

**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 14, 2008**

APPROVED 1/13/09

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:30 a.m., Tuesday, October 14, 2008, 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. Starr: Good morning everyone, the October 14th meeting of the Maui Planning Commission is now in session. I'd like to welcome everyone. Thank the members for being here bright and early. We have Commissioner Kent Hiranaga, Commissioner Bruce U'u, we have Corp. Counsel extraordinaire, Jame Giroux, I'm Chair, Jonathan Starr. We have Current Division Administrator who actually does a lot of the preparation for these meetings here sitting in for the Director, Clayton Yoshida. We have Commissioner Donna Domingo, Commissioner Dr. William Iaconetti, and Commissioner Wayne Hedani. We have Carolyn Takayama-Corden who is our secretary. We have Joe Prutch, planner. We have Mike Miyamoto, Deputy Director of Public Works. We have planner Paul Fasi and some other folks will be along with us shortly. Thank Kenny Hulquist for coming and filming this meeting.

We have an interesting agenda today before we begin public testimony will be allowed on every agenda item and members of the public who wish to testify on any item have a choice. Either they can testify before all of the agenda items which will be at the beginning of the meeting in a couple of minutes or they can wait and testify before decision making on that specific agenda item. We ask them to testify only once and we ask that testimony be kept as short as possible, in no case more than three minutes.

We have a couple of agenda related things I'd like to bring before the members before we start. One is that at 1:00 p.m., immediately after our lunch break we have a workshop on LEED, Leadership and Energy Efficient Design, conducted by Ms. Gail Suzuki-Jones from the Department of Business Economic Development and Tourism. Should be a good workshop. She has to get back to Oahu and so the 1:00 p.m. we'll have to adhere if we can as close as possible to the 1:00 p.m. time. So we may need to move agenda items up or back to allow us to fill in the time slot before lunch and then to put anything remaining until after the LEED training. So I request that members, you know, when we get to that time we can work what needs to be done.

We also had a request from Mr. Greg Kaufman who's the applicant on two of the public hearing items to reverse the order in which we hear them. And if there's a desire by members to accommodate him we could switch them. He wanted to have Pine State Limited come before Iwa Ike, I don't really understand the reason for that but that was his request.

Mr. Iaconetti: So moved.

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Dr. Iaconetti, seconded by Commissioner Domingo to change the agenda so that Pine State Limited comes before Iwa Ike. Any discussion? All in favor please raise your hand.

It was moved by Mr. Iaconetti, seconded by Ms. Domingo, then unanimously

**VOTED: To Change Agenda to Take Up Item B-2 (Pine State Limited) Before Item B-1.
(Assenting - W. Iaconetti, D. Domingo, K. Hiranaga, J. Guard, B. U`u,
W. Mardfin, W. Hedani, J. Starr)
(Excused - J. Pawsat)**

Mr. Clayton Yoshida: Unanimous.

Mr. Starr: Unanimous. Okay, so we will swap those. And with that we can move along to public testimony. I do see a sign in sheet so we'll start with those who have signed in. I'd like to first call to testify Angie Hoffman. Welcome and thank you for coming. Next testifier will be Colin McCormick.

The following individuals testified at the beginning of the meeting:

Angie Hoffman - Item B1 and B2, Iwa Ike and Pine State Limited, DBA
Colin McCormick - Item B1 and B2, Iwa Ike and Pine State Limited, DBA
Daniel Kanahale - Item B1 and B2, Iwa Ike and Pine State Limited, DBA
Merrill Kaufman - Item B1, Iwa Ike, DBA
Pat Borges - Item B1 and B2, Iwa Ike and Pine State Limited, DBA
Clarence Tavares - Item B1 and B2, Iwa Ike and Pine State Limited, DBA
Jocelyn Costa - Item B1 and B2, Iwa Ike and Pine State Limited, DBA

Their testimony can be found under the item on which they testified on.

Mr. Starr: Any other members of the public wishing to give testimony on any agenda item please make yourselves known. Okay, not seeing any, the initial public testimony portion of the meeting is now closed, and we'll move onto our agenda items. We have swapped B-1 and B-2 in order. However, we also do have two related in C-1 and C-2 which are petitions to intervene on B-1 and B-2. And so my understanding is that before we decision-making on B-1 and B-2, we should take up the petitions to intervene. We do have a choice of whether we want to get a presentation on B-1 and B-2 first and then move on discussing the intervention, or whether we should just move straight on the intervention, and I'm looking to get a feeling from the Commissioners whether they want a presentation, or we should discuss the intervention. Commissioner U`u?

Mr. U`u: I just wondering if we could ask Corp. Counsel what would be the appropriate approach.

Mr. Starr: Yeah, go ahead, James.

Mr. James Giroux: Well, I could see it going both ways. I would prefer that each item be taken separately. The – I think the main point is that you might want just enough information from the staff to understand what you're looking at in order to dispose of the issue of intervention, but I would caution to stay away from actual fact-finding at this stage until you've disposed of the issue of intervention.

Mr. Starr: So, Members, what I'm hearing is a suggestion that we ask staff to give us a brief overview on the item without going into detail and without going into, you know, certainly any kind of decision-making or anything like that. And then, we move on to hearing the intervention. And if that goes in such a way that we dismiss the intervention, then we can go back to the item. In other words, the item would go into intervention if that were granted. Is that workable, Mr. Yoshida?

Mr. Yoshida: Yes, I would suggest that after the staff makes a presentation that the Commission conduct the public hearing as the applicant has spent monies, time, effort to notify the neighbors. So open and close the public hearing, and then deal with the intervention request.

Mr. Starr: James, is there any problem with having a public hearing before hearing the intervention?

Mr. Giroux: As far as public testimony, I'm okay with that, but having the full blown-out public hearing, I think it's semantics. I think what Clayton is requesting is that the public be allowed to testify before we dispose of the intervention.

Mr. Starr: Okay. The question is though is if the intervention – say it was deferred or whatever, would there still be another public hearing, or would that satisfy the requirements for the public hearing?

Mr. Giroux: Okay, now we're getting into hypotheticals here. I would caution as far as– There's a public hearing requirement under 19.68. And that requirement requires notice. And so those notices go out and they're quite expensive. And I think that's what I think Clayton is trying to bring our attention to is that we need to clear up these legal matters before we proceed, but also give the applicant an opportunity to fulfill the obligations that they're required to fulfill which is under 19.68. I think that under your rules that it is important to clear up issues of intervention at the earliest practicable time because that does change greatly your perspective of how the case is then handled because if it is being – to be in a contested case forum, then issues of notice are basically then thrown out the window because then you would be then dealing with an issue of notice to the people who then have become parties, and that then disposes of the public hearing. But I think all of those issues would be discussed fully in disposing of the issue of whether or not this is such a case where an intervention would or would not be granted.

Mr. Starr: So what I intend to do, if that's okay with the Members, is we'll have the Planner give a brief overview of each of these applications. After that we'll also allow the applicant to say a few words. We will allow public testimony on that item. And then we'll deal with the intervention and then see how it goes pending what action we'll take on the intervention. Dr. Iaconetti?

Mr. Iaconetti: I'd like to ask Corp. Counsel what he meant by any – stay away from the facts? How can we have any . . . (inaudible) . . . without hearing the facts?

Mr. Giroux: I'm not asking you to be ignorant. I'm asking you to be cautious in what you say and what kind of information you request for at this stage. Every applicant has a right to due process in presenting their case. They have the burden of, you know, producing such evidence that would show you that their project is in conformance with the HRS mandates in changing – amending their State designation. However, you have an issue of somebody has filed an intervention. And you

need to know what this project is about, but this is not the stage to be testing the applicant – the applicant’s evidence. It’s a preliminary idea, a snapshot, so you understand what you are dealing with, you know, what’s the zoning, what’s the acreage, what’s the location, those types of things. I don’t want you to be getting into what are the cultural impacts, what are the drainage, what’s the – you know, these types – what’s the traffic report. I don’t want you to be getting into that type of detail. Just like – kind of like when we go – went on the site visit, I asked you to limit your questions to things that would bring to light what you’re seeing as far as location, spacing, those types of things.

Mr. Iaconetti: Thank you.

Mr. Starr: Okay, well, let’s proceed. I’ll ask Mr. Yoshida to introduce B-2, and then we’ll keep that initial presentation brief.

B. PUBLIC HEARINGS

2. PINE STATE LIMITED requesting a State Land Use District Boundary Amendment from Agricultural to Urban for Ke Kani Kai, a proposed 2-lot subdivision and associated infrastructure improvements at Lot 3 Makena, Keoneoio Road, TMK: 2-1-005: 117, Makena, Island of Maui. (DBA 2007/0008) (P. Fasi)

Mr. Yoshida: Thank you, Mr. Chair, Members of the Commission. Clayton Yoshida from the Planning Department subbing for Planning Director Jeff Hunt who’s at the Council Planning Committee Meeting as they deal with the Bed and Breakfast and TVR Legislation. And he’s also scheduled to be at the Policy Committee Meeting this afternoon to deal with the Kula Ridge Fast Track 201H Affordable Housing Project.

Mr. Yoshida then introduced the Agenda Item B-2 into the record.

Mr. Starr: Go ahead, Mr. Fasi. Give us a brief overview. If we get beyond the intervention, we’ll look for more detail and other things.

Mr. Paul Fasi: Would the Chair want a brief history on how we got to this point or is that not necessary?

Mr. Starr: No. that’s fine. This is a time we need to understand where we’re at with this.

Mr. Fasi: Okay, thank you. This matter arises from an application for the following permits: special management area permit, a community plan amendment, a district boundary amendment, change in zoning, and infrastructural improvements. The applications were filed on January 25th 2008. An EA was published on this development on January 23rd 2008. The 30-day public comment period ended on February 22nd 2008. No public comments were received. And a FONSI was discussed at the Planning Commission of July 8th. The matter was deferred pending further information and a FONSI was not issued.

On July 18th 2008, the Department Zoning Division made a conclusive determination that the correct

County zoning for the parcel was R-3 residential and not interim. This revision in zoning affects the applicant's application in several ways. The community plan amendment is no longer applicable as the R-3 zoning is in accord with the community plan designation of single family. The change in zoning is no longer applicable as the zoning has been confirmed to be R-3. The environmental assessment is no longer applicable as a trigger for Chapter 343 was the community plan amendment which is no longer applicable. The special management area permit, Permit No. SM120070018 is no longer applicable as the proposed action has been determined by the Department to fall into the special management assessment category or SM2, a minor permit. So it is not an SMA major permit. And that brings us to where we're at today.

So the applicant is requesting approval of a State land use district boundary amendment. Let me clarify that. The applicant is requesting a recommendation of approval of a State land use district boundary amendment. What this Body is deciding today is not approving or disapproving the actual DBA. You are only making a recommendation to the Council on approval or disapproval. No decision will be made granting approval or disapproval by this Body. It is up to the Council to determine that.

And the reason for the DBA is so that the land use classifications are compliant with each other. The current State land use classification is ag. Development on State ag land is restricted. A district boundary amendment is necessary to change from State ag to State urban in order to be compliant with County zoning and community plan designation R-3 single family. The Kihei Community Plan is single family; County zoning—R-3 residential; 10,000 square foot minimum. And that pretty much brings us to where we are up-to-date on this development.

I would also like to note for the record that the applicant has made a commitment to put self-imposed restrictions upon this reclassification that all lots shall be a minimum of one-half acre or greater, no future subdivisions shall be permitted, no condominiumizing, setbacks to match that required by rural zoning, and building heights to be limited to 30 feet. Setbacks to match that require rural zoning, and no. 5, building heights limited to 30 feet is already in the County Zoning Code, but my point is that R-3 zoning allows this particular lot to be subdivided into six 10,000 square foot lots. The applicant is restricting himself to two lots, two half-acre lots, and this will run with the land. It will be a deed, put in the deed of the land, and recorded at the Bureau of Conveyances.

I think listening to the testimony this morning, there seems to be a slight misunderstanding with the word "urban" zoning. And the word "urban" connotes many images of over development. However, in this case, the reason we are doing the urban reclassification on the district boundary is so we don't have to come before you and do the long route, so to speak. We could reclassify it to RU.5. I'm sorry. We could do a State district boundary amendment to rural, but that would encounter going through the community plan amendment, change in zoning, district boundary amendment, and the EA process all over again. By going and reclassifying or recommending a State district boundary amendment, we automatically bring everything into conformance with the rest of the County zoning and community plan designations. So I think it's important to remember that the applicant is putting self-imposed restrictions on this particular parcel that bring it into compliance closer to a rural designation than it is urban. The urban district boundary amendment is merely a means to an end, and it really doesn't connote any urban type development whatsoever. Thank you.

Mr. Starr: Paul, we have a couple of questions. I wanna a quick one first. If it were left as it is in ag, then what would be the allowable use compared to what would be the allowable use changing it from ag to urban.

Mr. Fasi: If it were left in ag, it wouldn't be allowed to be developed because the ag zoning designation, the State Land Use Commission prohibits – pretty much restricts any development on State ag land. It'd be very difficult.

Mr. Starr: He could still build a house, and a farm dwelling, and do agriculture.

Mr. Fasi: No, they could not.

Mr. Starr: Could not?

Mr. Fasi: No.

Mr. Starr: Okay, Commissioner Mardfin?

Mr. Mardfin: This is very, very minor and technical. On the page – but I wanna, if this gets legal, I wanna make sure we have it – on the first page of this document that we were given, the document no., if you look at the TMK–

Mr. Fasi: It should be 117.

Mr. Mardfin: 117, not 017.

Mr. Fasi: Right.

Mr. Starr: Okay, Commissioner Hiranaga?

Mr. Hiranaga: Could I have confirmation from Planning Director or Senior Planner?

Mr. Fasi: Planning Program Administrator.

Mr. Hiranaga: Regarding the statement that no dwellings would be allowable on this parcel under the current designations.

Mr. Yoshida: I believe if the – currently the property is designated State ag district. So under Chapter 205, they'll be allowed a farm dwelling. But they have, I believe, a substandard – well, a farm – one farm dwelling, but they wouldn't be able to subdivide because the minimum lot size in a State ag district under 205 is one acre.

Mr. Hiranaga: They would not be allowed to build two farm dwellings?

Mr. Yoshida: If they were zoned County ag, then under County ag, they're allowed a – two farm dwellings, one not to allowed a thousand square feet, but the zoning as portrayed in the staff report,

on page 2, is R-3 residential. So the zoning is R-3 residential. The State land use designation is agriculture. And the community plan is single family.

Mr. Hiranaga: So only one dwelling?

Mr. Yoshida: Under the State ag, it would be allowed – well, I guess farm dwellings, but the ability to have two farm dwellings automatically is under the County ag zoning. In this case, it is zoned R-3, which allows for single family residence.

Mr. Hiranaga: So if he met all conditions required, what's the maximum build-out under the current designations?

Mr. Yoshida: The maximum build-out would be only one – the one farm dwelling because the – well, the ohana – under the accessory dwelling provision under 19.35 doesn't apply to the County ag district. It applies to the R-3 district. But they would have to be farm dwellings, not single family residences.

Mr. Hiranaga: I have a followup question. How can the zoning be R-3? It's not consistent with the State land use designation. I thought if there's an inconsistency, it was supposed to be zoned interim.

Mr. Yoshida: There was a case recently decided. Maybe Corp. Counsel can inform you more on this Hanohano case up in Pukalani where the property previously was in the ag – well, it was zoned by the County R-2. It was in the urban district, but then I guess it got moved over to the ag district. So the applicant, Hanohano LLC, went in for a district boundary amendment from ag to urban. And the County ascertained that they needed to get a zoning change, therefore, because it was interim. And this fact was challenged in court by Hanohano LLC. And the Judge said—it was Judge August—that the County did not have the ability to change a legislative action. The zoning on the map, on the zoning map was still R-3 and was never changed by the County Council. So similarly, in this particular case, the zoning on the map is R-3 and can only be changed by the Council.

Mr. Starr: Okay, Mr. Fasi?

Mr. Fasi: One other thing I'd like to point out that the two neighboring properties immediately bordering this property are both – designated State rural. Thank you.

Mr. Starr: Okay, Members, we'll have, I'm sure, additional opportunity at some point. Mr. Kaufman, do you have anything to add? And I wish you to stay away from the details and merit of the item. We'll get to that later, but if you do have anything to add regarding process, please.

Mr. Kaufman: Not at this time. I think Mr. Fasi covered it.

Mr. Starr: Okay. Thank you very much. As we discussed earlier, I'm going to open up once again for public testimony on this item and this item.

A) Public Hearing

The following testimony was received at the beginning of the meeting:

Ms. Angie Hoffman: Aloha, my name is Angie Hoffman. I'm testifying on agendas one and two. I grew up in North Kihei and spent my childhood going to Makena State Park and recreating on Oneloa, Big Beach. More recently I worked at the Ahihi-Kinau Natural Area Reserve as a naturalist. So I spent a lot of time in this area and I've seen a lot of development over the years much more than before.

I personally do not think this is an appropriate area for the kind of development that has gone on. I think a lot of the zoning that was granted over the years was a mistake. This is an area rich in cultural history with many archaeological sites still intact. This is an area that's home to many endangered native species. This is an area which the local community recreates and is very special to many people. Many people come to enjoy the last remnants of wild Maui over there. Not only the local community but also the visitors. Working in Ahihi, I had many people approach me and you know, tell me why they were down there spending their days down there instead of you know, at the hotel or somewhere else and it's because that's what they came to see. So I'm of the opinion that we should think long and hard before granting any more rezoning and allowing more building in the special sacred area.

Several small archaeological sites have been identified in the specific area. Down the street where the big house across from Pohaku Heiau was built, was being built, three burial sites were uncovered. Near the state park there was a village complex found.

In the wetlands in the state park across from the lots on the agenda today are home to the Hawaiian Stilt, the Ae'o. Oneloa Beach is the nesting ground of the Honu'ea, the Hawksbill. This year there's six nests on Oneloa Beach. This is a critically endangered species, very few remain. This place is sacred to the animals and to the people.

Many youth from all around the island come to this beach regularly to relax and play. I was one of them and still am. I still meet my friends from high school down there and you know, it's just a place to get away from it all. When we were younger it was a place to get away from our school lives and now it's a place to get away from work lives. Many of them would love to be here today testifying with me but you know, our burden with work lives so.

To move on, just to recap, this place is really important and dear to us. I have learned a lot in the last few years and just like to conclude by sharing with you my vision of the future of Makena. I see a beautiful wild place that has thriving populations of once endangered animals and plants. I see the stilt, the hawksbill, the Hawaiian monk seal all thriving in flourishing numbers. I see the native plants being restored by the community as well as the archaeological sites. I see the archaeological sites not only being left in tact but restored and respected. I see a place where people in the community of all ages as well as people from all around the world can come to learn from the past and use those learning for the future. I see archaeological sites left in a cultural landscape not separated from one and other. You know, if we see a whole village, leaving that intact so we can study it and learn from it. All that put together, the plants, the animals, the archaeological sites, I think create a wonderful living university.

Mr. Starr: I need to ask you to wrap up soon.

Ms. Hoffman: Okay. The last part. I see the recreational use of the local people respected and improved where there's enough camping, enough parking and maybe camping restored so local families can sleep in nature and reconnect with the aina. I urge you to decline these requests. This is not an urban area. It is not appropriate. Mahalo for your time.

Mr. Starr: Okay, thank you. Members, anyone have any questions for the testifier? Okay, thank you very much and thank you for coming. Next testifier is Colin McCormick, will be followed by Daniel Kanahele.

Mr. Colin McCormick: Aloha Planning Commissioners. My name is Colin McCormick. I'm here to testify directly against the proposed request for rezoning of parcels directly mauka of second entrance. I could go on and on telling you why the lands directly mauka of second entrance Big Beach is vital to the residents of this entire island in terms of our economy, our state of mind and our pleasure, but I'm assuming you're smart enough to notice already and I'm not going to go there today.

Plus if you ask people from anywhere in the islands they can tell you. I'm here today to speak about the federally listed endangered species found within the state park. First species I want to mention is the Hawaiian hawksbill turtle. In the state and the world there are only 60 or less nesting females. This includes six on Maui and two of the six are found at Big Beach, Oneloa. In fact I was told that just last night one of the nests of these two remaining of the six just hatched on the full moon and I think that's special. It's a coincidence.

Second species of serious concern is the Hawaiian Stilt, the Ae'o. The National Geographic Society reports in 2001 that there was an estimated 1,200 to 1,500 birds left in the world. And it brought its striding population down at Big Beach. I'm not expert in Hawaiian animals. My background is botany actually. I went to the University of Hawaii, but I have been down countless hours at Big Beach and I've observed these native species down there. So I'm just here to report what I seen. I've seen the Hawaiian Stilts even frequent beach in the uncrowded week days. You guys go there on the weekdays which is hard for most people, it's a whole other world. There's not as many people down there and the stilts they come out and play on the beach and that's really special.

The next federally listed species that I think needs much more attention is the Hawaiian hoary bat. The population is estimated in the thousands and they still don't know exactly for sure how many are left. Its habitat range is mentioned from sea level to summit areas according to research on the Big Island. And also this recent research on the Big Island they found out that it actually bat activity varies with season and altitude with the greatest level of activity occurring at low elevations below 4,200 feet from April to December. This kind of concurs with my observations. If you go at this time of the year, and the colder months of the year, the bats they come down to the ocean and you see them. You can go any night of the week and you'll see, not just one, I promise you'll see many Hawaiian bats just flying right above where the waves are breaking. These endangered animals need more attention and if their habitat range has been proven on the Big Island to go from sea level to the mountain tops, you know, it just seems obviously that you know, this whole zone is important to them.

And U.S. Fish and Wildlife Service also states that the warm temperatures are strongly associated with reproductive success. So, again, please just consider this project. There's other endangered

species too as I mentioned, the Hawaiian coot, the green sea turtle, the monk seal, but my time is up. I just ask yourself, please ask yourself what good is an urban project like this would do for these species down there? And the thing about the legality of these endangered, you know, these are federally listed species. You know, things that are Hawaiian are all endangered, but these are federally listed endangered species that are mandated by law to have protection. Thank you.

Mr. Starr: Okay, thank you Colin. Members, any questions for the testifier? Okay, not seeing any thank you for coming today. Next is Daniel Kanahale followed by Merrill Kaufman.

Mr. Daniel Kanahale: Good morning Planning Commissioners. My name is Daniel Kanahale. I live in South Maui. I'm here to testify first on Item B-1 on your agenda. Mr. Kaufman of Iwa Ike LLC, and then Item 2, Pine State Limited, and then thirdly, on your agenda under C-1, Lance Collins, Attorney for Linda McDonald. So I would like to begin by testifying on B-1.

I'm here to ask that the commissioners look hard on this request for rezoning. I personally think that at this point in time, this request should either be denied or deferred. I think it should be either because maybe 40 years ago people thought it was a good idea to urbanize the Makena area, but I think people look at it differently today. Times have changed and personally I think the idea to urbanize Makena that long ago was a mistake and it's a mistake today and it's a mistake for the following reasons.

Makena is an area that is culturally, historically, ecologically and biologically sensitive and we should not be urbanizing areas that are sensitive in those areas because of the potential impacts. I have a special interest, none archaeologist but I have a special interest in archaeology. The area Makena is rich in cultural history, Hawaiian history. There were many, many kanaka that lived out in the Makena area. Some studies say as many as 10,000 lived in that area over a period of almost a thousand years.

Now, the first hundred maybe hundred-fifty years of that archaeology may found on the surface or the subsurface, but to get down to 600 to 700 years ago of history you gotta go a lot deeper. One of the mistakes that I personally feel happens when it comes to archaeological inventory surveys for developments is that they used tunnel vision. They look at one isolated area without really looking at the interrelationships and connection that the arc sites on those areas have with the areas around it. Western style, when you study something their methodology is to dissect it, to break it apart. For the Hawaiians, it was all about interconnectedness, relationships, we call that *olo lokahi*, the oneness of life. So an arc site is not significant necessarily in and of itself, but is made significant in relationship to what is around it. So I think it's important for a commission like yourself in trying to understand the significance of the archaeo – arc sites of a particular parcel, you need to look at the big picture, you need to step back, you need to view it in the way that the kanakas viewed it as a whole. Otherwise, you don't get the true picture. Makena is rich in cultural history. It's also rich in ecological and biological history.

Colin spoke about the Hawaiian hawksbill turtle which is an endangered species. This year was a banner year for the hawksbill turtle as far as laying eggs. They had more turtles hatched this year than I think any other recorded time. Oneloa Beach is one of the places where it lays its eggs and this is a important site for the hawksbill turtle. I'll move on to a -

Mr. Starr: Yeah, I need to ask you to wrap up.

Mr. Kanahale: I'll move onto item B-2, the Pine State Limited and just continue my testimony because what I say also relates to –

Mr. Starr: I need to ask you to wrap up please.

Mr. Kanahale: Am I allowed another three minutes for the –

Mr. Starr: No.

Mr. Kanahale: Okay, I thought I was allowed it. Anyway I would like to ask that the Council deny or defer the request for rezoning based on the points that I had an opportunity to make today.

Mr. Starr: Okay, members any questions? Commissioner Mardfin.

Mr. Mardfin: You're talking about with relationship to your archaeological statements, that you need to consider the full picture and things around it, are there any heiau or other archaeological sites maybe not on the subject property but near the subject property?

Mr. Kanahale: Yeah, subject properties, parcel 18 and parcel 17, I believe are right next door and the parcel 116 there is a heiau. So I'd be interested to know what relationship the heiau has to the arc sites that were uncovered in the – any archaeological survey that was done on the sites in question, parcel, I mean, the parcels in question 118 and 117.

Also, it has been found that over time when arc sites are done on the same area over time more often than not you find more things than less. So I don't know how many archaeological inventory surveys have been done on lot 18 or 17. But there are other lots in Makena more often than not when they go back and do new surveys more is found rather less, rather than less. That's why I pointed out the fact that, you know, we have a lot of history here, a lot of people lived here. I think the deeper you go, the more you're going to find in terms of what was there historically, say 600 or 700 years ago rather than you know, maybe on the surface you're looking things of a 100 to 150 years ago. So, I think that's something else that should be considered.

Mr. Mardfin: Is it my understanding of you that with the heiau there and other things that instead of looking narrowly at a particular area you need to look at the surrounding area to find out whether they're – the archaeological findings are significant and finding additional significance within a larger area is that my understanding of what you're saying?

Mr. Kanahale: That's absolutely correct. Often times in reading archaeological inventory studies I find the word "insignificant" come up multiple times, multiple times, this site is insignificant, this site is insignificant, but I think if these studies were to step back and look more fully at the whole picture and look at things adjacent or immediately adjacent to the parcel or lots being considered that we perhaps learn even more about these sites and perhaps they wouldn't be defined as insignificant, that they would be defined as significant. And I just want to make this one quick point that, you know, the Hawaiians, the kanaka maole we didn't have a written language as far as I know. You know, today, our written language is found in our arc sites. I mean, our arc sites are like our

libraries, that's where our books are. And so every time we lose an arc site, we're losing part of our history, part of our – one of our libraries. You know every time a site, arc site is being bulldozed, it's like bulldozing our libraries unless those sites are thoroughly studied first. And I have a big question on whether or not these sites are getting the attention, the study, the documentation that they deserve, because you know, once it's gone, it's gone forever you cannot call it back and those stories that were there, those books will never be read, by kanaka or non kanaka alike. So, I think the arc sites are very, very important and we don't give them their due respect especially from my point of view as a kanaka.

Mr. Mardfin: Mahalo. Thank you for your manao.

Mr. Kanahele: Thank you for your question.

Mr. Starr: Okay, members any other questions? Commissioner U'u.

Mr. U'u: Good morning Mr. Kanahele.

Mr. Kanahele: Good morning Mr. U'u.

Mr. U'u: I agree what you said. Just for information, I know the county zoning is residential, the community plan is single family, and we're kind of in a bind and also the county recommends approval. So we're kind of in a bind. I understand what you're saying. I'm not saying I'm for it or against it right now, I just giving you what we up against right now. And it probably was a mistake back then when they zoned it or they didn't look at it by like what you said, is taking a step back, but during the present time as of today it is zoned residential. But I understand and I'll take into consideration when they come before us. Thank you.

Mr. Kanahele: May I respond briefly?

Mr. U'u: Go ahead.

Mr. Starr: Yeah.

Mr. Kanahele: I think, you know, you look at Makena as a whole and you look at what the state has done, Ahihi-Kinau, it's a natural area reserve now. Oneloa Beach is surrounded by a state park. At one time, they wanted to develop all of Oneloa Beach, they wanted to build condos and homes right on the beach. It took private citizens fighting for 14 years to protect the area around Oneloa Beach. Can you imagine the impacts that would have occurred if that beach was protected by the state park? Just on the wildlife alone, the Hawksbill turtle. So what I say to that is you folks have an opportunity to make a difference in this world of Maui. The state has stepped up, and they say well, these are vital areas they need to be protected for our present generation and our future generation. We don't think this should be urbanized. You folks have the authority given to you by the state to amend zoning, state zoning. You guys can step up to the plate and say, a we don't want to urbanize these areas, lets wait, lets wait till the Maui Island Plan comes up, lets wait till the GPAC has finished its work, lets see where they draw the urban lines, the growth lines, lets see what areas they want to protect. If anything, even if you can defer it and wait till the Maui Island Plan is pau and all the input from all the hard work these people have made to make your decision.

Don't have to make it today. You folks can wait. Wait, let the work be done, pau, and then with all the manao from all of these people to help and guide your decisions then you can move forward and make good decisions.

Mr. Starr: Okay thank you very much for sharing with us. That was good.

Mr. Kanahele: Thank you.

Mr. Starr: I would like to call the next testifier which is Merrill Kaufman will be followed by Pat Borges.

Mr. Starr: Okay. Thank you. Members? Okay, next testifier: Pat Borge followed by Clarence Tavares.

Mr. Pat Borge: Good morning. My name's Pat Borge. I've been involved in the Makena area for almost half my life and seen a lot of development going on. And my main concern is water. I mean every time you look in the *Maui News* we always talking water, water, water. And I drive by these big estates like the one by Black Sand Beach at – sprinklers run 24/7. I used to be a caretaker for a guy just before La – just before Ahihi Bay. And I was a caretaker for eight years, and that water meter ran 24/7. Because it's Makena. It's a drier side of the island and you people gotta realize that. I'm not against this rezoning but I want the County, you guys, to look at the whole picture. Are we ready for this? Can we handle this? Can the water that we have on this island can handle a project like this? Because you look at the one that you guys approved by Black Sand Beach. Five homes in there. It looks like Hana. I mean, give me a break. It's just common sense. Plus, you got union guys here. Half of the people that work on these custom homes are not even in the union. I've got to those projects. I've talked to the workers. A lot of these guys come from Honolulu. They come from the Mainland. And our local guys are sitting on the bench right now. I mean I like you guys to look at the whole picture. Mr. Kaufman, you know, he's with the ocean. I know he's involved with the whales, but you have LLC. I wanna know who's involved in this project. He's just a spokesman, I guess, or investor. But who else is involved in this? I drive down that road every day two, three times a day. Sometimes I cannot even get by to that area that they talking about because the State has no parking at Makena Big Beach. And it's closed. I mean sometimes I cannot get through. And if we have an emergency in La Perouse in some area, the trucks cannot get through that. People are on the beach. I mean, they're double parking and everything. And I also looked at the police report. And they're understaffed. Every time we have incidents out there, it takes a while for them to get out there. And that road has no walkway like it says in here. Hey, there's no bicycle paths. There's no sidewalks. There's people all over this road. It's a very dangerous road. You got weddings going on right down the street. Eleven weddings a day. Thirteen weddings a day. This place is packed with vehicles. That's the kinda things that I, as a businessman in the area, I gotta deal with every day. I mean, I'm sure this, you gonna see all this, there's no impact, but there is an impact, a big impact.

And you guys gotta look. I'm concerned about the runoff. I sit on the advisory committee for Ahihi-Kinaiu, and I've been sitting on that committee for like almost eight, nine years. And I'm a snorkler. I'm a diver. And I'm a fisherman. And I go in that water and I can see runoff is destroying that reef. You guys say there's a basin for a 50-year storm here. Hey, sometimes we get cloud burst, boom. Not 50 years. I mean, eight hours, we get one big flood coming down there. Like that project at

7155. They did a catch basin over there. Hey, water came right down that stream. Boom, all that mud goes into the ocean. The Makena area, when they grade, the bottom line is solid. I no care how much fill you put in, that water goes down to that dirt. Those cinders, like Makena Golf Course, hit the base, and it goes right down into the water. That's why when you snorkeling, you can feel the fresh water coming through the lava tubes. Water rolls downhill-bottom line.

I mean, I'm not against the- I want like how Mr. Kanahale said. Get the General Plan. You know, you guys gotta come together. Common sense approach to this issue. Water, the road, and who's gonna live in these homes? What are they giving back to our - what kinda - what they giving back to the community that we gonna benefit from? There's a State park that need money. Hey, maybe they can work something out with the State. But also when they come out here with a LLC, I like to know who's the players in this game. Is there other people who's playing with this that has land around the area that maybe this is a stepping stone to get a rezoning, and then from there go bang, bang, bang down the real fact that, hey, we rezone that area, so why not I cannot get mine? See that's what worries me. And when you guys go down there and take a drive, in the middle of the day, you see sprinklers running 24/7, water running down the road, and yet you turn the paper in the *Maui News*, hey, we gotta go water restrictions.

Mr. Starr: I need to ask you to wrap up.

Mr. Borge: Thank you very much. I mean, I just-

Mr. Starr: Yeah, don't go anywhere. We got some questions for you. Commissioner U`u?

Mr. U`u: Howzit, Mr. Borge. You talked about the five-lot subdivision that we approved.

Mr. Borge: That's the one by Black Sand Beach, yeah? You know where as you coming around the corner? You guys went approve two that really bothers me. One at 7155 because of the runoff there, and I see that sprinklers running 24/7. And that one right by Black Sand Beach, the one that cleaned out the wetland supposedly for the people of Maui. You know, that kinda thing I'm talking about is that here, we, as the community, gave them permission to clean up this wetland for the people, but yet they put the fence. They look like it's their little lake that they have there. They couldn't even fix the road to Black Sand Beach. I mean, if you gonna talk about giving back to the community and when you come in with this million-dollar home, that's what I like to see. I like to see that if you gonna give, give something. But that's- You look how much water. You guys should look at this. Go look at the water meters and see how much water these people are using. It's unbelievable. I mean, they're trying to create Hana in Makena. Makena is the driest area on the Island of Maui. Yes, we do get storms. But, hey, 50-year-storms. I've been there 30 years. Hey, sometimes we get rain in a matter of minutes-boom. I mean, it just starts coming down.

Mr. U`u: I agree, but just for your information, not every project- A lot of the projects in Makena if not deemed a development doesn't come before us-a lot of them. I'm thinking that quite possibly that five-lot subdivision, I don't know if it came before us. I know the subdivision before Big Beach never came before us.

Mr. Borge: That never did come. Okay.

Mr. U'u: And I agree with you on the water. I think the average use for that area is 2,500 gallons per day. The highest usage on Maui is in the Kihei to Makena area. I agree with you on that part.

Mr. Borge: Well, you figure that amount of water, what's his name—Spencer—cannot even get water for his affordable housing. I mean, that's— I mean, we're here. We're a community, and it's all about aloha and working together. And when you see some people cannot get that because, oh, we're only gonna cater to the rich, you form a conflict within the neighborhoods. It's like, hey, they get, and we no can. And that's how you get vibes on this island. I mean, I can see it every day. It's changing because we are not taking care the people of Maui. And you guys are the planners. And it's a tough decisions you guys gotta make, but like he said, you know, let the General Plan get into place. Sit down, talk story, and see what they going give to the community. But I also would like to know who's on the table, who's playing, who's involved in this development. Thank you very much.

