

**MAUI PLANNING COMMISSION
REGULAR MEETING
NOVEMBER 28, 2017**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice Chairperson Richard Higashi at approximately 9:05 a.m., Tuesday, November 28, 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.)

Mr. Richard Higashi: Planning Commission is now in session. The time is 9:05 a.m. I'd first of all like to welcome our newest member to our Maui Planning Commission. That's Kapu Alalani Hill. Welcome. At the same time I'd like to introduce the rest of the Commission to the audience starting with your right. Commissioner Carnicelli.

Mr. Lawrence Carnicelli: Good Morning Chair.

Mr. Higashi: Commissioner Robinson. Commissioner Hudson.

Mr. Larry Hudson: Good morning Chair.

Mr. Higashi: Our Corporate Counsel, Director Spence, Commissioner Tackett and Commissioner Castro.

Mr. Stephen Castro: Good morning Chair.

B. PUBLIC TESTIMONY - Public testimony will be taken when each agenda item is discussed. **Testimony will be limited to a maximum of three (3) minutes.**

Mr. Higashi: And I'm Higashi, Commission. At this time I'd like to first of all just clarify how we're going to do testimony. Normally we have public testimony at the beginning. Now we're going to have public testimony during or after the presentation of the permits. That will kind of speed up part of the process that we go along. No. 2 we're going to try to stay and stick with the three minute limit on testimony. Our recorder will notify the testifier that you have 2 ½ minutes now. That means that you have 30 seconds to finish your presentation. Once the presentation is said that it's closed at three minutes the Chair will close that particular testimony and move to the next so that we can expedite the process. So that's going to be what we're going to be doing. And so at this time I'm going to have Director Spence give us our itinerary for today.

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

1. **ANGELA ELIZA GONZALEZ-TROXEL and JON KEITH TROXEL requesting a State Land Use Commission Special Permit in order to operate the Keokea Ranch Estate, a three (3)-bedroom bed and breakfast located in the State Agricultural District at 337 Kealakapu Road, TMK: 2-2-002: 005, Kula, Island of Maui. (SUP2 2017/0018) (K. Willenbrink)**

Mr. William Spence: Thank you Mr. Chairman. Your first public hearing item, your only public hearing item Angela Eliza Gonzales-Troxel and Jon Keith Troxel requesting a State Land Use Commission Special Permit in order to operate the Keokea Ranch Estate, a three-bedroom bed and breakfast in Kula. And our staff planner this morning is Kim Willenbrink.

Ms. Kimberly Willenbrink: Good morning Mr. Chair and members of the Commission. Welcome to the team Commissioner Hill. We're glad to have you. My name is Kimberly Willenbrink. I am new to the Department of Planning. However I have worked for the County for 12 years now and I am very pleased to be before you today. Providing a schedule for your review and recommendation today because the owner applicant Ms. Angela Gonzales-Troxel is seeking approval of a State Land Use Commission Special Use Permit to operate a bed and breakfast in Keokea on Kealakapu Road. I'd like to give you a better idea of the location. Kealakapu Road is immediately passed Sun Yet Sin Park if you're familiar with that park. The proposed B&B is a ranch that sits on 6 ½ acres with a horse barn, a pasture land, and fruit trees. The ranch has a fully implemented farm plan stating that 92% of 6.5 acres is dedicated to agricultural use. The proposed B&B will be in the three bedroom main dwelling which the owners built in 2012. The owner will reside in the accessory dwelling. As of September 30th, 2017, there were 14 permitted B&B in the Makawao-Pukalani-Kula Community Plan District. And as you know the cap is limited to 40. There were no comments from the State, and there were no reports filed with the Police Department. If you approve the Special Use Permit today the Bed and Breakfast Permit will be approved administratively. Angie Troxel is also here today and will deliver a power point presentation and answer any questions you may have. After the presentation I will provide the Department's recommendation. At this time if there are no objections I will invite Angie to come up to the podium. Angie.

Ms. Angela Gonzales-Troxel: Good morning Chair. Good morning Commission members. Thank you for hearing my request this morning. Can you hear me?

Mr. Higashi: How would you like to first identify yourself please?

Ms. Gonzales-Troxel: My name is Angela Gonzales-Troxel and I'm here on behalf of myself, my husband, Keith Troxel, and my daughter, Danielle Troxel. And we've been living on Maui since 1983. Raised our daughter here. She went to St. Joseph, St. Anthony High School. We've been members of the community for a long time and we love it here. She's all grown up now so we are requesting that we could live in our smaller cottage and rent the main house out partially through the year and then use it when we need it you know like if we have family coming or something when we need more space. So that's pretty much what we're asking for. And I've spoken with my neighbors across the street, the Russells. All my neighbors in my neighborhood I spoke with them before we applied and they were all fine with us going forward to get a B&B Permit. So that's pretty much --. I don't know if you want to list my neighbors but they were all fine with it so.

So, okay, I can start talking about this? This is --. Most of our property is pasture land for our horses so it's primarily for equestrian use. Those are a couple of my horses there grazing. I have it crossed fence for rotation of the horses. I've been raising horses. I've been breeding

horses for years. You know riding and training them. That's one of my foals that I've breed, Kaia, and that's Navidad and Ringo over on the left side.

So we have the horse barn for them and like I said we have it crossed fenced so that we can rotate the horses to keep the pastures nice. And I've been putting in more fencing because what I want to do is expand my orchards and grow more trees, try and grow some indigenous plants, just have gardens. I just want to make it you know a larger area, and I can't mix the horses with the, you know, with the fruit trees. So I've been kind of keeping the fruit trees in a certain area, but I just re-fenced so that I can use a larger area to expand that part of our property. And that's one of my minis. I've been breeding miniature horses as well, and that's Apache.

Here's our horse arena we've been working on. We've been hitting a lot of rocks so it's been taken awhile, but we're getting the arena done which is going to help me a lot more which is training the horses. And what I want to do is start giving riding lesson. I have been giving like care and teaching children how to care for the miniature horses because they're not as intimidated with the small horses. So I've been doing that in the past and also giving little riding lessons on the small horses, but I want to expand it into, you know, being able to do more with my arena. So that's what we've been working on.

Okay, I've already said all of that. So anyway here is our arena in progress. It's pretty much the flattest portion of our property that we could find to do an arena so I'm pretty excited about that. And the property when we tried to do our pad for our homes was basically just giant boulders everywhere. I mean thousands of boulders in the land. So we re-proposed them and used them for retaining walls. That's a retaining wall on the left for my arena to hold the soil back. And then we used retaining walls to build homes up on so we've been trying to incorporate those into the property.

And here's our fruit orchard right now which like I said I'm fencing another area to expand that and start growing gardens too. I'd like to, I'd like to do a lot more of that. Those are my horses in the gulch. That's about it on that one.

So we just love the property. We love Keokea. We love living there and we just want to keep it beautiful. We want to keep our property. You know, keep making it nicer, taking care of it, and keeping it country.

So I'm asking the Commission to grant our State Special Use Permit to allow our B&B to be enabled. We will be responsible operators and not allow our guests to impact our neighborhood at all and thank you.

Mr. Higashi: Thank you. Any questions from the Commission? Excuse me. We're going to have public testimony and then after we'll ask questions of you.

Ms. Gonzales-Troxel: Okay.

Mr. Chivo Ching Johnson: Hi. Chivo Ching Johnson and sorry about recording this session today, but something has gone . . . (inaudible) . . . with our power supply. I did want to mention

that I live at the bottom of Kealakapu Road and have found the Troxels to be very nice people and very responsible.

Mr. Higashi: You're giving testimony now?

Mr. Ching Johnson: I am.

Mr. Higashi: Okay you've got to identify yourself first.

Mr. Ching Johnson: Okay, again, I'm Chivo Ching Johnson.

Mr. Higashi: Okay.

Mr. Ching Johnson: And I have no objection to the B&B as far as visitors being able to come out and spend time on Ag land as long as they are willing to work on my farm I'd be really happy with that. Thank you.

Mr. Higashi: Any questions from the Commission? Thank you. Anybody else would like to testify? I don't have a list so I don't know who's going to be --. Since I don't see any, public testimony is now closed. Would the planner like to make the proposal on the permit?

Ms. Willenbrink: Thank you Mr. Chair. The Department's full analysis is included in the staff report before you. As noted in the staff report the application falls within the criteria that determines an unusual and reasonable use. The Department has no additional analysis or comments to add at this time. The application complies with the standards for a State Special Use Permit and as such the Department recommends approval. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's report and recommendation prepared for today's November 28th, 2017 meeting as its Findings of Fact, Conclusion of Law, and Decision of Order, and to authorize the Planning Director to transmit said written decision and order on behalf of the Planning Commission. Mahalo.

Mr. Higashi: Are there any questions from Commission? Commissioner Robinson.

Mr. Keaka Robinson: Good morning.

Ms. Willenbrink: Good morning.

Mr. Robinson: I -- can you please show me where the owners are going to be? That's the second house?

