

**MAUI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 10, 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, November 10, 2105, 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: November 10th, and we are the Maui Planning Commission and we have a full agenda today so we will start out with public testimony.

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

Chair Ball: Anyone that would like to testify at this time may do so. However, if you testify now you may not testify when your agenda item comes up. You can wait and testify at that time. Anyone who would like to do so at this time, please come forward and identify yourself. You have three minutes.

The following individuals gave testimony at the beginning of the meeting:

Mike Moran, Item D-1, Victory Development, Final EA
Mikal Torgerson, Item E-1, James Walkus, Petition for Reconsideration
Tanna Swanson, Item E-1, James Walkus, Petition for Reconsideration

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 now closed. We will move onto Item C-1. Deputy Director?

Ms. McLean: Thank you, Chair. The Commission has two public hearing items before it today. The first one is a request from Mr. Dave Taylor, the Director of the Department of Water Supply for Phase 2 Project District Approval to replace the existing Iao Water Treatment Plant with a new water treatment plant and related improvements on 2.6 acres on West Alu Road, Iao Valley Road and West Main Street intersection at parcel TMK: 3:-5-001: 067 and 091 in Wailuku. Paul Fasi is the project planner.

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

1. **MR. DAVE TAYLOR, Director, DEPARTMENT OF WATER SUPPLY requesting a Phase II Project District Approval to replace the existing Iao Water Treatment Plant (WTP) with a new WTP and related improvements on 2.6 acres on West Alu Road, the Iao Valley Road and West Main Street intersection, TMK: 3-5-001: 067 (por.) and 091, Wailuku, Island of Maui. (PH2 2015/0001) (P. Fasi)**

Mr. Paul Fasi: Good morning, Commissioners. Today we're gonna be discussing the water treatment plant, Project District 3, Wailuku, Phase 2 Approval process. So today, you're gonna be approving the Phase 2 Project District Approval.

The Planning Commission reviewed the Draft EA on May 12, 2015. You had eight comments at that time. The applicant will be addressing those eight concerns that you had in their presentation. It's also Exhibit 23 in your report. You can follow it along. They have addressed all the concerns, all eight concerns. I'm not gonna get into the details of the project. The applicant's presentation does a very good job of that.

As far as regulatory concerns, Chapter 19.45.050, Process and Procedures for a Project District. There are basically six relevant criteria, the access, water, waste water, drainage, erosion control, and landscaping. The Department has reviewed the project in terms of the six criteria and feel that the applicant has successfully met these requirements for a Project District Phase 2 application. They will have to do one more Phase 3 application which comes before the Department. It does not come before this body. A Phase 3 application approval is basically ensuring that their submittal of site plan matches what they propose today and that is done administratively within the Department.

If you no questions for the Department, I'm gonna just turn it over to the applicant. They have a very good presentation for you which covers all the details of the project and you'll get a very good understanding and probably answer a lot of your questions based on their presentation.

So handed out today also was an October 26th letter addressed to David Goode from the Water Department and this is further addressing the line of sight around the curve on Alu Road and the landscaping. So if there are no further questions, I'm gonna turn it over to the applicant to start their presentation. Thank you.

Ms. Charlene Shibuya: Good morning, Chair and Commission Members. My name is Charlene Shibuya I'm with the company of Munekiyo Hiraga. We're the planning firm that's representing the Department of Water Supply project. As Paul explained we're here for Project District Phase 2 Approval request for the proposed Iao Water Treatment Plant upgrades. And of course, as I said, we're here for the Department of Water Supply. Project team I have with me today is Tom Ochwat, who's the engineer that's handling this project for the Department of Water Supply and we're the planning consultants, Munekiyo Hiraga. Tessa Munekiyo-Ng, the Vice-President of the company is also here with me, and of course, myself Charlene Shibuya doing the presentation and we also have the civil engineer from Austin Tsutsumi & Associates, Inc., Ivan Nakatsuka, Vice-Present and Chief Environmental Engineer in case you guys have, you know, technical questions later on.

And of course the purpose here is to update the Commission Members on the project with DWS's recent Finding of No Significant Impact declared with the Final Environmental Assessment. As you recall, some of the members remember that we were here before for comments on the Draft EA. And then we're here to recap responses to Commission Members comments on the Draft EA provided at that May 12, 2015 Maui Planning Commission meeting, and of course, finally to request approval of the Project District Phase 2 application with this project.

And the project overview, the location is West Alu Road on a vacant parcel mauka of the existing water treatment plant and tank site and adjacent to a Maui Electric Company substation. And the scope is to replace and relocate an existing water treatment plant with upgraded facilities to produce up to approximately 3.2 million gallons per day treated water whereas the current water treatment capacity is up approximately 1.7 million gallons per day.

And here's a aerial view to kinda give you a better perspective. We are here in the County Building, well actually the County Planning Conference Room and if you were to travel along High Street and head up towards Iao Valley, you'll see the fork in the road and just past the fork in the road, on the left you'll see the existing water tank and that's where the existing water treatment plant exists, and then next to it is the Maui Electric Company substation, and the future site of the Iao, new Iao Water Treatment Plant which is gonna be a parcel that's gonna be subdivided out of this large parcel.

And here's a photo of the existing treatment plant filtration units. Again, you see the large water tank that's there and this is the water treatment facility that originally was temporarily housed with some tents and as you can see it's all in disrepair and on the side and it's no longer protected from the weather. And if you were to drive down from the old Wailuku Heights and head down South Alu Road onto West Alu Road and if you peer between the trees you'll be able to see the vacant site. This is the Maui Electric substation and then the existing water treatment plant, actually water tank.

And here's a site plan overview. Again, this is West Alu Road, and there's that sharp curve that turns into South Alu Road. There's the existing water tank, the Maui Electric substation and the new site which will have the treatment, new treatment plant building and some facilities that go with it.

Here's a zoom in of the treatment plant site itself. It will have a driveway, a parking lot, a building that houses the filtration system as well as an office and you know, restroom, kitchen for the staff and then there's gonna be a chlorine contact building and then some sludge lagoons on the rear of the project.

And just to kinda give you a rough idea. This is the project components. It will have a treatment plant building. It will have filtration, the filtration area. Basically the stuff that, you know, is now exposed to the weather is gonna have a new filtration system, an office, breakroom, restroom, storage, electrical and generator rooms. And then on the site it's gonna have a 2,000-gallon diesel fuel tank for the generator system. A dual compartment sludge lagoon, chlorine contact tank for disinfection, and the finished water line from the chlorine contact tank to the existing Iao tank and access driveway and related landscape, drainage and waste water improvements.

And it's also gonna have a landscape plan. Again here is, again here is West Alu Road, South Alu Road. It's gonna have some series of Vetiver grass and in between is gonna be a mixture of Common Bermuda and Annual Rye. And on the rear of the parcel it's gonna be lined with Kukui trees. Just to give you an idea of what the landscaping will look like, this is what the Vetiver grass looks like. There's some that's existing along Hansen Road near the HC&S office. And then mixture Annual Rye and Common Bermuda grass it's commonly used on like roadside projects, your new roads where they kinda grass the shoulders. And then here's an example where Vetiver grass is used as erosion control on slopes. And then this is an example of a Kukui tree.

So in looking at the elevations we initially, I guess for the Commission Members that were here back in May there was actually an initial design of the...this is the view if you were looking from West Alu Road and then you would see the treatment plant building, sludge lagoon, and then chlorine contact tank, and then from the rear you'd be seeing the back of the building, the sludge lagoon and then the chlorine contact tank. But there were some comments on, you know, like the impact on the views and the lines of sight with this chlorine contact here, chlorine contact tank looking quite high. So it was redesigned with a lower design as well as the sludge lagoon was lowered so it has a lesser aesthetic impact looking from West Alu Road and also from the rear side from the view from the Kehalani lands.

And just to give you a little bit better view this is like a photographic overlay. Sorry about that...this is a photographic overlay again, showing the lowered chlorine contact tank and the building of course, the height of the design stayed the same. So it has a little bit better visual impact. And from the rear, you would see the Kukui trees screening the project or at least a big part of the project from the Kehalani land's view.

And the water source is gonna be surface water from the Lao-Waikapu Ditch and it's to increase capacity from up to 1.7 million gallons per day at the existing water treatment plant up to 3.2 million gallons per day at the proposed water treatment plant. And the amount of water allowed for use at the Lao Water Treatment Plant was determined in a recent agreement accepted by all parties regarding the interim in-stream flow standards for Na Wai Eha which includes Lao Stream. And in formulating this agreement the impacts to the streams were taken into account. And if you recall, John Duey from Na Wai Eha did testify at the last May 12th meeting that he did not have any objections to the project.

And as Paul explained there was a...well, he talked about the Environmental Assessment, the Draft EA that was presented before the Planning Commission in May and to update you the Final Environmental Assessment was published in the August 8, 2015 OEQC Environmental Notice and there was a declared Finding of No Significant Impact. And just to summarize that there were no biological resources found or endangered or threatened species and the archaeological assessment did not identify any cultural features and the new storm drainage system will be developed to fully retain the increase in runoff.

And as Paul mentioned there were some comments at the last Planning Commission meeting, the first one being that the existing water treatment plant site needs to be landscaped after decommissioning. The Water Supply will grass it and stabilize it after it gets decommissioned.

And then for the landscaping and fencing at the existing water treatment site, I guess the concern was to make sure it's set back accordingly to not obstruct driver's line of sight along the West Alu Road curve. An engineering sight analysis did confirm that it would not impact a driver's line of sight. I'll have a visual later on to show that.

And then the third concern was that the chlorine contact tank height or placement should not obstruct driver's line of sight. That same engineering sight analysis was done and then it was confirmed that the chlorine contact tank will not obstruct the line of sight, but we did reduce the height mainly just for visual impacts, but it was nothing to do with it being in the way of driver's lines

of sight.

And then there was a concern about there's an existing hiking trail that the project should not obstruct as far as access to the hiking trail, as well as parking in shoulder. So we'll show another visual that says the project and driveway will not obstruct any roadside shoulder parking use by hikers and will not block access to the trail. And here is the engineering sight distance analysis. Here's the site. Here's West Alu Road, South Alu Road, and here's the driveway. And here's the chlorine contact tank, and what the engineers did was identify the shaded area as an area that drivers need to see clearly around the curve of oncoming cars and as you can see the foot print of the chlorine contact tank is way outside of this shaded area.

And another thing that was checked too was to make sure that, you know, when they put in this driveway these triangles or shaded areas also identify areas where you know you shouldn't have parked cars so that people can get out safely. And then if you can see this is gonna be the fence line, this is the edge of the roadside and then the hiking trail is approximately somewhere around here. So right now they sort of park in the shoulders near the Maui Electric substation 'cause the opposite side of the road doesn't have wide shoulders to park. So as you can see even if...with these restricted triangles you know, where we wouldn't want people to park there's gonna be adequate space for more than four cars to park in the shoulder and they can cross and get to the hiking trail.

And then the fifth comment was there was concern on you know, what kind of chemicals are used, stored and disposed of at the new site or will be used. And then the information is provided in the preliminary engineering report appendices of both the Draft and Final EA. So if, you know, anybody wants to look at it, I have a copy of the Final EA here.

And then of course, the other concern was to make sure that chemicals uses, stored and disposed of at the existing site, you know, that it's done properly. And the Water Supply has confirmed that the chemical used, storage and handling that the existing site complies with the same regulatory requirements cited for the proposed water treatment plant.

And the seventh comment was that the Draft EA elevation drawings looked different between the engineering drawings and the photographic renderings. And since the lowered chlorine contact design we have corrected that. It looks...if you look in the Final EA the revised elevations are included in the Final EA, and it will be consistent with what you see in your handout.

And for...as Paul mentioned that there were, there's considerations in the Project District application because it's located within the Project District 3 Kehalani area that, you know, we're doing this Project District Phase 2 application, and DWS has submitted an application which is before you today, and then this project has been presented to the Kehalani Community Association on January 20, 2015 and then also at the annual Kehalani Homeowner's Association on April 1, 2015.

And the cost and schedule is it's estimated to be between \$12 to \$15 million and the construction is anticipated in Spring 2016 and will take approximately two years.

And okay, here's the criteria that Paul was outlining so of course, you know, access it's gonna be off West Alu Road off the driveway that I showed you. And then the water is a Water Supply project

so the water is there and has facilities. The waste water there's a connection to an existing sewer manhole along West Alu Road. And the drainage improvements and erosion control is designed per DPW Storm Drainage Rules. There are gonna, there is gonna be erosion control and water quality measures, construction and post construction BMPs and an NPDES Permit is being taken out. And of course, we did show the landscaping which includes Sunshine Vetiver grass and Common Bermuda and Annual Rye along the West Alu Road frontage and the Kukui trees along the south boundary which is the rear of the project property. And the potential environmental, social, economic and aesthetic impacts are all in the Final EA.

So with this, the DWS respects, well, Water Supply respectfully requests approval from the Maui Planning Commission of the Project District Phase 2 application, and if there's any questions, the team that I identified earlier is here to answer them.

a) Public Hearing

Chair Ball: Okay, thank you. We'll open it up for public testimony at this time. If any one would like to testify on this item they may do so at this time. You have three minutes. Seeing none, we'll go to the staff recommendation.

b) Action

Mr. Fasi: The Maui County Department of Planning recommends that the Maui Planning Commission approve the Project District Phase 2 application for the construction of the Iao Water Treatment Plant subject to 12 standard conditions and those are in the recommendation and I won't go through them. There is one amendment to Condition No. 4, we're gonna add the date, today's date to the final construction. So it will read, that final construction shall be in accordance with the presentations to the Maui Planning Commission on May 12th which was the EA review and today's date, November 10, 2015. And as I mentioned earlier, keep in mind that they're gonna come back to the Department for Phase 3 approval and that site plan that was in the presentation is gonna be the finished product. Thank you.

Chair Ball: Okay, questions from the Commission? Not all at once.

Mr. Robinson: I have one.

Chair Ball: Commissioner Robinson?

Mr. Robinson: So are they coming back for the final 3 or is this the last time we vote on this and 3 is a foregone conclusion?

Chair Ball: Deputy Director?

Ms. McLean: Thank you. Phase 3 is an administrative approval. So that would be just the Department. That approval would not come to the Commission.

Mr. Robinson: I would –

Chair Ball: Commissioner Robinson.

Mr. Robinson: I'm sorry. I'd like to request the reply that she gave regarding the chemicals and where it's cited in the EA?

Ms. Shibuya: If you look in the Appendixes, you know in the preliminary engineering report it outlines all the proposed chemical uses. As far as the existing then I would have to have Water Supply kinda outline that for you.

Mr. Robinson: I saw that and that's why we first discussed it about asking, but it doesn't say where they store it, how they store it, it doesn't say...it also says they might in the future use other chemicals. So, so when you referred it back to the EA, I didn't see in the EA where it says where it's stored.

Ms. Shibuya: Well, it's because the EA kinda focuses on the, you know, the new site yeah 'cause lot of the stuff, the treatment facility is gonna be transferred. So if you have specific questions I can have—

Mr. Robinson: Where is the new chemicals gonna be stored, do you have that?

Ms. Shibuya: It's gonna be in the, you know, the storage facilities in the—you're talking about the new site right?

Mr. Robinson: I know, but I apologize. In the building is one thing, where in the building 'cause chemicals can't be stored together some of these chemicals because when they mix it's toxic and that was my question the first time. Is there a separation room, is there a difference between or are they going just put all the chemicals in one room?

Ms. Shibuya: Yeah, what I'll do is I'll have Tom kinda outline what and where, I guess yeah, that's what your question is what and where is gonna be stored?

Mr. Robinson: The storage facility yes. How they plan on storing the chemicals. And if it's powder form or if it was chemical form?

Ms. Shibuya: Okay, so Tom can you come up?

Mr. Tom Ochwat: Good morning, Commission. My name is Tom Ochwat. I'm with the Department of Water Supply, CIP Engineer. That's a good question. We have actually further investigated our disinfection process. Originally we were looking at a gas, chlorine gas which would require a scrubber system, which I don't know if you're familiar with those terminologies where if we were to have a chlorine leak it would be vacuumed in through a cylinder that would have activated charcoal. We've moved away from that because of that hazard, and went to another type of disinfection which would be a sodium hypochlorite which you would call a high strength bleach usually 12 percent. It's again, a hazard, it's caustic, it can cause burns. We have emergency eye washes for that. And since that, we've actually moved, progressed to a even more safer disinfection system which is what we call an OSG which is an onsite generation to actually produce a very low strength chlorine, .8 percent chlorine. To give you some relative numbers, the chlorine that you buy commercially

Clorox is typically about 5 percent. This is .8 percent chlorine. And the only, you could say hazard, it's not even a hazard, how we make it is with salt and water and electricity, and that's the process that we are moving toward and actually have developing plans. We've developed plans to do that for this project. And we're looking at this system because of the proximity to the residents and the locality there. So I hope that would answer your question with regards to storage. We're just gonna be storing salt and making our own disinfection chlorine.

Mr. Robinson: So in essence you guys are doing what everybody does with the salt water pools, you have salt water, you have the probe, you go through electrodes, it turns into chlorine.

Mr. Ochwat: Yes.

Mr. Robinson: That's strong enough to do what you guys need to do at that .5?

Mr. Ochwat: Yes. It's...we're gonna need more water for more of a chlorine solution to do the disinfection, but that's a minimal amount compared to the overall production of water. You know, I believe we're using I think it's estimated 80 to 100 pounds of chlorine solution for the site to produce 3.2 million gallons.

Mr. Robinson: So is this a proposal or is this a mandate and you guys are gonna move—

Mr. Ochwat: It's already in the design plans.

Mr. Robinson: Fantastic. Thank you so much.

Chair Ball: Further questions from the Commission? Commissioner Higashi?

Mr. Higashi: I have one this is in relation to traffic. You know that particular site has a bad turn on Alu Street and I was concerned how they gonna prepare for traffic especially in the morning between the hours of 7:00 or 6:30 to 8:00, 8:30 where morning traffic comes downhill around that curve. And how they're gonna work out the construction so it doesn't block of traffic?

Ms. Shibuya: Oh, you're talking about the construction phase?

Mr. Higashi: Yeah, coming down.

Ms. Shibuya: Well, typically they would have to get a permit from Public Works. I guess Rowena can confirm and then in that permit they would have to outline their work some controls and I believe they usually kinda...they're sensitive to ...(inaudible)... construction workers parking all over the public right-of-way as well as you know concerns of obstructing traffic during the peak hours or even any time of the day yeah, to make sure vehicular access is not impeded especially during the morning...actually more the morning peak hours 'cause I know what you're talking about because I work in Wailuku, I see the cars coming down. Yeah, so but I said, Rowena can confirm you know, that they're gonna check that in the permit.

