in along this section will tend to block the view of the ocean and screen the facility. The facility is right in this corner right there. You still have pretty nice views of Maalaea Bay, Puulai, Molokini, Kahoolawe. As you proceed down you get a little closer, you're dropping in elevation. You're coming up to Pohakea Bridge and for a brief moment, right about there, you got a window over at the facility but again, this is from the bridge looking, and this was taken over the week...this was about a week ago, so that's the area...that's the view corridor that we're trying to protect. Once you're past that, the vegetation blocks the landfill. Your views to the ocean are straight ahead and they really open up when you hit this intersection. They're even more I'd say spectacular when you have the cane at a lower elevation. When the cane's a little higher you get a little bit of blockage, but you can see. And I just kinda kept this going 'cause it really is a spectacular view. It goes on for another mile like this. There are blockages along the way by vegetation. Anyways, it is...I never get tired of looking at it.

So we didn't talk about this view. This is going from Honoapiilani Highway towards Wailuku. It was never presented in the report. It's not a protected view corridor, but because people have commented on the visual nature of the facility, I figured I'd just take a shot, look...now this is driving towards Wailuku. The facility's in this area right over there. And then I'll take a turn and head down North Kihei Road. So stopping right there you can barely make out the top of the facility. This is a southern portion where they'll be a additional grade. Again, there's you know, obviously on the side of the road you do have blockages.

So this northern part that's the grade that we're asking basically with the closure height there won't be any more height than that. As you make the corner, you see the portion that's operational right now where there'll be some additional fill in there. And then as you pass it there's a lot of mature trees that basically shield it. Sorry for the shakiness. And then, you pass the facility and then you've got your spectacular views as you head down towards Kihei and here's the entrance to the facility.

Okay, just one more video clip. And if you want, if we want during the question and answer I can easily go back to any of these views and pause it. This is North Kihei Road heading up towards Wailuku and I'll make a right-hand turn towards Wailuku. Proceeding in this direction you really can't see it because of the kiawe trees. Coming up to the entrance to the facility right there. You get a peekaboo view of the facility there. A bit of view there. And looking back, that area is already at the height that we're talking about right now. I mean, that's where it would stay. Just we do...(inaudible)...the closure. This is a State Highway property right there. Sorry. What we just passed where those tractors were that's a State owned property and there's been some dumping by other people on the State owned property that's not part of the landfill. So again, that's at the height, looking back down here where the machinery is there'll be a little bit more. Then this is vegetative screening along the perimeter of the highway that you basically can't see the facility when you're heading in that direction.

And that, that concludes my portion of the presentation. I'm gonna ask Paul Horikawa to come up and...he's our attorney. He's gonna add a little bit, and then we'll be open for any questions and answers that the Commission may have.

Mr. Paul Horikawa: Hi, good morning, Mr. Chairman. My name is Paul Horikawa. I'm going to be speaking on behalf of the applicants in this matter, excuse me, the petitioners in this matter. But before I begin what I wanted to do was give other people who have signed up to testify. I'd like to give them an opportunity to testify so what had previously been presented and hopefully Rory's presentation addressed their concerns. But what I really want to do is give them an opportunity to testify on this matter.

Chairperson Lay: So will they be testifying on the behalf of the presentation, your presentation?

Mr. Frampton: You're talking about public testimony, right?

Mr. Horikawa: Public testimony, Mr. Chair.

Chairperson Lay: You see, the reason that I like to have the public testimony after is some of the issues that you're gonna bring up are exactly what they're gonna ask. So sometimes when you bringing up these issues and talking about it, it kinda just cuts down them asking the question that you're gonna cover anyway. So if it's all right, I'd rather you do your presentation first and that might help the gallery have a better understanding of what's going on.

Mr. Horikawa: If that's your desire. As I mentioned earlier, my name Paul Horikawa and I represent the Petitioner in this proceeding. I'd like to just talk about three basic issues. One is how did we get here today and why are we here today. Secondly, I'd like to talk about what happened in the past because there is a, there's a history to this that I'd like to talk about and I think it would be helpful if you consider those...what had happened in the past as you make your decision in this matter. And thirdly, what I'd like to do is advise you of what the Petitioner's position is, and also tell you what the basis for their position. And then I'm gonna conclude after that with a request that you approve the petition and grant the relief that was requested in their...basically granting the petition to state that the...what the Maui Planning Commission approved back in 2000...excuse me, 1998 or 1999 was a finished height of 176 feet above mean sea level.

But starting with the first issue about why we're here. I think you know, what happened last year and it has some relevance to this matter, there was a complaint that's my understanding and as a result of the complaint there was a Notice of Warning that was issued to the petitioner in this case. And what happened after that, and this was back in November of last year is that Rory and I we met with the Planning Department and we told them what our position was, that you know, hey, you know if it's a problem, if there's a problem with the height, we'll file an application to amend the permit and they gave us until December 26 to fill the application. Rory filled the application.

And in February of this year, I received a frantic call from Mr. Frampton advising me that the Department...I received a frantic call from Rory telling me that he just met with the Department and that they wanted the applicant, excuse me, the petitioner in this case, the applicant and the Petitioner they're the same entity, but they wanted the petitioner to file a Petition for Declaratory Ruling by Thursday of the following week. And so it was a long weekend but we spent some time and we drafted the petition that's before you. And that's basically why we're here today is because you know, we would have preferred a different route to address the issue that's gonna before you

because it's my understanding that the application is still pending. But we're here at the Department's request, and so we filed a petition and we're gonna ask you to review what happened in the past and to adopt what Rory had presented to you a few minutes ago and grant the relief that was requested in the petition.

Just by way of background. You know this...there was a 1995 application which lapsed for, you know, for a different reason, but I think this particular proceedings started in February 19th of 1998 and in that particular case the applicant filed an application for a Special Land Use Permit application so he could operate, so that they could operate the landfill out in Maalaea. The Commission adopted Joel August. At that time he was an attorney in private practice. He subsequently was appointed to the bench or he was appointed as a Judge for the Second Circuit Court. Very intelligent man. And so he conducted the hearing in November of 1998. There was, you know, 10 days of hearing. There was expert witnesses, lay witnesses, people from the community, you know, we had 10 days of testimony. The transcript, just reviewing the record one person said that the transcript was over 1,400 pages, someone else said it was over 2,000 pages. I remember reviewing the transcript because we had to prepare pleadings and memos to address some of the issues that were discussed during the contested case. But nevertheless, the contested case resulted in an order that consisted of 84 finding, there were 7 conclusions of law, there were 4 standard conditions, and 14 special conditions. The order is single-spaced and it's over 20 pages long.

One of the things, and you know, we're talking about something that was 17 years ago. And so, you know I have memories and recollections of what occurred during the contested case, but most of it was bad so I...but the good things, you know I don't remember all...you know, this...when Rory came up with the issue that hey, the Commission wants to know how high the landfill could be? What was the intent of the Commission when they adopted the D&O back in 1998...(inaudible)...1999.

And I fortunately, I had the opportunity to review the original proceeding that occurred in 1995. I reviewed the minutes of the meeting. I also reviewed the transcript as well as the minutes of the meeting that was held in 1998 when the Planning Commission issued the Decision and Order. I also reviewed the transcript, it's actually the minutes of what had occurred when they extended the permit back in 2006. You know, I was kinda surprised to learn that I had kinda forgotten, but I was...even at the 2006 meeting, but nevertheless, one thing is clear when you read the transcripts, when you read the Decision and Order, when you read what was included in the Commission's order, there's nothing, absolutely nothing. There's no conditions, there's no finding, there's no conclusion and certainly it's not included in the order on how high this landfill could be. I mean, that's that's very clear. I mean, you know I participated in it, and reviewing the record it's clear you know.

When we did the contested case in 1998, I think the intervenors because they were represented by Jack Mueller and Terry Pridemore, they were more concerned about the fire. They were concerned about toxic waste being, you know, somehow filtrating into the water system and there were traffic concerns. That was the three major issues. In 1995, there was a concern about screens along North Kihei Road. And that's how come there's a concern. There was a condition that Be-Still and Wiliwili had to be planted on the Maalaea edge of the landfill. The DeCoites, the

petitioner was trying to extend it along the highway just for screening purposes which to me make sense. But in any event, it's clear from what was issued by the Commission. They don't have anything that sets the height. And I guess that's the reason why we're here. You know what was the Commission intent? And in order to, I guess really address that issue...hold on for one second...

I'm just gonna address the last issue before I conclude and give you the Petitioner's view on what was approved when the Maui Planning Commission took action on this matter back in 1999. Well, I think there are two sets of documents for want of a better term that the parties including, you know, are looking at when they, you know, when they argued or lobbied their respected positions on what should be the final closure height for the Maalaea Landfill. And the first is the elevation map which Rory had showed to you a few minutes ago. There's no doubt that the map has several numbers on them and one of the numbers is the number 140 and the other number is 160. And you know, based upon what was contained in the map, there was a belief that the final closure elevation of the landfill would be between 140 and 160 feet.

Back in 2011, the applicant in this case hired Latte Consulting LLC and Mr. Hernandez is here if you have any questions to ask him, but one of the things that they were doing is they were in the process of preparing to close the landfill. You know, the landfill I mean, is at...it's close to its height that as far as what the DeCoites wanted to...I mean, we're not here to, you know, we're just here to have a determination on what did the Commission allow? And so you know and they had this vision of what they want it to be at. And so they prepared the closure plan, they presented it, presented the closure plan to the Department of Health and the instruction from the Department of Health, this is the Solid Waste Division, the division that monitors the landfills, their position was go back to the County of Maui and confirm the final closure elevation.

And a letter was written on behalf of the petitioner in this case to Mr. Spence and he reviewed the letter and on October 9th, Mr. Spence wrote a letter to the DeCoites and it confirmed the final closure heights. And the final closure heights, well according to the letter that was issued by the Planning Department was that it would...it was written in a kind of an awkward way. It said they confirmed the heights from 156 to 176. Now there's different ways you can interpret that okay. I see Will shaking his head, but you know, when the applicants...you know, they're not...they're good people. I mean, Mr. And Mrs. DeCoite are very good people, when they got the letter, they saw the letter, they looked at the bottom line and they saw that the letter said, you're confirmed to be an increase from 156 to 176. And so you know based upon their reading the bottom line, they just said, oh we can go to 176. They checked with the consultant. The consultant confirmed that, and so starting in 2011, they proceeded with the understanding that they could go to 176 feet above mean sea level. And that's kinda one of the reasons why we're here. You know, what was meant by that. And you know aside from that, you know, we have other evidence of what the height should be, but...let...you know, and that's one of the reasons why...the Members of the Commission have the report that issued by Mr. Spence, but nevertheless we'll leave it at that and I'll come back to it as I conclude.

But the other set of documents that are referred to is that the Maui Planning Commission relied on the representations which that are set forth in the report and Rory read that provisions of the report a few minutes ago. You know, whatever is in the report is in the report and one of the things that

I think has to be considered when you look at the report and look at Will's letter and you look at the order that was issued by the Planning Commission is that the intersection that we're talking about now is not the same intersection that the Planning Commission reviewed in 1998. As you may recall for those of you who are old enough, the intersection moved in the Maalaea direction 20, 30 yards and the highway...I know I was thinking about this the other day, I can't remember if when they redid the intersection if they increased it from two lanes to four lanes. I mean, I remember at one time it was two, but I really can't recall but nevertheless, when you look at the representations or the statements that are contained in the staff report, and I'm not gonna reread them because you know, Rory just told you what was there. I read the application. You know, I read the staff reports and I have an interpretation of what those words mean. The Planning Department reviewed the staff report. In fact, a lot of the report that was submitted to you today or distributed to you today, you know, there's a lot of reliance upon what the representations were contained in the staff report and that's based upon the Department's interpretation of what is contained in the staff report and what's also contained in the application.

But we have someone here today who wrote the application and he is probably in a better position than anyone here to construe and interpret what he meant when he included certain words about the visual resources or the impact on visual resources in the application as well as in the staff report. Because whatever was in the staff report was cut and pasted from the application that Chris Hart & Partners filed on behalf of DeCoite Trucking 18, 19 years ago. And I think there's a saying when you want information you go to source. Well, the source is sitting right next to me. And you heard him a few minutes ago. His interpretation of what the Planning Commission intended was that it be, be approximately 176 feet above mean sea level at the final closure height. And that's kind of what our position is.

To buttress that position I would like to just refer very briefly to certain points that are contained in the record. And one of the things that was included as part of the petition is the Declaration of Steve Joseph. Steve Joseph is a geologist, but he was also the individual who participated in the design of this particular landfill. And in his declaration he testifies about certain things. And one of the things that he testifies about was it was always designed as mound. And as you could see...as you saw from the pictures that Rory showed you a few minutes ago, you know that's the template for the design of a landfill. You want positive drainage from the landfill. What you don't want is to have water collecting on the landfill or getting into the landfill because that creates the opportunity for water to...especially in a lot of the landfills to have the water go through what's hazardous materials and collect into the groundwater which is something that we don't want. It's, I can't guarantee it, but it shouldn't happen in this case because there's a liner. In fact, when you look at the record, you know, the State of Hawaii said this was the most advanced...when it was constructed it was most advanced landfill in the State of Hawaii. It was the first landfill that had a liner. I remember when we were doing the contested case for this particular landfill, Central Maui did not have a liner and that was a real problem with the Department of Health. In fact, I think they got fined significant sums of money because that landfill didn't have a liner, but nevertheless you want a design that had a mound, you want it to have positive drainage. And Mr. Joseph, you know, who's all his life he's worked in a landfill. He's right now, he's in charge of the landfill on Oahu, the largest landfill in the State of Hawaii. He had to quit Masa Fujioka because he took a new job where he's the head man. But in his declaration and you know he states, you know, their intent when they designed the landfill was to have the landfill be at a height of 176 feet above mean sea

level. That was the intent when they designed it. That's in his declaration

The current consultant, Joseph Hernandez...oh, one other thing, one of the elements, and Mr. Joseph when I spoke to him stated that when they were designing the landfill they had met with the Planning Department and based upon their discussions with the Planning Department they came up with that number of 176 so that they would have...there would be views of the ocean when you are at Pohakea Gulch Bridge, you know, that bridge that Rory stopped in. They wanted the views over the ocean there. And that was one of the reasons. Mr. Hernandez is also, he's an engineer. He's hired as a consultant and he has a similar opinion that the landfill should have a mound design for positive drainage. And secondly that, you know, the finished closure height based upon the design and the information that they received should be at you know, 176 feet above mean sea level. You know, I just wanted to note before I close in a few minutes that prior to 2011, you know, there really wasn't a lot of discussion that's my understanding about what the final finished height should be. It was only when this issue of closure came up and they were talking about what the final finished elevation was gonna be that you know, the consultant and the DeCoites, you know, they pretty much self reported and said hey, we have a problem here. The design that was originally presented was in error and they wanted to amend the heights, and that's kind of the start of why we're here today.

And we you know, that's one other thing I wanted to point out and if I haven't already pointed it...I wanted to just remind the Commission that in the original order there was a requirement that there be vegetation along the perimeter, along the North Kihei perimeter of the landfill. And that's gradually been going back up the road too because of site conditions, but when the landfill is completed, when everything is done and said it's gonna...there's...it's gonna be vegetated. So there's...along the landfill there's gonna be a wall and you're not gonna be able to see...have much of an ocean view as you could see from the video.

I would just conclude you know, based upon Rory's understanding of what had occurred and Mr. Joseph, the design engineer who...the individual who designed this landfill as well as Mr. Hernandez's testimony that's included in the petition before you we would submit on behalf of the petitioner in this case that it be...the Commission should find that the finished closing elevations was at 176 feet above mean sea level. Thank you very much.

Chairperson Lay: Does that conclude your presentation, Rory? Okay. 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. If you testified on this already then you won't be allowed to testify again 'cause you've already said your, you know your portion of it. If you haven't testified, please step forward and give us your testimony. You have three minutes.

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

Chairperson Lay: Our next testifier is Francis Lydon.

Mr. Francis Lydon: Good morning, ladies and gentlemen. I'm a...my name is Francis Lydon. I'm a resident of Maalaea. I've come to speak on the landfill that's located there. This document is a decision and order that enacted that Special Use Permit and it's a legal document carrying a full

force of the Hawaiian Public Law. And most of the burden for this document falls upon the recipient that is DeCoite Landfill, Inc. Some of it falls upon the Commission before me.

There about five conditions, key conditions in this, in this permit. They are termination, elevation, capacity, closure, and financial. And when the first three are satisfied termination, elevation, and capacity when they're satisfied, when they're reached this document goes away. The recipient cannot wander outside the four corners of this document. He must be, he must operate within this document, and that's what's in this document. So for example, the capacity in the document is for 872,000 cubic yards of storage. Some time between June...January...July of 2010 and July of 2011, June of 2011 he blew through that and you have the record. I submitted the record and it's directly from his annual operating reports that it reflects that. I added 'em all up and that's what it came up with. So he exceeded that. This document then was satisfied.

Well, he also satisfied by the elevation. The elevation was 140, 160 feet AMS. And when that was satisfied, this document was satisfied and it went away. He should have stopped right there and he didn't. He kept building and building and whatever he put into the landfill after the document is satisfied is his responsibility, and his responsibility to remedy, and the remedy is to remove, and relocate it really. If I was to renovate my property and I was to put it in a pickup truck and then drive it and put it on land, vacant land and if I caught, I would be fined and, number two, I'd have to remove it. Well, that same principle applies to DeCoite Landfill. They must also do likewise because they've exceeded the document here.

There's also a closure requirement which adds three feet and it's a very specific closure requirement in here and it's there to protect the residents of Maui, the residents of Maalaea and all future generations from whatever might emit from that, that landfill. Now the elevation of 140 to 160 was written into the document. He wanted to make a technical change to that by making it 156 to 176--

Ms. Takayama-Corden: Three minutes.

Mr. Lydon: --well if the 140 to 160 which is...and the differential is the elevation of the landfill to the elevation of the highway theme throughout all of this document, through all the iterations is the idea of the point that the elevation of the highway will be higher than the elevation of the landfill when it tops out.

Chairperson Lay: Thank you, Francis.

Mr. Lydon: So if you now take a look at it--

Chairperson Lay: Francis, if you can conclude please?

Mr. Lydon: Okay, all right you got a financial, you got a closure, and then you also have financial and the financial is not only is DeCoite responsible, but also, A & B, Alexander & Baldwin responsible financially and physically for cleaning up the site. Now final thing is that this Commission has a responsibility also to stay within the four corners of this document, to stay within what it says in here, and not to wander outside and make decisions that are out here and--

Chairperson Lay: Thank you, Francis.

Mr. Lydon: Okay.

Chairperson Lay: Commissioners, you have any questions for the testifier?

Mr. Lydon: I'll answer any questions.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name?

Mr. Lydon: Francis Lydon.

Mr. Hedani: Francis?

Mr. Lydon: Francis.

Mr. Hedani: Right. What is your perspective? What would you like to see?

Mr. Lydon: Removal, relocation of that material. And I understand—

Mr. Hedani: From what height or what elevation would you like to see?

Mr. Lydon: Oh, back down to 140 to 160 which is what's in this document.

Mr. Hedani: Okay, thank you.

Mr. Lydon: Yeah.

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

Mr. Lydon: Thank you very much.

Chairperson Lay: Our next testifier is Pam Daoust.

Ms. Pam Daoust: Good morning, Commissioners. My name is Pam Daoust, and I am the President of the Maalaea Community Association. I have submitted a formal letter to you that lists our concerns regarding the Maui Construction and Demolition Landfill in detail, so here I will just summarize them.

Although it's been cleaned up and leveled off in recent weeks, the landfill has been a long-term eyesore for our community and even a health hazard if you go back to the times of the subterranean fires. Tourists headed for West Maui are treated to views of stacked concrete, piles

of debris, rusted litter fences that always look like they're falling down. We oppose reopening the landfill, enlarging it, allowing it to get any higher, and/or extending the permit which expires in 2016. Exhibit 20 which was supplied to us by the Planning Department shows the landfill at heights of 158 to 176 feet above mean sea level. The Planning Department's letter of 2011 said that a 176 feet would be the max. This was over a year ago in 2014. The landfill should have been closed then not allowed to continue operating for another year.

