

**MAUI PLANNING COMMISSION
REGULAR MINUTES
AUGUST 11, 2015**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:03 a.m., Tuesday, August 11, 2015, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chair Ball: Good morning everyone. Call this meeting to order of August 11, 2015. We have a quorum, and we will open this up with public testimony. If anyone would like to...Clayton?

Mr. Yoshida: Thank you, Mr. Chair. I'm Clayton Yoshida, Administrator of the Current Planning Division representing Planning Director, Will Spence who is doing a site inspection for one of our enforcement matters, and Deputy Director Michele McLean who's having several other meetings today.

With respect to Item D-1, discussion on the South Maui Citizens for Responsible Growth letter regarding the Special Management Area Use Permit for the Piilani Highway traffic improvements at Ohukai Road, when the agenda was posted we fully intended to have the Deputy Director of the State Department of Transportation, Ed Sniffen here. However, Ed did call me on Thursday, he does send his regrets. He has to be at a emergency meeting called by the Governor today. So we can possibly reschedule that, but he won't be able to attend today's meeting.

Chair Ball: Okay, what's the pleasure of board on that?

Mr. Hopper: Well you have to allow testimony on this. Once you decide ...(inaudible)...

Chair Ball: Okay.

Mr. Hopper: I mean, if you wanna defer it, you can.

Chair Ball: We'll take public testimony on that and then discuss after we have that, everybody's agreeable to that? Okay. So we will continue on now with public testimony.

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

Chair Ball: If you would like to testify at this time, you may do so, but you not testify again on item.

Mr. Mike Moran: Chair, could I get clarification? ...(inaudible-speaking from the audience)...

Chair Ball: Yes.

Mr. Moran: ...(inaudible-speaking from the audience)...

Ms. Takayama-Corden: Come to the mic, please.

Chair Ball: Mike, please come to mic and then make...if you wanna testify now you–

Mr. Moran: Well, I would rather...my intent was to testify when you heard the item, but I'm not clear. Are you not gonna hear the item at all?

Chair Ball: We will. We will be hearing the item and we'll take testimony at that time.

Mr. Moran: Oh, okay then I'll wait then. Thank you Chair.

Chair Ball: Okay, so we will be taking testimony now. If you'd like to testify at this time you may do so or you may wait for the agenda item to come up. If you testify now, you will not be able to testify when the agenda item comes up. Okay, lets see, Harry Hecht?

Mr. Harry Hecht: Is this the Item D?

Chair Ball: No, Item D will come up in–

Mr. Hecht: I'd like to testify at that time.

Chair Ball: Okay. Francis Skowronski.

Mr. Francis Skowronski: When the item comes up.

Chair Ball: And Mark Hyde?

Mr. Mark Hyde: ...(inaudible)...

Chair Ball: Okay, very good. Anyone else who would like to testify at this time may do so? Seeing none, public testimony is closed. Okay, we'll move onto Item C, Public Hearings.

Mr. Yoshida: Thank you, Mr. Chairman. Under Public Hearings, we have a request from Mr. Tonymasa Sasaki of JYS Brothers & Sisters, LLC. for a zoning change from R-2 Residential District to SBR Service Business Residential District for approximately 7,803 square feet of land for the Ichiban Okazuya located at 2133 Kaohu Street, TMK: 3-4-004: 030 and 083, Wailuku. The Staff Planner is Paul Fasi.

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

- 1. MR. TONYMASA SASAKI of JYS BROTHERS & SISTERS, LLC requesting a zoning change from R-2 Residential District to SBR Service Business Residential District for approximately 7,803 sq. ft. of land for the Ichiban Okazuya located at 2133 Kaohu Street, TMK: 3-4-004: 030 and 083, Wailuku, Island of Maui. (CIZ 2014/0006) (P. Fasi)**

Mr. Paul Fasi: Good morning.

Chair Ball: Morning.

Mr. Fasi: This morning you're gonna be making a recommendation to Council on the change in zoning. My...the Department's presentation will be very brief because Mike Munekiyo, the applicant's representative is here and so he makes my job real easy.

Statutorily on the State level they meet the requirements. We have no issues with anything other than the change in zoning which will establish the Service Business Residential Zoning for this particular use. The Department will say that this what the SBR Zoning Ordinance was meant to accomplish in these type of situations.

There is one letter of concern that will be passed out later on during this meeting. I forgot to bring it. You already have one copy in my report. This is the second letter from the neighbor across the street which basically he had concerns regarding the ingress and egress of the property onto the small lane opposite of Kaohu Street.

The Maui Police Department did comment on it and recommended that ingress and egress be removed from that side of the property. And so the Department will honor that and make that as part of this recommendation of approval when the time comes.

The Department has...if you have no questions for the Department, I'll turn it over to Mike Munekiyo of Munekiyo Hiraga, and he basically will give you all of the details that I would be giving you but he'd probably do a better job. Thank you.

Mr. Mike Munekiyo: Good morning, Commissioners. My name is Mike Munekiyo and I'm here this morning assisting Mr. Sasaki in his request for change in zoning. Maybe I can get the lights, oh Clayton will. Thanks, Clayton.

I'll give a brief overview of the request and following that request, of course we'll be happy to answer any questions the Commissioners may have. As Paul mentioned this is a request to change zoning from existing Residential to the SBR Service Business Residential District which is in alignment with the Wailuku-Kahului Community Plan.

So we'll move to the first slide of the presentation. Again, just to summarize the request. It is to change zoning from the R-2 Residential to the SBR Service Business Residential and this request affects the Ichiban Okazuya which is the storage, restaurant itself and the adjoining gravel parking area. Next slide. This is just a tax reference map and many of you are familiar with the location. This is Kaohu Street right here. Kalua Drive is the small local driveway which services residential areas down in this location. At the apex of this triangle here is the Ichiban Okazuka Store and right behind it adjoining it is the parking lot which currently exists, the gravel parking lot. So we'll go to the next slide. And just as a background there are two tax parcels involved, TMK: 3-4-004: 030 and 083. Parcel 030 is the Ichiban Okazuka Store itself. Parcel 083 is the gravel parking lot parcel. Parcel 030 is about 2,600 square feet, and Parcel 083 about 5,200 square feet. So roughly in total the area affected by the request is about 7,800 square feet. The owner of the property

JYS Brothers and Sisters, LLC, and they are represented Mr. Tony Sasaki who is here today.

Just to recap the existing land use designations to the property, the parcel...both parcels are within the State Land Use Urban District. The Wailuku-Kahului Community Plan designates both Parcel 030 and Parcel 083 as Business Commercial, and both parcels are zoned R-2 Residential.

Just a quick summary. Parcel 030 today, as I said is the Ichiban Okazuya Store, take-out lunch and dinner. Parcel 083 is a six-stall graveled parking area and on that parcel there is a storage shed which was formerly a garage and laundry room for the single-family structure which formerly occupied the...the property which I'll go over right now. Again, Parcel 030 is operated as the Ichiban Okazuya. It's been in business at that location in its current form essentially for 34 years. And before that it was a neighborhood market. Some of you may recall Tanouye Market being the predecessor store for the Ichiban Okazuka, but basically it served the same function, same kind of a configuration. Parcel 083 up to 2012 was occupied by a single-family dwelling. And in the year 2012 that dwelling structure was demolished and a new gravel parking lot installed in 2013. Here are some photographs, again this is the Ichiban Okazuya. It has a storage garage. It's enclosed right now so it's really storage shed and the gravel parking lot here. This is Kaohu Store...I'm sorry, Kaohu Street fronting the property. Same photograph from another perspective, this is the entryway to the parking area, six-stall parking area, again it's a gravel parking area. Just another view and we can continue Paul.

So basically all of this came up it was back in I think 2013, Mr. Sasaki applied for a variance to enable the use of the Parcel 083, the gravel parking lot parcel for parking lot purposes because R-2 Residential does not permit parking. So he was granted by the Board of Variances and Appeals a variance to enable the use of Parcel 083 for the gravel parking lot. And a condition of that approval was that the variance shall expire four years from the variance to enable the use of Parcel 083 for a gravel parking lot and a condition of that approval was that the variance shall expire four years from variance approval date or approval of a zoning change which ever is earlier. So essentially what the BVA was asking Mr. Sasaki was that to...he should really get a change in zoning rather than rely on the variance as a means of ensuring the long-term use of that parcel for parking purposes. So hence, the application today before you.

Just a summary of the analysis. There will be no change in use or intensification of use, nothing will change, everything will continue as is. There will be no adverse effects on historical or cultural resources and environmentally sensitive areas. There will be no added demands based on water and wastewater systems. Use of the off street parking...of the off street parking area improves traffic circulation conditions. Of course, the outcome is that if approved, this request would align the properties with the Wailuku-Kahului Community Plan and it supports the continued operations of an established neighborhood small business. And that concludes our brief presentation. We'd be happy to answer any questions that the Commissioners may have.

Chair Ball: Okay, thank you. Where did Paul go? You have the recommendation from the Department? Oh, sorry, we're gonna open it up for public testimony at this time.

a) Public Hearing

Chair Ball: Seeing none, public testimony is closed. Recommendation from the—

Mr. Fasi: Clayton, do I need to recuse myself since I'm customer?

...(Laughter from Commission)...

b) Action

Mr. Fasi: The Maui Planning Department recommends that the Maui Planning Commission recommend approval to the Maui County Council change in zoning from R-2 to SBR provided the two following conditions are recommended also.

That the applicant shall not use Kalua Street side of the property for either ingress or egress. And all entrance and exits shall be from Kaohu Street only. And this was the ...this is from the Maui Police Department.

That the applicant shall secure a lot consolidation approval to qualify for the SBR zoning because he needs to meet a minimum square footage requirement. The two separate lots separately don't meet SBR lot square footage minimums, but together they do. So before I take this to Council, he needs to have I guess, he needs to have the lot consolidation approval.

And just for the record, I'm gonna pass out the comment letter from the neighbor across the street which you already have a previous edition of. So that concludes the Department's recommendation. Thank you.

Chair Ball: Okay, questions from the Commission? Commissioner Robinson?

Mr. Robinson: Aloha Paul. I don't know if that's the letter that's passing out, but the letter that I read was a complaint about noise from delivery trucks. Is that the letter that they're now-

Mr. Fasi: It's basically covering the same issues.

Mr. Robinson: So is there a-

Mr. Fasi: They're both from Oliver Vaas, who submitted the previous letter.

Mr. Robinson: What is the...is inside this R-2 Residential? Is there a 7 o'clock cutoff time of no commercial deliveries?

Mr. Fasi: No, there's no time-

Mr. Robinson: There's no time at all?

Mr. Fasi: -stipulations on that.

Mr. Robinson: And the Planning Department doesn't see a problem with that or not wanting to put a condition of a normal working business hours of delivery trucks and so on and so forth in a Residential?

Mr. Fasi: We do not. If Mr. Vaas feels strongly he has another opportunity to Council to come and make that a priority if it's really concerned about it. But it's basically maybe propane trucks, delivery trucks, but they won't be exiting that side of the property any more because this property sits across the street from the exit and they come out. So with that side being closed off and I believe Mr. Sasaki has already closed off the ingress and egress. So we'll see how it goes. If he feels that strongly he has one more opportunity at Council to make his case on that and Council can then decide what they wanna do.

Mr. Robinson: On the photograph I saw at the back of the parking lot there's a...is that a house, is that a building next door? Is that another commercial building in the parking?

Mr. Fasi: No, that's the storage, storage shed.

Mr. Robinson: One more, one more back please? The one with the ...(inaudible)...

Mr. Fasi: Have you been to the Okazuya?

Mr. Robinson: I've always parked in the front. I've never gone in the parking lot because my truck is big.

Chair Ball: That's a neighboring parcel.

Mr. Robinson: Yeah, is that a house or is that another-

Mr. Fasi: That's a house.

