

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM C.3  
JUNE 22, 2021**

Ms. McLean: Yes, thank you, Chair. This is a complete review of a request from Mr. Ryan Schultz, Vice-President of Development of Versa Real Estate representing Makai V, LLC for a two-year time extension on the SMA Use Permit condition to initiate construction of the Nalu Ola West Subdivision at TMK: 2-5-04: 055, 068, 069, and 22 and parcels 2-7-004: 007, 048, 049, 052, 053, 054, 055, 056, and 058 in Haiku. Just to clarify, often the Commission is presented with SMA permit that have requested time extensions and the Commission is asked to waive review. In this instance, you're being given this application for your review not requesting you to waive it. So, the time extension is in front of you today for action, and Candace Thackerson is the project planner.

**C. COMMUNICATIONS**

- 3. Full review of MR. RYAN SCHULTZ, VICE-PRESIDENT OF DEVELOPMENT OF VERSA REAL ESTATE representing MAKAI V, LLC, requesting a two-year time extension on the Special Management Area Use Permit condition to initiate construction of the Nalu Ola West Subdivision at TMK 2-5 -004: 055, 068, 069, and 022, 2 7-004: 007, 048, 049, 052, 053, 054, 055, 056, and 058, Haiku, Island of Maui (SM1 2014/0004) (C. Thackerson)**

Ms. Candace Thackerson: Aloha Commissioners. Before I get into the project I just want to make sure that you've all had time to review all of the documents that had been received after the posting 'cause I know we had a lot of last minute testimony that came in last night, this morning and I believe during your meeting, you were also sent a document via email which was a copy of the Preliminary Compliance Report. I believe the one that was included in your exhibit was scanned in single-sided when it was a double sided 'cause sometimes the numbers jump and our Corp. Counsel was wonderful enough to point that out to me so I wanted to make sure that you all got a copy of that and I would like to ask the commissioners if they would maybe like five minutes if they have not reviewed said documents or if you would like to push forward, Chair?

Ms. Pali: Does anybody need an extra five minutes? Can you just raise your hand up if you feel like you need an extra five minutes to take, take a look at those documents? Okay, are we able to recess for five minutes?

Ms. McLean: Yes, Chair.

Ms. Pali: Great. Okay, let's recess. It's 2:57 now, why am I ending up on the threes, 3:03 is five minutes, is the third time, 3:03 we will recess until 3:03.

Ms. Thackerson: Thank you, Commissioners.

A recess was called 2:57 p.m., and the meeting was reconvened at 3:03 p.m.

Ms. Thackerson: Thank you for indulging me in that. It was just the first like ten pages of the Preliminary Compliance Report. All the exhibits were still the same, it was just the numbers weren't lining up because it was a double-sided to a single-sided technology thing.

Okay, the item before you is a full review of a time extension request as stated by Director McLean earlier so I won't reread all those long TMK numbers. This has been seen by this body previously back in January of this year and at that time it was for a waive or not waive of time extension and unfortunately the applicant wasn't able to make it and so the Commissioners asked for the time extension request to come back for full review.

Before I get into the application, I just want to go over the applicable amendments and...I mean, the applicable regulations and what you guys should be looking for. So, this project was originally approved because it's within the SMA area and it is considered a development. It is not for any structures or homes except for I believe the well, the small well like building that's going to be there. It is just for the paper subdivision as well as the improvements, the utilities that will be going in to the separate these lots.

This was approved by the Maui Planning Commission back in 2015, and, so time extensions reviews comes before you and there's four things that you should be looking at and that's in Chapter 202 of your Maui Planning Commission SMA Rules. Number one, you're supposed to look at the reason for the permit time extension, and number two, the length of time requested, and three, an analysis of whether any changes have occurred within the abutting or nearby Special Management Area since the granting of the permit that may cause the permitholders development to have now a substantial adverse environmental or ecological effect that it may not have had at the time when this permit was first approved by this body as well as an analysis or whether any changes have occurred in the SMA area since the granting of the permit that may also adversely affect the capacity or condition of the potential infrastructure. So, it's really, while we say full review, it's not per say a full review of the entire project over again, you know, the project has received its entitlements, it's a review of whether or not there's been a change in the area since the granting of this permit that would then perhaps make the commissioners want to take a relook at the, at the original approval.

I'm not sure if the applicants have a presentation, but I'm just gonna briefly go over the project a little bit. So, Nalu Ola Ranch West is located...it's on 57...the lots...there's 14 lots ranging in size from approximately six acres to 57 acres and there'll be nine easements. It's located off of Hana Highway out by Haiku, and the utility improvements include underground water lines from the onsite well and putting a water tank. The 480-square-foot building to house the pump as well as drainage improvements and to onsite detention basins. There's no other construction related development being proposed.

At the time that this was approved, shoreline access was a big discussion at the commission at the time this being a well-known surf and fishing spot, so I would like to direct the commissioner's attention to Exhibit 1 which I believe is on Page 8 of the staff report and as you can see there's quite a large easement along the Shoreline Easement 6 there that is in

Conservation and is an easement and will not be developed and will be kept open to the public. And since we all know it's not good enough just to provide land for the public you have to provide access to it or else it's no good if anybody can't get out there, right? So, other easements that you can see on that map are also in purple leading all from Hana Highway to this area as well as kind of on the right-hand side by Lot 11 there's Easement 8 which is like a little square. We also thought it was important that people have somewhere to park their vehicles too, what if fishermen catch a really...they're lucky, right they got a lot of fish, it's heavy to carry, they gotta get it back to their cars, so at the time that this was reviewed that was really important to the commission and so, we identified several easements through this lot to provide access to the larger Easement 6 that will not be built upon.

Moreover, in the conditions of approval on the permit, the original permit there were several shoreline access conditions. Condition No. 9 on the original permit talked about traditional shoreline public access from Hana Highway shall not be impeded within the easterly portion of Easement No. 6 in the vicinity of Maliko Gulch outlet to the ocean. The applicant has acknowledged the provisions of that and has provided it through the easements. Condition No. 10 also said that shoreline public access easement with a minimum of 15 feet dedicated to the County or a responsible conservation organization and shall be provided along the northerly tip of Easement 4 to Easement 6, and that has been provided as well. I'm not sure if the applicant, who they've chosen to take care of that. I believe it might be Hawaiian Islands Land Trust but I'll let the applicant answer that for themselves. I see that they're both on the call this time, that's good, so they'll be here to answer your questions.

Other than that for the time extension, the Department, it was our analysis is that there has been no real changes in the SMA area immediately surrounding this parcel. There's been no other SMA large projects that have been approved within the SMA area. There has been one mauka of this area, but it's not located within the Special Management Area. The applicant is requesting two years, they actually did get a grading permit approved for their project, but they failed to initiate. I believe they actually got the grading permit issued to them on the day that this permit was due to be expired. So...but their request was filed obviously prior to that, but they did not initiate so that's why they're here before you to get the two-year initiation. I can turn it over to the applicants to see if they have anything they want to say or if they have a presentation they would like to give.

Ms. Pali: Great.

Mr. Hopper: Madam Chair?

Ms. Thackerson: I see Mike Hopper has something to say.

Mr. Hopper: Just a reminder to swear, just to swear everybody in.

Ms. Thackerson: Oh, I swear that I said was the truth. I'm sorry, thanks Mike.

Mr. Hopper: Just for going forward. Thank you.

Ms. Thackerson: Yeah.

Ms. Pali: Okay. Thank you, Ms. Thackerson. Okay, so we shall introduce the applicant and we'll hear from them.

Mr. Steve Robinson: Hi, good evening, it's Steve Robinson representing Nalu Ola. Thank you all for being here on this long evening. I appreciate all your patience in getting us this far in the agenda. Not much has changed over the last couple years, we did take a hiatus for a number of different reasons. The property at the time, original approval was owned by Alexander and Baldwin. We subsequently purchased which is one of the reasons why the time didn't, didn't...we didn't get everything done in time. We did apply for this extension a little over two years ago, so at this point I think the extension's only like six more months left as of today. Other than that not a lot has changed. All the accesses have been, have been...I can address the issue that's come up last night if you'd like me to kind of jump to that spot or if anybody else has got other questions. I don't need to run you guys late.

Ms. Thackerson: I just, sorry, Staff Planner Candace Thackerson. I think the Commissioners can ask that at this time because I'm not sure if all of them are on the same page. I believe the applicant was referencing some testimony that we had received from Isaac Hall about some lighthouse access trails and I'm sure that we'll be getting public testimony on that as well. I see that there's people signed up to testify. I think perhaps we should hear from them before you address it and you can always...the applicant can always address back to the members of the community, but let's, let the community express their concerns first before we try to answer the questions in advance, but so just...yeah, just stick to the original request for the moment, sorry Chair.