We have shared our concerns with the DOH and they told us in an inspection last year that the top deck and the sides slopes were sloped improperly to prevent runoff rather than promote it, and that this needs to be addressed prior to final closure. We agree, and we call the matter to your attention in our official letter. We are concerned about ongoing groundwater contamination from toxins like lead, arsenic, mercury, silver, and so on. We've asked repeatedly for groundwater reports and were promised them in January, but none have yet been provided. The landfill's two lysimeters were broken in 2011 and new groundwater monitoring wells did not even go in until August of 2013. So no tests were done for quite a period of time. The DOH has said that the nearest potable water source is 2.8 miles away. Not true. Right across the street is Project District 12 where the development is currently being planned. The developer, Doug Spencer has said that he plans to put in a reverse osmosis treatment system to treat his water from the wells on the property if that project is approved. But what about the toxins reaching Kealia Pond and the ocean that are downhill from the landfill? That is a possibility. So we therefore recommend that ongoing groundwater testing be required as part of the closure plan for the landfill. Mr. Spencer, by the way wanted to be here today to testify in support of permanent closure as we are doing, but was unable to make it. We hope you will agree with us that it's past time to permanently close the landfill. Thank you so much for your time.

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

Mr. Higashi: Yes, I have a question. When was the last time you visited that site from the Kihei Road into the landfill?

Ms. Daoust: I go by there all the time.

Mr. Higashi: Okay, how many feet is it from the highway to the pit, to the surface of the pit?

Ms. Daoust: Well, I don't know how to measure that, but I can tell you if you're coming from North Kihei Road you're looking up at a, you know, it's high. If you're coming from Kuihelani and going down Honoapiilani your views straight ahead open up the ocean, your views this way are blocked I feel. You know, you're looking at, you gotta kinda look over to see the ocean. But if you're going right down Honoapiilani Highway, and again, it's been leveled off in recent weeks, but it has been definitely above the level of the highway quite a bit and you're looking up at it.

Mr. Higashi: Well, for your information I went there this morning.

Ms. Daoust: Yeah.

Mr. Higashi: And North Kihei Road is about 15 to 20 feet above the pit itself. The place you're

talking about is further toward the mill–

Ms. Daoust: Okay.

Mr. Higashi: –which is, which is a little higher. So there is still room to be filled if you're talking about height locations, et cetera that's not the –

Ms. Daoust: But what height is that, sir? Is that a 176 feet? The map that I had showed a 176 feet already at that, at that perimeter on either end.

Chairperson Lay: Commissioner Higashi, we can bring this up afterwards and we have everybody testify, you know, as far as how we...what we found. It's just questions directed at her.

Mr. Higashi: Okay, the water level you're talking about, the toxin material at ground level is it you're talking about the liner itself?

Ms. Daoust: Yeah, if you're looking at Kealia Pond, you're looking at the ocean it slopes down from the landfill. And so we consider that that is an issue that should be looked at in the closure plans and that you should continue to have groundwater monitoring after the landfill is closed to make sure that no toxins are getting into Kealia Pond or to the ocean from there.

Chairperson Lay: Commissioners, any more questions for the testifier? Seeing none, thank you. Oh, Commissioner Hedani?

Mr. Hedani: Pam?

Ms. Daoust: Yes.

Mr. Hedani: Does the community association contemplating legal action?

Ms. Daoust: Pardon? I could not hear you.

Mr. Hedani: Is the community association contemplating legal action on this issue?

Ms. Daoust: We have not discussed it at this point.

Mr. Hedani: And what would the community association like to see?

Ms. Daoust: We would like to see it remain closed, no extension of the permit.

Mr. Hedani: Relative to height?

Ms. Daoust: I think the height that it currently is now is high enough, sir.

Mr. Hedani: So it's acceptable to you?

Ms. Daoust: At this point, we don't wanna see it go any higher.

Mr. Hedani: But the existing height is acceptable to you?

Ms. Daoust: The existing as you look at it now I think as far as we...we just don't want it to go higher. We were into the Planning Department over a year ago complaining about the heights. We brought in Google maps from Google Earth showing the levels. We were concerned over a year ago that it was too high. But as it's leveled off, today when you go by it doesn't look as bad as it did before. We just don't wanna see that thing go any higher. Thank you.

Chairperson Lay: Commissioners, any more questions for the testifier? Seeing none, thank you, Pam. Our next testifier is John Finnegan.

Mr. John Finnegan: Good morning, ladies and gentlemen of the Maui Planning Commission. One of the things I saw this morning that I wasn't quite sure what it was, but I saw the sun today. So my name is again, I'll repeat it, John Finnegan and I've been a permanent resident of Maalaea for 29 years. I have been a member of the Maui or the Maalaea Community Association since its inception 25 years ago and I'm now currently on the board of the community association.

Maalaea is a seaside community with ten condos and a few private houses. Maalaea is best known for our small boat harbor, snorkeling at Molokini, fishing, whale watching, the Ocean Center with a first-class aquarium. We have left a few good restaurants. And we have stake in keeping Maalaea a first-class resort destination. This landfill is not a good neighbor and neither was the porta san that was visible from the Honoapiilani Highway that belonged to the landfill.

You have three roads that lead that Maalaea, the Honoapiilani Highway, the Kuihelani Highway, and North Kihei Road. When you approach Maalaea the pleasant views from those highways change to the Maui Demolition and Construction Landfill. In the real world we would call this landfill a highly visible active dump that is an eyesore and it is growing. That pleasant view has changed into dump trucks spilling alleged building waste on the landfill, then having it spread out by bulldozers. Maalaea residents have been upset and annoyed over this problem for 15 years with the dump by blowing dust, debris, noxious odors and on one occasion, a fire that burned for four days. The tires...the fire was traced to tires which are not exactly building material.

On November 20, 2014, the Department of Planning issued a Notice of Warning to Maui Demolition. The height of the landfill could be no more than 156 feet above sea level. A planning consultant employed by Maui Demolition said now the landfill is about 172 feet, a difference of 16 feet. We understand that Maui Demolition and Construction has temporarily closed the landfill. We ask if this closing is to catch up, clean up the landfill to comply with permit provisions just prior to this hearing. The Maalaea Community Association asks that the permit issued to Maui Demolition and Construction for the 14.8 acres in Maalaea not be renewed. Thank you very much.

Chairperson Lay: Commissioners, any questions for the testifier? Seeing none, thank you very much, John. Our next testifier is David Dantes.

Mr. Finnegan: Can I mention just one other thing? *The Maui News* had an excellent article about

Maalaea and the landfill on Sunday.

Chairperson Lay: You can pass it around if you like after. Thank you.

Chairperson Lay: The next testifier is Mike Moran.

Mr. Mike Moran: Aloha Chair and Commissioners. Thank you for the opportunity...excuse me, thank you for your volunteer service to the community. Mike Moran, President of the Kihei Community Association, KCA, for the association testifying on all three communications on today's agenda as they're all relevant to South Maui.

When KCA was incorporated almost 55 years ago, our Charter designated our district from Maalaea to Makena. So we do our best to advocate for the entire area in conjunction with the other entities representing smaller, more specific areas.

Okay, on Item No. 1, that first Communication on the Maui Demolition and Construction Landfill at Maalaea. We concur with the testimony of the Maalaea Community Association as this facility should be closed, but the owners must continue to be responsible for any groundwater contamination encountered in the future for this ecologically sensitive area close to Maalaea Bay as well as the Federal sanctuary.

Chairperson Lay: Mike, I have a quick question for you.

Mr. Moran: Yes, sir?

Chairperson Lay: So you're addressing three separate items today, right?

Mr. Moran: Yes, sir.

Chairperson Lay: You're going to take up individually given three minutes each or are you gonna —

Mr. Moran: That concludes No. 1, so I think they'll all be under the three-minute limit. But I was gonna ask that question shall I pause for questions between them?

Chairperson Lay: That's fine. Thank you very much, Mike.

Mr. Moran: Okay, so continue on?

Chairperson Lay: Yes, please.

Mr. Moran: Thank you. Okay, No. 2, of course No. 2 comes from the KCA letter of several months ago requesting expanding SMA boundaries in South Maui and we thank Commissioner Wakida for requesting this item on this morning's agenda. It will be addressed in detail by our KCA Director Gregg Stratton by his testimony. Please support our request for this change as extensive development mauka of the highway presently and much more in the future makes this the outdated

boundary obsolete. That's No. 2.

Okay, on Item No. 3, I had addressed this item at a prior Commission meeting as an example of the recommendations and conditions of the Commission seemingly being ignored. When the Commission recommends that the granting of a permit with specific conditions, we expect they will have an effect and believe you do as well. It is ludicrous for the Hawaii Department of Transportation to do this traffic improvement at this intersection and fail to include the sidewalks. We were advised by Councilmember Don Couch that he understood the Department of Transportation decided not to take this action because it would not directly connect to sidewalks on Ohukai ignoring how very close they would come to them as well as the fact that our Public Works Department is presently doing evaluation of where they will install additional sidewalks on Ohukai. We support the testimony from the South Maui Citizens for Responsible Growth on this matter in their detailed presentation. Once again, we thank Commissioner Wakida for requesting that this item also be on this morning's agenda. Mahalo.

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

Mr. Moran: Thank you.

Chairperson Lay: Okay. Annette Niles?

Ms. Annette Niles: Hi, my name is Annette Niles, farmer, rancher for over 40 years. I would like...I have two items. One is on the rubbish dump and one is on the vacation rental. So do I have three minutes each?

Chairperson Lay: We'll all three minutes for both. I mean individually.

Ms. Niles: Individually, okay. Okay, my take on the rubbish dump. You know we need that rubbish dump open. Construction have no where to go. And as far as the people talking about the views, I gotta look at Pulehu Road everyday with the mountain view. We look at that. They have no where to go. They have no where to go to drop off their construction pieces. This rubbish dump needs to stay open. As far as you know for me, I mean, and as far as the Board of Health and the environmental, we had a problem, not our property, but somebody else had. And as far as the environmental people and the Board of Health they've been on it because of oil spills, tires and all of that. They're not gonna call you and say, okay we're gonna go in today and check on it. They're gonna go in. So please consider leaving some place for this construction people to have somewhere to go because we can't fill 'em up on Pulehu side. It's enough already for that. So that was my take on the rubbish. Thank you.

Chairperson Lay: Any questions for the testifier on the rubbish dump issue at Maalaea. Thank you.

Chairperson Lay: Our next testifier, Kathleen.

Ms. Kathleen Perreira: Good morning. I agree with Annette. We are--

Chairperson Lay: Can you identify yourself?

Ms. Perreira: Kathleen Perreira and I'm testifying for the landfill. I agree with Annette. We have a construction company. We have a roofing company. We have talked to, I have talked to all the other roofing companies on Maui that have been using the landfill. For us, the landfill is extremely necessary. The County dump is now saying that everything has to be in by 1 o'clock or they won't take our truckloads. We do not have this kind of problem with the landfill. They have been very respectful of the construction industry. They check our loads to make sure we're not bringing things in that shouldn't be coming in there. It is for us, a place where we can continue our business on a daily basis. It is a big deal to have to go to the County dump. They don't want us there. They don't have room for us. They don't have time for us. Maalaea does.

For the visual part of it. I have to drive pass Omaopio everyday and as I came up through here I came through Maui Lani I think that's what it's called where old dump site was up in Wailuku. I see that mountain every time I drive through there. No, we don't wanna see it, I agree with that. The problem is it's very necessary for us as construction people to have an alternative place to go and Maalaea has provided that for us. So I would like you to consider some way to keep that refuse area for us. That's it.

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

Ms. Perreira: Thank you.

Chairperson Lay: Thank you. That concludes all of those who signed up for testifying this morning. Does anyone else wish to testify, please step up to the mic and you can identify yourself. You'll be given three minutes.

Mr. Mercer Chubby Vicens: I apologize, but I did sign up very early and it's under M. Chubby Vicens in there.

Chairperson Lay: Oh, okay. Sorry. I see it. Sorry about that.

Mr. Vicens: If it pleases the Chair, I would like to speak on two items this morning separately and I'll stay within the three minutes. The first is on the Communication 1, the Maui Demolition Construction. In 1996, I was the Vice-President of A & B Properties here on Maui, and put the deal together that allowed the DeCoites to accept construction landfill. There were several reasons. It filled the void. It filled the void where you can separate construction material from home use. It also did, had a direct economic savings to the community because there was about \$20 to \$30 a ton differential in the cost of dumping at Maalaea versus the County dump.

If you talk about visual impairments take a look at the mountains where you look at the beautiful Haleakala and see two large landfill masses streaming into the sky. If you drive through Maui Lani and look onto the left as you come up there's a humongous mountain there that was a landfill at one time. I drive by Maalaea because I've been directly involved in it over the years and I don't see that as being an impaired view. The view comes when you turn and head down Honoapiilani and

it opens up the corridor to Maalaea and that's when you should be looking at the ocean. Not if you're driving on Piilani and put yourself in and somebody else in danger's way by looking at the landfill, okay.

The last thing I wanna say is about the DeCoites. In my 25 years or 30 years with them I have found them to be very, very community minded. They have tried their best to follow all of the rules that were regulated by the Board of Health and the Planning Department. The incidents that happened with an early fire there that closed them down in 96, 97 was taken care of at their expense. Every penny to fix the problem came out of the DeCoites pocket. A & B in order to protect ourselves and the community has put a five-year period of time after closure where the DeCoites have to monitor the property to make sure that if it's sinking, they have to bring it up to elevation, if there's leakage problems or fumes they take care of it. So they've escrowed an amount of money to be able to take care of that, but we did put a five-year monitoring program on that after they close.

So in closing, I wanna tell you that I believe the DeCoites are great community people. They have served the purpose and I would hope that this Commission will support their effort to complete it which is about a year away. I think it will fill in a year and we are currently looking for a new spot in the vicinity of the current dump for a new site. But I'll be here to answer any questions you have about how they're keeping water from leaking out of the thing or any other questions that may arise about that particular issue. Thank you very much Mr. Chair.

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

Mr. Hedani: Chubby, since you put the deal together what was the intent relative to the overall height of the dump when it's finished?

Mr. Vicens: Well, I think that...they'll explain later Commissioner Hedani. We have the engineer here, but I believe that it was always the intent to try and arrive at a level that would not be an eyesore. And I'm not familiar with the particulars. However, however, there was an error made several years back that was...(inaudible)...I think to be corrected in 2011 with the Department of Planning. So that's the best I can give you.

Mr. Hedani: Okay, I guess my question was from an understanding standpoint was your understanding that it be filled to the existing grade so it's level with the existing grade?

Mr. Vicens: I can't answer that with effectual answer, sir.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Hey Chubby.

Mr. Vicens: Good morning.

Mr. Tsai: Good morning. Thanks for coming forward. Question regarding the contamination. You say you can speak to that. Was there any clause in there when you put the deal together?

Mr. Vicens: Well, when we put the deal together they had to provide a rubber liner. Someone came in from the Big Island and put a liner on the bottom. And as they came up along the sides, you have to maintain this rubber liner so that no water, no water can leak out into the aquifer as they, as some of these testifiers noted. And then you had to put a monitor to make sure that the leachate fell within a particular Board of Health requirement and that has been done and followed over the years. So that answer to your question is there was a protective cover put up by them by law. I don't know that the County does it in their landfill. I'm not sure. I doubt it. But anyway, that's why we did it that way and it was mandated they do it, and I watched them do it.

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

Chairperson Lay: Does anyone else wish to testify at this time? Please step forward, identify yourself and you have three minutes.

Ms. Christy Kajiwaru Gusman: Aloha Commissioners. My name is Christy Kajiwaru Gusman. I come today on, in support of the Maui C&D Landfill. I come today wearing a couple different hats. First of all, as a small business owner. I own and operate Trinity Environmental Services doing business Maui Roll Offs. The closure, abrupt closure of the Maui C&D Landfill has hurt many of our contracts. The Maui County Landfill was not prepared to take on the amount of waste generated by the contractors that use the C&D Landfill on a daily basis. They've come up with a bunch of anti-business rules and regulations for us. Closing the landfill at 1 o'clock is just one of them. Having to make appointments and have our drivers be at the landfill at 5:30 in the morning on certain days of the week, only one day a week to dispose of certain types of material. Styrofoam and plastics have to be in by 8 o'clock in the morning it's ridiculous. Totally anti-business.

The staff...I specialize in environmental waste, asbestos, lead and mold. The staff at the Maui County Landfill I love them all, but they do not know what they are doing. They do not require us to bring in any form of lab reports to the contents of what we're bringing in. All they require is a shipping manifest saying it's going from Point A to Point B, Point B being the landfill.

With the C&D Landfill, Cheryl requires us, their people us to get approval not only from our laboratory, but from another third party which they choose and then we have to go through an approval process by A & B before we can dump. These people are tracking what they do. They know what's going in their landfill. And basically it makes it a little bit harder for us, but that's why we charge the money that we charge for doing it because it's done right.

Secondly, as an environmental consultant I wanna touch on the subject of asbestos today and I feel very happy that all of these people behind me came out to testify and told us that they drive this road everyday, they'll looking at the landfill everyday, they're concerned about the Kealia Pond and the water and the toxins going into that pond. Asbestos is illegal only in the United States. Therefore, most of our parts on our cars come from China, Korea, Taiwan. Did you folks know that your brake pads on your car contain a minimum of 30 percent asbestos? Therefore, the people driving that road everyday, direct contamination to the Kealia Pond every time it rains. The landfill which mind you is set up between the corn field and Maui Electric, so before any of that water

reaches "Kealia Pond" it's being filtered through the ground. Just point of thought.

I was also the geo tech on the Maui County Landfill site back in 2008 when they opened up the new section.

Ms. Takayama-Corden: Three minutes.

Ms. Kajiwaru Gusman: To answer Mr. Vicen's question earlier, yes we did not that recall put in a rubber lining in the Maui County Landfill. There's nothing there.

Chairperson Lay: Please conclude.

Ms. Kajiwaru Gusman: In conclusion, I just wanna say that, you this, this is a family business. Something that we have very little of left here in the Hawaii. Mr. Freitas, Mr. DeCoite, the Tavares Family, there's Mr. Funes, there's not much of them left. These people have built Maui to what it is today. They operate a good business. They employ many of my friends and I hope to seem them be able to continue what they are doing and I hope that the County gets on board and helps us find a solution instead of just shutting them down without having anywhere for us to go. Thank you.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Young lady did you get the notice of the price increase on the County Landfill?

Ms. Fujiwara Gusman: Oh yes I did. Yeah, and that's not good for us either.

Mr. Freitas: So you know that the difference that your customers and everybody--

Ms. Fujiwara Gusman: That we are paying, yes we do.

Mr. Freitas: Gonna pay a substantial...it's substantial.

Ms. Fujiwara Gusman: Substantial, exactly yeah. And it has hurt a few of our contracts that we're already locked into. One particularly being the Maui Lu demolition which we're working on right now which threw everything...that's why I'm here today is mostly because of that project.

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

Ms. Fujiwara-Gusman: Thank you.

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

Mr. Charles Jencks: Good afternoon, good morning, Commissioners. My name is Charles Jencks. I'm here representing Pacific Rim Land and Goodfellow Brothers, Inc., here to support Mr. DeCoites request and some adjustment to the height if necessary. I just wanna be brief

because I know you've been sitting for a while.

I was a Director in 95 when this was originally approved. Frankly we were glad to see Mr. DeCoite come in because he was gonna create a facility that was gonna divert a significant amount of material from the Maui County Landfill. And we've since then opened up additional phases saving the County taxpayers significant amounts of money in terms of not only their cost to deposit material at the landfill, but also the future cost for design...acquiring land, design, monitoring and closing landfills because it's a very expensive process.

I don't know what Mr. DeCoite charges at this point in time, but I do know that what he was going to charge at the time he opened up was significantly less than the actual cost to dump the same material at the County landfill. So I mean, it was like a duh. This is a really smart idea. These facilities need to go into a hole and I can tell you that from firsthand experience.

You heard a request from Pacific Rim Land for a heavy industrial facility in Central Maui over in Puunene. We initially, Chad Goodfellow directed me to study the idea of creating a construction demolition facility in that 86-acre plan because we knew Chick's facility would eventually reach capacity. These facilities only work if you have a hole to fill. It doesn't work economically and Mr. Hernandez can address this, I can address it firsthand it makes absolutely no financial sense to dig a hole then put stuff in it. It just doesn't make any sense unless of course, you're taking gold or silver out of the hole, it just doesn't make any sense. So these things have to go where there's a whole to fill and cinder pits are a logical place to put them.

Once again, the benefit to the people in Maui County, the taxpayers is significant. This was started in 95, we're at 2015. There's been 20 years of diversion out of the landfill to this facility. And I don't know if Mr. Ginoza is here, but perhaps he could give you an idea of the millions of dollars that have been saved for the taxpayers by allowing this facility to run. I would say to you today, adjusting this height if you can will give Mr. DeCoite additional time and save the tax payers money and hopefully working with A & B allow him to find another facility to open up to once again divert out of the landfill which is a Subtitle D facility and very expensive to operate, close, and find a new facility. So that is my testimony. I just urge you to act prudently and look out for the taxpayers of Maui County. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? I have one. Okay, with your knowledge in setting up this type of system how long would it take approximately to go from ground zero to creating it?

