

**MAUI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 10, 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 8:53 a.m., Tuesday, November 10, 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: Thank you all for coming and being part of our process today. This is the Maui Planning Commission. I'd like to introduce the members who have been able to make it so far is Commissioner Kent Hiranaga, Commissioner J.B. Guard who was supposed to be somewhere else but came in today and helped us out. This is our great Corporation Counsel representing and keeping us out of trouble, James Giroux. Chair Jonathan Starr. This is the Director of Planning, Jeff Hunt. Commissioner Donna Domingo and Commissioner Dr. William Iaconetti. We have Carolyn Takayama-Corden who's the secretary for the Maui Planning Commission. Deputy Director of Public Works, Mike Miyamoto, Clayton Yoshida who keeps things together at the Current Division and helps us with all the organizational stuff that makes these meetings possible and a few others of our great planners here also. Kenny Hulquist filming the meeting for Maui Tomorrow to be shown on Akaku. Thank you for being here as well Kenny.

We take testimony on all agenda items in one of two ways. Everyone is welcome to testify either or before all of the agenda items begin which will be just in a couple of minutes or they can testify during each agenda item usually before decision making and after the initial presentation. So if there's an item that you're interested in and want to offer testimony you can do it either before the meeting or later on when we get to that in – (technical difficulties with p.a. system caused the meeting to be temporarily delayed while a temporary p.a. system and recorder were set up.)

Okay, we okay? Kenny, you good? Okay, once again I apologize for the delay in getting started here. Our regular sound system which need to record the meetings for the record was not functioning and I think we're in good shape thanks to Mike Miyamoto and our technical team. Anyway, once again, welcome November 10th. It's a Monday which is unusual. We're having our Maui Planning Commission meeting. We will begin with public testimony on any agenda item. Anyone wishing to testify on any item on the agenda can either testify now or when that item comes up before us. I do have a list of sign ups and I ask you to bear with us, speak into the microphone that's provided so it goes on the record. Our first testifier is Barbara Newton. The second will be Paul Halberg. Barbara Newton please come up and welcome and ask you to keep it as short as possible, under three minutes and thank you for being here. Aloha.

The following individuals testified at the beginning of the meeting:

Ms. Barbara Newton - Item C-2, William Moffett, Kahana Nui Villas, CP

Mr. Paul Halberg - Item C-2, William Moffett, Kahana Nui Villas, CP

Mr. Kaleo Baybayan - Item F-2, Parks & Recreation, Lahaina Civic Tennis Courts, SMA

Mr. Brian Puckett - Item C-1, Marriott Ownership Resorts, Maui Lu Redevelopment, SMA transfer

Ms. Anna Dumbleton-Item C-1, Marriott Ownership Resorts, Maui Lu Redevelopment, SMA transfer

Ms. Jessica Ross - Noted by Ms. Callentine she will speaking at the time when her item comes up.

Ms. Elaine Galant - Item F-2, Parks & Recreation, Lahaina Civic Tennis Courts, SMA

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

Mr. Starr: C. Rose Riley, are you here with us? I guess not, maybe we'll come back before the item. Is there any other members that wish to testify on any agenda item at this time? If so, please come forward or raise your hand or let me know. Not seeing any, the initial public testimony portion of the meeting will be closed and we'll move onto our first item. And before the Director of Planning introduces it, I just do want to mention that we do have a letter relating to it that may change our actions and I'm sure that will be explained to us as we go along. Director Hunt.

Mr. Hunt: Your first item is the resolution thanking Joan Pawsat for her service on the Maui Planning Commission.

B. Resolution Thanking Joan Pawsat for her service on the Maui Planning Commission

Mr. Hunt: Traditionally we read these into the record.

Resolution of the Maui Planning Commission

WHEREAS, The Maui County Planning Commission was established in 1958; and

WHEREAS, since April 2007, Joan Pawsat has served as a member of the Maui Planning Commission; and

WHEREAS, Joan Pawsat, has served the Maui Planning Commission with dedication and provided valuable guidance in serving the needs of the people of Maui County; and

WHEREAS, Joan Pawsat has resigned as a member effective October 28, 2008 as she will be leaving the island of Maui, now therefore

BE IT RESOLVED, by the Maui Planning Commission that it does hereby express its deepest gratitude and appreciation to Joan Pawsat for her service during the past one and a half years and does hereby extend its best wishes in her future endeavors; and

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the Honorable Charmaine Tavares, Mayor of the County of Maui and the Honorable G. Riki Hokama, Chairman of the Maui County Council.

Mr. Starr: Okay, members is everyone satisfied and happy to go along with this resolution? Okay. I see unanimous agreement. Is that set up for us to sign it? Okay, we'll pass it around to sign it and thank Commissioner Pawsat for her service and she is missed and certainly is appreciated.

We'll move to our second item, our first public hearing of the day and it will be introduced by Director Hunt.

Mr. Hunt: This item involves Marriott Ownership Resorts, Inc., requesting a transfer to the Special Management Area Use permit from Genesee Capital to Marriott Ownership Resorts Inc., for the Maui Lu redevelopment project at TMK 3-9-1: 083, 086, 120 in Kihei. The file numbers are SM1 2003/0021. Pardon me, that's the only file number and the staff planner assigned to this Ann Cua. Clayton Yoshida is here on her behalf.

C. PUBLIC HEARINGS (Action to be taken after each public hearing item.)

- 1. MARRIOTT OWNERSHIP RESORTS, INC. requesting a transfer of the Special Management Area Use Permit from GENESEE CAPITAL to MARRIOTT OWNERSHIP RESORTS, INC. for the Maui Lu Redevelopment Project at TMK: 3-9-001: 083, 086, & 120, Kihei, Island of Maui. (SM1 2003/0021)(C. Yoshida for A. Cua)**

Mr. Clayton Yoshida: Thank you Mr. Chair, Members of Commission, the subject request was filed with the Department on September 24, 2008. The Maui Ocean Resorts Inc., is in the process of acquiring the Maui Lu project and as such is requesting the permit transfer.

If you may recall the commission did grant the SMA permit for this project on March 17th of this year and the findings of fact, conclusions of law and decision and order was issued on July 22nd. The property is approximately 27.28 acres located at the north end of Kihei at the intersection of Kaonoulu Road and South Kihei Road and is divided into two sections by South Kihei Road. The project includes a demolition of the existing structures on parcel 086 located mauka of South Kihei Road and the two habitable structures on parcel 083 located makai of South Kihei Road. The project also consists of the construction of 400 units contained within new one to four-story buildings of which 388 units will be lock off units and related amenities.

It is noted that condition no. 31a requires removal of the two habitable structures on the makai side of South Kihei Road. A total of 687 parking stalls will be constructed. As part of the easement agreement with the state, the project will also include beach nourishment of 6,500 cubic yards of beach quality sand to the pocket beaches fronting the property as well as the beach south of the property. Monitoring will also be conducted by the applicant.

Pursuant to condition no. 8 of the SMA permit and your rules, a public hearing must be held on this request as there was a petition to intervene filed and granted on the SMA permit and a written waiver of public hearing was not received from all parties by the department.

On September 26th, the department served a notice of the hearing on the applicant and the intervenor. On October 2nd, a second notice outlining the 500 foot notification process was mailed to the applicant and previous intervenor. On October 10th, the applicant mailed a letter of notification and location map to all owners and lessees within 500 feet of the subject property describing the transfer and notifying them of the hearing date, time and place by certified mail or registered mail.

By letter dated October 20th, the current permit holder, Genesee Capital authorized Marriott Ocean Resorts Inc., to apply for the transfer in permit holder for this project.

The potential new owners Marriott Ocean Resort Inc, has submitted an affidavit dated September 8, 2008 which states that they have read the SMA permit docket dated July 22nd, and are familiar with its contents. It further states that they acknowledge the condition of the SMA, conditions of the SMA permit and agree to comply with the terms and conditions.

We did receive a letter from Christopher Hart of Chris Hart and Partners dated November 7th asking that on the behalf of the applicant that given the current challenges in the U. S. financial market that have arisen since the filing of the application, Marriott Ocean Resorts Inc., request that the public hearing be held and closed and action on the transfer of the SMA permit be deferred until December 2008.

We have received no other written letters of testimony regarding the request.

Mr. Starr: Okay, thank you Mr. Yoshida. So we have a request that the item be deferred. I don't know whether it can be deferred into December. I know that we only have one December meeting. We have five public hearing items already scheduled for that, but we certainly can defer it. I do have a concern procedurally about having the public hearing and then deferring the item so that they don't have to do the public hearing. I think that the process is you know, is there so that the public have an opportunity to come out when the project is actually being heard. So I don't know how other members feel about that. But you know, in any case, I think we should allow the public to testify and have their, you know, their manao heard, but I also think we should allow that as well at the time when we get to hear the item itself. Anyway, I guess, I would like – you know, if members are in agreement we can go straight to public testimony and then if there's a desire to defer it or to take any other action we can then do that.

Mr. Yoshida: Mr. Chair, I don't know if you allow the applicant to make a presentation or provide comments as is typically the standard procedure?

Mr. Starr: I will, but you know, the applicant has said that they don't want action taken on this today. So I would assume they'll be brief because whatever they're going to say they'll have to come back and say again when the item comes before us, but I will certainly give them the opportunity to explain their position and give their comments. So we are in the good hands here of Mr. Paul Mancini, welcome, and please take the microphone.

Mr. Paul Mancini: Thank you. My name is Paul Mancini. I'm representing the permit holder at this time and I will be extremely brief. We would request the matter be deferred as was related by Clayton and I agree with the Chairman, although we would like the formal public hearing heard today, but at each meeting your agenda item goes out, the public can testify because it is an agenda item the next time it comes on your agenda. So I don't see any derogation on the ability of the public to testify on this and they'll be given the chance when the commission takes it up again. We'd just appreciate the opportunity to get back before you in December on when your agenda permits. Thank you.

Mr. Starr: Thank you Mr. Mancini. Is the staff have any comments on this? Okay, I'll open up for public testimony on this item and this item only.

a) Public Hearing

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

Mr. Starr: Brian Puckett followed by, it looks like C. Wilson. Please introduce yourself and use the mike.

Mr. Brian Puckett: Yes, my name's Brian Puckett. I'm the resident manager of South Point at Waiakoa. I'm speaking on behalf of South Point and we have some concerns about the Maui Lu redevelopment project. While we are for the redevelopment of Maui Lu we really do like the project. We have some concerns as far as how the redevelopment is going to take place.

Some of the things that we're concerned about are the beginning and approximate ending date of the project. (inaudible)... dust and noise. Also, control of asbestos at that project because I believe it was built pre'62 when asbestos was prominent in the building of projects. Proper control of the termite invested wood. How traffic flow will be affected to South Point and from South Point. Will South Point maintenance staff and myself have access to the rear of our buildings at the time this project when this project is going on and also when it's done? Also, we're looking maybe pest control. We're wondering how pest control is going to be handled over there like for rodents and things that will be displaced. Also cats, feral cats and things will be displaced in that area. And also more importantly than any of this, well not more importantly but a lot of importance goes to the grading of the property so it does not flood South Point. We're very concerned about that kind of stuff. If I can get some answers on that it would be great. I don't know who I'd go to for those answers for that project. Anyway, again, that's all I have for right now.

Mr. Starr: Okay, thank you very much. Members, the item will be discussed in detail when it comes before us and we did have some hearings on this project not too long ago. The next testifier is it looks like C. Wilson., okay, who's declining. But thanks for being here. The next is Anna Dumbleton will be followed by Jessica Ross. So Anna if you're here please come forward, introduce yourself and welcome. Please use a mike because our system is having challenges today.

Ms. Anna Dumbleton: Anna Dumbleton from South Point. Mr. Puckett has asked all the questions that I had planned to ask so I won't take any more of your time and hopefully we'll get some answers to all his questions. Thank you.

Mr. Starr: And thank you for coming out today Anna.

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

Mr. Starr: Anyone wishing to testify on Item C-1, the Marriott Ownership Resorts regarding the Maui Lu, please make yourself known. And not seeing any, the public testimony portion of this is closed.

b) Action

Mr. Starr: Okay, members we've had a request for a deferral but as part of that request for a

deferral they also requested that when the item comes before us it not be a public hearing. I would like to hear from our counsel on that because I have some questions as to whether that really is following the spirit if not the letter of the law and I see Mr. Mancini wants to comment too, but I do want to first ask Mr. Giroux to give us a comment on that.

Mr. James Giroux: Thank you Chair. Yeah, 205A is pretty clear that one of its actual purposes and objectives is to allow public participation on these types of matters and that's why our rules reflect that if there was an intervention that the public should be again renoticed and be given the proper notice to know that this was on the agenda. The fact that it's being asked to move to December 2008, you know, from this letter this is probably something that the board should discuss if it feels that this is a legitimate reason to actually move something off, off of the date that it's been publicly noticed. Something like this, I think the intention is that you have a public notice and then you do have a action. The purpose is is that also we're trying to deal with the Sunshine Law so that people actual know, first of all, that they know that there's a hearing going on. Then secondly, that they can participate as far as giving their input and third, that they can see you deliberate in open about that decision.

Every time we have an item on the agenda it is put on the agenda, however, it's very different than an actual public notice where you're given notice at your residence or you're given, people within 500 feet are actually given a different type of notice than your regular agenda. Your agenda just goes out, it's posted. If people check the agenda, they'll see that it's on. So you have a different amount of participation.

I have talked with the Department about this because we also deal with this in different context. When they concurrently process zoning and community plans along with SMA permits and it's been frustrating on my part because it takes, even though they're saying they're doing a public hearing, it takes two to three years for the zoning to go through and then all of a sudden we have an SMA hearing pop up out of nowhere that just got six days notice. So I think it's up for this body to decide whether or not you're going to be complying with that. Whether or not this is of major, minor importance to this body. So you know, as far as moving to December, that's what, a month? So if anybody who got the actual notice, you know, looking at the audience nobody has even testified so that could be a factor in deciding whether or not you want take action today or move it off for a month.

Mr. Starr: Okay, thank you Mr. Giroux. Mr. Mancini, please.

Mr. Mancini: Just to clarify our position. Our position is not that there wouldn't be a hearing, the public would not have the opportunity to testify. Obviously that's a requirement of the law. Often times before this commission you'll have the public hearing, you'll have a number of public hearings today, people will have the opportunity to testify on each item, but you may not finish your work on that item for that day and you may defer that item. The issue is, does the applicant then have to give notice to all the people on the deferred meeting and the policy has always been no, you had the public hearing today, but you do notice it on your agenda, it gets noticed in the paper and people can come to testify. I think that's the only issue. If there's a legal issue as to whether that's proper or not, might suggest you pass it on to Corporation Counsel. I believe the policy of the commission has always has been the ability to defer and you don't have to notice the people once

again after that action, but if there's an issue possibly you can get an opinion on it. Thank you for your time.

Mr. Starr: And thank you Mr. Mancini. You know, I do believe that the position of the commission is try to follow the Sunshine Law in spirit as well as to the letter and give the public every opportunity to be noticed.

But I have a question, which is if the body were to make a motion and vote to deny, then what happens? I assume that that doesn't affect they underlaying SMA but only the transfer. Jeff, you want to take a shot at that?

Mr. Hunt: I would defer to Corporation Counsel.

Mr. Giroux: Thanks Jonathan. Hypothetically, if there was a vote to deny the transfer what would happen is that if the permit holder wasn't in a financial position to follow through with pulling the permits and getting the job started, they would actually end up coming back here to either, again, transfer it to somebody else or to basically get an extension and if their financial position changed or if their priorities have changed then they may be able to continue the project. However, you've always put a standard condition of the three years to start, five years to complete and the purpose is so that you can continue your cumulative impact analysis on the area and because you're getting while the project is sitting, you're getting continued requests for further applications which may or may not change the ecological landscape of the area. So that would be the ramification.

Mr. Starr: Okay, members is there anyone who would like to make a comment, ask a question or make a motion relevant to this item? The PA is out Commissioner Hedani, so we got to use this one.

Mr. Hedani: Mr. Chairman, I'd like to apologize for being late. I didn't realize that tomorrow was a holiday and we'd move to Monday so here I am. Marriott, Host Marriott are members of Kaanapali Operations so I'll be recusing myself from voting on this item. However, I'd like to reserve the ability to participate in discussion.

Mr. Starr: And that is as has been our case I hope you will participate because you're the expert on these items and thank you for rushing in. We were challenged for a quorum and we appreciate you dropping everything and rushing. I know it's an unusual meeting today. I'll pass the mike – oh, here's another mike we'll give to Commissioner Hiranaga is recognized.

Mr. Hiranaga: I was reviewing the letter from Donald Baarman or the email I guess, and I wanted to know who is 575 South Kihei Road LLC?

Mr. Starr: Mr. Mancini please.

Mr. Mancini: 575 South Kihei Road LLC is the real property owner of the property that's involved here. Genesee Capital is one of the members of 575 South Kihei Road. So it's really permit holder who is Genesee Capital.

Mr. Hiranaga: Thank you. One more comment I guess, personally I don't oppose the deferral request because if they don't have an agreement there's no point in transferring the permit, but then I don't necessarily agree with giving them a priority as far as rescheduling. I think it should just be put back in the hopper and come back when it should come back.

Mr. Starr: Would you like to offer a motion to that effect?

Mr. Hiranaga: I'll wait if there's further discussion from other commissioners.

Mr. Giroux: Just to put a note on that comment. I'd like you to know that our policy of not having to renotice is based on that there's a date certain. So just so you know that. I don't want the motion to be let's just put it back when it comes back.

Mr. Starr: Members, anyone wishing to make some action. Commissioner Guard.

Mr. Guard: Thank you. We could go to a date certain in January as well then, correct? Or February when – the agenda looks pretty full for the next meeting and I may not be here for that one.

Mr. Starr: Yeah, I'll ask Mr. Yoshida, he's the master of our calendar. We don't want to push anything else aside for it.

Mr. Yoshida: Thank you Mr. Chairman, Members of the Commission. If we're talking December, December 9th we have four public hearing items, one of them being the Maui Lani VMX project which now also is applying for County Special Use Permit in addition to the Phase 2 Project District Approval. We have a second residence, Brayton residence in Lahaina Town on Front Street, an SMA permit. We have the Maui Beach Place SMA permit which is for a three-lot condominium on Iliili Street in Kihei. And the fourth public hearing item is a conditional permit for concierge services at the Kauhale Makai project in Kihei.

Mr. Starr: Have we got a slot in January or early February that we could accommodate this?

Mr. Yoshida: Well, I guess it's somewhat early to book the public hearings for January 13th because there's like a five-week lag between the December 9th meeting and the January 13th meeting. We have scheduled I think the Emanuel Lutheran Church change in zoning which is adjacent to the other church project that the commission reviewed out here on the 50 acres that was previously designated – is designated public/quasi-public, was going to be for the St. Anthony School relocation, but has been sold to the two churches.

Mr. Starr: But we could probably put it in there on January 13th or the following meeting, right?

Mr. Yoshida: If that's the wish of the commission, yes.

Mr. Starr: Okay, you know, my own personal feeling is that there should be a new public hearing if we're going to move it forward, you know, and not try to sneak it through without giving the full notice the second time. But anyway, we are open for a motion from any of the members. I apologize for this humbug.

Mr. Iaconetti: I'd like to move deferral to a date certain in January, 13th I think it is.

Ms. Domingo: Second. I second that.

Mr. Starr: So we have a motion by Dr. Iaconetti, seconded by Commissioner Domingo that the item be deferred to a date certain which is January 13th. And just for clarification will that – is the intent of the motion that we have a new public hearing with proper notification?

Mr. Iaconetti: Yes.

Mr. Starr: Okay, so we have that motion is on the floor. Anyone wishing to comment or offer an amendment please make yourself known. Not seeing any, we ready to call the question? All in favor please raise your hand. All opposed, please raise your hand. And let the record show one recusal.

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

VOTED: To Defer the Matter to the January 13, 2009 Meeting with a New Public Hearing and Proper Notification.
(Assenting - W. Iaconetti, D. Domingo, K. Hiranaga, J. Guard, J. Starr)
(Recused - W. Hedani)
(Excused - B. U'u, W. Mardfin)

Mr. Hunt: The vote was five in favor and zero against.

Mr. Starr: So this item is deferred to January 13th and I want to thank staff for keeping it together and we'll see you in January Mr. Mancini. Thank you very much for coming here. Do we need time to set up for our next item? Okay, we're going to have a short recess to the call of the chair, as short as possible when everyone's ready we'll start again.

A recess was called at 9:29 a.m., and the meeting was reconvened at 9:37 a.m.

Mr. Starr: Meeting of November 10th, Planning Commission meeting is back in session. Before the next item I want to turn it over to Dr. Iaconetti, Commissioner Iaconetti has a question and I'm frankly very glad he's going to ask it.

Mr. Iaconetti: Before we take the next two items on our agenda, I'd like to be brought up to date, I'd like the commission to be brought up to date as to what rules we are operating under for B&B and TVRs?

Mr. Hunt: Your current laws have not changed. Right now TVRs are specifically prohibited outside of hotel districts. The Council made that affirmative action many years ago. That has not changed. In the late '90's B&Bs were allowed outside of hotel districts which is kind of a subset of TVRs. Nonetheless the county has processed and approved 12 conditional permits for TVRS outside of hotel sites. So we've got kind of this ambiguous policy direction. The law specifically allows them, Council has been individually approving them.

The department's position is based on the existing laws and citizen sentiments that there's no one to complain to if there's no manager on site and it's affecting affordable housing. It's impacting the availability of rentals. The Department position is we don't support conditional permits where there's no owner on site. That's just our recommendation. This body can ignore that if you so please. So again, our position is, if there's an owner on site for a conditional permit we've been supporting it and recommending support. If there's no owner on site we have been opposing it and then there's kind of this mixed gray area, hybrid we called it, where perhaps it's a manager on site or perhaps it's an owner next door and what we've been doing on those is taken them on a case by case basis and you did approve a manager on site early on in this year.

The B&B bills up at Council would expand the definition of a bed and breakfast to include an ohana. Right now they don't. So right now if somebody is asking to rent out an ohana it has to be a conditional permit. But the bills up at Council now would expand the B&B definition to include an ohana, but it would remove the lessee. So the B&B would only be for an owner on site. The bills on TVRs are going to, I believe they're going to be addressed next year. The B&B bill we should be very clear. It hasn't been passed yet. It's just been passed out of committee. Most of the time, once they get out of committee there's not a whole lot of change done to them. However the Planning Committee only has five members. So there's four members who have had an opportunity, limited opportunity to speak their mind but they haven't had a real opportunity to vote and pass motions and they may want to get their finger prints on that bill. So I wouldn't be surprised if there's a little modification at Council. But that's where it is right now.

This body and the Planning Department can't assume laws will be changed or if they are changed what the contents of those changes will be. So we just have to process these applications based on what the laws are today at this time. I think it's important that not only do you follow the laws but when you make your decisions you recognize the policy implications and that you're giving direction to our community as to what kind of vacation rentals are supported and again, the sentiments in the community is there's no on site owner, there's far less support. There's these gray areas that we talked about. To give you an example, we believe that because of the direction, the communication that was given out to the public in the previous administration where it's okay to operate without a permit, we believe that actually encouraged offshore investors. And our statistics show that 80% of the applications you folks reviewed this year had no on site owner and it was off site owner, and 38% of those owners had multiple TVRs. So there seems to be – the direction to the community to seem to result in an investment, a commoditization of our residents, of our residential areas. So I would caution you on not just making the decision on a specific application because when you make a decision on an application, all the people out there in the community will be going, "okay, that's what I can do." You're setting direction. So you've got some gray areas before you today. You've got two applications which I'll admit are in the gray area and to be honest and try to be objective I think you can make an argument on both sides.

One of them has an on site owner but it's the children of the owner, so it's the owner, it's the family. That seems pretty good. But it's the children of the owner and they have a small fraction. So is the direction now we start allowing fractional ownership and then it's okay. It's also in the farm zone and our farm zone has a special layer of protection. But again, I can see both sides of that argument.

Another one, you have the owner living next door or across the street. Well, he's not on site but he can kind of keep an eye on it. It's not the same as the owner living in San Francisco and there's no one there at all. But again, do we want to send the direction to our community that it's okay to buy the property next door and rent it out and that's okay? So there's those policy implications.

Mr. Starr: I have a follow up question. How do the community plans come into this and where are they in the pecking order in terms of the community plan versus ordinance and the community plan say versus public testimony, if the community comes out and testifies on something but the community plan says something else, you know what are our duties?

Mr. Hunt: Most of your community plans are somewhat vague on vacation rentals. Paia and Hana have some very explicit language but most of them just speak to controlling or managing or limiting them. The General Plan in general speaks to having resort areas separate from our community areas, but that doesn't mean it's an absolute. It doesn't mean that we can't allow B&Bs for instance. Our ordinances allow B&Bs right now. So if the community plan explicitly has language that seems to go against it, we will let you know. I believe in these two instances they're not in any of those community plans that have that language. We think you should take into consideration the sentiments of the community. If the local community is against it or supporting it that should maybe sway your vote a little bit, but at the same time you need to realize what the law states and what the policy implications are of your decision. So that even if you have 30 people coming forward and saying this is a great idea, it may not meet the law and it may not be a policy that you want to set direction on.

Mr. Starr: Members? Okay, thank you very much for that and I just want to mention I understand there's a number of folks come over from Molokai for this and I just want to thank you for coming and for the caring. You're really welcome here and just want to wish you aloha. You'll have a chance to testify in a little while on this item. And without further ado, I'll ask our Director of Planning, Jeff Hunt to introduce the next agenda item.

Mr. Hunt: Your next agenda item involves Mr. William B. Moffett, managing member of Kahana Nui, LLC requesting a Conditional Permit in order to operate the Kahana Nui Villas using a single family residence as a short term rental in the R-3 Residential District on Lower Honoapiilani Road, TMK 4-3-019:049, Kahana. The application number is CP 2002/0017 and Robyn Loudermilk is the planner assigned to this.

2. MR. WILLIAM B. MOFFETT, Managing Member of KAHANA NUI, LLC requesting a Conditional Permit in order to operate the Kahana Nui Villas, using a single-family residence as a short-term rental in the R-3 Residential District on Lower Honoapiilani Road, TMK: 4-3-019: 049, Kahana, Island of Maui. (CP 2002/0017) (R. Loudermilk)

Ms. Robyn Loudermilk: Good morning. I'd like to turn over the presentation to Gwen Hiraga. The power point presentation will be approximately five minutes and will cover pretty much everything in the department's report.

Mr. Starr: Okay, thank you, and please proceed Gwen.

Ms. Gwen Hiraga: Hi, good morning Members of Commission. My name is Gwen Hiraga and I will be doing a short power point presentation. Following my presentation, the applicant's attorney will be saying a few words.

Again, this application, the applicant and the owner is Kahana Nui LLC and Mr. William "Buzz" Moffett. I introduced myself already and Mr. Luna will be coming up after me.

The next slide is a regional location map, this is the location of the property, this is Lower Honoapiilani Road.

Again, this is the property and the applicant's property right here.

In terms of property description the parcel size is approximately 12,818 square feet. The zoning is R-3 residential. The residence itself is approximately 4,000 square feet, a five bedroom, four and a half bath. Parking is available on site and can accommodate approximately five vehicles comfortably.

The surrounding uses of the property to the north are single family residences, to the south is Kahananui Stream and Kahana Village Condominium, it is a short term rental project although it's in the apartment zone. To the east of the project is Lower Honoapiilani Road and further back is Kahananui Park as well as Kahananui Stream. West of the property is the Pacific Ocean.

This is the applicant's site plan. Again, this is the parcel. You enter from Lower Honoapiilani Road. This is the parking area and this is the residence.

The house floor plan. This is the first floor plan. And the second floor plan where there are three more bedrooms.

Project highlights. Kahana Nui makes a positive contribution to the visitor industry by offering a private and peaceful alternative to Maui's hotels, condominiums and resorts. As a private family home Kahana Nui provides the unfilled need of a perfect location for a family to travel together and enjoy the comfort and ease of staying at home. The residence is rented out as a single unit. The majority of the guests are families with an average length of stay of two weeks. The minimum stay is one week. Kahana Nui is a member of the Maui Chamber of Commerce, the Maui Visitors Bureau and the Maui Hotel and Lodging Association.