Mr. Robinson: No, I think, I think just importantly it doesn't show up in the map, quite as well as that from a public access standpoint. There is, there are pedestrian accesses, easements between Lot 1 and 14 and Lot 1 and 2 which is has been...which is traditional fishing route that was also used as an old pineapple road, so that has been, even though it's been gated that that has been used most, I think the most frequent spot for the fishermen to park. Once the road is constructed going between Lots 13 and 14 all the way to Lot 8, there is another public access easement between Lot 7 and 8 to take you out to the shoreline there. The access easements at the time were designed with the, with the planning commission and also just kind of taking a look at I think it was called the Upcountry Trailways Plan at the time, it's been a few years since we did this, but that was the basis of the design at that time. We are looking forward to getting started and breaking ground this summer or fall, and I'm here to answer any questions you might have.

Ms. Pali: Great. Okay, thank you. So, if it's okay Commissioners, I would like to go and move onto public testimony. We'll hear from the public and then we'll circle back with our questions after that. Director, do we have anyone ready to testify?

Ms. McLean: Yes, Chair. So far we have three people who have indicated they wish to testify. The first is Scott Werden. I know that he had to drop out and I think he may have joined back again, Scott are you there? Chair, I don't see him on the call anymore. We can come back to him. The next testifier is also not on the call any longer it appears that's Maile Magalianes. I apologize if I mispronounced the name.

Ms. Maile Magalianes: Hi. Yes, I'm here.

Ms. McLean: Okay. Please go ahead and provide your name?

Ms. Magalianes: Hi, name is Maile Magalianes and I live in Haiku.

Ms. Pali: Okay, and can we have you testify that you, you know, swear in that everything that you say is true and accurate.

Ms. Magalianes: Yes, everything I say is true. Okay, so thank you for your time. I just wanted to bring awareness to the native plant and marine life in that area. There are only two populations from Lipoa Point to Puhala Bay, the Hylaeus ...(inaudible)...pollinators who are native coastal plants like the Ohelo Kai, the Akulikuli, and Kookoolau as well as the Akoko and if you didn't know there's an endemic Aweoweo that is regaining its health population, it's growing. I think that the native plant and marine life will be negatively affected by a water treatment right there off the highway, a water plant treatment right there off the highway. I feel like the...that you say there's not...it's not going to be developed more like a roadways and whatnot but the developer for this I feel like should reach out to local farmers and try to keep that it's ag, you know, it's deemed Ag and Conservation so it only makes sense to grow, grow what grows in that area native and naturally and right now it's kalo and watercress and that's feeding the people in that area around Maliko Bay and in Haiku, my family, friends of my family, my family's family and so any development in this area is going to affect the food that we eat, and so the developer I think should reconsider his plans for this area and you Commissioners as well, start to think about the people that you may be working to serve is it the developers or the locals. And my children are not gonna be able to enjoy what I have enjoyed because my kupuna have worked to perpetuate to protect this area. I believe there's an LCA in the area as well too, I'm not so sure, but I'm afraid of development especially off of the Hana Highway considering that Maliko Market Place mauka side of Hana Highway right now that's an intense traffic hazard and anything thereafter will be an even worse traffic hazard. We just ask that you consider the native plant life that's endemic to only Maui and only this part of Maui that's special, you know, my children who have the right to learn and view and see it in their lifetime. So thank you for your time. Thank you developer for your time as well, and that concludes my testimony.

Ms. Pali: Okay, thank you for your time. Hold on though, don't go anywhere. Let's see if there's any commissioners who have questions for you. Commissioner Thayer.

Ms. Thayer: Thank you. I, I'm sorry to say my internet cut out in the middle of that, so I didn't hear all of the testimony. I only heard the part there was the Hylaeus, two populations found and then I got cut off after that. And then I came back in about when you were mentioning the use across the highway with like the market place that's there's now. Can you fill in, sorry, on what was between that?

Ms. Magalianes: Those two native bees, they're the only pollinators for the Ohelo Kai, the Akulikuli, Kookoolau and a variety of Akoko that's endemic to Kanemoeala Bay. And I think that it will be negatively affected by any ground water runoff from the water treatment plant that they're proposing to build in that area. And also, I heard that there are some groups that are actively protecting to restore these areas and so I wonder if they know that this area is being proposed for development because the conservation groups I think would be very hurt that all their work would be...(technical difficulties – BlueJeans lost connection for all participants)...

Ms. Pali: Did everybody get dropped?

Mr. Edlao: Yeah, I did.

Ms. Takayama-Corden: Yes.

Ms. Pali: Okay, well we'll just pause for a minute and we'll let everybody jump on.

Ms. Thackerson: Well, I'm glad it wasn't just me.

Ms. Pali: Okay, so let's see I have Kawika, Edlao, Thompson, Hipolito, waiting for the girls, Chair, I keeping saying, Director are you on?

Ms. McLean: Yes, Chair I'm here.

Ms. Pali: Okay, Ms. Thayer, we all got dropped so we're just gonna wait for Lindsey and we'll proceed.

Ms. Thayer: I think I got cut off a lot of that also.

Ms. Pali: We'll have her testify again if she doesn't mind. Okay, there's Commissioner Lindsey, so it looks like I have all six commissioners. Now, let's hope that the testifier is back on the line.

Ms. McLean: Maile, I can see that you're still listed as attending the meeting. Are you able to get back on and...(inaudible)...your testimony?

Ms. Magalianes: Yes.

Ms. McLean: Or go through the highlights that would be great. Thank you so much.

Ms. Magalianes: Okay, besides those native and endemic plants on the coastal zone, there's kalo that grows there and watercress that feeds the community. And then the endemic Aweoweo that's growing in population, so...but I also, I know it's not a question or I'm not sure if this is a question I didn't mention this earlier but this is deemed agricultural lots similar to Launiupoko which have turned into gentlemen estates which is what seems to be track of Maui County's develop so let's just try to avoid that. Like I asked or I requesting the farm...the developer reach out to farmers, potential farmers to farm the land instead of develop the land. That's all.

Ms. Pali: Yeah, go ahead Commissioner Thayer.

Ms. Thayer: You mentioned that there were conservation groups that work out here, can you tell us about that again?

Ms. Magalianes: I do believe, I believe maybe PEPP the Plant Extinction Prevention Program might be one. And then, maybe the Nature Conservancy, I'm not sure, but I do know that they're...the Maui Nui Botanical Gardens they've collected seeds from these said plants to help preserve them.

Ms. Thayer: Thank you. I'm very, very familiar with PEPP and with the botanical garden, thank you.

Ms. Magalianes: Thank you.

Ms. Pali: Okay, any other questions or Maile? Okay, thank you.

Ms. Magalianes: Thank you.

Ms. Pali: Director, we'll have the next testifier.

Ms. McLean: Thank you, Chair. The next testifier is Manny Kuloloio, and he will be followed by Leinaala Kuloloio. Manny, are you still on the call?

Mr. Manny Kuloloio: Director McLean can you hear me?

Ms. McLean: Yes, we can.

Ms. Thackerson: Just a reminder to swear everybody in, sorry.

Ms. Pali: Thank you, Carolyn. Manny, can you just state your name for the record and swear to tell the truth, whole truth, nothing but the truth.

Mr. Kuloloio: Yes, aloha. My name is Manuel Wayne Makahiapo DeCosta Kuloloio, born 10/22/1969. I feel like I'm a court case deposition at Iwado Realty again. I testify the whole truth. To the Planning Commission, last night at after 9:00 p.m., my sister forwarded me a letter written by Maui's famous Uncle Isaac Davis Hall addressed to you, members, and it states, I write as an attorney who have been involved with Pauwela Light House County Park and the access to it since 1979. I take no position on whether a time extension should be granted for Na Ola West Subdivision. I write to simply alert the commission regarding the existence of this significant coastal resource in the vicinity of this subdivision and the role this subdivision plays in providing access Pauwela lighthouse county park and I hope Candace you know that Candace. He attached a TM key, TMK plat 2-7-004 it clearly depicts the "lighthouse road" leading from Hana Highway to Pauwela lighthouse, a 3.8 parcel of land designated as tax map key 2-7-005:009.

