

**MAUI PLANNING COMMISSION
REGULAR MEETING
MARCH 8, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:02 a.m., Tuesday, March 8, 2016, 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.)

Mr. Keone Ball: Good morning everyone. Thank you for attending the March 8th, 2016 Maui Planning Commission meeting. We have a quorum, and at this time we'll take public testimony. If you'd like to testify on any agenda item you may do so at this time. However, when the agenda item comes up you cannot testify again. So, if anyone would like to testify at this time, please come forward, identify yourself, and you have three minutes. I think everyone wants to warm up.

(Unidentified individual from the audience): I can choose to testify now or I can testify later?

Mr. Ball: Right, but not both. Yeah. Okay, so -- someone behind you is standing. Morning, please identify yourself and you have three minutes.

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.

Mr. Maroe Smith: Sorry about that. Again, my name is Maroe Smith. I'm here in support of Haiku Mill. I've been a firefighter for the last 15 years on Maui. Like most of us, I've had to work a second, two or three jobs just to make ends meet. And my wife and I, together, started two small businesses; one's a cocktail catering company and one's a set and we do events at Haiku Mill. And I've seen a significant impact Haiku Mill's inability to book future events while undergoing this special events permit process. In the interim without being able to hold events at Haiku Mill or even advertise and book future events, the faith of Haiku Mill is uncertain and the immediate impact on local businesses and local families has been disastrous. Small businesses such as ours are relying on the work Haiku Mill has generated for us. Aside from how this has personally affected my family, as my current position in the Maui Fire Department, I understand and support the rules that are in place to provide protection and safety for our community, and --. But I also understand that Haiku Mill is taking the necessary steps to, that they must do to come into compliance. I just want to say that I support small businesses and their ability to function within our community. My parents and younger brother own Ocean Vodka, and I have seen firsthand what the support of the County and State governments can do for small local businesses. It can take a business down or it can accelerate its growth, provide it with assistance it needs to be not

only a viable business, but a business that will encourage economic growth on our island. It can support a business through various transitions so that it can be one of those businesses that help Maui become known around the world for. It's clear that increasing the agricultural tourism is not only on the rise, but it's putting Maui on the map. I'm here to state my opinion that with support Haiku Mill can move through the necessary and important steps to be compliant and continue to bring world class events to this beautiful island. Without support it will be detrimental to the families dependent on Haiku Mill for work. Thank you for your time.

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

Mr. Smith: Thank you.

Mr. Ball: Anyone else would like to testify at this time? Don't be shy. Seeing none, public testimony is now closed. We're moving on to agenda Item C-1, Director?

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

- 1. MR. JAMES P. ARGYROPOULOS requesting a Special Management Area Use Permit, and a Shoreline Setback Variance for debris removal at shoreline and slope repair project to mitigate the severe erosion fronting the project site at 475 Hana Highway, TMK: 2-6-009: 005, Kuau, Island of Maui. (SM1 2013/0015) (SSV 2013/0003) (J. Buika)**

Mr. Will Spence: Good morning Commissioners.

Mr. Ball: Good morning.

Mr. Spence: Your first public hearing item this morning is Mr. James P. Argyropoulos -- I'm sure, he will -- I believe I'm pronouncing his name correctly -- requesting an SMA Permit and Shoreline Setback Variance for debris removal on the shoreline in Kuau. The staff planner this morning is Mr. James Buika.

Mr. James Buika: Thank you Director, good morning Chair --

Mr. Ball: Morning.

Mr. Buika: -- Commissioners, Corporation Counsel. My name is Jim Buika. I'm a shoreline planner with Maui County Planning Department. And this project before you is a proposed Argyropoulos shoreline protection located at 475 Hana Highway in Kuau. It is a hybrid of a revetment and a retaining wall at the shoreline bluff. I would like to provide the Commission with some brief opening remarks and then provide the applicant the opportunity to present

the project to you. We have three engineer presentations. I'll ask Mike Summers to talk about the purpose, need, location; and then we have a structural, a civil and a coastal engineering short presentations for you, with a short video. Following the presentation I will provide an analysis relatively to the SMA Rules and for the Shoreline Setback Variance. And then following this presentation I'll turn it back over to the chair to -- for deliberation, Q&A, etcetera. So if this is acceptable to the chair, I'll just provide some opening remarks. Thank you.

Mr. Ball: Fine. Thank you.

Mr. Buika: Thanks. The Department report in front of you is for both a Major SMA Use Permit and a Shoreline Setback Variance since the entire project will take place in the shoreline setback area. The applicant together with the County is bringing this forward to you as the alternative mitigation that is likely the most environmentally sound choice that will stabilize this section of the shoreline here, and you'll see why. The action does require a variance from our shoreline rules. And what that means is this action is not allowed in the setback area under normal circumstances unless it meets strict variance criteria which the applicant and the County will focus on in our presentation to walk you through that for your consideration and for your vote. And as you understand the shoreline protection can come in different forms ranging from doing nothing, retreat, adding sand, re-nourishing the beach or hardening the shoreline. Hardening has been our most common option. It is against our Rules. It's our least favorable, desirable option, but through the environmental assessment process we examine all of our options. And this project did, in the EA, it did examine 12 different alternatives and, including beach nourishing out front here. So five alternatives were brought to the design stage. These were the five most practicable alternatives. And they were examined looking at three different criteria; health and safety, impact to the environment, and also impact to the neighbors. So each of these alternatives were developed to a conceptual design phase in order to find the best practicable solution for this very difficult situation that we have out here at the coastline which we'll present.

So the preferred best practicable alternative will be presented to you today because it was the result of the environmental assessment process that was completed. The preferred alternative has been reviewed by the State and Federal level, as well as the neighbors have viewed it. The variance and the SM1 permits from the County are the last remaining environmental permit reviews required for this project. I'll allow the applicant and the engineer to describe the project's need, the location, and the design of the alternative. We have a short video giving you the location of the shoreline here, to give you some context. And the presentation will conclude by myself analyzing each of the required environmental review standards and the criteria required for the variance. And so I'll go through them one by one so you can see how it meets the variance criteria. Then at that point, I'll turn it back over to the chair for Q&A and deliberations for all of you.

So to end my opening statement, the Planning Department and the State Department of

Land and Natural Resources believe that the project will have added benefits to the shoreline in this area because there is a large component of debris, remnant debris removal that's in the shoreline, that's very dangerous. It has been dangerous for a number of years. You'll see some photos of all that.

So this -- the action prior to the protective structure will clean up the shoreline so it's all combined in this permit. And the shoreline cleanup has been reviewed and approved both by the State, as well as US Army Corp of Engineers. So that concludes my opening remarks and with your permission, Mr. Chair, we're ready to proceed with the presentation.

Mr. Ball: Please do, thank you.

Mr. Buika: Thank you. I would like to turn it over to Mike Summers who is the consultant on the project. He can introduce the applicants; Nico Argyropoulos who is here, as well as the engineering team that will each do short presentations. So I'll turn it over to Mike Summers.

Mr. Mike Summers: Mr. Chairman, members of the Commission, I just want to thank you for being here today to review this important project. And my name is Mike Summers. I'm a land use planner. I'm President of Planning Consultants Hawaii. And our firm was retained by the Argyropoulos family to prepare and process the Environmental Assessment, Conservation District Use Permit, Special Management Area Permit, and Shoreline Setback Variance for this project.

In the audience today we have Nico Argyropoulos. Nico is the owner's representative. His father owns the property. And as Jim noted, today, we'll be giving you a power point presentation. This will be our third presentation to the Planning Commission. We presented the Draft EA in January of 2014 to the Commission, and in January of 2015, we presented the Final EA.

Today's meeting we'll document the need for this project, the proposed engineering mitigation, construction phase BMPs, and the results of our coastal engineering evaluation. And today we do have our entire consultant team to help with this presentation and address any questions that you might have. So we have Kiumars Siah with Triple-A Structural Engineering; he's our structural engineer; and Ashley Otomo with Otomo Engineering, she's our civil engineer; and Mike Foley with Oceanit who along with his colleagues have prepared a coastal engineering evaluation report.

So this project is located at 475 Hana Highway in Kuau. The lot area is 17,581 square feet. There's an existing single-family residence and ohana unit on the property. The zoning is R1-Residential, Community Plan is Single-Family, and as I mentioned we need an SMA Permit, Shoreline Setback Variance, State Conservation District Use Permit, Flood Development Permit, Grading Permit, and Building Permit.

The project is about three-quarters of a mile to the east of Paia Town, right -- one property to the east of the Blue Tile House, and 150 feet to the west of Kaulahao Beach Park. Next.

Now why are we doing this project? And what don't we like about that picture aside from the irrigation line there? This is a very, very dangerous situation. You have a concaved bank that's about 18-feet high that has eroded approximately 28-feet. It's very, very unstable from the top of the property, presenting a very clear risk to the owners of the property, and it's a very significant safety concern to the folks that walk along this beach. So it's a, it's a risk to the private owner and it's a risk to the public. Now over the last several years this property has eroded about 28-feet. Now put that into perspective, that's about 15 dump truck loads of sediment that has been placed into the ocean, and that's an environmental problem.

There are also remnant seawall debris from a structure that was built in early 70's that front the shoreline that also propose or present a very clear risk to the public, and it significantly hinders access along the shoreline. And you'll see several photos that describe that. As I mentioned, the sedimentation of the near shore waters is a significant problem with the situation.

So – can you put that again? Back it up. So anyway, there are two aspects to the project. The first aspect is to remove the shoreline debris that are along the frontage of the property. And this is actually a requirement of the State. The State will not allow this project to proceed without removing the encroachments in front of the property. So that's the first part of the project. And the second part of the project is to construct a hybrid revetment retaining wall to protect the property from further erosion. Next.

And this is a plan view of the subject property, and essentially you can see where the erosion has occurred along the shoreline. You'll see the property frontage. On the west side and -- yeah, one the west side of the property, you'll see the stairs -- and this is all documented in the photographs -- and a large piece of remnant seawall and other seawall debris, and then the Hamai property and the Goetzman's property.

And this is essentially the area that has eroded most severely, and again, you see debris along the shoreline, that big piece of remnant debris. There's a tunnel underneath here that people are forced to walk underneath, the irrigation line, all of the escarpment, and the subject property. Next.

And this is looking makai, or I'm sorry, mauka, into the property. This picture was taken about 2 ½ so years ago, and this area has already fallen onto the shoreline. This is no longer there. It's part of the rubble. Next.

Now this is essentially the remnant, the largest piece of remnant shoreline debris that exists. And essentially if you were to walk around the shoreline you have two options. You

either walk along this makai side of the remnant piece, or you walk underneath the piece between the embankment and the piece of rubble. Next.

And this gives you some perspective of what that looks like. This is your current shoreline access, and essentially you're walking right underneath that tree. It's about ready to fall in. Next.

And so this was looking to the east. This is with our project team and the County planners. And as I mentioned, this is no longer there. This is already eroded. You'll see the remnant debris. And you'll also see along the Hamai property which is the neighbor to the east, a pretty significant placement of boulders to provide some level of protection for that property. Next.

And this is looking kind of on the west side of that, at the area that you would have to walk through closer along the shoreline. Next.

Now these are those remnant stairs that would be removed; again, looking at the rubble. Next.

Now this is a picture from March of 2015 and essentially you'll see the existing kind of what remains of a tree, a coconut palm, and the embankment. And this was August 2nd, 2015 and you can see that this portion of the property has migrated down to the beach, and it's probably now in the ocean. Next.

And this is just a couple of weeks ago. We had the rest of the tree essentially fall in, and it's along the ocean. And you can see the red silted ocean right here, and I'm sure this is now contributing to siltation of the bay. Next.

Now this gives you a pretty good perspective of the existing shoreline condition along this coast. And what I'm going to do is I'm going to start from the east and go to the west, and here's the subject property, and this is the Hamai's and this is the Palmer's. So working from the east, you have essentially large boulders that have been placed along the shoreline to provide protection. Behind those boulders you have a shoreline hardening structure that essentially protects the Palmer's property. Fronting the Hamai's property you have large placed boulders. These boulders are not engineered. They are un-engineered, and they provide some level of protection. Along the Argyropoulos property, you have the failed seawall which has been undermined, and this property is now exposed to the ocean and that's why you're seeing all this erosion. And fronting the Goetzman's property you have an existing retaining wall along with placed boulders. And then to the west of that you have the beach. Next.

And this is what that condition looks like along the shoreline looking to the east. Next.

Now this is actually a very important feature of this section of coastline. This is a little pool, a little channel. And it's important because it provides a safe place for people to swim. It's directly in front of the property and the Goetzman's property. And it's also an important entry way into the surf for surfers, so this is something that you really do not want to impact. You want to try to maintain that, and we've been very cognizant of trying to do that. Next.

And this is looking kind of at that channel from the beach. And essentially what surfers will do is they'll paddle through here and then they'll find their way out to the surf. Next.

And this is Kaulahao Beach. Again, this is about 150 feet to the west of the project. Next.

And this is looking at the area. This is the entrance to that little channel, and essentially to get to the property, you walk around here and then kind of scamp over the existing remnant debris and along the shoreline. Next.

So with that, we have a short video presentation. Some of you folks have seen this, but it does provide a really nice overview of the condition.

And you can see there are a lot of stakeholders here. We have a beach user right here, right in the sunshine, hopefully not getting skin cancer. And here we have our shoreline condition. You can see the Palmer's, and the Hamai's, and the Argyropoulos's, and the Goetzman's. And then we'll pan over here, and you'll see the beach. There's our bather. And you can kind of get a closer view of the existing condition. And by the way, the end part of this video that were shot on the site occurred during a very high swell event. Not the highest we've had this year, but a pretty significant event; kind of get a perspective of the shoreline here.