Mr. Starr: I have a one question for you before you go. You know, I also go out there and snorkel once a week, twice a week, out on those waters. And over the past two years or so I've been noticing kind of like – I don't know if it's a seaweed or an algae, but green – kind a of green mass, kind of a soft green mass that's floating around on the bottom, and that's new. You're kinda seeing them from all the way from Five Graves up to Waihihi. And now, I've seen something new just this year which is like a brownish kind of stuff, you know, that floats just below the surface. And some – about a month ago, it liked bloomed. It was really thick so much so I went down by the Prince. Tourists were telling me not to go in the water there because they thought it was coming from the cruise boat, but I know it's really something that's growing there. I know a lot of these projects have septic systems. And I'm wondering if you with the committee had done any work in what's going on.

Mr. Borge: Well, see, the last time when the Dowling – we had a community meeting in Makena, and you know, Dowling is thinking about really developing the area, and runoff came up, and according to Roy Figueroa, when they started to build the Maui Prince, I remember going to some of the public hearings that they were suppose to do a study. And this was back in the '80s that they did a study. And they said it was no impact at Ahihi-Kinau. But what I was asking them, hey, let's do a study now. Let the State go in there, do a study, compare your study, and see if there's any difference before we move ahead, but that was left at the table. I don't think any – they said they did a study, but for me, I would like them to do another study to compare the study with what they did. That's why DLNR, I don't understand DLNR. They should be right up in here saying, hey, let's do a study. Let's see if there's any runoff that's being created from this other areas also before we make a decision on this. And like you said, you know, it's our natural resource. We depend on tourists, too. Now, if we destroy our resources, you know, you gotta weigh both sides because then, why they going come? You know, just like you, if the reef die, you not going go snorkel out there, you know? To me, it's just a common sense approach. I mean, you just gotta look at both sides. Everybody gotta get down, sit on the table, and let's do it right for the Island of Maui. Okay, thank you.

Mr. Starr: Thank you very much for coming before us. Clarence Tavares is next.

Mr. Clarence Tavares: My name is Clarence Tavares.

Mr. Starr: Pull the mike down, Clarence.

Mr. Tavares: And I live in Makena. I think Pat has covered all what I was going to say that my opinion is about, you know, I used to raise a few head of cattle before down there. And was all so agriculture. And I came to the County to see if I could change the zoning to get a better rating on the taxes which I was raising cattle on residential. And I got a hold of somebody. We sat and we talked. And I told them that how come the zoning has never been – used to be residential before. No, Sonny. No, no. It was always, always, always agriculture. I told him, please, don't tell me that. You might think I don't anything about it, but I used to raise a few head of cattle. I had land from Ulupalakua Ranch, and Ernest Morton, and the State, and also the Makaiwa Estate. And I was paying taxes for all that land. And he told me, no. Well, I tell you, Sonny. I bring the book, and I show you. I tell him, good idea. He tell me, okay. Bring the book down. I'm gonna show you. I'm gonna show you. I told him, well, I tell you right now, I put a thousand dollars down, you put one dollar right now. And I told him this, now you open the book. And he went. He said, see, see, see, see, look. It's all agriculture. I said, no, don't stop the pages. Keep turning. Keep turning. And I finally watched the pages. Getting close. And I said, well, slow down now. Slow down now. And sure enough, when came down, I told him, what was that? What was that? Why you folks have to fool the people?, I told him. Oh, well, you know, Sonny. I told him, well, was it – am I right? Yeah, but you know, we have to get a little bit control of the land. I told him, that's you guys just fooling us. And now, this came up again about changing the zoning again. I said, oh, man, you know problem nowadays getting change – they change anything for what they want. Well, the idea is, I know once you start, they give you no end. It's gonna follow up all the way with the next person. And whoever wants to subdivide and change zonings, it's gonna follow up. I told a couple of people that I didn't wanna come out and do all that stuff, but I think people don't know much about the mountain runoffs. Somebody asked me, call me up, if I ever seen the olden days. I told them, well, I seen my own self. And 'til today, I worry about the runoffs coming in the back of my house when we do have heavy rains up mauka because nobody's looking at it. Nobody's taking care of that. When it happens, it's too late. So anyway, I say that I'm against what you guys planned for. But my feeling is, after you give one, and that's the rest gonna start afterwards. You can give one, you can give all. Thank you.

Mr. Starr: Okay, thank you for coming. Any questions, Members? Thank you. I don't have anyone else signed up, but is there anyone else? Please come forward, introduce yourself, and thank you for joining us.

Ms. Jocelyn Costa: Good morning. My name is Jocelyn Costa. I come on behalf of the – my ohana. I've become familiar with the Makena area, and the type of archaeological remains that are there. And I've come to different meetings and I've heard experts come before you, come before the County Council, come before other commissions and councils to let them know that there's nothing there. It is nice to hear a owner say that, you know, she's willing to respect what is there. She's been there for four years. These artifacts that are laying there with probably bones, more than likely bones, been there for hundreds of years, and . . .

. . . taking our time because the General Plan is coming up. I have questions about that General Plan because there are good people who are working on that General Plan, but when I see the end result that is crafted by the Planning Department, it worries me. It looks as if they went through years of hard work for it to look like what they started out with. And I'm hoping that there's strong

enough people in that Commission that will stand up and say that is not what we said for this plan.

I watched a show the other night and there was this gentleman that went around the world to find out what the meaning of life was. And he came across this one – I think he's a Buddhist, highly respected like the Dalai Lama. And he gave these nobodies 20 minutes of his time out of all the important people there. And when they asked him what the meaning of life was, he gave them a story, and I'm gonna give you the same story. He said there was a man on a horse in a tremendous hurry trotting off. And this other gentleman came up to him and kinda of stopped him and said, "Where are you going in such a hurry?" And the man on the horse said, "I don't know. You gotta ask the horse." And so what I'm asking you is, this economical horse that you ride that is guiding you, could you please get off that horse and do your job? Thank you.

Mr. Starr: Members, questions? Okay, thank you very much for sharing.

This concludes the testimony received at the beginning of the meeting.

Mr. Starr: If anyone who has not testified, wishes to testify, please make yourself known. You've testified before. Okay, it's not really open for questions from the public. Mr. Kanahale, you have testified. If you have something really brief that's based on new knowledge, I'll allow it, but I ask you to really keep it brief and pertaining to new information that you've received on the process.

Mr. Kanahale: Okay, I just wanted to clarify something. My earlier testimony was on B-1. Then I wanted to add testimony for B-2. Is that – can I proceed?

Mr. Starr: Yeah, I'll allow it at this time, but I ask you to please keep it brief for us.

Mr. Kanahale: Thank you very much, Chair. One of my concerns I have with the proposed amendment is the potential increase of density right across of me potential for building more homes right across from Oneloa Big Beach. And recently there's been a lot of effort to restore the wetlands in that area by removing invasive species and trash, cars, and so on and so forth. So pertaining to Lot 117, I believe there is a wetland area adjacent to 117 on the makai side. And I'm concerned about the potential impacts of development on the wetland areas. We talk about wetlands in General Pac – GPAC meetings and the need to protect those vital environments. So that's something I would like the Commission to consider as you decide whether or not to recommend this proposal for amendment.

And the other thing I wanted to bring to your attention was many people have talked about the endangered Hawaiian Hawksbill Turtle. I wonder if anyone– This is a rhetorical question. I wonder if anyone here has had a chance to do any turtle watching at Oneloa Beach. I have. And in – being on the beach at night with Hannah Bernard, I learned–Hannah Bernard is a marine biologist–I learned that the Hawksbill Turtle is very, very sensitive to light. Any kind of light will cause the turtle not to come ashore to lay its eggs. Now, maybe you've been on Big Beach late at night. I know you're not allowed to camp there anymore, but in the past, you could. You know how dark it is. It is almost pitch black. And the sky is just incredible at night. I mean, you can see all the stars. It's so beautiful. The only light distraction is on the south side of the beach, the far end of the beach. There's a flood light on a piece of property south of Oneloa Beach, but other than that, it's totally dark. So this is a perfect environment for female Hawksbill Turtles to come up on the beach and

to lay eggs. If there's any kind of light pollution, the lights will scare them away. So one of the concerns I have with any increase in density especially across from Oneloa Beach and the proposed amendments are for parcels directly across from Oneloa Beach, I'm concerned about the impact of any kind of light that will have on the Hawksbill Turtles being able to come up on the beach. And it's an endangered Hawaiian species so it's something that I would also ask that the Commissioners take into consideration. So thank you for the time to testify on these two items.

Mr. Starr: Okay, thank you. Hold on. Members, any--? Yeah, Commissioner Mardfin?

Mr. Mardfin: I have one brief question. I guess I'm getting confused here. You said there are wetlands there, and yet I heard that this was bone dry. Can you tell -- describe the wetlands more and what happens here?

Mr. Kanahale: Well, they are dry right now. I mean, it has been traditionally a wetland area. There's been a wetland area in Oneloa Beach. And it has been a habitat for seabirds. And there have been ongoing efforts to restore the wetlands. So that habitat can be used by indigenous or native birds or animals again so--

Mr. Mardfin: Thank you.

Mr. Kanahale: You're welcome. Any other questions?

Mr. Starr: Members? Okay, seeing none, thank you very much for coming back. Yeah. Angie, really brief, please, and identify yourself, first, but keep it real short.

Ms. Angie Hoffman: Yeah, the area's -- the Makena area's very dry. The wetlands are dry right now. And the reason--

Mr. Starr: Angie, identify yourself.

Ms. Hoffman: Sorry. Angie Hoffman.

Mr. Starr: Okay, we need that for the record.

Ms. Hoffman: Talk about the wetland. Two things that affect the wetlands: the fact that kiawe is all in the area, very invasive, non-native species sucking up the water table. And then, you know, the water table is affected by, you know, wells in the area. So that is, you know, two reasons why it's dry. So there's a little confusion about Makena being the driest place but, you know, the fact that the wetlands are dry right now and they're not supposed to be. It's a fluctuation so--

Mr. Starr: Okay. Thank you. Members? Okay, any other member? Please. You've given testimony already so--

Ms. Costa: I'd like clarification due to the Sunshine Law that when I first came up-- My name is Jocelyn Costa. That when I first came up, I was under--

Mr. Starr: Yeah, Jocelyn, you're out of order, please. Are you asking to give testimony?

Ms. Costa: Yes, and also clarification.

Mr. Starr: Did you give testimony on this item or the other item before?

Mr. Costa: B-1.

Mr. Starr: You gave on B-1 and this is B-2?

Ms. Costa: Correct.

Mr. Starr: And you have some other stuff that's different from B-1?

Ms. Costa: Correct.

Mr. Starr: Okay, I ask you to be brief, please. Go ahead and identify yourself. Give us your name.

Ms. Costa: Okay. My name is Jocelyn Costa and I wanted clarification because with the Sunshine Law I know that you closed testimony for B-1, and then you opened testimony for B-2. Is that not correct? I just need to understand.

Mr. Starr: No, no. We closed – we had testimony for any agenda item at the beginning of the meeting, which is what we always do. And then we are opening – we opened testimony for each individual item before we do any decision-making or as part of the public hearing which is what we're doing now. So right now, this – we're hearing specific testimony to B-2 which is separate the ability– You see, people sometimes can come in the morning and then they have to leave before the item. So people can testify either before they're leaving, you know, at the beginning, or before any individual item.

Ms. Costa: I see. So, okay, so this in regards to B-2. And as far as notification, I was wondering if any of the heirs of the royal patented lands there, land commission awards, as well as the royal patents have been notified as well, if that is on your record that like a family member name Kenui? If the owner of the ahupuaa, one of our Konahikis or the Aliis there that also have interest there were notified or their heirs and assigns as well? And I have also a question: what was presented a little while ago that they're wanting to try to do the pono thing and putting in their own restrictions, that led me to think about what the intent is. When they first purchased this property, they had the understanding that it was agriculture. How much agriculture have they attempted to do to show the intent of the actual purchase? Or was it intended just for this subdivision? So but again I'd like to clarify – I'd like to some kind of understanding as far as for the royal patent lands, land commission award titles, if any of those heirs and assigns have been notified as well, and if there has been some due diligence within the public notification so that the heirs know if they need – maybe that's why you never had anyone come forward from the beginning. Thank you.

Mr. Starr: Okay, thank you. And your concerns have been noted by the Planner who will discuss that with us. Commissioner U`u, do you have your hand up?

Mr. U`u: Yeah, a question probably for Corp. Counsel—I know it states here that it is part of the royal patent grant 1478 made to Kehui. According to the County tax map key, there are three other

properties included with this land grant. I'm not familiar with the royal patent, sadly, but can you give me some information because that's what's stated in here, in the application.

Mr. Giroux: I haven't reviewed the royal patent, but I can give you some general information as far as the— The royal patent would be the original—

Mr. Starr: Could I ask you to hold that 'til we're finished with testimony, but note it down and we will get to that, but I want to continue through testimony, and then we wanna keep it in order. I have signed up Mimi Hoffman. I'd like to call Mimi. Please come identify yourself, and welcome, and we're here for testimony on Item B-2. And try to keep it brief, three minutes, if you can.

Ms. Mimi Hoffman: Are we still speaking about the wetland?

Mr. Starr: If it relates to Item B-1 certainly. And move the mike up so we can hear you better, and give us your name first.

Ms. Hoffman: My name is Mimi Hoffman. And I've lived in Kihei, North Kihei, for over 20 years. We went to — what you call it? Turtle watch. That's my second time. And I've noticed that in the wetland and the dry land, the — I do not understand very much, but I think it's wet when the turtles they come out, right? And they go back and they are so delicate. They are so small. And the survival rate is — I mean, it's hard for me to tell because I'm not an expert but— The wet, what came up to my mind was like when it rains, yeah? It'll be wet. And when it dries up, the kiawe, for example, the roots are very deep, and it'll suck up the — get the water from there. So wet or dry, it's up to the season and, you know, how you define it, I guess. So that's what I would like to say. And I was out last night during the turtle watch and I'm not too—

Anyway, to go back to the turtles, they are very little turtles that are hatching, from what I see. So they are very certainly very endangered, you know, from my experience. And I'm not an expert but, yeah— I'm sorry. I'm just fading out. If you have any questions?

Mr. Starr: Are the turtles hatching right now?

Ms. Hoffman: Yes. And it's very exciting for me to have that experience. It was my privilege to be part of it. And, you know, the turtles are so, so delicate. And one of them was like — you know, I saw one just one for my own experience, it got caught in the thing, and it was trying very hard to climb up this little hole this turtle was in. So we tried to very gently clear the place up for them to reach the ocean water. And it's an experience that — it's holy for the turtle, for me. And it's an experience I'll never forget.

Mr. Starr: Are these really rare leatherback or are they green sea turtles?

Ms. Hoffman: Sorry?

Mr. Starr: Do you know if they're the leatherback, the really rare ones, or are these the green sea turtles?

Ms. Hoffman: Hawksbills, yes.

Mr. Starr: These are Hawksbills. Okay. Thank you. Members? Okay, thank you very much for sharing that. That's very interesting. Members? Okay, other members of the public wishing to give testimony that we have not received before? Not seeing any, we'll close testimony on B-2. And thank you everyone for sharing. Mr. Fasi, you had something before. Why don't you—?

Mr. Fasi: I did. I no longer.

Mr. Starr: Okay. I just – just to go back to one thing, I want to clarify that the applicant, if it remained in ag would be able to have a house, a farm dwelling there, is that correct?

Mr. Fasi: That would be correct. That would be one farm dwelling, no other development.

Mr. Starr: Thank you. Okay, Members, if it's all right, I think we should move to discussing the petition to intervene, which I – which we will do as soon as we have a short break. And we will back here at ten minutes after 10.

(A recess was taken at 9:58 a.m., and the meeting reconvened at 10:10 a.m.)

Mr. Starr: . . . the Planning Commission meeting of October 14th. We're back in session. And we're about to take about a petition to intervene on Item B-2 that's been filed by Mr. Lance Collins. And this petition to intervene, we will be staging our hearing and deliberation on it in two stages.

C. COMMUNICATIONS

2. **LANCE COLLINS, attorney for LINDA MCDONALD submitting a Petition to Intervene dated September 30, 2008 on the request by PINE STATE LIMITED for a State Land Use District Boundary Amendment from Agricultural to Urban for Ke Kani Kai, a proposed 2-lot subdivision and associated infrastructure improvements at Lot 3 Makena, Keoneoio Road, TMK: 2-1-005: 117, Makena, Island of Maui. (DBA 2007/0008) (P. Fasi)**

Mr. Starr: In the first stage as is our process will be determine whether the filing was proper and timely. And as such, whether we will hear the petition to intervene and if we find that the filing itself was done according to rules, then we will get onto the merits of the petition itself, not the merits of the application, but the merits of the petition. But right now, we're not even talking about the merits of the petition, but only as far as the filing and the timeliness, or whether there was good cause for our rules which we recently had before us, but we could have explained again, if necessary. To begin the process, we're going to hear first from the petitioner, who in this case is Mr. Lance Collins. And once again, Mr. Collins, I'll ask you to keep the discussion germane to the first stage, which is the timeliness and the details of the filing so that we can decide whether we will hear the petition itself. Before we do that, Corp. Counsel is asking me to ask you whether you have received a – something dated October 14th, and this is from Quick Time, or is it from you, James? This is, I believe, from, yeah, Greg Kaufman. The copy I have is unsigned, and it's a request for denial of petition to intervene. Just answer if you received that.

Mr. Lance Collins: No, no I haven't.

Mr. Starr: Thank you. Okay, proceed.

Mr. Collins: Just of course as a preliminary matter—

Mr. Starr: Okay, I think we better make sure you have a copy of it. Paul?

Mr. Collins: Well—

Mr. Starr: I'd like you to have a copy of it though I know you don't have time to read it or to—

Mr. Collins: Sure. Just in the record, we'd like to say that we haven't had the opportunity to read it, and we would object because the Commission rules require under 12-201-44 that opposition to intervention has to be filed within five days after being served, and that's — it's well after that so—

Mr. Starr: We haven't read it either, but let's talk about this initial filings.

Mr. Collins: Sure. Just as a preliminary matter in this first phase, it should be noted that Ms. McDonald is stating that the application is incomplete because not all property owners were notified or compiled in the list as required by the ordinance. And at least in my mind that's something that should be resolved before even a petition to intervene is considered although as long as it's not considered waived, I don't think we have any objection to dealing with it after the petition to intervene is discussed because obviously, we would intervene anyways, but I don't know if that's something the Commission wants to deal with before we get to the first stage with this.

Mr. Starr: I was not clear if that question was regarding the petition or whether that question was regarding the application itself.

Mr. Collins: Well, yeah, from our position—

Mr. Starr: I think it was related to B-1. It was not related to the petition itself.

Mr. Collins: Wait, I'm sorry, what?

Mr. Starr: I believe that that question was related to the Item B-1, and not to the filing to the petition.

Mr. Collins: Oh, no, the question I'm presenting is actually for this one, B-2. They're for both.

Mr. Starr: Yeah, I'm sorry. It was about for B-2, but not C-2, which is a petition.

Mr. Collins: Oh, right. What I'm saying procedurally, though is, I'm not sure if it's — I'm not sure if the Commission should entertain the petition to intervene while there's a question about whether the application was complete because not all property owners were notified and is required by the ordinance. So, I mean, I don't care if you — I don't think there's a problem on our part just as long as it's clear that we're not waiving that issue because . . . notice all property owners in the area I think is a serious defect . . . (inaudible) . . .

Mr. Starr: Yeah, the — yeah, your objection is so noted, and staff has taken note of it, and we'll clarify it when discussion reaches that point.

Mr. Collins: Okay. Pursuant to 12-201-41, Ms. Linda McDonald filed a petition to intervene in the matter of Pine State Limited requesting a State Land Use District Boundary Amendment/Reclassification consisting of approximately 1.385 acres from agricultural to urban at tax map key 2-2-1-05-0117, Makena, Island of Maui. The petition – Ms. McDonald did file it with – on September 30th which under the very strict computation of time, rules – in the rules of the Planning Commission was within ten days, excluding weekends and holidays. And it comports, without getting into the substance of this phase, it comports with all of the filing requirements for our petition for intervention. Thank you.

Mr. Starr: Okay, thank you. Mr. Kaufman, you have the floor.

Mr. Greg Kaufman: Yes, thank you. We believe that the – there is no right to intervene here. That under Maui Planning Commission Rule 12-201-39 allows for intervention of proceedings with the Commission action 1) results in final decision, and 2) which is appealable under HRS Chapter 91. Commission action today will–

Mr. Starr: Mr. Kaufman, I'm gonna ask you to keep your arguments germane to the filing and, you know, not to the merits of the petition itself. And with that said, I'll ask you to continue.

Mr. Kaufman: I believe what I am saying is germane. Is that–? Are you overruling me?

Mr. Starr: No, I'm not overruling you. I just want – I'm just making a reminder that we're not deciding on the petition. We're deciding whether we will hear it.

Mr. Kaufman: Yes. The Commission action today as detailed by Mr. Fasi will not result in any final decision-making for a district boundary amendment; therefore, there is no right to intervene. The intervenor did not timely file this petition with the Commission. Rule 12-201-40a requires the intervenor to file a petition with the Commission and serve the petition on the applicant at least ten days before the hearing, Saturdays and Sundays and State holidays are not counted if the period is ten days or less, 12-21-18. Saturdays and Sundays are not counted. The petition was filed on – would've had to be filed on September 29th. The petition was filed on September 30 which is untimely and no good cause in delay of filing was stated. In addition, the applicant has never been served this petition to intervene. We've never received it. Rule 12-201-40a requires the intervenor to serve the petition on the applicant at least ten days before the hearing. Sunday, Saturdays and State holidays are not counted. 12-21 – 12-201-21d says "Service must be made by first-class certified mail return receipt requested or other means authorized by law." No service of petition to intervene was attempted by September 29th or thereafter. No service of process was attempted by first-class certified mail return receipt requested. I will state that we did receive a letter from Mr. Collins indicating on October 7th through a facsimile, to date– excuse me, "My client is intervening in the above referenced boundary amendment." To date, however, we have not received a service of petition to intervene. Even if one could construe the simple statement as properly serving notice, service by a facsimile is not allowed. No State statute allows for service of petitions by facsimile. Court rules allows service of facsimile by – on an attorney and not on a party, Hawai'i Civic Rules – Hawai'i Rules Civic Procedure 5b. The untimely petitions to intervene are not permitted and the intervenor has not shown good cause for not serving notice and not filing timely. Thank you.

Mr. Starr: Okay, thank you, Mr. Kaufman. Mr. Collins?

Mr. Collins: Thank you again. The petitioner objects to this opposition. It was not filed within five days. The first issue of timely filing of the petition ten days of this hearing was September 30th. It's not supposed to be – the rule does not require that the filing be done before – it's not before ten days before a hearing. It's ten days before a hearing. So the argument that the applicant is making would essentially make it 11 days versus ten. Secondly, the circuit courts here on Maui have overturned the Planning Commission previously on this issue of computation of time that intervention is supposed to be freely granted and that this computation of time should not be used as a technical means to bar people that would otherwise have a right to intervene to intervene. And so, first of all, this computation of time, September 30th is ten days beforehand, but even if there were some kind of technical thing where the – that where it would be the 29th, the idea that that would prohibit somebody that would otherwise have a right to intervene from not being allowed to intervene is clearly inappropriate. Rule 12-201-21d says that "Service is made by first-class certified mail return receipt or other means authorized by law." As was stated in the petition to intervene, in the certificate of service, the petition was deposited in the mail, U.S. first-class mail prepaid. That is authorized by law under the rules of Civil Procedure, Rule 5. Subsection E says when service completes, "Service by mail shall be regarded as complete when deposited in the U.S. mail properly addressed and stamped." I think the issue with this particular petition is that the address is in Hong Kong. The address for Pine State Limited was in Hong Kong and there was no address in the application that referred to anywhere else. And so, following the rules, the petitioner deposited in the mail. However, I'm not entirely clear of what the issue of actual notice is because Mr. Kaufman faxed me on September 29th or September 30th and to put in the mail, and I got it in the letter, faxed it to me, and then I got the actual letter on October 1st, and he was clearly aware of this petition, and we had a number of correspondence over it. So I'm not entirely sure what this whole technical argument about service is, but the rules have been complied with. There's no challenge in certificate of service. The applicant is not challenging that my certificate of service is false. He's not claiming that I didn't put it in the mail with postage. That hasn't been received. Well, I don't know how long it takes for first-class mail to get to Hong Kong, but if he wanted it quicker, he should've put an address closer. And let's see, what was his other point? I think at this time, those – that covers all of the main points of this issue. If you have any questions–

Mr. Starr: I'll give– Hold on. I wanna give Mr. Kaufman one more opportunity, then we'll have questions, but I want to have Corp. Counsel. Mr. Collins, hold on one second.

Mr. Giroux: Can you address Mr. Kaufman's first point regarding Rule 12-201-39?

Mr. Collins: Which one?

Mr. Giroux: Regarding Rule 12-201-39?

Mr. Collins: Oh, yeah, there is a final – the Commission will be taking a final determination of legal rights, duties, and privileges with a specific party. This issue will not go forward to the County Council unless the Planning Commission takes some final determination. I think the rules are clear that uses the word "determination" because there are times like in this where the Planning Commission has a legal obligation to make recommendations to the Maui County Council. And so they used the word "final determination" as opposed to "final action" or some other thing to incorporate all of the different matters that come before the Planning Commission that at the Planning Commission stage is final. And this is an issue that would allow – the district boundary

amendment is something that if this petition were denied, Ms. McDonald would have immediate – would have the right to an immediate appeal of that denial of intervention. And so for purposes of Chapter 19-14, it is final action within that statute. It should be noted that this is sort of a special process from the general State district boundary amendment process which is done by the Land Use Commission whereas this bifurcated. And there is no right to intervene at the County Council level. It's delegated to the Planning Commission to deal with that and to make those factual determinations, and have a record to make recommendations. So this clearly is within the means for the petition to intervene. And that's one of the reasons why all landowners within 500 feet of the property are supposed to be notified by mail even though in this case they weren't. And so that – you know, otherwise, there would no purpose for any of that, and there would never be a right for anybody to intervene in this, and that was not the intent of the district boundary statute was to somehow exempt small parcels from the full review. So I don't know if that answers the question but–

Mr. Starr: Okay. Mr. Kaufman, and then I'll open it to Members for questions.

Mr. Kaufman: Thank you. I think Mr. Collins is mixing land use code rules with Maui Planning Commission rules. This is a recommendation. It is not final decision-making that's happening here today. You can recommend no or you can recommend yes, but the County Council is gonna have the final say on this matter. I, today, am challenging the certificate of service. We have never, Pine State Limited, has never received a copy of this petition to intervene. I was handed a copy of it today by Mr. Fasi at about 8:15 this morning. The first awareness I ever had was in correspondence of October 7th. All correspondence, and Mr. Collins can look at it, and I can show you, was with regard to this noticing issue not on the petition to intervene. Second of all, yesterday was a Federal holiday. Mail was not delivered yesterday. You cannot receive notice. So Mr. Collins is wrong in his math. By not noticing us, he has denied our applicant's right to oppose. We could not come before you with a formal opposition because we were never noticed. By failing to serve petition on the applicant, the applicant has been denied their right to oppose the petition. Such opposition must be filed within five days of being served. And contrary to his simple reading of the rule, service is by certified return receipt mail, exactly how we had to notice all the landowners, by certified return receipt mail. He cannot have it both ways. He cannot argue that I did not notice his client yet stand before here and tell you he simply put something in the mail. He has no proof. I've never received a copy. So we ask you based on the merits of failure to service, failure for untimely filing, failure to have the right to intervene that this petition to intervene be denied. Thank you.

Mr. Starr: Okay. Members, questions for either of the two parties or for Corp. Counsel? Commissioner Mardfin? Just make it clear who you're asking a question for. Lance, why don't you come forward?

Mr. Mardfin: I think I'm asking Mr. Kaufman. The certificate of service by Lance Collins has an address of Greg Kaufman, Pine State Limited, Room 1307-1308, Dominion Center, 4359 Queens Road East, Wan Chai, Hong Kong. Is that a proper address?

Mr. Kaufman: Yes, it is. It has not been received in Hong Kong.

Mr. Mardfin: But– Okay.

Mr. Kaufman: As of this morning, walking in here, it has not been received in Hong Kong after Mr. Fasi gave me this.

Mr. Mardfin: Now I have a question for Mr. Collins.

Mr. Collins: Can I just state for the record that it's not a Federal holiday in Hong Kong yesterday. Hong Kong does not celebrate Columbus Day.

Mr. Mardfin: It's also on the other side of the date line.

Mr. Collins: That's right, or two days ago. I'm sorry.

Mr. Mardfin: You posted this in the mail as it says. I'm counting days. And help me understand the days. I kinda made a little, mini calendar for myself.

Mr. Collins: Sure.

Mr. Mardfin: Thirty days has September. You mailed this on the 30th Hawai'i time – this side of the date line, Hawai'i's side of the date line.

Mr. Collins: Yes.

Mr. Mardfin: So the 30th is one day. That's a Tuesday. Then the first, second, third; fourth and fifth are Saturday, Sunday; sixth, seventh, eight, nine, ten; 11 and 12 are Saturday, Sunday; 13; and today is the 14th.

Mr. Collins: That's right.

Mr. Mardfin: So that's ten. And the rule as I'm reading it says "Filed with the Commission served upon the applicant no less than ten days before." So ten is – not less ten.

Mr. Collins: That's right.

Mr. Mardfin: Thank you.

Mr. Collins: The rules says, "Service by mail shall be regarded as complete when deposited in U.S. mail properly addressed and stamped." So it's not – it doesn't matter when it gets to Hong Kong.

Mr. Mardfin: Whether they received it or not.

Mr. Collins: That's right, yeah. That's not an issue.

Mr. Starr: Commissioner Guard.

Mr. Guard: This may be just a comment, but this is actually one of the first times that I've the petition to intervene in our packet that we had it that far in advance that they were able to put it in the packet and mail it to us. Normally, we get to the meeting and it's sitting on our desk as a last

minute item. So I never really even questioned the issue of it being untimely that it was able to make it to the packet. It went to the mail to get to my house as well.

Mr. Starr: Mr. Collins, did you get a receipt from the post office when you posted it or—?

Mr. Collins: Did I get a receipt?

Mr. Starr: Yeah.

Mr. Collins: No, they don't usually give receipts for first-class mail.

Mr. Starr: Oh, okay. Members?

Mr. Collins: Also, the other thing, too, is that unlike the ordinance for district boundary amendments that require that all property owners be notified by certified return receipt, the Commission rules for intervention say "or other means authorized by law," which according to Rules of Civil Procedure include just U.S. first-class mail postage prepaid." And so it's not that there's one standard that my client's trying to say there's one standard for Pine State Limited and there is one standard for her petition. I think the issue that there are different standards because the district boundary amendment requires something in the ordinance whereas petitions to intervene are subject to a completely different set of rules.

Mr. Starr: Okay. Yeah, Commissioner Hedani?

Mr. Hedani: It's a question for Mr. Collins. Your client's property is adjacent to the subject parcel?

Mr. Collins: Yes, right next door.

Mr. Hedani: Could you describe the tax map key number for that parcel?

Mr. Collins: Yes. It is 2-2-1-005-116. And she's been the sole owner by quitclaim deed of December 2005.

Mr. Hedani: Thank you.

Mr. Starr: Thank you. Commissioner Mardfin?

Mr. Mardfin: Mr. Collins, I have another question for you. Tell me again how you mailed this? You put it in the mail with kind of – did you send it first-class, certified mail?

Mr. Collins: No.

Mr. Mardfin: Oh. Return receipt requested?

Mr. Collins: No. It's not required to by law.

Mr. Mardfin: Our methods of service, 12-201-21d says, "Service of paper shall be made by first-

class, certified mail, return receipt requested, or other means authorized by law.”

Mr. Collins: Right, other means authorized by law is first-class mail, postage prepaid.

Mr. Mardfin: And what item of law says – defines that?

Mr. Collins: Rule 5 of the Hawai`i Rules of Civil Procedure.

Mr. Mardfin: Okay. Thank you.

Mr. Starr: Okay. I’m gonna let Mr. Kaufman – I see he has his hand up, and then it’ll go to Commissioner Hedani. Mr. Kaufman, do you have something you want to – wish to add? I’ll allow that now.

Mr. Kaufman: Yes, thank you. I would like to reiterate that MPC Rule 12-21 – 12-201-21d does specifically state that it must be made by first-class, certified mail, return receipt requested, or by other means. It would seem like that that certified, return receipt mail, because it’s specifically calling that out trumps any notion that generally mailing of it – of a notice is appropriate otherwise, the code would’ve not specifically detailed that this was required for noticing.

Mr. Mardfin: I think we need to have our Corp. Counsel determine what civil procedure law said.

Mr. Starr: Yeah, Corp. Counsel is getting the ordinance from upstairs. Commissioner Hedani?

Mr. Hedani: A question for Mr. Collins. Lance, do we just take your word for it that you mailed it on time, or do you have any evidence that you mailed it on time?

Mr. Collins: Well, according to law, certificate of service is essentially, presumptive proof.

Mr. Hedani: So we take your word for it that you mailed it?

Mr. Collins: Yeah, I mean, if you want, I could maybe call up my paralegal and have her come down if you wanna administer an oath to her. I’m sure she’d be more than happy to testify that it was dropped in the mail. But I think the issue is that there’s no competent evidence that Mr. Kaufman can present at this moment that says that it wasn’t. So I think there’s an issue of proof. Because he didn’t receive it, it doesn’t it wasn’t deposited it wasn’t in the mail. I think that’s why the rules like they are in every proceeding throughout the State say that service is complete upon mailing, not when it’s received so–

Mr. Hedani: So you didn’t request a return receipt requested and none was provided?

Mr. Collins: No.

Mr. Starr: Okay, Members, any other questions at this time? Okay, we’re– Commissioner Guard?

Mr. Guard: This might be for Corp. Counsel then, ‘cause the last intervention came after we had already seen a presentation of a project. So I didn’t really think we’d be even arguing timeliness.

And if the petitioner's saying they didn't get their notice by certified mail, that brings up another can of worms for us as Commissioners, does it not? Okay, I guess we can start with the issue of receiving notice from the landowner. In other cases, if that was the case, it just gets tabled, and says there was a lack of sufficient notice.

Mr. Giroux: I think we're mixing apples and oranges here. The process of notice should be taken up by staff. We're going to – because that's a factual issue. We got to look at what was done to the extent that it was. If we see that that's satisfactory, then we would move forward. If staff were to bring to light that actually, you know, there was a deficiency there, then we would in the matter of not wasting everybody's time, we would bring it to light, and say, hey, we found a problem. We think you're gonna have to re-notice, and then we would just stop it right there. If the deficiency is not caught and we go through this whole process, and at the end there's a lawsuit and that's brought up, and yeah, it's brought to light that there wasn't notice, then the court would basically, enjoin us from – the decision you made would basically – we would have to come back and reprocess.

The issue we're dealing with now is intervention—whether or not the parties were probably served and given notice. And that, you gotta use a fairness analysis of is everybody being treated fairly, are they following our rules, is that in accord? But then you also have to look at the merits of the intervention itself. And there is an issue of whether or not right now this intervention is even a proper mechanism to come before this body. So I would like to focus on that because if we could dispose of that, that would take care of all of these side issues of notice, and timeliness, and yada, yada, yada, because those are all going to end up being very factual. And I would like to keep this on all the legal terms because we can look at this as a legal matter being that whether or not this body has even the venue to bring an intervention.

Mr. Starr: I'd like to ask you a question, Mr. Giroux. The certificate of service that has been filed by the law office of Lance Collins, you know, it states that that this was indeed served through the U.S. mail. I understand that normal practice is to accept this as the truth because if an attorney were to say fudge on something like that, then they would be a risk of having charges, being debarred, being sued, and all of that. Is this something that's usually questioned—the certificate of service? Is this something that we would normally accept as factual evidence that what it states has been done?

Mr. Giroux: Well, yeah, that's the whole purpose of a certificate of service. Challenging a certificate of service is very difficult. I mean, you'd have actually prove that maybe the stamp on the letter wasn't stamped on that day. Those are things that can happen. But again, we're talking about a matter of a day or two. In this case, the other issue is that the person has an out-of-country mailbox. So to actually go through the factual investigation to find out if this was actually properly deposited in the post office is a very difficult matter to ascertain.