In 1979, the federal government scheduled the private sale of this property by auction. Aunty Alice Kuloloio, my grandmother, I wrote that, filed suit to stop the sale in 1979 in Alice Kuloloio, etal versus Freeman, Civil number 79-0420 in the United States District Court, District of Hawaii. Just before the hearing on the requested injunction the then president of the United States stepped in and canceled the private sale based upon the agreement of Maui County to preserve the 3.38 acres as a county park in perpetuity. On March 30, 1981, the GSA, the General Services Administration approved the transfer of 3.38 acres to the County, Maui County for the establishment of a park. The County accepted these 3.38 acres as the Pauwela lighthouse county park. Access to this county park has by the lighthouse road.

Commissioners, Planning Commission Member Candace, I spoke to Mr. Steve Robinson this on his cellphone. The last time we spoke was in Paia Hawaiian Protestant Church with my dad and we asked you Mr. Robinson, that you will continue general access for the public, for native tenants' rights reserved and a continuation –

Ms. Takayama-Corden: Three minutes.

Mr. Kuloloio: --of their rights, Aunty Alice and her descendants. I am still looking Planning Commission Members for the protection—

Ms. Pali: Hi, Manny I'm so sorry, I'm gonna have to interrupt you, and you're up with the three minutes and I'm sorry, but we have to be fair to everyone.

Mr. Kuloloio: Hey Ms. Pali.

Ms. Pali: Yes, sir.

Mr. Kuloloio: Ms. Pali, can I come back later??

Ms. Pali: So, I'll defer to Director on what's allowed. Director.

Ms. McLean: Chair, that's up to the—

Mr. Kuloloio: Feel like...(inaudible)...council meeting.

Ms. McLean: --to the Chair and the Commission. But certainly, if there are questions for Mr. Kuloloio, he would be able to respond to those.

Ms. Pali: Yes, let's see if we have questions for you Manny. Commissioners, do you have any questions, yes, Mr. Edlao, and then we'll go to Mr. Thompson and then Manny you can kinda weave in any additional items you wanted to with the questions and answers. Go ahead Mr. Edlao. We can't hear you your microphone is muted.

Mr. Edlao: Manuel, can you elaborate on what was Mr. Robinson's response to your question regarding the access to be continued?

Mr. Kuloloio: I believe he was in communication with Isaac Hall this morning. I believe there's a confusion about the map on what exactly is the lighthouse road as identified in that agreement. So, Candace as a staff, please make sure that you are protecting the County of Maui's interest, think that's the concern right now, Uncle Jerry, okay.

Mr. Edlao: Okay.

Ms. Pali: Anything else Commissioner Edlao?

Mr. Edlao: No. He didn't quite answer my question but that's okay.

Mr. Kuloloio: Okay, Mr. Edlao, come back again then, ask me a question, go ahead.

Mr. Edlao: I asked you, when you talked to Mr. Robinson about maintaining the access what was his response 'cause you was...you were cut off. So, what was his response with regards to possibly continuing access or not continuing access that was my question?

Mr. Kuloloio: He felt that the road below the Haiku Community Center, right, that road that goes directly to the lighthouse is not under his purview and his ownership and that it is still under the ownership of A&B.

Mr. Edlao: Okay, thank you.

Mr. Kuloloio: Does that help?

Mr. Edlao: Yeah, it does. Thank you.

Ms. Pali: Okay, Commissioner Thompson has a question for you Manny.

Mr. Thompson: Hi Manny, thanks for testifying today. I found that very interesting and too, I was a little confused by the...which road, the lighthouse road 'cause the maps I'm looking at here has a road that goes in, I'm not sure it goes right there though, I'm not that familiar with it, so are talking about two different roads, the one they have on their map and the one you're talking about are different. That's my question.

Mr. Kuloloio: Mr. Thompson, I'm not in my office right now where I have a five computer screens okay, I apologize to you, but I will defer to your professional staff, Candace, to be very descriptive of what is the lighthouse road, right, and that the letter that Isaac wrote was very descriptive about it. That's all I'm asking, okay. You guys have a professional, you guys can help figure it out, all right.

Mr. Thompson: Okay, thank you very much.

Ms. Pali: Okay, any other questions Commissioner Thompson? Okay, any other questions from the Commissioners? Yes, Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Mr. Kuloloio, I think we will better understand what you're saying and he has been asking that staff Thackerson maybe put a picture up and can we look at this because this is a very important email that I got last night and I understand what Commissioner Thompson is saying. It was very blurry, not very clear. There's Easement 6, 10, 4, all kinds of easement, and what is interesting is that the map it never showed Pauwela lighthouse so we could understand what's going on. And I really wish that Mr. ... I'm sorry, what his name is, the person, the applicant was able to address this earlier and because he didn't, before we let Mr. Kuloloio go, can we get this answered for Commissioner Thompson and I on this. One of the things that Mr. Hall stated was that there may be the road that went over one of the lots and that could be a problem. So, somebody's gotta be sharing that so we can continue our questions with Mr. Kuloloio.

Ms. Pali: I'll jump in Commissioner Freitas. We will have...we can...Director has trained us on this in the past, we don't have maintain or hold a spot or we don't shut the meeting down because we have questions, but we will affect with our questions to the applicant and to staff planner and we can make sure we get the questions you need answered so that you can move forward with a decision. So, what I would recommend is ask any other questions you might have of the testifier and then just make that note, I've kind of written that down as well and then we'll go and do more digging with Planning Department.

Mr. Freitas: I cannot ask the question 'cause there was not a clear map.

Ms. Pali: Okay, we'll—

Mr. Freitas: And I was hoping that the presentation had a clear map and it never, it never happened in all this document as well as what was presented, not clear. So, as long as we can

get back...ask Mr. Kuloloio questions after I'm okay with coming back, he may be busy, might have to leave.

Ms. Pali: Yeah, so when we don't get the information, we need then sometimes that would prohibit you from making a decision on the matter. But we don't shut things down because we don't get answers unfortunately but it will allow us to affect change so that way we can be, you know, have better information presented. So, if you don't have any further questions for this testifier, unless you do, you can proceed, otherwise we'll move forward and let's see how we can kind of unravel this.

Mr. Freitas: Mr. Kuloloio, are you comfortable in answering a little bit more questions about that agreement by the Maui County on the lighthouse and the road 'cause originally what I read last night it was only the lighthouse and I was looking for easement right-of-way on the road and I didn't see that in there. You know, I'm getting older, I need glasses, maybe it was there and I didn't see it, but could you share a little bit about what he was trying to say in that regarding the easement and how it affected certain lots?

Mr. Kuloloio: You know, thank you Commissioner Freitas. I appreciate you asking me the question. So, Chairperson Pali, Isaac was very specific in asking about perhaps another time would be an ability for him or you folks to put this on the agenda, yeah, at least for this access. However, Commissioner Freitas, I am BAE Systems Quality Assurance Manager for compliance, I read all your documents from your planning commission, all your submittals and that question you asked I couldn't even figure it out myself and I come from the area and that's what hurt me Pali, that's what hurt me, that's what hurt me that your professional staff told me to testify first when I wanted to hear her and the petitioner come first and show me what homework that they have done that's how it's normally done. So, you're absolutely right Mr. Freitas, I am concerned, but I think everybody as a commissioner and this planning commission and the staff, its professional staff, Isaac Davis Hall is the best of the best of the best, so when he's asking this question, please do it. Just do your homework as all I asking because I will do my homework too Mr. Freitas.

Unfortunately, I've been up since 9 o'clock last night. I thought I know everything Ms. Pali, I was humbled by Isaac again. I did not know my grandma filed a suit against the GSA. I thought I knew everything, so I learned something new today and I hope eight of you also learned something new today. Because I could not sleep Mr. Hipolito, Mr. Thompson, Mr. Edlao, Ms. Lindsey, Ms. Thayer, I couldn't. So, you know what Ms. Pali, I took a PTO today, the USS Harper can wait. If I cannot protect access to this place in front of my house that we named my dad's first grandchild Puniawa, yeah, it's almost like we might as well throw everything away. So, I'm here. I said I wouldn't participate Ms. Pali, but look, here I am 6.75 hours into this, but you know what in our younger days a planning commission hearing went to 15 hours so this is not the record, but I'm patiently listening and I'm looking forward to hearing from Mr. Robinson. I'm not going to deny him to build, his extension is fine, but I want to hear your professional staff to see if they have done their homework 'cause that's not my job.

I don't, I don't get paid to do your work for you, okay, you are doing this on behalf of the public of Maui.

Ms. Pali: Manny, I need to interrupt respectfully—

Mr. Kuloloio: Thank you, Ms. Pali.

