

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JULY 12, 2016**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Max Tsai at approximately 9:07 a.m., Tuesday, July 12, 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.)

Chair Tsai: Good morning. Thank you all for waiting. Today is July 12, 2016, the Maui Planning Commission is called to order.

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

Chair Tsai: At this time we're going to open the floor for public testimony. Anyone wish to testify at this moment may testify if you can't stay for the agenda comes up or you can wait, but you can do only one or the other. We have a list right here. Please let me know if you're interested in testifying now or wait till the agenda item comes up. I have Steven Hynson? Bryant Neal? Please identify yourself again and you have three minutes.

Mr. Bryant Neal: Good morning, my name is Bryant Neal. I am curator ...(inaudible)...curator of the Story of Hawaii Museum located at the Queen Kaahumanu Shopping Center. For the past three years I have been working on an exhibit in anticipation of the 75<sup>th</sup> anniversary of the bombing of Pearl Harbor and it will basically show the importance that Maui played as a role during that war and a great deal of that has to do with the 4<sup>th</sup> Marine Division and its positioning here at Maui.

It was at the museum where I first met and found out about Camp Maui and the efforts that were being put towards keeping it in its pristine condition and being able to use it as a place for showcasing the actions of the 4<sup>th</sup> Marine Division.

Just a little bit background. When the United States went on the offensive after the bombing of Pearl Harbor it's a two pronged approach. The 4<sup>th</sup> Marine Division was assembled at Camp Pendleton under the direction of Admiral Nimitz and they were the Navy attacking the center. The Army was being led by General Douglas MacArthur. Island hopping up from Australia both headed to the Philippines. 4<sup>th</sup> Marine Division assembled at Camp Pendleton. The first group of men to go straight from training into battle. Their first engagement Marshall Islands onto the Marianas. From there they came back to Maui and Maui up at Camp Maui is where 1,600 acres were cleared and training, recreation and a rest spot for the 4<sup>th</sup> Marine Division was assembled. And putting that into perspective there were 20,000 soldiers that landed there and for the most part these are 15 to 18-year-old boys most of them leaving home for the very first time going off and in most cases they thought on an adventure. When they got there of course they found themselves fighting a war that nobody else basically had to fight simply because of the enemy.

The Japanese had a resolve that nobody else had ever seen before that being the fact that there was no surrender so they were in engagements that were pretty horrific. After each one of those engagements coming back to Maui was a place of reprovisioning themselves, their companies as the casualties were extremely high so they basically now had to get men from Oahu that came here but Maui is where all of those boys were actually whooped into shape so to speak. The jungle training that they experienced here up at Haiku. I mean these kids coming out of Kansas never seen a jungle before. So when they were presented with that and the training that went on up there it was the first time that they had experienced that. The beach assault training that went on here same thing again. Most of these kids from Middle America never even been to an ocean before. Many of them never even been on a plane before. So when they went off these were necessary skills that made it most important for them once they actually reached these battle zones that they went to. And then of course after each one of those engagements they came back to Maui where they were welcomed. The folks of Maui this is actually a petition and the resolution Maui—

Chair Tsai: Bryant can you please conclude?

Mr. Neal: --were actually assembled. In any event, in closing the importance of Maui and Camp Maui on a number of different levels not just showing it as a war zone but a place of resolve for many of those men whom I have actually met who've come back to Maui for closure. This picture, and I'll close with that young man turned 19-years-old here on his 89<sup>th</sup> birthday he was on Maui, showed up at my museum wanting to see where that had happened and going back. He was accompanied by his daughter and his son-in-law and she had said he never talked about any of this stuff before.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Bryant?

Mr. Neal: Yes?

Mr. Hedani: Are you in favor or opposed to the application?

Mr. Neal: In favor. In favor.

Mr. Hedani: Okay.

Chair Tsai: Any other questions? Thank you, sir. Okay, Daniel Coltart? You're gonna wait or you wanna testify now?

Mr. Daniel Coltart: I guess I'll go for it.

Chair Tsai: Okay. You have three minutes. Thank you.

Mr. Daniel Coltart: Okay, my name's Daniel Coltart. I'm a carpenter. I work for Local 665 ... (inaudible)... I live next door to the zipline. I'm the closest person to the zipline. I'm literally maybe 330 feet to the tower. My house is... my property parallel's the zipline and I'm literally an amphitheater to the uncontrollable screaming that goes on 24/7 and it's completely frazzled my wife and I. Some days I'm good, some days she's good. They have a bungee drop that when they drop from the bungee they scream uncontrollably. I've tried to get the zipline guides to have people tone it down over there, tell them that we're living... you're living in a place where people have lived and farmed for 35 years. I've lived there for 35 years and it's jagged my nerves to where, you know, I don't know what to do about it anymore. It's like... so it's not anything they can do about it. We have blogs that Missy has, my wife has taken off of Facebook where they're saying my voice is hoarse from screaming uncontrollably for three hours that I've lost my voice it's gone hoarse. And these blogs that they have written about their experience over there. Now they're making millions of dollars over there every day while my property value is going down. I have a long-term rental that I rent and periodically I leave to go to Canada and when I rent out things people now are asking me what's it like to... you know, and I'm having people turn down because of the screaming because it's chaos over there. And they put in a counting thing to count the traffic that goes by there and they put it below the driveway to the entry to the place when cars... when you get on a GPS and you're led to the zipline it takes you through all the short-cuts through Haliimaile and you come down to go to zipline not come up. So all the traffic... so that was flawed that thing. I had a car get totaled going out my driveway a couple years back 'cause they fly up and down that road. There's been a cop there, you know, giving tickets on a regular basis now because it's so bad. Let's see what else can I tell you. How much time do I have? They have decibel thing out there that they're gonna testify that it doesn't go above the decibels but the uncontrollable screaming happens at times that you don't know when. There's times when the kids out of school and little kids are screaming high pitched. The screams are so... it sounds like somebody is being murdered.

Ms. Takayama-Corden: Three minutes.

Mr. Coltart: Sometimes it sounds like wild sex. Sometimes it sounds like whatever, you know like we don't know what's going on over there half the time. And sometimes I literally think somebody just got shot over there or something and so, you know, let's see—

Chair Tsai: Please conclude.

Mr. Coltart: I'm bummed. I'm against it. Boo.

Chair Tsai: Commissioner Robinson? We have a question for you.

Mr. Coltart: Yes sir?

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Hi, what was your name again, I apologize.

Mr. Coltart: Daniel Coltart.

Mr. Robinson: Daniel, of all this time did you ever reach out to the ownership in a letter form or have anything tangible?

Mr. Coltart: I have talked personally because I consider Chris who's the son, he's here today. They're both my friends. I love these guys. This is not a...and I talked to them personally over, and over, and over. I asked them to ask...to write something to the guides to tell them to not scream so loud and the guide personally said to me, they pay \$125.00 I'm not gonna tell them not to scream, they have to scream that's...and like I said it's uncontrollable. They cannot help themselves from screaming. Even if you wrote something and said don't scream you cannot not scream when you drop 60 feet straight down. You're gonna scream. You know, there's no way to stop it. I figured that out the hard way.

Mr. Robinson: Thank you.

Chair Tsai: Marian Prosser?

Ms. Marian Prosser: My name is Marian Prosser and I'm Daniel's wife. Also live, I also live right next to the zipline. I love Chris. I wanna just say this is a fine, fine young man here. He's a fine young man, the young man who's running this zipline so this is a really difficult and emotional decision. I'm gonna stand against the zipline. The reasons are the lifestyle that we have enjoyed for all the years that we've been there. I do healing arts and do body work and imagine and going to get a nice tranquil massage and dealing with this as Danny said, uncontrollable screaming. Danny records music and imagine trying to record music during these uncontrollable events of screaming.

I just wanted to read a couple of the quotes that I got off of the blog. Here's one that says, it's on the North Shore Zipline Blog. It says, so much fun facing my fears. Sore throat from screaming so much LOL, I had to literally be pushed off the free fall plank couldn't get myself to jump. Lots of laughs all around. Pictures on my computer not so good memories.

Here's another one that says, whoop whoop I'm a survivor. Not much of a voice from involuntarily screaming just about every launch. Thank you so much Derek Hoyte my first adventure living in paradise.

And I'm so happy these guys are having a great time out here. I don't like to be a person who says I don't want it in my backyard. That's not who I am. But it's put us in a really uncomfortable position as far as wanting growth. I like hearing the history. I think that's all really interesting but it doesn't change our personal experience. By the end of the day you know the first scream in day it's like oh I can do this and by the end of the day we're just so frazzled and at times Danny and I take turns sometimes we get so frazzled that they'll scream and we're like ...at the top of our lungs and here this is our life in our living room. Our house

runs along the zipline so it's in every single room in our house, every single room of it and we can't get away from it. So rest my case, yeah.

Chair Tsai: James "Jaice" Rohrer.

Mr. James "Jaice" Rohrer: Hi, I'm Jake Rohrer. I live at 2090 Kaupakalua in Haiku. My property is adjacent to my brother's property that borders on his western board the zipline. It essentially...he's lived there for 40 years, it essentially both visually and audibly destroys Peter's privacy and the sense of country living that he's enjoyed for some 40 years. I have it much better. I don't see the zipline but the noise and ruckus comes to me and especially in times of slack tradewinds or Kona winds it carries it as though it's coming from my own backyard. And it is, it is as has been described it is rowdy screaming, yelling, cursing and I'd like to develop maybe the back two acres of property but I couldn't it's just, its proximity to the zipline makes that a unwise decision.

I'd like to address the idea that Mr. Hoyte who has parked several military vehicles on his property qualifies as a historical presence. The gentleman from the museum neglected to mention in its entirety the 40-acre 4<sup>th</sup> Division Marine Memorial Park on Kokomo Road in the immediate neighborhood and it was set aside and built as a historical monument and it is there for public use, recreational use, and the idea that we need to increase this presence with Mr. Hoyte's military vehicles I think is preposterous.

I'd think, I'd like to suggest that Mr. Hoyte's intention here is self-serving and transparent. He simply wants to save a buck and not follow the rules of the zoning that's in place to protect the community at large. When he came in and established the zipline he simply barged in and erected it. He trespassed on my brother's property, I don't know who on else. And we just woke up and there's a zipline and it's up to us to now remove it. It simply does not belong in this quiet, pastoral country setting and it as you will hear beyond me it is so disruptive and disturbing to everyone who lives within range. So we ask that you really take a look at Mr. Hoyte's intent, the need, the public need and value of his military vehicles parking on this property—

Ms. Takayama-Corden: Three minutes.

Mr. Rohrer: --and under no circumstances historical or otherwise should this disruptive endeavor be allowed to continue in this once quiet neighborhood.

Chair Tsai: Thank you. Thank you. Next Janice Kinoshita?

Ms. Janice Kinoshita: Hi, we have lived on Kauhikoa—I'm Janice Kinoshita—and our family has lived on Kauhikoa Road for 45 years. When we moved up there it was dirt road and most of the property adjacent was independent pineapple farmers. It was a really quiet place, there weren't very many homes up there and we've certainly seen the changes over 45 years which are expected. It's not expected to see an Agriculturally zoned area granted a special permit to put a zipline up and I'm really confused I think as to how that happened without any of the neighbors

being included in that decision to give them a special use permit or did they put up the zipline before they had the special use permit I'm not sure. But in either case, none of the neighbors were included in that initial development of a zipline. And yes, I think historically it's a special area, museums don't belong on two acres of agriculturally zoned land and there are museums for that. We do have the park at Giggle Hill. We have those things to memorialize those people who did serve and they deserve it but it's not on two acres next to my lot. I'm adjacent to Danny so I'm one up from him. The noise is loud and it is persistent. In the beginning here weren't too many people so it was doable. In my opinion it's changed a lot in the last year and the increase in population they now have a food truck outside which people come to eat from how aren't even going on the zipline. I walked down the other just to get a feel of it and it really is in an inappropriate area. So I hope you consider that because I think a lot of the neighbors are very unhappy with it.

Chair Tsai: Thank you. Fred Borsum?

Mr. Fred Borsum: Yeah, hi my name's Fred Borsum. I'm not really good at public speaking so kinda bear with me. I'm just...most everybody here has said pretty much what I have to...what I feel about it. We've lived off Kauhikoa Road for 44 years. We also have seen a lot of change. This is, the zipline is something that we thought was all agreed upon by the County and everything and we found out it wasn't. And we also feel we really don't need it there. We live a ways back not right next door. We can still hear the screaming and yelling and stuff like that. I have a couple questions. I would like to know as far as ag on the property since it is zoned Ag right now. If it's guavas I think we all can say we ag guavas you know. I also understand that he's had ziplines in the past that have been less than upfront. I would also like know what guarantees we can have that this won't happen again. I also had not been approached as a neighbor by Mr. Hoyte. I think that would have been a nice way to do it, neighborly to come and see us before all this stuff came up. I also understand there's a 80-foot tower planned for this. What are the other plans? Nobody wants a Disneyland over here. Anyway, that's all I have to say. Thank you so much.

Chair Tsai: Mathew Kinoshita?

Mr. Mathew Kinoshita: Good morning, Chair, Members. My name is Matt Kinoshita. I am probably the next closest neighbor beside Dan who spoke earlier. I am here because I know nothing about the plans. I knew nothing about the zipline going up in the first place. That I can verify what everybody said about the screaming, the noise, the traffic, it's all true. I'm just wondering how I as the closest neighbor besides Dan can get the guarantee that things don't get out of control in the future if we say, okay we're gonna allow this to happen because number one, years ago when I made an addition to my house I had to prove my ag prove, I had to show receipts for all my sales and everything that. I still continue to sell product, and I did things the right way. And I look next door and have a big commercial property going and I would like to do that. That would be nice to make that kind of money, but I went the right way, the legal way, and I'm doing things the legal way. I still don't know anything about this. I've learned more from these guys than this or any kind of paperwork that I received. All I've ever got was legal notices,

so maybe I can stand here and answer some questions from you guys since I'm the closest neighbor?