Mr. Starr: Okay, yeah, Mr. Fasi?

Mr. Fasi: Well, the Planning Department would like to remind this body that we are basically in unchartered waters here because historically, the Planning Commission, when discussing a district boundary amendment, has never accepted an intervention on a State legislative action which a district boundary amendment is. An intervention on a DBA is just not allowed. This is not an SMA.

Not a–

Mr. Starr: My understanding is we're not – does not – we're not at that point.

Mr. Fasi: Well, the point I would like to get to is that all of this discussion about timeliness and certificate of service is kinda moot because this is the wrong body to be serving an intervention to. Thank you.

Mr. Starr: I don't feel that that was germane. First, we're going to decide whether we're going to hear the matter based on the filing of the– Commissioner Hedani?

Mr. Hedani: I'd like to ask staff if he can give us an opinion as to what would be the proper venue for an intervention.

Mr. Starr: Yeah, go ahead, Paul.

Mr. Fasi: It isn't. This planner's understanding in talking with the other senior planners is that an intervention on a DBA is something that just is not allowed. You cannot intervene on a State legislative action.

Mr. Hedani: So it's not allowed, period?

Mr. Fasi: That is my understanding.

Mr. Starr: Mr. Yoshida, please comment.

Mr. Yoshida: I believe it wouldn't be allowed if it's the legislative body that takes the final action, which in this case is the Council versus if it were more than 15 acres, it's the State Land Use Commission that takes the final action.

Mr. Hedani: Clayton, so what you're telling me is that the intervention should be filed at the County Council level as opposed to the Planning Commission level?

Mr. Yoshida: I think Corp. Counsel would clarify if intervention can be made to the Council because they're a legislative body versus the Commission or an administrative body.

Mr. Giroux: Chair, if you want, we can go into executive session, I can lay this down to you, or if you want, I can lay this down for you in public, whichever the Chair pleases. But I think sooner or later, somebody's going to have to go from top to bottom and clear this issue up.

Mr. Starr: My preference to do it in regular session. I don't feel that it puts us in a bad position to do so. The only thing is I would prefer to stick to a process of whether – of us deciding whether we're going to look at these matters or not as a first step is what we did – what we've done in previous times, and to limit that to the filing of it. And if so, we should look if we're the proper venue and whether it has merit as a stage, as a second stage. Am I in line with what we've doing, James, with that?

Mr. Giroux: Well, I think we should bring up the issue of venue first. I mean, jurisdiction is the most crucial of decisions because without jurisdiction then all other decisions are moot.

Mr. Starr: Okay, so venue should be there along with the timing of the filing and whether filing was proper in our decision of whether we should hear it or not. Do we have a consensus on that? Okay. In that case, go ahead, Commissioner Mardfin.

Mr. Mardfin: My understanding is that with that discussion that we're going to deal with, the right to intervene here as this being the proper venue. And we've just heard from Planner Fasi that for this sort of event, it has not been the case that we've intervened. I do want to point out one thing, however. In the response from Mr. Kaufman, there's no right to intervene, he quotes, "Maui Rule 12-201-39 allows intervention proceedings where the Commission action results in a final decision," is what he writes. If you actually check with 12-201-39, it says, "All proceedings in which action by the Commission will result in a final determination of the legal rights, duties, or privileges of a specific party." And we need to check with Corp. Counsel. But it seems to me as a layman that as a decision and a determination are two different things. I think on a district boundary, we're making a determination to recommend to the Council. Even though we might not have the – even though the Council may have the final decision-making power, I think we're making a determination. And therefore, despite the fact that the wording got changed in Mr. Kaufman's paper, we need to go back to the original which says determination, and therefore, I would think as a layman that we do have the – this is the proper from which they can intervene.

Mr. Kaufman: Yeah, let's – I'd like to hear from Counsel and – he has the scripture now so – Please, Mr. Giroux.

Mr. Giroux: I'd just like to kinda – so you can follow along as far as from what – where you get jurisdiction and authority, you cannot go beyond the bounds of. So I'd like to start from the top and just reiterate that we are dealing with State district boundary amendment. Okay? The State legislature created 205. So we have to look at 205. And 205-31 is what establishes the procedure for looking at these types of permits. The State legislature broke it down into two subgroups. One group is those properties that are above 15 acres and one is below 15 acres. It says that – I'll just read it. HRS 205-3.1 states, "That the district boundary amendments involving land area of 15 acres or less shall be determined by the appropriate County land use decision-making authority," and I'll get back to that, "for the district and shall not require consideration by the Land Use Commission." The Land Use Commission is also established by the State legislature and they have their own rules. The Maui County Code, Chapter 19.68 established procedures in order to implement the procedures of Section 205.3.1. So you have to look at what the County's authority is into creating an ordinance. They created an ordinance in order to deal with the responsibilities given to it by 205. Okay? So within that responsibility of 19.68, we understand that that is created by a legislative act and it's an ordinance. So now we have to look within that ordinance to see what kind of duties and responsibilities we have. Maui County Code, Section 19.68.030 requires that the appropriate Planning Commission hold a public hearing and submit a report with findings and recommendations to the County Council. They've delegated certain responsibilities to this Board and held onto itself certain duties and responsibilities as a decision-maker. The duties that were given to us is to hold a public hearing, and to create a report and recommendation. No where in the ordinance does it state that we are to conduct interventions. It's silent, I guess, it's the – what my boss usually says. So you have to look at the ordinance on its face and see that it is silent on

interventions. However, within the ordinance, it also says that the Commission can create its own rules, procedures, and such to deal with it, if we look in our own rules. We have not specifically created rules to deal with interventions dealing with district boundary amendments. Now, we do have within our rules, how we deal with interventions. And so I'm gonna read that later, but I wanna tie this up. It says:

Maui County Code, 19.68.040, Requires the County Council to consider the application and may adopt the findings and recommendations in whole or in part or otherwise act upon the report and transcript or summary and in the Council's discretion hold further hearings and take further evidence and testimony in connection therewith before taking final action.

Maui County Code, Section 19.68.40 states, "That the final action approving an application shall be by the adoption of an ordinance." Now, we have to look at our rules now because again, the County code is silent, and they've divested certain duties and responsibilities to this body. And I wanna remind you that there – this body is familiar with certain processes that you are just the recommending and recording and fact-finding body that sends recommendations. Conditional permits are one such animal which is created by County code. And the County code says that it has to come to you for review and recommendation, and then it's sent back to Council, and it's adopted by ordinance. It's very similar. Zoning—zoning is a little bit of a different animal, but again, by Charter, it has to come to you. By Charter and by code, it comes to you for review, recommendations, findings and facts, and then sent to the Council for final determination, and acted on by Council by ordinance. So again, I want you to keep that in mind when you're thinking about what are you duties and responsibilities.

So let's dive into our rules, Maui Planning Commission Rules of Practice and Procedure 12-201-39. That's the one of issue right here and it states:

All proceedings in which action by the Commission will result in a final determination of the legal rights, duties, or privileges of a specific party or parties, and which is appealable pursuant to Section 91-14, HRS, as amended, is a contested case.

So for the first time we see in the rules the word "contested case," and that's very crucial. "Petitions to intervene in such proceedings may be filed in accordance with the provisions of this subchapter." So if we find that we are the final determinators—using George Bush's perfect English—and we again find that whatever we decide can be appealed to the circuit court, then we can safely say we're dealing with a contested case, and then, we can allow an intervention by our rules. So you have to look at the Maui Planning Commission review of the State Land Use District Boundary Amendment pursuant to Maui County Code 19.68 will not result in a final determination of the legal rights, duties, or privileges of a specific party, the Kaufmans, or anybody who wants to challenge that, but rather will result in a report and a recommendation to the County Council that has the final authority over that matter.

HRS 91-14 is very crucial because that's our contested case, Chapter 91. That's our contested case law again enacted by the State legislature. So they have authority over contested cases. We are then to work within the bounds of those – that authority. HRS, Section 91-14a states:

Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that the deferral of review pending entry of a subsequent final decision would deprive the appellant of adequate relief is entitled to judicial review therefore under this chapter.

So that's an instruction to the circuit court when they have to review this. Is this such a decision that if the circuit court wouldn't review it, would the appellant be so prejudiced that their rights would not be protected? The Planning Commission review of the State land use district boundary amendment pursuant to Maui County Code, Chapter 19.68 is not appealable to the circuit court pursuant to HRS 91-14 because the Planning Commission will not produce a final decision and order regarding this application and the deferral review pending entry of the subsequent final decision would not deprive the petitioner of the adequate relief. The reason of that analysis comes with the ability or inability for this body to influence the outcome of the final decision-maker. Courts do not like to review decisions of administrative agencies if there is another administrative agency that is going to actually do the final decision-making. HRS 91 defines contested case as "A proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing." There are only two requirements for a hearing to be regarded as a contested case hearing: that the hearing be required by law; and the hearing determine the rights, duties, or privileges of the specific party. Again, this hearing is required by law, but on the second arm of determining those rights, after looking at the law and the context of which those laws are written, and the legal theory behind those, we have to see that are we determining those rights, or are we influencing those rights such that the person's rights would be violated? The Planning Commission review of a State land use district boundary amendment pursuant to Maui County Code, Chapter 19.68 does not determine the rights, duties, or privileges of a specific party. It only transmits a recommendation to the County Council which is the final decision-maker. And we went over about everything that the County Council can do in its power and authority that overrides – it can override, change, augment, and such of the decision of this body. Therefore, the petition to intervene must be denied because the Planning Commission review of the State land use district boundary amendment pursuant to Maui County Code, Chapter 19.68 is not a contested case, and the Maui Planning Commission Rules of Practice and Procedure 12-201-39 allows intervention only when there is a contested case. So that's the opinion of the Council is for you to deliberate. If you follow my logic, or reasoning, or agree with that, then that would be something that would need to be discussed on the record to be adopted. And again, if there's anything in here that you disagree with, then I need you to discuss that, and at least get five votes to change that to make it clear because you will be required to produce a decision and order in order to deny this intervention, and it needs to be served on the applicant or the petitioner.

Mr. Starr: So that is what Corp. Counsel, after deliberation on this has, I guess, strongly recommended to us. And if we go apart from that, we should have our reasons for doing so very clearly on the record, and make sure that we have real reasons for doing so. Members? Yeah, Commissioner Hedani?

Mr. Hedani: Determinators? The question that I have is, the applicant in this particular case, can they proceed forward to the County Council without a determination from this body?

Mr. Giroux: I appreciate that question because I've been struggling with that in the context of your conditional permits, but let me flip through my bible here. Section 19.68-030, Section B, states,

“That the appropriate Planning Commission shall thereupon,” and this is after getting the information from the Planning Director:

Shall thereupon conduct a public hearing on the application for the requested reclassification boundary change notice of which shall be published in the newspaper of general circulation in the County at least thirty days prior to the date of the hearing so noticed. At least six days prior to the Planning Commission hearing or meeting on the application for the requested reclassification boundary change, the Planning Director shall transmit his analysis and recommendations to the appropriate Planning Commission, and shall make such documentation available for public viewing. After completion of the hearing, the appropriate Planning Commission shall submit to the County Council with such recommendations as the facts may warrant together with the transcript of the hearing or a summary of the evidence and testimony taken.

So I see a “shall” in there. So again, the Supreme Court has sometimes seen “shalls” to be “mays,” but I’m gonna tell you right now that there’s already an analysis by the Director of Planning if they don’t get a recommendation for you or a report from you, they will get your transcript, and they will get a summary of your evidence and testimony taken. That reading – reading that in context with what the powers of the Council have, the fact that they can reopen the hearing and take more testimony tells me that that “shall” actually may be read as a “may.” That the Council actually may be able to take action without your recommendation, but again, they’ve given you that opportunity to do an analysis, to take evidence, to question, and I would strongly advise you to at least attempt to get there because we are trying to administrate a State law under 205.

Mr. Starr: Okay, you would gotten the book right down. I believe that was regarding the file – the rules on filing. Why don’t you read us that and then we can proceed? And I will be allowing both Mr. Collins and Mr. Kaufman an opportunity in a few minutes to comment.

Mr. Giroux: Okay. I’m reading out of the Rules of Civil Procedure, Rule 5, Service and Filing of Pleadings and Other Papers. I’m just gonna – it’s a pretty, long section, so I’m gonna jump down to Section B-1. It says:

Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party’s last known address, or if no address is known, by leaving it with the clerk of court, or d) if service is to be upon the attorney by facsimile transmission to the attorney’s business facsimile receiver.

Section 2:

Delivery of a copy within this rule means handing it to the attorney, to the party, or leaving it at the attorney’s or party’s office with the clerk or the person in charge thereof, or if there’s no one in charge, leaving in a conspicuous place therein, or if the office is closed, or the person has to be served has no office, leaving it at the person’s dwelling house or usual place of abode with some person of suitable age in discretion residing therein. Facsimile transmission means transmission and

receipt of the entire document without error with a cover sheet which states the attorney to whom it is directed, the case meaning the court case, and the title, and the number of pages of the document.

Section 3:

Service by mail is complete upon mailing. Service by facsimile transmission is complete upon receipt of the entire document by the intended recipient and between the hours of 8 a.m. and 5 p.m. on a court date. Service by facsimile transmission that occurs after 5 p.m. shall be deemed to have occurred on the next court date.

I believe that's the only relevant—

Mr. Starr: Okay. Members – well, any questions before I give the applicant the opportunity? Go ahead, Commissioner Mardfin?

Mr. Mardfin: I wanna make sure I understand what our Corp. Counsel said not about this last issue but about the earlier issue. My understanding of what he said is that basically we don't have the authority to deal with – set up a contested case for this situation, but that wouldn't necessarily stop the petitioner from urging us to consider various issues raised in their petition when we deal with facts of the matter, but that we wouldn't entertain this as a contested case issue. Is that – did I understand you correctly?

Mr. Giroux: Yeah, you would deal with it as a public hearing just like if you had an SMA permit where there was a lot of public contention or public opposition, but nobody filed a petition to intervene. That's a purpose of a public hearing. You would be getting the public's point of view. You would be getting the public's guidance as far as what issues are important to the community. And it would be up the Board to then incorporate that in their questioning and review of the application.

Mr. Starr: I have a question here which is although I think there should be a mechanism, I don't – from that conclusion, I don't see a mechanism because we can only have a contested case. In this case, if there are two things. And one of those is that it has to be appealable, which it isn't. However, under 91-14, it does say:

Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature of the deferral of review pending entry of a subsequent final decision would provide the appellant of adequate relief who is entitled judicial rule thereupon to this chapter.

I am wondering whether the “or by a preliminary ruling” whether in this case although what we do is advisory that would count as preliminary ruling.

Mr. Giroux: I mean, I can clearly see that that would be an issue of contention and argument. And that's why I clearly gave you the caveat that this is your attorney's analysis and evaluation of it. When I – well, when looking at whether or not—and I gotta kind of go into how would the circuit court look at this because that's really an admonition to the circuit court judge—how would he would look

at that and say that the rights and privileges can – are not adequately protected? In the sense where if we were a body that had some type of recommending authority that would go on to another body that would actually look at a different aspect of the project, I'm having a hard time coming up with a hypothetical, but there are situations where an administrative agency would say, well, you know, this is our recommendation and knowing full well that the next administrative procedure would not be a review of that decision. It would merely be an incorporation of that decision. So there would actually not be a review whereas if you look at the code, not only is there a review, but there's an opportunity to actually rehear, retake evidence, and re – and this body's done it to our hearings officers, in fact, you guys. We've had hearings officers spend hundreds of hours taking legal under oath testimony, and facts, and documents that filled bankers boxes, and they came to us because we were the final authority said, we don't agree. We're gonna reopen it for evidence. We're gonna take further evidence. And so you could see that if somebody wanted to appeal that hearings officer's decision, they'd be wasting a lot of time because the final decision-maker was you. And it's the same thing with the Council. If somebody appeals your recommendation, they're wasting a heck of a lot of time because they don't even know what the nine members of the Council are gonna do. And that's – it could amount to more – you know, they are supposed to look within the boundaries of 205 in administering it, but you don't have influence over their decision. They may defer to you because we are an agency that carries that expertise, but it doesn't guarantee that. And therefore, somebody who disagrees with your recommendation could go to Council, and would have the ability to influence that body maybe even more than you. And that's something that I have to look at when I'm analyzing whether or not the significant rights would be determined. And again, this is just the opinion of your attorney. The circuit court would have to determine that. And that's why I'm very cautious in trying to make it clear that you should produce a decision and order that states clearly what your position is because bright minds can differ.

Mr. Starr: Okay. Let me–

Mr. Mardfin: Can I ask–?

Mr. Starr: Yeah, go ahead, Commissioner.

Mr. Mardfin: If somebody knows, I just have a quick question. Anybody have a rough idea of how many of our boundary amendment recommendations to the Council are followed and how many are overturned in some fashion?

Mr. Starr: Clayton?

Mr. Yoshida: To my recollection, I believe the Council has followed most of your – the Commission's recommendations. And there may be times when they have not.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Is this from 1960 and on that you are stating?

Mr. Yoshida: No, I believe the statute was changed in 1986 to allow the counties to deal acreages of 15 acres or less for boundary reclassifications.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay. I wanna give an opportunity to Mr. Collins and Mr. Kaufman for a final argument on this.

Mr. Collins: First, Ms. McDonald has to stress that the idea petition to intervene was not opposed by anybody, including the County, within the timeframe, and then to have this sort of sua sponte argument presented at the last moment without a meaningful opportunity to respond is wholly irregular. And in terms of violating people's rights to due and fair process, that hits it square on the nose. However, notwithstanding that objection, the Supreme Court recently in the E & G Operating Lounge V. the Honolulu Liquor Commission rejected part of the analysis that your attorney has provided you and overruled the Intermediate Court of Appeals, and said this whole parsing of what's a contested case, a public hearing? They said anytime a statute says "public hearing," that is a contested case and is subject to all of the 91-14 requirements. And so the idea that somehow when the County Council passed an ordinance requiring you folks to have a public hearing on this matter that that somehow excluded petition to intervenes and that sort of thing, at least in my opinion, was resoundingly rejected by the Hawai'i Supreme Court. The statute does require a public hearing. A final determination is made by this body and it does affect the rights, privileges, and duties of persons. You folks are not required to make a decision today. And if you did grant the petition to intervene, and there was a contested case, and you created a full record, which is the whole purpose of a contested case is to create a full record so that the decision-makers have a full and complete record to make their decision, the Planning Department would not have the authority to simply get the transcript and rush it up to the 8th floor of the County Building. It would have absolutely no authority. The word does say "shall," but it doesn't put any time restrictions or anything on how you folks do that. And if you folks believe that a full and a complete record includes intervention. And at least from the petition to intervene in this case there are clear issues that would warrant a full and developed record upon which to make adequate recommendations, that is something that is totally within your power to do. And the idea that – I mean, the issue is not can you accept this or can't you accept this. There's wide discretion. Your rules allow it. There's nothing in the statutes that says that you can't. The most recent case law says that public hearings are contested cases. This does effect the rights of private parties. If you folks came up with the final recommendation that said under no condition should you change this district – the boundary amendment, and you had all of these reasons, you had all of this factual support, that will affect the outcome of this. And the notion that in 1985 or maybe it was in 1986 when the legislature decided that parcels 15 acres or smaller would be dealt with at the County level, the idea that suddenly that was being done to eliminate the right to intervene I think is totally absurd. It totally goes against the idea of public participation. And it goes against the idea that the Council would require that homeowners within 500 feet of this parcel be notified by certified registered mail, or certified or registered mail, returned receipt, and that it be put in the notice – in the notices for the – the notices that ended up in the newspaper. And with respect to the notices in the newspaper, it's just sort of at least in my mind, it makes no sense why there would be all of this notice, and then it's like, well, you have the right to testify, because obviously, Sunshine Law requires that, and it's required that you folks accept public testimony since before this change in the – from the Land Use Commission for parcels with– So there obviously had to be some reason that when the Council adopted the ordinance with respect to this process that it required all of this additional notice and required a public hearing. And the Supreme Court said a public hearing when it's in the statute means a contested case. And so in this circumstance, I disagree, and I don't believe that even if there isn't

a right to intervene, the rules permit it, and there is no harm to this body or liability in sending this to a contested case to develop a full record anyways. And so I think the issue really comes down to why wouldn't the Planning Commission wanna have a full record upon which to make its recommendations? Even if you were to accept your attorney's arguments, there's nothing that stops the Planning Commission from accepting this petition. So that's Ms. McDonald's argument.

Mr. Starr: Thank you, Mr. Collins. Mr. Kaufman, please?

Mr. Kaufman: Yes, thank you. I'd like to make three points. One, we concur with Corp. Counsel's findings. We believe that a final determination or decision is not going to be made by this body or rather, recommendation. Second, we continue to object to the fact that we – we're not – we did not receive service of notice of this matter; therefore, our rights have been denied to oppose. And that's why there was no opposition filed here. But more importantly, the third most important thing to follow up on what Mr. Collin just said is that this public hearing, all the public noticing of the land owners, the noticing in the newspaper, was to develop a full public record. Ms. McDonald could've come here today and testify. So what you need to ask yourself is, is the position of the intervenor substantially the same as the other parties that came here today. And the admission of the additional parties, will it render the proceedings inefficient or unmanageable? And does the intervention – will it aide in the development of the full record, or will it overly broaden the issues? The intervenor's position which I've read today is essentially the same as what we've heard from the public today. It doesn't raise any new issues that weren't raised by the department, that weren't by the people that testified here. And Ms. McDonald could've stood here before and freely testified to you folks, freely put on the record, freely written by her own discourse. Mr. Collins could've written a bible for you to read. He could've written a novel for you to read on her concerns and submitted today. He did not. So we believe her position, the intervenor's position in this matter, is not substantially different from the public. Her right to due process has not been denied. And we believe that this intervention, this petition to intervene should be denied. Thank you.

Mr. Starr: Thank you, Mr. Kaufman. Members, more questions? Or if not, then a motion would be in order, which could be one of several. Commissioner Mardfin?

Mr. Mardfin: I'd sort of like to go into executive session and talk to our Corp. Counsel about some of the legal issues that were raised, if that's appropriate.

Mr. Starr: My opinion is that we've heard it all, and we have that opinion in writing if anyone wants to see it that hasn't seen it.

Mr. Guard: I'll second the motion. I haven't seen that paperwork that's been floating around here.

Mr. Starr: You have the motion to go into executive session or the motion to see this?

Mr. Guard: To go into executive session where we can look at that.

Mr. Starr: You can look at it right now, but– Was this distributed to everyone, James?

Mr. Giroux; No, it wasn't. This is my organized thoughts on the subject.

Mr. Starr: Okay. I mean, that's pretty much what you read out to us, right?

Mr. Giroux: Yeah, I read it into the record.

Mr. Starr: You have copies of it?

Mr. Giroux: Yeah.

Mr. Starr: Can you give the Members a copy, please?

Mr. Giroux: And the parties?

Mr. Starr: You did read it – yeah, you did it into – you read it into the record. Okay, so I forget—was that a motion?

Ms. Donna Domingo: Mr. Chair, there was a motion and a second.

Mr. Starr: Okay, okay. So we have a motion on the floor with a second by Commissioner Mardfin, seconded by Commissioner Guard. And the motion, Mr. Yoshida?

Mr. Yoshida: The motion is to – for the Commission to go into executive session to discuss with its attorney its responsibilities under Chapter–

Mr. Starr: To consult with our attorney regarding our rights, duties, liabilities. Discussion, Commissioner Hiranaga?

Mr. Hiranaga: I agree with the Chair that I believe the Corporation Counsel's position has been explained, and if other Commissioners have questions, they should ask them freely in this forum. I don't see a need to go into executive session myself.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I'd like to respond to that, if I may, by saying that Mr. Collins and Mr. Kaufman raised some additional things that I think we need to talk with our Counsel.

Mr. Starr: Okay. Are we ready to vote on the motion? I guess we're ready to vote on the motion. Okay. All in favor of going into executive session, please raise your hand. All oppose? The count? We require a two-thirds super majority. Did you get the count?

Mr. Yoshida: I believe it was five in favor and three against.

It was moved by Mr. Mardfin, seconded by Mr. Guard, and

**The Motion to go into Executive Session, Failed Due to Not Having a Two-Thirds Majority.
(Assenting - W. Mardfin, J. Guard, B. U`u, D. Domingo, W. Iaconetti)**

(Dissenting - J. Starr, K. Hiranaga, W. Hedani)
(Excused - J. Pawsat)

Mr. Starr: Yeah, so we do not have a super majority. As such, the motion fails. Mr. Fasi?

Mr. Fasi: The Planning Department would just like to point out that should the noticing be accepted as proposed by Mr. Collins, that's highly unusual precedent you'll be setting. Therefore, it would in the future going forward certified return receipt mailing will no longer be required of any other applicant, and they can just stick things in the mail first class postage, which is a highly unusual precedent.

Mr. Starr: Okay, that was in relation to the form of mailing?

Mr. Fasi: Correct.

Mr. Starr: Okay. Thank you. Commissioner Hedani?

Mr. Hedani: I'd like to ask staff if the petition to intervene was received by the Planning Department in a timely manner.

Mr. Fasi: We received the petition to intervene on September 30th. I also want to point out that the applicant has verbally told the Planning Department that the mailing list that was used for the mailout as the tax records. And a McDonald is on that list and apparently it is Mrs. McDonald's husband, the other half of the marriage was properly noticed.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: So the answer is the question is it was received in a timely manner in the staff's opinion?

Mr. Starr: That's what he said, yes.

Mr. Fasi: The noticing was handed to the Planning Department on September 30th, so the answer was – is yes, as far as the Planning Department is concerned. We do disagree that it was properly noticed to the applicant or noticed to the applicant in a proper manner.

Mr. Starr: Okay. Commissioner Hiranaga?

Mr. Hiranaga: I have a question for Mr. Collins.

Mr. Starr: Go ahead.

Mr. Hiranaga: Is it your customary practice to send all mailings regarding serving of notice via first class mail?

Mr. Collins: Yes, yes, unless like in the district boundary amendment ordinance where it requires other forms of notice or personal – there's certain things that requires personal service. And I hire

Richard Alcamendres to personally serve.

Mr. Hiranaga: So you do not send anything via certified return receipt?

Mr. Collins: Only when it's explicitly required by law. I've never had a problem with people receiving things before.

Mr. Hiranaga: Why did you not send it third class since it was going to Hong Kong? It would've been cheaper if you sent it third class.

Mr. Collins: Well, because the Rules of Civil Procedure required it to be first class postage prepaid.

Mr. Hiranaga: Okay, thank you.

Mr. Collins: But just so that you know, in the other thing that you haven't considered yet, that was sent to Makena, and there were correspondences between Mr. Kaufman and my office starting the day after the petition to intervene was filed. So – and I do make reference to it in my letter. So I'm not entirely sure – I mean, I was never asked for another copy. I would've been happy to give one. I assumed that he had received it. He'd also mentioned that he had been emailing Mr. Fasi. So I'm not sure why nobody told him about 'til this morning, or why he – but anyways.

Mr. Starr: Okay, thank you, Mr. Collins. Commissioner Mardfin?

Mr. Mardfin: I'd like to ask for Corp. Counsel in public that I was gonna ask in private—Mr. Collins referred to a Supreme Court decision that dealt with when and under what circumstances people can intervene. Do you have any response to his statements?

Mr. Starr: The something or other club versus—

Mr. Giroux: Yeah, that's E&J Lounge Operation Company V. the Liquor Commission of the City and County of Honolulu. In that case basically, the issue or the holding coming out of that is it doesn't matter what form your hearing takes. If it's a contested case, it's a contested case. There's nothing in Chapter 91 that requires a trial-like setting. This often times will influence how the courts treat an SMA hearing, which is a public hearing and also for variances. I also advise the Board of Variances where they often have very informal public hearings. What happens is that the applicant shows up, puts on his project, and the Board asks a few questions. Oftentimes if you look at our rules, we start using the word "contested case," actually when an intervenor appears. When E&J Lounge says is that, no, from the moment that person steps into the room, if his private rights are being determined, it is a contested case no matter how you proceed. Therefore, it's then treated given all of the rights under Chapter 91 of a contested case. And that's usually the right to present their case, right to present evidence, cross examine anybody who wants to oppose what they're doing. And so E&J Lounge is seminal—I think is gonna have a broad impact. The problem is is that the point that wasn't determined by E&J Lounge was when is your agency's determination final? So basically, it talked about form. It didn't address finality. And you have to interpret your rule in what do you feel the word "final determination?" How do you interpret "final determination" to be interpreted because you're the administrative agency interpreting your own rule? So you need to deliberate on that. And we've given you examples of how un-final your decisions might be. So

that's up to you and how you're going to receive and interpret that.

Mr. Starr: Okay, Members, the Chair would welcome a motion regarding whether we're going to actually hear the contested case. And either we can – the motion can be that we would not hear the contested case because this would not be the right venue or the filing was not timely. Or it could be that we will hear the application with filing that was either timely or for cause, and that we have reason that we are the correct venue. Or I guess we could also defer it as well if we felt more time was needed for proper – you know, because of process with the mail. But in any event, we are open to any of those types of motions. Commissioner Mardfin?

Mr. Mardfin: I have a question for the Chair—if we were to proceed and accept the advice of our Corp. Counsel and denied the petition to intervene, would we still be able to in a subsequent motion defer this entire agenda item in order to give the people the people that wanted to intervene in a contested case the opportunity to provide written testimony that would, as Mr. Kaufman, they could write a bible, and would be open?

Mr. Starr: Yeah, absolutely. Then we would move on to the Item B-2, and we could deal with it in any we wished. Commissioner Mardfin?

Mr. Mardfin: I move that reject the motion – the petition to intervene based on the recommendation of our Counsel that this is an inappropriate action to take on this kind of–

Mr. Starr: Because of venue?

Mr. Mardfin: Because of venue.

Mr. Starr: Okay. Is there a second to that motion? Okay, so we have a motion by Commissioner Mardfin, seconded by Commissioner Hedani. And can I hear the motion read back, Mr. Yoshida?

Mr. Yoshida: To deny the petition to intervene based on the advice provided by the Deputy Corp. Counsel.

Mr. Starr: Yeah, that – on the basis of venue – this is an improper venue.

Mr. Giroux: Actually, sorry, but in – just I think a more legally accurate conclusion is that this procedure under 19.68 is not a contested case: therefore, not allowing itself to intervention. I think that would make it clear.

Mr. Mardfin: Friendly amendment.

Mr. Starr: Doc, you were the second, right?

Mr. Iaconetti: No, I wasn't.

Mr. Starr: Wayne was. I'm sorry. Commissioner Hedani was the second. Is that okay with the second?

Mr. Hedani: Sure.

Mr. Starr: And could we read it back again, Clayton, now it's been revised?

Mr. Yoshida: Deny – the motion was to deny the petition to intervene based on the fact that this wasn't the proper venue and is not a final decision.

Mr. Giroux: That pursuant to 19.68–

Mr. Starr: Hold on a sec. Paul, why don't you write this down? Someone write it down, Clayton or Paul, please. Go ahead.

Mr. Giroux: Pursuant to 19.68 that this is not a contested case and does not avail itself to an intervention. That'll make it easier for the judges to overrule me.

Mr. Starr: Mr. Yoshida, read it back one more time, and then we'll–

Mr. Yoshida: The motion is to deny the petition to intervene based on the fact that pursuant to Chapter 19.68 of the Maui County Code that this is not a contested case and does not avail itself to intervention.

Mr. Starr: Is that consistent with the maker and the seconder? Okay. Dr. Iaconetti?

Mr. Iaconetti: Are we going to go through this very same discussion with B-1 as we have with B-2, or is this taking care of everyone?

Mr. Starr: No, we have to deal with B-1. It's not serially, yes, I'm afraid to say. I'm happy to say. Commissioner Hiranaga?

Mr. Hiranaga: I'm not sure if this is in order, but I was just wondering if Linda McDonald is in attendance today.

Mr. Starr: Is Linda McDonald in attendance?

Mr. Collins: No.

Mr. Hiranaga: Oh, I'm just kinda wondering. I guess she would've had an opportunity to provide testimony during the public hearing portions. I'm just kinda curious why she's not in attendance.

Mr. Collins: She couldn't be here today. And she of course hired an attorney so–

Mr. Hiranaga: Obviously, she couldn't be here today.

Mr. Starr: She was ably represented so– Commissioner Guard, did you have something?

Mr. Guard: I guess this is for Clayton or Corp. Counsel–if this goes up to Council and they would prefer it to be handled by us, is there an opportunity for them to kick it back if the contested case goes up at that level?

Mr. Starr: They can't-

Mr. Guard: That was for Clayton or Corp. Counsel.

Mr. Starr: They can't do a contested case at that level, I believe.

Mr. Guard: So Mrs. McDonald has no opportunity to intervene pass us?

Mr. Giroux: Yeah, the County Council would be seen as a legislative body, not an agency under Chapter 91. So they're not required to do a contested case either. But there is opportunity for public hearing and submission of testimony, and also to present any evidence that would convince the body to either grant or deny the application.

Mr. Starr: Okay. Members? Okay. We are ready to call the question. All in favor of the motion- Are you voting or do you have a question?

Mr. Mardfin: Voting.

Mr. Starr: Oh, okay. All in favor, please raise your hand. All oppose, please raise your hand. Say the count.

Mr. Yoshida: Six to two. Commissioner Guard and Iaconetti voting against. And Commissioner Pawsat is excused.

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

VOTED: To Deny the Petition to Intervene That Pursuant to 19.68 That This is Not a Contested Case and Does Not Avail Itself to an Intervention.
(Assenting - W. Mardfin, W. Hedani, K. Hiranaga, B. U'u, D. Domingo, J. Starr)
(Dissenting - J. Guard, W. Iaconetti)
(Excused - J. Pawsat)

Mr. Starr: Okay, so the motion passes. And in which case- You finished voting.

Mr. Mardfin: Now it's a motion.

Mr. Starr: Okay. I - before that, I just wanna say that we're gonna move along to Item B-2.

Mr. Mardfin: This is Item B-2.

Mr. Starr: Yeah, and we're gonna go back to the main Item B-2. And Commissioner Mardfin?

B. PUBLIC HEARINGS

2. PINE STATE LIMITED requesting a State Land Use District Boundary Amendment from Agricultural to Urban for Ke Kani Kai, a proposed 2-lot subdivision and associated infrastructure improvements at Lot 3 Makena, Keoneoio Road, TMK: 2-1-005: 117, Makena, Island of Maui. (DBA 2007/0008) (P. Fasi)

Mr. Mardfin: I move that we defer this item to allow Ms. McDonald to have an opportunity to prepare testimony. She's probably not here and didn't prepare testimony in order that – because they were anticipating a contested case. I would move to defer so she can put any of the issues in full in writing. Part of the petition to intervene was based on the fact that they wanted to make a full record – if she could that in – if presumably, if given enough time.

Mr. Starr: Okay, do we have a second? We do not have a second, so the motion dies for lack of a second. Okay. Moving back to Item B-2. I want to go back to Paul Fasi who's going to give us any additional information on the project. I'm not quite ready for recommendation yet, but up to that, why don't you give us information?

Mr. Fasi: The Department has no further information to give you. This is the second time it's been before this body. But I believe the applicant just wanted to do a – presentation.

Mr. Hiranaga: I have a question, Chair.

Mr. Starr: Hold on, Paul. Go ahead, Commissioner Hiranaga.

Mr. Hiranaga: I'm just wondering because of the close proximity of Item B-1, before we have a presentation by staff and/or the applicant, I'm just wondering if it's more appropriate to dispose of the intervention request on B-1 so we don't be tainted with information regarding B-2. I'm just wondering.

Mr. Starr: I don't have a problem. I know that we – Corp. Counsel requested that we deal with them serially and not package them together. But if you wish to make a motion to move Item B-1 in its intervention back up ahead, we can do that.