When in operation, the vacation rental employs on full-time and three, part-time nearby residents as well as many local subcontractors on a monthly basis. You heard the testimony of Barbara Newton this morning and she is an employee that does the cleaning at the residence. Operations manager is the owner and the applicant Mr. Moffett. He lives across the street from the project site approximately 225 feet away and is on call 24 hours. Ms. Newton testified also that whenever Buzz and his wife are away or off island, she is the person that is always available to assist guests.

A site visit was held with planner Robyn Loudermilk and the operations manager on October 27th.

I wanted to show you again, where Mr. Moffett lives. This is the subject property for the application

that's before you and he lives on this parcel here. Again, it is approximately 225 feet away and Mr. Moffett is available 24 hours a day.

Owners and lessees within 500 feet, this particular application received numerous letters of support. All of them have been included in the department's report to you and there were a couple that came in this morning. In total, there are – with this morning's testimony written testimony, there are 57 letters in support and 18, that I've shown in orange, the property is in the yellow, but 18, and with this morning's letter, it's 19 that live within 500 feet of the property. Thirty of the letters are from people that live within one mile of the property and eight are outside of the one mile. In addition, we received or you have been provided with two petitions in support and these were from Molokai East Side residents many of whom are here this morning who will be testifying in support.

These are just photos. This is Lower Honoapiilani Road. This is the driveway to the residence. Kahananui Park is here. Kahananui Stream is here. This is another shot of the entry, driveway entry. As I mentioned, to the south of the property is Kahananui Stream and further south, just about here is Kahana Village short term rental.

This is a view of the ocean being shot from Kahananui Stream which is located here. Kahana Village is to the right, right here and this is the home.

Just another view of the beach from the property from the west/south-west direction.

This is hard to see, but again, this is Kahananui Stream, Kahananui Village and this was taken from the residence which is here.

Kahananui Stream again, and Kahana Village.

This is a view of the ocean, Molokai is back here and this was taken from the deck.

And again, this is sort of a repeat slide but this is the entrance to the property, parking is around here, the residence is here, Kahananui Park is here, the stream goes this way and further south is Kahana Village vacation rental. That's the end of my portion. Mr. Luna will speak for a few minutes.

Mr. Starr: Okay, thank you.

Ms. Hiraga: One other thing, did you all receive copies of the power point presentation?

Mr. Starr: Yeah. Planner Loudermilk, oh is –

Ms. Loudermilk: Martin Luna will be saying a few words and I'll be passing out his response to our report while he goes over it.

Mr. Starr: Okay, thank you and welcome Mr. Luna.

Mr. B. Martin Luna: Thank you Mr. Chairman, Members of the Commission, I'm Martin Luna and

apologize to Robyn. I intended to get that to her earlier but I had a family matter to take care of this morning.

I think the critical thing for the commission is the fact that it's been here for a – we're here for a conditional use permit. The conditional use permit if you look at page 12 of our memo specifically states that, direct you to the top of page 12, that if something is not permitted, the conditional use section of the code states, "the purpose of conditional permits are granted to allow for uses not permitted within a given use zone where the proposed use is similar, related to, related or compatible to the permitted uses in the zone." And what we're talking about here is a residence, granted a transient vacation rental, but as pointed out and not disputed by the Planning Department is that it's rented to families and not rooms individually to tourists. But it's rented to families and your testimony today from people who will be testifying in support will state the same thing that it's rented to families and it's important also to note that you've got 19 of the residents within the 500-foot area supporting this. There are none as far as we know that have opposed this within the 500 foot area.

This application was filed way back in 2002. At that time, Mayor, I'm sorry back in – even farther – yeah, 2002 because I think Kimo was mayor at that time, Kimo Apana and then in 2003 there was a question by the Arakawa administration as to whether or not that application will be processed and the decision at that time by the Planning Department and they Mayor because we were present at the meeting was that they would hold this conditional use permit until action was taken by the county on the pending legislative measures that would be proposed. As you know, what the pending legislative measures did not come into fruition and then when this new administration took over two years ago, there was a move to eliminate transient vacation rentals. So this is why we had to revive this application within the Planning Department to process it before you today.

This is not a residential unit that has been just recently become a TVR. It's been in operation many years and the reason that's important is because of the support that we've received from the neighbors that there have been no, no complaints.

Now earlier, Director Hunt mentioned that this may be a precedent for others. Well, I think if it's going to be a precedent what you have to do for the others would be to show, number one, that it's right next door to a condominium of some 40 plus units that are already in transient vacation rental. They have short term rentals right next door and that's Kahana Village. So it's not like it's an isolated unit that's being rented out. You already have 40 plus units that are already being rented right next door. So the factors that you have to look at are not what the law says it's prohibited, but what the factors are which will permit this vacation rental to be in operation.

And the other point that Director Hunt mentioned is that you folks prefer to have someone on site. That's usually for a B&B. The TVR not necessarily has to have anyone on site, and the law still is influx on that. So, we ask you for your support and especially in looking at the factors pertaining to this particular application because the Planning Department's report has been a general report stating what the position of the department is and the county and not specifically to this particular application. So please look at the specifics of this particular application and apply the standard as pointed out on the top of page 12 of our memo where the law specifically allows conditional use permits where there are related uses within that area. Thank you.

Mr. Starr: Okay, thank you Mr. Luna. Robyn. Oh, hold on a second, Commissioner Hiranaga has a question.

Mr. Hiranaga: Martin, you brought up Kahana Village. Do you know the underlying zoning for Kahana Village?

Mr. Luna: Apartment.

Mr. Hiranaga: Apartment. Has the applicant made an attempt to do a zoning change on the subject property?

Mr. Luna: No, he hasn't.

Mr. Hiranaga: Any reason for not doing that?

Mr. Luna: He's been treating it primarily as a residential although he has rented it out but it's primarily to families. So I think that's one primary reason. I'm not sure if there are any other reasons.

Mr. Hiranaga: Okay, thank you.

Ms. Loudermilk: I'd just like to end with one of the questions that we initially started with. Prior to this application the rules as well as what the community plans and General Plan say or not say about TVRs and B&Bs. And I'd like for the commissioners to turn to their report starting on page number 6. We go through the objectives for land use, economic activity as well as visitor industry and this applies, should apply to all of the actions that come before you and under land use we do identify that we do like to have a wide range of land use designations or mixtures that's good for a community. And that lands should be used for the social and economic benefits of the county's residents.

You know, however, when we go under the visitor industry and economic activity, objective number 3 indicates "to insure that visitor industry facilities shall not disrupt agricultural and social pursuits and will not be allowed to negatively impact the county's natural and cultural resources," with a specific policy to restrict the transient rental use of single family housing in residential zones. So that's the guiding principal that we look at.

However, we do look through the various community plans and for West Maui they are not as strong as in Paia, Haiku or Hana which explicitly prohibit. However, in West Maui they want to provide for a balance and for both the land use standards as well as the economic activity. And as Jeff said, this is a gray area and just to let the commission know that contrary to what Mr. Luna indicated we did look at the property as an individual property with the surrounding uses. Our report may be a bit generic. Yeah, we are dealing with a lot of policies. However, we have identified the unique situation that there's a property owner living across the street not on site. We do know that this property owner does provide the house to members of families and community groups without charge. We have no concerns or problems with that. A homeowner can decide how he or she would like to have the house used.

Our major concern is the TVR component and there have been no complaints regarding the operation and you know, maybe an alternative, there's two alternatives. You know, B&B. Mr. Moffett could live on the property or Commissioner Hiranaga did provide another alternative coming in for a change in zoning. And so in general when we talk about TVRs, which are distinct from bed and breakfast at this point in time where the bed and breakfast the owner/operator lives on the property. Our General Plan already guides us to prohibit TVRs in the residential district and this is a residential district. However, what has come before you previously have been recommendations for both approval as well as denial based upon the unique facts associated with those particular operations. And in this particular case, the department is recommending denial. Would like to note that many of the letters of support were not received by the department until very, very late in the review process. If they had come in earlier as well as the change in the use from initially two houses to one house, then the department may have looked at it differently. However, we at this point in time do recommend denial.

Mr. Starr: Director Hunt.

Mr. Hunt: I would just like to clarify something. There's been kind of the term the owner lives across the street and really when I look at the Exhibit 6, I think that's a stretch. And in my mind what your decision today is, are you going to approve TVRs if the owner lives in the neighborhood or nearby, not adjacent, not across the street but in the neighborhood and that's a big policy step.

The other comment I'd like to make is the room has several bedrooms, I mean, pardon me, the subject house has several bedrooms. It's conceivable you could have a manager living in one of the bedrooms or something like that. So there are other options.

Mr. Starr: Okay, thank you Director. Members, anyone wishing to ask a question? Dr. Iaconetti.

Mr. Iaconetti: The testimony that you just give seems to conflict with what the testimony that the Director is giving us. I wonder if we could get on the same train here and act as a department and not as individuals.

Ms. Loudermilk: Can you provide me with the specific area of conflict?

Mr. Iaconetti: The comment you made about the fact that had the many letters in support had come in earlier that you might had changed your mind.

Ms. Loudermilk: We might, that is true, we might have changed our mind.

Mr. Iaconetti: That seems to be in conflict with what the Director is telling me, my opinion.

Ms. Loudermilk: Okay.

Mr. Starr: Yeah, I mean, I think what Planner Loudermilk was saying is that there are options and it could have been different had things been different in which they weren't. Do I have that right?

Ms. Loudermilk: Generally yes. That there were options available other than the TVR.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Echoing Commissioner Iaconetti's comment. I'm a little concerned with your comment about if the initial application had been for only one house versus two houses maybe there would have been a different outcome or if the letters of support had been received earlier perhaps there may have been a different outcome. It would appear to me then that this matter should be deferred to give you more time to reconsider your conclusion.

Ms. Loudermilk: We did. This was initially scheduled for public hearing in September. Once the public hearing was scheduled and we had put together the report the applicant then provided us with the information, the updated information that one, he no longer had two houses. That he only had one house. And so that is why the initial public hearing was canceled and that we did not schedule until I had all the information, was able to discern that yes, the current application before us now is only for one house and not two houses. The initial application that came in was for two houses.

Mr. Hiranaga: So you're not having second thoughts about your recommendation to the commission?

Ms. Loudermilk: Not at all.

Mr. Hiranaga: Thank you

Mr. Starr: Okay, Dr. Iaconetti.

Mr. Iaconetti: I wonder if we could have some possible statistics as to the percentage of local residents or local individuals that are renting the place rather than individuals that are coming from elsewhere?

Ms. Loudermilk: In discussing with the – with Mr. Moffett about that, we didn't go specific to local families renting versus off island families renting. Maybe he may have that, but in terms of generally about 60% of the time it was – the property was being rented, again, no distinction between whether it was local family or off island and that the remaining time were people such as the fishermen from Molokai, their family friends who would then be able to utilize the property. So maybe Mr. Moffett can within that 60% time period let – provide for this commission how many were local versus off island.

Mr. Starr: Is Mr. Moffett here? Could we ask you to comment on the percentage of off island as well as local, well I would say off of Maui Nui. Please go take the mike and introduce yourself.

Mr. Buzz Moffett: Hi, I'm Buzz Moffett. About, I'd say a hundred percent of the rentals are off island. You know, either mainland people, families and the rest of the time I just let my friends use it, you know, for the most part.

Mr. Starr: Okay. Members? Commissioner Guard.

Mr. Guard: Thank you. This one reminds me of another TVR that was approved down in the Kihei-Makena area where it was family that lived on island that did get a vacation rental permit approved I think through the conditional permit process that for the same thing a lot of local residents were able to use it free of charge all of the time. I mean, I'll go through, I went through the West Maui Community Plan and found a few favorable responses for this application actually. I just wanted to remind everyone that we did approve one on the ocean in the Makena area that seemed to be a very similar situation.

Mr. Starr: Okay, any other questions members? Commissioner Hedani.

Mr. Hedani: Is there a public beach access allowed in this? Where's the nearest public beach access in this area?

Ms. Loudermilk: Offhand I do not know unless they go into Kahana Stream itself.

Mr. Hedani: So there is no public beach access provided?

Ms. Loudermilk: I can check on that or can ask the applicant.

Mr. Starr: Mr. Moffett why don't you take the mike, introduce yourself again for the record.

Mr. Moffett: Hi, Buzz Moffett. There's a public beach access on the south side of Kahana Village Condominium. So it's about probably 300 feet away from Kahananui Stream.

Mr. Starr: Thank you. I want to apologize for the trouble we're having with the sound system today and ask everyone to bear with us. Commissioner Hedani.

Mr. Hedani: Second question that I had was, in the photograph that showed the bay from the deck, it appeared that the structure was very close to the ocean. Does it comply with existing setback laws?

Ms. Loudermilk: Yes, it does comply with the existing setback laws.

Mr. Starr: I have a question which is, is the property used for a wedding business?

Ms. Loudermilk: No.

Mr. Starr: And when they were asked to stop renting it out, did they comply with it?

Ms. Loudermilk: Yes they have. Yes, they have complied.

Mr. Starr: And Director Hunt has something.

Mr. Hunt: Could I ask the applicant a couple questions?

Mr. Starr: Yeah go ahead. Mr. Moffett.

Mr. Moffett: Buzz Moffett.

Mr. Hunt: Earlier today there was a lady named Barb Newton and she said while you're away she kind of looks after the place, is that accurate?

Mr. Moffett: Yes, we have two people that live right in the neighborhood. When my wife and I do go on vacations take over the operation. One of them is Cabe Clark who's sitting back here. He lives right in the neighborhood and the other one is Barbara Newton and they both live, you know, blocks away and so, you know, they're there everyday morning and night. Drive by it, you know, three, four times a day. They can't help but to drive by it. They live right there.

Mr. Hunt: And how often are you away?

Mr. Moffett: Not that often. You know, we go for, like everybody, everyone has to have a vacation at some point.

Mr. Hunt: Previously, I understand there was a TVR next door so there was two side by side, is that correct?

Mr. Moffett: Correct.

Mr. Hunt: What happened to that one?

Mr. Moffett: We had the shutdown at the first of the year. I just couldn't afford to carry two, you know, without the rental income and so we sold one.

Mr. Hunt: So you no longer own that adjacent house?

Mr. Moffett: No. And I have a letter in the record from that owner who is supporting me as well.

Mr. Hunt: And do you know if that's being short termed or?

Mr. Moffett: No, it's not. It sits empty.

Mr. Hunt: And would you be opposed to having a manager in the building?

Mr. Moffett: Well, it kind of defeats the whole purpose of having, you know, a family reunion home because then there's somebody living in the home with the family having their, you know, family reunion. We're very specific on who we rent it to. And we were looking families, we're not looking for groups of individuals or couples. We're looking for grandparent, the parents and the grandchildren and to have an onsite manager, it would be a little difficult for my wife and I, we have two children to live in the home. But it would kind of defeat the purpose. We're trying to provide, you know, a safe family environment for people to come and have, you know, spend time together.

Mr. Hunt: Thanks.

Mr. Starr: Okay, Members we ready for public testimony? Oh, go ahead Commissioner Hiranaga.

Mr. Hiranaga: I'm just wondering, have you thought about constructing an accessory dwelling, 500 square feet and then putting in an onsite manager in that dwelling?

Mr. Moffett: You know, we looked at the possibility of doing that and being that we're in a flood zone, and the minimum height is 11 feet off the ground for this particular flood zone, there is a potential, it would be very, very difficult to fit it in into the property just the way the home is positioned, the way the lot with the setbacks because if it's over a certain height, you have to have 10-foot sideways setbacks. You know, we don't – we never envisioned building a cottage on the property so it was never designed to have a cottage built there and because of the flood zone situation it would be very – I'm not sure if it would fit and when Robyn was out there we looked at it and it would be tough, tough thing to do.

Mr. Hiranaga: You could fill in the swimming pool.

Mr. Moffett: True.

Mr. Hiranaga: Correct. I mean there is room for it.

Mr. Moffett: Yeah, on the ocean side of the property, potentially there would be a spot for it yes.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay, at this point we'll open it up for public testimony.

a) Public Hearing

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

Ms. Barbara Newton: Okay, my name's Barb Newton and I am a single mom. I work for myself doing cleaning and the Kahana Nui – I'm speaking in behalf of the Kahana Nui Villa permit request as a transient vacation rental. I clean that unit. It has been my client. First the owners have been my client for six years until this year. And the work provided has comprised approximately 20% of my income. This property has never been used as a single family residence. It's a great vacation rental. It's the next house in a long line of vacation condo rentals right along the coast of West Maui there.

The property is also my neighbor. I live right across the street. There have been no disturbances of any sort that I've been aware of since the property was built. I've lived in that neighborhood for 12 years and the property isn't quite that old. As far as I know, the 26 homes on my street there have been no complaints from any of my neighbors either in talking on the street or at any of our homeowner meetings that we have annually.

When the owners, Buzz and Suzie and Moffett when they're off island they ask that I keep an eye on the property for them. Because it's at the end of my street I drive by it several times a day and

I make myself available to the guests when they were there. As I've driven by I've never noticed any kind of inappropriate behavior from the people that were there.

The Moffetts are excellent members of our community. They have donated stays at the house as a fundraising auction items for fundraisers. They've held fundraisers at the house as well. And I seen no reason for it not to be a transient vacation rental, but that's your job not mine. I could use the business. So thank you for considering it.

Mr. Starr: Okay, thank you very much. Members any questions for the testifier? Okay, thank you very much Barbara. Our next testifier will be Paul Halberg followed by Kaleo Baybayan. Welcome Paul.

Mr. Paul Halberg: Good morning. My name is Paul Halberg. I'm a computer consultant and software provider here on Maui as well as a web designer. And Buzz and I have worked together off and on, Buzz Moffett have worked together off and on for approximately 22 years now, and he's always been about the community and about the neighborhood and has always lived up on the west end there, either in Napili or in Kahana where he lives now. Always takes care of his neighborhood. Was more concerned with being able to give things away and removing the ability of the home when I discuss with him from being able to share it with the neighborhood as a fundraising thing or as a thing that's available to friends, family and neighbors than so much you know the long term rental possibilities. So it did impact me a little bit on my income but not that much. I did a lot of work for them over the years. But it was more that the generosity side of it that I saw and when you see the neighbors, they're always happy. They're not oh god, there's people over there. They're always waving, they're very pleasant. So it's a very aspect to this business in that neighborhood. That's it.

Mr. Starr: Members, any questions? Okay, thank you very much Paul.

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

Mr. Starr: I'd like to, I know there are some members here of the public who would like to testify please raise your hand and come forward. Please come forward and introduce yourself. Thank you for joining us.

Ms. Susie Moffett: Hi, my name's Susie Moffett. Buzz Moffett's wife. I have just a couple points most of which were made already. I'm the booking agent for the home. So that I do make my income that way. And we donate the home, not only do we give it to let the fishermen use it and stuff like that but we've donated over the years since we've built it to the local school districts for fundraisers and when they have fundraisers where they have auctions where they auction off a stay somewhere, we've donated it a lot that way. We've also donated the home to public radio auctions. I think that's the schools and public radio.

I have here a letter from the middle and upper school principal that you've been given a copy of that we just got yesterday and this is a school that's right up the road about mile and it's a nonprofit school. I'll just read to you real quickly.

“To Whom It May Concern, I’m writing this letter to confirm that Suzanne and William Moffett have donated the residence at 4591 Lower Honoapiilani to benefit Maui Preparatory Academy, a nonprofit school in the West Maui community. During 2005-2006 school years the Moffetts donated week long stays in their home in the annual school fundraisers. Funds collected from the winning offer each year were donated to schools financial aid programs. The Moffetts have offered to make this a reoccurring gift to our annual fund raiser. During 2007, the Moffetts donated their house on several occasions when the school needed housing for visiting teachers, consultants and potential candidates for employment. They assisted the school again this fall by donating a week at their home to a teacher who needed temporary lodging. The Moffetts have been extremely generous in offering their home to benefit the school. Please do not hesitate to contact me if you need any additional information regarding the Moffett’s gifts to the Maui Preparatory Academy.”

I just want to reiterate the fact that when I – how I screen the people that we had in the past booked too that on our application we have, the last page is names and ages of the applicants and we always, we make sure that they’re not all 40 year old and single. It’s kind of important to us that we’re really cool to our neighbors. We like our neighbors. We’ve been here. I’ve been in West Maui for 20 years. My husband’s been here his whole life. It’s important to us to be part of the community. That’s all. Thank you.

Mr. Starr: Okay, thank you. Next testifier, come forward, introduce yourself and thank you for being here.

Mr. Walter Naki: My name is Walter Naki. I’m from Molokai and the Moffetts have been – let us use their property on several occasions and for several years now. So I’m in support of Kahananui and I just wanted to say in our community on East Molokai, vacation homes has been very positive for us economic wise for the community and helping us with our economic woes.

Mr. Starr: Okay, and thank you for coming outside for that. Commissioner Guard has a question for you Walter.

Mr. Guard: So you guys are able to just like dock right outside or anchor out in the bay right there?

Mr. Naki: Yes.

Mr. Guard: And then you guys come over a few times a year?

Mr. Naki: Several times.

Mr. Guard: Okay for the record. Walter was first escort boat drive for Molokai to Oahu.

Mr. Starr: Okay, other members of the public. Please come forward sir, introduce yourself.

Mr. Eddie Tanaka: Aloha, my name is Eddie Tanaka and I’m also from Molokai, the East End and we actually we live right across the street or the ocean. It’s closer for us to get from our house to Buzz’s house than it was to get from Buzz’s house to here. So even though we’re off island, we still feel part of the island. We’re all sister islands here, yeah. And I’m part-time fisherman, farmer

and a musician. So this past year I've been coming here at least every two weeks and you know, I've kind of been calling up Buzz, "eh, can I come over stay with you?" And he goes, "eh, any time as long as, you know, if it's available." And most time if it's available, it's to friends and family. So he's always taking care of someone along – besides just the people who come from the mainland.

Again, in Molokai we tend want to be secluded but yet we want the balance also. And the way the economy is now, I think the vacation homes should be really looked at because you know, there's just not much going on here and if Buzz does have to give it up, he's not only going to give up part of his job, but part of all of us who come and go over there. If I had my family and all my friends to come here today, we would fill up this room. That's how much heart he has and his family, his children. So I'm just saying I support this and we should really look at this, you know, as far as laws, some laws are made 20 years ago because of what it was 20 years ago. 20 years later we didn't know we were going to have this big crash. I'm sure some of the laws will be changed, yeah.

There's one law that I was told that the government is going to open up four countries, foreign countries to allow them to come here without a visa and that would allow them to come and invest which is not a problem, but it could be a problem for us as owners. If I lose my house because I can't rent it out, some guy from China, Korea will come and buy it and he's allowed to own it. So we really got to look at how we can adjust our laws and make it work for us in the community and whole State of Hawaii not just, you know, Maui or just Molokai, but we need to look at it as whole. Mahalo.

Mr. Starr: Thank you and thank you for sharing, aloha.

Mr. Naki: Aloha.

Mr. Starr: Who would also like to come and share? Please come forward, introduce yourself. Welcome.

Mr. John Dela Cruz: Aloha, my name is Pope John Dela Cruz. I'm a popolo kanaka from Lahaina. And Buzz, I know Buzz from baby time. This boy, man, boy look haole, but if you was to take his inside out, this is one kanaka maole right here. This bugga no make money for bling, bling as you can see. He not bling, bling. You can see we not bling, bling. But he takes care of the four classes of financial people, pennynaires, hundrednaires, thousandnaires and millionaires. I am a pennynaire speaking for the braddah and I do agree that his place should be approved because this braddah look what he take care. He no take care only blings, blings but you gotta kinda deal with them, but he is kanaka maole in haole skin. And I believe like I said, I know this braddah baby time, this is one good man. Thank you.

Mr. Starr: Okay, and thank you. Who else like come forward? Please come.

Mr. Cade Clark: Hi, my name is Cade Clark I take care of the property like the lawn and the woodwork and stuff like that. Ever since this has been through and we haven't been able to rent it out it sort of hurt myself as well as my family. I have three kids, a wife. I live really close to the property as Buzz was saying. I probably go by it at least twice a day, make sure the trash isn't out or you know, clean it up. And always when I'm talking to the families and stuff, they really enjoy that

property being altogether not having to go from room to room or making sure, you know, calling over to see if room 301 is ready and everyone's together. It's like a big family like how you think Hawaii should be. I support it as well. Thank you very much.

Mr. Starr: Thank you. Please identify yourself and welcome.

Mr. Bill Castor: Good morning Commissioners. I'm Bill Castor from Molokai from Molokai, fireman. I support Buzz because of the economy wise too, and help a lot of people on Molokai and a lot of guys local people on the island and hope you guys think about his situation and hope you can approve it. Thank you.

Mr. Starr: Okay, thank you for coming forward and please introduce yourself. Thank you for being here.

Mr. T. Davis: ...(inaudible)... Davis. I support this application because every time I here and our families always come here, he always, always take care us, you know. And he's a good man and I hope you guys consider his application and pass it. Mahalo.

Mr. Starr: Thank you. Anyone else? Please come forward, introduce yourself.

Mr. Van Fischer: My name is Van Fischer. I live within 500 feet of the property on – at 25 Kahana Place and I am here to speak in support of this application as well. I've known Buzz for about 10 years now. I drive back and forth pass this property numerous times a day. Never have I seen cars, you know, piled up in the driveway, backing out in the street or any sort of indication that this was anything other than just a regular single family residence. A matter of fact, most times if I want to know if Buzz is home I look into this property's driveway to see if his car is parked there because most times you'll know if his car is parked there he's either out fishing or he's with the boys from Molokai.

I think that while Buzz and his family don't live on this piece of property, I think that this really is just an extension of their property across the street. I always see them riding back and forth on their bicycles to and from this place. I've been invited to numerous family gatherings where we have barbecues and such on this property. The fact that they only rent this property, you know, what is it, 60% of the time as vacation rental, the other 40% of the time it's actively being used by their family, by guests from Molokai and local guests here on the island. When my family came over to visit, I wanted to have a barbecue with Buzz we came to this house to barbecue. So I mean, I really think it's important to take into consideration, you know, all the variables of each application when somebody comes before you like this. I think that if you were looking for a property to put up as a precedent of what should be required if the owner doesn't live on site, this would be the precedent you would want to put up.

This is somebody who is deeply involved in the community. I paddle for Kahana Canoe Club, we're always hitting him up for money, we're always hitting him up for awards. They give to the local community. You know, I mean, I've gotten to know a lot of these people from Molokai that come over. I mean, it's a really sense of family down there and I think that if any of these licensed bed and breakfasts or guest accommodation places were to be as involved in their operation as Buzz

is in his, I think that there wouldn't be any complaints about TVRs. I really can honestly say because I started out as a client of Buzz, he sold me my house, that I don't think Buzz has guests and clients. I think what Buzz has is friends. And whether they came from the mainland and now they've been coming for, you know, for five or eight years, everybody may come as a client or come a guest but they leave as a friend and a part of this group that respects Buzz. And so I hope you take that into consideration when you take a look at this. I know that he doesn't live on the property, but certainly it is part of that little compound that is Moffett Ville down there and where I always see him and his kids. So thank you for the opportunity.

Mr. Starr: Okay, thank you very much. Anyone else wishing to offer testimony please make yourself known. Okay, last chance. Seeing none, the public testimony portion of this is now closed. I'd like to ask Planner Loudermilk to offer the Recommendation.

b) Action

Ms. Loudermilk: Well the Department's Recommendation is Denial. That concludes the department's recommendation.

Mr. Starr: Okay, Dr. Iaconetti.

Mr. Iaconetti: Mr. Moffett, do you own any other rental units on the west side?

Mr. Starr: Please go to the mike.

Mr. Moffett: No, I don't. Vacation units, no.

Mr. Iaconetti: Long term rentals?

Mr. Moffett: Long term I do yes.

Mr. Iaconetti: Thank you.

Mr. Starr: Okay, members we're now at the time, more questions or possible motion. Go ahead Commissioner Guard.

Mr. Guard: Thank you. This is actually for Robyn. What length of a conditional permit were they asking for?

Ms. Loudermilk: There was no specific time frame as this was an initial. Yeah, so there was no specific time frame for the request at this point when it came in.

Mr. Guard: What's typical?

Ms. Loudermilk: Typical is, meaning from the department's recommendation, department's typical would be anywhere from one to three year for initial and that would allow the – just an opportunity to review to see how the operations have occurred. And that it would have depend on whether it

was a new operation or an existing operation in terms of the initial or anywhere to three years. So those would be what we would take into consideration.