Chair Tsai: Commissioner Robinson?

Mr. Robinson: How early and how late do you hear these noises?

Mr. Kinoshita: I would say by 7:30 in the morning I start noticing it and up till 7:00 at night.

Mr. Robinson: Is it 365 or is it Monday thru Friday?

Mr. Kinoshita: I don't notice it on Sundays, but I'm a County fire fighter so I'm not home every day, but I do notice it every day that I'm home.

Mr. Robinson: Holidays, Christmas, New Years, Thanksgiving?

Mr. Kinoshita: I don't recall holidays, but weekdays guaranteed I know that for sure. Sundays I do not believe I don't hear it luckily for me, but with my schedule as a fire fighter every day is kind of like my Sunday if I'm off. So I value those days off.

Mr. Robinson: Thank you. Thanks for your service too.

Chair Tsai: Thank you. Valentine Aveiro, Sr.

Mr. Valentine Aveiro, Sr.: Good morning. My name is Valentine Aveiro. I am the property owner that's directly in the back of the zipline. We have had that property for over a hundred years. That right of way was dedicated when my family members purchased some land from the Copp Estate. That road that is existing on that property right now on North Shore Zipline was put up in 1944 by the military. Since 1944 to this day I personally maintain that road, cut the berry trees, the guavas, ...(inaudible)... so I pretty much maintain that road. And ever since going in and out of there and then North Shore Zipline move into that area I have always had problems with them. They have locked me out of my pasture for like three, four times. They have piled trash on my right of way leading to the gulch where I couldn't enter my property. They had built alternate roads so I could go around the trash, but I went up to Derek and told him that I'm not using that temporary right of way that you guys made because it's not, it's not the permanent, it's not the right of way that was there originally.

Anyway, the first incident I had with the North Shore Zipline I was coming out of my place with my tractor and heard this thing going over the road. That was the zipper coming down the zipline and they almost ran into my tractor. So you know they sent me a letter in the mail saying be cautious, the zipline is passing over the road, you know try to be cautious. You know that was fine with me I could deal with me, but you know, the next time I was coming out with my Bronco and the same incident happened. They almost ran into my Bronco so what I'm saying is this guys had put up one zipline over my right of way and when the guys zip over the road they're like five feet off the ground. If you're not paying attention to the zipline you can run into

somebody. And for somebody that been there for, my family have been there for the last hundred years why we should...I feel like I'm violated. These guys just zipping over my road and not treating me fair. North Shore Zipline have taken like 2,000 feet of zipline, there old zipline and trashed it on the road, on my right of way so when I come out there we'd have to run the zipline over like, you know, for one whole year so finally I got disgusted I ended up you know taking that line and throwing it in the bushes. So all this time that North Shore Zipline been there they never treated me right until today you know. I cannot get along with these people. And like we owned that property from the late 1800's and I feel that I am violated. I love that property and I take care of it with my heart and soul and here these guys come in with big bucks, millionaires from the mainland you know, to hell with the local people, build the zipline and you know we'll let them deal with it. They trying to really frustrate me so I end up like getting so disgusted that I going sell my place over there, but I don't wanna do that. I just want this thing controlled.

Ms. Takayama-Corden: Three minutes.

Mr. Aveiro: I think you guys should don't give this guys any permits to do anything because everything they did to me was illegal, you know, about the procedures and stuff like that so, but in conclusion, I'm totally against anything that these guys wanna do on the property because the more they do, the more I suffer because I gotta deal with traffic, I gotta deal with they locking me out of my property, you know, and all this other BS that go on with like they say the yelling and screaming and you going hear from everybody else, you know, so I'm totally opposed to any development that's on that property.

Chair Tsai: Thank you, sir.

Mr. Aveiro: You're welcome. Questions? Nobody get questions? Thank you.

Chair Tsai: Okay next one we have...I see a Gillar last name?

Mr. Gilliland: That's Gilliland and I'll wait for the agenda item.

Chair Tsai: Okay, Marsha Lowery? Peter Rohrer?

Mr. Peter Rohrer: I am the closest one to the zipline. I can see the zipline in bed. It's a foot and a half off my boundary line the biggest zipline.

Chair Tsai: Peter can you reidentify yourself for the record, please?

Mr. Rohrer: Yes, I'm Peter Rohrer. And I've been fighting this thing for a long time. Here is a petition I gave to the zoning committee I don't know a couple years ago, 45 neighbors signed it. I...six years ago when I came home from a day at the beach to discover the heavy earth moving equipment working on the hillside opposite my home, the hillside had already been denuded beyond the property line, way denuded, over 50 feet in one area and 400 feet long, they took



my fence all of it on my western boundary. Hundreds of mature trees, dumped hundreds of tons of their boulders on my property. This man Derek Hoyte does nothing pono.

This gross trespass was carried out in preparation for installation of an unpermitted zipline for a profit endeavored aim at Maui's tourist market by Mr. Derek Hoyte. I was later to learn that this sort of this uncaring reckless manner of doing business is commonplace for him. Public records indicate multiple similar trespasses in the Pacific Northwest including unpermitted timber removal from a national park forest that resulted in substantial fines, \$90,000 and other times that he didn't permits and got given a month long jail term that he spent five days before he took down his zipline and several other fines.

Mr. Hoyte then seeks to subvert this permitting process that he chooses to ignore through a transparent scheme of declaring his zipline operation of a historical significance. He further seeks to distort the true nature of this activity by referring it to documents for hearing as a challenge course rather than zipline that is so identified by his own road sign Northshore Zipline. The ...(inaudible)...the inception have plagued me and my mom with constant nuisance noise an loss of personal privacy. I think I've lost about 10,000 hours of sleep. I've been to doctors, hundreds of times. I suffer from PTSD and anxiety disorder. I've had to be medicated. I don't like that. I don't do that.

Thrill seekers look down upon my home from a zipline platform high in a eucalyptus tree. I've even seen it on the internet. Pictures take pictures of me and my property subjecting me and my neighbors to yelling, cursing, screaming, and other disruptive behavior—

Ms. Takayama-Corden: Three minutes.

Mr. Rohrer: --that one might expect from passengers on a rollercoaster, Mr. Hoyte's employees encourage the zipliners into a rowdy behavior with loud calls of earthquake when they go up this ladder here. They shake it so they get a rise out of the tourist and they yell and scream and they mostly do it to women tourists. Also this was not supposed to be built.

This is what I see from my deck. These pictures are all from my deck. Not even the closest deck to it. My living room, my bed like I say, I can just hey, hi. They've even seen my wife get out of bed with binoculars and waved to her naked. This is an example of how he...this is a boundary, property boundary, this was cleared over 50 feet down on my property. This is his property, this is my property. When I came back from the day at the beach with my boys and surfing and I walked up to the top of the hill and I saw Mr. Hoyte and his excavator, they just finished and I noticed because looking across my valley I saw big brown areas where I used to have trees, 40-foot high trees, it would have obscured the zipline but he took them down. And these trees here are 30 feet in on my property. He had cables down to them. I said, what the hell do you think you're doing here? He said, I'm gonna put in a zipline and these cables here are for a catwalk up to the zipline.

Chair Tsai: Peter would you please conclude?

Mr. Rohrer: Oh you're kidding.

Chair Tsai: Sorry.

Mr. Rohrer: Hundreds of tons of boulders on my property. For these reasons and more the zipline should not be allowed to operate in what's essentially a quiet rural neighborhood let alone exempt from zoning requirements. Other letters of protest by nearby neighbors have declared this gross intrusion in their lives. I've submitted this to the committee. With regard to his historical significance attached to his zipline operation there were 20,000 marines stationed 1,600 acres in this immediate area World War II. The presence has been expansively memorialized by the 4<sup>th</sup> Marine Division Memorial Park, 40.6 acres fronting nearby Kokomo Road where you can—

Chair Tsai: We have your written testimony.

Mr. Rohrer: ...respected...I just have another—

Mr. Hedani: Question?

Chair Tsai: Commissioner Hedani? Sorry, we gotta be fair to everyone with the three-minute rule. Commissioner Hedani?

Mr. Rohrer: Jesus Christ. There's police reports.

Mr. Robinson: Peter, Peter—

Mr. Rohrer: Eight police reports I made. There's county reports, four county reports I made.

Chair Tsai: Sir, you're out of order. Thank you. Hold on please.

Mr. Hedani: Peter?

Mr. Rohrer: Yes, sir. Any questions?

Mr. Hedani: I'm glad you're allowing me a question.

Mr. Rohrer: Yes sir.

Mr. Hedani: You mentioned you have PTSD.

Mr. Rohrer: Yes.

Mr. Hedani: Are you a veteran?

Mr. Rohrer: No. But I have a psychiatrist and a psychologist right here in a letter that both say I have it.

Mr. Hedani: Okay, would you consider—

Mr. Rohrer: I've been to them about a hundred times.

Mr. Hedani: Okay, listen to the question. Would you consider the activity a desecration of the historic nature of the area?

Mr. Rohrer: Absolutely.

Mr. Hedani: Thank you.

Chair Tsai: We have another question Peter.

Mr. Rohrer: Yes please.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Breathe, take a breath. We're not against you. We're just trying to get information. Thank you for withdrawing the paperwork and having to go through the court proceedings we wouldn't not want to have to have gone through that. The question I have for you is you stated that your trees were cut down, that trash was thrown on your stuff, rocks and something like that, did you make any type of criminal report or to the police or it's...I mean I don't know how that's—

Mr. Rohrer: Sure I have.

Mr. Robinson: Okay.

Mr. Rohrer: And he's come back a second time last February—

Mr. Robinson: Excuse me sir, sir—

Mr. Rohrer: --and done it again, all of it again, trespass, ...(inaudible)...boulders, built this new zipline platform and ladder 30 feet higher. He wasn't supposed to.

Mr. Robinson: Sir, sir, my question is if you made a report is there any such report, was there any fines, what happened when you reported it to the police or to the county?

Mr. Rohrer: Absolutely nothing. You people move slower than a snail I'm sorry to say that.

Mr. Robinson: No further questions.

Chair Tsai: Sharon Freitas?

Ms. Sharon Freitas: Good morning. Thank you for the opportunity. My name is Sharon Freitas. I do not live close by. I live on 18 Kalohea Place, Haiku, Hawaii. I found Tom Morrow Arena. I live on this land. We had 64,000 marines. There are cement slabs on my property can I be a historic site? Okay, I had first hand with Derek Hoyte. I lived in that property. My cattle I ran 64 head of breeding cows and two bulls before Derek Hoyte purchased that property. When Derek Hoyte purchased that property he came up with a subdivision plan. He wanted the bottom half. Then all of a sudden he found out gee, it's kinda hard to run a zipline across this room like this, but if I take over the other half up there high I can run a zipline downhill. Now you heard of all those fences being cut whose cattle was on the road? Mine. Do I have police reports? About 20. Do I have water issues? The meter on that property belonged to the people who still had interest in that property that did not sell their half. He cut my water line, he turned over my water trough, he chased my cattle out. His employees tell me the first thing they do in the morning, ho, ho, ho chase the cattle down out of the top property onto the Lowerys and the Gillilands property because I had that whole block leased. Did I have miscarriages from my cattle? Yes, a lot of dead calves 'cause they chase the cattle, the little baby calves stays back doesn't eat, it dies. This is an ag person? I personally went to a meeting with Mr. Molina up in that 9<sup>th</sup> floor and asked him about this and he say, oh yeah, yeah, he finally came, he got a permit and he's doing ag. I said, what ag? Oh, there's cattle on the property. I said really? Whose cattle, mine. He's not doing ag. I'm doing ag and he's chasing my cows out every day. And then we had a problem with the cops and him that we all went to court for. Then finally the cops had agree they kept their meter, he got the top half, the cops got the bottom half. And what Mr. Aveiro is saying do you know how many times I got in Derek's face for changing Mr. Aveiro's right of way and making him...his nice paved road going in making him going through the mud and sinking his vehicle. This man has no respect, no pono for nobody. And really, I mean, I know it's a business venture and it means revenue to the County but at what cost, and the way we all feel here, the way we've all been violated? It is ag.

Ms. Takayama-Corden: Three minutes.

Ms. Freitas: I own ag. Keep it ag nuff variances. Please somebody stand up for those of us who live there. This guy has plenty other places to put up a museum. No. Any questions?

Chair Tsai: Thank you, Ma'am. All right, anybody that wish, else wish to testify at this moment? Sorry sir you already did. Seeing none, public testimony is closed. We're gonna take a 10-minute recess and we'll be back 9:55.

A recess was called at 9:47 a.m., and the meeting was reconvened at 10:05 a.m.

Chair Tsai: All right, the planning commission called back to order. The first agenda item, C-1?

Ms. McLean: Thank you, Chair. You have one public hearing item on the agenda today. It's a request from Derek Hoyte of D&S Ventures for a County Special Use Permit for the Camp Maui Project in order to retain, rehabilitate and improve a historic site with accessory guided tours

including a challenge course, museum, zipline and onsite parking on 17.519 acres in the County Agricultural District at 2065 Kauhikoa Road, TMK: 2-7-012: 086 (por.) in Haiku. Paul Fasi is the Staff Planner. I would like to note for the record you will also see on your agenda a Communication Item of a Petition to Intervene and you will also see provided to you this morning the intervenor's withdrawal of that Petition to Intervene. So the record should reflect that the Petition to Intervene has been withdrawn so no action is needed for the Commission to take on the petition as it has been withdrawn.