Mr. Hiranaga: No, if the Chair is comfortable, I just wanted to raise–

Mr. Starr: I don't carry the weight, but let's do it by a motion, if you wanna move back B-1 – actually move to Item C-1 up ahead.

Mr. Hiranaga: Does Corporation Counsel have an opinion?

Mr. Giroux: I don't know, Chair. I'm gonna leave this up to you as far as the process. It is cleaner if we just deal with them one-by-one, but again, I think it is going to cover the same issues and hopefully not a different conclusion. So, Chair, I'm gonna leave that up to you.

Mr. Starr: Yeah, whatever you wanna do, Commissioner.

Mr. Hiranaga: I'll leave it up to you.

Mr. Starr: Okay, let's keep going. Then we'll handle B-1, C-1 together. And just to remind everyone, we will be breaking for lunch at 12:00, and at 1 o'clock, we will be taking up the special presentation by DBED, so assuming we won't – if we don't finish by then, we'll have to move this item to later in the agenda. Mr. Kaufman, please go ahead.

Mr. Kaufman: Thank you. I'm gonna walk you through this document here, if you don't mind hard copy. I think it's important if I can take a few minutes to explain a small bit of history and a little philosophical nature behind this request. I began living in Makena in the late '70s and was made aware about 15 years ago of a parcel of property that someone was trying to subdivide and put 16 houselots on it. I begged, borrowed, and begged money, and bought that piece of property to keep it from having 16 houselots built on it. And that's the property now known as the Kaufman Subdivision which was originally TMK 116 – ended up with 116. My notion in doing that is, I wanted to make sure that the rural residential feel of Makena was protected and preserved forever. And as you know on July 8th of this year, I came before you with a rural request to do the same thing to this property because a year and a half ago, I found out some California developers were going to buy this parcel of property next to Ke Kani Kai and develop it into a 12-lot subdivision. And when I moved to purchase the – what this parcel is gonna be referred to later on as Iwa lke, the owner of this property, Ke Kani Kai came to me and said, Greg, I wanna make sure that nobody can develop this property into small lots in the future as well. Can you help me make it look just like what you did and turn it into half-acre parcels? That is why I came before you on July 8th with that request to do a rural subdivision. However, as we now know two weeks after that meeting, we were notified that the property is no longer zoned interim. It is now R-3.

So I'd like to draw your attention to page 10, Exhibit 5. Page 10, Exhibit 5 shows you what we're up against here. This is the famous 1968 – believe Circa 1960s County Zoning Map. On this document, you can see my rural subdivision I created here about ten years ago sitting awash in a sea of yellow. Next to it is a blank spot which is also R-3 zoned as well. We are now surrounded engulfed by about a thousand acres that is now County zoned R-3. My action today here and on behalf of Ke Kani Kai is to set a benchmark, is to send a message that R-3 development in Makena will be half-acre . . . (inaudible) . . . And as Mr. Fasi shared with you today, we have asked for self-imposed conditions on our request. We have asked that there – the lots be minimum half-sized – a half-acre or larger, that there be no further subdividing, no condominiumizing, that the setbacks all be rural, and that the building heights be restricted to 30 feet maximum from natural grade, whichever is lower. You can see from this diagram, from this archive document—I apologize—"conservation" is misspelled on this map if you look at this. I just noticed that the other day. Guessing they didn't have spellcheck back in 1968. But if you can see from this document then, what is coming down the road for Makena is potentially a tsunami. And our intent is to set a benchmark for the Maui Planning Commission and the Maui County Council to say today that even though the County Council – the County zoning is R-3, even if though the community plan is single family that this must remain as a rural residential neighborhood, that this must be developed with half-acre lots or greater. This must retain the rural nature of Makena.

On the next page on Exhibit 6, you will see in terms of ag land, these are not noticed as part of the important agricultural lands of Maui. On Exhibit 7, you will see the land use classification, and this is classified as E, the lowest rating of land that's available.

I'd like to take you now back to Exhibit 10 which I believe is on page 15 and 16—Exhibit 10. Exhibit 10 is a satellite aerial view—this is what I'm looking at here—is a satellite aerial view of the Makena area. And you can see what's noted as KSD there which is the Kaufman Subdivision and Lot 3 that's adjoining that. Okay? The next exhibit, Exhibit 11, is a closer view of that, and you can see again, the Kaufman Subdivision and Lot 3 adjoining it. And down in this corner here is a single family residential home on the ocean.

There has been much discussion today, and – although I addressed all this in our EA that I submitted to you in July in great detail, I would like to point out some issues. If you go to 12-A, page 17, you will see an aerial view of Makena some 60 years ago in this very area. Note how this area has been razed. It has been bulldozed under. Note the homes here: one, two, three, four, five, six homes right on what is properly known as Big Beach or Oneloa right now. Notice some of the orchards that are grown here. This area has been completely bulldozed and razed. The hope of finding archaeological sites in this area was wiped out in the '40s. This was when the military had their compound down there. This was during the war years. And you can see an intensive amount of destruction and damage. If you go to 12-B, there's an aerial now of 20 years later in 1960. And you see the damage persist in the Makena area. You see the homes that are there as well, and you see the Lots 3 and 4 we're talking about.

Now let's go to 1988, a mere 20 years ago. And in 1988, you'll see something very interesting is that look at the regrowth of kiawe that's taken over, but look what also else what you see in this map. You see the effects of what is now known as the "Four-wheel drive." Look at all the roads that have been cut through this property, all over these properties in Makena. In this area right here, this shadowed area here that I'm pointing to, this is where the two parking lots at Big Beach exist today. You can see the area has been just ripe with growth, and traffic, and people driving anywhere—traditionally, hunting roads down there.

Much was made today about a wetland. There is no officially recognized wetland in Makena by Fish and Wildlife Service, Department of Land and Natural Resources, etc. What does exist there is a title – a pool that comes and goes with tides and is influenced by service water, but there is no official wetland in that area. And I would like to point out as a conservationist and as a scientist, we must point out the precautionary principle here. I've owned that property in Makena for nearly 15 years. I've resided there for five years. And in the face of that, the Hawksbill sea turtles have increased, the stilt numbers have increased, and the bat numbers have increased. So if you're looking for deleterious effects, you'd see them immediate, short term, and even midrange term, and the data is in conflict of that. In terms of light pollution, we're all concerned about that.

When I was before you – before the Commission before—I'd like to refer to this document now—much was talked about the archaeological issues in this area. And you tasked with a number of questions. And I came back and I found the answers for you. First, on the cover letter you'll see that there's two letters here: one for both— This is exhibit covers both properties, but you'll see that the archaeological studies have been accepted and approved by the State. But I wanna take you here to Figure 3. Figure 3 comes from *Project Kaeo* which is a fabulous document written by Lucienne DeNaie and Theresa Dunham released into 2007. This is all the known archaeological features in Makena up through 2006. And at the first glance when you see all these dots, etc., on this map, and I've located where our property is on this, this is significant, and I'm not trying to underplay it, but if you turn to the next page, Figure 4, one of the things that you will see is a mass

of where the Makena Complex lies and that's currently where the Maui Prince Hotel is, etc. You will see, if you look at the key on the left, you'll see that the majority of the features located down where this property is, are all cattle walls. They are cattle walls and insignificant features. It does not mean that they don't exist out there. And you'll see this little yellow dot. The further southernmost yellow dot is the fishing shrine that appears on our property right now.

If you flip to the last page, and this is a question I think Commissioner Mardfin asked is, if you go to Figure 6, you asked to see where these properties lie in relationship to the existing archaeological site. And I have depicted that for you. Give you some— I live on Lot 2-B-1 on this diagram, and that's 2-B-1 right here. And you'll see the archaeological site there. Now what I didn't point out on this diagram and I'd like to draw it in just for your edification right now is the actual amount of distance that is around that archaeological site that wide. You'll see the easement that was granted there is 20 feet wide. This is how far the space is really rounded. It's about— it's set back from any structure is 65 to 75 feet on either side and 200 feet wide. Also what's telling about this document here, too, is notice the roads, the old roads that you saw in the 1988 drawing. This old road went by the archaeological site, and as my wife testified earlier, that was a MECO road because they put a telephone pole right in the middle of that site which I removed. It took me three years fighting with MECO to get it removed, but I finally got it removed. You also note that on this map, these are the archaeological sites that have been discovered. There are none— there are no archaeological sites on Ke Kani Kai. And I'll come back to Iwa Ike in the future.

If you go back one page, and Mr. Martin asked about this question as well, you asked about—he asked a lot of questions—you asked about the issue of 19th Century landownership, correct? And you asked about . . . (inaudible) . . . and you wanted to know how these things were divided, and here is a wonderful depiction of those royal patent grants and how they're divided. And I will say incidentally, my property where I live someone I think one of the Commissioners last time was concerned about was it a part of a subdivided out of the Maui Prince or the Seibu issue? I bought that property from 12 Hawaiian . . . (inaudible) . . . from the Big Island, the Kai Family that had had in there for as far as I could see since the Great Mahele it looked like to me. So none of these properties that I've represented had anything to do with any deal with Seibu, etc. And someone else asked, and I think it's a pertinent question asked, who's these characters that are part of this? Pine State Limited, although they have a Hong Kong address, his mother has lived in the Polo Beach area, the Von Tempskys houses for 45 years of Wailea down there and is a 40-year-old man with a six and eight-year-old daughter and son, and plans to have their family live on this property. The action taken by Ke Kani Kai is simply for preservation and insurance and protection of this property will stay at half-acre lots or greater, and never be further subdivided or become dense. So I think in terms of the other issues, I'm happy to talk environmental issues, but I think we address those in the EA last time, and you have those at your disposal. Thank you.

Mr. Starr: Okay. Thank you, Mr. Kaufman. We're going to be breaking for lunch in a couple of minutes.

Mr. Kaufman: Chairman Starr, I forgot that there was one other document submitted to you—I'm sorry—from Xamanek Researches who actually did the archaeological surveys on Ke Kani Ka, Iwa Ike, and my property. So all three of those properties have been surveyed by the same firm, and he's written a letter to you to consider— take under your consideration. Thank you.

Mr. Starr: Okay. Thank you. We'll be breaking in a minute. I just want to ask Planner Fasi about an item that was brought up during testimony about the notice requirement, and whether notice had been served properly and timely to all people effected. And the question was specifically brought up regarding Kingdom of Hawai'i. So could you answer that, please, just so we clear that issue up?

Mr. Fasi: I don't understand the question, Chair?

Mr. Starr: Okay, we had testimony before asking whether notice had been served properly to all residents. And there was a specific question about whether notice had been served to Kingdom of Hawai'i. So I'm just passing on that question that came in testimony from the public.

Mr. Fasi: If the Kingdom of Hawai'i was on that tax map mailing list, then yes, but I don't know if they were or were not. The Department's comfortable with the mailing as it was sent out.

Mr. Starr: And it was sent to everyone on the tax map key list?

Mr. Fasi: Correct. The mailing again, let me just reiterate, the mailing was sent to everyone that is on that 500-foot tax map key list. And that's all the applicant can do. And the Department's comfortable that he did do what was required of him.

Mr. Starr: Okay, thank you. Members, I think it's a good time to break for lunch. Before we do, I would really like to request that we have a – that a motion be made to shuffle our agenda once again and move Item F up to be handled next. And then we're finished F at approximately 2:00 p.m., then we'll move back to Item B-2.

Mr. Guard: So moved.

Mr. Hiranaga: Second.

Mr. Starr: Okay, we have a motion by Commissioner Guard, seconded by Commissioner U`u that we shall move Item F up to directly following lunch at 1:00 p.m. All in favor, please raise your hand. All oppose?

It was moved by Mr. Guard, seconded by Mr. U`u, then

**VOTED: To Move Item F Up to Directly Following Lunch at 1:00 p.m.
(Assenting - W. Mardfin, W. Hedani, K. Hiranaga, B.
U`u, D. Domingo, J. Starr, J. Guard, W. Iaconetti)
(Excused - J. Pawsat)**

Mr. Starr: Okay, motion passes. We will back at 1:00 p.m. sharp.

(A lunch recess was taken at 12:00 p.m. and the meeting reconvened at 1:00 p.m.)

F. Workshop on LEED Training conducted by Ms. Gail Suzuki-Jones, Strategic Industries Division, State Department of Business, Economic Development, and

Tourism (To begin at approximately 1:00 p.m. or soon thereafter.)

Mr. Starr: The Maui Planning Commission meeting of October 14th is back in session. And I'm very pleased that we have a great presentation ahead of us. We have a workshop on LEED training conducted by Gail Suzuki-Jones. I know she works for DBED. And perhaps before she starts, she can give us a little introduction of what she does and what DBED's involvement in energy efficiency in the State is, and then we're looking forward to your presentation. Thank you so much for coming over and doing this for us.

Ms. Gail Suzuki-Jones: Thank you, Jonathan. My name is Gail Suzuki-Jones. And I'm from the Energy Division or the Strategic Industries Division at DBED, so at the State of Hawai'i. I met Jonathan at the last Land Use Commission that was held. I think it was last month at the Maui Prince Hotel in Makena. And at that time, I think it was a project in Kihei was being proposed for a petitioning land use amendment change from ag to – was it urban? I can't remember. Thank you. And my job at the Energy Division as an energy analyst ranges from testifying at hearings to promoting green building, organizing workshops on LEED, which is what we're gonna be talking about today, which is Leadership in Energy in Environmental Design. I also co-chair the AIA Honolulu's Environment Committee. And I'm on the USGBC Hawai'i Education Committee. I was formally on the board last year. And so I was invited to talk to you about LEED this afternoon. And I was just talking to Mary – sorry, Ann. I don't know why I keep calling you, Mary. My mother knew a Mary Cua. And so I keep thinking her as Mary Cua. Anyway, sorry. Are you serious? What a small world. We are finding out like what a small world, I guess, but this is Hawai'i, so we all know what. Anyway, what was I saying? I can't remember now. I was telling Ann that we're gonna be doing some LEED workshops not only next week on the various LEED programs, but also into 2009 when the LEED program transitions to LEED 3.0 2009. Okay, anyway, I guess I'll get started.

Okay, so here we are. This is what we're gonna be talking about today—What is LEED and the USGBC? What's happening with LEED in the State of Hawai'i? What LEED projects are here on Maui, which you folks may be very well aware of? What's happening with LEED in the future? And where we can we go for more information?

So USGBC stands for the U.S. Green Building Council. And the USGBC is a nonprofit consensus-based 501C3. And it consists of a number different entities there on a slide. You can see. And it promotes the LEED program. And here you can see the various levels of LEED which are LEED certified silver, gold, and platinum. And this is a voluntary consensus-based rating system with four different levels.

This is a list that I thought I'd show you of some of the USGBC national members in Hawai'i some of which you may be familiar with. It's kind of a running long list. There are over a hundred members. And the Hawai'i Chapter is also officially kicked off this year. And there are a number of USGBC Hawai'i Chapter members as well.

So reality or perception? Does anybody know where these projects are?

Mr. Mardfin: The one on the left is Kona.

Ms. Suzuki-Jones: Yes, it's the National Energy Lab of Hawai'i Gateway Project. And the one on

the right is also on the Big Island.

Mr. Starr: City of Refuge?

Ms. Suzuki-Jones: Yes, yes, that's it. So basically, you know, green building can be as high tech or low tech as we perceive or design. And in Hollywood recently, there have been a lot of coverage on global warming and some of the solutions to global warming from both Al Gore and – the one on the right is very good. It's a documentary by Leonardo DiCaprio. If you haven't seen that, you should check that out, but it gives some solutions to global warming. And then in the news, I don't know if you've noticed here on Maui, but in Honolulu, everywhere you look, there are articles, and T.V. shows, and commercials on being green, building green, green business, you name it. So it's definitely in the press and media.

And so what LEED is doing, its system for certifying the greenest performing buildings in the world. No small task. And basically, it's set up a system that is third party verified so that you know that your building will perform to what it's designed and built to achieve. LEED, Leadership, and Energy, and Environmental Design, as I said before, it's a system for certifying the design, the construction as well as the operations of green buildings in which you can receive points for different design elements. And you're able to then assess where your building stands next to other buildings in the country as well as around the world.

So where is green building? I think most of you have been exposed to this because there are a number of green building projects here on the island. But it involves not just energy efficiency or renewable energy, but water management, which is a major issue on this island; material use; indoor environmental quality; as well as site planning. And LEED not only addresses the design and construction of green buildings, but operations as well with the existing buildings' program for operations and maintenance. So it's looking at all of the costs as well as all of the systems that go into operating and maintaining a building.

Here's a list of some of the LEED certified projects in Hawaii on the left. And on the right are the neighborhood development pilot projects. I think the Wailuku Town Center is one here on Maui. So as you can see, there are a number that have already achieved various levels of certification from certified up to platinum. And then here's a list that I just got off the USGBC website yesterday of some of the projects here on Maui. And you may be well aware of these. On the last line are a number of the projects that Dowling Company is doing. And there's a number of those up at Kulamalu, the post office, as well as the Makena Resort and Condos.

This one on Oahu is the John A Burns School of Medicine. It has LEED certified level. It's really a beautiful building. It's on a former Brown Field site in Kakaako. If you haven't seen it, you should definitely go check it out. On the bottom of the building is a really great cafeteria that the culinary art school runs. Very reasonable food. Very delicious food for reasonable prices. So you should definitely check it out.

So sustainable sites—under this category, here are a number of a different points and items that you need to look at—some of which are prerequisite, some of which are not in order to get points under the sustainable sites category. By the way, if you have any questions, just raise your hand. Feel free to let me know. Hi, Jennifer. Okay, sustainable sites.

Now, water, water use, efficient water use. Here on Maui, I know that this is a major issue in terms of water supply. And so making sure that the buildings and developments that are designed and built here are as as water efficient as possible is something that I know a lot of the LEED projects here on Maui have tried to achieve.

EPA has the Water Sense Program, which is similar to Energy Star Program. So if you haven't heard of this, you should definitely check it out. If you go to the EPA.gov website, and then \water sense, you can get information on plumbing fixtures, landscape irrigation systems, as well as other water efficient commercial products that are available. You type in your zip code and it'll show where those products are available.

Mr. Starr: Gail?

Ms. Suzuki-Jones: Yes?

Mr. Starr: Doc has a question.

Mr. Iaconetti: Do you have any inclination . . . (inaudible) . . . ?

Ms. Suzuki-Jones: Was that on the list of projects? It wasn't. When did that-?

Mr. Iaconetti: . . . (inaudible) . . .

Ms. Suzuki-Jones: Is it undergoing renovations soon or-?

Mr. Iaconetti: . . . (inaudible) . . .

Ms. Suzuki-Jones: It has. Okay. No, I don't, but I can definitely find out. I don't know if Jennifer or anyone in the audience knows about that, but I could definitely find out about that. I know that there is a green guide for a healthcare program, which is similar to LEED for healthcare facilities because the issues in healthcare are so complex in relation to sanitation, and having sterile zones, and making sure that things don't spread in terms of diseases. So I'll check that out and see. I know that there are healthcare entities on Oahu that are looking at the green guide for healthcare, as well as looking at a number of different energy and water efficient options.

And then energy and atmosphere, this is a major category in which existing building commissioning, making sure your buildings operate as they were designed and engineered to operate at, making sure that the buildings achieve a minimum energy performance which now at this point in time is two points which is 14% above the ASHRE 2004. 90.1 – oh, sorry, Association – oh, no, American Society of Heating, Refrigeration and Air-Conditioning Engineers. Is that correct? Yeah. Okay. Great. Basically, it's a ventilation code. And there's another colleague of mine who's come to Maui fairly frequently to talk about building and energy codes—Howard Wigg. And he volunteered to come back if there are any questions because they are gonna be updating the current energy code to I think it's at least IECC 2006, if not, 2009. So that's his goal, at least, in the near future. So just to let you know he'll be coming back into town for meetings, but if you want to meet with him sooner, let me know.

Okay, optimizing energy performance, ozone protection, offsite renewable energy, which is a very major category especially with the utility rates that are as they are here on Maui as well as on the other islands. I think renewable energy has become – and Jonathan has even told me his house is off the grid, and I think there a lot of people that are looking at alternatives to conventional utility supply of energy. Building operations and maintenance, additional ozone protection, performance measurement, and then making sure you can document the cost impacts of related to these investments. That's very important.

Now as far as energy goes, energy efficiency, here's a list of Energy Star qualified or labeled buildings in the State of Hawaii. And as you can see, these aren't residential. These are just commercial. There are a number of State and County projects on the right-hand column. The State of Hawaii is working really working hard to get whatever buildings will qualify for Energy Star labeled as that. And then there are also resorts and hotels that are – that have been doing this on the bottom left. And then the commercial buildings are on the top lefthand column. The building in the middle is where I work. So if you're ever around there and wanna come up to the fifth floor to visit me, please do. And our building has gotten Energy Star labeled two years in a row. And then the one on the right is the Kapolei office, State office building, another State project.

Let me just say a few words, too, that the State has mandated LEED silver level for its State facilities, and some of you may also know that Honolulu City and County has also implemented or adopted a LEED silver standard for its facilities starting this year. So ours was implemented in 2006. And I'll show a list of projects a little later that we're working on.

Okay, landfills and construction waste, materials, and resources—we all know we live on islands and waste management is a big deal. It's a big issue. And I know that Maui County has been quite proactive in terms of recycling. Jobsite recycling and reuse is an area that's very big under construction waste management. Optimizing use of alternative materials such as bamboo which I know David Sands here on Maui is promoting. And then optimizing use of IAQ which is Indoor Air Quality. Thank you. I was thinking IEC for Environmental Quality. Thank you. Indoor Air Quality compliant products that are no or low VOC in terms of not off-gassing into the indoor environment. Sustainable or green-cleaning products are also very, very important. Once you build a green building you don't wanna pollute it with using chemicals that are going to out and off gas the occupants. Recycling—I know you folks do a lot of recycling in your offices, as well as toxic material. Source reduction and using materials that are off recycled content.

And I have a few shots here of some operations on Oahu, but I also know that Maui Recycling Group has the Aloha Shares Reuse Program. Maui Habitat for Humanity has a baseyard, I've heard, and is collecting used construction material. And I had heard something about community workday. Is that true? They have a project that was funded by EPA to do something similar to this. On Oahu, we have Baseyard Hawaii. The slide on the left shows Bert Barber who is running their baseyard on Sand Island. And ReuseHawaii.org has a baseyard in Kakaako. And then IslandDemo.com, they are a recycling and reuse business. They're not a nonprofit, but do jobsite recycling for large commercial and residential projects. IslandDemo is on Oahu, but I know they do work here on Maui and the neighbor islands as well just to let you know.

I thought this slide was really interesting in terms of this product that Michelle Kaufman has developed in California. MK stands for Michelle Kaufman. And the products there are counter top

materials made with concrete with fly ash and porcelain from recycled toilets. So you can be very resource efficient and still be very stylish in terms of use of your materials. I know on Oahu there's Lokahi Stone that produces concrete counter tops with a variety recycled glass and different materials similar to this.

And then indoor environmental quality—this is why I was kind of thrown off by the IAQ. Sorry. But anyway, Indoor Environmental Quality is very important making sure that the air that we breathe while we're working and at home and in other commercial establishments is clean air. And so all of these contribute to insuring that the indoor environment is a clean and green one.

I'm gonna show a couple of slides of some projects on Oahu that are LEED State projects. This is the Waipahu Intermediate School Cafeteria. And it's DOE's first LEED certified project. And as you can see, it has some very nice day lighting, through-clear stories, as well as stacked ventilation through the top. It achieves 15% reduction in energy consumption. And this is maybe a year or two old. So I would say their savings could be even double this \$3,000 per year given the utility price increases.

This is Green Guard. Green Guard is a program that's a third-party certification program for products such as tables, chairs, indoor furnishings, paint, carpeting to make sure that these products meet the low or no VOC levels for indoor environments.

And then innovation and design—this is a category that has somewhat—I don't know—kind of bit of flexibility. You can get one credit for LAP, which is LEED Accredited Professional. And then, up to four credits for innovation. So say, this was a green building and you have a tour, a self-guided tour that people can go through, and you have information on plaques on the wall, or a brochure that you hand out, you would qualify for an innovation and design credit for something such as that. A project on the Big Island in Hilo, some of you may have seen is UH's Imliloa Astronomy Center. That's a LEED certified project.

And then why you wanna do this? I know a lot of you in the room have already advocated for conditions in SMA permits for LEED certification. And in addition to the reduced environmental impact, there is also productivity and performance related benefits that can be seen in schools, hospitals, retail operations, warehouses, and factories, as well as offices. So a green project not only benefits the environment, but also benefits the occupants as well. And cross functional teams, the fact that integrated design processes are emphasized in these green building projects bring together people and stakeholders that wouldn't otherwise be involved in the design, in construction process, making sure the end users are involved at the beginning so that what is designed is something that is appropriate to the use and function of the facility is really important. And I think this is being done more and more these days anyway, but I think the cross functional team approach and integrated design process is a very big part of LEED and green building projects.

Consensus-based—there's actually a LEED 2009 which I mentioned that's gonna be coming out and premiered next year. And what it involves is that the full membership is able to vote and vote on whether or not to adopt this LEED version. And so the full membership has the ability to vote on this new LEED ballot that's coming out. And there are volunteer committees that go into developing the new LEED programs as well as new stakeholders that are involved. So it's a very participatory community and consensus-based process. It takes years to come up with a new version of LEED.

I think the 2009 – well, it used to be LEED 3.0 has been on the horizon for a year or so now, and so it's just something that take a little time, but by the time it comes out, they make sure that people are happy, people in terms of their membership, which is broad-based, are very happy with this. And again, there are four different levels of certification. And associated with those levels are costs. And these are very general ballpark figures. I wouldn't necessarily hang my hat on these, but I know that in a lot of cases, people always say, well, green building is gonna cost – you know, how much more is it gonna cost you? This is an average for offices and schools based on 40 buildings. So it's not a big population of buildings, but it gives you some idea of what costs might be. And I know here in Hawaii on some of the first LEED projects, these were a lot higher, but the learning curve is pretty steep. And I think that people are now much more accustomed and acquainted with the LEED program and processes both from the construction as well as design industries. And engineers are also getting on board with this. So I think that we will be able to realize some of these relatively low additional first costs.

And then I told you also include some information on State projects. The Kohala Library on the Big Island, Manoa Library, are two projects that have I think gone out to bid this year. Wailuku Elementary here on your island is going to be LEED. And I'm not sure what level of certification, but it's a project that Group 70 has been working. And then we have a DOT Airports LEED Commercial Interior Pilot Project, as well as a Department of Education Net Zero Energy Pilot Projects that will be implemented soon. So portable classroom buildings that generate enough energy that they don't need to rely on the regular electric grid.

UH Hilo Student Life Center, I think it actually may be finished by now. I think that's LEED's silver level. UH Hilo Science and Technology Center. On Oahu, UH Manoa Hall Dorms has opened up this fall. And the West Oahu Campus, when it's constructed will be LEED silver level. And then UH School of Law, its library and the State Capitol projects are somewhere in the works. The State Capitol, we're looking at LEED existing buildings for that particular project.

Tools and resources—there are a lot of tools and resources out there. The Energy Star website is one of those. It's www.energystar.gov. And they have portfolio manager. So if you're interested in say, seeing where this building stands or say, the other two county offices that are here in town where they stand. You can input your annual utility bills, the number of occupants, the number of computer units, as well as the hours of operation, and get a pretty good idea in just a matter of maybe an hour of where your building may stand in relation to other buildings around the country. And if you rate 75 or higher, you qualify for an Energy Star building label.

In terms of energy assessments, I know Maui Electric as well as the other utility companies on the other islands are happy to do preliminary energy assessments of your buildings. The Board of Water Supply on Oahu has Detect a Leak Week, but I know they are also working with companies and organizations to make sure that water is not leaking from some of the aging infrastructure that's around town these days.

City and counties waste and recycling audit—that's something that the Opala.org as well as the Maui County Recycling Office I know has information on. So you can see how you're doing in terms of recycling levels. The Department of Health has a pollution prevention guide. And we have a construction waste management as well as environmentally preferable product guide.

So a lot is available information wise. We'd be happy to come back as I had told Clayton and Ann to conduct other workshops on any of these programs that you think might be useful. And we'd be glad to cooperate with you folks on this. We also have the Hawaii Green Business Program, which I'll talk about a little later.

This is a plaque. And I think Jennifer, your office building, you have a plaque, right, right down on Main Street? And this is a LEED platinum plaque.

So in terms of what's going on around the country, in terms of the commercial LEED projects, you can see there, there is the Hawaiian Island Chain, but on the bottom lefthand corner is the number 89 for the number of certified and registered commercial LEED projects in Hawaii. And you can see where it stands compared to the rest of the country. And we may not be as good as California, but we're a pretty tiny State. But we're a lot better than some of the other States that are larger than us. So I think we're doing quite well.

And in terms of the commercial LEED registered projects, these are just some slides from the USGBC website. They anticipate a major growth in these projects, as well as the square footage. It's quite, quite mind-boggling if you think about it. And the number of LEED accredited professionals in the State I think is over 220 right now, so we are making some headway. And these are just cover fact sheets about some projects on the Mainland, and some of the figures on what they've been able to accomplish in terms of recycling rates, energy savings, as well as material usage. That's Colorado. This is in Washington, D.C. We have a number of LEED schools in the State of Hawaii as you saw.

And then LEED for homes, Jennifer can you raise your hand? This is Jennifer Stites. She is with Everett Dowling's office. She's a LEED accredited professional on the Board of the USGBC. And she's also the LEED for Homes Advocate in the State of Hawaii. And she's a good person to invite to maybe talk for LEED for Homes Program if you'd like that. I think she'd be happy to do so. There's also Charles Kaneshiro from Group 70 who's the LEED for Schools Advocate on Oahu, but he's the State Advocate, so he'd also be happy to talk about the LEED programs.

Okay, Orchard Garden Hotel in San Francisco. There was just a Green Hotel Hospitality Conference last week or the week before that on Oahu in which this project was presented. And I know there's a lot of resort and hotel business here on this island and a number of projects that are getting going in terms of LEED thanks to you folks and thanks to some other developers that are taking it upon themselves to do so. But there can be a lot of very positive outcomes from this.

And then for those of you who haven't been through the LEED certification process, you start by registering your project. You track the progress and then document your achievement. You apply for certification, and then there's a third party that certifies your project. And there's a Green Building Certification Institute that in 2009 that will have . . .

In terms of tools, the USGBC website is the best place for all this information. You can get information on the various rating systems, purchase the reference guides, get the checklists of projects, or I'm sorry, project checklists, as well as get lists of projects that are here on Maui as well as on other islands. There are credit interpretation requests that you can make online as well as the LEED online which is a lot less paper intensive process than it was in the past. It's a way that

your project team can actually share information. So it's not as cumbersome and resource – you won't use as much paper basically, is what it is.

And then educational workshops—we're conducting five on them next week on LEED for new construction, commercial interiors, as well as existing buildings. There are a number of project case studies that are here on the website and that's the address.

Here are some of the resources that are also available that I mentioned, as well as info on our Green Business Program and Green Hotels Program that DBED and DOH as well as the Chamber of Commerce of Hawaii have implemented. And then the Hawaii Built Green Program which is a residential program that the DEA and DBED have helped developed. So there's a lot of information available. As you can see, we have now I think it's four State facilities that are LEED certified with 15 to 16 that are in the process of design construction and certification. We're working with various commercial and resorts on green offices and retails as well as hotels. And then working with UH and some of the schools, DOE schools, to look at greening their facilities.

The Hawaii Green Business Program—there's a little logo on the bottom there, and we have developed a checklist for hotels, as well as a checklist for office and retail. And they have just developed one for greening government. So if you want information, this is where you can go to get some of the checklists. And this talks about the process. And I know we didn't really talk about this particular program, but I just thought I'd mention it.

If you have any questions, you can email or call me. We have some green tip sheets that have been developed. If any of you want these, on these particular items— Green Communities Program is a green affordable housing checklist. And these are my three daughters. And so Ann and I were just talking about how our kids are about the same age. So I am a very busy person, but I think it's really important for us to leave something that we're proud of for future generations. So I think LEED – what the USGBC is trying to do, as well as the other green programs around are some – are what – are definitely worthwhile. And I'm glad you folks are interested in this, and are educating yourselves on this. Anyway, thank you for inviting me to speak here today. Do you have any questions?

Mr. Starr: Yeah, does anyone have any questions?

Mr. Hedani: Yeah, I was just wondering where we could get a copy of your presentation today?

Ms. Suzuki-Jones: Your wish is our command. Right there.

Mr. Starr: Probably get could one through Kenny also.

Ms. Suzuki-Jones: Yeah, and I'd be glad to email it. If any of you want a copy of it, a pdf of it, I'd be glad to email it to you.

Mr. Iaconetti: In addition to the obvious benefits of this, are there any financial benefits in regards to real property taxes if you are LEED certified?

Ms. Suzuki-Jones: That's a good question. The City and County of Honolulu, their Members of the

City Council right now are talking about property tax holidays for different levels of LEED building. And I think it's the end of this month, Gary Okino's going to be introducing a bill related to this, and on the LEED website, there's a section called "Government Resources." It gives a number of different references to local government entities that have provided incentives for green building projects. So in terms of property tax right here right now, there's nothing that I know of. Jennifer or anyone in the audience that is available right now? I know for renewable energy there are tax credits, but not yet for property taxes.

Mr. U'u: What would be the cost to register your project?

Ms. Suzuki-Jones: It depends. That's a good question. The LEED for homes I think it's a \$150 per single family home. And then for the commercial buildings, it's based on square footage. I don't have the numbers right here, but it depends on the project size.

Mr. Starr: I think your—

Unidentified Speaker: (Inaudible)

Ms. Suzuki-Jones: Yeah, he may be right that—

Unidentified Speaker: (Inaudible)

Ms. Suzuki-Jones: For the certification. Yeah, I think that's based on the square footage. Thank you.

Mr. Starr: Gail, the energy code . . . (inaudible) . . . that you mentioned, and I know you that mentioned that Howard Wigg is working on that, and I hope we have a chance to meet with him sometime, but can you give us some idea of what's happening with that because there's a lot of discussion on Maui right now. I think we're utilizing national codes from 1996 which don't have any of the efficiency wording in them and anything that gets built will be a lot more efficient if we update it. Do you know what kind of timetable that's on and whether we need to do anything County level or is that automatically gonna happen under the State?

Ms. Suzuki-Jones: I know that I did check with Howard before I left because I knew this question might come up. And he did say that he is meeting with the various Counties as well as the State. I think it's Russ Saito who's overseeing this State building code. And they are meeting. Victor Reyes—he mentioned Victor's name, I'm sure you're familiar with him—has been active on this committee. And there are County reps on this. And so they are looking at, I think I mentioned the IECC 2006 as the next code they adopt. Howard was at an Energy Conference in Minnesota. And I think what they were trying to get was a 30% increase above IECC in the 2009 update, but they weren't able to quite get there. I think it's 15% they were able to agree upon in terms of the voting. And I think that was it what he's gonna be proposing to this group. And it may or may go through. They may just adopt the 2006 with amendments.

Mr. Starr: Do you have an idea of what, you know, even the 2006 what degree of efficiency gain that would entail?

Ms. Suzuki-Jones: You know we've been kind of going back and forth on this for a while. And I think we – at the last time we talked about this, I think it was 15% better than the current code, approximately, but don't quote me on that. I prefer that Howard – I could get back to you on that one. And we've had some engineers and some consultants look at that. And so I'd have to get back, but I think that's what they were looking at. But they'd like to go 15% above that – actually even more with the 30% above that.

Mr. Starr: So that would save 30% of the energy that is used to operate a building?

Ms. Suzuki-Jones: To the current code, yeah.

Mr. Starr: Yeah, compared to current.

Ms. Suzuki-Jones: Right, right.

Mr. Starr: I have one last question, which is I understand that the State has mandated LEED certification for I believe is all State-funded buildings?

Ms. Suzuki-Jones: Correct.

Mr. Starr: And I was surprised that the Land Use Commission where you were large developers to do I think LEED silver for market priced houses and LEED certified for affordable. Is that gonna be across the board requests?

