

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 14, 2017**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Max Tsai at approximately 9:05 a.m., Tuesday, March 14, 2017, 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.)

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.

C UNFINISHED BUSINESS

1. **ATC MAKENA HOLDINGS, LLC requesting an Environmental Assessment Determination of the Final Environmental Assessment prepared for the proposed Makena Resort M-5/M-6/S-7/B-2 project on approximately 47.15 acres of land located in the vicinity of the Makena Alanui Road and Honoiki Street intersection, TMK: 2-1-008: 080, 098, 099, 100 and 106, Makena, Island of Maui. (EA 2015/0007) (A. Cua) (The Commission commented on the Draft Environmental Assessment at its January 26, 2016 meeting.) (This matter was deferred at the January 10, 2017 meeting.)**

The Chapter 343 triggers are the use of County lands and work within the shoreline setback area. The Commission is the accepting authority of the Final EA.

The applicant also filed for a Special Management Area Use Permit. The public hearing on that application will be scheduled after the Chapter 343, HRS process has been completed.

The Commission may accept the Final Environmental Assessment as a Findings of No Significant Impact (FONSI) or take some other action.

MINUTES FOR ITEMS A, B, C-1 WERE TAKEN BY A COURT REPORTER AND ARE ON FILE.

Mr. Spence: Commissioners we have just a couple of other things on your agenda. I'm just gonna guess that Commissioner Tsai would like to talk about electronic copies and documents the next time?

D. COMMUNICATIONS

1. **Discussion on Rule Making as it relates to filing and digital copies, Chapter**

91, HRS. (Maui Planning Commission Chair Max Tsai) (Deferred from the February 14th and February 28th meetings.)

Chair Tsai: Well, I just...I have one more meeting so I'm just gonna put it out there for you guys. I feel like there's a substantial waste of paper. I'm hoping and maybe this...could you guys quiet down there please? Thank you, we're still conducting our meeting and we want to get out here too. So what I'm hoping for is maybe plant the seed and see you guys...well, my whole intention is to see if there's a way maybe we can do a hyper version because we had some previous discussion regarding this is how we can maybe go as paperless as we can on all these materials, all the trees that we're cutting down. So I was hoping for maybe if some of you had not... I will say, I'm not sure how much printing cost the department incurs every month or whatever it would be even more worthwhile to put it on and get everybody an iPad, I don't know a device where.

Mr. Spence: We can discuss internally.

Chair Tsai: Yeah just see, but I wanna bring out...Commissioner Robinson?

Mr. Robinson: ...(inaudible)...

Mr. Spence: It's not a problem to provide documents digitally. We currently do that either...I'm sure we could get PDFs from the applicants for you know for five volumes and put links on. We already put links on the County website, but there's other communications and stuff, those things are small enough we could email them. As far as providing devices for Commissioners, we'll have to talk about that internally.

Chair Tsai: Okay. Commissioner Robinson?

Mr. Robinson: Maybe we could start by having them do double-sided printing instead of just one side? You know, baby steps.

Chair Tsai: Yeah, I mean I just put it out there for you guys to think about. We can talk more next, my last meeting, but I do want to just...I feel like there's just tremendous and I'm also sure that all guys will appreciate not having to haul around all these stuff, you know, I mean that's, that's just a lot of paper being wasted.

Mr. Robinson: Not anymore. That's why I brought it.

Chair Tsai: So anyways I think it would be a lot efficient. Commissioner Hedani?

Mr. Hedani: I think the only concern that might arise...well, I think for it's great. You know, I think we're all technically proficient with using computers and going through the stuff is no problem. But it has to be produced anyway I think because there are people in the public that are not comfortable with just depending on technology that want to know what's in the project itself and for those people you still have to print it. So they—

Chair Tsai: I thought these are only for the preview of the commission not to the public, right?

Mr. Spence: Well we have to make documents available to the public.

Chair Tsai: So all this stuff is actually public—

Mr. Spence: We make them available to the public. They can copy them or we can copy them for people. Usually something like this is on the OEQC website. I mean this is not final until this commission says it's final. So this final with all these illustrations, everything that will go on the OEQC website at some point.

Mr. Robinson: Do the applicants pay for this or does the County pay for that or is it...The applicants pay for this, right?

Mr. Spence: The applicant.

Chair Tsai: Well, maybe perhaps we do like a ...(inaudible)...a hybrid model where maybe certain commissioners, maybe not just us but some other ones who are now here or future, we will still make some copies but whatever a dent we can put into this whole printing process will help. You know if someone wants some copies maybe we'll have some hard copies available at the meeting or something that we can refer to still but not definitely nine sets.

Mr. Robinson: You know, I think I would agree if we had some kind of mechanism and then we would just get jump drives to put in whatever device is and you know something like that.