**C. PUBLIC HEARING** (Action to be taken after public hearing and action on item D.1)

- 1. MR. DEREK HOYTE of D&S VENTURES, LLC requesting a County Special Use Permit for the Camp Maui Project in order to retain, rehabilitate, and improve a historic site with accessory guided tours including a challenge course, museum, zipline, and onsite parking on 17.519 acres in the County Agricultural District at 2065 Kauhikoa Road, TMK: 2-7-012: 086 (por.), Haiku, Island of Maui. (CUP 2015/0002) (P. Fasi)**

Mr. Paul Fasi: Good morning. I'm gonna go over statutory regulations and how the Zoning Code applies to the project. I'm not gonna get into the specific details of the project. There is a presentation from the applicant's consultant for that. Basically there are two components to this project. There's the zoning statutory code portion and then there's the legal aspect of this particular project with the intervention. It is zoned Ag on all three levels, State, County and Community Plan. And the reason this is a County Special Use Permit and not a State Special Use Permit because State code is a little broad and general and basically this could be approved on a State Special Use Permit in regards to reasonable...unusual and reasonable uses in the Ag District. But the County Code is a little more strict and it's requiring a County Special Use Permit for all ziplines on County land. The hiking and guided tours are allowed use in the County Ag District. It's the zipline portion that needs a County Special Use Permit. The only proposed construction on this particular project is gonna be a 80-foot zipline tower. There is as the Deputy Director mentioned an NOV, a Notice of Violation from ZAED, Zoning and Enforcement Division. I'm not quite familiar with all of the facts regarding that Notice of Violation but appears to be from the apparent testimony this morning that there could be some setback violations as well with the zipline traversing inside the setback property boundaries and the apparent construction of unpermitted structures on the property. There is an exhibit in your report from the Department of Public Works and they are not aware of any building permits for any structures on the property. The applicant right now is required to receive closure from the DBA pending the final decision on this particular County Special Use Permit.

At the time my report was written we were not aware of the intense neighbor opposition to the project. The Department did have one individual come in and ask me several questions regarding the project and that was my only communication personally with any of the neighbors. We did receive, I think you have two letters in opposition that was handed out this morning in addition to Mr. Rohrer's letter of opposition was handed out a few days prior.

Just to give you a brief history of the application. The Department received the County Special Use Permit application on October 1, 2015. On November 13, 2015, Mr. Rohrer the Petitioner petitioned to intervene at that time. On November 20<sup>th</sup>, the Department received the applicant's Motion Opposing the Petition to Intervene and to file a settlement. On December 3, 2015, the Department received the Petitioner's Memorandum in Opposition to the application's Motion Opposing the Petitioner's Petition to Intervene. So on July 2015, again the Department received Rohrer's, Mr. Rohrer's Notice of Withdrawal of the Petition to Intervene based on what happens today it will either have to...it will probably most likely have to go back to the Board of Variances and Appeals as they have further action to tend to on this particular application because of the Notice of Violation from the ZAED Department.

So this is where we're at today. And that pretty much concludes my department report as far as the statutory side. Any questions? If not, I'm gonna let the applicant do their presentation and they can get into the details of the proposed project.

Chair Tsai: Okay Paul we're gonna have a clarification from the Deputy Director.

Ms. McLean: Thank you, Chair. Again, a couple things to clarify. Deputy Public Works Director is here as well. The zipline structures as we understand them do not require building permits. There may be other structures on the property that would require building permits that we may not be aware of, but the towers and those types of things do not require building permits and the Public Works Department can clarify that during discussion if you'd like.

Secondly the use is permitted outright in the State Agricultural District. A State Special Use Permit is not needed for this activity 'cause the State Agricultural District in terms of recreational uses is more permissive than the County. So what's before you today is a County Special Use Permit that's needed in the County Agricultural District.

And lastly, there is still a proceeding pending with the Board of Variances and Appeals because there are outstanding violations for this operation pending with the Board of Variances and Appeals. If this application were to be approved today, that would cure the zoning violation component and the zoning violation component only. If the application is not approved then that use violation would continue to exist and then the Board of Variances and Appeals would have to take up the applicant's appeal of the violations that we have issued. So I'm happy to answer questions on that now or later if you'd like but just to...I wanted to clarify the status of the proceeding with the BVA because there are outstanding violations on the property that the applicant has appealed.

Chair Tsai: Thank you, Deputy. Any questions from the Commissioners? Commissioner Duvauchelle?

Ms. Duvauchelle: Would that pertain to grading permits also?

Ms. McLean: If Public Works could respond to that?

Ms. Dagdag-Andaya: If there is any grading that needs to be done on the property then a grading permit will still be required. But I don't...I'm not aware of any grading permits that were applied for at this point. As far as the building permit requirement this was a question that was asked many years ago when ziplines started becoming popular on island and we do have staff that travels to Oahu and meets with the Building Code Council so there are division heads and supervisors from the counties who meet regularly to talk about building code requirements and the issue of ziplines did come up and at this point, you know, we don't have it in our Code, I think ziplines they're not regulated under our Building Code but again you know this is just for the community now. You know if this is something important that needs to be addressed in future revisions of the Building Code I think maybe that's something that can be talked about and discussed at that time, but currently our Building Code does have, doesn't regulate any zipline structures. However, as Deputy Director McLean had mentioned earlier if there are other structures on the property that require a building permit then those structures need to be permitted under our Code.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: We keep on using zipline tower, how about a skeet shooting tower or is there a certain square footage of how a tower can be because I notice when there's an accident it wasn't, it wasn't correctly grounded, it was supposed to be a cement with a screw or something. So there's like a building code but not a violation. They don't have to have a permit for just any tower?

Ms. Dagdag-Andaya: Yeah, there is a square footage requirement for structures like as far as playground equipment that is not regulated under our Building Code. Tool sheds, things that are I think 120 square feet or more those if it's beyond 120 square feet then that would require a building permit. If it connects to any plumbing or electricity regardless of the size that would also require a building permit. But for something like a zipline tower, you know, I'm not...again, it would kinda, I think you might have to take a look at the structure and see how it's constructed to determine whether or not it would fall under the Building Code. For some zipline towers they're really skinny and little bit tall and that wouldn't qualify. But if it's something really big with a that kinda, like a box or with stairs or something really huge then that's when you can contact our office, our Building Permits Office or Building Plans Review Office and ask whether or not something like that needs to be permitted. I think we would need to see plans to make a determination.

Mr. Robinson: So like 120-square foot platform and under is okay is that what I'm hearing?

Ms. Dagdag-Andaya: Yes, I –

Mr. Robinson: Above 120 then probably would need a permit.

Ms. Dagdag-Andaya: Right.

Mr. Robinson: Thank you.

Ms. Dagdag-Andaya: But then again, you might wanna clarify it by seeing plans and having our staff investigate a little bit.

Mr. Robinson: Thank you.

Chair Tsai: Commissioner Castro?

Mr. Castro: Yes, I have a question. If a permit is not required for that then how do we know it's being properly erected, you know, Commissioner Robinson mentioned earlier there was an accident ...(inaudible)... I believe that where the footing gave way and caused that tower to collapse. So how do we know it's being erected properly without the permits?

Chair Tsai: Deputy?

Ms. Dagdag-Andaya: That I can't...I can't answer that. I can talk with staff I mean if you want, but as far as...yeah, I don't...

Ms. McLean: Well, if playground equipment isn't regulated you know at some point there is a decision made that certain things are not gonna be subject to the Building Code and as Rowena said these are relatively new operations and it may be that the Building Code does need to address them in the future because they are becoming more popular and there certainly is an important safety component to them. But for the time being they're not subject to the Building Code.

Mr. Castro: That's my concern the safety for the users.

Chair Tsai: Just to note, can the audience please not speak out of order. Everything here is recorded and we can't hear anything if people start talking from the audience. Thank you guys, appreciate that. Commissioner Hedani?

Mr. Hedani: Yes, I'd like to recommend for the Building Department to take a serious look at the Building Codes because there have been people that had died on this island as a direct result of failures of ziplines so we're already on notice people have died more than one person has died you know from a zipline operation. And if we're already on notice we need to take a serious look at the structural integrity of things to ensure that the zipline doesn't cross right of ways where they can get hit by a Bronco.

Chair Tsai: Commissioner Robinson? Oh, Deputy?

Ms. Dagdag-Andaya: You know if the Commission has any questions about structures, you know zipline structures or for this particular project I think maybe my suggestion is to have a letter, I mean you can always ask and write a letter and ask the question and then we can formally respond. So that's just a suggestion that I have for you.



Chair Tsai: Commissioner Robinson?

Mr. Robinson: Deputy I got another one for you. Suspension bridges is that under any Code a certain length of a bridge, certain heights, certain passenger?

Ms. Dagdag-Andaya: Since suspension bridges like on private property I'd have to check.

Mr. Robinson: Okay.

Ms. Dagdag-Andaya: But that's a good question too that you can probably, if you have a question for the Department we can...(inaudible)...

Mr. Robinson: Thank you.

Chair Tsai: On that note Deputy is there any height restrictions?

Ms. Dagdag-Andaya: Yeah, I'm sorry that's another one that you may wanna just ask, yeah, 'cause we have staff that deals with all those technical issues.

Chair Tsai: Okay, thank you. Commissioner Duvauchelle?

Ms. Duvauchelle: Sorry, I have one more question, and I'm sorry I am asking you to repeat yourself. So on this TMK there are currently no building permits issued.

Mr. Fasi: That is correct.

Ms. Duvauchelle: Are there any after-the-fact building permit applications?

Mr. Fasi: I'm not aware of any.

Ms. Duvauchelle: Thank you.

Mr. Fasi: And to just to clarify the height limitation basically in the Ag District we don't have a very good ordinance governing height. Theoretically they can build a tower up to the clouds it's just...you have the setback the structure one-foot for every one-foot in height but of course the Planning Department would never allow that to happen. But theoretically yeah, they're basically for structures such as non-dwelling structures you just have to set it back a foot for every foot in height.

Chair Tsai: Director, I mean Deputy?

Ms. Dagdag-Andaya: I'm just reading something here and apparently and this has to be researched I think I think you would need to maybe ask this question as well is like who, maybe at who at the State regulates these ziplines. I think that would be a good question to start with as well. According to this, it says State zipline inspections would go...and I don't know if this is

just a suggestion but there might be a, I think there's a State department that would regulate it, the same department that would regulate elevators and boilers. I don't know, but you might wanna ask that question as well is who at the State regulating ziplines.

Chair Tsai: Thank you. Paul proceed.

Mr. Fasi: If there are no further questions for the Department I can have the applicant start their presentation. I would think perhaps the State Land Use Commission may regulate these State Ag I don't know. But anyway Kimi do you wanna come up and do your presentation?

Ms. Kimi Yuen: Aloha Kakahiaka Chair Tsai, Members of the Planning Commission, Deputy Director McLean, Planning Staff, members of the general public. My name is Kimi Yuen. I'm a principal for PBR Hawaii. We were hired by the applicant to complete the Special Use Permit application that is before you today. And with me today I have members of our consultant team here to help clarify any questions you might have. If they may they'd like to come up, I have Cal Chipchase who is counsel for the applicant as well as Tyler Fujiwara from Austin Tsutsumi Associates who's the traffic engineer, and Mike Dega who is the archaeologist who prepared the preservation plan for the property.

I have a very brief power point presentation for you today and it was mainly to support Mr. Fasi's report and recommendations and to give the Commissioners an orientation of the property and some background on it so you can see what the property looks like. Give me a second while I pull up my...okay, and just to reiterate the primary use of the property is historic preservation and as has been discussed in some of the testimony so far the property is part of what was called Camp Maui and was home to the 4<sup>th</sup> Division of the U. S. Marine Corp. To give you some orientation as to where the property is located. Makawao is just off the screen to the bottom, Makawao Ave., is this dark line that continues and the property is just off Kauhikoa Road right here. For some other orientation the figures that are to come up and to give you a sense of scale of how big Camp Maui really was up in Haiku what was earlier mentioned in some of the testimony as Giggle Hill is this pu'u that's located right here off Kokomo Road. Its Hawaiian name is Kauhikoa just like the road and the County park that is a memorial to Camp Maui is actually located right at the foot of Kauhikoa Hill and it's off Kokomo Road.

This is an aerial view of the property. Again, north is up. Kauhikoa Road runs, I apologize I have to reach down, Kauhikoa Road runs right along on the western edge of the property, Ohia Gulch is to the east. And just to give you some orientation of some of the historic properties that are actually on site the entry drive for Camp Maui is right here and you can see the remnants of the old historic road that was part of Camp Maui runs this way through the area that is part of this application is outlined in red, it's 17 ½ acres so it's actually roughly half of the size of the existing TMK which is outlined in yellow. And so anyway this is the historic road that runs east-west and then turns north-south. And you can also see remnants of other Camp Maui roads that continue through the property, you know. There's remnants here of a secondary road that intersected the historic road that's still a remnant there. And this road also continued north and those were all part of the original Camp Maui roadways that existed on the base.

Also in this area you can see these kind of whitish rectangle those are the remaining cement foundations for the old Camp Maui buildings that were there. The museum ...(inaudible)...is this little circle that's right at the top of one of the foundations and parking happens along this area. When people drive in, they park here and then the museum is here where they check in. And so if you remember from the location map that I showed earlier, Kauhikoa, the pu`u, also known as Giggle Hill is located in the foreground. So you have to imagine this is actually turned completely upside down. So this view is looking south from the property. If you remember Kauhikoa Pu`u was actually just north of the property and so if you can remember you know, the roads that I kind of outlined that's on the property right now the property in question is actually located here. And so the expanse of Camp Maui was quite extensive it reached from this edge on Ohia Gulch side all the way across, you know where Kauhikoa Road would run s roughly here and the camp continued on the opposite side of what they used to call Giggle Hill during the war time. And so to give you a reference now Makawao Road goes that way and then the entrance to the property is right here where my pointer is and that historic road that ran east-west is here and then runs this way. And so this is the other remnant of the road that I pointed out on the aerial if you can imagine that.