The Blue Tile Roof House. The folks that live on the property, again, you can see how dangerous how this might be, the tide is very high. The irrigation line is gone now. This is gone, then the ocean. This does provide a little protection to the embankment, this piece of remnant debris. Then you can see the clay kind of silty Paia clay condition along the shoreline. Again, now we have a surfer that's actually going through that channel, so you can see that this is really an important place. I've never seen anybody paddle out like that; that's impressive. And this is actually Mr. Hamai; he's the neighbor to the east. And he's down there probably doing what he does whenever he has free time; fishing, which is, you know, I mean, it's a really, really important place. And it's a great surfing break. And, Kaulahao Beach Park.

Okay, I just want to quickly touch on some of the milestones, you know, these are very important. When this project came to our attention, you know, I asked myself, do I really want to get involved in something like this. You know, it's a very, very complex, challenging coastal project. You know, it's one that a planner would be a little concerned about. And so I essentially before I got involved, I said, you know, I want to have the Planning Department

staff here. I wanted to have them meet with the coastal engineer, and I want to have the property owner. I wanted to look at this condition and see if one, this project is in the public interest, from the Planning Department's perspective; and two, if it's a project that we can – well, yeah, if it's a project where there might be a solution; and three, is it a project that can get through the rigorous permitting process. Those are really kind of the three goals. And we had that meeting on the side, on November 16, 2012; it was about three years ago.

After meeting on the site, the team got together and we produced a number of alternatives for the project, and we met with the Planning Department and went through those alternatives. And then on May 16th, 2013, we faired it out a preferred alternative, and we met on the site to discuss that alternative and reviewed it with the staff and the engineering consultants. We presented the project to you in January of 2014 for the DEA. Next.

We conducted a meeting with the Hamai's and the Palmer's at the Hamai's residence on February 14, 2014. We then traveled to Honolulu and had a meeting with the DNLR staff and reviewed the project and discussed their issues and concerns and regulatory requirements. We then finalized the EA and met with you folks and gave you a presentation, got a FONSI determination. We then mailed all the neighbors within 500 feet, we sent them a project description and invited them to the subject property and conducted a power point presentation and discussed their concerns. Next.

We then met with the Board of Land and Natural Resources in October 2015, and were granted a Conservation District Use Permit. And then we got a Jurisdictional Determination from the Army Corp on November 2015, and today is March 8th. Next.

Now we essentially have five design objectives going into this project. And if any one of those objectives weren't satisfied then we didn't have alternative that would work. The first objective was to maximize the structure durability. There was really no reason to proceed with this project if it was going to become another remnant scattered plot of debris. It would block access and create safety problems. So this was a very important objective. We wanted to try to have the most minimal impact to the neighboring property owners. We didn't want to exacerbate their situation. We wanted to have -- minimize its visual impacts to and along the shoreline. We wanted to enhance lateral access along the shoreline, and we wanted to reduce impacts to coastal water quality.

And what are the project benefits? Essentially, this project, if built, will stop the erosion along the shoreline. It will address the safety concerns for the property owner and the public. It will mitigate soil erosion in the near shore waters. And, it will enhance lateral access along the shoreline.

And the preferred alternative, and as Jim mentioned, we looked at 12 alternatives. Everything from the no action alternative, to shot creating in the bank, and seawalls, and relocating the structure, and this was essentially the alternative that rose to the surface

because it's a very durable structure with a long life span. It precipitates the wave energy. It doesn't reflect the wave energy back into the coastal near shore waters. It reduces the amount of excavation along the side yard property line. And it provides a good foundation along the toll of the revetment for shoreline access. And the design using boulders and the facial treatments that we're proposing will bring it into character with the abutting kind of conditions. Next.

And with that, I'd like to ask Kiumars Siah to present our engineering plan.

Mr. Kiumars Siah: Good morning. My name is Kiumars Siah. I'm the structural engineer for this project, and it has been a long, long process. We started four years ago, so if you my memory fails me, you have to recognize . . . (inaudible) . . . So in this, as Mike was saying we had a...dire situation. Can you hear me?

Mr. Ball: Yeah.

Mr. Siah: We had a difficult situation that we had to deal with, and as far as I was concerned there were basically certain criteria had to be met. In other words what Mike has said was quite correct. I had to come up with something that a structure would be viable. That means it would work. It could be feasible practically. It could be permissible and as far as the County and the State and -- and it could be inline basically in character...and inline with the other adjacent properties. So that's why we, what we came up was something that could work structurally. It's a hybrid structure meaning combination of two things. Revetment which is known if you have to do something, if you have to do it, if you cannot just leave it with a beach nourishment and want to have something that work for you is the one that works structurally and as well as environmentally it is the minimum negative impacted. And then on top of that to even minimize that we've combined it with a retaining wall on top of it to reduce the height. So this is hybrid revetment retaining wall that gives us structurally what needs to be done, that basically protects the, the property, the subject property. It deals with the energy that has to be dissipated in order to minimize the impact. It gives the same appearance as what the other neighboring properties have, boulder like, and it is permissible. That part, so far, has been verified.

So...we thought that this picture that we prepared at the very start, I guess, 2012 would give you an overall scheme of the things. This is we are looking from the northwest, asymmetric view. What we have you see it's the revetment. It has a plateau at the bottom. This is the plateau at the bottom which provides a relatively safe means of walking along the shoreline. And then it has a sloping section that basically takes us from this lower elevation, brings it up to a higher elevation. That's again another plateau which would serve as another distance for the water if it comes off it can further travel. So, the, the -- by the way, and then these are not grouted. These are boulders with open space between them. In other words, when the water comes, the waves come, they hit it and they go inside. They don't reflect back. At the ends in order to because this, this property obviously is a neighboring

property belongs to, to the neighbor. We have the similar situation on this side, but for clarity we didn't show it. In order to make sure that we don't anything to that property obviously we cannot go and excavate or we have to --. And right now, this, this part is where Mike was saying where the remaining tree fell down about two or three weeks ago. If you don't anything that, that part cannot work. First of all because we are coming down from here to there so there's a difference of elevation. This area is a higher elevation so there should be something to retain this, this soil. Hence, the word, retaining wall, and we call it, and retaining wall. So, so that part is solid because we want -- we don't want the water to go there and cause erosion on that property. So the main purpose of this -- in other words, the main purpose of the end wall and the similar on this side are to protect the neighbors. They don't do anything for us, but we don't look at it like that. The whole system should work because if you have a problem with the neighboring property then that means our project is not acceptable. So, this, this wall, end wall is there to protect the neighboring property. They have a similar situation on this one. And that, at the very top of it, this is a retaining wall that would bring up the level to the existing finish or grade level. In other words, this entire thing is at same level.

This is new hybrid revetment retaining wall. This is the plan view. We, we have --. This is the edge of, the front edge, the makai, this one, edge of the wall. And we put it like this one, you can see coming down. So that as you see. And this is the property. As you see there's a, there's an angle from there – this angle, between them. I put it there with a specific purpose because we didn't want the water. If any waves come here rather -- if you have this situation, it hits it, it may go back and have some flanking on that. If you put it this way, any water that comes here cannot go back. It either is reflected this way coming back, or comes here, comes back, so to minimize any impacts on the neighboring properties on the, on the east.

This end wall is away, away from the other neighboring. So here basically we start our end wall more than 10-feet from the neighboring as you'll see, so we don't have that much of a -- and we are not doing anything to this part of the wall. So we basically took every measure and we included everything that we could to minimize the impact of the neighboring properties.

There was another -- this is a jagged line because we wanted to stay away from basically the jurisdiction of the Army, the Corp of Army Engineers. Prior to that, we had this coming here based on the comments that we get. They said if you stay outside of this thing, you don't have to do anything. We're outside. So we chose that.

This is a cross section, a typical cross section of the, of the, of the structure. This is the revetment, that's the bottom plateau. This is the sloping part. One to one and half; this is the maximum that we can go based on that current regulation. And this is the top plateau. These are huge boulders to, to do two things to make sure there are certain requirements. We just didn't choose them out of the...here. To make sure basically with the design and

the design waves, they should stay in their place. Otherwise it wouldn't work. And also it provides enough . . . (inaudible) . . . to dissipate the energy. And this is the retaining wall at the very top which is only this part of it is visible.

These are just mostly for construction purposes. This is a cross section of that end wall, retaining wall. This is shown with the, the constituent material, which are basically rock masonry to give you an idea of what it is. And this is a cross section longitudinal cross section. That's it as far as the structural design. I'll be happy to answer any questions what you whatsoever.

Ms. Ashley Otomo: Good morning Commissioners, Ashley Otomo, Otomo Engineering. I'm the civil engineer for the project. I'm going to go over the BMPs for this project. In the first phase we have the debris removal. So we'll be constructing an entrance for the machinery which will consist of gravel, and on each side we'll have a bio-soft with berm to prevent -- well the goal is to prevent any runoff or discharge from getting into the water here, so. We'll also be constructing a turbidity curtain fronting the debris field, and then we'll have a material and equipment storage area here surrounded by a berm.

During the construction of the wall we'll move the turbidity curtain inland, towards the front of wall here. And in the back of the wall we'll put in a silt fence, and also construct a berm behind the silt fence, and a retention basin here so that if there is any kind of storm events the water can pond in this area here, instead of against the wall or flow into the ocean. And this will stay here as well for the stabilization phase. I think that's it for the BMPs.

Mr. Mike Foley: Good morning.

Mr. Ball: Morning.

Mr. Foley: I'm Mike Foley. I'm from Oceanit. We're a coastal engineering firm based on Oahu. We also have an office on Maui. So we were contacted to give an outside perspective from a coastal engineering standpoint to how this project would respond to the coastal conditions and how the shoreline would react to this hardening project. And we really were -- we took a hard look at how the neighboring properties could be influenced by this hardening project. Next slide.

So in order to conduct our analysis, we, we first started out by reviewing the design plans which, which weren't done by our firm, by the way. So this was an outside look. We, we also conducted a site inspection in January of this year, and we did, we collected a bunch of observations on how the coastal circulation and erosion patterns are reacting in this bay. We studied the historical aerial images and evaluated ocean wave and wind climate . . . (inaudible) . . . And we also looked at the sea floor depths of the bathymetry in the project area. Next slide.

So we've already kind of gone over the site, but just to be clear, this is our subject property. Here's the erosion escarpment which a term for basically a cliff caused by erosion. So on the Hookipa side is the Hamai property, and on the Paia side is the Goetzman property. Here's that important reef feature, emerging reef structure, and the channel in between. And over here we have the beach which I grew up knowing as Tavares Beach. Next slide.

So this is looking back 1960. So in 1960 you can see -- I'll go through these all historic images just really quick, but I want you guys to all notice that in the 60's we had a real prominent clay reef shelf jutting out right next to our reef here. Our subject property had development, but the neighboring properties were undeveloped. The Hamai property was developed, so was the Palmer property. And if you noticed here there were a sliver of a sandy beach right up against this clay shelf. Also take a look at this vegetation line along Tavares Beach. And as we go through history in the next 50 years, notice how this vegetation line recedes back towards to this sandy road. Next slide.

1975, notice that our clay shelf is still pretty prominent. It has this nice rectangular shape. It's providing a lot of shoreline protection to now those two developed property. The Blue Tile Roof House is not yet built. Next slide.

1987, the Blue Tile Roof House has been constructed. Notice our vegetation line we have, we have sand coming up into the sugarcane fields now. Next slide.

88, not much change. Next slide.

1997, notice that our clay shelf has been half way eroded, it's now triangular in shape. We no longer have any sandy beach over here. The channel is pretty prominent between the reef and the clay, and our vegetation line has receded. Next slide.

2002. Next slide.

2013, notice that our clay shelf is completely gone. There's only a slight remnant. Also our vegetation line is pushed back quite, quite a ways, so this really shows that this whole area is going chronic erosion. Next slide.

Just looking at the erosion escarpment from 2008 to 2015, you can see that the shape has really deepened and widen over the years. Next slide.

Now looking at the wave patterns, the wind patterns in the area. It's a little hard to tell from this slide here, but this is known as a rose and this is a wind rose. This basically gives you the frequency of the winds, so this is telling us that most of the time on Maui we're getting northeast winds; no surprise for those of us who live here. Next slide.

This is giving us now the frequency of the waves. So this gives us wave heights, and we

see that the two largest wave heights shown by, shown as the lengths of those of bars are the northeast trade wind waves, and the northwest trade, or northwest swell waves coming down from Alaska. This rose over here gives you period, and wave period is an indication of energy. So the more red and purple colors, these are high energy waves. So high energy waves cause a lot of erosion. So we're getting a lot of high energy from the northwest, and any surfers in the crowd we would know that those northwest swells are the ones that where Jaws goes or Waimea breaks, and these are also the ones that, that cause big erosion events. Next slide.

Now this is important to understand because when we look at the bathymetry or the sea floor depths in Kuau Bay -- and here's our project site here in the west of the bay -- we see that this bay has a nice prominent shallow reef on its east end on its Hookipa side. And this six-foot depth, way out here, off shore from our property is breaking these waves as they come and approach the shore from the northwest and the northeast. And what this do is it's blocking these northeast winds and waves, and so when we think of northeast winds we think that what's happening is the water is coming and it's moving from Hookipa down to Kahului. And as it's doing that it's taking sand with it. But because of this reef we don't have that large affect inside this bay. But what we do have is these northwest swells; they have this nice "puka" here that they can get into the bay and this deep spot right here, and it goes into the 20-foot depth and it basically approaches the shoreline here. So this bay is really, is designed in a fashion, by nature, that it's allowing it to really erode on these northwest swell events. Next slide.

