

**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 22, 2013**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:03 a.m., Tuesday, October 22, 2013, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chairperson Lay: ...Today is October 22, 2103, our Planning Commission is now called to order. Public testimony will be taken at the start of the meeting on any agenda item except for contested cases under Chapter 91 HRS. In order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the Maui Planning Commission. Public testimony will also be taken when the agenda item is taken up by the Planning Commission. Maximum time limit is three minutes. The person testifying at this time will not be allowed to testify when the agenda item comes up before the Commission unless new or additional information is offered. Please be advised that applications for the community plan amendment, state district boundary reclassification, change in zoning and conditional permit require the approval of the Maui County Council. In order to be notified of future agendas of the Maui County Council please notify the Offices of Council Services. And you have three minutes to testify for testifiers. So right now we're gonna open up to public testimony. Does anyone wish to testify at this time before your agenda item comes up? If so, please step up to the mic, give your name and continue. Anyone? Public testimony is now closed. Moving onto Agenda Item No. 1.

Ms. McLean: Thank you, Chair. Good morning. You have one public hearing item today and that's a request from Mr. Grant Y.M. Chun, Vice-President of A & B Properties, requesting a Special Management Area Use Permit to construct two new retail buildings including a proposed TJ Maxx Store totaling 32,600 square feet, associated parking improvements, related improvements at the Maui Mall at 70 E. Kaahumanu Avenue, TMK: 3-7-009: 004 (por.) and 005 in Kahului. Candace Thackerson is the Staff Planner.

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

1. **MR. GRANT Y.M. CHUN, Vice-President of A&B PROPERTIES, INC. requesting a Special Management Area Use Permit in order to construct two (2) new retail buildings (including a proposed TJ Maxx Store) totaling 32,600 sq. ft., associated parking improvements, and related improvements at the Maui Mall, 70 E. Kaahumanu Avenue, TMK: 3-7-009: 004(por.) and 005, Kahului, Island of Maui. (SM1 2013/0004) (C. Thackerson)**

Ms. Candace Thackerson: Good morning, Commissioners. I'd like to make a slight correction to the proposal. We just had a last-minute site plan change...well, not last minute, it was a couple weeks, but it was before this notice went out. And there's actually a reduction in the square footage. So I think it says 32,6 and it's gonna be 31,940, and it's reflected as such on Staff Report.

So the subject property is within the Special Management Area which is why it's here before you today, and it is the proposed construction of two new retail buildings including a TJ Maxx totaling approximately 31,940 square feet, associated parking improvements and landscaping within the

existing parking lot at Maui Mall located at 70 East Kaahumanu Avenue and that's in Kahului, Maui.

So A & B Properties proposes the development of a new retail building in Kahului, Maui. And the proposed retail building will be located as I stated in the existing parking lot. It's two parcels. There's Parcel 004 and Parcel 005. I tried my best to label those out correctly in the Staff Report. Parcel 004 encompasses an area of approximately 25.37 acres, and Parcel 005 encompasses an area of approximately 1.5 acres and the proposed retail building and associated parking improvements and related improvements will take place mainly on Parcel 005 with a portion of Parcel 004 also being used and that's mostly for the parking improvements that are closer to the what's currently the Ale House and Wendy's over on the side there.

The applicant has prepared a short power point presentation so to not repeat ourselves, I'll just go ahead and let them give that presentation first and then you guys can ask any questions you'd like to them. Thank you.

Ms. Karlynn Fukuda: Good morning, Chair, and Members of the Maui Planning Commission. My name is Karlynn Fukuda of Munekiyo and Hiraga, Inc. We are before you today regarding the proposed retail buildings and related improvements at the Maui Mall. Can we hit the lights?

Joining me today are representative from the applicant, A & B Properties, Inc., we have Grant Chun and Charles Buckingham. Our project's architect is Riecke Sunnland Kono Architects and we have Anthony Riecke-Gonzales joining us. Our civil engineer is Otomo Engineering represented by Mark Matsuda today. Our traffic engineer is Phillip Rowell and Associates, Inc., and Phillip Rowell is here. And our landscape architect is K. Tanaka Landscape Architecture and Kevin Tanaka is present. And I am representing Munekiyo and Hiraga as the planning consultant.

The project site for the project is made up of two tax map keys, TMK: 2-3-007-009: 004 which is this larger parcel here at the Maui Mall that you all, I'm sure, all of you are probably familiar with as well as Parcel 005 which is a smaller parcel that's actually located wholly within the Maui Mall parcel. The total area for Parcel 004 and Parcel 005 is approximately 27 acres. The project site is bounded on the north by Kaahumanu Avenue, by the west Puunene Avenue and existing light or retail and commercial operations, to the south by Kamehameha Avenue and to the east by existing light industrial uses as well as Hana Highway beyond. Parcel 005 as I mentioned was subdivided out of Parcel 004 some time in the 80's.

This slide provides an aerial photo overlay of the proposed project improvements over the existing Maui Mall site. I'd just like to note that the total existing building square footage at the Maui Mall right now is approximately 185,700 square feet. With this aerial photo display I would like to point out a couple of things. So for your references, this is Puunene Avenue here, Kamehameha Avenue here, we have the Maui Clinic here, Kahului American Savings Bank, as the Commission heard a few, maybe a month or so ago, the proposed Bank of Hawaii, Kahului Banking Center would be located here, the County of Maui Service Center, and the Hollywood Theaters or the movie theaters at the mall is located here. This is the existing signalized intersection that leads into the Maui Mall Shopping Center, and on this side you would have the Kahului Safeway and Jack in the Box, Taco Bell for references.

So we see the site plan here that is proposed. There are two retail buildings that we are proposing.

The larger of the two retail buildings would be the proposed TJ Maxx building and there is a second building here that would house five retail units. There are additional improvements that I'd like to point out right now but are included as part of the plan. There's additional parking located here behind the American Savings Bank, and that is to...there's additional parking that's proposed. There's one more area and I'll show that when I get to the site plan, but there is additional parking area proposed because as you are probably aware, Parcel 005 is currently used for parking at the mall right now. So when these retail buildings are installed there's a need to replace the displaced parking stalls that will be there as well as provide parking for the uses on Parcel 005. One other thing that I wanted to point out here is that there are three pedestrian crossings that are proposed as part of the project. The first one which is not evident here but I will show it on the site plan would be between what this area here is the Kahului Florist and Subway at Maui Mall, so there is a pedestrian crossing proposed here. There's a second pedestrian crossing proposed here between the new TJ Maxx building and the County of Maui Service Center, and then the third pedestrian crossing is proposed here between the new TJ Maxx building and the proposed parking lot behind the American Savings Bank, Kahului.

The project scope includes two buildings, approximately 32,000 square feet in size. I think Candace had the actual, I think it's 31,940 square feet. As I mentioned, TJ Maxx will occupy the main retail building, and there'll be five additional retail units in the second building. There'll be new parking stalls proposed on Parcel 004 and Parcel 005 and in addition to the pedestrian paths there's landscaping and utility improvements also proposed as part of the project. Additionally, there are two vehicle access points that are proposed to provide connection between the Maui Mall and the new or the planned Bank of Hawaii, Kahului building as well as the installation of four electrical vehicle charging stations at the mall, and I'll point out those locations in a minute. The construction of the buildings may be phased. The TJ Maxx building for sure would go first. The additional retail units would depend on market demand. So it may be phased, but if there is demand at the time, construction is done on the TJ Maxx building it would be constructed all together.

So this is the site plan for the proposed project, but it also includes the overall mall. So again, to give the Commission orientation, Kaahumanu Avenue is here, Puunene Avenue is here, Kamehameha Avenue is here, and Hana Highway would be located here. We have Longs Drugs, Whole Foods, County of Maui Service Center and the theaters here, and this is the proposed area for the retail buildings. So we have the five retail units here, the TJ Maxx building here. I did mention so there is the additional parking that is proposed here behind the American Savings, Kahului Branch right now and there is additional parking again to replace the displaced parking stalls based on the construction of these buildings as well as a need for the uses that will be proposed here. Within in this area here at the mall which is currently undeveloped and that is adjacent to the Wendy's restaurant here and the Kahului Ale House restaurant here. So those are the areas.

In terms of the electric vehicle charging stations there are two electric vehicle charging stations proposed here about the center of the mall between Longs Drugs and Whole Foods and there are two additional electric vehicle charging stations proposed here in the area of the new TJ Maxx building and the Kahului Service Center or County of Maui Service Center, excuse me.

Again, the three pedestrian crossings that are being proposed, so here we see that pedestrian crossing between the area where the Kahului Florist/Subway restaurant is right now at the mall and the proposed retail units. The second one again, as I mentioned earlier, would be between the County of Service Center and the TJ Maxx building, and the third one here between the TJ Maxx building and this parking, this proposed parking area behind the American Savings Bank Kahului.

One other thing that I wanted to point out on the site plan before we move on, actually two things I guess is there are already existing driveway connections to the mall and so there are no new driveways or driveway access points proposed as part of this project. Many of you are familiar you know on Kaahumanu Avenue for example there's a right-turn in here at the corner. Here at the main entrance to the mall is a signalized intersection and then here towards the end of Kaahumanu Avenue there is a right-turn, and right-turn out access point. On Kamehameha Avenue, again, there's two signalized intersections. There's one signalized intersection here, I believe Alamaha Street, and then the second signalized intersection with I believe that's Hoohana Street, but basically Kahului Safeway is on the other side. There is the existing right-turn in, right-turn out here on Kamehameha Avenue and then there are connections right now to Puunene Avenue full intersection here.

The other thing that I wanted to point out is, again, as proposed by the Bank of Hawaii project so there is this interconnection with the Bank of Hawaii Kahului site. Their site is approximately this boundary here so there is the interconnection direct vehicle access between the bank site and the mall site. There is a second vehicle access point that we are proposing here between the bank site to this parking lot that leads behind the American Savings Bank Kahului. There are existing sidewalks that I also wanted to point out along Kaahumanu Avenue here that lead into the mall and also as well on Kamehameha Avenue.

The next few slides will be renderings and elevations of the proposed buildings and I'd like to point out here so this is the south elevation of the TJ Maxx building. This would be looking at the TJ, the new TJ Maxx building from Kamehameha Avenue, so if your back is to Safeway you are facing the front of the TJ Maxx building. We'd also like to note that earlier there had been red accents on the face where the TJ Maxx logo was, but based on the comments received from the Urban Design Review Board we have removed that and just left it with the clean TJ Maxx logo there. Then you have the west elevation of that building and this would be view if you were at say Maui Clinic side of the building or the behind Kahului bank, American Savings looking at the building this would be the view and this is the four retail units, excuse me, the five retail units that you see here. These are the other elevations. So this is the north elevation facing the five retail units. So this view is if you are facing the buildings from the Longs Drug area of the parking lot this is the view that you would see. The east elevation, this is the elevation of the TJ Maxx building along side what you would see if you're facing from the County of Maui Service Center. And again, based on the comments received from the Urban Design Review Board, there is additional landscaping that is proposed in this area to soften the appearance of the building.

The next two slides that you'll see will be photo renderings of the proposed buildings and this is...this shot is taken from the intersection at Hoohana Street, so basically Kahului Safeway is located behind us and we're looking into the mall looking back towards where the TJ Maxx building would be. This second photo rendering is what, you know, a proposal of what the building would

look like. Now unfortunately it's not the same perspective. This second shot is actually taken further in looking at the building beyond this, I don't know if this is a monkey pod or poinciana tree, but it's actually beyond that. So it's to actually give you a perspective of what that building would look like.

The second set of photo renderings. So this is looking back towards that Parcel 005 from again, the Longs side of the parking lot so your back is to Kaahumanu Avenue. And the second shot shows what the rendering would look like of the retail unit looking back from that same direction.

This is the overall landscape plan. So the areas of improvement are, you know, noted by the dash lines that we have here. So again, we have the additional parking area proposed behind the Kahului American Savings Bank and the additional parking proposed by the Wendy's and Ale House Restaurant. But basically the landscaping would, you know, mirror what the existing landscaping is at the mall to be consistent.

In terms of drainage improvements there are three areas where subsurface drainage improvements are proposed. One would be behind...in the new parking area behind the American Savings Bank, the second area would be within the existing Maui Mall parking lot adjacent to the retail units, and the third area would be in that new parking area proposed by the Wendy's Restaurant. The drainage system is designed to accommodate the 50-year, one-hour storm, and meets the requirements of the County's storm water drainage rules and treatment best practices. Catch basin inserts will be installed into the system to remove sediment, trash, and other pollutants.