There's one more feature that I wanted to point out on the aerial and it's this little cleared area and it's actually a little depressed area on the property that actually was a baseball field on the Camp Maui property where the Marines recreated. And so to give you a perspective of where that is it would have been right at this corner here and so those rectangular platforms, foundations that you saw in the aerial were these buildings that ran along this edge of it. And so the property is really at you know, the mauka most corner of what was Camp Maui and so Camp Maui was quite extensive. If you think where the property is today and where Kauhikoa, the Pu`u is that gives you a pretty big understanding of how big the Marine base was.

And so I also wanted to read a little bit of what the tour guides say about Camp Maui and it gives you a little bit of history of Camp Maui and its impact, the Marines had during World War II. They start with welcome everyone to the Northshore Zipline Company's tour of Camp Maui. Camp Maui during World War II was home to the 4<sup>th</sup> Marine Division of the United States Marines. The Fighting Fourth as they have become known fought four major battles during World War II, Roi-Namur, Saipan, Tinian, and Iwo Jima. Although the 4<sup>th</sup> Marine Division never numbered more than 24,000 at any one time a total of 81,000 marines assigned to it saw combat action with the division one or more times during World War II. Between 1944 and 1945, the Fighting Fourth experienced a casualty rate of 21.6 percent the highest casualty rate of any military division in the history of the United States. In fact, there were some infantry companies of the fourth which had more than 80 percent of their original members killed or wounded. One company, Company A had 97 percent casualties from the 250 men that started with only seven made it back to Camp Maui alive and uninjured. And so, Mr. Neil's representation earlier about the significance of Camp Maui is quite impactful and many, many folks local or resident are probably not aware of this history that is here right in Maui. And so, when the applicant, you know, learned of this history it is true he originally was planning to do a residential development but when he heard that history he thought the preservation of the site was more important.

And so this archaeological inventory survey was commissioned back in May 2007 and it shows actually the entire 36-acre TMK that was surveyed as part of it. For reference the project site and the area within the application is outlined in red here on this map, but this shows again Kauhikoa Road, Kauhikoa Road on this side of the property, on the west side of the property. In yellow is the historic macadam road that was on the base and then highlighted in orange are the remaining foundation slabs from the buildings and so this is overlaid with a map from Camp Maui so you can see the foundations that are still remaining. They've all been numbered and recorded with the State Historic Preservation Division. The baseball field that I showed in the aerial is right here and you can see the little indication on the drawing of where the baseball field was as well. And so, this is a site plan of the property.

Again, the property boundary that you saw in red earlier is roughly 17 ½ acres of the existing TMK and runs, I'm tracing it right now with my pointer so you can see the edge of it. Entrance again is here, connects to the historic road, parking area adjacent to an existing museum yurt. And if you're not familiar with a yurt it's a tent like structure. I have a picture of it later in this presentation but I'll walk you through basically how the tour operates right now.

Folks check in at the museum and get an orientation here. They walk a short distance to a practice run and training area right here. Tower 1 is actually the first tower where they start the zipline tour. And all along the way the guides are giving them information about the site. So it continues here. There is a suspension bridge between these two trees, another zipline to a tree platform that's here and it's beyond the 15-foot setback on the property line. And then they currently take one last zipline and then back down here and walk back to the museum here. The 80-foot tower that's proposed is located here and it's about 190 feet setback from the closest property boundary so it is well within the...it's well beyond the required setback for a structure that high, a non-dwelling structure that high.

And I will now flip through some images so you can get a sense of the property itself. So this is the entry drive at the top photo. There's a rustic fence that welcomes visitors. The driveway connects to the historic road and there are tent like structures over some of the existing historic building foundations where there vehicles on display from the World War II era. The lower picture shows what the museum Yurt looks like and so it's made to feel very much like a military camp. There's a little picnic area where people can wait where they check in or after tours. These are some of the displays in the museum yurt of historic photos. This is a photo of the old USO that was off Kauhikoa Road. This is the tree platform that's probably at the closest property boundary but beyond that 15-foot setback. And then this is a photo of the baseball field, the remnants of that baseball field and the depressed area and so this is the 40-foot tower and basically what the structures look like are open, open beam, cross beam structures or tree platforms like this. This is a photo of one of the ladders up to the tree platform and then this is that suspension bridge between the trees.

This is a shot of a photo, a historic photo that is at one of the support structures for the zipline and it shows, you know, the historic landscape that once was there with the camp you know fronting the existing landscape so they can imagine what the camp looked like at that place. And then this is another shot of that...the baseball field where they had actually set up a boxing

ring and they had boxing matches for the marines to enjoy. But you can see there's a little drop off here in the photo and the military structures are in the back, Quonset huts. But the idea is to give the guests an idea of what Camp Maui looked like and so they show historic photos of the base and the camp and the activities that happened with the historic landscape preserved behind it. And so you can imagine if the applicant had gone ahead with what they originally planned, with the residential development all of this would have been closed off to the public. There's no way for people kind of imagine how big Camp Maui and how it laid out in the environment. So the idea is you know preserving 17 ½ acres in pretty much open space preserving all of the remaining foundations, the roadways, and then telling the story about Camp Maui is something that probably most people would not get a chance to do if this just became more of the same of you know ag residential, rural residential kind of use. You know this gives people an opportunity to actually learn about the site, see it firsthand and imagine you know seeing all the way to Kauhikoa, the pu`u from the property to see what Camp Maui really was and where it was and still have evidence of the camp and the base that was here in Maui.

A little known fact too is that it's actually the only U.S. Marine Corp base that was outside of the U.S. at the time and so probably not many people know that Maui played such an important role in World War II, but this was, this was where the marines came back, this is where they trained, this is where they recreated and you know, decompressed all of the combat that they saw during the Pacific campaign. And so you know we heard a lot of emotional testimony and I know, you know the applicant may not have made a lot of friends in the neighborhood but what he's trying to do now is to preserve a piece of Maui's history. Seventeen and a half acres is not a small piece. He would have easily sold that off as more of the same rural residential development, but what he's trying to do is preserve that piece of history for Maui so you can see the extent right from Kauhikoa Pu`u, the extent of the camp all the way to his property that's up here at the upper edge of the photo.

And so, that concludes my slide show but I did want to also speak to some of the concerns that were raised by the testimony that was shared today. And so thank you. The applicant has also commissioned a traffic study and as I mentioned Tyler Fujiwara from Austin Tsutsumi's Maui Office is here today if you have technical questions about that. But we did do a traffic assessment as requested by the Department of Public Works and found that at peak times morning and afternoon peak traffic was always at a level of service Level A. And so if you're familiar with what level of service is the traffic engineers rate it on a scale from A to E with A being the best with either no delay or up to a 10-second delay so very minimal, very good flow, traffic flow. And even when they combined the in and out traffic from the driveway the level of service never dropped below level of service A so the traffic on the existing Kauhikoa Road and at the driveway are minimal. You have tour groups that come in roughly every hour between 8:00 and the last tour is at about 4:15. There may be some activity that happens onsite where the staff is cleaning up, but really the operations for the tour is from 8:00 a.m. until 6:00 p.m. at the very latest. So traffic you know even during the peak morning and afternoon peaks added with actually the worst case scenario of traffic in and out of the driveway never went above a level of service A and so you if you have other technical questions about that we're happy to bring Tyler up to answer those.

The applicant also commissioned a sound study and took measurements over a seven-day period. It went 24 hours. They left a sound meter at the closest zipline to the properties so that's probably the tree platform that you saw that was right beyond that 15-foot setback. It's the closest one to the neighboring residences and in that study it was also found that none of the sounds whether they were the mechanical wheel on the ziplines or the audibles from the tour guests ever exceeded the County or I mean, not the County...the State Office of Health's standard for an Ag District which is 70 decibels. Nothing ever went above 63 and this was full like recorded over seven days, 24 hours, an average was taken and none of the sound levels from the zipline tours or the guests ever exceeded what is allowable in the Agricultural District what is allowable in the Agricultural District. In the loudest noises tended to be the rustling of the trees and so we have that rustling of the trees or surrounding –

Chair Tsai: I need the audience to keep in order here. I'm sorry, but I understand your guys emotions but you gotta let the presenter present their case. I don't wanna have to call a recess to this meeting. Do not speak unless you're at the podium. Thank you.

Ms. Yuen: And these measurements were taken just last month so this is the peak period during the summer. The study was done by Diehl Adams and unfortunately they're not here today, but we've left a copy of the report with Paul so if you have any questions about it he has the copy now of the report and so it does show that none of the measurements over that 7-day period exceeded what is mandated by the State requirements.

I also wanted to address the safety standards and I believe it's actually OSHA that regulates the zipline requirements. You know OSHA is the health and safety and more for occupational jobs and so I have Chris also here who can talk a little bit more about that and how they maintain the standards according OSHA and I think there's another certification for similar challenge courses and zipline tours that they maintain in order to ensure the safety of the guests as well as the employees on staff. And so with that, I'll have Chris come up. Thank you.

Mr. Chris Hoyte: Hi, my name is Chris Hoyte, I'm Derek's son. I know my dad can be a little difficult and it sounds like he hasn't made too many friends. But I'm the one that's onsite and I run the day to day operation. I would like to, we're trying address everyone's concerns with the zipline. We've had archaeologists come out and we're trying to make sure that we properly preserve the site. We've had the sound engineers comes out making sure that we're within the sound limit. We've had the traffic engineer come out to make sure that we're within the County standards. And we've also had a planner to make sure that we're following the rules. As far as safety at the zipline we follow ACCT standards which is Association for Challenge Course Technology. So they pretty much control how we build our structures, the towers, the tree platforms and how we run our day to day operations as far as training and pretty much everything that we do. We do course inspections every day. We do a monthly thorough inspection. We also have a professional come out yearly to do a thorough yearly inspection of the entire course. So that's basically the safety part of it all.

So the big part of the tour there at Northshore Zipline is the combined education with fun. We wanna educate people about the site there and we feel that it's a big part of that area of Haiku

and of Maui and it's an important part of the news we talked about. I don't think really too many people even know about or realize. Currently we're employing 24 people at a living wage, guides Leslie and...Yeah, we'd like to preserve the site rather than develop it and I think that's what we're trying to do there. Anyways, I wanna be a good neighbor to everybody. I wanna be pono and that's why we're here today.

Chair Tsai: Are you guys done with your presentation?

Ms. Yuen: Not quite yet. I think the next person we wanna call up is Mike Dega who's the archaeologist that prepared the preservation plan so he can give you a little background on that as well.

Mr. Mike Dega: Morning Commissioners. It's a bit odd, Rowena you could attest to this I'm usually here to talk about precontact Native Hawaiian sites not a 75-year-old site.

Chair Tsai: Can you repeat your name?

Mr. Dega: Mike Dega from SCS Archaeology. It's an interesting historic site. I think we can all agree to that point. One interesting fact is the 4<sup>th</sup> Division went down to Saipan and Tinian and fought. I was actually in Saipan last year and we found a G.I. and we brought him back to Honolulu to DNA analysis and guaranteed he was up at Camp Maui at some point so it's an interesting connection.

The SHPD agreed there's a AIS done in 2007 which was accepted in January 2016. Recommendation as no further work. The SHPD concurred with that assessment. We came back to them and said well, it's an important site how about if we preserve it? And of course, SHPD was gonna say absolutely. We wrote our preservation plan which encompass 16 features, 15 of the Quonset huts and the road. The SHPD approved that in April of this year so it is under a preservation plan, has a official state site number to it to this Camp Maui site. So it's on the record of SHPD DLNR. If you have any questions, I'm happy to answer them. I heard the audience talking about move the museum, et cetera like that, if you have questions of that nature would this activities on the site affect this site? I'd be happy to answer any of those. ...(inaudible)...probably has a few.

Chair Tsai: Commissioners, I think we're...I'm gonna reserve the comments or questions after the presentation and then public testimony, but—

Mr. Dega: Okay.

Chair Tsai: Is that okay? Thank you.

If you go back to the historic map of the area of the lot itself, it said salvage dump. What does that mean?

Mr. Dega: I think that's related to the World War II use. We didn't test—

Mr. Hedani: So it was a dumping ground for equipment basically in that area?

Mr. Dega: Probably, but the area was not tested during the inventory survey by Cultural Surveys because they did a few parcels around it, backhoe trenches and didn't find anything cultural. SHPD said fine tell me what's on the surface and we'll go from there.

Mr. Hedani: Okay, but you didn't do any research on the actual use of the property by the marines at that time?

Mr. Dega: We did...the research was done during the AIS and they discovered, you know, the concrete slabs and how many people were there, you know the history of the area and the activities that were occurring on a day to day basis.

Mr. Hedani: I'm not referring to 1,600 acres just to the 17 acres.

Mr. Dega: Yeah, that was all done in the AIS. All the background was done. There was LCA research. They interviewed many of the neighbors that lived in the areas, the Santos Family, et cetera. It talked about the land use from the LCA times they used this pasture, all the through World War II times and the pineapple, sugar cane cultivation, et cetera.

Mr. Hedani: Thank you.

Mr. Dega: Thank you.

Mr. Hedani: Marines are not G.I.s. Marines are Marines.

Mr. Dega: Marines, correct. It's classified by the ...(inaudible)... as a G.I. so I'm sorry about that.

Chair Tsai: You guys have anybody else to come forward for the presentation?

Ms. Yuen: We just have one more, Cal Chipchase who is counsel for the applicant.