Chair Ball: Public Works.

Ms. Dagdag-Andaya: For the record, Rowena Dagdag-Andaya, Public Works. And Charlene is correct. There's a Work to Perform Permit that gets applied for and then in that permit the applicant states the...how they set up traffic control, the times and how they, I guess the safety plan is also included. And from there, I mean, that's that's basically is the process for which I think that's what you were asking about how-

Mr. Higashi: Yes.

Ms. Dagdag-Andaya: And they would respect that too, the times. There are other construction related items that don't get approved by us, it goes to Department of Health so anything like noise, dust, that goes to Department of Health. But with respect to the traffic control that would come to us.

Ms. Shibuya: Yeah, and you know at the last meeting there was a concern about the curve, that's why we gave you copies of that letter from Water Supply to Public Works to kinda show we're gonna work with Public Works to address that curve also which is not you know, not caused by our project but you know, understanding that it's nearby.

Mr. Higashi: Yeah, thank you.

Chair Ball: Commissioner Lay?

Mr. Lay: Follow up question on that. Okay, so this comes out with the construction part of the project where we're gonna have construction trucks and cars parked all around and just get an insurance that they won't parking where we're designating an area where the people who are hiking can park? You know, if we can let the construction company know that this is not their parking, this is for the hikers?

Ms. Shibuya: Didn't they...they don't want the workers to park in the right-of-way anyway, that would be a restriction?

Ms. Dagdag-Andaya: I wouldn't know. Not in the right-of-way.

Ms. Shibuya: Yeah, they usually have to provide their own parking, you know, either onsite or somewhere else. But other than that I would imagine some restrictions can be put on the permit.

Ms. Dagdag-Andaya: Yeah, and you know, also take into consideration, I think the Police Department might be reviewing the application, you know, as well, so any kind of traffic related issues would be reviewed by them. So as...I don't think parking within, anything that obstructs traffic or the flow of the traffic would it be...

Ms. Shibuya: Well, probably maybe the best thing to do is just in the construction drawing maybe they can put something in for the contractor to perhaps post signs or something that you know, like hikers park here or something like that.

Chair Ball: Commissioner Lay?

Mr. Lay: That would be great. That way you know it is accessible. Because I know when—

Ms. Shibuya: Yeah. Something simple that you know it's temporary that's why, yeah. It's a temporary issue. So the Water Supply with that.

Chair Ball: If Public Works, if you could make a requirement for them to park their vehicles on the site then that would not allow them to park in those parking stalls, that parking spots that Commissioner Lay is talking about, not parking stalls, but the side of the road they use for hiking.

Ms. Dagdag-Andaya: Would that be a condition that you wanna put into the...

Ms. Shibuya: I mean, we could just easily put it in the contract plans.

Mr. Lay: That would be perfect.

Ms. Shibuya: And I think that would probably be the easiest way to enforce it, if they...you know, if they forget, the workers forget and start to park and you know, block sight distance as well as parking for hikers.

Mr. Lay: Thank you.

Chair Ball: Further questions? Commissioner Hedani?

Mr. Hedani: Charlene, the sharp curve on Alu Road at the corner, mauka corner has the topography been changed to improve lines of sight around that curve?

Ms. Shibuya: Not at this point, but that's where you know Water Supply is willing to work with Public Works, you know, later on when the project is actually in construction and we have, you know, equipment on site so they can...you know, the only thing is we would want Public Works to identify you know, like say exactly if they feel the engineering recommendation is to cut the bank, you know, how much et cetera, we wouldn't think...you know, we wouldn't want Water Supply to just go ahead and cut everything and not have Public Works concur or assure that it meets the engineering requirements. But at least the consultant for Water Supply at least identified the shaded areas that we should have clear lines of sight based on the...

Chair Ball: Public Works?

Ms. Dagdag-Andaya: We're gonna need to review anyway for grading.

Ms. Shibuya: Yeah.

Ms. Dagdag-Andaya: So at that time, that's when our Department would review what their construction plans are. And if there's any additional discussions that needs to take place between Public Works and Water Department maybe we can have that discussion there. But yeah, I do know that there is that grading permit process that we engage them in.

Chair Ball: The...if you can go back to the few slides there's a slide of the let's say top of the project

looking towards, I don't know Kahului Harbor if you will?

Ms. Shibuya: Is that...the photograph through the trees.

Chair Ball: Yeah, there's a photograph.

Ms. Shibuya: Through the trees, yeah. It's kinda dark yeah.

Chair Ball: So I recall from our discussions at the previous meeting on this that that chlorine tank we wanted it no obstructing this view not the traffic view, not the view of the vehicular traffic going around that turn. It was this view right here is what we had concern with that that tower would be standing up basically right there in that view and we wanted it to turn over on its side and it was told to us that that was possible or if you were gonna look into it or something to that effect.

Ms. Shibuya: Yes it was lowered 13 feet, so it's gonna be here. And I guess it's not superimposed here, but and on these other visual the photographic, the rear view, yeah, it's kinda outside of the...from the Kehalani land view it's outside of that.

Chair Ball: 'Cause it's further up on the hill right in that...I know you can't even see it from that—

Ms. Shibuya: Yeah, would be like up here. But the thing is they wouldn't like in relation to the treatment plant building height, you know, it was kinda sticking up further. It's gonna be 13 feet lower now.

Chair Ball: Well, would be helpful if we had that rendering on that view plane photograph.

Ms. Shibuya: And then actually you know this picture that I took you would actually have to go into the bushes and peer through the trees if you really wanted to see it 'cause it's actually all obscured by the trees. You actually have to walk over the guardrail and look through. So I think what in reality probably the tank will be very difficult to see unless they clear everything out...(inaudible)...You know, if Public Works cuts all the grass in the shoulder.

Chair Ball: Commissioner Lay?

Mr. Lay: It's my understanding that we're not gonna do the chlorine tank already that we're gonna be using a water treatment with salt and you're saying that it's gonna use more water so is this tank gonna be bigger than the existing chlorine tank that you're showing us or?

Ms. Shibuya: Oh, the chlorine contact tank?

Mr. Lay: Yes.

Ms. Shibuya: It's gonna still need the chlorine tank but they redesigned it to be lower, 13 feet. So, oh let's see, let me show you this.

Mr. Lay: Yeah, that...go back two photos.

Ms. Shibuya: Oh, you wanna see those photos?

Mr. Lay: That one right there, you see the chlorine tank on your left-hand side?

Ms. Shibuya: Yeah, so it's not-

Mr. Lay: Is that a holding tank for chlorine itself or is that your treatment process.

Ms. Shibuya: I have to defer to Tom, getting kinda technical.

Mr. Fasi: If I could...Paul Fasi. As I recall at the last meeting in the Draft Environmental Assessment and in regards to the location of this chlorine tank, the Department of Water, the Engineering Department has to put the facilities where they feel it needs to go because the facility is gravity fed. So you don't have a whole lot of options. They don't wanna install pumps because that's gonna add to the cost of everything and reliability factor is just blown away. So the location of the tank is gotta be in certain vicinity in order to make this gravity flow work and make the water treatment plant engineeringly feasible.

Mr. Lay: I totally understand, but what we're hearing is they're not gonna do chlorine, we're gonna use a water treatment with salt and electricity to do this process. So I'm wondering is that you're using that same footprint there?

Mr. Ochwat: Again, this Tom Ochwat. To address that, let's see if I get that...that is a water tank that actually inject the chlorine...actually inject the chlorine it has to have some what we call contact time to disinfect the majority of the water before it goes into the public water system. So that tank is actually the holding tank that mixes the chlorine that we inject into the finished water and then eventually goes into the public water system. The reason why the tank is on that location is because it's at a somewhat higher elevation to going to the existing 3 million gallon storage tank at the lao tank site.

Mr. Lay: Okay, thank you.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I think what it was, was they had the tanks on top of each other and they moved it down, but they was still that way. But going back to the height. I thought we were concerned about the sight line from the bottom of the hill looking up because this monstrosity of 33 feet was gonna be above this building and we see it more that way so that the bottom they brought it down to 20 feet but it's still that way, and so that's a great improvement you know. But I am still questionable, it's I see where we helped the sight lines on the Kehalani side of the Kukui trees and it looks great but why didn't we follow through and do the lower part of the property as well as the street side of the property so we can...you know, so nobody has to look at the building per say up close instead of just doing from the Kehalani side?

Ms. Shibuya: You mean the front view?

Mr. Robinson: If you could...let me get your landscaping layout, I apologize. Page 21 of the one

issued today, you have your landscaping and it's just, just on that side.

Ms. Shibuya: Oh, you want me to look a landscaping plan and tell-

Mr. Robinson: Yeah, on 21.

Unidentified Speaker: Page 12 is landscaping.

Ms. Shibuya: Okay, yeah I was looking at the page 21, 21.

Unidentified Speaker: That's sight analysis.

Mr. Robinson: Site...oh, the site. I apologize.

Ms. Shibuya: Oh, on the slide, right, slide 12?

Mr. Robinson: Yeah, I apologize. So you know, it's great that you guys put the trees to address the sight line there, but is there a possibility that you could also do the lower property as well as the one fronting West Alu Road?

Ms. Shibuya: You mean trees? Yeah, I guess the property sits, it actually sits low yeah, somewhat. It's cut down so you, you're talking about more screening than the fence and the Vetiver grass.

Mr. Robinson: I apologize but I don't see any pictures with views from the lower topography, but I do see the view from the Alu side. And as you can see how nice it looks from the Kehalani side, but the Alu side we just go ahead and we see buildings again.

Ms. Shibuya: Oh. No, again let me just forward it, you mean like this Alu Road view?

Mr. Robinson: Yeah.

Ms. Shibuya: That's creating...'cause it looks-

Mr. Robinson: ...(inaudible)...again, it's an improvement but is there, is there space and availability to just, I mean, I mean, trees grow naturally up there. You don't really have to really have it, you know, don't really have to irrigate it.

Ms. Shibuya: Well, I would imagine the Vetiver grass since it grows tall it will, you know, as it gets mature it probably would screen some of it. So if they, let me see the landscape...if they have it like say for example close up to the fencing, let's see, you know so like this is gonna be the fencing so you're thinking of extending maybe the Vetiver grass up here is that, as a better screening, well...(inaudible)...supplemental screening to the fence?

Mr. Robinson: With all due respect, I don't...I don't wanna say exactly what it has to be, but the picture that I see now with the fencing and barbed wire on time and then a straight building looks like...it's not very, you know in the residential area, it's looks, you know, it looks sort of like OCCC is what I'm saying. You know, it's very commercial looking. And if you could put trees in the front

it if there's room or in the back of it. But as you can see with your rendering, the rendering has barbed wire, and then you can see about 10 feet of building.

Ms. Shibuya: ...(inaudible)...comment.

Mr. Robinson: You guys did a great side on the other side fronting the homes, you know, with everybody driving past there, I think gotta make it as nice as well.

Ms. Shibuya: Well,(inaudible)...you put a line of trees in the front too to supplement to fence if you think that would help a lot.

Mr. Robinson: Yeah, I think.

Ms. Shibuya: Should be easy enough.

Mr. Robinson: Everybody drives past there. That's the driveway, right?

Chair Ball: That's the view from South Alu Road, correct?

Mr. Robinson: Yeah.

Ms. Shibuya: Yes.

Chair Ball: So what we're saying is that looks terrible.

Ms. Shibuya: Yeah, so...

Chair Ball: So put some hedge or bushes, whatever in front of that fence so it softens that up.

Mr. Lay: Right around.

Mr. Robinson: With height so it, you know...

Chair Ball: Right with height.

Mr. Robinson: Yeah, 'cause all this, all this is barbed wire and it is residential. Even the south part is residential. You know it's barbed wire too.

Ms. Shibuya: Yeah, and there's green, it's green. The mesh is not gonna cut it, yeah?

Chair Ball: Right.

Mr. Robinson: Yeah.

Ms. Shibuya: So, yeah so the thing is you know the Water Supply landscaping is on the inside of the fence yeah, so...that's that...so just add the trees.

Mr. Robinson: I think it would help. You see the fence, but you don't try to do the building.

Ms. Shibuya: Yeah, so mainly having these tops kinda screened that's what your concern is?

Mr. Robinson: Yeah, and you know and I don't see any renderings from the lower topography of this building, and I know that's one of our concerns is how it look?

Ms. Shibuya: Are you talking about like if you were further...

Mr. Robinson: Looking up towards the...

Ms. Shibuya: Oh, like if you're looking up this way, you probably would see the existing green tank in the way. I guess depending what angle you're looking at.

Mr. Robinson: And that tank is staying right, we're keeping the tank?

Ms. Shibuya: Yes.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Along the line of what Commissioner Robinson is saying on the trees, the choice of tree is Kukui, Kukui nut?

Ms. Shibuya: Right.

Mr. Higashi: I'm just wondering the height of the tree as it matures would it then block the view, although the building is getting lower, the trees are getting higher is it going to obstruct?

Ms. Shibuya: Yeah, if you look at, you see this Kukui tree, see the man over here, it grows kinda tall, and it has a nice crown too, so it will screen both ways.

Mr. Robinson: And it grows well on hills.

Mr. Higashi: So height wise it won't block the view coming down from Alu as the trees mature?

Ms. Shibuya: Well, probably...well, because that sight triangle was I think it was kind of outside yeah, so let's take a look at that sight triangle. Yeah so of course, any kind of-

Mr. Higashi: This one here, you see the trees on this side toward the mountain.

Ms. Shibuya: Toward this side.

Mr. Higashi: Not the ones-

Ms. Shibuya: Yes. So, but I think you know when we look at the sight triangle, let's see, I mean, I shouldn't call it sight, so the shaded area. The tree line would probably be here so even if it extended to here, we still wouldn't obstruct the drivers, yeah. This is sort of way off.

Mr. Higashi: Far away in the

Mr. Fasi: Paul Fasi, Planning Department. You know, we're talking about a pumping station. It's not a community center. And the thing, one of the things you gotta keep in mind is when you start putting in landscaping, trees and hedges, they're nice, but somebody gotta pay for the maintenance of this. So when you start adding fancy landscaping it's gonna add to the cost of the maintenance of the entire facility. So just keep that in mind.

Chair Ball: That's not what we're asking for Paul. We're asking for--

Mr. Fasi: I know that's not you're saying for, but you need to consider that.

Chair Ball: --you to soften it up and we're not asking for vegetation that is...right, that it requires a lotta maintenance. Want a few trees over there to soften that fence line up so it doesn't so prisonish.

Mr. Fasi: Well, along with the maintenance comes cost.

Chair Ball: Yeah, we understand that.

Mr. Fasi: That's what you need to keep in mind.

Chair Ball: Any further questions? Seeing none...

Ms. Shibuya: Can I call up the civil engineer to give a little bit more background and perspective on the landscaping?

Chair Ball: Yes.

Ms. Shibuya: Ivan.

Mr. Ivan Nakatsuka: Thank you, Charlene. My name is Ivan Nakatsuka with Austin Tsutsumi & Associates. Yeah, this slide here because there was a comment about maybe adding some hedges or trees even along here for the view plane. From an engineering perspective, one of the problems with that is the grading of the site. We don't show a grading plan on any of these slides, of course it's in the construction plans, but in order to get the level area of the plant, we're really grading at about 2:1 all the way up to that fence line with a very limited flat area right at the fence itself. So if you put any kind of a hedge and certain trees under the current grading plan would be I want to say impossible, but very difficult to do. Certainly there's an alternative which prefer not to do is flattening that grade that would it probably require retaining walls which is a tremendous cost of course.

Chair Ball: We don't wanna do that, but what would you recommend there if you wanted to plant something on that fence line?

Mr. Nakatsuka: Yeah, I mean, if you're not gonna be planting outside the fence 'cause that's where

the existing fence is in that right-of-way as I understand and then take up these hikers parking and all that, it will be inside the fence and as I said, it pretty much from the fence here it comes down like that. And then the site itself with a driveway and building.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Ivan?

Mr. Nakatsuka: Yes.

Mr. Hedani: Can you move the fence two feet in and then plant a hedge on the outside?

Mr. Nakatsuka: Well, as I said, you know you can do some things to some degree to hedge and not a tree maybe to add to the fence. You know, I mean these are green slats, vinyl slats in there which helps versus regular chainlink fence like the current treatment plant and tank site. And if you look at that it's the same fence without the slats which is meant to obscure the view and give a little better aesthetics as well that it's still a fence.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I have a question regarding the view from the Kehalani lands. This looks sloped to me.

Mr. Nakatsuka: Sloped?

Mr. Robinson: Sloped.

Mr. Nakatsuka: Yeah, it is sloped mauka to makai that's the natural slope of the area.

Mr. Robinson: Isn't this sloped as well? I mean, wouldn't we do the exact same thing—

Mr. Nakatsuka: It is, it is sloped, yeah.

Mr. Robinson: —on there?

Mr. Nakatsuka: Gently sloped from mauka to makai.

Mr. Robinson: So I don't understand how we can work on one side and not on the other. Am I not getting it?

Mr. Nakatsuka: Well because the site itself is quite a bit lower than the fence especially on the West Alu Road. I don't have the exact elevations but that driveway coming down is pretty steep, you know on the right side there coming from Alu Road it comes pretty steeply down to a level site. So I don't recall exactly what the exact existing elevation is of the road versus the level area, but it's pretty significant and that's why we have to grade it up to the fence.

Chair Ball: Okay, well let's go back to that view we were talking about. I've seen plenty trees grow

on hills so I don't buy that one. So there seems to be enough concern with the Commission about this fence line so it needs to be addressed with something, planting it, moving it over so you can put a tree on there or whatever, but it seems like the Commission wants some action on this, yes?

Mr. Nakatsuka: You know there might be a possibility because as you could tell by the Vetiver grass it kinda starts not all the way down to the driveway it's kind of more in the upper area because it does get steeper up there and we tried to flatten the slope a bit, but keeping the fence line the same, yeah, to meet the existing ground. We could probably at least on the bottom half, I wouldn't say half, but can show the Vetiver grass, the landscape plan? See the Vetiver is about little more than halfway down and that's just because that's the steepest slope 2:1. After that where you don't have that it's a little less slope not a whole lot less, but it's maybe 3:1 or 4:1 maybe. So you know, if you were to make that part steep and therefore, be able to create a more level area at the top that's wider at the fence line you may be able to plant trees at least halfway up until that point there say, right where the pointer is right there. That's one possibility that I can see. Now, but then as you get higher up, then it becomes a bit more problematic to have a wide level area. So I think that's a compromise, almost like halfway coming up to a point you have some landscaping. Or as I said, there are try to avoid retaining walls and there's a possibility to get more flat area up there, but that's very costly.