Ms. Willenbrink: Yes.

Mr. Robinson: Do you have an exhibit of that please?

Ms. Willenbrink: Would you like me to ask Angie to come up for questions?

Mr. Robinson: It's actually for you so I'm glad you're there.

Ms. Willenbrink: Okay.

Mr. Robinson: Is it attached, is that what it is?

Ms. Willenbrink: No, it's next door. I don't know how many feet, but maybe a 100 yards.

Mr. Robinson: I apologize. Is that the second house right there?

Ms. Willenbrink: The one on the left is the cottage.

Mr. Robinson: That's the cottage?

Ms. Willenbrink: And the main structure is on the right and you can tell that it's a little bit larger and a three bedroom.

Mr. Robinson: Is the --? Did we inform the applicant that they could do either or? They could have a B&B for either the cottage or the house? It doesn't have to be one or the other?

Ms. Willenbrink: I don't think I expressly said that to them, but when I went on the site visit I did go into each unit to have a visual inspection. I merely went off the application as provided using the main structure. My feeling from the Troxels are now that the daughter is all grown up they want to downsize but still have the large house for when they have family gatherings or whatever uses that they would need. Maybe if the daughter decides to move back.

Mr. Robinson: Yeah, I just want to make sure that they understand that they could probably have flexibility if it's small group or to a large group of renting out one or the other instead of you know a couple might be you know a three bedrooms might be a lot for a couple. They still might have that flexibility which is allowable on the application, you know as a permit. That's all. I just want to make sure that everybody was cognizant of that instead of only giving the permit for just one structure.

Ms. Willenbrink: Thank you for that Commissioner.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: Thank you Chair. So Ms. Willenbrink, as I'm looking at this photo right here --

Ms. Willenbrink: Yes.

Mr. Carnicelli: -- which is the aerial. And so my first question is is this auxiliary unit down here where my thumb is.

Ms. Willenbrink: Yes sir.

Mr. Carnicelli: That's just a barn, correct?

Ms. Willenbrink: Oh, yes I see --

Mr. Carnicelli: There's the ohana, here's the barn. Right? Correct?

Ms. Willenbrink: Correct. That's the whole barn.

Mr. Carnicelli: So did you inspect that barn?

Ms. Willenbrink: I did not. I inspected it from above, but I didn't walk down.

Mr. Carnicelli: So we don't --. I mean I'm just saying is there's been you know non-conforming uses to dwellings like this and I'm just curious to see if you've gone and actually seen, see if this is habitable or not.

Ms. Willenbrink: Correct. I did not walk down into the gulch that day to view the barn, but I did view the horses and they definitely need a barn to stall them.

Mr. Carnicelli: Okay. And then one other question Chair. I don't see any response from any of the neighbors or anybody. Is that actually the case then there was nobody for, nobody against except for . . . (inaudible) . . .

Ms. Willenbrink: That's exactly the case. No one opposed, no one in favor, no comments. Thank you for the question.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: Can you please ask the applicant if they're interested in the flexibility of using either dwelling?

Ms. Willenbrink: I can invite her to the podium and I can come back for further questions if you would like to after that.

Mr. Robinson: Okay, thank you.

Ms. Willenbrink: Angie.

Ms. Gonzales-Troxel: Hi.

Mr. Robinson: Hi. The question I'm asking is you're allowed to have a permit that you could use either residence at any time instead of just one dwelling. Are you interested in the flexibility or you just want just for your main house?

Ms. Gonzales-Troxel: Well I didn't know that you could do that. If it's the same process then I don't have to go through more of a process.

Mr. Robinson: It can happen right here.

Ms. Gonzales-Troxel: I think that would be nice to have the flexibility.

Mr. Robinson: Okay thank you. It makes sense. Thank you.

Ms. Gonzales-Troxel: Thank you.

Mr. Higashi: Any other questions from the Commission?

Ms. Willenbrink: Further clarification please. Are you suggesting that it would be one or the other or both?

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: She can only do one at a time because it's B&B. You could use, you could either rent out the smaller at one time or the larger at one time, so it's the flexibility. So it would be --. And I'm thinking if they're going to turn it as supplement income it's a lot harder to find a large group than it is a small group.

Ms. Willenbrink: I see.

Mr. Robinson: So that way therefore they could offer either one, and whichever one picks up if they want the flexibility they have that option.

Ms. Willenbrink: Okay. And so it is one or the other.

Mr. Robinson: You would have to re-inspect the smaller dwelling, make sure all the fire extinguishers and all the stuff are there but.

Ms. Willenbrink: Right. Okay.

Mr. Spence: Mr. Chair?

Mr. Higashi: Commissioner. Director Spence.

Mr. Spence: When it comes time to make a motion and vote, if the Commission would like us to specify in the approval, assuming its approved -- I'm not going presume that yet -- if it's approved we can specify in the approval letter that they could use either house one at a time if that's the pleasure of the Commission.

Ms. Willenbrink: Thank you Director.

Mr. Higashi: Any other questions from the Commission? If not, would the Director like to state the recommendation?

Ms. Willenbrink: The recommendation is approval. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's Report and Recommendation prepared for the November 28th, 2017 meeting as its Findings of Fact, Conclusion of Law, and Decision and Order, and to authorize the Planning Director to transmit said written decision and order on behalf of you, the Planning Commission. Mahalo.

Mr. Higashi: Any motion by the Commission? Commissioner Carnicelli.

Mr. Carnicelli: Move to approve as recommended by staff.

Mr. Castro: Second.

Mr. Higashi: Seconded by Commissioner Castro. Questions.

Mr. Robinson: I would like to see if we could also put an amendment on that that they could use either dwelling at a time.

Mr. Higashi: Any second to the amendment? Carnicelli?

Mr. Carnicelli: I'll second the amendment.

Mr. Higashi: Okay. First of all let's vote on the amendment. The amendment is that the applicant may choose to use the large or the smaller dwelling for the bed and breakfast and it was seconded by Commissioner Carnicelli. All those in favor --? Oh, any discussion? Seeing none. All those in favor signify by raising your hand.

Mr. Spence: Okay, so that's six ayes.

Mr. Higashi: Six ayes. Motion carries. Now we get to the motion. Okay, the motion is to accept the application.

Mr. Spence: Yeah, the motion --

Mr. Higashi: To approve.

Mr. Spence: We have a motion to approve as recommended by staff, and as amended.

Mr. Higashi: All those in favor signify by raising your hand. That's six ayes. Thank you.

Mr. Spence: Six ayes.

Mr. Higashi: Motion carries. Congratulations, you got the --

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

VOTED: To Approve the State Land Use Commission Special Permit as

**Recommended by the Department as Amended that Either Dwelling
Can Be Used for the Bed and Breakfast.**

**(Assenting – L. Carnicelli, S. Castro, A. Hill, L. Hudson,
K. Robinson, C. Tackett)**

(Excused – T. Gomes, S. Duvauchelle)

Mr. Spence: And just for the record, let me comment that while the Commission voted on the Special Use Permit, the Bed and Breakfast Permit is an administrative approval. And I just -- I know the Commission's intent is to be able to use either one of the, the buildings. I want to double check our administrative code that that's possible. I just want to double check that before we say we can go do this, okay. So when we do the administrative approval we'll double check. So thank you, congratulations Ms. Troxel.

D. UNFINISHED BUSINESS

1. **Proposed Settlement Agreement between the COUNTY OF MAUI and the ASSOCIATION OF APARTMENT OWNERS OF MAHINAHINA BEACH for the construction of barbecue grills, a stairway, a trellis, electrical lights, switches and wiring, an eating area, and a seawall within the Special Management Area (SMA) and Shoreline Setback Area (SSA) without first receiving permit for such improvements on property situated at 4007 Lower Honoapiilani Road, TMK: 4-3-008: 001, Mahinahina, Lahaina, Island of Maui. (Deferred at the April 25, 2017 meeting.) (previously scheduled for the October 24, 2017 meeting.)**
 - a. **SMA Notices of Violations issued as follows: NOV 20150063 (Electrical), NOV 20150065 (Stairway), NOV 20150068 (Trellis), NOV 20150070 (Barbecue grills), NOV 20150071 (Seawalls), and NOV 20150073 (Eating Area)**
 - b. **SSA Notices of Violation issued as follows: NOV 20150064 (Electrical), NOV 20150066 (Stairway), NOV 20150068 (Trellis), NOV 20150070 (Barbecue grills), NOV 20150072 (seawalls)**

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH THEIR ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS

The Commission may take final action on the proposed Settlement Agreement pursuant to the provisions of Section 12-202-23(d)(3) of the Maui Planning Commission's Special Management Area Rules.

Mr. Higashi: Next item on the agenda.

Mr. Spence: So Commissioners, we're on Item D.1., proposed settlement agreement between the County of Maui and the Association of Apartment Owners for Mahinahina Beach. We have

with us this morning Mr. Clayton Yoshida and I see Mr. Geiger also representing Mahinahina Beach Apartment Owners.