Ms. Suzuki-Jones: No, that isn't, but what we are looking at is very large developments that have a significant impact on the environment, as well as we have a clean energy initiative that the State has signed with the Department of Energy to achieve 70% renewables by 2030, as well as a Green House Gas Reduction Act that needs – I think we're supposed to get down to 1990 levels by 2020. And so there are a lot of initiatives at the State level that are really moving us in the direction of energy self sufficiency. There was a speaker at the AIA Regional Conference last week, Ed Mansrea, from New Mexico talking about the Architecture 2030 Challenge, which is advocating for carbon neutral buildings by 2030. And that's something that the AIA National is promoting. And I know that at the local AIA Chapter it's something that we also are advocating for because we're so vulnerable here in Hawaii. Most of our energy as well as resources are shipped in. We need to change the way that we do business as well as design and build our buildings in order to be able to withstand what may or may not be happening in the future. And I think by designing renewable energy efficient buildings and homes, we will at least work our way toward that. LEED certified is apparently quite easy to achieve, and LEED silver is not that difficult. And there's some really good programs out there: the Hawaii Built Green; as well as Green Communities for Greening Affordable housing. So there's a number of different of options. So we'd be glad to provide some more educational material on these as well.

Mr. Mardfin: In your presentation you had a list of LEED silver buildings in Hawaii. Are there any gold or platinum ones?

Ms. Suzuki-Jones: There are some gold and platinum projects. The Nahau project, the Gateway project is a platinum project on the Big Island. It actually generates more energy than it uses, and

it feeds it back into the grid. I think it was HELCO that paid for the panels on top of the building in Kona. And then for LEED gold projects, the Punahou K - Middle School, Hawaii Baptist Academy Middle School—those aren't State projects, but they are projects in the State. The AIA Commercial Interiors is a LEED gold project. And I'm trying to think of any others. I can't think of any other gold.

Mr. Mardfin: The alternative – the Natural Energy Institute on the Big Island in Kona—I have visited. What level is that?

Ms. Suzuki-Jones: It's platinum.

Mr. Mardfin: That's a platinum?

Ms. Suzuki-Jones: Yeah. It was one of the first nine in the country, I think, and it won a number of national as well as local and State awards. Yeah, they're doing a lot of research out there on other renewable energy options. So there's some exciting things on the horizon.

Mr. Mardfin: One of your slides showed the extra cost, construction cost. Is there any estimate of how many years it takes to pay off that additional cost at the different levels?

Ms. Suzuki-Jones: You know that really varies by project, but yeah, I can't really generalize on that. It depends on the size, and type, and the cost of the project.

Mr. Mardfin: Pretty much less than ten years?

Ms. Suzuki-Jones: I would say so given the utility's rates as they are right now. And then in terms of water and sewer, on Oahu, we've seen a major increase in rates there as well. And I just think the designing these buildings to be smart buildings as well as resource and energy efficient is really just the right thing to do. It's the right thing to do. It also will pay off. It's something that – it's not every project in the State maybe can able to achieve LEED levels. However, there are other green building programs that you could follow certifications and checklists in order to achieve different green building levels. So it really varies. It's something I can't really generalize on, but yeah, the life cycle costs could be well under ten years.

Mr. Starr: About a year ago, we had a gentleman from Oahu who works for DLNR come and address the Commission. And think was about coastal zone management program. And he gave us a talk. We deal with a prime authority on shoreline issues and issue the SMA permits. So we – that's kind of our main direct responsibility. And he had told us that according to the State's view, the – what we – one of the things we couldn't do was mandate energy efficiency as part of the SMA program. And an argument was made that, well, sea level rise is tied to greenhouse gas emissions and global warming. So it would seem a logical nexus of connectivity to say that anything built on the shoreline should be energy efficient and reduced emissions to help reduce greenhouse gas and sea level so that was the nexus of connectivity, but we were told at that time a year ago that the State wasn't – didn't believe that that was a direct connectivity. Is there – is it possible perhaps for some kind of discussion over in Honolulu to be held on that because it seems if it's now the State's policy to more than encourage this, it would make sense certainly at least in the shoreline where sea level rises, it's gonna affect it.

Ms. Suzuki-Jones: Yes, we have been talking to some people at DLNR, but maybe not that particular individual. And so we'd be glad to do that. I think it's OCCA were the people. Oh, okay.

Mr. Yoshida: I think it was Doug Tom.

Ms. Suzuki-Jones: Oh, I know Doug.

Mr. Starr: Okay. Jennifer, do you have anything to add? Or is there anyone else out there who's actually building LEED stuff? Why don't you give us a couple of words? And do you take--? Grab a microphone. You're actually in the field.

Ms. Jennifer Stites: Well, I just wanted to come in support of Gail coming and talking about this 'cause I think it's important. And one thing I do wanna note is that I think for LEED if it's not something that's done from the start, it can be very difficult. So I think when you're looking at projects, you need to consider how far along this project is. And I think if we can start to create systems that incentive this from the very getgo, it'll be a lot easier and more cost effective for developers to be doing. But I'm happy to answer any questions anyone has locally here on Maui or at least try.

Mr. Mardfin: How much work is being done with single family dwellings?

Ms. Stites: Sure. LEED for Homes was just launched at the beginning for this year. So it's a relatively new rating system. Right now what's going on is really just trying to build a consensus of how that rating system works. And it's based quite heavily on Energy Star for homes. So Energy Star is sort of the first piece, and then LEED builds on that to incorporate beyond energy. So looking at water use, indoor air quality that Gail spoke about to make it more holistic. Dowling Company is working on some of those projects. There are some single family homes as well up in Wailuku Heights. There is actually a certified home. Talk about getting affordable housing built as well--multi family and single family. So it's definitely in the works. I think we're gonna start seeing a lot more of it. And it's going to make it a lot easier to LEED on a residential scale because using LEED for new construction can be tough 'cause it's not really the right system.

Unidentified Speaker: (Inaudible)

Ms. Stites: Yeah, act as . . . (inaudible) . . .

Mr. Mardfin: I know back in the '70s, there was the Alternative Energy House was built on the UH Manoa Campus. They were way ahead of their time doing stuff with energy, and water, and all sorts of other things. It was a great building.

Ms. Stites: It's still there, hanging in there.

Mr. Hedani: I had a question for Janice, actually. You know from a community standpoint, are there guidelines that lead to establish for community planning?

Ms. Suzuki-Jones: There's a LEED for Neighborhood Development Program that's in the pilot stage right now. And ACTIS who we just talked about has a LEED for Neighborhood Development. And

I think they were those other three that I had mentioned that are still in the pilot stage. And I'm not sure when they're gonna be launching that. Have you heard, Jennifer? Yeah.

Mr. Starr: Kahului Town Center is one of the pilot projects for LEED MD on a nationwide level.

Ms. Stites: And I think Olowalu Town maybe is one.

Mr. Hedani: The only other thing I wanted to mention was that there's a group on Maui that's working on the LEED diamond certification, which is the development of none of the above where you just have trees and grass.

Mr. Starr: It's like the post carbon level. Well, thank you. This was a wonderful presentation. And I just wanna thank you for doing this work on the State level and bringing us into the future gracefully. Thank you.

Ms. Suzuki-Jones: Thank you, all.

Mr. Starr: Okay, and we'll take a ten-minute recess, and go back to the business at hand.

(A recess was taken at 1:51 p.m. and the meeting reconvened at 2:02 p.m.)

Mr. Starr: . . . to order. This is October 14th 2008. We're continuing the Maui Planning Commission meeting. We're going back to Item B-2, Pine State Limited requesting a land use district boundary amendment from ag to urban for Ke Kani Kai in Makena.

2. PINE STATE LIMITED requesting a State Land Use District Boundary Amendment from Agricultural to Urban for Ke Kani Kai, a proposed 2-lot subdivision and associated infrastructure improvements at Lot 3 Makena, Keoneoio Road, TMK: 2-1-005: 117, Makena, Island of Maui. (DBA 2007/0008) (P. Fasi)

Mr. Starr: And we were on discussion. We just had a presentation by the applicant. And now it's time for Commissioners to ask whatever questions, and then we'll deal with action on it. Commissioner Mardfin?

Mr. Mardfin: Just as we were adjourning for lunch, Lance Collins was suggesting that his client had not been adequately notified. I was wondering if there was any discussion on that, and whether that had been resolved.

Mr. Starr: Mr. Fasi?

Mr. Fasi: During lunch break, Planner Joe Prutch went online, and went online to the Maui County real property assessment website which is where Mr. Kaufman got his mailing list. And as of yesterday, it was just updated 10/13/2008. And now it shows Linda McDonald on the ownership list. So I just wanted to get that into the record. Prior to the update, I believe Linda McDonald was not on the ownership list.

Mr. Mardfin: So does that imply that she was not notified or she was notified?

Mr. Fasi: It would imply that the – Linda McDonald herself not being on the County real property assessment list, which is what is the normal procedure for all our applicants and the data base which is normally used was not on there. However, Michael McDonald was. Now as of the update yesterday, now she's on it, and Michael McDonald's not.

Mr. Starr: So is Michael McDonald related to said Linda McDonald?

Mr. Fasi: I believe they're husband and wife or formally husband and wife. I'm not certain which of the two they are.

Mr. Starr: I just wanna ask counsel if this is something we should be concerned with.

Mr. Giroux: Chair, let me just flip to the section about notice regarding district boundaries. My experience with this in the past is there usually is a good faith effort analysis to be given to this type of situation. And under 19.68.020, Section 9, it talks about looking at the real property tax as being basically your key to finding who you're supposed to be noticing. It says, "The applicant may rely on any ownership list containing names and addresses as provided by any homeowners association." Let me go up a little bit. Let's see. Let me just read the whole section so there's no confusion. It says:

A list compiled within the 30-day period preceding the acceptance of the completed application by the Planning Department of the names of all those on record as owners and lessees of real property located within 500 feet of the real property which is the subject of the application. Their tax map key numbers and their addresses as this information is recorded in the State conveyance tax affidavits, real property assessment lists, and addresses located at the Real Property Division of the County.

And then it goes on to talk about properties that have been condominiumized.

Mr. Starr: Dr. Iaconetti?

Mr. Iaconetti: Is it possible to find out who was paying the taxes on that property?

Mr. Giroux: You're gonna have to ask the staff or the applicant.

Mr. Iaconetti: You said the list is compiled from the people who are paying the real property tax.

Mr. Giroux: Yes, as recorded in the State conveyance tax affidavits, real property assessment list and addresses located at the Real Property Tax Division of the County.

Mr. Iaconetti: So who was paying the taxes?

Mr. Fasi: I would assume that it was the person on the list. I wouldn't know.

Mr. Iaconetti: I don't need an assumption. I'd like to know who is paying the taxes.

Mr. Starr: Is it something we have a mechanism to find out, Mr. Fasi?

Mr. Fasi: Dr. Iaconetti, pardon, but I don't see the relevance of who's paying the taxes versus—

Mr. Iaconetti: Relevant as to who was notified.

Mr. Fasi: The person that's on the list was notified—Michael J. McDonald.

Mr. Iaconetti: But according to our legal counsel, the list is made up on individuals who are paying taxes.

Mr. Fasi: And the list comes from the Maui County Real Property Assessment Division which is the Tax Office. So I would assume that it is Michael McDonald that is paying the taxes since he's on the tax assessment list.

Mr. Starr: I know we had a question about whether it's possible to find out who has been paying — actually paying the taxes. Is that something that a phone call could find out for us? Could you try, if you can?

Mr. Fasi: Certainly.

Mr. Starr: Thank you. Commissioner Hiranaga?

Mr. Hiranaga: My understanding is the list of — or the addresses on this real property tax list is determined or provided to the County as to where the real property assessment or real property tax bill should be sent. It does provide a basis to determine who owns the property. If you wanted an accurate list of who owns the property, you would have to request either a title search on every single parcel in the 500-foot radius, and that list would only be good on the date it was generated because title changes could occur the following day. So I think what I'm hearing is that this is a reasonable source to identify the people who probably are living in the 500-foot radius, but it's not meant to be the most accurate list available because there are land transactions occurring every day. So I don't why we're belaboring this point. If it says to use the real property tax list, they used the real property tax list. We've met that burden. I mean, we don't need to determine if that person who's intervening received the notification. If it was sent to the people on that list, we've met the burden of notification.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Yeah, I just wanted to reiterate what Commissioner Hiranaga is saying. If what Corp. Counsel is saying is that that's the list that you use, then the notification requirements have been met whether husband and wife speak to each other or not.

Mr. Starr: James, do you agree with that reasonable attempt has been made to deliver to the proper party?

Mr. Giroux: Yeah, you know, I don't think it's Corp. Counsel's call. Usually in this situation we look at the statute. And the statute usually goes back to the Planning Director to make that evaluation because he does an evaluation of completeness of the application. And I have to assume at this time because I'm not of the Department's workings that they did an evaluation of the application, and they saw fit that the proper notice was followed.

Mr. Starr: Mr. Yoshida?

Mr. Yoshida: Yeah, to the best of our ability, we feel that the applicant has met the notification requirement and in addition, they did publish the notice once a week for three consecutive weeks as also required by Chapter 19.68.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: Let me try to get to this nut in a slightly different route. Lance Collins' client must've heard about this. Otherwise, she wouldn't have contacted Lance Collins. Whether or not there were X number of days in there is one thing. Does anybody know how long ago she received – she found out about it?

Mr. Starr: They filed an intervention on a certain date. They must've known about it by then. Commissioner Hiranaga?

Mr. Hiranaga: I'm a little confused as to why we're discussing notification because I believe the intervention request was denied. Now aren't we supposed to be talking about the merits of the application?

Mr. Starr: My understanding is that there was a concern mentioned by the lawyer for the applicant to one of the Commissioners that time – that their client wasn't notified of the application in a timely manner. So for whatever that is, that's why we're discussing it. We've heard from the Department that they feel that the notice requirements have been properly met. I'm satisfied. I don't know if other Commissioners have any more issues, but– Okay. Yeah, Joe, go ahead.

Mr. Prutch: If I might add, I mean, Paul's not here right now, and I have the Iwa lke next, which is very similar to this one, and I also wanted to note, too, that the applicant did go out, I don't know how far, but he did go out quite a distance beyond the 500-foot, not required to, but he did just to try to get more notice out there, just to mention that.

Mr. Starr: Okay. I'd like to try to move it along. I do have a question, which is how – I don't really understand why there is no requirement for an SMA on this. There will be septic systems in proximity to the shoreline, and runoff, and so on. I'm trying to understand for an SMA has been dropped.

Mr. Yoshida: I believe there are some associated improvements. There may be a requirement for an SMA but the evaluation of the improvements may be less than \$125,000, so it could turn into an SMA minor permit.

Mr. Starr: You mean it's because of the value? It seems like this is a many, many million-dollar

project. I don't get the value of \$125,000. Is that only the value of the paperwork?

Mr. Yoshida: If the evaluation of the construction of the improvements to service the lots for the subdivision is less than \$125,000 that is the criteria, one of the criteria for the issuance of the minor permit.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: I think the location of the property is also mauka of the highway closest to the shore.

Mr. Starr: Is the property inside the SMA boundary?

Mr. Yoshida: Yes, I believe as reflected on page two, it is within the SMA. Well, it is mauka of the highway, but again, the minimum distance for the SMA is 300 feet from the shoreline. And based on our maps, SMA maps, we've determined that the property is located in the special management area.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: My reading of that when I was looking it over was that they're saying at this point they're not coming in for building. All they're trying to do is subdividing into two. And so they put a value on it of \$17,500 I think it was because they're not talking about building, and they're not talking about the value of the property. They're talking about subdivision – since the subdivision into two has a small value, they qualified for SMA, not exempt, but SMA minor. And SMA minors don't require EAs and that sort of thing.

Mr. Starr: So when they go to build, does that then create an SMA obligation?

Mr. Yoshida: I guess when the – if the subdivision is completed and the lots are conveyed to third party owners, the third party owners would come in for SMA assessments for construction of houses on their lots. When basically on page three under Land Use Permits, we have listed a special management area minor permit.

Mr. Starr: Then won't they be a single family house on a single lot, and at that point they'll be exempt from the SMA? It seems like this is a way to find a loophole out of doing an SMA by saying that the value of the subdivision is below a certain value, getting a subdivision, and then getting an SMA exemption because this is a residential on a single lot. Am I correct in that, Mr. Yoshida?

Mr. Yoshida: Well, I believe at this point, the applicant is just providing improved lots with various utilities.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Just looking at the staff report, curbs, gutters, and sidewalks are being deferred or waived. So the only improvement I can see is one 5/8-inch water lateral and maybe the drainage . . . (inaudible) . . ., so there really aren't any improvements gonna be required 'cause it appears fire protection is adequate, water service is adequate. They're gonna put the lateral in for the

waterline. And the applicant can correct me, but other than that, that's why they're saying it's only about \$18,000 worth of improvements. And it's below the \$125,000 threshold for a major SMA permit, so it's not really a loophole. It still goes through a review, but it's an administrative review by the Department. It doesn't come under the jurisdiction of the Planning Commission. Am I correct or—?

Unidentified Speaker: You're correct, yes.

Mr. Prutch: And just to note as well, if it goes to an SMA minor, we, as the Planning Department can still condition – place conditions on that SMA minor.

Mr. Starr: Mr. Fasi, did you get an answer? Were you able to get an answer to Dr. Iaconetti's question?

Mr. Fasi: Yes, I did. As of today, Michael J. McDonald and Linda M. McDonald are both as listed property owners. At the time that Mr. Kaufman pulled his list, apparently, Linda McDonald was not on it. And as I would like to point out again, this list was just updated yesterday.

Mr. Starr: Thank you making the effort. Okay, Members, more questions? Commissioner Hiranaga?

Mr. Hiranaga: The applicant says in its drainage plan it will collect all additional surface runoff created by the development for a 50-year, one-hour storm. And a lot of public testimony was concerned about water quality across the street. So I'm wondering if the applicant would be agreeable to capturing the existing as well as the additional runoff created by his project for his parcel.

Mr. Staff: Yeah, Mr. Kaufman, please.

Mr. Kaufman: Yes, those comments were taken on board from the last meeting. And the engineer suggested the plan— Excuse me. The engineer suggested the plan to accommodate that request to retain the runoff and a retention basin on the property.

Mr. Hiranaga: Existing and additional?

Mr. Kaufman: Yes.

Mr. Starr: So, Mr. Fasi, it sounds like the applicant would be amenable to a condition that all the runoff – all runoff generated from the site pre-development as well as increased from the developer will be retained onsite.

Mr. Fasi: So noted.

Mr. Starr: Thank you. Members? If there's no more— Go ahead, Commissioner Hiranaga.

Mr. Hiranaga: You mentioned an ohana would be allowable on the subdivided lots. You have a size limitation on that because I believe under the R-3 zoning, you could probably build another full-

sized house.

Mr. Kaufman: Oh, no, I wasn't thinking that at all. I was under the impression it would be 500 square feet maximum, at the outside, 700. My understanding on the rural— I did not build an ohana. I'm not keen on ohanas, but my neighbor built on our rural zoning. And he was restricted to 700 square feet. And his property was just under an acre in size. So I'm presuming that an ohana would be 500 to 700 square feet maximum—whatever the code is. Mr. Fasi may know.

Mr. Fasi: Yeah, that's correct. (Inaudible) . . . for R-3.

Mr. Hiranaga: But for a rural, half-acre it's 7, right?

Mr. Fasi: For a rural half-acre, it is 7, correct.

Mr. Kaufman: But we're happy to abide by the R-3 requirement to the 500 square feet.

Mr. Hiranaga: I would be agreeable to 700.

Mr. Kaufman: All right.

Mr. Hiranaga: So it's 700 square foot limitation on the—

Mr. Fasi: Sure, so noted.

Mr. Starr: Members, anything else? Commissioner Mardfin?

Mr. Mardfin: Exhibit 4 is a letter from OHA. And basically they say they cannot approve this project because proper CIA was – cultural impact assessment was not done. There's some notices in here that – that was in a January 5th 2008 letter. I understand subsequent to that, and we saw it in the EA that some stuff was done, and we have a July 10, 2008 letter from DLNR that we accepted the archaeological assessment submitted by Xamanek but there's nothing new from OHA. Does anybody know whether OHA even though DLNR is the accepting authority, does anybody know if OHA is now okay with the project?

Mr. Starr: Paul?

Mr. Fasi: I'm gonna defer that to the applicant?

Mr. Kaufman: Yes, the CIA was completed. It's in the – the Maui Planning Commission has a copy of it and it was forwarded it immediately to OHA and all the cc's that appear on his address. And we never heard a response from them ever. And I think on the July 1st 2008 letter to Mr. Prutch here, the SHPD acknowledges that the CIA was recommended and was undertaken. So at this point, we submitted it, asked for review or comment, and have never heard back from any – not even the local OHA, any of the representatives on the OHA letter that were cc'd. Everyone received a copy of the CIA, and we've received no negative feedback or feedback at all on the CIA. So I presumed it was accepted as written.

Mr. Starr: Okay. Commissioner Hiranaga?

Mr. Hiranaga: Since we haven't received a response from OHA, and this will be a recommendation to Council, I'd suggest the Planning Department do a follow up letter to OHA to see if they have a comments regarding the CIA so that it could be available for Council's review.

Mr. Starr: Okay, Mr. Fasi, got that?

Mr. Fasi: Could I bring it to the Commission's attention, Exhibit 4 of the Department's report where it-

Mr. Starr: What does it say?

Mr. Fasi: Is this addressing your concern regarding cultural impact assessment?

Mr. Mardfin: Right, the January 25th letter.

Mr. Fasi: Yes.

Mr. Mardfin: Yeah. And they said this is not acceptable. The CIA wasn't done and we reject the project until it is done. Then it seems that it - sometime around April I think it was done. We saw it in the EA and it was - Mr. Kaufman says it was sent out again to OHA, but they haven't heard back. We do know that DLNR got it because in Exhibit 10, they say they got it and they accepted it. But them accepting it and OHA accepting it are two- I mean, legally, DLNR accepts it, but whether OHA is satisfied with it or not, we're only presuming because they haven't responded. And what - was just asked is that you contact OHA to make sure that they are okay with it before it goes to Council.

Mr. Fasi: I believe this issue came up on a previous project before OHA not responding and DLNR did respond. And I believe that we walked away with a decision that the archaeologists which are "scientific" in their analysis versus social, cultural aspects of the OHA review, and I believe this Board relied on the DLNR recommendation over the OHA because of that fact.

Mr. Mardfin: Not to be argumentative, that may be, but I think OHA raises some very serious concerns, and I'm not prepared to - not hearing from them - I think if they had serious complaints, they might've responded. Not hearing them is fine, but I think that we ought to check with them to see if their concerns have been allayed by the architectural report 'cause they do raise some serious issues.

Mr. Fasi: So noted.

Mr. Mardfin: If it weren't - if they hadn't done the thing and had the archaeological assessment accepted by DLNR, I wouldn't support this at all, but I'm willing to assume-

Mr. Fasi: The Department has no problem doing the follow up.

Mr. Starr: Okay. In other words, you will send a follow up letter, and the results of that will go with

our recommendation, whatever that is.

Mr. Fasi: You wanna condition that as a third condition here that–

Mr. Starr: I don't think it needs–

Mr. Fasi: Follow it up as a request? Or you just want me to put–

Mr. Starr: Yeah, just do it.

Mr. Fasi: Okay.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Some of the testifiers during the public hearing mentioned about the lack of parking. And according to the staff report, due to the creation of the road-widening lot, there will be eight to ten parking stalls available to the public. Is that correct?

Mr. Kaufman: That's correct, yes.

Mr. Hiranaga: And I guess that would be on County land, right?

Mr. Kaufman: Yes.

Mr. Hiranaga: So you're gonna mark those or how will people know that the parking is there?

Mr. Kaufman: Our plan was to do exactly what we did at the subdivision which is just leave it as the Public Works requested which is graded and people park there. They're parking there right now.

Mr. Hiranaga: Graded and graveled or just graded?

Mr. Kaufman: It's graded and graveled, yes. So they're currently – people are currently parking there right now. And while I would point out that eight to ten parking stalls may not sound like a lot, that's about 15% of the current parking at the second parking lot at Big Beach. So it adds significant to the parking down there.

Mr. Starr: Would you be amenable to a condition regarding light pollution toward the shoreline that it be – I'm gonna look to the Department for help with wording, but that it be constrained in the severest sense. In fact, it should be virtually nil.

Mr. Fasi: There's a State law that regard – in light pollution. And that law was enacted specific–

Mr. Starr: . . . the Makena-Keoneoio Road? Is that acceptable to you, Mr. Kaufman?

Mr. Kaufman: I'm amenable to that. Actually if you look in the – I'm looking for it now in the EA. We address this issue.

Mr. Starr: The EA is not valid.

Mr. Kaufman: Okay, but I was just looking for the language that we put in the EA that might be helpful.

Mr. Starr: I'd like no light to cross the road. Commissioner Mardfin?

Mr. Mardfin: Different issue. Exhibit 2 is a letter from the Department of Public Works. And they raise a number of issues. In the reply to Exhibit 2, there is a reply to that by Mr. Kaufman. And the letter following that which doesn't have a separate designation is a rejoinder from the Department of Public Works. And they say in response to Mr. Kaufman's letter, "Ke Kani Kai's response to Item No. 2 speaks to complying with providing the road-widening lot, but does not speak towards providing the improvements per County standards as described in the Department's comments. The response to Item No. 11 indicates compliance with Maui County Code which covers the remaining section." So maybe it's dealt with, but—

Mr. Kaufman: I viewed that. Sorry. I viewed that. The reason we didn't respond to that because it seemed like they were answering their own question in the letter. It seemed like – in other words, the way I received that letter is saying you didn't address it in Point 2, but you addressed it in Point 11. And so, I'm in concurrence with what they've asked for.

Mr. Mardfin: So you will be providing improvements per County standards?

Mr. Kaufman: Yes, yes.

Mr. Mardfin: What's the cost of that, roughly? Any idea?

Mr. Kaufman: It's whatever County standards are being placed upon the subdivision right now. They would've been the curbs, gutters, etc., which are being exempted from the project. So—

Mr. Mardfin: So it wouldn't push you over the \$125,000 threshold for SMA minor?

Mr. Kaufman: No.

Mr. Starr: Okay, Members? I have a last one. I have a concern about septic systems in this area. This is a place where the nearshore waters are already being impacted by release from septic systems when all of the substrate, it's lava, it's very porous. I'm wondering what you're willing to do to make sure that we don't have increasing pollution from the septic system into the nearshore waters.

Mr. Kaufman: Actually, I share your concern with that given the fact that Big Beach is actually downstream from largely the big golf course right now. It's actually pretty amazing that there's been less inundation in that area than one would expect. Two issues that we have looked at which is looking at the most efficient septic system whether they be above ground, sand-type filters, or below ground. And the other issue to look down the road in terms of tying into the Makena Resort system should it ever become available as a possibility. But it is our intent to insure that – and so far on our subdivision we've seen no leaching, no problems at all. So I think properly installed and

maintained, they could work very efficiently there.

Mr. Starr: So you're saying you're not willing to do anything as far as a condition to—

Mr. Kaufman: No, I'm willing to listen to a condition you may have. I mean, the systems that are available out there – I mean, there's a variety of systems. If you've got one that you prefer that you'd like to have us restricted to, we'd certainly entertain that.

Mr. Starr: Anyone help me with this? Bruce?

Mr. Kaufman: I mean, to my knowledge, Chairman, sorry, I think commercially available, there's basically about two types. There's the one that's in the ground, and then there's the vertical sand filter that sits above the ground as well. In my researching this four years ago before we installed ours and working with Arakaki Associates in designing it, I couldn't ascertain that one was any more efficient than the other one, but again, I'm willing to look at whatever it takes. I mean, I'm a guy who bleeds green. I'm an environmentalist, so I'm looking at whatever it takes to make stuff happen.

Mr. Starr: Does the Department have any recommendations on this?

Mr. Fasi: Well, I know that the septic system has to be designed by a certified engineer, and it has to pass the State Department of Health requirements in order for them to get a sign-off on a building permit.

Mr. Starr: I wish I had an answer to this. I don't. Okay, Members? Commissioner U`u?

Mr. U`u: Question—I know you going in for the – subdivide the properties, but at what point were you thinking of actually building the dwellings?

Mr. Kaufman: Well, if my experience plays out this time what I experienced last time, the subdivision process took about three, three and a half years. And I think I received final subdivision in 1999, and finally occupied my home in 2004. So I see we're talking three to five years minimum from this date forward before anyone could occupy a residence there down there at all, and that's again subject to water. If there's no water, we could be talking 20-30 years. I mean, this is really like I said before sort of a pre-emptive strike to establish something there, but water is certainly going to be an issue. But if all – if everything lined up and they found water tomorrow, I think you're looking at a minimum three, if not, expected five years from today before you build a home.

Mr. Starr: Dr. Iaconetti?

Mr. Iaconetti: Mr. Kaufman, I commend you to the five items that you listed in your letter of October 2 that all lots shall be a minimum of one-half acre. And I think that's great. If something horrible should happen and you no longer are able to maintain ownership of this property, I realize you have this in perpetuity, these five items, but I wonder how difficult it would be for a new owner to increase the occupation of that space from one-half acre lots to 10,000 square feet. This wouldn't be the first time something like this happened where somebody gets an okay to build something, and then decides he doesn't want to, and he sells it to somebody else who has other ideas about how to use the property.

Mr. Kaufman: Dr. Iaconetti, I would say that I want from this body that ironclad insurance that no one could ever do that.

Mr. Iaconetti: That was the question—how difficult would it be to change it even though it was in the perpetuity? Is it possible to change it?

Mr. Starr: We're just making our recommendation here. My understanding, by the way, is that this is owned by a corporate entity in China. This is not owned by the gentleman standing before us. He is just their agent. So I don't really understand what his commitments might mean, but I would like to ask Clayton what would happen if there's a condition for .5-acre and there's a decision to change that later.

Mr. Yoshida: I guess there could be a condition of the boundary classification that could be registered in the form of a unilateral agreement. And if they wanted to change that, then they would have to go through the process of amending the condition for the boundary amendment and having a new lateral agreement put in place.

Mr. Starr: Okay. Commissioner Hiranaga?

Mr. Hiranaga: In laymen terms, Clayton, you're saying that a future owner needs to come before the Planning Commission whoever is at that time seated there to get them to remove the condition. And then they would have to go the Council and have the Council amend the ordinance.

Mr. Yoshida: Yes, because the condition would run with the land.

Mr. Starr: Okay, Members, let's deal with it one way or another. Are we ready for the recommendation from staff? Commissioner Mardfin?

Mr. Mardfin: I just wanna do one quick one. Because there was a lot of testimony about water being used to feed lawns while people don't get to drink in Wailuku, and I understand you can't even get water at this point, can you give us any assurances that you don't plan to make this huge orchard down there?

Mr. Kaufman: Yes, I'll tell you right now that I have a sprinkler system. That it runs three days a week period out of seven. But contrary to what was said before, there is a zone right there in Makena where these properties happen to be located where we receive almost every day at 4 o'clock in the afternoon. As a matter of fact, it rained an hour and a half last night in Makena. And so it's a very unusual strip. If you go up towards the parking lot at Big Beach, it's dry as a bone. So there's a little spot right there that comes off of Ulupalakua and it rains in there. So the need for water is not high. But our commitment— I'll tell you my interest in doing this project is very simple in that I think we can also establish green sustainable homes down there, and showcase how you can xeriscaping, how you can use minimal water. My house right now runs off the sun, and it's got solar pv, etc. And I wanna create a situation where I have a minimal impact there. And I'm happy to commit to that. And that's the spirit and desire that we're moving into this process with. You know, I do agree there's issues with water. There are two water meters. There is a water meter on each parcel down there, but there's not enough water for what we plan on doing right now.

Mr. Starr: Okay, Mr. Fasi, you have a recommendation?

Mr. Fasi: I wanted to just say a few words on Dr. laconetti's comments regarding how permits are. The Department's real – very comfortable with the applicant restricting himself to these covenants. And these covenants to him and restrictions on his property would be attached to a deed which is – would be held, I believe, in title to the property, so it would be a legal, binding document beyond this body or the Council, but in actual legal document restricting these conditions and tied to the deed. So when you do a title search on the property, these restrictions would come up.

Mr. laconetti: Thank you.

Mr. Fasi: I'll get into the recommendation. Thank you, Mr. Chair.

Mr. Starr: Why don't you wait? Let him get through them and then you'll have the next question. Yeah, go ahead, Commissioner Hedani?

Mr. Hedani: Paul, the question that I had was CC&Rs that are tied to the land are enforceable basically by only whoever is willing to enforce the CC&Rs. Is that something that the County be made a party to in terms of enforcement? Or is it something that the owner of the property would be – it would be up to the Pine State Limited to enforce the covenants?

Mr. Fasi: Well, to the best of knowledge, I believe that not only would he would be tied to these restrictions in the deed, but also these conditions will be put as recommendations to the district boundary amendment that you are making recommendations to. And so in that case, the DBA would tie it as well. That's the best answer I can give you right now.

Mr. Hedani: Okay, so I guess from the standpoint of enforcement, if there was a violation of those terms, it would be enforceable by the County?

Mr. Fasi: Yes, I would believe so. I believe that is correct.

Mr. Starr: Okay, move along to the recommendation.

Mr. Fasi: The Maui Planning Department recommends that the Maui Planning Commission recommend approval to the Maui County Council of the land use district boundary amendment from ag to urban. In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the October 14th 2008 meeting as its findings of fact, conclusions of law, and decision and order, and authorize the Director of Planning to transmit said written decision and order to the Maui County Council on behalf of the Planning Commission.

Mr. Starr: And then you attach the list of–

Mr. Fasi: And attach as further recommendations, the self-imposed restrictions by the applicant of which there are five in his October 2nd 2008 letter, and the three additional conditions imposed by this body on the DBA.

Mr. Starr: Members, is there any desire to try to get more teeth into those, or there is a desire to make a motion on this thing? Some enthusiasm. Someone please make a motion for, or against, or to defer. Pick one. Commissioner Mardfin?

Mr. Mardfin: I move that we accept the recommendations of the Planning Department and further our recommendations to the County Council to approve this project with this boundary amendment with all the conditions that we've . . . (inaudible) . . .

Mr. Starr: Okay, is there a second?

Mr. U`u: Second.

Mr. Starr: Okay, motion by Commissioner Mardfin. I heard – second by Commissioner U`u. Fighting over it over there. And the motion is–?

Mr. Yoshida: To recommend approval subject to the conditions as defined by the staff planner.

Mr. Starr: Okay. Corp. Counsel would like to hear the conditions again. And I'm really confused about what exactly these things are by self-imposed. It sounds like some kind of penance. It doesn't sound like something that anyone is actually gonna see is performed. But why don't you read them?

Mr. Fasi: Based on the applicant's October 2nd 2008 letter, the conditions that the Planning Department agrees with and accepts as restrictions on this lot:

1. All lots shall be a minimum of one-half acre or greater;
2. No future subdivision shall be permitted;
3. No condominiumizing;
4. Setbacks to match that required of rural zoning;
5. Building heights to be limited to 30 feet above natural or finished grade, whichever is lower;
6. That all runoff, pre and post development, to be mitigated by the owner;
7. A maximum of 700 square feet on the ohana or accessory dwelling;
8. That no light pollution, that no light be directed towards the makai side of the property towards the ocean.

Mr. Starr: That no light be emitted from the property which can be seen on the ocean side of Makena–

Mr. Fasi: Keoneoio Road?

Mr. Starr: Yeah.

Mr. Fasi: That no light be emitted or directed towards–

Mr. Starr: No, that can be seen–

Mr. Fasi: That can be seen towards—

Mr. Starr: That can be seen from the ocean side of—

Mr. Fasi: Okay. “That no light be emitted that can be seen from the ocean side of Keoneoio Road.”

Mr. Starr: Okay. Thank you. Commissioner Hiranaga?

Mr. Hiranaga: I believe that Condition 5 regarding the retention basin, you used the word “mitigate.” I think it should be “shall retain all pre development and post development surface runoff.”