Mr. Guard: Thank you. I'll open it up for the rest of the commission but I have a – later on I want to go through the statement that it's contrary to the West Maui Community Plan policies because I went through the community plan and found some items that contradict that statement.

Mr. Star: Doc go ahead.

Mr. Iaconetti: Would it be appropriate to make a motion at this point so that the commission can continue to consider it?

Mr. Starr: Yes.

Mr. Iaconetti: And would it be appropriate to put a time frame on the motion?

Mr. Starr: Yes. I just asked the director that if there were, you know, a desire by members of the commission to approve that, you know, normally when we approve such an item we have a set of conditions both standard and special conditions and one of those would be a time limit. You know, if that seems to be the desire what the Chair would like to do would be to take a 10-minute recess and see if the department could come back to us with a starting point on conditions including a time limit. So Doc whatever your pleasure.

Mr. Iaconetti: Well, I was about to make a motion to approve it, approve the request for – as presented with a time frame of three years. Realizing that the Council does not seem to act very rapidly on any of these items and it will take us three years I think to finally clear this up. And so under the circumstances, I'd like to move that we approve the conditional permit with a time of three years.

Mr. Starr: Could I request as part of that motion that the motion be subject to conditions that we'll attach with a second motion before the end of this meeting?

Mr. Iaconetti: Fine.

Mr. Starr: And is there a second to that?

Mr. Guard: So we have a motion by Dr. Iaconetti and a second by Commissioner Guard and the motion is.

Mr. Hunt: To approve with a three-year limit subject to further conditions.

Mr. Starr: And those conditions will be instituted today. Okay, Commissioner Guard.

Mr. Guard: Just to go along with Director Hunt on why I feel like I'm not really opening the door for everyone. I want to go through a few of the items on the community plan on why I'm willing to second it and hopefully other people will agree with me and maybe we can move this thing forward.

Mr. Starr: Yeah, proceed.

Mr. Guard: Well on page 15 and 16, it talks about “a well-planned community with a mixture of compatible uses to accommodate the future needs of residents and visitors in a manner that provides for the stable social and economic well being of residents and enhancement of the regions open space area and natural environmental resources.” So from reading a few of the items about Buzz taking care of the stream I don’t think he had that obligation but he and his friends took it on as their own kuleana and responsibility to take care of the water. So to me, that’s a huge difference from a lot of these other applications that we see from the offshore investors. So that was one main item.

Okay, so 23 goes along with that same issue on “existing developments shall be maintained and shall not expand streams and gulches, etc.” So hopefully along with everyone who’s concerned about the marine ecosystem, taking care of these streams in dry times is a integral part of this application and probably provides for a better stay for visitors as well. If anyone else has anything I can take a break as well, if not, I’ll keep going.

Economic activity on page 25, “diversified economy that provides a range of stable employment ... in a manner that will enhance both the community’s quality of life and environment.” So that’s kind of on the same page. That’s for another one.

27, 5c, “urge the adoption of a problem to promote the employment of local residents.” I think he’s done a good job with that.

28, 3, “encourage and protect traditional shoreline and mountain access, cultural practices and rural ag lifestyles. Ensure adequate access to our public shorelines for recreation including lateral continuity.”

29, 13 and 15, “encourage community stewardship, not necessarily historic site, but if there’s been prevalent bay fishing for generations in Hawaii.”

And item 15, that he talked about with teaching fishing with kids coming down and local children, “encourage cultural and educational programs to perpetuate Hawaiian and other ethnic heritages.”

I didn’t go through the whole thing. I hope that sums it up on why I’m willing to move forward with this application and it is only on the table as a three-year permit. So if Buzz decided to stop cleaning the stream or anything else and stop letting people come and stay that I guess we’d revisit it in a few years and like Doc said, I don’t think, the County may not have something concrete by then. Hopefully so, but you never know.

Mr. Starr: Okay, thank you Commissioner Guard. Planner Loudermilk, you have something?

Ms. Loudermilk: I was going to ask Commissioner Guard that should the motion pass and we do have conditions that during the 10 minutes that I’m putting the conditions together could you please just write down on a paper, you know, the page and just the number so that I can include that in the

write up to the Council.

Mr. Guard: Not a problem.

Ms. Loudermilk: Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: The applicant has provided a strong testimony from the public which is important but personally I feel that the applicant has other options that he has not explored that may make this use more palatable to the county and to the commission such as providing an onsite manager. I know he says he doesn't want to, but that is an option. Second option is possibly building an accessory dwelling on the property and putting an onsite manager there. So at this time, I will be voting against the motion.

Mr. Starr: Okay, members ready for a vote? Commissioner Hedani please.

Mr. Hedani: I concur with Commissioner Hiranaga's position relative to this application. I appreciate the support that was expressed. I think to some degree we need to take the application view from the standpoint of whether or not subsequent owners of the property if it's not Mr. Moffett who has a tremendous rapport with the community if the property is sold and transferred to someone else would that person still function in the same way that he does? Whether or not the access to the ocean can be improved in this particular area especially along Kahananui Stream to the ocean. There is a beach access that's actually a hundred feet away, hundred yards away that was required because the apartment project that went in was required to provide a beach access. If this were to be approved then I think because the uses are similar to the apartments across the street, a public beach access should be required through the property to the ocean as part of that process. But I think he does have other options. I do have a position that's not as favorable for transient vacation rentals as for bed and breakfast which is another option that he has only because I think that it's more controllable from the standpoint of the community. Thank you.

Mr. Starr: Commissioner Hedani, you know, I certainly share your concerns but I know there's a lot, you know, there's certainly a lot of local support, you know, and he's providing pretty good service. Corp. Counsel reminds that there is a non-transferability clause to all of these and you know, I don't know if you are interested in trying to make your concerns part of a condition or you feel that it's better not to kind of open the door for TVRs. You know, whatever you feel is certainly fine. Commissioner Domingo.

Ms. Domingo: Thank you. I commend Mr. Moffett. I also am very compelled to commend the people that came up and talked about Mr. Moffett's TVR, but I have concerns regarding the access. Also, there's other options that Mr. Moffett would be able to use. I want to say that I will be voting against this motion.

Mr. Starr: Okay, we're ready to call the question? Okay. Members all those in favor of the motion please signify by raising your hand. All those opposed, please raise your hand. Okay, looks like, director?

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

**The Motion to Recommend Approval of the Conditional Permit to the Council with a Three-Year Time Period and Conditions to be Added Failed.
(Assenting - W. Iaconetti, J. Guard, J. Starr)
(Dissenting - K. Hiranaga, D. Domingo, W. Hedani)
(Excused - B. U'u, W. Mardfin)**

Mr. Hunt: I have it as three in favor and three against.

Mr. Starr: So the motion fails. The Chair would be open to another motion of taking a different type of action. Commissioner Guard.

Mr. Guard: I guess I have a question for the commission on the public access is definitely a big issue and I don't know if the applicant would be, maybe not necessarily willing to put in an easement but if he didn't oppose public access, that sounds like what more fishermen would be interested in instead of publicizing it as a public beach right of way. Just having it available there for almost like a secret nook to how you get out to the fishing point instead of keeping it with the signage. I mean, the signage is what kills a lot of our beaches and our fishing areas. So I guess if the applicant would be willing to not oppose or stop people from say trespassing, I think that was part of my case on this was that it sounded like he was letting people go there for cultural purposes or fishing rights, etc., and to me that's who we'd want to protect. I mean, there's a lot of people that probably would rather see less public access signs to keep some beaches from being put on the Maui Drive By Guide, etc. So for us to put those blue signs up, I think it limits actual resident use of some of these beaches.

Mr. Starr: Okay, do we have another motion. Chair would prefer we deal with this one way or another today because our staff is certainly –

Mr. Guard: Maybe if I could ask the applicant if he could go over some of those issues. The ohana, that same thing that may take two years to build. They're in the SMA. They're going to need a year or so to pull a permit. Change the zoning, we've seen how long that can take. So I guess a conditional permit just to keep him owning the property instead of delivering it to an offshore owner in the short term may just help facilitate this process.

Mr. Starr: Go ahead Ms. Loudermilk.

Ms. Loudermilk: Did the commission want the applicant to respond to those questions?

Mr. Starr: Yeah please.

Mr. Moffett: Thank you. Buzz Moffett. All the local fisherman right in the neighborhood, they all come through the property already. It's well-known that the code to the gate which the gate is rarely closed but when it is, the code's the address and pretty much everybody knows it.

Ms. Loudermilk: We do now, it's going to be on Akaku.

Mr. Moffett: Which is fine. When guests in the past have come and stayed I always tell them, that hey, the local fishermen, they're coming in to throw net out here, they come right through the property, you should go down and talk to them. And a lot of people do. It's part of the culture. These guys all live within walking distance already. So as far as access, it's never really been an issue where local people had to walk past my home to the beach access to get down. They all just walk through and that's no problem. I have no problem making that, dealing with that.

As far as the onsite situation, although I believe that it would take away from the property building a cottage on there, I would be willing to do that and I'd also be willing to put an onsite manager in one of the rooms as a condition if that would help sway the commission right now. You know this – without the ability to rent this property I cannot afford to own it and it's just the reality. I'm willing to do whatever I have to do to make this work for everybody. So I would start the process to build a cottage if that's what the commission asked.

Mr. Starr: Okay, members is there anyone wishing to make a further motion on this and I would like to deal with it one way or another. Commissioner Hiranaga.

Mr. Hiranaga: Actually I have a question for the director. As far as the proposed B&B ordinance coming out of the Planning Committee of the Council in residentially zoned property are they opposing so called onsite manager via lease. I know you mentioned that they were opposing that in ag districts?

Mr. Hunt: The bill as it's worded right now would only apply B&Bs to onsite owners.

Mr. Hiranaga: So no lease agreements in any zoned property?

Mr. Hunt: That's correct. Now the department would – given the wording of the conditional permit the department feels that it's conceivable to support an onsite manager. It's similar to a B&B as there's someone on site. You're providing local housing for that manager, etc. But that's not what the law says right now.

Mr. Hiranaga: My personal comment. I think the department has opposed applicants who have held firm regarding their request for a TVR and then upon seeing the positions of the commissioners saying okay, we'll do a B&B then, so if he intended to change this to a B&B with an onsite manager my recommendation would be to defer this matter to allow the department to review it under that situation because it would give you opportunities to provide conditions versus right now you have no conditions. Your recommendation is to deny and now he's saying, well maybe I'll put an onsite manager on the property so now it's really a B&B and I think the department should have an opportunity to analyze this and come up with project specific conditions versus trying to write something up in 10 minutes during a recess.

Mr. Starr: Yeah go ahead Commissioner Guard.

Mr. Guard: Does the department have any of that available from previous conditions on other conditional permits for the same type of application?

Ms. Loudermilk: Yes we do.

Mr. Starr: Yeah, I mean, it's my belief that we can deal with it today one way or another is preferable. Director Hunt.

Mr. Hunt: Another option would be to defer today and give Robyn time to go through it and come back later today if that's what you want. I mean, I understand the idea we want to act on these things.

Mr. Starr: Members? Okay, go ahead.

Mr. Hunt: Just one last comment. Commissioner Hiranaga was correct. We generally don't like the idea of someone coming in with a TVR and then at the last minute when it's starting to go south on them, they go, well we'll throw in an onsite manager. The problem with that is then the word gets out in the community that roll the dice and go for the TVR and if you don't get it at the last second, just throw in an onsite manager and we don't think that's good planning. We think it should be up front, give us the analysis, give us a time to review it. That's just a department position. Perhaps you got to look at them individually. There is a lot of support in this case. There's other issues. So that's our position. Generally speaking we don't want those, but –

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: Well, a cottage may take two years. What if Doc had – we go for a one-year or a two-year permit instead and then at that point see how necessary this cottage or onsite manager is if there's complaints, etc. Like you say as a case by case basis I thought that's why the conditional permit process was available for residents of the county.

Mr. Starr: Okay, once again, the Chair is looking for a motion to do anything at this point and that could be a motion Commissioner Guard or to defer to later today. I prefer not to just defer it out in time because there's been so much staff time already put into this, I hate to put more. Commissioner Guard.

Mr. Guard: I don't want to waste Robyn's time if people aren't – if people are opposed to the idea of a vacation rental and it's not so much so adding a couple key conditions. I mean, I'm obviously, I'd be willing to make the motion, but if it's just going to die at 1:00 p.m., I don't really see the point.

Mr. Starr: Well, you know, give it a try or someone make a motion to deny or anything, but lets make a motion someone please. Commissioner Hiranaga.

Mr. Hiranaga: Well, a little unusual, but you know, the Council is moving towards allowing B&Bs with owner occupants only. That's the recommendation out of the Planning Committee to the full Council. You know, there's been a lot of good testimony regarding this particular operation. There may be a window of opportunity here which will probably be closed if this conditional use permit is approved say for three years when that comes back and there's a new ordinance in place which is opposes that then their opportunity probably would be diminished. I would make a motion to defer this matter till after say Item F-2 is completed because I know there's a lot of people here that

are going to be testifying on F-2 so we can return to this matter and give the applicant and the staff an opportunity to work on project specific conditions.

Mr. Starr: Do we have a second?

Mr. Guard: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Hiranaga, seconded by Commissioner Guard basically to juggle our agenda, but to move it to later today after Item F-2. We ready for a vote on that? All in favor, please raise your hand. All opposed?

It was moved by Mr. Hiranaga, seconded by Mr. Guard, then unanimously

**VOTED: To Defer the Matter Until After Item F-2 in Order to Give Staff and the Applicant an Opportunity to Work on Project Specific Conditions.
(Assenting - K. Hiranaga, J. Guard, D. Domingo, W. Iaconetti, W. Hedani, J. Starr)
(Excused - B. U'u, W. Mardfin)**

Mr. Hunt: I've got that as six in favor, zero against. Commissioner Hiranaga, did I understand your motion was staff to work with the applicant and come back with a manager on site condition?

Mr. Hiranaga: Correct, and any other conditions they feel are applicable.

Mr. Starr: Yeah, and I also want to encourage staff to work with Ms. Loudermilk and add other ideas you have that would go in addition to whatever she's got and I know she's quite expert in putting it together. Okay, thank you. So we'll be back to this later today. We're at this point going to take a 10-minute recess. We'll be back at what is, eight minutes of 11:00.

A recess was called at 10:58 a.m., and the meeting was reconvened at 11:09 a.m.

Mr. Starr: Okay, Maui Planning Commission meeting of November 10th, we're back in session. We have much to many microphones here. Ask people to bear with us because we have some technical issues today. I'll turn it over to Director Jeff Hunt to introduce our next item.

Mr. Hunt: Your next item is Unfinished Business. This was before you before. Jay Wisthoff and 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 in Launiupoko. The file numbers are SUP2 2003/0003 and CP 2003/0003. The planner assigned to this is Jeffrey Dack.

D. 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.**

Mr. Jeffrey Dack: Yes, good morning. At hour August 26th meeting you held a public hearing. You received testimony from two persons in favor of the requests, two persons in opposition to it. Had considerable questions and discussion and ultimately deferred the matter to the October 14th commission meeting. At that meeting, the matter was further deferred to this November 10th meeting. I'll highlight some of the information responding to questions from the August meeting.

From a review of mapping in the county's Accela GIS system, there appears to be a 108 lots of around two acres in the general subdivision area which includes the project site. There are no approved TVRs within 500 feet of the subject property and then within the overall subdivision.

These owners don't own any other short-term rentals on Maui.

You'll see that although Commissioner Mardfin is not here, in August he, or actually subsequent to the August 26th meeting he received a communication from a member of the public alerting him to a section of the website for the Hoolio House and that was aimed at facilitating, holding weddings for guests of the party.

I'll excerpt a few communications from applicant Jay Wisthoff inquiring about that as they are included in the staff report. But, "he indicated, we have removed the wedding page from our website. We will probably want to pursue an additional permit in the future. Our current application is far more critical. We would have not allowed weddings on the property had we known they were not allowed or that they might jeopardize our permit to operate the Hoolio House."

Back to questions the commissioners had regarding agriculture. As was indicated in the previous report according to Land Study Bureau's detailed land classification dated May 1967, this property has an overall productivity rating of E. There's aerial photos in your addendum staff report that show the site as well as by far most if not all the surrounding land now in the subdivision at that time in 1967, to be not in agriculture production but instead, to have been, appear to have been scrub land at that point.

The applicant has indicated that they will proceed with implementation of the final phase of their farm plan within 90 days of permit approval for their requested TVR.

Regarding water, Mr. Glen Trimble of West Maui Land Company has provided a letter stating, "there have been no validated claims or litigation by anyone regarding the water being supplied by Launiupoko Water Company or Launiupoko Irrigation Company and that the applicant's usage puts no strain on the system."

Regarding questions about sewers, in response to concerns by neighbor, Pam English about the adequacy of the septic system. A communication from the applicant to the department responds "we doubled the size of our septic system when we built the ohana and it has been approved for our use." They have provided a DOH communication relative to the approved septic system.

In response to concerns by Ms. English about roads and maintenance, communication from the applicant states, "we believe that our use as a B&B only marginally increases road uses versus occupants living in a six-bedroom house, home, on a full-time basis."

The Department of Parks and Recreation commented that they are not in favor of TVRs within the agricultural districts due to the potential impact on their parks. The applicant responded in a letter dated September 5, 2008, that's in your staff report that they conducted an informal poll of their guests and found that less 5% visit the closest park which is Launiupoko Park. However, the Parks Department sent a letter dated September 24th stating, "it remains our department's policy to not support transient vacation rentals on agricultural land."

As of the writing of the addendum staff report and still current today, the Planning Department has received five letters in support of the project and one letter in opposition. The applicant has also submitted a project packet with color photographs for the meeting and they will present that as a set of power point slides as you had requested at your August 26th meeting.

Just to brief you on the recommendation. I'm not sure how you want to hold the procedure here, but at the August 26th meeting you had received a recommendation which does still stand. It is for approval subject to conditions for the special use permit and conditional permit with the addition of an eighth condition that you'll find on your green sheet at the back of the addendum packet that would implement or operationalize the offer to complete the farm plan so that that conditional permit, condition 8, would say "within 90 days of permit approval shall proceed with implementation the final phase of the farm plan."

Any questions of staff before the applicant makes their presentation. A power point slides you had requested.

Mr. Starr: Okay Members? Why don't we have the applicant proceed and how long will this –

Mr. Jay Wisthoff: About 15 minutes.

Mr. Starr: We usually allow 10 minutes for this type of thing maximum. So we'll cut you off after 10 minutes. Carolyn, you'll keep a clock?

Mr. Jay Wisthoff: Good morning Commissioners, my name is Jay Wisthoff. My wife Kathy and I have applied for the State Special Use and Conditional Permits to operate Hoolio House at 138 Awaiku Street. My daughter Amy and son-in-law, Dan, live on the property and are co-owners and are full-time resident managers and they're going help, Amy is going to help me with the power point presentation.

Ms. Amy Wisthoff-Martin: Good afternoon, my name is Amy Wisthoff-Martin and my husband, Dan and I are the co-owners and onsite manager of Hoolio House. It is six-bedroom, six-bath Bali inspired home on a two-acre lot which includes our two-bedroom ohana where we live with our daughters. We're providing luxury accommodation for visitors in a B&B setting and rural, peaceful alternative to resort accommodations. Current language requires a TVR permit which is what we've applied for, but we do operate as a bed and breakfast. We provide daily breakfast. We enforce

strict quiet hours. Our security, fire and phone system connect the ohana and the main house and obviously Dan and I are the owners on site.

There are just a few of the pictures from different rooms. Each room is unique, all with an outdoor shower and private lanai where guests are able to enjoy their time. These are pictures of our parking areas. All guest parking is provided for on the property and there is never the case of street parking with our property.

Mr. Wisthoff: We're a family owned business. My wife and I are majority owners. We live just outside the 500-foot radius right up the street and we are involved in the operation of the property. Our daughter, Amy, son-in-law, Dan and their two daughters live in the ohana. They're the full-time, onsite host and owners. They have an office in the main house and of course, they prepare breakfast in the main house. So they're in the house on and off all day. They're on site about 85 to 100% each day and they own 16% of the property and that percentage actually has been increasing each year.

We're dedicated to providing our guests with a unique Maui experience having minimal impact on our neighborhood and island. Making our property suitable for agriculture and providing community support to Maui.

Ms. Wisthoff-Martin: In the last five years we've been recognized by publications around the world for our unique property and outstanding service. We're listed in several major guides includes Fodor's and Fromers and we're consistently at the top of trip adviser review rankings. The last on the list here, the Japanese magazine that we were featured in were both sponsored by the Maui Visitors Bureau and we were invited to be a part of it. We're also members of PAll which is the Professional Association of Innkeepers International.

Mr. Wisthoff: We originally filed our application in May of 2003. We found the property it had just recently been completed and my wife and I went to an open house and before we even made an offer on the property, we met with the Planning Department found out what the rules and requirements were for getting a permit to operate. We submitted the application in May of 2003. Purchased the property in August of 2003 when we finally closed on it and we began operating in November 2003. We've been in continued communication with the department. Tried to maintain a positive relationship and tried to keep our application moving over the last four or five years.

Since inception we filed all appropriate tax returns and pay taxes for operating as a bed and breakfast. General Excise Tax and Transient Accommodation Taxes of 454,000 last year and almost a \$178,000 since inception. Our property has always been classified as a resort hotel for property tax purposes which more than doubles our tax rate. We paid \$13,000 in 2007 and \$45,000 since inception. We do not receive or ask for a homeowners exemption on the property. We employ three to four full-time and part-time employees. We offer health insurance benefits including medical, dental and vision, paid vacations. We offer above standard, industry standard wages, workman's compensation coverage. We also provide a monthly daycare subsidy to our full-time housekeeper and we're always up to date with Federal and State payroll taxes. We paid approximately \$13,000 employer taxes in 2007.

Ms. Wisthoff-Martin: My husband, Dan and I are the onsite owners and live in the ohana which is approximately a hundred feet to the main dwelling. As I said before the security, phone and fire system are connected to the ohana. There's an alarm panel in our bedroom and the phone in our house is the same system as at the main house. Guests are able to call us with a push of a button. We do have our office in main house and we're in and out of the office throughout the day. We are on the property 85 to 100% of every day.

As a family and as a business supporting our community has always been important. Since the inception of Hooilo House we have donated over \$150,000 to charitable organizations including Pacific Whale Foundation, Maui YMCA, Maui Nui Botanical Garden, Sacred Hearts, Maui Firefighters, Maui Arts and Cultural, Maui United Way and Women Helping Women Maui. A portion of our nightly rooms rates are earmarked for annual donations to the three at the top of the list.

In addition to supporting our community, we have support from our community including letters from our neighbors, Kimo and Deidre Falconer who are adjacent to the north. Pamela Boyd who is adjacent to the south and Ted Loberg and Mary Ann Leigh who are adjacent to the east of our property. We also have one from Loreen Kelly who lives a few doors down. And we also have a letter of support from Mike Morris, who is CEO of the Maui Family YMCA and one of the organizations that we support.

This is the plot map of the area. We are the highlighted property there. The outlined properties surrounding it are the ones with the letters of support and the dark line is indicating our 500-foot radius around the property.

Our environmental impacts according to the Planning Department staff report, there's no short term noise or air quality impacts. There are no rare, endangered or threatened species on the property. The small amount of traffic to Hooilo House will add only marginally to the volume of traffic in the area. And the larger lot and distance between neighbor dwellings provides minimal noise to the neighbors.

Our septic system was expanded as required by the Department of Health, Wastewater Division. It was designed and certified by Linda Taylor Engineering and has been inspected and approved for our use.

For fire suppression, there is a fire hydrant located on Awaiku Street. We also installed a standpipe below the swimming pool with standard Fire Department fittings allowing the Fire Department to use the pool for fire suppression.

Our water supply, our potable water is provided by Launiupoko Water Company. There is adequate water available to the property. The letter was Jeffrey Dack mentioned included in the application from the water company stating that we are not a strain on the system and that there is adequate water available to the property. Our nonpotable water is by Launiupoko Irrigation.

We have a thorough recycling program. We've significantly lowered our waste production by implementing a recycling program which includes recycle bins in every guestroom. My husband, Dan, was singled out by Maui Recycling Service in 2006 for his consistent recycling efforts. And

we also have onsite composting. We've also reduced our guest plastic water bottle waste to almost zero by providing complimentary take home water bottles that guests reuse during their stay.

Mr. Wisthoff: Okay, the final section that we want to hit on is the agricultural use of the property. We are in an agricultural zone and as Jeffrey mentioned, our land is classified as Type E agricultural land which is the lowest productivity rating and it's typically designed or described as not suitable for farming. There's severe slope with large and medium boulders throughout the property.

This picture is from the 1967, Land Study Bureau survey, an aerial photograph of our area. You can see that the lower part of the mountain is obviously been under current agricultural use and then the darker portion up above which you can't really make out very well is basically scrub land. It's just boulders and big piles of weeds.

This is map from Google Earth in 2006 showing the exact location of the like of our property at 138 Awaiku Street, and then Amy overlaid the two maps so that you can see the exact location of the subject property on the 1967 map and showing that it's clearly within the area that was not under active development at the time.

These are two pieces of property that are adjacent to our property that are currently undeveloped just to give you an idea of what the property looked like before development. They're a little hard to see but you can see that there's stacks of boulders and it's pretty severe slope on the land.

We did our agricultural plan basically in three phases. Phase 1 was an organic orchard using a half to two-thirds of an acre in the east portion of the lot as an orchard and to implement composting. Phase 2 was to use the area around the structures for papaya, herbs, flowers and native plants. And Phase 3 is to develop the west end of the property which is the lower property for ag use.

These are two pictures of the current orchard site. The first picture on the top is the site in 2003 when we purchased the property. You can see that it slopes down pretty drastically and then kind of drops off into the parking area. The second picture on the bottom shows the retaining wall we put in. We had to bring in 40 truckloads of dirt to level out the property so that it could be planted and then irrigated and plant it for use as an orchard.

Mr. Starr: Please wrap up, that's 10 minutes.

Mr. Wisthoff: Okay ...(inaudible - changing of tape)... mulberries, lime, avocado, lemon. Composting, we a composting area where we recycle plant and food waste and use it in the orchard and around the property. We grow papaya, tropical plants and native plants around the main house as part of Phase 2. The flowers are used in tropical arrangements around the house and native plants present an opportunity for guest education. We basically feel like we're offering a form of agri-tourism. The guests are able to learn more about the local native plants and they're also able to go into the orchard and harvest fruit whenever they feel a need to or desire to.

Developing the west end of the property, this is a picture of the lower end our lot and you can see we've kind of leveled it out. We've started to make some improvements in that area to bring

agriculture down there. Couple of reasons we've waited is that there's an organic farming learning curve we've never done it before and we had to find out which plants work best in our soil conditions and high winds. And so we're ready now to begin implementing that lower lot. We've tested vegetables in our container garden just to see what we can grow up in that area. And we've also experimented with palm propagation from our coconut palms planting the coconuts and based on our success here, we're going to expand that area significantly into the lower lot.

We strive to be the exception to the rule in our area. We've introduced significant agriculture on our two-acre lot which is not historically been farmed and we estimate that 60% of our lot will be dedicated to ag upon completion of Phase 3.

And just to summarize real quickly. We're a small family owned business. We feel like we do an excellent job of offering an alternative to Maui visitors from the resort areas. We have a positive impact on our neighborhood, our community and on Maui tourism. And our greatest hope today is that you'll be able to approve our application so that we continue to operate our business as a family and improve our business and continue to help the community.

Mr. Starr: Okay, thank you. I want to ask Planner Mr. Dack to tell us what's – explain what's before us and what our options are and not get to the recommendation until after we have the public testimony on this.

Mr. Dack: You have before a State Special Use Permit which is necessary for the operation because it is proposed in an agricultural district and you have a County Conditional Use Permit because the operation is not permitted within the current Ag County zoning.

Mr. Starr: We're the decision making body on the state permit?

Mr. Dack: Yes, the planning commission is the decision making body on the State Special Use Permit and you would be recommending should you choose to do so, you could be recommending to the County Council relative to the Conditional Permit where they are the final decision making authority.

Mr. Starr: Okay and we have both these two separate items, two separate decisions but they're both under one agenda item, is that correct?

Mr. Dack: Yes, that's the way you probably had most of the TVRs come to you.

Mr. Starr: Okay, thank you. Members, questions, comments? Dr. Iaconetti.

