

**MAUI PLANNING COMMISSION  
REGULAR MEETING  
JANUARY 13, 2009**

**APPROVED: 2/24/09**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:33 a.m., Tuesday, January 13, 2009, 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. Jonathan Starr: Good morning, one and all, and a happy new year. I thank everyone for joining us today, our first meeting of 2009 as the Maui Planning Commission. The date is January 13<sup>th</sup> 2009. We have with us today Honorable Kent Hiranaga, Commissioner; Vice-Chairman J. B. Guard; Commissioner Ward Mardfin; our Attorney and Deputy Corp. Counsel James Giroux. I'm Chair Jonathan Starr. We have the Director of Planning for the County of Maui, Jeff Hunt. We have Commissioner Donna Domingo; Commissioner Doctor William Iaconetti. We have Commissioner Wayne Hedani. We have Carolyn Takayama-Corden, our Secretary for the Commission. We have Deputy Director of Public Works, Mike Miyamoto; our Planner Robyn Loudermilk. We have other Planners who will be working with us today and they do all the real hard work. We just come and get on camera. They work day and night and do a really good job. And Kenny Hultquist videotaping the meeting.

Before we get to public testimony, just a couple of comments about the agenda. We had two items that kinda got dropped out from the beginning: the Marriott and the tennis, which tennis will be on the next meeting. So we scheduled three items that will – that were Haiku items. And those are to be taken up at 1:00 p.m. so that people from the Haiku area could come in knowing that they'd be after lunch. So we may need to be a little bit flexible in moving other items forward. If we went through the first couple of items quickly, then we can handle the ones afterwards, and then break for lunch, and then take the Haiku items.

We accept public testimony at these meetings in two ways: either you can testify at the beginning of the meeting, which will be momentarily; or you can testify before we take action on any item while that item itself is being presented. So you have a choice, you know, if you want to testify and head off somewhere, that's fine; or if you want to wait for the item and testify, then that is fine. Whatever we can do to be helpful. We do welcome people coming in and sharing their experience, and wisdom, and views with us. That's what we're here for.

**B. UNFINISHED BUSINESS**

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)( A. Cua) (public hearing conducted on November 10, 2008.)**
  - a. **December 5, 2008 letter from CHRIS HART of CHRIS HART & PARTNERS withdrawing the transfer request.**

Ms. Ann Cua: Good morning, Chair, Members of the Commission. As indicated on the agenda, we did receive a letter from Chris Hart of Chris Hart & Partners withdrawing the transfer request and I believe you all have that in your agenda packet.

Mr. Starr: Okay, is there any action required on our part?

Ms. Cua: To acknowledge the withdrawal.

Mr. Starr: Okay. All right. Chris, you have anything to add to this?

Mr. Chris Hart: Thank you, Mr. Chair. Chris Hart, Chris Hart & Partners. I really don't have anything to add except for the fact that in the context of the financial crisis that exist in our country, Marriott, in the context of their bond rating decided that this was too big a challenge to take on at this time. But in terms of the project, we have an additional two years from March 18<sup>th</sup> to begin construction. And so we will be moving forward with the project in that timeframe. Thank you very much.

Mr. Starr: Okay. Commissioner Hedani?

Mr. Wayne Hedani: I move to file the—

Mr. Starr: Wait one second.

Mr. Hedani: Move to file the transfer request.

Mr. Starr: Commissioner Hedani, just wait one second. Any members of the public wanting to testify on this? Seeing none, Commissioner Hedani, please continue.

Mr. Hedani: Move to file the transfer request.

Mr. Starr: Second?

Mr. John Guard: Second.

Mr. Starr: Okay, moved by Commissioner Hedani, seconded by Commissioner Guard. Director, the motion is—?

Mr. Jeffrey Hunt: To withdraw the – or to file the application.

Mr. Starr: Okay, any discussion? All in favor, please signify by raising your hand. All opposed?

Mr. Hunt: We have that as seven in favor and zero against.

Mr. Starr: Okay. Thank you very much.

**It was moved by Mr. Hedani, seconded by Mr. Guard, then**

**VOTED: To File the Transfer Request.**  
**(Assenting - W. Hedani, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo,**  
**W. Iaconetti, J. Starr)**  
**(Excused - B. U'u)**

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

- 1. EMMANUEL LUTHERAN CHURCH OF MAUI requesting a Change in Zoning from County Agricultural District to the P-1 Public/Quasi-Public District for the new church campus and school facilities on 25.263 acres of land at TMK: 3-5-002: 011, Wailuku, Island of Maui. (CIZ 2006/0012)(J. Dack)**

Mr. Jeffrey Dack: Yes, good morning and happy new year. The subject property is approximately 25.263 acres and is located just between the southerly edge of the developed area of Wailuku and north of Waikapu between Honoapiilani Highway, Waiale Road, and Kuikahi Drive. The land use designations for the site are urban district for the State. And the community plan, it's public/quasi-public. The current zoning is agriculture and it's not located in the special management area. Regarding surrounding uses, north of the site is immediately is vacant land, and on both sides of Kuikahi Drive with the shopping center now under planning north of Kuikahi Drive. To the east of the site is vacant land across Waiale Road between the property and the Maui Lani lands, which are now under planning for mixed residential and commercial uses. Immediately south of the site is the vacant Valley Isle Fellowship Church site where a district boundary amendment has been approved recently, and I think a change in zoning also, if I remember correctly. And then to the west of the site is vacant land across Honoapiilani Highway. Elevations of the site range from approximately 323 feet to approximately 384 feet with a moderately sloping site of an average slope of 6.2%. The site is currently vacant having been used most recently for small scaled agricultural operations which ceased in 2004. No waterlines currently serve the subject property. There is an eight-inch sewerline now in Waiale Road. Waiale Road is a recently improved two-lane – two-way, former, canehaul road in its segment running north from Waiko Road to Kuikahi Drive. The applicant sought and on March 7<sup>th</sup> of this year – last year, excuse me, 2008, received the State Land Use Commission's approval of the applicant's petition to reclassify the site from the State agricultural district to the urban district subject to 23 conditions which are included as exhibits to your staff report. The applicant will now give a presentation to describe the project. Then I'd like to return to the – return to present the Department's analysis. Thank you.

Mr. Chris Hart: Mr. Chair, Members of the Commission–

Mr. Starr: Yeah, Chris, you have a power point?

Mr. Hart: Yes, I do.

Mr. Starr: How long will that run about?

Mr. Hart: Ten minutes?

Mr. Starr: Okay.

Mr. Hart: Yeah, it's gonna be brief.

Mr. Starr: Yeah, please go ahead. It's okay.

Mr. Hart: We're trying to be less verbose in the new year. My name is Chris Hart, Chris Hart & Partners. And we have with us today basically our consultant team which is Phillip Rowell who's our traffic engineer, and Stacy Otomo who's our civil engineer. Matt Slepik of our office has been the planner in charge of this project. We also have representatives from Emmanuel Lutheran Church. And we will be having some participation by Pastor Milton Fricke who is the Founding Pastor of Emmanuel Lutheran Church. And it gives us great pleasure to be part of this process for the development of Emmanuel Lutheran Church and School Campus.

The actual parcel was – site was a former Wailuku Agribusiness field, and actually has been lying fallow since 2003. The location is actually between Wailuku– This is Wailuku, Kahului. This is Wailuku Heights. This is Waikapu. So it's an area that was set aside in the community plan which actually was signed in 2002. And it was meant to be basically an open space separation between Wailuku and Waikapu, and was identified in the plan as public/quasi-public. Again, the parcel has been laying fallow since 2003, and it's a 50-acre parcel, including the project site.

It was designated for public/quasi-public uses in the 2002 update of the Wailuku-Kahului Community Plan. This basically is the matrix for the Wailuku-Kahului Community Plan. It's important to note that essentially the Citizens Advisory Committee in 1993 identified it as public/quasi-public. Also, in 1994, the Planning Department basically supported that. The Planning Commission recommended that in 1994 as well. In 2002, the County Council essentially adopted in the community plan the parcel as proposed zoning: public/quasi-public.

The 50-acre parcel was subdivided out from Wailuku Agribusiness lands in 2003. The 50-acre parcel then was further subdivided into two 25-acre parcels. One parcel was sold to Valley Isle Fellowship and the other to Emmanuel Lutheran Church Maui. At this point, I think that we would like to have Reverend Fricke come up and just give some brief background. He is the founding Pastor, again, of Emmanuel Lutheran Church of Maui. And we would like to have him introduce himself and say some things about this project in the context of the importance to the future of the school and the church.

Mr. Starr: Fine. Reverend Fricke, welcome. Please.

Reverend Milton Fricke: Good morning, Mr. Chairman and Commissioners. My name is Milton Fricke. I've been the Pastor of Emmanuel Lutheran Church for the past 40 years. In 1967, Emmanuel Lutheran Church was chartered as a corporation in the State of Hawaii. In 1971, we built our first unit. In 1972, we began a preschool. Our denomination is one that has Christian schools across the nation. We feel it's a very important part of our ministry. In 1978, we began Emmanuel Lutheran Grade School operating out of Kahului Union Churches' facilities for about seven years. In 1984, we began construction on our own property at 520 West One Street in Kahului. Since that time, our school has grown. We have approximately 175 students now enrolled in our school. And we see the need of providing this kind of education for more families on the

island. And so we began in 1990 actually to think in terms of a bigger piece of property. The present property is approximately one and a third acres. So after looking and working with A&B for a long time trying to find pieces of property, we were approached in 2001 actually, about this piece of property. And as we – at that time, we thought that Saint Anthony would build a high school on the adjacent property. The Bishop backed out of that and the Valley Isle Fellowship then purchased that piece of property.

As we have continued to grow, we see the need in our community and especially with a lot of new housing in this general area, we felt that this was a very, very good piece of property for us to continue this kind of program. And so we would like to see this property move into the public/quasi-public zoning which is in the General Plan now, and we were approached with the understanding that that could happen. We have gone through the past three years. We've gone the process with the State. We had considered subdividing in two pieces originally, but the former Planning Director would not allow that to happen, so we spent three years with the State trying to get it – move it into the urban designation, and we have that designation now at the present time. Again, we operate both a preschool and a grade school. The preschool has 38 students at the present time, and the grade school has, I think, 175 or 176 at the present time. I think that kind of gives you a little bit of a background. The congregation's growing. We hope and pray that the school will continue to grow also.

Mr. Matt Slepín: Good morning. I'm Matt Slepín from Chris Hart & Partners. I'm the senior associate attached to this project. I want to conclude our presentation. Just a very brief summary of the project itself, the process it's gone through, and some of the considerations.

The – as Pastor Fricke noted, the existing church and school site is very small for what they're attempting to do and for what they project in the future. They have a little 1.3 acre site currently with very little space and enrollment going up. As a result of that, they want to create a new campus for the school and the church sanctuary. The idea is that it would be a sort of a low density, village green structure that would – or campus that would fit in with the drive as you go down from Wailuku to Waikapu. A great deal more space for students, many more classrooms, and they project that the enrollment could go up eventually to about 450 students. The church sanctuary would also be able to seat about 450 people.

As this is a change in zoning request, there are no construction plans at this point. We're still only in the land use control phase of the project, but the church hired a very noted firm, Flansberg and Associates out of Boston, I believe, to produce a conceptual master plan for the project of which this is it.

Honoapiilani Highway running to Wailuku, Lahaina that way, Waiale Drive down there. The idea would be you've got an entrance, a landscaped entrance that leads to this roundabout, school, classrooms, library, administration building, parking, play fields, and the church sanctuary up there. As I say, this is very conceptual at this point because we're only at the change in zoning level.

Briefly, the processing history on this, as Pastor Fricke mentioned, early on, the Planning Department advised that even though the plans only call at this point for developing less than 15 acres of the site, because the site in total is 25 acres, the district boundary amendment would have

to be processed through the State Land Use Commission, we filed a petition for the district boundary amendment back in March of 2006. And almost exactly two years later, we received the approval for that. It's been about a year now. Then in September of 2006, we filed the change of zoning application with the County to change it from agriculture to public/quasi-public.

Very briefly, the potential impacts issue and mitigation measures of the project—I've listed up here. It's discussed at greater length in our application. Traffic and roadways—as you can see from that exhibit, the access would be off of a driveway from Waiale Drive with an emergency only access onto Honoapiilani Highway. We had a traffic impact analysis report prepared for the project. In general, there were no substantive impacts from development of this project. There was one intersection where it was noted that in a future year there would be problems. I believe that's Waiale Road and Kuikahi Drive. However, there are other projects in the vicinity, notably Maui Lani, that are required to mitigate that intersection themselves when the warrants hit, and they're in advance of this project.

There's no existing drainage system right now on this undeveloped piece of property. There is a drainage channel that crosses along the edge. There will be a new drainage system with greater catch basins. And the summary would be that there's no increase in runoff flowing into either the drainage channel or onto Waiale Road. Infrastructure again, there's nothing currently serving the property in terms of water, wastewater, or electricity, but the project, we would be able to tie into existing County lines and MECO lines.

The project site was former industrial agriculture, and therefore, it was subject to agricultural chemicals during its life. It also was noted that it's somewhat near to the former Waikapu Landfill. As a result, we had a phase one environmental site assessment performed. There was no evidence of any contamination or hazardous substances. However, in keeping with the recommendation of that report, they will be doing soil testing before there's any occupancy of the site just to make doubly sure.

Historical and archaeological resources—unsurprisingly, because of its history, there's nothing there now. It's been heavily disturbed for many decades on end. We did have an archaeological survey which found nothing other than the existing Kama Ditch which is historical in terms of the period of industrialized agriculture, but there's nothing proposed anywhere near the ditch. There will, however, be archaeological monitoring carried out during ground-altering activities as a precaution. Biological resources is much the same. Again, it's a heavily disturbed site so there's nothing pristine or natural, critical or endangered habitats left at this point.

In terms of agricultural resources, as we discussed, this site has been planned for exactly this use for many years at this point. The community plan was adopted, I guess we're going on seven years ago now, for public/quasi-public uses, and there's a history before that. And agriculture ceased shortly upon the change of that community plan designation.

So the development of granting of this change in zoning wouldn't have any impact, substantial impact, to agriculture, but it would fulfill the intent of the community plan.

The project site is located along Honoapiilani Highway, so we looked at some view plane issues.

There's no identified protected view planes across the site. And development of this project with its low density concept would, in fact, keep that sort of visual separation that we're looking for still between Wailuku and Waikapu rather than say a dense, residential, housing development or something like that.

We did do a couple of view simulations which are in your report. I just picked out a couple here. This is Honoapiilani Highway heading down from Wailuku to Waikapu with the church site off there. So the idea would be landscaping, grass, these low, cluster buildings. This is Waiale Drive going the same way—Wailuku to Waikapu looking up, and again.

In conclusion, our analysis shows that there's no substantial impacts from the granting of this zoning. And it would, in fact, fulfill the intent of the community plan update, and what this piece has been proposed for, for a very long time. Thank you for your attention. I'll answer any questions if you have them now.

Mr. William Iaconetti: Do you have plans for the other ten or more acres that aren't included in here?

Mr. Slepín: There are no plans at this point. As discussed in the application, the church has their conceptual plan at this point occurring in several phases, which is based entirely on funding. As a nonprofit, they have to get the money where they can. However, the proposed final phase of this point still doesn't involve anything on those other acres. So essentially, all of this over on this north side, there's no plans for this. Now, at some point in the future, something might happen, but there's no plans at this point.

Mr. Iaconetti: Would the change in zoning create a problem if they wanted to develop that in some manner, or develop it into an ag school sort of situation?

Mr. Starr: Director?

Mr. Hunt: The change in zoning is consistent with the community plan. So that should be your over – from the Planning Department's perspective, that's our over-guiding principle is implementing the community plan. Whether that leads to restrictions in the future, that may be, but that is what the community plan calls for is it should be public/quasi-public.

Mr. Kent Hiranaga: I guess one of my concerns is the impact to the ocean views along the north shore of Maui as you drive north along Honoapiilani Highway. And the pictures that you offered just doesn't seem to be consistent with my recollection of those views. And maybe it's because of where this particular site is. You know, it's at the corner of Honoapiilani and Kuikahi, but my recollection is as soon as you leave Waikapu Town or now the Spencer Project, you can see right down the entire north shore all the way to Huelo Point, and Kahului Harbor as you drive. Is my recollection wrong 'cause I've driven that road for 40 years?

Mr. Slepín: Well, this parcel is before you get to the Spencer Project. So you may be—

Mr. Hiranaga: No, I'm going from Waikapu to Wailuku.

Mr. Slepín: Oh, oh, oh, going north. I see what you're saying. Well, this, of course, is going in the other direction rather than north. This is going – driving south.

Mr. Hiranaga: You're looking south.

Mr. Slepín: But – yeah, exactly. There are some views of the ocean and the Central Valley from the highway at this point. It's not consistent across the site, but there are some. And the intent of this project isn't to be invisible exactly because we – the conceptual plan is to be actually sort of attractive. And that the idea is that the church, in particular, would provide kind of a landmark building in a way that – something like Makawao Union Church and some of those other churches that are appealing in of themselves. There would be therefore, as I say, there's some impact of the view.

Mr. Hart: Chris Hart. You know, I understand your concern. And one of the parcels were basically being looked at by the Citizens Advisory Committee and being proposed during the time of basically the update of the Wailuku-Kahului Community Plan. There was a desire on the part of basically the Advisory Committee and I think on the Planning Department to really try to create a separation or a sense of separation, open space separation, between the development at Wailuku and Waikapu. And therefore, they chose a public/quasi-public in order to basically have a development that would be a more campus-like, open space-type of development as compared to a single family, residential subdivision or some other urban more dense urban kind of use. And that was the intention essentially, as you're driving either from Waikapu or from Wailuku that there would be an area that would have a sense of open space. And that was discussed also through the process at the Council level, specifically. Alan Arakawa was the Chair of the Land Use Committee at that time, and that was the discussion during that period. But obviously, as Matt says, there will be development on the site. There is an intention that the church itself, the sanctuary, would become a landmark-type building from the point of view of the community. They essentially, Emmanuel Lutheran Church, has retained the services of Jim Niess of Maui Architectural Group who's going to be actually be the local architect to design the facilities. But the intention is to maintain a campus-like feeling with open space surrounding the building, and not to create a dense urban kind of development in order to enhance the sense of open space, and also really to open – have the views be open to the public.

Mr. Hiranaga: I'm not sure if you answered my question, but my recollection is that as you leave Waikapu and drive to Wailuku, you can see Kahului Harbor. You can see the North Shore of Maui. And you're going to put an 86-foot high church there which some people may call it a landmark. Other people might call it something else. So, you know, I'm just–

Mr. Slepín: It wouldn't be 86 feet.

Mr. Hiranaga: Okay, 85 feet, 11 inches, and three quarters.

Mr. Slepín: The zoning would restrict it to, I believe, 35 feet.

Mr. Hiranaga: What does it say in the staff report, then? Eighty-feet.



Mr. Slepín: If it says 85 feet, I think that would be in error.

Mr. Hiranaga: I hope so.

Mr. Slepín: The zoning ought to restrict that to 35 feet.

Mr. Hiranaga: It's in the staff report. I read it.

Mr. Starr: Jeff?

Mr. Dack: It's on page 28 of the staff report. When staff asked the applicant for the building heights that were associated with the view simulations, those were the figures that we received: a little bit under 86 feet from the peak of the steeple to the floor for the church. And staff had the memory, maybe mistaken, but had the memory that there was going to be some kind of request for either a legislative change or possibly a variance to allow for the – at least the church steeple to extend above otherwise height limit of the – in the district which I recall is 35 feet.

Mr. Slepín: Commissioner, I think I can just clarify it.

Mr. Hiranaga: I'm sorry. What page is that again?

Mr. Dack: Page 28.