Mr. Fasi: “That all runoff, pre and post development, shall be—?”

Mr. Hiranaga: “Retained—“

Mr. Fasi: “Retained by the owner.”

Mr. Hiranaga: “Onsite.”

Mr. Fasi: “It shall be retained by the owner onsite.”

Mr. Starr: Yeah, thank you. Members, any other? Yeah, go ahead.

Mr. Giroux: Paul, I just need to clarify, I’m reading the letter and the letter is saying that the following five conditions are gonna be either in an SMA or in a deed to the property at the State Land Bureau of Conveyance. Now, what they’re voting on is to actually put these conditions in the State boundary amendment. Because when we’re writing up ordinances and stuff, we rely on these types of documents to make sure we get the conditions right. And I just want the Members to be clear that you’re putting this as conditions. You’re not waiting for these to be put in future entitlements. And the other thing is looking at the community plan on page 7 in your report regarding curbs, gutters, sidewalks, I don’t see that being put in as a condition. Is that something that you—?

Mr. Fasi: The Department of Public Works will make that as either a requirement or not a requirement based on their standards for that area. It would be unusual to put curbs, gutters, and sidewalks in that particular location.

Mr. Giroux: Okay, Paul, I was involved heavily in the last two projects on Kenolio Road and I had to write extensive legal opinions because of this issue. And it really worries me that the Planning Department hasn’t nailed this down at this level here because all I’m seeing is another legal opinion that James Giroux is gonna have to go write. Okay? And I’m really concerned about this because those two legal opinions were very difficult to write. I mean, the research and the reasoning that had to go in there to make sure that the County was doing something legal in the aspect of development was very difficult. And I knew that those opinions would be someday probably taken out of context and used for a different purpose. And I really want the Planning Department to look at this hard because what you’re looking at is basically a conflict within your Kihei Community Plan. You have a community plan designation for residential, and yet you have a context there that says that the roads shall remain in a character of rural. And you know that Public Works, as soon as you

go to subdivide is stuck with the County Code, Title 18, forcing as soon as you subdivide to create curbs, gutters, and sidewalks. Now, when I had to deal with them in this context, they were very, very opposed to my legal opinion. And what I wrote it was in the context of zoning. Now, it's coming before us in the context of a State designation, State district boundary amendment. And it bothers me. I mean, I'm just raising the issue for the Department because I'm afraid that the applicant's gonna run into this when he gets up to Council.

Mr. Starr: Can you recommend an action we can take, James?

Mr. Giroux: Well, what I'm telling the Department is they need to look at this because I-

Mr. Starr: Well, give us an action we can take to deal with it.

Mr. Giroux: It is not my place to tell Planning how to do their job. And it's - and they need to be advising accordingly as far as planning ability in what is it going to do to keep in conformance and in alignment with the community plan.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Yeah, I can see a concern when the property is zoned R-3 and the community plan is urban. If someone were to be injured on the roadside, they could file a complaint that if there had been sidewalks, curbs, and gutters, this accident would not have happened. And so I can see that can be some exposure to the County when in fact these requirements are on the books and some agency or department is waiving that requirement with no real solid basis for doing that.

Mr. Starr: Well, does someone want to add a condition? Do you want maintain the rural character? Do you want to force them to put sidewalks, curbs, and gutters? What do we want to do?

Mr. Fasi: Could the Department make a suggestion that the applicant just be held accountable to the final decisions that would be made by the Department of Public Works whether to put them in or not because it is - the Department relies on Department of Public Works to sometimes make those decisions because at Papaanui, they didn't require them in.

Mr. Giroux: Okay, Paul, Public Works is actually a non-voting Member of this body. We should be able to know what Public Works is thinking about this before they vote. Again, we are trying to administrate a State law. And while doing that, we may be setting ourselves up to violate a County ordinance. So we need to know what the Administration's position is on this before we send up that recommendation to the County Council and put them into this position.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Can't we just remain silent on the issue because all we're doing is a State boundary amendment? We're not granting final subdivision approval. So there is a process that has to go through. So we're just not gonna make any representation to the applicant either way. Just be silent about it.

Mr. Starr: Can we just add some wording that will go up to the Council to make sure that they have a decision from Public Works and the - with the agreement of the applicant before it passes on to

them for decision-making?

Mr. Giroux: Yes, and again, we did go over what the Council's ability is. And if you wanna highlight that as a concern, or request that that there be some determination before you go forward because the representation that you're gonna keep the character while doing something legally that's gonna force character to change doesn't put anybody in a good position to go forward because this isn't gonna be caught until subdivision.

Mr. Starr: Okay, we got it. So, Paul, as part of the recommendation that a determination be made by Public Works for the assent of the applicant as to what degree of improvements regarding—

Mr. Fasi: Prior to scheduling before the Council?

Mr. Starr: Yeah, Mr. Yoshida?

Mr. Yoshida: Yeah, I guess, I don't have the exact language before me, but if we can use the similar roadway standard language as we did for the Papaanui Subdivision which has — as James has said kind of has to — the community plan says one thing and the roadway standards are something else. Because the Commission — because for Papaanui, after the Council took the legislative action, then the Commission saw the SMA.

Mr. Starr: Okay, so I think we've dealt with that.

Mr. Prutch: If needed, that condition is in the Iwa Ike report. So it would be very similar to this one as well.

Mr. Starr: Okay, Paul, you have that?

Mr. Fasi: Yes, I do. We'd just request a determination—Department of Public Works regarding their sidewalk requirements. A determination be made prior to scheduling before the Council.

Mr. Starr: Yes. Okay, Commissioner Hedani?

Mr. Hedani: So in that particular case, Paul, if the applicant or if the Department goes to the Public Works, and Public Works says that you should improve the roadway to County standards, that would be the recommendation?

Mr. Fasi: That would be the recommendation, correct.

Mr. Hedani: Okay, 'cause I think in the case of the Makena Landing Subdivision, it was a road that was in very close proximity to the ocean. It was very narrow at that particular point. And it had a different character than the roadway that's adjacent to this particular property.

Mr. Starr: Okay, Members? Commissioner U`u?

Mr. U`u: One last thing, one of the testifiers also made a statement that a lot of the work being done was from out-of-State. I was wondering if we could put in a condition to say that a local signatory

contractor build the potential houses onsite. Is that possible?

Mr. Kaufman: I built my house.

Mr. U`u: Oh, you built your own house? Are you building these next two houses?

Mr. Kaufman: (Inaudible)

Mr. U`u: So you did it all in-house?

Mr. Kaufman: Yeah, they were all Maui guys.

Mr. Starr: So the guys from Hong Kong will come and build their own houses?

Mr. Kaufman: No, no, no. That – his business is located in Hong Kong. This guy lives part-time on Maui and part-time in . . . (inaudible) . . .

Mr. U`u: So you'll be local?

Mr. Kaufman: Local, yeah. We didn't bring anybody in. All local guys.

Mr. U`u: 'Cause I seen a lot of building, and I know they weren't local. I mean, local, you define local as been here a year, or six months, or 15 years to 20 years? That's my interpretation of local.

Mr. Kaufman: I used Clarence Tavares' son – Sonny Vic's son, Clarence to do the work. I used Sonny's other brother-in-law to do the grading work. So I used all local.

Mr. U`u: So you wouldn't be opposed to putting local on that?

Mr. Kaufman: No, I don't know anywhere else to go but local.

Mr. U`u: That's good.

Mr. Kaufman: Okay.

Mr. Starr: Okay, Members, we ready for a vote? Go ahead, Commissioner Hiranaga?

Mr. Hiranaga: Is that an additional condition that's being placed on the motion or is that just discussion?

Mr. Starr: I think that was a personal commitment—whatever that means.

Mr. U`u: Could we have it in writing?

Mr. Kaufman: I don't mind putting it in writing. I'm not gonna hire anybody that doesn't live on Maui that isn't local.

Mr. U`u: That's good with me.

Mr. Kaufman: That's fine.

Mr. Starr: Okay, Commissioner Mardfin. Come on, let's wrap it up.

Mr. Mardfin: I don't wanna beat a dead horse, but I think putting a condition like that would probably be illegal. I mean, you can ask him to do it, but—

Mr. U`u: I can live with it. Can you? Kidding.

Mr. Starr: Okay, can we take a vote. Okay, we have a motion on the floor. And the motion is to recommend approval of the recommendation with conditions. All those in favor, please raise your hand. All those opposed. Clayton?

Mr. Yoshida: Let's see, we have Commissioner Iaconetti and the Chair voting no. We have five in favor. We have Commissioner Guard and Commissioner Pawsat excused. So the motion passes.

It was moved by Mr. Mardfin, seconded by Mr. U`u, then,

**VOTED: To Recommend Approval of the State Land Use District Boundary Amendment, with conditions.
(Assenting - W. Mardfin, B. U`u, K. Hiranaga, D. Domingo, W. Hedani)
(Dissenting - W. Iaconetti, J. Starr)
(Excused - J. Pawsat, J. Guard)**

Mr. Fasi: Just for clarification, Commissioner U`u's request was a letter of request or a condition?

Mr. Starr: It was not a condition. It was a request that the applicant will write a letter that he intends to.

Mr. Fasi: Okay, thank you.

Mr. Mardfin: And you'll check with OHA.

Mr. Starr: Thank you. Moving right along we're going to the next item on the agenda, which is B-1. The planner is Joe Prutch. We're gonna follow the same process, but we're gonna follow it a lot faster.

Mr. Prutch: But if I may? The applicant's out here for the next item—the Hoolio House.

Mr. Starr: Yeah.

Mr. Prutch: They have a family obligation and they've got to be leaving around 3 o'clock supposedly. So they're not gonna be able to be here when their item's up. Is there a chance we

can get to them? And they asked if they can defer theirs until the next possible meeting since they're gonna be able to here for their item. They've been here all day, but they're not gonna be able to here past 3 o'clock.

E. UNFINISHED BUSINESS

1. **JAY WISTHOFF & KATHY WISTHOFF requesting a State Land Use Commission Special Use Permit and a Conditional Permit in order to operate a transient vacation rental, Hoolio House in the State Agricultural District at 138 Awaiku Street, TMK: 4-7-009: 058, Launiupoko, Lahaina, Island of Maui. (SUP2 20030003) (CP 20030003) (J. Dack) Public Hearing was conducted on August 26,2008.**

Dr. Iaconetti: So moved.

Mr. Starr: Wait a second. Do we have a second?

Mr. Prutch: But when is the next meeting, Clayton? Will they be able to get on the 28th?

Mr. Starr: They'll be informed when it's able to fit in.

Mr. Yoshida: Yeah, we have public hearings on the next-

Mr. Starr: So we have a motion by Dr. Iaconetti, seconded by Commissioner Hedani.

Mr. Giroux: We should have a date certain because otherwise, they're gonna run the risk of having of go through the public notice requirements again.

Mr. Prutch: So the first week in November? What day is that?

Mr. Yoshida: The next meeting is on November 10 – I'm sorry, October 28th. We have five public hearing items scheduled.

Mr. Starr: So make it for the following one.

Mr. Yoshida: November 10th. We have four public hearings scheduled.

Mr. Starr: So November 10th.

Mr. Yoshida: Yeah, the Monday before Veteran's Day.

Mr. Starr: Okay, is that all right with the maker and the second. Okay, so what is the motion, Clayton?

Mr. Yoshida: That the Hoolio House application items be deferred 'til the November 10 Maui Planning Commission meeting.

Mr. Starr: Okay, any discussion? All those in favor, please raise your hand. All opposed, please raise your hand.

Mr. Yoshida: Unanimous.

It was moved by Mr. Iaconetti, seconded by Mr. Hedani, then unanimously

**VOTED: To Defer the Matter to the November 10, 2008 Due to the Applicant Not Being Able to Be Present After 3:00 p.m.
(Assenting - W. Iaconetti, W. Hedani, K. Hiranaga, B. U'u, W. Mardfin, D. Domingo, J. Starr)
(Excused - J. Pawsat, J. Guard)**

Mr. Starr: Okay, thank you. Sorry about that, folks. Moving right along. Clayton, introduce the next item. What we're going to do once again is have a brief overview of the project, very brief overview, and then we're going to have a – we're gonna go – we'll open for public testimony, then we'll have discussion on the C-1, the filing of intervention.

B. PUBLIC HEARINGS

- 1. MR. GREG KAUFMAN of IWA IKE LLC requesting a State Land Use District Boundary Amendment from Agricultural to Urban for the Iwa Ike Subdivision, a four (4) lot subdivision and related improvements at 6699 Makena Road, TMK: 2-1-005: 118, Makena, Island of Maui. (DBA 2007/0007)(J. Prutch)**

Mr. Yoshida: Yes, thank you, Mr. Chairman. Very quickly, this is a request from Greg Kaufman of Iwa Ike LLC for a State land use district boundary amendment from ag to urban for the Iwa Ike Subdivision, a four-lot subdivision and related improvements at TMK: 2-1-005:118, Makena, Island of Maui. Joe Prutch is the staff planner. Associated with that is a petition to intervene filed by Lance Collins attorney for Linda McDonald on this request.

Mr. Prutch: Okay, I'll be brief as this project is very similar to Paul's project we just discussed. The only difference from this one is this one is Parcel No. 118. This one is about 2.8 acres in size. And this one is a subdivision for four lots somewhere between a half and .7 acres each. Same situation, same State land use designation of ag, same Kihei-Makena Community Plan for single family and zoning of R-3. The brief history that Paul went through is adequate for this project as well. Same thing. So we're here for the DBA. Two changes from State ag to State urban for consistency with the community plan and the zoning. It does already have preliminary subdivision approval. And the only reason, the only way to get final subdivision approval is to make consistency with the designation so that it can move forward with that. I think I'll leave it at for now. We'll get into more analysis a little bit later after we get through the petition to intervene. Thank you.

Mr. Starr: Okay, thank you, Joe Prutch.

A) Public Hearing

The following testimony was received at the beginning of the meeting:

Ms. Angie Hoffman: Aloha, my name is Angie Hoffman. I'm testifying on agendas one and two. I grew up in North Kihei and spent my childhood going to Makena State Park and recreating on Oneloa, Big Beach. More recently I worked at the Ahihi-Kinau Natural Area Reserve as a naturalist. So I spent a lot of time in this area and I've seen a lot of development over the years much more than before.

I personally do not think this is an appropriate area for the kind of development that has gone on. I think a lot of the zoning that was granted over the years was a mistake. This is an area rich in cultural history with many archaeological sites still intact. This is an area that's home to many endangered native species. This is an area which the local community recreates and is very special to many people. Many people come to enjoy the last remnants of wild Maui over there. Not only the local community but also the visitors. Working in Ahihi, I had many people approach me and you know, tell me why they were down there spending their days down there instead of you know, at the hotel or somewhere else and it's because that's what they came to see. So I'm of the opinion that we should think long and hard before granting any more rezoning and allowing more building in the special sacred area.

Several small archaeological sites have been identified in the specific area. Down the street where the big house across from Pohaku Heiau was built, was being built, three burial sites were uncovered. Near the state park there was a village complex found.

In the wetlands in the state park across from the lots on the agenda today are home to the Hawaiian Stilt, the Ae'o. Oneloa Beach is the nesting ground of the Honu'ea, the Hawksbill. This year there's six nests on Oneloa Beach. This is a critically endangered species, very few remain. This place is sacred to the animals and to the people.

Many youth from all around the island come to this beach regularly to relax and play. I was one of them and still am. I still meet my friends from high school down there and you know, it's just a place to get away from it all. When we were younger it was a place to get away from our school lives and now it's a place to get away from work lives. Many of them would love to be here today testifying with me but you know, our burden with work lives so.

To move on, just to recap, this place is really important and dear to us. I have learned a lot in the last few years and just like to conclude by sharing with you my vision of the future of Makena. I see a beautiful wild place that has thriving populations of once endangered animals and plants. I see the stilt, the hawksbill, the Hawaiian monk seal all thriving in flourishing numbers. I see the native plants being restored by the community as well as the archaeological sites. I see the archaeological sites not only being left in tact but restored and respected. I see a place where people in the community of all ages as well as people from all around the world can come to learn from the past and use those learning for the future. I see archaeological sites left in a cultural landscape not separated from one and other. You know, if we see a whole village, leaving that intact so we can study it and learn from it. All that put together, the plants, the animals, the archaeological sites, I think create a wonderful living university.

Mr. Starr: I need to ask you to wrap up soon.

Ms. Hoffman: Okay. The last part. I see the recreational use of the local people respected and improved where there's enough camping, enough parking and maybe camping restored so local families can sleep in nature and reconnect with the aina. I urge you to decline these requests. This is not an urban area. It is not appropriate. Mahalo for your time.

Mr. Starr: Okay, thank you. Members, anyone have any questions for the testifier? Okay, thank you very much and thank you for coming. Next testifier is Colin McCormick, will be followed by Daniel Kanahele.

Mr. Colin McCormick: Aloha Planning Commissioners. My name is Colin McCormick. I'm here to testify directly against the proposed request for rezoning of parcels directly mauka of second entrance. I could go on and on telling you why the lands directly mauka of second entrance Big Beach is vital to the residents of this entire island in terms of our economy, our state of mind and our pleasure, but I'm assuming you're smart enough to notice already and I'm not going to go there today.

Plus if you ask people from anywhere in the islands they can tell you. I'm here today to speak about the federally listed endangered species found within the state park. First species I want to mention is the Hawaiian hawksbill turtle. In the state and the world there are only 60 or less nesting females. This includes six on Maui and two of the six are found at Big Beach, Oneloa. In fact I was told that just last night one of the nests of these two remaining of the six just hatched on the full moon and I think that's special. It's a coincidence.

Second species of serious concern is the Hawaiian Stilt, the Ae'o. The National Geographic Society reports in 2001 that there was an estimated 1,200 to 1,500 birds left in the world. And it brought its striding population down at Big Beach. I'm not expert in Hawaiian animals. My background is botany actually. I went to the University of Hawaii, but I have been down countless hours at Big Beach and I've observed these native species down there. So I'm just here to report what I seen. I've seen the Hawaiian Stilts even frequent beach in the uncrowded week days. You guys go there on the weekdays which is hard for most people, it's a whole other world. There's not as many people down there and the stilts they come out and play on the beach and that's really special.

The next federally listed species that I think needs much more attention is the Hawaiian hoary bat. The population is estimated in the thousands and they still don't know exactly for sure how many are left. Its habitat range is mentioned from sea level to summit areas according to research on the Big Island. And also this recent research on the Big Island they found out that it actually bat activity varies with season and altitude with the greatest level of activity occurring at low elevations below 4,200 feet from April to December. This kind of concurs with my observations. If you go at this time of the year, and the colder months of the year, the bats they come down to the ocean and you see them. You can go any night of the week and you'll see, not just one, I promise you'll see many Hawaiian bats just flying right above where the waves are breaking. These endangered animals need more attention and if their habitat range has been proven on the Big Island to go from sea level to the mountain tops, you know, it just seems obviously that you know, this whole zone is important to them.

And U.S. Fish and Wildlife Service also states that the warm temperatures are strongly associated with reproductive success. So, again, please just consider this project. There's other endangered

species too as I mentioned, the Hawaiian coot, the green sea turtle, the monk seal, but my time is up. I just ask yourself, please ask yourself what good is an urban project like this would do for these species down there? And the thing about the legality of these endangered, you know, these are federally listed species. You know, things that are Hawaiian are all endangered, but these are federally listed endangered species that are mandated by law to have protection. Thank you.

Mr. Starr: Okay, thank you Colin. Members, any questions for the testifier? Okay, not seeing any thank you for coming today. Next is Daniel Kanahale followed by Merrill Kaufman.

Mr. Daniel Kanahale: Good morning Planning Commissioners. My name is Daniel Kanahale. I live in South Maui. I'm here to testify first on Item B-1 on your agenda. Mr. Kaufman of Iwa Ike LLC, and then Item 2, Pine State Limited, and then thirdly, on your agenda under C-1, Lance Collins, Attorney for Linda McDonald. So I would like to begin by testifying on B-1.

I'm here to ask that the commissioners look hard on this request for rezoning. I personally think that at this point in time, this request should either be denied or deferred. I think it should be either because maybe 40 years ago people thought it was a good idea to urbanize the Makena area, but I think people look at it differently today. Times have changed and personally I think the idea to urbanize Makena that long ago was a mistake and it's a mistake today and it's a mistake for the following reasons.

Makena is an area that is culturally, historically, ecologically and biologically sensitive and we should not be urbanizing areas that are sensitive in those areas because of the potential impacts. I have a special interest, none archaeologist but I have a special interest in archaeology. The area Makena is rich in cultural history, Hawaiian history. There were many, many kanaka that lived out in the Makena area. Some studies say as many as 10,000 lived in that area over a period of almost a thousand years.

Now, the first hundred maybe hundred-fifty years of that archaeology may found on the surface or the subsurface, but to get down to 600 to 700 years ago of history you gotta go a lot deeper. One of the mistakes that I personally feel happens when it comes to archaeological inventory surveys for developments is that they used tunnel vision. They look at one isolated area without really looking at the interrelationships and connection that the arc sites on those areas have with the areas around it. Western style, when you study something their methodology is to dissect it, to break it apart. For the Hawaiians, it was all about interconnectedness, relationships, we call that olo lokahi, the oneness of life. So an arc site is not significant necessarily in and of itself, but is made significant in relationship to what is around it. So I think it's important for a commission like yourself in trying to understand the significance of the archaeo - arc sites of a particular parcel, you need to look at the big picture, you need to step back, you need to view it in the way that the kanakas viewed it as a whole. Otherwise, you don't get the true picture. Makena is rich in cultural history. It's also rich in ecological and biological history.

Colin spoke about the Hawaiian hawksbill turtle which is an endangered species. This year was a banner year for the hawksbill turtle as far as laying eggs. They had more turtles hatched this year than I think any other recorded time. Oneloa Beach is one of the places where it lays its eggs and this is a important site for the hawksbill turtle. I'll move on to a -

Mr. Starr: Yeah, I need to ask you to wrap up.

Mr. Kanahale: I'll move onto item B-2, the Pine State Limited and just continue my testimony because what I say also relates to –

Mr. Starr: I need to ask you to wrap up please.

Mr. Kanahale: Am I allowed another three minutes for the –

Mr. Starr: No.

Mr. Kanahale: Okay, I thought I was allowed it. Anyway I would like to ask that the Council deny or defer the request for rezoning based on the points that I had an opportunity to make today.

Mr. Starr: Okay, members any questions? Commissioner Mardfin.

Mr. Mardfin: You're talking about with relationship to your archaeological statements, that you need to consider the full picture and things around it, are there any heiau or other archaeological sites maybe not on the subject property but near the subject property?

Mr. Kanahale: Yeah, subject properties, parcel 18 and parcel 17, I believe are right next door and the parcel 116 there is a heiau. So I'd be interested to know what relationship the heiau has to the arc sites that were uncovered in the – any archaeological survey that was done on the sites in question, parcel, I mean, the parcels in question 118 and 117.

Also, it has been found that over time when arc sites are done on the same area over time more often than not you find more things than less. So I don't know how many archaeological inventory surveys have been done on lot 18 or 17. But there are other lots in Makena more often than not when they go back and do new surveys more is found rather less, rather than less. That's why I pointed out the fact that, you know, we have a lot of history here, a lot of people lived here. I think the deeper you go, the more you're going to find in terms of what was there historically, say 600 or 700 years ago rather than you know, maybe on the surface you're looking things of a 100 to 150 years ago. So, I think that's something else that should be considered.

Mr. Mardfin: Is it my understanding of you that with the heiau there and other things that instead of looking narrowly at a particular area you need to look at the surrounding area to find out whether they're – the archaeological findings are significant and finding additional significance within a larger area is that my understanding of what you're saying?

Mr. Kanahale: That's absolutely correct. Often times in reading archaeological inventory studies I find the word "insignificant" come up multiple times, multiple times, this site is insignificant, this site is insignificant, but I think if these studies were to step back and look more fully at the whole picture and look at things adjacent or immediately adjacent to the parcel or lots being considered that we perhaps learn even more about these sites and perhaps they wouldn't be defined as insignificant, that they would be defined as significant. And I just want to make this one quick point that, you know, the Hawaiians, the kanaka maole we didn't have a written language as far as I know. You know, today, our written language is found in our arc sites. I mean, our arc sites are like our

libraries, that's where our books are. And so every time we lose an arc site, we're losing part of our history, part of our – one of our libraries. You know every time a site, arc site is being bulldozed, it's like bulldozing our libraries unless those sites are thoroughly studied first. And I have a big question on whether or not these sites are getting the attention, the study, the documentation that they deserve, because you know, once it's gone, it's gone forever you cannot call it back and those stories that were there, those books will never be read, by kanaka or non kanaka alike. So, I think the arc sites are very, very important and we don't give them their due respect especially from my point of view as a kanaka.

Mr. Mardfin: Mahalo. Thank you for your manao.

Mr. Kanahele: Thank you for your question.

Mr. Starr: Okay, members any other questions? Commissioner U'u.

Mr. U'u: Good morning Mr. Kanahele.

Mr. Kanahele: Good morning Mr. U'u.

Mr. U'u: I agree what you said. Just for information, I know the county zoning is residential, the community plan is single family, and we're kind of in a bind and also the county recommends approval. So we're kind of in a bind. I understand what you're saying. I'm not saying I'm for it or against it right now, I just giving you what we up against right now. And it probably was a mistake back then when they zoned it or they didn't look at it by like what you said, is taking a step back, but during the present time as of today it is zoned residential. But I understand and I'll take into consideration when they come before us. Thank you.

Mr. Kanahele: May I respond briefly?

Mr. U'u: Go ahead.

Mr. Starr: Yeah.

Mr. Kanahele: I think, you know, you look at Makena as a whole and you look at what the state has done, Ahihi-Kinau, it's a natural area reserve now. Oneloa Beach is surrounded by a state park. At one time, they wanted to develop all of Oneloa Beach, they wanted to build condos and homes right on the beach. It took private citizens fighting for 14 years to protect the area around Oneloa Beach. Can you imagine the impacts that would have occurred if that beach was protected by the state park? Just on the wildlife alone, the Hawksbill turtle. So what I say to that is you folks have an opportunity to make a difference in this world of Maui. The state has stepped up, and they say well, these are vital areas they need to be protected for our present generation and our future generation. We don't think this should be urbanized. You folks have the authority given to you by the state to amend zoning, state zoning. You guys can step up to the plate and say, a we don't want to urbanize these areas, lets wait, lets wait till the Maui Island Plan comes up, lets wait till the GPAC has finished its work, lets see where they draw the urban lines, the growth lines, lets see what areas they want to protect. If anything, even if you can defer it and wait till the Maui Island Plan is pau and all the input from all the hard work these people have made to make your decision.

Don't have to make it today. You folks can wait. Wait, let the work be done, pau, and then with all the manao from all of these people to help and guide your decisions then you can move forward and make good decisions.

Mr. Starr: Okay thank you very much for sharing with us. That was good.

Mr. Kanahale: Thank you.

Mr. Starr: I would like to call the next testifier which is Merrill Kaufman will be followed by Pat Borges.

Ms. Merrill Kaufman: Aloha mai ka ko. My name is Merrill Kaufman. I am here to testify with respect to the Iwa lke proposal I think it's now agenda item number one after the change. You know, I'm part owner in the subject property so I'm standing before you today to ask you to consider approving our request for rezoning.

I may be in a strange position in that I agree, really wholeheartedly with almost everything the people who came before me had to say. I have lived in Makena for almost four years. We live actually next to the – on a piece of property next to the subject property of the Iwa lke development. Before that, I lived in North Kihei. I've raised four daughters all born on Maui. So I have a real interest in preserving those places that Angie and Colin talked about. They're the same places my children play everyday. The same beach that, you know, my teenage daughter who before she left for college a couple months ago took her sort of last walk on Maui on.

I've been marine science educator on Maui teaching here for 19 years. So I know a lot about ae'a and I know a lot about all the people who come and spend the night, you know, give so much of their selves to make sure that, you know, turtles have a safe place to nest and I appreciate all their efforts.

I'm in the unique position of being sort of a bit of a caretaker for one of the archaeological sites that Mr. Kanahale spoke about as there is a site on our present property and I would say that I take that responsibility very humbly in order to make sure that the site is removed of invasive vegetation, that the sign that allows access for people who wish to study archaeological sites is well posted. That if anyone should have an interest in that site, they're certainly more than welcome to come and view it and learn from it and enjoy it as they may as is required by law.

I would also say that most of us here on Maui live in what we would call development. So development takes lots of forms. And not only as a landowner who has a interest in trying to have a piece of land nearby me for my children which is a probably a very selfish wish, but that's my wish, but also as a mother, as a teacher, as a student of Olelo Hawaii, as a student of hula, I would say that, you know, not all people who wish to develop or improve a property should be looked upon maybe as evil or not respecting the natural world or the culture of this place.

I don't make any claims that I have any more right than anybody else who enjoy Makena. I do everything I can. I don't spray Round Up. I pull my weeds by hand so I don't have runoff going down the street. You know, I compost my yard waste, I don't have a gardener so I know what happens outside. So I think there is development and I think Mr. Kanahale is right, we really need

to look especially at the archaeological sites. I agree.

When we first moved down there and I saw that Maui Electric had gone through the present archaeological site that's on my property and put a telephone pole right in the middle of it, I couldn't even believe that someone didn't stop them from doing that. So I agree, you know, take a really good look at archaeological sites, make the look holistic but I would also, just ask people to have a dialogue and if this property or if this petition should be granted or if deferred, it's good that the people in this room you know, see my face, so they can come up to me and say, well, you know, if you ever do something down there, let's talk about what that should look like. Let's involve people in that decision. Let's have an open— No, I live here, too, and I have a real interest.

Mr. Starr: Please, please wrap up.

Ms. Kaufman: And so I just wanted to say that I hope that you will consider the various viewpoints and also people's intent when they come before you. Mahalo.

Mr. Starr: Okay. Thank you. Members? Okay, next testifier: Pat Borge followed by Clarence Tavares.

Mr. Pat Borge: Good morning. My name's Pat Borge. I've been involved in the Makena area for almost half my life and seen a lot of development going on. And my main concern is water. I mean every time you look in the *Maui News* we always talking water, water, water. And I drive by these big estates like the one by Black Sand Beach at – sprinklers run 24/7. I used to be a caretaker for a guy just before La – just before Ahihi Bay. And I was a caretaker for eight years, and that water meter ran 24/7. Because it's Makena. It's a drier side of the island and you people gotta realize that. I'm not against this rezoning but I want the County, you guys, to look at the whole picture. Are we ready for this? Can we handle this? Can the water that we have on this island can handle a project like this? Because you look at the one that you guys approved by Black Sand Beach. Five homes in there. It looks like Hana. I mean, give me a break. It's just common sense. Plus, you got union guys here. Half of the people that work on these custom homes are not even in the union. I've got to those projects. I've talked to the workers. A lot of these guys come from Honolulu. They come from the Mainland. And our local guys are sitting on the bench right now. I mean I like you guys to look at the whole picture. Mr. Kaufman, you know, he's with the ocean. I know he's involved with the whales, but you have LLC. I wanna know who's involved in this project. He's just a spokesman, I guess, or investor. But who else is involved in this? I drive down that road every day two, three times a day. Sometimes I cannot even get by to that area that they talking about because the State has no parking at Makena Big Beach. And it's closed. I mean sometimes I cannot get through. And if we have an emergency in La Perouse in some area, the trucks cannot get through that. People are on the beach. I mean, they're double parking and everything. And I also looked at the police report. And they're understaffed. Every time we have incidents out there, it takes a while for them to get out there. And that road has no walkway like it says in here. Hey, there's no bicycle paths. There's no sidewalks. There's people all over this road. It's a very dangerous road. You got weddings going on right down the street. Eleven weddings a day. Thirteen weddings a day. This place is packed with vehicles. That's the kinda things that I, as a businessman in the area, I gotta deal with every day. I mean, I'm sure this, you gonna see all this, there's no impact, but there is an impact, a big impact.

And you guys gotta look. I'm concerned about the runoff. I sit on the advisory committee for Ahihi-Kinau, and I've been sitting on that committee for like almost eight, nine years. And I'm a snorkler. I'm a diver. And I'm a fisherman. And I go in that water and I can see runoff is destroying that reef. You guys say there's a basin for a 50-year storm here. Hey, sometimes we get cloud burst, boom. Not 50 years. I mean, eight hours, we get one big flood coming down there. Like that project at 7155. They did a catch basin over there. Hey, water came right down that stream. Boom, all that mud goes into the ocean. The Makena area, when they grade, the bottom line is solid. I no care how much fill you put in, that water goes down to that dirt. Those cinders, like Makena Golf Course, hit the base, and it goes right down into the water. That's why when you snorkeling, you can feel the fresh water coming through the lava tubes. Water rolls downhill—bottom line.

I mean, I'm not against the— I want like how Mr. Kanahale said. Get the General Plan. You know, you guys gotta come together. Common sense approach to this issue. Water, the road, and who's gonna live in these homes? What are they giving back to our — what kinda — what they giving back to the community that we gonna benefit from? There's a State park that need money. Hey, maybe they can work something out with the State. But also when they come out here with a LLC, I like to know who's the players in this game. Is there other people who's playing with this that has land around the area that maybe this is a stepping stone to get a rezoning, and then from there go bang, bang, bang down the real fact that, hey, we rezone that area, so why not I cannot get mine? See that's what worries me. And when you guys go down there and take a drive, in the middle of the day, you see sprinklers running 24/7, water running down the road, and yet you turn the paper in the *Maui News*, hey, we gotta go water restrictions.

Mr. Starr: I need to ask you to wrap up.

Mr. Borge: Thank you very much. I mean, I just—

Mr. Starr: Yeah, don't go anywhere. We got some questions for you. Commissioner U`u?

Mr. U`u: Howzit, Mr. Borge. You talked about the five-lot subdivision that we approved.

Mr. Borge: That's the one by Black Sand Beach, yeah? You know where as you coming around the corner? You guys went approve two that really bothers me. One at 7155 because of the runoff there, and I see that sprinklers running 24/7. And that one right by Black Sand Beach, the one that cleaned out the wetland supposedly for the people of Maui. You know, that kinda thing I'm talking about is that here, we, as the community, gave them permission to clean up this wetland for the people, but yet they put the fence. They look like it's their little lake that they have there. They couldn't even fix the road to Black Sand Beach. I mean, if you gonna talk about giving back to the community and when you come in with this million-dollar home, that's what I like to see. I like to see that if you gonna give, give something. But that's— You look how much water. You guys should look at this. Go look at the water meters and see how much water these people are using. It's unbelievable. I mean, they're trying to create Hana in Makena. Makena is the driest area on the Island of Maui. Yes, we do get storms. But, hey, 50-year-storms. I've been there 30 years. Hey, sometimes we get rain in a matter of minutes—boom. I mean, it just starts coming down.

Mr. U`u: I agree, but just for your information, not every project— A lot of the projects in Makena if not deemed a development doesn't come before us—a lot of them. I'm thinking that quite possibly

that five-lot subdivision, I don't know if it came before us. I know the subdivision before Big Beach never came before us.

Mr. Borge: That never did come. Okay.

Mr. U'u: And I agree with you on the water. I think the average use for that area is 2,500 gallons per day. The highest usage on Maui is in the Kihei to Makena area. I agree with you on that part.

Mr. Borge: Well, you figure that amount of water, what's his name—Spencer—cannot even get water for his affordable housing. I mean, that's— I mean, we're here. We're a community, and it's all about aloha and working together. And when you see some people cannot get that because, oh, we're only gonna cater to the rich, you form a conflict within the neighborhoods. It's like, hey, they get, and we no can. And that's how you get vibes on this island. I mean, I can see it every day. It's changing because we are not taking care the people of Maui. And you guys are the planners. And it's a tough decisions you guys gotta make, but like he said, you know, let the General Plan get into place. Sit down, talk story, and see what they going give to the community. But I also would like to know who's on the table, who's playing, who's involved in this development. Thank you very much.