Mr. Cal Chipchase: Cal Chipchase for the applicant and I really didn't have anything to do formally in terms of a presentation for you. I think you put a lot and we appreciate your patience. I just wanted to address a couple of questions that came up from the Commissioners regarding the BVA proceedings and the NOV because I worked on those and also in relation to his speech between Mr. Peter Rohrer and ...(inaudible)...the operator of the property because that also came up. The NOVs relate to use. They're use violations because as you heard from the Deputy Director the County takes the position that any zipline activity regardless of what it's in connection with requires a County Special Use Permit. Respectfully we disagreed with that position that a County Special Use Permit is required. So the County issued the NOV. We appealed the NOV to the BVA. Ultimately in discussions with the County everyone agreed that it was better to come before this body and seek a County Special Use Permit rather than fight



this out in court. And so those proceedings were stayed and we, the applicant, retained the consultants that you've heard from and the others that couldn't be here to prepare the application and to make sure that all standards, State, County, Federal, whatever was applicable was met. So that's the application reports you have today and the BVA proceedings remain stayed.

The other question that came up and I believe it related to disputes between Mr. Peter Rohrer who you've heard from today and the operator of the zipline, Derek Hoyte or DNS. That actually resulted in a lawsuit and that lawsuit was settled. And as part of that settlement agreement, Mr. Peter Rohrer released all his claims and that's why he withdrew the petition for intervention is 'cause the court ordered him to withdraw that petition for intervention as a breach of the settlement agreement because he did settle the claims and he's received compensation for that. So that's, that's where those disputes were and I think a lot of what you hear today is an outgrowth of those. Any questions? I'm happy to take them now or I'm happy to take them later.

Chair Tsai: Thank you. That concludes your presentation?

**a) Public Hearing**

Chair Tsai: Okay, we're gonna open the floor...Commissioner Hedani?

Mr. Hedani: You're gonna take questions now or later?

Chair Tsai: I'm gonna take it after the public testimony. Okay, at this moment I'm gonna reopen the floor for public testimony. I got three people that didn't testify earlier. Steven Hyson? Yeah, please come forward. You have three minutes. Please identify yourself again.

Mr. Steven Hynson: My name is Steven Hynson. I live...my wife and I live three lots mauka of the zipline project and I have submitted written testimony as has my sister who lives next door. I just want to say that I also am not in favor of the issuance of the Special Use Permit. I wanna reiterate that. But there are a couple of points I didn't include in my testimony and after hearing some of the presentations I do want to mention I have degrees both in archaeology and as a land use planner. I've worked in Hawaii in the 70's and 80's both at Bishop Museum and private industry in the 70's and 80's. So I have some kind of feel for you know land use planning, you know how things go as well as the archaeology of the islands both prehistoric and historic. And as a neighbor I've kind of watched what they've done with the grading, with the bulldozing. They talk about historic roads and it's a joke. Let's talk about historic preservation. They have no clue and maybe they brought people on staff and said oh wait a minute you know, we gotta take a look at this, but what they have done up to this point is negligible. I appreciate that a survey's been done and they're looking into that. But I ask you if they would have really emphasized that aspect of this site, the historic aspect and the museum does it require a zipline, does it require a challenge course? Well, no I don't think so. And if you hear from the testimony of my neighbors it is a major nuisance with the activities created by the zipline and you know, the challenge course, and this notion of a 80-foot tower I would suggestion I put on my land use

planner hat and I take a look at the Maui County Code and I see one, that recreation activities are supposed to be ancillary and accessory to agricultural activities. It's right there on Code. Secondly there are height requirements. It doesn't specifically address ziplines but there are height limitations and an 80-foot zipline tower does not comply with those requirements in the ordinance and I agree that the ziplines and their structures do need to be addressed. The accident up at Piihola was horrendous. And there's other things, you know, I think on Kauai, you know setting up the zipline there's a number of people injured if not killed. So it does need to be regulated, it does need to be addressed by the Planning Department and taken up with the Council.

And just to conclude my testimony my father was stationed here in 1945. He flew out of NASKA. He married a Honolulu girl in 1948. My mother lived in Honolulu. She saw Pearl Harbor being bombed. They retired up on their property in the early 70's. They came to Maui in '69. Both of them have passed. My mother most recently. She was still alive when the zipline was put in. She'd turn down her hearing aids. That's the way she survived it. My father, God rest his soul, he's buried in Makawao Veteran's Cemetery rolls, I'm sure rolls in his grave.

Ms. Takayama-Corden: Three minutes.

Mr. Hynson: Although he was cremated. But nonetheless, so I can't speak for them...you know, they have gone beyond, but you know they moved to that area because it was rural, it had a rural character. My father raised his horses, kept a couple head of cattle, made friends with the neighbors and I hope all of you if haven't recently take a drive up and down Kauhikoa and you'll get a sense of what the neighborhood's like. You know it is kind of a classic rural Maui neighborhood. People are doing their agricultural activities.

Chair Tsai: Please conclude sir.

Mr. Hynson: Thank you very much. Any questions?

Chair Tsai: Thank you. Lance Gilliland.

Mr. Lance Gilliland: Aloha, I'm Lance Gilliland. I live at 1835 Kauhikoa Road and I'm a direct descendent of the Copp Clan that owned all of this property. I am here to testify against the zipline and I have a petition from members on the road. They're demanding that it be stopped as well. It took me 11 years to build my home on Kauhikoa Road 'cause I did it the correct way. This Commission should stop this hearing as of today because this what is before you is not an accurate account of the process. There's three owners of that property. You haven't heard anything about the other two owners. They do not have the signatures of those other two owners to put any zipline or operations on this property. They've done it illegally from 2009. So by right, this Commission shouldn't even be hearing this because they don't by process, by the rules of the Special Use Permit you have to have the signatures of all owners on the permit. They do not.

They're also saying in this report that they have a Lot 3C for road widening that is inaccurate 'cause it has to be three owners. Derek Hoyte owns basically 18 acres, there's a Dorothy Munoz and then Bobby Copp owns the other 18 acres combined brother and sister, they're the actually the Copp clan is themselves. So this report you have in front of you is inaccurate as well. It talked about the traffic study they said 40 to 50 customers per day that's inaccurate. They have 40 to 60 cars in there a day. Cars, two people a car that's 120 people, but families come so you can see the numbers are quite different than what this shows. The pictures they showed of you of the property is inaccurate. It's another outdated photo. So there's a lot of flaws in this docket too much for me to cover in three minutes. But I'm most, I'm the closest to this project than anybody else even Rohrer because this is my family's property and I was the konohiki or the land supervisor if you will for the family so I know everything that has gone on this property. It's very emotional and hard for me to speak about, but I can go down the list of the things that are wrong, 80-foot towers, 2009 Derek Hoyte has a history of...let me...here's my, let me just read this to you, I better keep my controlled. So here's how I describe the situation. Hiking, hiking by definition is a walk for a long distance. There's no long distance probably 30 feet, 30 yards is the most they're gonna walk to any of the ziplines yeah. Fraud, wrongful, criminal deception intended to result in financial or personal gain. Derek Hoyte has been proven, gone to jail for this same kind of unpermitted businesses in the mainland. He's doing it here and I believe he might even have a situation in Huelo that he's done the same thing again, unpermitted. He just looks at County rules and regulations, policies and procedures and blows them off. ...(inaudible)...he's showing that right now and then...shenanigan, reckless or malicious behavior that causes discomfort or annoyance to others. Permit, an official document giving authorization to do something. He does not have the authorization to build anything there. He doesn't have all the owners' signatures period. The last one I have is legal, appointed or required by the law, by law. He has nothing. Thank you very much

Chair Tsai: Thank you. Commissioner Robinson?

Mr. Robinson: Lance I got a couple questions for you. But the first one is can you explain to me the ownership of this property and there's three people, he had the top, he had the bottom—

Mr. Gilliland: So—

Mr. Robinson: Wait there's right of ways. You know so we're hearing from a lot of people with that seems to be part of this property but I'm a little confused.

Mr. Gilliland: Sure. So the property before Derek Hoyte owned it there's ownership of Bobby Copp, Dorothy Munoz and the Ah Sam family. The Ah Sams live in Kona. They sold their interest, 50 percent of that 36 acres to Derek Hoyte. Derek Hoyte showed up. His brothers were squatting on it. I had a police report called him because he was squatting on the lower section of the property. And so there's an agreement, there's a written map of how Derek had subdivided the property in his behalf and that it's documented through the police that he was going to be on the lower side, the makai side. He started his zipline operation, zipline owns 50 percent acreage. So he started his operation in 2009 around the zipline full operation going on on the makai side. All of a sudden he decides he wanted to go on the upper side so he's

literally taking over this property as someone has described prior to this. Mr. Aveiro has a easement road that's been there forever that goes through the property as outlined here that Derek is every time trying not to honor in the subdivision proposal that's in front of my uncle and aunty at this time. Derek has done everything to stall process and move it on. But Mr. Aveiro's access road is being...Derek doesn't wanna put it on the subdivision agreement which the family is saying it has to be because it is grandfathered in. He has every right to access this road. So Derek was first...the picture that he showed you is inaccurate because it would have showed the ...(inaudible)... starting and Hoyte's here he can confirm that they were on the lower half prior to this whole shenanigans going on and then finally moved onto the upper side. Everywhere on that whole area, my property I have those same Quonset huts cement pads. I guess I can get historical site, I can do everything that they're doing. But the property is owned by three people right now. It is not subdivided. They're tenants in common. So this should not be in front of you. And again inside of this packet it says 3C is a road widening. That is incorrect. And please if anybody can dispute me please dispute me I'd be happy to comment.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Thanks for that. So the next question, I heard they said if they're not gonna make this a zipline that they're gonna go ahead and subdivide and make houses. So since you built your house there how easy for them to go ahead and—

Mr. Gilliland: They got no water. They have no water. It will take them forever and all they can do is subdivide that property if they're lucky by three more times it would be. So they're not gonna make this...it's gonna be two-acre lots minimum, two-acre lots minimum. But you only can subdivide seven times, they've already done it three times. There's only four left, right? One water meter, but the water meter is to my aunty and uncle. He does not have a water meter. It's already been in the settlement in Cardoza's court that they have my Aunty Dorothy Munoz has the water meter. He can, he can develop all he wants but it's gonna be a catchment system if he's lucky. But he has a process. It took me 11 years. I think expect him to have to go through the same process. Just like this zipline, it's supposed to go the way, the legal way, the policies and procedures, rules and regulations they're not being followed, they have not been followed. It's should be ceased and desist as the order has been already done by the County. This thing should be taken down, all of it taken down, the land put back to its status and then come and start the process. That's how it's supposed to be nothing more, nothing less. I'm not asking for any favors. That's the process we have here. Eleven years, 11 years took me for my house. Can't see somebody else coming in and just blowing it all off. Especially when he's a repeat offender of this policy and procedures, rules and regulations of County Code. It's documents. Cannot have this, cannot. That's not right for our county.

Chair Tsai: Lance, where's your house at?

Mr. Gilliland: 1835, sir. I'm makai of him about a half a mile down. And I too can hear the screaming and vulgar language from my house.

Chair Tsai: Thank you. Marsha Lowery?

Ms. Marsha Lowery: I'm Marsha Lowery. I live on the other side of the gulch across. I, too can hear it, hear the noise and then also the zip itself that noise does travel through the gulch. I really don't have anything to add. I think everything pretty much been stated here by people that are closer. I, too though am opposed the zipline itself. I don't understand what it has to do with a historical site. I did send my brother down there in October when his family came to visit to go check it out and I just texted him because I didn't know they were doing a historical tour and they did not get a historical tour just so just they got a zipline tour. Just want to state that. Thank you.

Chair Tsai: Thank you. Marsha we have a question for you. Commissioner Hedani?

Mr. Hedani: I heard testimony that the operator has been operating since 2009.

Ms. Lowery: Yes.

Mr. Hedani: And have they ceased operation at any specific point in time as a result of the Notices of Violation?

Ms. Lowery: That I don't know. I don't think so.

Mr. Hedani: So they've been continuously operating. Are they operating today?

Ms. Lowery: Yes.

Chair Tsai: Thank you. Okay, anyone else wish to testify who haven't testify yet you may come forward. No I'm sorry, I can't allow that. We can ask Commissioner if you have a question maybe one of the commission members can call you forward but right now we don't allow it. Once you testify that's all the chance you have. We have to be fair. Yeah, you had your three minutes, sorry. Okay, at this moment we're gonna open the floor for comments, questions from the...oh, I'm sorry, public testimony closed now. All right, questions from the Commission?

Mr. Robinson: The recommendation...(inaudible)...

Mr. Hedani: I have a question.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I actually have a question for the applicant or the applicant's representative from PBR.

Ms. Yuen: Aloha.

Mr. Hedani: PBR is a very respected organization. Have you folks certified that the equipment being proposed is safe?

Ms. Yuen: That is not part of our expertise and I would rather bring up the owner who does go through those procedures in terms of the –

Mr. Hedani: So PBR has not investigated any of the structures on the site?

Ms. Yuen: No, that's not what we—yeah, we're planners and landscape architects so we're not engineers, we're not architects.

Mr. Hedani: ...(inaudible)... contract with a structural engineer?

Ms. Yuen: No we don't have a structural engineer on our staff.

Mr. Hedani: So no one's evaluated the proposal from a structural engineering standpoint?

Ms. Yuen: No, no, not within PBR.

Chair Tsai: Commissioner Higashi?

Mr. Higashi: Based upon your application and the location of this particular property it's primarily agriculture and the rating of it did you say it was A to E and it's A?

Ms. Yuen: No, the A to E is actually the traffic.

Mr. Higashi: Oh, that was traffic.

Ms. Yuen: Traffic analysis. Yeah, the soils are C and E and so like Mr. Fasi and Deputy Director mentioned that under State Land Use Ag they are permitted uses.

Mr. Higashi: So the applicant did they have any intention of doing any agricultural work such as farming?