Mr. Starr: Can we ask Jim Niess to come up and tell us how what the maximum height of this is going to be?

Mr. Jim Niess: Good morning, Commissioners. Jim Niess, Maui Architectural Group. And as Chris mentioned, we have been retained to carry this concept forward. Actually, there is no plan at this point, but, you know, we would be intending to work with the zoning envelope. Now, that being said, one thing should be pointed out that this site slopes 40 feet down to Waiale Road. So most of the buildings and the mass of the project will be down below the roadway. And it's a good thing for the school as well for acoustical reasons. It's only the sanctuary that would be near the road. And it's oriented in such a way at this point that it takes into account that view corridor that goes down toward the harbor. And that's something that we could – we would – as we develop this concept a little further, we'll pay attention to.

Mr. Starr: So in other words, you're saying the intent is to keep it 35 feet? So you wouldn't have a problem if we would recommend a condition to that effect?

Mr. Niess: I should maybe have the–

Mr. Slepín: You could do so, but as I was attempting to point out, the public/quasi-public zoning already restricts the height to 35 feet so that I think where the confusion was is in the change in zoning application on page 5, we did mention that—and this is I must admit at this point about two years old, two and a half—that they might want to get the church steeple higher than that. But if they wanted to do that, they would have to separately file a height variance that would go before the

Board of Variances and Appeals. So the condition wouldn't be too meaningful, I think, because they're already restricted to 35 feet. The 86 feet, I think, is just an error. They would not be allowed to build that.

Mr. Hiranaga: So your answer is no to Chair Starr's question about a condition not to exceed the underlying zoning? You're saying you might want to go for a variance, so your answer is no.

Mr. Slepín: My answer was we could accept it if you wanted to put it, but they would like to consider the possibility at some point of having something higher, not 86 feet. They would never be able to build a church that big. But if for instance the top of the steeple, not the inhabited part of the sanctuary, but the steeple part, if the steeple wanted to go 40 feet or something, 45 feet, they would have to go through a whole variance procedure to do it. So my answer is that I think it would be sort of an overkill to do that because they don't have any plans at the moment.

Mr. Hiranaga: So that's a no?

Mr. Slepín: That's a long-winded no. How's that?

Mr. Hiranaga: Okay, that's what I wanted.

Mr. Slepín: There you go.

Mr. Guard: On one of our documents that we got from the Wailuku Main Street Association, this might help all of the Members, the very center of their little logo is the Wailuku Church in there, and the steeple's fairly small, but it is a significant landmark that the Wailuku Main Street Association chose to incorporate in their logo. So it's only the steeple. I don't think it's going to be like living area or the entire building going that high that I wouldn't wanna stop a church from applying for a variance in the future later.

Mr. Hiranaga: Not sure if this question is for the applicant, but should I limit my questions at this time for the applicant?

Mr. Starr: No.

Mr. Hiranaga: I guess, you know, one of the underlying themes about the community plan is to preserve agricultural lands. And here we have lands, 25 acres, neighboring 25 acres, which is classified as ag prime, Class A. You know, this is like one of the most cultivatable lands on this island. And you guys are saying, well, it's only 100<sup>th</sup> of a percent so let's let it go through. And then you're giving people like in Launiupoko who have to, you know, you can't even graze cattle up there, and you're saying, hey, this is not a proper use. I'm just wondering, Planning Department, where do you draw the line 'cause this is – I mean, if you're gonna farm, this is the type of land you're gonna farm on? You know, the water source is right there. West Maui Mountains is running down the stream in Waikapu.

Mr. Hunt: We draw the line in accordance with the community plan. The community plan in this instance, the community requested and the Council adopted that this land be public/quasi-public.

So while there are – I imagine there are policies in the Wailuku Community Plan speaking to preserving agricultural land that would apply to the agricultural designated lands in the community plan. At this point, our direction is to implement the community plan. The change in zoning is consistent with the community plan.

Mr. Hiranaga: Just one followup question. On page 25, item no. 5, there's a statement which I'm not sure who made, but it says:

The Maui Planning Department has indicated their support for the proposed project . . . however, the Department also called for the retention of the existing ag district land located to the west of the project area across from Honoapiilani Highway.

So those lands I guess are not in the community plan for residential use or for higher use than agriculture?

Mr. Dack: That is correct. Those lands you're referring are designated agriculture in the community plan on the west side of Honoapiilani Highway from the project site.

Mr. Hiranaga: Is that between the Waiolani Subdivision and—?

Mr. Dack: And Kehalani, yes, between Waiolani and Kehalani.

Mr. Hiranaga: That's not all built out? There's still a section that's not built out?

Mr. Dack: There's still a pretty substantial section that's not built out, yes, very large, actually.

Mr. Hiranaga: All right, thank you.

Mr. Starr: I kinda have a followup to Commissioner Hiranaga's question for the Director which is that we heard that this was set aside with the intent—and I know Chris was certainly around then—to be an open space buffer. And somehow he mentioned that the justification for the pqp was to have it as that open space, and it does serve that well now. You know, I bicycle along there, and, you know, it's nice to have that gap and that view, and it is a really beautiful view. How does this – you know, what happens when we look at these open space buffers which we know was something we want between our communities on our major roads and see them getting built up like this especially when we're talking about very tall structures?

Mr. Hunt: I think Mr. Hart was referring to – or using the term “open space” loosely. If the community plan had designated this as open space, then I think there would be a different recommendation coming from the Planning Department. Public/quasi-public designations allow for some development, but in comparison to a commercial shopping center or a dense residential subdivision, the amount of development is far less, and so comparatively, there'll be more open space, there'll be more views, certainly not as much as an outright open space designation.

Mr. Hedani: It's not a question for the applicant at this point, but a comment that I'd like to offer at this time is that from my perspective, when a community plan over six years or eight years adopts

a use for a particular area, it's kind of the will of the people of that area that they would like to see that happen. From my perspective, when a community plan is adopted, the zoning should almost automatically go along with the community plan instead of each individual applicant have to either come in to file for a change in zoning to match the community plan. In this particular case, I think it's appropriate from a use standpoint. And when you evaluate the request, at 50,000 square of building over 25 acres, you're looking at 4.6% of the land being dedicated for structures with 95% of the land being designated for open space and landscaping. And that to me would be preservation of open space within the corridor.

Mr. Ward Mardfin: Could you turn to Exhibit 8 in the staff report? I'm going to ask a – well, I'll ask a question. Exhibit 8 is the testimony of the Office of Planning in support of the petition for Emmanuel Lutheran Church before the Land Use Commission. On page 7 of that, it refers to item 5, Cultural Historic and Archaeological Resources. The second paragraph under there says:

The Office of Hawaiian Affairs (OHA) has expressed concerns that given the property's potential for subsurface archaeological sites including burials, the 11 test trenches excavated during the petitioner's archaeological field inspection are inadequate for the 25-acre project area. OHA has requested that a comprehensive archaeological inventory survey be submitted to the Department of Land and Natural Resources, State Historic Preservation Division, for review and approval.

Was that ever done?

Mr. Slepín: The Office of Hawaiian Affairs is not the body that oversees archaeological work. They did make that comment and Office of Planning passed it along as they have to. However, the State Historic Preservation Division which does review and oversee this work was happy with the work that was done. However, as I mentioned, there will be archaeological monitoring onsite so that even though I don't believe anybody expects there to be anything after I'll say approximately, a century of heavy duty industrial agriculture, there will be archaeological monitoring in the case – in case there is something.

Mr. Mardfin: Then the answer is, no, that you did not take OHA's advice?

Mr. Slepín: We did not take OHA's advice unless they – OHA frequently offers – opines in areas that is not their bailey wick. We appreciated it, but the actual office that does this work did not agree with their comment.

Mr. Starr: Go ahead, Chris.

Mr. Hart: Thank you, Mr. Chair. Chris Hart. The archaeological inventory level survey that was done was done by a recognized qualified archaeologist in the State of Hawaii. And it was accepted by the State Historic Preservation Division. It may be a difference of opinion that maybe they would like to have had more trenching done, but in the context of the study that was submitted to the State Historic Preservation Division, it was adequate.

Mr. Guard: And then there's going to be archaeological monitoring where the buildings are going,

and most of it's still going to be open space, right?

Mr. Hart: That's correct. And all of the trenching for utilities and so on will be monitored—the foundation work and all of the utilities.

Mr. Starr: Commissioner Mardfin, do you have more?

Mr. Mardfin: I was just gonna say, Mr. Hart, that you said that SHPD didn't think it was necessary, but the fact is that OHA was aware of what had been done and found it inadequate from their point of view.

Mr. Hart: I understand that, but I think I have to stand by what Matthew Slepín said. Basically, OHA is essentially not involved in essentially the process of reading – reviewing and attesting to the quality of work done by professionals in the community, namely in this case, archaeologists. This property has been in agriculture. It has been dug and basically farmed for many generations, and there was nothing found of any significance on the site. There is a remnant of the Kama Ditch which will be preserved. We have definitely agreed that in the context of the construction that monitoring will be done in terms of further ground-disturbing activities, but it was – it was basically noted, but essentially, the State Historic Preservation Division and the Land Use Commission didn't feel that there was a need for additional work.

Mr. Mardfin: Earlier on, you had a diagram showing the master plan. That one. Can you tell me where the 11 trenches were dug?

Mr. Slepín: If you could pull out the archaeological report, I believe—

Mr. Mardfin: The reason I asked, I mean, if the 11 trenches are in the far right-hand side of that diagram, it's not where the buildings are gonna take place. If the 11 trenches were dug sort of in the central portion, it is where the buildings are gonna be dug. On 25 acres, I can see you could do 11 trenches. It wouldn't tell you anything about where the buildings are gonna be.

Mr. Slepín: If you look at the change in zoning application, in the appendices at the archaeology report, there's a map showing where the trenches were dug.

Mr. Dack: The Commission does that have, but I'll provide my copy over to Commissioner Mardfin.

Mr. Slepín: Oh, okay, sorry. Sorry.

Mr. Starr: Yeah, please pass that around. In the meantime—

Mr. Mardfin: Leave that up, please, so I can do a visual comparison.

Mr. Slepín: But essentially, they're all across the site. They're scattered across the site more or less equally.

Mr. Mardfin: Does "TR" mean trench?

Mr. Slepín: Yes.

Mr. Mardfin: I see more than 11.

Mr. Dack: It looks like there's 25, actually, indicated in the table.

Mr. Mardfin: Okay, then I'm satisfied. Thank you.

Mr. Starr: Jeff, is that the application?

Mr. Dack: That's correct.

Mr. Starr: Okay, so that contains all the information we didn't get about the project. Something for future discussion.

Mr. Mardfin: That takes care of my concerns. It seems to be well distributed.

Mr. Starr: Okay. Other questions? Commissioner Hiranaga?

Mr. Hiranaga: I guess this is not really a question, but a statement. Going back to the proposed location of your church facility, which you may apply for a height variance in the future, it states in the staff report that the church facility will be approximately, 80 feet from the boundary with Honoapiilani Highway. I guess it is the custom when building facilities such as this to place the church at the highest point on the site, and also try to make it the tallest building in the development. But I guess I have concerns about it being 80 feet from Honoapiilani Highway and its impacts again on the existing ocean views. And I'm not sure if any of the Commissioners have had a chance to drive South Kihei Road where the new church that we approved – was it this year or last year? It's under construction. But it is extremely imposing onto – as you drive by it. I don't know if it's 30 feet from South Kihei Road, but I'm just expressing a concern that the proximity – 80 feet is really not very far a distance. I'm hoping that the applicant will take that into consideration that not everyone will consider this building a landmark in the positive light.

Mr. Starr: I have a couple of questions seeing it's slowing down. You know, first of all, where is the nearest transit stop to this facility? And I know that's fluid, but I am – do want to have an answer to that question.

Mr. Slepín: You mean the public bus route?

Mr. Starr: Yeah.

Mr. Slepín: Yeah, I don't believe they stop anywhere in this vicinity because there's no residences immediately in the vicinity. There is a stop, I believe, at the– Sorry. Jeff?

Mr. Dack: It's on Waiale. There's one on Waiale Road. I'm guessing 500 to a thousand feet or so north of the intersection with Kuikahi Drive adjacent to a large apartment project and complex. Unfortunately, I can't remember the name of it at the moment.

Mr. Starr: So that's approximately how far?

Mr. Slepín: That would be approximately— Let's see. The homeless shelter, yeah, but I'm trying to think. That's probably a mile?

Mr. Dack: Should be closer to half a mile or maybe less.

Mr. Guard: Is there room for a bus turnout on this property anywhere or would there be on the 25 acres?

Mr. Slepín: The Department of Transportation at one point made a comment that they would like to see a bus shelter in the vicinity but not on the project site. I don't know if that letter's in the staff report.

Mr. Starr: Yeah, there is a letter to that effect. And we would like to see — you know, know how far it is from a transit stop for all future projects. And I have a real concern. Can you go back to the picture showing Waiale Road heading south? You kind of have a before and after. I bicycle and walk that quite a bit. And could you go to the after picture? What I see happening is that pedestrians including school children who are trying to walk or bicycle are getting shunted off into the roadway. And I'm wondering if you really intended to do that, or there's an intention to create a bicycle and pedestrian path or lane when you get into the property?

Mr. Slepín: That question was raised as well by Public Works, perhaps, or Planning Department. Actually I think it was your letter about bicycle paths. The plan, the conceptual plan, doesn't call for a bicycle lane, but I believe in our discussions, the church is not opposed in the road-widening lot that they create to putting in a bicycle path or bicycle lane in that section of the road.

Mr. Starr: How about on Honoapiilani Highway?

Mr. Slepín: There's no access onto Honoapiilani Highway from this project.

Mr. Starr: Yes, but there is frontage. And either there is the ability for people to walk and bicycle outside of the traffic lane or there isn't. And that depends on the landowner who's gonna landscape it. Matt?

Mr. Slepín: Are you talking about putting in a bicycle lane on the highway or are you talking about putting in a bicycle path on the property?

Mr. Starr: It looked like right now that from — that the shoulder's gonna go away from your pictures.

Mr. Slepín: Well, again, these are very conceptual drawings because we're not — as Jim mentioned, there aren't any plans at this point. We're just looking for the zoning as a part of the land entitlement process. The church, as I say, hired Flansberg and Associates to come up with a conceptual plan, but there's nothing concrete about that whether there would be shoulders, not shoulders, whether the building's going to be white, or blue, whether it's going to be this or that.

Mr. Starr: Is there a willingness on behalf of the applicant to accept a recommended condition and to carry that forward that there be a bicycle and pedestrian path or lane on both the Waiale and Honoapiilani sides of the project?

Mr. Hart: Could I just say that obviously, in the context of the development of the project, we are interested in working together with the State in both cases, and developing – you know, making sure that there are bicycle paths along the highway? And certainly, we'll work to achieve that. The school, because of the fact that it is a school, is gonna be secure, so it's really difficult to basically welcome people into the site, but certainly, we'll work with the State and the County to develop public bikeways. And if that is a condition, you know, we'll certainly do that as far as the frontage of the property is concerned.

Mr. Starr: So you're willing to accept that condition?

Mr. Hart: Yeah.

Mr. Starr: I mean it's hard to see a school where children cannot walk or bicycle to it.

Mr. Hart: That's correct. We will work with the State.

Mr. Hedani: Just a comment that on Honoapiilani Highway, there are bike paths on either side of the highway from Wailuku all the way to Maalaea. And I believe there are bike paths on Waiale Drive as well.

Mr. Starr: Well, on the Waiale one, it's going away, on their picture. That was my concern. Members? Commissioner Hiranaga?

Mr. Hiranaga: This is actually more of a question for the Department. On page 17, item no. 5, there's a statement in here regarding the GPAC review of the draft Maui Island Plan. And it says in that draft version:

The property falls within the urban growth boundary found on the draft land use policy map for Wailuku-Kahului. Even though it is not in any of the planned growth areas in the draft plan, it is nearby both the Waiale and Waikapu planned growth areas.

And I just wanted a further explanation of the statement. I guess it's justifying the development of this area.

Mr. Hunt: The draft Maui Island Plan designates urban growth boundaries. And within those urban growth boundaries, it designates certain growth areas where growth would be concentrated, perhaps, a new town, or a rural center, or something like that—a concentrated development. So that's what it says when it's not within one of the growth areas, but it is within the urban growth boundary. So the property is intended to be allowed or provided for urban uses.

Mr. Hiranaga: In the future?



Mr. Hunt: In accordance with the draft Maui Island Plan.

Mr. Hiranaga: So what you're saying is if the plan is adopted as proposed, although this would be allowed, they'd have to go through some type of a process to have it allowed?

Mr. Hunt: No, actually, it kind of goes back to your earlier question about why isn't this being saved for ag land or open space. And I should probably clarify my earlier comment that in regards to the community plan, the Department just doesn't accept carte blanche every community plan designation and then support a change in zoning for it. Most of the time, you know, the vast overwhelming majority of the time, we would. If there's instances where situations change, or concerns have come to our attention, or if there's a planning process that starts to indicate that perhaps it's not going in that direction, then maybe we wouldn't support a change in zoning to implement the community plan. In this instance, all the indicators up until today have been that the community supports the public/quasi-public designation, and the discussions at the Maui Island Plan GPAC have all been to include this within the urban growth boundaries and to retain it in its current public/quasi-public designation. So there's no indication to us any concern or reason to not support that designation.

Mr. Hiranaga: So in the Department's opinion, if this application was approved, and the other application which was approved by the other church property, and they're built out, that's sufficient separation between Waikapu Town and Wailuku Town for adequate separation? So the – because – is the Spencer Project—is that part of Wailuku or Waikapu?

Mr. Hunt: I'm not sure which you would call it. In regards to the green belt or open space, there is a lot of discussion at the GPAC about having a green belt between Waikapu and Wailuku. And it's complex and there's a number of projects that are being tossed about, including a Maui Lani Project. So I think the Planning Department supports the concept. As I say, the devil's in the details. How do we actually accomplish that? With working with the developers, we believe we can come up with that. Again, it's a subtle variation. This isn't an absolute green belt, but a lot of communities will accept public uses with their campuses, and the green lawns, etc., as contributing to a green space as opposed to a commercial or a subdivision.

Mr. Hiranaga: The Kehalani Project District extends all the way up to Kuikahi Drive on the east side of Honoapiilani Highway? Is that correct?

Mr. Hunt: I believe so.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Members, we ready for—?

Mr. Hiranaga: I got one more question. Does the Department have any concerns about the proximity of the no longer used Waikapu Landfill as far as in the future there maybe noxious fumes that are emitted from it? I'm just wondering if the County would want some type of indemnification from this applicant that they would not sue the County in the future if something occurs at that landfill that impacts the users or uses of that facility?

Mr. Hunt: Jeffrey, did we have any issues raised regarding that?

Mr. Dack: No, there really weren't. The conclusion was that the old landfill was actually kind of down-sloped a little bit lower topographically, than the site. So there wasn't a concern about water. I don't remember noxious fumes every being raised, and I don't recall this being an issue. If there's some interest, and frankly, the thoughts of indemnification didn't cross run across our mind, if the Commission wishes to go that way, I think you might ask Corporation Counsel for an opinion on – not an opinion, that's a loaded word, but you might ask for Corporation Counsel's comments on the value or need for indemnification. We're working with another member of the County Council during the district boundary amendment process for a petition before the State, and she was aware of the Waikapu Landfill, and didn't feel – that member of Corporation Counsel didn't feel there was any concerns. But if the Commission has some, you could certainly address them.

Mr. Hiranaga: Well, maybe not necessarily a comment from Corporation Counsel, but maybe a note to Environmental Services that they take a closer look at that issue. But you may comment if – you're welcome to comment.