Mr. Iaconetti: Is there a reason why they are applying for a TVR rather than a B&B simply because the owner managers are not in the same building is that the idea?

Mr. Dack: The main reason is that the B&B ordinance makes provision only within residential and some business districts. It doesn't make provision for this kind of operation in agricultural districts. So any and all operations proposed in agricultural districts only have the TVR option available to them. They don't have the B&B option available to them.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Is this the property were doing weddings?

Mr. Dack: Yes, you had contacted me relative to weddings and there's as I noted in the presentation I think just before you were able to arrive and basically briefed from the staff report that I indicated the applicant once they were made aware of the wedding difficulties and that it was not permitted without extra permits they did cease the operation, the weddings and there's a letter in there indicating – actually there's a quotation in your staff report indicating they wouldn't have conducted the weddings had they known that it was not permitted. They misunderstood it. Thought that being it was conducted by a wedding planner that's the only permit was necessary. And were interested in pursuing a subsequent permit for weddings, but as I understand they have ceased those.

Mr. Mardfin: And so when they heard that weddings weren't permitted they stopped doing weddings?

Mr. Dack: That's right.

Mr. Mardfin: They are aware that TVRs are not permitted?

Mr. Dack: That's correct.

Mr. Mardfin: Have they stopped doing TVR?

Mr. Dack: No, they have not.

Mr. Starr: Okay, Members are we ready for public testimony? Okay, I'd like to open up for members of the public who wish to give testimony on this agenda item. Please make yourself known. Okay, not seeing any, public testimony portion is closed. We ready for staff recommendation? Go ahead Mr. Dack.

Mr. Dack: I'll make it briefly because you have heard the recommendation before at your August meeting but basically it is for approval of the State Special Use Permit and a recommendation that the County Council approve the Conditional Permit. There are a set of 15 recommended conditions in the staff report for the State Special Use Permit and there was seven conditions in the original staff report recommended for the County Conditional Permit. Now staff is recommending an 8th condition that you'll find at the back of the addendum report in the green color. And also remind you that part of the recommendation that stands from the original August meeting was to modify slightly some wording at the end of what would become the conclusions of law section for the State Special Use Permit. I won't go through that again because unless you wish so we had gone through it in August. And also, if you wish me to brief you on each of the conditions recommended please ask, but otherwise in interest of time, considering you've heard them before, I'll conclude that recommendation.

Mr. Starr: I want to ask department why on this particular one they're recommending approval which seems to be inconsistent and it seems like, you know, considering it's in ag, it's even further away from the spirit of the ordinances.

Mr. Hunt: As I mentioned earlier, we got a scale or spectrum of uses and this one falls in what we call consider a gray area. It's on ag and that should be an area of concern. At the same time, the owner's family is living on the site. So it's not even a manager that we discussed and we approved one earlier this year that had a manager on site in the ag land and the owner I believe was living in Alaska. Now we don't have to repeat our mistakes if you see that as a mistake, but given that kind of precedent, giving the fact that there seems to be community support for owners, in this case it's families, members of the same family is the owners, we felt that it met the criteria.

The laws that are up at Council right now and again, they haven't been adopted yet, but they give some at least indication contain a small lot exemption for agricultural lots that B&Bs with an owner on site would be allowed, would be permitted. They'd be subject to the State Special Use Permit which would come before you but no longer would require a Conditional permit.

Now whether 16% of an owner and the family meets that criteria, we can't craft legislation that covers every conceivable situation. So you have to just say, "well, is it in the spirit of the law?" In this case, we believe it is and it is a gray area and we can understand if you have other feelings.

Mr. Dack: And I'd like to add that in this particular case although all the land use designations state community plan and zoning are agriculture, the land really isn't – hasn't been used for agriculture historically in the past as you can see from the aeriels that you had seen except that his owner has come in and taken land that has no agricultural designations, really hadn't been used for agriculture and basically modified the property through substantial importation of soil to try to be consistent with what the least land designation supposed to be, they do have agricultural operations occurring which I'm not aware of others in the subdivision do. Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the Director a question. Would you expect that an applicant for one of these things when it's not permitted to shut down operations while their application is being considered?

Mr. Hunt: And that's a very good question. And we would expect them to shut down and I think it sends a somewhat dangerous message to the community that you don't have to and we'll continue to process your applications. There's some – perhaps we could condition it that until they get the conditional permit they will shut down. You could talk to the applicant about that. This is a tough one. This is a gray area application we'll admit it. We felt we could recommend approval.

Mr. Starr: Why did your report not mention the fact that they're continuing to operate and how come you didn't have enforcement and how come – I mean, frankly I'm shocked that since they've been breaking the law, you've been turning a blind eye on them breaking the law but not to so many other people. Why you're recommending approval and turning a blind eye to them. It really – You know, I'm sure that it's being done in good faith but it really smacks of something else.

Mr. Hunt: The enforcement division of the department basically does their own investigations and we don't necessarily pick out somebody just because they brought in an application. So there's not a beefed up enforcement just cause someone's made application. So it's not like we're ignoring it, it just that it happens to be before you.

Mr. Starr: Members, your pleasure? Commissioner Hiranaga.

Mr. Hiranaga: Not sure if staff has an answer to this, I'm just curious regarding the real property tax designation of resort/hotel in an ag district. How did that come about?

Mr. Dack: Staff has no history. No knowledge of history of that particular tax assessment information. We usually don't receive that.

Mr. Hiranaga: Another question I have. I guess the 16% ownership of the daughter, I guess you're doing annual conveyances to take into consideration tax ramifications. Is that what you're doing?

Mr. Wisthoff: It's a combination of tax ramifications. We give a certain amount each year and then it's also a matter of sweat equity. You know they're working the property full time and part of their compensation is additional ownership interest each year. And on the resort/hotel designation we voluntarily contacted the property tax department when we opened up and changed our designation to resort/hotel.

Mr. Hiranaga: One more comment. Although I do not condone their continuing to operate while their application is being processed, personally I feel that this Launiupoko area which has a land class of E which historically has been used primarily for grazing. I think the applicant invested quite a bit of money to be able to create a diversified agricultural operation on his property which he intends to use 60% for agricultural use. So he will be implementing and complying with the farm plan requirement.

With discussions regarding the previous application in Keokea I voted against that because it was an onsite manager, they had no intentions of implementing a farm plan for 50% of the acreage and the owner was in Alaska and did not attend the commission meeting and so although at that time the staff did recommend to approve that particular application, I did vote against that particular application, but I feel because this applicant is trying or attempting to farm on the property which would not be able to farm it, its preexisting condition, I will be voting for a motion if a motion is accepted to approve the recommendation.

Mr. Starr: Okay Members more discussion or a motion would be in order as well. Commissioner Guard.

Mr. Mardfin: I have a question I guess to the planner. We had a statement by a Pam English that she was opposed to this and I apologize for getting here late, I was teaching, but I have a letter from, it looks like a letter from the applicant to Pam English. I was wondering if Pam English had said anything in person or by mail to us about her feelings? Have they changed?

Mr. Dack: Yeah, staff hasn't received any communication directly from Ms. English at any time.

Certainly, other than the initial time you had held your hearing and when we received a letter around the same time. We haven't heard anything subsequent to that.

Mr. Mardfin: So she may in fact, still be opposed to this as the head of the homeowner's association?

Mr. Dack: She may still be. I don't know what her personal position is. I understand that the homeowner's association did eventually or they were able to hold a meeting and discuss this subject and I understand they came out with a position neutral.

Mr. Mardfin: Okay.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: I think a motion is in order. I would like to move approval of the conditional permit as presented.

Mr. Starr: Okay, and we're looking for a second and just to make it clear this is the first of two items because we have a conditional permit and then we have the special use permit. This is to recommend approval of the conditional. Is there a second?

Mr. Hiranaga: Point of order?

Mr. Starr: Yeah, Commissioner Hiranaga.

Mr. Hiranaga: Should you not address the State Special Use Permit first prior to the Conditional Use Permit? Because you can't make a recommendation on the Conditional Use Permit unless you have approval on the State Special Use.

Mr. Starr: It probably would be better, would be preferable procedure. You know, if the maker of the motion was willing to start with the other one first that would probably be better.

Mr. Iaconetti: Yes, yes, I'm in favor of that.

Mr. Starr: Okay, so the motion has been changed to a motion to approve the State Special Use Permit. Is that correct?

Mr. Iaconetti: Yes.

Mr. Starr: Okay. Is there a second?

Mr. Hiranaga: Second.

Mr. Starr: Okay, so we have a motion by Dr. Iaconetti, seconded by Commissioner Hiranaga and the director will properly restate the motion.

Mr. Hunt: Motion is to approve the State Special Use Permit as presented.

Mr. Starr: Okay, any discussion? Commissioner Hiranaga.

Mr. Hiranaga: One final comment. As the B&B ordinance that's being communicated from the Council Planning Committee to the Full Council if adopted as proposed this would be an acceptable use. You can correct me if I'm wrong Director.

Mr. Hunt: It would be an acceptable use. All laws are open to interpretation. Again, the owners in this case only own 16% though they are part of the family that owns it.

Mr. Starr: Commissioner Guard.

Mr. Guard: How long is the Special Use Permit valid for in this case? I saw some stuff till August 31st, so that's a pretty short permit now.

Mr. Dack: We certainly can modify that. One other possible approach is to make it valid until a year after adoption of a conditional permit should one be approved and then the Council would, if the Council were to approve a year then you have the time line syncing it together.

Mr. Starr: Okay, any other? Commissioner Mardfin.

Mr. Mardfin: I thought I heard, Jeffrey, I thought I heard you say, that while they stop the weddings they plan to pursue weddings?

Mr. Dack: Yes, they do. They are working on an application to be able to have the weddings recommence, but only after subsequent application consideration and adoption in a legal manner this time.

Mr. Mardfin: And that would come back before us if it did?

Mr. Dack: Yes, it would have to. Yes it would.

Mr. Mardfin: I'd like to amend –

Mr. Starr: Yeah, go ahead Commissioner Mardfin.

Mr. Mardfin: I'd like to amend this Special Use Permit to have a condition, I don't know whether I should put it on this one or the next motion, but a condition that they not – they do not apply for a wedding permit, a permit to conduct weddings here so we don't have to deal with it – we get one more time.

Mr. Starr: Yeah, you're offering an amendment and could you restate the amendment?

Mr. Mardfin: That a condition be added that they will not proceed on the ability to hold weddings there.

Mr. Starr: Okay, is there a second to the amendment? Amendment dies for lack of a second. Commissioner Hedani.

Mr. Hedani: This is a question for the Director I guess. In this particular subdivision you know, it's classified – the subdivision is classified agricultural, two-acre agricultural lots. The debate that's going on right now relative to the B&B ordinance is whether or not they should be allowed in agricultural zones with the Farm Bureau coming out against it because their position is that it would increase land values to the point where you couldn't do agriculture.

In this particular case, it seems like it bears that out. The acquisition price of the property is probably beyond agricultural production logic if you were to try to produce a truly agricultural operation on the lot itself although what they're doing is probably better than everybody else in the subdivision. The question that I have is for the long term, should this entire subdivision be reclassified as agricultural estates or gentleman estates or residential or is it still going to remain agriculture in the long term plan from the standpoint of understanding that it's supposed to be producing agriculture.

Mr. Hunt: The long term plans are difficult to predict. I can tell you what the proposals are, what the outcome will be. But there is discussion that perhaps we should come up with a rural zoning and rezone some of these agricultural small lots as rural. I agree with your analysis of the debate on the impact of B&Bs and other commercial uses on the farm zone and that debate did occur very extensively up at Council. I think the outcome was that if there is these small lots that the County has approved two acres it difficult to hold these owners of two acres to a farm test. It's difficult to farm two acres. Now there's examples where people do it, you know, specialty niche crops and there's examples where people hauled in dirt and haul in water, well are we really saving agricultural land by doing that? So I think that's the debate where we're headed is should we rezone these rural or leave them as they are but there is an active discussion on how do we treat, how do we regulate these small lots that are in the farm zone.

Mr. Starr: Dr. Iaconetti please.

Mr. Iaconetti: The property has been used apparently for grazing. I don't know how many ranch type businesses could be grazing on two acres. I mean, you can't raise cattle on two acres or perhaps goats, but I don't quite understand why this is considered agricultural property. I realize that isn't our kuleana but it isn't agriculturally motivated. And if they've subdivided it into two-acre ag lands then you got to be able to figure out something that you can grow on two acres.

Mr. Hunt: Dr. Iaconetti, I think you hit the nail on the head. It's why are we subdividing our agricultural land into two-acre lots and then we hold these people to a standard that says, wait a minute that's agricultural zoned you're expected to practice agriculture on that. I think the problem is frankly the County approving two-acre lots. Our law allows that so I'm not pointing the finger at anybody who's administering that law. I think we need to change our law and say it doesn't make sense. You don't preserve ag land by chopping it up into two-acre lots, but we have to account for the fact that we've done that and there are two-acre lots out there and what do we do with those two-acre lots? And one of them is before you today.

Mr. Starr: I'd like to comment, you know, the idea that ag land really is for ag and if it's going to be used for something else in a best possible world it probably should be turned into something else, but right now we do have the ability to take ag and chop it up into small bits that are not suitable for ag and is probably not the greatest thing. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the Director, if this motion fails, presumably they'd shut down a TVR operation. What would their alternatives be? To use it for long term rental?

Mr. Hunt: That would be one of their options, long term rental. Well, any other kind of use, you know, any kind of commercial use like a wedding business would require a conditional permit similar to what we're going through right now.

Mr. Starr: Commissioner Guard.

Mr. Guard: Thank you. I'm okay with the State Special Use Permit. I think it is a nice location for this for a short term. On the conditions, I don't know this might be for Dack, Mr. Dack, is Exhibit 26 from OHA, I see how green that area is now and I know the nonpotable water is fairly cheap for everyone to use up there but there are streams nearby that are now dry not entirely due to this subdivision, but there's I think there is a swelling movement to get some water back. So I don't know if there's a way to monitor the amount of water being used both potable and nonpotable. But I don't like to see these requirements be made to farm so these guys are going to be able to water two acres where people in the valley that actually have native Hawaiian rights that were discussed in Exhibit 26 from OHA are losing water and sorry to say, I think taro and poi is up to \$5.00 to \$6.00 a pound and I think oranges it might only be a \$1.00 to \$2.00 a pound. So I don't want to see someone taking water that someone may be able to use in the future that have been there for generations as well and that seems to be what's happening on the west side quite a bit. And how do we monitor that? If there was any explanation from Exhibit 26 to make sure that people that are in the valley that actually have native rights and properties that used to be stream front are now just rock front.

Mr. Starr: I was asking Mr. Dack about the use of water and understand there were limitations on the amount of water that could be used.

Mr. Dack: There were initially limitations. However, you'll find another exhibit to your staff report or letter from the applicant, the principal if not the sole source because I'm not finding the sole source but the principal source of water for the subdivision is well water. It's ground water. There's a indication that on page 6 of the Addendum Report, the portable water system currently capable of 630,000 gallons per day. That if I recall correctly, I think that is well water. I can't find it to absolutely verify but there's a mention, continues on, "the capacity will increase to 1.3 millions per day when well 3 is on line later this year," so that additional water certainly is going to be a well water. By the fact that it's well 3, it's helping me think that the rest of the system is well water too. So it shouldn't be, one would hope that it wouldn't be impacting stream water usage.

Mr. Guard: In that same exhibit I believe they talked about potential studies, and I mean, we're seeing it now on this side of the island and obviously there's a lot of people and a lot of streams on the west side that are now dry and when other larger developments have come forward that's been

an issue. I understand that it's well water but until if there's ever a study that shows a relationship from this wells diminishing actual stream flow and maybe the Wisthoffs aren't the only people with these lush bed and breakfasts up in Launiupoko and all of a sudden people want some water back into the streams there should be some – a method of either limiting maybe some drip irrigation would do better than sprawling lawns up there. That's over the next year if this permit goes forward that might be a valid condition to place on that because I believe that is going to be coming up that people on the west side are going to want some stream flow back as well. I've heard rumbling of that and I know this area with Kaula Valley is probably one of the hot topics for those residents.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: Are there any other B&Bs or TVRs operating in the Launiupoko area?

Mr. Dack: None that staff identified, no.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Jeff, the subdivision itself, Launiupoko Subdivision looks like it's in an alluvial plain where erosion from the valley has created an alluvial plain. Alluvial plains generally are fertile soils. I don't know if that's the case or not. You said that it was classified E. Normally in the state classification system soil can be classified as category E primarily because there's no water access to it. And when you add water to the soils classification it could jump from an E to a C or a B or an A. Is that the case here?

Mr. Dack: I'm looking at page 13 of the original staff report that indicated the property as well-drained, non-stony soil located within dry climate is not suitable for agricultural production but usable for grazing. Usually in the Land Study Bureau system they will give two classifications. One would be with agriculture – excuse me, one would be with irrigation and one without irrigation. I don't recall this and it has a little system after it. I don't recall this having any different productivity designation for irrigation, but in most of the cases I've seen where there actually is a higher class, higher productivity classification, if you have irrigation, I've usually only seen it bump up one notch. So it might take it – just from that, that might take it from a E to a D with irrigation. But again, I don't even remember seeing there being an irrigation alternative classification for this site.

Mr. Starr: Okay, members anything else? Are we ready to vote on the motion? There is a motion on the floor. Looks like we are. I'll ask the Director to restate the motion since it's been a while.

Mr. Hunt: I believe the motion's to move to approve the State Special Use Permit as presented. I don't believe there's been any added conditions.

Mr. Giroux: ...(inaudible)... time frame.

Mr. Starr: Yeah, what's the time frame Director?

Mr. Dack: It was recommended to be one year from your last meeting but certainly can change that as I think I've indicated could be reasonable to have the time frame be for one year to cease or

expire at one year after the Council would if they do approve a Conditional Permit for this item.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I have a suggestion just stating that, "the Special Use Permit shall expire simultaneously with the Conditional Use Permit if it's approved by Council."

Mr. Starr: Is that an amendment that you're offering or just a suggestion?

Mr. Hiranaga: Just a suggestion.

Mr. Starr: Okay, does anyone want to offer an amendment? Any amendment? No? Okay. We're ready to call the question. Okay, Commissioner Hiranaga.

Mr. Hiranaga: The person who made the motion cannot amend his motion so is that correct?

Mr. Starr: I'll allow it.

Mr. Hiranaga: The person who made the motion cannot amend his motion.

Mr. Starr: No, I'll allow the amendment.

Mr. Hiranaga: Okay, I'll make the amendment.

Mr. Starr: Is there a second to the amendment?

Mr. Guard: Second.

Mr. Starr: Okay so we have an amendment by Commissioner Hiranaga, seconded by Commissioner Guard and the amendment is?

Mr. Hunt: To change the time line so that the State Special Use Permit would – the deadline on it or the expiration date would coincide with the Conditional Permit should it be approved by Council and just real quickly, staff supports this amendment.

Mr. Starr: Okay are we ready to vote on the amendment? Okay, we're voting on the amendment and the amendment only regarding the duration. All in favor, please raise your hand. All opposed.

It was moved by Mr. Hiranaga, seconded by Mr. Guard, then

**VOTED: That the Expiration of the Special Use Permit to Simultaneously Expire with the Conditional Use Permit if Approved by the County Council.
(Assenting - K. Hiranaga, J. Guard, W. Mardfin, D. Domingo,
W. Iaconetti, W. Hedani, J. Starr)
(Excused - B. U'u)**

Mr. Hunt: I have that seven in favor, zero against.

Mr. Starr: And now we're ready to move onto the main motion. Anything else? Okay, on the main motion – Commissioner Hedani.

Mr. Hedani: I guess this is a question for the department. As a whole, do we see any inconsistency in terms of this particular case approving a TVR on agricultural lands when we just considered another TVR in Kahana where we're recommending denial?

Mr. Hunt: Not to repeat myself, but I think we're entering the gray area, the twilight zone perhaps and we're starting to fine tune, we're taking applications and look at them individually. The one that you looked at earlier today had no one on site and the public seems to be not supportive of that concept. In this case, you have one with the owners on site though it's the owner's family but still the owners, their family. I think we all cherish family and give that some regard. It's agricultural. The opposite argument is it's a two-acre agricultural lot that's never been commercially farmed in the past. It's a gray area. I admit it.

Mr. Starr: I'd like to comment that in all the discussion there's been on B&Bs and agricultural there's been a test in terms of an income so that it's shown that these uses are really are helping to promote agriculture, you know, and I know we had very lengthy discussions on how much that should be when that was before us here. You know, this is an area that's – there's no even being asked so there's no encouragement for commercial agriculture here where, you know, in all the discussion on ordinance there has been. Anyway, lets vote on the main motion. I don't see anyone ready to make any other amendments. So all in favor of the main motion which is to approve the State Special Use Permit, please raise your hand. All opposed?

It was moved by Mr. Iaconetti, seconded by Mr. Hiranaga, and

The Motion To Approve the State Special Use Permit with the Conditions, as Amended Failed.

(Assenting - W. Iaconetti, K. Hiranaga, J. Guard, D. Domingo)

(Dissenting - W. Mardfin, W. Hedani, J. Starr)

(Excused - B. U'u)

Mr. Hunt: I've got that as four in favor and three against.

Mr. Starr: Okay, Members we have a Mexican standoff. Is there any other motion that anyone would like to make? We can move to deny, we can defer, we can do anything we want but lets do something. Not seeing – go ahead Mr. Dack.

Mr. Dack: Would you be willing to invite the applicant to see if they have any comments that might help the situation? It's up to you, you don't have to but if you wish to, they –

Mr. Starr: If they something specific and very brief I'd be willing to listen to them.

Mr. Wisthoff: Regarding the matter of weddings. We did consider applying for another conditional

use permit and had we known about the requirement earlier we could have included it with this one. But since that time, we've decided not to pursue that. I know that Commissioner Mardfin was concerned about it. But we would consider that as a condition to the permit also that we not pursue it and we could look at it again maybe in future years when we apply for renewals.

Mr. Starr: Okay, go ahead Director.

Mr. Hunt: I'll just try something. Perhaps we can alleviate some of the concerns. There was some concern expressed earlier that the operation was still being conducted. Would the applicant be willing to commit to shutting down until the conditional permit is approved? We usually require breakfast be served to reduce traffic in the area. Would the applicant be willing to commit to breakfast will be served? Would the applicant be willing to abide by a condition or allow a condition that the owners will not apply for any other TVRs. I'm just trying to throw out something to get some kind of a action.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Question. If the proposed B&B ordinance coming out of the Council's Planning Committee is approved by the Full Council, how are you going to transition that? How are you going to implement that ordinance? I know it's kind of premature since the Council hasn't adopted it? But typically when it comes out of committee chances are they will be adopting it.

Mr. Hunt: We've specifically put in provisions that say that if you have a conditional permit application now that meets the definition of the new bed and breakfast and owner on site including the ohana then we can process that as a bed and breakfast permit. So there's a good chance the Wisthoffs could come in and meet that definition. They'd still need a State Special Use Permit because it's on the agricultural zone.

Mr. Hiranaga: So the Commission would have to grant the special use permit but the Director could grant the B&B application?

Mr. Hunt: Yes, but it would be similar to what's going on right now. We would not grant it until the State Special Use Permit was granted by you. But it would eliminate the next step going up to Council.

Mr. Hiranaga: It would still have to come to the commission though?

Mr. Hunt: Correct.

Mr. Hiranaga: Just for the special use permit?

Mr. Hunt: Just for the special use permit but we would not issue the B&B permit, well, we can't until they have a State Special Use Permit.

Mr. Hiranaga: I guess, personally I don't see the harm for approving the special use permit as a minimum so that if the ordinance is adopted by the Council they don't have to come back to us.

Mr. Starr: Okay, members please someone make a motion of either, a different way of approval or denial or deferral. Any of those would let us move onto the next item and lunch. Commissioner Hedani.

Mr. Hedani: I guess this is a question for the department. I would be more comfortable if the applicant came in in this particular case as a B&B as opposed to a transient vacation rental on agricultural land. Is there a way we can do that?

Mr. Hunt: It is a B&B, it's just that our existing law does not allow for B&Bs on agricultural land. The 19.64 which allows for B&Bs only allows them in residential and business districts. So therefore, even though it is a B&B with the owners living on the site, they have to apply for a TVR. In this case, technically the owners are in the ohana so I guess it wouldn't meet the existing definition of a B&B. Wasn't a very clear answer was it?

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'd like to say a couple of things. One is I was really torn on this. I was really right down the middle. I very much like the suggestions that the Director made. I thought I was going to like what the applicant proposed about not applying for a wedding permit until he said, "at this time and not till later." And then that turned me off again. And I mean, I'd want a permanent condition that a wedding permit not be applied for and weddings not be held there because that can create a lot of traffic and disturbing neighbors. But I like the idea in essence that they wait till the Council passes laws and then they come back.

Mr. Starr: You want to make some kind of motion that will get us there?

Mr. Mardfin: I'll make a motion, but I made the – same motion I made before but it didn't have a second. The motion would be that a condition be attached to this that no weddings – this would never be used for weddings.

Mr. Starr: So do I get you right that you're making a motion for approval with the added condition regarding weddings?

Mr. Mardfin: No, I don't want to do that. I'll wait till somebody else makes a motion to approve then I'll make the amendment.

Mr. Starr: Okay.

Mr. Guard: ...(inaudible - changing of tape)... we need an extra vote to have this go through but on the weddings I don't think I'm really ready to limit someone's weddings. I'm going through my mental Rolodex as limited as it is, and the last five to ten weddings in a row I've been on people's private properties and sorry to say, I probably have parties with more people than some of these vacation weddings here. At some point, I mean, what if one of their family friends wants to get married on the property? I think they have that – I think they should have that ability. I mean, I have a small house, I couldn't hold a big wedding, but if someone wanted to really have it there, I think I would let them. It's not – I don't know if they're asking for a wedding business like the one

that in Maalaea was going after, but is there a limit? I mean, I think to say never and then the laws change then what?

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Personally I think saying no weddings forever is micro managing. They still have to get a conditional use permit. They have to come before the planning commission and the council. And if they elect to do that that's their prerogative. I personally would not be in favor of it. If he's voluntarily states he will not be applying for a special use permit, conditional use permit for weddings, commercial wedding operations that's good enough for me. I don't think it needs to be a condition to the application personally. There's a still a process he has to go through.

Mr. Starr: Okay, any members willing to offer a motion? Okay, Commissioner Mardfin.

Mr. Mardfin: I move we deny the application.

Mr. Starr: Do we have a second?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Commissioner Mardfin. We have a second by Commissioner Hedani. The motion is to deny the State Special Use Permit. Any discussion? Possible amendments? Seeing none, all in favor of the motion please raise your hand. All opposed?

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

The Motion to Deny the State Special Use Permit Failed.

(Assenting - W. Mardfin, W. Hedani, J. Starr)

(Dissenting - K. Hiranaga, J. Guard, D. Domingo, W. Iaconetti)

(Excused - B. U'u)

Mr. Hunt: I have that as three in favor and four against.

Mr. Starr: Okay, so once again we're stuck. Perhaps a motion to defer is in order. The applicant has something they wish to say please come Mr. Wisthoff and briefly give your comments.

Mr. Wisthoff: We're willing to handle any condition or take any conditions on the weddings. We've never held wedding as a profit motive. We did as an amenity when guests asked, you know, "can we get married on your property?" and we said, "sure." We had four people standing in the yard exchange vows. It wasn't a huge business for us. We never did any wedding planning. We never went out and hired photographers or anything like that. So we did it as a favor to guests basically.

Mr. Starr: Okay, so you would be willing to offer a voluntary condition that no commercial wedding business be done on the property?

Mr. Wisthoff: Yes. Absolutely.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I just want to say the reason I raised that is because I got a call from a member of the public that were very upset that weddings were being held there in addition to other things but that was one of their big points.

Mr. Wisthoff: Well we tried to. It was an anonymous call apparently. We contacted all of our immediate neighbors again because we were concerned if one of our immediate neighbors had a problem because they've all been supportive and everyone of them said that "no it wasn't us, we don't have any problem with anything you're doing there." And our weddings have been so small and low key that you would have had to drive up our driveway to even know that there was a wedding going on. There's absolutely no way that a neighbor that's not immediately adjacent to us would have seen known about a wedding going on.

Mr. Starr: Okay, lets get past the discussion. You know, why doesn't someone offer that if that's a willingness on the part of the applicant. Commissioner Hiranaga.