I'd like to conclude our presentation by just pointing out some of the sustainability features that are being proposed as part of this project. We are proposing to install bike racks near the entrance of the TJ Maxx building, and showers for the employees have been suggested to the TJ Maxx Corporation for inclusion in their building in case they do have employees who bike to work. As we mentioned earlier, we are installing pedestrian pathways from the parking areas. We are looking to utilize CMU block from local sources. There are the electrical vehicle charging stations that are being proposed to be installed. Photo voltaic or other alternative energy generation is under consideration by TJ Maxx. And we're looking at reflective roof coverings to be installed on flat areas and light-colored canopies will be installed to reduce cooling needs and our site is located on the existing bus route. So not everybody would need to drive to site. This concludes our presentation and we are available to answer any questions you may have. Thank you very much.

Chairperson Lay: Commissioners, at this time, I'm going to hold back on our questions and then we're gonna go to public testimony.

b) Action

Chairperson Lay: Public testifiers, we have John Guard. Please identify yourself. You have three minutes.

Mr. John Guard: My name is John Guard. I live in Kula, but I actually own The Pet Shop in the Maui Mall. So as a long-term tenant of the Maui Mall, you know, we're excited to see this project. We think it's a great project. I've never been in a TJ Maxx, but women love TJ Maxx. Every woman I've ever talked to has been in TJ Maxx is thrilled to hear that this is coming to Maui. I think it does

a great job of filling in a blank spot in our mall that was intended to be filled 40 years ago. I don't see any reason why it wouldn't be approved. I don't know what contention there might be for it, but it fills a price niche and a market that is much more appealing to the broad Kahului-Wailuku community. It's not a high end store. It's between Ross and Macy's I guess. And I just think it's a good fit for the mall and for Kahului. Thank you.

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

Mr. Guard: Thank you.

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

Mr. Mark Martinez: Good morning, Mark Martinez, store team leader Whole Foods Market. And I just want to speak in favor of the TJ Maxx in the Maui Mall Shopping Center. As an anchor tenant there in the shopping center and as one who is I guess excited about the growth and the possibility of not only a TJ Maxx opening in Kahului to fill a niche market that, you know, we don't currently have. I feel like it's an under served area. I also feel like it would bring excitement and help revitalize the mall as a whole and make it a better destination for the consumers in the area. You know, possibly help stoke the fires of young business owners, people that want to get into a mall that, you know, actually has plenty of vacant space at this time. And you know, we got the traffic going through the mall at a more steady, consistent pace, I think that would excite a lot of people. In addition, like I feel, you know, in growing that business, you know, it will grow the businesses around the mall and allow us to hire more people and provide more jobs for the community. So in that respect, I think it's a win. And it will bring some excitement to the area.

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

Mr. Martinez: Alright, thank you.

Chairperson Lay: Does anyone else wish to testify at this time? Seeing none, public testimony is closed. Commissioners, questions? Commissioner Wakida?

Ms. Wakida: Yes, thank you, Chairperson. Maybe my question is for a representative from A & B?

Ms. Fukuda: Okay.

Ms. Wakida: That would be you?

Ms. Fukuda: Well, I can I guess see if I can answer your question first, and if not, we have representatives from A & B here who would be able to answer.

Ms. Wakida: It has to do with occupancy at the mall.

Ms. Fukuda: Yes.

Ms. Wakida: And I'm just curious. Right now there seems to be quite a bit of open space, unleased retail space, so I'm just interested to know what A & B's thoughts are they're gonna add five more, besides TJ Maxx, retail spaces, and how...what their thinking is about this?

Ms. Fukuda: So I'll answer initially and if you want...because we did discuss this, so currently there's about a 4 percent vacancy at the mall actually. And if there, you know, was the ability to put TJ Maxx into the mall, they would have loved to have done that. You know, unfortunately the space needs that TJ Maxx had were larger. With regards to the five retail units, they recognize that yes, they do have some space available, and so if the market demand is there at the time that the TJ Maxx building is constructed they would construct the five additional retail units. If there's not that demand at that time, then that's why we mentioned it may be phased. And so, only the TJ Maxx building may be built first. So...

Ms. Wakida: Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I got a question for Grant.

Mr. Grant Chun: Good morning, Commission. Grant Chun here on behalf of A & B Properties.

Mr. Medeiros: Okay, Grant, I like the project, okay. And the only question that I have is when can you guys start? You know, that's what...the delays, you know, really gets to me, okay. You got a good project, but when can you start? I mean, shove in the dirt?

Mr. Chun: Well, we're already in construction drawings and we're anticipating that the permitting process with County will probably take once construction drawings are done at the end of the year, January or so, it probably take about six months for approval and then we're looking at a summer start date. Summer 2014.

Mr. Medeiros: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'm not sure if this is for Grant or for Karlynn. When my wife gets a haircut, I take a walk, and I walked the block that includes this particular site. One of the things I noticed is that when you're on Puunene Avenue and you take the driveway between American Savings Bank and the Clinic into the shopping center, there's no pedestrian...there's no nicely laid out pedestrian access from that side. There's a hedge on one side of the driveway and I think there's stalls from American Savings that back directly out into the driveway so there's no sidewalk other than a painted sidewalk on the ground that leads in the direction of the TJ Maxx Store. So one of the suggestions that I would have is to take a look at that particular driveway and see if there's a way to integrate pedestrian access from that access point because I think when the Kahului Town Center is built across the street there's gonna be much more pedestrian traffic coming from that direction towards the Maui Mall.

Ms. Fukuda: Okay, thank you. We can take a look at that.

Chairperson Lay: Any more questions? Commissioner Shibuya?

Vice-Chair Shibuya: Can you generally describe the area? I know you mentioned the areas for the drainage. Can you show me on the map approximately where the drainages will be and the size of the drain?

Ms. Fukuda: So I'll show you two of the drainage areas here because the third one is not shown. So one of the drainage areas, the underground retention basin will be here in this parking lot proposed behind the Kahului American Savings Bank. There's a second underground retention basin proposed in this area here and then if I could get to the site plan there is a third underground retention basin proposed in the new parking area adjacent to the Wendy's and Ale House Restaurants. So in terms of the sizing of those, I can have Mark Matsuda, the civil engineer give you that information.

Vice-Chair Shibuya: Okay, I'm just looking in terms of the impact during construction we expect some problems here because you have less parking spaces available, and that's understandable and about how long will it take? Can you describe that?

Ms. Fukuda: For how long the construction period is?

Vice-Chair Shibuya: Right, for the drainage and the leach fields or however they have it designed.

Mr. Mark Matsuda: Good morning, Mark Matsuda, Otomo Engineering. Generally the grading obviously will be done up front and with that would be the drainage improvements along with the subsurface drains. I would imagine this area maybe a month or two once it gets started. The sizing of the drainage facilities would be based when we do our design during the construction plan period we would size it based on the County standards.

Vice-Chair Shibuya: On the drainage area right in front of the five stores that's proposed, they're not gonna build the five stores, but they're gonna have the drainage drywell area there, right?

Mr. Matsuda: Correct.

Vice-Chair Shibuya: And you're going to pave it over after you're done I assume?

Mr. Matsuda: The store, the store area? The driveway area? The driveway improvements, all of the proposed driveway improvements, parking stalls and drainage, yeah would be done up front.

Vice-Chair Shibuya: That's correct.

Mr. Matsuda: Yes.

Vice-Chair Shibuya: And so those...that drain area just in front of the five stores that's proposed because the five stores are not gonna be built right away, it's gonna be phased. So the drainage

is gonna be constructed and then you're gonna cover it over and you're gonna pave it?

Mr. Matsuda: Correct.

Vice-Chair Shibuya: And so that the parking area is restored. That's all I'm after.

Mr. Matsuda: Yes, yes, it will be.

Vice-Chair Shibuya: Okay, thank you.

Chairperson Lay: Commissioners, any more questions? I have one concern. This is TJ shopping store and it's a ladies store, I'm just wondering if there's adequate benches for the guys outside while we're waiting for the ladies? Something comfortable, just something to consider.

Ms. Fukuda: We've heard your comment. Thank you, Chair Lay, and we'll definitely take that into consideration. Thank you.

Chairperson Lay: Please do. Please do. Commissioner Hedani?

Mr. Hedani: I just wanted to say that I really like the architectural presentation of the building, and the integration of the design of the building with the existing Maui Mall, the architecture. I thought it was well done.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'm just looking in terms of Kamehameha type of traffic and the impact that it will have especially when you're doing left-turn lanes from Kamehameha going south as well as going north. Is there an intent of increasing the amount of cars that is stacked up in the left-turn lanes?

Ms. Fukuda: I don't think necessarily there's an intent to increase the stack of cars that will be stored in the left-turn lane. I'm assuming you're talking about the Puunene-Kamehameha intersection here?

Vice-Chair Shibuya: That is correct.

Ms. Fukuda: But we understand that DOT is looking at an overall master plan for improvements to Puunene Avenue and at that time I think that intersections improvements are probably be considered and I see Rowena nodding her head at the Puunene-Kamehameha Avenue intersections. So I think that that's probably forthcoming.

Vice-Chair Shibuya: Right. Right across the street of Puunene Avenue, Bank of Hawaii had made a proposal to construct their bank. I had a concern at that time in terms of the left-turn lanes especially the amount of cars that's gonna go south towards Kihei. That is of a concern as well as the traffic now coming from Macy's or that shopping center, Kaahumanu Shopping Center coming down towards the ocean side on Puunene Avenue. So that is of concern right now. I just don't

want us to design traffic congestion. Okay, thank you.

Ms. Fukuda: Understood.

Chairperson Lay: Commissioners? Commissioner Wakida?

Ms. Wakida: Couple questions about the roof. What is the type of reflective roof covering that's proposed?

Ms. Fukuda: I can defer to Anthony Riecke-Gonzales, the project architect, but my guess is that it's probably a light colored, you know, white paint type of surface, but...Anthony?

Mr. Anthony Riecke-Gonzales: Good morning, Commissioners. My name is Anthony Riecke-Gonzales with Riecke Sunnland and Kono Architects. We would be using a what's called a TPO which is a single-ply membrane. They're quite common now where you want a long life roof and they typically are white. So there as reflective of roof material as is available on the market right now.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And as long as we're on the roof, the presentation says that photo voltaic and other solar types of installations are under...only under consideration. Why isn't automatically? Why haven't you automatically gone there and say, yes we're gonna do?

Mr. Riecke-Gonzales: Well, because we're doing the shell of the building. TJ Maxx will actually be responsible for building out their space and they'll also be responsible for paying the electric bill. So that would be part of their scope to do and they would have to put that in their next, I don't know what their corporate setup is on how they do that. It has been recommended to them. In fact, it's been strongly recommended to them and they'll probably be a little bit surprised when they get, you know, Maui Electric bill versus most other places in the world. It makes a lot more sense here.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: However, as an architect don't you build in certain infrastructure to support photo voltaic panels why you construct the building?

Mr. Riecke-Gonzales: No, we wouldn't. We can certainly recommend that they use energy efficient light bulbs that type of things and certainly the shell of the building will have that already put into it because it's common sense these days. But as far as if they were to go with photo voltaic, that whole system would be packaged together and whether you have an existing building. I'm sure you've seen lots of existing buildings right now that get photo voltaics add to it. There's nothing special that's being done to be able to accommodate photo voltaic other than it's nice to have big, flat area where you can put all the panels.

Ms. Wakida: Okay, thank you.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Since you're up there. When you're designing such a structure what is the estimated use or load, electrical load that you have for this structure?

Mr. Riecke-Gonzales: Well, believe or not I hire an electrical engineer to do those kinds of computations. But in this case, normally what's going to bound that is the new code for energy. And so they will be looking at the energy code that they have to stay under. And retail typically they'll try and go right up there because they want as much lighting as they can get within the space and the great thing is, you know, we have now fluorescents and LED light bulbs that can provide a lot more light with less electricity and that's how they're able to meet the new energy codes.

Vice-Chair Shibuya: Follow up.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: In terms of TJ Maxx they have other types of stores throughout, especially in Southern California, we have almost similar types of environments and they have similar sizes of the structure wouldn't this boiler plate type of a estimate be applicable to Maui?

Mr. Riecke-Gonzales: In terms of electrical use?

Vice-Chair Shibuya: Of use of energy, yes.

Mr. Riecke-Gonzales: I couldn't speak for TJ Maxx on that.

Vice-Chair Shibuya: Did you look at those estimates?