Chair Tsai: Or emailed to us.

Mr. Robinson: Yeah, yeah, but I don't know if I want to be on Wi-Fi and reading my documents and making notes you know. I think just no Wi-Fi and jump drive then we don't have to worry about technology catching up and shutting down a meeting.

Chair Tsai: I mean we should maybe have a copy or two available just like as you guys seen in many testimonials people provide documentation they pass around and then if we want to refer to it while we're in a meeting we don't – But anyways just put it out there. I mean we can make less amount of copies it would be better you know, instead of having nine copies for, well probably 11. Anyways, so think about that. We can maybe hopefully come up some type of consensus maybe next time? Commissioner Hedani?

Mr. Hedani: This relates to the decision we just made and I don't know if it's appropriate to bring it up at this point since the decision's already been made, but I just wanted to add a comment for the public's consumption that I was bothered by the fact that a petition was circulated to the general public which identified a project which took five volumes of documents to cover the impacts on one sheet of paper that wasn't even a complete page and that was the basis of the petition that went out to the public which resulted in fifteen hundred and thirty somewhat signatures. Which showed up today, a portion of which showed today in a highly aggravated form. And my comment is when organizations send out materials like that to the

public, if you start the fire you're responsible for what it burns. And I think we saw a part of that happen here in the commission.

Chair Tsai: Right.

Mr. Hedani: You need to provide them with all of the information that has been provided before you ask them to come out vociferously and oppose a project without the information being given to them.

Mr. Spence: Yes.

Chair Tsai: And I totally agree. And my feeling is exactly that too, but I think with advancement of you know social media and so forth, the public have access to a lot of information that's not necessarily complete or true. So my concern is how do you—

Mr. Robinson: More information.

Chair Tsai: More information period. So how do you police that or how do you even make it so that you know?

Mr. Spence: I think it's...boy, we're getting off on a whole different discussion. I think it's up to the commission to determine you know, okay, is testimony a result of some kind of Facebook posting that has no basis and fact or were the people ... you hear some of the testifiers they're very well educated on what's going on and that gives credibility to what they have to say and you can tell from the testimony. But quite the opposite is true too, people testify it's like I wish I could help you, but you know there's no understanding of what the project is.

Chair Tsai: Which actually if I wanna elaborate...Ann?

Ms. Cua: If I could add something really quick. You know what the department does now that we didn't do before is everything that you get, your agendas and all the reports, the documents like in this case that document that you got today with all the response to your 15 questions those were posted on our website.

Unidentified Speaker: There you go.

Chair Tsai: Right.

Ms. Cua: So we didn't do that before. So people now definitely have the ability to get the most accurate information. We can control that. What we can't control is what people do with...whether they extrapolate something and put that out, you know, what they do with the information that's there that we'll be able to control. But at least now we're putting whatever we have out there so that hopefully the correct information gets disseminated.

Chair Tsai: And I totally agree and to expand on that whole scheme of things and I obviously in the last past year as finishing on my term, my five-year term being the Chair I've noticed a lot

more people stepping forward and taking a lot of time from us and the public testifying with very limited or wrong information and I'm going to make Jim work here for a second is that when we're, we're ...(inaudible)...of the Commission, but perhaps something for the Commission or even the legal counsel can address is that maybe how our framework, you guys may want to consider how we handle our agenda or the whole meeting do we allow...I think we're required by law to do public testimony how do we limit it so that it only pertains this matter so that we don't have to keep sitting until 5:30 or past that not getting things done because of just you know everybody coming out. You know, we want everybody ability to go on record of course, public is allowed legally to testify but how do we control it so we minimize the amount of useless waste of time stuff? Jim?