Ms. Yuen: Not to my knowledge what the primary use on this property is historic preservation and that is currently permitted under the County zoning for the Ag District and so within the County's regulations for an Agricultural District historic preservation, cultural and historic landscapes, preservation of all of those things are permitted as a primary use. So that's what the primary use for the property is.

Mr. Higashi: Okay, further to that is according to your priorities you originally had ranching and then you went into historical sites and so forth and according to the gentleman that came up I think I counted seven slabs on that particular property. Do you know how many slabs there are in this entire Maui Camp property?

Ms. Yuen: No, I don't know. I don't know if the archaeologist knows but I don't know that. I only know what was done for this piece.

Mr. Higashi: Well the reason why I ask was why is this seven piece of slabs on this particular property so significant as compared to others 9,000 whatever it is?

Ms. Yuen: I don't think it's a necessarily a measure of what would be more or less significant. I think the fact is that the slabs exist at this site and it's a physical reminder it's still there that the camp was there and so as we showed from the perspective map, you know, it was at one end of the camp and so it's kind of a nice delineation and it's nice that the applicant has decided to preserve it as part of what was here. They could have easily taken out the slabs. SHPD did not requirement them to preserve them but the applicant decided that this was a piece of history that he wanted to preserve.

Mr. Higashi: The reason why I asked the question was I didn't hear in your application any presentation pertaining to any historical part besides the zipline and where it was going so my question is you know, do you have in your tour a portion of it and how much of it is presented in the area of historical sites et cetera?

Ms. Yuen: So think maybe if Chris can help a little bit with on the tour exactly and how it's run. I just...what I read was from the script and part of the introduction and so I'll let Chris explain a little bit more how the tours actually run with the historic perspective.

Mr. Chris Hoyte: Yeah, so I don't know if...

Chair Tsai: Chris can you identify yourself for the record?

Mr. Hoyte: Yeah, Chris Hoyte. Through some of the pictures that she had shown we have different pictures on all the platforms. Basically there's a picture on each platform showing what the area looked like back in the day. We got the boxing ring, we've got the pictures of the tents and all that so there's several points along the tour that the guides stop and talk about the history. And that's kinda what we're trying to do is combine the history with the zipline tour.

Mr. Higashi: So on your zipline tour on each platform you have a presentation of what the historical site is about?

Mr. Hoyte: Yeah.

Mr. Higashi: And how long is that?

Mr. Hoyte: Maybe a couple of minutes.

Mr. Higashi: Couple of minutes?

Mr. Hoyte: Yeah.

Mr. Higashi: So primarily it's the zipline?

Mr. Hoyte: Yeah.

Mr. Higashi: ...(inaudible)...

Mr. Hoyte: Yeah.

Mr. Higashi: Okay.

Chair Tsai: Commissioner Duvauchelle?

Ms. Duvauchelle: Chris I have a question when did you add those pictures?

Mr. Hoyte: We've had them since we put it up.

Ms. Duvauchelle: And are you operating as a nonprofit?

Mr. Hoyte: No.

Ms. Duvauchelle: So being the historic preservation site or a museum you're not doing business under a nonprofit?

Mr. Hoyte: We have done stuff for nonprofit. We have done fundraisers for Giggle Hill and other places.

Ms. Duvauchelle: I guess I'm just trying to figure out how the two marry as far as your zipline business and the museum area. I mean what came first the cart or the horse or...

Mr. Hoyte: What came first was the zipline.

Ms. Duvauchelle: Thank you.

Chair Tsai: Commissioner Hudson?

Mr. Hudson: Good morning. Questions of you, just a couple of real quick questions. The zipline came first as opposed to historic preservation? Which came first?

Mr. Hoyte: Yeah we, we put in the zipline.

Mr. Hudson: You thought that was more important than historic preservation?

Mr. Hoyte: I don't know if I would say it like that.

Mr. Hudson: Simple question.



Mr. Hoyte: Yeah, we put in the zipline first.

Mr. Hudson: Okay, since we're doing historic preservation any chance of a...that being able to walk the thing because it's hard for Vets to climb up that ladder. You have anything regarding the Vets walking tour?

Mr. Hoyte: Yeah, we do have a walking tour where you can follow.

Mr. Hudson: So why can't the whole thing be a walking tour that would alleviate all the problems?

Mr. Hoyte: Yeah, it's a zipline tour as well.

Mr. Hudson: Did you guys ever consider just walking tours? You have them now?

Mr. Hoyte: Yeah, yeah people can walk along.

Mr. Hudson: ...(inaudible)...

Mr. Hoyte: Yeah.

Mr. Hudson: That's good. My last question. Since historic preservation is what you're basing this whole thing on I assume that you have tons of blogs about historic preservation from your past clients is that true? ...(inaudible)...blogs we have about preservation as opposed to screaming and yelling and zipping around at 40 miles an hour.

Mr. Hoyte: Well, if you go to our website we talk about the history and—

Mr. Hudson: We're talking about the clients what do they say?

Mr. Hoyte: I mean we can get on there and put up, but yeah there's a lot of comments on there as far as us combining the zipline tours with the history.

Mr. Hudson: Thank you.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Chris, I guess you're here for somebody else's ills but you're the manager now?

Mr. Hoyte: Yeah.

Mr. Robinson: How long have you been the manager?

Mr. Hoyte: Since the beginning.

Mr. Robinson: Since...when's the beginning?

Mr. Hoyte: I guess about 2010.

Mr. Robinson: 2010. I'm looking at a Notice of Violation on December 11, 2014. Did you ever see this Notice of Violation?

Mr. Hoyte: No.

Mr. Robinson: So you're the manager, you're in charge but you've never seen this Notice of Violation?

Mr. Hoyte: I'm trying to recall.

Mr. Robinson: Are you aware of a Notice of Violation?

Mr. Hoyte: Yeah.

Mr. Robinson: Which one?

Mr. Hoyte: I'm not...

Mr. Robinson: Okay, well if you read the Notice of Violation it says the zipline activity occurring on subject property is not a permitted use. You have a driver's license?

Mr. Hoyte: Yeah.

Mr. Robinson: Because you don't wanna get arrested for doing something illegal. Well this Notice of Violation says that. In fact if you looked in the packet that were here with your application and it also says that you guys have a Notice of Violation a year before this. And then they sent you another one and it also says to cease and desist and in the notice and you can talk to your attorney because you pay for him not me, but it says you need a Special Use Permit but yet you guys still went to the Board of Variances instead of applying for it here.

Mr. Hoyte: Okay.

Mr. Robinson: So I don't know what you guys are doing up there. It doesn't sound like it's anything correct. I don't...I'm not gonna validate because I wasn't there when fences were taken down or trees were cut, but Notice of Violations is County document that's pretty simple and if you were the manager which is in charge of safety, which is in charge of neighbors, which is in charge of employees and you don't know about a County Notice of Violation or you've never read it then for one thing is you guys are mismanaged I can tell you that for sure. And if you do read this Notice of Violation it says you need a Special Use Permit and this is 2014. Are you guys operating as of today?

Mr. Hoyte: Yes.

Mr. Robinson: So you are currently operating without a permit which is a Notice of Violation saying that you cannot. So in other words you guys are taking a stance that you feel that you can continue to operate as you guys feel even though you have a Notice of Violation and a cease and desist? Is that correct?

Mr. Hoyte: Yes.

Mr. Robinson: Thank you.

Chair Tsai: Commissioner Higashi?

Mr. Higashi: I have a question. When you construct your zipline—

Mr. Hoyte: Yeah.

Mr. Higashi: Is your primary source historical site first or is it height elevation based upon maximum travel when you build your zipline now? Is it situated where you're targeting the historical site as a place you're gonna go and do the presentation or are you doing it based upon the height elevation of where you're gonna go?

Mr. Hoyte: I mean it's a combination of both. I mean we got over the old ball field and that's a you know one of the main historical visual sites that you can see.

Mr. Higashi: So it's not, it's not historical first, it's zipline travel?

Mr. Hoyte: I guess if you wanna put it that way.

Mr. Higashi: To get it maximum thrill or whatever it is.

Mr. Hoyte: Well I mean not maximum thrill but to make it work as a zipline.

Mr. Higashi: Okay.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Chris?

Mr. Hoyte: Yeah.

Mr. Hedani: I've heard testimony that personnel that operate the zipline shake the ladder when guests are climbing up to the platform, earthquake. Talk to me about earthquake.

Mr. Hoyte: I'm not aware of this.

Mr. Hedani: Understand that this little box over here is recording your statements.

Mr. Hoyte: Yeah.

Mr. Hedani: And it's being recorded here too.

Mr. Hoyte: Okay.

Mr. Hedani: So making a misrepresentation before the Commission is pretty serious—

Mr. Hoyte: Yeah.

Mr. Hedani: --situation. Do you know of things like that going on?

Mr. Hoyte: I know the guides try to, you know, be funny and make people laugh. I don't know if that's something that they do.

Mr. Hedani: When the guests climb up the ladder is there more than one guest on the ladder at any time?

Mr. Hoyte: No, no.

Mr. Hedani: So one at a time?

Mr. Hoyte: One at a time.

Mr. Hedani: You're positive?

Mr. Hoyte: Positive.

Mr. Hedani: Okay.

Mr. Hoyte: The guests are clipped in as they climb.

Mr. Hedani: If the guests were to fall off of the ladder how far would they fall?

Mr. Hoyte: The line that they're clipped into runs through an auto locking device called an ALF so they can't fall.

Mr. Hedani: They cannot fall from the ladder?

Mr. Hoyte: It works kinda like a seatbelt. So any sudden movement will...it will lock.

Mr. Hedani: They get clipped in before they climb the ladder?

Mr. Hoyte: Yeah. Customers are clipped in at all times.

Mr. Hedani: And you're positive that happens all the time?

Mr. Hoyte: Absolutely.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Can we go back to that picture that you showed with...has your clients in front of the ladder that was climbing up it was a bunch of people? No, you had people with helmets on and gear on.

Ms. McLean: That might have been a photograph...(inaudible)...testifier.

Mr. Robinson: Oh that was the testifiers? Oh I apologize. Am I able to ask for that photograph from the testifier not their testimony since it was they showed it in? I'm sorry, I just wanna see the picture.

Chair Tsai: You wanna see the picture of the photograph that one of the testifier presented?

Mr. Robinson: Yeah.

Chair Tsai: Allow it.

Mr. Robinson: He's gone?

Mr. Rohrer: ...(inaudible- not speaking into a microphone.) the ladder goes up on that platform. They shake it and say, Hawaiian earthquake.

Chair Tsai: Okay, thank you Peter.

Mr. Rohrer: And I also have ...(inaudible-not speaking into a microphone)

Chair Tsai: Thanks fine. Thank you.

Mr. Robinson: I want to pass on Mr. Hedani has two people on the ladder.

Chair Tsai: Just so the applicant can review the photos as well.

Mr. Robinson: You didn't see that first one. Did you see that first one? Oh you saw it, yeah you saw it.

Chair Tsai: Commissioner Duvauchelle?

Ms. Duvauchelle: I have a question when Chris is ready or...

Mr. Hoyte: Yeah.

Ms. Duvauchelle: So during the clearing, so you did an archaeological survey I know Mike is here, did you clear before you did the survey or was the survey done prior?

Mr. Hoyte: I'm not sure.

Ms. Duvauchelle: And did you get an NRCS Permit, a grading permit.

Mr. Hoyte: My dad deals with all that stuff so...

Ms. Duvauchelle: So no permits. Are you required to get a noise permit from the Department of Health?

Mr. Hoyte: I'm not aware.

Ms. Yuen: We can help with the question.

Ms. Duvauchelle: Okay.

Ms. Yuen: So if you remember the archaeological survey was done in –

Chair Tsai: Can you identify yourself again, sorry.

Ms. Yuen: -- I'm sorry, Kimi Yuen, PBR Hawaii. So they AIS was performed in May of 2007 and so that predated any of the activity.

Ms. Duvauchelle: Any of the clearing?

Ms. Yuen: Any of the clearing and so what they're doing now too I understand is they're actually clearing some of Hau and Christmas Berry that is undermining some of the foundations that are still left as well. So if you looked at the aerial it doesn't actually show you know all of the foundations that are there but they're working to clear those to try to preserve the foundations that are remaining, so...

Ms. Duvauchelle: And an NRCS Permit is not required for that on agricultural land?

Ms. Yuen: And NRCS Permit?

Ms. Duvauchelle: NRCS.

Ms. Yuen: For the?

Ms. Duvauchelle: Clearing.

Ms. Yuen: The clearing.

Ms. Duvauchelle: On ag land.

Ms. Yuen: If it's just clearing I mean I think you know Public Works can also tell you it's just clearing of invasive species and I don't believe it's required.

Ms. Dagdag-Andaya: I mean it depends on what the activity is—

Chair Tsai: Deputy?

Ms. Dagdag-Andaya: Oh, I'm sorry. The NRCS Permit you can do that. There's two ways of getting either a clearing or grading approval. If it's an ag I believe you can go through NRCS and get a conservation plan and work with them on your clearing or the other option is to go through the, you know, the building...Public Works Departments from the county and get a grading permit from them, so...

Ms. Duvauchelle: Right. Thank you.

Chair Tsai: Further questions from the Commission? I have a question. Oh, Commissioner Castro?

Mr. Castro: This is for Lance oh I'm sorry, not Lance, Chris.

Mr. Hoyte: Yeah.

Mr. Castro: Chris do you have routine maintenance schedule?

Mr. Hoyte: Yes we do.

Mr. Castro: You know do you check all the ropes, the ladders, everything?

Mr. Hoyte: Yeah, we do a daily, monthly and yearly inspection.

Mr. Castro: Those that inspect them are they qualified to do inspections?

Mr. Hoyte: Yes.

Mr. Castro: How are they qualified?