Mr. Riecke-Gonzales: Have we looked at the electrical loads, no. We're not at that point in the construction documents and again, I'm doing the shell building so we will use what is code required per square foot of what the amount of electricity they could put in. They will actually be selecting, you know, how many fixtures they put in to light the clothing within the store.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: You're aware of the RPS, Renewable Portfolio Standards for Hawaii?

Mr. Riecke-Gonzales: No, I'm not familiar with that.

Vice-Chair Shibuya: Okay, there's a requirement for a 30 percent conservation as well as 40 percent renewable energy that you provide by 2030. And I'd like to be able to stay abreast with that Hawaii standards. So as long as you understand that--

Mr. Riecke-Gonzales: I'm sure my electrical engineer is very familiar with that if it's a code requirement, he will be complying with it.

Vice-Chair Shibuya: Yeah, I just don't want us to comply on the 2029.

Mr. Riecke-Gonzales: Understood.

Vice-Chair Shibuya: Okay, thank you.

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

Mr. Hedani: I guess this might be for Candace or Staff. Were there housing or water assessments that needed to be made in conjunction with the project?

Ms. Thackerson: The project was routed out to the Water Department as well as Housing and Human Concerns and I don't believe they offered any significant comments that were opposing or had conditions upon the project. So just the standard ones. I think the Water Department's answer—it's listed in your exhibits—they just outline...is it Exhibit 10? Yeah, Exhibit 10, they have on the back page of that, they do list out conservation measures that they recommend which is kind of their standard boiler plate conditions that they recommend. So when the applicant writes back on Exhibit 10A that they acknowledge and accept those conservation measures. That's really, but they do have all the infrastructure set up there to meet all the needs for this building, for the predicted.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: So basically it complies with the Show the Water Bill and any housing assessments that need to be made relative to housing for employees?

Ms. Thackerson: Yeah, the Show Me the Water is more for new subdivisions and things like that, and they do have the existing infrastructure. That's where they don't have a existing or you need to get a water meter or upgrade your line or things like that and the Maui Mall has several large water meters running under there.

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

Ms. Wakida: I guess I could ask Karlynn first. In this area, I haven't driven by for a while, how many, if any, monkey pod or shower trees are gonna be removed to build this building?

Ms. Fukuda: I'll have our landscape architect, Kevin Tanaka respond to that question.

Mr. Kevin Tanaka: Good morning, Commissioners. Sorry, your question was?

Chairperson Lay: Please identify yourself?

Mr. Tanaka: Sorry, Kevin, Kevin Tanaka, the project landscape architect. I believe, I think it's about seven of them that are gonna be removed?

Ms. Wakida: Monkey pod or shower or both?

Mr. Tanaka: Monkey pods in that area. There are few other palms that are...if you notice the condition of those monkey pods are--

Unidentified Speaker: Poor.

Mr. Tanaka: Yeah, they are in poor condition.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: I have a little bit of concern about the types of trees that you're using. As you know, and probably everybody else in this room knows, the hot spot in the state has consistently been Kahului for the past year. And the more we create parking lots, the more that's gonna go up and roof tops and other things. And so I feel very strongly about having adequate shade trees put in parking lots. What I'm seeing now are trees put in that either don't very big or are pruned back into little lollipops that do nothing. So I wanted to ask you specifically about your choice of an orchid tree and why you chose that one?

Mr. Tanaka: Well, the overall design concept was because it is an existing mall to continue that design theme with the exception of the autograph which is now considered invasive. But the orchid tree in my experience is anyway, you'd have an attractive look that I've seen that should be able to handle those conditions though the way the mall and the new structure is set up, you know, from the conditions of strong winds, salt breeze, and the heat coming off of pavement in my opinion anyway that they would, it would survive.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: A little bit of information that I got from the extension agent at the University of Hawaii said that they didn't feel the orchid tree was that dependable for shade especially in Kahului. They don't feel it is very drought and wind tolerant, and they cited that there's a lot them at the UHMC Campus that don't seem to be, seem very full.

Mr. Tanaka: The way I looked it was that the MCC Campus versus here is although a couple of miles apart, a different, a totally different ecosystem. The ones that are on the MCC Campus are very exposed where, you know, I felt that in this case it was very protected by comparison by the buildings themselves. As far as the...granted I will acknowledge the fact that the orchid tree does...will not produce the shade that some others will and the canopy it's more of a design choice. You know, as a designer, and I guess what I...the owner has the ultimate I guess responsibility in the maintenance of trees, and what we've seen over the years is that owners want visibility. When the tree grows it cuts out visibility to their business and unfortunately some butchering takes place. It's...although in this case, anyway in the Maui Mall anyway, I don't believe that there has been that issue of trees being necessarily butchered.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Just to comment in terms of butchering trees in parking lots. I'd like to avoid that and perhaps suggest that they have a canopy over the parking area. The canopy is with photo

voltaic panels and I'm sure people would love to park in those slots and so you put them in a front entrance and I'll guarantee you they'll have lots of parking all filled up. Thank you.

Mr. Tanaka: As a landscape architect, I...well, not as a landscape architect I'll agree. As a landscape architect I'd still like to see more trees.

Vice-Chair Shibuya: Understand.

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

Mr. Hedani: On the prior comment that I made regarding pedestrian access from the Puunene Avenue side, and this is for Grant and A & B's consideration, I think the driveway that is between the Maui Clinic and the old Bank of Hawaii site also has that same lack of pedestrian access that should be considered at some point in the future.

Mr. Grant: Thank you, Mr. Hedani.

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

a) Action

Ms. Thackerson: I'd like to make a slight correction to Condition No. 5. It's just a renumbering of the exhibits. Where it says, exhibit...the preliminary site plan labeled Exhibit 4 it should be Exhibit 3. Exhibit 6 should be Exhibit 5, and Exhibit 5 should be Exhibit 4. Sorry, there was a last minute addition of one page which throws off all the numbering. So just switch those around.

In light of that, in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the October 22, 2013 meeting as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit said decision and order on behalf of the Planning Commission.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'd like to make a motion to accept with the following additional amendment or it's the project specific conditions and that amendment would be to include-

Chairperson Lay: Let's get the second on that recommendation.

Mr. Tsai: Second.

Chairperson Lay: Okay.

Vice-Chair Shibuya: The amendment would be to include, recommend that they include renewable energy as well as energy conservation measures. To be at least minimally complying with the

renewable portfolio standards of the State of Hawaii.

Chairperson Lay: Does the seconder agree with that?

Mr. Tsai: I agree.

Vice-Chair Shibuya: Thank you.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'd like to make comment. I think this is a worthy project and I think if we look in terms of the owner and the developer understanding the need to sustain ourselves not only in energy but to have a good economy and good jobs here, I support this project very much. Thank you.

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

Ms. Wakida: Just a comment. As long as we have A & B in the room. I strongly encourage A & B to pay attention to the trees that they put in their commercial areas and their parking lots. I think this is very important and that quite often gets put on the side, gets tossed under some design thing without a lot of...I'm not saying A & B does this, but I think some other projects don't give it enough serious attention and it's just extremely important to our island that we pay attention to keeping it green and shaded. Thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I support the project and let's call for the vote.

Chairperson Lay: I'd like to add a little recommendation also on this. With all our contractors, local contractors here, and our local construction workers if we can as much as possible use our local companies here and contractors.

Mr. Medeiros: I second that.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just a comment for also for A & B's consideration is that at some point with this project coming on line, with the development across the street from Puunene Avenue coming on line and that whole Kahului Town Square project, the developer should look at synchronizing all of the street lights in that area so that it minimizes the traffic congestion in the area.

Chairperson Lay: Any more discussion? Can you repeat the motion?

Ms. McLean: Thank you, Chair. My understanding is that there's only one formal amendment. So the motion would be to approve the project subject to the 12 conditions recommended by the

Planning Department with the corrections to the exhibit numbers in Condition 5, and with a 13th condition that the project shall include renewable energy and energy conservation measures in compliance with the State's renewable portfolio standards.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I think that was as a recommendation not a requirement.

Vice-Chair Shibuya: yes, it's a recommendation.

Ms. McLean: Okay, so that's not an additional condition?

Vice-Chair Shibuya: No, it's just a recommendation.

Ms. McLean: Okay, then the motion would be to approve the project subject to the 12 conditions as noted in the staff report with the corrections to the exhibit numbers of Condition 5.

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

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

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

Ms. Thackerson: Thank you.

Chairperson Lay: At this time let's take a break till about 10 o'clock.

Ms. Fukuda: Thank you very much.

A recess was called at 9:52 a.m., and the meeting was reconvened at 10:02 a.m.

Chairperson Lay: Deputy, our next agenda item?

Ms. McLean: Thank you, Chair. The Commission has two Communication items on the agenda this afternoon. The first one is from Mr. Scott Crawford, who's the Chair of the Hana Advisory Committee to your Commission transmitting their recommendations on a request by Brianna Lee Everett for a State Land Use Commission Special Use Permit to operate Hana's Tradewind Cottage, a two-bedroom bed and breakfast in the State Agricultural District at 4435 Alalele Place, TMK 1-3-099: 107 in Hana. Gina Flammer is the Staff Planner.

C. COMMUNICATIONS

1. **MR. SCOTT CRAWFORD, Chair of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting their recommendation on the request by MS. BRIANNA LEE EVERETT for a State Land Use Commission Special Use Permit in order to operate the Hana's Tradewind Cottage, a two (2) bedroom bed and breakfast home on property situated in the State Agricultural District at 143 Alalele Place, TMK: 1-3-009: 107, Hana, Island of Maui. (SUP2 2012/0034) (G. Flammer)**

Ms. Flammer: Good morning, Commission Members. I just wanna point out in your packet, I'm sure you've all seen it, not only is the recommendation on top, then we have the report. This one has a lot of color photos. I'm gonna just show kind of a subset in a power point in just a minute. But then we also have the minutes from the Hana Advisory Committee which were fairly short and then there was one letter of recommendation that was submitted right at the hearing and that's included in the very back. So let me go right into show you some pictures.

So there you can see the front of the unit, two bedrooms. That's almost 750 square feet. It's in Kaeleku which is closer, you can see Wainapanapa State Park. It's kind of on the Haiku side of Hana as you're coming into town. You can see Hana down there in the corner. It's on the airport road. It was originally a five-acre parcel, family parcel flower farm for 27 years that was subdivided for a family member and she now has the shaded in area. You can see the site plan right here. I didn't indicate on the other parcel, but that also is tropical flowers as well. It's a very large tropical flower farm that's been in existence for 27 years and it's a family business. It's called Tradewind Tropicals.

I wanted to show what it looks like when you're coming into town. The road in is very wide, very easy. There's sign that makes it very easy. We have a fire standpipe that's out right in front. And then as you come in it's nice and flat. You can see some of the ginger that's growing right there. You come in, you can't see from here but to the right is the main residence where the applicant lives with her husband and her child. And then as you go into the unit, you walk right into the kitchen and then they've got the main area. And then there's two bedrooms. There's a master bedroom and then twin beds in the second bedroom area.

So since we're doing the Land Use Permit which I call the ag permit so our applicants can understand what they're coming in for I wanted to show you the commercial nature of this one. You can order over the internet and here's just a little bit of what's on the internet and what's available there. You can see that it's all tropical flowers. I just wanted to show you some pictures of what the property looks like. We got some ginger. Lots of ginger. It's hard when there's so much to take pictures so that you can actually see what it looks like. It's kind of a sea of ginger. The property does in the back kind of go down a little bit and it was really interesting to see. But I'm gonna try to do my best here and show you. There's a little plumeria that sits to the right, but the rest of it is the tropical flowers. There's also a vegetable garden area which I think I showed a little bit of it in there. There are some pictures of it in the report. That's just for personal use and that's behind the house.

So at the advisory committee meeting which was held May 23rd, we did have one testifier that spoke

in support of it. There was a letter of support. The Committee was familiar with the flower farm so there really weren't a lot of questions. You'll see there's just a couple pages of minutes in there and it was a unanimous approval, recommendation of approval for this. I do have the applicant here, Brianna Everett is sitting in the orange shirt right here if you have any questions for her and that concludes my presentation.

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

Ms. Brianna Everett: No, but I can answer questions.

Chairperson Lay: I'm going to open to public testimony at this time. Does anyone wish to testify? Please step forward, identify yourself, and you have three minutes.

Mr. Tom Croly: Hi, I'm Tom Croly. I'll be very brief. I had the opportunity to stay Hana Tradewinds Cottages in 1997, some 16 years ago. This has been a business that Brianna's mother started and it's been ongoing since and I'm pleased to see it continue on. It's a working flower farm. It was a wonderful accommodation to stay in. And I just wanna point out that in order for Brianna to get here, to get before you today for the approval of this SUP, she's been working on this permit for more than a year and a half. She consulted with me even before the ordinance had been passed and got what needed to be done. She's been jumping through all the hoops necessary to get to this point and I encourage you to approve this application. Thank you.