Chair Ball: Commissioner Duvauchelle?

Ms. Duvauchelle: Couldn't you bench...couldn't you cut a bench into the slope and put the trees on it?

Mr. Nakatsuka: Right now we're pretty steep, as I recall it's almost going up from the drive...paved area to that fence line it's like...so to put a bench, you can't reach it, you know. And certainly you need a bench when you're really steep every 15 of pipe it's a different story.

Ms. Duvauchelle: Well, I have to agree with the other Commissioners. I think you have enough room to play with there on your grading and moving your fence, that somehow you can get the trees in. Thank you.

Mr. Nakatsuka: Moving the fence?

Ms. Duvauchelle: Like Commissioner Hedani stated, move the...take the fence in and plant the trees outside of the fence.

Mr. Nakatsuka: Outside.

Chair Ball: Okay, Commissioner Lay.

Mr. Lay: For me I don't see the difference if you had it on the inside cause you could...it's still gonna take up...you might even get more space if you put it on the inside 'cause you can still get parking between trees if that's what you're worried about. And that's Kukui trees I don't know if you have to have it that close. You know on your backside you're totally blocking but they'll fan out eventually and the maintenance on the Kukui tree is pretty much plant and what it grow. So you know, and it's a beautiful tree.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Ivan, I think from the Commission's perspective in other cases that we've seen were you put chainlink fencing up it's being screened from view, yeah. If you look on Honoapiilani Highway where Buzz's Wharf is, you know, they put the pump station in over there and put a chainlink fence around it, and then they put screening naupaka around it to screen the chainlink fencing from view which is growing out quite nicely. And I think what they're looking for is something to soften the view from the Alu Road side so the local people going up Alu Road don't get the backside of the facility while the people living on the Kehalani side get the nice view.

Mr. Nakatsuka: So in essence you want the trees to obscure the fence as well, right and not just the-

Chair Ball: And it doesn't have to be trees, but-

Mr. Nakatsuka: Or shrubs or...

Chair Ball: You guys can figure that part out.

Mr. Nakatsuka: Yeah, we have a landscape architect.

Mr. Hedani: I'm sure Russell can figure something out.

Mr. Nakatsuka: Yeah, it's Russell Gushi. But I guess Water Supply would then be responsible for maintaining the trees outside their fence.

Chair Ball: Well, try not to plant some that requires that, but would grow.

Mr. Nakatsuka: But they would be responsible for those trees and not Public Works I suppose outside the fence.

Ms. Dagdag-Andaya: Rowena Dagdag, Public Works. If it's gonna be in the right-of-way and it's a street tree then Parks Department becomes the entity that maintains it.

Chair Ball: Let's blame them since they're not here and gives them the responsibility.

Mr. Nakatsuka: And if we move the fence three feet from the right-of-way and the trees are between the right-of-way and the fence or something like that, I'm not sure who has jurisdiction.

Chair Ball: All right, well you guys can figure that out. We just want you guys to put something over there. Commissioner Hedani?

Mr. Hedani: Yeah, I think if you work with Russell, you could probably plant trees inside of the fence line and hedges on the outside of the fence line so the fence would be screened and the building would be screened.

Mr. Nakatsuka: Okay.

Chair Ball: With that idea that you know, you're gonna have to water a little bit to get it to grown and then when once it's growing then you don't have deal with it. Okay?

Mr. Nakatsuka: Thank you.

Chair Ball: Thank you. Further questions? We beat that fence up, okay. Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Chair Ball: There's a motion to approve is there a second?

Mr. Robinson: Second.

Chair Ball: Second by Commissioner Robinson. Any further discussion? Commissioner Lay?

Mr. Lay: I would like to thank you guys you did do some really nice changes that helped from our first views that we had of it and we appreciate you participating and help to make it even nicer. Thank you.

Chair Ball: I concur. Commissioner Robinson?

Mr. Robinson: We're voting on recommended but do we...is it a condition if we ask for more landscaping or is it not a condition?

Chair Ball: Deputy Director?

Ms. McLean: Thank you, Chair. I think with the modification that Paul introduced adding today's date that references final construction being in accordance with plans presented to the Commission on May 12 and today. So by tying in today's date then it's as they presented it. So they agreed to.

Mr. Robinson: They agreed to.

Ms. McLean: They agreed to install trees and screening on that side. It's up to the Commission. If you wanna put in a specific condition you certainly can.

Chair Ball: Did you redo it? Are you agreeable to that?

Mr. Fasi: The Department's agreeable to that. The applicant?

Ms. Shibuya: Yes, and condition is gonna be like more general, like to provide screening 'cause you know mentioned that the landscape architect can figure out the best way to do it, yeah. Yes, the applicant is agreeable.

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

Commission Members: Aye.

Ms. McLean: Six ayes.

Chair Ball: Motion carried.

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

VOTED: To Approve the Phase II Project District Approval as Recommended by the Department.
(Assenting - W. Hedani, K. Robinson, L. Hudson, I. Lay, S. Duvauchelle, R. Higashi)
(Excused - J. Medeiros, M. Tsai)

Chair Ball: We'll take a five-minute recess.

A recess was called at 10:05 a.m., and the meeting was reconvened at 10:14 a.m.

Chair Ball: Call this meeting back to order. Next on the agenda, Deputy Director?

Ms. McLean: Thank you, Chair. This is your second public hearing item. A request from Steven and Ivy Nickens for State Land Use Commission Special Use Permit and Bed and Breakfast Permit to operate the Hula Hale Bed and Breakfast, a two-bedroom B&B home located in the State Agricultural District at 1340 Kauhikoa Road at parcel TMK: 2-7-035: 005 in Haiku. The presentation will be made by Tara Furukawa who is one of our newer Planners. This is her first time presenting to you folks, and I know she'll do a great job. SoTara...

2. STEVEN NICKENS and IVY NICKENS requesting a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit in order to operate the Hula Hale Bed and Breakfast, a two (2)-bedroom bed and breakfast home located in the State Agricultural District at 1340 Kauhikoa Road, TMK: 2-7-035: 005, Haiku, Island of Maui. (SUP2 2015/0009) (T. Furukawa)

Ms. Tara Furukawa: Good morning, Commissioner. My name is Staff Planner Tara Furukawa. This item is under your review because the applicants Steven and Ivy Nickens are requesting a Land Use Commission Special Use Permit to operate a bed and breakfast at their cottage that sits on two and a half acres of agricultural land in Haiku.

The proposed Hula Hale Bed and Breakfast is located in Haiku at 1340 Kauhikoa Road. The owners, Steven and Ivy Nickens have owned and lived on the two and a half acre flag lot for 25 years and raised their four children there. Ivy Nickens was raised down the street in Rice Camp. The Nickens live in the main house which was built in 1990 and they're proposing that the cottage which is located north of the main house be used for a bed and breakfast. A driveway and fence separate the main and accessory dwelling structures.

The cottage was built in 1999 and is 744 square feet. The parking is located to the east of the cottage. It has a foyer, kitchen, living and deck area, two bedrooms and one bathroom. Each of the bedrooms can be rented individually or a guest will have the possibility to rent the whole house. The deck and living room areas will be communal areas where guests can relax.

Operation of a B&B will be compatible with the character of the rural area. There's agriculture throughout the property. It's not just concentrated in one area. When first entering the property palms line the driveway and as you can see from the implemented farm plan the property consists of palms, fruit trees, tropical flower plants and vegetable garden. Amidst the landscaping is the main house and cottage. The abundant vegetation and gulch make it difficult to see and/or hear anything from neighboring properties. To the north separated by thick trees are good long-time neighbors who approve of the B&B. The property to the south belongs to a long-time neighbor and good friend who supports the B&B and it's separated by bamboo and palms. At the southeast corner is an old friend and his house can barely be seen from the property. To the east of the property is a good neighbor separated by a hedge. His property is not really visible and there's also a property owned that has been rented for the last year, it's separated a hedge and wood fence. To the west is a large gulch at the back of the property and 14 acres belonging to a long-time farmer and family friend.

There were no letters from neighbors submitted after notice was provided. Neighbor notice was provided twice, once for the bed and breakfast application and more recently for the SUP2 application public hearing. The Department sought comments from the Land Use Commission and State Office of Planning and received no comment. As you can see there are no approved STRHs or B&Bs within 500 feet of the proposed Hula Hale B&B location. Now the applicant, Steve Nickens will discuss the agriculture on the property.

Mr. Steven Nickens: Good morning. Okay, on the property we have a lot going on. First of all, about two, three years ago we harvested 12 Royal Palms. If you go to the Andaz Hotel, go into the lobby, you're gonna see all of our Royals that are planted at the Andaz and over five coconut trees. And then at the Marriott in Kahului, there's two Royals in front there. Those were taken from our yard too. So those are some crops that we've harvested. We developed this property, my wife and I, and not my daughters. They don't like digging holes, but my sons. We did all the work on this property. It was vacant land. So it's concentrated with fruit trees and if you were to come into my property first we have lychee. There's over 12 varieties of citrus. We've brought our avocados up to speed. My daughter's horse over the years, while she was going to school ate my avocados, so we're finally getting up to production on avocados. Two mango trees, grapefruits, bananas throughout the property, 30 x 30 garden. So it's not like we just went, oh let's do a B&B and let's a farm. We've been doing this for years, even our prior home that we had in Haiku too. We maintain everything ourselves. We don't have gardeners. My wife and I do all the work and you know we have tropical flowers throughout the property that we planted and maintained. So there you go. Any questions?

Chair Ball: We'll ask you later Steve. Is that the presentation?

Ms. Furukawa: Yes.

Chair Ball: Okay.

a) Public Hearing

Chair Ball: We will open it up for public testimony at this time. Anyone would like to testify on this agenda item may do so? Seeing none, we will close public testimony and we will get the

recommendation from the Staff.

b) Action

Ms. Furukawa: Okay, the application complies with the applicable standards for a State Land Use Commission Special Use Permit and as such, the Department recommends approval of the permit subject to 16 standard conditions and recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the November 10, 2015 meeting as its finding 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 Commission.

Chair Ball: Thank you.

Ms. McLean: Excuse me, Mr. Chair if I may?

Chair Ball: Deputy Director?

Ms. McLean: Tara, I think the recommendation has seven standard conditions. It might be the STRH Permit has 16 standard conditions that that would be typical. Just wanna confirm the standard conditions for the State Special Use Permit.

Ms. Furukawa: Yeah, it's just seven. Sorry.

Ms. McLean: Okay. Just so we're all looking at the same thing. Thank you.

Chair Ball: That's why you're the Deputy Director. All right, questions from the Commission? Commissioner Hedani?

Mr. Hedani: There's a stream running along the gulch on this property that borders the property. I just wanted to confirm the elevation difference between the stream and the property where the residences are?

Mr. Nickens: It's steep.

Mr. Hedani: Okay.

Mr. Nickens: Yeah, there is a trail. When I property there's kind of a road cut down into it. At one point I was gonna landscape it, but the older I got I thought I can't do this.

Mr. Hedani: My only concern is that we've had B&Bs wash down a river in the past.

Mr. Nickens; No, no, no, this is a-- Yeah, you can hear it and you can see it from one corner, but it's pretty safe, no one. My dog goes swimming down there. That's about it.

Mr. Hedani: Thank you.

Chair Ball: Further questions? Commissioner Robinson?

Mr. Robinson: I see this B&B has a name Hula Hale. Is this a new name or has this been in service and now you're coming in for an application?

Ms. Ivy Nickens: Just thought of that name.

Mr. Robinson: Just thought of that name, brand new?

Mr. Nickens: Kinda catchy.

Mr. Robinson: Follow up question.

Chair Ball: Continue.

Mr. Robinson: If you could please step up please, I have a question for you. I apologize. Steven have you folks rented this out before or has this been used just for your personal use? What has this cottage been used for?

Mr. Nickens: You know, I've had a tenant in there and you know, he actually was in there for seven years. And he just recently went to Nepal and so he's in Nepal for a couple months and then he's headed to the east coast, his elderly parents. He's gonna be on the east coast taking care of his parents. So timing was good for us.

Mr. Robinson: You're not open to renting it out? Is it, I mean I don't know how the rental market is in Haiku so I apologize. I'm not real estate and see a lot of people going for bed and beds [sic] and you know, it's very common and I'm not opposed to bed and beds [sic], but with the housing the way it is, how is rentals in that market. What is the going price for rentals or do you know in that area?

Mr. Nickens: You know, I think Upcountry is kinda typical. I mean, you know, I think rentals are running anywhere from you know, for 1,200 up to 2,500 you know it seems to be the rental market.

Mr. Robinson: For a cottage?

Mr. Nickens: Cottages can run up to 2,000. My son lives in Haiku. He has a 1,000 square foot cottage and you know, he pays 2,000 for a cottage.

Mr. Robinson: Instead of free at home?

Mr. Nickens: You know, you don't wanna live with your kids. I mean, you know, it's good to have 'em visit.

Mr. Robinson: Yeah.

Mr. Nickens: You know, I don't know if you guys have kids.

Mr. Robinson: Thank you.

Mr. Nickens: Okay.

Chair Ball: Further questions? Commissioner Hedani?

Mr. Hedani: You're open for a motion?

Chair Ball: Yeah.

Mr. Hedani: Move to approve as recommended.

Mr. Hudson: Second.

Chair Ball: Moved by Hedani, second by Hudson. All in favor of the motion raise your hand and say, "aye".

Commission Members: Aye.

Ms. McLean: Five ayes.

Chair Ball: Did you raise your hand?

Mr. Robinson: No.

Chair Ball: Against? One against.

Chair Ball: Motion carried.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit and Bed and Breakfast Permit as Recommended by the Department.
(Assenting - W. Hedani, L. Hudson, I. Lay, S. Duvauchelle, R. Higashi)
(Dissenting - K. Robinson)
(Excused - J. Medeiros, M. Tsai)**

Chair Ball: Moving on. New Business, Item D-1, Deputy Director?

Ms. McLean: Thank you, Chair. Under New Business, you have a request from Victory Development for an Environmental Assessment Determination on the Final EA prepared in support of a Community Plan Amendment from Multi-Family to Hotel for the Nani Loa Condominium Hotel Project, 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032 in Kihei. And again, we have your project planner as Paul Fasi.

D. NEW BUSINESS

1. **VICTORY DEVELOPMENT requesting an Environmental Assessment Determination on the Final Environmental Assessment prepared in support of the Community Plan Amendment from Multi-Family to Hotel for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (EA 2015/0004) (CPA 2015/0002) (SM1 2015/0004) (P. Fasi) (Draft EA reviewed at the June 9, 2015 MPC meeting.)**

The EA trigger is the community plan amendment.

The applicant has also applied for a Special Management Area Use Permit. The public hearing on the Community Plan Amendment and the Special Management Area Use Permit will not be scheduled until after Chapter 343, HRS process has been completed.

Mr. Paul Fasi: Good morning again, Commissioners. We are here today to discuss the finding of no significant impact on the Final EA. As you are aware this application will come back to the Planning Commission at a later date and then we will be discussing the Community Plan Amendment and Special Management Area Permit application. But today, we're just concentrating on the Finding of No Significant Impact for the Draft EA.

You've seen this project before. It's come before you on May 12th and you had eight items of concern. The applicant will be addressing those eight items. They have a rather lengthy presentation so I'd just like to turn it over to the applicant since you're somewhat familiar with the project already. Thank you.

Mr. Jordan Hart: Good morning, Commissioners. My name is Jordan Hart of Chris Hart & Partners. I'm here to present the Nani Loa Condominium Hotel Project. This is a presentation of the Draft Final Environmental Assessment and we're here to receive comments on or acceptance of a Finding of No Significant Impact for the project.

The developer is Victory Development. Today we have Todd Liebl and Greg Walker in the audience as well as Raymond Cabebe and myself from Chris Hart & Partners. Civil engineering is Otomo Engineering, they're also here today.

Project is also requesting a Community Plan Amendment. This will require a decision by the Maui County Council and then after that assuming we receive a Community Plan Amendment, we'll be back to the Maui Planning Commission for review of a Special Management Area Use Permit for the development of the project.

This is a project location map. This is a project located in Central Kihei. It's above Kam II. This is the Piilani Highway here. This is a tax map key. The subject parcel here. South Kihei Road here. The north-south collector road is here. This is a perpetual easement which is how the project gains its access from South Kihei Road through the Kihei Kai Nani project. This is an aerial photograph of the project. Again, north-south collector road, South Kihei Road, Kihei Kai Nani, the proposed project.

This is the community plan map. As you can see the project has been sitting in the transition between Hotel and Multi-Family. It previously had been a Hotel. On the last community plan update it was changed to Multi-Family. The applicant is requesting a change back to Hotel. That would allow for the same type of use that's occurring in the makai Kihei Kai Nani project. I should also mention that this project was originally a portion of the Kihei Kai Nani project. The original developer completed about three-quarters of the original project and then ended up subdividing this portion off to be finished off later. This is a County zoning map. The project is zoned H-2.

This is oblique area photograph. This is a previously reviewed Aloha Villages project. It's currently inactive, north-south collector road, project site, Kam II. These are some character photographs of the project site. This is from the edge of the Kihei Kai Nani project looking east towards the project site. This is an existing box culvert. This culvert is on the Kihei Kai Nani property. As we discussed the last time, the way the storm water flow works is it flows down from mauka, through the mauka vacant parcel, through the existing project site which is vacant and then it enters into the Kihei Kai Nani and currently sheet flows down the center of the driveway as it makes it way towards the ocean.

This is the project site. This is the gulch we were discussing. The proposed project is not proposing any development within the gulch. All the project occurs on the north and south sides of the property. The project is 39 condo units, three and four-story buildings. There's ground floor parking under each building. It's two and three-bedroom configurations with typical condominium amenities.

This is a site plan. What the site plan does...This is a rendered landscape plan. There are going to be Hong Kong Orchids and Milo trees buffering the east or the west side of the property between the existing Kihei Kai Nani and the proposed project. The existing gulch remains in its current condition. Sorry, we're gonna take a moment to reset here. What I had wanted to show is the setback between the existing Kihei Kai Nani and our project's property line and then the proposed setback of our property to the property line. And so what you end up having is I believe it's approximately 20 feet from the existing Kihei Kai Nani to our property line and then we're proposing 30-foot setbacks from our property line. So a total of approximately 50 feet between existing buildings and proposed buildings. And if you look at the Kihei Kai Nani site we believe this is consistent with their scale of development because they have in between their own buildings separation as close as 20 feet. So we're pretty far, so it's 51 feet actually. So we're relatively separated.