Mr. Jencks: I would say it probably take you three years and that's because this is a landfill. It is a HRS 343 trigger which requires an EIS, and extensive studies. So it's a very...you gotta first of all acquire the land, get the proper zoning in place which is a couple of years. You got the 343 requirement. This is a very long-term process. We, in the context of Puunene decided because of the cost and the difficulty in doing this, we just didn't see it made any sense and it was a very, very long-term process.

Chairperson Lay: Follow up. So when looking...you were asked to look at different areas is there anywhere else where this could possibly happen, I mean with a three-year?

Mr. Jencks: Sure. There's some other cinder pits in the County that could function as this type of facility and you know, we're talking...depending upon the size of the acreage of the site, this was I think 15 acres or more it required a State Special Land Use Permit you might have the same lengthy process for that, but what I would say to you is that it's much easier to do it that way than going and digging holes to put this stuff in because it just doesn't make any sense. And the sooner you get going on an alternate, the better off you're gonna be.

Chairperson Lay: Another question. With this project itself, as far as the safety implications that go behind and be creating...you know, right now they're saying, okay it's filled we're gonna have to use our Central Maui Landfill, right?

Mr. Jencks: Right.

Chairperson Lay: Is it set up to do that?

Mr. Jencks: The Central Maui Landfill?

Chairperson Lay: Yeah, adequately that you know, safety wise as far as drainage, water. I know we've got liquids, we've got greenage, we've got all kinds of things going in there. Is it safe?

Mr. Jencks: You could ask that question of Mr. Ginoza. From my experience as a Director, the landfill was permitted as Subtitle D landfill which means it's fully lined with leachate wells and the whole works. So I would say to you based from my experience and knowledge absolutely it could be used for that, but it's expensive capacity, 'cause it's expensive to build a Subtitle D landfill. It's very expensive. Why use it for lumber and drywall when you should use it for MSW?

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

Mr. Jencks: You're welcome.

Chairperson Lay: Does anyone else wish to testify at this time, please step forward, identify yourself and you have three minutes. Seeing no one, public testimony is closed. Commissioners, do you wanna take a break before we go into the questions or you wanna roll right into our questions?

Chairperson Lay: Five minute break then. Then let's just do with a five-minute break then.

A recess was called at 11:30 a.m., and the meeting was reconvened at 11:43 a.m.

Chairperson Lay: Commissioners, questions? Commissioner Wakida?

Ms. Wakida: I will start. Kurt could you please answer a question? I would like to know if I understand this correctly and I'm basing this on the October 19, 2011 clarification of measures for State Land Use Commission Special Use Permit and the way I'm understanding this is originally this was a 160 feet, and then they went back and they measured and they said, no actually it's 176.

Chairperson Lay: A little closer to the mic please?

Ms. Wakida: Is that correct. Am I understanding that correctly?

Mr. Wollenhaupt: Well, I believe that that is correct and of course the, I believe the gentleman who did write that Mr. Hernandez is in the audience along with the applicant. One does have to remember, and it was in our staff report that these numbers were based off of that contour map that has now filled to have to what we called in question, the very rudimentary amount of the 140 or the 160. That's the map that now is being reviewed. Remembering that in 2011, perhaps...well the analysis at the level that we have been looking at it recently has taken a far greater role. So this adjustment probably would be explained from an engineering standpoint by their representative. But we understood it as it said in the letter here that, the new measurements would not increase the actual physical height of the waste landfill was that two and that was why that was how the letter was written.

Ms. Wakida: Okay. Follow up?

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I'll ask later. That's okay.

Chairperson Lay: Commissioners, questions? Okay, my turn then. Okay with our different dump site, we have the Central Maui dump site and we have this construction dump site at Maalaea, I mean, who you would say would answer this the best and the best scenario would be is one set up like the other? Like can we take our construction site waste material to the Central Maui waste dump area and have the same precautions that we have at the construction site where we don't have seepage into the soil, where it is protected?

Ms. Wakida: Who are you asking?

Chairperson Lay: Who would be best person? Okay, thank you for someone standing.

Mr. Kyle Ginoza: Good morning. My name is Kyle Ginoza. I'm the Director of the Department of Environmental Management. I over...or my Department oversees the landfill operations for the County landfills including the Central Maui Landfill which is the primary landfill for the Maui island.

And so the way our landfill is structured is to handle all municipal solid waste including construction demolition waste. The way our permit read was that provided there was a private construction demolition landfill in operation we would not accept C&D waste and we would divert the traffic to the C&D landfill. In absence of a private C&D landfill in operation, we accept construction demolition waste. And so we are fully permitted to accept construction demolition waste not that we want to, but when we were notified that the DeCoites, Maui Demolition Construction Landfill closed, we then sprang into action to accept C&D waste.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Question for Mr. Ginoza. How much tonnage you know is added daily to your landfill there and by the added tonnage it shortens the life of the landfill, you know. Basically what I'm trying to say is that, the construction landfill benefitted Maui County waste management tremendously, am I right?

Mr. Ginoza: Oh definitely. Yeah, I would echo what Charlie Jencks said about the benefit to the taxpayer of having the private construction demolition landfill there. I mean, definitely an asset to the community to have the private C&D landfill. If you look at the added burden to our landfill, we average on the order of about 450 tons per day and on the first day which was after a holiday that we...the first full day we got 180 tons extra. But it's kinda normalized to about a 25 percent increase. So about 100, little over 100 tons a day of C&D landfill that we get that would be in addition to the roughly 450 tons a day that we get.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Kyle can you speak to the capacity of this County landfill. I mean, with this current rate, 25 percent increase what are we looking at like a long-term effect capacity wise or anything like that?

Mr. Ginoza: Sure. So what we do as far as the County landfill as far as development landfill, is we follow the quarrying operation of Ameron. As they excavate, we then come in, line it, prepare it for landfilling and then fill it up. And so in theory, we have decades of landfill space as long as we kinda follow them along. And so by accepting C&D waste it would just quicken or accelerate before we have to make the next cell. And so depending on what happens here, you know, we'd have to really start looking at developing in a new space because we are targeting a 20-acre parcel for our landfill our next phase. I mean, this wouldn't put us in crisis mode by any means, but it would hasten what we need to do to develop more landfill space.

Chairperson Lay: Commissioner Tsai? Thanks, Kyle. So as a follow up, so can you...your projection on the cost increase for dumping as a result of this increase? 'Cause I'm hearing from other Commissioners the cost is going up significantly.

Mr. Ginoza: Well it is a...it will be a cost to the dumpers, the haulers because right now I don't exactly...I don't know the rate structure exactly of what Mr. DeCoite charges, but with our current rate structure we have to charge \$75.60 per ton for what they dump at our landfill. So I think its on the order of 20 to 50 dollars more than what the haulers pay currently or whatever it is. But you know, it is a significant increase. We are looking at if we have to continue to accept construction demolition waste in the next fiscal year how we would structure the rate structure to try to not only landfill everything but to try to mirror to some extent what Mr. DeCoite does in trying to divert it from landfilling.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I guess what I'm trying to ask you is do you anticipate a rate increase based on this increase of, you know, construction waste and how much?

Mr. Ginoza: It wouldn't be a rate increase for the commercial haulers or the normal MSW, municipal solid waste tipping fee, but there would be other rate classes to accommodate construction demolition waste. So it wouldn't be a because we're accepting C&D waste all of a sudden the hotels and businesses their rates would go up. They would be immune from any kind of rate increase as a result of anything with the construction demolition.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Mr. Ginoza, being that you have accepting a 100 tons more per day, do you have to hire more people at the landfill or are you anticipating hiring more people to manage this influx of material?

Mr. Ginoza: With the current staffing we have, we're not needing to increase the staff over what we are already trying to increase to just manage our operations. So if you're asking is there's gonna be a delta increase because of C&D waste acceptance, no there isn't. But there are additional costs related to accepting the C&D waste which you know for instance in order to mitigate some of those impacts we only would accept it up to like 1 o'clock so that we can cover it with other waste adequately. But you know, there are additional costs with cover material and repair maintenance and such, but not personnel costs other than over, maybe some overtime.

Chairperson Lay: Okay. Oh, Commissioner Wakida?

Ms. Wakida: I don't have a question for Mr. Ginoza.

Chairperson Lay: Mr. Ginoza, we had a testifier earlier state that with that Maalaea plant when they bring in their rubbish it has to be tested to make sure that no bad toxins or anything like that and she said that she thinks that the landfill, the Central Maui Landfill doesn't do that. Is that true or?

Mr. Ginoza: I mean, we have spotters there to kind of ensure that...landfill attendants to ensure that certain hazardous materials and such in asbestos and such are not accepted or you know if for instance we get asbestos we have a certain area that we accept it. So there are from a commercial standpoint checks and balances for that. As far as for residential hazardous waste and other materials, by permit we're allowed to accept for instance if you had like, if Mr. Higashi had some turpentine, you know, he could wad it up and throw it in the landfill. So that's regulated and allowed by permit to accept that in in that manner, but we do have checks and balances in place to ensure that we follow permit, we don't accept materials that shouldn't be accepted.

Chairperson Lay: Okay. Commissioner Wakida?

Ms. Wakida: I have a question for Mr. Frampton.

Mr. Ginoza: Thank you.

Chairperson Lay: Thank you, Kyle.

Ms. Wakida: Thank you.

Mr. Frampton: Yes?

Ms. Wakida: I just wanna get very clear on what we're dealing with today. This issue is coming up because this landfill is planning to close soon. Is that correct?

Mr. Frampton: Yes. If this...if the Commission finds that the finished height of 176 is consistent with the intent of the Planning Commission's original approval then the northern portion of the facility we wouldn't bringing in any more waste there, just closure and the southern end, would have some additional capacity. But it's estimated that that would be done, that would be used up in about one year.

Ms. Wakida: Okay.

Mr. Frampton: And I'm sorry, I just wanna add two more things. I would just, one is when we were here in 2006 getting a time extension, they estimated that the remaining life of the facility was between eight and ten years, turned out to be pretty accurate. So that's what...they gave him a ten-year time frame. The permit would end in 2006, I mean, 2016 right now if it's not amended.

Just one other thing too, just to mention about the closure. The reason why it's closed right now is we wanted to resolve this matter. Mr. DeCoite did not wanna have to bring in any additional material that might exacerbate the existing situation. So that's why it's closed. If this matter gets resolved today, he will start operations again, and it's one-year estimated time of completion. Sorry for the long answer.

Ms. Wakida: No, that's fine, that's fine. So the facility does need to close fairly soon, within a year or so?

Mr. Frampton: That's correct.

Ms. Wakida: And there will be a big need to find another location which everybody, what plenty of testifiers have clearly pointed out. Did I hear you say when you were presenting this that it's now at a 172 feet?

Mr. Frampton: Correct. On the northern portion, yes.

Ms. Wakida: The finished grade according to the petitioner would be a 176, and that includes I assume the top layers that go in?

Mr. Frampton: That's correct.

Ms. Wakida: So he would have to be at least two feet below that or at least as best I could read from the documents.

Mr. Frampton: Right, so—

Ms. Wakida: So it's about two feet of vegetation or something on top.

Mr. Frampton: About three. So the top of the closure would be 176. The top of debris could be as high as 173, if you will. So when we reference 176 that includes the three feet of closure material.

Ms. Wakida: Correct. Okay. Thank you.

Chairperson Lay: Director?

Mr. Spence: Commissioners, probably the best illustration of what the applicant is saying is Exhibit 20 contained within your packet of the elevation they're saying that they should be able to go to. To me, and I'm not trying to cut off any questions the Commission may have to the applicant. But I'm just trying to explain a little bit. I hear the kind of pause in the questioning. The question is not to...are we amending anything with this current operation? The question is as I believe it was Mr. Lydon said, are they operating within the four corners of their permit? And when the Planning Department looks at it, we look at certain things. Like one of the...it's true there are no conditions regarding the closed height. But what we do have within the staff report and over and over is that the statement that final elevation of the closed landfill will be approximately 160 feet above mean sea level. We know that that 160...I mean, those numbers are all wrong. They've all been adjusted ...(inaudible)...

This elevation is below the elevation of Honoapiilani Highway between North Kihei Road and Kuihelani Highway intersections thus should not create an obstruction of ocean views from this roadway. The Planning Department gets stuck at this...at the verbiage that this elevation is below the existing elevation of Honoapiilani Highway because certainly at the southern end they do extend, and probably a little bit at the northern end, and that is right about even it appears. Okay, the rest of that, that sentence...okay, the...this elevation is below the existing elevation of Honoapiilani Highway between North Kihei Road and Kuihelani Highway intersection and thus would not create an obstruction of ocean views from this roadway. So while the Department thinks that they're extending above the highway and that is our problem, that is our, what how we think that there is a violation.

The applicant is arguing it was never intended to be looking at it perpendicular to the highway. It was always meant to be looking as you're driving down the highway over the landfill to the ocean. And so to me the decision before the Commission and maybe Corp. Counsel wants to, would add to this, the decision before the Commission is that are they in violation or was the intent of the Commission always be able to see over the landfill to the ocean. Again, we're not changing...this Commission is not changing any conditions to this permit. They're just saying are they within their proper parameters or are they not? That's the declaration that we're looking for.

Chairperson Lay: Corp. Counsel want to say—

Ms. Thomson: I was just going to say that I agree with, I agree with the Planning Director on that.

I think that the applicant's representation regarding the finished closure height and needs to be read with conjunction with the end of that sentence which says, views toward the ocean. So it's a view corridor that's being protected by this finished closure height. What you're being asked by the petitioner is to say whether 176 is a finished closure height across the entire top of the landfill whether that adequately protects those ocean views that were obviously important enough to have been, you know, carried through successive versions of this application through the years.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Can I ask a question of the Director? A previous Planning Commission dealt with this issue, correct?

Mr. Spence: Of sorts.

Ms. Wakida: In '06? And they didn't decide already that 176 was the corrected height? Am I misunderstanding that?

Mr. Spence: No. What the previous Planning Commissions dealt with as Mr. Horikawa pointed out the issue at that time was the fire, was traffic, was dust, and odor. That there were, there were representations made. This language from this sentence that comes from the original application for a Special Use Permit and came to the Commission. The Commission never really commented on that because that was not the issue at the time. And as the staff person in that...the 1998 contested case, I always understood it as the ocean views would be preserved. That was the representations made and I never...there was just not the issue of that day. So the Commission never commented on it. All the same, it made it within the decision and order this verbiage about below the existing highway and should not create obstructions of ocean view. That language made it into the Commission's decision and order, findings of fact...findings of fact, conclusions of law for that permit. So that was adopted. ...(inaudible)...but I see the attorney frantically ...(inaudible)... trying to comment. But...so it was...

Ms. Wakida: Okay, I understand.

Mr. Spence: Okay.

Ms. Wakida: I understand. Thank you.

Chairperson Lay: Commissioners? Commissioner Hedani?

Mr. Hedani: This is a question for Rory. Rory, when I look at his map it shows an elevation at 176 for the landfill in this area.

Mr. Frampton: Yes.

Mr. Hedani: Well, it shows 176 through the entire top of the landfill essentially.

Mr. Frampton: If that...excuse me, that...if you see the label to it, it says Final Elevation Contour.

So there are...it's a little confusing.

Mr. Hedani: So existing 174.3?

Mr. Frampton: Correct. Which is now down below 172.

Mr. Hedani: Okay. And the question that I'm pointing to over here is not gonna be at ...*(inaudible)*...

Mr. Frampton: That's correct.

Mr. Hedani: Except for closure.

Mr. Frampton: That's correct.

Mr. Hedani: Okay, and this has additional capacity in it?

Mr. Frampton: That's correct. On that map right there it shows it. There's two points, 163 and 158. Those are actual elevation spots. That's raised a little bit now, but it still has capacity to go to 176 if you find that the 176 is consistent with the previous approval.

Mr. Hedani: Okay.

Mr. Frampton: And I just have to throw in that the statement by the Planning Director that that statement made it into the findings of fact, conclusions of law in 1999 that's not correct. It wasn't in the 1999 conclusions of law. It was subsequently...it was included in staff reports, but technically speaking it wasn't in the findings of fact, conclusion of law for 1999 that approved this permit.

Mr. Hedani: Okay. The other question that I had...continuing...the other question that I had is the elevations that you have along the highway reflect, reflect eye height?

Mr. Frampton: Correct.

Mr. Hedani: You're taller than I am so your eyes are higher than my eyes. You know, when I sit in my Fiero I'm like three feet lower than that riding along the highway. I'm not sure what kind of vehicle you're riding in when you look at the views. So the concern that I have is the heights that we see along the highway don't necessarily correspond to height about mean sea level which is reflected in the landfill. In other words, the height of 176.0.

Mr. Frampton: In eye height you mean?

Mr. Hedani: Right. Eye height of 176.0 here is probably 5 feet higher—

Mr. Frampton: Correct.

Mr. Hedani: —than elevation above mean sea level. So this elevation is 171 probably.

Mr. Frampton: Roughly, yes.

Mr. Hedani: Roughly. So it would be five feet higher as far as this is concerned relative to the elevation of the highway.

Mr. Frampton: If you draw the line perpendicular, but as we discussed earlier and as the Director noted, you know, the idea was looking from that point along the view corridor.

Mr. Hedani: Right. Right, because it goes all the way up to 193 at the intersection with Kuihelani Highway.

Mr. Frampton: Exactly. And that's when...that section between the 193 and 176 that's when you're looking over the facility. When you're at the facility you're not looking sideways, you're down the view corridor more in a straight line.

Mr. Hedani: Right. I appreciated your presentation. I appreciated the fact that you did, you know, go through the video and allowed us to take a look at what we're actually seeing by doing that. And the language that I before me is very confusing from the standpoint of what we're expected to declare. The applicant, the petitioner in this particular case is asking for 176 total across the entire landfill is what he's asking for. And if it hasn't been determined in the past the maximum height, then we would declare that that would be the actual height by agreement at this point.

Mr. Frampton: Yes, so my understanding is that petitioner's requesting that the Commission confirm that a finished height of 176 above mean sea level is consistent with the intent of the Planning Commission's original approval of SUP 98/005 and yes,--

Mr. Hedani: Okay. Thank you.

Mr. Frampton: And I'm sorry, one other little statement. I was in a Subaru. I wasn't in my diesel truck.

Chairperson Lay: Director?

Mr. Spence: And Commissioners, I do stand corrected. The thing about 160 feet and et cetera that I said it does not appear in the D&O. It does appear in the staff report and it does appear that same representation...it's all the same, that is was cut and paste at the time from the application into the staff report. It also appears in I believe it's the 2006 time extension. So it still was a representation made. And but what Rory is saying is correct. They're saying is this 176, does that fall within the parameters of what the Commission approved at that time?

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Mr. Frampton, please? I guess I interpreted this a little different from Commissioner Hedani from the standpoint that the 176 I thought was from the mean sea level up to the maximum top of where you're gonna be finishing versus on the highway looking from a

vehicle because you could be in a truck or a car or whatever whereas if you're on a sea level from the pit looking up and thinking the maximum height it would be 176 finished. Is that correct or—

Mr. Frampton: Yeah, all of the elevations are referencing an elevation above sea level. So you're correct the 176 is the finished height, 176 above sea level the...(inaudible)...when we're discussing the heights along the highway it's kinda so that you can compare you know what your eye height would be in relation to the landfill height, but all those references, the original reference, zero would be sea level.

Mr. Higashi: Start from sea—

Mr. Frampton: Yeah, starting from sea level, correct. Correct.

Mr. Higashi: All right. I have one more. I'd like to after reading all this voluminous amount of paperwork that went through, I'd like to commend the DeCoite Trucking Company for their ambitious initial taking of meeting the Federal guidelines of putting those liners in and making sure that there's no leak. While like the community association is concerned about water pollution or toxic chemicals that they have made it so that it's monitored properly, and I totally commend the company for doing such a great job 'cause must cost a lot of money to be able to do that. And when you look at the cost factor of where they're putting it now versus the landfill there's a substantial amount of cost factor for the business people taking their waste there.

Mr. Frampton: On their behalf I would thank you and just my own personal comment is, I always found that you know, someone mentioned you know the fact that the, you know, the mom and pops and the family operations that basically you know do private industry here on Maui and the DeCoites are definitely an example of that. They took this initiative upon themselves. There is no other private landfill on Maui. I mean, it's a private landfill. Not one dollar of County money went into constructing that and I think there is definitely they should be commended and I thank you very much.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Rory, let's just, big if scenario here, if this body finds that 176 is too high and we ask to have that reduced is that a task that can be accomplished by the applicant fairly easily? I mean, I assume you just bulldoze the other areas, the high areas is that...I don't know about...