Ms. Pali: --I'm gonna interrupt respectfully, and I'm grateful you're here, Commissioner Freitas I'm grateful for your questions, but we don't want the meeting, you know, going in the wrong direction because we're here to create solutions. So, Manny you have identified some problems, it sounds like Commissioner Freitas has listed those out and that's exactly what you as a testifier is supposed to help us do, identify problems, and then we are tasked with solutions, so thank you for that. Is there any other questions for the testifier?

Mr. Freitas: No, thank you, Chair.

Ms. Pali: Okay, thank you, Manny. Thank you, Commission. Director, we're gonna go to the next testifier if there is one.

Ms. McLean: Yes, Chair, the next testifier is Leinaala Kuloloio.

Ms. Pali: Great, thank you. And Leinaala if you can swear in, state your name and then proceed please.

Ms. Leinaala Kuloloio-Vedder: Aloha, can you hear me?

Ms. Pali: Yes, we can hear you now.

Ms. Kuloloio-Vedder: Okay, I got it. Aloha, yes, my name is Leinaala Kuloloio-Vedder, and Manuel is my brother, he's my older brother and so yeah, we were very shocked when we got the letter from Isaac about our grandmother, Alice. I live there. I live...

Ms. McLean: Excuse me, Leinaala.

Ms. Kuloloio-Vedder: Oh, hi.

Ms. McLean: Do you promise to be truthful?

Ms. Kuloloio-Vedder: Oh, I always will try...promise to be truthful, yes.

Ms. McLean: Mahalo.

Ms. Kuloloio-Vedder: Yes, I live by that. Okay, mahalo. I'm sorry, I don't have my...(inaudible)...with me, but yes, I do. So, when we got the letters from Isaac, he forwarded it

to us, I live there. I live on Grant 226 and I did send in my testimony I think about 2 o'clock in the morning, early this morning, and you know, similar to Commissioner Freitas I was looking at the map and it was confusing to myself, so I was going with the map that I had and the map that was provided in the testimony and I was very confused. Yes, my grandmother had a court case, so what I'm trying to say is that Maui County let alone the United States government has a fiduciary duty to my grandmother and I am one of heirs and like I said, I live there, I can see Pauwela lighthouse, my son is names Puniawa because of that and he was baptized in Puniawa by my father, Leslie Kuloloio. And so, it is very shocking to me that this is coming up and shared with my brother and I'm gonna share with all of you, you know, throughout the generations my family has encountered many lawsuits to protect our own interest and the interest of the general public. And I cannot see this happening when my grandmother had fought for this, when my father...and it was published in the Maui News back in 1979 with my brother hand in hand walking down to Puniawa Bay to open, to have open access along with Charles Maxwell, Isaac Davis Hall, and many of our residents to continue our traditional gathering rights. And so, I ask this commission today to please do your due diligence. You can read my testimony. I'm sorry, I'm outside at Hoaloha Park, I'm at Hawaiian Canoe Club, so I'm not able to access the map that is provided for me at this time, I'm on my phone, so I apologize for not being prepared for this. However, I do thank you folks to continuing this meeting that started at 9 o'clock. So, please that's all I'm asking please do your due diligence, I'm asking also the developers of this area as a beneficiary of...and as a native tenant, please provide maps that are more visible and like Commissioner Freitas I'm very confused as far as the easements, so I'd like to see what was the, what was the suit about with my grandmother. I, too, was up all night looking for all of my grandmother's records of Pauwela and I have everyone's deeds in Pauwela Village and I, you know—

Ms. Takayama-Corden: Three minutes.

Ms. Kuloloio-Vedder: So, that's it. I thank you all for doing your due diligence and please get back to us and like Isaac had written in his letter, I do support his letter, perhaps you can put him and us in the future agenda item next month. Mahalo.

Ms. Pali: Okay, any questions for the testifier from the commission, please? Go ahead Mr. Freitas.

Mr. Freitas: Thank you, Chair. Just a quick question Ms. Kuloloio-Vedder. You're okay with the project as long as the easement and the lighthouse issue is resolved?

Ms. Kuloloio-Vedder: No, I'm not okay with the project. You know, there's so many of us families and I'm gonna name some of them, Hanaike, Kaholokula, Kukahiko, Kahiapo, and Akuna and you know, there seems to be a lot of quiet title action that's going on. I am not in support of the project Commissioner Freitas. However, access is something that should be granted especially to the heirs of Alice Kuloloio and to the people in the Pauwela Hui that reside there and continues to reside there.

Mr. Freitas: Thank you so much Ms. Kuloloio.

Ms. Kuloloio-Vedder: Thank you, Commissioner Freitas.

Ms. Pali: Okay, any other questions? Okay, seeing none, thank you so much for your testimony.

Ms. Kuloloio-Vedder: Mahalo.

Ms. Pali: Director, anyone else for testifying?

Ms. McLean: No, Chair there has no one else who has said they want to testify. Oh, I spoke too soon, Tiare Lawrence would like to testify. Tiare, go ahead.

Ms. Tiare Lawrence: Aloha Commissioners. Here I am again, sorry. I'm pulling a Kai Nishiki you know, like the last one. Anyhow, I wanted to come on, I've watched the sign that this development for the last –

Ms. Pali: Tiare, I'm going to interrupt you, you gotta swear in and you gotta state your name for the record, sorry.

Ms. Lawrence: Of course, aloha, my name is Tiare Lawrence, I swear to tell you the truth and only the truth. Okay, you know I've watched those signs at that, that area of development and it always, like it always it gives me that icky feeling, you know, I just cringe, I just cringe at the thought of more gentlemen real estate, luxury home development that Maui does not need and I feel like, you know, I was looking at the paperwork and I guess this project came in 2014 for SMA Permit, I don't know why it's taken so long, but you know, times have changed in the last six years and I think that we need to do...we need to take a hard line, we need to like aole to any more of these types of developments. They've literally priced out locals, our people are hurting. The median home price on Maui is, is nearing one million dollars. Now's the time to pull the plug people. We gotta pull the plug for local families. It's time that we focus on workforce, true affordable housing, enough with the gentleman real estate. If you go on the MLS we're in shortage of luxury real estate, we're in severe shortage of real workforce housing. So, I'm just gonna take that hardline and say aole to this extension of this SMA Permit and I stand with the Kuloloio Ohana in not supporting the project and mahalo nui for your time today.

Ms. Pali: Okay, thank you. Any questions for Tiare? Okay, seeing none, thank you so much.

Ms. Lawrence: Aloha.

Ms. Pali: Okay, Director anyone else on the list? If you can hear my voice and you're not on the list but you'd like to testify please unmute yourself and introduce yourself. Okay, going once, ready to close public testimony, going twice, alright, Director, please let the record note that we are closing public testimony on this item.

Ms. McLean: Thank you, Chair. So, noted.

Ms. Pali: And we'll go back now for Commissioners, were you taking notes? All right, so it's time for you guys to ask your questions of the applicant or the staff planner before deliberations. So, let's go to Commissioner Edlao.

Mr. Edlao: Question for Corp. Counsel. Because we're dealing with just the extension, can we push this and regarding the access or is that a separate issue?

Mr. Hopper: Thank you, Chair. I do think that's something we can look into. I think you're going to assess whether allowing the time extension if there would be any adverse environmental or ecological effects to allowing the time extension. Also, it does deal with...I, you know, there's not an extensive evidentry background on this but there are allegations that this is you know a public trail, so I think that is generally something the Coastal Zone Management Act would at the very least I think have you get that information on when you take action on it, so I do think it's something that you can review and consider and certainly have you know, questions answered about it.

Mr. Edlao: Okay, good answer. So, can Candace, can you...do you have a map that you can put up and show us exactly where this easement crosses the lot and where that lighthouse is 'cause again, like Commissioner Freitas says, you know, these maps we got, you know, like him I got glasses I'm getting old, I couldn't even see, you know at first I had a hard time figuring out where this was. So, please do you have a map that you can put up and lead us to the lighthouse?

Ms. Thackerson: All right, aloha Commissioners. So, this was actually...I received this the same time you guys did, Monday. You know, we don't have a record of this. This was be not something the Planning Department would keep on file. Sounds like it was a court lawsuit that got filed somewhere between them. You know, we have permits and developments on file so we don't have any record really for this application because there's been no development on the parcel so that's why I also confused upon receiving this map from Isaac Hall. I couldn't make heads or tails of it at first. I love the way someone's drawn the watershed tree line, very creative with their artistic freedom there. But while we've been talking, I have been looking very closely and trying to piece these together with a Google aerial view and I'm finished...I mean, I really do wish Isaac was here as well so he could at least explain...I wish he would have highlighted on his map where the trail even is because I...it's really not even there. So, I'm gonna do my best to try to explain it and then I'll let the applicant perhaps comes in because he's probably the one with the land surveyors and can really know the detail, but let me try to share screen and see what happens.