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

Mr. Freitas: Just a comment. I've been on this property and it is definitely a working farm.

Chairperson Lay: Does anyone else wish to testify? Seeing none, we're now closing public testimony. Commissioners, do you have any questions for the applicant? Commissioner Wakida?

Ms. Wakida: Well, not exactly a question but a comment if I may? To me, this is kinda like the Cadillac of B&B applications because the first thing I always look at when it's on ag property is I scrutinize the ag operation what's going and we get so many that are so thin. And it is just wonderful an actual working farm and a successful flower operation. So it's good luck here.

Chairperson Lay: Thank you. Commissioner Shibuya.

Vice-Chair Shibuya: I don't know where, who to address this problem to. In terms of the currency of the TMK maps. I know it's not the Planning Department. I know it's not the Environmental Management. It's gotta be probably in the Finance area. So now there's a comment made that the Tax Map Key was not current and did not reflect the family subdivision. I understand family subdivision. How can we energize the...that department to update the TMK maps in a more timely matter?

Chairperson Lay: Deputy?

Ms. McLean: Thank you, Chair. That's actually an ongoing cooperative effort that we have

between our Department, our ITS which used to be MIS, our technical support department, and Real Property Tax Division. Right now it's very difficult for our Staff Planners to produce and verify the maps for applicants and for the Commission showing how many B&Bs or short-term rentals are within the 500-foot boundary because we have different layers in our shared computer system and some are more current than others. And Real Property Tax is working to get more current and we are working to update our other layers and to get them all in sync. So it is a recognized problem. I don't have a real answer for you other than to say we acknowledge it and we're working together to solve it.

Vice-Chair Shibuya: Yeah, my biggest concern is that here we are, we have tax map keys that's supposed to be up to date and current and the public is actually the ones that's being assessed which is done promptly by the Council. And I'd just like to defend the people here that we need to update these maps so that we have peace in the family.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I am a friend of the farmers, okay, and I fully support you guys.

Chairperson Lay: Commissioner Hedani? I'd also like to comment. You've been here for a while. You're established. You worked really hard to get your retail on, you're selling flowers across, you know, the United States and around and I commend you on that. There's a lot of effort that went behind it and you guys established yourself there in Hana. Can we get the Department's recommendation? Oh, Commissioner Shibuya, excuse me.

Vice-Chair Shibuya: Yes, I just wanted to understand are there flood inundation problems or concerns and risks in this area?

Ms. Flammer: The flood map shows it, let's look in the report and see what that is, there's no gulch area that goes through there.

Vice-Chair Shibuya: Very good.

Ms. Flammer: Yeah, and I should have in here what the flood zone is. It's a moderate slope that's slopes eastward.

Vice-Chair Shibuya: And the airport road is actually like a stream when it's raining.

Ms. Flammer: Yes, however this one—

Vice-Chair Shibuya: It's not that steep.

Ms. Flammer: It's not that steep but the way the property goes I looked it's very well planted. You can tell when floods come through because of the vegetation. When you've got a heavy flood area you're usually dealing with rocks and what looks like a dry stream bed or dealing with new types of plants. As I looked down and kind of saw, it's very mature plants. So even when we had the Kona storm that came through in the—was that fall last year that hit your area? There was a really

bad storm that came through and wiped out. I visited one of the properties right after that and you can see the damage. I didn't see any storm damage on this property. The house is also located up higher. It's the farm that would be risk it's down below.

Vice-Chair Shibuya: That's good. I just wanna be assured because we did have some fatalities of some local residents there who tried to cross streams getting back to their home. And if residents get into accidents, visitors would definitely get into accidents.

Ms. Flammer: There was a discussion about that at the last Hana Advisory Committee. The thinking is that that was created, that was manmade. There had been some construction upstream that had changed the natural flow and that's what had created the problem.

Vice-Chair Shibuya: Oops. Thank you.

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

Ms. Flammer: Okay, again, we have the seven conditions that we put on the Land Use Permit, the seventh being that it has to remain implemented, the farm plan, during the duration of the permit. I don't see any problems with this business. We have it moving it onto a second generation too. So with that in mind, the Planning Department recommends that the Maui Planning Commission accept the Hana Advisory Committee's recommendation and adopt the Planning Department's report and recommendation prepared for the May 23, 2013 Hana Advisory Committee as well as the supplemental information prepared for today, October 22, 2013 Planning Commission hearing as the findings of fact, conclusion of law, decision and order and authorize the Director of Planning to transmit said decision and order on behalf of the Planning Commission.

Mr. Freitas: So move.

Chairperson Lay: Got a motion on the floor.

Mr. Hedani: Second

Chairperson Lay: Seconded by Commissioner Hedani. Any discussion on the motion? Can we repeat the Department's recommendation or the motion?

Ms. McLean: The motion is to approve the subject permit consistent with the Hana Advisory Committee's recommendation subject to seven conditions.

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

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

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

Chairperson Lay: Congratulations. Our next agenda item?

Ms. McLean: This is your second Communication item. Again, Mr. Scott Crawford, Chair of the Hana Advisory Committee transmitting recommendations on the request by Richard and Andrea Ray for a State Land Use Commission Special Use Permit to operate the Hale Noa Short-Term Rental Home, a two-bedroom short-term rental home on property in the State Agricultural District at 175 Ulaino Road, TMK: 1-3-009: 091, again, in Hana. And Gina Flammer again is the Staff Planner.

2. **MR. SCOTT CRAWFORD, Chair of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting their recommendation on the request by RICHARD and ANDREA M. RAY for a State Land Use Commission Special Use Permit in order to operate the Hale Noa Short-Term Rental Home (STRH), a two (2) bedroom short-term rental home on property situated in the State Agricultural District at 175 Ulaino Road, TMK: 1-3-009: 091, Hana, Island of Maui. (SUP2 2013/0003) (G. Flammer)**

Ms. Gina Flammer: Again, good morning. You have the same packet that you had before. This was the second item that was on the May 23rd Hana Advisory Committee. Just to let you know, we did just have one on September 26 where I brought four items, four different projects. Yeah, I'm not sure I'll do that again, but you'll see those again in a couple months. So we're continuing to have Hana residents come forth and come in for permits which is really nice. Okay, so back to this one. I'm gonna show you again. We're dealing with a short-term rental home permit this time. It's a two-bedroom, 720 square foot unit. The owners have owned it for quite some time. It's mostly been rented out long-term. When she called me and told me she was going to wait for permit to operate I did my best to expedite it. It's really hard with Hana to move it quickly along. You have to go to the Hana Advisory Committee then we wait for the minutes and then we come here. Her husband flew in for...they live in Honolulu, for the meeting in the Hana and then she came in this morning for today's meeting. So she's here in the audience, Andrea Ray, right here. But let me first go through and show you some pictures.

Okay, so again we're dealing with the same area. We're near the airport towards Hana. Here's the site map so you can see. It's a full-acre parcel. It's long and thin. It does require quite a bit of work. I did talk to the applicant a little bit this morning about it just how much man time it takes when you're dealing with a lot of rain and you're trying to keep things clear for your agriculture. The

husband had explained to me the reason that they're going to short-term rental is they want to spend some more time out there and really wanna start working more on the ag. When Andrea comes out she does use the mangoes and creates mango chutney and sells it locally, bring some of it back, but they wanna expand that even further and it's very hard to do that when you have long-term tenants. So here you can see the unit. Again, they didn't do the full 1,000 square feet. It's only 720 with a covered carport, and then the inside.

And then we move to the outside. There is a lot of banana. It was hard to capture with the photographs. The thing that I found really interesting about this property is there wasn't a lot of fruit which means they're cultivating it. It's hard for me to go out and see fruit on the trees that's not being used. This property I didn't see that. I know they have people that take care of the fruit and they like to see it sold locally. I tried to show you more on one slide so I didn't just give you 40 slides of all the various agriculture, but you can see. There's also flowers which they plan to use for the short-term rental. Right now they're focusing mostly on the fruit. A lot of papaya as well. Hard to capture the mango trees in the pictures because they were so large. There's quite a bit of papaya. And then I always like to see the keiki trees. It shows that they're interesting in the long-term when they're planting those. So when we went to the Hana Advisory Committee, Ward Mardfin, a former commissioner here, he likes to ask the applicants, you know, why do you not rent long-term or why are you changing? And then I did discuss earlier what the applicant's response was. The Committee was very grateful for them waiting to start. As you know, probably most of the ones you see are people coming into compliance as opposed to people deciding to start a new business. There were two letters of support with the application. I did not see it in here, but I know that Ono Farms does take some of the fruit. I had thought he was going to send in a letter, and then somehow it just didn't happen. There was a unanimous recommendation of approval for this one. That concludes the power point.

Chairperson Lay: Does the applicant wish to say anything at this time? At this time, we're gonna open up for public testimony. Does anyone wish to testify? Seeing none, public testimony is closed. Commissioners, questions? Commissioner Wakida?

Ms. Wakida: Thank you. Gina, where do the owners live at this time?

Ms. Flammer: They currently live in Honolulu. Their son and daughter-in-law live in Hana.

Ms. Wakida: And their son and daughter-in-law will be the responsible parties there?

Ms. Flammer: The daughter-in-law is, will be, yeah.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Yeah, I just like to thank the Hana Advisory Committee for the depth in which they go through all of these applications. I think they put a lot of hard work into the review of these items and I thank the applicant for going through this two-step process to get here but it makes my job a lot easier.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yes, I'm not happy with this short-term rental and the reason is is because they're coming out of long-term and our rental market is very, very limited. We do not have homes right now for people that needs to rent. So, I am concerned that it was in a long-term rental situation and now the person or persons that was renting now they're looking for another place. So I have a major concern with this rental, short-term rental.

Ms. Flammer: The way the Council dealt with that. We did talk about that. One of the biggest things we mitigated was reducing the inventory of long-term rentals. That was done through the cap. We're gonna bring the bill back to you. We're gonna take a look and see how effective that is. But that's what the Council did look at, and the Hana Advisory Committee, that's why Ward asked them the question because they are concerned about long-term rentals.

Chairperson Lay: Please step up to the mic, identify yourself.

Ms. Andrea Ray: Andrea Ray. We only rented it out long-term for one-year over ten years ago because we're working on the property all the time. It takes a lot of work and we don't plan to do it. You know, we need to work there, and so that's why this works better for us. We only did it as I say one time, ten years ago for a year to a school teacher. So there's no one moving out.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: So you rented it ten years ago and the property has been sitting vacant all of this time?

Ms. Ray: Well, we go there as much as we can. I mean, it's a huge amount of work and my husband can work from there. He has remote access to job in Honolulu. So as much as we can, we go because we're trying, you know, there's still a lot of the property landscaped by Mother Nature that we want to have all farming. So it takes a lot of work and as I say, we go whenever we can.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: What is your retail sales on the ag for this on the property at this time? What have you reported to the tax department that you've sold.

Ms. Ray: You know, we don't sell a massive amount. Probably maybe \$1,000 a year. I mean, we donate a lot of stuff. We give away a lot of things. We sell the chutney. We sell bananas to banana bread, but when they're paying like a 25 cents a pound, that's you know. Chuck Boerner takes our meyer lemons and tangerines, but it's all a minimal amounts of money because they make the money.

Mr. Freitas: Yeah, \$1,000 cannot support even a minimal operation of a ag operation.

Ms. Ray: Right, and we're trying to expand on that. I mean, we spend \$500 a month just to keep the lawn mowed and the property looking good. So you know, we're really trying to expand our ag. We have some ideas and Chuck Boerner's helping us, our friend from Ono Farm, but it just takes a lot of work that we can only do, you know, now and then. As often as we can, but that's why

we're not doing long-term and that's why we haven't done long-term. We put in a lot just in the last 10 years.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Your ag plan, what crops do you intend to plant or what type of vegetables or flowers that you intend to plant that will generate income?

Ms. Ray: Well, we're planning to put in a lot more papaya. We planning to put in cacao which is really popular right now and those are basically the two things we wanna plant. A lot of cacao actually.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Had a question for Gina as follow up to Jack's question what is the cap for Hana and how close are we at this point?