Mr. Robinson: That's a house.

Mr. Fasi: But if you go up and down Kaohu Street you'll see several former residences transformed into small businesses.

Mr. Robinson: And none of them have a...you can't do any business before 7 o'clock?

Mr. Fasi: I can't answer that. I don't...I can't answer that. But I have never had an SBR request with any kind of time constraint on it.

Chair Ball: If we can, if we can get the applicant to explain you know the deliveries that he gets and, you know?

Mr. Fasi: Sure.

Mr. Munekiyo: Thank you, Mr. Chair. Thank you, Commissioner. I think a source of that issue raised by the neighbor arises from trucks exiting and ...actually exiting and entering from Kalua Drive which is right across this residence. And not too long ago, Mr. Sasaki actually closed off that gate. So delivery trucks actually will be coming in from Kaohu Street and parking towards that adjoining residence or structure that you see on that photo. So we think that that closing of the gate really addresses that issue as well as the concern about traffic.

Chair Ball: Follow up to that. Do we have delivery times that they come in usually or...

Mr. Munekiyo: Tony?

Mr. Sasaki: ...(inaudible-speaking from audience)...

Mr. Munekiyo: I'll have Mr. Sasaki...

Chair Ball: Okay. Please identify yourself too.

Mr. Tonymasa Sasaki: My name is Tonymasa Sasaki, owner of the Ichiban Okazu. You hear me? The delivery truck coming earliest is 7 o'clock. I told them to delivery driver any time after 7:00, also parking on the front of the store. I told them strictly. Used to be they go inside from the Kalua Road through the behind the store, but no, not any more.

Chair Ball: Is that a daily delivery, you receive daily?

Mr. Sasaki: No, no, no twice a week. And the gas, gas we fill 'em up one a week. That's all we making noise for the early morning 7 o'clock.

Chair Ball: Okay, Commissioner Lay?

Mr. Lay: So that's the only delivery you have is in the morning then. None, in the evening or anything like that right?

Mr. Sasaki: No, no, no.

Mr. Lay: Okay.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Mr. Sasaki--

Mr. Sasaki: Yes?

Mr. Hedani: --have really good food.

Mr. Sasaki: Thank you very much.

Mr. Hedani: Do you have any objection to closing access on Kalua Road?

Mr. Sasaki: Yeah, actually what my idea is the Kalua Road is so narrow. But still people for the--to me, I don't mind for making no parking sign for the whole way down through the Kalua Road. That's more sense for the public. So to me, I don't mind close the gate, but my requesting making no parking for the Kalua Road. More, more concerned about public safety. That's all I want to see. I not trying to making like money for the business, of course the people say, the public safety is most priority, important. So that's the only thing I wanna say for no parking. That's what I making

for parking not for...to my business.

Mr. Lay: Commissioner Robinson?

Mr. Robinson: Who's your...Who's your food vendor that you, that makes the food deliveries?

Mr. Sasaki: Food vendor use HFM.

Mr. Robinson: HFM?

Mr. Sasaki: Also VIP.

Mr. Robinson: Which...what size trucks? Do they use—

Mr. Sasaki: They —

Mr. Robinson: —a smaller box trucks or the large one?

Mr. Sasaki: —come like most times the four ton truck.

Mr. Robinson: Four ton?

Mr. Sasaki: Four ton truck. Sometimes eight ton truck.

Mr. Robinson: But that's up to them what truck they're deciding, right? It's on their—

Mr. Sasaki: Yeah, right.

Mr. Robinson: —different days?

Mr. Sasaki: I can request to make it small trucks.

Mr. Robinson: Yeah, that's what I'm thinking.

Mr. Sasaki: Okay.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Mr. Sasaki?

Mr. Sasaki: Yes?

Mr. Medeiros: You seem like a really good neighbor. Could you open up a business on my street?

Mr. Sasaki: Huh? Oh,...

Chair Ball: Anyone else? Commissioner Lay?

Mr. Lay: Just a follow up on that. Where you were saying where you were saying where you wouldn't mind where there's no parking on that side of your store. I know they used to park there before because they wanted to go to your store.

Mr. Sasaki: Yeah, right, right.

Mr. Lay: But is it, is the...are residents parking there also?'

Mr. Sasaki: Yeah, right.

Mr. Lay: Okay, thank you.

Chair Ball: Any further questions? Do we have a motion? Commissioner Medeiros?

Mr. Medeiros: Move to accept the recommendation.

Chair Ball: Motion to accept.

Mr. Hedani: Second.

Chair Ball: Second by Hedani? All in favor say, aye?

Mr. Robinson: Discussion?

Chair Ball: Sorry, discussion? Thank you.

Mr. Robinson: As I think it's fine too, I'd like to put a condition which I think is just no deliveries before 7:00 a.m. I think the neighbor now might be very acceptable on the use to it. But if in the future they might wanna sell that property and as they grow. So, and you know, Department of Health they have a 7:00 a.m. anyway, decibel point so they can always complain about that. But I think it's maybe 7:00 a.m. with a, with a truck with a you know, over four tons. You know that small truck is not as loud compared to that big one. And that big one they do keep the big reefer running it's very loud. And it has a larger beeper. I have those trucks and I do have a business in a residential area on another area and that's kinda what we follow too, so it kinda keeps the neighbors so that way there is no huhu in the future. And I would just like to see if we could add that condition as well.

Chair Ball: Is that acceptable to the motion makers and seconder?

Mr. Hedani: There's no objection.

Chair Ball: Department?

Mr. Fasi: I would keep in mind that across the street you got the Trask commercial building and you have people coming and going at all hours of the morning and night, and across the street then you

have the County municipal building with our trucks and vehicles coming at all hours. So I would just keep that consideration in mind. I don't want the 7 o'clock issue to be hardship. Nobody else is making—

Chair Ball: Is the applicant—

Mr. Fasi: —an issue of it. It was mainly the ingress and egress.

Chair Ball: Does the applicant have a issue with the 7:00 a.m. delivery time?

Mr. Munekiyo: Mr. Sasaki indicates that he has no problem with 7 o'clock delivery time.

Mr. Hopper: Question?

Chair Ball: Sure. Corporation Counsel?

Mr. Hopper: Paul, just to clarify. It says that...did you say that the lot's going to be consolidated before the change in zoning's approved so that they have...meet the minimum lot size?

Mr. Fasi: Yes, sir.

Mr. Hopper: Okay. So really this condition when the Council sees this, it will already have been fulfilled basically?

Mr. Fasi: Yes, sir.

Mr. Hopper: Okay, thanks.

Chair Ball: Okay, any further discussion? Seeing none, all in favor raise your hand and say, aye?

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried unanimously.

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

**VOTED: To Recommend Approval of the Change in Zoning from R-2 Residential District to SBR Service Business Residential District to the County Council as Recommended by the Department with a condition of no deliveries earlier than 7:00 a.m.
(Assenting - J. Medeiros, W. Hedani, L. Hudson, I. Lay, M. Tsai,
K. Robinson)
(Excused - R. Higashi, S. Duvauchelle)**

Chair Ball: Moving on.

Mr. Yoshida: Thank you, Mr. Chair. Under Item D-1, Unfinished Business, we have a discussion

on the South Maui Citizens for Responsible Growth's letters regarding compliance with Condition No. 23 of the Special Management Area Use Permit for the State Department of Transportation Piilani Highway Traffic Improvements at Ohukai Road project regarding consideration of the installation of sidewalks at TMK: 3-9-1: 146, Kihei, Island of Maui.

D. UNFINISHED BUSINESS

- 1. Discussion on the South Maui Citizens for Responsible Growth's letters regarding compliance with Condition No. 23 of the Special Management Area Use Permit for the State Department of Transportation Piilani Highway Traffic Improvements at Ohukai Road project regarding consideration of the installation of sidewalks at TMK: 3-9-1: 146, Kihei, Island of Maui. (SM1 2011/0007) (Commissioner Penny Wakida's request) (Deferred from the March 10, 2015, April 14, 2015, April 28, 2015, and May 12, 2015 meetings.)**

Mr. Yoshida: As I had explained earlier at the beginning of the meeting, the Deputy of DOT, Director, Ed Sniffen had planned to be here. He does send his regrets. He was called into an emergency meeting called by the Governor.

Chair Ball: Okay. Commissioner Tsai?

Vice-Chair Tsai: We've had I guess the Deputy Director of Transportation canceled on us two times and my understanding is we can request the higher level of authority--

Chair Ball: Before we, before we start discussing that, let's open the public testimony up and then we'll...(inaudible)... Okay, so we're gonna open it up for public testimony at this time on Item D-1. Harry Hecht.

Mr. Hecht: Can you have Mike, have Mike go first?

Chair Ball: Sure. Mike Moran?

Mr. Mike Moran: Just have a couple pictures, if you can now just pass them around...(inaudible-not speaking into a microphone)...Aloha, Chair Ball and Commissioners. Mike Moran.

Chair Ball: Aloha.

Mr. Moran: President of the Kihei Community Association for the KCA on Item D, Ohukai intersection. While I believe it has been clearly established what the Commission requires to take action to rectify the omission of installing sidewalks at the intersections and clearly and repeatedly presented to you by Mr. Hyde of South Maui Citizens I believe there's still some confusion in what this project is about.

This was never a drainage project. When HDOT Freddie Cajigal spoke to you in this room in May he called it a traffic signal project. The title on HDOT's plan calls it the Piilani Highway traffic operation improvement at Ohukai Road. While a segment of the required traffic operation improvement may require making adjustments to existing drainage, the purpose of the project

concerns traffic not drainage.

Another issue is whether this intersection can be a safe, reasonable pedestrian crossing. For years it has been established as a marked, signalized, well used pedestrian crossing. Through some pictures I offer alternatives which have also been used for years not only by the Kihei Charter School students but by many others. A few hundred yard south of Ohukai, but before reaching the next intersection at Ka Ono Ulu there's a right turn only when driving north on the highway on the mauka side of the highway at Blackie's Gas Station. As you can see, pedestrians cross the highway with no signal nor crosswalk in one of two ways. In spite of the State DOT fence, fencing blocking access to this right of way, very quickly peeled back by the users, some have worn a path to the edge of the highway and dash across while others choose to crouch down and go under the roadway through the drainage culvert. So whether this proposed pedestrian crossing at Ohukai is safe and reasonable, please consider these alternatives in your discussion today.

Yes, KCA is a very strong advocate for proper pedestrian bicycle underpass further south at Kulanihakoi when the DOE, Kihei High School is built which is a condition set by the State Land Use Commission. But while we do not see HDOT doing the same at this intersection at Ohukai, we do expect simple sidewalks to be included here. Let's make it as safe as possible.

Now as construction seems to be complete as one who has walked and cycled through this intersection for years, it is now less safe to do either than ever before. I will have continued testimony from KCA will be provided by our highly accredited engineer and KCA Vice-President, Harry Hecht. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you Mike. Next, Harry Hecht.

Mr. Harry Hecht: Thank you, Mr. Chairman, Members of the Planning Commission. My name's Harry Hecht. I live...a Maui resident. I live at 1032 South Kihei Road in Kihei. I'm here to testify again as Vice-President of the Kihei Community Association regarding the lack of sidewalks on Ohukai Road and Piilani Highway. The Kihei Community Association continues to favor the inclusion of sidewalks at this location.

Briefly my background is I am a civil engineer licensed in the State of Hawaii and in the State of California. I have a PhD from the University of California in civil environmental engineering and over 50 years of experience in planning, designing and constructing state highways, county roads, city streets which many of them included pedestrian and bike facilities. I taught highway design to civil engineers at San Diego State College and I'm also serving as an alternate on the Public...Maui Public Works Commission.