As discussed earlier we are gonna be placing Hong Kong Orchids and Milo trees along the border of the property and then there would also be hedging along the full perimeter. The landscape plan. This is the plant materials that we're proposing. Naio , Ilima Papa, `A`ali`i, various others.

One of the issues that was brought up in the public comment period was how to address existing mature vegetation on the site. The applicant did engage a certified arborist, Mr. Ernie Rezens. He came to the project site and did an assessment of the trees. What Mr. Rezens identified was 15 mature trees that would be 13 shade trees and two palms. Three of these trees are invasive species so we wouldn't propose to keep them in their current condition. We propose to remove them. Of all the trees only seven were considered to be transplantable, you know, candidates to be transplanted. But of those it would basically be too costly. Some of them were too large to

attempt to move and others were unhealthy. The recommendation from Mr. Rezens was to replace with like kind trees. And so what you have is an existing 15 mature trees that includes palms and what the project is proposing to do is 18 large canopy shade trees as well as 14 palms. So it's a total of 32 new trees where you currently have 15 as well as dwarf plumerias and other vegetation.

This is the oblique area photo with rendering of the project site. What this is intended to do is show you the proposed scale of the project in relation to other development in the area. We believe the project is an appropriate scale with its surroundings. This is an analysis of density with regard to the proposed project which is 27 units per acre and then surrounding developments. The Kihei Kai Nani immediately mauka is 34.7 units per acre. The Kihei Ekahi immediately to the south is 35.9 units per acre and then you can also see the others around. With regard to floor area ratio and lot coverage, the project complies with both H-2 and A-2 zoning requirements for density. This building, this section is an analysis of height. What you can see here is the Kihei Ekahi which is in alignment with the proposed project. The yellow building is Building No. 1, and the green building is Building No. 2, and then you also see the section goes makai and you can see Kihei Kai Nani project and basically what this shows is the elevation relation in section form. So the proposed buildings are approximately 35 and 45 feet in height. The H-2 zoning allows for a 160 feet. However, that's limited by community plan which would allow for a maximum of 75 feet. So the maximum you would expect to obtain in the SMA Major Permit is 75 feet. However, the applicant is proposing 35 feet and 45 feet respectively. These are section elevations of the project site. The south elevation looking over the...well, through the gulch. East and west elevations. Perspective rendering, this would be looking southeast. You can see Haleakala is approximated in the background there. A rendering looking southwest, northwest.

This is information on lighting fixtures. The irrigations system will be designed to accept R-1 water when it's available at the site. There is an existing two-inch water meter for the project site. The project is served by County sewer. There is adequate capacity. Regarding storm water retention there is a existing condition of storm water flowing through the site. The project leaves that largely unchanged. However the project does propose to retain an additional 20 percent of the increase in runoff on site. So what the project is gonna do is retain 100 percent of the increase resulting from development in addition to another 20 percent. So there'll be a slight improvement to the existing condition, but there is a large and ongoing condition that does occur through that gulch.

It should be noted that that gulch receives approximately 307 acres worth of drainage that's of mauka lands. So it's just a kind of a indicator of how this is a concentration of drainage for the region. And so the project proposed to allow it to flow through as it has done so in the past. What this diagram indicates is basically the drainage area that ultimately ends up in this project running through this project site.

Regarding roadway access the project is accessed from South Kihei Road. The applicant has received feedback from neighboring property owners on concern of construction access. The applicant has a verbal understanding with the north property owner for construction access. This is the ideal proposal although the applicant does not want to run construction vehicles though the existing easement.

Regarding traffic there are 870 vehicles passing the project's intersection at South Kihei Road in the A.M., and 1,144 in the P.M. In 2020, the peak will be 1,010 A.M. trips, and 1,370 P.M. trips.

This project's contribution to those total numbers will be 24 in the A.M., and 28, in the P.M. We did receive comment from Public Works regarding the creation of a left-turn lane. The applicant is open to restriping the intersection there in front of the project site to create the opportunity for a left-turn lane. These are some photographs of the existing condition. There are, there is a signalized crossing in the front of the project site where pedestrians can get across South Kihei Road. These are also just photographs of the character of the roadway as well as an aerial.

In addition to construction access, the applicant does not propose to park any construction vehicles on the Kihei Kai Nani site. During the construction process the project will be phased so that all parking can occur on the project site.

Best management practices will be observed during the construction phase. And construction timing will be aligned with the visitor industry slow season which is based on our understanding of feedback a lot of the concern for the Kihei Kai Nani. That project is currently...there's a lot of transient vacation rental that occurs because it's Hotel zoned and so a lot of owners are concerned with impacts to their rentals and so the applicant is open to working with them and basically phasing construction for slow season.

Meetings that occurred. Victory Development met with the Kihei Kai Nani site manager and AOA Board President in October of 2014 with a presentation to the Kai Nani Board. In December 2014, Victory Development met with the AOA Board President again. In April 2014, shared updated plans with Kihei Kai Nani Site Manager and the AOA Board President. On May 2015, Chris Hart & Partners and Victory Development presented to the Kihei Community Association, Design Review Committee. In September of 2015, there was a community meeting. Property owners within 500 feet were invited. A total of 900 invitations were mailed out, 23 individuals attended that meeting where the project was presented, there was question and answer and discussion of all of the project issues that we had covered previously as well as addressed in the Final EA. In June of this year, the Draft EA was presented to the Maui Planning Commission. In August of 2015 it was presented to the Urban Design Review. We are here again to present the Final EA to the Planning Commission.

Future steps that need to occur. Assuming a Finding of No Significant Impact that will be published with the OEQC then the project will be referred to the Maui County Council where there will be a decision on the Community Plan Amendment. After decision on the Community Plan Amendment, the project will come back to the Maui Planning Commission for decision on the development approval of the Special Management Area Use Permit.

In summary, we feel it's appropriate for this project to receive a Finding of No Significant Impact and that would be based on the agency comments and community comments that we received as well as the mitigation measures proposed by the applicant. Thank you very much.

Chair Ball: Thank you. We will open it up for public testimony at this time.

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

Mr. Mike Moran: Good morning, Chair Ball and Commissioners.

Chair Ball: Good morning.

Mr. Moran: Mike Moran for the Kihei Community Association on D-1. I realize that it's a challenge for you when we testify early and the item comes up much later, but we did distribute only one page of testimony and ask if you can please try and look at that when the item comes up. This is on D-1.

Examining this EA and noting a claim of no impact on the ocean simply because the project is uphill 1,000 feet which is on Page 17, please examine that, seems to defy the laws of gravity. Is the logic here to say only building on the beach if it were legal can affect the ocean. This is egregious. We are ...(inaudible)... Further claiming that the project will have no impact on traffic because the intersection is already F rated without the project seems absurd. So if it's already a failure adding even more vehicles does not make it even worse? If you were backed on your street as the 10th car in line waiting to proceed onto South Kihei Road is it not a greater impact if you are then the 15th or 20th? Is this asking traffic engineers to create a worse rating than F so it could be applied to this project?

Claiming a FONSI for the EA in the request. The EA was triggered by a request to change the Kihei-Makena Community Plan from Multi-Family to Hotel. Changing the changing community plan goes against the Kihei Community Association's efforts to have the plan prevail over zoning. It was our understanding that the Commission is be guided by following the community plan. How can the Commission be expected to do this if one just bypasses or changes the plan? Are you expected to make capricious decisions? You heard and saw examples of prior testimony on this same project at a meeting earlier this year regarding impact on the buildings and gulches, flooding, ocean degradation, traffic, et cetera. All this remains. Nothing has changed. Some of that testimony may yet be repeated later today, but if not, please recall what you saw and heard from the community as you reach your decision today

Commissioners, what does finding no significant impact FONSI means to you? Well the Feds, the Highway Administration anyway says a FONSI is issued when environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment. Can anyone honestly say this applies there?

Lastly, do we need or want more high-end residential projects in South Maui? I thought we were looking for residential projects for our residents not those our residents can't afford. Just bringing more people with wealth from outside Maui and having less development to those living here. Mahalo.

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

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

Chair Ball: Anybody would like to testify on this agenda item may do so. Seeing none, we will close public testimony. We will ask for the recommendation from Staff.

Mr. Fasi: Your alternatives for the FONSI are basically three alternatives and accept the Final EA and issue the FONSI Determination. You can defer the Final EA or you can tell them prepare an EIS. As far as the recommendation from the Department, the Department has reviewed the Final

EA and concludes that the environmental document meets the various criteria for an acceptance of EA and therefore, the Department recommends that the Commission accept the Final EA and issue the Findings of No Significant Impact. Thank you.

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

Mr. Hudson: Thank you, Chair. I have a couple of questions. I think Mr. Hart would be able to answer some of them. It's my understanding you're gonna be using R-1 water during the construction phases is that correct?

Mr. Hart: That's correct.

Mr. Hudson: You said that you're gonna plum for R-1 water in the future is that correct?

Mr. Hart: Yes, that's correct.

Mr. Hudson: When in the future, one year, ten years or a hundred years?

Mr. Hart: Well, Environmental Management would be able to tell you know, the Commission when supply will be available.

Mr. Hudson: You did a study, right to find out how much it's gonna cost to bring the down the R-1 water?

Mr. Hart: To bring...this project...well...

Mr. Hudson: This is a for-profit project, right?

Mr. Hart: It is a for-profit project that's correct, yes.

Mr. Hudson: So you're gonna contribute to the infrastructure, right?

Mr. Hart: That's correct, but as far as when...I'm sorry, I got a little off track there. As far as when Environmental Management will make that water available to project site I couldn't answer that for you.

Mr. Hudson: You asked them through, right?

Mr. Hart: I don't believe we asked them to serve this project directly, but we are prepared to. We are plumbing for it. We can ask them to provide water to the site, but I believe that their plans are kind of driven by regional planning on their part as far as where they're gonna send the lines directly.

Mr. Hudson: You're gonna be using 37 gallons....37 thousand gallons per day of water, and some of that is gonna be potable water used for irrigation.

Mr. Hart: That's right.

Mr. Hudson: In a place that's very, very dry to begin with. Is that my, is that a correct assessment?

Mr. Hart: I believe that that's correct, yes.

Mr. Hudson: Okay, so then, so then you did a study as to where we find more water then because you're taking it from Mokuahau?

Mr. Hart: Well, that's the current County source of water for this region, yes.

Mr. Hudson: And you looked at other sources? You tried to find wells and stuff?

Mr. Hart: I don't believe that this project proposed to drill a well on site.

Mr. Hudson: So you didn't look?

Mr. Hart: We didn't look? Well, the project has a two-inch County water meter. So that their proposed option for water.

Mr. Hudson: That's fine, but this is not an infrastructure project. So did you look for water? It's a simple question?

Mr. Hart: I would say in reply to that there was...it would have been assumed that the two-inch water meters were adequate for the project site so we didn't proactively look for an alternate source of water prior to this meeting.

Mr. Hudson: So you just figured you guys were gonna use Mokuahau and no problem, right?

Mr. Hart: Well, do the project does own a two-inch water meter so the project did assume that they had the right to use that water, yes.

Mr. Hudson: May I ask one more?

Chair Ball: Continue.

Mr. Hudson: Your traffic report, really? Could you explain that to me? I see an awful of numbers and then I see seconds. I think I read somewhere in this monstrosity that you expect a delay in traffic of one to two seconds, is that right?

Mr. Hart: Depending on which action we're talking about. Which intersection action were we discussing with regard to one to a second delay?

Mr. Hudson: I remember reading it, this report was...

Mr. Hart: So there's basically one location for the project to enter and access that's the driveway off South Kihei Road and so there's two directions can be gone and that would be north and south.

Mr. Hudson: The finding of no significant impact means exactly that no significant impact. Your

traffic is gonna have an impact and you guys here to be reluctant to put in a new lane even though it's a for-profit project. Could you explain the logic behind that?

Mr. Hart: Sure. Sure. As discussed in the presentation a few minutes ago we did proposed to restripe South Kihei Road which would include a left turn lane. The number of vehicles that are gonna be added to the intersection, sorry I didn't go back far enough...as a result of this project I believe we're—

Mr. Hudson: How many units are there again?

Mr. Hart: Thirty-nine.

Mr. Hudson: How did you come up with the number of 24 then?

Mr. Hart: The traffic engineer basically generates calculations based on national standards for project trip generation.

Mr. Hudson: I'm not buying that. I have no further questions for him.

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

Mr. Robinson: Aloha, Mr. Hart.

Mr. Hart: Aloha.

Mr. Robinson: Going on with the traffic study how many parking stalls are gonna be in this project? Can I say 83?

Mr. Hart: Yes, thank you.

Mr. Robinson: Can you say 83?

Mr. Hart: Eighty-three, thank you.

Mr. Robinson: With 83 parking stalls is it the assumption of your traffic analysis that only half of the people using the stalls will drive a day?

Mr. Hart: Oh, okay. Yeah, what is assessed is the peak hour. So no, it's not...that's not, that's not the assumption. The assumption is that approximately half of the residents will be driving during just the peak. So whether or not basically using national standards the assumption is that that many people are having to take their trip during the existing peak on South Kihei Road.

Mr. Robinson: What is considered peak hours?

Mr. Hart: I believe it's 8:00 to 9:00, 8:00 to 9:00....sorry, 7:30 to 8:30 and 3:45 to 4:45 p.m. was the peak for this project.

Mr. Robinson: So only one...25 percent of the people will be using those cars during those two hours?

Mr. Hart: Again, based on National Engineering Standards—

Mr. Robinson: And I mean, and again, there's National, there's Hawaii, there's when we wake up and do things compared with 9 o'clock.

Mr. Hart: Right.

Mr. Robinson: So is there any correlation between National and Hawaii or does Hawaii have its own specific guidelines for traffic times?

Mr. Hart: Perhaps Public Works could comment on their use of the same standards?

Ms. Dagdag-Andaya: So when Public Works...well, when the TIAR gets reviewed by Public Works we're reviewing the same thing that the traffic engineers review. The Institute of Transportation Engineers developed standards and ways to calculate traffic. So if we're looking at a multi-family project versus a residential project, versus a school, versus a park, versus a government facility, there are different standards for different types of projects so the numbers kinda vary from project to project. In this case, their traffic engineer did a review and then we checked that review. We also provided the applicant with our comments to their traffic impact assessment report. So we have our comments to them. And what Mr. Hart said about the traffic lane going in into the project on...from South Kihei Road that was one recommendation that we had provided to them in our September 22, 2015-letter. We also asked, our Comment No. 3 also stated from our Department, "include a recommendation that improvements be considered on South Kihei Road to improve the ability from traffic to exit the project". So that was another comment that we had for them as well. But as for you know reviewing standards, yeah we...those numbers are...I don't think there's a Hawaii standard but there's a national standard that we use.

Chair Ball: Further questions? Commissioner Lay?

Mr. Lay: Okay, on your infrastructure, your sewage, your water, your electrical how is it coming in?

Mr. Hart: The proposal is through the property's existing perpetual easement.

Mr. Lay: Through Kai Nani's?

Mr. Hart: Through...this property has a recorded easement through Kihei Kai Nani. So Kihei Kai Nani granted this property an easement for access and utilities.

Mr. Lay: It's gonna be underground?

Mr. Hart: Yes, that's right.

Mr. Lay: So they're gonna have dig, dig up their parking and roadway? I mean, how are they coming through?

Mr. Hart: Right, that was the agreement when the Kihei Kai Nani assigned the easement to this property. The expectation would be that their access would occur in that same route and that the utilities would be placed in that route.

Mr. Lay: Okay.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Jordan?

Mr. Hart: Yes.

Mr. Hedani: Drainage.

Mr. Hart: Yes.

Mr. Hedani: Can you explain to me how this is gonna work again?

Mr. Hart: We have Stacy Otomo from Otomo Engineering here. Maybe I'll have Stacy come up to discuss the drainage process a little bit.

Mr. Stacy Otomo: Good morning, Chair Ball and Members of the Planning Commission. My name is Stacy Otomo. To answer Commissioner Hedani's question, one of the maps that we showed showed you the extent of the drainage area, and it is a regional drainage area meaning it goes quite a ways mauka of Piilani Highway. So there is a fair amount of water that comes down. Basically what's happening if you look to the right on that diagram it flows down where the blue line is, it comes across Piilani Highway through some of the developed properties. There's an existing—

Chair Ball: Hold on Stacy. Let's get a portable mic for you. Main thing you have the portable mic. Okay, thank you.

Mr. Otomo: This retention basin was constructed as part of I believe this subdivision right here which collects water from here and releases it back into this area right here. So when Kihei Kai Nani was built, if you saw one of the pictures right in this area there was a circular turnaround. So what the runoff does in this area is it comes through that little box culvert but it's a short box culvert that basically takes it underground and allows the runoff to flow down the center of the existing parking lot in Kihei Kai Nani and that's the current drainage system.

When...what we're proposing is to mitigate more than what the County drainage standards call for on the property. And the bottom line is we're gonna end up reducing the amount of runoff that actually comes in here, you know, grant it it's a small amount, but we're doing more than what's required by the County.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I understand. You know, I understand that you're addressing the delta from the project and you're handling that onsite through underground retention. The problem that I have is that from

an engineering perspective, the whole thing doesn't make sense. An open channel, you know, if you look at the highway, the channel, the culverts under the highway are sized for 660 cubic feet per second.

Mr. Otomo: That's correct.

Mr. Hedani: So assuming something happens mauka that's gonna come down makai and then it ends up in this little 12-inch by 6-foot culvert that daylights by the circular driveway of the project from an engineering standpoint it doesn't make sense to me.

Mr. Otomo: I agree. However, that's an existing condition that's there now so with or without this project it will continue flowing in that particular fashion.

Chair Ball: I have a follow up on this topic to Public Works. Is there any mitigation in the works on that stream flow as far as slowing down the water that comes down there? "Cause we saw videos last time of that sheetflow coming down the driveway of Kihei Kai Nani.

Ms. Dagdag-Andaya: This is for off site?

Chair Ball: Yes.

Ms. Dagdag-Andaya: For off site drainage? I mean, the applicant is only required to handle...and I mean, I know you guys know this what's on site.

Chair Ball: That's why I'm asking you if you handle off site.