Mr. Hiranaga: I would say that I will second and be in favor of a motion to place a special condition to prohibit commercial and would like to underline the word "commercial weddings" on this property.

Mr. Starr: Okay will you make the motion?

Mr. Hiranaga: I'll second the motion.

Mr. Starr: Okay, will someone make the motion?

Mr. Guard: I'll make the motion to add the, I guess a condition for no commercial wedding business on the property.

Mr. Starr: Okay, you're making a motion to approve subject to the conditions stated plus one additional condition.

Mr. Guard: Oh yeah there's no condition right now. Making a motion to approve as recommended with the added condition that no commercial wedding activity be on the premises.

Mr. Starr: And Commissioner Hiranaga?

Mr. Hiranaga: Clarification regarding the length of the permit, would that be inclusive also?

Mr. Guard: And the length of the permit will end simultaneously with the conditional permit.

Mr. Hiranaga: Yeah, I'll second that.

Mr. Starr: Okay, so we have a motion on the floor. Seconded by Guard and Hiranaga and the motion is?

Mr. Hunt: Motion is to move to approve the State Special Use Permit with the conditions as noted by staff with the revision to the deadline for the State Special Use Permit will coincide with any deadline for the Conditional Permit should it be approved and with the added condition "that no commercial wedding activities shall be conducted on the site."

Mr. Starr: Everyone agree that that's the motion? Okay, any discussion? Amendments?

Mr. Mardfin: I have a question.

Mr. Starr: Go ahead Commissioner Mardfin.

Mr. Mardfin: Mr. Director you suggested two or three other things that ought to be in there that I want to have as amendments. One was serving of breakfasts. The other was stop operating as a TVR until such time as this stuff is approved and what was the third one?

Mr. Hunt: And that the applicant shall not conduct any other TVRs.

Mr. Mardfin: And that the applicant shall not have any other TVRs on Maui.

Mr. Starr: Okay, could you put that in a form of an amendment if you wish.

Mr. Mardfin: I move to amend the motion to add three additional conditions.

One, "that the applicant shall not have any other TVRs on the island of Maui," excuse me, "on the County of Maui."

The second, "that the serve breakfast as is appropriate for a B&B operation."

The third is "that they cease operations until such time as all the permits are legally granted."

Mr. Starr: Okay, is there a second to that?

Mr. Hedani: Second.

Mr. Starr: Okay so we have a motion by Commissioner Mardfin, seconded by Commissioner Hedani and before we read it back and it becomes the property of the body I'd like to ask the applicant if this is something that they would be willing to accept. Mr. Wisthoff.

Mr. Wisthoff: We already serve breakfast every day for all of our guests. That's not an issue. We don't own any other TVRs and don't plan on owning any other TVRs. As far as closing down, we have reservation system that's booked for six months out and it would not only be a severe financial hardship on us, but we have guests coming, you know, next week that would need a place to stay that are counting on us being there. If there was any way we could change that condition that we could operate until the process is complete.

Mr. Starr: I mean, but the operation's illegal.

Mr. Wisthoff: You know, we went through this. All right, I discussed it a little bit in August. You know, it's been such a drastic change in perception. When we started this we went in and we met with the Planning Department and they understood we were operating and their response to us was thanking us for our patience and for being one of the few people that try to operate within the rules and came in and filled out all the appropriate paperwork and went through the process. And now with the new administration all of a sudden you know, everybody is seeing –

Mr. Starr: Okay, we don't need a political speech. It is illegal.

Mr. Wisthoff: Okay, I understand. I apologize.

Mr. Starr: You are breaking the law. Commissioner Hiranaga.

Mr. Hunt: I actually appreciate your comments. It is an awkward situation, but we're faced with enforcing the existing laws. We have worked with other operators to give them a period to shut down so that the tourists who are innocent in all this and we don't want to discourage them, they're not inconvenienced. So would you be willing to work with the Planning Department to work out a shut down procedure so that it's agreeable to both of us?

Mr. Wisthoff: Certainly willing to work with it. I'm not sure what the timing is. This goes from here to the Council for approval. I'm not sure if how short a time that is or how long a time. But we would be willing to work with the department on a procedure for shutting down so that our tourists, our guests aren't inconvenienced.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: As a friendly amendment to my own amendment I would think it's okay if they accept no new reservations until after all permits are granted and that they work with the department to as efficiently as possible cease operations until all permits are granted. That's a modification of my --

Mr. Starr: Commissioner Hedani.

Mr. Hedani: So the amendment to the amendment would be that they take no new reservations even if those reservations are already booked six months in advance? So the shut down wouldn't be effective for six months?

Mr. Mardfin: Excuse me I don't understand. That they take no new reservations even if it's six months in advance because I have no idea how fast the Council is going to work.

Mr. Starr: I would like to ask Corporation Counsel because in a sense what that does is puts us in a position of being a party to illegal actions and I think that with litigation that is in the current climate that could really open the County and open us up by saying it's okay for them to continue to break the law. You know, but why are other people being prohibited. Go ahead Mr. Giroux. I'm sorry for dumping that on you.

Mr. Giroux: That's why I got out of bed this morning, right? Yeah, this is a tough spot you guys. But I think what you have to look at is that you're part of the permitting process. You're not part of the enforcement process and that means that if you're dealing with an application, deal with the application. Let the administration deal with enforcement because you don't want to sticking your head into something that's not your kuleana. You're being asked to deal with what's in front of you and so that what that means is that have you done your analysis, have you done your findings and have you found the use appropriate? And if you have, then move on because the Council then is going to have to deal with the second part. You know, you can't, you got two legs to stand on. You got your special use permit and then you've got your conditional use permit. So you've got to make a decision here at this level with what you have in front of you. And if you're going to try to micro manage this political mess of what we've been forced to deal with I think you're gonna have to just cut some short lines now and just hey, we have a permit, we did our job, we analyzed it, lets move on. Because to get involved in this start up, shut down, invest, don't invest, that's not your job. Your job is to look at the use, look at the application, does it fit within the parameters, if it does, vote it up or vote it down if it doesn't.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'd like to withdraw my amendment. It sounds like two of the three they were already doing and third I understand the problem with existing reservations and I'll leave it essentially to the department to work on enforcement so they may still want to pursue shutting it down early.

Mr. Starr: Okay, Commissioner Hedani is the second.

Mr. Hedani: Concur.

Mr. Starr: Okay, so the motion and the second have been withdrawn. And so that puts us with a main motion on the floor and could you repeat the main motion Director?

Mr. Hunt: I'll try. I believe the motion's to approve the permit, the State Special Use Permit as staff presented with a revision to the deadline so that it coincides with the Conditional Permit deadline should that be approved. And with the added conditions that no commercial wedding activities will be conducted.

Mr. Starr: That meets my recollection. Dr. Iaconetti.

Mr. Iaconetti: I wonder, point of order. Since the original motion was denied, do we not have to have a reconsideration?

Mr. Starr: I think this is a different motion.

Mr. Iaconetti: Okay.

Mr. Guard: No this is, the motion to deny failed and then I made the second motion --

Mr. Starr: It is similar to a motion that failed before but I think it's different enough. I rule that it's

different enough.

Mr. Guard: Well, adding the wedding changes it. Pretty material.

Mr. Starr: Okay, Members any other amendments, any other comments? Ready to call the question? All in favor of the motion please raise your hand. You look so enthusiastic Ward.

Mr. Mardfin: Oh I hate this.

Mr. Starr: All opposed please raise your hand.

It was moved by Mr. Guard, seconded by Mr. Hiranaga, then

VOTED: To Approve the State Special Use Permit with Conditions as Presented by the Department with the Addition of Time Period Deadline to Coincide with the Deadline of the Conditional Permit Should the Council Approve the Permit and that No Commercial Wedding be Allowed on the Premises.
(Assenting - J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, W. Iaconetti)
(Dissenting - W. Hedani, J. Starr)
(Excused - B. U'u)

Mr. Hunt: I have five votes in favor and two against.

Mr. Starr: Okay, congratulations and good luck. Oh wait, no congratulations yet. Okay, we are open for another possible motion regarding recommendation to Council on Conditional Use Permit.

Mr. Iaconetti: I move recommendation to the Council for a Conditional Use Permit.

Mr. Starr: Okay, that's as recommended by the department. Is there a second?

Mr. Hiranaga: Second for discussion.

Mr. Starr: Okay.

Mr. Hiranaga: Would you like to add the other two special conditions that were applied to the special use permit regarding -- well, one actually which would be the commercial weddings?

Mr. Iaconetti: Fine.

Mr. Starr: Okay, so we have a motion and second and that motion is?

Mr. Hunt: Move to recommend approval of the Conditional Permit to Council with the added condition that no commercial wedding activities shall take place on the site.

Mr. Starr: And do we need time limit involved or is that conditional.

Mr. Guard: I think it's a one-year permit.

Mr. Starr: Oh is that already there? Jeff?

Mr. Dack: That will be up to Council. Your recommendation, the recommendation as it's indicated, just confirm what it is but it's probably for a year. Yes, it's recommended that the permit be valid for one year.

Mr. Starr: Okay, any discussion? Commissioner Guard.

Mr. Guard: I think with this one I'd like to see some water usage either --

Mr. Starr: Make an amendment.

Mr. Guard: Well, I was going to ask Jeff if that's already in there -- Dack. My reasoning is I look at that photo and all the farms I drive by either in Haiku or even in Kula have a lot of dirt around them and this water could be used in better places than creating lawns throughout the two acres and I really don't like that part of it. That it's somewhat extravagant only because the water is so cheap up in Launiupoko.

Mr. Starr: Maybe they can use that dry water you get in the can.

Mr. Guard: Maybe they could use actual farming techniques of drip irrigation instead of the bazooka on the sprayer that we up there quite a bit.

Mr. Starr: Anyway, Jeff.

Mr. Dack: That's certainly up to the commission. The only condition relative to water actually was with the State Special Use Permit that talked about water rights, but if you wish to add a condition regarding the water in the CP that's fine.

Mr. Guard: I guess if it's in the State Special Use Permit, that's where OHA had more say I would think. So if no one else is concerned about it, no not at this time.

Mr. Starr: Okay, any other amendments? Any discussion? Commissioner Mardfin.

Mr. Mardfin: I'd like to say I'm going to vote for this very, very reluctantly. I'm really right on the edge here. The things that are in favor of this in my mind are the good attempt I think to do agriculture. Land that seems to be kind of difficult to do. Another thing is that it is the owners or the owners family that's here so it has sort of the in-house person. And the fact that none of the neighbors seemed to have objected although I did get that one call. So I'm very reluctantly I'll probably vote for this unless somebody can give me a reason not to.

Mr. Starr: Commissioner Guard.

Mr. Guard: Actually I would like to make an amendment to have the applicant provide water usage for the ag use portion of that property maybe each time they come up for renewal.

Mr. Starr: Is there a second?

Mr. Guard: I think it will come up even if it dies, I think this is going to become an issue on that side of the island.

Mr. Starr: Okay, amendment dies for lack of a second. Anything else? We ready to vote on the main motion regarding the Conditional Use Permit recommendation? All in favor, please raise your hand. All opposed.

It was moved by Mr. Guard, seconded by Mr. Hiranaga, then

VOTED: To Recommend Approval of the Conditional Permit to the County Council with the Recommended Conditions and the Addition of the Condition that No Commercial Weddings be Allowed on the Premises.
(Assenting - W. Iaconetti, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo)
(Dissenting - W. Hedani, J. Starr)
(Excused - B. U'u)

Mr. Hunt: I have that as five in favor and two against.

Mr. Starr: Okay, now congratulations and good luck. It looks like a really beautiful idyllic place you built. Okay, we will be recessing for lunch. We'll see you at 1:30 p.m. Thanks for the hard work.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:30 p.m.

Mr. Starr: November 10th meeting of the Maui Planning Commission is back in business. Back in order after a wonderful lunch. We have it itemized as a workshop but really it's a technical change in a standard condition that James Giroux our great counsel is going to give us an update on and the reasons why he brought this up.

E. Workshop conducted by Deputy Corporation Counsel James Giroux on the proposed amendment to the standard Special Management Area Use Permit condition regarding permit transferability to conform with the March 2008 rule amendment for SMA permits and amendments to approved henceforth.

October 30, 2008 Letter from Deputy Corporation Counsel James Giroux regarding the language for Revised Special Management Area Use Permit Standard Condition Regarding Time Extension.

Mr. James Giroux: Thank you Chair. Yeah, I was going to say I'd rather have it under the Communications, but anyway, I wrote a memo, I talked to the Chair about this is that I was reviewing the standard conditions for the SMAs as they were coming through and I noticed that we

needed to update the language in one of our standard conditions in the way we process our time extensions and we just recently changed the rules so I figured it would be good time to put this in writing, remind the staff to look at their SMA conditions and it would help us too because then we have this in our arsenal so the more checks we have about the conditions the better off we're going to be as far as crafting our conditions even though they're -- what we're going to try to do is get these into our standard, standard conditions so we don't have to spend too much time on them as we deliberate the hard pressed issues that we already have to deal with. So the idea is that we're going to try to standardize the language to conform with our new rule, 12-202-17 and hopefully that rule doesn't change any time soon so it will be consistent.

The only caveat I have is that you know, these standard conditions if the case presents itself you know, feel free to look at the standard condition and try to tailor it to the needs of the project if need be because what happens is is that when you do a condition, it actually will trump the rule. When the staff is trying to administer the conditions they will look at the conditions first and then if they can't interpret it or it tells them to look at the rule then they'll look at the rule to administer it. So a lot of the stuff is about procedure and timing and that's becoming more and more critical in the projects that we're doing especially when we're trying to maintain a type of control so you can do a cumulative impact analysis on each and every SMA project that comes through in the shoreline area.

Mr. Starr: Yeah, just for clarification this particular item, explain it does and what the problem was with the way the wording that we're approving.

Mr. Giroux: Oh okay. The way the wording is now it says that "the Planning Director shall review and approve a time extension request but may," I probably should have just bolded may, "may forward said request to the planning commission for review and approval."

The procedure now as your rule has stated is that every time extension actually will come here first. They will make a preliminary decision but it comes here first and then you will decide whether or not you want to waive review of that time extension. If you waive review then it goes back to the director and he completes the processing of the time extension.

Mr. Starr: And this is what we did at the last meeting, right?

Mr. Giroux: Yes.

Mr. Starr: This is the procedure we followed and we changed the rule to. Commissioner Mardfin.

Mr. Mardfin: I just have a quick question on this. It says, "the Planning Director shall review and approve a time extension," does that allow him to disapprove it?

Mr. Giroux: Good question.

Mr. Mardfin: I mean, if you have to approve then reviewing doesn't make a whole lot of sense.

Mr. Giroux: Yeah, it does beg the question. I would read it that if you can approve then that means

you ...(inaudible)... have the power to approve unless there's another section that gives you specific procedures to disapprove something.

Mr. Mardfin: So he could review it and recommend -- not recommend. Decide to disapprove, is that?

Mr. Giroux: Well, the procedure we have now according to the rules is that before he makes a final decision to approve or disapprove it would come to the commission for an opportunity for you to take jurisdiction over it and then you do have the power to approve and disapprove. If you don't take jurisdiction of it and you send it back he will have the power to --

Mr. Starr: Yeah, I think what Ward is saying is shall review and approve sounds like he shall approve it whether -- is there a way you'd rather have that stated Ward?

Mr. Mardfin: The Planning Director shall review and may approve.

Mr. Giroux: Okay, we can --

Mr. Mardfin: Is that -- shall review means he must and may approve implying may disapprove.

Mr. Giroux: Let me turn to the section here.

Mr. Starr: I think that is a better language. It's kind of ...(inaudible)... words, but that is better. Or it can be, shall approve or deny.

Mr. Giroux: Yeah, actually we did look at that and we did add, we added that language earlier into that section. Prior to granting or denying any permit time extension request. So the language is actually clear earlier before this quote. There's another section prior to it. So -- rather than be redundant over and over again.

Mr. Starr: Okay, we're all good with that? I don't think we need any action. We take action on it whenever we approve the conditions. Dr. Iaconetti.

Mr. Iaconetti: What happens if he does not approve the time extension?

Mr. Giroux: Well, he would make a preliminary decision then he would send it to you notifying you that a request was made. So if his preliminary decision was to deny it and you decided not to review it then he would just go ahead and deny it. What would happen is if the applicant was not happy with that decision, they would appeal that decision to your commission anyway or they would go back and reapply for an SMA major.

Mr. Iaconetti: So it's determined by the applicant appealing the director's decision.

Mr. Giroux: Director's decision. Yeah.

Mr. Iaconetti: And that's going to be made clear to them?

Mr. Giroux: The director would probably have a meeting with the applicant. So yeah, it would be clear about what their options would be.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I'd like to hear the Director's comments on this because I think the initiation of the rule was so that certain things can be expedited because everybody blames the planning commission for hanging up everything in the world and causing everything to cost twice as much.

Mr. Hunt: If the Planning Department had our way we would simply say we can grant these extensions or deny them and I think as I understand it, there was discussion with the planning commission about delegating down to streamline and you guys were okay with delegating down, however, you wanted a final review. There was a compromise. So I think that's how the language came out and you know, we can live with that and it's a good compromise.

As I understand it, how it would work is we would come forward and tell you folks here's the time extension we're going to either -- I mean, we're going to either deny it or approve and we'll just inform you and then you guys simply nod your head or let it go or you can have the option to say, no, no, no, wait a minute, we want to review that. And so it gives you that option. So I think it's a good streamlining compromise.

Mr. Giroux: Yeah, because I think we did have one where it came up and you guys decided not to take jurisdiction because it was such a small project and it didn't look like anything had changed.

Mr. Starr: Okay, moving right along. Director Hunt, please introduce the next item. I want to thank, I think we have some people from off island for this item and thank you for coming over.

Mr. Hunt: The next item involves Mr. Ken Kawahara of the State Department of Land and Natural Resources requesting a Special Management Area Use Permit for the proposed Maalaea Small Boat Harbor improvements at TMK 3-6-001: 002, 049 and a portion of 049 and 050 and lot 2-8-014: 027, 028, and 030 in Maalaea. The file number is SM1 2008/0004 and Thorne Abbott is the planner assigned to this project.

F. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. MR. KEN KAWAHARA of the STATE DEPARTMENT OF LAND AND NATURAL RESOURCES requesting a Special Management Area Use Permit for the proposed Maalaea Small Boat Harbor Improvements at TMK: 3-6-001: 002, 049, 049 (por.), and 050; 3-8-014: 027, 028, and 030, Maalaea, Island of Maui. (SM1 2008/0004) (T. Abbott)**

Mr. Thorne Abbott presented a power point presentation of the application.

Mr. Mich Hirano: Thank you Thorne and good afternoon Commissioners, my name is Mich Hirano with Munekiyo and Hiraga and we're helping the applicant, State Department of Land and Natural Resources and the Federal Transit Administration with the application before you today.

I have a power point presentation as well that like to just briefly go over to just show you the improvements that are being proposed for the Maalaea Harbor. I think Thorne's analysis of the harbor was very good with those recent photographs. Just one moment please.

Mr. Starr: Yeah, about how long is your presentation Mich before you begin?

Mr. Hirano: I'll cut it short. I'll make it very short.

Mr. Starr: Like how long?

Mr. Hirano: 10 minutes.

Mr. Starr: Yeah, that's fine.

Mr. Hirano: It will take a few minutes to load the power point but I just wanted to say that you know, there was a ferry service in the late '70's, early '80's, Sea Flight that operated out of Maalaea Harbor and the plans were to renovate the existing -- when Sea Flight abandoned their service the harbor, I think the Harbor Master took over. It's now a office for the State District Land and Natural Resources, Division of Ocean Recreation and Boating and so they are now in the harbor facility. So the idea was to renovate the building or actually demolish it and build a new building and then to do wastewater improvements and water improvements to the harbor and as well use the current overflow parking area and pave it to provide a hundred stalls and a comfort station.

The State Department of Land and Natural Resources is also using state funds to provide a pump out, sewage pump out facilities and electrical upgrades for the project. So there are two separate projects that are funded separately but they're being combined and packaged in one application.

So just quickly the applicant is the State Department of Land and Natural Resources as well as the Federal Transit Administration. The lead consultant is Fukunaga and Associates. Architects Pacific doing the architectural. Landscape architects are Walter, Tamura, Matoda and Munekiyo and Hiraga are doing the planning and environmental assessment.

This is the -- a picture of the harbor. This is what is referred to as the south mole. It's about 1,100 feet long and 90 feet wide and at the end of the south mole is the existing ferry terminal facility and the Harbor Master's offices. So that will be replaced, torn down and a new facility will be there. It will be basically the same footprint as the existing building.

There will be sewer and water upgrades leading to a wastewater treatment and it's a tertiary wastewater treatment facility that's located at the entrance road into the harbor adjacent to Honoapiilani Highway.

There will be electrical upgrades throughout the harbor. There's a electrical meter building, two on the south mole and one on the north face of the harbor.

This is the area which is now a overflow parking area and the idea would be to pave this parking area, provide a hundred-stall parking lot and a comfort station just adjacent to the parking lot.

There will be as well, drainage improvements to retain the drain -- the storm water runoff into a underground detention/retention basin system that will be in the landscape area near the comfort station.

There's as well, a sewage pump out facility on the north side of the harbor and this runs into a force main which will be then taken up for treatment at the wastewater plant.

Throughout the harbor will be surface, new surface. Right now as Thorne had pointed out the asphalt is deteriorating so the idea would be to actually pave the new south mole an rest ripe for parking. There's about a 151 stalls of parking on the south mole and there will be concrete surface put onto the south mole because of the I think the marine weather conditions. Everything has to be kind of marine proof so that's the idea to improve the south mole.

This is where most of the commercial harbor and most of the commercial vessels operate. They go into the Ocean Village Shopping Center, they, you know, congregate there, get orientation and then they go out into their facilities here and there are two on the north side of the harbor.

Again, this is just another engineering site plan. There will be absorption field or leach fields throughout -- in two places in the harbor as well as the existing cesspools will be converted into treatment pools or injection pools, injection wells. And it's a 100% backup so the capacity was to have a hundred percent backup for treatment of the wastewater in these leach fields.

This is the ferry building. The first floor of the building will be for the ferry terminal. There's a waiting area in the first floor and a men's and women's washroom. And then on the second floor it's the Harbor Master's office as well as the Division of Boating and Ocean Recreation will be moving from their present office in the Millyard Industrial Center and will be relocating to the new harbor office.

Again, this is just a site plan of the parking area. This is the comfort station elevation. It's about 800 square feet. I think it's about 18 feet in height.

This is a picture of the parking area as you see it now. It's kind of a gravel parking area with some scrub vegetation around the parking area.

This is where the comfort station will be built. This is a rendering, a photographic rendering of the comfort station as you can see and as well with the paved parking lot, the landscaping in the parking lot and the new comfort station.

Another element of the SMA project or permit application or the electrical meter buildings. Because they're a vertical structures they're part of the SMA permit. They're about eight feet high and 17 feet in width. They're not very large but we just wanted to cover those in the SMA permit.

This is plan view of the wastewater treatment facility. It's a tertiary wastewater treatment plant. This is a landscaping around it to screen the plant from the highway. It will sit about four feet above grade so there will be a service access road into the plant and then the plant will be built and then the pipes leading from the plant into the leach field and the injection well.

The plant will be maintained under contract by the State Department of Land and Natural Resources. They'll have a contract with an engineering firm and plant operator that would do the maintenance on the plant. The pump out system and you know there was a lot of controversy over the years about wastewater treatment and allowing pumpage, sewage pump outs for the vessels that use Maalaea Harbor and there's that big campaign, "Don't Dump, Pump, Don't Dump." So there are 18 individual pump out hoses or pump out stations to – that service the south mole. So basically each vessel on the south mole will be sharing it on their berth with their adjacent neighbor. They have a hose facility on the vessel and it will connect and pump into the sewage pump out which will then flow it by gravity into a pump station and then through the pump station be forced up into the wastewater treatment facility.

The loss will be two public pump out stations one on the south mole and one on the north mole, on the north wharf. So there will be 20 in total throughout the harbor. That's just basically what I mentioned.

We went to Urban Design and they had recommended to the planning commission that DLNR look at providing pump out service on the north side of the harbor because there is only one there. Now this was very difficult to do. It was a very costly endeavor. There are two large vessels I think operating out of the north side of the harbor and the idea is that after the improvements are done and the wastewater pump stations are in place on the south mole, the solution would be to move those two recreational vessels, one of them I think is Trilogy from the north face mooring area, put them into the south mole and have them able to hook up to the sewage pump outs that will be offered on the south side of the harbor.

We looked at the cost of providing pump out facilities on the north mole or on the north side of the harbor and it was an additional cost of about \$1.4 million. Because of the topography and how you have to service it, you would need a pump station as well as a gravity sewer line from the vessel to the pump station and then a force main so it's a fairly expensive operation. And DLNR would request that the planning commission delete that as the recommendation it is financially not feasible. It's very costly and not have that as a condition.

Commercial vessel allocation. As I mentioned earlier, after the improvements will be in place the larger commercial vessels will all be on the south mole. They'll have their individual pump outs and that would reduce the need to install sewage pump out in the northern harbor area. However, there is a public pump out on the north wharf to accommodate vessels that may not be serviced directly at their berth.

...(inaudible – changing of tape)... is a very advanced technology in terms of wastewater treatment. It works on a membrane biological reactor and it provides very advanced treatment. It has an equalization tank that regulates the flow into it so it has a – you know, from the pump station it's the sewage is collected into this equalization tank and then it equalizes and it slows the process of flow into the treatment system. There are two trains so that if there's redundancy in the system, so if one side breaks down or you're maintaining one side you will have as well, you can operate and still process the effluent because there will be two systems in parallel that will provide the operations and processing for the sewage.

The treated wastewater will be discharged into three injection wells. These injection wells are existing converted – they're existing cesspools and the whole reason for this I guess this project and the wastewater treatment in part is to get away from the large capacity cesspools because the Environmental Protection Act had prohibited large cesspool use. So this is part of that conversion to comply with EPA standards and Department of Health Standards. There's also a leach field that would provide a hundred percent backup to the capacity of the seepage pits. So that would allow rotation. You won't be using the seepage pits a hundred percent of the time. They'll be rotating with the seepage as well as with the ...(inaudible)... or the leach field.

The waste water treatment is a fairly quality. It's equal to R-1 quality recycled water when it comes out. However, it's not being used for recycling. The salinity is fairly high on it so that's why it has to be injected into leach fields. The existing quality of water the system rates 5 BODs which is – and 2 NTUs. These are sort of standards of water quality as well as turbidity which is the murkiness of the water. It ranges from 1.14 to 6.8 which is a fairly high quality as well.

The overflow parking would be secured. The Department of Land and Natural Resources has a Division of Conservation and Resource Enforcement (DCRE) and they will be under contract to patrol the harbor. As well, the Maui Police Department patrols the harbor and will increase patrols if necessary regarding calls or trouble. The parking lot lighting will be on from dusk until dawn and the lot will be cleared of brush thus reducing areas of concealment.

The electrical upgrades, safety concerns. With the existing deteriorating system and the improvements will be able to bring the harbor up to meet current building electrical code standards.

In terms of pedestrian safety, there will be a sidewalk leading from the new parking lot, overflow parking lot to the ferry. And if you've ever been in Maalaea sort of during the morning when the tours are operating you'll find that the markage of the pedestrian lanes are not very clear within the harbor and there's traffic coming through the harbor, Maalaea Road sort of goes right through the harbor. So by doing these improvements we're also doing safety improvements. There'll be well marked crosswalks and walkways leading from the parking area through the harbor and over the south mole to the ferry terminal.

In terms of project cost and time line, the total cost for these facility improvements and upgrades is \$23.4 million. It will be a 24-month construction schedule in nine phases. Each phase will be approximately 90 to 120 days and the reason it's being phased is that the harbor will remain open during construction. Try to minimize the impact to the commercial operators that are operating out of the harbor currently. And as you can see these improvements are fairly major and so it's going to be well phased to minimize that construction. And the relocation will be done as necessary and at the end of the improvements there will be permanent relocation of the commercial vessels to the south mole so that they will be able to connect to the sewage waste pump out stations.

So that's our presentation. So thank you.

Mr. Starr: Okay, thank you Mich. Members, who's got questions? Dr. Iaconetti.

Mr. Iaconetti: Mich, what problems are we going to have with the restaurant that close to the

treatment facility?