Mr. Hoyte: The ACCT, Association for Challenge Course Technology.

Mr. Castro: They have credentials for them?

Mr. Hoyte: Ah huh. Is that all?

Chair Tsai: I have a question either for the Department or the counsel for the applicant regarding an ownership that was...that issue that was brought up? Can you speak to that?

Mr. Cal Chipchase: I'd be happy to Chair. Cal Chipchase for the applicant. Yes, so there were three owners or there are three owners. They're going through subdivision now. I got an update this morning that said that all of the—

Chair Tsai: Can you speak to the mic please?

Mr. Chipchase: Of course, Chair. All the concerns by the other co-owners had been addressed were the comment from their counsel. They have Honolulu counsel representing them. All of their comments have been addressed and that they were waiting for sign off so that they could submit it to Public Works to continue with the subdivision or to start the subdivision process. So the issue with the application all relates to the agreement with the County arising out of the BVA proceedings. So Commissioner you'd asked about the application and the signatures and you had asked about the Notices of Violations. I understand those questions and those concerns. They all relate to the disagreement with the County that a County Special Use Permit is required for this particular operation. Under these Notices of Violations were issued they were appealed because respectfully we disagree with the County's position. Ultimately in discussions with the County everyone agreed, the County, the applicant that it was better to come before this body on a Special Use Permit than to fight out those competing interpretations of County Code. Is there any permit required for the operation or is a County Special Use Permit required. Ultimately everyone agreed that it was better to come in and seek a County Special Use Permit than to fight that out before the BVA and then fight it out in court. In connection with that agreement everybody understood that a subdivision would ultimately need to be completed so that the 17 ½ site stood alone as an independent parcel but that that process would take time to complete both because of the concerns by the co-owners and some disagreement as to what was required as part of a subdivision. Also not to worry with lawsuits that also was a lawsuit which also resulted in a settlement agreement which is why there's going to be a subdivision. But there was disagreement as to...or there was an understanding that that would take time. And so rather than wait for that process to be completed everybody agreed that we should come before this body on the Special Use Permit application and statements of no objection were submitted by Counsel for the other co-owners, no objections to the application so that we could proceed with this while we finish the concerns or address the concerns of subdivision so that everything could get permitted as quickly as possible. In connection with that same agreement with the County it was understood that the operations would continue while this permitting, while this permit was processed. So that is I think hopefully some context in response to your concerns Commissioner.

Chair Tsai: Counsel you speak to the subdivision of the property. My other question is what about this operation of zipline. Does Mr. Hoyte have actually signoff from the other owners to operate the zipline?



Mr. Chipchase: Well, I don't wanna get into technical issues of what a Tenant in Common is allowed to do on the property. Basically you're allowed to make any use as long as you don't interfere with the other individual's uses. I'll also add that as part of the settlement agreement with Mr. Copp and Ms. Munoz it was understood that Derek would occupy or D&S would occupy the 17 ½ acres that he's occupying exclusively and that they would have exclusive possession and occupation of the other roughly half of the original parcel size. So in terms of his operation everyone agreed through that settlement that he would conduct his operation on only his property and that they wouldn't interfere with it and they wouldn't object to it. When it came time to submit the SUP application as I say, they submitted statements of no objection to the application with them fully understanding that ultimately the property is gonna be subdivided and they won't be Tenants in Common with him in any part of it they'll have their portion of the original lot.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Counsel when did you take on these clients?

Mr. Chipchase: I began representing Mr. Hoyte in 2014 I believe.

Mr. Robinson: So is you started then after the Notice of Violation?

Mr. Chipchase: Yes.

Mr. Robinson: So you weren't around when it first happened to say firsthand knowledge that there was disagreement or agreement. It was just told to you that way?

Mr. Chipchase: No Commissioner, I wouldn't phrase it like that at all.

Mr. Robinson: You phrase...you actually spoke for the County when you said that the County and you agreed that you should be at SUP when the violation says that you should have an SUP. The NOV says you'd have an SUP. The Code says, you have SUP. You guys said you had a disagreement. It seems like you guys disagree with everybody until you have to follow the law. And you saying that you agree to the SUP I think is a misstatement because that was your last resort and you're also saying that the County gave you permission to operate when that is not the fact either. The County is saying that you risk being fined every single day. You have a cease and desist. That's not an agreement to operate. So I think you're kind of misstating some things as a counsel. And just to let you know it's usually the County speaks for themselves and usually it's in paperwork and that's what I have this Notice of Violation for me. That's all I'm saying.

Mr. Chipchase: Understand Commissioner.

Mr. Robinson: That's all I'm saying. Thank you.

Mr. Chipchase: Understand Commissioner. And I'm happy to have counsel for the County come up and discuss the agreement that we reached after those NOVs were issued. As I say I was engaged in response to the NOVs or when they were issued looked at the County Code, looked at the State law, looked at the Notice of Violation respectfully disagreed with the County's interpretation and that's why we appealed to the BVA.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Derek?

Mr. Chipchase: Cal.

Mr. Hedani: Do you have a water meter?

Mr. Chipchase: I can't speak to...I'm only legal counsel. I'm not Derek. I'm just Cal. So I can't speak to whether we have a water meter on site.

Mr. Hedani: Is Derek here?

Mr. Chipchase: No Mr. Hoyte is not here. His son, Chris who is as he said is the day to day manager is here.

Mr. Robinson: Counsel.

Unidentified Speaker: Cal.

Mr. Chipchase: I'm just the attorney.

Mr. Hedani: Are you aware that...well, I've heard. I've heard testimony today that fence lines were destroyed, other people's property, trees and boulders were destroyed. Do you have any comment on that?

Mr. Chipchase: I have no knowledge of that at all one way or the other.

Mr. Hedani: So from your perspective it didn't happen?

Mr. Chipchase: I can't tell you because I don't know. I do know that there were lawsuits that were filed.

Mr. Hedani: Okay.

Mr. Chipchase: And lawsuits that were settled. And so to the extent that those were issues that were raised in the lawsuit they've been resolved between the parties.

Mr. Hedani: The settlement on the lawsuit had a provision that the zipline operation would not be expanded is that correct?

Mr. Chipchase: I believe that is correct.

Mr. Hedani: And the proposal now is to expand it contrary to the settlement agreement?

Mr. Chipchase: I believe that that tower was part of the understanding of what the zipline would look like when it...from that point and wouldn't be expanded. If that's incorrect, Mr. Rohrer is free to file a motion with the court to seek to enforce the settlement agreement.

Mr. Hedani: So you're not sure?

Mr. Chipchase: No, no I believe that I'm correct. I believe that it's not a violation of the settlement agreement, I believe it's –

Mr. Hedani: You believe the expansion is part of the settlement agreement?

Mr. Chipchase: I believe the 80-foot tower is part of the settlement agreement, yes.

Mr. Hedani: Okay. Do you know what the height restriction is in the Agricultural District?

Mr. Chipchase: I'm sorry what's that?

Mr. Hedani: Do you know what the height restriction is in the Agricultural District?

Mr. Chipchase: I'd be happy to ask Mr. Fasi or Ms. Yuen to address that.

Mr. Hedani: But you don't know?

Mr. Chipchase: No I don't know.

Chair Tsai: Thank you. For Commissioners, I understand the counsel for the County is in the audience if we need to ask him regarding this particular settlement. Any other questions from the Commission? Seeing none, thank you. I'd like to hear the recommendation from the Department.

Mr. Hopper: I could just briefly I could answer the height question regarding the agricultural...well, I had it here. Essentially and maybe Paul or the Deputy Director can comment it's based on the higher beyond 35 feet it needs to be setback based on its additional height over 35 feet there's an additional setback. So there's actually no specific limit. You have the Code in front of you, yes?

Mr. Fasi: You are correct, Mike. Here's what it says, any non-dwelling structure such as a barn or silo that is over 35 feet in height shall be setback one additional foot for each foot in structure

height. This is for non-dwelling structure. I would like to say prior to giving the Department's recommendation that at the time I wrote this report the Department was not aware of the community opposition to this project. As I mentioned previously we only had one person come in to the Department and he basically had some concerns. The applicant's consultant did address those concern. Again, the Department was not aware of the community opposition to the project. So that being said, the Planning Department based on the facts presented in the Department report finds the existing and proposed uses will not have an adverse environmental or ecological outcome. And so therefore, in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the July 12, 2016 meeting as its findings of fact, conclusions of law, decision and order and authorize the Director of Planning to transmit the decision and order on behalf of the planning commission.

Mr. Hopper: Just to note for the Commissioners the criteria for a County Special Permit which is what's being requested here you can find it on Page 4 of you staff report. That's taken from Maui County Code 19.510.070 and it says, criteria for a permit. So in your deliberations and in your decision making we would advise that you take a look at that and whatever way, whichever way you vote consider those criteria in your decision making.

Chair Tsai: Deputy?

Ms. McLean: Those are found on Page 2 of your recommendation, the criteria are listed on Page 2.

Chair Tsai: If I could have Paul read it off if you don't mind.

Mr. Fasi: I'm sorry are we referring, Deputy Director are we referring to Page 4?

Chair Tsai: Two.

Ms. McLean: Page 4 or excuse me Page 2 of the recommendation lists the eight criteria for a County Special Use Permit.

Mr. Fasi: Oh, I'm sorry.

Chair Tsai: You know what, you mind, we'll just have Michele do it. Thank you.

Ms. McLean: Standards for a County Special Use Permit are found in Title 19 of the Maui County Code Section 19.510.070. And this is in the recommendation modified for this particular region. The proposed use meets the intent of the Countywide Policy Plan and the Objectives and Policies of the Paia-Haiku Community Plan. The proposed use is consistent with the Paia-Haiku Community Plan land use map. The proposed use meets the intent and purpose of the County Agricultural District with an approved Special Use Permit. The proposed use will not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems or other public

requirements, conveniences and improvements. The proposed use will not adversely impact the social, cultural, economic, environmental and ecological character and quality of the area. The public shall be protected from the deleterious effects of the proposed use. The need for public service demands created by the proposed use shall be fulfilled and the proposed use is located in the State Agricultural District and is a permitted use in the State Agricultural District and is considered an open area recreational facility.

Chair Tsai: Thank you, Deputy. With that we have recommendation from the Department. Can I have a motion from the Commission please? Commissioner Hedani?

Mr. Hedani: I move to deny the application.

Mr. Higashi: Second.

Chair Tsai: Motion by Commissioner Hedani to deny, second by Commissioner Higashi. Open for questioning, discussion?

Mr. Hedani: I'd like to provide the basis for the denial.

Chair Tsai: Commissioner Higashi?

Mr. Higashi: I basically seconded by the motion based upon the fact that this particular request signals more towards the recreational situation and in opposition from the general neighborhood in that particular area specifically noise which creates a major problem for people around that...living in that area.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Okay, I made the motion to deny because of the following reasons. The proposed use does not meet the intent and purpose of the County Agricultural District which is agricultural production. The applicant has testified that they have no agricultural operations in place on the property and that the primary activity is the zipline operation which is not an agricultural activity. They have also demonstrated that the zipline crosses a historic roadway. We've heard testimony from individuals that said that the zipline was operated unsafely, that the suspended weight of the passengers came to within five feet of the ground crossing the roadway that is open and accessible and is a danger to the public. They've affected drainage from the property with unpermitted grading on the site and the destruction of vegetation, trees and the movement of rocks on the property without a permit. They've testified before this commission that only one person ascends the ladder for their zipline at any one time and we've been presented evidence in terms of photographs that demonstrates more than one person on the ladder at one point in time. They've affected the social, cultural and environmental character of the neighborhood and they have encouraged because the staff wants to have fun, they've encouraged guests to scream in fear of their lives when ascending the ladder to the platform. And they've also testified that there's no way they can control the screaming that occurs when somebody falls 80 feet off a bungee jump or going down a zipline. When a person goes down a zipline they are

not in control of themselves anymore. They depend on the operator's expertise and safety to ensure that their experience is safe. And I think the operator in this case has demonstrated a negligent attitude in terms of that safety and I think it exposes the County to liability in the event we approve something like this, somebody goes down the zipline, gets struck by a Bronco and dies. We've already had two people killed on ziplines on this island one of which was a staff member. And I also feel that deleterious to the proposed uses of agricultural uses in the area. They've already demonstrated that their activity has caused their neighboring tenant in common's cattle to die as a result of their activities which is contrary to agricultural uses, and they've demonstrated a willful disregard for consideration of their neighbors as well as other tenants in common. And those are the reasons why I think we should deny this particular application. They've been fined. They've been jailed in other jurisdictions. They continue to operate their operation since 2009 contrary to an order to cease and desist by 2013, and they basically allowed their attorney to represent them before the County rather than taking appropriate steps to cease and desist their operation until they secure a proper permit and I don't think that should be rewarded with an approval.

Chair Tsai: Thank you, Commissioner. Commissioner Higashi?

Mr. Higashi: I'd also like to add one more thing and that is I don't think the primary purpose for this particular permit was for citing education in historical sites. It seemed like it was more advantageous to have the zipline situated in such a way that it became more recreational than education and I think that's important and I concur with Commissioner Hedani that the applicant's reputation does not seem like they're cooperative in trying to get the community together in trying to present a project. It just blatant in their procedure in how they were doing things and I think that's wrong.

Chair Tsai: Commissioner Hudson?