Mr. James Giroux: Well, I think this Commission is used to the fact that in our SMA permitting process, we do have an indemnity clause in it, and that's because it's what's considered an ad hoc permit. When you're dealing with zoning, you're dealing with a legislative act. So Council basically takes on that responsibility of looking at the zoning. And usually in the courts, a zoning action doesn't – as long as it's done within the confines of the law, it doesn't raise a liability for the County. So you're usually – And if it does, then the Council has to take up that issue. But usually, a zoning act is seen as a legislative act, so there is immunity to the County when doing a zoning process.

Mr. Hiranaga: Could we just ask the Department of Environmental Services just to take a second look if they have any concerns?

Mr. Dack: Yes, we can do that.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay, we're going to take a recess up 'til 10 o'clock, and then we'll proceed with public testimony.

(A recess was taken at 9:53 a.m., and the meeting reconvened at 10:03 a.m.)

Mr. Starr: The meeting is back in session. And unless there are any other questions for staff or applicant, we'll proceed with additional presentation by Planner Jeffrey Dack.

Mr. Dack: Yes, fortunately, this can be shorter 'cause the Commission's already had a fair amount of discussion, but I do want to put a few things on the record. The project is in conformance with the goals, objectives, and policies of the State plan. It's in keeping with the General Plan's objectives and policies. You've had some discussion about views, but I wanted to mention that there is further guidance for that in the Scenic Resources Section of the draft Maui Island Plan which references a Heritage Resources Policy Map in which this section of Honoapiilani Highway

is identified as having medium scenic resource values. And that, as I say, complies to guidance in considering – scenic considerations.

Regarding traffic, the State Department of Transportation commented on the district boundary amendment. And then the Land Use Commission approved that district boundary amendment with various traffic conditions. One significant one to us is one that requires a revised traffic impact analysis report after the project's phase one is completed. And then to construct – to contribute to or construct State highway improvements in the immediate vicinity of the project area. So they'll look at traffic after phase one is in place, and then they'll be able to mitigate based upon knowledge of what's really going on. The Department of Public Works concurs. They would also like to see a revised traffic study.

Regarding their request for a change from the prior agricultural use, there's already been some discussion of that, but wanted to agree with the conclusion of the Office of Planning. During the district boundary amendment that the increasingly residential nature of the region renders small parcels such as the subject property less suitable for agricultural production.

Then relative to the discussion of view and open space corridors, it sounds like the applicant is willing to offer a condition which would limit the maximum height of the church to 35 feet with a possible extension of the steeple bell tower to 40 feet. So that should be mitigating a fair amount of the possible view concerns that were in the Department's report. Even prior to that, though, the Department had concluded that although there might – some people could find that there could be an impact from this that the Department didn't consider there was a visual impact even before that reduction which the applicant is willing to voluntarily offer.

The Department's received no letters in support, no letters from the public in opposition to the proposed action, no letters in support.

There are alternatives in the staff report. They are listed in the written staff report. One is to recommend approval with conditions. I want to bring to your attention if you hadn't had a chance on the table when you arrived probably kind of fairly on the bottom of the stack was a – or is, was, a memorandum put out dated January the 8<sup>th</sup> which proposes various modifications to some of the recommended conditions. I know we're not on to that section yet, but in case you didn't have a chance to – you didn't find that, didn't see that yet, that's something I just wanted to bring to your attention. I will go through them at the time we get – when we get to the recommendation from the Department after the public testimony. This concludes the Department's report for now. Thank you.

Mr. Starr: Thank you, Mr. Dack. Any questions from Members? Seeing none, we'll move along to public testimony. I believe Lois Bisquera is still here and wishing to testify. Please come up. Ann Bergman will be next. Please introduce yourself and welcome.

Ms. Lois Bisquera. Aloha ka kou. My name is Lois Whitney Bisquera. And while I work for the County of Maui in the Office of the Mayor, I am testifying this morning as an individual, and on vacation time for the record, but I'm here most importantly as a parent.

With two daughters having attended Emmanuel Lutheran School, the younger one currently in fourth grade, I have been a part of the Emmanuel Ohana for eight and a half years. I have experienced the full gamut of interactions with other parents, teachers, administrators, and staff members, and can quite honestly say that the driving force behind the school is a dedication to each student and to each family.

Over the years I have spent many hours in different classrooms as a parent volunteer and also as a music and choir teacher. And I've come to know many of the staff as friends and even trusted mentors. I have witnessed them handle challenging issues with grace and Christ's love with both students and parents. And, you know, oftentimes it's the parents that cause the most hoo-hoo. I confess, too. I have watched often students thrive and grow even as individual learners, some students that would've labeled as "problem kids" in other schools.

Having spent my whole life attending public schools in Hawaii: Kula Elementary, Maui High, MCC, and UH Manoa, I know firsthand both the strengths and weaknesses of the public school system. And I'll also tell you that there is no perfect school for everyone 'cause each child has unique needs and every parent certainly holds different values with regard to their child's education. But for our family, we were looking for a safe, loving environment with a strong emphasis on academics balanced with a curriculum on the arts, music, hula, opportunities to perform on stage, as well as hands-on art like painting, drawing, crafts. They also have an up-to-date media center that allows for ample computer time for each of the grades; P.E. classes; and one of my favorite elements, which is a weekly chapel service that instills respect and love for God and for all people. That, right there, really for me sums up the driving force behind Emmanuel Lutheran which is teachers who love God expressing that in their classrooms through gentle but firm guidance by praying for their students individually and corporately even before the first morning bell rings, and also, by ministering to the needs of many of the parents of the school. As you know, parents face many challenges of their own.

I can see how this school is poised to have an even greater impact in our community. As Maui continues to grow, it is important that Emmanuel Lutheran can increase its campus size to meet the needs of a larger number of families. I do need to say that not all families that attend Emmanuel Lutheran are Christians. And their children are respected and loved all the same. But I do believe it is God's provision and leadership that has brought the school to where it is today.

And as a parent, I am extremely grateful for the positive influence that the teachers and staff have had on the lives of our two daughters. They are students who absolutely love to learn. They love to tackle all kinds of challenges, and they do enjoy healthy, social relationships with their peers and other adults. So I thank you for this opportunity to share my experience as a parent with Emmanuel Lutheran School. And I do ask you to consider recommending approval for this change of zoning for the property. Mahalo nui loa.

Mr. Starr: Thank you very much. Members, questions? Okay, thank you. And now, Ann Bergman, please introduce yourself for the record and welcome.

Ms. Ann Bergman: Good morning. My name is Ann Bergman and I am the current principal of Emmanuel Lutheran School. I thank you for giving us this opportunity to come before you this

morning.

I would like to let you know that this is just my second year here on Maui as principal of this school. But I have 33 years of ministry through the Lutheran School System as a teacher and as an administrator. Emmanuel Lutheran School grades K through 8 currently serve 174 students. Our preschool program serves 36 as of today. We have been at almost full capacity at our school and at our preschool for quite a few years, and we have been turning students away who would like to be there. This year alone, we have turned away more than 20 students mostly for our kindergarten and our middle school program for lack of room.

Emmanuel has grown steadily over the years. Our preschool has stayed steady at 36, 38, and a couple of years of 40 students since it opened. Our elementary school has averaged 129 students during the years that it had K through 6<sup>th</sup> grade. And since we've gone to K through 8<sup>th</sup> grade, we've averaged 164 students. And as I said, this year, we have 174. When we build our new facilities, we will be able to double our capacity both for our preschool and for our elementary school. There are many families out there that are looking for quality Christian education for their children, and we would love to be able to continue to provide that to even more families. Also, when we build our new facility, we'll be able to have things that we have no room for right now. Our playground and sport field is very crowded with children. Our classroom space is all used for classrooms. Our new facility will allow us to have an art room, music, science lab. It will eventually allow us to have a gymnasium. No, it doesn't rain here that much but when it does, it's a little difficult to keep the kids inside. So we are asking you to please consider our request to allow us to grow. We are filling a need on this island for quality Christ-centered, Christian education. And allowing us to build will allow us to continue in this work. Thank you very much for your time.

Mr. Starr: Please wait a second. Dr. Iaconetti?

Mr. William Iaconetti: Thank you very much for testifying. Is there any consideration for enlarging the school facilities to high school?

Ms. Bergman: At this point in time, we have not gone that route. Understand, we have 25 acres, and I don't know what the Lord has planned for our school and for our community in the future. But at this point in time, we are looking at our enlarging our preschool through 8<sup>th</sup> grade program.

Mr. Starr: Okay. Thank you very much. Any other members of the public wishing to testify, please make yourself known. Anyone else? Not seeing any, public testimony on this item is closed. I'll now call back Planner Jeff Dack to give a recommendation and also to be – give us clarity on what we're – what we're being asked to do specifically.

Mr. Dack: You are being asked to make a recommendation to the County Council for a change in zoning of this current site from its current agricultural designation to public/quasi-public zoning district. The – as I mentioned at the conclusion of the presentation on the Department's report, there is a memorandum dated January the 8<sup>th</sup> which I will be asking you to refer to in considering conditions of approval.

First off, though, I wanted to indicate from the recommendation report that the application complies

with the applicable standards for a change in zoning, and that the Department of Planning does recommend that the Commission in turn recommend approval of the change in zoning subject to what we originally had as ten conditions, but now we'll have as 12.

In the memo of January 8<sup>th</sup> that I mentioned, it indicates that subsequent to the publication of the recommendation report for the change in zoning, the Departments of Planning, Water Supply, and Public Works have requested modifications to the conditions that are listed in that January 8<sup>th</sup> memo with deletions from the wording that was in the published staff report shown between brackets and with additions shown as being underlined. But first– So I'll be referring back and forth between the published recommendation report and this memo.

The first condition is as in the published recommendation report which is to in order to prevent impacts to water resources, the developer/applicant shall employ construction mitigations which are listed in the full condition. I'm not gonna go through all these conditions in detail, but do want to briefly mention them.

Condition no. 2, please do refer to the January 8<sup>th</sup> memo. That Condition 2 requires water conservation measures, including particularly in this case limited – a limitation of irrigated turf to 25% or less of total landscaped area except for active play or picnic areas. And that those terms except for active play or picnic areas were discussed with the Department of Water Supply, and they specifically meant those two be able to exclude playing fields from that limitation. They didn't – to be able to provide for schools and other recreational facilities to not be subject to that 25% turf limitation for playing fields, but other aspects of uses would be – would have that limitation by that recommended condition from the Department of Water Supply.

Back to the recommendation report, Condition 3 includes measures to facilitate wastewater collection and treatment services. Condition 4 requires a plan for composting or disposal of cleared and grubbed material, and recycled and reused disposal of construction waste.

Back to the January 8<sup>th</sup> memo for Condition 5, you'll find that on the bottom of the second page. That would require a plan for internal circulation which keeps vehicular traffic from mixing with the students. That was a concern that was raised by both the Department of Public Works and the County Department of Transportation.

Again, in the memo for Condition 6, that would delete some of the prior wording of Condition 6, and now just require road-widening lots, but not the improvement thereof because improvements are – churches are exempt from making improvements to – right-of-ways associated with projects, but they can be required to provide road-widening lots.

Condition no. 7, go back to the published report. It requires an updated traffic assessment report, and that that be approved not just by the State Land Use Commission – excuse me, the State Department of Transportation, but also approved by the County Department of Public Works. And that the applicant contributes or construct all its recommended circulation improvements.

Condition no. 8, please see the memo again. That requires the applicant to participate in a future impact fee for traffic and roadway improvements.

Condition no. 9 again in the memo requires the drainageway within the northerly portion of the site to be fenced but to access for maintenance to be provided.

Condition 10, back to the published report, requires any compliance reports to be submitted and approved.

Then I mentioned there would – now staff is recommending two new conditions. I'm still working on the final wording on one of them, but they're a result of the previous discussion both particularly with respect to building heights and then also bikeways and pedestrian improvements. So I have a Condition 11 to suggest that – to read:

That as offered by the applicant and to the satisfaction of the Department of Planning, the maximum height of all buildings shall be 35 feet except that a steeple or bell tower may extend up to 40 feet.

Then a Condition 12 would be, "That as offered by the applicant and to the satisfaction of the Department of Public Works, the applicant shall," and again, I'm still working on the wording, I didn't get a chance to complete it before coming back up, but "maintain and/or work with the Department of Public Works and the State Department of Transportation to maintain and/or improve pedestrian, bicycle facilities along Waiale Road and Honoapiilani Highway." I'll probably fine tune that a bit, but that should be the gist of Condition – recommended Condition 12.

And so in conclusion, the Department recommends the Maui Planning Commission adopt the Department's report and recommendation prepared for this meeting, along with the January 8<sup>th</sup> memo we've been referring to as its report to the Maui County Council, and authorize the Planning Director to transmit the report and recommendation to the Council. This concludes our recommendation. Any questions?

Mr. Starr: Thank you, Mr. Dack. Members? Commissioner Hedani?

Mr. Hedani: So moved.

Mr. Iaconetti: Second.

Mr. Starr: Okay. Director, we have a motion. The motion reads—?

Mr. Hunt: The motion was very brief. I'll interpret it as accepting the recommendation from the staff to recommend approval of the change in zoning subject to the 12 conditions of approval as revised and outlined by the staff.

Mr. Starr: Comments? Questions? Commissioner Hedani?

Mr. Hedani: Those were exactly my words.

Mr. Starr: Well said. Commissioner Hiranaga?

Mr. Hiranaga: Just for clarification on that building height limit, is that from existing grade or finished grade, whichever is lower?

Mr. Dack: That's using the current definition of building height in the zoning ordinance.

Mr. Starr: We're going to go to Corp. Counsel for this.

Mr. Giroux: Jeff, I just want clarity just because I think you're trying to write the condition on the fly here. Title 19 says the maximum height I believe is 35 feet.

Mr. Dack: That's correct.

Mr. Giroux: So your wording – can you just explain what the intent of it is because if the intent is to go up to 35 feet, but however, allow them to go and seek a variance if they can get one from the Board of Variances and Appeals, or what's the intent of that language?

Mr. Dack: The normal process certainly would be to seek – to allow them to seek the variance. I guess there is a small thought had crossed my mind that since this is an ordinance, the County Council might have the authority to actually allow that 40 feet without requiring the applicant go through a variance process, but I'm not sure of their – the ability and normality of doing that. It would seem that it be facilitative to the whole process if the County Council were able to just straight away say 40 feet is adequate for the steeple and bell tower and not have to have the applicant go back to a variance process if that was acceptable to both the Commission and the Council 'cause it's only a five-foot difference over the current maximum height, but I honestly don't know if that's a normal kind of thing for the Council to do. If the normal procedure would be to allow the 40 feet only with the variance process, then that would be the way to go, but I don't know which would be the interest or intent are acceptable.

Mr. Giroux: I'm glad I asked the question. So I think the Commission has to be – understand that intent because I think it does raise significant legal questions as far as how the Council would proceed to view that. So I think they need to know your thinking of that, if they are going to proceed in that manner.

Mr. Starr: I think in the discussion, it was an intent to put a cap, you know, a maximum cap. Commissioner Hiranaga, you have a comment?

Mr. Hiranaga: My preference is not to avoid having to go through the BVA process because that process is set up for a purpose. So the language should state that the applicant shall not attempt to obtain a height variance beyond 40 feet, but they still need to go before the BVA.

Mr. Dack: Sure, I'll clarify that. Thank you.

Mr. Starr: Is everyone satisfied with that? Commissioner Hiranaga?

Mr. Hiranaga: Just a statement. I hope the applicant will be sensitive to the public. Not everyone will probably appreciate looking at the rear of the church that may be 35 feet high from Honoapiilani



Highway instead of the ocean. So I hope you guys – I hope the applicant will be sensitive to that because your visual exhibits show the front of the church facing the ocean. So that means the people on Honoapiilani Highway will be looking at the back of the church and not the ocean. So I hope you're gonna be sensitive to that.

Mr. Starr: I wanted to comment that I know Jim Niess is the best we got here on Maui, and will understand that this is a landmark view, and that if there's something going to obstruct that view, that should be a landmark, too, that we can all be happy to live with. I'm sure he, with the good people at Emmanuel Lutheran, will build something that will do us well. Members? Okay, we'll take a vote. All in favor, please raise your hand. All opposed? Okay, Director?

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

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

**VOTED: To Recommend Approval of the Change in Zoning to the Maui County Council with the 12 Conditions Discussed.  
(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, J. Starr)  
(Excused - B. U'u)**

Mr. Starr: Congratulations, and please continue doing the good works.

**2. KAUAHALE MAKAI AOA requesting a Conditional Permit to operate concierge services at the Kauhale Makai Project at 938 South Kihei Road, TMK: 3-9-001: 075-128, Kihei, Island of Maui. (CP 2008/0001) (J. Prutch)**

Mr. Joseph Prutch: Good morning, Chair, Commissioners. Got the Kauhale Makai AOA Concierge Services Project before you today. The applicant is requesting approval of a longstanding concierge desk service within the Kauhale Makai, Village by the Sea Resort, as a convenience to their vacationing guests.

A little bit about the property—it's 3.1 acres in size located on the makai side of Kihei Road at 938 South Kihei. It's got a State land use designation of urban, Kihei-Makena Community Plan of multi family, and the zoning is A-2 apartment. The project site was developed in 1976 as an apartment development with individually-owned condos that have been rented out as transient vacation rentals, from my understanding, since construction. Currently, it is comprised of 90% vacation units and 10% long term units. In the hotel's 30 years of operation, there has always been a concierge desk in the lobby currently staffed by Hawaiian Style Activities and previously by Concierge Connection.

So the applicant is proposing to establish a concierge desk within the lobby of the Kauhale Makai as a convenience to the vacationing desk staying at the hotel, of course, essentially to provide guests with tourist-related information and be able to accept payment for activities. Currently, the concierge desk is operating on a limited basis. They're able to dispel information to the guests, but they're not able to accept payment or book reservations. The reason for this is because they are in the A-2 zoning district and the A-2 zoning district does not permit hotels or commercial – hotel

commercial services. There's no construction proposed. Everything's existing. The applicant will use the lobby and a briefing room in order to serve continental breakfast, present to the guests the different activities they can do, and then be able to sell these packages to the guests on the site. No signs will be posted on the exterior of the building. It's not the idea – this is not to invite in the general public. It's for the Kauhale Makai guests only. The applicant has suggested some very limitations to their concierge's use which I've listed as conditions of approval. And I can either go over those now or I'll go over when we get to the recommendation stage.

Like I said, it's zoned A-2. It's not a permitted use which is why we're here for the conditional permit. And the use itself, even though it is in the A-2, since it was built and in operation prior to 1989, it is allowed to continue on as a transient vacation rental use as long as it continues to do so. So staff feels that since the hotel is a legal nonconforming use that the hotel concierge should be able to be used alongside with the hotel use, and that this is not a – is an adequate request by the applicant. As far as the applicant, I have Chris Williams from Hawaiian Activities here. And from the Kauhale Makai AOA, I've got Steve Castagnola, Alex Bennett, and Linda Paul. So they're all here to answer any questions you might have as well. And I'll hold off on the recommendation until after discussion unless you want the recommendation now.

Mr. Starr: No. Members, any questions? Commissioner Mardfin?

Mr. Mardfin: I just have a brief question. I don't know who to ask it, though. Why does this need approval? It seems so manini.

Mr. Starr: Director?

Mr. Hunt: As Joe tried to indicate, you have kind of an unusual situation here where you have a legal but nonconforming use operating. So technically, the use isn't allowed in that zone. It's an apartment district, but our prohibition on TVRs outside of the hotel district allowed for preexisting apartment buildings to continue to operate. And this was preexisting and it's been continually operating. You could take a hard stance and say, well, it's nonconforming. We should be phasing these out, but the Planning Department felt since it was legally nonconforming and we do support tourism as one of our main economic drivers, in this case, we should support a very small project that would facilitate the continued use of the TVRs in this legal nonconforming use.