Ms. Dagdag-Andaya: Well, what we have right now is the drainage study for South Maui. And in that drainage study which is what we're hoping is, we're hoping to get the draft pretty soon from our consultants. That will help identify the issues and potential mitigation measures or solutions but that's gonna be a long-term project and not something that this project is gonna be able to fix. That's a regional issue.

Chair Ball: No, and I understand that that's why I asked you and not them because this is upstream from them and so they're not contributing to this lets per say but I mean, we gotta solve that issue. Look at it, I mean I don't have to go much school as Stacy went to see that you got a big problem there and we saw it on video also.

Ms. Dagdag-Andaya: Which is why we're, you know, we're anxiously awaiting the study to be provided and so we can plan our, you know, plan for what we need to do, what our next steps are in mitigating the drainage issues in this region.

Chair Ball: Commissioner Hedani?

Mr. Hedani: From an ideal standpoint Stacy, I know the Kihei Kai Nani made a mistake by having their drainage left on the surface through the middle of their parking lot as the design solution that they accepted. From an engineering perspective would the proper solution have been to put everything underground?

Mr. Otomo: Ideally that's correct. You would have wanted to put in a structure that basically took the runoff from here and suboutlet somewhere makai of South Kihei. That would have been the ultimate solution so the project.

Mr. Hedani: But that's not something that Kihei Kai Nani is entertaining or considering at this point?

Mr. Otomo: Not that I'm aware of.

Chair Ball: Well, and I don't know if we want that either because the solution is to bring that all the way out to the shoreline which I don't think we want either. I'd rather see it sheetflow on that parking lot than a direct line out to Kamaole 1 or 2 or whatever...Kamaole 2 whatever that is out there. I have a question about the verbal agreement you have with the landowner to access. When is that gonna become a written agreement?

Mr. Hart: Well, you know, I've been thinking a lot about this and anticipating that we're gonna come back for SMA Major Permit. What I would like to do is basically leave it open because what will happen is they'll have to enter into this negotiation with their neighboring property owners and there's only two options. If they wind up with a condition it really puts them in a...the two neighboring property owners know that they now have a condition to secure access and negotiation is really hampered in that way, but basically when they're ready, when they're pulling permits and they're really to actually do a construction project that's when they would wanna execute an agreement as discussed at length previously the applicant's completely aware that they're going to seriously aggravate all of these people who live makai of them if they don't get this access. So that's their goal. That's what they want to do. But it would happen at development time. If I could, a point of clarification, there was a discussion of parking stalls previously I believe that 83 is the correct number, I mentioned 86 incorrectly earlier.

Chair Ball: You said 83.

Mr. Hart: Yeah, that's right.

Chair Ball: Anybody else had further questions? I have a question about the utilities that you're gonna install up the driveway here. Is that gonna be right up the driveway or you're gonna have a...you have a easement on the left or right side of the property or...

Mr. Hart: The easement is right up the driveway. There's a diagram that shows it on the real property tax map that it's there. That's the location of the easement it's just basically right up the center of the driveway. So that's the area where they have legal right to be installing infrastructure. So anything that went off of that would require a new agreement. I don't expect that we're proposing that at this time.

Chair Ball: Commissioner Lay?

Mr. Lay: So that falls under your rights, powers and privileges. I can't find it. I'm trying to look that up right now and I can't find that. Can you follow up on that? What exactly does that entail?

Mr. Hart: It's for access and utilities is in summary.

Mr. Lay: Attachment 1....So Kai Nani doesn't have a choice, right?

Mr. Hart: Well, Kai Nani dedicated the right to use this land to this property owner. So the easement is in benefit of their mauka neighbor. As discussed previously, this property was all owned by one entity at one time. That developer developed about three-quarters of the project and then they subdivided off this mauka portion. And in addition to subdividing they created this access and utility easement and recorded against the property. So each one of these Kihei Kai Nani owners that bought in, you know, bought in with this existing easement in place.

Mr. Lay: 'Cause we seen...I can't see how you're gonna have a backhoe or anything going up that thing, with a bulldozer, a truck or even a truck trying to fill it up and then you're trying to tell everybody it's okay.

Mr. Hart: Right, and to reiterate, they do not propose to do that. They're working...there is two undeveloped parcels, one is to the east and one is to the north, and they're working with those owners to secure access. And so the comment that I was making earlier is just that if that becomes a condition of approval in the future that really hampers this applicant's ability to negotiate with those two land owners. If those two land owners are aware that that's a condition of approval then it becomes you know, a very unfriendly negotiation process. But that is exactly what they want to do. They do not want to provide construction access right up the middle, tears up the asphalt which they'll have to fix, it significantly inconveniences their neighbors and just results in generating complaints throughout the construction process which is what not they're trying to look for.

Mr. Lay: 'Cause when you came before us the last time those same questions came up so this time we were trying...hoping that we'd have the answers on that easement is available, the parking is gonna be available for construction and...

Mr. Hart: Well, the parking is available for construction. The easement, there's a verbal agreement for the easement currently. The applicant is here now. I know he's aware of what you're basically implying that you'd like to see a executed agreement for access. So that would be something they would be working on.

Chair Ball: I have a question. You said that the...well, the question is are the utilities stubbed out to that, to the site in question or are they gonna have to dig up the driveway?

Mr. Hart: I'll bring up Stacy Otomo to discuss existing utilities again.

Mr. Otomo: Stacy Otomo again. To answer your question, Commissioner Ball, there's an existing two-inch meter already down in this location. We got a copy of the as-built drawing when the meter was put in and according to the as-built drawings it showed that there's a two-inch water line that actually came up here and stubbed out in the property. I think at the last meeting there was some discussion from the Kihei Kai Nani owners that it was not put in. But the information that we got shows it being put in. There's also an eight-inch sewer line that actually comes all the way up to the property. So in terms of the domestic water line and the sewer line it's already stubbed to the property. So what we're anticipating that needs to be put in would be a fire line and probably the underground electrical components basically from South Kihei Road into the property. And we can double check this but this easement is quite wide, and I believe it not only covers the center line

of the driveway, but it actually extends out to the parking stall, so it is a fairly wide easement. So as far as installation of utilities inconvenience to Kihei Kai Nani, you know all this is gonna have to be planned, worked out with them as far as trying to do this during their non peak season and working with them closely to not disrupting their parking.

Chair Ball: Commissioner Hedani? Two at a time.

Mr. Hedani: Two at a time. I guess this is for Stacy again. I understand where you're coming from Stacy from the drainage perspective. I understand you're meeting the obligations for the site. I just don't wanna sign off on something that ends up with somebody dying at some point. The inlet for the drainage system that goes underground beneath the breezeway portion of the project, is it graded so that little kids cannot get stuck in there when the big water comes down?

Mr. Otomo: First of all, this portion of Kihei Kai Nani is gonna be left in its natural state. There's gonna be retaining walls on all ends, so it's an open channel coming through Kihei Kai Nani. The existing inlet for the box culvert is right about here and it's a two feet tall by seven-foot wide box culvert so what we are anticipating is doing is putting in some kind of protective grating over the inlet of that box culvert.

Mr. Hedani: So I don't have to worry about little kids getting stuck in it?

Mr. Otomo: Yes.

Chair Ball: Commissioner Robinson?

Mr. Robinson: While you're p there Stacy, can you explain to me the positive impact you guys are having with drainage with the reduction and how that's happening?

Mr. Otomo: In terms of ...(inaudible)... there's two criteria we're gonna need. In this particular case there's an existing drainage way that goes through the property. You know, we're obligated not to so-call block it, allow it to keep flowing through the property which we are. The other half is we cannot increase the runoff from the property into the existing drainage way which we are also. We're actually reducing the amount albeit you know, one and a half acres compared to the drainage area of over 300 acres is quite minuscule, but again ,we're doing as much as we can on our property to try and help the situation.

Mr. Robinson: How are you...I know you were stating you're gonna do that. I wanna know how is that a...how are you able to do that with you having less ground, less absorption. So you're putting asphalt, you're putting buildings, but yet you're taking away water. I don't know how that, how that works.

Mr. Otomo: Yeah, the type of drainage system we're proposing is going to be underground perforated pipe and basically what they are is they're large diameter pipes that are perforated. It's wrapped with gravel and filter cloth. So all the drainage that's picked up from the hard surface is piped into this structure and it-

Mr. Robinson: A big field like how that other proposed in Kihei was doing to help a flood?

Mr. Otomo: Yeah, so basically a large leach field.

Mr. Robinson: Was that inside here?

Mr. Otomo: It's probably in the drainage report like a brief description of what we're proposing.

Mr. Robinson: It was? I understand you're getting a bigger pipe—

Mr. Otomo: Right.

Mr. Robinson: —a bigger leach field and you're taking some of that, that surface water that's coming from your building—

Mr. Otomo: Right, yes.

Mr. Robinson: —and you're taking that down.

Mr. Otomo: Yes.

Mr. Robinson: And that, that over offsets what that natural ground would absorb?

Mr. Otomo: Yes.

Mr. Robinson: My next question is doesn't this property have the capability of having brush and other things go into the culvert and into the gulch and, and which, which is you know, it's...which of course it does and what is the plans for heavy equipment to go there and get that cleaned out if it's going to be surrounded by a parking structure.

Mr. Otomo: It goes back to the question that Commissioner Hedani asked. The protective grating actually is two-fold. It's designed to prevent people from actually getting into it, you know, it's also going to be designed on an incline. So what it is it's basically self-cleaning where any debris that come down—

Mr. Robinson: I'm talking higher up though.

Mr. Otomo: Oh.

Mr. Robinson: Before you, before you reach...before you reach the Kai Nani zone or where that culvert is in the gulch 'cause you know, as different things fall in that gulch. What's the plan to get those cleaned up if we're gonna having parking and trees and the building right there. Is there a way to get equipment back there to get that cleaned out?

Mr. Otomo: They can access it from this front section here, I mean, within here. Beyond this, you know we don't own the property. But I think if you go back to the old...previous drawing we saw Raymond where it showed the offsite retention basin that was created by another project. You know that helps catch some of the debris that comes from the real mauka area. This one right here. So there's an opportunity there for you know, large debris to be caught in this detention

basin. So I'm sure the owner of this, the maintenance ownership of this has rights to get in there and clean up the basin.

Mr. Robinson: Yes Stacy, but you also have your own trees inside your own gulch that's gonna grow with water—

Mr. Otomo: Right.

Mr. Robinson: —and it's gonna die with drought and how are, how are we gonna clean that debris out? I mean, so are you saying a excavator is gonna drive around straight up the driveway gonna go around in between the two buildings and be able to reach down and clean that out?

Mr. Otomo: Well, you can actually get a small piece of equipment into that drainage way from—

Mr. Robinson: You can go down the gulch?

Mr. Otomo: It's whether—

Mr. Robinson: What's the height? I'm sorry, I don't —

Mr. Otomo: It's basically gonna be on grade coming down. So you can get a mower in there, you can get a small excavator.

Mr. Robinson: You'll be able to drive inside the gulch?

Mr. Otomo: Yes. So as far as maintenance on the property itself it's doable from the property.

Chair Ball: Further questions?

Mr. Robinson: Thank you Stacy.

Chair Ball: Further questions? Commissioner Hedani?

Mr. Hedani: I just wanna verify that the proposed improvements is acceptable to Public Works?

Chair Ball: Public Works?

Ms. Dagdag-Andaya: We...I mean, we're gonna have another chance at reviewing this again at SMA and then when they come forward with our...with their construction plans. So at this point, the conceptual is fine. We have no additional comments, but again, there's other opportunities for review.

Chair Ball: Okay. Commissioner Hedani?

Mr. Hedani: My only comment basically to that is that when, when 660 cubic feet of water come across the highway and down the drainage channel and through this property, some of it is gonna go underground, some of it is gonna go right over the top of it, right through the breezeway fo the

two buildings and sheetflow onto the Kihei Kai Nani property. When the ultimate solution comes down to making drainage improvements it's gonna require Public Works or somebody to build a channel or something, some kind of drainage improvement right through the middle of this development, right through the middle of the Kihei Kai Nani driveway. It's gonna tear out all of your water lines, all of your sewer lines, all of your electrical lines in order to put that drainage system in and it's basically making the future improvement hugely a problem from my perspective because it's already urbanized, it's already built, it's already approved and it's like taking down all of those improvements in order to put something in after-the-fact and it's kind of ass backwards. But if that's acceptable then so be it I guess.

Chair Ball: Public Works?

Ms. Dagdag-Andaya: You know, just to respond to that, again, I go back to the drainage study that we have being prepared for the County. Until we know what those improvements are, you know, we have no mechanism for any kind of, you know, determining some sort of fee or assessment on the applicants. And what we're reviewing...I mean, what we review is according to Code what's required. So that's...I mean, that's all I have to say.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Can I speak to Jordan please, thanks Stacy. Hi Jordan, I wanna ask you a couple things and I wanna, I wanna go back to the easement and the things that we talked about earlier and I remember in our last meeting talked about two things important which was the disruption that would be to the people involves if we had to go through the easement in the middle and then also during the construction and then where the parking would be, and I know we keep on tying in that this was one project that got the chopped into two. And my philosophy is it's one project that got chopped into two and once it got chopped into two then it's just two different property owners. It ain't well, the guy used to own it and therefore we're allowed to do things. So I think, you know, and that's how I'm looking at it. I know there's an easement which is like anybody else has a easement of any other property owner and we wanna mitigate it, but I hear you telling us that you don't want us to give it as a condition because it will hurt your negotiating, but I don't think you're gonna get an approval without a condition because... 'cause, 'cause...because that the FONSI is showing that you're not gonna have a impact. So I guess we're saying is you know you didn't have the agreement, right you have a verbal agreement to have the access through different land owners.

Mr. Hart: That's right. Yeah, if I could start to reply to what you're saying?

Mr. Robinson: Yes, thanks.

Mr. Hart: So as I said earlier, I think that what our goal would be is to try to basically have an agreement executed before we come back to you for SMA Major Permit so we don't have to discuss this any further. But what I had been trying to explain with regard to conditions is basically what you...what I was commenting on is that if the Maui Planning Commission gives this landowner a condition that they have to secure an off site agreement with a separate private party in order to complete their project it puts them in a really difficult position especially when their neighbors know, you know, those two developers abutting this project know this project is dead in the water unless they secure construction access negotiation becomes extremely...can become extremely unfriendly

at that time. That's all. I was just talking about that dynamic there. I think that our goal at this point would be to come to you with an executed access agreement for construction phase so we don't have to discuss this further in the future.

With regard to legal access and the issue of the property being owned by the same person in the past and now it's separated, all I was trying to explain is that this easement has been recorded and it's you know, runs with the land so that these owners know it exists. So now they're coming to the Maui Planning Commission and saying hey, we want you guys to stop our neighbor from exercising their legal access through our property because it's gonna be an inconvenience to us...absolutely it's an inconvenience. Is it a significant environmental impact? I don't personally think that gaining construction access through a paved parking lot is a significant environmental impact. It would be a social impact, and we're gonna...our goal is to avoid that as I just discussed. But I do think it's reasonable to have the option of both because it's their legal access and because in actuality it's probably better to provide construction access over pavement. Although that's not their goal, you know, there's gonna be less dust, all of the other things that happen with going over unpaved land. But to reiterate it would be a better conversation for us coming back to you if we have an executed agreement. So, I think that we'll discuss that and we'll try to have that and we can have the discussion again, you know, at SMA when this body decides whether or not they'll grant the development permit for this project.

Mr. Robinson: I understand that, but I don't...you're no more important a landowner compared to your owner who might sell you the land rights, I mean, you know, so we're not going to say well we're gonna do this for you so you can have a better negotiating that's just my...you know, 'cause you wanna have a better way so they don't leverage and to me, that's my concern. My concern is the impacts. And my impacts go to when you gonna develop the middle, and we talked about this last time, and I didn't hear or see anything about this time about the parking spaces. The parking spaces of Kihei Kai Nani when you're in the driveway they won't have access to those parking spaces. So the people that are going to lose those parking spaces where are they gonna park while you're doing your construction which easement...nobody's saying that you don't have the easement. We all agree to that. It's legal. So that's not a discrepancy, but the parking is a discrepancy, the impact to the traffic is if people are gonna be parking on the next door neighbors and they're gonna be, you know, the social impacts will then spill onto the road because people are crossing the street that becomes a significant impact and so if we don't have a plan for the offset of the parking of the people Kihei Kai Nani that is, that is what I'm trying to say. It's ain't the construction, it ain't the roadways, what happens once you, once you take away the roadway and all those parking stalls?

Mr. Hart: Well, we can a parking mobilization plan for that, for basically how, you know, the dance between the excavation and parking access will work. I don't think that that's something that can't be overcome. You know, both parties have the obligation to cooperate on it because of the existing easement and so they'll do that. And I'm sure that our applicant will provide any options that are feasible as far as maybe parking on the site if that's...

Mr. Robinson: Do you have a idea or a plan 'cause we talked about this the last time you were here? Did you guys-

Mr. Hart: To resolve that? No, not at this time. I would say our basic plan is to negotiate with them

when we're entering into the construction phase but at this time we're--

Mr. Robinson: No, no, no, no this is Kihei Kai Nani and the parking. This is the--

Mr. Hart: I understand what you're saying, yeah, right, right...what I'm trying to explain is that that it...with the level of detail that's already in this report that would be an advanced level of detail that we didn't get for the Final EA yet. We are going to Council and then we're gonna come back here. So as we get closer to actually having a project that's gonna occur we are you know, gonna be refining those finer details, but phasing the installation of utilities and how parking will be adjusted in the Kihei Kai Nani might be...I guess that was a little early in the process in our...

Mr. Robinson: Early? I don't know about...yeah, I think you guys have priorities is I think is what it is.

Mr. Hart: Well, okay--

Mr. Robinson: Okay, Jordan thank you. I don't want to beat you up. Thank you.

Chair Ball: Deputy Director?