Mr. Clayton Yoshida: Good morning Mr. Vice-Chair and members of the Maui Planning Commission. Again we're here subject to the provisions of Chapter 12-202-23(d)3 of your Special Management Area Rules which reads:

If the violator seeks a negotiated settlement with the enforcement agency, but waives to the right to a hearing, the enforcement agency, in consultation with the department and the Corporation Counsel, may negotiate a settlement agreement with the landowner or, if appropriate, the violator, that provides for a cure of the violation, set any fine, and inspection of a parcel by the enforcement agency and the department. The proposed settlement agreement shall be forwarded to the Commission for a final action.

This matter was considered by the Commission at your April 25th meeting. After due deliberation, the Commission deferred action in order to receive further information regarding original notices of violations, accumulated fines, photos of the original violations, explanation on negotiation. And from the applicant, they asked to, for them to provide information regarding contractors, what and when was built. So our Zoning Division did provide a memo with attachments regarding the chronology and also the notices of violation that were issued. The AOA of Mahinahina Beach provided some information regarding history of the structures that were built. Again, Mr. Geiger is the attorney for the AOA of Mahinahina Beach and he can answer any questions regarding the AOA. That's where we're at.

Mr. Higashi: All right. Excuse me, we're going to start with public testimony first and then we'll ask you to come up. Thank you. At this time are there any public testimony? Seeing none, public testimony is closed. Now we can go to the applicant.

Mr. Jim Geiger: Good morning Chair, Vice-Chair actually, and Commissioners. We're back here again, again asking that you approve a settlement that was reached between the Zoning & Enforcement Division and my client concerning the violations. I can tell you that it was a difficult negotiation and it was very much back and forth in order to get to where we got and that was acceptable to my client as well as acceptable to the Department. I know that you received the staff report and I can tell you it does not contain all of the back and forth that have gone between us. I can tell you this because this is a portion of my file on this particular project and you can tell that it does not have as much as you might see in your report there. I can also tell you that a part of the challenge that we've had, and you asked for more information on when things were put in and who did them is that our best belief is most of the items were there prior to the rules. But we can't find anything to establish that, to prove it. And so based upon that the association made a decision, and their decision was well we could have taken an appeal and appealed this. We could have argued over whether or not our proof is good or not good. But we thought it would be better to get into compliance, to correct the problems, and to move on. And so that's what we chose to do. And we chose to pay what is a large fine if you look historically and what has been done in connection with these types of matters. I think that the Department supports what was done obviously, and it has taken us a long time to get here so that we can

have you approve it. So we can actually go forward and make the final corrections so that we can complete the settlement that was negotiated.

One final item I will tell you that is slightly different from the settlement. There was a Hao tree that we have photographs from the family that owned this before the property was developed. It was out there for years. They had supports for that Hao tree that were bamboo poles. One of the negotiated items in the settlements was that we had to take out the trellis that had been put in over the years to help support this Hao tree and put in bamboo poles again or something like bamboo poles so that would match what we have. We thought that we couldn't do that and so the Hao tree is now gone. We don't have that anymore, and it's unfortunate, but if that's what it takes we've gone there, we do that compliance.

So if you have any additional questions that the association can answer I'd be happy to try to answer them. Otherwise again we would ask you to please approve the settlement so that we can proceed forward.

Mr. Higashi: Are there any questions from the Commission? Commissioner Robinson.

Mr. Robinson: Aloha Mr. Geiger.

Mr. Geiger: Good morning.

Mr. Robinson: At the last meeting we asked for a couple of things from yourself and the homeowners. Do you have any of that?

Mr. Geiger: We provided to the Department the information that we had. You had asked for if we had information on who put the things in, when they put them in, and whether they were licensed. And we identified each of the items. We sent a memo which I assume was provided to the Commission. But if it wasn't I apologize, it was provided to the Department.

Mr. Robinson: Do you have that now in front of you?

Mr. Geiger: I have a copy.

Mr. Robinson: Mr. Geiger, I have a piece of paper through Mr. Yoshida saying that the electrical, no records; installation, no records, nobody knows. And I got to believe that the AOA has an accounting system, and that checks were written to people who performed these services. And when I see something that no information, no information, no information and we want to settle for something less than what the original fines were after six years of operating illegally, I don't feel the...the AOA you know is really trying to settle.

Mr. Geiger: Let me answer if I could, I'll expand on that. After the last meeting we went back and looked through all of our records and we looked through all of the accounting records specifically to see if we can identify any information on when the electrical was put in or if there were any maintenance on the electrical, any expenditures whatsoever. There were none. We don't have any records of that being done. We assume that it was done just as part of some sort of normal maintenance of the association many years ago. But we have gone through all of

our records that we have including all of the records that the management companies have. They have changed management companies over the years. And we searched very diligently for anything on that to provide to you and we found absolutely nothing.

We did find some records on the tile/flag stone that was installed, and so there we were able to provide a contractor. It was combined with other work so we can't give you an exact amount on what was paid for the flag stone and the barbeque area, but we can tell you when it was done and it was done by a licensed contractor who, when I last checked, was no longer licensed and had stopped business.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: So if I get you correctly what you're saying is you know that it was a licensed contractor but you don't have any record of it?

Mr. Geiger: No, we have invoices, but it was not just for the item that is part of the settlement. They also did the pool at the same time and so it was all part of one particular project.

Mr. Carnicelli: Does that include the electrical?

Mr. Geiger: No the electrical was --. The only electrical consisted of two or three lights that were attached to the trellises holding up the Hao tree. I had some light fixtures and some conduit and that was the sum substance of the electrical.

Mr. Carnicelli: Chair?

Mr. Higashi: Yes Commissioner.

Mr. Carnicelli: So does the association have a maintenance staff that is employed by the association?

Mr. Geiger: I think the answer is no, but I need to confirm it.

Mr. Carnicelli: So then therefore if any work were to be done it would have to be someone that would have to be hired to do that not just staff doing it.

Mr. Geiger: If any work were done of significant nature, yes. As far as small stuff, I don't know whether or not they in the past they had a maintenance person or not.

Excuse me. They have had. I'm sorry I was checking with my client. And perhaps you should -
-

Mr. Higashi: Would you like to come forward and identify yourself? Please identify yourself.

Mr. Ara Gurunian: Name is Ara Gurunian and I'm a resident at --

Mr. Higashi: Speak into the mic please.

Mr. Gurunian: A little nervous looking at all you guys; got to be honest. Ara Gurunian and I'm a resident Mahinahina Beach. And I have a couple of -- I have some pictures and some painting.

Mr. Geiger: Answer the question on whether or not . . . (inaudible) . . .

Mr. Gurunian: We've had several, we've had several maintenance people, we've had several management companies, and coming up here and saying I don't know who did the work, I could understand your but --. So basically we or the association took on this property we all bought, real estate agents assured us that we were not doing anything wrong or anything. We had no idea of any of this. The reason I'm here today is we want to comply. And I'm very, very sorry. I was shocked personally to find out that we were fined or you know. Again I'm really nervous right now. I don't do this very often. The things that were there were existing things and we thought and when I say we, as an association, thought that we were going to fix or not fix, not change, but to just make things more nice. And so when the person came out all the violations were a shocked to me personally. The existing place has been there since quite some time, like the 70's. I have some pictures if you guys want to see them. They've been there before the SMA Rules had existed. We didn't, and when I say we, not I, but the people that I trusted did some fixes if there's lack of better words. And as soon as we got the, I don't know what it's called the letter or whatever, we wanted to comply. We hired who a person that we were told that is professional land use attorney. We also hired a professional planner, Coastal Planners. And at that time --. And always we wanted to comply. We took out the electrical as soon as we --. All the things we could do that we were fined for we took those out.

Mr. Higashi: Could you specify about the approximate date of what you're talking about?

Mr. Gurunian: I'm not good at this sir. Yes, as soon as --

Mr. Geiger: If I could. The items that the association could handle such as the electrical, the gas, these types of things were taken out before the 10 days after receiving the Notice of Violation. And those things were done immediately.

Mr. Gurunian: Immediately.

Mr. Geiger: We had a meeting shortly afterwards with the Zoning and Enforcement Division to discuss the other items and what we needed to do based upon the information we had and we reached an agreement on what we needed.

Mr. Higashi: So what was the date on that?

Mr. Geiger: That was September 4th was the date of the meeting. The stuff that was taken out was sometime in August. I can't remember the exact date. It was sometime around the 24th to the, to the --. It was somewhere between the 24th of August and the 4th of September.

Mr. Higashi: Was that 2015?

Mr. Geiger: That was 2015, yes.

Mr. Higashi: August 2015?

Mr. Geiger: It was after receiving the Notice of Violation.

Mr. Higashi: You didn't have any documentation to show at that time that any permit was presented to have things rectified?