Mr. Mardfin: I have a second question. In here you mentioned the economic impact and you think it will add somewhat to full-time employment. That doesn't seem to take account of possible reductions in employment in surrounding areas that offer similar services. You know, if the people that are living there are presumably buying these services already somewhere else, in general, and having it sold in this location means it won't be sold in other locations, so any – it strikes me that the net effect on unemployment is zero.

Mr. Prutch: Well, it does give the guests a simpler way to get their activities booked. Right now the way it exists, the guests might go down to a presentation of what you could do on Maui. However, they could be presented, told, go on this whale-watching trip, have a good time; however, you can't purchase that here. You have to drive down to, I believe, it's the Boss Frog Store over at Azeka. And you have to pay for and book your reservation there. The idea is they might be losing people from the Kauhale Makai presentation that just doesn't want to go over there, and don't go there, or

don't make it there, or go elsewhere.

Mr. Mardfin: How far is that?

Mr. Prutch: I wanna say it's less than two miles? Maybe less than a mile? I can't recall. Can I let Chris Williams come up? He's with Hawaiian Activities. So he's the one that operates the concierge desk.

Mr. Starr: Yeah, come on up, Chris. Introduce yourself for the record.

Mr. Christopher Williams: Hello, folks. My name is Christopher Williams, Director of Marketing for Hawaiian Style Activities. Just to address your question there, within the past six months, two other activity companies have actually closed their doors within an eighth of a mile of this particular location. So that has created about four people out of work. And we're looking to employ a person full-time. I don't know if that addresses your question there. Two of our competitors have closed their doors within an eighth of a mile.

Mr. Mardfin: That would tell me that you don't need one.

Mr. Williams: But we feel that there is a demand there. We're in a different situation, in a market. So we feel that based on the history of the property in the past, we feel that there is an opportunity there.

Mr. Mardfin: And you're not gonna take – you're not – by the conditions, you're not allowed to take any walk-in people, anybody that's not living or staying there you can't deal with at all?

Mr. Williams: That is correct. Yes, that is correct. We're not gonna solicit those people in any way whatsoever. It's only the hotel guests arriving.

Mr. Hedani: Chris, how did this come about? Was there a complaint that was filed? I mean, why are we discussing this?

Mr. Williams: Actually, this gentleman right here could probably better address that. He's from the property itself.

Mr. Starr: Yeah, come introduce yourself, sir.

Mr. Steve Castagnola: Mr. Chairman and Council, I'm Steve Castagnola, Hawaii resident for 16 years after getting off active duty from the navy. Worked Maui County medical evacuation. I'm a helicopter pilot. And I just got involved with the community association when we experienced a little struggle with the new owner of what we call the liquor store was the Village General Store. They were operating without a conditional – or they were operating with an invalid conditional use permit. We filed a complaint. And they sold their property, and then filed a complaint against us for continuing concierge services which we had done for 30 years? Since the developer – I mean, the developer had concierge services. He had a store. The conditional use permit was to remain in control of the developer or the – it wasn't even the AOAO. It was just written for the developer. He, however, was allowed to sell the business, not the property. When the last owner purchased that

we had the difficulty with, he purchased the actual property and then the corporation dissolved instead of purchasing the corporation that owned the property. So the conditional use permit was null and void. His complaint came back to Charles Villalon. And to comply, Exhibit 2 in your packet shows a letter from me to Mr. Villalon after a meeting. It was clear to us when he explained as an inspector that we could not sell anything commercially out of Kauhale Makai as an A-2 zoned area because just as the General Store conditional use permit was null and void, the developer's corporation being dissolved, it didn't apply to us either. So we're applying for our own conditional use permit to continue the services that owners of this 169-unit project community would like to have onsite that they were accustomed to selling newspaper, having activity sales, having an orientation on the property.

Mr. Hedani: Great. Thank you. And thank you for your service to our country.

Mr. Castagnola: Thank you.

Mr. Starr: Thank you. Commissioner Hiranaga?

Mr. Hiranaga: These are more actually comments on the staff report. I'm just wondering on page 5, the second sentence, "... Makai as a convenience to the vacationing guests staying at the hotel." Is that a proper use—the word "hotel?"

Mr. Starr: Director or Joe?

Mr. Prutch: Essentially, maybe I could've used the word "resort," since it is an apartment district. I guess technically it's not a hotel, but it seems to operate I guess more as a resort than a hotel I guess would be the proper word.

Mr. Hiranaga: "Resort condominium?"

Mr. Prutch: Yeah, I would think more of a resort condominium complex.

Mr. Hiranaga: And on the same light, page 7, I guess it's the first paragraph, "According to Chapter 19.37 Time Sharing Plans," so you consider this use a timesharing plan as far as the condominium complex?

Mr. Prutch: That is the – that's the title of Chapter 19.37 in the zoning code. It's Chapter 19.37 Time Sharing Plans. And then within that code, one of the sections talks about the allowed uses of transient vacation rentals or whether permitted or whether not permitted. It's just the chapter title.

Mr. Iaconetti: In the past, the desk that has been used, have they been able to actually sell any of the things that they're planning on selling on the future?

Mr. Prutch: I believe so, but once again, I'll let Chris come up and elaborate on what they do offer.

Mr. Williams: The answer is yes.

Mr. Iaconetti: It's really none of my business, but how much money are we actually talking about

that the resort will—?

Mr. Williams: Prior to the incident with the liquor store and us making the adjustment, we consistently – I would say between \$8,500 and maybe \$12,000 a month in gross revenues is what that desk generated. That's one of the reasons why we're kind of pushing to get back in there with the current economy.

Mr. Iaconetti: Thank you.

Mr. Mardfin: Now it's starting to make sense to me a little bit. So you were doing this until you got the complaint. You got the complaint and you stopped. Until you – come here. And then you wanna go back to it. Now it's making sense to me.

Mr. Williams: That's exactly correct, sir. Yes, sir.

Mr. Starr: Okay, Members, are we out of questions? Let's open it up for public testimony. Anyone from the public wishing to comment on this? Please?

Mr. Castagnola: Mr. Chairman, Steve Castagnola again. With the recommendations from the Planning Department, I was conferring with the other directors present, Linda Paul and Alex Bennett, from the association, board of directors. There are a couple of things that we addressed with Mr. Prutch before coming in today, including the use of the word, "hotel." And after looking at the documents, we asked for the word, "hotel" to just be stricken because it says "Kauhale Makai Hotel," and we felt that it would be more clearer if it was "Kauhale Makai." So anywhere in the recommendation, we wanted the word "hotel" stricken. Also, the application to which I'm the signatore does not appear in your packet, but I do have a copy of what I signed, and we requested vending along with activity sales. Prior to the complaint with the store, we had always sold the *Maui News* at the counter and single-serve laundry soap. We wanted to be able to sell sundry not for necessarily a profit, but just to make it a convenience to our occupants. So in the project specific conditions, we would like to add Item 10 to allow sundry sales for the occupants of Kauhale Makai. As this developed, and it's been about 18 months, we didn't realize that the vending opportunity was not being discussed. As well in the recommendation, I'd like to say there is some areas where it's – where our project is described as a hotel. We'd like it to be described as Kauhale Makai. So anywhere the "hotel" is, it should say "Kauhale Makai." And then I have one more request, and I'm not sure if this proper protocol, but the recommendations also indicate a valid period of two years from the effective date of the ordinance, if we're granted one. We've been operating – selling activity sales, newspapers, and soap for 30 years, and we were hoping not to have to come back. We will come back, but because the way the board of directors is governed, every three years we turn over. I will not be here to pursue this application again. So I was hoping that we could waive the two-year provisional period. Thank you, Mr. Chairman.

Mr. Starr: Thank you for your clarity. Members, any questions? Joe, you have those to bring back for discussion when the time comes? Okay. Any other members of the public wishing to give testimony, please now would be the time. Yeah, please come up and introduce yourself, and welcome. Thank you for being here. Pull the microphone down.

Ms. Linda Paul: I only have a very short statement. I'm Linda Paul. I'm Linda Paul. And we bought

our unit at Kauhale Makai 25 years ago and we are permanent residents there. I just hope that you will approve this application. It's important to all our visitors, our owners, our renters. We have a lot of guests. Even though I'm an owner, I did use the concierge services quite a bit because we have a lot of visitors, you know, relatives from the Mainland and friends. And please consider this. We're hoping you will approve it. Thank you.

Mr. Starr: Thank you for being here. Come up, sir. Introduce yourself for the record.

Mr. Alex Bennett: Alex Bennett. Again, board member of the AOA of Kauhale Makai. I'm an owner. Have been since for about nine years—2000. And I'm one of those that come temporarily couple times a year, but rent my unit out in the interim. And I would certainly like to have the concierge's activities available for my guests. And I would like to have the ability to walk down to the lobby and buy the newspaper rather than walk to Longs, or Star Market, or some place considerably further although that's probably better for my physical well-being. Thank you.

Mr. Starr: Thank you very much. Anyone else wishing to testify on this item? Okay, seeing none, public testimony is closed. I'll call back Planner Prutch for recommendations and any additional comments. And especially looking for a comment regarding the request to go from two years to eternity. I don't know if that's possible.

Mr. Prutch: Okay, I'll start off with the – that the application does comply with the applicable standards for a conditional permit. The Planning Department is recommending that the Maui Planning Commission recommend approval of this conditional permit to the County Council subject to the following nine possible – looks like ten conditions now. I'll start off with the condition to remove the word "hotel." I was going to do that as a cleanup item anyways. I don't think there's a concern on that. For the additional Condition no. 10, I wrote it up as, "Allow vending of sundry items for occupants/guests of the Kauhale Makai." It kinda seems to go along with the concierge service anyways. I agree with that one. As to waiving the two years, I don't know if that's customary. I don't know that I've seen that. I was thinking of maybe giving them an increase to five years or something just to allow them to do business and not have to come back to the entire extension process to the Commission and Council for an item as you said that why is it here anyways? If the Commission wishes to waive that condition, I know the applicant would be extremely happy. I might ask Jeff Hunt if that's something we've ever done or if we even can.

Mr. Starr: Director? I'm a little nervous about breaking precedent, but maybe we can make it a very long, long term.

Mr. Hunt: I would recommend you put a length of time on there, but perhaps we can go longer than two years. Circumstances change. Laws change. You don't know what the future's gonna hold. I'm a little leery about giving a conditional permit forever.

Mr. Starr: So maybe when one of the Members makes a motion, they can add a number of years.

Mr. Prutch: I would suggest five or ten years, but it is up to you guys in discussion in how long you wish to do.

Mr. Starr: Okay. Anything else, Joe?

Mr. Prutch: That's it. Just that in consideration of the foregoing, the Planning Department recommends the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for this January 13<sup>th</sup> meeting as its findings of fact, conclusions of law, and decision and order subject to the nine plus the tenth condition as spelled out, and with the Commission's addition or change to the two-year time period to whatever you discuss. I'm sure anything beyond two, the applicant would be happy with that.

Mr. Starr: Any questions, comments, motions? Commissioner Mardfin?

Mr. Mardfin: I have a question for the Director. Supposed it stayed at two years. I think that's too short myself, but supposed it were two years, they would have to come back to this Body? Or they could go get administrative decision from the Director? I would assume that, you know, if we approve it this time, I would think the Director in the future could do it administratively assuming there were no problems or complaints.

Mr. Hunt: The Maui County Code says if the administration determines that there has been no substantial change in the factors surrounding the original application, no public hearing need be held.

Mr. Mardfin: No public hearing. That doesn't mean it doesn't have to come to us.

Mr. Hunt: I'm just telling you what the law says.

Mr. Starr: It's ambiguous, in other words.

Mr. Mardfin: When we're ready for amendments – are we ready for amendments?

Mr. Starr: No, because we're ready for a motion.

Mr. Mardfin: Because I'm gonna amend to make the length to five years and let it go to the Director of Planning for extensions rather than come back to this Body.

Mr. Starr: Well, if you wanna make a motion, that's fine. And the motion can be – have any number of years you want. To me, the longer, the better, possibly. But I don't think we want to get into creating a precedent as far as changing the process without rule-making. Commissioner Hiranaga?

Mr. Hiranaga: Correct me if I'm wrong, the conditional permit is approved or denied by the County Council, not the Planning Commission, so we don't have that power. I would hate to circumvent the County Council. But I do have a statement. Regarding Condition no. 7, I would also like that no signs shall be posted on or along South Kihei Road, you know, like those sandwich signs, little clown waving. I need to stress it's very important that some type of enforcement or it be – it's very important that they comply with this condition because I know when economic times go hard, whoever is sitting behind that desk doesn't make any money unless they sell something. And they may wanna be more aggressive in their advertising. And so I think that's a very important condition.

Mr. Starr: Ma'am, did you want to comment? If so, introduce yourself.

Ms. Paul: I'll give you some information. I'm Linda Paul. I neglected to tell you last time that I'm also a board – AOA board secretary. We do have a bylaw that prohibits all signs on property unless okayed by the board of directors for safety and directions and things. And those signs will not be allowed at all. The lobby gets all its business primarily because everybody – there's a house rule law that everybody who goes into Kauhale Makai must register at the front desk. No keys are given out or anything. It's not a hotel, but they do register at the front desk. And that's why – that's the highest visibility you can have right there because – in your packet, you'll see the concierge desk is right there in the lobby. And that's why they come back to the lobby for the business. No signs are needed. No signs were there before. No signs will be there again. Thank you.

Mr. Starr: Please come to the mic. and keep it really brief.

Mr. Castagnola: Mr. Chairman, Steve Castagnola. Part of the complaint that came from our association and community addressed Mr. Hiranaga – Commissioner Hiranaga's concern. And I'm in favor of amending Recommendation 7 to read, "No signs shall be posted on South Kihei Road, the exterior of the building or within the parking area advertising the concierge desk." We did also complain to Mr. Villalon that the owner of the liquor store had a billboard in the back of his pickup truck that he was parking on South Kihei Road. We didn't want the public attention. Thank you, Mr. Chairman.

Mr. Starr: Commissioner Hiranaga, is that wording okay? I think Joe's got that written down.

Mr. Hiranaga: Actually, I prefer "on or along South Kihei Road."

Mr. Starr: Dr. Iaconetti?

Mr. Iaconetti: I was going to make a motion to approve with the extension of time to five years.

Mr. Starr: Is there a second?

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Dr. Iaconetti, seconded by Commissioner Hedani. The motion is—?

Mr. Hunt: To approve with the condition of a time period for five years.

Mr. Prutch: And the amendments to Condition no. 7 and the addition of Condition no. 10.

Mr. Starr: Well, the motion includes the recommended conditions.

Mr. Prutch: Okay, thank you.

Mr. Starr: Director?

Mr. Hunt: I believe that a conditional permit is almost an ordinance. And since the Council – you could recommend to the Council, and the Council could pass as part of the ordinance a provision



that the administration can approve renewals if there's no significant changes. The reason I'm suggesting this is it's in line with what Ward was suggesting is just for streamlining of the permitting and to free up your agenda. This is the kinda stuff that we don't need to take to you folks. And I think it would benefit the business in the future.

Mr. Starr: So if anyone did wanna make an amendment to that effect, they're certainly welcomed to do so. Commissioner Mardfin?

Mr. Mardfin: I would like to make that amendment that the recommendation would be that— By the way, you say we're passing this. We're actually recommending this to the Council.

Mr. Hunt: Correct.

Mr. Mardfin: The additional recommendation that renewals of this be handled administratively by the Director of Planning. And they're free to accept that or not.

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

Mr. Hedani: Second.

Mr. Starr: Okay, we have an amendment by Commissioner Mardfin, seconded by Commissioner Hedani that states—?

Mr. Hunt: That renewals may be approved by the Director of Planning.

Mr. Starr: Commissioner Hiranaga?

Mr. Hiranaga: Just a question relating to Condition 3 regarding non transferability. Is the applicant the Kauhale Makai AOA, or is it the concierge service?

Mr. Prutch: Yes, good question. The applicant is the AOA. They get the permit. The Hawaiian Style Activities operates through the Kauhale Makai. So if Kauhale Makai wanted to go somewhere else, or they went out of business, or something happened, the AOA still has the conditional permit for a concierge service. They would be able to bring somebody else in to do the concierge service at the AOA at the lobby.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Commissioner Hedani, did I see your hand? Are you ready to vote on the amendment? Okay, we're voting on the amendment. All in favor of the amendment, please raise your hand. All opposed? Director?

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

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

**VOTED: To Recommend that renewals may be approved by the Director of**

**Planning.**

**(Assenting - W. Mardfin, W. Hedani, W. Iaconetti, K. Hiranaga, J. Guard,  
D. Domingo, J. Starr)**

**(Excused - B. U'u)**

Mr. Starr: Okay now we'll vote on the main motion as amended. All in favor, please raise your hand. All opposed?

Mr. Hunt: And likewise, seven in favor, zero against.

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

**VOTED: To Recommend Approval of the Conditional Permit to the Maui County Council with conditions.**

**(Assenting - W. Iaconetti, W. Hedani, K. Hiranaga, J. Guard, W. Mardfin,  
D. Domingo, J. Starr)**

**(Excused - B. U'u)**

Mr. Starr: Okay, well, congratulations, and sorry you had to go through so much hassle to continue doing what you've been doing for 30 years. And I'd like to suggest if anyone would like to make a motion that we move Item F-1, the New Business, Doris Todd Memorial Christian Day School, up on the agenda next. Then we would take a short break while they set that up. They are ready to proceed with that.

Mr. Iaconetti: So moved.

Mr. Starr: Is there a second? Okay, moved by Dr. Iaconetti, seconded by Vice-Chair Guard that we move Item F-1 up on the agenda. All in favor, please raise your hand. All opposed?

**It was moved by Mr. Iaconetti, seconded by Mr. Guard, then**

**VOTED: To Move Up Item F-1 on the Agenda.**

**(Assenting - W. Iaconetti, J. Guard, K. Hiranaga, W. Mardfin,  
D. Domingo, W. Hedani, J. Starr)**

**(Excused - B. U'u)**

Mr. Starr: Okay, we're gonna take a break until 11:10.

(A recess was then taken at 11:00 a.m. and the meeting reconvened at 11:10 a.m.)

**F. NEW BUSINESS**

- 1. CHRIS HART & PARTNERS, INC., on behalf of DORIS TODD MEMORIAL CHRISTIAN DAY SCHOOL requesting a determination on the Final Environmental Assessment prepared in support of the Community Plan Amendment to Public/Quasi-Public for the implementation of the schools long range plan for facility development at 519 Baldwin Avenue, TMK: 2-5-005: 020,**

**044 and 052, Paia, Island of Maui. (EA 2007/0001) (CPA 2006/0008) (DBA 2005/0004) (CIZ 2005/0007) (R. Loudermilk) (Draft EA was reviewed at the June 24, 2008 meeting.)**

**The EA trigger is the Community Plan Amendment. The Maui Planning Commission is the accepting authority for the EA.**

**The public hearing on the Community Plan Amendment, District Boundary Amendment, and Change in Zoning will be scheduled for a future date after the Chapter 343 process has been completed.**

Mr. Starr: The Maui Planning Commission meeting, January 13<sup>th</sup> 2009. We're back in session. We're ready for Planner Extraordinaire Robyn Loudermilk to bring us the next item.

Ms. Robyn Loudermilk: What we have before you today is the Doris Todd Memorial Christian School. Today we are before you to get approval for the acceptance of a final EA and a FONSI determination for their property located in Paia. I would like to turn it over to Mr. Raymond Cabebe who would be doing a very brief, less than five-minute presentation highlighting – a summary again of the project and highlighting the various concerns and how they were addressed by the Commission. So if I may turn it over to Mr. Cabebe?

Mr. Starr: Take it away, Mr. Cabebe.