Mr. Frampton: That's a very general question. Without knowing what the height you'd be if you're going down one or two feet, you know, they have that play right now. If you're talking hypothetically to going down 20 feet that's a lot of material and they'd have to look at whether or not they could accommodate it all on site. There is remaining capacity on site, but your question begs another question of...or I guess the answer would be it depends on what number you'd suggest?

Mr. Tsai: Right. I mean, I'm just throwing out say if you know, there's 160 that's been thrown around. So are we talking 15, 14 feet....

Mr. Frampton: The 160 would be...there's two things, two big issues with that. One is the amount

of material 'cause he's a 172 right now in one portion so you'd have to bring 12 feet of waste in the northern section and another 6 feet of waste in the southern section. The other issue is that, you know, the liner, the edge of the pit goes all the way up to 165, 166 and so you'd be...if you made him go down that low you'd actually be exposing liner and that's not a good thing because then it degrades when it hits the sunlight. But remember my slides earlier showing the edge of the pit. So 160 would certainly be a concern in the portion where the grades are...where the edge of the pit is higher than that.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Would...I'm inclined to support this request, but would they be willing to start with the planting trees immediately after they open up, if they open up? I know they have some trees planted and everything. Would they be willing to start with the trees because they eventually are gonna have to plant them anyway?

Mr. Frampton: Yeah, you know I did discuss that with Mr. DeCoite earlier because there's a few sections where there are no trees, those peekaboo views that I called, and he would be willing to go ahead and fill in those blocks. I just might add that any of you who've tried farming before or growing anything, sometimes it's grows really well, sometimes it doesn't. Originally the DeCoites irrigated and planted Wiliwili, you know the False Wiliwili, the ones that used go along Mokulele Highway?

Mr. Medeiros: Yeah.

Mr. Frampton: And then the bug came, you know, the super wasp? And so they had a grove of the Wiliwili and then the wasp came and decimated it. Since then they've replanted and you can see if you drive along there's sections of Be-Still, there's sections with Bamboo and there's some other hedges that have, they have irrigated and they have started. So that's another, sorry but long answer of saying...the short answer is yes, they would be willing to.

Mr. Medeiros: Good enough for me.

Mr. Frampton: Yeah.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yes, I tend to support...not tend, I support this because you got the view corridor there and within in a year this thing will go away and if you notice the rest of the landfills that we have, look at the one in Waikapu, Piilani, those are...they're all grassed over. They look nice, you know, it's just a mountain. And to take that 100 tons a day to what do you call Central Landfill I think it's putting stress on our County landfill and I think a year, we would have some time to what do you call look for another landfill and I think it's right on track because the view corridor is protected.

Chairperson Lay: And I guess that's my question, can we be assured that that view corridor will...if we're saying 176 that's where we're at right through?

Mr. Frampton: Yes, but I do have to note that when we...when the trees get planted there, it will close up that peekaboo window and like the rest of the facility, you won't be looking directly at the mountain, you'll be looking at trees. And you know, like there is around that whole area. There's a lot of mature kiawe trees. So the 176 we can commit to. You know, the DeCoites have been very diligent. That's how they found out about this problem. They have their engineers come over, they go out there and survey. They go with the handheld GPS devices and they figure out what the elevations are. So yes, they have the equipment, the technology to accurately measure the 176 at final closure. And the view corridor it gets a little complicated when you're talking about planting trees, but...

Chairperson Lay: Well, I have to agree to you on the part as far as what you're gonna grow out there 'cause it's so dry, but anything that can help enhance that area 'cause previously to that when I was in high school, that was just kiawe trees with a pit. And before that a cinder cone went 80 feet in the air a long time ago.

Mr. Frampton: And then some, yeah.

Chairperson Lay: Okay.

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

Chairperson Lay: No, I'm not that old, but what I've seen here. You can ask my mom on that one. Commissioner Hedani?

Mr. Hedani: Yeah, Mr. Chairman, I kind of appreciate what the DeCoites have gone through in this particular case. I think they provide a very valuable service to the County of Maui in terms of accepting construction debris and construction waste avoiding that impact on our landfill. In this particular case I think it's unfortunate that they're dealing with a situation where fines of \$1,000 per day are something that they're looking if we do not confirm 176 or a number that's acceptable to the Commission based on everything that we've read and seen.

I was on the Commission in 2006 when the extension came up and I don't recall any discussion of height limits at that particular point in time. It was a hole in the ground, as far as we were concerned, you know, we weren't looking at a mountain at that point so it didn't...it wasn't top of mind for the Commission at that particular point in time.

After I've looked at the exhibits that were presented today, my original thought would be wouldn't you take it to the existing topography of the land and make it flat. In listening to the explanations about diverting runoff from the top of the landfill away from the site itself, I can see why you need to mound it over the existing grade. So personally, I have no problem with confirming 176 feet above mean sea level for the entire landfill.

Chairperson Lay: Director?

Mr. Spence: For Commissioner Hedani, you said over the entire landfill or as represented in Exhibit 20?

Mr. Hedani: As represented in Exhibit 20. It's 176 max with the landfill.

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

Mr. Tsai: I'll second Commissioner Hedani?

Ms. Wakida: Is there a motion?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: The only thing that I couldn't make sense out of in here was a reference to Kahekili Highway. I looked up on my Google Map and it says from North Market Street to Honokohau Bay is Kahekili Highway.

Ms. Wakida: It was corrected...(inaudible)...

Chairperson Lay: Does the Department have a recommendation?

Mr. Wollenhaupt: We have a clarifying point and you may wanna bring up Mr. Frampton. The proposed closure plan is actually Exhibit No. 19. That emulates what Exhibit 20 has, but it more clearly defines on a contour by contour basis what the closure plan is to be. Exhibit 20 shows the schematic of 176, but those other numbers are just actual heights. So I think that it would probably be referenced as proposed closure plan dated December 2014 noted as Exhibit No. 19 or Figure 5 from Maui Demolition & Construction. That does have the same 176 contour that's on No. 20, but it fully defines what the contours are moving out to the perimeter of the landfill.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Move to accept the Declaratory Ruling as specified by Staff.

Mr. Freitas: So move.

Mr. Tsai: Second.

Mr. Medeiros: Second.

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

Ms. Wakida: I came from Lahaina this morning as I had a Planning Commission meeting and made a special point of taking a look at the site we're talking about. Coming from Lahaina, I saw some of the landfill and for about a second it was a little bit of obstruction of the ocean. However, I was really looking for it and normally I wouldn't be paying that kind of attention going in that direction coming towards Wailuku I should pay attention to where I'm going. So I am in favor of the motion and I think that our view planes are gonna be preserved.

Chairperson Lay: Any more discussion on the motion? Commissioner Medeiros?

Mr. Medeiros: I believe that the view planes are protected. Okay, and I agree with Commissioner Wakida we should keep our eyes on the road. I also would like to say that you know, people have, had concerns about...it was pointed out to me that you know, the Maalaea people their wastewater is treated by injection wells and everything and they're concerned about you know, contamination of water. And I'll put myself out on the limb right now, if you come to me with something like that I will tell you straight up, clean your yard before you clean your neighbor's yard.

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

Mr. Hedani: Mr. Chairman, I think that you know, agreeing on this particular height will extend the life of the existing landfill for a year possibly. It would give the County that much more time to seek alternatives. I thought the Commission reviewed a construction demolition landfill site in Puunene that we reviewed, but apparently that's not happening. So we need to look at alternatives within a year to try to solve what the problem before it becomes a real problem. But I think everybody contributes to construction demolition debris. The recent high winds that we had, all the roofing material that blew off of everybody's houses you know, when we do the repairs, this is where it ends up with the waste.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Clarification. Does this motion mean that what we're doing in essence is just extending it to January 2016 or is it beyond?

Chairperson Lay: We're giving them the height.

Mr. Spence: What this, what this motion would do if it passes is you're saying this Exhibit 19 with the topography on it, going up to 176, et cetera, that is consistent with the former approval of the prior Planning Commission. It's still within the parameters of what that, their existing Special Use Permit covers.

Mr. Higashi: So for clarification sake—

Mr. Spence: You're not amending anything.

Mr. Higashi: —yeah, so—

Mr. Spence: You're not changing anything.

Mr. Higashi: You're not changing. So can they go beyond this particular area as long as they're at 176 or they have to terminate based upon what they're presently proposing?

Mr. Spence: They would have to terminate.

Mr. Higashi: Terminate. Yes, okay.

Mr. Spence: And I would add, I don't know if they're gonna pursue an amendment or anything. There's been some discussion of that, so that's a separate matter that will come...if they pursue it, it would come back before you.

Chairperson Lay: Commissioners, any more discussion on the motion? Seeing none, can we get the Director to repeat the motion? Exactly what Kurt said.

Mr. Spence: The motion is exactly what Kurt said. The motion is that the proposed closure plan as shown in Exhibit 19 of the staff report is consistent with the approval of the prior Planning Commissions.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: That the Proposed Closure Plan Dated December 2014 as Shown in Exhibit 19 of the Staff Report is Consistent with the Approvals of the Planning Commissions.
(Assenting - W. Hedani, J. Freitas, J. Medeiros, M. Tsai, S. Duvauchelle,
P. Wakida, R. Higashi)
(Excused - K. Ball)**

Chairperson Lay: And apologies for such a late lunch, but I know the Komoda donuts held us over for a little while. We will reconvene at 1:30 everyone.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:34 p.m.

Chairperson Lay: The Commission is called back to order. Our next agenda item, Director?

Mr. Spence: Okay, Commissioners. We're on Item C-2, Discussion of the Kihei Community Association's letter regarding expanding SMA boundaries in South Maui. And just as a note Commissioners, on occasion we receive correspondence addressed to you. When that happens it's our practice that we include that correspondence in your packet or hand out at a Planning Commission meeting. These are not agenda items. They're agenda items if you would like to bring them up. The Item C-2 and C-3 were items that were addressed to you. They were handed out, I don't know, months ago, and there were inquiries by those letter writers, you know, how come this hasn't come on the Commission's agenda. So I actually just approached Penny, it could have been any Commissioner ...(inaudible)...say, you know, why don't we put these on the agenda for discussion? So when we receive correspondence we'll hand it out. If you don't wanna discuss it, that's fine with us. If you do wanna discuss it, you know, just make a note to the appropriate staff

and we'll agendize it. But it was at my request to Commissioner Wakida that we put these on the agenda. That she make the request to put these on the agenda so we can discuss it.

2. Discussion on Kihei Community Association's letter regarding expanding SMA boundaries in South Maui. (Commissioner Penny Wakida's request)

Mr. Spence: So with that, Item C-2 we do have a letter from the Kihei Community Association regarding the SMA boundaries, expanding the SMA boundaries within in South Kihei. I don't know if...how you wanna proceed Mr. Chairman? We've had a couple people testify already and we could just pick it up as you wish. You could get the Department's comments or whatever you would like.

Chairperson Lay: Let's start with the Department's comments.

Mr. Medeiros: Excuse me?

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I believe there are some people that wanted to testify on this matter that already came in. Since they made the trip all the way over here to testify, I think that they should be allowed to.

Chairperson Lay: So there were some who testified this morning and because they testified at that time they're not allowed to testify again on the agenda item. For anyone who hasn't testified they'll be allowed to—

Mr. Medeiros: On this?

Chairperson Lay: Yeah, on this agenda item. They'll be allowed to testify, but we're gonna let the Director just briefly, you know, talk about the SMA and then go through that.

Mr. Spence: And I can provide a lot more information as we go through this. Overall, the Planning Department would not be in favor of expanding the SMA boundaries within the South Maui area. When we look at State Law and when we look at the purpose of the Special Management Area...let's start out with Chapter 205A which stems from the Coastal Zone Management, Federal Coastal Zone Management Act and then all the coastal states they adopt some form of their own coastal zone law.

The way that Hawaii did it was to adopt Chapter 205A, and it's an environmental law. It is technically the entire State is within the coastal zone, but there's a small area around the coast, relatively small area around coast that is the Special Management Area. It's supposed to be related to the coastal area. I'll read Part 2 of 205A and this is 205A-21, Findings and Purposes. This is specific to the Special Management Areas. The Legislature finds that special controls on development within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure of management options and to ensure that adequate access by dedication or other means to public-owned or used beaches, recreation areas, natural

reserves is provided. So that's the roughly the purpose of the Special Management Area. It's along the shoreline. It's an area along the shoreline. Each one of the counties is allowed to make the determination of where that is. In 205A-23, County Special Management Areas, the purpose of the Special Management Areas it says, the authority shall review pursuant to Chapter 91, amended as necessary by the Special Management Area boundaries to further the objectives and policies of this chapter. If you go back, and you are the authority, by Charter you are the authority for the Special Management Area, the objectives and policies are laid out in 205A-2 and there's a whole score of things.

The question is is at what point are...is it no longer...the boundaries of the Special Management Area are no longer within an area along the shoreline. Right now within the South Maui area the Special Management Area extends from the shoreline to roughly Piilani Highway and it's ... that distance from the shoreline to the highway varies from about three-quarters of a mile to almost a mile in some cases. Personally we, the Planning Department finds that that may exceed what was the purpose and intent of the Special Management Area. The current boundary was adopted, I forget exactly when the highway was first established and at that time there was a lot of vacant entitled land. That's no longer the case. There's not a lot of entitled land left in Kihei. What there is very difficult to develop, it's wetlands, it's within flood zones, those kinds of things. Extending it up above the highway is problematic. Then we're extending even a mile away. That's even harder to say that that's within the shoreline area.

I would also note that the properties that are mauka of the highway are predominantly undeveloped or agriculture. Not all of them. Some of them are going through entitlement processes. There's other laws that apply to them. But to just say because there's development planned mauka of the highway is not a justification to extend the Special Management Area. There's a lot of...there's already a lot of environmental safeguards in place for say the agricultural land like Haleakala Ranch wants to put in or we had testimony this morning from Grant Chun from Alexander & Baldwin. They just went through the entitlement process. Haleakala Ranch has yet to go through that process.

To go from the State Land Use Commission, doing an EA or an EIS through the State Land Use Commission through the County Council to get zoning is approximately seven years. That's an entire real estate cycle. So what the, what you're saying, we have a vision of what we're gonna do right now, seven years from now, you know, it's a long time with a lot of review and a lot of public input along the way. Because the...if you look at, if you look at the environmental laws that we have, and the processes that we have to gain entitlements to entitle a piece of agricultural land is first you start off with the EIS. You know, you're going to be looking at archaeology. You're gonna be looking at drainage. You're going to be looking at view sheds, economic impacts, traffic, all the things that are already covered under the Special Management Area. Traffic is not supposed to be an SMA criteria by the way, but it's going through the EIS process it's gonna look at the lengthy cultural impact statements, endangered species, impacts to agriculture. That's just in the EIS process.

When it gets to the State Land Use Commission, they're gonna look at those things again. When it comes to a change in zoning with the County Council and what comes before this Commission, it's gonna go through those criteria again. You're gonna look at those, the County Council is gonna look at those, and all along the way it's really expected that a developer goes and meets with the

community and you know, have this significant dialog.

To then just extend the Special Management Area to do this as another time, I find that redundant with what is already taking place. So the Special Management Area is not supposed to be a project review and the gist of it is protection of our shoreline and our near shore resources. If we come and, you know, and that's already taken care with these other processes by law.

Back in 2011, and I'll change this a little bit, back in 2011 when I first became Director we started looking at project to comprehensively look at the SMA boundaries. I don't know if many of the Commissioners are still here from that. But Penny still is. We have as where in the 70s, I believe it was 70s maybe the 80s when the SMA boundaries were first adopted it was just selected to the nearest highway which is kinda arbitrary. If you go and you look at the criteria and look at the objectives and policies within 205A, there wasn't a whole lot of matching up. It was a convenient demarcation granted. But now that we have GIS and we have all kinds of analytical tools, at least did the perfunctory functions of looking at where the SMA is, looking where the coastal hazards are, where the wetlands, all those kinds of things, those are much more accurate demarcations of where the SMA is gonna be.

If you're talking about some place like Kihei, in some places it may extend up to the highway, in some places it may come down. If you're talking about somewhere like Olowalu or Launiupoko, where the SMA is right on the highway that's a silly place too. It should go above the highway, but where that is we haven't completed those studies. But just so you know, because there's going to be additional development, it's not a criteria to pursue that. And I understand the feelings and I understand the KCA's position on this. I have to look it from State Law, the purpose and intent of 205A. That's our discussion.

Chairperson Lay: Okay, Commissioners, at this time I'm gonna open up to public testimony. If you haven't testified and you would like to testify on this agenda item, please step forward and testify. Identify yourself and you have three minutes.

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

Mr. Grant Chun: Good morning everyone. My name is Grant Chun, Vice-President of A & B Properties. This morning I'm here to offer testimony on the proposal of the Kihei Community Association to expand the SMA boundaries in South Maui. The Special Management Area is based upon the 1972 Federal Coastal Zone Management Act which sought to better manage coastal lands throughout the United States.

The SMA has a geographic focus which is our coastal lands. The SMA boundaries on Maui and throughout the State were established in the 1970's and focused on our coastal lands. The SMA permitting system was not intended to mirror and regulate urban growth areas defined by the Maui Island Plan.

Any amendments to the SMA boundaries should advance the objectives and policies of the Coastal Zone Management Program and should be carefully evaluated and equitably applied. The proposal would subject new geographic areas to the SMA permitting process which currently do

not have such a requirement. This will add to the time and cost of permitting and ultimate development which is paid for ultimately by consumers. While this is clear, what is not clear is the tangible benefits that would result from this additional layer of permitting and how this would further the objectives and policies of the Coastal Zone Management Program.

These existing State and County land use regulatory system is very comprehensive and more than adequate to manage growth within Maui's defined growth areas. Additional regulatory requirements are not necessary. Instead, the County should be examining ways of streamlining the process.

Finally, the additional workload that expansion of the SMA boundary would entail for our hardworking Planning Department staff could potentially be very significant. The logical extension of this initiative could be to include all lands within the County's urban growth areas as part of the SMA. This would create an additional layer of permitting, analysis, studies, and expense that would be hard on the public as well as on the Department. Thank you very much for this opportunity to offer our thoughts.

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

Chairperson Lay: The next testifier is Mike Moran.

Mr. Mike Moran: Aloha Chair and Commissioners. Thank you for the opportunity...excuse me, thank you for your volunteer service to the community. Mike Moran, President of the Kihei Community Association, KCA, for the association testifying on all three communications on today's agenda as they're all relevant to South Maui.

When KCA was incorporated almost 55 years ago, our Charter designated our district from Maalaea to Makena. So we do our best to advocate for the entire area in conjunction with the other entities representing smaller, more specific areas.

Okay, on Item No. 1, that first Communication on the Maui Demolition and Construction Landfill at Maalaea. We concur with the testimony of the Maalaea Community Association as this facility should be closed, but the owners must continue to be responsible for any groundwater contamination encountered in the future for this ecologically sensitive area close to Maalaea Bay as well as the Federal sanctuary.

Chairperson Lay: Mike, I have a quick question for you.

Mr. Moran: Yes, sir?

Chairperson Lay: So you're addressing three separate items today, right?

Mr. Moran: Yes, sir.

Chairperson Lay: You're going to take up individually given three minutes each or are you gonna

–

Mr. Moran: That concludes No. 1, so I think they'll all be under the three-minute limit. But I was gonna ask that question shall I pause for questions between them?

Chairperson Lay: That's fine. Thank you very much, Mike.

Mr. Moran: Okay, so continue on?

Chairperson Lay: Yes, please.

Mr. Moran: Thank you. Okay, No. 2, of course No. 2 comes from the KCA letter of several months ago requesting expanding SMA boundaries in South Maui and we thank Commissioner Wakida for requesting this item on this morning's agenda. It will be addressed in detail by our KCA Director Gregg Stratton by his testimony. Please support our request for this change as extensive development mauka of the highway presently and much more in the future makes this the outdated boundary obsolete. That's No. 2.

Okay, on Item No. 3, I had addressed this item at a prior Commission meeting as an example of the recommendations and conditions of the Commission seemingly being ignored. When the Commission recommends that the granting of a permit with specific conditions, we expect they will have an effect and believe you do as well. It is ludicrous for the Hawaii Department of Transportation to do this traffic improvement at this intersection and fail to include the sidewalks. We were advised by Councilmember Don Couch that he understood the Department of Transportation decided not to take this action because it would not directly connect to sidewalks on Ohukai ignoring how very close they would come to them as well as the fact that our Public Works Department is presently doing evaluation of where they will install additional sidewalks on Ohukai. We support the testimony from the South Maui Citizens for Responsible Growth on this matter in their detailed presentation. Once again, we thank Commissioner Wakida for requesting that this item also be on this morning's agenda. Mahalo.