Mr. Giroux: I am fully prepared to answer that. We have been having many meetings in our office, the Legal Department because there's been some cases coming down from the Supreme Court about contested cases and how we're supposed to use that and we've been analyzing your guy's rules and your agendas to see how we can most advise you to conform to the laws that is now because I've been advising you guys for about 10 years and as I'm sitting here my challenge is how do I advise you guys, how do I advise you guys because your rules and you've got all of these laws changing on you all the time. You have Sunshine Law changing on you. You have 343 changing on you. You have contested case law changing on you. And so for your legal team it's a serious challenge. I mean we are texted to the limit you know trying to control meetings in order to conform you to the law. I mean, that's to keep you guys out of the newspaper, to keep you guys out of lawsuits and so I think what's gonna happen is we're probably gonna have to do some training, you know some more training as far as how to deal with public testimony. I think you got some advice on the record today about how we have curb our statements to conform to the law and do their job which is a challenge. Because how do you distinguish between well why is my statement not conform? Well, because we're dealing with analysis, we're not dealing with conclusion. Well what does that mean? Well, because we are looking at a informational document, we're not looking at special management permit. And when you have to split the hair like that it takes a lot of study, it takes a lot of concentrated effort and as the Chair's job to take that and say, hey okay what are you talking about? We're gonna cut you off, well that's dangerous. You're saying not relevant. Well, the law says you have to take all relevant testimony. Okay, what are you basing your relevance on? Well, you're not talking about the project. Yeah, but we're talking about the environment. Well, you're not talking about the environment and this project. And that's the three minutes that drag on one after the other, after the other, and you're going, no this is Makena not Lahaina. Yeah, but all my friends said you guys were gonna build a hotel in Lahaina that's why I showed up. And so you gotta consistently control like I try to control and I try to control and now the Chair is gonna take my...you know, it's like yelling in the cup, turn left, huh left when? No, now. What? And so it's challenging, it's challenging. So it's an issue of efficiency but fairness and so what I'm saying is we're going to spend more time training you and we're gonna spend more time with the Chair to try to get that efficiency into the system without infringing on the public's right to participate.

Chair Tsai: And so Corp. Counsel are we legally bind to have three minutes of testimony and you said just so clear.

Mr. Giroux: Oh man, Sunshine Law they've...OIP's commented on it. We have Honolulu only giving two minutes. And so we're pushing that edge of what is public participation and how far does it go? Right now you know the minimum is like two minutes.

Chair Tsai: Yeah, Commissioner Robinson?

Mr. Robinson: My problem wasn't with everybody having their say, my problem was with them saying it three times, you know, and that's where I was hoping that we could have and I don't know how in the law, but if we could have information meetings where there's no vote that could be happened and before that was happening we would have to have the presentation and testimony instead of like a working through progress with the project. I mean this Makena project is a big project. You know, I would hope it would have been on T.V. to where people could see the testifiers prior and doing that and working that type of stuff. But the hard part is hearing it three times when we wanna get to questions. You know this project might not have taken as long if the planning commission who actually has to make a decision not the Planning Department or not the people that are the applicants talking among themselves you know, we are the ones that have to get our hands in there to say this is what we think the project is gonna work at and I think that's our challenge. But I don't wanna stifle anybody's right to speak but three times is not necessary I don't think. I think I'm intelligent enough to hear them the first time.

Chair Tsai: Right. Or it's specifically pertaining to this project or relevant to what we're talking about, right? I mean, people confused about what EIS or EA or something else that's not relevant, we shouldn't be obliged to have to hear them talking about something that's totally irrelevant. Commissioner Carnicelli?

Mr. Carnicelli: Well, I'm just gonna concur with all you guys. I think it's a very slippery slope when we start telling people what they can testify, you know and like what they can say and not say and everything like that. So to me, I think it's everybody's right even if they wanna say it 17 times and we've already heard it 30 more times and we hear it for you know the 18th time again that stuff I don't think we try to control and I don't think we can control. But what we can control is whether it's two minutes or three minutes, you're pau. You get three minutes. There was probably a dozen people today that talked for almost five and that's not to say like okay, what they had to say isn't valuable, it's having to say no it's other people's time, it's our time that's valuable and I think that it's very disrespectful for people to talk beyond what it is that everybody else gets to talk. So that's...and that's coming from a guy that goes on and on and on. So I get it. Wrap it up right.

Chair Tsai: So last question for the, you know we do have so I'm gonna go on record and ask you this now. We have to have public testimony period, right?

Mr. Spence: Yes.

Chair Tsai: So do we actually have to have it twice or can we actually take out the public...the initial public testimony and actually just have it when the agenda item comes up because it's almost redundant.

Mr. Spence: It all started as a courtesy. You know, your agendas can sometimes have three or four sometimes even five public hearings. People can't wait till the afternoon. So you're saying hey, those people who can't stick around till 2:00 in the afternoon this is your opportunity to testify now.

Chair Tsai: But it's not a requirement?

Mr. Spence: You know it's not required. It's a courtesy by this Commission to accommodate the public. For projects like this you know the morning testimony goes till noon.

Chair Tsai: Well past noon.

Mr. Spence: And just to clarify, I don't think we should...we can't tell people what to testify or anything. My earlier comments was just you know it's up to the commission, the individual commissioners to assess what's creditable and what's not and you know consider all things that are said, you know, with the...(inaudible)...

Mr. Robinson: My last note on that is I think if we have testimony after the presentation it would help inaccuracies in the morning presentation, I mean testimonies where you know they haven't heard the presentation yet because it changes every time they come. So you know...

Mr. Spence: And that's something that Councilmember King is starting to do. Do the presentation first so people can—

Chair Tsai: Listen to it.