Mr. Raymond Cabebe: Good morning, Commissioners. Good morning, Chairman Starr. As Robyn said, this is your review of the final EA for the Doris Todd Christian School in support of their request for a district boundary amendment, community plan amendment, and a change in zoning. Just to go quickly, briefly, re-familiarize you with the project, this is an accredited school. It's been in existence for about 48 years. And it's been at this site for 44 years. I just talked to Carolyn Moore who's the principal and she's here today along with Ms. Mabel Todd who is the president of the board. And also, we also have Hideo Kawahara representing A&B as the owner of the property. We also have Mr. Phillip Rowell who prepared the traffic report, Ms. Jill Engledow who prepared the cultural report.

Students at the school right now are preschool through 8<sup>th</sup> grade; a staff of 23. They operate from Monday through Friday. It's located in Paia as Robyn said in an area known as Upper Paia. It runs along Baldwin Avenue across from Skill Village in the vicinity of the former Sugar Mill, and north of the Paia Elementary School.

This is a zoom in of the property. And the school leases 3.432 acres from A&B who is the owner of the property. There's actually two parcels – it actually encompasses three parcels, I'm sorry, Parcel 44, and 52 and a small portion of Parcel 20 which is about approximately a thousand acres. The school lies on about 2.4 acres. And A&B Hawaii has applied for a subdivision. And in the course of the subdivision, they need to have consistency with all the land use designations. And that's why we're here before you.

This is a tax map zoom in of the area. Parcel 44 and 52 in this area, and the school lies right in there. And this is a subdivision map. Parcel 20 which is about a thousand acres is in this hashed

area. The school is down here in this little area along Baldwin Avenue. And I wanted to remind you that also that the rest of the Parcel 20 is not – we're not asking for any kind of change in zoning or change in district boundary for that parcel, for that portion of the parcel. We're just asking just for the school site. And this is the school site—3.432 acres along Baldwin Avenue across from Skill Village.

And just to summarize, the district amendment from agricultural to urban; single family community plan amendment to public/quasi-public; and County zoning from interim to P-1 public/quasi-public.

This is an aerial of 1957 just to show you what it looked like in those days surrounded by all the camps and villages. And the Doris Todd Memorial School lies in an area called the – was called "School Village." Not School, "Store Village," I'm sorry. This is a master site plan of the school. Baldwin Avenue runs along here. This is the church, administration building here. This is the three existing classroom buildings, future pavilion lies here, and the future library/media center. There's an existing basketball court here. The ditch runs along this area here. And there's a gulch that runs along here. The site was never used for any kind of a commercial agriculture. It wasn't designated for any kind of an agricultural rating by the Land Study Bureau and by the ALISH Program. It does not meet any standards for – to consider it important agricultural lands, and it's surrounded by single family designated land in the Paia-Haiku Community Plan.

We did have some comments from agencies. These are the most notable ones. The Department of Water Supply talked about water system improvements. And they're already installed. Their meter is sized – their meters are already sized for their entire master plan. And so their project demand has already been allocated. Public Works—their conditions have been met or will be met during subdivision processing. Baldwin Avenue already meets the ultimate width of 50 feet and already has curbs and gutters. There's a sidewalk on the school side. Environmental Management—they already have improvements regarding the sewer system. Their sewer lateral is adequate. And any future building will be – will meet their requirements. There is no cafeteria facility on the property so there is no need for any kind of pretreatment, any kind of grease trap. The Police Department acknowledges there's no significant impact to the area because it's an existing facility. And as in – their contract already adheres to regulations to reduce noise, dust, and debris in the area because of their proximity to the residential area.

The State Land Use Commission issued a special use permit back in 1978 to allow expansion of the school. And the school continues to adhere to all those conditions. The permit will be automatically revoked upon termination of the lease. And that will happen upon subdivision and the transfer to the school of the property.

The Office of Hawaiian Affairs had a – just needed clarification as far as what is the purpose of the EA. The trigger for the EA is the community plan amendment. And we also had to clarify with them that what we're asking for is just for the school site itself and not for any other part of Parcel 20. And we had to justify it for urban district designation. We talked about the agricultural resources that are nonexistent. A cultural impact assessment has been provided.

On June 24<sup>th</sup> 2008, this Commission reviewed the draft EA. And one of the comments was – wanted information about the public transportation. Maui Bus does not have a route on Baldwin Avenue. This is Baldwin Avenue here. On Hana Highway is the nearest bus stop. It's at Haiku

Community Center. And that bus route services the Haiku commuter bus route and the Haiku Islander bus route. Baldwin Avenue is not identified as a transit corridor, but on the draft Maui Island Plan, there is a bus corridor or a transportation corridor up Haleakala Highway up to Pukalani.

Cultural impact assessment—one was prepared by Ms. Jill Engledow. It's in your final EA as Appendix L. She concludes that there are no cultural resources that might be impacted by the proposed subdivision and community plan amendment.

Zoning history—the property has been a State agricultural district since 1963 when the statewide Land Use Law came into effect. In 1983, the Paia-Haiku Community Plan designated the area as public/quasi-public just for those two parcels, and single family for the part of the school site that's not on those two parcels. And it's County interim due to the inconsistency with the State and the community plan designations. In the draft Maui Island Plan, which is designated on this map by this red line, the project site lies just inside of it along Baldwin Avenue across from Skill Village here.

So in summary, this final EA is in support of this request for a district boundary amendment from agriculture to urban; community plan amendment from single family to public/quasi-public just for the portion of the site on Parcel 20; a change in zoning from interim to P-1 public/quasi-public. And this request is required for the subdivision to proceed. The community plan amendment is the trigger for the Chapter 343, Environmental Assessment. This final EA addresses agency comments and impacts adequately. The final EA also provides information required for the Planning Commission to make recommendations to the Maui County Council on the applications. A finding of no significant impact is warranted. And today, the applicant is asking for your acceptance of the final EA. Thank you.

Mr. Starr: Thank you, Mr. Cabebe. And I wanted to point out something, Director. Pointed out which is this wonderful photo, Figure 10, in the book from '57. I want to thank you for including that. It really shows a compact community built around a railroad. Anyway, Members, questions for the applicant or for the Planner? Commissioner Hiranaga?

Mr. Hiranaga: Typically in the past when we review the draft EA, there's comments from Commissioners, and then the applicant sort of highlights or says how the draft has been revised to address those comments. So I was wondering, were there any comments from the Commissioners on the draft EA?

Ms. Loudermilk: Yes. Yes, there was. As part of the June 24<sup>th</sup> 2008 meeting, those comments are included in the appendix section. And what the responses – there's a separate response letter in the EA document. And then that information, general information, was incorporated into the final document.

Mr. Hiranaga: Where is that response letter located?

Ms. Loudermilk: It would be Appendix K, and it is the, I believe, third page from the back part of the appendix. Letter dated July 2<sup>nd</sup> 2008. And I stand corrected in terms of – excuse me. That's the letter and then the response letter is in front of that dated October 2<sup>nd</sup> 2009.

Mr. Hiranaga: Appendix K?

Ms. Loudermilk: Appendix K.

Mr. Hiranaga: Third page from the back?

Ms. Loudermilk: Third page from the back. It should be the Planning Department letter dated July 2<sup>nd</sup>.

Mr. Hiranaga: All right. Thank you.

Ms. Loudermilk: And then the applicant's specific response to those comments is one page before that, October 2<sup>nd</sup> 2008. And then that information in the letter was then incorporated into the final document.

Mr. Hiranaga: All right. Thank you.

Ms. Loudermilk: You're welcome.

Mr. Hedani: Move to accept the final EA, and issue of finding of no significant impact determination.

Mr. Iaconetti: Second.

Mr. Starr: It's a bit premature. I just wanna open for public testimony and get a recommendation first. So if it's okay with the maker, can we hold that thought for a couple minutes?

Mr. Hedani: Sure.

Mr. Starr: Okay, anything else, Robyn?

Ms. Loudermilk: Not at this time unless there's any additional clarification or questions that the Commission may have on this document.

Mr. Starr: Okay. Members of the public wishing to give testimony on this item, please make yourself known. Not seeing any, public testimony is closed. Your recommendation?

Ms. Loudermilk: Our recommendation is that the Commission determine that the proposed action does not have a significant impact on the environment, and that the potential impacts have been adequately mitigated. As such, the Commission – we request the Commission issue a finding of no significance for the final EA document, and have the Department transmit the determination to the Office of Environmental Quality Control for publication with the note that the issuance of the FONSI determination does not preclude the Commission from requiring additional information and/or mitigative measures during the review of the community plan amendment, land use district boundary amendment, and change in zoning. And that concludes the Department's recommendation.

Mr. Starr: Thank you. Commissioner Hedani?

Mr. Hedani: That was so long that I'll say, I so move.

Mr. Iaconetti: Second.

Mr. Starr: And Dr. Iaconetti has seconded Commissioner Hedani's motion. The motion is to—? Director?

Mr. Hunt: The motion is to accept the staff recommendation.

Mr. Starr: Okay, any discussion? Not seeing any, all in favor, please raise your hand. All opposed? Okay.

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

**VOTED: To Accept the Recommendation of the Department to Accept the Final Environmental Assessment and Make a Findings of No Significant Impact (FONSI)**  
**(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, W. Mardfin, D. Domingo, J. Starr)**  
**(Excused - B. U'u, J. Guard)**

Ms. Loudermilk: Thank you very much.

Mr. Starr: And congratulations to the applicant. And thank you for the good work you're doing. And we'll see you back in the process, I guess.

Mr. Hunt: And for the record, that was seven in favor, zero against.

Mr. Starr: Okay. We'd like to suggest that we move along to Items H – we move Items H and I up on the agenda. We can't do G because someone's not here who needs to be here for that. So if anyone would like to make a motion that we move Items H, Minutes and Director's Report up on the agenda, we can handle that now.

Mr. Iaconetti: So move.

Ms. Donna Domingo: Second.

Mr. Starr: Okay, moved by Dr. Iaconetti, seconded by Commissioner Donna Domingo that Items H and I be moved up to next on the agenda. All in favor, please raise your hand. All opposed?

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

**VOTED: To Move Up Items H and I on the Agenda.**  
**(Assenting - W. Iaconetti, D. Domingo, K. Hiranaga, J. Guard, W. Mardfin, W. Hedani, J. Starr)**  
**(Excused - B. U'u)**

Mr. Starr: Okay, motion passes.

**H. ACTION MINUTES OF THE DECEMBER 9, 2008 MEETING AND REGULAR MINUTES OF THE OCTOBER 14, 2008, OCTOBER 23, 2008, NOVEMBER 10, 2008 AND NOVEMBER 25, 2008 MEETINGS.**

Mr. Starr: And there was a correction page, I believe?

Mr. Hunt: And, Carolyn, there was a correction page? Is that correct?

Mr. Starr: Okay. Anyone have any additional corrections, changes, comments? Okay, ready for a motion on this?

Mr. Hedani: Move to approve as amended.

Ms. Domingo: Second.

Mr. Starr: Okay, moved by Commissioner Hedani, seconded by Commissioner Domingo to—?

Mr. Hunt: The motion's to approve the minutes as amended.

Mr. Starr: Okay, all in favor, please raise your hand. All opposed?

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

**It was moved by Mr. Hedani, seconded by Ms. Domingo, then**

**VOTED: To Approve the Minutes, as Amended.  
(Assenting - W. Hedani, D. Domingo, K. Hiranaga, J. Guard, W. Mardfin,  
W. Iaconetti, J. Starr)  
(Excused - B. U'u)**

**I. DIRECTOR'S REPORT**

**1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue a time extension(s) on the following requests:**

- a. MR. MILTON ARAKAWA, Director, DEPARTMENT OF PUBLIC WORKS requesting a Special Management Area Use Permit two-year time extension on the period to initiate construction of the Waiohonu Bridge Replacement project at TMK: 1-4-012:002, 016, and 019, Hana, Island of Maui. (SM1 2002/0025) (J. Buika)**

Mr. Hunt: introduced the agenda item.

Mr. Hunt: The Commission shall either acknowledge receipt of this request, and you may review



the time extension, or waive its review. A little editorializing here, generally, we bring these to you, and if you have concerns and you can request to review them yourselves.

Mr. Mardfin: Director, during one of the recesses, I spoke with Mike about this. My question was, why do they need the time extension? And correct me if I mischaracterize what you said to me, Mike, but essentially that the funds aren't available yet, and things got pushed back, and so they have to delay this a little bit. Is that--?

Mr. Michael Miyamoto: Mr. Chair, yes, in reviewing the documentation provided by the department, there are some minor stream permits that we need to secure finally. And due to the type of funding, Federal funding available from the State at this point that the project is being pushed back a little in the Stip.

Mr. Mardfin: And I just wanted to say that the community of Hana eagerly awaits the repair of this and other bridges, so we're glad we're continuing to work on it. And maybe with a new President, we'll have money to do shovel-ready projects.

Mr. Starr: Mike, I'd like to, at a future meeting, I'd like to call on you to give us an update on bridge and other projects in the County. So if you could start to get that together. And then when you have it ready, let us know, and we'll put it on an agenda.

Mr. Miyamoto: Actually, I just called Engineering. Oh, he walked in the door. So Joe can answer any of the questions you have regarding the Waiohonu Bridge.

Mr. Starr: Joe, thanks for being here. Can you give us a status on Waiohonu and also really very, very briefly on what other at least East Maui bridge projects are going on?

Mr. Joe Krueger: Okay, from what I can remember, first Waiohonu, it's on the Federal Stip Program to replace the permanent bridge in 2011, but we don't wanna wait that long for the-- We have problems with that bridge, so what we plan to do is put in a temporary bridge. Put the temporary bridge in now this year until we can replace the permanent bridge. So we just close permanent bridge. And when we get the funding, we can go ahead and replace it unless funds from Obama come in, and then we can go ahead and do that.

For 2009, we have Papahawahawa. We're going to have to get an extension on the SMA permit for that. And then for 2010, we have Kaholopo`o and possibly Kokoai. Kokoai, we're gonna rehabilitate. The others we're gonna replace with a one-lane bridge.

Mr. Starr: When you do Kokoai and the others, is traffic gonna be stopped there for an extended period of time?

Mr. Krueger: When we do the bridges, we'll have a temporary bridge. Except for Kaholopo`o, we'll have the Hamoa Road as a bypass to use as a detour. So traffic won't be closed.

Mr. Starr: So you're never gonna have to block off traffic for months like in the old days?

Mr. Krueger: Correct. Yeah.

Mr. Starr: Good job.

Mr. Mardfin: I have two questions. The first one is, what is your criteria for deciding which bridge goes first, second, third, and so forth, generally?

Mr. Krueger: We had a plan at one time, and it was to start at one end or the other end and work our way this way. But then as we go along, we get problems with a bridge, and then it kinda gets delayed, but we're still going on with the other bridges. So it kind of got sort of mixed up. See, Kaholopo`o and Papahawahawa, which is closest to Hana Town was supposed to go first. But now that we have – they're both being delayed. And Waiohonu was gonna be next. So that's – that kinda jumped ahead of the other two. But by putting in a temporary bridge or having a detour road available, we don't have to go from Hana Town working our way out. We can skip around.

Mr. Mardfin: I wanna congratulate you on one thing. I was ten minutes late getting – well, I wasn't late getting here. I was delayed ten minutes on the Hana Highway today because they were bringing this gigantic concrete beam to Paihihi. And the policemen were guarding it and told us to get off to the side and stuff, but huge beam. But congratulations. I'm glad you're proceeding with that one.

Mr. Krueger: We'll be finished in about three months.

Mr. Mardfin: Thank you very much.

Mr. Starr: I wanted to make a comment too. The period of Christmas through New Year's was the wettest and worst conditions around where I live at least 20 years. I woke up on Sunday before New Year's and there at Nuinuiloa, there was four or five feet of water over the fort. It was running through the pipes, and four or five feet over on top, Kalepa had run. There was three foot of mud across most of Kalepa Bridge. And there were just a jumble of trees. It looked like, you know, a ball of twine, but they were trees. And the whole pavement had been ripped up for almost half a mile past it. And it was just, you know, a huge jumble. And it was – there were – there was actually a big celebrity party going on in Kipahulu and there were all kinds of people moving back and forth, and it was just rivers had run that had never run. And, you know, I kinda looked at that, and figured well, no one's going anywhere for a week. And next thing, there's a big – the Hana Road crew came down with a big track loader and just moved up mud out of the way, and worked it, and worked with, you know, helped the community people out. And it – I heard from community members who were tearful about the job that the road crew did in keeping local residents able to get back with their families and keep it safe, and keep it kinda closed for the public unless you had vehicles that were safe. But the road crew did a really good job. I sent a letter to the Director and it was just really moving. They really did great. And I wanna just express thanks again for that.

Mr. Krueger: Thank you.

Mr. Starr: Members, anything else on this? Director? Thank you very much, Jeff. Thanks, Mike. And we'll still do that, Mike, sometime. When you get a list together, let us know.

Mr. Hunt: So hearing no request to review the time extension, we'll assume that you're waiving that.

Mr. Starr: Any members of the public have any testimony on that? Not seeing any, Commissioner

Hedani?

Mr. Hedani: Move to waiver review of the request.

Mr. Starr: Second, someone?

Mr. Mardfin: Second.

Mr. Starr: Okay, seconded by Commissioner Mardfin. Moved by Commissioner Hedani. Director?

Mr. Hunt: The motion is to waive review of the Waiohonu Bridge replacement time extension.

Mr. Starr: Okay, all in favor, please raise your hand. All opposed?

Mr. Hunt: That was seven in favor, zero against.

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

**VOTED: To Waive Review of the Time Extension Request.  
(Assenting - W. Hedani, W. Mardfin, K. Hiranaga, J. Guard, D. Domingo,  
W. Iaconetti, J. Starr)  
(Excused - B. U'u)**

- b. HONUA LLC requesting a Special Management Area Use Permit time extension to increase the time to initiate construction of the Makena Golf Course Maintenance Washpad by two years until April 30, 2010 at TMK: 2-1-005: 108, Makena, Island of Maui. (SM1 2002/0028) (P. Fasi)**

Mr. Hunt: The next time extension involves Honua LLC requesting a special management area use permit time extension to increase the time to initiate construction of the Makena Golf Course maintenance washpad by two years until April 30, 2010, at TMK: 2-1-005: 108 in Makena. The file no. is SM1 2002/0028. The Planner assigned to this is Paul Fasi. He's not here, and frankly, I don't have a lot of information on this. It is a washpad.

Mr. Starr: What is a washpad?

Mr. Hunt: They're usually used for trucks or vehicles. Or in the golf course, I would imagine it would be for the carts.

Mr. Hedani: Move to waive review.

Ms. Domingo: Second.

Mr. Starr: Let me just see if anyone wants to – public to comment on it? Is that okay, Commissioner Hedani? Okay. Do we have any public testimony on that? Seeing none, I'm sorry, please rephrase the motion.

Mr. Hedani: To waive the review of the Honua LLC special management area use permit time extension.

Ms. Domingo: Second.

Mr. Starr: Okay, moved by Commissioner Hedani, second by Commissioner Domingo. Hold on one sec. To waive– Doc?

Mr. Iaconetti: This is at least the second time this has come up for a time extension. What's so complicated about this? I wonder why don't they get it done? As long as I've been on the Commission, they've been asking for time extensions.

Mr. Starr: Can we get a hold of Paul on–?

Mr. Iaconetti: It's not that important. I just wondered why that keeps coming back.

Mr. Hunt: I was informed by the secretary that the Current Planning Division actually received a request that they're no longer interested in this time extension. So apparently, they believe they can meet the deadline. We don't have that on paper. So this is rather awkward. So I'm being informed we have an email that–

Mr. Starr: Commissioner Hedani, what's your pleasure?

Mr. Hedani: I think in any case, it can be handled administratively.

Mr. Starr: Okay, but what do we want to do with the motion?

Mr. Mardfin: Well, that's why he wanted it waived so it can be dealt with administratively. If we pass the motion, then it's–

Mr. Guard: So we just vote on the motion.