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

Mr. Moran: Thank you.

Mr. Vicens: Okay, thank you very much. Chair, I'd like to speak on Communication, C-2, discussing with the Kihei Community to extend the SMA boundaries in South Maui above Piilani Highway. The SMA is exactly what it's supposed to be Shoreline Management Act. And originally it was up along Kihei Highway I think is where the coastal was back in 1972. Then it was moved while I was on the, while I was on the General Plan Committee there was conversation about it moving makai of Piilani Highway. And I don't know whether it did take place, but I'm...now what the conversation going on indicates that it is in place and I'm not sure.

Okay, now to take a shoreline management deal and try to move it mauka of the highway if you don't want any growth take it up to the top of Haleakala Highway, Haleakala. Common sense has

got to prevail. People have to remember why the law was put in in the first place to protect the coastal areas. And we've done everything we can to protect it. We've got the SMAs which add cost every time you try to do a project, the cost is passed onto the affordable housing buyer. So all of these things have economic ramifications. They have ramifications on what the community is going to look like in the next 20 or 30 years and we've decided at the General Plan and been accepted as to what it's supposed to look like. So therefore, I submit that this is a stop growth measure period. And with that in mind I am against it and I am imploring the Commission to use reason when you determine where the coastal zone should be. Thank you so much.

Chairperson Lay: Commissioners, any questions for the testifier? I have a question. Okay, so this problem is with us. I mean, like you said before it runs up to our highway and proceeds that way. We've got issues of property ownership where this line might pass right through their property, you know half of their property is SMA, half of 'em isn't. How, I mean, you guys have come across this problem. How do you see it working out where you can at least let us know what you think on the best way to handle this if we come across it or when we come across it in the future?

Mr. Vicens: I think again, again it's a cost item measure for a developer. And the process is not...it's not exactly cumbersome but it is expensive and that's the real point. Is that if you're gonna be a developer and you're gonna develop mauka of the highway you're trying to get your costs numbers down. Okay, we've got to do 25 affordable homes...percent of the affordable home on our Kihei project, 25 percent. So if you build 1,000 homes 250 homes are affordable. Every time you add a cost item to what we're doing, it impacts the affordable homes as well as the market homes. So it's a shared cost all the way across the board. And those of us that are contractors understand that the margin of profit if any, if any, is very, very narrow on an affordable home because you're building the same kind of home that you're gonna building up where the market homes are gonna take place because one, it's cheaper; two, you're giving them a good product. We don't want a bad product in our subdivisions. So that's the answer on the SMA.

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

Mr. Vicens: Thank you very much.

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

Mr. Tom Croly: Aloha, Commissioners. I'm Tom Croly. And I really appreciate the foreword that the Director gave in bringing some clarity to what's on your agenda today. So I just wanna say that as someone who lives in Maui Meadows who would be affected if this line were to change and it would affect indirectly in that if I wanted to do some addition to my house, you know what goes with that, I have to get a waiver for the SMA. If someone in my neighborhood as to do termite repair something as simple as that. So it just wouldn't be wise to take these folks who, whose homes were built many, many years ago and then say to them, oh now you're in the SMA and you're subject to all these other restrictions. So that's all that I wanted to add to the discussion today.

Chairperson Lay: Commissioners, any questions for the testifier? Thank you very much? Does anyone else wish to testify at this time?

Mr. Greg Stratton: Yes, my name is Greg Stratton and I wanna thank you for getting this on the agenda, whoever I thank and all of you for getting it here. I'm with the Kihei Community Association. I'm the co-chairman of their Planning Committee and I was the one who drafted the letter. So I guess I'm the right guy to be here.

1979, is a long time ago. I can remember those days, yes. You know, Jimmy Carter was President there was a lot of different things going on in the world and that's when this boundary was set. And it was set at the Piilani which at the time was in fact mauka of almost all the development that was planned for Kihei. It was pretty much up there. And I would like to think the designers were a little bit more concerned with the thing than simply saying, gee there's a highway let's take it. I think they looked at it and said, that this whole area it drains right into the ocean. And so when you wanna talk about the shoreline management, the houses up by the Piilani, their water goes down the streets and into the drains, and into the things and drains into the ocean, and they are part of the problems that we are seeing with the reefs outside in Kihei.

So we do have a situation that said that they looked at this and said, it needs to go up there and take that whole entire strip. In fact, if we went back to the Hawaiian concept they would say that the entire strip all the way up to the top Haleakala drains into the ocean and should be part of the SMA area. That may be a tidge overkill and I agree that's probably, but they understood that what happens up above does eventually get down and get into the ocean. And I think that was the whole reason that the SMA boundary was initially set there up on the Piilani and why we think that development mauka of the Piilani puts the same things, down the same channels, and end up in the same ocean as the stuff on the other side. There's really no difference crossing over 300-foot of highway.

The SMA is a good thing to add to the process because it goes, it happens much later when you finally have a design for a project. A lot of these things we see that go through the zoning and all of those things, they are very conceptual and other than residential development, it does go through a Planned Development process. All of the commercial, all of the industrial, all these other uses go through no developmental process. Once the zoning is put in there, they just now go through staff to be built. So there's no allowance for a public input on what the final design of these projects are. And the SMA allows it to do that.

Ms. Takayama-Corden: Three minutes.

Mr. Stratton: Okay, one last thing. Two more things. One is it did not stop growth in Kihei. So that's not true. Piilani is now the center of the new development and as far as the distances goes I looked to the California Commission. They have their own separate commission that looks at their equivalent of an SMA, the Coastal Commission and they go as much as five miles inland in many cases if the drainage is there.

Chairperson Lay: Please conclude.

Mr. Stratton: So it's time to move the boundary. Thank you.

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

Mr. Tsai: I'm sorry, I didn't get your name again

Mr. Stratton: Greg Stratton.

Mr. Tsai: Hey Greg, since you're draftee of this letter here and what do you have in mind as far as it's...I mean how high are we talking about? Are you gonna like South Maui go all the way to top of Maui Meadows or what we, what are your thoughts?

Mr. Stratton: The new General Plan of the island created a growth boundary. And at the time, actually the Piilani was kind of a growth boundary in the sense that nobody...everyone expected all the growth to be below it. Now we have a growth boundary on the General Plan and it does not include in the urban growth boundary Maui Meadows. Maui Meadows has got a different classification. So we projected that it would be the urban growth boundary as the upper most line and the assumption being that if anybody want to then build any more urban stuff, they'll have to change the urban growth boundary and then it would take care of it.

Chairperson Lay: Commissioners, any more questions for the testifier? Seeing none...oh, Commissioner Freitas?

Mr. Freitas: You say this is not a stop growth measure, but I interpret it as a stop growth measure because I think where the boundary is is sufficient compared to other areas in the what do you call in the area. Yes, everything runs into the ocean, everything runs downhill. If the ocean was faced uphill it wouldn't run into the ocean.

Mr. Stratton: I don't think there's no intention.

Chairperson Lay: Is that a question?

Mr. Freitas: No, I-

Mr. Stratton: I don't think there's any intention of this to be growth. It's really basically trying to say it's the same on both side of the thing.

Chairperson Lay: Okay, and thank you that wasn't a question. Commissioners, any more questions for the testifier? Seeing none, thank you very much. Oh, Commissioner Medeiros?

Mr. Medeiros: Yeah, I live in Kihei, okay. And we're looking at you know mauka of the highway. We don't have enough affordable housing in Kihei. We don't. Where else are we gonna build for our kids? You know, Kihei has to grow too. And with the limited amount of space, where are they gonna develop? You said, yourself below the highway is almost done. You gotta have growth.

Mr. Stratton: Well, there is a growth. There is an urban boundary and included in that are several projects that are residential and that will go through the residential process and they will then have the 25 percent affordable housing with them.

Mr. Medeiros: I totally disagree with you.

Mr. Stratton: You think that won't happen?

Mr. Medeiros: I disagree with you that affordable housing will happen if you get your way.

Chairperson Lay: Commissioners, any more questions for the testifier? Thank you very much, Mr. Stratton. Does anyone else wish to testify at this time? Please step forward, you have three minutes, and identify yourself?

Mr. Rory Frampton: Good afternoon, Commissioners.

Chairperson Lay: Missed us, huh?

Mr. Frampton: I'll try to be quicker this time. My name is Rory Frampton. I'm a planning consultant. I will disclose that I do consulting for landowners above the highway that would be affected by this proposal. Although the feelings that I'm gonna express are feelings I've had for many years and prior to my employment with these guys and I'm speaking as an individual.

The SMA Permit as Grant Chun noted earlier it's supposed to be specific to the coastal zone and issues related to the coastal zone like coastal access views, anything coastal resource related. You know when they expanded the boundary up to the highway, Chris Hart was very much involved with that and used to work...I worked with Chris Hart for 13 years. We often spoke about the SMA in Kihei and he felt at the time, we had projects that were being built with sidewalks that were...you know, the roadway would be 56 and then there would be 60 feet and the sidewalks weren't matching up. The urban design wasn't to their satisfaction. They felt it was very important to have this SMA tool to look at urban design issues and urban growth issues. That's why founded, they started the Urban Design Review Board it was to review projects in the SMA.

Now that sounds really good but if you're thinking of urban design, if you're thinking of traffic, smart growth, all these issues are important regardless of where you are whether you're in Kula or whether you're in Wailuku if they're not coastal dependent. I always used to say if it's not...if it's a concern in Kansas it can't be a coastal zone concern. People in Kansas have concerns over traffic and urban design and smart growth and all that stuff, and what happened was the SMA became a convenient, became a defacto planning tool.

Now if you wanna have all these projects, and I think the types of concerns that the KCA put forth about street, you know, traffic calming and smart growth and all the things that they advocate which I think...I strongly endorse, I don't think you go at 'em via the SMA. I just have a problem with that. I think if you wanna have a Urban Design Review Permit that you apply to everybody, I think that makes sense. That would need some work, but I don't think you hijack the SMA Permit to have that be your defacto planning tool.

And the other point is, nowadays unfortunately zoning is not conceptual. I think theoretically zoning should be conceptual, but it's become a development permit and it's become very, very specific and you have people here in the audience that argue that the zoning or even the State Land Use approval should be treated as a development permit. And in that kind of environment, you don't need another round of review to look at the same type of issues. If really the zoning and if the

State District Boundary Amendment process really just a conceptual land use kind of allowance or entitlement maybe having the SMA cover that area would be less objectionable. But to have to go through the General Plan, the State Land Use, the community plan, and zoning, and have every one of those levels look very specifically at your project and then you're gonna throw another layer on there, the SMA, I'm sorry it doesn't make sense to me. So keep the SMA coastal related. If you wanna have a design review, if you wanna have a design review permit that applies to everybody that advocates for the types of things that KCA I think rightfully advocates for then maybe you find another vehicle not the SMA. Thanks.

Chairperson Lay: Thank you. Commissioners, any questions for the testifier? Seeing none, than you very much. Does anyone else wish to testify at this time? If not, we're closing public testimony. Oh, excuse me.

Mr. Charles Jencks: See you all again. I have a hand out. While Jason is handing out my short summary, I would like to say a few things briefly. The first page of the handout is highlighted and it includes the exact text that Director Spence was talking about. I'm not gonna read it 'cause he read it to you and he read to you exactly what I was going to read to you which talks about the purpose and intent of this State Act to protect coastal resources.

But I would like to also direct you to the second page of the handout and what I've done is I've highlighted all of the goals and objectives and policies sections in 205A that once again relate to this Coastal Zone Management, Special Management Area. Recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, management of development, public participation, beach protection and marine resources. Now what's the common theme there I ask you? It's coastal resources. Protecting the coastal resources and managing those resources not going to the top of Haleakala because that's the logical extension of this discussion where does it stop? We had this discussion on Molokai, and look, Mr. Director, I'm not sure but what is the SMA boundary on Molokai right now?

Mr. Spence: It's also a ...(inaudible)...super well-defined boundaries. It varies with the highway.

Mr. Jencks: Right. There was discussion about making it island wide years ago.

Mr. Spence: Oh, yes there was.

Mr. Jencks: And we've had discussions with the Director off the record, on the record about taking this boundary because of the status of development in South Maui and reducing it to South Kihei Road where the real impact is with regard to urban runoff, congestion, traffic, managing the coastal resource.

If you go above the highway and frankly we've seen all this. I've never seen this Commission turn down an intervention they didn't like. It's real easy to file for an intervention. You then have a delay of a year on a project. It isn't a stretch. It isn't a stretch today to look mauka of the highway and say, gee I've got a subdivision and I've got \$20 million in on and offsite improvements I've got to construct before I can build anything assuming I already have zoning and community plan in place that is a \$3,000 a day carry, \$3,000 a day at 5 percent simple interest. That's unsustainable. If

you want affordable housing, a project's proposed mauka of the highway it's got zoning, it's got community plan, it's up for an SMA Permit, a Major SMA Permit, an intervention request, you're dead. So I would think very carefully about what's being proposed to you by the KCA. 'Cause I see this as nothing but a way to control projects and delay. And the only people that pay for that delay are the folks that want the houses. Thank you.

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

Mr. Medeiros: Charlie, you're a developer okay.

Mr. Jencks: It's not a bad thing.

Mr. Medeiros: Okay, or you try to be.

Mr. Jencks: I'm a nonprofit developer right now.

Mr. Medeiros: Now, with affordable housing, okay any time there's a housing development there is affordable housing attached to it. Given this step how hard would it be to develop mauka of the highway? Would it be a lot harder or just another step as they're making it sound?

Mr. Jencks: No, it's perceived as just another step, another permit you have to get, but the exposure, the potential delay could be enormous. And that ends up costing somebody money and potentially puts the project out of being feasible. 'Cause remember this could include not only you know, many of the folks that Rory works for, I also consult with, Maui R & T Park, Promenade, Honuaula, I think Makena Resort is in the SMA totally, I may be incorrect on that. But a lot of projects that are gonna generate housing in South Maui to address the demand that's there today would be in this proposed district and the risk...it increases the risk exponentially.

Chairperson Lay: Director wish to comment?

Mr. Spence: To add to the thought of the length of time it takes, some things you can do concurrently, some things you can't. Occasionally the Commission sees a change in zoning and SMA Permit and then once the zoning passes at a minimum, the SMA application will take another six months. Very often if you have already entitled land or after it's entitled it could easily take another year to get the final entitlements before you can even apply for building permits. You don't apply for building permits before you get your SMA Permit because there may be conditions or things may change during that SMA approval process that could change your construction plans and then you have to send it all back to the architect, and they have to redo the drawings, and then you go apply for a building permit. And the building permit process for subdivision or for...well, subdivision is a little bit different, that could take year and a half, a couple years all by itself. To get a building for a major, relatively major commercial structure that can take...Charlie would be more familiar with than I would, six months, a year?

Mr. Jencks: Yeah, nine months.

Mr. Spence: So it's already extremely difficult. I'll have one more comment when we're done with

testimony.

Mr. Jencks: Thank you, Mr. Chair.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: So being that there's an additional cost, wouldn't the consumer, the people that are buying the houses have to pay more for it?

Mr. Jencks: Well, somebody has to pay for it. It's either the tenants in businesses or the folks that buy the market rate homes, and you may have to push the price points on the affordable, still within the bracket of course to qualify, but you may have to adjust. Somebody pays.

Mr. Medeiros: Thank you.

Mr. Jencks: Thank you.

Chairperson Lay: Does anyone else wish to testify? Please step forward, identify yourself and you have three minutes.

Mr. Tom Blackburn Rodrigues: Mr. Chairman, Members of the Planning Commission. My name is Tom Blackburn Rodrigues, and I am the Executive Consultant for Go Maui Inc., Go Maui is an IRS qualified nonprofit organization. The mission of Go Maui is to empower local residents to obtain housing, employment, and educational opportunities in a healthy, vibrant and environmentally sound economy while respecting our diverse cultures.

Mr. Chairman, I wish to testify in opposition to the letter from the Kihei Community Association regarding an expansion of the South Maui SMA boundary from the Piilani to mauka of the highway perhaps, perhaps up to the urban growth boundary put in place by the Maui Island Plan.

Go Maui respectfully ask the Commission to receive and file the letter from the KCA and to take no further action on the request. We make this request for the following reasons. Number one, it is premature. The Council has only adopted the Maui Island Plan. Two more islands are still in process. Number two. As has been mentioned earlier, what will be the impact on areas such as Maui Meadows? Are they going to be in? Are they going to be out? Lines changes and things changes as we've seen today in the testimony years bring change. Have they been consulted? What would be the impact on the cesspool replacement controversy? What will be the impact on the R & T Park? And on subdivisions of Hale Piilani 1, 2, and 3? If this unprecedented request were to be adopted, what would be the consequences if a home burnt down and had to be replaced as happened just a few months ago over what would be now the new KCA SMA boundary line? How would it affect new home additions and extensions to meet the needs of Maui's growing family? How would this demand for defacto SMA control affect the planning and financing of new commercial and house development?

Mr. Chairman, a hallmark of this Commission, your administration has been to reasonably address the need to ease and speed up the permit approval process well maintaining the necessary

oversight. This proposal would add another layer of delay and review that will cost Maui jobs, homes, and critical tax revenue. The SMA is to protect the shoreline and provides for public comment. It does not allow one organization however well meaning and well intentioned to dominate and own the process. Thank you for the opportunity to testify and I would just like to close by saying that later, Mr. Tom Croly is going to talk about the affordable housing and vacation rental issue though now I will be supporting his remarks and his advocacy. Are there any questions, Mr. Chairman?

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: I'm ready to make a motion.

Chairperson Lay: Commissioners, any questions for our testifier? Seeing none, does anyone else wish to testify at this time? Step forward and identify yourself. Thank you very much.

Ms. Christy Kajiwaru Gusman: Aloha Commissioners. I come to you this time as a small farmer and rancher here in Maui County. Listening to what the Planning Director had to said earlier and the testimony that followed. It appears that the definition of the word, shoreline, for those of you who don't understand it, according Mr. Webster it says, that it is the line where a body of water and the shore meets or the strip of land along a coast or shore. It does not extend into the slopes of Haleakala. And I'm sure that none of you would appreciate me allowing my cattle to walk along Polo Beach. Therefore, I am also in agreement with Mr. Jencks, Mr. Blackburn, and the others that this a really bad idea for Maui County. 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? If not, public testimony is closed.

Mr. Spence: Mr. Chairman?

Chairperson Lay: Director?

Mr. Spence: I would like to make one more comment of what the Special Management Area...(inaudible)...it's not just a matter of large developments, big subdivisions, new commercial buildings or...what it means is it affects a lot of different people. It especially affects small property owners or really insignificant projects. I had staff do a little research in...just in the Kihei area. The number of SMXs, we refer to them as SMXs, these are exempt actions, exempt under the law. Nevertheless, it takes an application, it takes submittal of documents, gathering of information, submittal of documents, proof of ownership, photographs, et cetera to file an application. Just in the Kihei area in 2010, the Planning Department processed a 152 different SMXs, 2011, a 178, 169 in 2012, 178 in 2013, 187 in 2014. Island wide, it's almost three times that much, actually four times that much.

And you look at the kinds of things that people have to apply for and expect additional processing on. I have...turn in just at a random page main dwelling, so this is an existing lot, somebody wants to build a house that's exempt, a deck and a laundry room, construction of a new entry and a roof, the alteration of a ceiling, alteration of restrooms for ADA compliance, a storefront alteration, a

swimming pool, enlargement, I don't know what a GE shower is, concrete repair some place in Wailea, repairs to sprinklers, new roof, build ADA compliant walkways. I did see the environmental review of the screen for the Wailea music or not music, the movie festival every year. They put up a screen, they have to go through environmental review for that for something that is temporary in nature.

I don't think this is a good use of applicant's time. Right now you have a lot of homes mauka of the highway that you can't just carve those out because they would have some kind of...if you wanna say the new development has an effect on the shoreline, would have to say that they do too. So it's, it's a...I think it's an unnecessary time and expense for individual property owners to do things like reroof or to add a swimming pool, for public good like ADA compliance. But it's also, just to be honest, it's a lot of work for our staff. It's a huge amount of work that I don't think is really necessary. So we'll be, you know, bringing some amendments to the Commission, but it's not, you're not just capturing the big projects. You're capturing all the little guys who just want to add a lanai or do some remodel onto their house, and I think that that's a burden on the public that should not be there by expanding the SMA boundaries.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I move that we file this letter and take no further action on it.

Mr. Medeiros: Second.

Chairperson Lay: We have a motion on the floor.