Mr. Hirano: We don't foresee problems. The treatment is very advanced. There will be very few odors coming from it. It will be enclosed. So I know that they have supported – Buzz's Wharf Restaurant has supported the application and the project but they were concerned about sewage odors.

Mr. Iaconetti: Very few odors doesn't comfort me at all. Is there going to be any odor at all?

Mr. Hirano: I'd like to ask Royce Fukunaga, who's the project engineer to just address that.

Mr. Royce Fukunaga: The plant is an NMB plant. It's advance technology. The parts of the plant, the treatment process that usually generates the odor will be enclosed. So we don't anticipate any problems with odor or noise from the treatment plant.

Mr. Iaconetti: Does that mean there will not be any odor or will there be some odor?

Mr. Fukunaga: You know, we can't guarantee that there's not any odors but the technology that's being employed is such that you know, by experience these plants they do not create problems with odor. We are enclosing the parts of the treatment system that generally are associated with odors. So we don't anticipate any problems with odors.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: As a follow up Mich. Does the plant have a deodorification facility that's tied to it like the Public Works guys have? It does not?

Mr. Hirano: No it doesn't, no.

Mr. Hedani: Okay. Is it going to be landscaped out from view since it's along Honoapiilani Highway?

Mr. Hirano: Yes. There is landscaping hedging on the highway side of the plant as well as on the northeast side.

Mr. Hedani: My last question would be if it's a high tech plant is there personnel that knows how to maintain it?

Mr. Hirano: Yes, it will be under contract to a maintenance company that has experience in technology to operate and maintain these plants, yes.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: My understanding is the reason you're not using the R-1 water for irrigation or using it is because it has a high salinity content?

Mr. Hirano: Yes, the holds or the tanks on the marine vessels that hold the sewage they're flushed with seawater. So when the treatment plant receives the effluent from vessels, you know, it's a fairly high salt content. And so, they can't use that type of water for irrigation. The salinity is too high.

Mr. Mardfin: And so this water that you can't use on the land is going to be pumped into an injection well. How deep will the injection well be?

Mr. Hirano: The wells, probably between 10 to 20 feet. They couldn't find the bottom of wells. They didn't measure them so they expect or suspect they're around 10 to 20 feet deep.

Mr. Mardfin: Well, if it's only 10 to 20 feet deep then the water that goes in there is going to find its way into the open ocean isn't it?

Mr. Hirano: Eventually it will be – eventually it will, yes.

Mr. Mardfin: And what will this do to coral and algae growth?

Mr. Hirano: Well, we mentioned that the quality of the water as it leaves the plant will be of high quality. The phosphoreus and nitrate levels are approximately 5 milligrams per liter and the phosphoreus is less than 1 milligram per liter. So it's a fairly high quality. It shouldn't have negative adverse impacts on marine water quality. They basically say that the water quality that leaves that treatment plant is probably better than what's in the harbor now.

Mr. Mardfin: Are studies going to be done to track coral growth and algal growth?

Mr. Hirano: We have had a marine study done on the project. However, there are no triggers for the marine water quality monitoring requirement. We thought that if there were like a Department of Army permit that we would need water quality certification so we did a marine water quality when the project was initiated but the department had decided not to do any water improvements at this time so that wasn't required. So there will be no water quality monitoring requirement.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Mich, the leach field looks like it's underneath the parking lot right now.

Mr. Hirano: Yes.

Mr. Hedani: Is that the plan?

Mr. Hirano: Yes. It will be under pavement, yes.

Mr. Hedani: I've never seen – I've never known of a situation like that. How does that work?

Mr. Fukunaga: The current situation now there are three cesspools that are servicing the existing comfort station at the existing comfort station at the existing ferry terminal building. Those three

cesspools is along with the cesspool that services the existing comfort station in the corner were deemed large cesspools by EPA. So those were mandated to be removed by May of 2009 I believe. So DLNR started the process with the existing comfort station. The existing restrooms in the terminal facility are right now those are being pumped. They go into a holding tank outside of the ferry terminal building and they're being pumped by a pump truck. So what will happen with this treatment plant is it will take those – that effluent along with the effluent that will be coming off the vessels into this new treatment plant. And we will be reusing the existing seepage pits as part of the effluent disposal. But because we need more capacity, we are putting in the leach fields.

Mr. Hedani: Okay, I'm just ignorant about leach fields. When I think of leach fields, I think of gravel areas where your car is going to disappear if you park it on top of it.

Mr. Fukunaga: No, the leach fields are actually vessels, they're tanks that are going to be where the effluent is disposed but it's structurally sound so that it will support the pavement above the leach field. No, we don't anticipate to lose any cars into the leach field.

Mr. Hedani: One last question. On lighting because we have astronomical facilities up on Haleakala there's an Outdoor Lighting Ordinance and everything, is the harbor going to come into compliance with that?

Mr. Fukunaga: Yes, we will.

Mr. Hedani: Yea.

Mr. Fukunaga: Yeah. We're trying to – you know, obviously not light it too much. The lighting is a thing that we've looked at quite closely. We don't want to light it too much to create problems for the observatories. By ordinance, we cannot light the waters either. So the lighting, this is a lighting fixture. It's basically all configured with what we call side shields or the light is projected to just project vertically down onto the ground so that it's not going to create any hazard either, you know with the observatories or with the surrounding neighbors.

Mr. Hedani: You might want to run those through the Public Works guys because if that's the fixture you're using I don't think it would comply with the Outdoor Lighting Ordinance. It is full cutoff?

Mr. Hirano: Yes it's downlighted, shielded. There's no drop lense so it does meet the specs. It's a fairly high standard lighting fixture.

Mr. Hedani: Normally you shouldn't be able to see any portion of the luminaire.

Mr. Hirano: Well, this is considered what a call a drop down, that it's considered it isn't a drop down. It's sort of recessed up into it. So it doesn't glare beyond.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: I'm quite ignorant of all this, but at the present time is it my understanding that all of the sewage is being pumped out by trucks and removed from the area?

Mr. Hirano: Yes at this time. The vessels have done that. There's a truck that comes twice a week to pump out and the existing ferry terminal used to go into a pump station and then go into the cesspool. That stopped and it's now that cesspool was converted into a holding tank and then it gets pumped out as well.

Mr. Iaconetti: Are you anticipating a lot more sewage with this?

Mr. Hirano: No more capacity than what is there now and I think the 2020 projection was about 20,000 gallons a day – 18,000 gallons a day and the capacity right now before they started was 36,000 gallons per day.

Mr. Iaconetti: So let me ask you a very, very ignorant question. Why are we having a treatment plant? Why don't we continue trucking it out of there?

Mr. Hirano: I think it's a fairly expensive operation to do that. I mean, this is expensive as well, but I think the solution was to treat the effluent on site rather than having it pumped out. And you know, the – well, a part of the sewage I guess that is being dumped is ocean dumped too, so it's not all going and being pumped out. So it was to prevent the ocean dumping and provide the facilities on land to treat the effluent and to take it from vessel and treat it on land.

Mr. Iaconetti: What part of it is now being ocean dumped?

Mr. Hirano: The commercial vessel operators they can legally dump three miles out into – when they're three miles offshore, they can dump their effluent into the ocean, but this "pump don't dump" campaign was to prevent that and maintain water quality throughout the west side and so they were – they started this campaign to pump out the vessels and provide that facility and the county had been supporting that by some funding as well. But I think the ultimate solution is to provide wastewater treatment at site rather than having the pumper truck come down every two weeks and it's far more convenient to just hook up you're – you know, after you come in, for a commercial vessel, to come in after a tour just to pump it out and have it treated.

Mr. Iaconetti: Well my concern, living on the west side and driving past our Lahaina treatment plant has almost always been met with an awful lot of horrible odor and that happens to be one of my favorite restaurants and I'd hate to think that I would be having dinner with that odor.

Mr. Hirano: As we mentioned, the basins were it's treated is contained, but there's no air reaching it. It's not going anywhere, it's being contained.

Mr. Iaconetti: We shall see.

Mr. Starr: I have a couple and then I'll let the other commissioner go. I have a real problem with the fact that you don't intend to provide pump outs to the vessels on the north side. That's over half of the vessels. You know, I've had a vessel in there myself and I know, you know, I kind of know the drill. And I spoke to a couple of boat owners and they will not go and wait in line to pump out on that general facility. They will continue to pump in the ocean. So you're only providing facilities for less than half of the vessels in the harbor. The department has recommended a condition that

pump out facilities also be provided for those vessels on the north side of the harbor yet you're asking us not to include that condition because the state doesn't want to spend the money to provide that for all of the vessels on the north side. You're looking to move two of the vessels on the north side to the south side and then leave the rest of them dumping in the ocean. So it's like, you know, you're doing this for show. You're not going to stop people dumping into the ocean. I'd like to understand why if you're doing it you don't do it right and provide facilities for all of the vessels on the north side as well so that we aren't pretending we're doing something but really we're going to have vessels continuing to dump the stuff off our beaches.

Mr. Hirano: Those are very good questions. There was a survey done when this whole plan was being developed by the Division of Boating and Ocean Recreation. Many of the boats on the north side are smaller vessels. There are two large operators on the north side, Expeditions is one – not Expeditions, but Trilogy is one of them. The idea would be to move those two large operators onto the south side and get their effluent taken care of with the pump stations that will be provided on the south mole. On the north side, many of the boaters during the survey really didn't have waste water facilities on board. They basically use a bucket or they don't have any facilities. And so those small boats really wouldn't be serviced and they wouldn't provide any service need because they don't have the facilities on their boats to hold the – their wastewater. They're small fishers and small boat operators. The two large ones that generate the sewage will be accommodated. So I think when you look at the costs of \$1.4 million to service those few vessels after you've done the relocation, it just was not feasible. And I think that the solution does take care of the most of the wastewater that's generated from the vessels.

Mr. Starr: Well, it does take care of the large commercial operators but about half of the boats that will not be serviced do have tanks and will continue to dump in the ocean.

Mr. Hirano: Well, they do have two public facilities as well where they could go and to use the pump outs. So I don't think that they're being neglected. They will have the opportunity to do that. So they are being taken care of.

Mr. Starr: It's too bad you're not doing it right. Now on your drainage plan, you're using a 10-year storm numbers. And I'm wondering why you're using 10-year storm when the county ordinance and Mr. Miyamoto can correct me if I'm wrong is to utilize 50-year storm numbers. You're looking to deal with one hour in a 10-year storm where it should be one hour in a 50-year storm which is much greater numbers. Mike.

Mr. Miyamoto: Mr. Chair, I checked with our building permit staff and typically the 50-year, one hour storm applies to drainage facilities that are going to be dumping into a roadway system and this parcel being less than a hundred acres which is trigger point between the different years for the site, the 10-year would be sufficient. The location of this site also plays a factor because it's a drainage, it has a drainage system that does not need to necessarily need to go to some kind of a retention basin. Basically there's no downstream property from this parcel.

Mr. Starr: It's going right in the harbor. It's going right in the ocean.

Mr. Miyamoto: Well, that's what I mean. Technically by the rules there's no "downstream" parcel.

So you know, if this additional parking area is something that's going to be contemplated for additional storage that's certainly something we would look at that would possibly something that may fit the 50-year, one hour storm category.

Mr. Starr: I mean, since this is going right onto the reef, it's going right into the ocean, there's not even, you know, an area to give it a chance to clean up a bit. Is there any way you can increase it, increase the amount of retainage so that you're not dumping this right into the ocean?

Mr. Fukunaga: Yeah, currently. What we're doing, what I think Mr. Miyamoto said is correct is that in order to comply with the county ordinance, the 10-year storm is the accepted level of protection. However, what we've done is included this additional detention basin under the parking lot in order to damp the peak of the flow so that it doesn't just go gushing into the harbor. Right now the runoff from the parking lot which is currently going into the harbor off a gravel and dirt surface we're changing that to a paved surface which we acknowledge is increasing the runoff. So the rational is to provide additional detention so that the peak increase or the increase in the peak generated by the impervious surface is captured in the detention system. So it's not going directly into the harbor which is normally the case but it is going into this detention system which is going to dampen the peak flow and also trap some of the sediments that will be coming off the pavement.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: As a follow up to that question because we're increasing the overall amount of paved surfaces, are we going to be intercepting or trying to intercept and filter any petrochemical runoffs?

Mr. Fukunaga: The only place where we're increasing the pavement is at the parking lot. The rest of the harbor is –

Mr. Hedani: The overflow parking lot?

Mr. Fukunaga: Yeah.

Mr. Hedani: What about the existing parking lot?

Mr. Fukunaga: That's all currently paved. It's all an asphalt pavement that's going to be resurfaced with a concrete.

Mr. Hedani: But there's no intercept of petrochemicals before it hits the water?

Mr. Fukunaga: Right now, the drainage system is maintained as it currently is.

Mr. Hedani: So it's just sheetflow into the harbor?

Mr. Fukunaga: Yeah, sheetflowing.

Mr. Starr: Members? Commissioner Mardfin.

Mr. Mardfin: Suppose for the sake of argument within 30 years we have a one to two meter rise in sea level. I know that seems high. What will mess up? If sea level goes up by a meter or two how will that affect the operations? Will the south mole be under water?

Mr. Fukunaga: Probably. Currently the finished floor of the proposed terminal building or the rebuilt terminal building is about seven and a half. The current high water mark is about two, two to two and a half. So if you anticipate a rise of, you know, couple meters, yeah we're right at the finished floor level except that you know, just about a lot of other structures along the coast are going to be under water.

Mr. Mardfin: I don't deny that. What about the tertiary plant?

Mr. Fukunaga: The tertiary plant is up high by the – on the elevation almost up to the highway.

Mr. Mardfin: What about the pump out stations?

Mr. Fukunaga: The pump out stations are at the harbor level.

Mr. Mardfin: So they'd have to be raised.

Mr. Fukunaga: The pump out stations are submersible pumps so they're already operating underwater.

Mr. Starr: Yeah, Commissioner Hedani please.

Mr. Hedani: I just wanted to offer my compliments and congratulations for working on this project because I think it's something that a lot of people have been pushing for for a long time and I think it's long overdue.

Mr. Starr: Commissioner Guard.

Mr. Guard: Thank you. Is there the opportunity to put in any of those drainage catch basins with the petrochemical filters in them? Either in the new parking lot? Just to think ahead that you try to save any of it? Would that be possible?

Mr. Fukunaga: It's possible. We don't have them in the project right now.

Mr. Guard: Right now.

Mr. Fukunaga: Yeah, it's an additional cost. You know one of the concerns we have this project towards the end was on a tight time schedule because of the expiration of some funding.

Mr. Guard: Yeah, yeah, yeah.

Mr. Fukunaga: There's a combination of federal and state funds. So the project has already gone out to bid. One of the concerns we have of course is as we make changes that it will be substantial,

you know, premium the state pays. So not to say that we're against any changes, but you know, sensitive to the cost issue that we'd like to make sure that any changes we do incorporate you know, is going to be really needed.

Mr. Guard: Yeah, well if those catch basins, and a lot of people are doing that it might be something for --

Mr. Fukunaga: Yeah, it's --

Mr. Guard: Yeah, but we don't want to lose the funding obviously.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Following up on Commissioner Starr's question, I understand that the \$1.4 million for putting more pump out stations on the north mole, I kind of get that. Can you -- is there a management solution to this. Could you take a couple of stalls on the south mole and make it so that the boats on the north could pull in there -- I mean it sounds like a waiting problem. They don't want to wait for it. How about giving two to four stalls on the south mole and let all the boats on the north mole pull in there, unload their stuff and then move across to the north?

Mr. Fukunaga: Yeah, we did approach it, because of the additional cost of putting in the additional pump outs on the north side, it's being looked at as a management issue. Unfortunately, you know, the harbor master was supposed to be here today but he couldn't make it, but he is in the process of relocating or he will be relocating all of the certainly the commercial vessels. I think Trilogy is one of the bigger commercial operators operating off the north mole now. They are scheduled to move to the south mole and the plan is to move all of the commercial people to the south mole.

We did meet with all the boaters several times during the process within the last three years. One of the reasons of course in addition to the cost of putting in more pump outs on the north mole was the fact that lot of these smaller guys told us they wouldn't be using any pump outs even if we ran a lateral right up to their slip on the north side because a lot of them are not equipped right now to pump. What happens with the people on the south mole is they have to be equipped. They have to have a pump. So they have to pump into the system in order to be able to get their sewer out of the boats. The smaller operators on the north side, primarily don't have that facility so they candidly told us that were we to put laterals right up to their slip that they would not probably not be using it because of the cost of having to outfit their boat to do so.

The compromise or the accommodation was to add two additional public pump outs, one on the south side and one on the north side. And the difference with these pump outs are they're vacuum pumps. So instead of having to have any pump on board, these people who don't have, they just have to have the right nozzle connection and they can just go up there and hook up and have their sewage sucked out of their boats. So that's the accommodation right now. And we have one on the south mole and another one on the north mole. Yeah, on the north side. So you know, that's the -- yeah, the boaters yeah they tell us that if they had to stand in line to have their sewage pumped, they would not. Right now that's part of the problem, the pumping service that provides pump out service operates just twice a week. So you have to get your boat for them to pump it out

when they provide the service which is, you know, just twice a week.

Mr. Mardfin: And with the two new ones that you're putting in, that's going to be twice a week?

Mr. Fukunaga: No, no, they'll be there permanent. I mean, they'll be 24/7. Well, the one on the north mole is not 24/7. We had some problems with the condominium owners who objected to having a pump out near their, on the north side near their condos. So the accommodation would then is that that pump out on the north side will be a standby pump out. The main public pump out will be on the south side. And the north side would be used just during daylight hours so that it doesn't, the noise doesn't impact the --

Mr. Mardfin: Any of the boats that berth at the north mole, at any time can just take their boat around to the south pump out station. They don't need special facilities. How long does it take to pump a boat out?

Mr. Fukunaga: Some of these are real small. Just maybe a minute if it's a --

Mr. Mardfin: So there shouldn't be a three-hour wait for this stuff.

Mr. Fukunaga: No, no. And the reason, you know we have the south mole that loading area where the pump out is is also going to be used by the ferry service. So when the ferry is docked there you know, it's going to take up the space, that's why we have that additional one on the north mole and that is primarily the time when we think it's going to be used, other wise basic use will be at the south mole for these other --

Mr. Mardfin: And is the harbor master intending on putting in regulations that the boats have to use this or they get their hand so something?

Mr. Fukunaga: Well, unfortunately I think the loss is that if they go out three miles, you know, that that's the law. They can dump. The attempt here is to provide, you convenience service so that they will not dump I think they've been hopefully educating that dumping off shore it's a whale sanctuary, federal whale sanctuary so it is a real no-no to be dumping their miles off shore. But unfortunately with the infrequent pump out service that's available now and the amount of you know, the low numbers that we were getting fro the pump out operator that we suspect that there's quite a bit of offshore dumping going on because of the inconvenience of just having to wait for the twice a week service.

Mr. Mardfin: Does Mike Moran, I think this is his letter agree with this solution of having the two major one's on the north and the south mole. Is here -- I can't tell from -- from his letter indicates he's not happy with it. But have you7 had any further conversations with them.

Mr. Fukunaga: You know we've had like I said, we had a number of meetings over the past three years with the boaters. And we had public notices, generally what we presented was as far as we knew acceptable to the voters. We had no formal protect as to this project. You know, we went back and forth initially we had -- we started out with a master plan which had pump outs throughout the whole harbor. Unfortunately, the federal funds would not cover. The federal funds were

basically for the ferry service. So the federal funding would not cover the portion of the pump out for the rest of the slips. So that was a state expense where we had a much more limited budget. And so we went through a number of iterations with the voters involved to come up with a solution. So this was a solution basically like I said, you know, the problem with north side was a cost issue, but we tried to come up with a management plan that would accommodate the boaters who would use it and what we did come up with we thought would be, you know, to put in the vacuum pumps and their main objection was yeah, they told us quite frankly that if they had to wait in line to pump out their sewage they would not.

Mr. Mardfin: But you're telling me there won't be much of a line or there shouldn't be a much of a line.

Mr. Fukunaga: Yeah, that's right. That's the reaction we got from the boaters with this plan.

Mr. Starr: What's the state facilities for pump out on Oahu say at Kailua and Ala Wai?

Mr. Fukunaga: This is unique. This is the only harbor that's going to have a sewer pump out to each slip. It's like a subdivision situation on land where you have a sewer lateral right up to your property line and there's no other harbor in the state that has this.

Mr. Starr: So they don't have that at Kawaihae or any other?

Mr. Fukunaga: No. I think like Lahaina has one or two public pump outs. It's basically, you know, the state provides public pump outs at a few harbors and the guys have to stand in line to do it and I think what they found by and large they won't. They'll just go three miles out. In the case of, this is more sensitive environment here because of the national whale sanctuary. So I think that, you know, the boaters there are more sensitive to the problem, but it's a matter of their convenience too.

Mr. Starr: Yeah, I appreciate you doing it. One last question for me. Since it is a state project will the new ferry terminal is that going to be LEED certified?

Mr. Fukunaga: The building is not, no the building is not LEED certified.

Mr. Starr: I thought that all the state new buildings were going to be LEED certified. Is there an exemption on this?

Mr. Fukunaga: There's no requirement as far as we know for the building to be LEED certified.

Mr. Starr: Maybe I was wrong that's what I thought I had heard from DBED people.

Mr. Fukunaga: I think our architect says there's a dollar amount for the LEED certified and apparently we're below that dollar amount.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: Thank you. Yeah, just to speed this along. On the vacuum pump out station facilities

is there going to be opportunity to maybe just think for the future to have some I guess standoffs that we could tie into later at a lesser expense to provide more for the people on the north mole? Even if we're not doing it immediately, that maybe as newer boats come in that are outfitted with that technology or those pumps?

Mr. Fukunaga: Well, to add on the \$1.4 million cost was to equip all the slips on the north side with a pump out individually to each slip. The additional cost to put in one additional vacuum pump out is about \$180,000. So it's still a substantial cost but certainly not the \$1.4 million. But like I said, you know, one of the problems we're going to have to face are the condo owners on the north side. We do have the one pump out located now as close to the Coast Guard side as possible away from them. If we were to put another pump out, it would probably have to go in front of the condo side and --

Mr. Guard: Couldn't put it by the boat ramp?

Mr. Fukunaga; No, it's real tight.

Mr. Guard: Real tight over there already.

Mr. Fukunaga: ...we looked at the boat ramp, improving the boat ramp and there's just no room in that corner.

Mr. Guard: Oh, okay.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: As long as I've lived here there has always been a shortage of slips for individuals to have their fishing boats all over the island but especially this one. Is there any thought of enlarging it so that people can -- how long is the wait now for somebody who has a boat that wants to --

Mr. Starr: Doc, I've been on the list 12 years and I'm still not much further down than when I got on it.

Mr. Hirano: There's no capacity increase. There were plans earlier to expand the harbor and it involved more breakwater and marine work and I think that there was quite a protest against that and those plans have not materialized. So we wanted to make it clear with this project that it wasn't affecting the marine environment and there will be no expansion at the harbor.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: One last question. The report referred to snowflake coral.

Mr. Hirano: Yes.

Mr. Mardfin: And I'm a little ignorant. Tell me what the snowflake coral is. It sounds like it's a bad

thing and what can you do about it?

Mr. Hirano: Well, that came up in the marine study that was done. It's an invasive species. It's very aggressive. I guess it overtakes the habitat from the other corals and they're very prone to sunlight. So the idea -- the comment was in terms of a recommendation is when -- that's why partly there was no marine work as well being done but there is some snowflake coral I believe underneath the loading facility. So there has to be extra caution taken when there's work in that area. Most of the work will be on the surface.

Mr. Mardfin: What if anything can be done about it, about the snowflake coral. You're saying stop spreading it. What can you do to reduce it or to --?

Mr. Hirano: I guess to take it out and actually remove it. That's not in the program. They didn't want to go into the water.

Mr. Starr: Director.

Mr. Hunt: Mich, we required detention and even filtering on parking lots in the SMA that are away from the shoreline and essentially in this case the south mole is a parking lot that's jutting out into the ocean and as I understand it the response well, it's an existing situation so we're not going to address.

Mr. Hirano: There's no drainage facility right now on the parking lot.

Mr. Hunt: Is it possible to create a drainage facility?

Mr. Hirano: Not at this time, without considerable expense because you have to, you know, put in a drain system.

Mr. Hunt: So the response is it's an expense issue?

Mr. Hirano: Yes, partly in the code requirement. You know, they're building it to meet code. There's no code requirement that it has to be done. So they were just -- you know, they were following the code.

Mr. Hunt: Did the EA analyze whether there was going to be any drainage for that area?

Mr. Hirano: Well, the EA analyzed that there was no increase in the storm water runoff in that area. There was increase in the parking lot and that was being addressed through storm water detention system.

Mr. Hunt: But the EA didn't say as an alternative it would cost this amount of money to put in a drainage system on the south mole?

Mr. Hirano: No, it didn't.

Mr. Hunt: Do you understand my concerns about having virtually a parking lot that's jutting out into the ocean that's just sheet flowing right into the ocean?

Mr. Hirano: Yes, I understand that.

Mr. Hunt: Thank you.

Mr. Starr: I have a question regarding that EA. This is once again where the same agency that wrote the EA and is doing the project was the reviewing and approving agency for the EA and maybe that's why the fact that we have ... (inaudible - changing of tape)...

Mr. Hirano: ... in the harbor.

Mr. Starr: What?

Mr. Hirano: There are no fuel dispensing facilities.

Mr. Starr: Yes, and every single one of these vessels is fueled up before they proceed out to sea. Well, no there's a couple of pure sailboats but everything else is fueled up. And when you do fuel up a vessel, you drip. You know, it happens. You know, I've done it. Almost every time they fuel, some water leaks, some oil leaks, all the P.O.L. is being -- was there any concern? If from the state was involved with that EA and why didn't you take that into account?

Mr. Hirano: I just want to clarify if there are fuel dispensing facilities there, I believe there aren't.

Mr. Starr: They're private fuel dispensing facilities.

Mr. Mardfin: So is a five-gallon can.

Mr. Hirano: Not within the harbor area there, no.

Mr. Starr: You've never been down there and seen the fuel trucks? I wish the state would be a model rather than an abuser.

Mr. Hirano: I think the state is being a model in the sense of coming forward and providing the funding to put in sewage pump out stations and that was, when we were doing the environmental assessment there were no plans at that time to do the sewage pump out. What the comments we received were, at least design for those. So that was put into the project in terms of design that it would be accommodated. However, during the implementation and funding stage, the state had decided that it was enough of a priority to put sewage pump out facilities in the harbor. So at a cost of, you know, close to \$6 million if not more. They've brought state funding to this harbor. So I think it went beyond the original expectations and have provided and responded to a priority that was kind of identified and discussed during the environmental assessment process and now they've actually are implementing it. So they have really come I think to the floor and have provided this facility.

Mr. Starr: Understand Maalaea Harbor is the lucrative harbor facility in the state for state government, for DLNR. What is the income per year from Maalaea.

Mr. Hirano: Both Maalaea and Lahaina are I think revenue producing facilities. I'm not sure exactly what the revenue is on the harbor.

Mr. Starr: Okay, thank you. Members any other? Can we go to testimony? Commissioner Mardfin.

Mr. Mardfin: I just want to say, one quick thing. I acknowledge that you're doing a lot to take care of the pollution, the boat sewage that's being produced. But if this were a private project and taking the director's lead we wouldn't be even looking at this unless something were done about the petroleum products. A couple years ago I was done there for the very first time I took a boat out to Molokini with my sisters, we were showing them around and we parked out on that south mole and it was fine and water hits, I don't know if it was unusual or not but water hits it, flops over, goes in. It wasn't getting much spray on the car, but you know, the water was going over, rolling under whatever was leaking out of my car, I hope not much, but I can't guarantee nothing would have just taken it over across and down into the enclosed portion where it would probably have accumulated I think that we need to do something about that.

Mr. Starr: Shall we go to public testimony? Okay, let me open up for public testimony.

a) Public Hearing

Mr. Starr: Are there any members of the public who wish to testify on this item, please make yourself known. Last chance, public testimony. Seeing none, public testimony is closed. Ready to give recommendation and anything else on the department side Mr. Abbott.

b) Action

Mr. Abbott: The department recommends approval and also appreciates all the different comments and discussion so that we can be aware of what you're concerns are for additional, future projects that are coming up, harbor improvement projects. We recommend approval with 16 conditions, 11 of those are pretty standard.