Mr. Hunt: If you waive it, and they no longer request it, I don't think there's any harm.

Mr. Starr: Okay, so we're ready to vote on the motion? Okay, all in favor, please raise your hand. All opposed?

Mr. Hunt: That's seven in favor and zero against.

**It was moved by Mr. Hedani, seconded by Ms. Domingo, then**

**VOTED: To Waive Review of the Time Extension Request.**  
**(Assenting - W. Hedani, D. Domingo, K. Hiranaga, J. Guard, W. Mardfin,**  
**W. Iaconetti, J. Starr)**  
**(Excused - B. U'u)**

**2. Planning Commission Projects/Issues**

Mr. Hunt: Your next item involves Planning Commission projects and issues. I thought I'd take this opportunity to apprise you of the B&B Bill and how we're gonna be implementing it 'cause some of that will affect this Commission.

First of all, the B&B Bill was adopted by Council and signed by the Mayor. The major elements of this new law expand the zones where B&Bs are allowed. They're now allowed in addition to the residential zone and business zone and hotel zone, they've been expanded to include the rural and agricultural zones. There's also a cap on the number of B&Bs—a total of 400. And they're broken down by community plan districts. Each community plan has their own cap. The definition of a B&B was modified. They now require that the owner of the property live onsite. There's no longer a lessee allowed. So it has to be the owner onsite. The liberalization, though, included the rental of the ohana. I believe this Board voted four to two in favor of including the ohana. So that was included in the new law. So you can use up to two dwellings. You can rent up to two. You can rent one and live in the other one. It doesn't matter if it's the main or ohana, but no more than two can be included in the B&B. If there's a third dwelling on the property, it would have to be a long term rented or rented to farm workers, etc.

Mr. Mardfin: Jeff, can I interrupt one second? 'Cause I read the same thing. Suppose there are three buildings? The owner could live in one and rent out both the other two. Is that correct?

Mr. Hunt: No, has to live in one of the two units that is part of the B&B.

Mr. Mardfin: Okay, I misread it then or I misinterpreted it.

Mr. Hunt: They do have to put up a project sign prior to submitting the application five days. And that sign has to be up until the application's decided upon. That's a new requirement for us and there's some been some talk in the Department and elsewhere that perhaps we should require that more often. So that is a new idea. It will take us at a minimum, months, to process these applications. There's some feelings out there that you just submitted and it's automatic, and it's a day or two, and you start operating. I just think it's important that people realize it's gonna take months. The Planners already have full workloads, and they're gonna just incorporate this into their existing workload. We are going to prioritize B&Bs that have been pending as a conditional permit for a long time that meet the new definition. So with this ohana, in the past, people had to get a conditional permit. If they meet the new definition, and they've been pending a long time, we think it's fair that they be prioritized. Everyone else will just be first-come, first-served. As they come in, we process them. It seems to be the fairest for everybody. John?

Mr. Guard: How many people have put in applications so far?

Mr. Hunt: We had one so far. Again, there was a five-day waiting – or you had to have the sign up for five days prior to submitting. So we didn't really anticipate any 'til this week. But we have had 500, and as of yesterday, 503 applications downloaded from the website. Now, maybe some of those – I assume some of them are gonna be curious, and some of them will look at it and determine, well, it's not worth it, but that is a high volume. Doctor?

Mr. Iaconetti: The food element, do they still have to provide you breakfast?

Mr. Hunt: Yes, they have to provide a breakfast, but it cannot meet the definition of a restaurant, which means it's not prepared or cooked.

Mr. Iaconetti: But they can provide just a kitchen as a place that they can have breakfast? Or they actually have to provide breakfast?

Mr. Hunt: They have to provide breakfast somewhere on – in one of the two dwelling units, but there can be a kitchen. Each dwelling unit can have their own kitchen and they can prepare their own food. So they don't have to – they're not forcing someone to eat their breakfast, but it has to be available in case someone doesn't have food or doesn't want to drive into town. The intent on that, and it's pretty standard, and that's why they're called bed and breakfasts, is to reduce traffic in the neighborhoods so that in the morning, there's not all these cars going up and down the road disturbing the neighbors.

Mr. Iaconetti: What I'm asking is, can they get by with just providing a kitchen and not providing any food at all?

Mr. Hunt: No, they have to provide breakfast. They have to make it available.

Mr. Hedani: Do the 400 approvals have to come through this Body? Or are they being handled administratively?

Mr. Hunt: No, let me continue on and I think I'll answer some of your questions. Most of the applications can be handled at the Department level. That was our streamlining provision that we can handle most of them. However, there's instances where they will have to come to the Planning Commission. And one is if 31% of the neighbors within 500 feet object, then it gets kicked to you folks. If there's a second B&B within 500 feet, that's another method it gets to you folks. Or if it's on agricultural land, then it comes to you folks. But here's the distinction, on the agricultural land, it comes to you folks for the State special use permit which you will then analyze to determine impacts to farm land, compliance with State laws regarding HRS. Technically, you won't be reviewing the B&B permit. It's like when you guys make a recommendation on a change in zoning and the SMA you kind of hold it back here, the Council makes the ultimate decision on the change in zoning. And then once you get that, you guys act on your SMA. It'll be the same scenario with the Planning Department. We'll hold the B&B. See what you guys do on the State SUP for the agricultural permit. If you approve it, then we will process the B&B. Another situation is we've got some of these conditional permits that are like I mentioned that meet the new definition. They have the option to have those being processed as a B&B. And so we're gonna send out letters to those folks. And we'll prioritize those. And they can request that it just be handled as a B&B. So some of that will reduce the workload coming to you folks on conditional permits. And I think that's about – that's all I had. So any questions?

Mr. Starr: How about those that are already in the pipeline for CUPs like the ones before us today?

Mr. Hunt: If they've got an approved CUP or CP for a B&B or transient vacation rental, and they meet the definition, they can simply say, we wanna be renewed as a B&B under 19.64. If they have a pending application, they can do the same thing. If they meet the definition, they can say, we wanna be processed as a B&B rather than this conditional permit and have to go all the way to

Council. Today you have one of your applications—and let me know if I'm starting to get out of bounds, James—one of your applications, we believe it would meet the definition of a B&B. And they've asked should we withdraw our conditional permit? And we said, there's no harm in going forward with your conditional permit before you make that decision. And so this one's coming before you today unless they withdraw it. It would be a recommendation on a conditional permit. There's a good chance after you make your recommendation, if you do today, that they will then send us a letter and request that it just be processed merely as a B&B. You still would have to act on the State SUP today anyways. So it's not a waste of your time completely.

Mr. Hedani: Are you happy with the resulting bill?

Mr. Hunt: Yeah, actually I think it's a very good bill. And I wanted to mention that to you folks. Everyone contributed from you folks— Remember back in those hearings, and the signs, and the protests? There was a lot of community input from the Planning Commission, from the citizens, the special interest groups, the Council Planning Committee, and the Department staff too. So I thought it was a good process. The bill itself focuses on ownership of the land and conveying a benefit to the people who own the land and are living on the land. And I think that's a good message to our community. And it also I think it helps to diminish off-island speculation where – when it was the wild, wild west days of anything goes, just go ahead and operate your TVR. Our statistics showed that that actually induced a lot of off-island ownership and speculation where we had multiple TVRs being purchased and operated by one person who lives in San Francisco or something. So this seems to focus the benefit on the owners of our property. And they still live on the site, so they can deal with the neighbors' complaints. They're still living on the site, so they're providing for local housing. And yet we're still at same time providing for tourism and economic development. So I think it is a good bill. It's a compromised bill. In a lot of ways, that's a good bill. No one got exactly what they wanted. So perhaps it is a good bill.

Mr. Mardfin: I'd like to ask – I wanna make sure I understand because I'm likely to get asked questions about it. On the priorities—people that have been applying – have already put in applications will be given the first priority?

Mr. Hunt: People who have a pending conditional permit application that meets the new definition of a B&B, we will – if they request that their application now be processed as a B&B, we will prioritize the processing of that.

Mr. Mardfin: And then you said beyond that, it's a first-come, first-served situation.

Mr. Hunt: Yeah, it's interesting. We get a lot of requests for people to prioritize their applications. And you can imagine that everyone thinks their application should be prioritized. And if you start prioritizing everybody, after a while, there's no point in prioritization. It's like everyone's flying first class.

Mr. Mardfin: Is there any thought to de-prioritizing people that have been operating illegally?

Mr. Hunt: It's an interesting question. And we talked to Corp. Counsel, and I think they even advised you that your job is to process the application before you. I've worked in other jurisdictions where the Department wouldn't bring an application forward if there was a known violation. We're

still wrestling with that. I mean, on the one hand, we figure if somebody has a right to put in an application, let's process it. On the other hand, if it's a known violation, we shouldn't be encouraging that.

Mr. Hiranaga: I did not follow the Council's processing of this ordinance. My question is, is there any concern about putting caps on the number of permits per area because they may turn into a commodity in the future?

Mr. Hunt: Well, the permit is nontransferable so it's not like you can put it on eBay or something. I think there's been some concerns about the caps more on the numbers themselves, not that it would result in the commodity. Some people argue they're too low. Some people argue they're too high. So again, perhaps it's a good number. I don't see it being a commodity. I do see the caps tending to result in a rush. There's a fear out in the community that if I don't get my application in, the cap's gonna be reached, and then I won't have an opportunity. I think that's resulting from the caps.

One last comment: the reason it was expressed by the Council for the caps, and we heard it a lot was it sends a message to the community that, yeah, we're allowing these in our community, but we're not gonna allow them to run ramped. We're capping them. We're regulating them, but we're still providing for them. And I think that was the message of the caps.

Mr. Hiranaga: I guess my thought was I would've preferred just to allow free market to sort of control the number of B&Bs. Because if people aren't staying at your place, you're not gonna have an impact even if you have a license. And the ones that are operating successfully will have the business. So once you reach the cap, there may be people who get one visitor a year. They're gonna hold onto that permit. And for me, I would've preferred a free market basis versus artificially setting caps.

Mr. Starr: When the caps get reached, does that conditional permit process start again?

Mr. Hunt: Well, they would have two options. We will create a waitlist if the caps are reached. And the other option would be they could go for a conditional permit.

Mr. Starr: So we may end up where we were but with a lot of B&Bs operating.

Mr. Hunt: Well, it would beg the policy question, then. If we have a cap, should we be issuing conditional permits above that cap? It seems to undermine the purpose of the cap. So we can cross that bridge when we get to it, but that issue will be raised if we get there.

Mr. Guard: Is there anything to stop you from applying for a permit even if you have a long term tenant now?

Mr. Hunt: No.

Mr. Guard: Like if you want it to be available? Because if you look at the for rent signs, and you see that there's quite a few places for rent, it might be in your best interest to get the permit for long term.



Mr. Hunt: We heard the rumor, for lack of a better term, that that's what people are doing is they're just locking one up just in case they want to do one in the future. Another rumor we heard is people are locking them up so that there can't be another one within 500 feet of them because they don't want one at all in the neighborhood. And again, that's just rumor control. Who knows?

Mr. Guard: A followup question. I live next to one. I mean, they don't cause a problem at all. So if I wanted to get one 'cause I can't get a long term tenant in a cottage, am I eligible to get one? 'Cause it'll be coming in front of this Body because I live next to one.

Mr. Hunt: If there's a permitted one within 500 feet, then it gets kicked to this Body. It doesn't mean that it's denied. It just means that the Planning Department doesn't have the authority to approve it. And then in terms of your voting itself—

Mr. Guard: . . . (inaudible) . . . come in front of the Commission when I'm on the Commission.

Mr. Hunt: For that particular one? Your own?

Mr. Guard: I can?

Mr. Hunt: Yeah. You would have to recuse yourself if it's your own application.

Mr. Hiranaga: I guess one financial burden is placed that they lose their homeowner's exemption. And then there is a different tax rate, or are you still taxed at—?

Mr. Hunt: No, there's no different tax rate, but you lose the homeowner's exemption. The Council discussed that a lot. And I hate to speak on behalf of Council, but I'm trying to explain to the best of my understanding what their thought process was is that if you're renting out short term, it's to some degree, a pseudo commercial use, and therefore, you shouldn't get the same homeowner's exemption of somebody who's just using it for purely residential. Now whether you agree with that logic or not, to the best of my understanding, that was their logic.

Mr. Hiranaga: It probably impacts their insurance coverage also. I think they have to disclose that to their carrier. It probably impacts their premiums.

Mr. Hunt: There's also discussion about creating a new B&B tax rate where if you are operating, not only would you lose your homeowner's exemption, . . .

Mr. Guard: . . . but higher than approved residential.

Mr. Starr: How about ag zone?

Mr. Hunt: Anything in particular?

Mr. Starr: How does it — what happens with the B&Bs on ag land?

Mr. Hunt: At the Department level, we can approve the B&B if you guys issue the SUP, but they have to meet the income test which is \$35,000 gross income for the two previous years. Or if the

lot is five acres or less, they have to have a fully implemented farm plan, and the lot had to be created prior to November of last year. The third option is if the parcel's listed on the State or National Historic Register. So there's kind of a— The income test that you guys initially recommended, and went up to Council and got batted around, remember you guys lowered it, I believe? And then we – in talking to the Farm Bureau, they were concerned it was too low, so we raised it back up to \$35,000, but then had a small lot exemption to that income test, 'cause if you're only – got five acres or less, the argument was it's difficult to make the \$35,000 gross income. So that's what they finally came up with.

Mr. Mardfin: This is speculation, but my guess is for Hana, the 48 allocation is gonna kinda go like that. That's a number that the Council could reconsider in the future, isn't it?

Mr. Hunt: Oh, anytime, yeah.

Mr. Mardfin: And it might be sort of community-driven, which if the community wants more, they could maybe request that the caps be raised. And if communities wanted less, they could ask that they be lowered, I would think.

Mr. Hunt: Well, part of the language that was in the bill was – and it speaks to further reductions per the community plan. So as we go through our community plan updates, each community plan could determine potentially, well, we don't want that many. That's too much and they could reduce it. It's difficult to raise it above the existing ordinance caps, but it would send a message and then the Council could change the ordinance.

Mr. Mardfin: Thank you.

Mr. Starr: Thank you for a good presentation on that. Let's move along and finish up.

### **3. Discussion of Future Maui Planning Commission Agendas**

#### **a. January 27, 2009 agenda**

Mr. Hunt: The next one is the future Planning Commission agendas. And there's a memo from Clayton Yoshida regarding the January 27<sup>th</sup> agenda.

Mr. Starr: Yeah, and I wanna make a comment that there's a really great presentation coming at the next meeting. This guy, Mark Fenton who's the national, in fact, international proponent of creating healthy and walkable communities is really at the cutting edge of good planning and smart growth. And the guy's just brilliant and a great speaker. And really look forward to that. It should be a really good one. You know, he's able to give examples of stuff that works in designing communities for people to be active. Anyway.

Mr. Hunt: Any other questions or comments on the 27<sup>th</sup> agenda?

Mr. Guard: I have a question back to Item 2. In talking about the signage just for B&Bs, did that get batted around for larger projects? We've been talking about this for a couple of years.

Mr. Hunt: The conversation was focused on the B&B ordinance, but I think it gives an indication that there is support for that. And you're correct, it has been talked about for several years. And we'll continue to discuss it.

Mr. Starr: Can I make a request of you, J.B.? Can you put together a note, and we'll pass it along to the Department requesting that they give consideration, and we put it on a topic for agenda at a future meeting?

Mr. Guard: Okay, well, I mean—

Mr. Starr: We went through that a year ago, two years ago.

Mr. Guard: Yeah, I brought it up during my honeymoon when I was on the Big Island, and they were doing it. And it was like, oh, we'll look into this. And that's a great idea. And I've seen multiple projects that we didn't really like that would've been perfect candidates are now built and up and going.

Mr. Starr: Let's do it. Put it in a memo and we'll get it—

Mr. Guard: I think that's a great memo on record and on this that it's been two years. And to say that, oh, it was a great idea for the B&B, and it puts so much pressure on us when the neighbors are the ones that would be able to kind of watchdog their own neighborhood or the people that drive by. Like Kent was saying, he drives north on Honoapiilani Highway and next thing he knows, there's a steeple in his face, then maybe he would've seen the sign there for three months prior to building to say, hey, this might have a view impact.

Mr. Hunt: We'll schedule it for an agenda item for your discussion.

Mr. Starr: Okay.

Mr. Guard: On a date certain?

Mr. Hunt: In February.

**b. Chair's request to reschedule the April 28, 2009 meeting due to the American Planning Association National Conference**

Mr. Starr: Okay. And the next one I guess came from me to see if there's any interest and maybe also gives me an opportunity. The APA National Convention—I was — it was really a wonderful experience last year in Lost Wages. This one's in Minneapolis. I mean, it's just — you know, there's just so much opportunity to learn stuff. There's great speakers. Usually three or four of them every session. It's really good. So I really want to encourage anyone who can to go. I understand that this year there's really limited funds for sending staff. Are you sending anyone, Jeff?

Mr. Hunt: If we send anyone, it'll only be one or two people. Our budget is so tight so don't anybody else bother asking.

Mr. Starr: Yeah, it is expensive. In fact, registration cost me eight hundred bucks on top of the hotel and flight and stuff, but I'm doing it again. It was worth it. And encourage anyone else to do it. It's really good. And we have a meeting right in the middle of it. If there's any desire to move it a couple of days forward or back, we could do it. If not, that's fine too.

Mr. Hiranaga: I guess I would be willing to go along with the request if there was a quorum issue, but if there is not a quorum issue, I really don't see a justification for it. If you're the only person that's gonna be planning on going, we're gonna have hopefully eight other Members and we do have a Vice-Chair, if you are Chair.

Mr. Starr: Well, I probably won't – you know, I might not be Chair then anyway, but okay. No need to do anything. If any of you guys can possibly go, it really is worth while.

Mr. Hedani: There was a couple of people in the audience that wanted to testify on agenda items. So you might wanna ask as to what order you're gonna be following on the agenda following our break for lunch.

Mr. Starr: Okay, I was just gonna run through the rest.

Mr. Mardfin: I wanted to speak on changing the date. I have no problem with changing the date. I'd prefer it to be a Tuesday so either a week earlier or a week later, but–

Mr. Starr: I don't even know if the room's available. Did Clayton do any work on that?

Mr. Hunt: I'm not sure we looked into it. Generally speaking, it's up to you folks. Generally speaking, we would probably follow Mr. Hiranaga's comments. We have a nice steady process. The public has expectations on what days.

Mr. Starr: Yeah, it's fine with me.

Ms. Domingo: Yeah, I think John gotta realize he gotta be here on April 28<sup>th</sup>. Right, John?

Mr. Guard: What's that?

Ms. Domingo: Vice-Chair, April 28<sup>th</sup>.

Mr. Guard: It's gonna be a new vote anyway.

Mr. Starr: Yeah, whoever is Chair or Vice-Chair. I just mainly wanted to see if I could inspire anyone else to go with me 'cause it's great. Anyway, let's move right along. How about we break for lunch and come back in one hour with a clean, full stomach? And someone wanted to ask what you're testifying for, Angie and Kai?

Ms. Angie Hoffman: (Inaudible)

Mr. Starr: Okay, it'll be after lunch.

Ms. Hoffman: (Inaudible)

Mr. Starr: Well, we had scheduled at one o'clock for the two Haiku items, so it'll be a little bit later, a ways later, 'cause Hanzawa's Store will be . . . (inaudible) . . . Okay, anyway, we're recessing 'til five minutes after 1:00. Enjoy your lunch.

(A lunch recess was taken at 12:08 p.m. and the meeting reconvened at 1:05 p.m.)

Mr. Starr: . . . 2009 is back in session. Hope everyone had a good lunch. We're going to move on to Item D-1 on our agenda. And I turn it over to our avid Director to introduce the item.