Mr. Spence: They have some kind of clarity on what's being proposed and then people can testify and I think that's...in some cases that's a really good thing. In other cases, people can't...(inaudible)...

Mr. Carnicelli: And I think that one last thing that would be good is, you know, you did it today and I know Kurt does it, Chair can do it over and over and over again, this is why we're here. Like this is what we're making a decision on is this particular thing and really say that over and over and over again and reiterate that okay, we're here to say whether something should be built in Makena. We're here to say is this proposal have significant impact or not. Like you know to just get...so people understand, you know we have more information but we're less informed and so it's just like okay, but if we can kinda give them those bite size pieces—

Mr. Robinson: Wrap it up.

Mr. Carnicelli: Right, wrap it up.

Chair Tsai: So I'm trying to actually help you guys for the future, you know, Chair and so forth. Jim if we wanna change the structure of this does it ...(inaudible)...department or future.

Mr. Spence: That's the discretion of the—

Mr. Giroux: It's the call of the Chair and as long as it's defined early on so people know like when they come to the meeting that this is gonna be our process and we're consistent with it.

Chair Tsai: Can I actually change right now for that last meeting? Say we only taking testimony at the end of the presentation?

Mr. Robinson: Yeah.

Chair Tsai: Well, it hasn't been published yet, right the next agenda item—

Mr. Spence: No, the next agenda hasn't been, but I can tell you what's on the next agenda.

Chair Tsai: I know what's on the next.

Mr. Giroux: And you can also put the time, the time limitation on the agenda just so people know so it's consistent.

Chair Tsai: Okay, do I need to take a vote here? If you guys okay with that, I'll make an executive decision.

Unidentified Speaker: Well, it's the call of the Chair.

Mr. Giroux: Call of the Chair. If nobody likes it they can appeal and then get a second.

Chair Tsai: So I'm gonna make a decision to actually replace the public testimony in the very second beginning and place that...but do I need to make a note saying that public testimony will be taken when we do the call to order saying at end of the presentation, after the presentation after each agenda item.

Mr. Giroux: And I can work with Will because I'm also gonna be giving other advice about how we handle our contested cases.

Chair Tsai: Commission Higashi?

Mr. Higashi: Mr. Chair, can we have the Director finish his agenda and we can go?

Chair Tsai: Yep.

E. ACCEPTANCE OF THE ACTION MINUTES OF FEBRUARY 28, 2017 MEETING

Mr. Spence: So Acceptance of the minutes, action minutes of February 28, 2017.

Chair Tsai: All in favor?

Commission Members: Aye.

Chair Tsai: Opposed. None.

The Commission unanimously accepted the Action Minutes of the February 28, 2017.

F. DIRECTOR'S REPORT

1. SMA Minor Permit Report

2. SMA Exemptions Report

Mr. Spence: Director's Report. SMA Minor and SMA Exemptions Reports.

Mr. Hedani: Move to accept.

Mr. Castro: Second.

Chair Tsai: All in favor?

Commission Members: Aye.

Chair Tsai: Opposed? None.

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

**VOTED: To Accept the SMA Minor and SMA Exemption Reports
(Assenting – W. Hedani, S. Castro, L. Carnicelli, K. Robinson,
P. Canto, R. Higashi)
(Excused – L. Hudson, S. Duvauchelle)**

3. Discussion of Future Maui Planning Commission Agendas

a. March 28, 2017 agenda items

Mr. Spence: On March 28th we're gonna having resolutions thanking outgoing members Wayne Hedani and Max Tsai. We also have three public hearings, bed and breakfast, two bed and breakfasts, conditional permit to operate educational center and Hawaiian healing arts within the Ag District involves a conditional permit. I think there's a typo there. There's actually four public hearings, Verizon Wireless requesting special use permit for a facility. There's adoption of decisions and orders, so two of those. One is for Mr. James Walkus in Lahaina and the other one is a D&O for...actually two D&Os for Mr. Michael Baskin of Seashore Properties. And then there will be commission considering a waiver and SMA time extension.

Mr. Carnicelli: Including Baskin?

Mr. Spence: No, Sam and John Garcia in Makena. One of the testifiers.

Chair Tsai: So with that thank you. If no other things, thank you all. Meeting's adjourned.

G NEXT REGULAR MEETING DATE: MARCH 28, 2017

H. ADJOURNMENT

The meeting was adjourned at 5:48 p.m.

Submitted by,

Carolyn Takayama-Corden
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE

Present

Pua Canto
Lawrence Carnicelli
Stephen Castro
Sandy Duvauchelle, Vice-Chairperson (excused at 5:24 p.m.)
Wayne Hedani
Richard Higashi
Keaka Robinson
Max Tsai, Chairperson

Excused

Larry Hudson

Others

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