Okay, can you guys see my screen? Yes, I see a thumbs up. Okay, barely see a little skinny thumbs up. So, this is the map that Isaac sent us, right on Monday. And this is what I was saying was the really funny watershed, lovely drawing here of these trees that someone did.

And this is the applicant's one, and this was the one you guys was saying was really small that Isaac had provided. I believe I had provided a larger one, but this, this was the one.

Now can you guys see my Google map view behind this screen, I can't, I can't...yeah, I see okay.

Mr. Edlao: Yeah.

Ms. Pali: Yes.

Ms. Thackerson: So, this Google screen here, now I don't know, I believe this is the road that they're talking about because it leads out here to the lighthouse, you see where it's got the lighthouse. So, I believe this is the road that's in, that's in talks, okay. That would be the one that leads out to this parcel. And if we look at this map, and I've been trying to just eyeball...I was trying to line up this bay here, this bay with this bay, this point, okay, and so we have this point and we have this point, these points seem to line up. If you notice then on this map that would actually put the lighthouse somewhere over here off of this parcel and off of this development. That would probably place this road somewhere off, off this map. Maybe it's this area right here where I see, you see where it matches up where there's this little skinny, there's like a road here, and road here and you see this road here and this road here, this far side to me looks like the beginnings of this line here that leads out to the lighthouse which would be not located on this development from what I'm seeing because I can't make heads or tails of this one, I'm sorry. I don't even know what year this was drawn or...and you know when this was routed out to the various departments when this application was initially done and approved nobody responded with any comments that included this, so I may be mistaken on where this, this access line is, but from what I'm seeing on Google maps where it looks like where people access it currently it's up through here because this leads directly to the lighthouse out here and that would put it from what I can see off, off this map. I hope that was helpful, that's the best I can make of heads or tails of it. Unless the applicant would also, I would love to...for his response as well.

Ms. Pali: Yes, we'll give the applicant an opportunity to see if he can comment further on it, but yeah let's see what he says first. Mr. Hopper.

Mr. Hopper: The only thing I would add is that and I cannot verify...this is just the testimony you've received so I cannot verify this but testimony claims that existing Easements A5 and A6 are located within the Nalu Ola West Subdivision, and so, and it attaches a subdivision plat, it shows the easements they're on the far right side and at least with the map that was attached, I could try to share my screen here if you'd like, but I think the allegation is that the map is...some of the easements are within the area although it's unclear, you know, if any of this information is accurate, but I think I can at least show based on the letter what the, what the allegation is without being able to verify it, so in...let me see if I can do a screen share. Can you see a map at all?

Ms. Pali: Yes, we do, or we did. There it is.

Mr. Hopper: You see this map?

Ms. Pali: Yes.

Mr. Hopper: So, it says, Easements A5 and A6. Here's Easement, existing Easement A5, existing easement A6. This is apparently the project boundary. Again, as alleged, and here's, here's A5 and here's A6 and I don't even know if this is the actual trail that's being discussed. I think that's the allegation in the testimony, but I think that's what the letter at least refers to but you know, Ms. Thackerson talked about this potentially being that road. I do not know that but the letter is alleging that this and this are parts of that historic trail and in our, and our existing easements as described in the Subdivision map, but again, with only having this information yesterday, and with only having that information as of yesterday and without having a professional planner verify that, I can say I think from the letter that's the allegation but I cannot verify that and would...you know, if you're going to want completely accurate information on that, I think you would want to have that verified if you haven't already or hear from the applicant on it, but that was I think the allegation.

Ms. Pali: Great, thank you for that, Mr. Hopper. Okay, so can we go to the applicant, maybe they have something to share on this topic?

Mr. Steve Robinson: I sure can. Yes, it's Steve Robinson again. I swear it's me. Yeah, I can, I can clarify. So, I believe, first of all, I don't know that there's allegations. I think there's more just questions. So, and I don't know if I can share screen 'cause I don't know if I have that capability or not, but in Mr. Hall, I think and I responded to Mr. Hall last night 'cause I was pretty confused by his initial correspondence and to which he followed up with me this morning. So, in the State map, I believe which is what Ms. Thackerson showed, there is a dashed line that says, Pauwela light...I think it says lighthouse road which Mr. Hall refers to in his letters, the lighthouse road, and which does in part line up with the existing easements A4, A5. So, I believe that's where the issue is. Now Easements A4, A5 which is on the east side of lot, of our Lot 11 were all established prior to our involvement in the project. So, those were established as by a declaration of easements to handle that private road and was recorded by Alexander and Baldwin back in I believe 2010. We used those existing easement to serve as our Lot 11 which is the only lot that is in this area. We don't...we do not have control...we have no issue with the public using any of those easements and for reference to those people that know the area I believe that that...that's where the old reservoir was and there's a gated entrance there. So, I don't believe at least I know for the last 11 or 12 years that I've been involved with this property that has not been used as the route to Pauwela lighthouse. That's not to say that Mr. Hall isn't correct when he said there was a traditional route at some point in the past as depicted in this drawing shown by Mrs. Thackerson.

The road that was also pointed out in the...on the Google Earth is the road that's a really rough road for those of you who have taken it. There is no gate on that road and it does service the

lighthouse. Since my involvement in the property that has been what I've understood to be called the lighthouse road which is outside of the boundary of this property. It crosses property of our project, it crosses property owned by Alexander and Baldwin and leads out to the lighthouse and I believe that is where both people use...I think that's the only passible route and I think it's questionably passable that goes out to the lighthouse. So, I believe that's where the confusion is. So, from our standpoint given the two roads, the one which is covered by our easements or the existing easements A5 and A6, we have no issue in consenting to the public's use of that road. We do not have sole control over that road. We own one lot. There is another landowner mauka of us and there is also A&B that owns the property surrounding us, so that would be up to the multiple parties' discretion to change the easement language to a public access. The road that is open now that I think is the road that's been used to access the lighthouse is not part of our control and I believe that's open to the public. I hope that clarifies it. I know it's hard to do without drawings. I did send out a drawing, Candace last night to Isaac, I think I copied you that has both roads highlighted on it.

Ms. Pali: Great. Thank you, Mr. Robinson.

Ms. Thackerson: Should I try to find the map that he was talking about to add to his testimony, I mean, to his response since he can't seem to share?

Ms. Pali: Yeah, if you have it and he highlighted the two roads I would love to see it. I found it on your Planning report.

Ms. Thackerson: The shoreline access page I believe.

Ms. Pali: I found it on the one that says, the west subdivision improvements. You've got a red line for project area, green for lot boundaries and purple for—

Ms. Thackerson: Yes, okay I think I have that one, let me...

Ms. Pali: And then you can clearly see the boundary—

Ms. Thackerson: This one?

Ms. Pali: Well, that would work too.

Ms. Thackerson: Oh, okay. I wasn't sure if this...is this the one you were talking about Steve, applicant?

Mr. Robinson: Yeah, if you...well, it's hard to see on this 'cause they're not highlighted red, but it's the easement...it's the easement on the east side of Lot 11 is the easement area that was...that exists right now. I think you could see there's a line that says, easement...existing easement A7 there.

Ms. Thackerson: Let's see if you sent me another one.

Mr. Robinson: I think I sent you something called...

Ms. Thackerson: Is this it?

Mr. Robinson: Yeah, that's it right there.

Ms. Thackerson: I'm sorry, Commissioners see...(inaudible)...

Mr. Robinson: So, this is a, this is a survey, this is a survey that's east...that shows the east boundary. So, the blue road is the existing, is the existing road that lines up with Mr. Hall's drawing that from the, whatever it was the 40's, I don't know exact when that, that was dated, it shows that it's traditional access. The red line is the, is the road that's existing that everybody uses now, and it traverses down the east side of the Grant 226 which is owned by Alexander and Baldwin.

Ms. Thackerson: Okay, I'm not sure if that helped to clear up anything or not.