**D. UNFINISHED BUSINESS** (To be taken up at approximately 1:00 p.m. or soon thereafter.)

**1. MATT and SANDY DANIELLS requesting the following land use changes for the Hanzawa Variety Store Expansion and Subdivision at 1833 Kaupakalua Road, TMK: 2-7-014: portion of 044, Haiku, Island of Maui: (R. Loudermilk) Public hearing conducted on August 12, 2008.**

- a) State Land Use Boundary Reclassification from the State Agriculture District to the State Urban (approximately 2 acres) and the State Rural District (approximately 1.93 acres) (DBA 2007/0001)**
- b) Change in Zoning from Interim District to B-CT Country Town Business District and RU-0.5 Rural District (CIZ 2007/0001) (R. Loudermilk)**

**The Commission may take action on the State Land Use Boundary Reclassification and Change in Zoning applications.**

Mr. Hunt: Your next agenda item involves Matt and Sandy Daniells requesting the following land use changes for the Hanzawa Variety Store expansion and subdivision at 1833 Kaupakalua, TMK: 2-7-014: portion of 044 in Haiku. Robyn Loudermilk is the Planner assigned to this project. And is Robyn here yet? I don't believe we have the project Planner. We could have the applicant start.

Mr. Starr: Okay. I know it's unusual but, Will, why don't you lead off, and then Robyn will take it up from Department specific?

Mr. William Spence: Thank you, Mr. Chairman. Thank you, Commissioners. My name is William Spence. I'm here representing Matt and Sandy Daniells in their district boundary amendment and change in zoning for the Hanzawa Store. I have a power point for you.

The reason we're back here today is because at our last meeting, the Commission requested some additional information. So what we'd like to do is go through the power point, which also includes the additional information, and then we'll take questions by the Commissioners.

Mr. Starr: How long will the power point run?

Mr. Spence: I can go through it pretty quickly.

Mr. Starr: How long? We always ask this question and we like to know. Ten minutes? Fifteen minutes?

Mr. Spence: Ten.

Mr. Starr: Ten? You got ten minutes. Go for it.

Mr. Spence: Okay. Commissioners know– I think Chairman Starr was away. He was attending national events when we did this last time. Location of the community plan map: West Kuiaha here, Kaupakalua Road here, and East Kuiaha, Awalau Road as well. And these are the two designations for the subject properties: business commercial and rural. This is the lot configuration. I show this because there's a little – because it's unusually shaped. This is one lot here–3.536 acres. And then the other smaller lot which is only .4 acres. These – closeup of the community plan designations: two acres of business commercial, 1.93 of rural. This is the property from the air. Awalau Road here that goes up underneath the eucalyptus trees, Kaupakalua here. There's the existing store. The remaining portion in which – you know, this whole portion here to be zoned B-CT and then the area in the back to be rural.

A little bit of history–the store was founded in 1915. Taichiro Hanzawa originally founded it and then Brother Tetsuji came over from Japan, took over the store when Tetsuji went to Paia Mercantile. And was turned over to Ralph Hanzawa, and then over to Matt and Sandy Daniells. Sandy Shishido Daniells is Ralph Hanzawa's niece.

This is what the original store looked like. It burned down in 1974. As you can see, it was – basically, they rebuilt the warehouse. And then they dressed it up, and this what it looks like today providing some cover for the customers underneath the gas pumps, landscaping, etc.

So why change the zoning? First off, the store's at risk. Here we have a store that's been there for almost a century. The store's at risk because it's nonconforming. It's been there. It predates all land use law. They need the zoning to keep the doors open. It's needed to accommodate community growth. And we'll examine all these in a little more detail. Good planning implements a community plan. And interim zoning is absolutely an undesirable thing to have in anybody's neighborhood. So the store's at risk. It's grandfathered in. If there's – if there was a natural disaster, out of our code it says, "Any nonconforming use discontinued for 12 consecutive months shall not be resumed." So it means if the store burned down again, or blew over, or whatever, right now it takes at least six months just to get a building permit. Then you have to get your financing. Then you have to get – actually build the thing. You're looking at – you know, you're almost two years into a project already. The store would not be resumed. It needs this zoning just to stay where it is. In addition, another part of the code says this work shall not exceed 50% of the current replacement cost. So even if they got all their financing and everything, they could only build half of it back. It's needed to keep the doors open. The store is the same size as it was in 1974. It's about 2,800 square feet. In the same 35 years, you can only pack so much goods for sale in there, but yet at the same time, your cost of business keeps going up with insurance and employee benefits. We now have shipping rises and fuel surcharges. At a certain point without growing, they can't charge enough and remain competitive. And I think we have Sandy Daniells with us today. She – particularly on this point, she wanted to address the Commission.

Mr. Starr: Yeah, welcome, Sandy. Just introduce yourself for the record.

Ms. Sandy Daniells: Good afternoon, Mr. Chairman and Commissioners. My name is Sandy Daniells, owner of Hanzawa Store. After our first meeting in August before the Commission, I was asked to share more with all of you. And it's not that I don't want to share. It's just hard to be up here, so bear with me.

Anyway, when we first started our rezoning request in 2005, we had no idea that it would take so long. And with the price tag of at least \$100,000 and counting, obviously this has placed a significant financial strain on the business. We are a small mom and pop store that operates on thin margins. We are not a gold mine nor do we make millions. While operating expenses increase yearly, last year especially, we saw our fuel cost steadily increase month-to-month yet we had to keep our prices reasonable to compete. This created an additional financial burden which I guess you could compare it to having your mortgage nearly triple and having to pay it weekly granted on a larger dollar scale. There's no way to recover these costs in a short period of time. We all had to tighten our belts and be very creative. So many of our vendors started imposing fuel surcharges, delivery surcharges, and minimum order requirements. We are seeing some relief at the pumps, but we know that the petroleum industry is sensitive to supply and demand. And we are still experiencing fluctuations in our fuel costs. In our situation wanting to expand and add more services went from a desire to a need in order to remain in business. We are very aware that many people depend on us on a daily basis, and we want to continue to be there to serve them. So we respectfully ask for your support of our zoning request. Thank you.

Mr. Starr: Will, why don't you hold off for a minute? I wanna ask our Planner Robyn Loudermilk to come up. And I want to apologize, Robyn. I jumped the gun a couple of minutes. You were actually on time. I stated a little bit early.

Ms. Loudermilk: Thank you. What the Department did is in today's addendum report and recommendation was address all the concerns that were – was to – there were a number of questions that the Commission had after the previous public hearing. And so what this report did was to provide the information that was requested. A number of the information had to do with the traffic security measures, some of the code requirements, as well as the zoning requirements. As the request for the change in zoning is a business country town zoning which also has – which is different than other zoning designations in that it has design standards associated with it depending on the location of the zoning, I believe the report addresses the requested information from the Commission. The community plan map for the particular area was included so we could see what the other community plan designations were as part of the design standards and the public infrastructure in relation to the subdivision should the land use changes go forward. The community plan in Paia-Haiku has very strong language regarding different types of subdivision standards that are different than what is on the book right now, and that part of the design elements of the property incorporate the preferred design standards identified within the Paia-Haiku Community Plan Region.

Regarding additional square footage for a build-out scenario, we indicated that was fairly difficult to do and that theoretically, all the applicant has to do was build to the setbacks and the building heights. And you can calculate what that would be. There's no floor area ratios or certain lot coverage. So we're – the example that we have been – that was provided in here was very, very

conservative. I think we could double it and still meet other requirements for parking. The water meters were already on the property. There are no requirements to upgrade those meters. Regarding the – any proposed traffic improvements for the change in zoning and the district boundary, there are none. Any proposed improvements will be part of subdivision should the request be approved. The applicant, however, is requesting to be able to put in a storage turn lane off Kaupakalua to help ease the flow of the traffic coming in and out depending on the driveways.

So that leads me to the driveways. One of the questions were, if there were three, if we could reduce one, what would be the impact? At this point in time, it's difficult to indicate that as the Department of Public Works will be awaiting a sight distance report. So even as proposed, the new driveways may have to be slightly relocated depending on the results of that particular report.

And then the underground storage tanks, they are – they were recently– when I mean “recently,” within the last few years–upgraded to the current requirements by the EPA and the State of Hawaii. And the nature of the storage tanks are such that there are a number of mechanisms to prevent any seepage or leakage. There was also a question about its relationship to the Hamakua Ditch that was talked about that traverses a portion of the property. The storage tanks are located greater than the minimum 50 feet requirement that the Department of Health would have if it was a surface. They really have nothing for subsurface which this is. However, in consultation with the Department of Health, they use the most conservative standards available on the books, and that's where the storage tanks were relocated.

And then, you know, lastly, I just wanna reiterate that the Department supports the request. We do think that this is a good project in the location. One of the last analyses that the Department did based upon the last meeting was, what would be the appropriate zoning to allow for this type of operation because there was discussion in terms of the type of business or goods that could be sold and with the focus more on the agricultural because it is still a rural agricultural type of area? And then reviewing the agricultural zoning district, it does not allow for this type of store. It's very strict in terms of what is allowed in terms of size and produce. And to rezone a property and then they would have to come in for a conditional permit to allow it to continue for that use, I don't – we checked. We can't do that. Business country town would allow for the uses. There are concerns about potential types of uses, but I feel that we can work with the applicant. We can take a look to see what the permitted uses are, and see if there are any that you'd want to take out. However, I would like to note that when there was the blanket rezoning for similar properties in Upcountry, Hana, Paia, Haiku that were in the urban district, it was blanket. No conditions put out at all in terms of use. And the only reason again why this property could not take advantage of that was that it was not in the State urban district though it had been in existence much longer than many of these other properties that were rezoned. So in light of the land use, in this particular location, the business country town really is the most appropriate for what is existing there. The proposed layout, square footage is very compatible. And the Department continues to stand by its recommendation to support the request for both the change in zoning and the district boundary amendment. Thank you.

Mr. Starr: Will, you wanna wrap up if you have anything more in your presentation?

Mr. Spence: Thank you, Commissioners. Okay, I can go through these really quickly. As we discussed last time, it accommodates the growth that has already taken place in the area. There



has been no additional commercial space added in the whole Haiku area for 30 years. We also looked at what's happened within a mile of the store. Right now within a mile of the store, there's 547 homes. That translates by census tract numbers into about 1,500 people. That's just within a mile of the store. And if you look at the Urban Land Institute Standards, and at 20 feet – 20 square feet of commercial per single family, that translates into 10,000 almost 11,000 square feet needed just for within that mile radius. When you start getting out, and Hanzawa Store is here at Kaupakalua, when you start getting out down at the Five Corners, out in Peahi, and then Huelo is out here, and other areas outside of that, you're talking a lot more than just those 1,500 people. You're talking, you know, thousands. And I know Sandy talks about having regular customers from Kailua maybe 15 miles away. So this store serves a larger regional need, not just for the area residents. And as you know Pauwela Cannery, Pauwela does not have a store any more. So people either go to Haiku or they go to Hanzawa Store.

Just a little bit on – just explain exactly what they wanna do with the rural designation, 1.935 acres. They've agreed to a condition that just says all we want is two lots. Basically, we want to split it into half: one to be sold, another to be kept in the family. The sold one will help finance the commercial construction.

The – as far as densities go, the interim zoning that's on it right now would allow one house – I mean, with adjustments for being in the country, about one house per ten thousand square feet. You could potentially end up with a lot higher density on this. Rural zoning, the way that we're proposing it is actually a downzoning if you wanna talk about the density of what can be built.

We have Jim Niess, the project architect, with us to talk about the commercial aspect and how it meets the business town design guidelines.

Mr. Niess: Good afternoon, Commissioners. Jim Niess from Maui Architectural Group and it's a pleasure to be in front of you a second time today. We did meet in August over this, and I just wanted to briefly go over some of the project parameters just to refresh your memory. This is the existing store right here. We're proposing an– Now, remember, this is a change in zoning, so these are very conceptual plans. They aren't highly detailed, similar to Emmanuel Lutheran this morning. Proposing an 800 square foot addition to the store itself. Proposing three smaller scale retail structures and accompanying parking.

And in response to community concerns about traffic, we've added a right-turn entry lane here. And basically that's the outline of the project. Incidentally, Chairman Starr, you've mentioned this this morning, there is a sidewalk right here on the site within the boundary of the site. I think the confusion stem from the fact that we're requesting from the Department of Public Works flexible standards regarding roadway widths, curbs, urban curbs and gutters. We're trying to maintain the rural character of the neighborhood. And we went through the same thing in Hana with the Hana Ranch Store, and were given that kind of dispensation. And so it seemed appropriate here and that's what we were asking for. We're not trying to not put a sidewalk in. We want pedestrians to be able to circulate between the two aspects here. And as well, the additional parking will service the main store. We want to put a new entry here. The entry right now is here. And to service customers from both sides of the property at the two parking lots.

We're deleting eight – right now there are eight parking stalls here that back right onto Kaupakalua

Road which is obviously a dangerous condition. And that's sort of a no-brainer. That's going. We've moved the loading zone which right now faces Kaupakalua Road and it's kind of . . . (inaudible) . . . over to the side just to get it out of the public view and make it more functional. Right now trucks as well back onto Kaupakalua Road. So we've provided this kind of a loading zone with a backout space.

The buildings are designed with country town business design guidelines in mind with facades, smaller scaled appropriate massing, canopies, appropriate detailing, doors and windows, good street presence. That's why the buildings are up on the roadway and not having the parking in front of the buildings. And of course, we'll be landscaping the parking lot per County code.

And just on a quick personal note, I just wanted to remind you folks that this is my country store. I live a mile up Awalau Road. Been there for 35 years and everything's available in this store: everything from stationary to dog food, fresh produce, cold beer, Spam, often lowest gas prices on the island. And actually in the last hearing, I mentioned that my outfit was almost completely furnished by Hanzawa's but I didn't do that this time because one kalohe Commissioner asked me personal questions about my underwear.

But the truth is the population in Haiku has tripled in the 35 years that I've lived there and this store has not grown. In fact, there's no additional commercial space in this neighborhood. In the mid-'90s, Ralph Hanzawa was aging, and, you know, we worried about the future of the store. We were greatly relieved when Sandy stepped up and gave up a successful nursing career on Oahu to come back and manage the store. Her family owned what is now Haiku Town Center as well. This expanded family has really been serving her community for close to a century. And how many of our mom and pop-run businesses have disappeared in the past decades? I'd rattle off a dozen. I'm sure you're aware of more. There's only a handful left, you know, Komoda's, Morihara's, Hasegawa's, Hanzawa's. And the primary reason we're here and the problem is interim zoning which is sort of a private joke. Robyn told me it celebrated its 50<sup>th</sup> birthday. And in the late '90s, all the Hanzawas' competitors: Fukushima's, Ohashi's, Kawaharada's, Tomo's, were all given blanket unconditioned country town business zoning. Hanzawa's was excluded because it wasn't in the State rural district. In 1974, as Will mentioned, the store did burn to the ground. And today, as Will mentioned, a fire or other natural disaster, the store couldn't be replaced in a timely manner, and it could be years, if ever, if it were reconstituted or reconstructed.

I know several Commissioners were very familiar with Hana. And I wanted to recall the Hasegawa fiasco because they were caught in the same Catch 22. And when that store was burned down by an arsonist in 1984, it was a huge tragedy to the community. And to this day, that property has not been rebuilt. And that's what I knew and that's why I've been nagging my good friends and clients here to face this zoning process.

When we remodeled the facade and installed new gas pumps and tanks in '97, we did get the community plan designation-business commercial. And it's an expensive process as Sandy mentioned. And it's a process that none of their competitors have had to go through.

The bottom line is interim zoning must go. The property is community plan commercial. There is large community support for these modest expansion plans. The competitors are not burdened with any conditions. We respectfully request that you approve or recommend approval to the Council

of this action.

Mr. Starr: Members, questions for the applicant?

Mr. Mardfin: For Sandy, just a quick one, what are you charging for regular gas today?

Ms. Daniells: It's \$2.47.

Mr. Mardfin: It's \$2.47? Okay. You're a lot cheaper than Hana. We're still over \$3.00. One of the things – I don't know who this for, really, but one of the things I was concerned with was I know Hasegawas was having a problem with the EPA conditions on gas – underground gas tanks. It sounds like – I read it here and I heard Robyn say it, but I take that those problems are cleared up because you had to dig out everything that there was there? You had to clean up all the underground dirt?

Ms. Daniells: We did. We did that. Everything's cleaned up. New tanks, fiberglass, steel, double-wall tanks.

Mr. Mardfin: Okay, that was one of my major concerns and it wasn't answered the last time, but it's answered now. So thank you very much.

Mr. Starr: I have a question. I think this is for Jim. Can we go back to that, I guess, the plan? I have one concern which is you know as this is getting to be a busier place, you know, we're trying to keep rural standards, but it's becoming a kinda little bit urban, and there's gonna be more traffic and more people moving in and out, and it's not necessarily a bad thing, but I have a real concern about people who are walking down Kaupakalua or people who are bicycling, and how they're gonna get through all this mess safely. And for me to be comfortable, I want you to find a way that's marked and that goes all the way through both for pedestrians and bicycles. Is there a way to do that?

Mr. Niess: I don't see why not. I mean, there'll be a continuous pedestrian path through the property. I would point out, too, though that Kaupakalua Road drops down this way. There's about a six-foot grade change right here. So the reason we don't want to put a sidewalk over here is that the sidewalk – you know, a standard, urban sidewalk with curbs and gutters is that it would drop down six feet. We'd have a retaining wall with the stores up here. It just doesn't make any sense. But to address your question, yes, there'll be a pedestrian, and bikeway, skateboard path through the property.

Mr. Starr: 'Cause right now it looks like it goes from store to store, but it won't – there's that island at the juncture of the road. I wanna be sure there's a walkway or a bicycle way through there, and also, a way to get out and that that's marked.

Mr. Niess: Absolutely. I mean, no question, we'll provide for that.

Mr. Starr: Okay. And would you be willing to put some wording together voluntarily to that effect just so that there's a way to – that you will create that continuity?

Mr. Niess: We don't have a problem with a condition like that.

Mr. Starr: Okay, why don't you write it with Planner Loudermilk, and then that eases my concerns? Members?

Mr. Mardfin: Jim, you said you're gonna put the entrance on the – I don't know which direction north is, but on the south – assuming north is up–

Mr. Niess: North is actually down.

Mr. Mardfin: Okay, well, where you said you were gonna put the door, to the right of that is where you said the existing entrance is. Is that existing entrance gonna stay an entrance or is that gonna be shut off?

Mr. Niess: That's a good question. Again, we're very conceptual right now. And in a retail business, it's difficult to manage two entries, but maybe there will be a way since there's a lot of parking here, too, and this is semi protected into this entryway. If we had the cash wrapped in this area, we might be able to manage both entries.

Mr. Mardfin: And the gas is to the right of that?

Mr. Niess: The gas is right here. These are–

Mr. Mardfin: So you'd want to have something on that side so you can go on and pay your gas maybe through a window at the very minimum.

Mr. Niess: There is a pay window.

Mr. Hiranaga: Is there gonna be any attempt to capture more surface runoff than what is proposed? You're proposing to capture any additional runoff from the site, but the current site does have a lot of impervious area, which I guess sheet flows onto Kaupakalua Road. And I'm wondering if there's additional capacity that could be provided to reduce that sheet runoff. I think you got six cfs as existing.

Mr. Niess: I'm gonna ask Stacy Otomo, our civil engineer, to come up here who has some thoughts along those lines.

Mr. Stacy Otomo: Good afternoon, Chairman Starr, Members of the Commission. My name is Stacy Otomo. To answer Commissioner Hiranaga's questions, right now Commissioner Hiranaga, what we're planning to do is we're planning to put in some catch basins along this frontage as well as back in this parking area. There's a low point existing roughly around here on the site. And we have the ability to put in a fairly large detention basin so what I discussed with Jim Niess was to actually handle the entire 50-year flow back in the detention basin somewhere back in here and not only the increase.