So considering this understanding of how the shoreline is reacting, we then took a careful look at the design plans. And here's the existing condition as we noted there's debris from the shattered seawall, collapsed seawall. So really this debris is still serving a function. It's still protecting the shoreline to an extent. Where we see the big escarpment is right here where this gap between the debris is. So this is allowing the most wave energy and it's really just starting to cut into the bay. Now the proposed plan is to fix the problem. First they're going to remove that debris. But because we're now removing that shoreline hardening, we need to replace it with something or else the problem is going to continue. So what we're going to do is build this rock revetment slope, and then these two side walls to contain the neighboring properties and to prevent erosion. Next slide.

So we've already gone over this, but an important feature is that this rock revetment is designed to absorb the wave energy, prevent reflections. And then the side walls here are to contain the, the material, . . . (inaudible) . . . material and to prevent erosion on the sides. Next slide.

And I mentioned that because this erosion escarpment is progressing at a rate estimated at about half a foot per year, and this is not going to stop. So we looked back and we see that this is a chronic eroding shoreline. This escarpment will continue to deepen and widen. And it's important to note here that because of the shape of the bay that the currents

affecting the property, at the Argyropoulos property and also at the Hamai property, they're onshore, offshore. So these are not long shore currents. Long shore currents would run along the coast like this. Onshore, offshore are going in and out; in and out of the bay. And what that means is that what you do on the neighboring property isn't going to have a significant impact on the next door property because you're not influencing that current, that current transport down the coastline. Next slide.

Now when you look at the...the Hamai property next door, there are signs of erosion. Now this natural background erosion isn't expected to change due to this structure. We don't expect that there will be significant in wall flanking effects. Next slide.

But it is important to note that as we've already seen and this photo was just taken a couple of weeks ago. I believe this was taken on the day Eddie Akau contest, so we had a large, large event. But this escarpment is beginning to enter into the Hamai property. And as this progresses, this slope will fail and these rocks will fall in. And unless they get another permanent structure, these rocks will eventually end up at sea elevation. And when those are at sea elevation they will provide little protection to that embankment. Thank you.

Mr. Summers: Okay, as I mentioned, you know, we kicked off this project in 2012 and since 2012 we've actually sent this application in a variety of formats to our State, County and Federal agencies on three separate occasions for agency comments. The most significant comments came back in the Draft EA, and they were addressed and presented to you in the Final EA. I think we had 20 agencies who received the application.

I just – I'd like to read this quote. This is actually from the staff report of DNLR, the Office of Conservation & Coastal Lands. It was one of their, I think, last statements in their staff report, and I just thought it was really important to read this. It states "the OCCL notes that there are unique characteristics to this proposal that would allow us to support the issuance of a permit despite our generally strong stance against hardening the shoreline. In this instance, the driving issue is not to protect private property at the expense of a public resource, but rather to stabilize a slope in order to create a safer beach transit corridor to reduce the amount of sediment washing on to the reef and near shore waters, and to prevent the scarp from enlarging onto neighboring properties and triggering seawall failures." And with that Jim Buika will address the SMA material.

Mr. Buika: Well, what I'd like to do actually is offer the Chair to turn it back to you. This is part of the analysis. I can do this at the end with the recommendation. Since we've been going 45 minutes, if there are questions and everything is fresh in the minds, I think it would be good to break and turn it back to the Chair. And I can go through the SMA criteria and the variance criteria at the proper time, a later time. Thank you Chair.

Mr. Ball: Okay, at this time we'll open it up for public testimony. Anyone that would like to testify on this agenda item may do so at this time. Seeing...none. Go ahead. Please

identify yourself...and you have three minutes.

Ms. Virginia Karpovich: Thank you for this opportunity to speak. I'm a 30 plus year. My name is Virginia Karpovich, and I'm a 30 plus year resident, and I own property on this bay. It seems to me that it would be prudent to ask these folks to join hands with neighbors including Kaulahao Beach and do a more inclusive plan which might indeed include annual beach nourishment. This body is empowered with the responsibility to protect and preserve irreplaceable resources. Kaulahao Beach is one of our irreplaceable resources. Like Kaulahao Beach will...wave energy dissipate or deflect to the next unprotected shoreline area including Kaulahao Beach. And this is my concern is that the adjoining neighbors will be impacted and then what do they do. That Kaulahao Beach will be impacted by greater erosion and then what will we do. And so what I'm asking you, as a body, is to address a larger plan which includes a little bit more of the shoreline. And I've walked the shoreline a lot, and there's lots of permitted and unpermitted structures, some of which have resulted in actually some pretty stabilizing effects, and others have totally eroded the neighbors. And I applaud the extensive work these people have done. I mean, it's stellar, but I still worry about behind those concrete wing walls what will happen to adjacent properties which also is a property you're empowered to protect. Blue Tile Roof for Kaulahao. Thank you very much.

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

Ms. Hillary Palmer: Good morning everybody. My name is Hillary Palmer, and I guess you figured out I'm two lots away from the subject property. I'm going to back track a little bit before I get to my prepared statement. I'm in agreement, and I think all the science is in agreement that handling shoreline conservation and erosion issues on a lot by lot basis is antiquated. And from the statements made here today, obviously there's going to be a continual erosion problem, and we need to address this on a much larger basis, not only for my property and the Hamai's, but for the beach as well.

The beach needs replenishment. It serves as a spillway for all of the rain water. It runs through the parking lot right on to the beach, and you can see the erosion occurring just on a daily basis. After a big storm you can come down and see the runoff. It's also a danger and the County's going to end up getting sued because someone's going to fall in this broken down parking lot over there and get injured because all this runoff is causing the parking lot to disintegrate.

Okay with that said, being two lots away from the subject property, I'm very concerned about the depth of how much this lot is going to be cut back. It's approximately 30 feet right onto the border of the neighboring property. It's a lot of concern. What if a big storm happens during this process? It's unlikely in the summer time, but we do, we do get storms in the summer.

So I've lived on the property for 19 years. I've owned it for 19 years, and I'm also familiar with the effects of what's been happening. We don't have too many people along the shoreline walking any longer. I'm -- I understand the concern about the danger of the old staircase being taken down. I've been told, in part, when we were at the meetings that this was going to be cut back to the degree that they're asking was to remove, to be able to get a truck down, to remove the debris. And if that is indeed a, the major reason I have to kind of stand out against that.

I want to thank Mike Summers and all of the folks that came out to give us presentations. And I am definitely in favor that something needs to be done to this lot. It will eventually devastate the Hamai's and move its way towards mine. But it's this 30, 30-foot cutback that I'm concerned about. And we've been told that it needs to be done to remove the debris from the staircase, and for the revetment, revetment wall. And I recognize these safety concerns, but I don't feel that cutting back the lot to this degree is a good idea and I just have to wonder if there's a better way to achieve this; possibly leaving the, breaking down the debris and leaving it in there and utilizing what's there. I'm concerned what's going to happen to the reef when this, these materials are moved. And we know this is unprecedented, it's been stated, and there's good reasons for that. I'm really concerned because no one can really say what might occur during the process of when the soil is removed and how much it could affect Mr. Hamai's property. And I'm really concerned about the Hamai property. Will it, will it prevent the surfers from getting out to the break, but most of important is what's going to happen to the neighboring lots.

Mr. Ball: Thank you. Is there any questions for the testifier? Commissioner Robinson?

Mr. Robinson: I hear your concern.

Ms. Palmer: Okay. Thank you.

Mr. Robinson: When you, when you put your wall in, what year was that?

Ms. Palmer: I didn't put my wall in. When we bought it -- we bought the property in 1997 and it was all existing.

Mr. Robinson: Do you have -- do you know when the wall was put in?

Ms. Palmer: I could not tell you. I would imagine sometime in the 70's or 80's. I really don't know.

Mr. Robinson: Okay. Thank you.

Mr. Ball: Mr. Palmer, would you like to come forward? Please come forward and identify yourself and talk in --

Mr. William Palmer: What you have a problem with their property --

Mr. Ball: Mr. Palmer, identify yourself now.

Mr. Palmer: My name is William Palmer. I own the property next to the Hamai's which is next to Argyropoulos property. One of the problems that we're not looking at is a few years back a developer bought the house next to the Blue Tile Roof House and he extended it all the way up to the coastline without permits, granite the seawall in front of the place and sold it for a couple of million dollars, and the County fined him \$50,000 of which he skipped down and wrote the check. But you better go out and look at that place again because right next to the Blue Tile Roof House it's caving in more than the Argyropoulos place, and it's about, now, it's about 10 feet from the corner of that house. So what you're going to find, you're going to be looking at the Argyropoulos property, and the next thing you know that house next to the Blue Tile Roof House is going to be falling into the beach. So, I mean, I don't know how you're going to look at it, but that's exactly what's happening. You kind of gotta be afraid of, of putting the seawall up there. It looks really great, but I think you've got to come over to the properties next door with a, a way the water can't come up behind these wall you're talking about. I was told they're going to be pyramid walls, 10 feet on the bottom, five-feet on the top, and that's going to keep his property together. Now if the surge, surges are coming in and it's slushing behind these walls, then it's going to start eroding those lots, those lots that are adjacent because they haven't been prepared as well as they will have been prepared. Well, I don't know. I think you better have another look at what's going on there right next to the beach. And if you would go down the beach and look at the Blue Tile Roof, where they poured their foundation and put their wall on top of that. Now, it's all exposed and it's all falling right into the sand so, you know, I don't know --. I certainly know that I want them to get their property fixed, and I want them to not affect the Hamai's because once it starts hitting the Hamai lot, it gets in behind things.

And one of the other things that I didn't really get is wanting to remove the concrete. Now concrete has been in the Maui shoreline since the Army was here pouring, pouring concrete for . . . (inaudible) . . . placement and whatever. There's concrete in the coastline. So to have to remove all that, I'd rather see that aggregate reduced to a size that's workable, and right there instead of having to try to haul it out of the water. I think that's a silly process. But, it has to be done. I know they've hired the right people to do it. I'm really familiar with Roger Thorton; he's the project coordinator. He's a very capable fellow. He knows what has to be done. He has shoreline experience. He used to own Kilohana which is two doors down from my lot which he sold, so he now lives down in Sprecklesville. But he's very capable. So I think they're doing the right thing. But I think you've got to really take a little wider look of what's going on there because if you expose the Hamai property you make their property good, but you expose the Hamai property it's just going to continue to erode down the coastline, so we've got to do something.

My, my, my property was owned by Harry Kokubun who was the mechanical engineer that put together the house . . . (inaudible) . . . in Haiku. So he was an engineer. Okay. He hired Danny Fong to bring in the rocks that are in front of my place, the big boulders that you'll see. He set those boulders in the early 60's I believe it was; either '59 or '60. Mr. Hamai might have a better pinpointed date. But that's what the engineer in those days did, and it's held up fairly well. I don't understand why we can't continue to use the large available stones because the plantation's going out of business and there's plenty of that material available in the fields to purchase from them. I'm sure they'll give us a deal on it as well.

Mr. Ball: Thank you. Is there any questions for the testifier?

Mr. Robinson: Yes. The question was --

Mr. Palmer: Thank you very much for your time. I appreciate --

Mr. Ball: Hold on. There's a question. There's a question for you.

Mr. Robinson: Same question; do you know when the wall at your property was put up? I know the rocks was earlier, but the wall itself.

Mr. Palmer: In the, in the late 50's, early 60's.

Mr. Robinson: Well, there's no walls on the pictures we saw on the --

Mr. Palmer: Yeah, it was --. It was starting to -- it was just repaired because it was there, it was just starting to fall in. So when we got it, we looked at what had to be done. There was nothing over the top. This was all on the, on the top of the lot which was there, but it was starting to fall apart and it was only like, like, this high up there. So when we built the walls on the property, we had them build the walls off the front, on top of what was there.

Mr. Robinson: So the higher wall was after you took ownership of it.

Mr. Palmer: No, it was there, but it was in bad shape. It was repaired after I bought the property. I did basic maintenance to repair it to keep it from being dangerous, from having kids fall over the front, and fall down a 30-foot cliff into, into the rocks. It's not going to happen. So that's what I did, I repaired an existing wall that had been there from Mr. Kokubun's time. And Mr. Kokubun lives further down in Paia in his home. This was a rental property that he owned, so --

Mr. Robinson: Thank you. Thank you sir.

Mr. Palmer: If there's anything else I can tell you that I know of I'd be glad to tell you.

Mr. Ball: Thank you. Would anyone would like to testify at this time? Please come forward.

Mr. Howard Hamai: Yeah, my name is Howard Hamai. I live right next to the property. I agree with this, what he said, that, you know, if we build this one wall here, what's going to happen to everybody else? But if I'm not mistaken if, in other places where they build a wall, all the adjoining, adjacent properties, you know, they get damaged too. If you look around Maui, I think in Lahaina, even in Spreckleville side, I think there's – they put walls and then, you know, it continues on to the next property. So that's my concern. I mean, I have respect for my neighbor, and I know he has to protect his property, but, you know, like the lady said here, we need to see the whole picture. You know we just put one here, then it's gonna go right down to the next one. If we can work out something where we can, you know, help everybody out, instead of just one, you know. I still have, like I said, I have respect for him. I understand what he is doing for his property, but you know, we're all neighbors, and we might all get affected by this. So take a look around, see where the walls are, see the next properties. Thank you.