Mr. Medeiros: Second, second.

Chairperson Lay: Seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: I would like first of all to commend the KCA organization for their advocacy for coming to the Planning Commission from time to time. It's a very good community group that's going on in Kihei and I wish we had more like them in other areas. On this particular issue, I think it can be argued that everything uphill from the ocean eventually impacts the ocean. However, in my time on the Planning Commission I have observed that there are, and as our Director has already stated, a number of levels of scrutiny and oversight in projects that are outside the SMA that addressed the concerns that I would have about impact on the coastal areas like drainage, those kinds of things. So I am in agreement with the motion that I don't feel we need to take further action on this, but I think the conversation that ensued was good and I think there needs to be more of these kinds of things.

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

Mr. Hedani: I think from my perspective you cannot dictate good design, you cannot dictate good planning. If you look at Kihei as an example, everything below Piilani Highway is in the SMA area and it doesn't necessarily reflect good design or good planning, it's kind of a mess just because

of the way it is. It's kinda like a blunt instrument to try to accomplish a goal of good planning or good design and...(sound system malfunction)... it does capture all of the little guys that are doing little things that shouldn't be taking up that much staff time. I do think that the boundary needs to be amended in certain areas and I think that happens almost automatically right now in Lahaina for example when the new State Bypass Highway goes in, I think the SMA boundary would follow the State highway at that point assuming the lower highway becomes a County highway because they probably wouldn't maintain both. And it...I think the original discussion at the Legislature was that it's the State highway nearest the coast is the boundary that is generally accepted as the guideline. I think the area from the bypass highway to the sea needs to have a lot more scrutiny than exists today. But I think that this is probably not the best way necessarily to try to encourage good design or good planning.

Chairperson Lay: Commissioners, any more discuss on the motion on the floor? Corp. Counsel?

Mr. Hopper: Just a comment. It's not similar to Council. I don't believe there's any formal filing process for items like this. If there's no action taken to direct the Director to amend the SMA boundary there would just be no action undertaken on this item. So I think the motion could be understood to not take action on this proposal, but it's not necessarily a required action to take no action. Just wanted that noted for the record.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Another comment. I think there are certain areas and what Charlie passed out to us is a good refresher on the SMA Guidelines. Recreation areas and natural area reserves, I think at some point the Planning Department or somebody should take a look at areas that deserve protection and preservation for the purpose of not losing everything that we value. What comes to mind for me is like the area by cut mountain in Lahaina as you look all the way up to the mountains with no development between the highway and the top of the mountain, the area above Ukumehame Canyon that has scenic vistas you can see that possibly could provide recreational trails for the future. But there are areas that need protection, nurturing and guidance and I think that somehow there has to be a mechanism to try to protect those areas.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I'd agree with Director Spence about the minor repair situation with the SMA. I've been on this Commission for just about a year and every month it seem to be increasing with the amount of projects that come up and I think it's overtaxing the Planning Department Staff with a lot of unnecessary kinds of things that could be expedited and it would help the consumer as well in getting the projects done especially when you look at 2008 and the project is still on the books. I would think by now that house would be gone. But anyway I totally agree with Director Spence about simplifying the process.

Chairperson Lay: Commissioners, any more discussion the motion? Motion on the floor is to file the letter.

Mr. Freitas: And no further action.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries.

Mr. Spence: And one last...

Chairperson Lay: Director?

Mr. Spence: We do understand. And I also appreciate the KCA's advocacy. They take a lot of proactive views on different issues, and I'm glad that they're there. We will be taking up the SMA boundaries at some point. We'd like to develop some of that in-house first and we will most definitely involve the public with that, and the Planning Commission, et cetera.

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

VOTED: To File and No Action Be Taken.
(Assenting - J. Freitas, J. Medeiros, M. Tsai, W. Hedani, S. Duvauchelle,
P. Wakida, R. Higashi)
(Excused - K. Ball)

Chairperson Lay: Commissioners, you want a break or go to our next agenda item?

Ms. Wakida: Power on through.

Chairperson Lay: Okay, moving onto our next agenda item.

Mr. Spence: Okay, Commissioners, we are on Item C-2, or excuse me, C-3, Discussion of South Maui Citizens for Responsible Growth Letter regarding SMA Permit and the thought of...that a certain condition has been violated. Again, this is something I requested...it was handed out long ago, I just asked Mr. Wakida to make the request, and she said sure. So we have with us, Candace Thackerson was the planner that was involved with writing the acceptance of the compliance report, et cetera and not meaning to put you on the spot, but...

- 3. Discussion on the South Maui Citizens for Responsible Growth letters regarding the Special Management Area Use Permit for the State Department of Transportation Piilani Highway Traffic Improvements at Ohukai Road project at TMK: 3-9-1: 146, Kihei, Island of Maui. (SM1 2011/0007) (Commissioner Penny Wakida's request)**

Chairperson Lay: Does anyone wish to testify on this agenda item?

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

Chairperson Lay: The next testifier is Mike Moran.

Mr. Mike Moran: Aloha Chair and Commissioners. Thank you for the opportunity...excuse me, thank you for your volunteer service to the community. Mike Moran, President of the Kihei Community Association, KCA, for the association testifying on all three communications on today's agenda as they're all relevant to South Maui.

When KCA was incorporated almost 55 years ago, our Charter designated our district from Maalaea to Makena. So we do our best to advocate for the entire area in conjunction with the other entities representing smaller, more specific areas.

Okay, on Item No. 1, that first Communication on the Maui Demolition and Construction Landfill at Maalaea. We concur with the testimony of the Maalaea Community Association as this facility should be closed, but the owners must continue to be responsible for any groundwater contamination encountered in the future for this ecologically sensitive area close to Maalaea Bay as well as the Federal sanctuary.

Chairperson Lay: Mike, I have a quick question for you.

Mr. Moran: Yes, sir?

Chairperson Lay: So you're addressing three separate items today, right?

Mr. Moran: Yes, sir.

Chairperson Lay: You're going to take up individually given three minutes each or are you gonna –

Mr. Moran: That concludes No. 1, so I think they'll all be under the three-minute limit. But I was gonna ask that question shall I pause for questions between them?

Chairperson Lay: That's fine. Thank you very much, Mike.

Mr. Moran: Okay, so continue on?

Chairperson Lay: Yes, please.

Mr. Moran: Thank you. Okay, No. 2, of course No. 2 comes from the KCA letter of several months ago requesting expanding SMA boundaries in South Maui and we thank Commissioner Wakida for requesting this item on this morning's agenda. It will be addressed in detail by our KCA Director Gregg Stratton by his testimony. Please support our request for this change as extensive development mauka of the highway presently and much more in the future makes this the outdated boundary obsolete. That's No. 2.

Okay, on Item No. 3, I had addressed this item at a prior Commission meeting as an example of the recommendations and conditions of the Commission seemingly being ignored. When the Commission recommends that the granting of a permit with specific conditions, we expect they will have an effect and believe you do as well. It is ludicrous for the Hawaii Department of

Transportation to do this traffic improvement at this intersection and fail to include the sidewalks. We were advised by Councilmember Don Couch that he understood the Department of Transportation decided not to take this action because it would not directly connect to sidewalks on Ohukai ignoring how very close they would come to them as well as the fact that our Public Works Department is presently doing evaluation of where they will install additional sidewalks on Ohukai. We support the testimony from the South Maui Citizens for Responsible Growth on this matter in their detailed presentation. Once again, we thank Commissioner Wakida for requesting that this item also be on this morning's agenda. Mahalo.

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

Mr. Moran: Thank you.

Chairperson Lay: Our next testifier Mike(*sic*) Hyde.

Mr. Mark Hyde: Thanks for putting this item on your agenda for discussion. This relates to the SMA Permit that was issued for expansion of Piilani Highway at Ohukai Road in Kihei. That was done in 2012 by this body. And while this Commission decided that it would not mandate sidewalks at that location it was concerned about sidewalks and walkability and therefore attached a Condition No. 23 to the permit. And that condition required the applicant to do four things essentially. Number one, the applicant was to consider the addition of sidewalks subsequent to their appearance before you. Number two, the condition requires that the consideration be based upon evidence, factual evidence. Number three, it required the Department of Planning to exercise its discretion after receiving the consideration and the evidence embodied in a preliminary compliance report. And Number four, it required the Department of Planning to then in the exercise of its discretion to be satisfied with the conclusions reached. Given the absence in this case of a preliminary compliance report that was generated after-the-fact only after a request by South Maui Citizens for Responsible Growth it's absolutely crystal clear that the SMA Permit and Condition No. 23 were violated in this case.

In addition, when the so-called preliminary compliance report was written in December of 2014, it did not consider public policy and more importantly the evidence that was cited is not supportable. One of the items cited is that the location is rural in character. Another is that the shoulders of the highway would be safe for pedestrians and in fact in 2013, the State Department of Transportation issued its Statewide Pedestrian Master Plan and explicitly states that highway shoulders are not safe and pedestrian friendly.

Now at this location there are neighborhoods on both sides of the highway and at this location you'll find more pedestrian traffic than anywhere else along Piilani Highway.

Ms. Takayama-Corden: Three minutes.

Mr. Hyde: And in the industrial park next to this location you have the Kihei Charter School and you'll frequently find children at that location. It's a high speed highway.

Chairperson Lay: Please conclude.

Mr. Hyde: My conclusion is that because of the process was not followed and the outcome is unsatisfactory and insupportable we ask that this breach of the SMA Permit be addressed by this body. The ultimate remedy of which should be to require the addition of sidewalks to the intersection expansion project. Thank you.

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

Mr. Tsai: Mark, right?

Mr. Hyde: Yes.

Mr. Tsai: I know the intersection really well. So are you talking about both sides of the light? Are talking about one side only?

Mr. Hyde: I think both sides should be fixed. It's a singular project. There are sidewalks. In fact one of the...some of the evidence cited is that there are no sidewalks on the County property which in fact is incorrect. There are sidewalks on the mauka side that extend well into the neighborhood and the industrial park. Without question, kids stand at that corner and there should be sidewalks on the mauka side. And my view if you're gonna do it on the mauka side, you should do it on the makai side. Keep in mind that a high school is gonna be built two streets down off Piilani and if we're to abide by the policies of the County and the State in terms of safety, health, mobility, kids are gonna need to have that infrastructure there. Otherwise, they're just not gonna walk to school or if they do, they're gonna do so in a dangerous way. We recommend that sidewalks be put in both sides of the highway.

Chairperson Lay: Commissioners, any more questions for Mr. Hyde? If not, thank you very much.

Mr. Hyde: Thank you.

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

Chairperson Lay: Seeing no one, public testimony is closed.

Ms. Candace Thackerson: So the condition that was in question at the time was regarding sidewalks being installed on the Piilani Highway road improvements at Ohukai Road. The Condition in question is No. 23 on the approval letter and it states, "that the applicant shall consider the addition of pedestrian friendly access sidewalks for the project area within their construction plans to the satisfaction of the department and evidence of said consideration to provided in the preliminary compliance report."

Since then the consultant for State DOT, Parsons Brinkerhoff has submitted their preliminary compliance report and they addressed the consideration of the pedestrian friendly sidewalks and have chosen to not include them as part of their construction plans.

I have pulled the minutes from the previous Planning Commission meeting on August 14, 2012 where the discussion occurred on the floor with the Commissioners. They did, there was some strong advocacy to see the sidewalks included by the Commissioners. However, when it came time to actually draft the condition, it says here, Chair Hiranaga at the time said, and your motion for the sidewalks are you mandating these improvements? And Commissioner Shibuya said, no, I am not mandating them, and then they went on to say, you know, thank you, you know it's interesting that we do have pedestrian crossway and crosswalk sidewalks stripings, but we don't have any sidewalks accessing these improvements. So then the Chair Hiranaga said, okay, and the other condition regarding the culvert do you want them to just look at it? And Commissioner Shibuya said, just look at it.

So there was some discussion and it was brought up, and it was something that was important at the time to the Commissioners and to the public, however, at the time the consultant from DOT did say that at that point they were not ready to commit to it on the floor. I think his exact words were, yeah, so State DOT said as far as the sidewalks in the Ohukai intersection, we'd like to take a look at that to see how feasible it is. We're really not sure if it may have a other impact. So I don't really know from here....I mean, those are all the facts of the story and now we have the consideration brought up that the sidewalks were not put in and that is a concern that it was a violation of the SMA conditions. I think the Department....I'll let Will expand on the Department's take on that but seeing as how it says, shall consider, it's not exactly mandating the improvements.

Mr. Spence: Commissioners, when you pass conditions on permits, when you say, shall consider, we take your conditions seriously. When you say, you shall do something, we take that seriously. When you say for an applicant to "consider" something, we take that equally as serious. So I understand that they were late in their compliance report, but they did submit it at the urging I believe of the South Maui Citizens. And we did review it, and Candace is one of our very thorough planners. She looks at everything very carefully and the Department came to the conclusion that yes, the DOT did consider putting in sidewalks and chose not to.

So we don't see any violation of this condition. Do I wanna see sidewalks? Yes, I do. I think that would be the place, one of the places that they should be. I know that Councilmember Couch has made a couple comments to me. All the same, when the Commission said, no, I'm not mandating it, you know, that's what we go with. So will there be opportunity to include sidewalks at a later date? Possibly, and maybe at the County's expense, I don't know. But there is no violation of this condition.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Yeah, I guess this question might be towards Corp. Counsel as well. I was at the meeting and having the office actually right off Ohukai I know that intersection very well, and I recall in the meeting we specifically talked about the sidewalks. And also, I was the one actually brought up having both the left-turn lanes onto Piilani Highway from Ohukai to be turning and my understanding from the Corp. Counsel at the time that we could not impose those kind of conditions anyway. And I think if I call correctly that was the reason why it was not mandated condition. So I guess my point is even if we did, can we even enforce it? That's the question too.

Mr. Hopper: Well, you have an SMA condition and it's on the project. So if there's a belief by the Commission that the condition's been violated, you can continue to investigate and potentially institute a proceeding to determine whether or not there's been a violation of the permit. Now the Department has given you its opinion. But as far as the condition it's placed on an SMA Permit. That's already done. So it's a valid condition to consider the placement. If the consideration was not done, was not adequate to the Commission's satisfaction, then that can be an issue for enforcement or if you wanna gather more information on this issue. I mean, right now you only have a couple of letters. Candace has mentioned the minutes, but I don't know if that's been distributed to the Members. You can look into that more. But as far as the condition at this point that is, that has been placed on the permit already so that's already there. That is an active condition.

So whether or not the...I mean, the Department has given you its opinion, but if you, as a Commission wish to investigate further, you have that authority to look into whether or not the condition's been breached and eventually bring the applicant forward to make that determination. So that's at the option of the Commission. I think that was the point of the letter to the Commission that the Department had its opinion.

SMA conditions can be enforced by the Department directly, but as far as compliance with the condition and the determination whether to rescind a permit or to amend a condition and things like that, that's something the Commission directly would have authority over.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: A comment. In the future maybe we should drop the wording, "consider" and put that condition on, and it would alleviate all of this nonsense.

Mr. Spence: Sure. Understood. We do follow the Commission's lead. It is a permit that the Commission is approving so we follow the lead of the Commission and how they direct conditions to be. So if...at least at that time, the direction of the Commission was to consider. Perhaps it should have been shall, but it wasn't.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I guess I'm one of the few people that trust the State and County government to do the right thing. You know, and I really do believe that it was considered. Whether they felt it was not feasible or...but it was considered, you know? Sometime I don't like government but I trust them. That's all I got.

Chairperson Lay: Commissioners, more comments? Commissioner Hedani?

Mr. Hedani: I agree with Jack. If we want something required then we should say, it's required rather than consider.

Chairperson Lay: For me, I think at times when we understand the hardship of the person too, and the unfeasibility of it, even though we wish it to be like that, we can't really mandate it. So you

know, sometimes you want something to look that way and it can't be done and we just don't express our feelings and that's how I think sometimes we do say consider.

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

Chairperson Lay: Other than that, mandate it, right?

Mr. Tsai: Yeah.

Chairperson Lay: Yes. Commissioner Higashi?

Mr. Higashi: Yes, is it at this point the Director, so the Director that the Commission can require the developer to put in a sidewalk in this particular area? It seems like it's kinda of a dangerous area as far as traffic is concerned with Piilani and Ohukai?

Chairperson Lay: Director?

Mr. Spence: Yeah, I think that was the question. I can't change the condition of your permits. So, and that's what we dealt with all morning is I can't change whatever other Planning Commissions approved. I think Mr. Hopper outlined some of your authority and maybe he would want to reiterate.

Chairperson Lay: Corp. Counsel? We're not talking about an amendment of the condition. You could look into the issue further as to whether or not the condition's been complied with, whether or not there has been consideration. Consideration was requirement and whether or not that's been done to the adequacy of the Commission's condition is something the Commission can continue to look into. Again, the Department's given you its opinion, but the Commission can continue to investigate that and essentially require either further evidence of compliance with the condition, can bring the applicant forward to ask questions, and then ultimately if it could decide to hold that there's been a breach of the permit if that's something. And that would be through a contested case hearing process. It would be a more formal process than this right here. But this could be, you know, right now all you have is a letter with statements in it and you've got another letter from the developer's consultants responding and that's all you have. So if you wanna do more investigation or if you want to have...initiate a formal proceeding in the future that's an option of the Commission.

Chairperson Lay: Commissioner Tsai?

Vice-Chair Tsai: Yeah, I mean, it's just for, I mean I said my piece last meeting before regarding this. I mean, I'm very familiar with that area having to...and I see kids, keikis especially coming up from...the problem with that intersection is that the bus stop is actually further down towards South Kihei Road. So people who actually take the bus, they have to actually walk up Ohukai and through Piilani Highway and a sidewalk would definitely benefit everyone I mean, I see people there all the time. So, I mean, I'd be open to reinvestigating, but my question to the Corp. Counsel is if we take that step, is DOT has to stop their construction because it's currently taking place right now or is it can be doing it concurrently?

Mr. Hopper: If there was either a injunction in court or a stop work order issued by the Department that would require the work to be stopped, but a continued investigation would not in itself require the work to be stopped. I know that's been a request made when a stop work order is issued by the Department as an enforcement proceeding that wouldn't stop the work. Or a court proceeding that would request injunctive relief, stop the work on the basis that there's been a breach of a condition. That's something that's available as well, but again, the mere continued investigation or even placing it on an agenda for action in the future wouldn't necessarily stop the work unless there was either a stop work order or other injunctive relief ordered by a court to actually stop the work that's underway.

Mr. Tsai: Well, I definitely would like to put down on a investigate order because I think on the basis of just safety. Because I hate to see the State doing all this work and then presents an issue 'cause that intersection is pretty dangerous. I see it all the time. I just, I think you know, just protect all of ourselves and the people, we should see what the investigation.

Mr. Higashi: I second.

Chairperson Lay: Okay, I have a motion by Commissioner Tsai, seconded by Commissioner Higashi. Any discussion on the motion? Candace?

Ms. Thackerson: I just wanna clarify. So it's not actually further investigation of installing the sidewalks 'cause that wasn't the condition. It's further investigation of consideration that they install so we wanna hear—

Mr. Tsai: Right. On the basis—

Ms. Thackerson: —further elaboration from State DOT of what their process was and why they did not choose to put those in.

Mr. Tsai: Taking safety into consideration.

Ms. Thackerson: Yep, okay. Thank you.

Chairperson Lay: Any discussion on the motion?

Mr. Medeiros: I don't understand the motion? What is it? What exactly are we—

Chairperson Lay: Can you repeat the motion?

Mr. Tsai: I guess the way I'm understanding from the Council is we're proceeding with further investigation on the...wording correctly on the sidewalk that into consideration.

Mr. Hopper: If there's a desire for that then I think it would be a good idea to determine what exactly you would like to do? Would you like to have the Department on behalf of the Commission send a letter to the developer requesting that they attend the next meeting and provide a description of what consideration was done, and also provide that in writing essentially an expansion of what

they've provided as part of the preliminary compliance report? That's an example of something the Commission could ask for.

Mr. Tsai: And as it specifically relates to traffic flow and safety, pedestrian safety. I think that's valid.

Mr. Spence: I don't know, I think...maybe Michael would like to comment on that, but I mean, we're investigating how they considered whether to put in sidewalks or not. I don't think we can expand it beyond what the scope and intent of the condition is. I mean, you can't say, you know, add to it, a meaning that was not there at the time that it was approved.

Mr. Hopper: So, you'd be requesting that they come in and explain what consider, how, ...what they took as far as their consideration about sidewalks.

Mr. Spence: Right.

Chairperson Lay: But with that, can't they just say, we thought about it and it didn't pan out?