No. 12 is that SHPD will be contacted if they have any -- run into any cultural remains or remnants.

13. That they'll design it in consultation with the Police Department for crime prevention through environmental design.
14. That the light fixtures will be designed based on the recommendations of the Urban Design Review Board.
15. That in consultation with the department, the applicant shall install additional sewage pump out stations to serve boaters using slip on the northern side of the harbor to the extent practicable.

This is the condition the DLNR would request you waive.

16. That the applicant shall take all necessary and practical precautions and implement best management practices and operating procedures to ensure that neither odor nor noise create a nuisance to business established in the vicinity.

And I might mention the location of the treatment plant which is very high quality is down wind and it's a very windy place out at Buzz's Wharf.

With that, we recommend approval. Thank you.

Mr. Starr: Okay, Members, questions, comments, possible motions. Commissioner Hedani.

Mr. Hedani: Move to approve.

Mr. Starr: As recommended, yeah?

Mr. Hedani: As recommended.

Mr. Starr: We have a second?

Mr. Giroux: Just a second, I don't know if this is a clerical, Thorne, as far as your conclusions of law, it states "the application complies with the applicable standards for a special management permit as follows," and then it says, "involves an irrevocable commitment to loss." Are you missing the negative in all of these or?

Mr. Abbott: I would presume so. If you'd direct me to that clause. Is it page 1, 2 or 3.

Mr. Giroux: Page 2 of 6. Your recommendations.

Mr. Abbott: If you look at the bottom of the recommendations part there's a page 1, 2, 3, 4, 5 or 6. Which are you speaking of James? I'm sure it's a typographic error and we will correct it appropriately.

Mr. Giroux: I guess, it's missing the universal, "it does not."

Mr. Abbott: James, would you point out which page it's on?

Mr. Giroux: It's page 2 of 6.

Mr. Starr: On the recommendation.

Mr. Giroux: It's your conclusions of law.

Mr. Abbott: We'll so note that correction. Thank you so noted and corrected.

Mr. Starr: Okay, we have a motion, do we get a second for that? Does anyone want to offer a second?

Mr. Guard: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hedani, seconded by Commissioner Guard and what is this motion Director.

Mr. Hunt: As I understand it, it's move to approve as recommended.

Mr. Starr: With a that minor.

Mr. Abbott: With the correction on the findings.

Mr. Hunt: With the correction to the findings.

Mr. Abbott: The addition of the word "doesn't."

Mr. Giroux: And I believe our standard condition that we talked about regarding time extensions, Condition No. 2.

Mr. Starr: Yeah. Oh, does that have the old wording it it?

Mr. Giroux: Yeah.

Mr. Starr: Yeah, need to replace the wording in condition no. 2 Thorne. That's if they want a time extension then it goes to the Director, the Director asks us whether he can deal with it or whether we want to see it. Commissioner Hedani.

Mr. Hedani: I'd actually like to amend the main motion by deleting condition no. 15 regarding the north mole and inserting a condition that "the department will make its best efforts to pursue intercepting and filtering runoff off of the south mole in its place."

Mr. Starr: Um --

Mr. Hedani: With the \$1.4 million that they'll save by not having to put in the north mole pump outs, they should be able to put in a couple of filtration measures and a drop curb that would intercept the water before it hits the water.

Mr. Starr: Thorne can you give us some language for that?

Mr. Abbott: That in consultation with the department, the applicant will develop storm best management practices for storm water runoff on the south mole.

Mr. Starr: Commissioner Guard, do you accept that as?

Mr. Guard: I would accept that but I think they should try to do that on the new parking lot on the north mole as well.

Mr. Abbott: Throughout the project.

Mr. Guard: Yeah, and then I guess that's my question is Planning Department knows we like to do this and this went through quite a few consultations and signatures here that this shouldn't even be at this stage in the game.

Mr. Starr: Well, it's good we're doing it.

Mr. Guard: Yeah, definitely.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I guess I'm little confused. There's a mention of a \$1.4 million savings but in fact this condition would create an additional expense of \$1.4 million over what's budgeted. So I don't see a savings that can be reused.

Mr. Abbott: I think the applicant would be amenable and we will ask if changing it to in consultation with the department, BMPs for storm water treatment will be used throughout the project because I don't believe those are significant costs but we can ask the applicant if they'd be willing to accept that.

Mr. Hiranaga: I would suggest you do ask the applicant.

Mr. Hirano: I just discussed that with the civil engineer, project engineer. Said that they would look at it and do BMPs in consultation with the department.

Mr. Starr: Go ahead Director.

Mr. Hunt: Mich, is the idea of BMPs during the construction or to actually implement some drainage long term for the south mole?

Mr. Hirano: Well, I think it would be to look at possible solutions for long term. But I think the other constraint with that is this project has gone out to bid. The budget sort of has been set, so if there are substantial costs to this it could, you know, I don't know how they could meet that obligation and make the funding commitment and the project.

Mr. Starr: Do I get this right? You're here for an SMA.

Mr. Hirano: Yes.

Mr. Starr: But you don't want to make any changes because it's been sent out to bid and this is state project?

Mr. Hirano: This is a state project. And because it's a state projects, the funds are limited. They're appropriated by legislature.

Mr. Starr: And the SMA is a state law. And you're not aware that the project has to comply with SMA?

Mr. Hirano: We believe that the project is complying with the SMA.

Mr. Starr: There's something wrong here. It's starting to sound like Superferry.

Mr. Hirano: We said that we would work with the department to look at BMPs and drainage solutions. But –

Mr. Starr: Commissioner Hedani, I'm sorry, yeah –

Mr. Hedani: Yeah, the wording of my amendment was that they make their best efforts basically to try to intercept. And what we're talking about is intercepting the petrochemicals coming off the parking lot before it hits the water so you don't get that nice shiny oily gleam over the top of the water when you look inside the water.

Mr. Starr: ...(inaudible).. yes.

Mr. Hirano: Yes, the applicant is agreeable to do that and work with the department to do that.

Mr. Starr: Case closed. We ready to vote? Dr. Iaconetti.

Mr. Iaconetti: Will there be available CPR equipment in the boathouse and will the people who station there or working there be taught how to use it?

Mr. Starr: The Harbor Master. Good idea.

Mr. Hirano: The Coast Guard station is stationed on the north mole, on the north side of the harbor. And I believe that they probably have all that equipment. I'm not sure what the State Harbor Master has in terms of that type of equipment.

Mr. Iaconetti: I would think that ought to be a condition. People are using these in airplanes. They're using them on street corners. It seems to me we ought to have CPR equipment and people taught how to use it.

Mr. Starr: Doc, can we offer that as an amendment?

Mr. Iaconetti: So, yes.

Mr. Starr: And do we have a second to that?

Mr. Mardfin: Second.

Mr. Starr: Okay, so we have an amendment offered. Jeff, Director, we have an amendment offered by Dr. Iaconetti, seconded by Commissioner Mardfin that CPR equipment be made available in the ferry terminal and that someone – and that training in its use be given to someone, the Harbor Master or someone in that building. Commissioner Hedani.

Mr. Hedani: Can we vote on the prior amendment first?

Mr. Starr: I did not think that that was an amendment. I thought that that was a friendly change to the main motion since the second agreed to it. That's how I was looking at it. I mean, I'm happy to change that.

Mr. Hedani: That's fine.

Mr. Starr: Okay, Director, you want to read back the amendment?

Mr. Hunt: The amendment regarding CPR equipment?

Mr. Starr: Yeah.

Mr. Hunt: As I understand it we would require CPR equipment be made available in the ferry terminal building and training be provided.

Mr. Starr: Yes, is that?

Mr. Iaconetti: For its use, yes.

Mr. Starr: Okay, lets vote on that amendment.

Mr. Hiranaga: Question.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I'm hesitant to use the word "required" because then you're going to need funding, you're going to have to send the staff out for training, you're going to have to buy equipment, so if you're going to hinge this SMA permit on them meeting this requirement I have a problem with that. You could suggest that made available, but to make it a requirement, a condition, for the approval of the SMA permit that they have this training and equipment available.

Mr. Starr: How about you alter the wording so you're happy.

Mr. Hiranaga: Suggest that or recommend that equipment be available, not require it. We're not dealing with a private entity that can just send a request to their CEO and get money.

Mr. Starr: I mean, I'd be amazed if the Harbor Master, you now, or Ferry Master didn't have that. I know the captains, to maintain a captain's license you go through some of that. Go ahead Mr. Abbott.

Mr. Abbott: Two comments as you point out for commercial ops they have to have that anyhow. But we could use the clause "that to the extent practicable" and that would do that. And also on condition 14, I comment about the recommendation of the URDB it should be UDRB. So I apologize for that typo.

Mr. Starr: It's the underwater demolition's response. Commissioner Hedani.

Mr. Hedani: Thorne can you also check to make sure that it's downlit full cut off?

Mr. Abbott: Yes.

Mr. Starr: So we have – the amendment's been changed slightly. You want to read the wording of it?

Mr. Hunt: That CPR equipment be made available in the ferry terminal building and training be provided for its use as practicable?

Mr. Giroux: To the extent.

Mr. Abbott: To the extent practicable.

Mr. Starr: Okay, everyone happy?

Mr. Iaconetti: I'm not happy. I think – I'd hate to be there and hoping that somebody knew how to use it.

Mr. Starr: That training wasn't practicable.

Mr. Iaconetti: Yeah.

Mr. Hiranaga: The U. S. Coast Guard is right across there.

Mr. Mardfin: If the maker of the motion isn't happy with it, ... (inaudible)... to amend the amendment.

Mr. Starr: So if Doc is not happy with it, then we would vote on the amendment that's created which is required. And we can do that. I'm happy with that. Okay. We're going to vote –

Mr. Guard: Discussion.

Mr. Starr: Yeah, go ahead Commissioner Guard.

Mr. Guard: Wouldn't we be dealing with an office that's only open during certain hours anyway? I mean, there may not even be someone to staff it? Right, I mean, the harbor could be used 24/7. Someone may not be in that office when it's needed Doc.

Mr. Iaconetti: Cardiac arrhythmias are not scheduled.

Mr. Guard: No one's there, then it's better to have the equipment.

Mr. Starr: Okay, we're going to vote on the amendment that the equipment be provided and that training and its use be required. And I believe that there are plenty of people around there who have it, it's just to make sure that someone –

Mr. Hiranaga: Clarification, are we voting on the original language or the –?

Mr. Starr: Yes, the original language.

Mr. Hiranaga: Where it's required?

Mr. Starr: Yeah.

Mr. Hiranaga: As a condition of the SMA permit.

Mr. Mardfin: Are you moving to amendment that?

Mr. Hiranaga: I'm asking for clarification on what we're voting on.

Mr. Starr: I mean, you can amendment to a subsidiary amendment, I will welcome that. Okay, all in favor of the amendment regarding CPR equipment, please raise your hand? All opposed?

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

**The Motion to require CPR equipment be made available in the ferry terminal building and training be provided, Failed.
(Assenting - W. Iaconetti, W. Mardfin, J. Starr)
(Dissenting - K. Hiranaga, D. Domingo, W. Hedani, J. Guard)
(Excused - B. U'u)**

Mr. Hunt: I had that votes in favor, three against.

Mr. Guard: Four against.

Mr. Abbott: Four opposed.

Mr. Starr: Yeah, there in favor, four opposed. Okay, the amendment fails. Is there anyone wishing to offer any other amendments? Dr. Iaconetti.

Mr. Iaconetti: I have a question. In the event that the power utilized for the pumping purposes of – breaks down for some reason or other is there a standby power system?

Mr. Abbott: It's a very good question sir. Let me ask the applicant.

Mr. Fukunaga: No, there is not. There's no standby generator. We're dependent on commercial

power.

Mr. Starr: What happens?

Mr. Fukunaga: There are receptacles on site to hook up a generator. So if there is a power outage then the state, DBOR will have to bring a generator in to hook up the system.

Mr. Starr: Is there a situation, a possible condition under which power fails and then we get a release into the harbor?

Mr. Fukunaga: No, the system will just shut down. There's no release -- The effluent goes into the ground so the plant, the pumps will shut down that pump up to the plant. So it's just the pump outs will not work.

Mr. Starr: We won't have a manhole overflow or any of that?

Mr. Fukunaga: No, it's all pumped up to the treatment plant.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'd like to move to -- I'd like to move an amendment that CPR equipment be available to the maximum extent possible.

Mr. Starr: Equipment be provided and training to the maximum or just that CPR equipment be provided?

Mr. Mardfin: CPR equipment be available 24/7 for cardiac problems. I know they do it in Keanae. They have it so it's outside, people can get to it 24/7.

Mr. Starr: But no mention of training?

Mr. Mardfin: No, mention of training?

Mr. Starr: Okay, is there a second to that amendment?

Mr. Iaconetti: I'll second that.

Mr. Starr: Okay, so we have a motion by Commission Mardfin, seconded by Dr. Iaconetti. Director, what's the amendment?

Mr. Hunt: That CPR equipment be available at all times to the maximum extent possible.

Mr. Starr: I didn't hear a maximum extent possible for the equipment, did I?

Mr. Hunt: The first attempt was CPR equipment be available to the maximum extent possible. Then it was changed at all times.

Mr. Starr: Yeah.

Mr. Hunt: So that would replace the maximum extent possible.

Mr. Mardfin: Okay.

Mr. Hunt: So it would be worded "CPR equipment will be available at all times."

Mr. Starr: Okay, are we ready to vote on that amendment? Okay, all in favor, please raise your hand. All opposed?

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

**The Motion to Have CPR Equipment Available at All Times, Failed.
(Assenting - W. Mardfin, W. Iaconetti, J. Guard, J. Starr)
(Dissenting - K. Hiranaga, D. Domingo, W. Hedani)
(Excused - B. U'u)**

Mr. Hunt: I had that four in favor and three against.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Call for the question.

Mr. Starr: On the main motion.

Mr. Iaconetti: I've got another amendment.

Mr. Starr: Okay, Doctor.

Mr. Iaconetti: I'd like to recommend a motion by stating that "a generator is in place and available in the event of a power shortage."

Mr. Starr: Okay, is there second to the amendment?

Mr. Mardfin: Second.

Mr. Starr: Amendment, moved by Dr. Iaconetti, seconded by Commissioner Mardfin, that amendment is?

Mr. Hunt: That a generator shall be in place and available in case of a power failure.

Mr. Starr: Okay, any discussion? Commissioner Hiranaga.

Mr. Hiranaga: Is this a portable generator that you would then carry and plug into the receptacle or is this a in place generation that would automatically kick on when power fails. I was just kind

of curious, what kind of generator. You're talking about the little Honda generation that you buy at ... (inaudible)...

Mr. Iaconetti: Yeah, Doc.

Mr. Iaconetti: Not being knowledgeable about generators I would think something fixed and ready to go as in a hospital when the power fails.

Mr. Starr: Go ahead.

Mr. Abbott: Could a comment be made to Dr. Iaconetti's concerns. There's an equalizing tank. Everything gravity flows down to an equalizing tanks. There's a big tank, big holding tanks then it's pumped up to the treatment station then it's pumped down. If the power were to go out you have all the capacity of that equalizing tank to fill up first. You wouldn't have any over flow situations now. It went for a long, long period of time, you know, like a week, two weeks, three weeks then maybe you'd have an issue. But I'll let the applicant speak to that, but the way the system 's designed, everything gravity flows to that big holding tank in the first place.

Mr. Fukunaga: That's almost all correct. The system has a series of pump stations. The system is both a gravity and forced main system. The treatment plant sits on the top and so ultimately the flows that get to the treatment plant are pumped up there. But the flows that come from the comfort stations and the sewer pump outs along the south mole go into a gravity system and then they are then gravity flowed to a pump station that then pumps it to another pump station and then ultimately to the treatment plant. So the concern, if the concern is that there would be a spill that occur if the power went out, the answer would be no, there would not be a spill. What would happen is the system would shut down people would no longer be able to pump sewage out out of their pump outs, but there is a holding capacity within the pump stations that would provide some buffer and the concern or the problem with maintaining the portable pumps is that the pumps are all different sizes so it's not a matter of keeping one portable pump on site. The pump that runs the or the generator that would run the treatment plant would require a big generator and then different sized generators to power the pump stations. So the plan would be that the availability of these connection points to the pumps would be available, portable pumps, but that when the outage occurs, the state would have to find the pumps to run the generators with it – find the generators to run the pumps at that time. But that in the interim that any spill would not be anticipated.

Mr. Starr: Yeah, we have an amendment on the floor. We're ready to vote on the amendment, the amendment regarding generators. All in favor please raise your hand. All opposed. Okay.

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

The Motion to Add a Condition That a Generator is in Place and Available in the Event of a Power Shortage, Failed.

(Assenting - W. Iaconetti)

(Dissenting - K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, W. Hedani, J. Starr)

(Excused - B. U'u)

Mr. Hunt: It was one in favor, six against.

Mr. Starr: Okay, we're onto the main motion. We ready for the main motion?

Mr. Mardfin: May I hear condition 14, please, 15?

Mr. Hunt: I understand it that it was amended by consensus to read, "that the applicant shall work with the department to find a drainage solution to the south mole."

Mr. Mardfin: To deal with petroleum?

Mr. Starr: That was not it. Go ahead Mr. Abbott.

Mr. Abbott: Slightly different version. "That in consultation with the department, the applicant shall use best management practices for storm water treatment throughout the project." That would cover all the areas.

Mr. Starr: Okay, good. Lets vote on the main motion, okay. All in favor, please raise your hand. All opposed.

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

**VOTED: To Approve the Special Management Area Use Permit with Conditions.
(Assenting - W. Hedani, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo,
J. Starr)
(Dissenting - W. Iaconetti)
(Excused - B. U'u)**

Mr. Hunt: I have that as six in favor and one against.

Mr. Abbott: Thank you very much.

Mr. Starr: Congratulations and thank you for bringing it to us and build a nice project. We're going to take 10-minute recess.

A recess was called at 3:14 p.m., and the meeting was reconvened at 3:24 p.m.

Mr. Starr: I will introduce our plan extraordinary Livi Calentine who will bring us the next item and we should mention that there's a second item, Item G-1, a filing for an intervention which is related to the item itself and I'm sure that our discussions will involve not only F-2 but G-1 as well. Go ahead Ms. Callentine.

- 2. MS. TAMARA HORCAJO, Director of the COUNTY DEPARTMENT OF PARKS AND RECREATION requesting a Special Management Area Use Permit for the Lahaina Civic Center Tennis Courts Expansion Project consisting of the addition of four (4) new tennis courts, a 25-stall paved parking lot, and related**

improvements at TMK: 4-5-021: portion of 010, portion of 016, and portion of 020, Lahaina, Island of Maui. (SM1 2008/0015) (L. Callentine)

Ms. Livit Callentine: All right, thank you Mr. Chair. The item before you this afternoon is a special management area use permit for expanding the existing Lahaina Civic Center tennis courts and the applicant, the proposed project is to add an additional four tennis courts and a 25-stall parking lot and related site improvements.

The project was subject to Chapter 343 Hawaii Revised Statutes and the trigger is the state-owned land and the Parks Department who is the applicant issued a Finding of No Significant Impact and this was published in the OEQC Environmental Notice and there have been no appeals. The deadline for appeals was November 7th and there haven't been no appeals.

The subject project is going to be located straddling a portion of three different tax map keys. Tax map key 2-4-05: 021, 010 and 016 and 020. The total acreage of those three parcels is a little over 70 acres. The project itself encompasses a two acres of those three parcels.

The existing – what's existing on those parcels is on parcel 10 is the Lahaina Civic Center tennis court complex which has currently five tennis courts. On parcel 16 is portion of the Lahaina Civic Center main facilities and on parcel 20 is vacant land. The State of Hawaii owns the first two parcels and the State of Hawaii and the Department of Hawaiian Homelands own the third parcel, 20.

The land use for these parcels is – the state land use is agriculture and urban on two of the parcels and just urban on the remaining parcel. The community plan it's designated as public/quasi-public on two of the parcels and on agricultural on one of the parcels and it is county zoned agriculture all the way across and it is in the SMA. And a portion of 16 and parcel 20 are in the SMA.

So as you are probably aware the surrounding uses are to the north, Lahaina Civic Center main facilities. To the east is undeveloped Hawaiian Homelands land. To the south is the existing tennis court complex, the Villages of Leialii which is a DHHL affordable housing development and the Waihikuli houselot subdivision. And to the west you find the Lahaina Post Office, the Honoapiilani Highway and the Waihikuli Wayside Park. So the proposed project is to be located to the north of and adjacent to the existing tennis courts and the existing project site is grassed and vacant.

The project consists as I said of additional four tennis courts and these courts will provide for fencing, sports lighting and windscreens. The parking lot will be lighted and there will be lighted walkway access paths, retaining walls, landscape planting and irrigation and site utilities which include changes to the water, wastewater, drainage and electrical systems.

The project was reviewed by a large number of reviewing agencies and by the UDRB. Your comments from agencies were attached to your staff report and UDRB letter as well. So at this time I would like to turn the podium over to Munekiyo and Hiraga, Mike Munekiyo and Kimberly Skog for a short power point presentation. They say about five minutes.

Mr. Starr: Yeah, hold on one second Mike. Commissioner Guard reminded that we were going to

switch back to Moffett after F-1. I thought it was after F-2. Director, do you have that in your notes?

Mr. Hunt: My staff is telling me it was after F-2.

Mr. Starr: Yeah, that's what I recollect Commissioner Guard.

Mr. Guard: Oh, okay.

Mr. Starr: I'm sorry, please go ahead Mr. Munekiyo.

Mr. Mike Munekiyo: Thank you Mr. Chair and Members of the Commission. My name is Mike Munekiyo. We do have a very short power point overview of the project, but before we get into that I just want to inform the commission that we have been meeting with the intervenor, Ms. Ross, and what we've agreed to is that we would like to have the intervention matter deferred until the next meeting. This will give us some time to meet further and to discuss with the DHHL as well, the department some of the concerns that the intervenor has. So we'd like to go through our presentation, at least go through the process that is scheduled today and then ask, of course, Ms. Ross, will be able to speak to it but we are asking for a deferral on the intervention matter. So I'll have Kim Skog just run through a real brief overview of the project.

Mr. Starr: Okay, just hold on one second. Mr. Giroux, they're going to ask for a deferral on the intervention which I assume would also mean on any discussion making that we might do, but they would like to proceed with the presentation regarding the body of the matter regarding the tennis courts. I assume that that works for us. Please comment.

Mr. Giroux: What I would prefer at least just you can have maybe a staff overview, but to get into the issue itself, if this goes into a contested case there is burdens of proof and all of that, and I would not want that to be confused with this hearing as far as what you have to present and what evidence. I think we should dispose of the matter of the intervention first before we get into anything unless you know, it's clear it's going to be abundantly repetitive.

Mr. Starr: What I think would be a good solution is allow a brief overview so that we understand about it and then we – I would also like to allow the public to speak but we won't, I won't allow questioning or discussion among, you know, among the members and so on until we get to the intervention whenever we do that. That's workable, right?

Mr. Giroux: Yeah, you can –

Mr. Starr: So please keep it brief because I'm sure we'll get it back to it again. Mr. Munekiyo, how long will this be about?

Mr. Munekiyo: Less than five minutes.

Mr. Starr: Fine. Okay.

Ms. Kimberly Skog: Good afternoon Commissioner, I'm Kimberly Skog. This is the Lahaina Civic

Center tennis courts complex expansion. Livit went over this a good deal so I'll try and keep it brief.

From a regional context standpoint the project site is located just mauka of the Waihikuli Wayside Park. Right off of Honoapiilani Highway and just south of the existing Lahaina Civic Center facilities.

This is a TMK map showing the affected parcels. The project site is about two acres. It takes up about 1.1 acres of parcel 20 which is owned by the State of Hawaii, Department of Hawaiian Homelands. There's a .2 acre sliver of the parcel 16 and about .7 acre portion of parcel which contains the existing five tennis courts.

This is the Lahaina Civic Center site plan and you'll see the tennis courts expansion is going immediately north of the existing tennis courts. The post office is just west of the project site and the Lahaina Civic Center, court house, Police station and other facilities are located there.

This is the grassy area where the four additional tennis courts will be located. You can see the existing tennis courts in the background and the Villages of Leialii, 1A subdivision is just back there.

This is looking a little bit mauka of the previous picture. This brush area here is kind of the sliver of DHHL lands. The new 25-stall parking lot would be located in this area.

This is kind of showing where the driveway access to the parking lot will be. The tennis courts will be about there or so.

And this is looking south along the service road to the tennis courts complex. You'll see some of the existing courts right here and that is the Leialii Subdivision in the background.

This is the site plan for the proposed project. You'll see the four additional tennis courts, the 25-stall paved parking lot. There's some drainage improvements, retaining wall in this area and all the proposed landscaping. And that's it.

Mr. Munekiyo: So Mr. Chair, that's the project overview. Hopefully it clarifies some of the work elements that Department of Parks and Recreation proposes to undertake.

Mr. Starr: Okay, members if it's acceptable to everyone, I'd like to go straight to public testimony and then we can deal with the petition.

A) Public Hearing

Mr. Starr: I'd like to allow any members of the public that would like to offer testimony. I believe that you're the intervenor, so you'll have an opportunity as the intervenor. But if you're not, and you're public then please come now.

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

Mr. Starr: Next testifier Kaleo Baybayan followed by Brian Puckett.

Mr. Kaleo Baybayan: My name is Kaleo Baybayan. I'm a resident of Leialii Hawaiian Homes. We're here for the tennis courts building at Civic Center and I have another member will talk. I just gonna let her do the talking.

Mr. Starr: You're going to be filing a petition to intervene later?

Mr. Baybayan: Yes.

Mr. Starr: Actually, yeah as the intervenor you'll have opportunity to speak. I mean, if you want to speak as a public testifier that's okay, but you are the intervenor.

Mr. Baybayan: But's the board ...(inaudible).. of the Leialii.

Ms. Jessica Ross: Okay, we'll go ahead and wait for our time on the agenda. We are on the agenda. So we'll present and then –

Mr. Starr: Okay, that's fine. Thank you. Next testifier, and you will be given the opportunity when the item comes up.

Mr. Starr: Next testifier is Jessica Ross, will be followed by Elaine Gallant. Jessica Ross.

Ms. Livit Callentine: Mr. Chair, Ms. Ross left. She's going to testify at the time of the item.

Mr. Starr: Oh okay. Thanks for letting me know.

Ms. Callentine: She was here and spoke just a few minutes ago.

Mr. Starr: Is Elaine Gallant here? Elaine please come forward and C. Rose Riley will be next. Please introduce yourself and welcome.

Ms. Elaine Gallant: I'm going to make it real easy on you. I'm testifying during the period of time where it's being presented.

Mr. Starr: Okay, thank you again for coming down.

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

Mr. Starr: And please introduce yourself.

Mr. Kaleo Waiwai: My name is Kaleo Waiwai. I live at Leialii Hawaiian Homestead. I live right next to the tennis courts. Do we need more tennis courts in that area? You know, for the public. Why not we have like, chair, you know, kids, children care, like park, you know. That I've noticed since I live right next to the tennis court during 9:00 to maybe 5:00 it's not used. I live right there. I hear the sound. Midnight, in the night, 1:00 in the morning of the wall, toog, toog, toog, toog, all night, all night. It's been like that ever since I moved there. So you know, I'm going to hear more, louder, 1:00, 12:00 in the morning. You know, that's my point because I live right next to there. But children

you make a small playground there, you know, they're not going to be 1:00 in the morning, they be in bed like 6:00, 7:00. You know, so that gives me the opportunity to voice that I'm not going to hear more tennis court. That's all I have to say.

Mr. Starr: Okay, thank you. Please come forward. I think you would like to testify. Please introduce yourself and thank you for coming in and being so patient.

Ms. Elaine Gallant: My name is Elaine Gallant and I'm chairperson of the Save Our Courts Committee for the Maui District Tennis Association. I've spoken to you before. I do wish I'd had an opportunity to speak with the lovely folks with Leialii because we do need tennis courts as you know. 16 of the 19 public courts in the Kaanapali area will be destroyed. Now granted there is an economic downturn going on right now, and for two years, we've been faced with the threat that these courts are going to be destroyed and the west side won't have any workable courts right there except for the five at the Lahaina Civic Center which is why we're asking for the additional four courts because there are several thousand people who play so those courts are very important to us.