Mr. Geiger: If I understand your question the documentation that we had been able to find did not conclusively establish that permits had been issued for these items when the condominium was originally constructed. That is the association's best belief that all of these items were there when the condominium was constructed, were part of the original construction. And so that's why we felt everything was there but we did a diligent search of the department's records, of the County's records, of our records to try to find anything that would allow us to support that, and the best that we found were some photographs, some building plans. We did not find permits. We wish we had. With one exception, I don't want you folks to misunderstand. I don't want you folks to have any misimpression. The flagstone on the stairway was added in 2004 by a licensed contractor.

Mr. Spence: I have to ask the gentleman if you're going to talk to the Commissioners you have to do so on the microphone. All of this is being recorded per State Law, etcetera, etcetera. We want a complete record.

Mr. Gurunian: Thank you sir.

Mr. Spence: No that's okay. I understand.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: I'd like to speak to the applicant please.

Mr. Gurunian: Yes sir.

Mr. Robinson: First you're doing great. I was up there before. Just take a breath.

Mr. Gurunian: I'm freaking out right now to be honest to you. I don't ever do this.

Mr. Robinson: There's no cameras today so just take a deep breath and relax.

Mr. Gurunian: I watch you guys on TV sometimes.

Mr. Spence: Scary, huh?

Mr. Gurunian: Scary.

Mr. Robinson: Please sir. So what I'm hearing from you is that all of this was pre-existing up

until 2004 except for the tile. The area was already pre-built. And that you folks in 2004-2005 added on electrical.

Mr. Gurunian: Yes, sir.

Mr. Robinson: I'm sorry.

Mr. Geiger: The electrical was there prior to 2004. The only thing that happened in 2004 was that flagstone or tiles was added to the stairways into the barbeque or lanai area.

Mr. Robinson: Do you know when the electrical was added?

Mr. Geiger: Best knowledge of everybody we've asked at the association, it's been there since everybody's been living there. We assume, but we can't prove that it was there from the beginning, from when it was built. But again that's been our problem. If we had that proof we wouldn't have been settling, we would have been fighting, and we don't have that proof.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: And also what I heard was that the SMA Rules changed while you already had this barbeque area or no?

Mr. Gurunian: No sir.

Mr. Geiger: No. What happened is that we believe these items especially the barbeque area pre-existed the adoption of the SMA. But again we can't get documentation to establish that. It's our belief, we just don't have the documentations. We have some photographs that show a barbeque area in the place, but we don't know exactly what the structure was at that time. I mean we've gone back and we've pulled certified shorelines from the time. I can tell you that the condominium public report for this condominium references an SMA Permit, but we can't find an SMA permit. And so I can't assure you that it existed.

Mr. Robinson: So Mr. Geiger when a, when a person purchases a unit at Mahinahina, right, isn't it a, isn't it the standard process as you go through a title company? And title companies go through and make sure that all permits? So for the last five years have you not sold any permits? I mean are people buying knowing that there's a violation?

Mr. Geiger: I can't answer whether the title company finds violations or not. I can tell you that generally speaking the title companies will not search for violations like this. They'll search the court records, but they generally will not search the administrative records.

Mr. Robinson: Okay, thank you.

Mr. Gurunian: Perhaps I'm speaking --

Mr. Higashi: Please, please identify yourself because we don't have any videos and our recorder needs to put down that information. Identify yourself if you're going to say something please. Any other questions from the Commission? Commissioner Hill.

Ms. Alalani Hill: Yes you had mentioned.

Mr. Gurunian: Is that for me?

Ms. Hill: Yes.

Mr. Gurunian: Ara Gurunian.

Ms. Hill: Thank you. You had mentioned that you -- just that some people to do some fixes and I just wanted to understand what those fixes consisted of and approximately when.

Mr. Gurunian: Absolutely. That's a great question. And I'm sorry I was being a little bit vague. We've hired licensed contractors only. We actually have a form, if you were a condominium complex as you all know. We've hired only licensed contractors and we have to fill out a form if you even want to do any kind of modifications to anything. We're very, very strict about anything that, that happens. So when you say modifications or when I said modifications or fixes we did the tile thing. It seems very vague that we don't have records and I am very sorry for that. I had no idea that the association or the management company and numerous ones can't identify and give us things here. So I am truly sorry and it sounds really vague.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: You're doing great.

Mr. Gurunian: I'm freaking out. I'm shaking right now.

Mr. Carnicelli: I get that you're shaking. This is --. We're not the enemy right now. We're just --. Hang on. We're just doing a query. So my question is you know you stated your name and you said you're a resident there.

Mr. Gurunian: Yes sir.

Mr. Carnicelli: Are you on the board? Because I think Mr. Geiger said that she's actually the President so are you just a resident there, or are you on the board, or you're just a concerned citizen?

Mr. Gurunian: Yes.

Mr. Carnicelli: Resident.

Mr. Gurunian: Resident.

Mr. Carnicelli: Yes you're not on the board.

Mr. Gurunian: I am actually on the board right now. Correct.

Mr. Carnicelli: Okay, but she's the president.

Mr. Gurunian: Yes.

Mr. Carnicelli: Okay, that's all. I'm just --. You're doing great.

Mr. Gurunian: . . . (inaudible) . . .

Mr. Carnicelli: No, no. I'm not asking why you're speaking. I'm just getting clarity. I'm just getting clarity. You're all right. You're all right.

Mr. Gurunian: I'm tripping. May I mention a couple other things that I actually make notes on?

Mr. Geiger: Just to follow up.

Mr. Higashi: Okay, identify yourself guys.

Mr. Geiger: Jim Geiger again. Just to follow up. Ara is the former president and he was the president during most of the time that this has been pending which is why he's here.

Mr. Higashi: Could you just specify what year you were president of that particular association?

Mr. Gurunian: Ara Gurunian.

Mr. Higashi: What year?

Ms. Nancy Mitchell: My name is Nancy Mitchell. Thank you for this morning. So Ara Gurunian is -.

Mr. Higashi: What is your position please?

Ms. Mitchell: I'm the president right now of the board of directors.

Mr. Higashi: Present president.

Ms. Mitchell: Yes. I succeeded Ara who served in 2016 into 2017.

Mr. Higashi: So Ara, he was president 2015?

Ms. Mitchell: 2, 0, 1, 6, and 2, 0, 1, 7, up until April.

Mr. Higashi: Okay. Thank you.

Ms. Mitchell: Ara has been on the board prior to that and he's been working.

Mr. Higashi: Okay. Any questions from the Commission?

Mr. Robinson: I have one last question.

Mr. Higashi: Okay, Commissioner Robinson.

Mr. Robinson: What happens after the settlement?

Mr. Geiger: This is Jim Geiger. As soon as you approve the settlement we have a contractor who I believe is still ready to go. Scott Brothers. They've been ready to go. They've been hanging with us. The money for the fine has been set aside. The money for the work has been set aside. And we're just waiting for the approval to start the work.

Mr. Robinson: Why do you need an approval to stop a violation? That's what I'm confused about. Is it a negotiating tool on your guy's behalf?

Mr. Geiger: No, it was not a negotiating tool.

Mr. Robinson: So you agree that the violation is, is true.

Mr. Geiger: We agreed that we received notices of violation. We agree that some of the work certainly was done after the adoption of the Shoreline Rules and the SMA. And for those we agree we need to do something. The others, we believe existed before but we can't prove it. So rather than contest it and draw it out we felt the best approach would be to go ahead and enter into the settlement and get everything done at once.

Mr. Robinson: You show me yours, and I'll show you mines? Is that the --? I mean I've --. So it's kind of like -- the only way you're going to do the construction to remove the SMA violation, if you're saying it's not grandfathered in, is to agree on a settlement beforehand.

Mr. Geiger: But we can't get the SMA Permit until this settlement is approved. It's approved pending this settlement. We can't make the correction without your approval.

Mr. Robinson: So you need an SMA Permit to do the demolition.

Mr. Geiger: Yes. That's correct.

Mr. Spence: Mr. Chairman.

Mr. Higashi: Commissioner Spence.

Mr. Spence: If I could explain a little bit. Okay so they have violations and they have agreed to and they have been cooperative and willing to work with us on this. It has been a negotiation. As Mr. Geiger has said we've been working on ways to go forward with this. As soon as this part is settled, okay. When there's an SMA violation and there's a negotiation what your rules

refer to as a negotiated settlement that negotiated settlement has to be approved by the Planning Commission. Okay once that ---. They need --. What they need to do to correct some things is they need another permit and to remove some of the work that is in the shoreline area and overall in the SMA. We can't issue a permit until this settlement is reached and approved. So, when the Commission, assuming you approve this settlement then we can go ahead and issue the permits and they can make the final corrections.

Mr. Robinson: Chair?

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: Thank you Director. Okay, so let me understand this. Somebody has a violation, but they can't fix the violation until we approve a settlement for the violation. So until then they're going to keep on violating. There is no bypassing the settlement to stop a violation. I mean what if this was hurting people?

Mr. Spence: Well, okay, that's a different matter. Okay. The violations exist I mean to the degree that they could not just remove the wiring or whatever. The violations exist. They are not continuing to violate, they are just existing. It's not like they're conducting a land use. It's not like a bed and breakfast or a short-term rental that they're ignoring our warnings or anything. They, they are attentive and attempting to settle what is currently there.