Mr. Ball: Any questions for the testifier? Commissioner Robinson?

Mr. Robinson: Are you suggesting that nothing gets done, or are you suggesting that you jump with him and you guys make one big wall? I don't understand.

Mr. Hamai: No. I can jump in and do a wall because I don't know how much it's going to cost and you know. You know, if we can get a -- I don't know if we can get a better plan or something, then just, you know, address one place like, you know, we can put rocks or something, you know, something else instead of just a wall. Because if you put, you know, regular rocks and you get all your . . . (inaudible) . . . and stuff, you put the cement and somebody goes down there, you get tangled, you get seaweed grows down there, you slide down and get hurt. But, you know, if you get rocks like how, how all the rest of the land is, you know, the ocean part, I can go too, you know, fishing or whatever. But I don't know if my understanding, I don't know if you can just place rocks or, I don't think so, but, you know, that would better I think. And that would do the same thing, stop the waves, make the waves, you know, weaker and then, you know, just come in. Of course we still going have erosion, but, you know, it would be more natural. Thank you.

Mr. Ball: Thank you. Anyone else would like to testify at this time? Seeing none, public testimony is now closed. Jim, if we could get your recommendation please.

Mr. Buika: Thank you. What I'd like to do is provide some analysis and findings before the, the recommendations. I'll go through these quickly. All of you are very familiar with the SMA evaluative criteria so I'll just, I'll read through these. They do comply but just for your edification here it involves an irrevocable commitment to loss or destruction of a natural or cultural resources. It does not, the finding is, it does not -- there will be an SHPD monitor

during the project, and there really are no other. It is confined on the property so there will be no, no ocean loss materials here. Significantly it curtails the beneficial uses of the environment. It will not curtail the use of the environment. It will actually improve the lateral access and the enjoyment of the shoreline in this area. It conflicts with the County's or the State's long term environmental policies and goals. It does not, it's documented in the, the staff report, substantially affects the economic or social welfare and activities of the community, County or State. There is no population increase, so there are no real impacts to that. (E), involves substantial secondary impacts such as population changes, etcetera. There is no population change or change in any of the infrastructure. It has no significant adverse effects, but cumulatively it has considerable effects upon the environment or it involves a commitment for larger action. It does not, I think, Dr. Foley, the coastal engineer, gave a good explanation of, of how the actual, the long shore current is not affected, the waves come in and out, it is fairly isolated, the waves through the bathymetry and the impact on the shoreline so that it is isolated to this property. So there are no longer time, major impacts. Substantially affects the rare, threatened or endangered species or animal, plant, or its habitat. There are very good best management practices that are included as a condition espoused by the National Fish and Wildlife Service that we have included. There are no shore birds, or it is not a nesting area for the turtles in the area. It's not contrary to State plan, General Plan, appropriate community plan, zoning and ordinances; it's consistent with that. Detrimentially affects air or water quality or ambient noise levels. There will be BMPs for the air and water, water quality as Engineer Otomo presented. It affects the environmental sensitive area such as the flood plains, shoreline tsunami zone, erosion area, logically hazardous land, . . . (inaudible) . . . fresh water or coastal waters. The appropriate design and construction mitigation measures have been into account to avoid, to minimize any impacts to this environmentally sensitive shoreline area including the channel. It will help prevent the clay from continuing to erode into the ocean further protecting the reef and the coastline. Substantially alters natural land forms, and existing public views to and along the shoreline. It, it is designed to...blend in with the shoreline and the surrounding, other themed rock or un-engineered revetment, and it will tie in nicely. And it is consistent with the Coastal Zone Management objectives and policies of which there are 10, which are in the staff report which I will not go through at this stage. So those are the SMA criteria here.

There are six criteria for the variance, and I will spend just a moment going through these. There are two conditions where a -- this type of activity are allowed by our variance rules. They're under A; it's (a), (b), (c), (d), (e), and (f). So A7 and 9, there are certain criteria, and this meets two of them. That it is a private facility or improvements that are clearly in the public interest. And then (9) is private facilities or improvements that may artificially fix the shoreline provided that the Commission also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; and provided further that the Commission imposes conditions prohibit any structure seaward of the existing shoreline unless it is clearly in the public's interest. And I have some bullets on that. There is a small 432 square foot encroachment into the State

jurisdiction that has been permitted by the Conservation District Use Permit and the State. And the reason for that is to tie into, effectively tie into the neighboring property. That's the only reason for it. And again, it has been permitted there.

Under (b), a structure or an activity may be granted a variance upon grounds of hardship. There are three conditions for that. And proposed action does not question the need or appropriateness of shoreline setbacks to avoid coastal hazards. The situation is unique and that a water based public access point fronts the property. And the current situation presents a public, health and safety issue. Because the release of the clay sediment to the near shore environment is adverse to coral growth, water clarity, and retention of natural features, and the falling debris are dangerous. The proposal is a practical alternative designed in concert with the shoreline environment and coastal hazards that affect the property. So it does not take the rules into -- it does not question the rules at all but it is a unique situation.

The third one is before granting a hardship variance, the Commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason the determination of the reasonableness of the use of the land should properly consider factors such as shoreline conditions, erosion, surf, flood conditions, and geography of the lot. I think Dr. Foley did appropriately explain all of this to us and that it is an unstable...situation that does need protection, and that...the, the...it reduces the public's exposure to harm in this region.

The fourth criteria are for purposes to this section. Hardship shall not include economic hardship to the applicant and other conditions there. It is not hardship due to the applicant. It is end effect basically from the other properties. It's not caused by the applicant himself. So the proposed action is not the result of a discretionary government approval. Additionally, the hardship is in this situation would be from exposure to the negligence to reduce risk, liability and potential injury. A hardship exists from the continued degradation of the near shore marine environment from clay sedimentation if unabated rather than an economic hardship to the property owner.

And just two more. No variance shall be granted unless appropriate conditions are imposed. These five conditions are set forth in the, in the recommendation letter...and the applicant is willing to add these conditions. They are to maintain and require safe lateral access to and along the shoreline; minimize risk of adverse impacts on beach properties; to minimize risks of structures falling, becoming a loose rocks or rubble on public property; to minimize adverse impacts on public views to, from and along the shorelines; and to comply with both the flood hazard development districts and erosion sedimentations of rules of Public Works.

And finally the fourth criteria is not withstanding any provisions of this section to the

contrary. The Commission may consider granting a variance for the protection of a legal habitable structure or public infrastructure, provided that the structure is at risk of damage from coastal erosion, poses a danger to health, safety and welfare to the public, and is the best shoreline management option in accordance with the relevant State policy on shoreline hardening. The State policy on shoreline hardening basically is they are against shoreline hardening, but Mike did read that quote from the, the Conservation District Use Permit that this is an exceptional case where they do agree with. So it is a unique circumstance. It does not involve a threatened structure or any of the structures or the structure on the property. Hamai, there is. On the Goetzman's, there is a structure very close. We don't know whether it's been permitted or not but that wasn't investigated as part of this permit.

So in summary, the proposed action conforms to shoreline variance criteria, A7 and A9, relating to permissible shoreline hardening. Given the exposure of the shoreline to coastal hazards and its potential to adversely affect public and private amenities, including near shore access to recreational sites, the proposed action is a reasonable use of the shoreline and an appropriate management strategy to address site-specific shoreline issues. The proposed action is an acceptable remedy that adheres to the goals and objectives of the Shoreline Rules for the Maui Planning Commission and the Hawaii Coastal Zone Management Act.

So those are the findings, summary of the findings. I'll get on to, as requested by the Chair to give the recommendation.

Mr. Ball: Let's wait on that, we'll take a five minute recess.

Mr. Buika: Okay.

(The Maui Planning Commission recessed at 10:22 a.m. and reconvened at 10:34 a.m.)

Mr. Ball: We'll call the meeting back to order. Jim, you have the floor.

Mr. Buika: Thank you Chair. I'll conclude here. I would like to add one additional statement. I'll summarize before the recommendation, just very quickly, the Conclusion of Law, and then give the recommendation of the Department. Just one additional finding, for the record is that we are, at this location, we are not affecting a sandy beach or the neighboring properties, and those are key things that I think we've stated over and over. There really is no opportunity here to replenish the beach out in front. It hasn't had a beach in a long time and it would just be too difficult. It's not good opportunity. It's not a good location. And, I think the engineer, the coastal engineer did say that the project will not have detrimental end effects on the neighboring properties because of how it will be constructed.

So as far as Conclusions of Law, regarding the Shoreline Setback Variance, the Shoreline Setback Variance application complies with the standards and criteria for the development of the shoreline setback area as set forth in Chapter 205, your shoreline rules, as well as Chapter 205A, as amended, and as written up in the section on State and County Shoreline Rules Analysis for Shoreline Setback Variance in the report.

The application applies with the six applicable criteria for the Shoreline Setback Variance which I went through in detail, and I do have one, since Corp Counsel is here and is always here, I do have one correction to the Conclusions of Law on that first page there in the green section. Is that the -- it complies with the Chapter 203 Shoreline Rules for the Maui Planning Commission, Sections 12-203-15, criteria for approval of a variance. I had A8. It is actually -- I'll strike that and replace it with A7 and A9, (b), (c), (d), (e) and (f). Those were the variance criteria I went through so in the final I will change that.

So it does comply with the six criteria in detail. And as far as a recommendation, the Maui Planning Department recommends approval of the Special Management Area Use Permit and the Shoreline Setback Variance subject to the following six standard and 14 project specific conditions. And each of these conditions, there are six standard conditions which are before you. I will not go over the standard conditions regarding initiation, finalization, liability, etcetera, final compliance and then the filtration.

I will go over just real quickly I'll mention the project specific conditions. Number 7 is that at the satisfaction of the Department or the State Historic Preservation Division that all ground altering activities will be monitored. Number 8 has to do with construction. There are three from the Department of Land & Natural Resources, Office of Conservation Coastal Lands. One has to do with -- number 8 has to do with construction crews and the BMPs; they will all be briefed on how to conduct the project. Number 9 has to do with the flood hazard development permit. Actually one is not required for this project. Number 10 has to do with no artificial flood, flood lights out to the ocean up. Number 11 is protection of the aquatic environment while you're doing construction, making sure all the construction BMPs are in place to protect the water quality. Number 13 is the Department of Public Works that all of the erosion controlled plans are approved prior to construction. Number 13 are the detailed comments from the Department of Interior Fish and Wildlife Service for best management practices, to protect wildlife, the visual survey, ceasing if any of the turtles or animals are found, and that all -- the area is protected and well -- the construction is done to protect all the, any protected or endangered species. Number 14 is again is regarding Department of Land and Natural Resources the remnant debris removal. Best Management Practice is 15 and 16 are Department of Health, National Pollution Discharge Elimination System Permit (NPDES) may be required. Department of Health, number 16, is the dust control measures. 17 has to do again with the remnant removal, remnant debris removal having it done during the spring and summer months, at low tides, when the waves are at minimum. 18 is having a good solid waste management plan, recycling materials; that is Department of Environmental Management to properly dispose of materials. Number 19, again, is the

Department of Land and Natural Resources, OCCL, is requiring that the State Certified Shoreline be completed after the debris is removed because it is an encroachment, it has to be taken out, so there is a, a, an exhibit, I believe it's 22 in there that is of an agreement between the applicant and OCCL for gaining that State Certified Shoreline later on after the project is completed. And then number 20...are the mandatory five conditions that are part of the criteria for approval of the variance. Number 20 (a) through (e), I won't read through those, I've already read through those.

So...to conclude, in consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's report prepared for the March 8th, 2016 meeting, and the Department's recommendation report prepared for the same meeting, as its Findings of Fact, Conclusions of Law, and Decision and Order on the SM1 and the SSV, the Shoreline Setback Variance, and to authorize the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission. Those conclude my -- that concludes my recommendation, Chair.

Mr. Ball: Thank you. Okay we'll open up to questions from the Commission to the applicant. Commissioner Hudson?

Mr. Hudson: This is for the...you. I'm sorry I forgot your name.

Mr. Summers: Mike Summers.

Mr. Hudson: Yeah, Mike. I'm sorry.

Mr. Summers: Yeah, Mike Summers.

Mr. Hudson: I assume that this isn't the very first wall like this. Is it, the very first wall?

Mr. Summers: No. I mean, these are very, very common walls that have constructed, not only on Maui, but around the State of Hawaii and elsewhere.

Mr. Hudson: Okay, thank you. It's a hybrid, so, so what's their running history? How do they perform?

Mr. Summers: It's my understanding that these types of walls because of the way they are designed with the slope of the revetment and allowing the ocean to penetrate into the boulders and then come back out that they're probably the type of structure that would be the most durable. Because rather than building a seawall where all that energy impacts into the wall it creates all that force, you're allowing the energy to penetrate and then come back out so they would be a very durable structure.

Mr. Hudson: Mr. Chair --

Mr. Ball: Continue.

Mr. Hudson: The question is this isn't the first wall like this that has been built?

Mr. Summers: No.

Mr. Hudson: Okay. My question is how old are these types of walls? What's the running history? And I understand the theory that you're explaining to me, but I want hard core facts. We have x-amount of walls, none have failed, a couple have failed; do you have that, that information?

Mr. Summers: You know, I don't have that available to myself, but we do have some shoreline experts in the audience from the Planning Department. Kiumars? Jim?