My testimony is based on current field review of the site, a review of some of the construction plans and my past experience. I would like in the brief time that I have allotted make five points. One, the contract for the construction of the intersection appears to be complete or nearly complete. In the south eastern quadrant of the intersection is now a metal beam guardrail which was added in the improvement and in my opinion is unnecessary. It would be safer for automobiles to have ...(inaudible)... slope from the edge of pavement rather than a guardrail. The guardrail impedes a pedestrian and bike movements across the south part of the intersection. Number three, in the

south east quadrant with the metal guardrail removed that has just been placed there is adequate room for a right of way to accommodate a five-foot sidewalk and to join a four-foot sidewalk on the south west corner. Since the guardrail is now installed on the south east part of the intersection there is no opportunity for cost offset in eliminating the guardrail. Therefore, the cost of the guardrail removal and placing the sidewalk at this time in my opinion would be approximately \$40,000 using \$7.00 a square foot for the sidewalk. Five, the bike travel from north to east is now striped to conflict with free vehicle movements in the same direction. This design is being litigated by an injured bike rider against Pima County, Arizona with a sum of \$6 million. I would recommend a review of the bike striping going north to eliminate the conflict with the turning vehicles. Again, I recommend the addition of sidewalks on the south side of this intersection. Mahalo. Any questions?

Chair Ball: Any questions for the testifier? Seeing none, thank you. Next on this item would be Mark Hyde.

Mr. Mark Hyde: Thank you. Mark Hyde. I'm President of South Maui Citizens for Responsible Growth, but first I wanna thank you for your persistence and patience with this matter and for trudging through my voluminous correspondence. And quite frankly I don't think I can do any better this morning than what I've already written to you. But I wanna make some simple comments. This is not about the HDOT. This is about people, safety. It's about planning. It's about public policy. It's about law and it's about duty. It's not about what the HDOT thinks. And I think it comes down to a simple question for you. If you believe that in this case there has been a preliminary compliance report issue, that it was timely, that it was acted on by the Department of Planning that was accepted. And if you believe the facts in that document that the area is rural, that there are no sidewalks nearby and there are no plans to build sidewalks there by the Department of Public Works. And if you believe bottom line that it's safe, then you should do nothing. But I submit to you that there is no, and has been no preliminary compliance report. There is no, and has been no acceptance of that report by the Department. Plans went out for bid without sidewalks. The Department of Transportation did no work in terms of public safety. If anything they looked at cost. And based upon that, and based upon the Charter of the County of Maui which assigns to you the obligation to enforce your orders, I think you are compelled to act. And I ask that you do so this morning and bring this matter to a head. Thank you very much.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Okay, would anyone else like to testify on this agenda item? Seeing none, public testimony is closed. Corporation Counsel would you like to guide us in this?

Mr. Hopper: Well, I can go over several options in executive session if you'd like to discuss moving forward, but I'm not sure what the will of the body is at this point. I don't know if you want to have discussion or go right to executive session. Or...I mean it's gonna depend on what the Commissioners –

Chair Ball: Okay. Well, let's have a little discussion. What I recommend is use caution when you are coming up with that that it's in our purview to ...(inaudible)...items that you might come up with. So with that, Commissioner Tsai was...

Mr. Hopper: Does the Planning Department...I don't know if they have something to add.

Chair Ball: Clayton, do you have anything to add to this item?

Mr. Yoshida: Well, we do have present the Staff Planner, Candace Thackerson, who handled the SMA Use Permit back in 2012. If this matter is deferred, perhaps we could ask if the Commissioners have specific questions...(inaudible)...to and wants to have the DOT official here at the next scheduled meeting. If the Commission could maybe define some questions that they would want the DOT officials to respond.

Mr. Hopper: Clayton, other than the what we have in this packet has there been any written correspondence since the preliminary compliance report from the Department of Transportation?

Ms. Candace Thackerson: Can I answer that? Staff Planner Candace Thackerson. The only correspondence beside the preliminary compliance report have just been emails asking them when they can come out to the Maui Planning Commission meeting and also our request of their presence. I think we've sent two or three I believe letters and the last letter also asked for someone of higher authority than Freddy as well as the outline that they needed to bring how they considered the sidewalks including you know, fiscal and things like that in the last request. And they were scheduled to be here today. They told us that. And then last week we got an email that said they weren't gonna be able to make it.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Yeah, as I've stated or tried to say before due to unresponsiveness of the DOT I would like to go on record requesting higher authority such as the assistance Governor. I think we have a purview to do that as a body to be present.

Chair Ball: The Lieutenant Governor?

Vice-Chair Tsai: Yep.

Chair Ball: Anyone else with a comment? Commissioner Hedani?

Mr. Hedani: Personally I think we've spent too much time on this issue. It's been deferred like three times. The State of Hawaii DOT has a lot of projects that they can do. There's a lot of projects that they can skip depending on the amount of resistance that we provide. They can just redirect the money to other things. It's no skin off their nose. If we don't need a left-turn lane at this intersection then they can defer it forever if we want. Personally, I think we should approve it and move forward.

Chair Ball: I don't know if there's any approval needed.

Ms. Thackerson: Yeah.

Chair Ball: Commissioner Lay?

Mr. Lay: Well, my opinion on the matter is we have an unsafe intersection and I'm responsible for saying something at this point. Should something happen it becomes in effect I was a part of it and

I wanna see this dealt with in a manner where we do fix what has to be fixed. If we gotta put in a sidewalk that makes it safe for this residents to go across the street, I think it should be done.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I'd like to request a executive session so we can speak with Corporate Counsel about exactly what options we do have to try to get something positive out of this meeting instead of deferring it for...(inaudible)...time.

Mr. Medeiros: Second that.

Mr. Hudson: I agree with that.

Chair Ball: We have a motion to move into executive session by Commissioner Robinson, seconded by Medeiros...Corporation Counsel?

Mr. Hopper: And just for the record, the purpose is under HRS 92 to discuss the board's rights, duties, liabilities, subject to attorney/client privilege.

Chair Ball: Okay, all in favor of moving into executive session raise your hand? Unanimous. We will go into executive session.

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

VOTED: To Go into Executive Session.
(Assenting - L. Hudson, J. Medeiros, I. Lay, M. Tsai, W. Hedani,
K. Robinson)
(Excused - R. Higashi, S. Duvauchelle)

The Commission went into executive session from 9:44 a.m. to approximately 10:08 a.m. Following a recess, the regular meeting was reconvened at 10:16 am.

Chair Ball: Okay, let's call this meeting back to order. Thank you to the public for letting us have that executive session. We are on Item D-1. Commissioners, what's the pleasure of the board? Discussion?

Mr. Robinson: I propose a motion to defer and with the hope that the DOT will come in a couple weeks and we can have them address our concerns and hopefully convince them to find somewhere in their budget that they have money for the sidewalks.

Chair Ball: Okay, Commissioner Lay?

Mr. Lay: Discussion on it. We've done it before. What's the guarantee that they'll show up again, they will show up this time? I know there is probably a reasonable reason why they couldn't show up this time, but what happened to the two previous times? And that's my concern there where, you know, I don't think they're addressing this. They're not taking this as seriously as we are.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I second the motion, by the way.

Chair Ball: Thank you. Commissioner Hudson?

Mr. Hudson: Perhaps we should consider the contested case hearing letter to be sent out to the State.

Vice-Chair Tsai: Yeah, I'll--

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Yeah, I'll agree to that. I will ask a formal contested case letter be sent.

Chair Ball: Corporation Counsel?

Mr. Hopper: Just as by way of background, it is the option of the Commission to request that a contested case hearing proceeding be instituted in order to determine whether or not there's been a breach of the condition and a notification given to the DOT that the formal contested case hearing proceeding has been instituted. That's an option. There has not been that formal proceeding instituted to date. It's one of the options available to the Commission.

Chair Ball: Do we need to state what the--

Mr. Hopper: At this point, you have a motion and a second to defer. I think this is part of the discussion.

Chair Ball: Yeah.

Mr. Hopper: You would normally have a vote on that and see where that would go. So I think that's where you could go, but I think it's correct. I wanted to give that on record that that's correct that that's a potential option that the Commission has.

Chair Ball: In that further discussion, do we have to state in that contested case what the--

Mr. Robinson: The breach.

Chair Ball: --breach is, right?

Mr. Hopper: I think you could state, again, this is on a different potential motion, but that the contested case hearing proceeding is to determine whether Condition 23 of the SMA Permit has been breached, and basically give notice of I think if the Commission has a basis for the breach at least evidence of breach and they believe they need an answer but you could provide that in the letter and say, with information that you've obtained that you believe shows that there was a breach and that they would need to be responsive to in the contested case proceeding.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I think to some degree we need to remove our egos from this issue. You know, we're getting to the point where it's well, they're not showing up so you don't have no respect for us. It's a simple traffic improvement for an intersection. The only way that pedestrians are gonna affect the coastal zone is if a pedestrian got run over and bled into the drain line all the way to the ocean. There's no difference. Pedestrian safety is important, but it's not relevant to the coastal zone. Liability is important. There's no sidewalks on the entire length of Piilani Highway on either side. It's not a perfect world. The State is responsible for liability, not the County, not the Commission, not South Maui Citizens for Responsible Growth and it's their call from the standpoint of liability. There's more than enough on the record right now for James Krueger to fry them in court if somebody dies, but that's not the issue. The issue is the SMA and whether or not the left-turn lane is gonna affect the ocean. Whether or not the sidewalks are gonna affect the ocean is not something that's pertinent, the discussion in my opinion.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I agree with my fellow Commissioners that they haven't been responsive to us and be hopeful that they could have found somebody to come and speak to us or at least a formal letter saying I'm sorry we couldn't be there but here's what our stance are and here's the answers to your questions. I think in deferring this I think our goal is to get sidewalks on top of the highway. I think if it takes one meeting, four meetings, I think if we can get it, I think somehow if we can get them here however long it takes I think the end result is okay, we can get what we want which is a safer avenue for our kids who's going to be a high school there, who's gonna be walking across the street to the, to Blackie's as well as to the convenience store. We know it's gonna happen, and it may be a little bit longer, but hopefully we get the result that we want.

Chair Ball: Anything further? Okay, shall we vote then? Vote is...the motion is to defer this matter to the next meeting.

Mr. Hopper: Was it to provide notice also to the Department consistent with what the I guess what we've been doing to the DOT?

Chair Ball: Yes, with the...and have them answer the questions that we...

Mr. Robinson: Yeah, and what ...(inaudible)...I think if it does pass that we can defer, maybe after that we can see if we can add questions that we want the defer, it's no sense...(inaudible)...Is that a process? Per se if we have enough people that wanna defer and then if there is enough people-

Chair Ball: Yeah, we know what the questions are, so we can-

Mr. Robinson: ...(inaudible)...Or and...well, maybe we could add, you might wanna add one or two that come with some data with how they arrived the cost-

Chair Ball: That will be right now further discussion then adding conditions.

Mr. Hopper: This is to be the content of the letter. This is again not the formal contested case

hearing letter, but it's another letter that you request the Department send on your behalf to attend the next meeting and potentially discuss in discussion what you would want to say in that letter.

Chair Ball: Answer to these questions.

Mr. Hopper: Right.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: We still will have questions. We'll still have the option if they no show again, we still have the option to file a contested case?

Mr. Hopper: Again, if you find that there's evidence of a breach of your condition you could do that and seek enforcement of that, of that condition through a contested case hearing. So yes, if that's...you could do that in the future.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Yeah, I'm just letting the Commission know that I'll be voting against this motion because I believe deferring is been what we've been doing for quite a while now. I hate to keep doing the same thing. I would be for the formal contested case letter.

Chair Ball: Commissioner Lay?

Mr. Lay: On the breach, wouldn't it be no information coming in would be a breach, a no response?

Mr. Hopper: Well, I think there was an oral response. But if you were not satisfied with the information that was provided with you to date then you could cite that as a part of the...if you believe that that was a breach of the condition and that the information that they have given is insufficient to establish compliance with the condition. Then you could cite that as a reason. The main thing is though you would need to cite a basis for why there is a breach. In general, you would wanna start with that. And then if there's been insufficient response to evidence that you have on the record of why there is a breach then I think that's your...that could be an additional basis.

Chair Ball: Commissioner Robinson?

Mr. Robinson: At this time, I'd like to withdraw my motion for deferral until after a vote of a breach of...I would like to withdraw my motion.

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

Chair Ball: Right. Let's vote on that and then if that fails then we can move onto another motion.

Mr. Robinson: We can...are we allowed to...but we can't vote on the same motion twice or we can, can we?

Chair Ball: Why would you—

Mr. Robinson: If we fail, if there's like...how many rounds do you get before you—

Chair Ball: As many as you get to pass the motion, so...

Mr. Robinson: As long as somebody seconds it, it can keep on going again?

Mr. Hopper: Wait. At this stage, this motion's been moved and seconded and you're in discussion.

Mr. Robinson: Okay.

Mr. Hopper: So you could take a vote on this. Frankly, if there's no action one way or the other, the item will automatically be deferred, but it's going to be a matter of getting five votes to take a particular action.

Chair Ball: So would you like to add the questions onto your deferral?

Mr. Robinson: Next time.

Chair Ball: Okay, can we vote to the motion to defer this item? All in favor raise your hand? Two, three. All opposed? Four. Motion is not passed 'cause you need five to pass.

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

**The Motion to Defer the Matter FAILED.
(Assenting - K. Robinson, J. Medeiros)
(Dissenting - L. Hudson, I. Lay, M. Tsai, W. Hedani)
(Excused - R. Higashi, S. Duvauchelle)**

Chair Ball: Anyone else have a motion.

Vice-Chair Tsai: I move to file a formal contested case letter.

Chair Ball: Is there a second to that?

Mr. Medeiros: I'll second it.

Chair Ball: Commissioner Hudson?

Mr. Hudson: So it's gonna be deferred pending this contested case hearing anyway, right, the clarification?

Mr. Hopper: Well, you'd be sending them a letter with the hearing date. Generally the letter would establish a hearing date or at the very least say that we're going to establish hearing dates, but that's gonna be...it's not really a deferral that's taking action for further enforcement proceeding that will require their attendance.

Mr. Hudson: Okay.

Chair Ball: It was seconded by Medeiros. Any other discussion this is? Commissioner Robinson?

Mr. Robinson: For this motion, what is the planned breach for the contested case hearing?

Vice-Chair Tsai: I assume that's discussion of the commission and we'll set up a date.

Mr. Robinson: Yeah

Mr. Medeiros: Formal letter.

Vice-Chair Tsai: Corp. Counsel?

Mr. Hopper: Well, the Commissioners would need to discuss and determine what the basis of the letter would be now.

Chair Ball: Commissioner Lay?

Mr. Lay: Under the basis of the letter it's because for consideration they didn't give an appropriate response. It was only a verbal one, we'd like a written one with some documentation behind on why it was not considered and why is it where we're at at this point.

Vice-Chair Tsai: And I think the justification for this is based on the numerous attempts to set up meetings with them and had to cancel last minute.

Ms. Thackerson: Can I just clarify so I can get it down in my letter? And also I just wanted to remind the Commission they did attend a meeting so I can't-

Chair Ball: Identify yourself, Candace.

Ms. Thackerson: Yeah. But it's gonna have to be for the higher presence.

Chair Ball: Identify yourself.

Ms. Thackerson: Oh, Staff Planner Candace Thackerson. So when I'm gonna go ahead and draft this as a notice letter requesting them for contested case hearing. The breach is gonna be of whether Condition No. 23 of the SMA Permit was breached subject ...and you're saying that Freddie attending the meeting was not satisfactory. His response was not satisfactory and neither was the written response provided in the Preliminary Compliance Report. But you would like further clarification of that consideration including documentation and perhaps his higher up?

Vice-Chair Tsai: Yes. Yes, please.

Ms. Thackerson: Okay. I mean, thanks.

Chair Ball: Anything further? Commissioner Hedani?

Mr. Hedani: I'm gonna vote against the motion. I'm not even sure where we are at this point. I believe the SMA Permit was granted to this particular project and what we're discussing is a letter from a citizen's group basically contesting whether or not or asking whether or not the DOT is in compliance with the terms of our letter. The SMA Permit has been granted, the project's complete, and we're about to embark on a legal journey that's gonna cost more than the sidewalk would cost to construct. There's a cost associated with everything relative to this particular issue. This is just on this one issue, this one letter that comes in. And my concern is the time and effort and the expense that it's gonna take to go through a legal gyration which we don't know whether or not we're gonna prevail or not and whether or not there's any benefit to that at the bottom end. I just thought...I just feel that I'm not a friend of the DOT. The DOT screws up on a lot of things and I've taken issue with them on a lot of things, but we really need to move on is my perspective.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: I don't totally disagree with Commissioner Hedani's points. My feeling on this is that I think this according to Corp. Counsel is perhaps our last resort as a last ditch effort to try to get this resolved. And I'm simply looking at this as us doing our due diligence as a Commission to carry forth our duties and whatever happens I guess this, this is it. And I don't want this to be one of those things that get sweep...swept under the carpet and be done with.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I'm gonna support this one. But I know that I've seconded the prior one. You know, I too, am not a fan of DOT. However, what I do see is I have three friends, Commissioners, that are not satisfied with compliance, the information received for compliance and they want more information. And I going support that...(inaudible)...second for that too.

Chair Ball: Any further discussion? Commissioner Robinson?

Mr. Robinson: I haven't lost my patience yes, with DOT maybe 'cause I'm new. But I still have the hope that our Staff Planner will convince them that of what's going on and how close we are to really getting to a big mess here that hopefully they'll show up at our next meeting. If they don't, I'll probably then you know, might have lost my patience by then. Thank you.

Chair Ball: Commissioner Lay?

Mr. Lay: For me, it makes me just wonder if this was another island if it would have been done automatically at the start.

Chair Ball: Okay, seeing no further discussion we will call for the vote. All in favor of the motion to send a contested case...start the contested case process, raise your hand and say, aye?

Commission Members: Aye.

Chair Ball: There are four ayes. All in favor say, no? Opposed, I mean, say, no? Two noes.

Mr. Hopper: Chairman?

Chair Ball: Chair votes on the no side.

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

The Motion to Send a Letter of Notice of a Formal Contest Case Hearing Process FAILED.

(Assenting - M. Tsai, J. Medeiros, L. Hudson)

(Dissenting - W. Hedani, K. Robinson, K. Ball)

(Excused - R. Higashi, S. Duvauchelle)

Mr. Hopper: Can I make a comment?

Chair Ball: Corporation Counsel?

Mr. Hopper: Just as a potential suggestion, if there is a letter sent to DOT you could note that there was consideration of the institution of a formal contested case hearing process for enforcement purposes if...again, I don't know what the Commission wants to do. Right now it's going to be automatically deferred if there cannot be an action taken. But the fact is on the record there was vote and it failed by one vote on instituting a contested case hearing process. And so if that is something that could...the Commission would like noted on the record in the next letter sent to the DOT that's something that the Commission could consider.

Chair Ball: Do we have a new motion? Commissioner Lay?

Mr. Lay: Motion to defer including in the letter that Corp. Counsel just spoke about.

Mr. Medeiros: Second.

Mr. Hopper: And if...I'm sorry...

Chair Ball: Second by Medeiros. Go ahead, Corporation Counsel?

Mr. Hopper: And if there's any other information you wanna put in that letter, request that Candace put in that letter.

Chair Ball: I would suggest that we put the questions that we want answered in there.

Mr. Robinson: Well I think...he answered a question before about did they get a quote, and his quote was we all agree is it's not a very, very...very liable number. It's a little accelerated. So but how do we, how do we ask for a...can't ask for a second quote because they already have the number?

Chair Ball: Sorry, I don't know if that was actual a quote or he was just guessing, guesstimating.

Mr. Robinson: He was guessing at per square foot...

Chair Ball: I believe. So we can ask for that because the footage was incorrect also.

Mr. Robinson: Right.

Chair Ball: So if we get more accurate estimate.

Mr. Robinson: But I guess, and then I guess I'm apprehensive by asking that because they might ask for a delay, say well we don't have that and we need to get that in 45, 60...you know how--

Chair Ball: Well, that's their problem.

Mr. Robinson: --that's a catch-22, yeah.

Chair Ball: Otherwise we go to contested case hearing.

Mr. Robinson: Contested case, yeah.

Chair Ball: So that's their...(inaudible)...to get that done. Commissioner Lay?

Mr. Lay: Also, with the school being put other is there at that point would there is there at point would there be a necessary sidewalk running through tying into that?

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, can we request at least a written response?

Chair Ball: Well, they tried to do that at the last meeting. They wanted to respond in writing, but we told them that they had to be here. I believe the Deputy Director of the State Department of Transportation was supposed to be in attendance for this who's this you know, second boss basically. Right, and I think we could get both. They come and present and they--

Mr. Medeiros: That would be better.

Chair Ball: --give it to us in writing also.

Mr. Medeiros: At least the written.

Chair Ball: I would think that you know like Commissioner Robinson was saying, we get, you know, the estimate, a real estimate, not I think it's this, right--

Mr. Robinson: And, and--

Chair Ball: --footage and--

Mr. Robinson: --yeah, and then hopefully--

Chair Ball: --material costs--

Mr. Robinson: --and hopefully the Kihei community will have a estimate of their own with their

research.

Mr. Medeiros: Because as it is right now with them not showing up and they don't have a written response, we can't act. We can on a written.

Mr. Robinson: Exactly.

Mr. Medeiros: You know, so, I mean at least a written if they cannot attend.

Chair Ball: Well, and because that's what it was based on their consideration. Well, where's your consideration? Well, I think is not a consideration to me. Your consideration is look, here's the documents that we've researched this thing and it's not feasible is consideration more to me you know, so I'd like to see something like that. Anyone else? Okay, motion to defer. Do you have that? Oh, sorry, thank you. Public Works?

Ms. Dagdag-Andaya: Thank you. Rowena Dagdag just for the record. I...I'm just wondering listening in on all this discussion. Where do you want the sidewalk to be placed?

Mr. Medeiros: On the side of the road.

Ms. Dagdag-Andaya: On what side? Piilani or on the mauka side, makai side?

Chair Ball: That's a good question.

Ms. Dagdag-Andaya: You know, we...I think if you're gonna come up with a estimate or a quote you at least need to know where the sidewalk is gonna go.

Chair Ball: Where, yeah, thank you for that. The State has apparently done the estimate for the sidewalks in the surrounding area.

Mr. Robinson: That's how you got the number.

Ms. Dagdag-Andaya: Excuse me, Rowena Dagdag- Andaya once again. But I think they may have just come up with a rough estimate in their head, but I think you would need to make it clear where you want the sidewalks to go. You know after this project came before the Planning Commission what was it 2012? 2012. A few years after that our department started considering...well, we created a sidewalk fund or a sidewalk item in our CIP, and I think it was in 2013, 2014 that we thought okay, why don't we look at Ohukai sidewalks on Ohukai? Now this is way after this project had gone before the Planning Commission. And you know, we've even talked to Mike and members of the South...Kihei Community Association about that Ohukai project and that's gonna happen on the makai side of Piilani Highway. So I think, you know for me, just to know where your sidewalks are gonna connect. We always think of when we do a project, we always need to plan it out. So we wanna know too, I mean, I'm speaking for my department, but we just wanna know where would these State sidewalks be located? Are you looking at the mauka side of Ohukai? I mean, how many feet are you looking at? Are you looking at Piilani Highway, and then...or is it the ultimate goal to eventually create sidewalks all throughout Piilani Highway? I think those questions also need to...I'm not...and again, I'm trying to defend DOT here, I'm just wondering.

Chair Ball: Where does the County end 'cause is Ohukai, right?

Ms. Dagdag-Andaya: Correct.

Chair Ball: And so where does that end and the State begin?

Ms. Dagdag-Andaya: Well, there's a...I don't know the exact number or the distance from the intersection up to our portion, but on the State's intersection I mean there is...I don't wanna say, you know, on the record how many feet, but there is a certain amount of feet that they are still in charge of, and then after that begins our jurisdiction.

Chair Ball: Okay, so that's a starting point.

Mr. Hopper: Mr. Chair?

Chair Ball: Corporation Counsel?

Mr. Hopper: Just as a comment. This isn't going to be on really...I don't think a perspective sidewalk. It's gonna be what they have already considered. This is compliance with the condition and what they've done to consider this and it's something that I think the Commission's asking what have you already considered and finding evidence of that. So I think that's what the question is. If there's a broader issue of sidewalks there independent of this condition or on other County or State projects then those are not necessarily...I mean, they're relevant, but necessarily to the condition compliance. I think that the Commission's asking for...I don't wanna...the Commissioners can ask for whatever they want I suppose and I think you bring up a good point as far as the specific location, but I think for now, the question is based on the condition what the DOT has done as far as consideration and what the Planning Department has reviewed as part of the...as far as what consideration has been given.

Chair Ball: And I agree with that, but we do wanna give them some guidance on, you know, what would be consideration and then looking specifically at, I don't know, all the sections of that intersection or the, you know, the northwest corner or whatever, so...Commissioner Robinson?

Mr. Robinson: Are we able to call up anybody right now to ask them that question?

Chair Ball: What question?

Mr. Robinson: Is...you know, this is...we've been talking about this for a while and I've heard a lot of data and of course, the comment is the reason we're in this situation is because you have the new sidewalks and new type of, you know, neighborhood sidewalks and bike paths and all that. And even though this project was awarded after that the Public Works, we weren't able, the County to go ahead and get that in the bid and so we're here try and debate, trying to get this backwards. So I wanna make sure that we understand what happened is the Public Works didn't get it into the bid process even though that was kind of a thing we wanted to do in 2010. But my question is, is I know that there's like a standard of distance and you know, intersections that we wanna go through and I was, I was gonna throw it over to maybe one the people that are in the Kihei committee to see if they actually are, you know, are more in tune to what the State were talking

about the last time?

Chair Ball: Well, I would think—

Mr. Robinson: Because, yeah, because like you said the State gave us a ballpark figure so they must of looked at something.

Chair Ball: And that's what I think we have to...we're gonna base our decision on when they come to talk to us.

Mr. Robinson: Right.

Chair Ball: They're gonna say, okay, this is what we considered. We considered this sidewalk, this sidewalk, this sidewalk, and that sidewalk or we considered just this one section in sidewalk. I don't know, so we should wait for their consideration I think on what they did and then when they're here we can ask them well—

Mr. Robinson: Let them embellish on that.

Chair Ball: Yeah. Candace?

Ms. Thackerson: Staff Planner, Candace Thackerson. So I believe the motion, 'cause I just wanna make sure my notes are okay for the letter. See how you guys feel about this is to defer for today and we're requesting their attendance and their presence of either, either the Deputy Director or the Director or just...or would you like the Director?

Chair Ball: Either one.

Ms. Thackerson: Okay, so the presence of the Deputy Director or Director of State DOT with written documentation of construction cost estimates and including, but not limited to precise square footage of sidewalk...of considered sidewalk area, material and labor cost, et cetera. I will also mention formally in my letter that there was a contested case hearing motion on the floor and it failed by one vote.

Chair Ball: On that sidewalk you want to put and location.

Ms. Thackerson: Okay, and location.

Chair Ball: And also we want them to be at the August 25th.

Ms. Thackerson: August 25th is that...Clayton, will that be okay? I mean, are able to get that on the agenda by the next meeting? And a letter out...I'm just making sure that we can agendize that properly.

Mr. Yoshida: Well, we have two public hearing items and one communication item scheduled for the meeting plus the Public Works workshop. Again, to get the Deputy Director of the State Department of Transportation they're saying they need at least three weeks lead time.

Ms. Thackerson: Oh okay. So perhaps the first meeting in September?

Unidentified Speaker: September 8th.

Chair Ball: What is that date?

Ms. Thackerson: September 8th

Chair Ball: Commissioner Hedani?

Mr. Hedani: I don't think it's important whether it's the Deputy Director or the Director or a representative of the DOT, the _____engineer that they can come up with, the District Engineer, as long as whoever comes has the answers to questions that we have if we know what our questions are.

Mr. Lay: And the authority to answer it.

Chair Ball: Well, it's true.

Ms. Thackerson: Staff Planner Candace Thackerson. Would the Commission just like then the letter to state that...I mean, if I write in the letter that somebody with authority from State DOT and they bring with them the written documentation of the construction cost estimates and including, but not limited to the precise square footage of sidewalk area and locations that were considered, materials like if someone brings that, like say, Freddie who I actually don't believe is with the State DOT. Oh, is he still? Okay, great. Then, and they bring all of that would that satisfy the Commission?

Chair Ball: Corporation Counsel?

Mr. Hopper: Just a suggestion of the Commission. You may also wanna say, and any other responses to the issue of compliance with Condition No. 23. Maybe leave it in addition to those...that information. And you also would I think wanna note that failure to attend or provide the information may result in a contested case proceeding going forward. I'm sorry, I didn't mean to cut off Commissioner Tsai.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: My concern is that they have appeared...well, what's his name Freddie, appear in front of us before and the questions that we asked were simply just answered they considered it and they didn't wanna do it. So this is why I believe someone with a higher authority would be better fitted to address some of these questions in a more appropriate manner versus just we looked at it and that was it.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I think if that happens again, where, where he just comes and gives off the cuff answers you'll probably get my vote and probably go to that contested case hearing.

Chair Ball: Anything further? Commissioner Hedani?

Mr. Hedani: I'm gonna vote...I'm gonna vote against the motion to defer only because I think Item D-1 should just be filed.

Ms. Thackerson: For clarification?

Chair Ball: Candace?

Ms. Thackerson: Were we going with Commissioner Tsai's request for their presence or were we not?

Chair Ball: The original motion was to have—

Ms. Thackerson: The Deputy Director or Director?

Chair Ball: Right.

Ms. Thackerson: Yeah, okay.

Chair Ball: And to give them enough time which is why we put it to the September 8th. Okay, all good? All in favor of the motion raise your hand, say aye? Four, five. All opposed? One. The motion carried.

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

VOTED: To Defer the Matter to the September 8th Meeting Requesting that the Director or Deputy Director of the Department of Transportation be Present. To be Noted in the Letter that the Commission had Considered the Institution of Formal Contested Case Hearing Process for Enforcement Purposes and Requesting the Concerns Listed of the Commission be Addressed in a Written Response and also at the Meeting.
(Assenting - I. Lay, J. Medeiros, L. Hudson, M. Tsai, K. Robinson)
(Dissenting - W. Hedani)
(Excused - R. Higashi, S. Duvauchelle)

Chair Ball: All right, moving on.

Mr. Yoshida: Thank you, Mr. Chair. The next Item E-1, under Communications, Mr. D. Ward Mardfin, Vice-Chair of the Hana Advisory Committee transmitting the Committee's recommendation on the following application: Wayne Arakaki of Wayne Arakaki Engineering, LLC on behalf of Thomas Hoeffken requesting a State Land Use Commission Special Use Permit for the mining and resource extraction of rock to be processed as aggregate for roadway maintenance on approximately 12 acres of land located next to Kawaipapa Stream in the State Agriculture District for property situated at TMK: 1-3-004: 001 (por.), Hana, Island of Maui. The Staff Planner is Sybil Lopez.

E. COMMUNICATIONS

1. **MR. D. WARD MARDFIN, Vice-Chair of the HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION transmitting the Committee's recommendation on the following application:**

MR. WAYNE I. ARAKAKI, of WAYNE I. ARAKAKI ENGINEERING, LLC, on behalf of MR. THOMAS HOFFKEN, requesting a State Land Use Commission Special Use Permit for the mining and resource extraction of rock to be processed as aggregate for roadway maintenance on approximately 12 acres of land located next to Kawaipapa Stream in the State Agricultural District, TMK: 1-3-004: 001 (por.), Hana, Island of Maui. (SUP2 2014/0002) (S. Lopez)

Ms. Sybil Lopez: Good morning, Maui Planning Commission. I am Staff Planner Sybil Lopez on the SUP2 2014/0002. The application is for a State Land Use Commission SUP for mining and resource extraction on a 12-acre portion of a 72.8 acre in the State Ag District, TMK: (2) 1-3-004: 001 in Hana community, Island of Maui, Hawaii. I do have the applicant representing today, Gabe Hoeffken. He'll be doing a power point presentation, but before he goes on I'll just kinda do a summary on what the project is, so...and while he gets his presentation ready.

So basically we're looking at Maui County Code 19.30A-060 under Special Uses. That the following uses and structures shall be permitted in the Agriculture District if a Special Use Permit as provided in Section 19.510.070 of this title has been obtained. Except that if the use described in this section also requires a special permit as provided in Chapter 205 under the Hawaii Revised Statutes and if the land area of the subject parcel is 15 acres or less. The State Special Permit shall fulfill the requirements of this section. And under that section we're looking at Section 12 for mining and resource extraction.

So we did conduct public hearing held before the Hana Advisory Committee on March 9, 2015. It was unanimously voted to recess the meeting until Tuesday, March 17, 2015 in request to do a site inspection, a site visit. The site visit was held on March 17, 2015 at the driveway entrance to 4356 Hana Highway. Who was present was the applicant himself, who convened with three other committee members which was comprised during the March 9th meeting. And so they came back, they recessed and came back on that afternoon to unanimously vote to recommend approval. So I will turn the time over to Gabe and he can conduct his power point presentation. Thank you.

Mr. Gade Hoeffken: Good morning everybody. Thanks for letting me speak this morning. I appreciate your time and your consideration. I'd also like to thank the Hana Advisory Committee for their time and their recommendation. They did a very thorough review of our application and asked a lot of really good questions.

So to start, the property owner is actually my father Tom Hoeffken. My father and I are co-owners of Thomas Backhoe and Excavation. And Thomas Backhoe would actually run the rock crushing operation.

So our goal today, and through this process is to get a Special Use Permit to be allowed to crush. We're asking for permission on a 12-acre piece of land out of the larger 72 plus acres. And the

property is currently classified as State Ag, County Ag and is located mauka of Hana Highway so it's not in the SMA area.

Our land use designation Agricultural, State Land Use. Hana Community Plan is Agriculture and Rural. County zoning is Ag and Interim, and then the Flood Zone is X A. X is minimal risk and the A is no base flood elevation determined. Generally the land is very rocky and very porous. Having been there during significant rain events. It doesn't even puddle. All the water penetrates in the ground.

Surrounding uses to the north of the property is undeveloped land. East is Hana Highway. South is Kawaipapa Stream. And west is some undeveloped and some residential properties. The area we're looking to quarry is actually pretty much in the center of the property so it's not really next to any of those boundaries and that will be shown on a later slide. So this is the whole subject parcel. So you can kinda see to the right is Hana Highway and then to the left would be Haleakala.

The property is mostly rock and jungle and it seems counterintuitive that jungle would be growing on top of rock, but if you walk the property you'll see that it's jungle...I mean it's rock outcroppings and valleys just covered with the dense jungle foliage. There's really little to no top soil. The soil that is there is just a kinda a rocky material. Yeah, if you tried to have livestock on the property they'd pretty much get lost or get injured. It's really not ideal for that. And the jungle wouldn't make for very good feed.

This is a photo of an area where we started trying to work on a driveway and you kinda see it's pretty much...the background, the jungle is what most...that's the area near Hana Highway looks like and that's just rock from just a little bit of excavation. I think some of that had actually been broken with a hoe ram in order to remove it.

Here are some comments from the Hana Advisory Committee after their site visit on the 17th of March. One comment was, when I look at the site if you try and grow something there, the only thing you're gonna be successful growing is mosquitoes because it's rock. I mean, it's not what I call rock, it's boulders. So...this was one of the big concerns with the Hana Advisory Committee was is this land good potential agricultural land? 'Cause you know, they wanted to make sure we weren't gonna be digging out all top soil to get down to the rocks. Mr. Crawford from the Committee said having gone to the site I think that you know, I can say from my experience it's certainly not quality agricultural land. It's not, it's impossible to say yes we could grow some things here, but it's certainly...all the walking around I did was on rock and papa the whole time. I didn't see any real top soil that was readily available. And I would say if you wanted to really do agriculture on this land you'd actually have to bring in top soil, bring top soil in and doing that would be a lot easier after the land had been basically, the surface had been mined and made level. So the people that went on the site visit their comments pretty much reinforced what we said which was the land is very, very rugged and mostly rocky.

The benefits of crushing rock in Hana or the uses of aggregate in Hana and throughout the island and the world, one of the main uses for aggregate is concrete production. It's also used for septic system, leach fields and other drain systems for getting rid of either waste water and/or storm water. Gravel driveways, also road base for asphalt and concrete road construction. If you're gonna build a road you need gravel. I already said drainage systems. And also, for use under concrete building

pads.

Okay, this is a slide where it actually shows the area to be mined, the 12 acres. It's important for you to note that 12 acres would not be mined concurrently. The operation would probably take up half an acre to an acre at a time. There's not a huge demand for aggregate in Hana. It's a small community. There's no point in making a whole bunch material if your market only needs a certain amount. It's not cost effective to export material to this side of the island. And because the operation is so small, the cost of crushing is significantly higher than it would be on this side of the island. We'd have to run smaller machines. It doesn't make sense to invest in the kind of efficient machines that you'd use on this side because you do such a small volume. So it would be a very small operation and it...that 12 acres would probably you know be used over a pretty large period of time.

Benefits of local rock crushing. It's important, you know, you do things it has a benefit to the community. It's not just, you know, a money making venture purely. Some of the benefits are reduced cost of materials in Hana both concrete and aggregate. Reduced wear and tear on the Hana Highway. The Hana Highway has been mostly repaved in over the last like I don't know if it's like eight or ten years. There's only a few sections that are currently not repaved. So the road's really nice. If you import rock, trucks do the most damage to roadways. So reducing the amount of trucks that you have on that road it really helps the longevity of the road and reduces repair and maintenance costs.

Additionally, having aggregate readily available to contractors and homeowners makes it easier for people to get stuff done. If there's an emergency, if you know, County, State needs a load of rock and it's an emergency rather than having to run all the way to the other side of the island and losing half a day, they can just come and grab it. So it makes it available. And additionally, it's jobs to local residents of Hana. We employ Hana residents and we would sell to Hana residents which would help the community with jobs.

Here's...so basically the first meeting there was public testimony. The majority of it was favorable. There is one individual who wasn't really for or against and I'll talk about that. I'm just gonna summarize what these individuals said, but the quotes are there. Mr. Perry Bentinors who's Maui Invasive Species helicopter pilot was for it. We allow them, Maui Invasive Species Committee to park or land and take off their helicopters from the property. And that allows them to save money on fuel because they don't have to go as far. So they're very supportive of just us maintaining the area and keeping it down to where they're able to land and to continue to use the property. Mr. Jim Lyons was in support because he works part-time as a contractor and he appreciates having locally available materials. Mr. Shane Sinenci was the one individual who was kind of on the fence and his concerns were cultural and archaeological. And when he first spoke I hadn't had a chance to share our archaeological investigative study is that the right word, yeah. So we had done that. I believe it was like a 70 something page document and it covered the entire property. So we shared that with him and then later he actually went on the site visit and was pretty happy with the fact that the area that we are planning to work on has no significant archaeological sites and that will be shown on a future map. And then one of the neighbors of the property Ms. JoAnne Young was also in favor of our Special Use Permit.

Archaeological, historic and cultural resources. Hana Associates completed our archaeological

inventory survey of the project site. I don't know what the second line is. Basically 26 sites were documents including both precontact and historic era sites containing 169 features, 22 sites are adequately documented, no further work or preservation recommended. Three sites are recommended for mitigation, data recovery or preservation. And the archaeological inventory survey meets the requirements of the State Administrative Rule 13-276 and is accepted as final.

So this map actually shows the proposed mining area and then it's really small, but all those numbers actually show the various sites. And in the report and you could go and there is a thing basically said what each one of those sites was in relation to the map, you can look at it. There are no sites in the proposed mining area or the roadway to the mine.

Infrastructure and public utilities and services. Water, the amount of water used for crushing is approximately 250 to 1,250 gallons per day equivalent to or less than single family. Most times crushing will be done after a rain event. It rains a lot in Hana. If your rock is wet when it crush it doesn't require as much water to keep it from having dust. The amount of water used is dictated visual emissions testing and the water is required for dust control and only needed during the crushing operations or through a dry spell if we have to water the road. And basically crushing operations are permitted through the State Department of Health Clean Air Branch or Division. So there's a pretty stringent process of getting your equipment tested for emissions. And tracking emissions during crushing operations. So it has to...reports are done bi-annually. And then yearly you gotta submit how much you've crushed and tonnages and then they have actually sheet where you calculate your total emissions and whatnot.

Drainage impact is minimized by the porous and rocky terrain. The crushing operation will have little or no impact on drainage or runoff as no impervious surface would be created. Impervious surface is new blacktop asphalt or concrete surfaces. Due to the terrain and location, it is unlikely that runoff from the crushing area make it to the stream or neighboring properties. As you noticed, it is pretty much in the center of the property and the property is all hills and valleys and it also have very good drainage.

Environmental Impacts, the operation of the crushing equipment is, already said this, regulated by the Clean Air Branch of the Department of Health. It includes mandatory equipment testing and usage laws. Also, due to the small scale and limited use impact would be minimal. Our production would only be used in Hana and East Maui. Only enough material to meet the needs of current and upcoming projects to be made. And we're allowed to do 2,080 hours of crushing per year. We projected it would probably be less than 25 of that per year on it on the average year. I mean, there just isn't a demand to crush that much.

This pretty much is what, well it summarizes the two meetings with the Hana Advisory Committee. During and after or the first meeting there were concerns about potential waste of ag land basically not using it for agricultural purposes, noise, quarry operations, and scale for operations, and question about the location of archaeological sites led to the extension of this meeting and a site visit on the 17th of March. On the March 17th meeting after the site visit, they voted for approval of the Special Use Permit. Basically they had two things that they wanted added. One was that it only operate Monday through Friday, 7:30 to 4:30 for noise and dust control basically so that stuff not going early in the morning or late in the afternoon or on weekends. And if any significant or any archaeological items are found that we would contact DLNR right a way. And that's pretty much

a given, it's the law. You're supposed to do that if you find anything you gotta ...(inaudible)...

Conclusion, our goal would be to reduce the trucks on Hana Highway or actually if we're allowed to crush it will reduce trucks on Hana Highway. It will reduce Hana's reliance on imported material. It will have minimal environmental impact. It will have low production volume just because of low need. There will be no disturbance of archaeological sites on the property. And we will continue to support Maui Invasive Species Committee and the Hana community. Questions?

Chair Ball: Okay, at this time we'll open it up for public testimony. Anybody wishing to testify at this time may do so. Seeing none, we'll close public testimony. And let's see, can we have the recommendation by the Staff Planner, Sybil?

Ms. Lopez: So just for the record, when we did do the visit just to my knowledge looking around the Hoeffkens has contributed a lot to that Hana community and I think it's a big asset that they have down there for the Hana people. What I wanted to request, we do have nine conditions, nine total conditions that I've written and looking at the No. 9, I would wanna request to strike No. 9 being that it is not relative to this project based on MCC 19.30A. It's in relation to 19.64.030. So the request would be, recommendation would be for eight conditions and not nine conditions. The one through six conditions are pretty much standard conditions. Usually it will be valid for three years. The Director may forward the time extension request to the Commission for review and approval and may require a public hearing on the time extension by the Commission. No. 2 would be the transferring if they were to sell. This is standard. No. 3 would be the insurance. Four will be compliance with all other applicable governmental requirements. Five would be a compliance report. No. 6 would be develop the property in substantial compliance with the representations made to the Commission in obtaining the SUP. And No. 7 and 8 was the addition from the HAC, the Hana Advisory Committee which Gabe explained in his presentation.

Chair Ball: Okay, thank you. Questions from the Commission? Commissioner Robinson?

Mr. Robinson: Can you please go back and tell us why No. 9 is not applicable?

Ms. Lopez: No. 9 refers to bed and breakfast, single-family dwellings, duplex dwellings. In this particular project they're only doing resource and mining. Although it is an Agricultural District if they happen to want to put a bed and breakfast in that area which I don't think that they would that the uses and structures permitted on property shall be limited to the Section 19.64.030. I mean, if you feel that it should stay in there, then...but it's just not relative in the fact of what the uses...what they're requesting the use to be, and I wouldn't wanna see them any bed and breakfast home in that vicinity.

Chair Ball: Corporation Counsel?

Mr. Hopper: Is this...this looks almost like it's a leftover condition from a change in zoning like it was for...'cause it says, it limits the uses and structures. I think I've seen conditions like that for like a SBR change in zoning or something when they wanted to limit the uses. Was this proposed for a Special Use Permit? Or this looks like it's a change in zoning type of condition.

Ms. Lopez: Yeah, that's why it's not relative to this project. So it wouldn't, it wouldn't relate to what

they are coming in for.

Mr. Hopper: Yeah, so they're asking for Special Use Permit to operate what was presented--

Ms. Lopez: Operate the resource and mining.

Mr. Hopper: --and...yeah, so this No. 9 looks like it's there...like if you're gonna get a change in zoning and they list like 10 uses, this would limit those uses. This is not what this permit's for essentially so...

Ms. Lopez: Yes.

Mr. Hopper: Okay.

Ms. Lopez: But it is in Section 19.30A, but not pertaining to this resource and mining.

Mr. Hopper: Yeah, but the Special Use Permit is to do an additional use, it's not allowed. It's not to change the zoning--

Ms. Lopez: No, it's not.

Mr. Hopper: --for groups use. So this is, yeah, this...No. 9 should not be on this permit.

Ms. Lopez: Thank you.

Mr. Hopper: Yeah.

Mr. Robinson: But, but in reading this, isn't there like...isn't this part 1 of part 2 of affordable housing or are you guys aren't at that stage yet so this the first stage?

Mr. Hoeffken: This is Gabe Hoeffken. Basically this is...affordable housing is separate, but it ties into this. We're currently working on application for a 201H for the lower portion of the property for 24 workforce housing pieces in cooperation with Habitat, but that still hasn't been designed yet.

Mr. Robinson: Same property though?

Mr. Hoeffken: Same property, yeah. Lower portion, like the portion closest to the highway.

Mr. Robinson: You're working on your application, but...(inaudible)...not in.

Mr. Hoeffken: Yeah, just finished our Traffic Impact Study, traffic assessment for that. It just got done.

Mr. Hopper: But the Special Use Permit for the 12 acres does not cover any of that property?

Mr. Hoeffken: No.

Mr. Hopper: Yeah, so the 70 acres, but the Special Use Permit and the area that the Commission has jurisdiction over is the 12 acres for the Special Use Permit. Yes, so the... 'cause otherwise if it's bigger than the 12 acres you'd have to go to the State Land Use Commission, but it's only 12 acres so it's...that's the purview of the Commission here.

Mr. Robinson: And then when they go for the affordable housing does that, does that come back to this if it's less than 15 acres?

Mr. Hopper: Are they gonna need...well, I don't know what the plans are for affordable housing. I mean, there's a special-

Mr. Yoshida: If they go through the 201H process that will be handled by the County Council. The County Council will grant the 201H through a resolution.

Mr. Hopper: Or the Land Use Commission if it's greater than 15 acres.

Mr. Yoshida: Yeah if it's greater than 15 acres then for the affordable housing then they would have to go to the State Land Use Commission for to reclassify. If they have to reclassify the land from Ag to Interim.

Mr. Robinson: And then, and then if they wanted to say become a B&B would come back for a Special Use Permit because... 'cause the County wouldn't grant B&B, it would just be affordable housing and then if they wanted to change that to be a bed and breakfast or...no?

Mr. Yoshida: Well, for the bed and breakfast if it's still in the Ag District, the bed and breakfast is not currently a permitted use in the Ag District. That's why we process so many State Special Use Permits in Launiupoko and in the State Ag District for bed and breakfast, bed and breakfast uses. So if they wanted to do it and the project area was less than 15 acres they would have to come to you to allow for a bed and breakfast permit use as several other entities in Hana have located in the State Ag District.

Mr. Robinson: Thank you.

Chair Ball: Okay, Commissioner Hedani?

Mr. Hedani: It's a question for Sybil. I'm looking at Exhibit 4 and there's two red circles. What do those represent? Well, there's a red oval and a red circle what do those represent? I guess the project is the "X"? Is the project the "X" on this exhibit?

Ms. Lopez: Yes, the project is the "X".

Chair Ball: Is it relevant to the project?

Mr. Hoeffken: It's not. I don't...I've never seen this map before, but it's well away from where we...(inaudible)...

Chair Ball: Okay.

Mr. Hedani: Okay, I guess my question basically is how close is the project to the nearest people that can hear it and how loud is the project in terms of noise and who would be...is there anybody in the area that would hear the operation operating?

Mr. Hoeffken: Potentially, but it's not much louder than regular farming activities. We're running tractors and/or if we were just trying to clear the land with say a D-9 or D-10. So it does make noise. It's not silent. I mean, it's pretty much any sort of construction activity it's gonna be fairly loud. That's why the Hana Advisory Committee made the recommendation that we only work from 7:30 to 4:30. And several neighbors were present and one was actually in support of project even though she said that she can hear it, she felt that the benefit for the community was worth the noise. But it's not ridiculous noise. It's not someone running—

Mr. Hedani: Okay, well when I think of a rock crushing operation, I'm thinking of some kind of a machine that takes big boulders and makes it into little pebbles.

Mr. Hoeffken: Yeah, the crushing...(inaudible)...

Mr. Hedani: And it's really, really noisy.

Mr. Hoeffken: It is. But one of the advantages of being in a jungle is the foliage actually helps reduce the sound. And you know, we're thoughtful about...we're thoughtful when you crush, you know, if there's a wind blowing right towards the neighbors, we try not to crush as much.

Mr. Hedani: So I guess my question would be what is the distance to the nearest people that would hear the operation?

Mr. Hoeffken: I don't know if I'm able to get internet. I can potentially measure it with my laptop. It's over 1,500 feet. I don't know exactly how far.

Mr. Hedani: Fifteen hundred feet?

Mr. Hoeffken: It's over 1,500.

Mr. Hedani: Okay. Unless you have affordable housing on the project in which case they'd be right next door to it?

Mr. Hoeffken: Well, we are not allowed to crush from the State permit closer than 1,500.

Mr. Hedani: I see.

Mr. Hoeffken: So they actually have a restriction built in on the Clean Air Branch side. So yeah, we're limited. So if the affordable housing comes in and we still need to crush we actually gotta go, I'm guessing maybe the top part of the 12 acres would probably still work, but we'd have to come back to you guys and say, hey we wanna move it to this area that's further way...(inaudible)... Really, my father is retirement age, and he pretty much runs everything in Hana, into Hana. I do not plan to go to Hana. So when he retires, he'll probably be shutting down. The goal is to make enough rock to hopefully to do this housing project, help out the community for as long as we can,

to have a little bit surplus and then when he retires that's pretty much it. We don't have any an long term vision to run it ...(inaudible)...

Chair Ball: Commissioner Hedani?

Mr. Hedani: What happens to the land after the rock is removed?

Mr. Hoeffken: Gabe Hoeffken. After the rock is removed, it's pretty much just left flat. We don't leave big craters and holes like for a landfill. In fact, we don't really, I mean, we'll break larger boulders, but we're not blasting and we're not using big hoe rams to extract the rock. If the rock's solid we leave it. We basically just take off the loose stuff. So but hills and valleys we kinda make it a flatter area.

Mr. Hedani: It's basically a graveled area?

Mr. Hoeffken: Exactly.

Mr. Hedani: Okay.

Chair Ball: Commissioner Lay?

Mr. Lay: I'd like to commend you too. You're a big asset in Hana. We're gonna need a lotta gravel out there and with the rainy season. But I do have a question on your runoff. I know your location is in the center of that property and with the stream, you know, right close by there, I mean is there any chance of any...when you're washing off your machinery or when your trucks driving through and your general rain will it go into the river?

Mr. Hoeffken: Gabe Hoeffken again. That's a great question and there really isn't. I mean, we're really sensitive to the water sources in Hana 'cause water is so precious. And there's really no way. I mean, if we were trying to do heavy agriculture, the run off issue would be a lot greater than with us crushing because we'd be trying to use a larger portion, we'd get a lot closer to the river. We are far enough away from the river that there's really no real chance of it getting there. The other thing about rock in comparison to dirt, soil is...dirt and soil has more of a tendency to shift and move and run where as rock the water pretty much goes right through it and then just dissipates. It rarely moves the material. So...

Mr. Lay: So Kawaipaa, the river does it run all the time or is it just seasonal?

Mr. Hoeffken: It's just seasonal. I was lucky enough to see it run once when I was out there. And it was actually pretty incredible because we hear the...this loud noise of the river coming. And we run down to the river and I expect the speed of water to be very, very, very fast and to just come barreling down the hill. Well, because of how porous the rock is, it was actually moving at a brisk like walking. Because it was actually having to fill in all the underground cavities and voids before it could actually come up to the surface where you could see it. It was just moving along at a very slow pace. But it's really rare. I think it probably does run underground probably all the time, but you don't see it.

Mr. Lay: Okay, thank you.

Chair Ball: Further questions? Seeing none, do we have a motion? Commissioner Medeiros?

Mr. Medeiros: Move to accept the recommendation.

Mr. Lay: Second.

Chair Ball: Second by Commissioner Lay. Further discussion? Public Works?

Ms. Dagdag-Andaya: I just wanted to...I mean just thinking about it, I wanted to add in just a condition about best management practices. If we can include that if you guys would be okay with that by creating a best management practices plan that you would have the Public Works Department review when you guys do your grading permit.

Mr. Hoeffken: Is that in addition to the regular...(inaudible)...

Ms. Dagdag-Andaya: It's still the same. I mean, it's the same. It wouldn't be in addition. But I thought you know, just to document that in the conditions knowing that, you know, that's something that we should also review too.

Chair Ball: Is that acceptable to the maker of the motion and the seconder?

Mr. Lay: Yes.

Chair Ball: Further discussion? Sybil?

Ms. Lopez: So I'll add that as a condition the BMPs, and do you still want me to strike No. 9 or are we leaving No. 9?

Mr. Hopper: I'd strike it.

Chair Ball: Maker of the motion?

Mr. Medeiros: Strike it.

Mr. Lay: Second.

Chair Ball: Okay, striking 9 and now adding 9, a new 9. Okay, all in favor of the motion, please raise your hand, say, aye?

Commission Members: Aye.

Chair Ball: Motion carried unanimously.

Ms. Lopez: Thank you, Commission.

Chair Ball: Thank you.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit as Recommended by the Hana Advisory Committee to the Maui Planning Commission and Department as Amended with Deletion of Condition No. 9, and the Addition of a Condition Regarding a Best Management Practices Plan Reviewed by the Department of Public Works.
(Assenting - J. Medeiros, I. Lay, L. Hudson, M. Tsai, W. Hedani, K. Robinson)
(Excused - R. Higashi, S. Duvauchelle)**

Chair Ball: Okay, moving on.

F. ACCEPTANCE OF THE ACTION MINUTES OF THE JULY 28, 2015 MEETING AND REGULAR MINUTES OF THE JUNE 9, 2015, JUNE 23, 2015 AND JULY 14, 2015 MEETINGS

Mr. Yoshida: We're on Item F, Acceptance of Action Minutes of the July 28, 2015 Meeting and Regular Minutes of the June 9, 2015, June 23, 2015, and July 14, 2015 Meetings.

Chair Ball: Is there a motion to approve?

Mr. Medeiros: So moved.

Chair Ball: Is there a second?

Mr. Hudson: Second.

Chair Ball: All in favor say, aye?

Commission Members: Aye.

Chair Ball: Any opposed? Motion carries unanimously.

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

**VOTED: To Accept the Action Minutes of the July 28, 2015 Meeting and the Regular Minutes of the June 9, 2015, June 23, 2015 and July 14, 2015 Meetings.
(Assenting - J. Medeiros, L. Hudson, I. Lay, M. Tsai, W. Hedani, K. Robinson)
(Excused - R. Higashi, S. Duvauchelle)**

Chair Ball: Item G?

G. DIRECTOR'S REPORT

- 1. Notification pursuant to its Special Management Area (SMA) to the Maui Planning Commission of the following SMA Appeal:**

PAUL ALSTON & PAMELA W. BUNN of ALSTON HUNT FLOYD & ING, attorneys for Appellant SEASHORE PROPERTIES, LLC submitting a Notice of Appeal on July 27, 2015 of the Planning Director's decision to issue an After-The-Fact (ATF) Special Management Area (SMA) Minor Permit Approval for Flatbread Restaurant at 87/ 89 Hana Highway, TMK: 2-6-002: 002, Paia, Island of Maui. (SMX 2014/0291) (SM2 2015/0054) (APPL 2015/0002)

Mr. Yoshida: Under Director's Report, No. 1, we are notifying the Commission of the filing of an Notice of Appeal by Paul Alston and Pamela Bunn of Alston Hunt Floyd and Ing, attorneys for Appellant Seashore Properties, LLC. I guess they filed it on July 24, 2015, and they filed their filing fee on July 27, 2015 of the Planning Director's decision to issue an After-the-Fact Special Management Area Minor Permit Approval for the Flatbread Restaurant at 87/89 Hana Highway, TMK: 2-6-002: 002, Paia, Island of Maui.

This is for notification purposes pursuant to your SMA Rules, Section 12-202-26 which states in part, the Department shall notify the Commission at the Commission's next regularly scheduled meeting of a filing of the Notice of Appeal.

Chair Ball: Okay, we'll open it up for public testimony at this time. Francis Skowronski is signed up to testify on this item.

Mr. Francis Skowronski: In lieu of the Appellant not being present, we would have no testimony at this time.

Chair Ball: Okay, thank you.

Mr. Hopper: There's no action or description. This is not the actual beginning of the appeal. That's gonna have to happen in the future date. So this is, this is purely for notification purposes. No action is required or permitted at this point.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Question? What is the process when somebody files an appeal like this?

Mr. Yoshida: Well, they supposed to file an appeal within 10 days after the meeting at which the Commission received notification of the Director's decision. So when we give you those lists of SMA Minor Permits and SMA Exemptions that were issued by the Director they have 10 business days after that meeting to file a Notice of Appeal. The Planning Department...so in this case there is an appellant, Seashore Properties, LLC, there is an appellee, the Planning Department, there is the Applicant, Flatbread Restaurant. And then pursuant to your rules, the parties have 10 days after notification of the Notice for Appeal to the Planning Commission to file a Petition to Intervene,

10 business days. So if there is a Petition to Intervene to participate as a party, then at a future meeting the Commission will have to decide whether or not to grant the Petition to Intervene. So currently there are three parties, the Appellant, Seashore Properties, the Appellee, the Planning Department, Applicant, Flatbread Pizza. And we're just trying to discern if there's gonna be any other parties.

Mr. Hedani: So the question for us comes at the point where we...for us to decide whether to grant intervention?

Mr. Yoshida: That and...'cause we wanna decide who all the parties are before we try to move into a contested case hearing. We don't want a party to come in, you know, when we're in a midst of a contested case hearing saying I wanna intervene. At which point when we define all the parties then we typically have try to select a hearings officer, mediator and we develop a schedule for the contested case hearing.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Can you briefly tell us what this?

Mr. Hopper: No.

Mr. Robinson: No?

Mr. Hopper: At this point we can't discuss the merits of the appeal.

Mr. Robinson: Not the appeal, what the permit was?

Mr. Hopper: No. None of the information about this can be discussed at this point. The parties all have to have notice before that begins.

Chair Ball: You have a document in your packet. Any other questions on this?

Mr. Hopper: And it's important for this appeal also, I'm sorry Mr. Chair, that the information, the research and stuff has to all be done by submission of evidence by the parties to you guys. So it's a very formal process, but...so that's what's gonna have to happen. The parties are gonna have to submit to you the information arguing their case. So at this point, that's what's gonna happen in the future. But that's important. And then all the parties will have to be notified before there can be, you know, discussion of the item before the Commission.

2. Notification of the Issuance of the following Special Management Area (SMA) Emergency Permit:

July 24, 2015-approval letter to MR. CHRIS CONGER, Coastal Scientist of SEA ENGINEERING, INC. for emergency erosion protection of approximately 200 feet of shoreline adjacent to the Hyatt Regency Maui at 200 Nohea Kai Drive, TMK: 4-4-013: 008, Kaanapali, Island of Maui. (SM3 2015/0010) (SSA 2015/0039) (SM3 2015/0008) (SSA 2015/0022) (K. Scott)

For notification purposes only.

Mr. Yoshida: Moving to Item 2, this is again notification to the Commission pursuant to your SMA Rules that an SMA Emergency Permit has been issued by letter dated July 14, 2015 to Chris Conger, Coastal Scientist of Sea Engineering, Inc., for emergency erosion protection of approximately 200 feet of shoreline adjacent to the Hyatt Regency Maui at 200 Nohea Kai Drive, TMK: 4-4-013: 008, Kaanapali, Island of Maui. Keith Scott is the Staff Planner, but again, we're notifying the Commission that an SMA Emergency Permit has been issued for this purpose.

Chair Ball: Commissioner Robinson?

Mr. Robinson: So when there's a notice to us are we allowed to ask what is actually being done or is this just notice?

Mr. Yoshida: I think we had transmitted the approval letter for the emergency permit giving the various facts as to when the permit was issued, it was a verbal approval.

Mr. Keith Scott: Keith Scott, Staff Planner. I just passed out a summary of the activity that took place with respect to the Hyatt Regency Maui.

Chair Ball: Pleasure of the Commission?

Mr. Robinson: I have a question. Is...of course it was needed to be done, you know. The question is, do you guys follow certain practices or studies of who it affects neighboring properties or is it a we stop the erosion at the Hyatt now and then hopefully we see what happens?

Mr. Scott: In this particular case the area at the Hyatt that is affected by this is in the center of the Hyatt property so there is no effects to any of the other properties in that area. So in direct answer to your question, yeah, we'll look at everything that needs to be looked at.

Mr. Robinson: Well, I mean, because the water is gonna either go down the coast one way or the other way, right? So if it's going from the, from the new Hyatt towards the, you know, the Regency, it's still gonna carry down through the beach area and wrap around that way too if you're between the ...(inaudible)...right? I mean, is there any monitoring or is it's just you put that up and-

Mr. Scott: No, there is monitoring. There's a report that's filed, actually there was a State permit that was issued concurrent with this so that they could use State land and part of the skirt that is the facility is in State land. And so their report has been filed after the installation of the skirt and the facilities. And then have...they're able to keep that for 180 days and we will continue to monitor that. In fact, they're required to monitor that on an ongoing basis, but we do that as well.

Chair Ball: That's not permanent either. They gotta come in for Emergency Permit.

Mr. Robinson: Right, right. So in the next 180 days the sand replenishes itself, is that, is that an assumption or...

Mr. Scott: Not necessarily. I mean, it may or it may not. You know the beach is a...(inaudible)...

Mr. Robinson: But if it does, the skirt stays so that way next time it won't have the same...you know what I mean?

Mr. Scott: I'm not sure I –

Mr. Robinson: Well, say the sand comes back and it covers the skirt, we're not gonna try to pull the skirt out and you're gonna leave it there?

Mr. Scott: For up to 180 days.

Mr. Robinson: Oh that's all. It has to come out after 180 days?

Mr. Scott: It does.

Mr. Robinson: Or you go back and ask for an extension?

Mr. Scott: Under an Emergency Permit the facilities that are permitted have a maximum life of 180 days. So within that time it would have to be pulled out. The concern with this particular situation was that we had a major swell and tide concurrently at about the end of July and it was already impacting this area. The wave action was impacting that area. So we wanted to protect it from that major swell. The Hyatt actually anticipated only having that skirt up for about 90 days or so. And as I've indicated in my summary, the skirt is such that it can be used again, although it would be subject to an additional permit at that time.

Mr. Robinson: I apologize. The Hyatt is doing this or the State is doing this?

Mr. Scott: The Hyatt is doing it with the State Permit.

Mr. Robinson: State permit.

Chair Ball: Question? Is the Hyatt looking at a permanent solution for that section?

Mr. Scott: Yes, the Hyatt is working with the Kaanapali Operators Association and the State to do a beach renourishment program in that area.

Chair Ball: Okay, any other questions? Seeing none–

Mr. Lay: How old, how old are the photos? How old are the photos? When was these photos taken?

Mr. Scott: The initial photo, the first four photos were taken on the 17th of July. And the other two photos were taken just at the end of July.

Mr. Lay: And that's when the 180 days would start from the end of July?

Mr. Scott: Actually from the date of the permit.

Mr. Lay: Okay.

Chair Ball: Okay, Commissioner Hedani?

Mr. Hedani: From what I understand, they're gonna come in for improvements after this period, this time period expires?

Mr. Scott: Actually with this particular one, it's gonna be just a monitor on an as needed basis. Then they come in for a permit to replace this mechanism.

Mr. Hedani: With something else?

Mr. Scott: It's possible that it could be with the same material at a future time. They don't wanna do anything permanent because they are looking to the beach nourishment program which is a couple years away.

Chair Ball: So I'm assuming that they're waiting out the summer swells and then it will be winter so they don't have to worry as much, right? Is that theory and then they can take the material out and then if summer comes around again and they need it, they put it...go for the permit again and put it back until they can get the sand renourishment project together--

Mr. Scott: That's correct.

Chair Ball: --and there was sand back on the shore.

Mr. Hedani: Just for the Commission's information.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Just for the Commission's information, Kaanapali Operations Association, our organization is working in partnership with the State Department of Land and Natural Resources on a beach renourishment program for Kaanapali from Hanakao Beach Park all the way to Black Rock. It's gonna involve about 75,000 cubic yards of sand which we would like to place along the beach in that geographic area. 50,000 cubic feet will go in front of the Marriott and the Hyatt and 25,000 cubic feet will go from the Marriott to Black Rock to address beach erosion. The State, it took the State about three months to sign the contract, but they just executed the contract for the EIS for that process. So we're doing a full-blown EIS to come to this Commission on that particular project. And it's DLNR is gonna be the lead. We're a financial contributor and it's on a 50/50 basis with the State. Estimated cost of the project in today's dollars \$7.6 million. So we're contributing half and the State is hopefully gonna contribute the other half. It will be at least two years before the EIS comes to us. So the Hyatt may be coming back for other things I think during the interim.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I again. I notice on Picture No. 6 is the covering I still see some fatigue of missing

sand on the most northern part?

Mr. Scott: Yes, however at that location it's not endangering any facilities at all.

Mr. Robinson: 'Cause the water's coming from north to south is that the way it flow?

Mr. Scott: Well, it's because the facility is far enough back from the scarp that it's not being affected at all at this time. Now it may be that a future time that scarp wears away and it gets close to the beach walk which is the facility we're trying to protect at this time that it may need to have this kind of protection at that time, but right now it's not required.

Mr. Robinson: I've never seen this type of scarp before is this what, is this something that we could look in the future that this is probably more of a common practice to try to protect with the erosion that's been happening lately?

Mr. Scott: This is relatively new so it's possible we might do that. Bear in mind that this is only a temporary protection. It's not something like a seawall.

Mr. Robinson: And with sandbags, I've seen sandbags float before so is...and I see on the northern part there's a barrier to hold the sandbags, but on the southern part it's just stacked sandbags.

Mr. Scott: Yeah, what you see at the top towards the back that last picture what's called a tiger dam and it's filled and it's heavy enough to hold the skirt down. They didn't have enough tiger dam to do the rest of it against these sandbags. And these are all up on top of the scarp. All of the sandbags are up on the top of the scarp so the potential for them to washed away is relatively low.

Mr. Robinson: Thank you.

Chair Ball: Okay. Any further? Moving on.

3. SMA Minor Permit Report (Appendix A)

4. SMA Exemption Report (Appendix B)

Mr. Yoshida: Under No. 3 and No. 4, the Department has issued, circulated its SMA Minor Permit Report and its SMA Exemption Reports.

Chair Ball: Any questions on that? Seeing none, moving on.

5. Discussion of Future Maui Planning Commission Agendas

a. August 25, 2015 meeting agenda items

Mr. Yoshida: Okay, under Item 5 for the August 25th meeting again, as mentioned earlier we have two public hearing items. One for a State Special Use Permit for a bed and breakfast in the State Ag District to Michelle Sewell for property located on Kuiaha Road in Haiku. And second, to the Maui County Council of the Boy Scouts of America for a County Special Use Permit to construct

a new dining hall and improve the fire protection and domestic water systems at their Camp Maluhia site, Kahakuloa. And also a transfer of Phase 2 Project District Approvals of the prior owner to the owner of the Kehalani Project District. And the Department of Public Works will have their workshop on traffic.

Ms. Dagdag-Andaya: Can I say something?

Mr. Yoshida: That's all we have scheduled.

Chair Ball: Public Works?

Ms. Dagdag-Andaya: May I suggest that we do it when the State comes in?

Chair Ball: What's the pleasure? Defer that matter to maybe when the State comes in the 9th?

Mr. Lay: Public Works thinks it will work better that way?

Ms. Dagdag-Andaya: Perhaps I can also have the State do a workshop on how they do complete streets?

Chair Ball: That be helpful. Let's do that then.

Mr. Robinson: Before we talk to them.

Chair Ball: Right, right, maybe we'll put that at the front of the meeting, right? So we'll defer Item C to the 9th, September 9th meeting. September 8th meeting. Thank you.

H. NEXT REGULAR MEETING DATE: August 25, 2015

I. ADJOURNMENT

Chair Ball: Okay, if nothing further, our next regular meeting will be on August 25th. Thank you all for coming. Meeting's adjourned.

The meeting was adjourned at approximately 11:42 a.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Keone Ball, Chair
Wayne Hedani
Larry Hudson
Ivan Lay
Jason Medeiros
Keaka Robinson
Max Tsai, Vice-Chair

Excused

Richard Higashi
Sandy Duvauchelle

Others

Clayton Yoshida, Program Administrator, Current Division, Planning Department
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works