Ms. Pali: I'm gonna back to Commissioner Freitas since that was his question. But if you do have your staff planning documents out there's something called Exhibit 1, and from the description if you look at Lot 11 which is highlighted in red, all the way to the right of Lot 11 you see this easement on the edge and based off of the applicant's testimony I wrote down he confirmed that the easements on Lot 11 would continue to allow for public access and that that they would not have any way of changing that in those easements and I think that was the big concern from what I heard Commissioner Freitas, so let me know if that's what you're looking for too. But that's how I see it.

Mr. Freitas: Thank you, Chair. What I was looking at was a combination of Mr. Hall's description of the easements and he's not talking about the one way on the right. He was more specific in the one that goes right down the middle for some reason I believe that's the one that he was referring to not this other one that goes ziggity zag to the right that's, that's the one that I have question on because that is not the most direct route, but that is, that seems to be the route that most people are taking and that's the one of concern 'cause it goes right through the development and in some parts, it cuts through a certain lot if I understood Mr. Hall's email that's...that was the issue.

Ms. Pali: Okay, good. Thank you, Commissioner Freitas. I'd like to real quick Commissioner Lindsey go back to the applicant because he said he exchanged emails with Mr. Hall so I want him to come back on if that's okay to answer your question Mr. Freitas 'cause it sounds like he confirmed. So, Mr. Robinson can you let us know after confirming with Mr. Hall exactly where what he was talking about. Are you...can you confirm what you guys established?

Mr. Robinson: Yeah, I can't...I can't speak for Mr. Hall, and we traded, we traded correspondence. We did not, we were not able to speak. I would say that we have no easement that crosses over our lots. It's the easement down on the east side of Lot 11 as you pointed out and ...(inaudible)...that easement does not extend all the way to the lighthouse, so if there is a push for restoring a traditional access route that has, that has long been lost to pineapple cultivation 'cause that's due...(inaudible)...pineapple field and it may be, I don't know the history, maybe it moved to where it is today, but if there's an interest in restoring that more traditional route then there's a lot of other players involved. We don't own all the land between Lot 11 and the lighthouse. We are, as we have shown, everywhere else in our development and in our project, and again, just to clarify this is a...this was done under consolidation and resubdivision, so the subdivision is done. Matter of fact, five of the 14 lots have already been conveyed to third parties. This is just to put the infrastructure in, but as we've shown everywhere else in the development, we are supporters of providing shoreline access, traditional shoreline access, so if there's anything additional, we can provide we are more than willing to provide it.

Ms. Pali: Okay, thank you Mr. Robinson. Commissioner Freitas, did you want to have a follow up question or?

Mr. Freitas: Yes, please. As I'm looking back Mr. Hall's email and he is very specific, it says Easement 4, 5, 6, and 7 and on the map that was provided by the applicant, I see clearly Easement 4, I see clearly Easement 7 and I gotta guess that 5 and 6 is in between there, and that is not on this map, and that tends to, to steer toward the lighthouse. So—

Ms. Pali: Commissioner Freitas if I may? Do you have the Exhibit 1 pulled up in the packet because I really like—

Mr. Freitas: That's what I'm...that's what I'm looking at, that's what I'm referring to.

Ms. Pali: Do you see the purple line?

Mr. Freitas: Yes.

Ms. Pali: So, I see purple from the bottom of Lot 14 and all the way from the bottom of 2, 3, 4, 5, 6, 7 going all the way up, that's all purple as easement. I see it. You see it?

Mr. Freitas: Where do you see 5 and 6?

Ms. Pali: I mean, I see it on Exhibit 1. It's dated January 12<sup>th</sup>.

Mr. Freitas: Oh, I see Easement 6. Okay, where's 5.

Ms. Thackerson: Easement 5 is over between Lot 12 and 11 on the far side.

Ms. Pali: When you see Lot 1, you can see Lot 1, 2, 3, 4, 5 all in the same line.

Mr. Freitas: Okay.

Ms. Pali: And then it goes up, Line 6, 7, 8, so the easement runs from Lot 1 all the way at the base of Lot 2, 3, 4, 5 and up to 6 and 7.

Mr. Freitas: I see it now. I see. The Easement 6 is written within the purple that is not really a easement that looks like...what would that purple represent, does that—

Ms. Pali: Well, let me...Commissioner Freitas, let me go to Mr. Hopper who's chiming in and then we'll get back right to that. Mr. Hopper.

Mr. Hopper: This was a issue of confusion that I had when I look at this sketch. The letter is not talking about Easement 4, 5, 6 and 7. It's talking about Easements A4, A5, A6 and A7 which are different easements. A4, 5, 6 and 7 are over here on the far right of the project boundary. You can see them, in the map that I showed it was the easiest to see them. It's very hard to see them on Exhibit 1. The things in the purple are Easement 6, you know, 2, 3, 4, 5, 6 in purple. The Easements A4, 5, 6 and 7 are different easements. They're very had to see in this map. The blow-up map that I showed was at 400 percent when I showed that earlier and I think those are...two of those easements are in the project area, several of the other ones are outside of the boundaries of the project and I think Mr. Hall's letter recognizes that, but they're pretty hard to see, but basically, it's this little, you can see, you can barely see it on Exhibit 1. You go to Lot 11 on the far right side, you can see existing Easement A6 and then the rest of that little dotted line is I think A5. So, it's very hard to see, but I had the same issue that you did in looking at it at first, it does take some time. It's not—

Mr. Freitas: Mr. Hopper, thank you for clarifying. Okay, it is very confusing. Maybe you ought to do a whole new SMA or something, you gotta redo this whole thing.

Ms. Thackerson: Commissioners, Staff Planner Candace, I see it on the second map that when he told me blow it up to 400 percent, I felt like oh, maybe I need a stronger prescription. When I blew up it up 400 percent, he is...and that's also was throwing me about Isaac's letter too, is because there's Easements 4, Easements 5, but these have an A in front of them and if I blow this up even larger to 600 percent you can see here this is I believe, Corp. Counsel, the line that he was talking about here, and that's the one that you are also saying Commissioner Freitas goes more straight, but then it kind of ends and doesn't actually reach the lighthouse. It just stops here in this property compared this lighthouse road on this older map that shows it going all the way up and then cutting over and going to the lighthouse, right, this map that was provided and yet here on this one, we see that this easement kind of stops and doesn't, doesn't actually go all the way up to the coast.

Mr. Freitas: Ms. Thackerson, thank you so much and I apologize to everybody I didn't understand the A4 and 4.

Ms. Thackerson: Me either, but thank you.

Ms. Pali: You know what Commissioner Freitas, I think we all agree that we have the same question and I think in the end as long as we have the commitment from the applicant that they will allow and maintain that for public access for the parts that are on their, in their development I think at least you're doing your due diligence. So, before we go onto anyone else, did you have any follow up questions Mr. Freitas?

Mr. Freitas: I do have one for the applicant. There was a comment Mr. Kuloloio, I think it was him that you had stated that you...something about the easement is a A&B thing and not yours, but if Mr. Hopper can chime in, I believe when a person purchases a land that already has easement rights it comes with the purchase. So, I think if it is within your purchase agreement you should be responsible for the easement, the maintaining and all of that instead of, oh I don't know that's A&B unless A&B owns the other side, and you own this side, I really don't know 'cause I couldn't figure out where the road was and now we kinda figure it out now. So, just my...I don't know if there's an answer to that, but I would think that if you bought and it's within your property you are responsible and shouldn't be passed the buck over to A&B.

Ms. Pali: I'm gonna jump in if that's okay, Commissioner Freitas. So when the easement like kinda goes little bit left on their property and goes little bit right on A&B, they're actually both responsible for maintaining it all the way, and so I think he's already put on the record, and I wrote it down for us to consider as a condition that easements would remain open for public access. I think that's what you want to affect there.

Mr. Freitas: Thank you, Chair. Thank you. No more questions.

Ms. Pali: Okay, Commissioner Thayer.

Ms. Thayer: Thank you. I have a procedural question with respect to this time extension request. Reading the staff report, Analysis No. 5, it says, the request for the time extension was only submitted 71 days prior to the expiration when it's supposed to be per the conditions on the permits, it's supposed to be issued 90 days prior and I see that there's an analysis that says, the filing is in compliance with the SMA Rules, however if it's not in compliance with the specific conditions of the permit then how does that get reconciled 'cause to me just straight reading this in black and white that tells me that the permit is all done, 'cause the extension request wasn't put in in time.

Ms. Pali: Thackerson, planner go ahead.