As soon as the economic downturn changes and I believe some optimists are saying could be a year, if that's the case we exactly the right amount of time to get the courts built so that as soon as the economic crisis turns and the resorts resume their construction and destruction those courts will be ready to play and the impact on the playing public and the leagues and all that is therefore minimized instead of maximize which was what we were up against. It's unfortunate there's an economic downturn, but that's the way it is and we see it as a little bit of a mixed blessing. We're losing 16 courts, gaining four. That's a blessing too. We'll take whatever we can get.

So we're not opposed to a playground, don't take me wrong on that. We'd like to see it in addition to, because the plans at Leialii are quite large and they need to take care of their people, right. And they need to have many facilities. So, a playground is a good addition. And besides, parents playing with their children at parks is a good thing. Parents and kids seeing tennis courts is a good thing. So we have not much more to say to that. We just are very grateful that you all are considering it. And we do hope that you will pass it.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Is it appropriate to ask the testifier a question?

Mr. Starr: Yeah, I think as long as it's not really getting into the meat of the project itself, but it's about tennis in general and courts, that sort of thing.

Mr. Hiranaga: I was just curious if you knew how the night lighting is controlled? Is there a cut off like at 10:00 p.m. or is just you turn the timer on. It goes on 24/7?

Ms. Gallant: It's a punch button. It stays on for I think an hour.

Mr. Hiranaga: But there's no cut off at 10:00 p.m. You can go in there at 2:00 in the morning and press the button and the lights will come on?

Ms. Gallant: No. Not that I'm aware of. But as long as the lights are on, somebody is there and playing and the courts are used and they're being used more and more. ...(inaudible – changing of tape)... they're going to replace it with four, but those four are going to become more guest use than public use. And Royal Lahaina is the largest center where the bulk of the people play out of at Kaanapali which has kept them off of the public courts. And if anybody live by there you know, and I believe you're also on the board, their plans are now to halt their destruction of the courts because of the economic downturn. But again, as soon as that changes, they'll go.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I remember you were concerned the last time we were dealing with this issue in general with tournament play. There's currently one court there at Lahaina Civic Center?

Ms. Gallant: No, there are five courts at the Lahaina Civic Center.

Mr. Mardfin: There are currently five?

Ms. Gallant: Correct.

Mr. Mardfin: And this would bring it up to nine?

Ms. Gallant: This would bring it up to nine.

Mr. Mardfin: Is that sufficiently large to do tournaments?

Ms. Gallant: That is sufficiently large enough to do tournaments today, yes.

Mr. Mardfin: Why do you qualify that by tournaments today?

Ms. Gallant: Because I'm hoping that the almost 5,000 homes at Leialii someday will all be 50% tennis players.

Mr. Mardfin: In a tournament?

Ms. Gallant: Well, not in a tournament no, but I mean, on the courts.

Mr. Mardfin: Thank you.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: Could you tell us where the funding for the courts is coming from?

Ms. Gallant: Can I? No. I assume my tax dollar.

Mr. Starr: Yeah, we don't want to get into the specifics of this project either right now Doc. Any other questions for tennis in general and the testimony? No, from members of the commission.

Okay, thank you very much for your testimony today. Any other members of the public who have not already given testimony, please make yourself known if you wish to testify.

Ms. Jessica Ross: You said I cannot testify ...(inaudible – speaking from the audience)...

Mr. Starr: You're out of order please. Okay, public testimony is closed on this item. We have an interrelated item. It's marked as a communications item but it's a petition to intervene in this matter and if it is acceptable with the members of the commission I feel that it would be a proper time to allow the petitioners to state, to address us regarding the petition to intervene. We can address that issue. Hear what they have to say and also hear what the respondent has to say in that matter. Is that acceptable? Commissioner Hiranaga.

Mr. Hiranaga: Just a point of order. We had agreed to amend the agenda regarding the Moffett application to after F-2, so I'm just wondering if you need to move that Moffett issue behind G-1?

Mr. Starr: I don't think so because I think we're still on F-2, but we're at a, you know, kind of at a cross roads in F-2 and that requires us to deal with the intervention. So, with that being the case I'll allow the petitioner to make comments now regarding the petition to intervene. I believe that's Ms. Jessica – I'm going to take a two-minute recess just to make sure we're legally correct in the way we deal with it.

A recess was called at 3:46 p.m., and the meeting was reconvened at 3:48 p.m.

Mr. Starr: Commission is back in session. I'm sorry to have to delay that for housekeeping. I will allow Ms. Jessica Kailani Ross to give a initial presentation regarding the petition.

G. COMMUNICATIONS

- 1. MS. JESSICA KAILANI ROSS of the LEIALII HOMESTEAD ASSOCIATION submitting an October 24, 2008 letter requesting to intervene on the application by MS. TAMARA HORCAJO, Director of the COUNTY DEPARTMENT OF PARKS AND RECREATION for a Special Management Area Use Permit for the Lahaina Civic Center Tennis Courts Expansion Project consisting of the addition of four (4) new tennis courts, a 25-stall paved parking lot, and related improvements at TMK: 4-5-021: portion of 010, portion of 016, and portion of 020, Lahaina, Island of Maui. (SM1 2008/0015) (L. Callentine)**

Ms. Jessica Ross: Mahalo, aloha mai ka ko. My name is Jessica Kailani Ross. I am representing Leialii Homestead Association, Villages of Leialii. And this issue came to light via one certified letter to one resident in our community and we were not clear on the original map where exactly this proposed development would be located. And I made several phone calls and I heard nothing back and being the situation full of uncertainty, we felt it urgent to not only be here to testify but to file for an intervention because we – I know this is a special management area permit, however, we're not fully convinced that this is the best place for this development by the petitioners who have requested it. And our community of course, is greatly needing other things more than tennis courts.

Tennis courts are great, but there is no playground anywhere near our area nor after school care. It's way on the other side of Lahaina miles away. And we need after school boys and girls clubs in our area for children. And as the intervention states, the revised intervention, I hope you all have an amended intervention, there is an explanation of our concerns there. Should I read it or you've all had an opportunity to read it? Shall I review any of my concerns at this time being that it's written?

Mr. Starr: I don't think we need to get into details. You know, we just needed to give you an opportunity to introduce it and then we'll see if we're going to be able to hear it today. So –

Ms. Ross: I've agreed for a deferment to defer to a later date and again present our concerns or hopefully come to an agreement before that time.

Mr. Starr: Okay.

Ms. Ross: And that's about it. Any questions?

Mr. Starr: We'll have that opportunity when we get to the heart of the matter.

Ms. Ross: Okay, thank you.

Mr. Starr: In the meantime, I want to ask Baron Sumida to come up. I know he's with the Department of Parks, Project Manager. And I want to keep this only limited to the item of the petition to intervene and whether you're in a position to legally answer that petition and the timeliness of the filing and all of that or whether you want to defer or whatever you want to do. So please go ahead.

Mr. Baron Sumida: I would defer.

Mr. Starr: So you're asking to defer and I would like to ask about the details of service on you. When you received it, if you've received it and so on.

Mr. Sumida: I didn't receive it personally. I was told about it, oh lets say, a couple weeks ago, a week and a half.

Mr. Starr: Okay. So you received it in time but you just haven't had opportunity to get with Corp. Counsel and all of that?

Mr. Sumida: No.

Mr. Starr: And so you wish to defer?

Mr. Sumida: I would wish to defer.

Mr. Starr: Okay, thank you very much. So members so we've had a request from both sides of the intervention to defer and it's probably not in anyone's best interest to proceed with the item itself

with the intervention hanging there. So, perhaps motions to defer both on the item and the intervention might be in order. Commissioner Mardfin.

Mr. Mardfin: I move to defer the main item and the deferral to a date –

Mr. Starr: And the intervention.

Mr. Mardfin: And the intervention to a date certain. Does anybody know what that date is?

Mr. Starr: Mr. Yoshida when would you like this? I would assume we're in January some time or do we need to – can we do it to a date certain or do we need to wait and see what happens with the intervention? Go ahead Mr. Yoshida.

Mr. Yoshida: Well, I believe that we could defer to the next meeting and see where the parties are at. You know, maybe they may come to some amicable resolution of this or maybe not.

Mr. Starr: You think we can slip it into the next one?

Mr. Yoshida: Well, I feel that, you know, as a public project you know, we are trying to facilitate public projects and this is a public project. But you know, just to see where everybody is at.

Mr. Starr: So what's the date of that next meeting?

Ms. Callentine: November 25th.

Mr. Starr: November 25th.

Mr. Mardfin: So my motion is to defer the main project and the petition to intervene until the November 25th meeting.

Mr. Iaconetti: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Mardfin, seconded by Commissioner Dr. Iaconetti and that motion is?

Mr. Hunt: To defer the main item and the intervention to the November 25th meeting.

Mr. Starr: Okay, everyone ready to vote?

Mr. Mardfin: May I make a quick statement?

Mr. Starr: Okay.

Mr. Mardfin: I don't know if it's appropriate or Corp. Counsel could, but I would suggest that they involve Elaine Gallant also in their discussions. It's a suggestion not a requirement.

Mr. Starr: Okay, fine. Okay, we're ready for the voting? All in favor of the motion to defer, please raise your hand. All opposed. What do we got?

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

**VOTED: To Defer the Application for SMA and the Petition to Intervene to the November 25, 2008 Meeting In Order for the Applicant to Meet With the Intervenors.
(Assenting - W. Mardfin, W. Iaconetti, K. Hiranaga, J. Guard,
D. Domingo , W. Hedani, J. Starr)
(Excused - B. U'u)**

Mr. Hunt: I have that as seven in favor and zero against.

Mr. Starr: Okay, good. Hope you guys can work it out.

Mr. Munekiyo: We will. Thank you commissioners.

Mr. Starr: Okay, moving back to our patient folks from this morning. I'll pass it to Director Hunt to bring us back to a kinder gentler time.

Mr. Hunt: James do I need to read it into the record again?

Mr. Starr: Yeah.

Mr. Hunt: The next item involves the request from Jay Wisthoff and Kathy Wisthoff. –

Mr. Guard: No, no, no, wrong one. Buzz Moffett.

Mr. Hunt: I'm sorry.

Mr. Starr: We did Wisthoff. You want to do it again?

Mr. Iaconetti: No, lets not do that again.

Mr. Hunt: Let me try again. The next item involves William B. Moffett, Managing Member of Kahana Nui LLC requesting a conditional permit in order to operate the Kahana Nui Villas using a single-family residence as a short term rental in the R-3 Residential District on Lower Honoapiilani Road, TMK: 4-3-019: lot 49 in Kahana. The file number is CP 2002/0017 and Robyn Loudermilk is our planner involved.

Mr. Starr: We're going to take a very short recess to the call of the Chair until we locate our planner Loudermilk. Can someone go find Robyn?

Ms. Callentine: She's calling right now.

A recess was called at 3:56 p.m., and the meeting was reconvened at 3:57 p.m.

Mr. Starr: We're waiting for Planner Loudermilk to return, in the meantime, Commissioner Hiranaga had a motion. I move to amend the agenda so we can address Item H which are the minutes.

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hiranaga, seconded by Commissioner Domingo to bring up Item H regarding the minutes up on our agenda to right now. All those in favor please raise your hand. All those opposed. Unanimous.

It was moved by Mr. Hiranaga, seconded by Ms. Domingo, then

**VOTED: To Take Up Item H
(Assenting - K. Hiranaga, D. Domingo, J. Guard, W. Mardfin,
W. Iaconetti, W. Hedani, J. Starr)
(Excused - J. Guard)**

H. ACTION MINUTES OF THE OCTOBER 28, 2008 MEETING, REGULAR MINUTES OF THE AUGUST 12, 2008 AND THE SEPTEMBER 9, 2008 MEETINGS

Mr. Starr: Commissioner Hiranaga, do you have any motion regarding the minutes?

Mr. Hiranaga: Motion to accept the October 28th Action Minutes, the August 12, 2008 Regular Minutes and the September 9, 2008 Regular Minutes.

Mr. Iaconetti: I'll second that.

Mr. Starr: Okay, motion by Commissioner Hiranaga, seconded by Dr. Iaconetti to accept the minutes as mentioned, any corrections or comments? Seeing none, all in favor of the motion please raise your hand. All opposed. Okay, unanimous.

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

**VOTED: To Approve the Action Minutes of October 28, 2008, the Regular Minutes of August 12, 2008 and September 9, 2008 Meetings, as Circulated.
(Assenting - K. Hiranaga, W. Iaconetti, J. Guard, W. Mardfin,
D. Domingo, W. Hedani, J. Starr)
(Excused - B. U'u)**

Mr. Starr: Moving right along we are back to our item from this morning, Item C-2, Kahana Nui LLC. And I believe the point at which deferred was that we were asking for a new set of conditions and also I'll request from Ms. Loudermilk that she remind us where we're at with the project and Commissioner Mardfin missed part of that. So just kind of bring us up to speed of where we are. I know he studied everything diligently, so he's quite knowledgeable.

C. PUBLIC HEARING

Continuation of:

2. MR. WILLIAM B. MOFFETT, Managing Member of KAHANA NUI, LLC requesting a Conditional Permit in order to operate the Kahana Nui Villas, using a single-family residence as a short-term rental in the R-3 Residential District on Lower Honoapiilani Road, TMK: 4-3-019: 049, Kahana, Island of Maui. (CP 2002/0017) (R. Loudermilk)

Ms. Loudermilk: Good afternoon Commissioners. Earlier this morning we had before us the Kahana Nui LLC, the request for conditional permit to use a single family residence as a transient vacation rental. There was a lot of testimony all in support for the project from people living within the 500-foot radius and within the community and users from Molokai.

After much discussion regarding General Plan, community plan and just general issues in relation to the TVRs in general, the department did make a recommendation to deny the request. There was a motion then to approve the request for a I believe it was a three-year period that motion was tied at three/three so it did not go forward.

Additionally, there was discussion regarding some of the areas of concern that emerged. One area had to do with the applicant had other options such as a onsite manager or constructing an ohana to have somebody permanently be on the property though the applicant lives within the neighborhood.

The second issue that emerged was public access to and from the shoreline over the property. The applicant provided information that there was a county public access approximately 300 feet to the south of the property and that in addition he currently allows the existing area fishermen and the general public from the community access to and from his property and he will continue to allow that to occur.

Then I believe the – one of the last issues had to do with having somebody actually being on site after the initial discussion.

Also as part of the discussion Commissioner Guard provided a number of objectives and policies from the West Maui Community Plan that he identified that would assist the commissioners in supporting a recommendation and many of those objectives and policies had to do with compatibility within the surrounding neighborhood. Assisting in keeping the environment, you know, keeping the surrounding environment clean as there is adjacent to Kahoma Stream.

And after discussions Commissioner Hiranaga made a motion to defer the item and the consensus among the commission because I'm not sure if Commissioner Hiranaga actually asked staff to instead of 10 minutes to review the request and come back with proposed conditions for this item should the commission go forward. And so we're back here. The commission voted to approve the motion. I believe we're finished after F-2.

I have a list of proposed conditions for this body to consider. I had Director Hunt review and I also had the applicant and lack of a better term, his people review and now I'd like to pass out the proposed conditions and then when I come back if we have – you need additional clarification or discussion I'd be gladly to do that.

Mr. Starr: Okay, if you have them on paper, why don't you give them out and then why don't you kind of briefly go through them as well. And thank you for getting it done for us and even on paper.

Mr. Hunt: The applicant has a copy?

Ms. Loudermilk: Yes, the applicant and his people have copies. So if I may Chair, I'd like to briefly go over the conditions. Conditions 1 through 5 are what the department would consider our standard conditions having to do with the lifetime and the operation of the permit itself regarding the time frame, a non-transferability clause, the insurance policy as well as developing the property in a substantial compliance.

Project specific conditions, Condition No. 6 we are proposing to you know, just limit the transient vacation rental within the existing dwelling and further clarifying that no special events shall be conducted on the property. There was a question from the commission whether there are weddings or something similar to that effect and the applicant had indicated that they do not conduct any type of special events.

Condition No. 7 is "that a manager be living full time on the property."

Condition No. 8, would be "that the public access to and from the shoreline over the property shall continue to be available to the fishermen and the local general public."

On page we'll start with Condition No. 9, "that the existing dwelling shall continue to be made available for overnight use by community organizations when not rented for transient vacation rental use."

No. 10, "that parking shall continue to be provided on site."

Conditions 11 through 14 are our standard conditions that we receive from the Department of Fire and Public Safety having to do with evacuation plans, smoke detectors, fire extinguishers and the inspection. And staff would just like to note when we went to the site visit applicant was already in compliance with these conditions.

No. 15 would be that, "the applicant shall own or operate another transient vacation rental in Maui County."

Condition 16, "that he inform the Real Property Tax Division he is operating a transient vacation rental." And just for the commission, the applicant does not claim a homeowner's exemption and has not been claiming a homeowner exemption for this property.

No. 17, "that the applicant will include the permit in all advertising."

No. 18, would “have the applicant provide us evidence of the general excise tax and TAT as well as evidence that both taxes have been paid and that we would keep in file.”

And then lastly, would be Condition No. 19, would be “the compliance report for review and approval with any request for a time extension amendment.”

Those are the proposed conditions that the department has put together for your consideration. Just for the commission’s information much of these conditions are pulled from either other B&B or transient vacation rentals that have already been approved most notably the Luuwai in Makena that went through the Council in which the situation was similar that the owner does reside on the island though the circumstances of the use are slightly different. And that concludes the department’s summary on the proposed conditions at this time.

Mr. Starr: Good work in putting these together. Members does anyone have a question, a comment or a motion? Dr. Iaconetti.

Mr. Iaconetti: Condition 18, states, “has been paid for the current period.” Does that mean that these taxes had not been paid prior to the current period?

Ms. Loudermilk: Not that was not the intent Doctor. We can work on language. What the intent was first of all to make sure that a current copy of both the TAT and GET are on file with the department and then a annual submittal showing that the applicant has in fact paid and is in compliance with paying those taxes. That is the intent not to have been paid for the current period.

Mr. Iaconetti: So we can assume that he has been paying taxes in the past?

Ms. Loudermilk: Yes, he has. Staff went to the Department of Taxation website and both taxes are currently up to date.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I apologize for not being here this morning, I was teaching. You said that the applicant lives fairly close to this place. Can you tell me how close?

Ms. Loudermilk: Across the street approximately 200 feet away is the front part of the property.

Mr. Mardfin: That’s close enough. Yeah, I mean, we’re not talking a mile.

Ms. Loudermilk: No, we’re not talking a mile. We’re talking approximately 200 feet south, and so he drives every – sees the property almost every day.

Mr. Mardfin: And condition 7 would have a manager on site. So if there were any problems, neighbors would know where to go to complain or?

Ms. Loudermilk: Yes, yes. As well as part of the discussion I believe having to do with what the department's preference would be for – in a situation like this. Is that a fair representation Jeff?

Mr. Hunt: I think the on site manager addresses legal concerns that a pure TVR is prohibited by our laws, however, B&Bs are specifically allowed and so this is one of those hybrid gray areas. With a manager we believe that it's not inconsistent with the intent of the prohibition. Also, the manager can respond to neighbor concerns about complaints about parking or noise and also having an on site manager provides local housing for our residents.

Mr. Mardfin: And local employment.

Mr. Hunt: And local employment.

Ms. Loudermilk: Yes.

Mr. Mardfin: May I ask the Director. With these conditions would the department be amenable to a recommendation for approval?

Mr. Hunt: Yes.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I'd like to suggestion on item 7, the word, "property" be inserted before manager.

Ms. Loudermilk: That there shall be a "property manager living full time on the property." Okay.

Mr. Hiranaga: Because it could be any type of manager.

Ms. Loudermilk: Point taken. Mr. Hiranaga, you're pretty sharp for 4:15 in the afternoon. Thank you very much.

Mr. Hiranaga: And did we specify a number of years? I know there's a pound sign there.

Ms. Loudermilk: I have the pound sign. I believe the initial motion which failed recommended three years.

Mr. Starr: I would hope that if someone, if there's motion that the maker of the motion would insert a number there.

Ms. Loudermilk: And then to note on that same condition no. 2 on the second to the bottom line I have a one-year period but that should be whatever year period in which the – is the period being proposed one-year from the effective date, within one-year, two-years, three-years.

Mr. Starr: Go ahead Director.

Mr. Hunt: I believe in item or Condition 16, it should be "operating."

Ms. Loudermilk: Thank you. That he is an operating.

Mr. Hunt: Chair. Mr. Mardfin, asked if we could recommend approval on this. I said earlier, we don't like the idea of people coming in with TVRs and then we change them and I hope this isn't setting a precedent but I think we can rely on the circumstances on this particular individual application. There's a lot of support. The applicant seems to be working with the community. He's given some public benefit. He lives in the neighborhood. And giving those kind of specific factors in this case, I think we're comfortable coming in at this last minute and putting a manager in there. But I don't want to send the wrong message that we would do this a lot or in every case.

Mr. Starr: Okay, Members? Would anyone like to offer a motion.

Mr. Iaconetti: I've approval with the conditions as stated.

Ms. Domingo: Second.

Mr. Guard: How many years?

Mr. Iaconetti: Three years.

Mr. Starr: Okay, we have a motion by Dr. Iaconetti.

Mr. Iaconetti: Conditional permit for three years.

Mr. Starr: Seconded by Commissioner Domingo. And the motion is and it's a recommendation.

Ms. Loudermilk: Yes, this will be the recommendation from the commission to the Maui County Council.

Mr. Giroux: I've got a – if this passes I gotta draft an ordinance and lately we've just been having trouble with people running businesses under corporations as far as when we're trying to deal with conditional permits. And I was just wondering if there could be any conversation that would clarify this matter before we got upstairs as far as getting this permit to a person instead of to a corporation?

Mr. Starr: Yes, Mr. Moffett, could – what I think Corp. Counsel was asking for and it's I think it's better for everyone concerned because you know, I think that a lot of the reason why there's so much sympathy for this is because of you, yourself, and what you've been doing that it be done in your name. Is that viable?

Mr. Moffett: Yes.

Ms. Loudermilk: So then the staff will modify every condition that has "William Moffett, Managing Partner, Kahana Nui LLC," to "William Moffett."

Mr. Starr: Okay, is that consistent with the intent of the motion?

Mr. Iaconetti: Yes.

Ms. Loudermilk: Corporation Counsel, does that satisfy your concern?

Mr. Giroux: Yes, yes it does.

Mr. Starr: I just want to comment that you know this really is a special and unique case which is different from all the others. This kind of serves as the Maui terminus of the yellow brick road for those who live on the water. You know, this is the friendly place where you can come at the end of our voyage and be welcome. I think that was something unique and really moving and I kind want to thank Mr. Moffett for providing that facility for the folks on Molokai and Lanai. Commissioner Hiranaga.

Mr. Hiranaga: Just a comment. If this conditional use permit recommendation is approved and sent to the Council and the Council does approve the conditional use permit as recommended, you may want to note that if the B&B ordinance is passed by the Council, personally when this permit comes back to the commission, I'll be looking for you to comply with whatever ordinance is in place. That this is a temporary fix not a permanent fix. Because once the Council creates a law I think everyone should comply with it. And right now the law is outdated but it's going to be revised very shortly.

Mr. Starr: Okay, members we ready to vote on this? Okay, all in favor please raise your hand. All opposed.

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

**VOTED: To Recommend Approval of the Conditional Permit for a Period of Three Years (3) to the County Council With Conditions.
(Assenting - W. Iaconetti, D. Domingo, K. Hiranaga, J. Guard,
W. Mardfin, W. Hedani, J. Starr)
(Excused - B. U'u)**

Mr. Starr: Okay, congratulations and good luck and I want to especially thank Robyn and staff for working hard and getting it done.

Ms. Loudermilk: Thank you commissioners.

Mr. Hunt: For the record, I have that seven in favor and zero against.

Ms. Loudermilk: Thank you.

Mr. Guard excused himself for the remainder of the meeting.

Mr. Starr: Okay, for the Director's Report we turn to no one other than our Director.

I. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

Mr. Hunt: I don't really have a report, but on today's applications what we did especially with the TVRs is we're starting to deal with and narrow down all the different unique situations. It's helpful to staff in your deliberations to explain why you support a project or why don't, your concerns, the unique situations regarding each one and that gives us direction for the future so that we can come back with a recommendation that is consistent with the will of this body. So that's just kind of an overall comment on that.

Mr. Starr: Commissioner Hedani first.

Mr. Hedani: Just a perspective that I wanted to offer in response to that is that in this particular case, there were no objections filed from anyone within the neighborhood which is rather unusual and in the prior case that I voted against the TVR within the agricultural area there were objections that were filed.

Mr. Hunt: And I think that's helpful to have those comments to us. It's interesting to note that I went through our applications and I took an estimate and I believe 70% of them are receiving at least some neighbor opposition. So I think there's out in the community there's this at least from some perspectives, "well, what's the problem with these TVRs, why don't you just ignore them or let them operate and then once the laws change you can start enforcing." Well, there's a lot of concerns right now with these and if we let them operate it's going against at least some of the neighbors to some extent.

Mr. Starr: I know my belief is that, you know, with the conditional permit, the standard, the bar should be set, very, very, very high. That almost any opposition is enough to stop it because it's something that is basically an illegal use that we're making legal because it's a unique situation. Commissioner Mardfin.

Mr. Mardfin: Share with the Director the idea of trying to find a rational that's reasonably consistent over properties. I'm struggling in my own mind as to where my lines are. That's why I often express why I'm for something or why I'm against it both to clarify my own thinking and to give you guidance at least into how my vote's likely to go.

I think I agree with that one of the issues at least in my mind was, you know, somebody being there on the property that can deal with complaints. I agree there were no complaints. One additional factor that impressed me even though wasn't here for the massive testimony I understand you got this morning was the mass of support from other people and the fact that he was giving back to the community. I read what J.B. had to say about he's taking care of streams, he's giving access, all that stuff are pluses and work in your favor. Putting up big stone walls works against you in my book.

Mr. Starr: Okay, anyone have anything else under planning issues? Doc did you have?

Mr. Iaconetti: No, I just wanted to tell Jeff that the comments that you made as to why we voted in favor of this are prudent and those are the reasons why I decided. I came to the meeting expecting to vote against that until I saw what happened. His reasoning was the very reasoning I had, that's why I was in favor of it.

Mr. Hunt: There's a fairness issue that we have to all be cognizant of is like I said earlier, we're not forced to repeat our mistakes if we believe a past decision was a mistake. But on the other hand, you just can't swing back and forth and every other one you approve it. There's a fairness issue that we have to treat everyone the same recognizing that everyone's slightly different, but there's a balance in there.

Mr. Starr: Okay, who else has got anything regarding projects and issues? Looks like we're okay. I guess Mr. Yoshida you're up next for the I-2.

2. Discussion of Future Maui Planning Commission Agendas

Mr. Yoshida: Yes, I think had circulated the memo regarding the items on the next – the November 25th agenda. We would just add that based on the commission's action today, we will also include the tennis court expansion at the Lahaina Civic Center.

Mr. Starr: I believe we did distribute a 2009 schedule, did we?

Mr. Yoshida: Yes.

Mr. Starr: Okay, I have managed to lose mine. Could you distribute it or email it around and also distribute paper on that?

Mr. Yoshida: I think it was circulated with your prior agenda, but we can probably circulate it again. It's the second and fourth Tuesday.

Mr. Starr: I need another copy. Could you email me one and get a paper one to Commissioner Domingo. I know did have it and I lost it.

Mr. Mardfin: Do we need to formally vote to approve that?

Mr. Starr: No. But if anyone has a problem we can deal with it.

3. EA/EIS Report

4. SMA Minor Permit Report

5. SMA Exemptions Report

Mr. Starr: EA/EIS Report.

Mr. Hunt: This is the opportunity for you folks to ask questions regarding the monthly or actually

bimonthly reports that we submit to you regarding the EAs, the SMAs, SMXs.

Mr. Starr: Okay, not seeing any and I guess we're okay. The next regular meeting is November 25th, another fun-filled day here in Wailuku. See you on November 25th. Good meeting everyone. Thank you.

J. NEXT REGULAR MEETING DATE: November 25, 2008

K. ADJOURNMENT

The meeting was adjourned at 4:25 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson
John J.B. Guard IV, Vice Chairperson (excused at 4:20 p.m.)
Donna Domingo
Wayne Hedani
Kent Hiranaga
William Iaconetti
Ward Mardfin (in attendance at 11:30 a.m.)

Excused

Bruce U'u

Others

Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works