Ms. Flammer: The cap is 48. Boy, I wish I knew this off the top of my head. I think we're at...you guys just approved eight over the past couple of meetings and I think we've had about three administrative approvals. So I think we're at probably 11 or 12 and there's probably five or six in the pipeline. Oh, I just did four so there'll be a little bit more than that. We're under 20 at this point teetering right around 20. So we're not quite half. There's talk about maybe doing a little more outreach out there because there's still some more people out there that have triggers to go to Hana Advisory Committee who are kind of on the fence and waiting to come in. We also have an issue with you need to have a broker sponsoring or realtor out there as a manager. So anybody that's on the mainland that doesn't have family is not able to come in right now. In a way, it's been nice to let all the residents come in first. But there are those other people, so we're trying to figure out when we bring the bill back, how can we reach out to those people.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: Gina, can you tell me the density in this area? How many bed and breakfasts and short-term rentals in this particular area roughly?

Ms. Flammer: Yeah, Kealaku is the area where we're seeing clustering of them. Boy, I wish I had a map that I just brought. Because you're doing the ag permit, I didn't bring in the short-term rental B&B map, but I just did a map, so there's probably eight that are in this area within a two-mile radius. None of them are within 500 feet. Very hard when you're dealing with large ag properties to get 'em within 500 feet so I did two-mile radius. I was very curious how the Hana Advisory Committee would react to the two-mile radius because they are clumping through there and they were pretty comfortable...I wouldn't even call it a concentration, but they understood that those are the more expensive ag lots and homes and those people are using the income to supplement what they're doing.

Vice-Chair Shibuya: Right.

Ms. Flammer: Yeah, so I didn't...the only reaction I got was could we see this map every time we do one of these permits.

Vice-Chair Shibuya: Yes, please. Thank you.

Ms. Flammer: You want the same for the land use is that what you're...I'll come next time with a list and give you an update on all of that.

Vice-Chair Shibuya: Next time is fine, thank you.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: While I share Commissioner Freitas' concerns about taking homes out of long-term and going to short-term, in this particular case I disagree with him because as she said it was out of the rental market for a long, long time and it was unanimously recommended by the Advisory Committee in Hana and for everybody to agree that says a lot to me, you know. And in my opinion, if there's a unanimous recommendation, I will tend to go with that recommendation.

Chairperson Lay: Gina?

Ms. Flammer: If I could just apologize for misunderstanding the applicant's response to the Advisory Committee. I had assumed it had been in long-term when...I have just got an explanation that it wasn't. Sorry about that.

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

Ms. Flammer: Okay, so again we're looking at the seven conditions that you just saw for the previous Land Use Special Use Permit. With that in mind, the Planning Department recommends that the Maui Planning Commission accept the Hana Advisory Committee's recommendation and adopt the Planning Department's report and recommendation prepared for the May 23, 2013-Hana Advisory Committee meeting as well as the supplemental information submitted for today, October 22, 2013 Planning Commission hearing as the findings of fact, conclusions of law, and decision and order and authorize the Director of Planning to transmit said decision and order on behalf of the Planning Commission.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Medeiros: Second.

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

Mr. Hedani: You know, one of the things I think that needs to be done is to take a look at the total

cap that we have for the areas. This is from the Department's perspective relative to future reviews of the ordinance, yeah, to see whether or not we're close to saturation or if we can address some of these questions with saturation. I know that at the time that the ordinance were being considered it was very controversial and a lot of people were opposed to it, and there were a lot of people that were doing it illegally. And I think the point is that, you know, like the concern that Commissioner Freitas brought up the income generated from short-term rentals and B&Bs can consume homes that are in the rental market. The proper response would be to provide appropriate zoning for rental operations as well as to control the cap on a number of people and the impact that they can have in the area. So we might be too high in this particular area for Hana. And the other question that I would have is, is there a drop dead date for applications after which it's pau, and we don't have to go through this for another 10 years or so for a future review?

Ms. Flammer: Thank you.

Chairperson Lay: Commissioners, any more discussion? Seeing none, can we repeat the motion, Director?

Mr. Spence: The motion is to approve as recommended by Staff and the Hana Advisory Committee.

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

Mr. Spence: That's seven ayes.

Chairperson Lay: Those opposed?

Mr. Spence: Excuse me, six ayes, one nay,

Chairperson Lay: Motion carries. Congratulations.

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

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

Ms. Flammer: Thank you.

Chairperson Lay: Our next agenda item?

Mr. Spence: Commissioners, we are Item D-1, Unfinished Business. William and Connie Lawler

requesting a Bed and Breakfast Permit, Maui Ocean Palms B&B in Maui Meadows. We had discussed this last time. The Staff Planner this morning is Mr. Joseph Prutch.

D. UNFINISHED BUSINESS

- 1. WILLIAM and CONNIE LAWLER requesting a Bed and Breakfast (B&B) Permit in order to operate the Maui Ocean Palms B&B, a two (2) bedroom bed and breakfast in the State Rural District at 1136 Kupulau Drive, TMK: 2-1-018: 072, Maui Meadows, Kihei, Island of Maui. (BBKM T2013/0001) (J. Prutch) (Public hearing conducted on September 24, 2013)**

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

Mr. Joe Prutch: Okay, good morning, Commissioners. I'm back with you again for the Maui Ocean Palms Bed and Breakfast application. This came before you last time on September 24, 2013, and you voted to defer it for some additional information which I have and I'll supply at the end. But for now since there were some Commissioners that weren't here last time, I'll go ahead and give you a little brief presentation.

Okay, so this B&B is located adjacent, this proposed B&B is located directly adjacent to an existing B&B and the B&B Code provides that if there is a B&B within 500 feet the proposed application has to come before the Planning Commission for review. So there's the reason why this B&B application is before you. The existing bed and breakfast directly adjacent to this is the Bird of Paradise B&B. It's a two-bedroom cottage. It's actually been in good standing since 2009. I processed their permit back then. I just processed their renewal in 2012 and they had no RFS, no Request for Service which means they had no complaints through our KIVA online system. And then I checked with the Police Department and they had no police calls to the property as well. So they got a five-year extension just last year. So they're in good standing.

This is a map showing the 500-foot list. It shows the project site. They're No. 44 on Kupulau Drive and the existing one next door is the Bird of Paradise B&B which is on the corner of Kupulau and Kumalani. Within 500 feet there were I believe it was 57 properties. This shows the aerial of those. So you can see the proposed B&B, the second one up, the project site, the pool in the background. The B&B for the existing Bird of Paradise is on the corner there. And that little building on that...sorry I don't have a pointer...that little building on the bottom below the pool, little square building that's the cottage that is a two-bedroom unit. And then the reason I show Mr. Hyatt's property below the two of these B&Bs is because he's the one who submitted opposition to the B&B because of noise issues and because of basically because there were two B&Bs adjacent to his property, and I'll get into that a little bit later when I come through with responding to your comments. This is a map, we call this the Shibuya map, this shows the...it's a good thing, we're gonna do this every time. I like this idea. Now that we figured out how to do it in our computer system it's much easier. What it shows, all it simply shows is the green dots shows the B&Bs that are in Maui Meadows. There's nine of them that exist permitted. These are all the permitted ones. And then the pink parcels are the five short-term rentals that are approved in Maui Meadows and

that's all there can be for now for short-term rentals. So this gives you an idea of what is in the neighborhood. You see the project site, obviously the Bird of Paradise is right next door, that dot on the upper right closest I think it's about, I wanna say it was about 800, 900 feet away and then the dot on the lower bottom portion there, the green dot that's the Aunte Kali's Cottage just got approved recently and that's probably about 1,100 feet away. So as far as approved bed and breakfasts there's only one within 500 feet adjacent to it and there's no short-term rentals within 500 feet of this property.

Here's the site plan showing the property. It's one main house, two-story, three-bedrooms. The applicant proposes to rent the two bedrooms out upstairs and the applicant will live downstairs in the one-bedroom below with an office for the applicant to do his work and his wife to do her work. So they'll maintain the bottom floor. The guests will use the top floor. The parking. There's two guest parking spaces just outdoors there on the left side for the guests to use, and then on the right side is a two-car garage that the owners will utilize for themselves. Plenty of vegetation around pretty much every property line. I'll show you some pictures next.

Okay, so this is a view of...the top left view is the gate, the gated property and the house sits down, oh, I don't know, maybe 100, 150 feet down. Anyways, the house sits down a little ways from the street and there is quite a bit of vegetation as you can see there. And then the front of the house is shown there on the bottom right you can see a car on the left-hand side that's where the guests would park. And you can't really see it, but that building on the right-hand side, that roof, that's where the garage is, so the owners will park their cars there.

This is views from the house. I wanted to show the views from the lanai. From what the guests will be looking at. That top view is the view west looking from the lanai on the second floor. So that's looking makai, and it's looking down at essentially where Mr. Hyatt's property is. Hard to see any buildings in there, just a lot of vegetation, but his, his...Mr. Hyatt's cottage is down there below that tree somewhere and then his house would be off to the left somewhere. The bottom view is looking north from the second floor lanai. So that's looking towards the next house over on the north side, sorry. But as you can see just more vegetation and really can't see much as far as homes. The top one is looking east so you're looking back at the street, back at Kupulau. Once again, the parking for the guests is on the right side in that shaded area and the parking for the owners is on the left side of where that garage is. And then the bottom picture is looking south. This is looking towards the Bird Paradise B&B next door. Once again, you really can't see it, but it is there behind the vegetation.

Okay, now we get to why the item was deferred last time. The Commission asked to have Staff go back and bring together a map or some information about all the legal vacation rentals which I showed you earlier we have that, but mainly too, any of the illegal vacation rentals that are mainly the ones that are within 500 feet of the property. This is a map that came from Mr. Hyatt and this was part of the discussion that he had showed...he shows the two B&Bs, sorry the writing's kind of bad, he shows his home below them on the left side there, then he showed three illegal TVRs you can see there that were surrounding his property that he alleged were TVRs. Well, that brought a stir up with the Commission and we went back and looked at it. Well, you'll see in your staff report as well, I had ZAED look into it, and ZAED did their research on those three properties in particular and they found that there was no proof any illegal vacation rentals going on on those

three properties. One of them used to be Redds which you might remember Redds used to operate illegally and since then the County stepped in and my understanding is as far as ZAED can tell it's closed down and it's no longer renting short-term. So they did thorough research on those three and couldn't find any proof.

What I did the rest of the time in my staff report is I went through and I did a search...well, okay, I did three things. One of them was I had our ZAED team send me a list of what alleged vacation rentals they have so far as of July of last year. My understanding is once they get a second Code Enforcement Officer they'll be able to pursue this a little more thoroughly, but until they get fully staffed I guess they don't have the time to thoroughly go through this yet. But they sent me a list of 390 pages of supposed illegal TVRs and...but if you look through a lot of them, no addresses, no phone, maybe a phone number, no addresses mainly. So I looked at this 390 pages and I'm like, okay, what do I do? So I did a search for Maui Meadows, and from that I only found three. That's all I was able to find out of 390 which is just what I can find. Of those three, one of them was a illegal operation for the Maui Guest House which has a permit so that was fine. The second one was one that I just could not find an address for so I could not locate so I don't know where it is. The third one was on a Craigs List advertising and of course, it's no longer there so I have no idea about the third one. So out of the County's listings, three of them, two of them I couldn't find. One of them of legal. Okay, then I went to the VRBO's website and they actually have a Maui Meadows section. And on that section I found seven listings for Maui Meadows and out of those seven, I found two of them...I'm sorry, I found one, two, three of them that were legal. So of the seven, three of them were advertising which were legal so no problem with those. The other four, one of them I was able to find, I think it was Keha Drive which may or may not be legal. I was talking to Tom Croly before this. He thinks that one's legal, not sure, but it wasn't within the 500 feet. And then the other three once, again, they were all unknown locations. So once again, I don't know where they are. They could be within the 500 feet. They may not, I don't know. By looking at pictures I couldn't tell. And then the last one I did was I did a research through Airbnb website, one of the other popular websites and this one was really nice for my point of view from what I had to do because it showed a map and it located all the B&Bs they advertise on a map. So I was able to zoom in on Maui Meadows and I was able to find eight B&Bs that are listed there, but I didn't do any further research on those eight because all of them were well outside the 500 feet. So whether those eight are legal or illegal I don't know but they're outside the 500 feet and your guys request was to give an idea of what was in the vicinity within the 500 feet.