Mr. Buika: Actually there, there aren't many walls that have been engineered like this in recent times. Since 2003, this is like one of the first. Projects that have come to the Planning Commission have been basically retaining walls that don't go down to the ocean, and they're doing OK. But this is really the first engineered revetment that I think is being brought to the Maui Planning Commission since 2003, since the shoreline rules. There are many seawalls around the island, old ones. They are -- but those are usually, mostly un-engineered. There are many Honokawai area, west side, south --

Mr. Hudson: Excuse me?

Mr. Buika: Yeah, go ahead. Sure. Sure.

Mr. Hudson: I'm just trying to get a history of this type of wall.

Mr. Buika: This type of wall.

Mr. Hudson: And you're saying that we don't have a history.

Mr. Buika: Well, we haven't permitted any. Okay, I'm giving you the permit history. I'm unaware of other, other similar type of walls. Maybe --

Mr. Hudson: I'm just, just trying to get how do these walls stand up.

Mr. Buika: Right.

Mr. Hudson: Because I don't know if we want to be a guinea pig, so I want some history. If we're going to put a wall like this, what's the history?

Mr. Buika: Well, we could ask the engineer. I guess the engineers would. I'm not, I'm not an engineer, so would you, would you get a little bit more information.

Mr. Siah: Good morning again. Kiumars Siah, structural engineer. As the name applies, it's hybrid. Hybrid means a combination of two different things. As far as each individual parts of those components that make the hybrid, they have many, many centuries of basically performance. You have revetments, and you have seen as all the harbors are, you can see them basically. If you just go to the harbor over here, you see the revetment part of it. The retaining wall part of it is any retaining wall. So we just combined it, and we engineered it. We just don't, don't just drop up some, some boulders. We make sure that the boulders are big enough. Actually if you look at the design of them, they have a specific range for weight. So, so they are carefully designed based on their practical performance of their revetments; all of them. Not only Maui or Kauai, or even United States shorelines, all along the entire world, everywhere that you have revetments, Netherland, European shorelines and other places. So we are not bringing -- the concept has been there and has performed well -- revetment. And the cost of retaining wall, they have reinforced concrete retaining wall has performed well and durable. We just combined them two, and as engineers, we tried to basically use whatever the knowledge which is proven record. And then put them together with little thing and thoughts of how we might basically fail and try to avoid them. That's basically what we have done.

As far as the permitting, I don't know the permitting, but that's not the thing that I would be concerned about. I'm concerned about basically is this subject, is it the thought. First of all make sense, is there physical evidence, ten years, 100 years, 200 years for revetment? Yes, it's a well-established fact. Anywhere you go, revetments, if you don't want to go with seawall, the revetment is the only -- the, the most efficient alternative to seawall which provides, basically, the benefits of the structural support system, and added benefit of dissipating energy as much as possible.

Mr. Ball: Thank you. Commissioner Hedani?

Mr. Hedani: Actually, this is just trying to answer Commissioner Hudson's question. I know of one slanted revetment. It's not a hybrid, but it's a slanted revetment just like he described that was done when Rob Hayashi was the Public Works Director. And it was put in -- at the Mahana Condominium, at the far end of Kaanapali which has a sandy beach. It was put in about 50 years ago, and 99% of the time you don't know it's there because it's under the sand and it hasn't failed. It's protected the Mahana Twins condominium which was built on a floating foundation, and the erosion had come to within 20 feet of the building which is why they permitted it, to be put in, to protect the habitable structure. In that case, it probably cost less than half a million dollars. They put in the slanted revetment. They haven't spent a dime on it since then, and it's lasted 50 years and you don't even know it's there.

Mr. Ball: Commissioner Higashi.

Mr. Higashi: I have a question about your construction of your construction of your . . . (inaudible) . . . I think it's comprehensive and great. However, if I were the owner of this property, what would it cost me to build this particular wall?

Mr. Siah: You'd have to ask the contractor. I'm an engineer.

Mr. Higashi: Who has the, who has the, who has the answer for this?

Mr. Buika: The valuation is \$450,000 for the entire project including the debris removal also.

Mr. Higashi: \$450,000?

Mr. Buika: Yes. Yes.

Mr. Ball: Commissioner Lay?

Mr. Lay: Okay. I have a question. Okay with this wall, I like your design and everything. I see how it works and how it possibly it will disperse the wave action. But I have a question with your neighbors, can, if they want to in the future tie into this?

Mr. Siah: Provided that they provide the same slope. Because if --. They, they have -- in other words, they cannot have a vertical.

Mr. Ball: Kiu, Kiu, use the microphone.

Mr. Siah: Provided they are consistent in order to tie into it they have to go with the --. It would be my preference, if they come to me I would say they basically you have to go back and provide a slope revetment, first of all. In nature, it should be compatible, which should be a revetment. And if it's a revetment, you have to go with the slope as we have done.

Mr. Ball: Continue.

Mr. Lay: Continuing with that. Okay, you're saying they can tie into it, but with these properties lines, you've got different property line with different variations towards the ocean, so it's going to go in and out. Is it still possible to joining in with that...with the existing wall?

Mr. Siah: With the existing wall? I'm sorry, could you repeat because I understand there are certain -- they cannot do. Because if we could come back and basically replicate or duplicate what they have, you wouldn't be allowed to do so. That's, that's my bottom line. I cannot come back and reconstruct what has been eroded...to the extent that it would

conform with the other, and if you look at the shoreline, the long line, you'll see the same thing. Right now, the, the -- what we are proposing would be a slope going up and coming back. Theirs, as soon as . . . (inaudible) . . . is almost vertical. And then in front of their property, those boulders, my understanding, is they are not on their property line but makai of the property line. So there's no way that you can make them the same unless they go back, or unless our client is allowed to rebuild and to match theirs.

Mr. Lay: Just an understanding of that. So we're talking about the profile of your shoreline where it could be possible but I'm seeing it hard to tie together.

Mr. Siah: Yeah, you definitely could be engineered, but what the permitting is, I don't know what the cost would be, I don't know. It's basically their decision. They, they have to go through this, this whole process which took for us, four years.

Mr. Lay: Okay, thank you.

Mr. Siah: Sure.

Mr. Ball: Commissioner Robinson?

Mr. Robinson: Please stay. I'm going to follow up with Commissioner Lay's question.

Mr. Siah: Sure.

Mr. Robinson: So we're here today to focus on one property and your wall.

Mr. Siah: Yeah.

Mr. Robinson: But we're also taking into consideration is Mr. Hamai next to him is when, is when...when the shoreline starts to take away his property has it does with everybody's, and he's ready to build the wall, will he be prohibited from, from building a certain type of wall which is a straight retaining wall because of the wall that you built, and the energy that you're taking? So, so we want to -- and that's the question is how does wall affect anybody else's, on either side, for them to do whatever they want to do?

Mr. Siah: Thank you for clarifying that. It doesn't affect in any way because they have the option if they are permitted, which I doubt very much, to go build the seawall because that was one of the things that we proposed. But, if they chose that, and if for any reason they are permitted to do so, they can come up, start at the -- because we, we provided that retaining wall. That retaining wall, they can have it there if they want to go with a vertical wall. Basically . . . (inaudible) . . . it would be basically a retained continuation for their wall, or you can keep that thing as a dividing between their slope if they go over the slope. In other words and to summarize, no, what we are doing does not prohibit or eliminate or

reduce any options for them; absolutely not. They can go through whatever solutions, their engineers, their planners come up with, and as long as we are allowed by the commission and the rules and laws. We are not eliminating any possibility.

Mr. Robinson: Thank you.

Mr. Ball: Further questions? Commissioner Lay?

Mr. Lay: Okay, mines going be on debris and removal, and how it's going to be done. There's -- we've heard that they're going to have a truck drive down there. I mean, what exactly is it? How exactly, how is that concrete going to be removed?

Mr. Siah: I leave that to the civil engineer.

Mr. Lay: Yeah, the civil engineer.

Mr. Summers: Thank you so --

Mr. Ball: Identify yourself.

Mr. Summers: Yeah, Mike Summers, Planning Consultants Hawaii, and we, we do have a contractor that's been retained. And essentially they will be using an excavator to go down there and break this rubble up, place them in dump trucks, and haul it away. Immediately after the rubble is removed, then this project would be implemented.

Mr. Lay: Okay. When you say you're going to have an excavator down there, do you mean down on the shoreline, or is it going to stay on top of the property and pickup and bring up?

Mr. Otomo: Ashley Otomo, Otomo Engineering. They're going to go down the graded ramp, the construction entrance ramp...which is, I think, 10 feet wide. And it would be graded at two to one slope maximum, and then there's going to be pad at the very bottom, where from there they can reach all the debris.

Mr. Lay: Okay, thank you.

Mr. Ball: Commissioner Robinson?

Mr. Robinson: I have a couple of questions. I'm going to stick with engineering. Is, is -- on your design, I saw that there was a pad at the bottom, on the ocean floor.

Mr. Siah: Yes.

Mr. Robinson: And is that all concrete?

Mr. Siah: The bottom part, below, yes, that, that is the foundation. If you look at the drawing, yes, at the bottom.

Mr. Robinson: So, is, is that, is that cement going to be below the surface where sand will cover that, or is that going to always be exposed and people might be able to walk on it?

Mr. Siah: There's no sand on there, number one. And then the, that, that part depends, if the water comes up, there would be water on top of it. If the water recedes, there will be, but there is no sand.

Mr. Robinson: So theoretically, once this pad starts, there's not really going to be a shoreline walkway because we're not going to want to be -- moss, moss and algae will build on top of this concrete, correct?

Mr. Siah: No, there are two parts. That, that part, maybe there's a misunderstanding. The bottom part, the foundation for that, for that would be . . . (inaudible) . . . But the top part, you have that, that flat plateau and the sloping and the next plateau, both are the very part, the exposed part are ungrouted.

Mr. Robinson: Mike, could you please show that picture because I saw, I saw where you have your rocks and your slopes, but I saw, I saw that there's a flat surface.

Mr. Siah: There are two. Yes, there's a flat surface, but there's a layer of big rocks --

Mr. Robinson: There will be boulders, so there is no exposed concrete. It's all boulders all the way through.

Mr. Siah: At the very top, you're right.

Mr. Robinson: All the way down to the shoreline, and to the water.

Mr. Siah: Yeah. Correct. If, if you hold on to this. No, no, this one.

Mr. Robinson: No, that's the one.

Mr. Siah: This one.

Mr. Robinson: No, that's my question Mike. That one right there.

Mr. Ball: Jim.

Mr. Robinson: Jim. I mean, my question, Jim.

Mr. Siah: Not this one.

Mr. Robinson: Okay, so, so, so this is the one I want you to answer. So I see a flat portion on the bottom there. Will that be covered with boulders?

Mr. Siah: No. That's a boulder. That's, that's --. That's the ocean. You see the --

Mr. Ball: It doesn't extend out that far.

Mr. Robinson: Actually, it's just not square. It's just --

Mr. Siah: You see, this line is the property line. This is ocean. We're not doing anything. This is, this is the ocean part. This is...this is the property line. This is the property line. And from here, everything that you see is the exposed boulders, ungrouted. So the arch is . . . (inaudible) . . .

Mr. Robinson: Thank you. Is, is --? Can I continue?

Mr. Ball: Continue.

Mr. Robinson: Does anybody have a question?

Mr. Ball: I do, but go ahead.

Mr. Robinson: I have a question. I didn't see in the drawings where there's a stair, but I saw there was a request for stairs.

Mr. Siah: The, the stairs, they are coming out, they are not going to be replaced.

Mr. Robinson: So no stairway?

Mr. Siah: No.

Mr. Robinson: Okay.

Mr. Ball: I have a question on the construction time frame and a contingency plan for severe weather event.

Mr. Siah: You want to answer that?

Mr. Summers: So -- yeah, we have been very cognizant of the fact that we want to avoid the rainy seasons and the high wave events. And so we would like to think that we could get

permitted by the middle of July and complete this construction by middle of September. That's kind of our goal. And, you know, obviously we'll be very cognizant of whatever, whatever kind of weather systems might be coming through the area. That is the driest time. We'll have BMP's in place, and we'll do, of course, whatever we can to mitigate should we have a storm event. And there will be a relatively, I mean, a short window where all that excavation will be done. And then the rest of the project will be actually building of the structure. So there will be that kind of a limited window for exposed areas.

Mr. Ball: Commissioner Lay?

Mr. Lay: How long is it going to take?

Mr. Summers: I think we're expecting it might be 60 to 90 days.

Mr. Ball: I have another question. The back of the bank, if you will, that's shotcrete...is that permeable at all or is that just a solid surface? Meaning -- is it --. Go back one, Jim. So are the waves going to then, let's say sheet flow if you will, through those rocks, and then the back is just solid, and it will just kind of come back to the ocean? Is that --?

Mr. Siah: See this, this part is solid because that's the face of the wall. This part is solid and then this is basically mirrored on . . . (inaudible) . . . So the entire thing would be from here going back there, coming back like U. Here is an L-shape . . . (inaudible) . . . The other part which makes the other leg of it is a mirror of this on the other side. So that would be --

Mr. Ball: No, my question is behind those boulders, right?

Mr. Siah: Behind those boulders.

Mr. Ball: Is that a solid surface or is there --

Mr. Siah: Yes.

Mr. Ball: -- some permeable, you know, some drain holes or whatever in that? Is there?

Mr. Siah: Do you see that? That's the wall.

Mr. Ball: But even further down?