Mr. Starr: I have a one question for you before you go. You know, I also go out there and snorkel once a week, twice a week, out on those waters. And over the past two years or so I've been noticing kind of like – I don't know if it's a seaweed or an algae, but green – kind a of green mass, kind of a soft green mass that's floating around on the bottom, and that's new. You're kinda seeing them from all the way from Five Graves up to Waihihi. And now, I've seen something new just this year which is like a brownish kind of stuff, you know, that floats just below the surface. And some – about a month ago, it liked bloomed. It was really thick so much so I went down by the Prince. Tourists were telling me not to go in the water there because they thought it was coming from the cruise boat, but I know it's really something that's growing there. I know a lot of these projects have septic systems. And I'm wondering if you with the committee had done any work in what's going on.

Mr. Borge: Well, see, the last time when the Dowling – we had a community meeting in Makena, and you know, Dowling is thinking about really developing the area, and runoff came up, and according to Roy Figueroa, when they started to build the Maui Prince, I remember going to some of the public hearings that they were suppose to do a study. And this was back in the '80s that they did a study. And they said it was no impact at Ahihi-Kinau. But what I was asking them, hey, let's do a study now. Let the State go in there, do a study, compare your study, and see if there's any difference before we move ahead, but that was left at the table. I don't think any – they said they did a study, but for me, I would like them to do another study to compare the study with what they did. That's why DLNR, I don't understand DLNR. They should be right up in here saying, hey, let's do a study. Let's see if there's any runoff that's being created from this other areas also before we make a decision on this. And like you said, you know, it's our natural resource. We depend on tourists, too. Now, if we destroy our resources, you know, you gotta weigh both sides because then, why they going come? You know, just like you, if the reef die, you not going go snorkel out there, you know? To me, it's just a common sense approach. I mean, you just gotta look at both sides. Everybody gotta get down, sit on the table, and let's do it right for the Island of Maui. Okay, thank you.

Mr. Starr: Thank you very much for coming before us. Clarence Tavares is next.

Mr. Clarence Tavares: My name is Clarence Tavares.

Mr. Starr: Pull the mike down, Clarence.

Mr. Tavares: And I live in Makena. I think Pat has covered all what I was going to say that my opinion is about, you know, I used to raise a few head of cattle before down there. And was all so agriculture. And I came to the County to see if I could change the zoning to get a better rating on the taxes which I was raising cattle on residential. And I got a hold of somebody. We sat and we talked. And I told them that how come the zoning has never been – used to be residential before. No, Sonny. No, no. It was always, always, always agriculture. I told him, please, don't tell me that. You might think I don't anything about it, but I used to raise a few head of cattle. I had land from Ulupalakua Ranch, and Ernest Morton, and the State, and also the Makaiwa Estate. And I was paying taxes for all that land. And he told me, no. Well, I tell you, Sonny. I bring the book, and I show you. I tell him, good idea. He tell me, okay. Bring the book down. I'm gonna show you. I'm gonna show you. I told him, well, I tell you right now, I put a thousand dollars down, you put one dollar right now. And I told him this, now you open the book. And he went. He said, see, see, see, see, look. It's all agriculture. I said, no, don't stop the pages. Keep turning. Keep turning. And I finally watched the pages. Getting close. And I said, well, slow down now. Slow down now. And sure enough, when came down, I told him, what was that? What was that? Why you folks have to fool the people?, I told him. Oh, well, you know, Sonny. I told him, well, was it – am I right? Yeah, but you know, we have to get a little bit control of the land. I told him, that's you guys just fooling us. And now, this came up again about changing the zoning again. I said, oh, man, you know problem nowadays getting change – they change anything for what they want. Well, the idea is, I know once you start, they give you no end. It's gonna follow up all the way with the next person. And whoever wants to subdivide and change zonings, it's gonna follow up. I told a couple of people that I didn't wanna come out and do all that stuff, but I think people don't know much about the mountain runoffs. Somebody asked me, call me up, if I ever seen the olden days. I told them, well, I seen my own self. And 'til today, I worry about the runoffs coming in the back of my house when we do have heavy rains up mauka because nobody's looking at it. Nobody's taking care of that. When it happens, it's too late. So anyway, I say that I'm against what you guys planned for. But my feeling is, after you give one, and that's the rest gonna start afterwards You can give one, you can give all. Thank you.

Mr. Starr: Okay, thank you for coming. Any questions, Members? Thank you. I don't have anyone else signed up, but is there anyone else? Please come forward, introduce yourself, and thank you for joining us.

Ms. Jocelyn Costa: Good morning. My name is Jocelyn Costa. I come on behalf of the – my ohana. I've become familiar with the Makena area, and the type of archaeological remains that are there. And I've come to different meetings and I've heard experts come before you, come before the County Council, come before other commissions and councils to let them know that there's nothing there. It is nice to hear a owner say that, you know, she's willing to respect what is there. She's been there for four years. These artifacts that are laying there with probably bones, more than likely bones, been there for hundreds of years, and . . .

. . . taking our time because the General Plan is coming up. I have questions about that General Plan because there are good people who are working on that General Plan, but when I see the end result that is crafted by the Planning Department, it worries me. It looks as if they went through years of hard work for it to look like what they started out with. And I'm hoping that there's strong enough people in that Commission that will stand up and say that is not what we said for this plan.

I watched a show the other night and there was this gentleman that went around the world to find out what the meaning of life was. And he came across this one – I think he's a Buddhist, highly respected like the Dalai Llama. And he gave these nobodies 20 minutes of his time out of all the important people there. And when they asked him what the meaning of life was, he gave them a story, and I'm gonna give you the same story. He said there was a man on a horse in a tremendous hurry trotting off. And this other gentleman came up to him and kinda of stopped him and said, "Where are you going in such a hurry?" And the man on the horse said, "I don't know. You gotta ask the horse." And so what I'm asking you is, this economical horse that you ride that is guiding you, could you please get off that horse and do your job? Thank you.

Mr. Starr: Members, questions? Okay, thank you very much for sharing.

This concludes the testimony received at the beginning of the meeting.

Mr. Starr: Do we have any members of the public wishing to testify on Item B-1. If so, please make yourself known. Not seeing any public testimony for B-1, is finished. We will take up the petition to intervene, which has been filed by Mr. Lance Collins on behalf of a neighbor.

C. COMMUNICATIONS

- 1. LANCE COLLINS, attorney for LINDA MCDONALD submitting a Petition to Intervene dated September 30, 2008 on the request by MR. GREG KAUFMAN of IWA IKE LLC for a State Land Use District Boundary Amendment from Agricultural to Urban for the Iwa Ike Subdivision, a four (4) lot subdivision and related improvements at 6699 Makena Road, TMK: 2-1-005: 118, Makena, Island of Maui. (DBA 2007/0007)(J. Prutch)**

Mr. Starr: Now, Mr. Collins is not here. I don't know. Is there anyone here representing the intervenor or the counsel? Not seeing any, we do have the paperwork on the petition. And I'll ask Mr. Kaufman if he has any comments on it, and we'll . . . (inaudible) . . .

Mr. Kaufman: Chairman Starr, we had submitted a letter dated today from Iwa Ike with our response to the petition to intervene and request a denial of the petition based on the facts that we presented before and that are contained within this written document. Thank you.

Mr. Starr: Members? Commissioner Mardfin?

Mr. Mardfin: I move that we deny the petition to intervene based on the reasoning that we used in the earlier action. And I'll rely on Clayton to find the exact wording that we used earlier.

Mr. Starr: Okay, and do we have a second?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Commissioner Mardfin, seconded by Commissioner Hedani. And that motion states—?

Mr. Yoshida: The motion is to deny the petition to intervene because pursuant to Chapter 19.68, Maui County Code, this is not a contested case and does not avail itself to intervention.

Mr. Starr: Okay, Members, any comments, questions? Seeing none, we will vote on the motion that's on the floor and then seconded. All in favor of the motion, please raise your hand. All opposed, please raise your hand.

Mr. Yoshida: We have six votes in favor, one against—Dr. Iaconetti. Two excused—Commissioners Guard and Pawsat. The motion passes.

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

VOTED: To Deny the Petition to Intervene Because Pursuant to Chapter 19.68, Maui County Code, This is Not a Contested Case and Does Not Avail Itself to Intervention.
(Assenting - W. Mardfin, W. Hedani, K. Hiranaga, B. U'u, D. Domingo, J. Starr)
(Dissenting - W. Iaconetti)
(Excused - J. Pawsat, J. Guard)

Mr. Starr: Okay. That puts us in a position to return back to Item B-1.

B. PUBLIC HEARINGS

- 1. MR. GREG KAUFMAN of IWA IKE LLC requesting a State Land Use District Boundary Amendment from Agricultural to Urban for the Iwa Ike Subdivision, a four (4) lot subdivision and related improvements at 6699 Makena Road, TMK: 2-1-005: 118, Makena, Island of Maui. (DBA 2007/0007)(J. Prutch)**

Mr. Starr: And I'd like to have some additional detail on the process. I believe this differs in some way than the other one. Please proceed, Joe.

Mr. Prutch: Not too much different between these two other than lot size and a different valuation for the improvements because of the larger driveway and more additional length for water lines.

I think I'll get into a – I wanna discuss the agriculture. I think that's one comment – I don't know if we talked about on Paul's project. Just to point out and I think we might've talked about it on his or you might – you have some maps in his handout he gave to you. There's some colored maps in there. The ALISH maps, which is the Agricultural Lands of Importance to the State of Hawaii,

they show this area as not rated. So not showing it as any important lands to the State. Also, in our Land Study Bureau way back in 1967, they rated different agricultural lands basically on – like in school from A to E, I think it was. I never got an E in school, luckily, but anyways. The subject property, for this one, was rated E, which identifies the land as the lowest productivity rating. And in summary, with those two documents, the land is not well suited for agricultural protection. Therefore, that helps to support this district boundary amendment from ag to urban.

As far as all the archaeological, I think we went into that quite well. The archaeological inventory survey—that was conducted back in December 2006. It did find three previous owner recorded sites on this property. I guess they weren't on the Ke Kani Kai. These three sites consisted of – oh, I'm sorry. These three sites were considered significant by Federal and State Historic Preservation Guidelines for their information content. Adequate information was gathered and no further archaeological work was recommended for the subject property as the three sites were adequately documented. However, as a precaution, an archaeological monitoring during earthmoving activities shall be conducted in accordance with a monitoring plan. And this monitoring plan was already approved by the State Historic Preservation Division. And you do have that letter. I don't recall which Exhibit, but it is in the file. So according to the letter from SHPD, the applicant's monitoring plan is accepted and final, and the proposed monitoring activities may commence. I just wanted to point out that the archaeological has been dealt with, and SHPD has approved of this, and also required that they continue monitoring while they're doing any earthwork out there.

I'd like to say as I did I think the applicant received preliminary subdivision approval in December of 2007. Final approval of course is contingent upon approval of a district boundary amendment. There is a special management area assessment permit is required as well. That is being held until the action on this DBA. Then the Planning Department will review the SMA and further that application.

As far as testimony was concerned, I mean, obviously, you received some testimony, public testimony today. We did receive intervention request. Obviously, we discussed that earlier. And I think you got two opposition letters that were handed out to you today. Other than that, the testimony was heard earlier this morning. And I think that's all I have for now. I'll let the applicant get up here. And if there's any more details, he'll probably go through his handout that he handed you today. Thank you.

Mr. Kaufman: Thank you. I'll be brief. In the handout I gave you about Iwa Ike, the – I'll like to draw your attention to a couple of exhibits—page 7, Exhibit 3. I did not indicate before what this yellow boundary line is on Exhibit 3 and Exhibit 4. You can see that these show the location of the property and the 500-foot radius. The yellow boundary I drew is all the landowners that were noticed with regard to this hearing. So there's act one very large landowner there obviously, but all the landowners were noticed, and you can see in both they far exceed – I actually noticed probably close to a half mile to three quarters of a mile away from the property.

The location of the property again in the aerial shots on 14 and 15 you can see it's actually a mere image of the Kaufman Subdivision. They're essentially two inverted L's touching each other. And you can see on Exhibit 15 there.

The property—in terms of archaeological issues, I wanted to bring up something different on this

property. Ke Kani Kai did not have any archaeological issues on it. Well, first before I get into that, a question was raised, Chairman Starr, about the ownership of this LLC. It is owned by myself and three other families on the island here. There's no corporations. There's no untoward business there. There are three individuals, plus myself and my wife.

I would like to point out on this – go to the archaeological map that I went through before. I would like to point out an exhibit I didn't talk about. If you go to the archaeological exhibits I gave you, there was a Table 1, a summary of all the archaeological studies done in this area since 1969. And the last time I appeared before you, one of the Commissioners had made a lot of statements about a Professor Kirch and his interest in the area. And I would like to point out that Professor Kirch was the one who did all the studies that a lot essentially – that the Wailea Resort that happened in 1969 and 1970. That was his work. So there is a history there in that area, but not of recent times.

If you go to this map here, this Figure 6, excuse me, and look at the property, Lot 4, one of the things I'd like to point out that Site 6223B is really cattle walls that are about 40 years old. All these sites that are located on this property are post contact sites. They're recent sites. The only potential one, if I recall, is 6225 up here in this corner. Uniquely enough, all these sites, all the Sites 6224C, B, and 225 all fall within the setbacks of the property. So they will – they likely will be undisturbed or untouched. Even if we wanted to touch them, they're sitting in the setbacks. The only things that need to be relocated is probably moving some of these cattle walls five or ten feet one way or the other. And in terms of the sites that were deemed non-significant, there really is no need to disturb, or disrupt them to any great degree. And this is concurred with in a letter that I gave you earlier dated October 13th 2008 where a Mr. Fredericksen on the second page details each of these sites. And he concludes by saying:

After consultation with SHPD Maui, it was determined that all three sites were significant under Criterion D for their information content. An adequate amount of information has been obtained about these sites. And the SHPD concurred that no further work was necessary other than precautionary monitoring. SHPD, the reviewing agency for archaeological projects in the State of Hawaii accepted both reports and the subsequent monitoring plans that were prepared for the projects. While it's always desirable to preserve sites, the sites located on this parcel simply do not represent the typical site types that are placed in as is preservation.

And I will point out that Mr. Fredericksen is the Vice-Chair of the Maui County Cultural Resources. So I hope his recommendations come with weight, and he's looked at all three of these parcels in a continuum and given his recommendations that way.

In terms of other issues, all the conditions that we've discussed with Ke Kani Kai are amenable to us for Iwa Ike. Thank you.

Mr. Starr: Okay, Members, questions for the applicant or for the Department? Commissioner Mardfin?

Mr. Mardfin: When I was reading this in preparation for this meeting, I saw Exhibit 1 which was the Maui Planning Commission comments on the EA. Before I get to there, let me go back a minute. Mr. Planner, I understand that the EA is not needed because it was all R-3 to begin with. There

wasn't any interim zoning so there wasn't a trigger that required an EA. Is that correct?

Mr. Prutch: Essentially what it is is the community plan amendment which was originally applied for required – was a trigger for the EA review. Because the community plan amendment is no longer needed, because of the change of zoning from interim to R-3, there was no need for an environmental review. A district boundary amendment project by itself does not require a Chapter 343.

Mr. Mardfin: The second point is in the Ke Kani Kai we found that there was an SMA minor and it was referred to because of the evaluation was low. I didn't see any wording in the Iwa Ike . . . (inaudible) . . . could've missed it.

Mr. Prutch: No, what – well, with the SMA, I have the SMA, the assessment application at my desk along with this. I'm not gonna review the SMA or I haven't reviewed the SMA. That's gonna be something that I'm waiting for the DBA to be dealt with first 'cause I can't really act on the SMA until the DBA is approved or denied.

Mr. Mardfin: So this will come back to us at some point in time?

Mr. Prutch: Only if it's a major, if it's considered a major. Once again, this one has a valuation under \$125,000. It was \$107,000 or so. So this one does have a valuation of \$125,000. So just like Ke Kani Kai, it may also go the SMA minor route. And at that point after DBA is acted on, approved, I guess, if it's denied, then there's no SMA. At that point, I'll assess it. And if I issue an SMA minor based on the valuation, it'll be just like his. We'll both do basically the same thing.

Mr. Mardfin: So it won't come to us again?

Mr. Prutch: Not necessarily. Unless it's decided by the Planning Department that this is a major use, then it would come back to the Commission.

Mr. Starr: Mr. Kaufman, on this project, are you willing that a condition be made that there be an SMA major on this?

Mr. Kaufman: This project has been independently reviewed by Otomo Engineering for all aspects regarding that so I'm relying upon Otomo in terms of the valuation and what rises to an SMA, and I don't see that it does.

Mr. Starr: It is a four-lot subdivision in a very sensitive area. That's not something that you would be willing to go along with?

Mr. Kaufman: Well, I don't think what we're proposing rises to the need for an SMA. I think that the EA in terms of environmental impacts showed that. And I don't share that concern in terms of– Go ahead.

Mr. Prutch: My understanding–Ann Cua is here–that's something the Department has to assess. That's our obligation to review the SMA assessment, make the determination based on our criteria, and any other issue, an exemption, or a minor, or bring it forward as a use permit. Does that sound

correct?

Mr. Starr: So you mean that you're saying that even if the applicant were willing to commit to a major, which in this case they're not, the Department would not support a major?

Ms. Cua: Well, again, I think the first thing that has to happen is, the Planning Department has to do a thorough evaluation based on the impacts. And it's hard to sit here and say what someone may or may not agree to. Obviously, we would work with the applicant if there's any concerns with how we have done our analysis, if there's any disagreement, if we feel some of the information that we have been provided is inaccurate or inadequate, and if we need additional information to do our analysis. But again, without having made that analysis, it's hard to sit and tell you what course of action any permit is gonna take.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: It's been my experience, and things can change, but the applicant, he can determine on his own that he wants to apply for a major SMA permit in order to avoid the possibility that if the Department or the Director determines that an SMA minor is sufficient that someone will appeal that determination. So in order to avoid that exposure of an appeal to the Director's decision, that person can apply for an major SMA permit on his own.

Ms. Cua: That is correct. An applicant, before they even apply to the Planning Department could decide that they will apply for a special management area use permit. And that is normally the case when it's a very large development. They don't go through the assessment process because they usually have a consultant and people just know that that would end up being a major permit anyway. There are projects, however, that an applicant or a consultant can think that it may qualify as an exemption or a minor permit that when we conduct our review and we do our analysis, we do not agree and we bump it up to a major permit. So it does go both ways.

Mr. Hiranaga: I would support the Chair's request that as part of the boundary amendment that the applicant agree to submit this project for a major SMA review at his own request because it is a four-lot subdivision regardless of the \$125,000 threshold. I think because of the sensitive location that \$125,000 threshold is fairly arbitrary. They come in at \$123,000.

Mr. Starr: I think we would want the applicant to be willing to apply. In which case that as I understand it from what Ms. Cua just said it becomes a moot point if the applicant applies. I mean we have a very endangered species nesting right across the road from it. It's a very sensitive area. Once again, Mr. Kaufman, is there any interest on your part in doing the right thing and applying for an SMA major?

Mr. Kaufman: Well, I guess, it's kind of putting words in my mouth: "doing the right thing." I'm always interested in doing the right thing. The issue the way I understood the process is that the Planning Department was going to tell me what was going to – what was or not going to rise to that occasion and I was going to have to comply with it. If you ask me in terms of what I experience in the four-lot that I did which was a much bigger subdivision than this, and the result in impacts, there were minimal, very minimal. And so I think if you think that in terms of it could have – what a four-lot subdivision may look like, I think if you wandered down and looked at the four-lot subdivision I

created with very little ground disturbance—

Mr. Starr: Yeah, we don't need a commercial from you. Just please answer the question.

Mr. Kaufman: I'm willing to abide by whatever the Planning Department asks me to do.

Mr. Starr: Thank you. Commissioner Mardfin?

Mr. Mardfin: To get back to what I was thinking about before I kinda worked up that other stuff, in our – in the July 10 letter from the Director to you regarding our comments on the draft environmental assessment, it was one, provide clear mapping of the project. I wanna thank you very, very much. This document you provided is exactly what at least what I was looking for and I believe what Ms. Pawsat was looking for. And I commend you for doing that. I think that's exactly kind of thing we were looking for.

I also would like to cite the information we got from Joan Pawsat—her communication with Patrick Kirch, and the information that's in here, and our concern that was raised at the time of the EA when we thought we had to do it was that instead of piecemeal, looking at small, little plots that we tie the thing together, and I think that's why this information's important that you provided, and also the report we got from Patrick Kirch that the orientation can make a difference, I would ask – I don't know if the – I guess I wanna see this in the form – this would be an acceptable condition that at some future point, we were asking people to put in money for a fund to do a region-wide archaeological survey – study that would get to all this. Would you be willing as a condition to commit to allowing access by appropriate archaeologists to your property to work on an overall regional archaeological study? Would that be an acceptable condition to you?

Mr. Kaufman: I don't have a problem with that. I'm not sure the timeframe you're talking about—now, or in perpetuity, or is there something—?

Mr. Mardfin: This is probably not gonna happen in the next year or two, but it's something that maybe within five years, I would hope, we get a major study by a really qualified archaeological team, maybe Kirch, maybe some other people. And I just – what I would hate to see is at some point you say, well, I'm sorry, we did our little – we had our group do our study and you can't go onto the property to check things out.

Mr. Kaufman: No, yeah, I'm not opposed. As a matter of fact, I asked on the fishing shrine on the property now, it has access rights to it, noticed rights, visitation rights, etc. In fact, I go the opposite way. I wanna make sure we're dealing with bonafides and not the other side which is people that could do more damage than good. So I'm in support of that notion of supporting further both archaeological, cultural, and scientific knowledge of those sites.

Mr. Mardfin: Thank you very much. I hope the planner will note that as a condition for the boundary amendment that's acceptable to the petitioner. Can I do one more?

Mr. Starr: Yeah, go ahead.

Mr. Mardfin: Item 12 in that letter from the Director was "Perform an analysis on the Workforce

Housing Policy as it would pertain to the two subdivisions: Iwa Ike and Ke Kani Kai had they been combined on one property creating six lots.” Did you have a chance to do that any of that or did the Department look at what that would imply?

Mr. Kaufman: We followed through on that. And I ran into a simple issue which is there are two separate owners, two separate parcels. They wouldn't rise to that. And I said, well, why what if you made them into one? And they said, well, you just can't make it into one because it's still isn't one. It doesn't rise to that. So I was advised that there was no merit to pursue that. I understand – I mean I tried to explain the notion that square footage-wise, lot-wise, it could rise to that, but the way I understood the code is, is that they're separate owners, separate projects, and it just didn't rise to any issue that would relate to Workforce Housing. And I was advised the same by the Department as well – I mean, Paul or Joe might have a comment on that.

Mr. Mardfin: We were basically concerned about the hypothetical. If these hadn't been split up and divided out, what would be—? We're not suggesting any wrongdoing in trying to skirt around things, but what it would've been had this all been one big property. Does the Department know? Have any notion as to what it would've been?

Mr. Fasi: No, the Department doesn't really deal with the hypotheticals of combining two separate TMKs and then submitting it to the Department of Housing and Human Concerns. I doubt it if they would be interested in the hypothetical evaluations. It's hard enough trying to get an opinion on the real stuff from them as it is.

Mr. Mardfin: There was also from the Director Item No. 4, “Please comment on public transportation provided at or near the project site.”

Mr. Kaufman: There is non available. The closest public transportation ends at Wailea Ike right at the Wailea – Shops at Wailea. That's as far as the public transportation extends at this point.

Mr. Mardfin: I'll stop asking those if somebody else wants to keep going on the list.

Mr. Starr: Members? Commissioner Hedani?

Mr. Hedani: You know when I review this particular site and compare it against the two-lot subdivision, I'm a little concerned about the archaeological sites that are on this particular parcel. There's a total of eight sites that are identified. It looks like the topography has certain areas that are high points on the site as well as being on a flood zone according to this map. And personally what I'd like to actually have is some input from Commissioner Pawsat because she was the one most interested, I think, in the archaeological relationships in the area.

Mr. Starr: Yeah, I had spoken with Commissioner Pawsat last week. She called me and she was really concerned and was upset that she couldn't be here. She's having an operation on a shoulder in the West Coast, and really wanted to be here, and really did have questions and concerns. So I'm sure she appreciates that. I don't know what you'd like to do. I'm certainly open to—

Mr. Hedani: My concern is that when I look at the setbacks, it looks like the setbacks does not cover the eight sites. Well, maybe the eighth site which included the rock walls or the so-called “cattle

walls” are not that important, but I’m interested in knowing what the position of the applicant is relative to preservation of anything significant on the site.

Mr. Starr: Mr. Kaufman, do you have any of your archaeological people here?

Mr. Kaufman: No, he was sick. That’s why he wrote the letter—Mr. Fredericksen. And we can again refer to the letter. But the site has been evaluated both in terms of a reconnaissance and survey on both properties. They’ve been reviewed and approved by SHPD. I can tell you that in terms of walking the property— And again, I’ll just walk you through. If we go back to this archaeological paper I gave you, if you go to Figure 3 here, if you see the three old-timers, I’ve only lived here 35years, but if you remember if you used to go down the old dirt road, there used to be a rock wall that ran all the length of the dirt road down there, if you recall that. And then about ten years ago, if you remember, the County came and said they were gonna pave it. And when they paved it, they took that whole rock wall away. So you’ll see all this wall down here—whether they’re cattle walls or whatever you wanna call them. They no longer exist. This little remnant of this cattle wall over here is the one – is the portion of what you’re seeing existing on our property right now. So this area right here, and in particular south of the shrine with all these walls appears to me just in seeing that notion is that was, and from what I understand from the locals is that there was cattle grazing there pretty heavily in the past on those parcels. Mr. Fredericksen also notes in his survey in the EA you’ll see that this property has been significant bulldozed at some point. And back in this area here has all been leveled and bulldozed, and as you can see the roads that go through the property as well. But I will tell you that these sites are all on hard pan. They’re all on hard surface, lava surfaces. They’re not located on any sandy surfaces, etc. When I walk this – with Uncle Les Kuloloio, Charlie Maxwell, and Dana Hall, certainly this parcel, the shrine rose to a significant issue. There were – none of these rise to that. They’re essentially a few rock piles on the ground, and I’m not belittling them. I’m just not saying they’re very prominent. You could walk through there and not even notice these. And I think if you go through the EA and see the photographs of them that we previously submitted, and I’m not sure that these have been displaced by these roads, or the 4-wheel drives, or what had happened before, and I’m not saying that they should not be preserved or protected, at this point, my conversations with Melissa at the State Historic Preservation District and anybody I’ve talked to over there just say these simply do not rise to the level of the criteria of sites that deserve protection. They just— And that’s the feedback I’ve gotten so far. If they had told me, “Greg, these need to be protected, they need easements around them, etc.” we would’ve followed that action as we did on our previous property.

Mr. Hedani: Greg, your previous comment was that the sites that may – or that most of the sites that we’re talking about that may be significant do not require removal. Wouldn’t that mean it would be possible to integrate those sites into the plan or any future development of those lots?

Mr. Kaufman: If you’re asking if I’m having to leave these in situ?

Mr. Hedani: Right.

Mr. Kaufman: Yes, yes.

Mr. Hedani: So you would be willing to do that?

Mr. Kaufman: Yes, yeah. I don't have a problem with it.

Mr. Starr: You want that to be noted by--? Joe, do you have that?

Mr. Prutch: No, I don't have that one.

Mr. Starr: Commissioner Hedani, maybe you could state it for Joe Prutch?

Mr. Kaufman: Excuse me, could I qualify my statement because the cattle walls are certainly not identified here as reaching Criterion D. So I guess what I would say is that the ones that should be preserved in situ are the ones -- let me find the numbers here are the ones is SIHP5050146223, SIHP5050146224, and SIHP5050146225. And there's some A, D's and C's on those I think on the map -- I mean, that was -- cover the criteria.

Mr. Hedani: Okay, Sites 223 would be the so-called "cattle walls."

Mr. Kaufman: Right. And those I think I would exempt out of there. I don't plan on--

Mr. Hedani: So Sites 224 and 225, you have no problems with preserving in situ?

Mr. Kaufman: Correct.

Mr. Hedani: Okay.

Mr. Starr: Okay. Mr. Prutch, have you got that?

Mr. Prutch: I got sites 224 and 225 as shown on Figure 6. But just the 224 and 225 is what I hear you want preserved, correct?

Mr. Starr: On those preserved, to be preserved in situ.

Mr. Prutch: Shall be what?

Mr. Starr: Preserved in situ. Situ. Situ. Commissioner Hedani, Commissioner Mardfin is curious.

Mr. Mardfin: I see 6225, but 6224 has an A, B, C, D, all of them.

Mr. Kaufman: Yeah, all those -- they're essentially listed as 224 and 225, but then there's an A, B, C, whatever they are. We're concurring to preserve all of those in situ.

Mr. Starr: Okay, Commissioner Hiranaga -- oh, go ahead.

Mr. Prutch: One thing I wanna make sure is these conditions and the last one as well, are these the consensus of the Commission, or is this just one Commissioner's comment?

Mr. Starr: Well, we're asking you to write it and then we'll vote on it. And then if it passes, then it's part of it. Commissioner Hiranaga, you had some for Public Works? It's all yours.

Mr. Hiranaga: Yeah, returning to the SMA valuations, according to the information provided by the applicant, he's saying that in order to obtain final subdivision approval, underground utilities, water distribution, fire protection system, drainage management, and paved roadways would have to be constructed. And I'm looking at his Exhibit 9, page 13, which shows the proposed subdivision, and he's showing a 24-foot wide roadway easement servicing three lots. And I guess I'm asking in your opinion, I don't know if you have this exhibit that we're looking at, even if curbs, gutters, and sidewalks were waived, wouldn't underground utilities, water distribution system, fire protection system, drainage management, and the paved roadway exceed \$125,000 in improvement costs?

Mr. Michael Miyamoto: The easement is 24 feet wide, but I think the roadway only needs to be 20 feet. And to be honest, I can't give you an estimate at this point about the value of that would be as far as—

Mr. Hiranaga: It's the practice of the Fire Department to require that this roadway easement now be able to sustain the weight of a fire engine, so it's gotta be fortified as before they used to allow dirt roadways or gravel especially in an urban area.

Mr. Miyamoto: Yeah, but I think — I mean I'd have to look up — I'd have to check with staff as to what the fire requirements are at this point. I'm not familiar at this point as far as this access easement for the back three parcels.

Mr. Hiranaga: Is there adequate fire water pressure to provide fire protection up to that level? Or will a storage tank be required?

Mr. Kaufman: Can I answer that?

Mr. Hiranaga: Sure.

Mr. Kaufman: There's a hydrant on our subdivision. There's a hydrant in front of the subdivision, and there's a hydrant adjacent to this property across the street on the Big Beach side of the property. And all those hydrants are charged and ready to go. We've tested them all. So there currently actually is five hydrants within a thousand feet of this area.

Mr. Hiranaga: But again, Public Works, your lot most distant from the roadway, isn't there like a 250-foot requirement for fire hydrants within the existing building?

Mr. Kaufman: 600.

Mr. Hiranaga: The proposed—600?

Mr. Kaufman: 600. So the hydrant here would be almost exactly where we put it on the — in our subdivision. It would be located approximately here. And this property overall length I believe is front to back just under 600 feet. So it would sit about the mid-point here.

Mr. Hiranaga: So you have to put a fire hydrant on the proposed project.

Mr. Kaufman: Yes. And to give you some idea, the improvements—two things: the improvements

that we did on the Kaufman Subdivision were about \$89,000. The hydrant is about \$6,000, \$7,000. One of the reasons why there's an economy of scale here is that we are actually in anticipation – in previous discussions, when I didn't own this property, I didn't know who owned it, when I did my subdivision, I actually asked the owners down the road, if he'd be interested in taking the utilities underground at some point. And they said if they ever decided to build, that they would come talk to me. So in advance of that, I actually stubbed underground utilities all the way to the end of the Kaufman Subdivision. So all that work has already been done. It was done in advance some seven years ago. MECO recommend that we do it because they said if we dug then, we may as well just lay the conduit, and stub it, and leave it there out of no anticipation of anything, just to do it. So there has been sort of cost-born or up-front that could bear fruit later on. But in terms of the roadway cost, etc., I believe Joe has the Otomo Engineering report, if you wanna see it. I'm sorry I didn't bring a copy that you could review . . . (inaudible) . . . in terms of cost and requirements.

Mr. Prutch: Yeah, I've got the Otomo Engineering – engineer's estimates for the Iwa Ike for the improvements. The total . . . (inaudible) . . .

(There were mechanical difficulties; therefore, portions of the tape were not able to be transcribed at this point.)

Mr. Starr: Commissioner Hiranaga, you still going?

Mr. Hiranaga: On this – well, actually, Mike, I guess, Stacy Otomo created that. I'm not gonna ask you if it's reasonable because you haven't had a chance to review it, but I guess it's conveniently close to \$115,000, coincidentally, luckily. I don't have any further questions regarding the improvements.

Mr. Prutch: Just if I may? Oh, I'm sorry. May I? I mean, when we get valuations, that's one of the things we have to deal with in our Planning Department is how do we know how much it cost to do all this. As a Department, we have to rely on an engineer's report, contractor's estimates. That's what we have to go by. So in this case, if we're getting something from an engineering department that's a recognized engineer, we have to go by their estimates as far as when we review the SMA and we use the valuation from that engineering's report.

Mr. Starr: Commissioner Hedani, you have the floor.

Mr. Hedani: Greg, in order to preserve Site 224A, which is located as part of your roadway easement, you would need to expand the easement on Lot 4 probably. I think you're showing a roadway easement that's like 24 feet wide.

Mr. Kaufman: 224A, yeah, well, first of all, it's probably not drawn to scale. It's on this map. It's much larger than it appears. But yes, we have to dodge the roadway around that, yeah, absolutely.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Similar comments from the previous application—is the applicant willing to retain all pre development and post development runoff onsite?

Mr. Kaufman: Yes.

Mr. Hiranaga: And limiting ohanas to 700 square feet?

Mr. Kaufman: Yes.

Mr. Hiranaga: I guess follow-up letter to OHA regarding the cultural impact assessment if they any comments?

Mr. Kaufman: That's for the Planning Department?

Mr. Hiranaga: Right.

Mr. Kaufman: Thank you.

Mr. Starr: What are the other ones? Do you have the list from--? Joe, the lighting and all that?

Mr. Prutch: Yeah, I have the list. As you said, retain all pre and post construction runoff onsite. The way I wrote the light one down was no light shall be emitted or directed onto Makena Road from the project site.

Mr. Starr: No, no light shall be emitted from the project site that shall be visible from the makai side of Makena-Keoneoio Road.

Mr. Prutch: Shall be visible?

Mr. Starr: Yes.

Mr. Prutch: From the makai side of the street.

Mr. Starr: Yeah, so the turtles will not see any light from this one.

Mr. Prutch: And then of course I have the five conditions that were applicant's suggestion for no further subdivision, no condominiumization, rural setback standards, and rural . . . (inaudible) . . . height standard. I have those conditions as well. And then the last one which you guys will have to agree on--Mardfin's request that the applicant and future landowner shall allow access to properties by any future Makena area wide archaeological studies, if we can get consensus on that. And then of course that Sites 224 and 225 as shown on Figure 6 shall be preserved in situ. And then in parathensis, I put "driveways may be relocated to avoid said sites."

Mr. Starr: Okay, Mr. Kaufman, are these acceptable to you?

Mr. Kaufman: Can I for efficiency's -- I think you might wanna combine I think 5 and 6, or 4 and 5, I think. I think they should probably say, "Preserve in situ and allow for access for scientific study preserve--" They're not necessarily one and the same thing, but they go hand-in-hand, because that's what you want is access to those preserved sites, correct?

Mr. Starr: I think it was to have the survey done.

Mr. Kaufman: Okay, I'm sorry.

Mr. Mardfin: I mean, those we know of so far. There may be others that get discovered in doing our system wide study.

Mr. Starr: Okay, is everyone happy with this? Any others? Commissioner Hiranaga?