Okay, also since then the applicant and Mr. Hyatt have spoken and you have an email in your packet there and I also had a letter that I got today handed to me which you guys also got today this was further conversations between the applicant and Mr. Hyatt and basically what it's saying is Mr. Hyatt...I mean, he couldn't be here today because he's in New York for a conference, he's still not a big fan of B&Bs adjacent to one another, but in this case he says that he is willing or he is lets say, how did he say it, he's essentially willing to not oppose if the applicant agreed to a one-year permit and if the Commission offered a one-year permit. Give this guy a trial offer, let him, let him operate and if a year goes by and he's got some issues, Mr. Hyatt will be back. If he doesn't have any issues, everything's clean then fine let it go and then we can do our process, give them up to five years the next time. If has no opposition or no...I'm sorry, no complaints or police calls. So that's all the current information. And Mr. Lawler is here, the applicant, he want to do a short presentation to you as well, just to kinda add a little bit more to what I have. If that's okay, I'll go

ahead and invite him up?

Chairperson Lay: That's fine.

Mr. Dave Lawler: Good morning, Commissioners again. My name's Dave Lawler. My wife, Connie Lawler couldn't be here. It's parent/teacher interviews today. She's a teacher so I'll do the talking for both of us. This is mainly for the benefit of the Commissioners that are here today that weren't here last time and for everybody else's continued benefit.

So as Joe said this is the property looking at the street. So first, yeah, we'd like to thank the Planning Department, Joe Prutch, Gina Flammer, and especially our consultant, Tom Croly who's been helping us since March in putting this application and all the inspections, everything together. We appreciate it all.

My wife's a fifth grade teacher at Kihei Elementary School. She also tutors children from any school on the weekends at our home. She has a Masters Education from Concordia University Irvine. I'm an audio engineer from Meyer Sound Labs in Berkeley. We did the installation at the MACC in 2006. I'm sure you've all been there, and I have some pictures of that coming up. Our son just graduated from Chaminade University in Honolulu with a business degree. He lives in Irvine, California,...(inaudible)...commercial real estate and our daughter, Marisol goes to my wife's school. She's in kindergarten. We were married on Maui. We've been coming here for many years. We bought the property in 2006 with the intention of moving here and we did finally do that on Valentines Day last year. Our long-term plan is to stay on Maui, contribute our energy and expertise to the community and paramount raise our daughter here. And here's a couple of pictures of Connie in her classroom with her students, and here she is tutoring kids at home in our upper floor. There's the Maui Arts and Cultural Center. You can see the big outdoor pavilion where they have concerts and on the left is the Castle Theater which is 1,200 seats and the picture on the right is the rac room. We spent three or four months in there in 2006 with my colleagues and we're very proud of that and we service that installation on a regular basis.

As I said, we purchased in 2006, but lived on the mainland. We rented it short-term for one and three-quarter years as we disclosed in our application in the description section. The booking agent lived one block away from the rental property. We were encouraged to rent short-term by the County and real estate agents because they said the ordinance for B&B Permits wasn't done yet and they would notify us when the permits would be available.

Now we collected and remitted taxes from the onset of short term rentals. At the end of 2007, the County changed their zoning enforcement policies and we then complied. So because we could not move here at the time and the short-term rental ordinance wasn't done yet, we decided to rent long-term until we could move here. It was managed by a prominent on-island property management company and our tenant who was only one person in the house was a property manager as well in the same area of the other. So in January 2012, our tenants started a business on the north shore and we were informed that he was moving out so at that point we decided we would move to Maui permanently. So now we're very proud to be part of the community. By opening this bed and breakfast we will welcome visitors into our home and give them personal service. We will definitely prescreen all guests to prove that they are respectful and we will not

approve guests who intend to have weddings, large gatherings or exceed occupancy limits or they don't fit in with the character of the residential area.

This is important to us. We plan to contribute to the local economy, employ local residents and businesses, purchase from local business as well as provide island wide revenue from our guests spending. Our goal is to provide a rich and quality alternative vacation experience supporting the diverse culture and traditions of Maui. That's especially important to my wife.

I got a few pictures of the bed and breakfast area. This is the inside front entry. Joe in his pictures showed you the outside coming in. Here's the living area and here's the entry area with the hallway going to the bedroom. You can see the dining area on the right and the large lanai out front for guests to enjoy. This is one of the bedrooms. You can see the sliding windows which give quick egress to the lanai for any fire safety concerns. The other bedroom has the same sliding windows. Here's a picture of the fire extinguisher in the kitchen and the proper designation. There are at least a half a dozen fire extinguishers on that property. On the right, you can see the two fire extinguishers. Smoke detectors are in the bedrooms. These are the new ones, the 10-year ones the lithium ion batteries that never chirp 'cause you know a smoke detector only chirps at 2:30 a.m. Again, here's some more pictures showing the mature vegetation. That's a plumeria grove, bestills on the right. All this vegetation is probably 35 to 40 years old. That's the north view from down on the bottom area. There's a fire standpipe. As I was telling Commissioner Shibuya on the last meeting right on the corner of our property. It's convenient. This is in front of the Bird of Paradise B&B next door showing that the owners planted a large stand of areca palms so that the neighbors wouldn't have to look at the their B&B and vice versa. They sacrificed a lot of their view to do that, but they're very community minded.

So we understand from the Planning Department that all the B&Bs approved since the ordinance of 2008 are very well behaved which is good to hear. All permits so far have been renewed when the first term finished and we plan to do that same. We also believe our application is not unique that no precedent would be set by a adjacent B&B. There's many B&Bs and STRHs in close proximity in Maui. There's 61 as of September 12, '13 STRHs or B&Bs approved or pending which is approximately 25 percent of the County cap on both designations. And then this is the spreadsheet that you have and you can see in some areas there's three, two, three, five, six or seven of them all in close proximity. Because we know they're having complaints they're all being renewed, that's gotta be a good sign that whoever's applying for these permits and getting approved is doing a good job at doing what they said they would do.

So intend to operate in a professional manner. We're gonna comply with all the conditions. We don't want to impact the neighborhood at all, and we do value our relationships with neighbors which is why I was happy that I was finally able to meet with Mr. Hyatt after the last meeting. We're gonna limit occupancy, two cars parked off the street. As you can see in the picture it's way off the street in the gated property. The owners are living on the property, in the same structure, and will be there at all times when guests are present.

We've reviewed and understand the conditions, the rules and standards of this permit and we're very prepared to uphold them. We just wanna be transparent. We have nothing to hide. We look forward to any questions you may have and we respectfully request the Planning Commission to

approve this permit. I'm available for your questions. Thank you very much.

Chairperson Lay: At this time, I'm gonna go to public testimony. Does anyone wish to testify at this time? Please step forward and give us your name.

Mr. Tom Croly: Aloha. As you all know me, I'm Tom Croly. And I'm testifying not as a consultant for the applicant, but as a resident of Maui Meadows. My wife and I walk our dog through the neighborhood everyday. We get to know the uses of the properties that are in the area. I can't say that I know every single use and every single property, but we get a pretty good feel for them, and I can state with relative certainty that the maps provided by Mr. Hyatt, his objection to this proposed bed and breakfast was not accurate and the allegations of these places being TVRs was totally fabricated. I'm troubled that the Commission would even take such unsubstantiated allegations seriously and have such a direct impact on the applicant as to defer his action and have him come back a month later. I want the Commission to understand that for the applicant to have come here he went through about six months of trying to comply with all the requirements of the ordinance. The Planning Department reviewed his application and made sure that he was in compliance with all those ordinances.

I understand this Commission has a difficult task of evaluating public testimony they receive from testifiers and that the testifiers are not under oath or bound to tell the Commission the truth, but I ask you to give your utmost consideration to the applicants. Understand that when the applicants come here and stand here, they're not as comfortable standing at this podium as I am. It's a major life event for somebody to make their way to this Commission and have to ask for this permit, and I hope that they're not treated in the same vein that you would treat a developer who is bringing forward a project, you know, in kind of a public way. These uses are rather benign. But I do hope that the applicants understand and show an understanding for what the rules are that they're being asked to uphold. And if they don't uphold these rules that they find themselves before you again in a year or when their permit gets renewed and at that time, maybe you take a more hostile approach to what they may be telling you.

To this date, all the people who have gotten permits are doing a great job and we're at kind of the infancy of this whole permitting, regulating of this industry. We've got maybe about a third of the industry permitted at this point. I expect you're gonna see a lot more of these come before because of the 500-foot rule, because you know, once you put in 500 feet in some areas goes out 100 properties in some cases. So you're gonna see many more applicants come forward to you and I just...I urge you to treat them with the utmost respect and consideration because it is so difficult for them to get here and I don't wanna discourage people from coming forward to get a permit because they're afraid of this step in the process and I do know that there are people holding back for just that reason. I hope very soon, we're gonna reach the point where most of the industry is permitted and where it is the norm that you have a permit-

Chairperson Lay: Please conclude.

Mr. Croly:-yeah. Before you operate and before you come forward, but we're not quite there yet, and we do need your help for that. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier?

Vice-Chair Shibuya: Commissioner Shibuya?

Vice-Chair Shibuya: I just wanna clear the record here. At that meeting in which we had to defer, there were five members here and they were not in agreement in terms of a unanimous agreement if you recall. I do wanna let you know that there was no negative intent by this Commission and it was every intent to give the applicant a fair chance. Had we taken a vote, it would have probably have died and that's not because one of us would probably have denied it. And that's not what I intended to have. I was the Chair at that time. So this actual looking for additional information was fitting and appropriate, and I think this allows not only the County to provide adequate information but it also ensured the Lawlers had an opportunity to keep the application still going.

Chairperson Lay: Commissioners, any more questions or comments?

Mr. Freitas: Yes, I have a comment. I wanted them to be permitted because I don't believe in people coming here and making allegations without proof and when Mr. Hyatt came here he was making allegations that things existed that did not exist, he could not give us one address, he could not give us any information. And I stated to him, you have a rental, I could state that you are running a bed and breakfast illegally and he could not prove any addresses that was running illegal. It was all hearsay and he created this whole thing because he did not want the bed and breakfast. I wouldn't want him as a neighbor.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I was there at the meeting also and I supported the proposal. Now, there were concerns brought about by the neighbor. I'm glad he lives up there and not next to me. It is our responsibility to investigate and make sure. Okay, nobody was disrespecting the Lawlers, you know. And I take offense to anybody even thinking that we disrespected them. We like ...(inaudible)... we have to do our job, if we...if somebody on this Commission is asking for an investigation, I will respect the Commissioners request and follow with the investigation. Do not accuse this Commission of being disrespectful when they are not. That's all I got.

Mr. Croly: May I respond?

Chairperson Lay: Not at this time. We're gonna do questions. Commissioner Wakida?

Ms. Wakida: No, I have a question of the applicant.

Mr. Croly: Thank you for your consideration. I apologize if there was any level of disrespect put forward. That wasn't my intent.

Chairperson Lay: Thank you. Does anyone else wish to testify at this time? Oh, question, excuse me, Commissioner Hedani?

Mr. Hedani: This is a question for Tom. Tom, if I heard you correctly, you said that the testimony

that was provided by Mr. Hyatt was not truthful?

Mr. Croly: That's correct.

Mr. Hedani: The exhibit that he gave us which is labeled Item 14, shows three TVRs surrounding his house. It's labeled lots 58, 17, and 12.

Mr. Croly: Right.

Mr. Hedani: And well, 8 is a B&B according to his exhibit. To your knowledge, what is reality?

Mr. Croly: Okay, Joe just had it up there. The one that's, that's across Kupulau that's No. 12, I guess, that one was operated for a long time as a short-term rental and I can tell you from walking the neighborhood it was not a good short-term rental. It was one that my wife and I would say, geez there's parties going on there and it was one that when the County came down and enforced on them, I as well as many neighbors were probably pleased to see that place close down. As best I know, that one is now in long-term rental. We notice that we're no longer having the noise that was coming out of that one. The next one up from that the No. 17 that's noted as illegal TVR to my knowledge that never has, never was. It was owned by a very old couple who became too old to take care of the house and sold it about two years ago. They sold it to some fellas who live on the mainland and they spent about a year renovating it and now there are two tenants living in that property as long-term rental. The one that's directly below them, No. 50, No. 50, right, No. 50, that property as best I know never was a TVR. It's owned by a couple who purchased it in October, and to be quite honest has some interest in using their cottage for short-term rental. They live in the house full-time. The owners live in the house full-time and they have a long-term tenant in their cottage, but they have brought forward the interest in operating a bed and breakfast from their house. The one, No. 8 down there that where there was some allegation there's no indication that that ever was a short-term rental, however he may have been referring to the one that got permitted which much further down the road.

Chairperson Lay: Commissioners, any more questions?

Mr. Hedani: Thank you.