Mr. Siah: Further down -- it's basically this continues all along, and then comes back. At the very end, it turns like that...come here.

Mr. Ball: No, further down. Underneath those boulders -- yeah, on the slope, thank you.

Mr. Siah: Understand you see this, and there's an 8-inch minimum shotcrete, right there.

Mr. Ball: Are there weep holes in that surface?

Mr. Siah: Concrete. Concrete. Concrete is another name for -- shotcrete another name for concrete, and . . . (inaudible) . . . is another name shotcrete which is another name for concrete.

Mr. Ball: Thank you. Is there weep holes in that...slope?

Mr. Siah: No.

Mr. Ball: The slope is solid.

Mr. Siah: The slope is solid.

Mr. Ball: Okay, Commissioner Robinson?

Mr. Robinson: Thank you. I have a question for Mr. Foley. Thanks for the presentation. It was really interesting.

Mr. Foley: You're welcome.

Mr. Robinson: Is, Jim? Jim? Yeah, are we able to, are we able go back to his presentation and the photographs from 1980? And, and, Mr. Foley, my question to you is...is, is what do you think happened to the, the mud embankment, I mean, the clay? Because I saw it really disappeared. And then my follow up question on that too because do you think the waves from the west took it away or do you think the waves from east took it away? Because I see your chart there's two different sides.

Mr. Foley: Right, okay. Well, let me first off say, a lot of this is speculation based on observations. I wasn't born in 1980, but, I can, can go back. So here's 1960. Let's, let's go forward. Let's go forward. 1975. Let's go forward one more here. Okay, 1987; what I see is it looks to me like a manmade structure jutting out there. I'm also noticing a little bit of an erosion scarp right here. So, now, I grew up in Haiku and one of -- I grew up on this beach. This is one of my first memories was actually on this beach. I've surfed out here many of times. Now when I say there's a long, an off shore, on shore current in this property that's, that's what I've observed. I also observed that there's a strong long shore current due to waves washing over this reef. And the waves wash over and they have to some place. So right in this channel which the surfers are using to access this shoreline, there is a strong current. And it's my belief that that current coupled with the wave action has really caused this erosion of this, of this clay shelf. But note that this clay shelf is not in front of the

Argyropoulos property; it's in front of the Goetzman's property. And it's really, that long shore current is really limited to that, that one area based on observations.

Mr. Robinson: So do you think the deterioration of that shelf came from the beach side or came from the property side to where the energy that took away that clay away?

Mr. Foley: Definitely from the Hookipa side. So there's a real strong, almost, almost like stream current right through there, right along that shelf. And if you were to go and try to swim through like during a big surf day, you couldn't even get through it. It would just wash you right through the beach.

Mr. Robinson: Okay. Question.

Mr. Ball: Continue.

Mr. Robinson: Could you put the next photo please Jim?

Mr. Buika: Pardon?

Mr. Robinson: Could you go to the next photo please? I'm sorry, can you get to almost current? Okay, so is, is -- my concern is, is for the strong...the winter waves that come and might impact Mr. Hamai's property. As I understand it will come in through way and like how you discussed earlier, and in your estimation, will this wall help Mr. Hamai's property or not affect it at all or, or be a detriment to Mr. Hamai's property?

Mr. Foley: Yeah, so we looked at that pretty carefully. So what we have, you know, we have this erosion scarp, and it's my opinion that this scarp is forming from these northwest swell events. So the, the topography, the natural geology of the bay protects, protects these properties from the northeast, from the northeast, the traditional seas we call them, that you get from all of our lovely trade winds. But when we get these northwest swells, the way the bay is formed, the bathymetry it allows a lot of energy to come into the bay. Some of it breaks on the offshore reefs, but a lot comes through. And when you look at the direction of the waves, and the orientation of this coastline, these properties here, they are, they are really exposed so they're getting the brunt of the energy. On either side on the headlands, you don't get as much. So these will be our most exposed properties. And the structure as it's designed it's basically intended to retain the soils and to stop this erosion scarp. We don't think that there will be a significant impact of flanking. The way it's designed, it's deflecting energy inward, into the armoring that, that they're going to be constructing. So it's going to mitigate that energy and basically absorb it onto the, the revetment slope.

Now if you don't do anything, eventually this escarpment is going to widen, and it's going to start to eat into the surrounding properties. It's going to keep going back towards the

structures, and then it's going to go behind the Hamai's boulder pile. And when it does that, the Hamai boulder pile is eventually going to start fall in and the whole thing is will unravel, and it will just progress. This structure is going to prevent that, so it's going to protect the Argyropoulos property, it will also provide protection to the Hamai property, and in the long term to the Goetzman's property from that continuing widening of, of an unmitigated problem.

Mr. Robinson: Last question. Jim, can you please go back to the drawing that we had that we were looking at the, the, the hand drawing? So Mr. Foley, looking at this drawing that on the top of the page where it has that wall next to the Hamai's property, the strong waves energy comes from, from the Argyropoulos and it would essentially hit that wall to take some of the energy away from Mr. Hamai's property. So what I'm looking at is actually would hopefully help preserve Mr. Hamai's property because this would be taking more of the energy and it would kind of help that from trying from tailing behind. Is that true?

Mr. Foley: Exactly. So if you were to go and were to stand on the property here where this coconut tree has recently fallen in and that Ironwood stump has fallen it, and if you looked out into the ocean side you would see, on this side, there's a surf break, and on this side over here there's, there's that reef. In the middle, there's not much, there's not much rocks, there's not much sticking out to stop the waves. So really the Argyropoulos property is getting hit head on by a lot of, a lot of this northwest energy. And what happens is as these waves approach, one, they impact into the boulder slope, but then as they impact that, waves, you know -- these are fronts moving in -- and as they approach this shoreline, they're going to deflect or bend. And so this structure is designed that it's going to bend in and absorb that energy in this area. Now if -- you know, the Hamai boulder slope is protecting the Hamai property. Currently we have a failed seawall here. That boulder slope it could be impacting and making this problem a little worse for the Argyropoulos property, at the moment. But once we come in and build the structure, any wave energy that hits here, it's going to reflect. So a portion of the energy is going to reflect off the wall. Some of it will go up, and portions go out, and some of it goes back. But the way this is designed, it's going to reflect the horizontal portion, mostly in this way. There will be fraction going that way, but the orientation of that angle makes it most preferable in my opinion to stop any sort of flanking on this side. And keep in mind too that flanking is also mitigated partially by those big boulders.

Mr. Robinson: What happens to the water and the waves coming from the opposite side? Is that also curved to where it would be deflected as well? Or will it be --? On your top corner there, if the water comes in, the water can come in then --

Mr. Foley: On this side here?

Mr. Robinson: -- and then it would be more impactful to the Hamai, or will it also deflect it . . . (inaudible) . . . ?

Mr. Foley: So if you remember, just the orientation of this bay, we have, we have that real prominent reef that sticks out on the Hookipa side of the bay. And that reef is dissipating all that northeast wave energy. If we could go back Jim. Ah, yes, here we go. Okay so it's a little tough to see, but so here's Kuau. This is Kuau Mart. So here we have the -- this reef that juts out, and people are familiar with this area. This is a windsurfing spot, so it's impossible to paddle out that far. But there are huge waves that break on this reef. And when waves break they dissipate energy. This, this headland also protects this, this bay from the northeast, the prominent, you know, wind swells. Now wind swells are a problem for Maui because they're so constant here, we have so much winds. Almost every day, we get these, these northeast winds which produce a lot of waves and this causes a lot of erosion. But the way that this bay is formed by nature, we have this nice c-shaped and it's blocking all that energy. So really the only northeast energy that you could get would be energy that's generated inside that bay from the winds, and it's just not enough fetch we call it, or not enough distance for the winds to really make a strong wave effect on the property. So in my opinion really the biggest concern is these northwest waves, and this structure is designed to mitigate effects from that kind of erosion.

Mr. Robinson: Thank you.

Mr. Ball: Commissioner Higashi?

Mr. Higashi: Looking at, Jim, Exhibit 7. There was concern about the rippling effect of erosion, and wave action, and would you say that, that if you take the Paia Town area where Baldwin Park is, in that particular area, Kanaha Pond, there are, there are two major reefs that run in that area. Consequently you have less erosion. Would you agree?

Mr. Foley: I agree. Yes.

Mr. Higashi: Now you move towards Baldwin, we've lost a lot of sand in that particular area because we've also noticed that the level of water has increased.

Mr. Foley: Correct.

Mr. Higashi: So, because that's a low line area we've lost a lot of that. Now that goes all the way through, up to Mama's Fish House, almost, if you look at it, sand wise. Beyond that, Hookipa on East Maui is all rocky and the wave actions are so big because there's no protection, there's no large reefs that will hold back the waves.

Mr. Foley: Correct.

Mr. Higashi: Now my understanding is that there was a company that produced these big concrete, what do you call them and they, they had these artificial reefs.

Mr. Foley: Right.

Mr. Higashi: Would you say that would that be possible taking just Kuau, and going towards Baldwin Park, whatever. If you have these structures put into the ocean with these seaweeds coming up, do you think that would prevent a lot of the erosion that's now occurring in this particular area, this whole stretch of it?

Mr. Foley: Thanks for your question. Absolutely. Let me, let me just give you a little background to answer your question if you don't mind. So I actually did my PhD dissertation on this topic, on looking at submerged artificial or manmade reef structures built out of concrete or sand filled materials, and looking at how that would change wave propagation patterns as they approach the coastline. And how that would change shoreline erosion or even wave problems for navigations for ships and stuff like that. And, and let me say, yes. I mean, we are experiencing sea level rise. You can look at the tide gauge in Kahului, and the record goes back to 1950. And you can look at the average sea level for the last 65 years and see that sea level has risen five inches since 1950, on Maui. So sea level rise is a big component to the problem. And the issue is, I mean, reefs -- waves break because of reefs or they break because of changes in bathymetry so it's not friction that breaks waves, it's changes in sea depth. So waves break because the sea floor comes up to an elevation. And you can think of it as a one to one ratio; a six foot wave would break in six foot depth. Now if you have say a foot of sea level rise, now the depth of that reef is seven feet. That six foot wave doesn't break, now it impacts on the shore. So we have this more energy that's coming, and that could be a big contributor to the shoreline loss that we're experiencing because even this five inches, it could be having a pretty significant impact.

Now one thing we could do from an engineering perspective is come in and build artificial structures or manmade structures, maybe concrete to fill in some of the gaps in this topography. And let me say we have looked at this not only from an engineering perspective, but also from an ecological standpoint, how we can build these structures to be ecologically beneficial to provide coral reef habitat, fish habitat, algae, stuffs like that. So we can make these environmentally responsible manners. And this is something that potentially it's worth coastal communities exploring as another option to solve some of these coastal erosion issues.

Mr. Higashi: Yeah, the reason why I asked you that was because I asked the gentleman that question, if I owned that property, how much I would spend. And you said, 400 somewhat thousand dollars. Now how much would \$400,000 do in building these artificial things to prevent erosion in our personal beaches.

Mr. Ball: Let's bring it back to 475 Hana Highway.

Mr. Higashi: So, can I finish my --

Mr. Ball: It doesn't pertain to this, so, I mean, you guys can trade numbers afterwards.

Mr. Foley: Anyway, we can discuss later, for sure.

Mr. Ball: As fascinating as it is and as interested as I am in it, it doesn't pertain to the property. So, are there further questions? Commissioner Hedani?

Mr. Hedani: Actually, I think it does pertain, Keone, because he's looking at an alternative to what's being proposed, and it's an alternative that they can consider.

Mr. Ball: Is that your question?

Mr. Hedani: Well, I'm just saying that we should allow him to answer the question.

Mr. Ball: Well, he's talking about dollars and artificial reefs; it's not pertaining to this particular item. So, are there further questions? I have a question that was -- it's probably for Jim about something that Kiu actually mentioned in his testimony about...how, how far back the, the applicant's seawall is compared to his neighbor's property. So his neighbor's property line is -- the property is basically right up to the ocean if you will, to the rocks, and then this one is set back. So now if that property had to do a seawall eventually now they wouldn't be allowed to do that. They'd have to do something similar to this project where they have to kind of move back into their property?

Mr. Buika: No, I don't think so. The reason that this project is moving back is because that large puka, the large erosion area there is now State land. It's now part of the ocean so that would be, if they brought it back to the property line or beyond the property, it would be in State waters. So they're forced to move back and use that, that -- the existing land. So that's the difference.

Mr. Ball: Okay. Thank you. Further questions? Seeing none, do we have a motion? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Medeiros: Second.

Mr. Ball: Moved by Commissioner Hedani, second by Commission Medeiros. Discussion? Commissioner Hedani?

Mr. Hedani: I've seen this presentation three times, and we've provided comments to the, you know, to the applicant three times. I think, I think in this particular case the

improvements that are being suggested is the best alternative that they can come up with under the circumstances. They've had hardening on either side of their property already that exists, and what they're doing is reacting to a situation where a failed seawall which is the debris that's in the ocean that hadn't been repaired is causing severe erosion. And what they're trying to do at this point is resolve that erosion in a way that will probably last a 100 years is my guess once it's done, and will not pollute the ocean with additional top soil falling into the ocean from the erosion that will continue if nothing is done. I know I've heard testimony about a more global solution, but in this particular case each individual property owner has to protect their own property which is what they're doing. And I think they've provided for lateral access along their shore, it will be natural boulders, you won't slip on them more than you'll slip on a natural boulder that exists on along the shoreline. And I think, my only concern is that the process, our process forces them to take four years to get to this point, probably \$100,000 worth of studies to get to this point, just to get approval to proceed. And if you look at the north shore of Oahu, you know, the storm events that are taking houses down, in four years you won't have a problem because the house would be gone.