Ms. Thackerson: So, according to the State Law SMA Rules, it's 60 days prior to file to an extension. The Department a long time ago used to put 90 days because it gave us a little bit more time to process the applications, 60 days isn't really enough time to review it, get it on an agenda, notice it for the 45-day here. So, the condition does say 90 days, we have since then

on all of the new SM1s going forward changed it to reflect State Law because we were advised that that was probably the best is to have what is actually written in your rules reflected that way the applicant's ever refer back to the rules and they see 60 days written into the Maui Planning Commission Rules for the SMA they'll see 60 days, so that's why I put them both in there for your consideration.

Ms. Thayer: I have a follow up to that 'cause I have a problem with this because like conditions on approvals are specific to the specific permits, and there's tons of State rules out there and laws that are less restrictive than what the conditions may actually be and I think that's the whole point of conditions is to put restrictions on things to make sure they occur or are carried out to the like the will of the commission that is approving the permit. So, to me, if we're not following the conditions of the permit then why do we even have conditions on these things? And like my read of the SMA Rules that sentence actually says in Section 12-202-17, it says, unless otherwise provided, any application for a time extension, blah, blah, blah, 60 days. And I think it is otherwise provided in the conditions on the permit which were acknowledged by the recipient of the permit themselves. So, I feel like if there was any wiggle room like the compliance report might have been timed for asking for not 90 days, but I'm having trouble reconciling if the condition says something how that doesn't hold.

Ms. Thackerson: So, that is why this is here for your full review. That would be for the Commission to make the decision.

Ms. Pali: Okay, you have a follow up question Commissioner Thayer. We're gonna go to Director. Director, go ahead please.

Ms. McLean: Thank you, Chair. I'll just add to that. Looking at this now and I appreciate the comments. We could have been in a position to tell the applicant that you requested your time extension too late outside of the parameters imposed by the permit condition and not accepted it at all. I don't think that would have been the appropriate action because that's a very big decision that should be made by the Commission rather than by the Department. That should have been discussed and further elaborated on in the staff report so that it wouldn't have to be raised by a Commissioner. But nonetheless that could be a basis for the Commission to deny the time extension if that's what you wish to do. We are often faced with what we consider to be relatively minor noncompliance issues, and we try to work with applicants or permit holders to achieve what we think is the best outcome. In this case, the best outcome is the decision being made by the Commission rather than by the Department for a minor noncompliance issue. Thank you, Chair.

Ms. Pali: Do you have a follow up question to that Commissioner Thayer?

Ms. Thayer: I don't know, I don't know what my question would be, but maybe to the other Commissioners I don't know if we're up for discussion but I feel like this is a condition that this body put on this project and it's very straight forward and in black and white and if like we're not following the conditions that we set then like what, what are these conditions and it's not like this

was not known. Like this was acknowledged by the applicant in their compliance reports on the permits and it's not like it, like jumped out of nowhere. Like this is, this was there from the beginning of the permit and so I guess I, I don't know, I'm putting it out there for discussion or something as to like are we sticking to the conditions that are put on these permits, like I think these conditions are there for a reason especially the time to initiate construction, like there's a reason that it's there and if we're not following that then what...I don't know, then what are conditions?

Ms. Pali: Yeah, so if I can jump in, and I think, I think it would be appropriate Commissioner Thayer that you ask the applicant why they were late 'cause you're wondering why they were late. I think you were asking staff why they allowed them to be late, but I think it would be appropriate, it sounds like you want to ask them why because we know that there's rules that are black and white but we do have to allow for the gray area because sometimes life happens and so, did you want to give them an opportunity to answer why they were late? I don't know if that's your next step or that could be a sticking point for you as to why you vote no, but I would like to continue on with the meeting, so would you like to ask them why or are you...want to sit out for a little bit and then come back with some other questions?

Ms. Thayer: I'll think about it and come back. Thank you.

Ms. Pali: Okay, sounds good. All right, Commissioner Lindsey.

Ms. Lindsey: She does...Commissioner Thayer has a point if we should...if these are the rules, we should follow the rules. I think I share the frustration with that because if we're always like, you know, it's open to interpretation but this is kind of a hard rule 90 days, you know, too, like the Costco gas station at least one more gas pump, you know. So, I feel like us, we wouldn't be doing our job if we just erased our own conditions. But and even giving the opportunity to the, to the applicant would, you know, like I don't know how much weight that should actually carry because well, I guess everybody was affected in 2020, so I don't know...

Ms. Pali: If I may, Commissioner Lindsey. I do want us to have this very healthy discussion. It's very valid, it's just that we're on the question part right now, so if we could just focus on our questions to the applicant, you get to wrestle as a commissioner with how this helps you reconcile—

Ms. Lindsey: Okay, ...(inaudible)...

Ms. Pali: But if you have questions, I want to get to that. Okay, no more. Okay, Commissioner Freitas you have questions? Okay, we're gonna get to the healthy discussion, but this is the question part. Okay, Jerry Edlao, Commissioner Thompson, Hipolito any other questions for the applicant? Okay, well...oh, go ahead Commissioner Lindsey.

Ms. Lindsey: One of the testifiers brought up the natural resources and how maybe...(inaudible)...water, pump filling, the water station that you have there. Can you

elaborate on what that water pump well is gonna be doing? I'm not sure why she was concerned about it, but I kinda want you to say something about it.

Mr. Robinson: There might be some confusion. I believe it was referred to as a treatment station, but it's actually...it's actually a well, so it's a water supply. All the well logs, well records, pump tests, straw down test and everything were submitted for the State and approved. I can't, I can't, I couldn't comment any more than that just that you know, all the State agencies reviewed the pump plan. It's not a sanitary treatment facility. It's a well.

Ms. Lindsey: Okay, thank you. That makes it much clearer for me. Thank you.

Ms. Pali: Okay, if no one else has any questions, I'd just like to ask about the elephant in the room, Mr. Robinson. Did you, were you aware that it...can you hear me now? Can you hear me okay now Ashley? Okay. Were you aware that you had to file for the time extension at the 90-day period? Were you unaware? Do you have a logical explanation as to why you guys cruised on in 19 days late? Like can you, can you comment on that please?

Mr. Robinson: Yeah, it's interesting because this application was actually filed more than 18 months ago for extension 'cause it was filed in December I believe it was filed in December of 2019, and by, by one of my staff at the time, so I don't remember what the conversation was whether, whether it was the 71 days or the statutory limitation is 60 days or I don't, I don't have knowledge on why there was 19-day discrepancy between what we were allowed to do and what we...according to the permit conditions and what we actually submitted. I don't know what conversations were taking place with staff at that time either. So, forgive me, you know, I could give you the dog ate my homework, but I don't know what happened.

Ms. Pali: Okay, but what you just said, you're representing that you started the process 18 months ago is that correct?

Mr. Robinson: What's that?

Ms. Pali: Did you just say that you started the process 18 months ago?

Mr. Robinson: We...yeah, I think the application was filed in December of 19.

Ms. Pali: Okay, planner—

Ms. Thackerson: Yeah, staff planner. It was filed on December—

Mr. Robinson: It's been a long, it's been a long time to get on a –

Ms. Thackerson: It was filed on December 19, 2019 which comes out to 71 days before the expiration which would be February 28, 2020.

Ms. Pali: I see. Okay, so to be fair Ms. Thackerson, is it common that the County is just open and flexible. What would be wrong in my opinion 'cause I get an opinion too, is that if the County is usually just kind of flexible for the last 30 years and then this Commission which is fine and it has its rights, and I believe behind it that those are good things to enforce rules so people take us seriously. But if we have been really relaxed all these years and then today moving forward, we're not, that's, that's not necessarily the right thing to do either. So, can you give us a little bit of background, is it something...so do they get notices, I mean, you know, what is, what's the environment like?

Ms. Thackerson: They don't get a notice on SM1 permits. I'm not sure for all of our permits. I might have to defer to the Director on that. I know...I'm not sure if B&B and STRH get a notice from us. I know that it is the responsibility of the applicant because it's on the approval letter. We do not send them any notices. We have sometimes when an applicant sends an email considered that, you know, as a request and they did send an email a few...a little bit prior to that, it was still not within the 90 days, but it was, it was a little bit closer, but we...the rules do read that it must be filed and we consider filed when they pay a fee, they submit an application and that is formally filed with the division. But I can perhaps, I see Dale Thompson got poor network, I'm not sure if we just lost him. But I may have to refer--

Ms. Pali: I see him.

Mr. Thompson: I'm on.

Ms. Thackerson: Oh okay, good. Good, I see him. To the Director to answer that as the way the Department proceeds.