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I'd like to make a comment. I'd like to express my appreciation, Joe Prutch for that outstanding information. It's great. That's the kind of picture I like. I mean, we can see the density. For me I need Crayons, so your picture satisfied my Crayon criteria of keeping it simple and so understandable.

Mr. Prutch: Thank you.

Vice-Chair Shibuya: And can you bring it up again?

Mr. Prutch: Which chart?

Vice-Chair Shibuya: You showed us that chart. I like that chart.

Mr. Prutch: Which chart?

Vice-Chair Shibuya: The map. The one with the red and green.

Mr. Prutch: The Shibuya map, all right.

Vice-Chair Shibuya: No, Joe Prutch map.

Mr. Prutch: Yeah, I did figure this out, so thank you.

Vice-Chair Shibuya: I like that. It gives us a better feel for the density of the type of...

Mr. Prutch: You'll probably see these more often now that we know how to do it easily that we can do it.

Vice-Chair Shibuya: Okay, thank you very much.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Joe, on the Shibuya map, the Shibuya Prutch map, there's a County ordinance that restricts short-term rentals in the Maui Meadows subdivision and the map shows five lots which is the cap for short-term rentals.

Mr. Prutch: Yes.

Mr. Hedani: So short-term rentals are pau as far as Maui Meadows?

Mr. Prutch: In Maui Meadows, yes unless the Council changes that who knows, but for now definitely not. The five was hit. It's done. You won't see another short-term rental in Maui Meadows.

Mr. Hedani: My question is if the Council capped five short-term rentals for Maui Meadows it's because they were concerned about the impact that short-term rentals has on the residential subdivision. In my book, if it walks like a duck, quacks like duck, it looks like a duck, it's a duck. There's very little difference between a short-term rental and a B&B except the owner is required to live within the residence except we bent that rule and owners don't have to live within the residence. We have owners next door, we have owners close by, we have owners with representatives that can be accessed all the time and we've kind of bent over backwards to accommodate. The question that I have is in my book a B&B and a short-term rental are not that much apart in terms of definition. The impact to the Maui Meadows subdivision is now not five, but it's five plus nine at the current time so it's 14. And the question that I have is is there a cap on the number of B&Bs for Maui Meadow similarly to the cap that they have on short-term rentals or can we have 80 B&Bs in Maui Meadows plus five short-term rentals?

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

Mr. Spence: To answer that, the legislative body thought very differently. I mean with all due respect to Commissioner Hedani's viewpoint, the legislative body saw it very differently and did not put a cap on bed and breakfast because the testimony and throughout the legislative history of everything was people were much less concerned when the owner was living on the property than when the owners were absent. So the...you know, they wanted somebody there. B&Bs are looked at differently because the owners are there and if somebody is making noise they can, you know, take control right then and there rather than having to call somebody and wait and you know, those kinds of things. So, Council looked at it very differently and the Department looked at it differently so, I understand the comment that the owners are there when the guests are there and can control the noise level.

Chairperson Lay: I'd like to comment too. Joe, what you did was wonderful. A lot of work went into it. Right now we're in the process of refining ourselves in this type of what we're covering right now. The information you gave us, even the places that weren't legal, what's gonna happen with that? These people already know that hey, there's people looking into this, they're saying we're not legal, and we have to do something to try and make this legal. So we're creating something where we were actually get rid of the illegals in some way or at least, you know, trying to watch over what's going on. So I think you've done a lot of good work here. I appreciate it and it gives us a good idea of what's going on out there. Director?

Mr. Spence: Thank you. Just a comment to the Commission. You know, Joe did a lot of research on what else was...I'm sorry?

Mr. Prutch: ZAED helped out a lot too.

Mr. Spence: Yeah. And I also took it upon myself to do some research and I understand protesters objecting to certain permits. When you allege that, you know, three or four of your neighbors are participating in illegal activities in order to stop the one, you know, that's a pretty serious allegation. So I took it upon myself to look on Airbnb and VRBO and a couple other sites. And I didn't just check and see where these things were located but I actually compared aerial data, aerial photographs. I looked at the Airbnb or the VRBO site and looked at the shape and the location of the swimming pool and the architecture and then compared it to what we have in tacheometry and I tried to find anything that could match, any evidence at all of these other alleged properties participating in illegal activities and I could find no evidence whatsoever. So I'm just confirming what Joe found and what Zoning Enforcement found, the allegations were not true and, you know, I appreciate when people, when people differ, you know, and you don't like to see something happen next door to them. That's perfectly legitimate, you know, to come and disagree with something, but to make allegations about your neighbors and find those allegations are not true that to me is even more serious, so that's a comment.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I'd like to support what Wayne said because I believe this is a true bed and breakfast. They live on the property. Now if you're living next door you're not living on the property.

You're basically a short-term rental and I think we should go back to the original intent, bed and breakfast, somebody live on the property, that's a true bed and breakfast. When you live next door, you have some...your neighbor comes down and manage the property, it becomes a short-term rental. Again, what you're doing is taking long-term rentals out of the long-term pool which we are desperately in need of to rent, what do you call, 500 square foot cottage it's \$1,200. That's ridiculous and the reason is because we do not have enough long-term rentals in the pool. It's buy and supply.

Chairperson Lay: Okay, thank you. At this time we'll close public testimony.

Mr. Prutch: If I might add too, I'm sorry, it was in the staff report, it was mentioned at the last meeting but just to clarify, 'cause it was brought up at the last project. Just to let you know Kihei-Makena Community Plan allows for a 100 B&Bs. So far we're up to 22 approved B&Bs. So we're only a fifth of the way there, and there are nine of those, of course, are in Maui Meadows. So just to let you know what the cap is and how far away we are from that in Kihei-Makena.

Chairperson Lay: Can we get the Department's recommendation?

Mr. Prutch: Yes. One thing I wanted to discuss or maybe ask you guys to discuss is the staff report showed the permit to last for two years 'cause that's what we originally were suggesting and recommending to you. Since that time of course you've heard from the opposition and you've from the applicant that the opposer would be a lot happier with the one-year, but it's I think up to you. The applicant's okay with the one-year. He would rather smooth sailing and make amends with neighbors and be kind and just operate for a year and then come back and hope to get his five years at that point. So the condition now reads a two-year permit. If you wanted to change it to one-year I would suggest you do it October 31, 2014 to give 'em a year from October rather than September.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I move to accept the original proposal of two years.

Mr. Freitas: I second it.

Chairperson Lay: Motion by Commissioner Medeiros. Seconded by Commissioner Freitas. Any discussion on the motion? Commissioner Hedani?

Mr. Hedani: What was the motion?

Chairperson Lay: Oh, can we repeat the motion, excuse me.

Mr. Spence: Motion was to accept the recommendation to approve as recommended by staff. That includes the original two years time.

Mr. Hedani: So the motion is for a two-year approval?

Mr. Medeiros: Yes.

Mr. Freitas: Yes.

Chairperson Lay: Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: I just want to be clear that the owner and family plan to live on the property full-time?

Mr. Prutch: It's my understanding, but I can ask the applicant to come up and just ensure that to you.

Mr. Lawler: If I may just make one comment before I answer your question if that's okay? My wife and I did not at all feel disrespected in the last meeting especially after watching the proceedings on T.V. where you get a third person perspective so I just wanna make that clear that I think we were grateful to get deferred because obviously things...the situation wasn't ideal. I know that we're not under oath here, but what I can say, I'm an audio engineer, I deal with the laws of physics, truth, facts, numbers and all that. So I'm just telling you and I know it's being recorded on T.V. we definitely will live in the house. We don't have any other properties on island or any other intent. Living there and developing that property and having a bed and breakfast and doing everything I said is our lifetime dream we've worked towards for years and I wish we were under oath 'cause I would say the same thing. Thank you.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Personally I'd like to state that I oppose an approval for two years for this particular case. To some degree I think we've done some research but we've done superficial research. What we can find in terms of advertising. What we can find online. From my perspective, I could support a one-year term with the condition that the Department, Zoning and Enforcement confirm or reconfirm whether or not the three or four rentals that are identified in the exhibit are actually in fact owner-occupied and not in TVRs or B&Bs. To me, an online search or an online search of advertising is all well and good, but it doesn't take the place of an inspector going up to the house, knocking on the door and saying I'd like to speak to the owner of the house and find out whether you have a tenant that's a short-term or long-term or the owner of the house to verify whether or not it is or is not a TVR. It's not something that's impossible. It's not something that's difficult to do and it would verify whether or not you have a TVR or short-term rental or a B&B operating instead of speculating in the universe of advertising what is or is not a fact.

I personally don't appreciate the fact that Mr. Hyatt was called a liar today and that his exhibit is incorrect, and he lives in house but he doesn't know what's going on in the neighborhood around him and from that perspective, and I'd like to point out that there are two objections to this B&B from both sides of the property not just Mr. Hyatt. The concern that I have is that the income being generated from TVRs and B&Bs can consume the entire neighborhood. If there's truth to the exhibit that's in Exhibit 14, the money that's generated from B&Bs and TVRs can go right down the street and acquire all of the people that are upset at them and expand in the neighborhood to the point where it displaces not only long-term renters but owners themselves. I can support a one-year as an amendment and I'd like to have the Department do some real footwork in this, knock on

doors and determine what is or is not a fact relative to the application within that one-year time frame.

Chairperson Lay: Commissioner Freitas?

Mr. Freitas: Yeah, I second the motion for a two-year extension. One-year is a blink of an eye. This gentleman did everything that he was required to do. Yes, we brought him back the second time, basically to his benefit because we probably would not get what do you call, his approval, but I believe in all fairness that this man did what he said and he did all of the rules. I believe that he should have a two-year because it's a very, very short time to set up a bed and breakfast or any type of business and run a business in two is...one-year is just very, very short. And yes, Mr. Hyatt did make what do you call, remarks that was not true. I'm not calling the man a liar, I'm just saying that the man did made allegations that was not there. He should have done his work and go and see and come here with some facts. At least one...if he had one address or one property that was running illegal, I would say let's go for a one-year or disapprove him, but he did not.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I recommended the...I moved for the two-year because I do not believe that this man and this family should be denied a chance to make a business because some idiot is doing something illegal. I'm not talking about Mr. Hyatt, I'm talking about these three or four houses that may or may not be doing something illegal. Because of somebody doing something illegal that means he can't do something legal? Give me a break. He's doing what he needs to do. And if there is something illegal going on, clean it up. If there isn't clean it up. If Hyatt has a problem with that let him do an investigation. If the Department has a problem with it, let them do an investigation, but do not punish a man and his family because some idiot is doing something illegal. That's my position.

Unidentified Speaker: Got a motion on the floor.

Chairperson Lay: We still have a motion on the floor. Any more discussion on that? Repeat the motion.

Mr. Spence: The motion is to approve as recommended by the Staff and that includes the two-year time frame.

Chairperson Lay: All those in favor? Those opposed?

Mr. Spence: That was five ayes, one nay. That's actually six ayes.

Chairperson Lay: Motion carries. Thank you.

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

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

Mr. Prutch: Thank you.

Mr. Spence: Just as an observation.

Chairperson Lay: Mr. Director?

Mr. Spence: This is why the Council put that provision in the code that if you have two that are...two B&Bs that are next to each other that it comes before this Commission so this kind of discussion can take place. So I think in this particular case it raised quite a bit of debate and so the provision worked. Ultimately the Commission found in favor of the applicant. I would point out that perhaps if another neighbor comes forward you may not find in his favor, you know, and I guess that's what this process is for. So to me, the process works.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: You know, just as a point of information for myself as well as the public. When a person operates an illegal TVR or B&B what is the penalty for doing that without a permit?

Mr. Spence: Well, we would...first off, we send out a warning and we say, okay, you either...you know, you gotta stop. Once we issue the Notice of Violation, penalties start accruing so much per day. It could be a \$100, it could be a \$200 dollars. To settle those...to settle...if there's no SMA violation settling the violation, it needs to go to BVA and the amount needs to be approved. You know, we're probably not going to collect...you know, some of these go on quite a long time so, you know, so there could be, you know, they could accrue technically if you add up every single day, they might accrue a million dollars, you know, and so we know we're not going to collect that but we will collect enough to create a disincentive. If there is a SMA violation, I'm not the sure the highest amount paid but the fines are much higher than just for zoning violations which a vacation rental would be. And those fines come before this Commission and you have to approve the amount in the settlement.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I'd like to, you know, just for our information, for the Commission's information, determine what the exact finds are for illegal operations. At a \$100 a day, I just rent out my unit for \$250 a day and I'd cover the fine along with the \$250, yeah. I thought something like a \$1,000 per

day fine for an illegal operation and I think in the case of SMA, something like \$10,000 per day as a violation is a disincentive for illegal operations and the public needs to understand that.