Mr. Ball: Commissioner Duvauchelle.

Ms. Duvauchelle: I agree with Commissioner Hedani. I wanted to tell Mike I've also listened to your presentation. I think you've done a really good job putting together a project team and maneuvering through a very difficult process, and I hope you have an expedient process in gaining your building, your permits. Thank you.

Mr. Summers: Thank you.

Mr. Ball: Commissioner Robinson?

Mr. Robinson: I'd like to agree with our past two commissioners and I hope that in the future people that need to protect their properties they will not take them this long and lose even more land because when they started that seawall could have been a lot closer to the, than what it is now. So hopefully this is a, this is a staple of what other people can follow and this process can be more expedient.

Mr. Ball: Commissioner Medeiros?

Mr. Medeiros: Yeah, I seconded this. Like Wayne, and seeing this three times, and this revetment way of protecting of what's left of the property, it seems to be the best way. It did bother me about the Hamai property but according to the engineers it's a better plan than leaving it as is because if you just leave it as it eventually it will affect the Hamai property. You know, so, they are helping by stopping it where it's at now. I think it's a good plan. It was good plan when I first saw it. The second time around, you showed me on it, and now it's time to vote on it, and I'm going to vote with it.

Mr. Ball: Commissioner Higashi?

Mr. Higashi: I wholeheartedly concur that this particular project needs to be done because of the severity of the erosion. And I agree with Commissioner Hedani that, that our process is really hindering a lot of the deterioration that's taking place. But my parallel to the \$400,000 was that for the State people we should look at alternative ways of saving the whole State rather than looking at piece meal situations and trying to prolong the things that are occurring to our people in our, in our shoreline area.

Mr. Ball: Commissioner Lay?

Mr. Lay: For me, the north shore, I don't know how you could ever go against it. It's a strong opposing force, and I'm glad that you guys are working to see what we can do to try and help it out. I personally like the . . . (inaudible) . . . drones whatever you're putting in the water but that won't work and I'm not sure because the waves are just too big. So I'm glad you guys are moving forward with this engineering design, and I think it will work.

Mr. Ball: Okay, any further? All in favor of the motion please raise your hand and say aye.

Mr. Spence: Seven ayes.

Mr. Ball: Any opposed? Abstention? Motion carries.

Mr. Buika: Thank you.

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

**VOTED: To Approve the Special Management Area Use Permit and Shoreline Setback Variance as Recommended by the Department.
(Assenting - W. Hedani, J. Medeiros, L. Hudson, I. Lay, S. Duvauchelle, K. Robinson, R. Higashi)
(Excused - M. Tsai)**

- 2. MS. SYLVIA HAMILTON KERR on behalf of HOOKAHI PALAMA ALII LLC requesting a State Land Use Commission Special Use Permit and a Conditional Permit in order to conduct historical and botanical tours, physical therapy/exercise classes; as well as special events such as engagements, entertainment, fashion shows, photo shoots, workshops, or retreats, farm to table culinary events, musical performances, benefit events, hula performances, film screenings in the State Agricultural District at 250 (also known as 224) Haiku Road, TMK: 2-7-003: 006,**

Haiku, Island of Maui. (SUP2 2014/0011) (CP 2014/0001) (G. Flammer)

Mr. Ball: We'll move right into Item C-2. Gina?

Mr. Spence: Okay Commissioners.

Mr. Ball: I'm sorry, Director.

Mr. Spence: Item C-2 is Ms. Sylvia Hamilton Kerr on behalf of Hookahi Palama Alii LLC. They are requesting a State Land Use Commission Special Use Permit and a Conditional Permit to conduct historical and botanical tours, etcetera. I'll let Gina Flammer -- it's basically the Haiku Mill Property. I'll let Gina explain what's up with that.

The minutes to Item C-2 (Hookahi Palama Alii LLC) was transcribed by a court reporter and was approved separately by the Maui Planning Commission.

Conditional Permit

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

**VOTED: To Recommend Approval of Conditional Permit to the County Council as Recommended by the Department.
(Assenting - M. Tsai, J. Medeiros, L. Hudson, I. Lay, W. Hedani, S. Duvauchelle, K. Robinson, R. Higashi)**

State Land Use Commission Special Use Permit

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

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

(The Maui Planning Commission recessed at 12:10 p.m. and reconvened at 1:15 p.m.)

- 3. MR. EDWARD BETHAM and MRS. OLGA MUNOZ NADAL requesting a Bed and Breakfast Home Permit in order to operate the Villa Maui Bed and Breakfast, a four(4) bedroom and breakfast home located in the RU-0.5 Rural District at 1821 Haiku Road, TMK: 2-7-007: 076-0002, Haiku,**

Island of Maui. (BBPH T2015/0009) (T. Furukawa)

The application is being taken to the Maui Planning Commission for action because there is a permitted bed and breakfast operation located within 500 ft. of the subject property.

Mr. Ball: Meeting back to order. We are on Item C3. Director?

Mr. Spence: Commissioners, this is Mr. Edward Betham and Ms. Olga Munoz Nadal, requesting a bed and breakfast home permit to operate the Villa Maui Bed and Breakfast in the State Rural District in Haiku, and our staff planner is Ms. Tara Furukawa.

Ms. Tara Furukawa: Good afternoon Commissioners.

Mr. Ball: Good afternoon.

Ms. Furukawa: The proposed Villa Maui B&B is located at 1821 Haiku Road. The owners, Edward Betham, and his wife, Olga, have owned the half acre lot from 2013. One dwelling is proposed for B&B use. The four bedroom dwelling which was built in 2013 has a kitchen, two living room areas, three full bathrooms, a laundry room, a lanai and outdoor parking space. And the permit request is for all four bedrooms in the dwelling. This item is under your review because the applicant is requesting a bed and breakfast permit to operate a B&B that is within 500 feet of one existing permitted B&B.

Now to speak and even more detail about the proposed B&B, here's the applicant, Edward Jamie Betham.

Mr. Edward Betham: Good afternoon Director, Chair, Commissioners. My name is Edward Betham, co-applicant for the bed and breakfast at 1821 Haiku Road, Maui. This -- that showed the, the house we're talking about, and the location right here. It's at the top of West Kuiaha -- sorry not the top, but the junction between West Kuiaha and Haiku Road. It's located down a driveway and tucked in as you see right there. Next. There's an aerial view of the property. Driveway comes down the right hand side. Now the top of that driveway. And you can see the proposed bed and breakfast down the bottom left, highlighted in red.

So just closing in on that, we have the concrete driveway; four parking spaces for the bed and breakfast. Downstairs layouts we have two bedrooms on the left hand side there. It's the east side of the house; one bathroom, main living area with kitchen, and lanai. And a separate, another bedroom on the right hand side of the screen there. Next.

And on the upstairs level, another bedroom, and kind of an open mezzanine area that we have the TV area for the bed and breakfast. Next slide. And so layout of the -- layout you'll see in the top left hand slide there, on the left hand side that's the bed and breakfast home,

and on the right hand side of that slide is our home where we live. Bottom right hand slide is the entrance way and the access to the house, of the bed and breakfast. And top left is the south facing side of the house. Bottom right slide is the west facing side of the house. Next. Bedrooms -- top left, bedroom number one, bedroom number two on the right, and the bath and shower on the bottom slide. Bedroom number three and bathroom which is -- and then bedroom number four and the shower which has, has an ensuite.

This is the kitchen on the top left there, and main living space on the top right, entrance to the lanai. The bottom left picture is the picture of upstairs, from the mezzanine, TV area. And the bottom right picture is the picture of the lanai.

So as you can see the view to the north, top left there, slide number 13. It's nice and open. View from the south is our neighbors. And view to the east, bottom right, that is our property, our home right there that you see in the slide. And view to the west, bottom right hand picture, that looks out towards the West Maui mountains and our neighbors on West Kuiaha. Next.

So the way we see our roles as bed and breakfast owner, we want to make sure there's no negative impacts to anybody in the local neighborhood. We feel that bed and breakfast tenants must adhere to strict policies regarding levels and hours of noise. We've been talking about for a different application before, but still quite relevant. And far stricter regulations than a regularly owned or rented home. Bed and breakfast is regulated by the County to ensure the neighborhood is not negatively affected by it. A regular owned or rented home is not. And we as bed and breakfast owners as you've seen live on the site, and it's in our best interest to ensure that our tenants are like minded family, not party goers or party givers. We have two children. We live there, so that's, as I say, in our interest as well as everybody in the whole neighborhood. And lastly, just to make sure that it's a nicely maintained yard and home. There's no potential eye sore situation for other people.

We -- my wife is from Spain, I'm from England as you may have...heard. We have a lot of family, you know, who do come from and visit from England and from Spain. We try and limit the amount of people who come from Spain. My wife is quite happy with my family from England, but maybe not so much of hers. But still we have, you know, people who come to stay with us from time to time, and that's one of the reason we're not able to rent it out for long term periods. We've have had in the past some -- a couple who stayed there and it wasn't that we were unhappy with them, but at the end of term of rent it was, it was quite a hard situation to deal with in the terms of the condition of the house. Just very dirty, very messy, a lot of renovations that we had to do on a relatively new house with regards to refinishing surfaces, floors, showers. And we feel, you know, from our situation that short term rental will allow us to maintain our family and friends coming, and will allow regular cleaning and maintenance, and less wear and tear on the home. So, thank you. Here's Tara.

Ms. Furukawa: Okay, as you can see there's one approved STRH within 500 feet of the

proposed Villa Maui location. I'm sorry, approved B&B. The approved B&B is the Hookipa Highway located three blocks away, at 1765 Haiku Road. Currently there are 36 permitted B&B operations in the Paia-Haiku Community Plan region out of a total maximum limit of 88 operations. There are no permitted STRH's within 500 feet. Out of a cap of 88 permits, there are 42 STRH operations in the Paia-Haiku Community Plan region.

Neighbor notice was provided twice; once for the STRH application, and more recently for the STRH application public hearing. Subsequent to the public hearing notice comment deadline one protest letter was received from the owner of the lot adjacent to this one. The neighbor was concerned about possible loss of character of the residential neighborhood, the traffic and noise, and shortage of long term rentals. He was particularly concerned about the house adjacent to the dwelling because he, he owns it and rents it. It should be noted that the owner reached out to the neighbor and is attempting to mitigate some of the concern via a thicker landscaping border between properties. Five letters of support were received; three from adjacent neighbors, and two that resides, from those residing within 500 feet. A letter of support was also received from a former neighbor to the applicant's former business, Café Mumbo, that attests to the applicant's character. The applicants worked to address one of the concerns which is the way to handle truck deliveries and showed themselves to be courteous and considerate overtime.

Okay, this concludes our presentation.

Mr. Ball: Thank you. At this time we'll open it up for public testimony. Anyone that would like to testify at this time may do so. Seeing none, public testimony is now closed. Can we get the Department's recommendation?

Ms. Furukawa: Okay. The application complies with the 17 standard conditions for a bed and breakfast permit, and as such the Department recommends approval.

Mr. Ball: Thank you. Commissioners, questions? Commissioner Robinson?

Mr. Robinson: On the aerial photograph I see four structures. Am I missing something?

Mr. Betham: No, you're not missing anything. Yeah, that is --. So, if you're looking at -- the top left is the bed and breakfast home; top right on that picture is our home; then bottom left in that little corner is our neighbor is Andrew Grier; and then I believe the other structures are -- they're the containers. They have --. Andrew Grier is developing further the --. I'm sorry, the mauka side of the slide, the south side, bottom end of it -- so those are containers with tools and things like that.

Mr. Ball: Director.

Mr. Spence: Commissioner, what this is, this is a property in the State Rural District, also zoned County Rural. The way the Rural ordinance reads you can one house --. I assume

this is zoned rural half acre.

Mr. Betham: Correct. Yeah.

Mr. Spence: You're allowed to have one house per half acre, not one, you know, a house and ohana per lot. You're allowed to have a house, one per half acre, and an ohana, so that's why you see four residences there. And you can do that, you can have a horizontal property regime. In other words you can condominiumize the property. Any further than -- I'm not sure what Public Works, what their rules say anymore, but if they were to do more than those three primary homes, they would have to do subdivision improvements. They would have to put in curb, gutters, sidewalks, all that.

Mr. Ball: Commissioner Robinson?

Mr. Robinson: Director, I thought there was a rule regarding you could put homes up on the, on RU's, but there was also the fire safety and --. So is this an area that that is not included for certain amounts? I think that's -- that was the -- that is my question.

Mr. Spence: Well, building permits go to the Department of Fire Safety. I mean, just plain building permits. So if it did not meet fire code they would not have been granted a building permit for the house.

Mr. Robinson: Can we verify they have building permits?

Mr. Betham: Yeah.

Mr. Robinson: It's all -- everything. Okay. Thank you.

Mr. Ball: Further questions. Seeing none...do we have a...motion? Is there a motion? Commissioner Hedani?

Mr. Hedani: Move to approve as recommended.

Mr. Hudson: Second.

Mr. Ball: Thank you. Moved by Commissioner Hedani, second by Commissioner Hudson, further discussion? All in favor raise your hand and say aye.

Mr. Spence: That's eight ayes.

Mr. Ball: Motion carries. Congratulations.

Mr. Betham: Thank you very much.