Ms. Pali: Okay, yeah, we'll hear from the Director. I mean, I know since I've been on, you know, we've had all these fine of hundreds of thousands and then they walk away with 25 grand. I mean, I know that we've made tons of exceptions in other types of processes and I just want to make sure that you know, rules are important, and yeah, so it's just a balance. Director, can you chime in?

Ms. McLean: Thank you, Chair. This is a much bigger discussion but I'll try to keep it focused. We, we try to play out the scenario. If for example we were to deny the renewal request because it was late, there's a possibility that decision could have been appealed and that's, you know, a long and involved process that would eventually come to the commission because it would be the appeal of an SMA decision. And, assuming it wouldn't be clear to us how the commission would vote on that and let's say they supported the applicant's appeal that there was justification then we'd be right back to where we are now. So, we try to look at the situation and just see what is the most practical way to go that's the most efficient, the most fair that leaves the decision making to the right authority. If it's enforcement where fines are imposed there are times when we do a large initial fine and then smaller daily fines just given the circumstances or maybe it's the other way around, the initial fine is small but there are large dailies, expecting compliance to happen upfront. So, each situation is different. The overall

goal is to achieve compliance and we...as you said Chair, we tend to be flexible and there are some in the Department who want to be strict and when something is black and white that's that. Overall, though, we think it's...the public is better served, applicants are well-served, the Commission is well-served if we allow some flexibility and leniency as long as the ultimate decision is made the authority that should make it.

Ms. Pali: Okay, thank you for that Director. So, I don't have any more questions for the applicant. Before we go into deliberation and votes and discussion, does anybody have any final questions for the applicant or the planner or Mr. Hopper, you know, whoever. Commissioner Freitas.

Mr. Freitas: I have a quick question for the applicant, Mr. Robinson, there was a testifier who talked about plants and...certain plants and things going on on the property that are endemic, culturally sensitive to Hawaiian culture can you comment on those just briefly. I know that you had mentioned earlier that you weren't too familiar with those, but this is one of the criteria for SMA approval and I know you already have an approval and this is just an extension, but this bringing up a concern. Maybe during pandemic that we are starting to see a lot of things coming about that wasn't there before and their natural habitat might be that area. One more time before we deliberate if you can share whatever you know about that.

Mr. Robinson: Yeah sure, so...I guess most importantly that the...all of the development area that we're talking about is contained within the fallow pineapple fields. There is no...no grading extends, no impacts to the shoreline setback, the Conservation District, the gulches specifically down in the...where the watercress farm is, you know all that is untouched. So, the only thing that we're doing and it was from day one of...in my involvement on this project 12 years ago, was that all activities would take place within...it wasn't fallow pineapple at the time, but it is fallow now, I know there's no pineapple out there anymore, but yeah, we all contained our development within the constraints of the disturbed earth that's already there.

Mr. Freitas: Mr. Robinson, so you're saying that oh well, there was some kind of plantation there, pineapple, and you're going to build on that or sell lots on that, however, before the pineapple here was a thriving community of plants and animals that was taken away by the pineapple company and now that it's fallow they're coming back, have you thought about that? So, this is something I just want you to think about, you don't need to answer, I know how I'm gonna vote.

Mr. Robinson: Okay.

Ms. Pali: Okay, any final questions? Okay, thank you everyone, we will get the staff planner's recommendation.

Ms. Thackerson: Okay, pursuant to the foregoing, the Maui County Planning Department recommends approval of the time extension for Condition No. 1, subject to the following revision and that be, that the project shall be initiated by February 28, 2022. Prior date it was 2020. In

consideration of the foregoing, the Maui Planning Department recommends the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the June 22, 2021 meeting as its Findings of Fact, Conclusions of Law, Decision and Order and authorize the Director of Planning to transmit said Decision and Order on behalf of the Planning Commission.

Ms. Pali: Thank you, Staff Planner Thackerson. All right people, look alive it's our last item, you ready? We're up for a motion. I'd like to entertain a motion. I see you Mr. Edlao, Commissioner Edlao.

Mr. Edlao: I move to deny the applicant.

Ms. Pali: Okay, we got a second.

Mr. Edlao: You know, rules are rules. I agree with Kimberly Thayer.

Ms. Pali: Okay, we have a motion to deny from Commissioner Edlao, and a second for Commissioner Thayer. We are open now on the floor for discussion. Would you like to elaborate Commissioner Edlao?

Mr. Edlao: Yeah, I agree with Commissioner Thayer because rules are rules and we should follow the rules, and if we don't then the rules are just recommendations or suggestions. If there are good reasons to foresee other than following you know, the rules then it should be disclosed either by the Department or even like the applicant, why were they late or why did the Department feel that we really should go because of this, this, this. This, this is a nightmare for me. This brings back memories of the Lahaina Brewery, same situation, you know, they were approved to go ahead and operate even after we were discussing whether they should continue or not, so that reason, why I'm denying this.

Ms. Pali: Okay, Commissioner Thayer would you like to say anything about your second?

Ms. Thayer: Sure.

Ms. Pali: Before you do that, let's get the Director. Director, I'll let you jump in real quick. Sorry, Commissioner Thayer.

Ms. McLean: Thank you, Chair. I just want to be clear that the Commission establishes on the record the basis under the rules for the denial. On Page 5 on the staff report at the top under, Applicable Regulations, it cites the Maui Planning Commission's SMA Rules, Section 12-202-17 and if you go down to the bottom of the section, letter C, unless otherwise provided, any application for an extension of a time stipulation must be filed not less than 60 calendar days prior to the expiration of the time condition provided that the Director for good cause may waive such 60-day requirement. So, the key there is, "unless otherwise provided," and as the

members indicated it was provided otherwise. So, you would find that the request does not meet that provision of rules. Thank you, Chair.

Ms. Pali: Thank you for that clarification. Commissioner Edlao, do you want to restate your motion and then point to the record of the reasons for denial please?

Mr. Edlao: My reasoning is because we're not following the rules period.

Ms. Pali: Mr. Hopper do you want to—

Mr. Edlao: I mean, I mean we gotta take a stand whether we're gonna follow the rules or not follow rules, and if we're not gonna follow rules then why are we here? That's my question.

Ms. Pali: So, I don't know if your second wants to help you or back you up, but as Commissioners we are going to be and are being trained into how to properly deny applications to protect our culus from any potential litigation, so we do have a process that we have to follow correctly. Commissioner Thayer, you wanna back him up?

Ms. Thayer: Sure. Yes, as pointed out by the Director, thank you. Our SMA Rules in Section 12-202-17, Item C, very clearly states, that unless otherwise provided, any application for an extension must be filed not let than 60 calendar days, and it is otherwise provided in the conditions of the SMA permit approval which states very clearly that no later than 90 days prior to the expiration of the permit shall the time extension be submitted. And it is very clear that we are at 71 days which is less than 90 days, and that is purely in black and white, and it says, failure to comply by that date will automatically terminate this SMA Permit, and that's exactly what's happened and it's...it was acknowledged by the applicant in their initial compliance report, it was acknowledged by the applicant in their second compliance report, so it's not like it was surprise to the applicant. It's been expressed very clearly in black and white multiple times and out of concern for sticking to the conditions that we, ourselves impose on all of these permits that are very much in black and white, I think there is no other action to take but to deny this request. Thank you.

Ms. Pali: Thank you, thank you Commissioner Thayer. Oh, good wing girl, eh you got Commissioner Edlao, that's great.

Mr. Edlao: Thank you, Kimberly.

Ms. Pali: Okay, any discussion.

Mr. Edlao: I couldn't have said it better.

Ms. Pali: Okay, any discussion?

Ms. Thayer: ...(inaudible)...

Ms. Pali: Okay, no discussion. I'm gonna call for a vote. Make sure you lift your hand and you say, aye. All in favor? Oh, sorry, all in favor to support the denial, please raise your hand and say, aye.

Mr. Edlao: Aye.

Ms. Pali: Any opposed? Okay, let the record show we have five ayes, and one opposed. The opposed is Mr. Thompson. You got that Director?

Ms. McLean: Yes, Chair.

Ms. Pali: Okay, so with five, I believe motion carries and we will be submitting a D&O for a denial.

Ms. McLean: Yes, Chair.

**It was moved by Mr. Edlao, seconded by Ms. Thayer, then**

**VOTED: To Deny the Special Management Area Use Permit Time Extension.  
(Assenting – J. Edlao, K. Thayer, K. Freitas, M. Hipolito, A. Lindsey)  
(Dissenting - D. Thompson)  
(Excused – P D. La Costa, C. Tackett)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II