Mr. Robinson: So the, the barbeque area is taped off and nobody is using it?

Mr. Spence: I have no knowledge of that.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: Thank you Chair. I guess this is maybe directed towards over to Corp Counsel into the loop here. As I recall from when I heard this you know this sort of just gets bogged down in front of us and says approve this settlement. We're going wait, wait, wait. You know we don't, we didn't have knowledge of the settlement, we're just saying just approve what this is. So my question is what happens if we don't approve this and also my question is what if we say we wanted you to go back to the table and I don't know cut a better deal? Like is that an option for us? Are we just saying, hey, listen this is a thumbs up, thumbs down, that's it?

Mr. David Galazin: Thank you Chair. Commissioner Carnicelli. So what you have before you is the result as the Director has alluded to an ongoing discussion and negotiation that spanned a period of I guess a couple years. And again per your rules because you are the agency that is in charge of this you do have to agree to or not agree to any proposed settlement. So it's not necessarily a thumbs up, thumbs down. You can...you can choose to not approve and if there are certain reason why you would not approve articulate those and then perhaps the settlement agreement can be modified. However if you reject the settlement agreement outright then it goes, we kind of start back at square one. Those Notices of Violation are still out there and they still need to get a permit in order to fix any of them. This is probably the easiest vehicle by which that can be accomplished and the purpose behind the administration enforcement of these violations is to correct the problem and that's the primary goal. And this is the most

efficient vehicle to which to do that, and per your rules that's you know the preferred method. But you are in charge. The Department has been negotiating this, but you know hopefully it can explain to your satisfaction what took place, and why they've agreed to what they have agreed to if you've got questions about that. If that answers your question.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: Yeah I appreciate that. Thank you. Because I guess just what I'm looking at weighing in my mind in this and I don't know if we're now going to discussion but just because I don't really have a question, but as a look at this I go we've got roughly \$2.3 million in violations that we've settled out for \$100,000. Now I don't want to burden an AOA with this huge amount of fine and cripple them and everything like that, and yet at the same time we don't want there to be precedence that you know it's like okay I'd rather beg for forgiveness and ask for permission you know with other associations out there in the future. So that's to me what I guess I'm sitting here balancing going okay where is it that we as a Commission lie with that and so that's where to me I'm going okay as the Department then say I'm assuming with Corp Counsel got to the settlement how did we get there. And maybe if we have to do that in executive session, not saying that we need to, but that's just what I guess I'm trying to weigh as I'm looking at this.

Mr. Higashi: Any other questions? I have one. I'm real concerned about records not being found and that can happen especially in associations where you find different people who becoming presidents etcetera. However the association is still responsible for all records whether they're there or not. And especially when it goes from August of 2015 which was two years ago when the violation was cited. And all the things that have occurred since then has accumulated over \$2 million of fines. And now they're talking about a settlement of a \$100,000. Now there's something wrong with the process in which this is happening. And I'm concerned about that from the standpoint that we're talking about an association that's supposed to be responsible for all actions that are taken at the property. Whether the records are there or not, they're still responsible. And that concerns me. So, how we're going to rectify this is what we are here today to do. And as a Chair, acting Chair, I am a concerned about the settlement. We're talking about \$2 million versus \$100,000. And this is definitely going to set precedence for the future violations that occur. And especially what I'm thinking about and what Commissioner Carnicelli is saying is that now someone can have a violation five years ago and automatically confess that they can't find the records. What does that mean? Does that mean that we'll just let it go or are we going to stick with the violation? And I think the enforcement becomes an issue at this point. Commissioner Robinson?

Mr. Robinson: I move to accept the agreement.

Mr. Castro: I second.

Mr. Higashi: It has been moved and seconded that the settlement agreement is approved. Any discussion? Commissioner Robinson.

Mr. Robinson: Fellow Commissioners you know when I first read this I was probably like you guys. I wasn't happy that an association let something drag on like this. I thought they built this

with the knowledge that it was illegal. I had no idea that this was a pre-existing you know old rock cement area, and it was pre-existing SMA. I had no idea that they couldn't tear it down because the County was telling them they had to figure this out first. You know it was kind of, it's kind of well, okay, we're sorry. You know we pulled out the electricity as soon as you give us the violation you know we start to do that you know. Them, them not having the proper files. This was in 2011 so that means they didn't keep files for seven years. You know we're in business, we know that you need to keep files for seven years minimum for taxes. So that is something that is you know just their election of duty on top of their board. But I'm about moving this hazard. I'm about getting this done. And yes the \$2 million might be a distraction but I think it is just that, a distraction. I think it's a, it's an element of how are things are set up. And I do believe that the system should be a little better. I do think that when we do fine a violation we should find some way for people to come into compliance quicker than six years, or seven years whatever it is if that is really is their intent. And I think that way we can find out what their intent is. If they're just you know if they're trying to complain and fight it to get it grandfathered in or okay we didn't know, I'm sorry, we've been doing this forever. You know you've got different Mayor's, different Planning Departments, different people overlook different things. And I'm at the point now, let's just get this thing pulled out. Let's try and preserve this shoreline because it's just getting bad than the longer this rock is there and being a seawall I think it's just worse for the area. Thank you.

Mr. Higashi: Any other comments? Commissioner Carnicelli.

Mr. Carnicelli: I'm going to I guess just because the motion is on the floor I'm going to speak to the motion and essentially say the same thing I did before. I agree with everything that Commissioner Robinson just said and yet I'm also --. You know I think there's a balance between you know we are in charge of the SMA. This is one, like, one of the things. This is our kuleana this particular board or commission. And so you know I think that we need to take it seriously, we need to do our due diligence. I'm glad. You know I think that we would have approved this you know months ago, the work probably would already be done, but I'm glad that we did our due diligence and we came through this and tried to do it the right way and didn't just say rubber stamp something either way. So you know as much as you know \$2.3 million versus \$100,000 sounds like this big disparity. I also am very well aware of the finances of an AOA and I don't want to necessarily burden them. But then again you know there's the balance of saying we also don't want to have you know associations or property owners doing stuffs in the SMA that they shouldn't. So, anyways, with all of that said I'm going to support the motion and thank you Chair.

Mr. Higashi: Any other comment? I'd like to just ask Commissioner Hill, do you feel comfortable in voting on this particular issue because you're new on the Commission and familiar with the information that's there?

Mr. Galazin: Yeah and I would just ask Commissioner if you reviewed everything going back to the prior meeting in April, all of the minutes from that. If you reviewed all the materials then I think that's an appropriate question to ask. If you haven't reviewed everything then my suggestion would be that you ask for recusal and then if there are no objections we can proceed with that.

Ms. Hill: I have --

Mr. Higashi: Commissioner Hill.

Ms. Hill: I have reviewed everything that was sent to me. And they recently . . . (inaudible) . . .

Mr. Higashi: Okay any further discussion? Okay, Director Spence would you like to?

Mr. Spence: The motion is to approve the settlement.

Mr. Higashi: All those in favor signified by raising your hand.

Mr. Spence: That's six ayes.

Mr. Higashi: Six ayes, motion carries.

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

VOTED: To Approve the Proposed Settlement Agreement.
(Assenting – K. Robinson, L. Hudson, L. Carnicelli, A. Hill,
C. Tackett, S. Castro)
(Excused – T. Gomes, S. Duvauchelle)

Mr. Geiger: Vice-Chair, Commissioners, thank you very much. We really appreciate this because we do want to go forward and get the work done. And I'm glad you recognized and we're kind of in a catch-22 about have to get this approved before we can get things done.

Mr. Robinson: We had no idea.

Mr. Geiger: I understand.

Mr. Higashi: Recommend that your association that you represent keep good records.

Mr. Geiger: It was surprise to us, yes.

Mr. Higashi: Okay, we're going to take a 10 minute recess. Report back at 10:25.

(The Maui Planning Commission recessed at 10:10 a.m. and reconvened at 10:25 a.m.)

E. COMMUNICATIONS

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

MR. ALFRED FAIRBANKS requesting a Special Management Area Use Permit two (2)-year time extension to initiate construction of the Alahele Estates Subdivision a 46-lot single family subdivision with related improvements at 0 Alahele Place, TMK: 3-9-017: 034, Kihei, Island of Maui. (SM1 2007/0006) (J. Buika)

The Investigative Committee was created at the October 10, 2017 meeting. The Investigative Committee provided their report at the November 14, 2017 meeting.

The Commission may take action on the time extension request.

Mr. Higashi: Director Spence, would you like to read the next?

Mr. Spence: Commissioners, we're on Item E.1., Communications. This is my notification to you that we intend to administratively process a time extension for an SMA Major Permit. There was an investigative committee went out and did a site visit, they reported at the October 10th, 2017 meeting. Excuse me November 14th, 2017. And our staff planner this morning is Mr. Jim Buika.

Mr. Jim Buika: Good morning. Thank you Director, Vice-Chair Higashi, Commissioners, and Planning Director. My name is Jim Buika, a planner in the Planning Department. And this project before you as Director Spence indicated is a continuation of a deferral from October 14th.

Again, the Department's request to the Maui Planning Commission is to vote to waive review of the two year time extension which is a request from the applicant to allow the Department to . . . (inaudible) . . . project for the time extension of two years administratively. So again procedurally at the October 14th meeting the Commission deferred to a site visit which was reported out by Commissioner Carnicelli at the last meeting of November 14th. Which brings us here today. And I would like to reference the additional two exhibits that I gave you which is a letter from the Planning Director to you. It has the fold outs or the -- there's an 11 by 17 drainage report that you can look at that augments the original package that we used during the site visit. At the site visit it was myself, Beth Carpenter who is the applicant's representative, Jeffrey Dack from the Planning Department and Commissioner Carnicelli. So the site visit did look mostly at the drainage, the lay of the land and we answered all questions there.

Just to summarize what the project is, it is a 14 acre vacant parcel that abuts up against Piilani Highway. And it is, the plan for the project is to develop a lot only subdivision, 48-lots at 7,500 square feet and larger. With a North-South Collector Road portion going through there and adequate drainage to manage the drainage on the parcel. There were over 40 conditions approved in 2008. This is the fourth time extension. The reason for this fourth time extension is the project -- the owner went bankrupt during the down turn in 2008, 2009, sold it back to the original owner who is now trying to do adequate, one-quarter workforce housing on the project and still needs this time extension to initiate the project. So I'll leave it at that. There is, there is

the drainage plan if you have any questions about that and I'll turn it back over to Vice-Chair Higashi. Thank you.

Mr. Higashi: Thank you. Any questions from the Commission? Commissioner Hill.

(120418/0800S)

Ms. Hill: Mahalo Chair. Mahalo for your patience. I have a question on the Ala Hele time extension. I've been a residence of Kihei for decades and know the area that is makai where the project does flood in that area down in Kihei Road into Kalama Park area when there is heavy rain and storms and the drainage present that I've noticed over the years has not been adequate for the existing homes and businesses. So I'm wondering how will the new development impact first of all the residents makai and the business owners of the project?

Mr. Buika: That was a concern originally and it was a comment at the last commission. That's why we deferred it. The drainage plan which I did hand out, the 11 by 17, does show that the, the calculations are with the development to be 28.25 cubic feet per second for 50. The calculations for Public Works is a 50 year one-hour storm. Obviously we can have storms that are larger than that. But the plan is with the drainage you can see the retention basin there as part of the project. It does have adequate drainage to contain all of the runoff including runoff generated by the development to not increase any flooding downstream. So everything is contained there, obviously Kalama Park, that area. Kihei is a wetland off a 10,000 foot mountain with some very major watersheds, and the, I believe Public Works is looking at a master drainage plan for the Kihei area. So this is part of a watershed and according to our Public Works sediment control, drainage control it will comply with those, with those rules.

And to add one thing, actually last time the applicant's representative Beth Carpenter, the applicant is willing to work with Haleakala Ranch which is, which is mauka of Piilani Highway, upstream from this area there to potentially dredge several ponds for the cattle as a sediment control, drainage control, added control to this project. So they are having conversations. It is not a requirement of the project, but they are willing to work with Haleakala Ranch and they've had positive feedback over there.

Ms. Hill: May I continue?

Mr. Higashi: Yes Commissioner Hill.

Ms. Hill: And with that Mr. Spence had stated on October 10th in the Planning Commission meeting that the proposed water retention basins would possibly be built at Haleakala Ranch land and then as you're speaking of Beth, Beth Carpenter, I did noticed that on the 14th of October in that meeting that the project hopes to work with Haleakala Ranch over the next two years to intercept some of the water coming down from the mountain side to at least retain it to slow it down and the water in case of a major storm. And the preliminary drainage report per Ala Hele's submission in May 2007 states that the developers negotiating as well with a land was then negotiating with the land owner mauka to Piilani Highway to obtain a site, construct an offsite retention basin as well. And further in the preliminary drainage report for that subdivision in May 2007 it also says conclusion of the developers is negotiating with the land owners as well

mauka of Piilani to obtain that site construction, offsite retention. So I have a need just reading the background materials, where are the negotiations that were underway from 2007 and that it's been 10 years and what stage are any of the negotiation in just looking at the retention basins. And is the developer giving these that it could happen. It's just 10 years it's been a long time for negotiation it seems to me and I don't see anything accomplished on that. And the last was what was just spoken that it is the notice of everything is coming from Haleakala, Haleakala Ranch so that . . . (inaudible) . . .

Mr. Buika: Right. I can report that negotiations are going on, that Haleakala Ranch owners are positively working with the applicant. Nothing is finalized at this point. It is above and beyond the project's requirements, but it does go on. So anecdotally I had information from Beth Carpenter that she is, she's a good outreach person. She's the one in charge of the project right now. So I can get a written report for you on what's going on with that if you'd like outside of this meeting. I certainly can and, and we can --. Right now it's just a time extension for the existing conditions. I do believe there possibly maybe some changes to the project which would require an amendment to the Special Management Area Permit that is authorized right now. So that would come back to the Commission at a future date within this next two years and you could add a condition and, or query further. But I can get more information about the status of the upcountry or upstream retention. So I know that is the intent at this point.

Mr. Higashi: Okay just for the record are there any public testimony for this particular project time extension? Seeing none, public testimony is closed for the record. All right any other questions? Commissioner Robinson.

Mr. Robinson: I just have a question. I hear retention retention and on the map it says detention. What is the difference?

Mr. Buika: I shouldn't give you a facetious answer.

Mr. Robinson: No you shouldn't.

Mr. Buika: There is no -- I guess if we had Public Works they could clarify -- but there is no, there is no difference from my understanding. Any comment? Retention? Detention?

Mr. Spence: No, I'm not. I think they can be used interchangeably.

Mr. Buika: Yeah. To detain, right. Retain and detain, they're similar. They are, they are retention basins that I think would you know potentially it will slow down water from creating a flooding condition is the, is the intent.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: I mean there is a different definition you know. To retain is different than to detain and so that's the --. You know what is it? You know exactly what is the premise of it? I'm sure maybe the engineer --. You don't have to answer to me today but I'd to know in the

future you know why they have it on some maps and something different on the other. Thank you Jim.

Mr. Buika: Good question. Thank you.

Mr. Higashi: Any other? Commissioner Tackett.

Mr. Christian Tackett: My question is about this particular portion. Is there any numbers associated with this percentage of workforce housing? And also is it, is it a market development or is there an affordability portion to it and what are the sizes of those for the proportion of those?

Mr. Buika: Yes, if I understand your question correctly there will be at least 12 workforce housing affordable housing units. The lots are large. They're 7,500 square feet to over 10,000 square feet, so it's rather generous for a workforce housing. And they are market. Right now the SM1 is approved for sale of the lots at market value so it would contain all of the utilities, build out, and just sale of the lot. There are in addition to that there -- we had a long discussion with the SM1 too that as part of the project they will create some CC&R covenant restrictions -- Thank you -- covenant conditions and restriction so that there will be a similar style so that it won't be totally different. So there will be some consistency to the development through CC&R's that will be developed as part of the sales and project. Does that answer all your questions?

Mr. Tackett: Is this a 201H or is it not?

Mr. Spence: No.

Mr. Buika: No, it is not a 201H at this point.

Mr. Tackett: Thank you. That was my questions.

Mr. Buika: Thanks.

Mr. Higashi: Any other questions? Commissioner Hill.

Ms. Hill: Mahalo. I had just gotten these papers from you last night Jim. Mahalo. I didn't know if others got this as it wasn't in the package regarding the DLNR Historic Preservation Division from 2002 that they got in February 2003 regarding the archaeological inventory survey that was done. And I was just reviewing it and noticed that they had stated that the archaeological assessments and inventory survey was found had no historic properties. And then when they came back and the other in the event of course if there is anything found, human skeletal remains or anything that the work would be ceased and to find what they needed to protect from any additional disturbance, and that the State Historical Preservation Office would be the contact. So I'm just wanting to be aware that the developer thinks are aware of what happened back in 2003. And lastly in that last report was July 18th that they -- what they originally reported with no revisions during their archival research of other projects that were in the area they re-

examined what they said and had issues pertaining to that parcel and found sand deposits which were identified in several of the trenches. So they were asking were the backhoes and trenches identified those sand deposits and that there should needed to be onsite monitoring, and that being submitted to Oahu and Maui, and then review of the acceptance. So I just want to make sure that this developer is aware of these that were submitted last night and what they need to do to be -- for monitoring for the developer. And in closing just that it is our kuleana to protect the integrity, the Hawaiian culture as well, and historical findings in this area that may be discovered in the Kamaole ahupuaa in the course of its development.