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

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

D. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 23, 2016 MEETING AND REGULAR MINUTES OF THE NOVEMBER 10, 2015 AND NOVEMBER 24, 2015 MEETINGS

Mr. Ball: Alright. Moving on to Item D, acceptance of the action minutes of February 23rd, 2016 meeting, and the regular minutes of the November 10th and November 24th meeting.

Mr. Medeiros: Move to accept.

Mr. Lay: Second.

Mr. Ball: Moved by Medeiros, second by Lay. All in favor -- any discussion? All in favor say aye. Any opposed? Motion carries. We are moving on to Item E, Director's Report.

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

**VOTED: To Accept the Action Minutes of the February 23, 2016 Meeting and the Regular Minutes of the November 10, 2015 and November 24, 2015 Meetings.
(Assenting - J. Medeiros, I. Lay, L. Hudson, M. Tsai, W. Hedani, K. Robinson, R. Higashi)
(Excused - S. Duvauchelle)**

E. DIRECTOR'S REPORT

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**

MR. TONY BRUNO, General Manager of the WESTIN MAUI RESORT & SPA requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Westin Maui Resort & Spa Renovation and related improvements at 2365 Kaanapali Parkway, TMK: 4-4-008: 019, Kaanapali, Island of Maui.

(SM1 2008/0019) (K. Scott)

Mr. Spence: Commissioners, number one under Director's Report is a notification that we intend to process a time extension for Mr. Tony Bruno of the West Maui Resort & Spa. It's a two-year time extension. You can waive your review or you could decide you want to hear it, and with us this afternoon is Mr. Keith Scott.

Mr. Keith Scott: Good afternoon Commissioners.

Mr. Ball: Good afternoon.

Mr. Scott: The Westin Kaanapali applied for a permit to renovate the porte cochere and the lobby and received SMA Use Permit, SM1 2008/0020. It was approved by the Commission in April of 2009, and since then has received two, two-year extensions; one in June of 2012, and one in April of 2014. There have been no significant changes in the special management area that would cause any concern. Cheryl Okuma of Munekiyo Hiraga is here to give you some project specifics should you would like that. I should also note that the resort general manager Mr. Bruno and a Starwood representative from the parent company are also in the audience.

Mr. Ball: Thank you. Let's... We'll wait...and then let's see, is there any public testimony at this time? Seeing none, we'll close public testimony. Recommendations, Keith?

Mr. Spence: It's just -- it's a notification, Commissioners. You can either just to acknowledge receipt of the request and you can either waive your review or --

Mr. Ball: -- or give it to you. Okay. So at this time then, questions from the Commission? I have one question, why the extension. Why we're going for another extension?

Ms. Cheryl Okuma: Good afternoon Chair Ball, Commissioners, Cheryl Okuma from Munekiyo Hiraga.

Mr. Medeiros: Good afternoon.

Ms. Okuma: Hello. Good afternoon. With me is Tony Bruno, the General Manager, since the summer of last year for the Westin Maui Resort & Spa, and Lawrence Butler from the Starwood Hotels. Basically, you know, there have been some things that have occurred over the last several months. One of them is the placement of the new general manager, Tony Bruno who's here this afternoon, but also in regards to what you've heard as far as the acquisition of the Starwood by the Marriott. And so now in regards to this particular project there's a desire to basically preserve this project in terms of the ability in terms of moving forward in the future.

Mr. Ball: I guess I didn't understand that last part.

Ms. Okuma: Okay. So the Starwood basically for this particular resort has been acquired by the Marriott.

Mr. Ball: Right.

Ms. Okuma: And so that is the process that has occurred or there's -- I guess there are things that's occurring in regards to that so it's going to basically be a new entity, right?

Mr. Ball: They haven't -- they haven't made the deal yet, they're in the process.

Ms. Okuma: Yeah.

Mr. Ball: Got it. Got it. Any further questions? Seeing -- Commissioner Medeiros.

Mr. Medeiros: I have a question for Bruno.

Mr. Ball: Mr. Bruno.

Mr. Medeiros: Okay with this acquisition by Marriott, are they really interested in this or they just want to keep their options open?

Mr. Tony Bruno: So the acquisition by Marriott --

Mr. Ball: Mr. Bruno, could you identify yourself please? Thanks.

Mr. Bruno: I'm sorry. Tony Bruno, General Manager, Westin Maui Resorts & Spa.

Mr. Ball: Thank you.

Mr. Bruno: The acquisition by Marriott is of the company. It's not just of the individual hotel. And so they are acquiring all the brands. The shareholders are voting at the end of this month, and as of right now we anticipate that mid-summer that we will have a closing and we will be all one family. We will continue to be a Westin.

Mr. Ball: Thank you. Commissioner Tsai.

Mr. Tsai: Yeah. And Mr. Bruno, thanks for coming forward. So my understanding is Starwood's current owner and is being purchased by Marriott...or in discussions for purchase.

Mr. Bruno: So the hotel is owned by Starwood; Marriott is buying the overall Starwood company which would include any assets that are transacted during that same time period.

Mr. Tsai: Marriott owns many brands. I mean, the Ritz Carlton, I believe, too, right, part of that whole brand.

Mr. Bruno: Yeah. There will be a total, I think, by the time it's all said and done, 30 brands.

Mr. Tsai: Right. Thank you.

Mr. Ball: By your stock now. Thank you. Further questions? Seeing none. Seeing none, is there a motion?

Mr. Medeiros: So move.

Mr. Ball: Moved by Commissioner Medeiros.

Mr. Tsai: Second.

Mr. Ball: Second by Commissioner Tsai. Discussion? Director?

Mr. Spence: The -- to waive review.

Mr. Medeiros: Yeah.

Mr. Spence: Okay.

Mr. Ball: Commissioner Robinson?

Mr. Robinson: Commissioner Hedani, do you have anything to add about this project?

Mr. Hedani: I support the motion to waive review. I'm very familiar with the improvements that they're talking about, and I know the transition that they're going through, Mr. Bruno coming on board, and I'm sure he'll do a good job.

Mr. Ball: Commissioner Medeiros.

Mr. Medeiros: Yeah, I support the...the project. You know when you guys came before us a couple of times, I supported it then, I still support and the reason I want to waive the review is, you know, Director is very capable of making this decision.

Mr. Ball: It's a rumor.

Mr. Spence: Thank you.

Mr. Ball: All in favor of the motion, raise your hand and say aye. Any opposed? Thank you.

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

VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension.
(Assenting - J. Medeiros, M. Tsai, L. Hudson, I. Lay, W. Hedani, K. Robinson, R. Higashi)
(Excused - S. Duvauchelle)

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

February 11, 2016-SMA Emergency Permit approval letter to MR. THORNE ABBOTT, consultant for MR. MARK REEDY for Seawall Repair and Stabilization for property situated at 131 Aleiki Place, TMK: 2-6-012: 030, Paia, Island of Maui. (SM3 2016/0002) (SSA 2016/0010) (K. Scott)

Mr. Ball: E2, Director.

Mr. Spence: Okay Commissioners, this is -- we are notifying hereby notifying you --. We are hereby notifying you that we issued a special management emergency permit on February 11, 2016. We've sent a letter, approval letter to Mr. Thorne Abbott, consultant to Mr. Mark Reedy for a seawall repair. This is for -- this is just for informational purposes. You should acknowledge receipt. And part of it -- and Mr. Keith Scott is here also to answer any questions.

Mr. Ball: Okay, any questions from the Commission?

Mr. Scott: Let me just point out that the, the pictures, all of them except the very last one are what the wall looked like before they started to do anything. The very last picture is what it looks like right now so I didn't want any confusion about that at all. And that left portion of the wall that you see was actually the base of the overall wall, and that will eventually be removed, but not until the end of the wave season which will be April, May or so.

Mr. Ball: Okay.

Unidentified Commissioner: . . . (inaudible) . . .

Mr. Scott: The initial proposal was to stabilize existing wall, and it was discovered that it could not be stabilized. And so the fill behind the wall was removed and the wall was taken down in steps, so that we didn't get anything out into the water. What the end result is going to be we're not sure exactly yet, but that would be the subject of . . . (inaudible) . . .

Mr. Ball: Yes, Commissioner Robinson?

Mr. Robinson: I'd like to recommend a hybrid wall.

Mr. Tsai: Care to elaborate Commissioner Robinson?

3. Discussion of Commission Member Attendance

Mr. Ball: You missed it. When you come late, you don't get the joke. You come on time, you get the joke. Alright...let's see, okay, thank you. Item E3, discussion of commission member attendance. Who wanted this on the agenda?

Mr. Lay: I'd like to say Wayne, I don't know what you do to the rest of us, you haven't missed one.

Mr. Ball: No one likes to show off. That's all.

Mr. Hedani: Thank you. Thank you for the report.

Mr. Robinson: You wanted a star next to your name, that's why.

Mr. Ball: Good job on your attendance. Do you have questions on this...for Corp Counsel? He's ready; any question you have. Commissioner Tsai.

Mr. Tsai: Is there a -- is the a number percentage that we're silently held to that we have to attend before --

Mr. Ball: There are specific rules and Corp Counsel will --

Mr. Murai: Well for the rules for this board, the rules only require that if you're not able to attend because of illness or other commitments that you notify the department. And I think, you know, in the short time I've been with you folks, I think, you know, this board does a pretty good job of that. I know that in the past sometimes we have a bare quorum it's sometimes tough to do business. But, you know, of course, no fault of anyone. It's just the way it is. But...you know, I know for example other, you know, other boards -- certainly please don't take this, you know, as an implication that it's a problem with this commission -- sometime in other boards you see board members or commissioners purposely staying away to prevent there from being a meeting and having a quorum and taking action. And in those kinds of situations certainly our County Charter if, if there is a truly, you know, bad board or commission member, the Charter allows the public to, to initiate a recall action. And if for whatever reason the, say the Mayor, who appoints board members and commissioners is unhappy, the Mayor can certainly recommend to the

Council that board or commission member be removed. And that's kind of like our rules and the County Charter's provision regarding, you know, board members and if they have attendance problems. I'm not sure -- I can't remember why it was put on, but you know, seeing that, you know, attendance was going to be discussed that was just my, those are just my thoughts are as far as what the rules are, our rules regarding attendance which are pretty simple, and the bigger picture as far as board and commission members.

Mr. Robinson: Could you restate those rules again?

Mr. Ball: Commissioner Robinson.

Mr. Robinson: Sorry.

Mr. Murai: Let me make sure -- in fact, I can point it out. Yeah, the rules, Section 12-201-28, Attendance:

"No member shall be absent for the service of the commission unless member is sick or otherwise unable to attend, and has so advised the chairperson prior to the meeting."

I'm sorry, so I said the department, it's really the chair that we notify. Or of course, the most efficient way is to notify the chair through, through the commission secretary. The -- if -- you know, and this is not just for attendance, but generally speaking if the public were unhappy with a board member, the public through the recall process in the County Charter could initiate a recall action of a commissioner or board member just like they could the Mayor or a Council member. And if the Mayor, for example, wanted to remove a board or commission member, he can initiate -- and it has to be for cause. In other words not just because the Mayor changed his mind but because a commissioner committed some kind of misconduct, the Mayor can request or move to have that commissioner or board member removed from office. But, the Council has to approve it. In other words because the Mayor appoints and the Council approves, you'd reverse that process by doing, doing it the same way.

Mr. Ball: Okay, everybody happy with that? Thank you. Okay, Let's see, Item E4, 5; 4 and 5.

4. SMA Minor Permit Report

5. SMA Exemptions Report

Mr. Spence: Commissioners, I'm looking for it here -- yes, there is an SMA Minor and Exemption report...for your information.

Mr. Ball: Any questions on those reports?

6. Discussion of Future Maui Planning Commission Agendas

a. March 22, 2016 meeting agenda items

Mr. Ball: Item E6, discussion of future planning commission agenda.

Mr. Spence: Commissioners, next time, on March 22nd, 2016, we're going to have a couple of resolutions thanking outgoing members Mr. Ball, Chairman Ball, and Ivan Lay. It will be sad to see you guys go. The second, you have one public hearing item for Ms. Sandra Gilbert for a bed and breakfast home in Maui Meadows. She's long had a Conditional Permit, apparently switching to a bed and breakfast permit. Communication items, Mr. Wayne Arakaki requesting the deletion of an SMA Permit for Kimura's Plaza in Kihei. And then unfinished business, we're going to see Walgreen's again. The kickoff of the last meeting for Ivan and Keone.

Mr. Ball: Thanks for that.

Mr. Spence: You're very welcome. Bed and breakfast report, there's two things. Let's see - one is to, to decide whether you want to waive review for time extension for an SMA permit for the Hoonani Subdivision in Kihei. And then the second one is to designation for Hana Advisory Committee for the public hearing of a bed and breakfast.

F. NEXT REGULAR MEETING DATE: MARCH 22, 2016

G. ADJOURNMENT

Mr. Ball: Okay. Next regular meeting will be March 22nd. Meeting adjourned. Thank you all for coming.

The meeting was adjourned at 2:46 p.m.

Respectfully Submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball, Chair
Sandy Duvauchelle (excused at 2:29 p.m.)
Wayne Hedani (in attendance at 9:06 a.m.)
Richard Higashi
Larry Hudson
Ivan Lay
Jason Medeiros
Keaka Robinson
Max Tsai, Vice-Chair (in attendance at 11:22 a.m.)

Others

Will Spence, Director, Planning Department
Jim Buika, Staff Planner
Gina Flammer, Staff Planner
Tara Furukawa, Staff Planner
Keith Scott, Staff Planner
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel