

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
OCTOBER 13, 2015**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:00 a.m., Tuesday, October 13, 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. We'll call this meeting to order of the Planning Commission on October 13, 2015.

**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: At this time, we will open up public testimony. Anyone that would like to testify at this time may do so. You will have three minutes. If you'd like to testify when the agenda item comes up you may do so, but you may not do both. That's clear. I see Tom coming to the podium.

The following individuals testified at the beginning of the meeting:

Tom Croly - Item D2, Christopher Profio, Petition for the Amendment of Rule  
Brad Everett - Item D2, Christopher Profio, Petition for the Amendment of Rule  
Mercer "Chubby" Vicens - Item D2, Christopher Profio, Petition for the Amendment of Rule

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

Chair Ball: Would anyone else like to testify at this time? Seeing none, public testimony is closed. We will move onto Item C, Director?

Mr. Spence: Good morning Commissioners.

Chair Ball: Good morning.

Mr. Spence: We have one public hearing item for you this morning. A Mr. James Walkus requesting a Short-Term Rental Home Permit to operate a five-bedroom home in Lahaina. And our Staff Planner this morning is Ms. Livit Callentine.

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

- 1. MR. JAMES WALKUS requesting a Short-Term Rental Home (STRH) Permit to operate a five (5) bedroom STRH, Maui Home STRH, in the County R-2 Residential Zoning District located at 1143 Front Street, TMK: 4-5-004: 058, Lahaina, Island of Maui. (STWM T2015/0012) (L. Callentine)**

**The application is being brought before the Commission as there is another permitted STRH located within 500 feet of the subject property.**

Ms. Livit Callentine: Thank you, Director. Livit Callentine, Planning Department. I'm gonna have some assistance on the slide show and the lights, one of our other Planners, Evelyn Aako. I wanna call your attention to Page No. 2 of your report under the Description of the Project, first off. The first sentence refers to the Serene Napili Hale which this is not. This is the Maui Home. And it was duly noticed as the Maui Home so that was a staff report error which will be corrected and as advised here.

So as the Director announced, this is an application for a short-term rental in Lahaina. The property is currently being utilized as a bed and breakfast home and so, and it's been operating successfully as a bed and breakfast home with no complaints, no police reports since 2007. So in May of 2015, Mikal Torgerson came in with an application for a short-term rental. He apologizes for not being here today, but he had some extreme medical condition that took him to Oahu last night.

So I'd like to just go ahead and go to the next slide please? So we are looking at converting an existing B&B to a short-term rental home to allow the applicant who has a very large extended family to enjoy and use the home more often as a B&B, you know, it's a little harder to do that. So next slide.

So it's located at 1143 Front Street. And as you can see this is an aerial view and I apologize my pointer has decided not to work. Needs a battery, but anyway you can see the...is there a pointer in the house? Oh wow, look at that. Ask and you shall receive. Thank you. So you can tell this is where the property is. Take a look at the surrounding area. All the lots are approximately the same size and similar configuration. The property is approximately 300 feet from the ocean. And we have the largest property in the region is the Puunoa Beach Estates which is ten condominiumized units on a common area. To the east, northeast is a large lot that is entitled to become an affordable housing unit called the...project called the Kahoma Village and it is approved for 203 affordable housing units.

Just to give you a little bit of a closer look at the neighborhood. Again, this is the subject property right here. It has one dwelling on it. It has a garage in front holding two cars and three parking stalls along the street front and a swimming pool and spa in the backyard. And again, just drilling down a little bit further.

So this is a site plan and as I mentioned there are the three parking stalls here and two in the garage and I'll show you the site plans now. I mean, the floor plan. First floor plan, okay the garage, bedroom no. 1, a great room, a lanai, dining, kitchen, office, and bathrooms, well a bathroom. Next slide please. So the second floor you find the second, third, and fourth bedroom and the master bedroom, so for a total of five bedrooms, and a family room, T.V. room, what have you here in the corner, several bathrooms. Thank you, next slide.

This is a shot of the front of the house with the two-car garage and yeah, I guess that goes without saying. Well, you do notice there's a fire hydrant if we...there's a fire hydrant right on the property here, on the property line. Next slide. This is the back of the house, so you're like at the pool looking at the back of the house. Go ahead. This is actually a view from the second floor of the

house facing west. Thank you. This is the pool and spa. This is the entrance to the home. This is the entryway with the stairs going to the second floor and into the living room. This is the kitchen. Okay, that's for the property description.

So as you know there is an existing short-term rental home operating within 500 feet of the proposed short-term rental home lot. In fact, there's five permitted short-term rental operations and no other permitted B&Bs within 500 feet of the subject property. So that is the trigger for the review today.

This is a regional map showing you the approximate locations on concentrations of short-term rentals and B&Bs in the West Maui Plan. Next slide. And this is the 500-foot radius around the subject property showing the number of short-term rentals in the area. Next slide. This is actually an identification of the individual short-term rental permits that have been issued. And public notice was duly given by the Department and the applicant. Both the Notice of Application is mailed out to each of the owners within the 500 feet and then the Notice of Public Hearing is mailed out. The applicant publishes a notice in the paper three times, in the Maui News, and the Department also publishes an ad in the paper. So public notice has been duly given.

So there has been testimony on this property and I handed out, I gave you a handout today which looks like this. You may have seen some of the letters in it before. There are four letters in this handout, and letters number 1, 2, and 3 I was...we were unable to verify that they were actually sent by the individuals because we didn't have any names. All we had if you look at the letters, we had a return address. Now, I...I'm of the opinion based on taking...studying handwriting analysis that I will just put this forth, I believe the letters were all signed...written by the same person. And none, like I say, unsigned. The fourth letter writer, John Wright, did have concerns but his concerns were that he would oppose this due to noise concerns especially if this property has a pool. Well, that's not an if. This property has a pool and it has been operating as a vacation rental since 2007. So I'm not sure that Mr. Wright even realizes that. So that's something for you to take into consideration. Thank you. This is just...the copies of the three letters that came from what appear to be the same hand. And the next slide.

So Mr. Wright lives three lots to the west of this subject property. As I mentioned, the issue with noise at the pool, if the property has a pool. He commented that there was just so many short-term rentals in the area and that the neighborhood was being dominated by short-term rentals or would become dominated by short-term rentals on holiday and they might not be too concerned about their neighbors.

In this case, there is a live-in manager who is also a holder of a long-term lease on the B&B. The intent of the applicant is to retire the B&B Permit if the Short-Term Rental Permit is granted. The applicant also owns the home next door which is kept vacant and his plan is to move the manager to the home next door and so that she can be there full-time nearby. They've had some theft or attempted thefts I guess, and so they would feel more comfortable if they did have someone close by. That won't be the designated manager, however. There's also a designated manager and she, her office is 21 miles from the property which is within 30 driving miles as required by the ordinance. So no one will actually be losing their housing because this is just shifting to the house next door.

And the applicant's consultant did respond to the letter of protest and as I mentioned, it did, it did

appear that the writer didn't seem to know there was a pool already. There's an existing B&B, no complaints. It shows that it's a well run operation.

Conversion to a short-term rental will not have additional impacts for the number, on the number or on the number of renters in the neighborhood. Actually when the home is rented to one party at a time it will most, it will most likely have fewer impacts on traffic than the B&B or even long-term rent or homeowner occupancy. There will be house rules established and they will be as per the Maui County Code and the manager phone number will be posted in front of the property.

So this is a map showing you the locations of the protests. The source, the source or alleged source of the protests. The only one we can for sure, oh shoot, you know, what No. 4 is cut off, I'm sorry I don't know how to make that change, but No. 4 is the John Wright. So you can see that No. 4 is John Wright and the Puunoa, I'll just make a comment on the Puunoa one letter, they have a..I'm sure they must have an association because they're condominimized property. That wasn't indicated in the letter. There are 10 property owners of individual condominiumized units. None of their names were indicated in the letter. So I leave it to you to make a determination on that Commissioners. Next one.

So the Department analyzed this as per requirements of the Code the manager has an active state. The designated manager for the short-term rental should it be granted, has an active State of Hawaii Real Estate License, less than 30 driving miles from the property. ...(inaudible)...guests neighbors and the County. And they also ensure compliance with State regulations if there was to be any issue with health issues. If there was to be any issue with health, health issues, they would have to comply with Health Department rules and regulations. The manager will enforce the house policies, collect all the rental fees and the restrictions, and standards found in 19.65.030 will be followed and met, have been met by this application.

As I said there are five permitted short-term rentals within 500 feet and there are 32 permitted short-term rentals in West Maui. The cap is 88, so you can see we haven't even reached halfway. This is a conversion of a well-operated B&B. We don't believe there'll be any additional impacts, no history of complaints or police incidents. Protests were inconclusive. Thank you. So I think at this point, Mr. Chair, do you want me to give you a recommendation?

Chair Ball: No, we'll open it up for public testimony at this time. Anyone wishing to testify on this item may do so?

Ms. Callentine: I would also, sorry, just like to say the applicant is in the audience today and would like to introduce himself, when you feel-

Chair Ball: Definitely.

Ms. Callentine: Would you like him to come up now?

Chair Ball: Please come forward, yes.

Ms. Callentine: Please come forward.

Mr. James Walkus: Good morning.

Commission Members: Good morning.

Mr. Walkus: Thank you for allowing me to come. I...my name is James Walkus and I live next door 1153 Front Street. I wasn't planning on speaking. Mikal Torgerson was supposed to do all this for me but for health reasons he had to go Honolulu. So I'm honored to be here. Honored to be living here in this beautiful island. We'll be living next door and our intent and for...(inaudible)...1143 will be moving over to a home in 1153 Front Street. So if there's any questions I can...

Mr. Lay: Okay, so it's my understanding is you'll be moving next door. You'll be the other manager right next door?

Mr. Walkus: Yes.

Chair Ball: Let's hold questions 'cause this is the applicant so we can come back to those questions. Thank you for your time.

Mr. Walkus: Thanks.

**a) Public Hearing**

Chair Ball: At this time we'll open it up for public testimony. Anyone wishing to testify on this item may do so. Seeing none, public testimony is now closed. Livit, you wanna give us your recommendation please?

**b) Action**

Ms. Callentine: I would be delighted, Mr. Chair. So the Department concludes that the application for a short-term rental home permit complies with the applicable standards for a short-term rental home in accordance with 19.65.030, Restrictions and Standards, Maui County Code. The Maui County Planning Department recommends approval subject to 23 standard conditions. And in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the October 13, 2015 meeting as the findings of fact, conclusions of law, decision and order and authorize the Planning Director to transmit said written decision and order on behalf of the Maui Planning Commission. Thank you.

Chair Ball: Thank you. At this time, we will open it up to the Commissioners for questions. Commissioner Medeiros?

Mr. Medeiros: I have a question for the applicant.

Mr. Walkus: James Walkus here again.

Mr. Medeiros: Do you live on the property?

Mr. Walkus: On 1153 I do, yes.

Mr. Medeiros: Now that's...1153 is...

Mr. Lay: He going be moving next door.

Mr. Medeiros: That's next door right?

Mr. Walkus: Yes.

Mr. Medeiros: Okay.

Ms. Callentine: So Commissioners, it's the property to the I'd say to the west, the northwest of the property.

Mr. Medeiros: Okay, 'cause I was under the impression that to get a B&B the owner had to live on the property.

Ms. Callentine: Livit Callentine. Yes, this B&B was granted as a BB1 back when we had a different set of standards. The ordinance had not yet been revised. The B&B ordinance, Title...Chapter 19.64. There was a clause in the ordinance at the time that if you...you either had to live onsite or a long-term lessee had to live onsite, and that was the arrangement here. There was a long-term lessee who lived onsite, operated the B&B, submitted all the time extension requests, met with County agencies when they needed to do site inspections, so just like the owner. But we don't really have that situation now. You must be an owner. The Code has been amended so he was grandfathered in. His permit was essentially grandfathered in as a...under the old rules.

Mr. Medeiros: Oh okay, I was just curious. First time I ever came across something like this. Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Livit on that same question, has the permit been renewed since it was originally issued?

Ms. Callentine: Oh, yes. Yes. absolutely.

Mr. Hedani: When it's renewed, doesn't it have to comply with the current law?

Ms. Callentine: No.

Mr. Hedani: No?

Ms. Callentine: It doesn't because it was issued prior to enactment of the current law.

Mr. Hedani: But it does not need to comply with current law when it's renewed?

Ms. Callentine: Well, you know what I might need a little help on that.

Chair Ball: Director?

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

Ms. Callentine: I don't know how...well, I don't actually know how to explain it, but that's how it's been explained to me, and I will reference the Chapter right now and see if I can give you the specifics. Well, this may be a question for Corporation Counsel more than anything.

Mr. Hopper: I don't have the law in front of me. It's gonna say in the B&B Law when it was changed what's going to happen with the applications that currently qualify. So I don't have that in front of me. That's something the Department would have needed to look at when the renewal came up.

Chair Ball: Commissioner Hedani?

Mr. Hedani: The condominium project that's one of the protest letters, Livit, is it open for short-term rental as a condominium?

Ms. Callentine: Most of the owners don't have addresses on island, so...I don't actually know. It's not, it's not permitted to be a short-term rental. I don't think it's in the Hotel District. So I don't actually know how it's operating or if it is operating as a short-term rental or if it's second homes for people and they just keep it vacant when they're not there. Perhaps the applicant might know the answer to that.

Mr. Hedani: Well, he's not the property owner, so I don't think he would know.

Ms. Callentine: Right.

Chair Ball: Further questions? Commissioner Lay?

Mr. Lay: Okay, so we have four homes that are in a short-term rental in that area already, right? And we're looking at the fifth one. When, when does this become a red flag to us. I know it's brought to us when we have one next to it. We got two next to it, we got three next to it, now we got four next to it, and how do we say five is cannot, but four can? I mean, when does that point occur? I mean, that's what I'm wondering. I mean, it's brought to our attention and we're trying to think what to do about it. Director, you have any?

Chair Ball: Director?

Mr. Spence: Basically what it says is if...the law says if, that if there's more than one within 500 feet, it has to come to Commission for your consideration. There's no hard and fast rule on how many are too many. There's...there could be a dozen all within 500 feet of each other. The idea that it comes to the Commission is to determine if there are impacts on the neighborhood. That's really the consideration. Are there impacts to the neighborhood? Is it keeping in the character within the neighborhood? That's what you're looking at as far as short-term rental homes.

The...and I guess the presumption is one, I mean, is okay, it doesn't change the character. There's few as little impacts if it meets all the criteria. Here we have a home that meets the criteria and has been a bed and breakfast for a very long time meeting all the, you know, requirements of the Code. Now he'd like to change to short-term rental home. He's gonna be living next door. It's really what this Commission is considering is this particular is adding one more even with the, with the owner next door, is that too much of an impact on the neighborhood? Or is it going to change the character of the neighborhood? I mean, considering it's been used for some type of short-term for a long time, the Department would...we would say no, it's not going to change anything. But nevertheless, that's not my decision, that's why we're here.

Mr. Lay: Thank you.

Chair Ball: Further comments, questions from the Commission? Commissioner Hedani?

Mr. Hedani: Livit, we actually have a condominium project that's listed as one of the protesters. So if there's 10 owners, then there's 10 protests coming from the condominium as well as four additional protests coming from surrounding neighbors. So we have a total of 14 protest letters essentially that we've received.

Ms. Callentine: I...that letter from Puunoa was not signed. No owner's names were on it.

Mr. Hedani: I understand.

Ms. Callentine: So we can't say which one of them sent it. We can't say whether it was the association that sent it. We can't say that it was the one in Unit 1.

Mr. Hedani: I understand.

Ms. Callentine: Or all of them. I don't think--

Mr. Hedani: I'm assuming that the person that submitted the letters received consent from the people that he was representing in his letters.

Ms. Callentine: Really?

Mr. Hedani: That they were objecting.

Ms. Callentine: You assume that? Okay, okay.

Mr. Hedani: The question that I have is, there's actually five short-term rentals in the area. This would be the sixth.

Ms. Callentine: Yeah, right.

Mr. Hedani: So I don't recall the Commission approving five short-term rentals in close proximity to each other in the past. Did that come out, come about administratively or did the Commission approve that?



Ms. Callentine: Well, I didn't actually go back to each one of these ones and see how they were approved. But it could have happened that one was approved. The first one was approved administratively and maybe all the other four came in. They...must have had to come before you, yeah.

Chair Ball: Director?

Mr. Spence: We would, we would have to look into the history of each one of those how they were approved. Probably what Livit is saying is probably correct that the first one was administratively approved. There could also be, you know, the next one farther than 500 feet away. You know this particular proposed...Yeah, I don't know they look within 500 feet. All I can say is we would have to look it up.

Ms. Callentine: I have an answer.

Mr. Spence: Okay.

Ms. Callentine: Thank you, Tom Croly. The other four, well actually all of them according to Mr. Croly were filed prior to the December 31, 2012 deadline so they weren't subject to the triggers at that time for Planning Commission review if there was another one within 500 feet. So they were approved administratively.

Chair Ball: Any further questions? Commissioner Hedani?

Mr. Hedani: Livit, if we deny the short-term rental approval, he can still operate as a B&B, right?

Ms. Callentine: I wouldn't be able to tell you what his intentions are if...I think he would not want to give up the B&B Permit is my understanding, but I would like you to direct that question directly to the applicant if you...that's my understanding.

Chair Ball: Any further questions? Do we have a motion from anyone? Commissioner Hedani?

Mr. Hedani: Move to deny the application.

Mr. Medeiros: Second.

Chair Ball: Second from Medeiros. Discussion? Commissioner Hedani?

Mr. Hedani: In this particular case, the applicant is a B&B operator grandfathered under the laws of a B&B operator. As such, it cannot replicate itself like a short-term rental. You cannot hire a manager, live inside the unit, go purchase the property next door, repeat, acquire more money, purchase the property next door and repeat with another manager. Only one permit per B&B operator and so this is it. One residence, one B&B operator. He's on top of all of the problems that happen within the property and it works. Apparently it's worked for several years.

Ms. Callentine: 2007.

Mr. Hedani: In this particular case I think if it came in from the outside without being a B&B for a short-term rental I would recommend denial of the petition only because of the density of the short-term rentals within 500 feet. The condominium project may or may not have a short-term rental permit under its operating regulations I'm not sure--

Ms. Callentine: It doesn't have a short-term rental permit from the Department or from the County.

Mr. Hedani: It does not?

Ms. Callentine: It does not. You would see it on here. The large parcel...this is the location of the condominium parcel and this...the way that these, the way that these markings get on this map is through our data base so it pulls in all of the permitted information we tell it. We have a layer that we can turn on to show us all the B&Bs and the short-term rentals within a certain radius and in this case, in this case there--

Mr. Hedani: I recognize where you're coming from Livit, but that's not true. Kaanapali has 5,000 units and 3,000 of those are condominium units that have the ability to operate as short-term rentals and that far exceeds--

Ms. Callentine: Right.

Mr. Hedani: --the 88 that's required for West Maui, you know. So it's not necessarily because it's a condominium it does not apply on your map.

Ms. Callentine: So I think as I understand what you're saying Commissioner that this is...it could be, they could be entitled by land use or by prior, prior determination. They could be entitled to operate as short-term rentals, but what my point was, this Department, Planning Department--

Chair Ball: This is not a debate.

Ms. Callentine: --has not authorized.

Chair Ball: We're getting the recommendation or the justification for this--

Mr. Hedani: Right.

Chair Ball: Commissioner Hedani, so you can--

Mr. Hedani: I think the density basically within the area is too high. I think allowing the operator to continue as a B&B operator does no harm to him. I haven't seen a justification for why a short-term rental is preferable to a B&B operation. If you wanted to have family over, you book your own family into the B&B and you have the use of the B&B for whatever term you want. I just don't see it.

Chair Ball: Any further comments? Commissioner Lay?

Mr. Lay: For me, I agree with Commissioner Hedani about the density. I'm also worried about

when we have things like this happen it becomes...the property value goes up, maybe the local...you know, other people couldn't afford this place, but because you're doing this, you can especially if you have two properties and if it goes on, and on, and on, we've got a little resort area that's created by houses and it's pushing out our people that are trying to get homes here on the island. So that part...and even with...how many, you got that 500-foot range for a reason, it's for us to not have it so dense in that area and just spread it out to other areas. And that's why there's a lot...a certain amount for these short-term rentals to be put up not in one area, but to be spread out more evenly. That's how I feel. It won't affect our neighborhoods that much if it's spread out and I think that that was the purpose of it.

Chair Ball: Further comments? Seeing none...

Mr. Medeiros: Yeah, I got one.

Chair Ball: Oh, Commissioner Medeiros?

Mr. Medeiros: I seconded it because the density and everything. And I agree that it seems that, you know, people who wanna live here are being pushed out. You know, I grew up in Lahaina. Front Street, Haole Camp, my dad paid \$35 a month rent, okay, when I was little kid. And wow, what happened? That's all I got.

Chair Ball: Any further comments? Seeing none, all in favor of the motion, please raise your hand and say, "aye"?

Mr. Spence: That's five ayes.

Chair Ball: Motion is carried. Permit is denied.

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

**VOTED: To Deny the Short-Term Rental Home Permit  
(Assenting - W. Hedani, J. Medeiros, I. Lay, S. Duvauchelle, R. Higashi)  
(Excused - L. Hudson, K. Robinson, M. Tsai)**

Ms. Callentine: Okay, before we move on then, I would like to turn your attention to Page 10 of the report. I'm gonna go through all the criteria and I want you to tell me which criteria you want...

Chair Ball: We're done.

Ms. Callentine: --you've applied.

Mr. Spence: They've discussed why they're denying it.

Ms. Callentine: I don't know why.

Mr. Hopper: I think Livit...Livit, I think on the record it's been made clear that the density was the main, was the main issue. That's a...that is a consideration by the Commission.

Ms. Callentine: Sure. Okay.

Mr. Hopper: It's definitely provided for in the rules and is something that the Commission can consider and weigh appropriately including the cumulative impact in addition to anything else that was mentioned by the Commission, again we would—

Ms. Callentine: Well, that was the only criteria I actually heard mentioned, so that's the only one that will be referred to in the D&O.

Mr. Hopper: Okay.

Chair Ball: Thank you. Item D1, Communications. Director? Commissioner Hedani?

Mr. Hedani: Sorry, before we leave that issue. I'd like to point out to the Department that in the standard conditions that we have under Condition Q1, there's a grammatical error in there where it says, "Sound that is audible beyond property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with the residential area." And what that means if you read it literally is that sound that is audible beyond the property boundaries during the hours from 8:00 a.m. to 9:00 p.m. shall not exceed sound of a residential area because it's a double negative. So it should be corrected to read, "Sound that is audible beyond the property boundaries during quiet hours shall not be more excessive..."

Chair Ball: Okay, moving onto Communication D1, Director?

Mr. Spence: Okay, Commissioners we have Communication items, Mr. Bob Offerman from Unity Church of Maui requesting a time extension for a County Special Use Permit to continue the church use in R-3 Residential District. Our Planner this morning is Evelyn Aako.

#### **D. COMMUNICATIONS**

- 1. MR. BOB OFFERMAN of THE UNITY CHURCH OF MAUI requesting a time extension on the County Special Use Permit in order to continue church use in the R-3 Residential District for property located at 483 High Street, TMK: 3-5-009: 007, Wailuku, Island of Maui. (CUP 2005/0009) (E. Aako)**

Ms. Evelyn Aako: Hi, good morning Commissioners.

Chair Ball: Good morning.

Ms. Aako: Could I just have a few moments to set up my power point presentation?

Chair Ball: Sure. We're gonna take a five-minutes break.

A recess was called at 9:45 a.m., and the meeting was reconvened at 9:51 a.m.

Chair Ball: Call this meeting back to order. We are on Communications Item D1, Director? Sorry.

Mr. Spence: No, I announced it. This is Mr. Bob Offerman of Unity Church, and our Staff Planner is Evelyn Aako.

Ms. Aako: Thank you. Again, good morning Commissioners. Staff Planner Evelyn Aako. So this item is under review because the applicant, Unity Church of Maui is requesting a time extension for a County Special Use Permit to allow for continued church use in a Residential District. I'm gonna give a brief presentation. We're hearing the history of the CUP and the project and a representative of the church, Mr. Bob Offerman is also present here. He's gonna come up and explain some of the pictures that are related to drainage system improvements that were required by the CUP. He's also here to answer any additional questions that I might not be able to answer and then after the presentation, I'll move into the analysis and recommendation.

So as I just mentioned, this item is under review because it is a request for a time extension for a County Special Use Permit. The CUP is required because the church is located in a County zoned Residential District. Maui County Code states that "certain uses and structures shall be permitted in the Residential Districts provided that a County Special Use Permit has first been attained." And churches including any accessory buildings are on the limited special uses. So the applicant is requesting a five-year time extension to the CUP to allow for continued church use until 2020.

To provide some historical context of the CUP I'll just try to briefly review the time line of the project. So in 1997, the subject property was purchased by the applicant and shortly after that purchase they were granted a CUP for church use in 1998. In 1999, they were granted a five-year time extension. In 2004, the permit lapsed and this was an inadvertent mistake on the applicant's part and as soon as they became aware of the permit lapse they applied for a new CUP in 2005. And from my understanding from looking at the correspondence and the minutes of the time period there were some challenges of scheduling the public hearing which is why it didn't go before the planning commission until 2007, and at that time a new CUP was granted and that was a five-year CUP till 2012. In 2010, they...the applicant applied for an amendment to the CUP to allow for Sunday services. This amendment was granted and the applicant was allowed Sunday services to begin at 10:00 a.m. In 2012, prior to the expiration date of the SUP they applied for a time extension and in 2013, that was granted. It was a three-year time extension and it also included an amendment to allow Sunday morning services a little bit early, to begin as early as 9:00 a.m. So that brings us up to the current time extension request which again would be until 2020.

I'm gonna talk a little bit about the subject property. So that little highlighted part is the project site. It's located just up the road there at 483 High Street here in Wailuku. And I'll talk about this a little further when I get to the public testimony slide, but I just wanna point out that there was a phone call received by the Department expressing opposition to the CUP by the owner of the neighboring parcel, so his parcel is here. And again, I'll talk about this a little bit more but just to note this is Unity Church that's highlighted and then right next to that, right on the other side of that neighbor is Valley Isle Fellowship Church. So that particular parcel owner is sandwiched in between two churches.

So this is the site plan of the subject property. This would be High Street running right here and then there's a one-way driveway that goes onto the subject property and it loops around the back and comes out a one-way driveway going back to High Street. In the front here is the primary structure which is visible from High Street and then behind that is the accessory structure which

was formally a garage, not visible from High Street but right behind the primary structure.

And here's a photograph of the primary structure as taken from High Street and this is to the left of the property because this is the driveway that exits back onto High Street. And then this is that same primary structure but the perspective is shifted a little to the right and you can see the driveway that goes onto the property and again, this right here where the white truck is, that's where the neighbor lives who expressed opposition to the CUP.

This is the back of that same primary structure and then this is the accessory structure that was formally a garage. Both structures are utilized by the church for church use. The primary structure is used for Sunday services, classes and workshops, while the accessory structure is used for smaller group activities such as group education or smaller classes and workshops.

So as part of the 2010 amendment application review, the State Department of Transportation requested that the applicant complete drainage system improvements to capture any water runoff exiting the property toward High Street. Otomo Engineering completed a drainage report and drafted a drainage system design plan and the report and the plan were approved by the State DOT per the conditions of the CUP.

However, upon reviewing the cost for the bid estimates which was nearly \$50,000, the applicant actually decided to sell the subject property. So at the time of the 2013 time extension request the applicant was still seeking to sell the property and the time extension was granted with the Commission having in mind that would allow the applicant more time to sell the property. However, after several years on the market with no successful sale, the applicant was able to obtain financing through private loans in 2014 to complete the drainage system improvements. So as I mentioned, previously in the 2010 the State DOT had approved those drainage plans and per their requests or requirement they asked that the applicant have those plans reviewed and approved by DOT Highways Division, Maui District Office. And they reviewed and approved the plans in late 2014. So the drainage system improvements were completed in 2015, and evidence of its completion was submitted to the Department with the applicant's compliance report.

And then the next few slides are actually...we'll walk you through that drainage system improvements and I'm gonna have Mr. Offerman step up to the podium and walk you through that.

Mr. Bob Offerman: Good morning, Bob Offerman representing Unity Church.

Chair Ball: Good morning.

Mr. Offerman: Thank you for allowing me to come and address you and let me say I really appreciate both the opportunity and especially you folks for the public service you do by willing to serve. I know your time is valuable.

But I'd like to briefly walk you through this because this project has been a large, a large thing for us for a number of years. This is an excerpt from the engineering drawing. I'd just like to show you what's involved. The object is to capture all the runoff from this parking area in the back and driveways before it can go down either driveway and go onto High Street. So to do that we had to modify the south or exit driveway, remove a large section and put in a swale to direct all of the

runoff onto the front lawn area. And then on the entrance driveway or north driveway we installed a trench drain behind the speed bump to direct again, direct the water into this storage area which is right here. This is a basin with an underground retention structure. There is a large hole, 7 x 7-foot hole filled with gravel except for a 30-inch, 36-inch diameter pipe, perforated pipe in the middle and two large drain structure one at either end. So if we have the next slide, this is the work on the south or exit driveway where we took up a large section of concrete and then poured a new section and you can see the swale right there that was angled below a raised area to direct the water onto the front area. Next slide. This is the north or entrance driveway. There's a trench drain going in, the speed bump being formed and there's the completed thing. And this is where they hook up a six-inch plastic ...(inaudible)...pipe that will go down into the underground structure. And then these next slides are just the installation of the retention basin. There's the outline of it. They've started to dig one of the holes for one of the drains. There's one of the drains in the hole. Next slide please. There is actually the other one on the south end and it's really interesting they put in both drains and then they dug the trench in between which was I found not what I would have expected, but anyway, so there you see this seven-foot wide, seven-foot deep trench with the two drain structures. Here they've lined it with a cloth that allows water to get through but not dirt to get in, and they've started to put in the gravel. Next slide. So here the bottom is filled with gravel prior to putting in the pipe. There is the pipe which is also wrapped in permeable cloth. They've started to put in the gravel to fill the rest of the hole. Here the trench is filled with gravel and the cloth has been wrapped over. They're starting to put on the dirt and here is the filled in structure then we have a few more slides that show the completed structure. This is back in May after it was completed. So this is from the west end looking towards Wailuku. There's Mr. Fukuoka's house. This is the other side looking back. There's our church structure there and there's the neighbor on the other side. And this is about a month ago after the grass has come back in. So this is equivalent to the previous slide looking to the west or to the, excuse me to the south, to the southwest. And I think we have a couple more that show again, this is from the other corner, I guess it would be the southwest corner of the building, Wailuku....our building...where we are now is down this way, this is High Street. And then this is equivalent from the other pictures looking again, towards the north. Any questions?

Chair Ball: Thank you.

Ms. Aako: So just going onto public testimony. The Department did receive a call on September 22<sup>nd</sup> from the owner of the neighboring parcel, Mr. Dave Fukuoka who resides at 477 High Street. He expressed his opposition to the CUP based on his disagreement with the allowance of churches in residential neighborhoods. He emphasized that he has had no problems with the applicant. He's found the applicant to be cooperative and receptive to any issues he's raised and really his primary concern is the allowance of churches in a residential neighborhood.

The Department would also like to note that the applicant has illustrated a great deal of consideration for any of Mr. Fukuoka's concerns. So for example, it was conditioned by the CUP that the applicant should notify Mr. Fukuoka at the time that they submit a request for a time extension and they did that and proof of that is on file at the Department. But they actually went on step further and notified him of today's Maui Planning Commission date and Mr. Offerman expressed to me that that was because they wanted to be transparent and allow Mr. Fukuoka to continue to be involved in the process if he, you know, had opinions to share. So just wanted to note that. So again, if you guys remember the earlier slide, Mr. Fukuoka really is concerned

because he's sandwiched in between two churches. And then September 29<sup>th</sup>, after the preparation of the final staff report, the Department did receive a second phone call from a neighbor. His exact language was that he doesn't know how he feels about having churches in a family neighborhood. He said that he would be writing and submitting a letter to the Department to express further his feelings, but as of today's date no letter has been received, so just to make that. And that concludes the presentation.

**a) Public Hearing**

Chair Ball: Thank you. At this time, we will open it up for public testimony. Anyone would like to testify at this time, they may do so?

Mr. Bob Offerman: Bob Offerman from Unity Church again. Again, thank you for your time. Just one thing, when we originally applied we asked for five years because that's all we've received in the past and we were under the impression that that was what was granted. I've since learned that longer time is possible, so if the Commission considers it appropriate, we'd really like to have a longer, longer time extension, ten years would be great. Thank you.

Chair Ball: Thank you. Anyone else would like to testify at this time? Seeing none, public testimony is closed. Can we get the Staff recommendation?

**b) Action**

Ms. Aako: So just one brief comment before I move into the recommendation was just to note that the CUP time extension application was not sent out for agency review as there were no remaining aspects of the project to review with the exception of the drainage system improvements. And as conditioned by the CUP the applicant, the applicant submitted the drainage plans for review and approval to both State DOT and DOT, Highways Division, Maui District Office, and Exhibit 8 and 9 of the staff reports are their review and approval.

So the application complies with the applicable standards for the County Special Use Permit and as such the Department recommends approval. Approval is based upon the six standard conditions and four project specific conditions. The previous project specific conditions regarding the drainage system have been deleted as those conditions have been met. Also, as the Department has been doing with other CUP time extensions, we've amended standard Condition No. 1 which allows the Planning Director to approve future times extensions.

And then the project specific conditions read as follows: Condition No. 7. That should attendance at any event be anticipated to exceed 40 persons, the applicant shall provide monitoring and shuttle services to the County parking lot in Wailuku in order to minimize the impact on the surrounding residential neighborhood. Condition No. 8. That maximum occupancy as determined by the Department of Fire and Public Safety shall not be exceeded at any time. No. 9. Sunday worship services shall not commence prior to 9:00 a.m. and shall be completed by 3:00 p.m. And No. 10. As represented by the applicant, the property owner of the parcel located at 477 High Street, Wailuku, Mr. Fukuoka shall be notified by return receipt, certified or registered mail when an application for renewal is submitted to the Department. Evidence of compliance shall be provided to the Department within 45 days of filing of the renewal application.



In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the October 13, 2015 meeting as its findings of fact, conclusion of law, and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Chair Ball: Thank you. Questions from the Commission? Commissioner Medeiros?

Mr. Medeiros: I just wanted to make a motion.

Chair Ball: Let's have some questions first if there are any, let's open that up anyway.

Mr. Medeiros: Okay.

Chair Ball: Any questions from the Commission? Seeing none, do we have a motion?

Mr. Medeiros: I'd like to move that we accept the recommendation of the Planning Department with amendment for ten years instead of five.

Chair Ball: Is there a second?

Mr. Hedani: Second.

Chair Ball: Second by Commissioner Hedani. Any further comments? Commissioner Hedani?

Mr. Hedani: I'd like to commend the applicant for their efforts in terms of addressing the drainage issue which is more than I've seen a lot of people having to go through in order to address drainage. So it was appreciated. It helps protect the ocean from siltation and runoff and we appreciate the time and expense that they went through in order to do that.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I made the motion because I appreciate what they did. Okay, and I was here the last time you was here and I voted for you guys then, I'm voting for you guys today, and I don't want...if I'm still around, I don't want you bothering me for five...in five years, and so I'm gonna vote the same way again. Okay, so ten years guarantee I not going be around.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I have a question for the applicant.

Chair Ball: We already went through that. We're done with that.

Mr. Higashi: What was that?

Chair Ball: We had the question time already.

Mr. Higashi: So I can't ask that question?

Chair Ball: No. It's just ... you could add your comment.

Mr. Higashi: It's my comment to the Commission. Number one, I don't know what the capacity of this facility is based upon the fact that they've been here kinda long since 90 something. And if this congregation should expand, what are the possibilities of approving something that we've already extended ten years for this particular facility to be there? That would be my major concern about the facility itself. I don't know what the size of the congregation is that would be able to accommodate this church ten years from now whether it's gonna double in congregation, et cetera, especially because it's surrounded by residents.

Chair Ball: And I believe that they answered that they answered that question because it's by Fire Code and they were...and they addressed that they can...only have a certain amount of parking and any overflow has to be shuttled in I believe was the testimony of the applicant, the conditions of the application, correct? Okay. Further, Commissioner Lay?

Mr. Lay: And on churches in a residential area it sometimes can be complex but I like how you guys set you guy's schedule. It starts at 9:00, ends at 3:00 that is in consideration for your neighbors and that's nice. I mean, that works. To me that works in a residential area 'cause I know with football season on, I'm sure there's...you might be disturbed your congregation.

Chair Ball: That's 7:00 a.m.

Mr. Spence: If you live next to Commissioner Lay.

Chair Ball: Okay, further comments? Seeing none, can we vote on the motion. All in favor of the motion raise your hand and say, "aye"?

Mr. Spence: That's five ayes.

Chair Ball: Motion carried unanimous.

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

**VOTED: To Approve the Time Extension of the County Special Use Permit for Ten (10) Years.  
(Assenting - J. Medeiros, W. Hedani, I. Lay, S. Duvauchelle, R. Higashi)  
(Excused - L. Hudson, K. Robinson, M. Tsai)**

Chair Ball: Moving onto...

Mr. Spence: Commissioners, we're on Communications, Item D2, Mr. Christopher Profio is petitioning for an amendment to the land use...excuse me, to the Maui Planning Commission SMA Rules. I'm sure Corporation Counsel will have some comments on procedure. It's a little bit unusual. But we're, you know, there's certain requirements laid out in the State Law and in your own Administrative Rules. Our Staff Planner this morning is Mr. Jeffrey Dack.

2. **MR. CHRISTOPER M. PROFIO, Petitioner, submitting a Petition for the Amendment of a Rule received on September 22, 2015 to amend Section 12-202-12(c)(2) of the Maui Planning Commission's Special Management Area Rules concerning Assessment and determination procedures as required SMA assessment information from the applicant to include: (J. Dack)**

**A description of all current impacts to the parcel and adjacent parcels caused by open-air agricultural burning, if any, and a description of anticipated changes to current impacts due to the proposed action, if any.**

Mr. Jeffrey Dack: Yes, good morning.

Chair Ball: Good morning.

Mr. Dack: The...as you can tell from your reports that the petition was received from Mr. Profio on September 22<sup>nd</sup>, and it is to amend the SMA Rules of the Planning Commission to add a new subsection within the rule, Section 12-202(c)(2) that would...that a new information requirement to be submitted as part of an SMA Assessment application and require that to be assessed for the Department to be able to make a determination as to whether a project is a development, is exempt and/or has any potential significant effects and might need any mitigations.

The wording to be added is that it would require an application to include, "a description of current impacts to the parcel and adjacent parcels caused by open-air agricultural burning, if any, and a description of anticipated changes to current impacts due to the proposed action, if any".

As the Director mentioned, there's a couple and it is in your report, there are a couple bodies of law relative to how you address a petition. HRS 91-6 allows any interested person to petition an agency to amend rules and we state the reasons for that. And then you have the Commission's Rules of Practice and Procedures, Chapter 201 that includes the specifics of the information requirements that need to be submitted by a petitioner. Again, as the Director indicated it's unusual. In fact, I can't remember the last time that you've had a petition come before you, but it is clearly described in your rules. Mr. Profio did, as the petitioner did submit an adequate petition meeting the requirements in Section 12-202-9(c)(1) as found in your, in your department memo.

As far as procedures are concerned, again, Corporation Counsel may have other things to say too, but the department offers that the petitioner should be given first an opportunity to present the petition, and public testimony should be taken after that, and after questions and deliberations, the Commission can either deny the petition or initiate proceedings for its further consideration, and there's some time lines like that under consideration including today the Commission has up to 30 days to either deny the petition or initiate those further proceedings. If the Commission chooses to deny, it must provide its reasons for doing so in writing. The Commission may delegate the Chair to sign a letter to the petitioner on behalf of the Commission with such reasons if that's what you choose. And if you choose to initiate further proceedings, the Department solicitate any...solicits any appropriate review and comment from relevant agencies and properly notice a public hearing for your further consideration.

Briefly on the analysis. The purpose of the Special Management Area under State Law is to control

development. And the purpose as stated in your SMA Rules is to implement Hawaii Revised Statutes, Chapter 205A relating to coastal zone, special management area and coastal zone area. Then you have a little further...well, the purpose of a SMA Assessment application which you do not see but we get hundreds of these in the Department every year, it's to make an assessment and determination of whether a proposed action is a development, will it have a significant impact on the Special Management Area of the coastal zone, and if it could cause a significant effect on the Special Management Area. The review process would identify those possible impacts and assure they're appropriately mitigated. And the assessment determination is required under State Law in your rules to focus on two particular aspects of State Law, HRS 205A-2 and that which includes SMA Objectives and Policies statewide, and then also all, all approvals that are issued by the Department and by the Commission need to be in compliance with SMA Guidelines which are found in Chapter 205A-26, both of those are exhibits to your memo.

On the other hand the petition would require a description of impacts that agricultural burning would have upon the parcel of land where an action is proposed and on adjacent parcels as well as changes to such impacts which could result from the proposed action. Neither agricultural burning nor its impacts are the subject of either HRS sections 205A-2 or 26. Proposed actions do not cause effects of cane burning. Cane burning is separate from and not under the control of the applicants for SMA Assessments or permits. Thus, neither the applicants nor the County are in the position to condition for or otherwise mitigate such impacts.

So in summary, the SMA Rules serve to assess, determine, and where necessary, mitigate potential effects of a proposed action on the SMA in the coastal zone. It's not intended...It's not in their intended purpose to determine existing impacts that agricultural burning may have on a parcel where an action is proposed or its neighboring parcels, nor the impacts a proposed might have on the ag burning. The possible effects of ag burning could be much more appropriately and directly addressed under other bodies of law and regulations, such as those under the purview of the State Department of Health.

I'd like to acknowledge that the Department and Commission have received various written testimonies. You have a significant packet submitted a few days ago which I hope went out with your packet...a letter from Mr. Dennis Glide...Clyde, excuse me, of Kihei. And further we have received in the last few days further written testimony, just want to reference in the record, you have four letters from Hui o Ka'Ike, one from their President Koa Martin, and if I...hopefully I'm gonna get the other names correctly, Wesley Bissen, Mac Hehelete[sic] (Mae Nakahata), that's my best guess from writing, the handwriting, I apologize, and Jocelyn Thomas. As well as you do have a written communication from the Kihei Community Association in addition to the oral testimony today, and you also have written testimony from Rick Volner, a General Manager of Hawaiian Commercial & Sugar Company.

We've also had communication back and forth with the State Office of Planning, not in any formal sense, but we work with them very closely as they are responsible to, for implementing the Hawaii Coastal Zone Management Law and we work with them and receive grants from them in order to carry out that. And they provide guidance on a statewide basis.

The Director may wish to pass on some of the communications that have happened with them, but we don't have anything in a formal sense from them. But in summary, well basically I'd like to move

to the recommendation that the Department recommends that after taking public testimony and deliberating that the Commission deny the petition, state the reasons for doing so, authorize the Department to incorporate those reasons into a letter to the petitioner. I would probably be checking with you as you're talking to make sure I've captured the essence of those, and authorize the Chair to sign the letter on behalf of the Commission. Any questions?

Chair Ball: Thank you. And now Chris you wanna give your part as the petitioner?

Mr. Chris Profio: I'm not used to speaking in public. It's been a long time. Good morning, my name is Chris Profio. I have lived in Kahului for eight and a half years. I love it here. My first visit to Hawaii was way back in the summer of 1971 where I stayed with my grandparents in Kapaa on Kauai. Stayed there for two long summers and I painted houses and crewed on a sport fishing boat. Those were my first exposures to this beautiful place. And I visited here many times before actually deciding that it was time for me to quit my job, retire, grab my dog, and come and live here for the rest of my life. It's a beautiful place.

I'm a little disappointed to be handed a document just before this meeting began that indicates that the staff recommendation is to deny the petition. I was also disappointed during the break to hear a member of this board express an opinion about this controversy over cane burning as just same old, some old. It's kinda disappointing and it makes me think that minds are already kind of made up here.

I want you to understand that even though...you don't have to live next door to a cane field to be affected by the smoke and the ash. I live in the old part of Maui Lani right off of South Kamehameha. I'm a good mile and a half maybe, maybe further from the closest cane field. But smoke from what I've seen in the eight and a half years of living here goes up and then it moves and sometimes it comes down. And over the years, I would estimate that I have been impacted by smoke and/or cane ash two or three times a week on average. You know, it all depends on the time of year and how the winds are blowing.

I got involved in the effort to stop cane burning some time ago. I got tired of trying to breath the air. I have allergies. My wife has respiratory issues. And then trying to cleaning up the ash. The ash falls on roof, it lands in roof, in my rain gutters. I am partially disabled. I may not look like it, but I have difficultly climbing ladders and it's very difficult and dangerous for me to try to attempt to climb up a ladder to scoop out the muck out of my rain gutters. I'm just sick to death of it.

I think we need to recognize that cane smoke and cane ash exist. It's...there's a lot of ash going into the ocean. It can't be doing the reef any good. If we accept that the reef is being stressed and the air is being polluted, there was just a study in the...reported in *The Maui News* last week that indicated that there was a correlation between larger scale, hundred acres or more cane burning and increased acute respiratory distress on this island.

HC&S...my understanding is HC&S has about 36,000 acres growing cane. They only green harvest about 3,000 of those acres. We'd like it to be a lot more than that. I guess the excuse has been that there is a lot of rocks in the fields, to that I reply that the HC&S has had over a 100 years to get the rocks out of the fields. I understand every once in a while they say that they're not gonna be growing cane any more and it might scare people and there's gonna be all these jobs lost. On the

same...on the other hand, they say they're gonna continue to stay in agriculture even if they stop growing cane. HC&S could be a hero if in my opinion if they started growing some food crops of various kinds that would help reduce Hawaii or this island's anyway, this island's reliance on imported food. You know, I think the land is gonna remain agricultural for a very long time. I don't wanna see people lose their jobs or anything, but I don't think that's what's going to happen.

I think like I said, when we're going to recognize that cane smoke and ash exist this is just an effort, this whole petition, is an effort to acknowledge it. If you're going to approve a development in the shoreline area that's gonna be continually inundated by smoke or ash, the people who might consider buying in that development need to know about it, okay. And if you can't mitigate the effects of it, at least you can educate people, hey, this development is in the path of smoke and ash judging from the prevailing winds, et cetera, et cetera. Nobody told me about smoke cane or cane smoke or ash when I bought my property. I heard about dogs barking and stuff like that, but I didn't hear anything, didn't read anything about cane smoke or ash. And you know, you have to recognize folks that number one, it's not your grand...great granddad's cane smoke. They're burning a lot of stuff with it. You don't want to breath it. There are thousands more people living on Maui than there were even 20, 30 or 40 years ago. My first visit to Kauai I think there was one traffic light on the entire island. Things have changed. So there are thousands of people more living down range of these burns now than there ever were before and the smoke and ash are making people sick. And we're trying...I'm asking you to help us do something about it. That's all I have to say.

Chair Ball: Thank you. At this time, we'll open it up for public testimony. Anyone wishing to do so, may do so at this time? Tom?

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

Mr. Tom Croly: Chair, I was gonna testify on a Communication item and you usually don't call those up individually. Will you today?

Chair Ball: If you'd like, sure.

Mr. Croly: Okay, then I'll testify when that Communication item comes up. Thank you.

Chair Ball: Yeah, that was 30 seconds Tom.

Mr. Mike Moran: Aloha—

Chair Ball: Aloha.

Mr. Moran: —and good morning. Mike Moran for the Kihei Community Association testifying on Item or Communication D2. Thank you to the volunteer Commissioners. I always like to emphasize that you guys are volunteers and also mahalo to the Director for distributing our position paper which is most of what we have to say, but I won't be saying. My testimony will be brief. Sigh of relief.

KCA feels it's prudent to address related matters to this request. If the KCA reviewed the A&B, the

parent company of HC&S residential project atop Kaiwahine in North Kihei in December of 2013 resubmitted testimony to the County Council's Land Use Committee on March 19, 2014 concerning the requested community plan amendment and change in zoning request. One of the objections to the proposed location was Number 3, "the project is in an area immediately adjacent to agricultural fields where chemical spraying and cane burning will be a health hazard for residents. While of course we do not speak for him, we heard Mayor's Environmental Coordinator Rob Parson state he questioned the judgement of the Council approving this project due to its location in the vicinity of cane burning.

Finally we submit KCA's position paper statement addressing air quality resulting from cane burning which we believe does a reasonable examination of the issue. Mahalo.

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

Mr. Brad Everett: Good morning, my name is Brad. I would like to testify I believe it's D2, Mr. Profio's proposed rule change. I'm a little disappointed. I just saw that looks like you guys already made up your mind and gonna send a letter out denying it. So I kinda bummed I took off work to come down there and share my thoughts. But might as well do it anyways since I'm here.

I was born and raised here in Hawaii. I'm well aware of the effects of sugar cane burning has on our local environment and public health. I'm also an avid surfer and have witnessed firsthand the effects of smoke and ash from local cane burns. I've often been forced to get out of the water in the mornings after having a difficult time breathing due to smoke in the air from a local cane burn. I usually go really early to avoid the crowds and that's when it's the worst.

On numerous occasions I've also been in the water when ash from the HC&S burns rains down on the ocean all around me. As you are aware this ash contains many components that are potentially harmful to aquatic life and our reef system. Just this morning, areas near Sugar Beach and North Kihei were blanketed in ash from an HC&S burn that was conducted right off of Mokulele Highway. I just drove by it around this 8:30 this morning and it's still smoldering, the smoke is still thick and it's blowing down into North Kihei.

I believe these effects need to be taken into account in the SMA permitting process. I'm not sure if any of you guys live in North Kihei. I lived in Haiku for a while. Ended up having to move to North Kihei and move to South Pointe complex and every morning. I lived there for 30 days, luckily my lease was month to month. I was unaware in Haiku how bad it was. Every morning I'd wake up and there be ash and smoke coming underneath my doorways, through the windows, and if you don't have air conditioning you're forced to breath it all in. So it's interesting that Alexander & Baldwin will propose a lot of developments on land that's downwind of burns and then say, why did you move there and blame people for moving there. So I'm going to support Mr. Profio's proposed rule change to take into consideration the effects of smoke and ash from agricultural operations in the SMA permitting process. These effects are substantial and will cumulatively add to the effects of proposed developments. So please forward it along. I know you already made your decision up, but if you can be swayed by testimony today, I encourage you to maybe to take a second look at it and maybe just forward it on so we can actually have the hearing on the matter. Appreciate your time. Thanks.

Chair Ball: Thank you. Just as a clarification. We have not made up our mind. That was a recommendation from the Department to this Commission.

Mr. Everett: Perfect. Well I...

Chair Ball: So we have not made a decision.

Mr. Everett: Okay, I encourage you to maybe keep an open mind today. Thanks.

Chair Ball: Thank you. Let's see, Chris?

Mr. Chris Profio:...(inaudible-speaking from the audience)...

Chair Ball: Yeah, you can address under your D2 item.

Mr. Profio: Okay, perfect. Thank you.

Chair Ball: And Mercer "Chubby" Vicens? Would you like to wait till the item or...

Mr. Mercer "Chubby" Vicens: No, I'll speak. Good morning, Chairman Ball. Members of the Commission my name is Mercer "Chubby" Vicens. I'm a 25-year plus resident of Sprecklesville which is directly across one of the larger major cane fields in the Paia region. And while every two years and I say it every two years they burn the cane in front of my house and every once in a while we have a little bit of a problem, but I think it is outweighed by the privilege, and I repeat, the privilege of living on Maui. So my testimony this morning is for your consideration.

Thank you for the opportunity to testify in opposition to the petition D2 to amend Special Management Area Rules relating to the open air ag burning. The purpose of the Special Management Area Rules is to determine if a proposed development will have significant effect upon the special management area of the coastline and this is not.

Should the proposed development project be determined to cause significant impacts on a Special Management Area, the SMA review process identifies these impacts and ensures that they are appropriately mitigated. The SMA process on the other hand does not pertain to impacts caused by actions unrelated to the proposed development project such as an open air agricultural burning as requested by the subject petitioner.

Should this petition be granted it would open up the SMA process to many, many more things than it what it was designed for to address an endless number of unrelated impacts which would greatly impede the SMA process. You may as well throw it out. Thus, it is requested that the petition to amend the Special Management Area Rules relating to open air agriculture be denied. Thank you very much.

I might add again, as I said I was a 25-year, I am a 25-year adjacent community member and I have to tell you that the times that we were inconvenienced is not significant, okay. And most of the time, the wind is blowing in the opposite direction, but you know, if it happens, it happens. I chose Maui freely. I will intend to spend the rest of my days unlike the young man who was up here earlier, I'm



80-years-old or will be soon and I've loved Hawaii and I have all respect for what you do here, for the decisions you will make. Just bear in mind that we are a special place and we abide by the rules. Thank you very much.

Chair Ball: Any questions for the testifier? Seeing none, thank you.

Mr. Vicens: Thank you very much.

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

Mr. Tom Croly: Thank you, Chair. I'm Tom Croly. Sometimes I'm speaking on my own behalf, sometimes I'm speaking for the Maui Vacation Rental Association. Today I'm speaking for Go Maui. Go Maui is a 501(c)(4) nonprofit that has a mission of providing leadership in the discussion about the need for growth and economic development on Maui. Our group has focused its efforts on policy that help create housing, jobs, water, agricultural and economic opportunities and infrastructure. Go Maui believes that the only way for Maui to move forward is that our residents have greater opportunities with a healthy environment and a vibrant economy while respecting our diverse culture and history.

The proposed petition before you today has no place here. ...(audio feedback)... The Planning Commission is tasked with enforcing the SMA, and the SMA is about what the effects of any proposed development would be to our shoreline. The idea that some other effect might have on this new proposed development, it's not really the place to be considering it. So whether it's good or bad, what the petitioner wants it just is the wrong venue and we urge that you deny this petition. Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Hold on, Tom. Did you have a question for Tom?

Unidentified Speaker: No.

Chair Ball: Okay. All right, Alice.

Ms. Alice Lee: Morning, Mr. Chair—

Chair Ball: Good morning.

Ms. Lee: —and Commissioners. My name is Alice Lee. I'm speaking as an individual, but also a volunteer for Go Maui. I have always been a strong advocate for housing and in particular affordable housing. As some of you know I have lived here all of my life, and my mother actually grew up in Camp 1. My grandfather is from there and my great grandmother. And although new people don't appreciate that connection it's very important to us 'cause that's how our values were created, and so there is an importance you know with the past. And I think a lot of us are products of the plantation, and without the plantation we would not have been able to advance.

But you know, taking that trip down memory lane is really irrelevant because SMA Rules are intended to assess proposed projects and activities in the shoreline area. And cane burning or

agricultural burning really should be a discussion for another venue as Tom mentioned. Cane burning and agricultural burning is already regulated by the State Department of Health. It does not belong in SMA Rules. So on that basis, I urge you to deny the petition. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, would anyone else like to testify at this time on Item D2? Seeing none, public testimony is now closed. Chris, do you have something? Go to the podium please and identify yourself again.

Mr. Profio: Again, I'm still Chris Profio. I'm still the petitioner. I don't think we're trying to—

Chair Ball: Chris, pull the mic closer.

Mr. Profio: I'm sorry, not used to these things. Is that better? I don't think we're trying to change the past. I mean, I recognize that the plantation era has a great deal of sociological, cultural, historical significance to these islands. The history is still there. The history doesn't change. But the notion that cane burning is some kind of sacred cultural icon I have to disagree with. It is just a harvesting method that a big company has decided to use because it's cheaper and more efficient for them to harvest their cane that way. And unfortunately, because there are more people living here now, there are a lot more people being impacted by the negative effects of it. But I recognize that the plantation era has its place, it was there, the history has not changed, it's still there.

Chair Ball: Thank you. Jeff, do you wanna give the staff recommendation again? I know you already have, but restate that please?

Mr. Dack: Well, we recommend that at this point you deny the petition, after deliberating, we recommend you deny the petition and then state the reasons for your decision, authorize the Chairman to...authorize the Department to incorporate those reasons into a letter and the Chair to sign a letter on behalf of the Commission. Thank you.

Chair Ball: Thank you. Questions from the Commission? Director?

Mr. Spence: Thank you, Mr. Chairman. In response to the petition...first I wanna apologize to Mr. Profio that our staff memo only got to him apparently this morning. Jeffrey explained to me that he tried to email it and it bounced back. So anyway, I apologize. We'll try to correct whatever additional efforts or something in the future.

But I also wanted to comment that we did consult with the Office of State Planning. They are the lead agency for the Coastal Zone Management Program in the State of Hawaii for all the counties. And we sent them a copy of the petition and they did write us some informal comments back. We will be getting a formal letter on letterhead. But if I could just include a couple of excerpts that—

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

Mr. Spence: I don't have copies of it.

Mr. Hopper: You gotta have the whole document.

Mr. Spence: Then well, we talked to OP and we'll get copies to Commissioners at a future date.

Mr. Hopper: Did you wanna take a recess and do it?

Mr. Spence: I'd have to get back to the office.

Mr. Hopper: You know what, give it to me. I can go to my office and make copies.

Mr. Spence: With all my scribbles on it.

Mr. Hopper: I'm just saying if the document's gonna be considered it needs to be distributed to everybody including the petitioner otherwise your comments ...(inaudible)...

Mr. Spence: Okay, we'll just hold comments.

Chair Ball: Any other further comments from the Commission?

Mr. Hopper: Yeah, my comment was--

Chair Ball: Corporation Counsel?

Mr. Hopper: If a document's gonna be referenced it would need to be distributed to everybody. If that's not possible it's something that the--

Mr. Spence: We do have a clean copy of it.

Mr. Hopper: Okay, would the Commissioners like...I could even go to my office and make copies for everyone including the public and the petitioner and we could take a recess for ten minutes, five minutes maybe?

Mr. Medeiros: Move to recess.

Mr. Lay: Ten.

Chair Ball: We'll be in recess for ten minutes.

A recess was called at 10:36 a.m., and the meeting was reconvened at 10:47 a.m.

Chair Ball: And we will call this meeting back to order. We left off with the Director getting us a memo from OP and we will continue on that, with that.

Mr. Spence: Thank you, Commissioners. And my apologies. We had been speaking with OP and we were trying to keep this a little more informal, but Mike Hopper, one of my comments is he's been keeping us out of trouble since however long. Anyway, but I thought their comments were important. Office of State Planning is the lead agency for administering for Hawaii Coastal Zone Management Act, their Coastal Zone Management Program for the State, for all the counties. It also stems from, you know, the Federal Government, the Coastal Zone...with the Coastal Zone

Management Act.

They comment that you know, the Chapter 205 lists what's a development, what's not a development, and if there were to be...if somebody was going to propose agricultural burning that would be one thing. But also going on further with regards to giving out SMA Permits their final comment, one of their final comments is that all the required information for SMA Use Assessments should be associated with CZM Objectives and supporting Policies as defined in 205A-2 and the SMA Guidelines and HRS 205A-26. Non CZM issues associated with developments within the SMA should be addressed by other County regulatory mechanisms in accordance with the findings and purposes of the SMA Permit under 205A-21 SMA permitting is not a regulatory mechanism to address smoke and air pollution from agricultural burning.

In other words, as Jeffrey pointed out and as the memo, the Department's memo points out when somebody proposes an action within the Special Management Area, when they propose to build a subdivision or condo or commercial center or an affordable housing project or whatever you're proposing to do, whatever the action is, you're assessing the impacts of the, that, that project will have on the Special Management Area with regards to drainage, you know, the whole list of policies and objectives in 205A. But you're not assessing, you're assessing what that project will do, not what things offsite are doing to the project. So in that sense, they're pretty much agreeing with us. They note that there could be other County, you know, mechanisms to regulate air pollution for agricultural burning. So I just wanted to include their comments on that and they will formalize and put 'em on letterhead at some point.

Chair Ball: Thank you, Director. Any further comments from the Commission?

Mr. Lay: I have a couple.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, this is only on the cane burning and I know the SMA's affecting our water areas. I mean with our water areas we got...if somebody is moving there and they're gonna purchase a home are we worried about should tell if there's a road right next by you? If you're in Haiku is it they should say something like it rains a lot? If you're in Lahaina is it, it's hot over by the ocean? Is that what we're gonna...we're looking at to do? Whales, traffic jams, salt air, school, church, noisy neighborhoods, birds nesting, surf spots that are hardly used at all, but when there's a surf there's a whole bunch of people there? I mean, is this is what we're looking to do? I mean, this petition is just a small push in that direction. I mean, I agree with, with not letting this pass, but I have concerns...you're talking about fresh air...volcanoes to me is the biggest one on Maui. When we have the vog comes in. It's a big air thing, but it's on Maui and it happens. And the history part, immigrants coming in, we have the Japanese, the Chinese, the Haoles, the Portuguese, all came here to work. I know we're here...a lotta people are here for the beauty and everything, but they came here people to work here and it's important that we do remember why they were here. And cane, the cane field is it cheaper to burn and how sustainable is cane fields right now? I mean, it's getting pushed out where we don't have cane or sugar from Hawaii and you know, we're trying to keep it going and there's a lot of people working out there who work in cane fields. So that's how I feel about this and that's my whole feeling about that. And I hope there's other people other there who will voice their opinion as strongly as I do.

Chair Ball: Further comments from the Commission? Commissioner Hedani?

Mr. Hedani: Well, I have a question first. A petition to change our SMA Rules can it be brought just by one person or is it a petition that's required to have "x" number of signatures?

Chair Ball: Corporation Counsel?

Mr. Hopper: I don't see any...there's a State law that says any interested person so it could be, it could be one person. It could be multiple people, but there's no, there's no limit to the number of people. There's no base requirement for the number of people. I'd also wanna clarify today if it wasn't already clear and it may already have been, you're not voting to actually change your rule today. You're voting whether or not you wanna initiate that process which would require a public hearing, publication in the newspaper and other things. You could vote to not to do that by denying the petition or you could vote to go forward with the amendments. But today you're eligible to actually amend the rules. That's a, that's a process you're probably familiar with, but this is...the State law requires that you have 30 days to determine to initiate that procedure or not initiate that procedure.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I know it's a difficult question. I know it's something that people that are convinced one way or another are never gonna change their minds on this particular issue. I come from a plantation background. My father worked for the plantation. He was an operator of a hydro power plant with a third grade education, but he operated a hydro power plant producing electricity in a very environmentally friendly way something that the plantation initiated on its own. The cleanest way to provide power for people through the use of hydro electric power is something the plantation did.

It's true that burning creates smoke and people are affected by smoke. I have two children and both of them had asthma when they were young. We lived in Wailuku and we lived in Wailuku Heights. Whenever there was cane burning, they did not suffer from an effect of the cane burning. Whenever the volcano erupted I would know one day in advance of it hitting the newspapers because their lips would turn blue. So I understand the effects of air pollution and especially vog on people with asthma. My personal opinion is that Dr. Pang who rendered an opinion lately about the connection between cane smoke and health effects, my personal opinion is that he doesn't know what he's talking about.

I believe that the plantation as an agricultural entity does more to protect the coastal zone and the SMA area than perhaps any other industry. I think it's important for Maui to have a balance between tourism, construction, the service industries, and agriculture. Contour plowing, creating protection for our water sheds, preventing runoff from reaching the ocean which can be an impact to the SMA area is something that the plantations go above and beyond to protect the resources that we have. They do more good than they do bad.

I read an article in the *Advertiser* I think yesterday that said that residential development has an impact ten times greater than agriculture on the environment through the use of chemicals. We use, you know, chemicals, insecticides, fertilizers, pesticides, fertilizers on our lawns within

subdivisions. And those subdivisions collectively have ten times the impact of agricultural operations on the environment. If you took A&B's 30,000 acres and converted all of it to residential, the impact would be you wouldn't have cane smoke, but you would have ten times the effect on the SMA and the CZM through the conversion of the use and knocking the balance out of...the balance between agriculture and development. I'm never gonna convince anyone to change their mind about HC&S. They've done more for affordable housing than anybody else. My father purchased his house back in 1960 for \$10,000. A 10,000 square foot lot with a three-bedroom, one-bath house for \$10,000. He paid it off in his lifetime with his wages that he earned as a worker for the plantation and I will eternally have a debt of gratitude to the plantation for doing things like that without recognition.

There's so much more that I wanna say about this, but I think the basic thing is I agree with the Department's opinion. I agree that the opinion that the venue is not correct. I think the issue is not germane to the SMA. I don't think someone that's applying for an SMA Permit in Hana should have to explain what impacts they have on their parcel from cane burning or their neighbor's parcel from cane burning. I think it's overreaching and it's not germane to the discussion that we have on the CZM. Thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I, too, am a product of the plantation in Paia, and I think that the plantation did service to the community as far as us getting an education, et cetera. And I think all the statistics that we've heard I think needs to be reevaluated from the standpoint that number one, there's more oxygen per acre produced by sugar cane than the forest and a lot of people don't know that. And I think the other side of the token is if we look historically at all the plantation in the State of Hawaii each plantation once it closed only created more problems with waste, et cetera. Take example Pioneer Mill in Lahaina which was the last one that closed. If you ever took a cruise after Pioneer Mill closed, the place did no longer look green. It was brown. And if you imagine 36,000 acres in HC&S being shut down, we'd have a dust bowl and you talk about any kind of health problem that would be a major health problem. And talking about asthma, I grew up as an asthmatic child and I didn't have the kind of problems that people talk about that causes a person with asthma with more health problems. And I think, I think it's high time the silent majority starts speaking up about the appreciation of what the plantation has done for the community. And granted, not all the things the plantation did was correct, but I think in the long run it did service to the community and I fully support the whole idea about what's happening with HC&S and trying to maintain the cultivation of the area because I think it draws a lot of tourism because this is the only place they'd be able to find cultivation of sugar cane in Hawaii and that's a major industry. And lastly, I think when we start to amend the SMA process it's gonna open up a whole can of worms and we don't wanna do that.

Chair Ball: Further comments? Commissioner Medeiros?

Mr. Medeiros: Yeah, I understand everybody's sentiments about HC&S and everything like that, and I appreciate everything that they've done, you know, and that's a lot coming from a guy that used to work for the union. You know, saying nice things about management. But the bottom line is this, it doesn't fit, okay? The petition isn't...bringing the petition to us this is not the venue for it, you know. The Planning Department agrees this is not the venue. A lot of the Commissioners believe that this is not the venue and I just think that spending all this time on something that's not

supposed to be here is a waste of time.

Chair Ball: Any further? Commissioner Duvauchelle?

Ms. Duvauchelle: ...(inaudible)...to talk. I am going to support the denial and it's based on not my feelings about cane burning, but I do love the agriculture here. As someone who's applied, been in the process as with a development applied for the SMA, I just feel like this is absolutely not the correct place for this type of provision. I don't think it fits what the original intention was and I honestly don't support it.

Chair Ball: Thank you. Any further comments? Commissioner Hedani?

Mr. Hedani: I can't resist. There's two more comments that I'd like to raise here. One is from my experience with Amfac and Pioneer Mill. When Amfac sold any piece of property in West Maui because it was the parent company of Pioneer Mill which was in the sugar operation they included in every warranty deed something that I called the rape and pillage clause. And what it said was that by conveying the property in the warranty deed it reserved the right to emit smoke, soot, dust, noise, noxious vapors and any other nuisances associated with the operation of a sugar plantation in perpetuity as a perpetual easement on the properties it sold. I don't know if A&B has done the same thing in their conveyance documents to people that purchased property like Chris, but in his warranty deed there's probably a reservation to recognize that there's an agricultural operation operating within the vicinity of his property. Most of the people in Wailea which is a A&B development probably have that same provision in their documents as well. A lot of the people in Kihei probably have that provision in their documents as well. And I think that agriculture needs to be nurtured and protected. We're supposed to have a Right to Farm Act in Hawaii that protects agricultural operations from monku from everybody because it is agriculture. It's dirty, dusty, smelly, and it is what it is. People say they should be in the business of raising food for food security, but those same people go to shop at Costco because the price is better. And the plantation pays the highest wages of agricultural workers in the world. You cannot compete with other areas that pay people 75 cents a day in order to produce produce on a free market basis and survive and that's all I have to say about that.

Chair Ball: All right. Any further comments? I'll just add to that comment, add onto Commissioner Hedani's comment that there is an avenue and it's called HRS 508D which is a Seller's Disclosure Statement which would probably better be served for that document to be...(inaudible)... The petitioner's issue could be addressed there more readily because it's, it's a Seller's Disclosure Statement. It's mandated by law that it has to be filled out. So that might be an avenue to look into. So we already do sort of have a law on the books as far as disclosing those sort of things. Anyway, do we have a motion then? Commissioner Higashi?

Mr. Higashi: I move to deny the request.

Mr. Hedani: Second.

Chair Ball: Second by Hedani. All in—

Mr. Hopper: Wait.

Chair Ball: Sorry, Corporation Counsel?

Mr. Hopper: Just wanna make clear the law requires that there be a reason of denial, reasons for denial given. I think the Department volunteered that based on the reasons set forth in their staff report they could submit that as a Commission...as the denial on behalf of the Commission, for the reasons on behalf the Commission. You could review that and alter it or add reasons or delete reasons if you believe they are or are not consistent with your vote. But if there's a motion, I would advise in including reasons for the denial or a proper delegation of those reasons to the Director based on the report making clear if there's any of those reasons set forth in the report you don't agree with or wanted to add any reasons for denial for the Director to add.

Chair Ball: Thank you. Either maker of the motion or the second? Commissioner Hedani?

Mr. Hedani: Yes, my second was based on the reasons that were set forth in the Department's report as the basis for denial of the petition.

Mr. Hopper: So the motion to be clear would be authorizing the Department to provide that as the Commission's reasons in its communication to the petitioner regarding the denial?

Chair Ball: Commissioner Higashi?

Mr. Higashi: I agree with the recommendation of the Director, based upon the recommendation stated.

Chair Ball: From the staff. Okay, everybody clear on that? Commissioner Hedani?

Mr. Hedani: It may take an hour to burn a stalk of cane from the time they light the fire until the time that stalk is extinguished, but it takes two years to get to that point. So stalk of cane produces oxygen for one year and 364 days and 23 hours before that hour comes around.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: My position of this not being the venue is gonna be part of that ...(inaudible)...

Unidentified Speaker: Yes.

Mr. Medeiros: I just wanted to make it clear that, you know, I want that in there.

Chair Ball: Okay, any further comments? Seeing none, let's call for the vote. All in favor of the denial of the petition signify by saying, "aye" and raise your hand?

Commission Members: Aye.

Mr. Spence: That's five ayes.

Chair Ball: Motion or petition is denied.



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

**VOTED: To Deny the Petition for the Amendment of a Rule.  
(Assenting - R. Higashi, W. Hedani, J. Medeiros, I. Lay, S. Duvauchelle)  
(Excused - L. Hudson, K. Robinson, M. Tsai)**

Chair Ball: Moving onto Item E.

Mr. Spence: Commissioners, Item E is Acceptance of the Action Minutes of September 22, 2015, and the Regular Minutes of September 8, 2015.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE SEPTEMBER 22, 2015 MEETING  
AND REGULAR MINUTES OF THE SEPTEMBER 8, 2015 MEETING**

Mr. Lay: Motion to accept.

Mr. Hedani: Second.

Chair Ball: Motion by Commissioner Lay, second by Hedani. All in favor of the motion, please raise your hand and say, "aye".

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried unanimous.

**It was moved by Mr. Lay, seconded by Mr. Hedani, then**

**VOTED: To Accept the Action Minutes of the September 22, 2015 Meeting and  
Regular Minutes of the September 8, 2015 Meeting.  
(Assenting - I. Lay, W. Hedani, J. Medeiros, S. Duvauchelle, R. Higashi)  
(Excused - L. Hudson, K. Robinson, M. Tsai)**

Chair Ball: Director's Report, Item F?

Mr. Spence: Commissioners, you have in front of you the proposed 2016 meeting schedule. You may choose to approve or approve with amendments of the proposed schedule.

**F. DIRECTOR'S REPORT**

**1. 2016 Meeting Schedule**

Chair Ball: Commissioners?

Mr. Spence: Note that November 7 is a Monday.

Mr. Lay: Motion to approve.

Mr. Medeiros: Why?

Chair Ball: There's a holiday on the Tuesday.

Mr. Spence: Holiday falls on the Tuesday.

Chair Ball: Is there a motion?

Mr. Hedani: Motion to approve.

Chair Ball: Commissioner Hedani.

Mr. Higashi: Second.

Chair Ball: Second by Higashi. All in favor raise your hand and say, "aye".

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried unanimously.

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

**VOTED: To Approve the Proposed 2016 Meeting Schedule.  
(Assenting - W. Hedani, R. Higashi, J. Medeiros, I. Lay, S. Duvauchelle)  
(Excused - L. Hudson, K. Robinson, M. Tsai)**

Chair Ball: Moving onto Item 2 and 3.

Mr. Spence: Commissioners, you have the SMA Minor Permit Report and the Exemption Report.

**2. SMA Minor Permit Report (Appendix A)**

**3. SMA Exemption Report (Appendix B)**

Chair Ball: Any question on Items 2 or 3 from the Commission?

Mr. Lay: Motion to accept.

Mr. Hedani: Second.

Chair Ball: There was a motion by Commission Lay to accept and seconded by Hedani. All in favor say, "aye".

Commission Members: Aye.

Chair Ball: Any opposed? The motion carried.

**It was moved by Mr. Lay, seconded by Mr. Hedani, then**

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

Chair Ball: Discussion of further, sorry, future Maui Planning Commission Agendas, Item 4, October 27<sup>th</sup>. Director?

**4. Discussion of Future Maui Planning Commission Agendas**

**a. October 27, 2015 meeting agenda items**

Mr. Spence: You do have a letter from Alston, Hunt, Floyd & Ing regarding a request to change the hearing date for the Motion to Dismiss Appeal of the SMA Permit for the Flatbread Pizza SMA Minor Permit. They're just requesting that they be able to present arguments at October 27<sup>th</sup>.

Okay, the other October 27<sup>th</sup> items, Sunstone Hawaii requesting a SMA Permit and Step 2 Planned Development approval for renovations at the Wailea Beach Marriott Resort project. The second public hearing item is Mr. Jeff Alfriend requesting a State Land Use Commission Special Use Permit in order to operate the Hale Kalani Bed and Breakfast on Kamehameheike Road in Kula. It says second public hearing, oh the Epstein's appeal is coming back. Mr. Tom Croly on behalf of Mr. and Mrs. Terry Epstein. Then I also already mentioned the SMA Appeal by Mr. Baskin regarding the granting of an SMA Minor Permit to Flatbread Pizza. Then Item D, Communications Mr. Rob Cole representing Haleakala Waldorf School requesting amendments to a State Land Use Commission Special Use Permit on Baldwin Avenue at the Hui Noeau. Then I'll have a Director's Report regarding a two-year time extension for the SMA Permit to initiate construction of the Alahele Subdivision in Kihei. So it sounds like you're gonna have a full agenda.

Chair Ball: Okay, let's see next meeting will be October 27<sup>th</sup>. See you all then. Meeting adjourned.

**G. NEXT REGULAR MEETING DATE: October 27, 2015**

**H. ADJOURNMENT**

The meeting was adjourned at approximately 11:13 a.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE**

**Present**

Keone Ball, Chair  
Sandy Duvauchelle  
Wayne Hedani  
Richard Higashi  
Ivan Lay  
Jason Medeiros

**Excused**

Larry Hudson  
Keaka Robinson  
Max Tsai, Vice-Chair

**Others**

Will Spence, Director, Planning Department  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)