Mr. Hopper: No, the State can respond. This is an option for the Commission to request this and whatever information you get back from the State, I can't speak for the State, but that is an option of the Commission.

Mr. Medeiros: I can support Commissioner Tsai on that, you know, I mean, bringing them in and having them explain how they came to that conclusion is something that we could all listen to. And that way we could decide then if it was adequately addressed. But as it is now, we don't know, you know, I said I trust State and County, but I don't agree with them all the time, okay. I Portagee. I mean, I'm all good Commissioner Tsai's motion.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I, too, would like them to reconsider. Their justification, the Parsons Brinkerhoff justification says that the County of Maui has no planned sidewalk projects on Ohukai Road and its surrounding street. I think that needs reconsideration since they have a high school going in across the highway. So I think, I heard one argument that it would be a sidewalk to nowhere. Well, in the big picture it won't be to nowhere 'cause there will need to be other sidewalks. So my...I don't want to reinvent their condition. What I'm suggesting is that in their consideration they take in the bigger picture of the need for sidewalks down the road. And secondly, I'm a little bit put off by their maintaining that it's the rural environment of the area, I think it's a little silly to use as an argument. I don't think that we would consider that area rural. But my other concern I think is more serious about looking at long-term needs for sidewalks in that area, and what this little bit will contribute.

Chairperson Lay: Okay, for my concern it would be, you said there's a bus stop in that area. If you're on a wheelchair how do they get to this bus stop if it's in the middle of nowhere? I mean, you have a public access area that has no access to this public access? So for me, safety wise I would see where the two would connect automatically all the time. If you're saying it's public, this

is where you can hop on the bus, you should be as a handicap person be able to hop on that bus. That's where I would be concerned about as far as sidewalks.

And another thing is what is the criteria for consider? That' one...if we're gonna use that word, we're gonna have to have some realm that we're gonna have to reach every time we use that word to make sure that whoever we say that to, understands what we're saying that we wanna see. So we would have to work on that too just to say if we use criteria, I mean, not criteria, but when we say consideration. Once we say consideration then you're gonna have to say okay, you have to reach this degree for consideration not just thought about, didn't work out, you know. So I think there's a lot of issues on this.

Mr. Spence: And so what I hear the Commission if the motion passes we're going to send DOT and Parsons a letter asking them for a deeper explanation on how they considered and ask them to attend the next Planning Commission meeting to also make that presentation to the Commission.

Ms. Thackerson: I have it drafted slightly, Director?

Chairperson Lay: Candace?

Ms. Thackerson: So it's to request attendance to next available Maui Planning Commission meeting by a State DOT representative to address their justification regarding consideration of not installing a sidewalk since they chose not to.

Chairperson Lay: Call for the vote?

Mr. Tsai: I've got another comment.

Chairperson Lay: Go ahead Commissioner Tsai?

Mr. Tsai: Another concern I'm bringing up too regarding this too is that, I know that area very well. There's not much sidewalk going down towards Ohukai towards South Kihei Road and I'm pretty sure that, Public Works is not here, that's County road below that. So I think by State taking the initiative of doing this if we get them to do it, I think it will prompt the County to extend that to address issue with wheelchair access and so forth also, I think would just for long-term effect this is a great...(inaudible)... you know if they look at it.

Chairperson Lay: At this time, let's call for the vote. All those in favor?

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries.

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

VOTED: To Send State DOT, Highways Division and Parsons Brinckerhoff a Letter Asking Further Explanation of What Their Process was as to

Why They Chose Not to Install the Sidewalks. Also, to have Them Attend the Next Available Planning Commission Meeting to Make That Presentation to the Commission.
(Assenting - M. Tsai, J. Medeiros, J. Freitas, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)
(Excused - K. Ball)

Chairperson Lay: Powering through. Our next agenda item?

Mr. Spence: Commissioners, Item D, Unfinished Business. The proposed moratorium for short-term rental home permits or a proposal to reduce the cap.

D. UNFINISHED BUSINESS

- 1. Proposed moratorium on Short-Term Rental Homes (STRH) or proposal to reduce the cap. (Commissioner Jack Freitas)**

Draft letter to the County Council expressing the concerns of the Commission based on discussion conducted at the February 24, 2015 meeting.

Mr. Spence: We included with your packet a draft letter to Chairman Mike White and Members of the County Council, and I guess what we're asking the Commission is this what you wanted in your letter or did you want it to say something else?

Chairperson Lay: Oh, do we read it to the public so they know what we're discussing?

Mr. Spence: I can read it, audience is not here. It's already a part of the—

Mr. Freitas: It's part of the record, right?

Chairperson Lay: Okay.

Mr. Spence: I mean if you want, I can.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I don't know if maybe you just don't wanna make the letter too long. However, I did add a comment about short-term rentals eroding the residential character of neighborhoods and driving up property values which in turn pulls those houses out of middle income families. It's not affordable to middle income families because those homes become lucrative commercial ventures rather than residences.

And I had one other...English teacher recommendation...

Chairperson Lay: Educator.

Ms. Wakida: I would put the third paragraph at the end about bed and breakfast. The points that you're making consecutive and then at the end the bed and breakfast. That would make more sense.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, being that I initiated this I can accept the changes that she made and I'd like to make a motion that we send the letter off to Mike White.

Mr. Spence: Okay, with the changes?

Mr. Freitas: With the changes that Penny just suggested.

Mr. Spence: Okay, understood.

Mr. Medeiros: Second.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Wasn't sure if you're gonna ask for public testimony?

Chairperson Lay: Yes, that's gonna happen right now.

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

Ms. Catherine Clark: Aloha, Commission Members and Director Spence. My name is Catherine Clark. I'm a board member of the Maui Vacation Rental Association. I do not own a vacation rental. I have no intention of ever owning a vacation rental, but I do provide services to them. There is a shortage of long-term lodging in Maui. This is nothing new. there has always been a shortage of long-term lodging. And I think there's agreement between the industry, the Planning Department, and everyone in this room that some vacation rental properties do take away from the long-term lodging. But I encourage you to explore a little bit deeper. And I'm sure you'll find that it isn't the permitted properties or even those that plan to apply for permit that are impacting the long-term lodging.

For the most part, it's the properties that have no intention of getting a permit. It could be a variety of reasons. It could be higher tax, it could be the health and safety rules that they would need to meet or even the difficulty of the process. These properties will vacation rent as long as possible and not convert to long-term lodging until enforcement gives them no other choice. There are far more unpermitted properties than there are legal properties. The County has started to enforce and we think that this will soon show some results.

Most of the permitted STR properties, and there are I believe 121 right now, are vacation renting so that the owner can spend a part of the year in his home. Most are not investment properties. They are second homes to be used by the owner and his family. Most have a value in excess of

a million dollars. And even if not vacation renting, it's highly unlikely they would convert and become long-term lodging in the affordable range. These owners would not put their property into the long term market because then how can they spend their time in their home which is the reason they had it in the first place?

But I also encourage you to look at more of a broad picture on this. There is economic value to these properties. Each home has a local manager, agents, and service providers. The income that they derive from providing services to the rental homes allows them to support their family and to rent or own a home. I am one of those people. If you remove the vacation rental homes, you remove most of these jobs and you'll simply add to the group that can no longer afford lodging.

I wanted to make it a little more visual for you. So this is a home with a permit. This one house last year paid out \$294,000 to local service vendors. Their manager, their agents, their gardeners, their cleaners, the people they buy the flowers from. That's not their mortgage, that's not their insurance, that's not their tax. That's just to the local vendors.

Ms. Takayama-Corden: Three minutes.

Ms. Clark: I have several of these and I'll pass them around if you'd like to take a look. But enforcement is key in this equation. It will move inventory into the long-term market and it will reinforce the message that you need permit to operate and the rules to operate will be strict. Keep in mind that islandwide the total number of permits currently allowed is only 400 disbursed throughout the community plan districts. They do provide jobs, and I don't feel that this segment of the market is taking away from local affordable housing. Thank you.

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

Mr. Freitas: That home that you just showed us that derived \$295,000 in--

Ms. Clark: Services provided.

Mr. Freitas: --services that they paid out. What was the total revenue that they generated as far as renting?

Ms. Clark: It's actually not a home that I manage, so I'm not really sure. But I believe that they're paying out over 60 percent.

Mr. Freitas: They're out over 60, they made 40 percent.

Ms. Clark: So that makes it easier for other people to afford lodging be it rent or own their own home.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, one of the things that I thought we should consider is reducing the cap from

what we have right now on the books to something that more accurately represents the people that have already gotten permits plus the people that have already applied for permits and are trying to get legal. In your opinion, and that's a couple dozen is what I was told are in the pipeline, in your opinion, has the industry been given enough time to get legal?

Ms. Clark: Have they been given enough time to apply? I feel they have. I definitely feel they have, but I also feel that there's people that have specific challenges they're trying to work through. Whether that's a good reason to wait or not, I don't know, but I also think there's some people that really just can't afford to. The process is long, and...but it's exactly the rental that this body is looking for. It's the small little property that financially it doesn't make sense to stay in the short-term rental market and so they are the ones that when push comes to shove will most likely convert to long term lodging.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: In your practice or in the industry generally, do the management companies manage for people that don't have legal permits?

Ms. Clark: At this point, I'm thinking of the managers that we work with and they do not. I mean, everybody right now that is trying to do it legally and the managers are real estate licensed, they need to try to do it legally. But you've also got a group of owners sitting on the mainland thinking they're never going to catch me. I'm just gonna manage my home from the mainland. So the local service vendors they're not getting that big slice off the top. That's sitting with the people that are managing their home from the mainland.

Mr. Hedani: So the service providers only provide services to those who have applied and are legal?

Ms. Clark: The ones that I personally work with and that I know of, I can honestly say yes. There could be others that I don't work with that are doing it differently.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I'm sorry, Ma'am I didn't get your name?

Ms. Clark: It's Catherine Clark.

Mr. Tsai: Hello, Catherine.

Ms. Clark: Hello.

Mr. Tsai: Okay, so I did some crunching, number crunching here and--

Ms. Clark: It's an astounding number.

Mr. Tsai: It is. But however, here's what I'm looking at based on like for example, the one in Kihei

that's I think that's obviously Wailea. If you're saying \$294,000 paid for local vendors and a 60 percent rate that means they would have generated \$490,000 in rental income and it said, owner nights in 2014, 70 nights, which means they rented out 70 nights. It means they're renting out at--

Ms. Clark: It runs for a very big number.

Mr. Tsai: --\$7,000 a night.

Ms. Clark: It's not a home that I manage. It's a home from another manager on the south side and I would trust her if that's what she said it was, I would definitely believe that's what it is.

Mr. Tsai: Yeah, and I'm not denying these numbers. I'm just making a point here after looking at the Kaanapali one as well. That one for particular, \$211,000 paid to local vendors, 34 nights, that's over \$10,000 a night.

Ms. Clark: I don't think so.

Mr. Tsai: Yeah, based on these numbers here.

Ms. Clark: Oh, yes, I'm sorry. Those are nights the owner stayed in their own home. It would take those nights away from.

Mr. Tsai: Subtract it from it, still you're looking at substantial numbers per night.

Ms. Clark: Absolutely.

Mr. Tsai: Cost per night. So I don't disagree with the fact that these are not your typical working family homes because obviously they're not. But yeah, your driving the property tax up basically.

Ms. Clark: But keep in mind that the permits are not transferrable so it doesn't impact the property tax of anybody around them. And once that property sells, it no longer has a permit.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Property taxes. It does affect property taxes, I know.

Ms. Clark: But only to that home.

Ms. Freitas: No, it does affect property taxes you know, and I'll give you an example. I know of properties in Haiku where they sold for a certain price then they went into the vacation rental. Here comes somebody else and goes to buy the property next to them, and they're saying hey you can generate this much income and then they buy it. And when they buy that second home, say \$300,000 more than the first home sold for, the property taxes go up all the way around because now, now the value went up.

Ms. Clark: There's no guarantee that second home would get a permit.

Ms. Freitas: There's no guarantee in life, Ma'am.

Ms. Clark: That's true.

Mr. Freitas: But these things are happening.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: You said one of these houses generated \$290--

Ms. Clark: Two hundred and ninety-four.

Mr. Medeiros: Okay, this is a permitted house, right?

Ms. Clark: It is.

Mr. Medeiros: So in other words, that income for the people that are working is not gonna go away. So how does the moratorium hurt you?

Ms. Clark: No, it won't hurt that specific house with the permit, but the point that I was trying to make is that if there are more of those houses, there are more jobs, paying more people more money and if somebody is gaining the benefit of the income from those homes then they can afford to rent or buy home. It's a source of jobs in the community.

Mr. Medeiros: But there would no...as long as the people that have applied are protected. The people that have permits are protected, those jobs are protected.

Ms. Clark: Yes, they are.

Mr. Medeiros: And there will be some growth. You know, like where it's not like people are losing jobs...

Chairperson Lay: Commissioners, I think at this time, we'll get into the discussion part of this instead of asking our testifier too many questions. Any more questions for our testifier? Seeing none, thank you very much for your input. Commissioners, any more discussion? Oh, we have another testifier?

Mr. Tom Croly: I'm Tom Croly and I'm testifying on behalf of the Maui Vacation Rental Association. I watched the broadcast, the *Akaku* broadcast of the discussion that you had at the last meeting regarding Mr. Freitas communication proposing a moratorium on issuing new short-term rental permits. Speaking for my organization who has spent more than 14 years advocating for a way to effectively regulate this part of the visitor industry, I find it disturbing and disappointing that we would be talking about this in truly the infancy, the infancy of regulating this use on Maui. To date there have been 121, as Cathy said, permits issued. And I looked at all of them and the values,

the assessed values of those properties. The average assessed value for the properties that have been granted short-term rental permits to date is \$1,950,000. That's the average. Some have been as high as 7 million, some have been as low as several hundred thousand. There have been only two properties in what we would call the affordable range, less than \$400,000 that got issued permits, and one of them was granted by this body here in Paia.

What these properties do as Cathy points out is they really do make jobs. If they are not being used in this way, yes, some of them are still maintained and these owners are going to continue to use them themselves as you can see from there, but they're not going to generate the kind of jobs, and the kind of money that's brought into the economy when they're just used those few nights by the owners.

The County has recently been taking action against the unpermitted ones. Many, many unpermitted places have gotten a letter like this one that says, you must take down your advertising and shut down. I applaud them for those efforts and I also want to, want them to continue those efforts. Many of the people who have gotten these letters have come to me and said, well I got this letter now I gotta come get a permit, what do I do? Okay, and I admonish them for, you know, operating without a permit and for not coming forward to this point.

But at that point, sometimes I have to look at their operations and say whether or not they'll be able to survive this process, whether they will be able to get a permit. In some cases, it can take an applicant a year or more preparing to get into making an application. Before they can even get an application accepted by the Planning Department, that property has to pass all of the safety inspections, it has pass the Building Codes and so forth, if it's in the Agricultural District it has the farm plan. So yes, there are several dozen applicants who are in the process right now whose applications haven't gone to the Planning Commission...haven't gone to the Planning Department yet, and are probably a year away from every getting in front of you guys because of how it will take to complete their applications and complete the processing of their application.

One other fact I want to bring to the table is, we hear these numbers. There are thousands, and thousands, and thousands of these out there. I think I know my industry pretty well, and I can you there are not thousands and thousands.

Ms. Takayama-Corden: Three minutes.

Mr. Croly: A testifier earlier today brought to you, VRBO, VRBO ad, and while I was sitting here, I called that VRBO ad, the listings, down to the ones that are just houses, just houses or cottages, not in condominium complexes, not in areas that have grandfathered use, not in the Hotel zoning and I came up with 650. Of those 650, 200 and some of them are permitted, and like the applicant or the testifier that you saw earlier, he has two ads. So he doesn't just have one ad for his place on there, he has two. So those 200 might be generating 400 ads. So when we really got down to it, how many of these are out there and are doing it, it's not in the thousands and thousands. The Department has made a dent in notifying those people, and I think we're gonna get there at some point.

Chairperson Lay: Please conclude.

Mr. Croly: Yes. So the process of permitting vacation rentals in Maui County is really just in its infancy. We really are making progress with this effort. But I would not wanna see all of that effort, years and years, go to vain by placing a moratorium on the ...(inaudible)... process. Instead, I would ask this body to urge the County Council to give the Department whatever resources it needs to both effectively process the permits that are coming through and effectively regulate those people who would not get permits and would be trying to operate illegally.

Chairperson Lay: Thank you. Commissioners, any questions for the testifier? Seeing none...oh, Commissioner Tsai?

Mr. Tsai: Tom, have you seen the letter that was drafted that we're proposing to send to the Council?

Mr. Croly: No, I have not.

Chairperson Lay: I asked before...(inaudible)...

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

Chairperson Lay: Our next testifier, David Dantes?

Mr. David Dantes: Good morning everyone. First of all--

Chairperson Lay: Please identify yourself too, please.

Mr. Dantes: David Dantes. First of all, I've had some experience dealing with government and I've had some experience dealing with the public, and I just wanna thank you for the job that you're doing kind of sitting in a crossfire between the two of them. I appreciate it.

My wife and I have a small permitted bed and breakfast in Haiku and I also served as a past president of the Maui Vacation Rental Association. And today, I'd like to try to dissuade you from imposing a moratorium or reducing the cap on short-term rental home permits and recommend an alternate approach to trying to preserve affordable housing.

Even if the cap of another 300 short-term rental homes were completely filled, those 300 homes were completely filled those 300 homes would represent just over a half percent of the inventory of single family dwellings on Maui, but I don't think it's likely to make a huge impact. On the other hand, I've provided you with a few pages of written testimony.

If you take a look at the first page, you'll see that on a website vacation rental by owner there are around 6,500 vacation rentals advertised on Maui. Most of those are condos, about 5,000 are condos leaving around 1,500 advertisements for cottages, villas, single-family homes and so forth. You'll find that of those 1,500 advertisements no more than 200 have permit numbers as required by law. I feel that in order to protect affordable housing from the proliferation of vacation rentals there needs to be a focus on enforcement against the existing illegal rentals which have been estimated to range between one and two thousand.

And there are difficulties with enforcement. It's not very effective so far. The Planning Committee of the Council was about to review the Short-Term Rental Ordinance including its enforcement provisions and I'd urge you instead of imposing a moratorium on permits to encourage the Planning Committee to tighten up the enforcement provisions. There's an opportunity to do that. They'll be hearing that bill starting on March 25th, I believe.

The second page, shows an advertisement for a villa renting at around \$1,100 a night. This has been reported by at least four different observers since August. The owner received a Notice of Warning telling him he had to stop advertising by the middle of September or face fines. This advertisement was printed yesterday.

And the third page, shows an affordable studio which could be a long-term housing for a Maui family. This property was reported to the Planning Department in August and is still advertising. We know that of the properties that have stopped advertising after a Notice of Warning, 40 percent of them resume advertising and there's no method in place right now for tracking that. And of the ones that advertise without a permits, we've done a study showing that only 25 percent of them have tax licenses.

Chairperson Lay: David, can you please conclude?

Mr. Dantes: I will. Well, I've said what I have to say and I appreciate your attention.

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

Mr. Dantes: Thank you.

Chairperson Lay: Our next testifier is Paul Laub.

Mr. Paul Laub: Aloha. I'm Paul Laub and I'm speaking for myself. However, the data that I have here for you is part of the survey put on by the Maui Native Hawaiian Chamber of Commerce to try to establish the root causes for the high cost of housing. 'Cause it is critical to all of us that our children, our grandchildren stay here.

The first item is water system development. And I'm not gonna read the whole thing since I've given you the paperwork, but with that one, a smallest water meter now is about \$12,000. For school impact per unit, school impact fees are approximately \$5,000. Park fees are \$22,000 per unit. Wastewater runs about \$2,500 for connecting fees. And these do vary in areas and in sizes. Storm drainage systems are extremely expensive. There's pressures on the electrical system they require substantial improvements of the grid. Highway traffic is particularly bad in West Maui. We've reached our, pretty much reached our limit. The general construction costs are up because when we don't have building only few businesses can stay in business and that reduces the competition which increases the cost. Miscellaneous planning, you can plan and plan and plan and there's no guarantee that all the money that you've invested in the planning that you're gonna get what you're trying to do. And the costs are just extravagant. It's no longer that a individual guy can just go ahead and plan and get his house done all by himself as a rule.

And then lack of affordable housing is another problem of course which drives up the competitive costs since we don't have enough affordable housing, it does drive up the cost. And that's affordable housing, it's not the expensive housing. And perhaps the government can provide incentives within bounds, exemptions of fees, subsidizing infrastructure and provide for that through bonds and related compensation to the County can be worked out by the development over time rather than all up front. Thank you very kindly for the opportunity to talk.