Ms. McLean: Thank you, Chair. I didn't sit in the previous meeting or meetings when the Commission discussed this so some of my comments might have been discussed already so excuse me if they're duplicative. Explaining a little bit I think where Jordan is coming from in approaching this in order to build on this property in the SMA the zoning and the community plan have to be consistent with each other. And so the first thing they need to do is amend the community plan so that it matches the Hotel zoning. That entitlement gets approved by the County Council. If they can get those things to match then they can come back to the Commission for their SMA Major Permit. And the SMA Major Permit as you've seen before that's really where you get into a lot of details of the development of the project. That's where you impose conditions in the event you choose to approve the project of course. That's where you would impose conditions about providing parking for the neighbors and things like that. This is a step away from it. I know it's a voluminous document but there are...there's a long list of requirements in the State Law of what has to go into this document. And so what you're looking at today relates more to the community plan amendment than the development details of the project. It's a little bit unusual because well, what do you put in that analysis except for the details of your project. You would need to know how much traffic its going to generate, what surfaces are gonna be hardened, so what your drainage plan is. So you have to have a plan in that document, but again, this isn't approving the project. That will come back to you at another time. And I'm not saying the information, you know, that you guys need is in that document, I'm just explaining the process a little bit. So however this environmental document moves from this point, if the community plan amendment is ultimately granted you will see the SMA Major in the future for details of the development itself.

Second point I wanted to bring up about the access easement is it's actually quite common here during the subdivision process for there to be access easements for vehicular and utility access. It's not often you see it in a hotel or business area. You see it pretty commonly in residential areas. Sometimes it's a flag lot but sometimes it appears to be a land locked parcel. But a subdivision

can't get approved unless you have that access and it's not ideal, you know, as a property owner I don't think I would want to rely on an easement. I'd want my own piece of land to give me access to my property. But it does happen and the person or the owner for whom that easement is in favor is absolutely fully entitled to use that. It's not an ideal situation but it is relatively common and owners are entitled to know if they use that easement ...(inaudible)... Thank you, Chair.

Chair Ball: Thank you. Further questions? Commissioner Hudson?

Mr. Hudson: Just for clarification, for today we're just looking at the no significant impact. Whether or not there's a significant impact?

Ms. McLean: That's correct.

Mr. Hudson: That's all we're doing. Now, now my understanding of the options is is that we could push for an EIS assuming we don't want the EA?

Ms. McLean: That is one of your options. Another option would be, and again I wasn't here for the earlier meetings so I don't know the nature of the comments that you gave. You could also give further comments and have them bring back another final version for you that addresses more issues. It doesn't go quite as far as kicking an EA up to an EIS but it gives them another opportunity to answer...to address more concerns.

Chair Ball: Commissioner Hedani?

Mr. Hedani: One more try just for fun. Jordan, does the applicant...is the applicant willing to contribute to future drainage improvements that may be necessary in order to handle the mauka property drainage flow through its property, question mark?

Mr. Hart: I'll bring the applicant up this time.

Mr. Todd Leibl: Hi, Todd Leibl with Victory Development. Until the County actually gets their information back it would be very difficult for us to say what we could or could not do as far as contributions. We have a very small piece of land in relationship to as you pointed out the CFMs that are coming down. So at this time, we are going an additional 20 percent on our site, and if others mauka of us were also going to increase by some percentage that would resolve many of the issues.

Chair Ball: Commissioner Hedani?

Mr. Hedani: Okay, let me ask the question in a different way. I'm not sure how many cubic feet come out from a culvert that's seven, you know twelve-inches high by seven feet long or whatever the dimensions are of the exit culvert, that exits from this property onto the Kihei Kai Nani property. I know it's not equal to the 660 cubic feet per second that the culverts under the Piilani Highway are sized for. So a large portion of that is gonna end up flowing via surface over the top and through your property. From my perspective that's not an ideal situation. You have somebody that inadvertently traipses into this flowing water as it's going by, slips, hits her head on the ground and becomes a quadriplegic as a result of something like that to me represents a tremendous liability

on the part of the property itself which could be ameliorated by putting the facilities underground and creating a safe environment at least through your property. That's the way I look at it. And so the question that I have is would you be willing to participate if Public Works were to come out with something like that that says this is what's happening, this is what needs to happen in order to keep everybody from getting killed or whatever, we're willing to cover our fair share of the improvements through our property in order to make that happen?

Mr. Leibl: Well, public safety is number one of course. And public safety is number one of course, so we would have to see what, what that is...so the if in all that is just unknown. So there would have to be proper grading and fencing to protect those areas in the mean time. And with this project's proposal we would actually be reducing the water flow through Kihei Kai Nani by some amount.

Mr. Hedani: Yeah, I understand that. I'm just saying from a standpoint of a hotel, a hotel developer has a higher standard of duty to ensure the safety of their guests on their property than a normal person.

Mr. Leibl: That's true. And this...although we are referring to this as hotel, this is vacation rentals so this is not a Hyatt or a Marriott. That's not the concept here. It's still very on queue with what you're saying.

Mr. Hedani: Yeah, if it's zoned Hotel, if it operates like a hotel, it's a hotel and the duty is yours.

Mr. Leibl: Exactly. So the, and the hotel portion as well as Kihei Kai Nani's who currently operates as a hotel and they currently have the water going through their property and that seems to be where the major part of the issue is it's our property is a very small piece, although significant, mauka of them and currently the water is going through their property as we pointed out from much higher elevations.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I agree with you from that standpoint. I recognized you know, I recognize all of those conditions, but what I'm...if I were to look at it from my perspective and there was an opportunity to create a safe versus an unsafe situation, I would hope that for the portion of the property that you're responsible for it should be raised to the highest safe standard that can be produced.

Mr. Hart: If I might, in just talking—

Chair Ball: Identify yourself Jordan.

Mr. Hart: Excuse me, my name is Jordan Hart. I was just conferring with the applicant. Would fencing around the drainage way, you know, something nice that basically matches the level of design of the project to basically keep that area not accessible. Maybe there will be a gate for service people to access down there if they needed to do anything, but otherwise, something that guests or residents wouldn't be able to get through in order to inadvertently slip and fall into the drainage way during a storm event.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I don't think that's necessary. From my perspective if you're gonna grate the inlet, you know, if you're gonna grate the inlet and the inlet is such that people can stick their heads through the thing and get stuck in there and none of the kids can slide by or squeeze through or shimmy over, under, around or whatever through the thing with great creativity, my concern is just the idea of having huge amounts of water—whatever is there now is only gonna increase in the future with mauka urbanization or whatever might happen in the future. So the existing situation is only gonna get worse not better in the future. And what I'm looking for is I guess what I'm looking for is an understanding that when those improvements comes due and have to be made to the point where you can't walk through three feet water flowing through your property to get from one side of the property to the other, somebody is gonna want to have improvements put in place as part of the bigger picture, you know.

Mr. Hart: Okay, if I could address a few things. Under the current design there is a makai end where you would be able to...where the flow is currently underground and that would be the way you could get to both sides of the property. Like there wouldn't, you wouldn't be cut off because the makai end is currently...there's a portion where their drainage runs under their existing driveway. Regarding an unknown contribution to a future improvement mauka of the Piilani Highway, you know what the applicant was trying to say that's a very large unknown for the scale of this project in order to commit that right now in the review of the Final EA is difficult for him to do.

Chair Ball: Commissioner Lay?

Mr. Lay: I have two questions. When was the Kai Nani purchased...I mean, the ownership the last...whoever owns it, when was that, when did that happen?

Mr. Hart: Approximately 2006. I should add that at that time there was a separate SMA Major and EA application that was filed for development of the project site. There was an economic decline and then the project was basically on hold since recently.

Mr. Lay: Second part. When did Victory purchase it?

Mr. Hart: That was I believe it was around 2006.

Mr. Lay: The same time.

Mr. Hart: This is the same applicant.

Chair Ball: I have a question. On Figure 9.9, we're kinda looking at the area that we're talking about under this cartoon if you will, I'm assuming it's a rendering, I'm assuming that it will look something like this, although probably from this perspective this is not your property, so this would probably just be kiawe fields and whatever it is now, correct?

Mr. Hart: Yeah, it would be assumed that they are planting firecracker plants and watering their grass. Yeah, this would be taken from a bit mauka.

Chair Ball: But if you look down at that, at the swale we're talking about and you know you can't see the culvert box but you can...that hill planting and that seems like there's a hedge at the top of the hill there.

Mr. Hart: That's right.

Chair Ball: I mean, you can't help stupid sometimes. So I mean, we could build a 10-foot wall there and somebody's gonna climb over it and go down in there and play in the water. So I think you've satisfied that. If this is an accurate rendering of that slope and the top of the slope that has a...you know, it seems like it's one of those, what is it, bougainvillea hedges or whatever it is, it's pretty impassable. I mean, you can't run it past your property. So I mean, you can only deal with what you have there.

Mr. Hart: Yeah, I agree with you. And that was kinda what I was talking about at the time I was asking Commissioner Hedani if he was interested in talking about a fence along that area. But I agree with you—

Chair Ball: You passed it.

Mr. Hart: Yeah, well what I was looking for is the actual site photo which shows that swale.

Chair Ball: Because I agree with Commissioner Hedani but there's only so much you can do because your property line runs out. You run...I don't know what is that a 100 feet to the back or so?

Mr. Hart: Yeah, and the other thing is that on our mauka property line is the gulch so how do you fence that gulch when you get to the mauka end?

Chair Ball: Gulch, right yeah.

Mr. Hart: Yeah, I agree and those issues are a concern currently you know. Kids could come with their boogie boards during a storm event now in an undeveloped property and play down there. It's just one of those things. You know, talking about the inconvenience of the site, it was developed in the '70s and it's infill development so this configuration is what it is and so now this development is coming back through and trying to fill in the gaps in Kihei.

Chair Ball: You know during that event that we saw a video last time?

Mr. Hart: Yes.

Chair Ball: Do we know what happened at this point? You know what I mean? Prior to the box? I mean did it like fill up to the level of the pool or...we never saw what the other side of that was. We saw the sheeflow side and what happened down at South Kihei Road, but we didn't see what happened at this choke point, if you will.

Mr. Hart: No, I haven't personally seen any videos showing this property. The ones I've seen have been from the Kihei Kai Nani looking at their driveway or I mean, their parking lot.

Chair Ball: 'Cause that would...well, I guess you guys are all stilted up with parking underneath, right-

Mr. Hart: That's right.

Chair Ball: So there's no living area if you will on the ground floor.

Mr. Hart: No, there's not and I could bring up Stacy to discuss those things further if wanted to.

Chair Ball: No, I'm happy with your answer. Further questions? Commissioner Robinson?

Mr. Robinson: Stay there Jordan. Commissioner Hudson brought up a point about water that I'm not even you know educated enough to understand can you, can you explain to me? Like the two-inch water meter that you have now that currently is enough water for your project? You don't need any more or do you need some subsidy from that?

Mr. Hart: We believe that it should be enough. I could bring up Stacy as well to discuss water demand in the project. I know from the landscape side what we're doing is selecting drought tolerant plants, drip irrigation, rain sensors, and all of the normal water conservation measures that you would do. And so we're not trying to as an example plant ginger or really thirsty plants in this area. But you know, basically that's the condition. Is that it's an existing condition parcel with a water meter.

Mr. Robinson: On the totals in here it's taking account it's a two-inch water meter and not anything larger?

Mr. Hart: I believe that it is. If I might bring up the civil engineer to discuss that a little further?

Mr. Otomo: Stacy Otomo again. What we're...from past experience projects of this size, you know a two-inch meter would be sufficient, but the normal route is that when we go through the building permit then actual calculations are done you know based on fixture units within each of the units and as a whole. And the meter size is determined by that. But from past experience the two-inch meter should be sufficient for a project of this nature.

Mr. Robinson: You did the calculations of the proposed fixtures and et cetera?

Mr. Otomo: Not at this time. It's done by the mechanical engineer as we go through the building permit process.

Mr. Robinson: So we haven't gone to that...you haven't got to that process yet or we have not-

Mr. Otomo: We're not in for building permit. We normally don't start until we get all the entitlements.

Mr. Robinson: The calculations have not been done yet. It's just an assumption that the two-inch should work?

Mr. Otomo: If you look in the engineering report, there is calculation. It is based on Department of Water Supply's planning standards.

Mr. Robinson: Right.

Mr. Otomo: Which you know, it shows that it's suffice. Where the actual number is determined as you go through the building permit process based on actual fixture units.

Mr. Robinson: But are you gonna give them the same information that we see in front here with the amount of the fixtures to get the same calculations with their numbers?

Mr. Otomo: The way fixture units are determined is when you get the actual floor plans depending on how many toilets, sinks, showers and so forth. The fixture units are determined by that quantity.

Mr. Robinson: So is that, is that a no?

Mr. Otomo: We don't have that number at this time.

Mr. Robinson: So we don't...so it's a...we...we're estimating that the two-inch should suffice but we're not...we don't know for sure because you haven't gone in for permits yet, 'cause we haven't counted the fixtures yet is that correct?

Mr. Otomo: That's correct.

Mr. Robinson: Thank you.

Chair Ball: Any further comments or questions? Commissioner Hedani?

Mr. Hedani: Question for Stacy. I'm trying to make this thing work in my head. I'm looking at Figure 9.8.

Mr. Otomo: Okay.

Mr. Hedani: And I'm trying, I'm trying to picture from my perspective where would the excess water flow from the drainage system through Exhibit 9.8?

Mr. Otomo: Okay, what's gonna happen like I explained earlier we're gonna put in a large diameter, large diameter pipe which will act like a subsurface drainage system and what happens normally at the very top of that system we have an overflow line which is gonna probably connect back somewhere within the existing drainage way, but that would be the safety valve for the system itself. But the release from that line is not going to be more than the amount of the water that goes in the gulch at this time.

Mr. Hedani: I'm sorry, can you run that by me again?

Mr. Otomo: Well-

Mr. Hedani: The way I'm picturing it, the stuff that goes underground through the site is not sufficient to handle everything that's coming from mauka and the balance goes over the top.

Mr. Otomo: No.

Mr. Hedani: Is that incorrect?

Mr. Otomo: Are you talking about the site or the off site?

Mr. Hedani: In my head I see I flood coming through right over here.

Mr. Otomo: Okay.

Mr. Hedani: Sheetflowing onto Kihei Kai Nani.

Mr. Otomo: Okay.

Mr. Hedani: Is that the condition that will happen?

Mr. Otomo: Surface water? What's happening now is gonna keep happening. What's at the existing drainage condition now is gonna keep happening. We're not gonna mitigate you know the regional flow going down the Kihei Kai Nani parking lot.

Mr. Hedani: I understand. So it would basically sheetflow right through here?

Mr. Otomo: No. The box culvert actually comes out right here right now so...oh, I'm sorry, it's right here. I'm looking at the wrong place. So the existing box culvert goes uphill this way into the drainage way.

Mr. Hedani: Oh, I see it's going that way.

Mr. Otomo: Yeah, so this is...you see this dark area right here? This is where the box, existing box culvert outlets.

Mr. Hedani: From the standpoint of capacity is that box culvert capable of handling whatever comes into the inlet?

Mr. Otomo: We did a preliminary sizing. The appropriate size for that 660 cubic feet per second is eight by ten box culvert. This is a two by seven. So it's undersized.

Mr. Hedani: So the water is gonna go airborne out of the culvert.

Mr. Otomo: What happen is when the inlets, you know, when the capacity of the box culvert is exceeded the water is just gonna build up and flow probably around this circle and down the Kihei Kai Nani parking lot.

Chair Ball: Further questions? Commissioner Lay?

Mr. Lay: Okay so on...you guys have 9.11 Figure, the aerial photo, 9.11, 9.11? That one. Okay, looking at this right to left are we looking at flat land or are we looking at where the left is lower, the right is lower as far as elevations?

Mr. Otomo: If I'm not mistaken I think it goes slightly down hill in this direction but it's relatively flat like in all of Kihei.

Mr. Lay: Like you said, we have a choke point, when we hit that choke point it's filled, we got debris stuck, plugging that drainage where will the water go 'cause now previously right now it's going right down that driveway out and going out, it is gonna flow onto our...the you know, that hotel on the side, the Kihei Ekahi? You know, if we get backed up where is that water gonna go?

Mr. Otomo: It's gonna continue where it's going right now. 'Cause the water comes down here. The circle is right here where we, where the box culvert goes underneath. We're not changing this, the elevation in this area. So any overflow will just continue going where it's going today.

Mr. Lay: Okay.

Chair Ball: I think the question is how deep is that swale where the box culvert is from let's say surface to the bottom?

Mr. Otomo: Can I make a comment? We did some inundation studies through here. Right...the gulch goes between the building, and the physical construction impact is not gonna affect the inundation limits in there. It's contained within the drainage area between the buildings. Again, the choke point would be where the existing two by seven box culvert is.

Chair Ball: The question was how deep is that?

Mr. Otomo: I don't have the numbers right off hand, but it's about four feet I believe is what we've calculated.

Chair Ball: Four feet from grade down to the bottom of the—

Mr. Otomo: Yeah, where the drainage way goes down. Somewhere between four—

Chair Ball: But we're talking about this, the mauka side of that box culvert.

Mr. Otomo: Yeah, the inlet is pretty much on grade so it flows down and directly into that inlet of the box culvert.

Chair Ball: No, but there's a...between those two buildings it goes—

Mr. Otomo: Down.

Chair Ball: —down and so you're saying that's about four feet deep to it.

Mr. Otomo: When the 100-year flow comes down we anticipate a depth of about four feet of water.

Chair Ball: Oh okay, and what's the depth of that whole culvert or swale or whatever it is?

Mr. Otomo: It's seven or eight feet I believe from the center to the sides here.

Chair Ball: Okay, that was the question. Further questions? Seeing none, do I have a motion?

Mr. Higashi: I make a motion to accept.

Chair Ball: Commissioner Higashi. Motion to accept. Is there a second?

Ms. Duvauchelle: I'll second.

Chair Ball: Commissioner Duvauchelle. Any further discussion?

Ms. Duvauchelle: I did want to make a comment. I'm going, I wanna support the Final EA. I think they've done a really good job in handling the drainage. They're not gonna solve the problem with 39 units and one and a half acres. But they have made sure that they're handling everything they can on their own site. The issue with the parking and the residents, the contractors will work it out, the developers when they get to that point, I'm not concerned. For this part of the approval I think this is good and I'm gonna support it.

Chair Ball: Okay, thank you. Commissioner Higashi?

Mr. Higashi: I make the motion to approve the proposal based upon the fact that I think personally I think it's a preliminary report. It is not a final report there's a lot that needs to be done. Looking at what we are talking about, we're talking about 300 plus acre drainage area that starts from the makai [*sic*] Piilani area all the way down to the ocean and I think it is the responsibility of the County Council to make a master plan in order to look at a master drainage to go rather than try to ask each individual developer as they come in. They should have done that when they first started building all these hotels along the way, and now we're talking about one small section. If you look at that section that we're talking about versus the large area of drainage that's happening I think it's very insignificant. And I think and I think looking at the plan, the applicant did an extensive amount of work trying to get this thing to get off the ground. I feel that we have to give them that opportunity in order to get this plan implemented because we're not at final stage and I think this is the way to get the thing going.