Mr. Buika: Yes, thank you for that comment. Yes, they are very aware. All of those documents are part of the original SM1. And yes I think there were 15 backhoes that they did, and they did find some limited sands, not in all of them. But that there is a, there is a condition. I believe it's condition no. 20 for the archaeological monitoring plan that will require a an archaeologist on every, on every piece of equipment during any grading operation or any ground altering activity. So that will be closely monitored. That's probably our number one, our number one requirement on all projects where there is sands for sure is to have archaeological monitoring. And then the other big mitigation in the SM1 is the drainage pretty much. So archaeological will be closely followed. And I will emphasize that as the project goes along.

Ms. Hill: Just one last thing. Has there been any other findings or anything since this 2002 report now that it's 2017, have any other building or shifts of the land in that area?

Mr. Buika: I do not believe so. There were, there were three or four other projects that are included in here. I did not do that research. But as you said the SHPD Kapolei did do additional. They researched other reports in the area and there were no -- there are no iwi or artifacts that they had found. So not too much in the area fortunately at this point. But it will be closely monitored because it is a vacant lot that will be developed and graded substantially.

Ms. Hill: Mahalo Jim. Mahalo Chair.

Mr. Higashi: Any other questions from the Commission? Commissioner Robinson.

Mr. Robinson: Jim, I'm going to apologize again, but I just want to...just want to clarify on the drainage again. You know usually with the drainage is for the catch basins we usually have a diagram of it, a picture of the depth of the soil to see what it can you know water to receive instead of just saying this is going to happen that's going to happen.

Mr. Buika: Correct.

Mr. Robinson: And you know I've always seen EA's and I noticed that this isn't an EA. So can you, can you help me in the packet that we have to show us the --. Where there is a picture where we've dug into the soil to make sure that it is porous enough to accept these water retention basins?

Mr. Buika: The preliminary drainage report is contained in here in the original handout. And then the, the actual drainage plan I handed out today. You're talking about the percolation?

Mr. Robinson: The retention basins, what is you know what is floor makeup what is the topography? Because this is going to collect the water on the runoff. So that's, that's what I'm interested in. That's why --. I can be missing but if you can kind of lead me to that.

Mr. Buika: Right, well, it's in the, on the page 1 of the preliminary drainage report for Ala Hele. I think it's, it's the last exhibit in the packet. Do you have that there? Otomo? They usually talks about the type of soil conditions, the topography and the soil conditions. And then the -- I'd have to read through it but the --.

Mr. Robinson: No, I see words. I see words, but I don't see any drawings. I don't see any makeup of it. I don't see an actual picture. But usually in drain off is I've seen the catch basin.

Mr. Buika: That was handed out today in the 11 by 17 picture which shows you the --

Mr. Robinson: Drawings. But, but, but pictures and soil and soil makeup of the area. If it's rocks it's not going to absorb anything right? So I understand the calculations but where's, where's quantifying the calculations. Where's the verification of the saying we have these calculations because the soil is this and the soil is that?

Mr. Buika: Well in the preliminary -- the calculations are in the preliminary drainage plan that I just referred you.

Mr. Robinson: Which is right here.

Mr. Buika: Otomo. Yes. So if you read through it it talks about the types of soil found. So it's Puu'one sand. So the soils within a project, at the very last line on page one, the soil classification. But that's from a map. And you know the sand is porous. Having a rapid permeability.

Mr. Robinson: So is it the contention that this whole, this whole property including the retention basin is sand?

Mr. Buika: I'm, I'm not sure. I mean there is. We were out there. There is lava rock in the area and there is sand above so they didn't, they didn't --. This is just a preliminary drainage report for the SMA. The final drainage report will go to Public Works for the building permits. So the only thing that's very required in the SMA is a preliminary drainage report. So that will be developed or I can, I can get that for you again. So it does require a final drainage approval by Public Works.

Mr. Spence: And Mr. Chairman?

Mr. Higashi: Director Spence.

Mr. Spence: The final drainage report is much more of an engineering report that will be reviewed by one of the engineers in DSA. But as Jim says what is required for an SMA Major

Permit is the preliminary. Will they be able to meet the requirements of Public Works? Absolutely. And if they in other reports you'll see that some applicants choose to go beyond what is necessary. And this applicant has expressed a willingness to do so. So at least from the Department's point of view they've meet their burden of proof for an extension of this permit.

Mr. Buika: So just to add, just to add -- right exactly -- the whole, this is a preliminary drainage report. And then the final drainage report is done through DSA, Development Services Administration, Public Works.

Mr. Spence: Yeah and that's also usually done in conjunction with a grading permit when they do the final contours of the land. So those will bring out you know some, you know some little tweaks or whatnot. So this, for the purposes of this that they've definitely meet what they need to do.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: Jim, Director, I understand preliminary. But if we're here to assess the preliminary report and the preliminary report it doesn't mean --. It shows us a retention basin catching water, but we don't know what the retention basin is made out of. Why even have us review anything if it's going to be caught in the, in the, in the future drainage report? I mean if we're going to judge something, right, I mean shouldn't we be judging facts instead of assumptions. And if our assumptions or as I said if, if, if it's going to be detailed later in the final report, then why have us even review it? I'm saying don't worry about it Keaka because it's going to be caught in the next phase. Well, if it's going to be caught in the next phase, then why are we even looking at it in the first place?

Mr. Spence: No, because, because --. First off I'm not sure what you're saying what is it going to be made of.

Mr. Robinson: I apologize. It's if we don't know what the soil makeup is of the retention basins. I mean we all know the asphalts is being made of in rooms and all that drainage and the sidewalks. But retention basins that's made to control the runoff, if it's you know, I mean, I know this is preliminary but to me that, that's what I'm interested in.

Mr. Spence: When someone comes in and applies for an SMA Permit part of that application has a their archaeological inventory survey, any cultural assessments if needed, you know traffic study if needed, or architecture if needed. But one thing that they always have is the preliminary drainage report. Okay so the application comes in, they're about an inch, inch and a half, two inches thick, and with all of the technical reports attached. We circulate those reports to the different agencies. I mean DSA could care less about certain things, but one thing they will focus on when they do their review of this application is that they'll look at the preliminary drainage report and say, okay, does this work? Is this adequate for this level of review? And they will comment back. That's part of what your package when you get those staff reports is comments by Public Works or the different agencies. And they will say okay this drainage report doesn't work, or it does work, or whatever. And then when it finally goes to construction, when they're doing the actual minutely detailed construction drawings of where the curbs,

gutters, sidewalks are going to be, how high they're going to be, all that stuff, that's when the final comes in. They're very large documents, the construction documents and the final drainage report is a part of those that they're going, that DSA is going to review before they can get a grading permit and any building permits for roadways and sidewalks and other infrastructure.

Mr. Buika: And I can add, I could add some additional comments. Thank you Director.

Mr. Robinson: And it's not really pertinent to this project even though it is. You know we had Walgreens. We had --. We know what their retention basins was. We had pictures. Was that an EA or was that an SMA?

Mr. Spence: I recall that was an EA.

Mr. Robinson: That was an EA. And so EA, the next step would come from this board and we'll see that type of location. So therefore if this board wanted to see more we'd have to ask for an EA and not grant an SMA? Or the SMA is already granted we can't ask for an EA? I guess is I want to see what we're in charge of, what we're not in charge of. It's kind of the drainage is. Kihei everything is drainage right?

Mr. Spence: Sure.

Mr. Robinson: So I guess that's where my question is. I'm not trying to make something, I just want to make sure I understand it you know really well.

Mr. Spence: Okay so I'm not sure what the --. At least for what the purposes of this level of review and you have to remember it has to be a preliminary drainage report for the reasons I've already stated but also when you, when the Commission gets into deliberations on a project they, they may say the building's too high. They may say in a project I worked on personally in Kihei the, the Commission at that time said we want to see the building closer to the road. And so whatever the Commission ultimately approves may change what's in the preliminary report. So it has to be preliminary for this level of review. It's not going to change a lot usually, but sometimes it changes enough that they have to, the, the final drainage report and everything has to be that much different. So a lot of things that this Commission reviews will have an ultimate effect on the final construction drawings that are submitted for, to Public Works, for approval.

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

Mr. Higashi: No, that's fine. I think what Commissioner Robinson is trying to state is that we're trying to make it as comprehensive as possible. However there are some preliminary things that come up. For example the Makena Project that was going with the archaeological sites, there were some areas that needed to be re-evaluated which they did in the permit process. And I think this is something that right now the owner is basically trying to get this particular project off the ground so we're at the preliminary stage of what's happening. Because they're going to -- it's going to have to come back and then get a final approval on the completed thing

such as drainage, and road construction, etcetera, etcetera, etcetera, including drainage and archaeological sites. Any other questions from the Commission?

Mr. Spence: Just a comment. I know --

Mr. Higashi: Director Spence.

Mr. Spence: The questions that Commissioner Robinson is asking are appropriate to be asked and I appreciate those coming forth. What I'm trying to express is some assurance that Public Works has already looked at this particular preliminary drainage report. And if they had had comments, if they had a problem with it, we would know about it and they would say go back and do this over, and then we would bring that to you. So, DSA didn't have any problems with it that I'm aware of so. And you know as said this particular applicant is wanting to do above and beyond what is being required already.