Mr. Hudson: Commissioner Hedani, I 100 percent agree with you. I'd sure like to know though how you got a copy of my notes you just read.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: I'd like to add that with the testimony of the manager of the property he didn't seem to have a grasp of what was going on with the people climbing, with Notice of Violations, with safety issues. I believe the platform that we saw in the pictures are larger than 120 square feet. I saw the amount of people that were on top of there. I think a picture could tell that. Hopefully as they've been known to be very...to push the envelope as far as it go, I'm sure they'll push this further that the building department would also check that tower to see that it is that way. And I guess you know, when your disingenuous, when you're only about yourself, when you're only for profit, when you view your neighbors as, as nuisances instead of people that you can relate to, bond with and enjoy a property this is what's gonna happen. You know a lot of people get special use permits here, a lot of people, but they do it in a different way. They meet with the neighbors, they try to understand the neighbors and they try to work things out. They don't cut down their fences, they don't make it so miserable that that it affects them

physically. And let's hope that that if there is a permitted use here it's a permitted use with the neighbors and it's correct and that we make people in Maui actually follow our County Charter and our laws because that's what it's all about. It's about people following the rules and people getting along. It's not about anarchy and I'm gonna do it because I have more money and I'm just gonna try and find laws to skirt the issue like a couple trucks here and there. And thank you Mr. Hedani for eloquently putting it down.

Chair Tsai: Any other comments from the Commission? Commissioner Hedani?

Mr. Hedani: You know the Commission in the past has taken extraordinary steps to try to stop sediment runoff into the ocean and the primary way that you do that is by controlling what happens on the land. In this particular case, the grading without a permit I believe contributes to environmental degradation through the release of sedimentation that goes into the watershed and ends up in the ocean ultimately. We have had people that were killed in zipline operations and they've demonstrated no structural engineer has taken a look or certified their operations as safe and as such I don't think it's safe for us to grant approval to something like that.

Chair Tsai: Thank you, Commissioner. Okay, seeing no more discussion—oh Deputy?

Ms. Dagdag-Andaya: I have just one thing. And I just wanted to clarify the department's, our department's role in the comments that when our Department commented on this project it was just a review of what was existing in terms of permits that we weren't asked to do a formal inspection on the property or to look into alleged violations of grading or building, electrical or plumbing. So I just wanted to make that clear. It was just to ask what is existing...I mean, existing on the property in terms of what is permitted and what was allowed through our department.

Chair Tsai: Thank you, Deputy. And can we have Deputy Director of Planning to repeat the motion please?

Ms. McLean: The motion is deny the County Special Use Permit.

Chair Tsai: Okay, call for a vote. All in favor of the motion raise your hand?

Ms. McLean: Six ayes.

Chair Tsai: Motion carries. Application denied and to all the audience members, thanks for trusting us in making the right decision here.

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

**VOTED: To Deny the County Special Use Permit.  
(Assenting – W. Hedani, R. Higashi, L. Hudson, K. Robinson,  
S. Duvauchelle, S. Castro)  
(Excused – L. Carnicelli, J. Medeiros)**

Chair Tsai: We will now break for lunch till 1 o'clock. Thank you.

**D. COMMUNICATIONS**

- 1 **ANTHONY L. RANKEN and SAMUEL P. SHNIDER of ANTHONY RANKEN & ASSOCIATES, attorneys for PETER L. ROHRER submitting dated November 13, 2015 PETER T. ROHRER'S Petition to Intervene on the following application: (P. Fasi)**

**MR. DEREK HOYTE of D&S VENTURES, LLC requesting a County Special Use Permit for the Camp Maui Project in order to retain, rehabilitate, and improve a historic site with accessory guided tours including a challenge course, museum, zipline, and onsite parking on 17.519 acres in the County Agricultural District at 2065 Kauhikoa Road, TMK: 2-7-012: 086 (por.), Haiku, Island of Maui. (CUP 2015/0002) (P. Fasi)**

- a. **CALVERT G. CHIPCHASE and CHRISTOPHER T. GOODIN of CADES SCHUTTE, attorneys for Applicant D&S VENTURES, LLC submitting dated November 19, 2015 a Motion Opposing PETER T. ROHRER's**

**Petition to Intervene and Motion to File Settlement Agreements Under Seal.**

- b. **ANTHONY L. RANKEN and SAMUEL P. SHNIDER of ANTHONY RANKEN & ASSOCIATES submitting dated December 3, 2015 PETER T. ROHRER's Memorandum in Opposition to Applicant D&S JOINT VENTURES, LLC's Motion Opposing PETER L. ROHRER's Petition to Intervene.**

**The Petition to Intervene was withdrawn.**

Ms. McLean: It's subject to the call of the Chair.

A recess was called at 11:53 a.m., and the meeting was reconvened at 12:01 p.m.

Chair Tsai: Okay, we're gonna call Maui Planning Commission back to order so we can go on the next agenda item.

Ms. McLean: Thank you, Chair. We're on Communication Item D-2. This is a communication from Ms. Colleen Suyama, Senior Associate of Munekiyo Hiraga on behalf of Intrawest submitting the 2016 Annual Report to the Maui Planning Commission on the disbursement of funds in the Settlement Agreement with the Maui Preservation Association on the Special Management Area Use Permit and Step II Planned Development Approval for the proposed Honua Kai Resort, North Beach Park and related improvements at TMK: 4-4-014: 006 and 008 and 4-4-001: 010 in Kaanapali. Candace Thackerson is the project planner and Ms. Suyama is also here.



2. **MS. COLLEEN SUYAMA, Senior Associate of MUNEKIYO HIRAGA on behalf of INTRAWEST submitting the 2016 Annual Report to the Maui Planning Commission on the disbursement of funds in the Settlement Agreement with the WEST MAUI PRESERVATION ASSOCIATION, INC. (WMPA) on the Special Management Area Use Permit and Step 2 Planned Development Approval for the proposed Honua Kai Resort, North Beach Park, and Related Improvements at TMK: 4-4-014: 006 and 008 and 4-4-001: 010, Kaanapali, Lahaina, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (C. Thackerson)**

**Condition No. 32 reads:**

**“That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information.”**

Ms. Candace Thackerson: Commissioners, this is an annual report that was originally on their SM1. As it's stated here that Condition No. 32 reads for your information, this annual report shall be filed with the Maui Planning Commission on the disbursement of funds in the Settlement Agreements. So this is an annual thing for those new commissioners who haven't seen this before. And Colleen Suyama is gonna go ahead and give you guys the report.

Ms. Colleen Suyama: As Candace said this is an annual report that we submit to the commission as a condition of the SMA Permit. Right now out of the disbursement of funds that were originally part of the SMA Permit in 2005 there's only two disbursements that have not been completed.

The first is the item no. let's see, Item No. B in which were there disbursements of over a million dollars that was supposed to go for what they at that time called the Mill Street extension and that was to build a parallel roadway between Keawe Street to Aholo Road parallel to Honoapiilani Highway. During the study what happened is that the alignment slightly shifted because of other factors and they renamed it from Mill Street to Kohua Street and that was reviewed and approved by...that change was approved by the Planning Commission. As of to date, there is only about \$463,000, little over \$463,000 left in that funding. My understanding is our office did the environmental assessment. That portion of the project is complete. My understanding is that the engineering firm is working with the developer of Intrawest as well as the Kaanapali Land Management Company and the Department of Public Works to see about doing the design and construction of a portion of the roadway but that is still in the design phase. It hasn't reached to where it's actually construction at this point.

The other fund that's available is that there was \$250,000 that was originally set aside for the Lahaina Bypass Highway on the northern side towards Kaanapali for the extension of the Lahaina Bypass roadway. The Department of Transportation came back to the developer and said well, for the north side of the bypass they needed to do some archaeological studies so

they wanted to use the monies for the \$250,000 to do the archaeological study. That has since been completed and there's a remainder of around \$36,567 left in that original \$250,000 funding. So that is the status of the financial for the Honua Kai Resort project and if there are any questions I'm open to address any questions.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: Colleen?

Ms. Suyama: Yes?

Mr. Hedani: I understand that WMPA has a fund of about \$3 million in it right now.

Ms. Suyama: I'm not sure—

Mr. Hedani: And they're supposed to use that for community benefit. Do you know how much of that \$3 million has been allocated to community benefits and if so, what did it go to?

Ms. Suyama: We have no knowledge and I know the Commission, the Commissions in the past had requested to WMPA to come before the Commission to address how is the monies being spent and what community projects, the community benefits have been done. They've never to my knowledge addressed the Commission's request and Honua Kai Resort has no control over what WMPA does. All they did was initially funded WMPA and there were provisions that when they do the initial sale of each of the units at the Honua Kai Resort a portion of that sale goes to WMPA. And supposedly they have their board, their own bylaws, et cetera, but Lance Collins is their attorney that represents them and I know that this Commission through the Planning Department had sent over the years several letters asking them to come before the Commission and make a report to you and unfortunately the developers of Honua Kai has no control over what WMPA does.

Mr. Hedani: Okay. Part of the concern that I have is that traffic in West Maui is totally screwed up right now. I mean, just totally. With the addition of the bypass highway's signal at Hokiokio in addition to the Launiupoko signal tying up traffic on Honoapiilani Highway it takes me 45 minutes to get from Huku Lii Road to the beginning of Front Street. That's almost an hour for five miles of roadway primarily because of the bypass and I know the State is just beginning to look at synchronizing Launiupoko, Kai Hele Ku and Hokiokio with the rest of the signals in Lahaina. So what I'm asking is can the funds the \$3 million that's sitting in WMPA's funds be used to signalizing, ...(inaudible)...synchronizing the two signals to match the other nine signals in Lahaina so that we don't have everybody moving at five miles per hour.

Ms. Suyama: Unfortunately that's a question that needs to be addressed to WMPA since they have control fully of the funds that they receive and it could be considered a community benefit but it's up to WMPA and their Board of Directors to make that decision.

Mr. Hedani: I'd like to ask the Director if we can request WMPA to come before the Commission to explain, you know, the aggregated funds that they have and what benefits have gone to the community.

Ms. McLean: Yes, we'd be happy to do that again as Ms. Suyama stated we have done that in the past and we don't have any way to compel them to come here or to provide us that information, but we will certainly request again.

Chair Tsai: It's just a communication so let's move onto the next item.

Ms. McLean: Thank you, Chair.

Ms. Suyama: Thank you.

Ms. McLean: The next item is acceptance of the action minutes of the June 28, 2016 meeting and regular minutes of the May 24, 2016 meeting.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE JUNE 28, 2016 MEETING AND REGULAR MINUTES OF THE MAY 24, 2016 MEETING**

Mr. Hedani: Move to approve.

Chair Tsai: Moved by Commissioner Hedani.

Mr. Robinson: Second.

Chair Tsai: By Commissioner Robinson. All in favor say, "aye".

Commission Members: Aye.

Chair Tsai: Opposed? Hearing none, motion pass.

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

**VOTED: To Accept the Action Minutes of the June 28, 2016 Meeting and Regular Minutes of the May 24, 2016 Meeting.  
(Assenting – W. Hedani, K. Robinson, L. Hudson, S. Duvauchelle,  
S. Castro, R. Higashi)  
(Excused – L. Carnicelli, J. Medeiros)**

Ms. McLean: The next item Chair under Director's Report is for the Commission to consider designating the Hana Advisory Committee to conduct the public hearing and provide its recommendation on the application from David Goode, Director of the Department of Public Works for a Special Management Area Use Permit for the Kahawaiokapia Bridge Replacement Project and related improvements located three miles south of Hana Town at the Hana Highway

right of way, TMK: 1-4-010: 013 and 1-4-011: 055 in Hana. So the action today for your consideration is to designate the Hana Advisory Committee to conduct the public hearing and provide recommendations to you.

**F. DIRECTOR'S REPORT**

1. **Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing and provide its recommendation on the following application:**

**MR. DAVID GOODE, Director, of the DEPARTMENT OF PUBLIC WORKS requesting a Special Management Use Permit for the Kahawaiokapia Bridge Replacement Project and related improvements located three (3) miles south of Hana Town at the Hana Highway Right-of-Way, TMK: 1-4-010: 013 and 1-4-011: 055, Hana, Island of Maui. (SM1 2016/0002) (K. Scott)**

Mr. Hedani: I so move.

Chair Tsai: Moved by Commissioner Hedani.

Mr. Robinson: Second.

Chair Tsai: Second by Commissioner Robinson. All in favor?

Ms. McLean: Six ayes.

Chair Tsai: Thank you. Motion carries.

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

**VOTED: To Designate the Hana Advisory Committee to Conduct the Public Hearing and Provide Its Recommendation.  
(Assenting – W. Hedani, K. Robinson, L. Hudson, S. Duvauchelle,  
S. Castro, R. Higashi)  
(Excused – L. Carnicelli, J. Medeiros)**

2. **SMA Minor Permit Report**

3. **SMA Exemptions Report**

Ms. McLean: Thank you, Chair. The next item under Director's Report you have your SMA Minor Permit Report and SMA Exemption Report. Are there any questions?

Chair Tsai: Nope. Seeing none...

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

**a. July 26, 2016 meeting agenda items**

Ms. McLean: Last item on the agenda is discussion of future Maui Planning Commission agendas. You were presented with a memorandum from Mr. Clayton Yoshida for your July 26<sup>th</sup> meeting. One public hearing item and two items under Director's Report.

Chair Tsai: Thank you, Deputy. With that, next meeting is July 26<sup>th</sup>. Thank you all for showing—

Mr. Robinson: I have a question. Weren't we supposed to do a site visit at our next meeting? Has that been taken off the agenda?

Ms. McLean: That's the August.

Mr. Robinson: August. Thank you.

Ms. McLean: You'll have the site visit followed by that item being discussed at the meeting.

Chair Tsai: In August. Thank you. All right meeting is adjourned. Thank you.

**G. NEXT REGULAR MEETING DATE: JULY 26, 2016**

**H. ADJOURNMENT**

The meeting was adjourned at 12:11 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Stephen Castro  
Sandy Duvauchelle  
Wayne Hedani  
Richard Higashi  
Larry Hudson  
Keaka Robinson  
Max Tsai, Chair

**Excused**

Lawrence Carnicelli  
Jason Medeiros, Vice-Chair

**Others**

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