Chair Ball: Okay. Further...yes, Commissioner Hudson?

Mr. Hudson: I believe the question here today is whether or not there's gonna be a significant impact. I cannot support this measure because I simply don't know. I have some questions that are not answered. If it goes through at this stage I'm sure that I'll be able to have them answered at a future date, but for now, my concerns are when is R-1 coming down? I might not like the answer to that, but the question has to be asked. Were alternate water sources looked at? Yes or no? Once again, I might not like the answer but we still have to ask the question. And another thing that I would be concerned about and maybe, maybe in future hearings on this the traffic report we have the illustrious pleasure of reading through this, but the public does not. And so a traffic accident report when it comes in front of us, you should keep in mind that the public needs to know

how they come up with their figures and why they're saying that there's no real significant impact. It might behoove the applicant to have somebody from that firm available for some of these questions. Those are my comments, thank you.

Chair Ball: Thank you. Are those noted by the applicant, Jordan?

Mr. Hart: Those were. Is it appropriate if I comment briefly?

Chair Ball: No, just note those down 'cause you'll be coming back again, all right so...Commissioner Robinson?

Mr. Robinson: I'm actually not concerned about the drainage. I think if the hotel's there or the hotel's not there it's a terrible situation and water is gonna be flowing. I think with the culvert there and how they have it and the buildings on the side I think the water is just gonna, if it fills up it's just gonna pass over and keep on going. I think the questions that I ask about the clearing if they clear that hole, again, if but when the hole does fill up, the water is still gonna down the driveway. So it doesn't matter. It's just not gonna go 20 feet I guess, it's not go through the, you know, through the vehicle. But I am still concerned about the, about the short-term impact of about the, about the parking. I mean, I understand they have a easement and I understand that, but I'm apprehensive because yes, the contractor and the land owners will work things out but are they gonna work it out from an equal standpoint or are they gonna work it out from well, we got the approval, we're gonna do it anyway, so either you guys agree to this, so here's your two options. Or is it, can we do something that's mutually benefit and that's my concern with these owners. You know, it's they have the easement, they have the right, but they don't...but that doesn't mean they can force it down their throats. It means they can go down the middle but they still gotta follow the rules which is hopefully they would discuss ahead of time. It's a lot of money they're gonna invest and I think goodwill goes a long way. I think if they take away parking spaces there's no way, there's no other place to put the parking spaces without a plan and then it's gonna impact the people at Ekahi and people on the other side if these people start trying to park on the highway temporarily just to run into the unit to grab something and traffic and safety. I think it's a safety issue because there's not a empty lot that you can access once you start going from that two-inch.

Another thing this the two-inch water meter is 15 gallons a minute which if everybody is taking a shower with a hotel unless they have big tanks which I didn't see any which if everybody gonna use the same time it's not an adequate amount. I think they're gonna need more water than that especially if it's gravity fed and then pushed uphill, the driveway not coming down the opposite way, pressure is going to go down and then two water meter has to go all the way back up towards the elevation. So those are my concerns. I'm not sure you know with the FONSI and us being able to bring these things up in the next time to nix it because then it becomes a different category. But I see these as impacts, but I'm not sure as a commission if I'm able, if I have any power if I pass this now or agree to this, move, this motion that the next time around it doesn't have to be addressed because I would have to find different criteria for the SMA.

Chair Ball: I have a concern with the verbal agreements. So make sure you try to get that negotiated by the time you get here. Any further comments? Commissioner Tsai?

Vice-Chair Tsai: I consulted with Corp. Counsel, just by being a few minutes late I have seen most

of the presentation. I have all the information so I guess I'm okay to vote on this, and I'm gonna support this. My reasoning is because I feel at this juncture they have done they can make this a good design and also at the same time I feel like this is not the point to address all the issues. There are concerns, but I also trust the process with you know, resolve most of these.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I was kind of asking as—

Chair Ball: Question to the Deputy my previous question.

Ms. McLean: Thank you, Chair and Commissioner Robinson. That's really a call for you to make is at what stage you feel comfortable having your concerns addressed. The project will come back to you as an SMA Major and I do very much appreciate your knowing what the SMA criteria is versus criteria by which different projects are reviewed. Looking at these, the big issues that I heard today I would be shocked. I've seen Jordan taking detailed notes, I would be shocked if they came back with an SMA project that didn't nail all of these down completely. At that time, it would be your opportunity to vote no or to add conditions to address them. Even though some of these might be peripheral SMA issues, like I said if the applicant comes back and doesn't have those nailed down to the extent that it doesn't even need to be a condition, you know, because it's built into the project that they present to you, I'd be, I'd be very surprised. But you do have another opportunity to look at it and impose conditions. And as long as you can draw a connection, draw that nexus between potential impact and a condition then you should be able to impose conditions at the SMA stage.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Sorry. What's the difference between the EA and the EIS in short form besides money?

Ms. McLean: Time, money, and probably couple of inches.

Mr. Robinson: Thank you.

Chair Ball: As a side note, I wish Public Works was here because they have an opportunity right now, the County Council or the County has an opportunity right now to fix this whole problem because they have a vacant lot north. It's privately owned but they have the opportunity to not tear up somebody's driveway to fix that culvert situation with that property just north of this project and I hope they take that into consideration when they get that drainage or that whatever plan they're waiting for. Hope they look at that because there's nothing on that site right now and they take that opportunity to have an easement put over that site to get rid of this whole thing. Anyway, with that any further comments or questions? Seeing none, Commissioner Hedani?

Mr. Hedani: From the standpoint of an Environmental Assessment of the property, I think they've addressed all of the things that can be addressed relative to the site itself. What I'd like to see at a future point is some willingness by the developer to participate in any future improvements that are required for the area as a region, to participate in some fair share agreement for improvements

that occur on their property itself or to somehow acknowledge that having an open drainage way right through the middle of a hotel property is not the ideal situation for the property and express a willingness to work with Public Works to find a better solution is where I would come from. But as far as addressing the legal constraints of what's required for a 39-acre parcel, I mean 39-unit parcel I think they pretty much done as much as can be done.

Chair Ball: Okay, let's call for the vote. All in favor raise your and hand say, "aye".

Ms. McLean: Four.

Chair Ball: All opposed? Three.

Ms. McLean: Three.

Chair Ball: Chair votes in favor. Motion carries.

It was moved by Mr. Higashi, seconded by Ms. Duvauchelle, then

**VOTED: To Accept the Final Environmental Assessment as a Findings of No Significant Impact (FONSI) as Recommended by the Department.
(Assenting - R. Higashi, S. Duvauchelle, M. Tsai, W. Hedani, K. Ball)
(Dissenting - L. Hudson, I. Lay, K. Robinson)
(Excused - J. Medeiros)**

Chair Ball: We'll go to lunch. We'll see you guys at 1 o'clock. We're in recess.

A recess was called at 12:02 p.m., and the meeting was reconvened at 1:04 p.m.

Chair Ball: Okay, good afternoon everybody. We'll call this meeting back to order. We are on Item E, Communication No. 1, Deputy Director?

Ms. McLean: Thank you, Chair. This is a Communication from Mr. Paul H. Peters, Attorney for Mr. James Walkus submitting a Petition for Reconsideration received on October 23, 2015 on the Commission's action to deny the Short-Term Rental Home Permit request by action taken at the October 13, 2015 meeting on the request by Mr. James Walkus to operate a five-bedroom short-term rental home in the R-2 Residential District for property located at 1143 Front Street, TMK: 4-5-004: 058 in Lahaina. The Staff Planner for the project is Livit Callentine. She is absent and filling in for her is Supervisor, Jeffrey Dack.

E. COMMUNICATIONS

- 1. MR. PAUL H. PETERS, attorney for MR. JAMES WALKUS submitting a Petition for Reconsideration received on October 23, 2015 on the Commission's action to deny the Short-Term Rental Home Permit request by action taken at the October 13, 2015 meeting on the request by MR. JAMES WALKUS to operate a five (5) bedroom short-term rental home in the R-2 Residential District for property located at 1143 Front Street, TMK: 4-5-004: 058, Lahaina, Island of**

Maui. (STWM T2015/0012) (J. Dack for L. Callentine)

***An Executive Session may be called on this item in order for the Commission to consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.**

Mr. Jeffrey Dack: Yes, good afternoon. Apologize for snafu within the Department. You were to have received a very short memo from the Department which I placed on your...at your places at the table just before the lunch break. You already had definitely within the packet the petition submitted by Mr. Peters. With that was supposed to be a very brief memo and then actually you also have what was supposed to be also sent with that memo was just a copy of the original report and recommendation for your convenience and reference if you needed it. Since you may not have seen the memo before, again, it's very brief. I'll just make my presentation by reading it.

It simply is that the matter arises from an application for a short-term rental home filed on May 9, 2005 [sic] by Mikal Torgerson, consultant on behalf of James Walkus, applicant. The applicant's request for a short-term rental home was heard by the Commission at your meeting on October the 13th. The Commission denied the request. Copy of the report and recommendation is included, again, not...it was supposed to included with the memo but is at your place at the table now. Minutes for the October 13th meeting are not yet available. On behalf of Mr. Walkus, Mr. Paul Howard Peters, attorney by petition received by the Department on October 23rd and you had again received in your packet made a Petition for Reconsideration of the Commission's denial of the subject STRH application. Mr. Peters argues in his petition in his words that reconsideration is necessary because of the applicant's due process rights were ...(inaudible)... and reconsideration is necessary because of clear legal and factual error. Corporation Counsel will advise the Commission on procedures to be followed with the item and attachments are as mentioned.

Any questions of that or you want to--

Chair Ball: With that being said, I just wanna make a clarification that you said May 9, 2005, it should be May 9, 2015. it says 2015 here but you--

Mr. Dack: If I said 2005 in my testimony I apologize. Missed a decade. Thank you.

Chair Ball: I just wanted to clarify that. Missed a decade yeah. At this point I wanna exercise Section 92-5(a)(4) of the Hawaii Revised Statutes to go into executive session so we can get some information from our Corporation Counsel. And then at that time we will come out executive session to deliberate on this a little bit more.

Vice-Chair Tsai: Move to go to executive session.

Mr. Lay: Second.

Chair Ball: All in favor, raise your hand please and say, "aye".

Commission Members: Aye.

Ms. McLean: Six ayes.

Chair Ball: Anyone opposed to go into executive session? Motion carries, we are in executive session. If we can clear the room and then we will let you know when we come back. I'm sorry to do that to you guys right after lunch.

The Commission went into executive session at 1:14 p.m. to approximately 1:22 p.m., the Commission then went back into regular session at 1:25 p.m.

Chair Ball: ...regular session. We heard from the Department, now we will hear from the petitioner and please state your name for the record. Thank you.

Mr. Paul Peters: Thank you, Chairman, Commissioners. My name is Paul Peters. I am the attorney for James Walkus the petitioner in this matter. What Mr. Walkus is petitioning for is reconsideration of a denial of his short-term rental housing permit that was made on October 13th. There are exigent circumstances that I believe prejudiced Mr. Walkus's ability to work through the process mainly his consultant and main witness that would testify as to impacts in the neighborhood, things that are important to this board in its adjudicatory function. Mr. Torgerson experienced an emergency that required him to go to Oahu for medical attention. When this occurred it might have been best that this board's decision was continued and testimony was continued to a later date to enable my client the ability to fully and fairly interact in the process. And this occurred at no fault of anybody, it just should of, I believe it should have been recognized by this board because I have seen this board is very deliberative. You've asked a lot of questions today. You require a lot of resources and the problem that occurred in this process is our main resource, Mr. Torgerson, he was on Oahu getting medical attention. If this was a court of law, by analogy the judge would have continued it and said, hey your attorney or key witnesses aren't here let's continue this. So unfortunately this court did make its decision and I believe the decision was in error. And of course this is my client's position and I believe that if he was permitted the ability to have full and fair ability to participate in the process the decision might have been different. So my client is basically asking for a second bite at the apple.

Now I'm sure that this Commission doesn't like to give second bites of the apple, you work very hard, but the point is my client's first bite at the apple wasn't fair. And this isn't, this isn't a question of fairness also. There is an underlying legal principle and we call it due process. Due process is basically memorialized in our Hawaii Constitution, our United States Constitution, but also our State Legislature has made the effort in our Hawaii Revised Statutes at 91-9 to impose upon all parties the ability and the right to be fully heard on all matters. And if you listen to the record of the October 13th hearing you'll hear that there were, there was things missing and those were holes that were missing that Mr. Torgerson could have filled in. So as a result of that I believe the process was impacted enough that I don't think my client got a fair shake. All my client is asking is that it be reheard.

I heard in earlier matters, the Planning Commissioners were concerned will I have another say in this? This isn't going to the point where I won't have input. You will have the same amount of input that you had on October 13th when you denied it. If after the rehearing you feel the same say having heard all of the evidence and all of the testimony you're well within your right to deny, but at least if that process occurs my client will have had and the people of the Maui, your constituents

would have the opportunity to a full and fair hearing and that's what we're all entitled to.

Another area of concern for my client is outlined in the petition, it has to do with the clear error. And there's an error of fact that's present. And the most important factual error that this body I seen, I think missed is it seemed to think that Mr. Walkus who currently, his property is currently operating under a Bed and Breakfast Permit when he adds a Short-Term Rental Permit if this board would have accepted it, but there would have been two permits out there, two properties. There's only one. There is no net increase to impact, and in fact, if evidence could have been presented I think this board would that there's less impact to the neighborhood under the Short-Term Rental Ordinance regime because you can only have one party present in the property. But under the Bed and Breakfast regime you have multiple parties. So in other words, you have multiple people attending and leaving at four in the morning to drive up to see Haleakala sunset. The impacts are exponentially higher to the neighborhood in a bed and breakfast regime than they are in the short-term rental regime.

They ask why is my client wanting to convert a Bed and Breakfast Permit which seems to have the most flexibility to a more restrictive short-term rental and this is because he's gonna transition the property to where there is no live-in manager. My client is a Native American salmon fisher. He's retiring. He's had a successful time fishing salmon in the Pacific Northwest and he intends on spending most of his time here in the property that he owns next to the subject property. So there will be no need to have a bed and breakfast permit because there will no need to have an onsite live-in manager. And so, all I'd ask that you please deliberate on this matter and I look forward to hopefully a positive recommendation that you would rehear, rehear our application. Do you have any questions?

Chair Ball: We'll hold questions at this time, and we will open it up for public testimony. Anybody that would like to testify at this time may do so. Did you...you testified earlier though right?

Unidentified Speaker: Yes.

Chair Ball: Was it on this agenda item, I believe it was?

Unidentified Speaker: ...(inaudible-speaking from the audience)...

Chair Ball: Okay.

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

Chair Ball: Mikal Torgerson?

Mr. Mikal Torgerson: Good morning Chair and Board Members. Thank you for the time to speak today. My name Mikal Torgerson. I wanted to speak on Item E-1 in your Communications and respectfully request that you give due deliberation to reconsidering the short-term rental for 1143 Front Street. It was brought you at your last meeting on the 13th, and unfortunately I was called off of Maui for emergent health situation and I wasn't able to properly represent my client. It put my client at a distinct disadvantage. He wasn't really prepared to present the project and unfortunately I really let him down as a result of health situation. And so I just respectfully request

that we offer him the opportunity of reconsideration so that I can properly present his project and give it real consideration. I'm available for any questions and I think it's gonna come up later in the day, but I just wanted to offer that and do appreciate your time and the service that you give our community. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Anyone else who would like to testify at this time? Please come forward, identify yourself.

Ms. Tanna Swanson: Hello, my name is Tanna Swanson. I'm President of the B&B Association here on Maui. I'm here to as Mikal was saying ask and hope that James Walkus gets a chance for reconsideration. He has played by the rules from day 1. He was the first one in that neighborhood to get the permit that was available at that time for his property and he has been the only one that has consistently gone by the rules and had a current permit. I don't think he should be penalized for trying to correct something. It was noted in the last hearing that he already had a permit. This case the lessee has the permit not James and that is one of the biggest reasons why I want clarification on this reconsideration. Thank you.

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

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

Chair Ball: Anyone else would they like to testify at this time? Seeing none, public testimony is closed. Questions from the Commission? Staff Planner Jeff, do you have a recommendation on this, like a...

Mr. Dack: Well, the...the Department originally recommended approval of the Short-Term Rental Home application. We would see no reason to change that recommendation at this point should the Commission choose to wish to rehear the item.

Chair Ball: Okay. You want to speak to the....okay, Corporation Counsel?

Mr. Murai: Counsel, you know you cited an Administrative Rule of the Commission that falls within a section relating to intervenors. I believe that's the wrong, the wrong authority that's been cited. My read is that that rule only applies to actions where intervention's been granted. Am I wrong or is there some other way you see this?

Mr. Peters: Counsel, which provision are you referring to, I apologize.

Mr. Murai: You cited—

Mr. Peters: Are you talking about HRS?

Mr. Murai: No, no, no. Admin Rule 12-201-84, Reconsideration and that falls in the section relating to the board's, I'm sorry the Commission's rules on intervention.

Mr. Peters: Counsel, my understanding of that statutory regime is that intervenors wouldn't be treated any differently than parties. It seems to me the parties would have just as much due

process rights as an intervenor who would be tangential and peripheral to the matter.

Mr. Murai: Okay, and you also cite the Hawaii and the U.S. Constitutions, and the provision that no person shall be deprived of life, liberty or property without due process. What's the interest here? Obviously it's not life or liberty. Are you saying that this is a property issue or there's like a takings?

Mr. Peters: Well, no a right to a permit has been held to a property interest that is covered under due process.

Mr. Murai: Okay.

Mr. Peters: There's this an analysis that the courts go through as to how close that right is and whether it's conditional or non conditional, but there is authority on that basis that my clients desire to effectively convert from an existing permit to another permit which this existing permit is a property right would rise to the level that my client would receive due process protection under the U.S. Constitution and the Hawaii Constitution.

Mr. Murai: And now, you know, with regard to Motions for Reconsideration my vague memory from law school is that the reasons would have to be something like what is it, change in law, evidence that wasn't available at the time of hearing or just flat out, that the...(inaudible)...just got it wrong. Which of these are you saying applies here?