Mr. Hiranaga: Well, I'm gonna have difficulty voting to approve this request unless the applicant is agreeable that when he submits his SMA application that he agrees to submit for a major SMA permit because the engineer's estimates at a \$115,000 is ten thousand dollars below the threshold-\$125,000. And I do not want to see a four-lot subdivision go through without our or the Commission's review because of the sensitivity of the location. I know you have a good track record as you've told us, but I'm just forewarning you, if you do not agree to that, you're not gonna have my vote.

Mr. Starr: Go ahead, Mr. Kaufman.

Mr. Kaufman: Yeah, I'm not sure – again, I'm not opposing that. I wanna be clear that I'm not opposing that, but I'm not sure if that's a condition. I guess I would request that the condition be rephrased that the Planning Department require an SMA for this. Is that not-?

Mr. Hiranaga: That's not what I said. I said you must agree to submit for an major SMA permit on your – and not require the Planning Department to say what you must do. You must voluntarily apply for a major SMA permit or you will not receive my vote.

Ms. Cua: If I could just make a comment just to make it clear? So everybody's clear, an application has already been filed. Yeah, so the applicant submitted a special management area permit assessment. The Department has not made or conducted the analysis for the assessment. So you're talking about when the applicant gets ready to file an application. So I just wanted everybody to understand that that application has been filed already. So with that, then I think you should have your discussion.

Mr. Hiranaga: To clarify then, that he will notify the Planning Department that he will be submitting for a major SMA permit, and not wait for a determination from the Department.

Mr. Starr: Your choice, Mr. Kaufman.

Mr. Kaufman: I guess schematic. I did not apply for a major and I did not apply for a minor. I simply applied for an SMA at this point. Is it your request that the application be withdrawn and that I submit a new application? Sorry. I'm just slightly out of my league on this one. I'm just trying to get some direction. I understand where you're trying to go, but from my perspective, I just applied for an SMA.

Mr. Hiranaga: Ann, do you understand what I'm trying to request from the applicant?

Ms. Cua: I understand what you're saying, and I don't know if we need Corp. Counsel to chime in on this at some point. There has been – like I said, there has been an application filed. The Department has to conduct its assessment. And we have to go through all our criteria. If the Department continues with its assessment, it may find that there are significant impacts regardless of valuation. What Joe is saying is correct about – especially when the valuation is close. For us, we require something from you—an engineer or an architect, but even with that, we have to through an assessment, and we have to come up and be able to say that there are gonna be no significant impacts for us to be able to issue an exemption. If we can say there's no significant impacts and the valuation is under \$125,000, we may be able to issue a minor. But regardless of valuation, if we find that there are going to be significant impacts, if we find that in our analysis, then we would bump that up to a major. What you're asking is that the applicant – I would think he would have to withdraw his application, and just file a major permit, if you're asking him to voluntarily apply for a major permit. What he's saying, and I understand that he doesn't understand the logistics is he just filed an assessment. And he's waiting for us to make a determination. If we go that route, the determination could be that there would be no significant impacts based on mitigative measures. We don't know 'cause we haven't completed the assessment yet.

Mr. Hiranaga: Previously you had stated that other developers have on their own decided to just apply for major SMA permits and not wait for the determination from the Department and also be exposed to a possible appeal by the determination of the Department. That has been a practice in the past.

Ms. Cua: Yeah, but I also did say that that's normally is the case when a big hotel project comes in or clearly you have a major project. Normally, normally, a four-lot subdivision that is not gonna require – or that is not proposing construction of houses on the for lots, normally they would come in for an assessment, normally. That's what we have found to be the case.

Mr. Hiranaga: But – but developers have done that voluntarily in the past—gone straight to a major SMA permit?

Ms. Cua: That is their option to come in straight out and ask for a major permit. That is an option.

Mr. Starr: Dr. Iaconetti?

Mr. Iaconetti: Is there some reason the cost of the retention basin is not included in this?

Mr. Kaufman: I don't have the answer for that. I do know in talking to – just vaguely have an answer that in talking to Mr. Otomo, I remember him saying that there are certain infrastructure improvements that are costed toward the project and some that are not. And I'm not sure . . . (inaudible) . . . retention basin is or isn't in there.

Mr. Iaconetti: Should it not be?

Mr. Kaufman: I don't have an answer to that. I would just say that again, if we go back to July 10th, my application was on all fronts in various areas, and I haven't wavered from that. And so I didn't know if I was applying for an SMA minor before or an SMA major. I just simply applied for an SMA permit. I am more than happy to deal with – regardless of the valuation, if the Planning Department

determines that there are significant impacts that will be created by this, I will want to mitigate them, period. And I don't know if I'm mitigating those any more by applying for an SMA major now or not. I don't know if you're gonna get any different response out of the Planning Department in their assessment of what we need to do in terms of mitigation.

Mr. Hedani: I think what Commissioner Hiranaga is requesting is for a voluntary commitment to go for an SMA major on this particular project whether the Commission passes that as a recommended condition or not from his perspective, I guess. Not putting words in your mouth, Ken.

Mr. Hiranaga: Well, if it's not voted by the Commission as a condition on the application, I just hope you have five other votes that approve your application 'cause you're not gonna have my vote.

Mr. Kaufman: No, sorry, what I was trying to get clarification from Ms. Cua is a recommendation that we withdraw our current application and submit a new application for a SMA major. If that's the recommendation, then I'm gonna have to abide by it. I'm not fighting that notion. I'm just saying that where I am right now is there is an application there. At some point, I've got to be either be told to remove that application and apply for an SMA major, or continue going on the path that I'm going right now.

Mr. Hedani: I concur with Commissioner Hiranaga's perspective on that because I know it's – in looking at the map and seeing it's in a flood zone, to agree to a condition for pre and post development retention of all water onsite, it's gonna take some heroic measures, I believe, especially if it's all rock. So I would kinda wanna see an SMA major on this one also.

Mr. Starr: I made myself clear on that, too, but it's the applicant's choice. I think our request was that it be voluntary.

Mr. Mardfin: How many pages is the application form? One page, two pages?

Mr. Yoshida: I think it's more than ten.

Mr. Mardfin: Is there a box on there to check whether you are requesting an SMA major, an SMA minor, or SMA exempt? There's no box on there?

Ms. Cua: No, not on the SMA assessment application. The SMA use permit application, which is an SMA major application is a separate application.

Mr. Mardfin: If they submitted that, does that – can you say that one more time so I'm clear?

Ms. Cua: The special management area use permit application which is a major permit application, that's what you're speaking of, is a separate application from what he submitted. He submitted an assessment application. That assessment application can either become a minor permit, or an exemption, or it can be bumped up to a major by the Department after we do our analysis, but that's not what you're asking.

Mr. Mardfin: No, it isn't. What they're asking is, and I'm tending to it already, that the applicant submit an SMA major permit application and they can do that at this stage?

Ms. Cua: They can do that at any stage?

Mr. Mardfin: Would doing it now be premature in any context?

Ms. Cua: I really don't know any specifics of this project. I'm just kinda waiting for my project, but normally, the Planning Department is not able to grant an SMA permit, and you've seen this, unless they have proper zoning. And I understand they have R-3 zoning for this property, but they need a district boundary amendment. So I believe any SMA application is premature at this time, but again, that's based on the ten minutes of information that I've-

Mr. Starr: Let's take a recess. It's been over two hours. We're gonna take a short recess. We'll try to get back in about seven minutes.

(A recess was then taken at 4:04 p.m., and the meeting reconvened at 4:12 p.m.)

Mr. Starr: . . . of the Iwa Ike. And we are gonna be losing some Members and Corp. Counsel whose presence I cherish. So, Members, any more questions, comments? Commissioner Hiranaga?

Mr. Hiranaga: Just clarification on the archaeological sites, those are gonna be easements that are recorded in the deeds as far as identifying their location and preserving their in situ status?

Mr. Kaufman: I presume we'll handle it just like we did the fishing shrine on 116 which was I believe it was a recorded easement. Pretty certain they were, yeah. We had put in place an easement for historic preservation purposes.

Mr. Starr: Okay, Members, any other comments? If not, a motion would be acceptable. Oh, wait, how about a recommendation from the Department? It's always good to get a recommendation. Give us the short form.

Mr. Prutch: He's asking if we resolved the SMA issue, or if that's a question, or-

Mr. Hiranaga: I'll ask the question-are you agreeable to withdrawing your special management area assessment application, and agreeable to submitting a major SMA permit application for the subject project?

Mr. Kaufman: Yes.

Mr. Starr: Okay. So is that something that we need to condition or is that the something that the Department can just take heed of and hear that - and cancel the existing application, and be waiting for a major?

Ms. Cua: Well, we can't go ahead and just cancel it. We would need a withdrawal letter from the applicant. Once we get that, we would acknowledge the withdrawal letter and return his assessment application.

Mr. Starr: And, Mr. Kaufman, is this what you're proposing to do?

Mr. Kaufman: I'm proposing to withdraw the current application and submit a new application for an SMA major. I believe that's what was requested.

Mr. Hiranaga: Should it be a condition of the application so it doesn't get lost before the Council or—?

Mr. Starr: I'm kinda feeling that may not be a great thing to have as a condition on this. Commissioner Iaconetti?

Mr. Iaconetti: Until he submits his new application, how can we condition it?

Mr. Hiranaga: No, we're talking about the boundary amendment.

Mr. Prutch: You're conditioning the district boundary amendment application before you today. That's where these conditions for lighting, and Sites 224 and all that stuff, that's being placed on the DBA recommendation to the Council—those conditions.

Mr. Hiranaga: I just don't want it get lost somewhere. I'd like the Council to have it in bold type before them. You can figure out where to put them.

Mr. Starr: Is it possible to just put a note that that was – that that comment was stated by the applicant?

Ms. Cua: Chair, what we could do is, in the time that it would take to prepare the ordinance that would have to go to Council and the map, the applicant would withdraw the application, 'cause that takes some time, we could acknowledge that, but in the letter that we send up to Council, we could indicate that that was your request to the applicant, he agreed, and hopefully in our letter it will say the withdrawal letter was submitted on this date, and the application was returned on this date before we send it up to Council.

Mr. Hiranaga: And the applicant will be applying for a major SMA permit upon approval from the Council?

Ms. Cua: Well, we don't necessarily – we're not concerned with when he applies. That's his choice. I think what you're concerned with is that that application is withdrawn and at some point in time, he applies.

Mr. Starr: Dr. Iaconetti?

Mr. Iaconetti; I'm just wondering if it wouldn't be easier to just defer at this point until they get the proper amendments and agreements in.

Mr. Starr: I'm open to whatever motion Members make. Let's proceed with the recommendation and then whatever motion anyone wants is fine with me. Mr. Prutch, please, let's move it along. We're gonna lose our quorum and lose our counsel.

Mr. Prutch: Okay, recommendation report, the application complies with the applicable standards

for a State district boundary amendment. It meets the eight criterion for urban district as listed in the staff's recommendation report. The Maui Planning Department's recommending that the Maui Planning Commission recommend to the Maui County Council approval of the State land use district boundary amendment from ag to urban subject to the two conditions listed in your staff – in your recommendation report, plus the five conditions listed in the letter to Mr. Greg Kaufman dated October 7th which list the conditions for minimum lot sizes; no future subdivision; no condominiumizing lots, setbacks to match rural RU 0.5 standards; and building height limitation of 30 feet; plus–try and get these right–the condition on the light standard Chair Starr requested; the – I don't know who suggested this one, but the retention of all pre and post construction development runoff onsite; Mr. Mardfin's idea of the applicant and future lot owners allowing access to their properties for some future Makena area wide archaeological study. And then the next condition is the Sites 224 A through E, and 225 shown on Figure 6 shall be preserved in situ (that the driveway as shown may need to be relocated or redesigned to avoid said sites). Also, with that condition that the sites be preserved in a recorded easement for historic preservation purposes similar – well, leave it at that. That's all I have.

Mr. Starr: Good. Who's got a motion? Ohanas.

Mr. Prutch: Okay, sorry. Was it no? I forget.

Mr. Starr: 700 square feet.

Mr. Prutch: Okay, that's right. Ohanas limited or accessory dwellings limited to 700 foot max.

Mr. Starr: Okay, who's got a motion? Commissioner Hiranaga?

Mr. Hiranaga: Actually, the follow-up letter to OHA regarding the–

Mr. Prutch: Was that a condition or was that just something that we were gonna try – staff–

Mr. Mardfin: Something you were gonna do.

Mr. Prutch: Okay, I only listed the conditions to go forward to Council.

Mr. Starr: Just make sure you got that.

Mr. Hiranaga: Is Corp. Counsel comfortable with the Condition No. 1 regarding curbs and gutters?

Mr. Giroux: Again, as far as me being comfortable, I think that we would need to find out what Public Works' position is. Even with that condition, I don't see it alleviating a need for a legal analysis because it's still possibly will be creating a conflict of laws.

Mr. Starr: Mike?

Mr. Miyamoto: Thank you, Mr. Chair. This is a condition we worked with the Planning Department to be a consistent with all the other projects that came forth along Makena-Keoneoio Road. And we inserted – the primary thing that we wanted inserted was “minimum” because as an example

in this project, they are proposing a 48-foot right-of-way in front versus what's proposed as the minimum of 32 feet on the other projects. So I mean, we just wanted a condition so that it doesn't conflict with the County code.

Mr. Starr: Okay, so the wording of it as it, are you convinced that that's legal and in conformance with the code?

Mr. Miyamoto: As far as legal, I leave that to Mr. Giroux, but as far as conforming to what the wishes were of the Council and the prior projects, it's pretty consistent.

Mr. Starr: Will you go with that, James?

Mr. Giroux: And, Mike, I'm looking at the wording. I didn't see this in the other project, which is gonna be in the similar circumstance. This is the same wording you want in the other project?

Mr. Miyamoto: Yes, we had talked about it, and Joe and I had mentioned it to Paul that they should be included also.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: I don't believe Mike was here when you gave your concerns about the conflict that this is a urban designated rural – I mean, residential zone, and you're waiving urban infrastructure requirements, if you have that legal right to do that was his concern.

Mr. Giroux: I guess I should bring you up to speed as far as my concerns were that when I was working on the projects where we were working with the zoning issue that was conflict with the community plan, the – at that time, the Public Works Director was very concerned about whether or not he had discretion or not. And in that context when I wrote that opinion, it was very narrowly construed to the power of Council in doing changes of zoning. And my concern was that we're doing with administrative action of 205 of the legislature and it's not coming out of the power of zoning. So the analysis may or may not be similar because we're still looking at a document that has an internal inconsistency—the community plan—and a conflict of laws between two ordinances coming out of the County Council. And I wanted to know what position the Public Works would take in the situation where previously they did not feel that they had the discretion. And as far as I didn't wanna be setting up the Council to be creating a conflict of laws.

Mr. Miyamoto: Thank you, Mr. Chair. In our discussions with the previous project, the project that brought the issue to light, the Papaanui Project, they were given urban. The roadway adjacent to their property was very narrow so it would've resulted in an excessively high retaining walls to provide what was designated by urban. So based on the County code, we did not feel we had any leeway as to what we could grant and what we couldn't grant. The County code is very straightforward on that. So that's when we seek the opinion that if the Council made it a condition to be consistent with the community plan that would force Public Works to adhere to the Council's decision is what we interpreted it at that time. And as James said, at the time it was only for a change in zoning. This is a DBA so it's a little – I don't know if it still applies. We'd have to get counsel's opinion whether a condition of DBA is similar to that of a change of zoning.

Mr. Starr: Okay, Members, how about we just stick with what we just did on the first one, which was to have a letter go up with it from the Department making sure that it's resolved before it goes to Council? I would say leave the condition but have the Department just write a note that would go up to Council with it saying that it should be resolved before their action on it. Isn't that what we did on the previous one?

Mr. Prutch: I don't know. I missed that part.

Mr. Starr: Clayton, have you got the wording on that? No? And that's been about six months ago.

Mr. Yoshida: So do we have a motion?

Mr. Starr: No. What we asked the planner to do was to send a note to Council that the issue of what roadway improvements, and curbs and gutters are done should be resolved by Public Works and the applicant before they decide on it before they do decision-making and be included in their decision. Did I remember that right, someone? Anyone?

Mr. Hiranaga: Or before they waive the requirements.

Mr. Starr: Yeah, okay, before they waive the requirements.

Mr. Hiranaga: For curbs, gutters, sidewalks. Just make sure it's legal that they have the right to do that.

Mr. Starr: Okay. Yeah, get together with your Department, guys, and Mr. Fasi, Joe, and make sure the two are consistent. Okay, we happy with that? Dr. Iaconetti?

Mr. Iaconetti: So this recommendation going to Council is providing they comply with all of the requirements or recommendations including the one that Ken has been making about the—?

Mr. Mardfin: His wasn't mentioned so far.

Mr. Starr: We don't have a motion. We don't have a motion yet. We just have the recommend—

Mr. Iaconetti: My feeling is that this is not a very clean situation. And I would personally prefer, and I don't know how far this will go, but move that we move that we defer until a date specific to take care of all of the requests and recommendations that have been made.

Mr. Starr: Do we have a second?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion on the floor by Dr. Iaconetti, seconded by Commissioner Hedani. The motion is—

Mr. Yoshida: To defer to a date certain – to defer action to a date certain until all of the conditions are provided.

Mr. Starr: Have you got a date?

Mr. Yoshida: Well, again, you know, I circulated the report for the next meeting. We have five public hearing items. And we already deferred the Hoolio House because they couldn't stay pass 3 o'clock to the November 10th meeting. We had four public hearing items.

Mr. Starr: So the second November meeting.

Mr. Yoshida: Well, we have another four public hearing items.

Mr. Starr: Well, let's put it for the second November meeting. Now we got five on each of the – we got the one so far today. Anyway, we have a motion on the floor and seconded. We have any discussion on that?

Mr. Prutch: Yeah. Oh, sorry. Can I? Just not understanding the deferral on the conditions when we have all the conditions called out and listed out on the recommendation.

Mr. Starr: Okay, you don't have to vote on it then, Joe. Let us vote.

Mr. Prutch: No, no, no. I'm just trying to understand.

Mr. Starr: Okay. Anyway, all in favor of– Yeah, what's the date of that second meeting?

Mr. Yoshida: November 25th.

Mr. Starr: November 25th is the date. So deferred to November 25th. Commissioner Mardfin?

Mr. Mardfin: I'm gonna vote for this on the hopes that the Department can also figure out how they want the SMA major deal structured.

Mr. Starr: Okay, we're gonna vote now on this. Yes, we are. We're deferring to November 25th is the motion. All those in favor, please raise your hand. All those opposed.

Mr. Yoshida: I see we have five votes in favor. Commissioner Hiranaga and Chair Starr voted against. And Commissioner Guard and Commissioner Pawsat are excused. Motion carried.

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

**VOTED: To Defer the Matter to the November 25, 2008 Meeting in Order for Concerns by Commission be Addressed.
(Assenting - W. Iaconetti, W. Hedani, B. U'u, W. Mardfin, D. Domingo)
(Dissenting - K. Hiranaga, J. Starr)
(Excused - J. Pawsat, J. Guard)**

Mr. Starr: The motion carries. The item is deferred 'til November 25th. Thank you very much. Moving on to the next item.

Mr. Yoshida: We have the action minutes approval of the—

Mr. Starr: Let's hold that. I'd like to request if it's okay with Members, we have – Mr. Arisumi's been here for the Nisei Veteran's Center. I think we can take that very quickly. Can we get a quick motion to move that up on the agenda?

Mr. Hedani: So moved.

Mr. U`u: Second.

Mr. Starr: Okay we have a motion by Commissioner Hedani, seconded by Commissioner U`u to move up Item G-3 up to the top of the agenda. And this is – I'll let Mr. Yoshida take it and see if we can move this really fast. Is Danny Dias here?

Mr. Yoshida: No.

Mr. Starr: Who's gonna handle this?

Mr. Yoshida: I'll handle this

Mr. Starr: Okay.

3. **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 issue a time extension on the following request:**

NISEI VETERANS MEMORIAL CENTER requesting a two-year Special Management Area Use Permit time extension on the period to complete construction of the Nisei Veterans Memorial Center at TMK: 3-8-007: 123, Wailuku, Island of Maui. (D. Dias)

Mr. Yoshida introduced the project into the record.

Mr. Yoshida: The notice – the request letter has been filed. You acknowledge receipt of the request and either vote to review the time extension request or waive the review of the request. This project has been ongoing for a while, but they've had to deal with funding and I believe archaeological issues.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Move to waive review of the request.

Mr. Iaconetti: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hedani, seconded by Commissioner Iaconetti. The motion is—

Mr. Yoshida: The motion to approve the request to allow the Director to issue the time extension, and also acknowledge the receipt of the request.

Mr. Starr: Any discussion? Seeing none, all in favor, please raise your hand. All opposed, raise your hand.

Mr. Yoshida: Unanimous.

It was moved by Mr. Hedani, seconded by Mr. Iaconetti, then unanimously

VOTED: To Acknowledge Receipt of the Request and Waive the Review of the Request.
(Assenting - W. Hedani, W. Iaconetti, B. U'u, W. Mardfin, D. Domingo, J. Starr)
(Excused - J. Pawsat, J. Guard, K. Hiranaga)

Mr. Starr: Thank you. We've waived our review of the request. Thank you very much. Keep up the good work. Our next item is action minutes.

D. ACTION MINUTES OF THE SEPTEMBER 23, 2008 MEETING AND REGULAR MINUTES OF THE JULY 22, 2008 AND AUGUST 26, 2008 MEETINGS

It was moved by Mr. Iaconetti, seconded by Mr. U'u, then unanimously

VOTED: To Approve the Action Minutes of September 23, 2008 and Regular Minutes of July 22, 2008 and August 22, 2008 as Circulated.
(Assenting - W. Iaconetti, B. U'u, W. Mardfin, D. Domingo, W. Hedani, J. Starr)
(Excused - J. Pawsat, J. Guard, K. Hiranaga)

Mr. Starr: Once again, kudos to the Department for nice, quick, and excellent job with those.

G. DIRECTOR'S REPORT

- 1. Pursuant to Section 12-202-26 of the Special Management Area (SMA) Rules of the Maui Planning Commission, this is a notification of the filing of the following SMA appeal:**

THOMAS D. WELCH, JR., ESQ. of MANCINI, Welch & GEIGER representing DOUGLAS POSELY, DONNA ANNE POSELY, PETE UNGRINICH, and JANET J. UNGRINICH appealing the Planning Director's decision dated September 8, 2009, refusing to process the Special Management Area Assessment Application (SMX 20080118) for the Olowalu Makai - Hikina Subdivision (Subdivision File No.'s 4.753; 4.755, 4.757; 4.834) located off of Honoapiilani Highway, TMK: 4-8-003: 047 (Lot 47-A), Olowalu, Lahaina, Island of Maui. (APPL 2008/0002) (T. Kapuaala)

Mr. Yoshida read the agenda item into the record.

Mr. Yoshida: So it's just a notification of receipt pursuant to your rules that this appeal has been filed by Mr. Geiger on behalf of the Poselys and the Ungrinichs.

Mr. Starr: Okay, so anyone have anything with that?

Mr. Iaconetti: I assume this is typographical "2009?"

Mr. Yoshida: Yeah, it's "2008."

Mr. Starr: And my understanding is no action's required of us on this?

Mr. Yoshida: That's correct.

Mr. Starr: Okay, Members, anything on this? Not seeing any, we can move right along.

2. July 31, 2008 letter received from the Department of Housing and Human Concerns regarding satisfaction of the SMA condition for the provision of workforce housing relating to the Kapalua Central Resort SMA

Mr. Yoshida read the agenda item into the record.

Mr. Yoshida: Ann Cua was the staff planner on the Kapalua Resort SMA. We have people here from Maui Land and Pine.

Mr. Starr: Please take it, Ms. Cua. I understand there's some conflict here. Can you explain the situation?

Ms. Cua: I'll do the best I can. We had the Housing Director here, but she had to leave for a meeting with the Mayor. We received this letter dated July 31st from the Department of Housing and Human Concerns then Director Vanessa Medeiros just basically notifying the Commission that condition no. 27 of the SMA permit relating to the Kapalua Central Resort Project, the compliance with that, is in question.

Just to let the Commission know the project has not received any kind of building permits or anything yet. We have not finalized any compliance report. There are a number of conditions that are still outstanding that they haven't complied with yet, but this is just a letter we received, and it went to the Commission, and it was asked to be placed on the agenda. So unless there are any questions, I have nothing further to add.

Mr. Starr: I have a question, which is what would happen, and is there any action this body can take if an applicant does not comply with these conditions, or is in conflict with an agency of the County that has been charged under the conditions with creating conformance? Is there anything we can do or what can our Department do?

Ms. Cua: Well, for any condition, we require two compliance reports. We require a preliminary

compliance report. In this case, I believe it was prior to building permits, and then a final report prior to certificate of occupancy. And there are some conditions that must be complied with prior to a building permit such as if they need an NPDES permit—anything construction related. And then there's conditions that need to be satisfied before they get a certificate of occupancy. And these compliance reports are given to the Planning Department. And if we find that they have not satisfied the condition prior to when they're supposed to satisfy it, we do not approve the compliance report, and therefore, they're not able to get either a building permit or a certificate of occupancy. We're just not there yet because we're not reviewing any kind of compliance report for this project at this point in time. This is a little big unusual situation where you were sent a separate letter from the Department of Housing and Human Concerns, but it was basically to say that there is a conflict between the 40 and 50%. And they've supplied the minutes of the meeting where you see that Bob McNatt said we will at least do 40% and if 50% is required, we'll do that. And I think that's what generated this letter to be written because I guess the parties—the Housing Division and the applicant basically agreed to disagree. That's my understanding. And you can – Mr. Churchill is here, and you can ask him maybe to further clarify, but that is my understanding of the situation, and you've basically been put on notice that as of now, they're not complying with the condition, but I'm here to tell you that there are other conditions that have not complied with yet because they just haven't moved forward with the project.

Mr. Starr: Okay. Members, it doesn't sound like there's any direct action we can take, but is there anyone who would like to hear from Mr. Churchill or have at him or anything? Mr. Churchill, please.

Mr. Ryan Churchill: Good evening. It's getting late. You've had a long day. Ryan Churchill with Maui Land and Pineapple Company to answer any questions, but otherwise, I agree with Ann. We're not disputing that we're not in compliance with that condition. And there's many conditions we're still working to address and have not submitted a compliance report.

Mr. Starr: Am I to understand from what you're saying that you haven't taken a firm position against the requirements, you're just still working on it?

Mr. Churchill: There's numerous conditions in working on the project that we're not in there pushing to try to pull building permits or anything like that. So I think it's premature and we're still working through the process with the County.

Mr. Starr: Okay. Members? Yeah, Commissioner Mardfin?

Mr. Mardfin: Are you disputing the 50% number?

Mr. Churchill: Yes.

Mr. Starr: I do remember that conversation with Mr. McNatt where he did say that if that was the requirement. Commissioner Hedani?

Mr. Hedani: Ryan, were there any measures that were taken that were conditioned on the agreement?

Mr. Churchill: Which agreement?

Mr. Hedani: Were any applications filed or any permits pulled relative to the Central Resort Project that were tied to the 40 or 50%?

Mr. Churchill: There's no agreements in discussion. There's been no submittal. There's been no discussion with them of which of our affordable housing projects will satisfy this. It's just the projects too premature to have those discussions with them.

Mr. Hedani: Well, what I'm hearing is that the position that was taken previously from Maui Land and Pine was that if 40% was the requirement, it would be provided. If 50% was the requirement, it would be provided. What I'm hearing today is that if 50% is the requirement, it would not be provided. Is that true?

Mr. Churchill: No, I think what we're saying is, and what Mr. McNatt's intentions were there is we're volunteering to do 40%, and we're still standing to that today. However, 50%, the ultimate decision, if that's required, an ultimate decision, in our view, is the court of law. If that's required, then we'll do that.

Mr. Hedani: Okay, so you're saying if the requirement is 50%, we'll just see you in court?

Mr. Churchill: Correct. And that's where we've been working with the Mayor and her administration. And there's been a change in the Director there to see where we're apart and whether we can settle on something. And if we can't, then we'll be pursuing our due course in court.

Mr. Hedani: Okay. I guess my question would be to the Department as to whether or not any permits were issued that were tied to that agreement.

Ms. Cua: For Central Resort, the only permit that was issued was the—

Mr. Hedani: Anything that was related to the project.

Ms. Cua: No, outside of the special management area permit, and the project district phase 2 approval which was granted June 26, 2007, no.

Mr. Hedani: I guess my question, Ann, would be were the project district approval, if those approvals were conditioned on that condition being met?

Ms. Cua: Yes, the condition—

Mr. Hedani: So they were conditioned on those commitments. Wouldn't reneging on those commitments negate the project district approval?

Ms. Cua: If they're not able to meet any condition, then we would not be approving compliance reports, which would not allow them to get building permits or certificate of occupancy. And the condition that apparently is in question here is the one that says that:

As represented by the applicant, a volunteer provision of at least 40% of the workforce housing unit shall be provided. Should a determination be made that a

workforce housing requirement of 50% is applicable, the applicant shall provide said 50%. A copy of the executed affordable housing agreement for the Central Resort Project shall be submitted to the Planning Department together with the project's preliminary compliance report.

And that has not – that has not happened yet. Did I answer your question?

Mr. Hedani: I guess my question would be, what's the next step at this point, then?

Ms. Cua: Well, until we have a compliance report, there's really nothing for us to do because when they submit a compliance report, they will say in fact how they are compliant with that condition. Until we have that, we cannot move to the next step. My understanding is they have not filed for any building permits. And normally, an applicant will file for their preliminary compliance report in anticipation of having building permits granted. And so none of that has been filed for to my knowledge. And I know I'm not exactly sure on the building permits, but I can tell you on the compliance reports, I have not received any full review, and it's probably because they are still trying to see how they're gonna be satisfying a number of conditions because they had I don't know how many—definitely more than 27 conditions. I think it was over 30.

Mr. Iaconetti: Is there a time limit by which they must submit a compliance report?

Ms. Cua: Not to submit the compliance report. They have I believe for this project—I don't know if we were doing the two years or three years then—three years to start construction. And if they can't start construction within three years, then they can come to you for an extension. So within three years, they have to get building permits to be able to start construction, or they would need to extend – request extension of the SMA permit.

Mr. Starr: Okay, thank you for bringing that to us. And I thank you to the applicant. The memory of this body is certainly more than two or three years, Mr. Churchill. So bear that in mind.

Mr. Iaconetti: So the only recourse if they are not compliant is to not give them a building permit.

Ms. Cua: If they are not compliant with conditions, we will not be granting approval of compliance reports, and depending on which conditions – there are certain conditions that have to be complied with before they get a building permit, and certain conditions they have to comply with before they get a certificate of occupancy. So if they're not able to comply with the conditions that need to be complied with before a building permit, then no, they will not be able to get a building permit. And then if they get building permits and they build, and they don't comply with the remainder of the conditions, they will not be able to get a certificate of occupancy and occupy their project.

Mr. Iaconetti: So in essence, if they stand on their 40% rather than the 50% that they agreed to, if they stand on that, they have three years in which to comply, and after that, they have to reapply for the whole project?

Ms. Cua: I'm sorry, could you—? I think I lost you. You're making sense, but I lost you. It's my fault. I lost you mid-stream. Can you state that again?

Mr. Iaconetti: If they continue to refuse to agree to the 50% and stand on the 40%, and they don't agree with the 50% for three years, at that point they have to apply all over again for a new permit?

Ms. Cua: No, no. And I don't wanna just limit it to this condition because it really could apply to any condition, but let me talk about this condition. I'm sorry to go back and forth. This condition specifically says that they have to get us an executed affordable housing agreement with the project's preliminary compliance report. As I mentioned, the preliminary compliance report comes before a building permit. But for any condition that would come before the building permit and before they could start construction, I mean, they have that three-year window before they can construction, if they are not able to start construction within the three years, then they don't have to come for a brand new permit. They just need to come in and ask for an extension of a permit. It doesn't require a public hearing, but it does require us to bring the project before you. You can take public testimony, but it's not a noticed public hearing matter.

Mr. Iaconetti: So if we do not extend at the end of three years, then what happens?

Ms. Cua: If you don't extend the permit, then they don't have a permit any more.

Mr. Iaconetti: That's what I was asking.

Mr. Hedani: Ann, you're not recommending at this point that we rescind the permit?

Ms. Cua: No, no.

Mr. Hedani: Because you're still in discussions with the—

Ms. Cua: Because I've received no compliance report that tells me that they're not compliant with the conditions either the preliminary compliance report or the final. I've not received anything, so I think it's premature at this point in time to be asking you to rescind the permit because until they submit me a compliance report that shows how they have complied with all of the conditions, I'm not in a position to make that kind of a recommendation to you.

Mr. Hedani: Okay, from my perspective, if they make a commitment, and then they renege on that commitment, it's ground for considering rescinding the approval.

Ms. Cua: That's correct. But again, I don't have anything in writing from them that's telling me that they are not going to comply with that condition as of yet.

Mr. Hedani: I just heard, "I'll see you in court."

Ms. Cua: Right, and you also heard that they're still in discussions and trying to reach a settlement with the now new Director. So again, until I get something more than this, and until they're asking for a building permit, and they want us to approve a preliminary compliance report, I'm really not in a position to tell you much more than I have.

Mr. Starr: I would think at some point perhaps a letter from this body saying that we hope that they would comply not only with all written conditions but also with a verbal statements made by their representative Mr. McNatt which a number of us witnessed would be in order, but I think it may be

a little bit premature. So could we request that you keep us up to date on what happens with this?

Ms. Cua: Sure.

Mr. Starr: Members? Okay, thank you very much. And good luck to you, Mr. McNatt, and I hope that Maui Land and Pine maintains – Mr. Churchill, and I hope that the good spirit of Maui Land and Pine remains.

Mr. Churchill: (Inaudible)

Mr. Starr: Sure.

Mr. Churchill: I think as Ann pointed out, we're not renegeing on this. We're not renegeing on what was said. My point is that the decision, the final decision, has not been made. And so when that decision is made, then we'll come back to staff and either have our compliance report, and our compliance report will say here's the decision, that's ultimately been made, and this is what we're gonna comply with. And so I think it's premature until that decision's final. And so I think that's been somewhat misinterpreted here.

Mr. Starr: Okay, well, hopefully there won't be any conflict.

Mr. Churchill: Thank you.

Mr. Starr: Thank you. Mr. Yoshida, let's finish it up.

4. Planning Commission Projects/Issues

Mr. Yoshida: We're on the Commission projects/issues item.

Mr. Starr: Don't have issues. Okay, next one.

5. Discussion of Future Maui Planning Commission Agendas

Mr. Yoshida: I've circulated what's on the next agenda—October 28th. There are five public hearing items, three of which are for public projects.

Mr. Starr: Okay, has everyone got that? And if anyone has got any ideas – the next few meetings look like they're gonna be pretty full, but if anyone's got any ideas for special programs to add one when things are a little slow, please let's hear them. Not now, but by and by.

6. EA/EIS Report

7. SMA Minor Permit Report

8. SMA Exemptions Report

9. Proposed 2009 Meeting Schedule

Mr. Yoshida: We have the SMA Minor Permit and SMA Exemption Report, and we've circulated our 2009 Meeting Schedule. If the schedule is okay, then we can start reserving the room before everybody does.

Mr. Starr: Okay, if anybody's got a concern with the meeting schedule or the agenda, please email them to me or Clayton quickly, and then we'll deal with them. Otherwise, we'll assume it's okay. Anyone have anything for the SMA, EA, EIS list? Got anything today?

Mr. Iaconetti: No, I was going to move to adjourn.

Mr. Mardfin: Second.

Mr. Starr: Okay. All right.

G. NEXT REGULAR MEETING DATE: October 28, 2008

The meeting was adjourned at 4:56 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson
John Guard IV, Vice Chairperson (excused at 1:51 p.m.)
Donna Domingo
Wayne Hedani
Kent Hiranaga (excused at 4:30 p.m.)
William Iaconetti
Ward Mardfin
Bruce U'u

Excused

Joan Pawsat

Others

Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works