Mr. Spence: I know we've had...I'm not sure what the highest paid is. I'm aware of one that was \$50,000. I'm not sure if...okay, I'm seeing 65,000 from Staff, that was for SMA violation. This Commission is going to see some others, hopefully realistically soon that we'll, you know, we'll have a very interesting discussion I'm sure...(inaudible)...

Chairperson Lay: Commissioner Shibuya?

Vice-Chair Shibuya: I just wanna make a comment that if they are operating illegally then the inspector does identify them, Notice of Violation or Notice of Warning, they're actually put on notice and now the question comes in, are you completing...I mean to the homeowner, are you completing a Schedule E? Schedule E on the IRS means that you are doing this type of rental and you are collecting income from it. And if you're not doing that, then you need to answer to the Feds. Okay, so it's not only the County, but you have the Feds and the State as well as the County. That's an awesome thing, we don't want to go to and I hope that we will play it straight.

Chairperson Lay: If no more comments, let's take a 10-minute recess, come back at 20 to 12:00.

A recess was called at 11:30 a.m., and the meeting was reconvened at 11:40 a.m.

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

Mr. Spence: Acceptance of Action Minutes and Regular Minutes.

**E. ACCEPTANCE OF THE ACTION MINUTES OF OCTOBER 8, 2013 MEETING AND
REGULAR MINUTES OF THE SEPTEMBER 24, 2013 MEETING**

Chairperson Lay: Everybody get a chance to look over our minutes?

Vice-Chair Shibuya: Yes.

Chairperson Lay: We need a verbal acceptance.

Ms. Wakida: I move--

Vice-Chair Shibuya: Move to accept.

Chairperson Lay: Excuse me, go ahead Commissioner Hedani.

Mr. Hedani: I'd just like to make a couple corrections to the minutes. Sandy is marked as absent on two of the voting items, Item B and Item C, and I think because she had a bereavement in the family and she was tending to family matters on the mainland that should have been excused as opposed to an absence.

Chairperson Lay: Okay.

Ms. Duvauchelle: Thank you. I didn't know there was a difference, but thanks.

Chairperson Lay: Okay, the correction is so noted.

Mr. Medeiros: Mr. Chair?

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: Before we continue, I'd just like to apologize for my outburst, but sometimes I get carried away. It's the Portagee in me I guess. But I apologize for my outburst but you know, I meant what I said, but you know, I apologize for raising my voice.

Chairperson Lay: Thank you, Commissioner Medeiros. Any more corrections on our minutes? All those in favor of accepting our minutes along with the correction say, "aye".

Commission Members: Aye.

Chairperson Lay: Those opposed? Minutes are accepted.

Mr. Spence: Okay, Commissioners Item F on your agenda, Director's Report. The first two items, Items 1a and b are just notifying you of appeals.

F. DIRECTOR'S REPORT

1. **Pursuant to the Special Management Area Rules of the Maui Planning Commission, notification to the Maui Planning Commission of the filing of the following Special Management Area (SMA) Appeals:**
 - a. **ISAAC HALL, attorney for MAUI AINA COMPANY, LLC, JOSH STONE, and MARTIN BRASS in their capacities as managing members of MAUI AINA COMPANY, LLC and CHRIS and ANNIE MARIE MCNEIL, and FRANCINE AARONA submitting an appeal dated September 20, 2013 of the amended SMA Minor Permit issued by the Planning Director for an addition to the Paia Inn at 93 Hana Highway, TMK: 2-6-002: 027, Paia, Island of Maui. (APPL 2013/0007) (SM2 2013/0087) (SMX 2013/0234) (E. Wade)**

Mr. Spence: The first one is Isaac Hall appealing an SMA Minor Permit issued to Paia Inn and that was...they appealed the original SMA Permit we issued and they're also appealing the amended SMA Permit that we issued.

- b. ISAAC HALL, attorney for JAMES BENDON, ROBERT and MARGARET KAPLAN, CYRUS MONROE, APRIL NIMS and PETER SIRACUSA submitting an appeal dated September 20, 2013 of the issuance of an SMA Exemption for the milling and resurfacing of Runway 2-20 at the Kahului Airport at 1 Kahului Airport Road, TMK: 3-8-001: 019, Kahului, Island of Maui (APPL 2013/0008) (SM5 2013/0189) (SMX 2013/0324) (P. Fasi).**

Item B, also Mr. Isaac Hall, attorney for these different parties appealing the issue of an SMA Exemption for the milling and resurfacing of the runway at the Kahului Airport. Again, this is just for your notification. There is no action to be taken.

Mr. Freitas: Who handles this appeal?

Mr. Spence: I'm sorry?

Mr. Freitas: Who handles the appeal?

Mr. Spence: The Corporation Counsel will.

Vice-Chair Shibuya: We don't get it?

Mr. Spence: Oh no, it will come before you, and you're gonna be the deciding body on whether to grant the appeal or not.

Vice-Chair Shibuya: Okay, good.

Mr. Spence: No. 2, Notification to Planning Commission.

- 2. Notification to the Maui Planning Commission of the issuance of the following Special Management Area Emergency pursuant to its Special Management Area (SMA) Rules:**

October 3, 2013 Special Management Area Emergency Permit approval letter issued to the KAHANA SUNSET AOA for the removal of a shoreline encroachment and seawall repairs to a seawall that has been undermined at the Kahana Sunset located at 4909 Lower Honoapiilani Road, TMK: 4-3-003: 015, Kahana, Lahaina, Island of Maui. (SM3 2013/0003) (J. Buika)

Mr. Spence: We issued an SMA Emergency Permit to Kahana Sunset for removal of shoreline encroachment...(inaudible)... An approval letter issued to Kahana Sunset for the removal of shoreline encroachment and seawall repairs to a seawall that's been undermined. If you have any questions, Staff Planner Jim Buika is here.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Mr. Buika my questions are simple. Originally Kahana Sunset came in for a change of zoning also I think along with this, maybe they...my recollection may not be quite accurate, but I thought they...it was kind of a package and I was wondering what happened to that change of zoning?

Mr. Buika: Sure I can clarify that for you. They have not come in for a change of zoning yet. They are coming in for a change of zoning. What did come before you on February 26th this year was the Draft Environmental Assessment to do the change of zoning. So that is still coming up in front of the Planning Commission later on this year. We will...we're almost ready to review with you the Final Environmental Assessment to do a major permit, a shoreline setback variance for some changes along the shoreline and the zoning change. Right now it's Residential and it will be Hotel M, Moderate I think, to comply with what is actually there. Yes?

Ms. Wakida: If members of the community have any further concerns about the draft, do they email you, the Draft Environmental Assessment?

Mr. Buika: Yes. I have gotten...there's a condominium complex on the mauka side of Lower Honoapiilani Highway there that has sent in a petition. I have asked the or the Department has asked the Kahana Sunset AOAO to have a public meeting with them which they are doing as part of the EA. So there are, there are some petitions or yeah, I guess petitions to the proposed actions and letters of concern that have come into the Department. They are part of the Final Environmental Assessment that you'll be able to view and so we are following up with that and trying to, trying to resolve all the issues.

Ms. Wakida: Okay.

Mr. Buika: And they can still submit...I mean, the SMA Permit has not even been filed by them yet. So that whole process will happen probably timing, you know, within the next six months to a year follow the EA.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Do you know if that public meeting has been scheduled yet?

Mr. Buika: I don't know. I think it has been conducted. I mean, they have an ongoing dialog with that group. I apologize for not knowing, but it will be in the Final EA.

Ms. Wakida: Thank you.

Chairperson Lay: Mr. Buika, can you tell me a little bit about that shoreline encroachment that's gonna be removed?

Mr. Buika: Yes, there's a picture of it there. You have this package, it begins with a letter to Mr. Raymond Cabebe, Chris Hart & Partners, October 3rd. In that package in there, the exhibits are

there. There's a page of six pictures collage on the page, let's see if it's there. Do you see the pictures there, so it would be if you go across...well, the top three pictures, actually the top four, you can see there's the seawall. You can see where it's undermined there. You can see the second picture there where the engineer is measuring there? All of that is the encroachment and you can see all the concrete. The concrete is white. Look at the third picture to the right, you can see all of that white concrete that's sticking out makai of the actual wall. That has been authorized by the Department of Land and Natural Resources through a letter through a long process to get their shoreline certified to remove that. And what that is, is that is dead weight that's all because that structure has been undermined, it's just dead weight pulling on the seawall and it can collapse. So that was authorized within the State's jurisdiction to be removed. So they're just gonna chop that, chop that out, jack hammer it out and get rid of that and then put some...the work will be, you can see down on the bottom pictures in that cavity, they're going to fill it in with...they're gonna dig it out, fill it in with large boulders, and then shotcrete it all behind the front face of the seawall.

Chairperson Lay: Okay. Commissioner Shibuya?

Vice-Chair Shibuya: I hope the engineers will do the bottom portion first before they take off the concrete sleeve or shelf 'cause you get lot of vibration there, you could loosen up the rocks above.

Mr. Buika: So noted. I'll--

Vice-Chair Shibuya: Mention that.

Mr. Buika: --defer to the engineers. So I think they have a plan for removing it, so thank you.

Vice-Chair Shibuya: Yeah, hate to see babooze.

Mr. Buika: It is obviously a dangerous situation.

Vice-Chair Shibuya: Yes.

Mr. Buika: They had an Emergency Permit to shore this up earlier. This is where a couple years ago in 2010, 2009-2010 winter the lanai collapsed above it. So this has been a problematic area. So as far as their reporting requirement, this will come in with the major use permit. All of this will be permitted this emergency work will be permitted within 180 days when that SMA comes in.

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

Mr. Buika: Thank you.

Mr. Spence: Thanks, Jim.

3. Planning Commission Projects/Issues

Mr. Spence: Commissioners, under Director's Report, No. 3, Planning Commission Projects/Issues, I don't have anything to report.

4. EA/EIS Report

Mr. Spence: No. 4, EA/EIS Report. We have handed out today, a Draft EA in support of a District Boundary Amendment, Community Plan Amendment, Change in Zoning for the proposed Waikapu Light Industrial Project. So that's for your information and we will be taking this up at a later meeting.

5. SMA Minor Permit Report

6. SMA Exemptions Report

Mr. Spence: You received the SMA Minor and SMA Exemption Report.

Chairperson Lay: Commissioners, you have questions on the reports? Commissioner Shibuya?

Vice-Chair Shibuya: Just a comment that I notice that there's more permit requests this past year than it was in previous years. So I guess we're looking up here gang.

Mr. Spence: Yeah, I think that's a reflection of the economy.

Vice-Chair Shibuya: That's correct. It's very healthy. Looks good.

Chairperson Lay: Any more comments? If not, we can get a verbal acceptance of our SMA Reports. All those in favor?

Commission Members: Aye.

Chairperson Lay: Those opposed? Acceptance of our Reports.

7. Discussion of Future Maui Planning Commission Agendas

a. November 12, 2013 meeting agenda items

Mr. Spence: Future Planning Commission Agendas. I have a memo from Clayton Yoshida. It appears that your next meeting is going to be very busy with three public hearing items including the ConRAC facility at the Kahului Airport, an SMA Major for a condominium project, and a Land Use Commission Special Use Permit for a bed and breakfast in Haliimaile. We also have Mr. Terry Epstein come back to this Commission. There will be Communication items for A & B Properties. There is a SMA Permit for Wailea Multi-Use Project. New Business, Mr. Albert Kanno, Manager of ABC Development Company requesting comments on the...actually on this Draft EA that's in front of you today. Then there'll be two things on the Director's Report. One requesting an SMA Use Permit, requesting a two-year time extension and then Mr. Alfred Fairbanks requesting a two-year time extension on another SMA Permit. Any questions, Commissioners? We should probably order lunch for that one.

Chairperson Lay: Commissioners, any other things to discuss? If not, thank you very much.

F. NEXT REGULAR MEETING DATE: NOVEMBER 12, 2013

G. ADJOURNMENT

The meeting was adjourned at 11:58 a.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Sandy Duvauchelle
Jack Freitas
Wayne Hedani
Ivan Lay, Chair
Jason Medeiros
Warren Shibuya, Vice-Chair
Max Tsai
Penny Wakida

Excused

Keone Ball

Others

Will Spence, Director, Planning Department (10:15 a.m.-11:58 a.m.)
Michele McLean Deputy Director, Planning Department (9:00 am.-10:15 a.m.)
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works