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

Chairperson Lay: Our next testifier is Sydney Smith.

Ms. Sydney Smith: Good morning, Commissioners. Good morning, Chairman Lay. Good morning, Mr. Spence. I testified just a week ago today at Gladys Baisa's Water Resources Committee 'cause she asked that we come forward with our ideas for affordable housing. So I have my testimony which is a matter of public record that I brought copies which I'll pass around after I'm through and I think that there's quite a few really good ideas in there.

But another thing that I testified to yesterday was opposition of BF-70 which is the new taxation system that they want to impose on farms here on Maui. And it was on the front page of *The Maui News* this morning. This is going to have a serious effect on our family farms. If we don't get it completely killed which I doubt if we can. I think we can only maybe amend it a little bit. Everybody that has agriculture land even with a working farm will see their taxes triple and maybe quintuple. This is gonna drastically effect our farms being able to stay in business.

I would like to advocate for family farms being able to have a vacation rental on their farm to be able to help subsidize them and keep them in business to keep the families on the farm. Most of the family farms that are here in Maui County are operated by farmers that are 60 years old and older and their family, children have left the farm and they've gone to the mainland because they're unable to find work here and they would come back though if they had a way to make a living. And having a vacation rental on a farm is something that visitors want to do and want to experience.

In my own case, I'll be here at your very next meeting with my permit that will come before you for my vacation rental on my farm. I have cottage that the last time it was rented long-term went for \$3,500 a month. It was a, it's a beautiful house. It was built in 1928. It has a waterfall view on one side and panoramic ocean view on the other side and it's completely private. It has never been an affordable house and it never will be an affordable house. So whether I have a long-term person in there or a visitor in there, it's not an affordable housing unit. And I have quite an extensive farm on my property. It is a real farm. It is not a fake farm. I'm the President of the Maui Coffee Association. I have about 50,000 coffee trees. I employ farm workers. I'm trying to advocate for actual farms and it's very important that we continue to support farms here in Maui County or we will just be a resort and that's all we will be. Thank you.

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

Mr. Hedani: Sydney, you said you have 50,000 coffee trees on your property. How large is your

property?

Ms. Smith: It's about 20 acres.

Mr. Hedani: Twenty acres. And do you reside on it?

Ms. Smith: Yes, but not on the parcel that my cottage is on. I have two adjoining parcels. So my farm is two TMKs that are side by side.

Mr. Hedani: Thank you.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: The parcel that your cottage is on, do you have coffee trees there?

Ms. Smith: Yes.

Mr. Freitas: Approximately how much revenue do you generate a year in a real farm?

Ms. Smith: Probably about \$35,000 a year.

Mr. Freitas: And net?

Ms. Smith: I don't know what the net is actually because we're continually planting and adding you know, to it and things like that, but I don't know, probably maybe \$12,000 a year net. There's so much labor involved.

Mr. Freitas: So you're generating \$1,000 a month for income?

Ms. Smith: It's probably 1,500, more like 1,500 a month.

Chairperson Lay: Okay, Commissioners let's keep it to what our agenda items are not specifically toward herself. You'll be back next month?

Ms. Smith: I'll be back in two weeks.

Chairperson Lay: Two weeks and we'll be able to get more information from you, but we do appreciate you coming forward and letting us know about the challenges of having a farm.

Ms. Smith: Is it okay if I pass around my testimony that I gave to the County Council last week?

Chairperson Lay: Sure.

Ms. Smith: Okay, thank you.

Chairperson Lay: Our next testifier is Eve Hogan.

Ms. Eve Hogan: Good morning and aloha. I'm Eve Hogan and I have a vacation rental that bless you all you granted to me in January. I am also a farmer and I wanted to paint a little bit of a similar picture to what Sydney just said. I know that the vacation rentals have gotten this vision of rich people getting richer and in our case it is a matter of hardworking farmers and hardworking people trying to keep their farms going. And to me, looking to these properties as Sydney pointed out as affordable housing is not comparison of apples to apples. Like David Dantes just held up an \$1,100 a night rental and said, hey we could turn this into affordable housing. And with all due love and respect to the Maui Vacation Rental Association I think they're more concerned about competition than affordable housing. It's really an important thing to look at, but these units, these properties are not affordable for the land owners and they would not be affordable for the renters.

But we cannot provide affordable housing even if we were to turn our units into long-term rentals, but we do provide jobs. And it's kind of like looking at the Grand Wailea and saying let's turn the Grand Wailea into an affordable housing unit, look at all these apartments. It's not a realistic comparison. But then when you look at the Grand Wailea and what they are providing the community is they're providing a lot of jobs. And the same is true with all these little vacation rentals. I agree that the illegal ones are the challenge but you guys already have a cap in place. And I just want to really implore you to look at the benefits to the community not just the challenges.

We also look at it as an amazing retirement opportunity for these farmers. As she pointed out, the average age of the farmer on Maui is 60 years old and they're telling us at the Department of Taxation that we have to dedicate for 20 years in order to get the tax breaks involved. Most of us are not gonna be able to farm into our 70s and 80s and 90s. And so having the ability to put a vacation rental on the property allows us to monetize our own farms so that we don't have to seek subsidy elsewhere. So just I wanna applaud you again for the incredibly difficult job you have. I really recognize how hard it is. I just wanna keep you having to a bigger picture of all of this as well. Thank you so much.

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

Ms. Hogan: Thank you.

Chairperson Lay: Your next agenda item?

Ms. Niles: Okay, my next was being on the vacation rental and about what it is to be on ag land and also about what was said yesterday on the B-70 which what happens is I have big properties and the way this is gonna be taxed, it's gonna be taxed at market value, not ag value anymore. So it takes me to pay now only on my small property which is just the five acres would take me \$4,000 on the homes which I have in affordable rental now, I have in affordable rental which I can't keep my people in there if this taxes go through the roof and the property would be at almost \$3,000, about \$3,300. That all would take me thousands of dollars where I can't keep it. Okay, and what would happen to my people in the houses?

So as far as this vacation rentals on ag land, and like I think Mr. Medeiros made a comment about

if you live here, you're not...like for gentleman farm I can see, you guys are coming and I don't blame you and I don't like it either myself. But as far as being like you said, here, we're here over 10 years, 20 years, you know, you wanna put something up and by now I tell you now, we're gonna need one if we gotta pay the taxes on this properties and that's only a little bit that I have. I have a property that's over 50 acres so that's gonna kill me so. But that was my take on the vacation rental and I hope you let us, you know, at least have something to back up or some money that we need. And you know, people love to come on the farm. They call me regularly, but I don't have anything. I don't have a vacation rental, but I'm talking like you know what, I really want to get something going if we have to do this tax you know what I mean 'cause I'm not going be able to keep my people in the houses and I won't put them out 'cause they work for me. But they work for me for rent, you know, and they get cheap rent 'cause they jobs and they work for security, help me on the farms and stuff like that, but that is my take on it. Thank you very much.

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

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

Chairperson Lay: Commissioners, any more questions? Any comments? Any motions?

Mr. Freitas: I'd like to make the motion to send...to forward the letter to the Council with the added comments that Penny put on.

Chairperson Lay: No, not with the additional comments, huh?

Mr. Tsai: What was the comments?

Mr. Freitas: Penny, could you—

Chairperson Lay: Reiterate your comments?

Ms. Wakida: Yes, in the justification for the moratorium, I suggested adding that short-term rentals are eroding the residential of our neighborhood by changing the character and driving up property values by turning residential homes into highly lucrative commercial ventures.

Chairperson Lay: You had two, huh?

Ms. Wakida: And I also just suggested moving a paragraph, but that's not...

Mr. Spence: Move the B&Bs to the end.

Mr. Freitas: We have a motion and second.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: The only thing that I could think of...I like the letter, I thought it was well done. The

only thing that I thought we could possibly add to it would be a reference to a cap or revisiting the cap on the total number of TVRs and B&Bs to be closer to, closer to the existing ones that have already been approved plus accommodating the people that are in the works.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just for my edification again, was the cap at 800, 400 and 400?

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

Mr. Hedani: Maybe Tom knows.

Mr. Croly: Four hundred B&Bs. Four hundred short-term.

Ms. Hedani: Yeah, so it's at 800. Personally, I think it should be 250 and 300.

Mr. Spence: ...(inaudible)...the response was from clear across the room no where near a microphone, there was 400 B&Bs, 400 short-term rental homes.

Chairperson Lay: Okay Director with the reduction of this cap, what does that do...the moratorium you stop right there, right? The cap, what would that do by adding that in there just to get an understanding of what the changes would in our letter?

Mr. Spence: We would just add a number of things to the letter. The things that Commissioner Wakida had recommended. We would also just include a recommendation that the County Council revisit the cap from 400 B&Bs, 400 short-term rental homes to I don't know...

Mr. Freitas: Leave it open. Leave it open, let them make the decision.

Mr. Spence: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: The reason I suggest that is that if you run into a legal mess and a tangle in regards to the moratorium, abridging people's rights and what not, you know, without a definitive timeframe revisiting the cap gives you an out that can fall back to that might work.

Chairperson Lay: I guess as long as the cap doesn't address the people that are already in the pipeline. You know, as long as you're not including, you know, don't go below the guys who've submitted their permits request. Commissioner Tsai?

Mr. Tsai: I guess either for the Director or Corp. Counsel, so this simply...a recommendation letter we're sending to the Council. Procedurally I guess Council has to take this matter and then what happens, I guess? Because this is a pretty open-ended letter. It says the ordinance be repealed or moratorium amongst other items in there. So what happens I guess?

Mr. Hopper: Council doesn't have to do anything. I mean they're reviewing their...they're reviewing the STRH Ordinance, but yeah they, just like any other comments you have they're free to disregard the letter. They don't have to...they could decide to repeal the ordinance. They could decide to give a temporary thing or they could file it. My guess is they'll put it on with the information they have for the STRH Ordinance review and maybe consider it, but it's going to be up to the Council just like any other legislative changes to the STRH Ordinance. It's up to the Council how they wanna proceed.

Mr. Tsai: It would never need to come back down to us again?

Mr. Hopper: I mean, unless they needed, they wanted to send something to you for clarification, but no they don't have to. This is something the Commission just decided to send on its own initiative. So the...I mean, the Council can do with it whatever they like. The Commission itself does not have the authority to change the ordinance. It would need...the Council would have to actually change the ordinance.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I'd like to amend that motion from the standpoint that I think one of the major problems ...(inaudible)...to Jack about was that the enforcement part needs to be enhanced and from that standpoint you could recommend to the Council that additional positions specifically for enforcement of these rental homes be implemented.

Ms. Wakida: It's in there.

Mr. Tsai: It's in there.

Mr. Freitas: It's in there.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Didn't the Council recommend the sunset on this ordinance at the last meeting.

Mr. Tsai: The Commission. We did.

Mr. Hopper: One, if there's any issue with the letter it's to say a moratorium until affordable housing...I mean, you would wanna...have clear dates so know what we're taking about. So I would recommend that the Council definitely would need to look at that if they wanted to, if they wanna repeal the ordinance they would just repeal it until they decided to reinstate it. If they wanted to stay no permits may be granted from this date to date, they would wanna make clear dates although frankly I think they'd be better off repealing the ordinance and then reinstating it at a later date if they felt the need. But language that would just say no more permits until the affordable housing issue is solved is not something that's recommended. That's I think very difficult to determine when the date would end. So they should pick dates or just repeal it and then reinstate if they so choose.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I agree with Commissioner Hedani about addressing the cap. It's something that I brought up several years ago as well. However, in this particular letter I think it muddies the focus because if we're asking for a moratorium or a repeal then there isn't any room that that conversation seems...and it should be another letter depending on how the Council acts. I'm afraid it will...the perception will be, well you've asked for a moratorium on one hand, but now you're saying oh well by the way you can put a cap. Does that mean you're allowing it, more short-term rentals? So I'm afraid that maybe we consider a second letter after this one's been received...and we know what they...how they act on it.

Chairperson Lay: Any more discussion? Commissioner Hedani?

Mr. Hedani: I agree.

Chairperson Lay: Okay, at this point we're gonna have to decide what we...with no moratorium, I mean with no cap on it or....Okay, so Director could you repeat the letter that we want to send to the County Council?

Mr. Spence: Commissioners, we...well, one thing we could do rather than write a second letter, and I'm just suggesting this, but you can decide whatever you wanna do. If you wanna write a second letter that's fine. But the...we could put that towards the end revisiting the cap and just say, if the County Council decides not to place a moratorium, we request you revisit the cap.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: You know, when I said I agree, I was agreeing with Penny to withdraw that comment.

Mr. Spence: That's fine. Okay, so we...Commissioners, the motion is to send this letter to the--

Mr. Freitas: Mike White.

Mr. Spence: I'm sorry?

Mr. Freitas: Mike White.

Mr. Spence: Yes to Chairman White with the following changes, that the short-term rental...there's concern that the short-term rental homes are eroding the residential character of certain neighborhoods and that you...change the commercial...there's a concern that properties are changed to commercial properties increasing property values into highly lucrative businesses. And then we're putting the...supporting the permitted bed and breakfast homes paragraph towards the end or at the end. That's the motion.

Chairperson Lay: Okay, that's the motion on the floor.

Ms. Wakida: May I make one final comment?

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I hope that Mike White doesn't just file this immediately. I hope, it's kind of a long shot, but I really hope that it creates a very lively discussion and that everybody takes a good hard look at this at the Council level.

Chairperson Lay: I personally like the letter, but I still have concerns about where we have the homeowner that this is their whole thing they got a three-bedroom house, they're renting it out, they find out that somebody finds out or catches them, and we give this bite or give them the fine, compared to this guy who has a \$7 million home who gets this fine and just goes, oh? That's my concern. I like the letter but I'm still...I don't know how you do the variable on that. I mean, if wrong is wrong, yeah?

Mr. Freitas: Like I stated what do you call, they will get a letter, they will get a warning, they will...they'll probably be visited three or four times before they get fined. They will have time to correct it, correct their wrong doing. If it's against the law, it's against the law.

Chairperson Lay: Okay, I agree. Commissioner Hedani?

Mr. Hedani: I think for the record too, you know while I appreciate the comments that were given to us today from testifiers about the value of homes not being affordable I think we've seen as a commission applications come in where there application is for a workforce housing area where it was intended to be affordable housing, where the money was so lucrative that it was changing the character of the neighborhood and produces or could produce revenues that could allow them to acquire additional property which I think is inappropriate.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: I didn't hear any in the proposal itself or the amendment about the enforcement. Was that eliminated from the motion itself?

Mr. Freitas: No, it's in there.

Mr. Higashi: Requesting additional enforcement personnel? Is that still included?

Mr. Spence: Yes.

Mr. Higashi: 'Cause I didn't hear the Director mention anything about that.

Mr. Freitas: It says enforcement right there. Zoning Enforcement Agency...

Mr. Spence: It's on the top of Page 2, However, with only six zoning inspectors who are responsible for zoning and other land use enforcement, it is unrealistic to expect that these thousands of STRHs will be returned to long-term residential use any time soon. Since the Department began pro-active enforcement last June, approximately 350 to 400 Notices of Warning,

and only a handful of compliance ...(inaudible)....

Mr. Higashi: That's still included?

Mr. Spence: Yes it is.

Mr. Higashi: Okay.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: I am actually gonna echo Commissioner Wakida's last comment. I hope that this letter will stir a lively discussion amongst the Councilmembers. I am definitely, I won't say split, but as far as supporting this letter I am, I think it's well written as we have discussed last time. At the same time I will have to say, I hope Commissioner Medeiros is right. We trust the government. The Council will make the right decision on this matter going forward. I think, yes, I mean when it comes to those high dollar, high value rentals, I don't believe that's gonna affect the affordable housing market here. I think what we need to be concerned about is the ones that...my concern obviously is that having this go into effect if it does, that there's gonna be likely cases of people you know, that are just not gonna...is gonna do it illegally and that's what I'm most concerned about and I hope that there's enough resources put in place for the Department to enforce it like Commissioner Higashi said. So I mean, there's a lot of unresolved matters and I hope they're all gonna work out.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I gotta back up my partner over here mostly because with these million-dollar homes, you know, these million-dollar second homes. These are second homes which means if you can afford a million-dollar second home you really don't need a business to help you pay the mortgage. Okay, what I'd like to see is like the lower...(inaudible)...the neighborhoods protected. You know, and I'm all for bed and breakfasts because they're on the property. It's a home-based business, but Commissioner Tsai is right. You know, we gotta take care of the people's neighborhoods. You know, like in Lahaina you know, we just came across people trying to change Baby Beach, what? Gotta back him up too.

Chairperson Lay: Commissioner Tsai?

Mr. Tsai: Another comment I wanna make and I don't believe we should not have short-term rentals because I believe that having short-term rentals will benefit the overall economy and the market especially and you guys all know being on Maui we're the most expensive per room night hotel rate in the whole state. And if you suddenly don't have the short-term rentals available then less visitors or you know, hotel rates probably even go up. So it's nice to have options I think, but good options is important and especially, you know, offering more alternative to hotels and condos and I think that's important to consider.

Chairperson Lay: Any more discussion on the motion? Commissioner Hedani?

Mr. Hedani: I think we should or the Commission should leave it to the discretion of the Chair and the Planning Director to review the final letter to make sure it flows and go ahead and send it out.

Chairperson Lay: We appreciate that. At this time, call for the vote. All those in favor?

Mr. Spence: That's seven ayes.

Chairperson Lay: Okay, letter goes out.

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

VOTED: To Add the Additional Suggestions by Ms. Wakida. That Short-Term Rentals are Eroding the Residential Character of Neighborhoods and Driving Up Property Values Which in Turn Pulls Those Houses Out of Middle Income Families. It's Not Affordable to Middle Income Families Because Those Homes Become Lucrative Commercial Ventures Rather Than Residences. Also, to Place the Third Paragraph Regarding Bed and Breakfasts as the Last Point, and Transmit Letter to the County Council.
(Assenting - J. Freitas, J. Medeiros, M. Tsai, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)
(Excused - K. Ball)

E. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 24, 2015 MEETING

Mr. Spence: Okay, Commissioners, Item E, Acceptance of the Action Minutes of February 24, 2015.

Mr. Freitas: So move.

Mr. Hedani: Second.

Chairperson Lay: Motion to accept, seconded. All those in favor?

Commission Members: Aye.

Chairperson Lay: Acceptance of our Action Minutes.

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

VOTED: To Accept the Action Minutes of the February 24, 2015 Meeting.
(Assenting - J. Freitas, M. Tsai, J. Medeiros, W. Hedani, S. Duvauchelle, P. Wakida, R. Higashi)
(Excused - K. Ball)

F. DIRECTOR'S REPORT

1. **SMA Minor Permit Report (Appendix A)**
2. **SMA Exemption Report (Appendix B)**

Mr. Spence: Commissioners, Item F, Director's Report, No. 1 and 2, you have the SMA Minor Permit Report and the SMA Exemption Report.

Chairperson Lay: Any questions? Can I have a motion to accept?

Ms. Wakida: So move.

Chairperson Lay: All those in favor?

Commission Members: Aye.

Chairperson Lay: Those opposed? Okay, motion carried.

It was moved by Ms. Wakida, then

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

Mr. Spence: The next Planning Commission agenda, March 24th.

Ms. Wakida: Is there any...is this just FYI?

Mr. Spence: Charter, yeah, it's just the Charter.

3. **Discussion of Future Maui Planning Commission Agendas**
 - a. **March 24, 2015 meeting agenda items**

Mr. Spence: Okay, so the next meeting, Resolutions thanking outgoing Members Penny Wakida and Jack Freitas, and lunch. I think we're going to Café O Lei. And then you have three public hearings, Mr. Craig Peal of Costco, the wanna do, get a SMA Permit to do photo voltaic installation. The second one is a Land Use Commission Special Use Permit for Maurice and Sydney Smith. You've heard Ms. Smith this morning. Then number three, Ms. Crystal Schmitt of Dragonfruit Farm, LLC requesting a Special Use Permit and a Conditional Permit for their agricultural property at Punakea Loop in Lahaina.

Chairperson Lay: Commissioners, any more questions on anything coming up? Anything to add? If not...(gavel)...

G. NEXT REGULAR MEETING DATE: March 24, 2015

H. ADJOURNMENT

The meeting was adjourned at approximately 3:28 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Sandy Duvauchelle
Jack Freitas
Wayne Hedani
Richard Higashi
Ivan Lay, Chair
Jason Medeiros
Max Tsai
Penny Wakida

Excused

Keone Ball, Vice-Chair

Others

Will Spence, Director, Planning Department
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
(9:00 a.m.-12:30 p.m.)
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
(1:30 p.m. - 3:38 p.m.)
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works