Mr. Peters: The procedures set out by the Maui County Code and is referenced in my petition and it provides...actually I don't have it cited, there is a standard that is set out in the Maui Code, and one of the standards is clear error, but there are three and if...I don't have it at the top of my...but I believe similar to a Motion for Reconsideration under the Hawaii Rules of Civil Procedure there is something that's analogous in the Maui County Code that specifically refers to Planning Commission decisions. It's the sister, it's the sister ordinance to 12-201-84 under Reconsideration, but I just didn't cite it, didn't cite that standard, and I could brief, brief you with it if that would help.

Mr. Murai: I'm not sure whether the Chair wants that. I guess, to cut through the chase though, you're not saying that there was evidence that was unavailable at the time of the hearing? In other words, I appreciate that Mr. Torgerson had a situation that prevented him from coming, but is there anything that he...any information or evidence that he would have presented that wasn't in his report, wasn't covered in the staff report that the Commissioners did not have?

Mr. Peters: I would extend though the concept of, concept of the statutes and due process include. Not only is it the presentation of evidence but the presentation of argument. So lets put the argument aside because I think that's what Mr. Torgerson's role was going to be and I think argument was a large part of it because this board was trying to interpret evidence. But Mr. Torgerson could have given evidence as it relates to some aspects of the report. This board was struggling with how to interpret some on its face fraudulently, fraudulent protest letters and the efforts made to contact the individuals that supposedly submitted those. I don't know if counsel if you were present on the 13th?

Mr. Murai: I was not.

Mr. Peters: There were I think five protest letters one of which only had a signature on it. I think the other four had no identification of the TMK or the property owner or the lessee, and there was a question as to their provenance, if you will, and whether this board should consider those as protest letters. And as we all know, that's one of the ten elements that this Planning Commission considers under the Short-Term Rental Ordinance as part of its deliberative process. And so there were factual questions related there to that Mr. Torgerson could have, could have resolved.

Mr. Murai: Another thing you had mentioned was that your paper seem to imply if not out and out state that the Commission or the Department should have continued...moved to continue the matter. Is there any duty on either parties part to request a continuance?

Mr. Peters: I think there's, I think there's an overall duty and see it everyday when I'm two doors down in court, and I see where a judge has said, listen we're not gonna go through this, you've said you're gonna have counsel or there's some substantive issues and we're gonna continue this, and the court does it on its own initiative. It was announced at the hearing that prior to starting the hearing if you listen to the record it was announced that Mr. Torgerson was unable because there was a medical emergency. My client is a simple fisherman. He didn't, he didn't have anybody representing him at that point, he didn't know any better, you know, totally unfamiliar with the process. He didn't know any better to stand up and say, could we continue this because the person that I've...that's put together this entire report and is I hired to argue it, he's unavailable today. Maybe it was my client's fault but there also I believe is a duty as the adjudicating power to see that that everybody gets a full and fair hearing as to evidence and argument.

Mr. Murai: I wasn't there. And I don't think you were there either, right?

Mr. Peters: No, sir.

Mr. Murai: Now I was...I stand to be corrected, but it was my understanding that your clients were asked whether, you know, even Mr. Torgerson's absence whether they wished to proceed. I was told that they answered in the affirmative.

Mr. Peters: I don't recall that from the recording that I have. As you know, the transcript hasn't come out yet. Even if that was the case, which I don't recall hearing it, that's as if, it's no different asking an unrepresented person in court do you want to proceed? And there are times where the court says, you know what, we aren't going to proceed. I'm gonna give you...I'm gonna delay this a week and when your attorney gets out of the hospital let's schedule this again, and I'll listen to him. And so, again, my client as it relates to this type of process is not sophisticated at all, and if you asked him out of politeness he would probably say, yes. But again, the record will show what was said. I don't recall it though, Counsel.

Chair Ball: Okay, thank you. Commissioners, questions?

Mr. Peters: Chairperson, may I add one historical fact?

Chair Ball: Sure.

Mr. Peters: The existing Bed and Breakfast Permit which Mr. Walkus has on his property is one

of the first issued in that area in 2007. They have operated every year since then without a complaint, without a violation, without any problem. They were...they pioneered this process and have proven that they can be good neighbors in that neighborhood and I hope to get...I hope that you see it that they can have further reconsideration of your prior denial.

Chair Ball: Okay, Deputy Director?

Ms. McLean: Thank you, Chair. The prior vote on this just so it's clear to everybody. Those who voted in favor of the motion to deny this were Commissioners Medeiros, who's absent today, Commissioner Lay, Commissioner Hedani, Commissioner Duvauchelle, and Commissioner Higashi. The Chair didn't vote, didn't need to vote. Commissioners Hudson, Robinson, and Tsai were excused from that meeting. So, my understanding and Corp. Counsel correct me if I'm wrong that if there is a Commissioner who wants to make a motion to rescind it would have to be one of the five who voted in favor of that motion to deny given that Commissioner Medeiros is absent today, it would be Commissioner Lay, Higashi, Duvauchelle or Hedani.

Mr. Murai: Deputy Director, with all due respect I believe that the requirement that the movant be a member of the prevailing vote on the prior action would only apply to a Motion for Reconsideration. I don't believe that under our rules, I mean, the Commission's Rules or Robert's Rules of Order a Motion for Reconsideration is possible. Motions for Reconsideration generally must be made by a person of the prevailing side at the same meeting or session, and once you adjourn that reconsideration is not available as a remedy. However, a remedy that is available potentially would be a motion to rescind the prior action taken. And the requirements of that would be that, of course, you have to a motion, a second, and because the agenda noted that that action would be possible a simple majority of five would be needed to grant a Motion to Rescind, in other words, vacate the prior action. But I think the movant can be from either side.

Chair Ball: Okay, so do we have some discussion from the Commission? I believe that we could either—

Mr. Murai: Well, Mr. Chair I have a suggestion.

Chair Ball: Corporation Counsel?

Mr. Murai: You could ask the Commissioners whether any Commissioner wishes to make a motion to rescind the prior action taken, and if there's no Commissioner willing to make that motion then the petition would fail.

Chair Ball: Oh, okay on itself. We don't have to vote to affirm the denial? Okay, that makes it easy, easier. Okay, in light of the things you've heard from the applicant is, is there a movement to rehear this or if—

Mr. Murai: Actually more specific, I'm sorry—

Chair Ball: Go ahead.

Mr. Murai: More specifically, the Chair would be able to entertain a motion to rescind the prior

action taken.

Chair Ball: Oh okay, thank you. Is there a motion to rescind the prior action or will it stay how it was? I believe that the actions here do not...it wouldn't end, they have another means to go to the court system to remedy this—

Mr. Murai: The remedies available to the petitioner is...well, the action that this board may take in this matter would not prejudice any other rights or remedies the petitioners may have, in other words, a Chapter 91 appeal.

Chair Ball: Okay. Everybody's looking at me. It looks like we do not have a motion or desire to rescind this and so we will let it go, and go where it may.

Mr. Peters: Counsel, I did locate the provision in the Maui County Code that relates to this matter, it's 12-201-84, and Subsection b, it says, the Petition for Reconsideration must demonstrate some reason why the Commission should reconsider its prior decision and must set forth facts or law of a strongly convincing nature such as would induce the Commission to reverse its prior decision. Reconsideration may be justified if, 1. There has been an intervening change in the controlling law. That does not apply here Counsel. 2. New evidence is available. I would say that the ability to present a witness that was previously unavailable to testify is new evidence unavailable and fulfills the requirements under Subsection (b)(2). Subsection 3. There is need to correct clear error. As I discussed—

Mr. Murai: You know, I don't disagree that it says what you just said it says, I guess what difficulty I have is that it falls under Chapter 5 which is relating to post hearing procedures where intervention is granted, and I know we spoke about that briefly earlier, but why it's available to intervenors or cases where intervention has been granted and not to other actions I have no clue. I don't know why our rules read that way, but that's how they read.

Mr. Peters: Right, and to me this is not a State law, this is a the County's own, see the title of it, Department of Planning, Rules of Practice...Maui Planning Commission Rules of Practice and Procedure. These are Rules of Practice and Procedure of this body.

Mr. Murai: I know, I know what they are, but I'm looking at it too, I'm looking at the same...I believe I'm looking at the same thing you're looking at and it falls under the Chapter, Subchapter 5, titled Post Hearing Procedures Where Intervention is Granted. I note that this is not a case where intervention is granted, therefore, that's why it appears to me that this rule permitting, allowing a Motion for Reconsideration is not available to your clients. Now, if I'm wrong, I'll be glad to be corrected, but that's, that's how I read it.

Mr. Peters: It's just...Counsel it seems conflict that you would extend greater rights to an intervenor than you would to the parties, counterintuitive if you will.

Chair Ball: All right, well you guys can fight this out in the outside.

Mr. Peters: All right, I again, I appreciate your consideration and hopefully we'll be back here at some point asking you to consider this application again.

Chair Ball: Thank you. Moving on, Item F, Acceptance of the Action Minutes from October 27, 2015....

Mr. Murai: ...(inaudible)...

Chair Ball: Okay. With a lack a movement to the motion, the applicant's petition is denied at this time.

For lack of a Motion to Rescind by a Commission Member the Petition for Reconsideration was DENIED.

Chair Ball: So we move onto Item F, the Acceptance of the Action Minutes from October 27, 2015, Regular Minutes of the September 22, 2015 Meeting.

F. ACCEPTANCE OF THE ACTION MINUTES OF THE OCTOBER 27, 2015 MEETING AND REGULAR MINUTES OF THE SEPTEMBER 22, 2015 MEETING

Mr. Lay: So move.

Vice-Chair Tsai: Second.

Chair Ball: Moved by Commissioner Lay. Second by who, Tsai. All in favor, raise you hand, say, "aye".

Commission Members: Aye.

Ms. McLean: Seven ayes.

Chair Ball: Motion carries.

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

**VOTED: To Accept the Action Minutes of the October 27, 2015 Meeting and Regular Minutes of the September 22, 2015 Meeting.
(Assenting - I. Lay, M. Tsai, L. Hudson, W. Hedani, S. Duvauchelle,
K. Robinson, R. Higashi)
(Excused - J. Medeiros)**

Chair Ball: Item G, Director's Report. Item 1.

Ms. McLean: Thank you, Chair. This is an item on the agenda for information purposes. It's notification of the issuance of a Special Management Area Emergency Permit to Mr. Joseph Higgins of Allana Buick & Bers for repair of three sinkholes at the Papakea Resort located at 3543 Lower Honoapiilani Road, at parcel TMK: 4-4-001: 056 in Lahaina. Keith Scott is the project planner. He's available if you have questions.

G. DIRECTOR'S REPORT

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

October 23, 2015 SMA Emergency Permit Approval Letter to Mr. Joseph Higgins of Allana Buick & Bers, Inc. for repair of three (3) sinkholes at the Papakea Resort located at 3543 Lower Honoapiilani Road, TMK: 4-4-001: 056, Lahaina, Island of Maui. (SM3 2015/0014) (SSA 2015/0055) (K. Scott)

Chair Ball: Thank you Keith for walking over twice.

Mr. Keith Scott: No problem.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Hi Keith. So what happened? And who is Allana Buick & Bers, is that the contractor?

Mr. Scott: That is an engineering consultant. So they processed the application on behalf of Papakea which is the property under the consideration.

Mr. Robinson: How big were the sinkholes?

Mr. Scott: They varied in size, but in general they ranged from two to four feet.

Mr. Robinson: Is it from, I assume from the ocean and—

Mr. Scott: Yeah.

Chair Ball: We did have a presentation on this.

Mr. Robinson: This one? The sinkholes? That wasn't the wall?

Chair Ball: Yeah, didn't we? I believe we did.

Mr. Scott: Actually this is fourth application we've had from Papakea for sinkholes that is on their property. These are three additional sinkholes that developed after the first three applications had been processed. I did wanna let you know that contemporaneous with this emergency application we received an application from Papakea to...with a more permanent solution so that hopefully we will not be coming back with this kind of a situation again at least at Papakea. It is a very long piece of property fronting on the ocean, and it is all faced with a seawall which is an old seawall and undermining and overtopping are the general problems.

Chair Ball: Okay, so they're preparing regular permit to fix the whole thing.

Mr. Scott: Correct. They've actually made the application. They've turned it in and it is currently out for comment from Department of Land and Natural Resources.

Chair Ball: Do we have a brief overview of what they're going to do as this emergency permit?

Mr. Scott: Yes.

Chair Ball: What allows them under this emergency permit?

Mr. Scott: Yeah, what the permit allows them to do is to line the three holes with a biodegradable fabric and backfill it with beach quality sand.

Chair Ball: Okay. Any other questions on this? Seeing none, thank you, Keith.

Mr. Scott: Thank you.

Chair Ball: Move onto Item G-2. Deputy Director?

Ms. McLean: Thank you, Chair. This is an item for the members who attended the 2015 Hawaii Congress of Planning Officials Conference that was held October 14-16 at the Hawaii Convention Center. So those members who attended HCPO this year, this is your opportunity to share back with the others your takeaways.

2. Reports from the members who attended the 2015 Hawaii Congress of Planning Officials (HCPO) Conference - October 14-16, 2015 at the Hawaii Convention Center, Honolulu, Hawaii (deferred from the October 27, 2015 meeting.)

Mr. Hudson: I have completed my report in writing so that everybody can read at their leisure.

Chair Ball: Thank you for overachieving on that.

Mr. Lay: I have a couple of questions, copy?

Chair Ball: Maybe we can give this to Carolyn and she can email that out to the group.

Mr. Hudson: Excuse me, I will say that Wayne helped out a great deal with the—

Mr. Robinson: Vice-Chair?

Chair Ball: Oh okay, we'll have him sign the bottom of that too then. Was there any verbal takeaways that you wanted to inform the group on besides the hospitality suite?

Vice-Chair Tsai: Which by the way I think we here on Maui do a much better job. That's kinda sorta a consensus I think. And it was consensus where I believe that the outer islands do a better job of that than Oahu. Maybe it's a budget issue but I think overall it's a great turnout and what's unique this is was it combined with...correctly GIS portion of part of which historically in the past, at least the four years I've been on the Commission it was just the planning portion so that was neat to meet folks in that capacity. And I did attend the off site unmanned vehicle demonstration. I thought that was neat. So that was a lot of GIS stuff and a matter of fact a lot of the guys there they

were in that particular field. So overall, I think the setup was good. It's just I think overall did a good job.

Chair Ball: Okay, any others? Commissioner Hedani?

Mr. Hedani: Yeah, I attended the session on Ford Island where we got a tour of the NOAA facilities that were built on Ford Island which was very impressive. The tour was impressive, the presentations were impressive from the group just in terms of NOAA does.

One of the things that they did provide us which I'll share with the Commission, I didn't bring it with me today was they gave each of us a set of pamphlets basically on leadership and guidance basically on processes for conducting meetings and things like that which I thought was very helpful. And that's something that we can circulate to everybody.

I agree with Commission Tsai that the...I've attended better conferences in the past that were more comprehensive, more on topic in terms of issues, burning issues that are confronting the commissions. I felt to some degree that the conference was overly weighted toward the techy side, the GIS techy side of the technical aspects of maps and things like that which from my perspective didn't go to some of the more serious problems and issues that confront commissions, you know, throughout the State. I thought it could have been better organized just in terms of the way that they handled it, but that's just a minor thing I think to some degree. Having everybody, 600 people line up for one line for lunch was a little tough.

But in the future I'd like to suggest that the Department consider sending everyone on the commission especially new commissioners that are just getting on board so that you do get exposure to the other commissioners from different islands. You get to share problems and considerations that they've undertaken that we haven't thought about and just grow from that standpoint. And that would be my recommendation.

Vice-Chair Tsai: Can I add one point? And I think I'm going to echo Commissioner Hedani's comment about the other commissioners and I'll even elaborate, extend that further to I think, and on a personal side I think transportation is an issue that we need to address I think in the future, how to better coordinate everybody's schedule so we have a means. I understand this trip we're obviously not allowed to rent cars, but I think it needs to be addressed where different commissioners or attendees are at different hotels how do we get, you know, to the conference. I mean, I was staying at Ihilani and I walked the first couple of times, but then I think it's too much.

Chair Ball: Sign up on time, that's how you do it. Just saying.

Mr. Lay: Before.

Chair Ball: I agree that all of the members should go to these conferences. It's very beneficial for us all to be able to attend these conferences that I've gone in the past, the commission was gone as a unit...(inaudible)...a lot.

Mr. Hedani: I agree with Commissioner Tsai about transportation. You know, I rented a car on my own because our tour started at 8:30 from the Convention Center and to wait for a bus to get the

Convention Center from the airport is just not gonna happen.

Chair Ball: Work on your budget there Deputy. Thank you.

Vice-Chair Tsai: Oh, pressure.

Chair Ball: Okay, anything else on that? Okay, moving on. Item 3. Let's go on Item 3, 4, SMA Minor and SMA Exemptions Report.

3. SMA Minor Permit Report

4. SMA Exemptions Report

Mr. Hedani: Move to accept.

Chair Ball: Move to accept.

Mr. Hudson: Second.

Chair Ball: Second by Hudson? Question, yes.

Mr. Robinson: Director, Millar well in Kihei. So I thought wells were State. Wells are County or if you get a permit you have to go through the County and the State?

Ms. McLean: They would...if this is in fact a water well which it seems to be they would need a permit from the Commission on Water Resource Management, but they would also need an SMA Permit for the physical.

Mr. Robinson: Is it County first or is it State first?

Ms. McLean: I'm not sure. If you can't get one or the other then the project doesn't proceed. I don't know that it needs to be one before the other. I don't know.

Mr. Robinson: I thought it, I thought it was State.

Chair Ball: Okay, Item 5. Oh sorry. If there are no further questions, all in favor of that motion? Unanimous.

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

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

Chair Ball: Item 5.

5. Discussion of Future Maui Planning Commission Agendas

a. November 24, 2015 meeting agenda items

Ms. McLean: Thank you, Chair. You have in front of you a memorandum dated today from Clayton Yoshida listing three public hearing items, a communication item, an unfinished business item and the director's report for the next agenda. Looks like a pretty full day.

Chair Ball: Any questions on that? Seeing none we will see you at the next meeting on November 24th. Meeting adjourned.

H. NEXT REGULAR MEETING DATE: NOVEMBER 24, 2015

I. ADJOURNMENT

The meeting was adjourned at 2:11 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Keone Ball, Chair
Sandy Duvauchelle
Wayne Hedani
Richard Higashi
Larry Hudson
Ivan Lay
Keaka Robinson
Max Tsai, Vice-Chair (in attendance at 10:38 a.m.)

Excused

Jason Medeiros

Others

Michele McLean, Deputy Director, Planning Department
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works