Mr. Higashi: Any other questions from the Commission? None. Director would you like to state.

Mr. Spence: Yes, decide whether the Commission wants to waive their review of this time extension or if you actually want to see it and discuss it and approve it yourself.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: Move to waive our review.

Mr. Higashi: Any second?

Mr. Larry Hudson: Second.

Mr. Higashi: Commissioner Hudson seconds. It has been moved and seconded that the particular request be waived. Any discussion? Commissioner Hudson?

Mr. Hudson: Just a quick comment. The Planning Department have very professional people working in it, and two of the people assigned to this particular project are to their very best. There's 42 conditions on this thing. It's been well vetted. I have no problem supporting the motion.

Mr. Higashi: Any other comments? None. All those in favor of the motion please signify by raising your right hand.

Mr. Spence: That's six ayes. Motion carries.

Mr. Higashi: Okay. This gets approved.

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

VOTED: To Waive Review of the Time Extension Request.

**(Assenting - L. Carnicelli, L. Hudson, A. Hill, K. Robinson,
C. Tackett, S. Castro)**
(Excused – T. Gomes, S. Duvauchelle)

Mr. Buika: Thank you.

Mr. Spence: Thank you Jim. Thank you Commissioners.

F. DIRECTOR'S REPORT

- 1. Designation of the Hana Advisory Committee to conduct the public hearing and provide their recommendation on the following request:**

MS. PATRICIA MILLER requesting a State Land Use Commission Special Permit in order to operate the Hana Sanctuary, a two bedroom bed and breakfast home located in the State Agricultural District at 1840 Hana Highway, TMK: 1-3-002: 006, Hana, Island of Maui. (SUP2 2017/0013) (R. Quigless)

The Commission may designate the Hana Advisory Committee to the Maui Planning Commission to conduct a public hearing and provide its recommendations on the request.

Mr. Spence: Okay, Item F, Director's Report, the -- is a request to designate the Hana Advisory Committee to conduct a public hearing and provide their recommendation regarding a Land Use Commission Special Permit in order to operate the Hana Sanctuary, a two-bedroom bed and breakfast home located in the Hana area. Mr. Ryan Quigless is here if you need any information from him or --.

Mr. Robinson: Move to approve.

Mr. Carnicelli: Second.

Mr. Higashi: It has been moved and seconded that the request be approved.

Mr. Spence: Yeah, but we need to vote.

Mr. Higashi: Do we need to vote on this?

Mr. Spence: Well we had a first and a second.

Mr. Higashi: Yes.

Mr. Spence: All in favor of designating the Hana Advisory Committee to hold the public hearing? That's six ayes. Thank you.

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

VOTED: To Designate the Hana Advisory Committee to the Maui Planning Commission to Conduct the Public Hearing and Provide Its Recommendations on the Request.
(Assenting – K. Robinson, L. Carnicelli, L. Hudson, A. Hill, C. Tackett, S. Castro)
(Excused – T. Gomes, S. Duvauchelle)

2. SMA Minor Permit Report

3. SMA Exemptions Report

Mr. Spence: The Commissioners you've also on Director's Report, F2 and F3, you have in front of you your SMA Minor Projects report and the Exemptions report. Do you have any questions on those? Otherwise this supposed to acknowledge receipt.

Commission had no questions or comments on the SMA Minor and SMA Exemptions Reports.

4. Discussion of Future Maui Planning Commission Agendas

a. December 12, 2017 agenda items

Mr. Higashi: Okay move on.

Mr. Spence: No. 4 is discussion of future agenda items. The December 12th Maui Planning Commission meeting, you have one public hearing per Mr. Les Young of Telecom Site Development Services on behalf of T-Mobile West LLC requesting a Conditional Permit in order to modify a rooftop wireless antenna in the B1 Neighborhood Business District in Pukalani. The second -- there's a communication for a Step 1 and 3. Excuse, Step 2 and 3 Planned Development Approval for a construction of the Wailea Professional Center on almost an acre of land in Wailea and it includes fencing, a car wash area, and a parking lot. You'll also be taking up the a petition, the action taken to deny, petition to intervene where you denied a petition by Ms. Deborah White in representing the homeowners association of Puunoa. So that will come in your packets for your review. The -- and then you're going to have another communication item of Mr. Chris Bolte and Gary Bolte requesting a short-term rental home permit in Lahaina. And that's what's coming up. Next meeting is December 12th and that will be, I believe, that's the last meeting of the year.

Mr. Spence went over the items scheduled for the December 12, 2017 meeting.

G. NEXT REGULAR MEETING DATE: December 12, 2017

H. ADJOURNMENT

Mr. Higashi: Commissioner Robinson?

Mr. Robinson: Chair, at the last meeting I asked for a clarification on the . . . (inaudible) . . . applicant if our Commission did not decide to be there, affirm or deny an application that it becomes automatic approval. And I asked for the legal, the legal -- I don't know the word for that -- statute of that. And I believe Corp Counsel says he has that for us today.

Mr. Galazin: Thank you Chair. Thank you Commissioner. So yes by State Statutes in 91-13.5 and that is entitled maximum time period for business or development related permits licenses or approvals, automatic approvals extensions. And the relevant portion there is Subsection C which says:

That all such issuing agencies -- and that would be the Commission in this case - - shall take action to grant or deny any application for a business or development related permit, license or approval within an established maximum period of time or the application shall be deemed approved with the one exception that if there's a delay in granting or denying an application caused by a lack of quorum at a regular meeting that would bump the time frame up. Except that if there's a subsequent lack of quorum at the next regular meeting, then that wouldn't give any more time extensions.

Now in your rules what you have in 12-201-34 is the maximum time period established by this Commission for making these decisions. And what you have is 120-days from the later of the date the application is deemed complete or the closing of the public hearing on the application. Unless there's a contested case hearing and it goes to the hearings officer. What that means is that after an application comes before you if there's a public hearing held then there's 120-days after that in which this body has to make a decision up or down on it. And if this Commission doesn't act within those six months, then it's deemed approved. And that's you know State law to prevent Commissions, or to prevent stagnation and Commissions trying to do things by inaction and just delaying projects. So you're sort of forced to make a decision one way or the other. Now the time period established is 120-days. That could be changed within your rules. You can make it shorter, you can make it longer. Do you want to get into it? I don't know how much shorter or how much longer you could make it but that's where that comes from. It's a combination of the statute interacting with your Commission Rules if that makes sense.

Mr. Higashi: Commissioner Carnicelli.

Mr. Carnicelli: As we've talked about this in the past I believe that one of the things that this Commission should consider in our own rules is, and I think that we've done a version of this maybe. I don't know if it was actually ratified. But instead of just deeming it to be approved, is it deems as approved as recommended by staff so then that way there's at least conditions. Because I think we went round and round about this, like going okay, if it's just quote in quote, just approved, then there's no conditions. It's just approved. So if it's going to be just approved, there should be conditions to that because there's going to be conditions if it is approved. Anyways I think if that needs to be interjected into this conversation.

Mr. Higashi: Corp Counsel.

Mr. Galazin: Yeah and that's you know I think there's a few places where the Department is currently looking at perhaps amending or bringing some proposed amendments to some of these rules and that might be, that might be one where we want to take a look at too. That's an excellent point you know. I'm sure the Director will take that into consideration.

Mr. Higashi: Commissioner Robinson.

Mr. Robinson: I'd like to speak on the reason why I asked for that ruling. At our last, at our last meeting we had four Commissioners voting one way and one Commissioner voting the other, and we only had a quorum of five and we had an empty seat for six months. And I felt that it was not proper for the length of time it took to fill this seat, and therefore having five people, one person could always if you know we don't have enough people to quorum because we had one person who is out ill, therefore it was always going to go a certain way as long as you had one dissenter. And having a Commission of people it's, it's -- you know you always want a majority or like mine did not a single minded Commission and that's what happened the last meeting. A single minded Commission moves it to an affirmative vote and that was my concern. I'm so happy that we have another Commissioner here today and I, and I -- I hope there's a speedy . . . (inaudible) . . . by the Commissioner but that's what important of Commissions trying to come to ever single meeting because we owe it to have that voice to where one voice doesn't become the majority. Thank you.

Mr. Higashi: Any other questions from Commissioners? If not, meeting is over. Meeting is adjourned.

The meeting was adjourned at approximately 11:07 a.m.

Respectfully submitted by,

Leilani A. Ramoran-Quemado
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli
Kahu Alalani Hill
Richard Higashi, Vice Chairperson
Larry Hudson
Keaka Robinson
Steven Castro
Christian Tackett

Excused

Tina Gomes

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Sandy Duvauchelle, Chairperson

Others

William Spence, Director, Planning Department

David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

Rowena Dagdag-Andaya, Deputy Director, Department of Public Works (on-call)