Mr. Hiranaga: And what was his answer?

Mr. Otomo: He agreed.

Mr. Hiranaga: Thank you.

Mr. Mardfin: I think – I don't recall – I have notes, so I don't know if it's this time or last time, but you were talking about a septic system. Is the septic system gonna handle both the store and the residences?

Mr. Spence: Yes, the – no, the two individual rural lots will have their own septic systems. The store and the new commercial, that'll have to be – that'll have a new septic system, you know, that'll have to meet all the Department of Health standards. That's gonna be its own engineering–

Mr. Mardfin: For the two house lots, what are they gonna do there?

Mr. Spence: They're gonna – they will have their own individual systems just like–

Mr. Mardfin: Does the existing house already have one?

Mr. Spence: Yes, it does.

Mr. Mardfin: Oh, one last thing. It was the last time around, but there was some discussion about exactly where that underground ditch is. And my recollection is somebody floated something either downstream with I don't know radioactive something or other that I don't remember if that's the case or not, but I could picture something going under there to try to locate where that ditch really is. Have you ever – have you guys finalized where that ditch is?

Mr. Spence: No, we haven't. All we have is that one map from – that we got from A&B Properties. It shows it right on the mauka side of Kaupakalua Road. And then that particular ditch keeps going east towards East Maui where–

Mr. Mardfin: And when you dug the new gas tanks, I presumed you didn't find anything, or you'd know where it is.

Mr. Spence: No. Actually, the old tanks were almost right on top of the ditch. When they removed those old tanks and did the remediation and everything, I mean, they didn't find anything, so it must be considerably far down.

Mr. Mardfin: Okay. Thank you.

Mr. Starr: I have one more question for Jim. Have you given any thought to designing for energy efficiency in terms of daylighting, and Energy Star, and stuff like that?

Mr. Niess: Absolutely. We'll be using sustainable design concepts. We have a LEEDS professional in the office now so we'll be looking to that. Whether we go through the certification process, I'm not sure, but we've incorporated that into all of our projects at this point.

Mr. Hiranaga: We had discussions previously about the proposed east end driveway. And I know

that . . . think about noise, traffic. And in this latest staff report, it says you intend to retain that?

Mr. Niess: We would like to retain that for the reasons that it creates much more flexibility on how you can circulate in and out of this parking area. And it also relieves congestion at this particular point. One thing that the neighbor /homeowner didn't realize I think 'cause it wasn't apparently obvious, but this driveway like I mentioned drops down six feet. So this property will be six feet above this driveway intersection mitigating noise allowing more flexibility and more safety right here where we also will have pedestrians crossing. The reason this side works so well right now is because there are three opportunities to circulate in and out of a very small parking lot. And if you've been up here around 4:00, or 5:00, six o'clock in the evening, there may be 18, 19 cars working in and out of here, four of them at the gas pumps. When we designed the canopy, we made a drive-through lane here for – it's very wet up in the area so that you can load groceries without getting trashed. But this works very well because there are a lot of options on how vehicles can move in and out. And it improves the safety markedly from the previous situation where you just drove – everybody goes straight in and backed up towards the old gas pumps. It was risky.

Mr. Hiranaga: I guess my concern is you have a neighbor that's been living in an agricultural area for many years. And you have a problem that you're creating by additional density. And now you're gonna create a nuisance for him. I know you're saying it's gonna work much better for your project, but what impact does that have to your neighbor? Have you had discussions with him because I thought noise travels upwards? So being elevated above the roadway is not a good thing.

Mr. Niess: Well, there is density of landscape and dirt that is a good acoustical barrier. These neighbors have lived in proximity to this commercial use since they bought the property. I mean, the commercial use has been there for close to a hundred years. So the agriculture business overlap has been coexisting peacefully for all these years. This, of course, would be really a secondary or . . . (inaudible) . . . circulation point because it's only gonna service individuals going this way on the exit. So we see it as a minor usage, but again, it just allows flexibility. But again, these are conceptual plans. And as Robyn mentioned, there are sight distance concerns that have to be met and other design criteria.

Mr. Hiranaga: I don't want to get into a debate, but you're saying he's living next to a commercial – existing commercial activity, but those new commercial buildings do not exist at this time.

Mr. Niess: No, that's true, but the properties are . . . (inaudible) . . .

Mr. Hiranaga: So there's quite a bit of distance between the existing store and his residence.

Mr. Niess: I'll grant you that.

Mr. Hiranaga: Well, I hope that as you develop your plans that you will have conversations with that property owner 'cause he took the time to appear at the public hearing.

Mr. Niess: We'll do that.

Mr. Starr: Is it possible to screen the, I guess, the eastern side better for noise and for—?

Mr. Niess: Absolutely. I mean, we could put up a fence or a barrier that would guarantee privacy there and landscape it. I mean, there are a lot of ways to address that issue.

Mr. Starr: Commissioner Hiranaga, is that something that you wanna pursue or just leave it?

Mr. Hiranaga: I don't wanna get into details.

Mr. Starr: Okay. Commissioner Mardfin?

Mr. Mardfin: I thought I understood the parking on the left side of that picture, but I think I misunderstood it. My impression was it was all going in one and out the other, but you're telling me now that's not the case. You're going in both sides and coming out both sides?

Mr. Niess: That's the intent of this conceptual sketch.

Mr. Mardfin: In both and out both?

Mr. Niess: Correct.

Mr. Mardfin: I guess I'm silly at this. I would've thought going in the near one and going out the far one would get a better flow, but I'm not an engineer at all.

Mr. Niess: Well, that's something that could be considered, too, but it's an issue of flexibility and how congested parking lots work.

Mr. Mardfin: Last time there was some talk about what would be in those three additional buildings. Has that firmed up at all?

Mr. Niess: Not at this time. I mean, you realize, too, you know, in August, we were here – the economy has taken a huge nosedive since that time. So, you know, as far as bringing these structures online, you know, financing has to be available. We have to have tenants. There has to be a thriving economy. There's a lot – we've got more process to do. We've got another seven, eight months of process at Council.

Mr. Spence: I'm Will Spence again. And just addressing what is going to be there, it's always been Matt and Sandy's intent – I mean, the intent of this project since the outset was to provide basic services for area residents. I mean, like right now, the nearest post office is in Haiku. And you gotta, you know, go drive all the way down. In fact, a lot of the people that were notified of the hearing have post office boxes in Haiku two and a half miles away where they could have a postal plus right there and can nearly walk and get their mail there. Those kinds of things. A little restaurant where people can stop and get a cup of coffee. Those are the – that's the intent of this project.

Mr. Mardfin: I think these are the same ideas that were brought up the last time.

Mr. Spence: Yeah.

Mr. Starr: I have a question for Jim. How you gonna segregate the runoff from the fueling pad from the drainage system and such that if there is – well, there always is a little bit spilled on the ground, and that shouldn't go into the retention basins, it should be filtered. If the truck filling up has a hose break, what's your plans on that?

Mr. Niess: I'll have Stacy come up and discuss it more in detail. But if we put a catch basin in that area, it has a filtering system that takes out all the nasty chemicals before it enters our main drainage. Stacy, do you wanna give more detail?

Mr. Otomo: Stacy Otomo again. To answer your question, Commissioner Starr, what we're proposing in the area closest to the store is also to install the oil and water separator prior to it going into the main drainage system.

Mr. Starr: What if the truck is filling up the tank and it dumps hundred gallons of, you know, of fuel?

Mr. Otomo: We would have to work on the grading in that dispenser area to allow the runoff, if that happens, to get down in the catch basin that we're discussing probably in the front of the store. But we haven't gotten into that detail as of right now.

Mr. Starr: 'Cause I know that's something we've made other places with fueling points is segregate out that part of the drainage. Is that something you'd be willing to have as a general condition? You could do the wording on it that it will be – care will be taken to separate that out?

Mr. Otomo: Yes.

Mr. Starr: Okay.

Mr. Niess: I'd just like to add one– Will started talking about postal services. I'd like to add one little personal grumble here because the post office just wrote to everybody on Awalau Road telling us that they're discontinuing delivery service. And when we challenged the Postmaster, he told us they'd written over 200 letters like this in the whole area out here for marginal or whatever reason, but the point is, the post office is pulling back service. And Hanzawa's has agreed for our little neighborhood to put in this little cluster box, which is sort of an urban concept in itself, but I don't know if the Planning Commission would – you know, we're trying to keep rural, rural here, and the post office is really pulling back in a dramatic way. So if we're being impacted right here, just think about the folks in Hana and all over the island. It may be an issue for the Commission to bring the Postmaster up here to answer a few hard questions. Sorry.

Mr. Starr: Okay, Members, other questions? Commissioner Hiranaga?

Mr. Hiranaga: Actually, this is a question for Public Works. Should I wait 'til after public testimony? I'm still having difficulty with the fact that you're not requiring any type of roadway widening lot. The existing roadway is how many feet wide? I know it's 20-foot of pavement.

Mr. Miyamoto: Mr. Chair, I don't think the applicant has stated– It's not that we're not requiring. They're asking for it. But by code right now, it does allow for the requirements to be overridden by the community plan. But as happened on Makena-Keoneoio Road, we stuck to what the code



provided, and it was up to the Council to make the decision to override us, and define what the community plan's intent was. As typical, the community plan doesn't specify when they want what rural character of a roadway to look like. It doesn't specify it. So from our standpoint, we stick to the County Code, and then another body can make the decision whether it be the Board of Variances or whether it be the Council to define what that rural character is.

Mr. Hiranaga: So the position of the department is you're still requiring the roadway widening lot unless you're superceded by another authority?

Mr. Miyamoto: At this point, yes.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: Okay, are we ready for public testimony?

Mr. Spence: Mr. Chairman, would you like me to address that a little perhaps in another manner?

Mr. Hiranaga: Later, because it's actually in a recommendation.

Mr. Starr: Okay. So public testimony? Okay, members of the public who wish to testify on this, please come forward. Introduce yourself and welcome.

(The following testimony was given at the beginning of the meeting.)

Ms. Jocelyn Perreira: Aloha, good morning. My name is Jocelyn Perreira. I'm the Executive Director and Tri-Isle Main Street Program Coordinator.

Dear Chair Starr and Maui Planning Commissioners. Aloha. The Wailuku Main Street Association, Inc., Tri-Isle Main Street Resource Center, an advocate for small towns in Maui County, would like to offer testimony in support of the Hanzawa Store request. Project plans were revised over the past two to three years to address community concerns related to design, safety, land use, and other related issues raised at the August 12, 2000, meeting of the Planning Commission. The project was also reviewed by our Tri-Isle Main Street Structure and Design Committee, our board with Haiku representatives, and a team of 12 volunteer professionals from a wide array of career paths. It is supported by our Haiku strategic plan that was developed with input from one thousand voices in the region. Its emphasis was to insure protection of the unique characteristics of Haiku villages to retain its sense of place and to further implement the broad objectives and policies in the Paia-Haiku Community Plan. This land use request is also consistent with the adopted Paia-Haiku Community Plan that provides a long term land use plan for the region. The project entitlements from the community plan supporting the current Countywide General Plan policies and appears to have strong support from GPAC members who recently asked to place this location on the Maui Island map. The Kaupakalua and surrounding areas is rural with a mix of ag and residential lots that has grown over the years. And additional community space is needed to provide services for the growing resident population. It should be noted that no new commercial space

has been added in this area for over 30 years. Support for this project is smart growth, smart planning, utilizing sound planning principles. The Hanzawa Family has been in business serving Kaupakalua community since the early 1900s. The Hanzawas have helped many families over the years even extending credit to carry those families when times were tough. They have deep roots in the community and deserve the opportunity to expand their operations to meet growing needs. To retain our traditional mom and pop local businesses, it is so important to give them a helping hand. It is important to recognize the strategic and vital importance of Hanzawas to the region as Hasegawa General Store is to Hana. In closing, your vote in support of this change in zoning request is respectfully requested. Please consider the community's needs and merits of this project. Don't be sidetracked by misinformation and mischaracterizations by a few because the fact is, this project has broad-based support in the region and on the island. Thank you for the opportunity to provide testimony in support of this worthy project that is consistent with other small towns in Maui County.

Mr. Starr: Okay. Thank you, Jocelyn. Members, any questions? I have one for you. The project, the way it's being proposed doesn't include a sidewalk fronting it to allow pedestrians to walk past it. Is that in consistent with kinda the principles that the Main Street and your other groups you're involved with support?

Ms. Perreira: Yeah, Chair Starr, I believe I got asked that question at the August meeting as well. And as for our part, you know, we have no qualms about you asking for a sidewalk. However, I will make note of the fact that because this is in a rural area, you know, we try to keep it as country-looking and country-feel as it should be and that we hope it to be. And so as long as the design has safeguarded some of the other safety security concerns, we feel that that does not necessarily have to be mandatory – a part of the project. But if that's something that you folks wish to impose upon the project, well, we're not going to have a problem with that.

Mr. Starr: Okay. Thank you very much for being here.

Ms. Perreira: Thank you.

Mr. Starr: Rory Frampton. Please, Rory?

Ms. Perreira: Aloha again. I received a letter just this morning emailed from Mr. Frampton, and he asked if I would read it for him. I did circulate a copy of the letter, and I believe you folks need to strike–

Mr. Starr: Please wait a second. Commissioner Hiranaga?

Mr. Hiranaga: Just wondering–when written testimony is submitted, is it the practice to allow it to be read? Or is it just–

Mr. Starr: It is unusual especially when the testifier is not here. It's up to Members whether they want to hear it read or not.

Mr. Hiranaga: My personal feeling is I would rather have it distributed to expedite the process.

Mr. Starr: Yeah, I think that would be sufficient. Yes?

Ms. Perreira: I do have a concern because we did receive this on email that if I read it, I know that it's accurate to what he portrayed because I just got it just before I came to the meeting. If you would allow me, it's very short.

Mr. Starr: I will allow it, but it's, you know, it's unusual, and you have already testified, so please keep it really short.

Ms. Perreira: I will. Thank you.

This letter is in support of the request of Matt and Sandy Daniells to establish business country town and rural zoning at their Kaupakalua property. The request is consistent with the Paia Community Plan. The business and rural expansion request was considered and supported by the Haiku-Paia Citizen Advisory Committee and approved by the Maui County Council during the community update in early 1990s. The request represents limited expansion of a historical use. This property has historically provided commercial services to the immediate area for a number of generations. This store was established to serve the community needs created by localized settlement of Kaupakalua area well before zoning laws were established. The request would recognize historic use of the property supporting settlers in the Kaupakalua area. More over the limited expansion is justified given the amount of growth which has occurred in the immediate area over the last 30 years. The request is consistent with sustainable community design principles providing small scale commercial services in close proximity to residences thus reducing overall vehicle miles traveled. The request supports local family business and provides opportunities for establishment of business and services which would support local community needs. The concept of enhancing the rural character was the focus of recent workshops conducted by the Tri-Isle Main Street Resource Center with participants from all over Maui including the Haiku area. There were strong support for reestablishment of the limited expansion. The concept allows for maintenance of small town and rural character by enhancing identity of traditional settlement areas. Impacts to immediate neighbors can and should be addressed. It is appropriate to attach conditions to the request which would limit the range of uses, vehicle access, and site design should take care to minimize impacts on neighbors. Site design and architecture should be human or residential in scale and include an appropriate rural or country town design consideration. It is unfortunate that few immediate neighbors have resorted to personal attacks to Matt and Sandy. I first met Matt while he was attending Haiku Elementary School over 30 years ago. He's been active and a successful member of Maui's community throughout his teenager and adult life. I respect his commitment to his family and his community. And I'm disappointed that there was need to find to personally attack him at times rather than focusing on issues generated by the request. In summary, the proposed request is consistent with the recognized principles of sustainable community design. Local impacts can and should be addressed. The Daniells have patiently

pursued this project for over 15 years, and I urge the Maui Planning Commission to support this request with the incorporation of careful considered conditions.  
Respectfully submitted, Rory Frampton.

Thank you very much.

(This concludes testimony given at the beginning of the meeting.)

Mr. Liam Ball: Hi, everyone. My name is Liam Ball and I live about three properties mauka of Hanzawa Store. And I'm here to support them for two reasons. And forgive me if I haven't been aware of all the minutia that you guys have already discussed, but the fact that the store has existed before zoning even existed I think we can all agree that if it was zoned anything other than what it is, that was an error, and that should be corrected. We love the store. We love these guys. They forgot to mention that they do have duck food earlier.

But the second thing is just the more global thing about developing. And I love this island. I am a newcomer. I've lived on Awalau. I live up by Jim for a couple of years. I've been there for 11 years. But I love what I came to appreciate and I don't want to see it changed. That having been said, I find that it does make sense if development is necessary comparing what these guys would like to do with let's say the Makena expansion, I think. They're not going into open space. They're not taking away views. They're really – there's an opportunity – when there's an opportunity to in-fill with their – and I'm talking about the two rural lots, again, they've only decided to make two lots rather than the four or whatever might be permissible, but I think we should really support people that are trying to in-fill and not break out into the beautiful open spaces that we all love. So that's just a global perspective. I think any time somebody's willing to take an area that's already well serviced by roads and students and whatnot– And to my belief, I know traffic has increased in the 11 years that I've been there, but it's not a major traffic problem area the way that the West side might be.

So the other thing is that I just wanted to make mention of, Jonathan Starr, you mentioned about the bike path and the walkway. And although I think those comments are well intended, if you've ever walked along Kaupakalua Road, right not it's really iffy as it is. And this may sound dumb, but I don't wanna see big wide roads and big sidewalks. That's kind of the thing, although it makes sense, it may make sense from a planning point of view, those are the little details that really erode at the country – you know, the country state of mind. And just as an example, I was in Hana for New Year's eve, and we were walking along the road by the old courthouse, and this girl I was with said, oh, I can't believe there's no sidewalk here. And I said, I'm glad there's no sidewalk here because if there was a big wide sidewalk there, it wouldn't be Hana. And what I noticed is that the cars that drive by, they slow down. Everybody was saying happy New Year. People take care. And those are the little things that people don't realize that's what we love. We love that we're looking on the roads and that people need to slow down. I don't believe many people have been killed on Kaupakalua although I wouldn't really want to be a biker. And, Jonathan, your – if we're looking, you know, 80 years into the future, I could see that, but I think that we can accommodate these guys with what they wanna do and maintain that small – I don't like to see wider roads. I think people speed up on wider roads. And so I give my full support to them. And I can actually see the store if I climb up on the roof of my house. So I'm definitely a close neighbor. Thank you for

your time.

Mr. Starr: Thank you. Other members? Come forward, introduce yourself. Welcome.

Mr. Tom Wittenbrock: Good afternoon, Mr. Starr, and Director, and Commissioners. I'm Tom Wittenbrock. And I was here back in August at the other meeting and pretty much said some of the same things so I'm not gonna bore you with the repetition here. I live a little bit outside of the one-mile radius. My wife and myself have been there for 20 years. And we've known the Daniells for 17 of those years, and watched how hard and appreciate very much Sandy tries to support the local growers on Maui, and keep Maui, Maui. You don't have to buy a lifetime supply of food there, you know, like at Costco. You can go in and plan for a couple meals instead of a whole year. And we also love having the gas station so close. And the deli is awesome. And I used to deliver for Sandy and Matt for a while with my little truck. And the existing delivery situation is pretty much ridiculous. When the big trucks show up, all that parking on the Kaupakalua side is history. And so this really minimizes now where you get to park. So people then go and they park at the pumps. Well, then who can get in there to buy gas? It makes it really difficult. So I can really see this improvement for all of us. And also, just for them to stick around, they're gonna have to increase the size of the store. I mean, I hope that some of you or perhaps all of you can get up there and take a look at Sandy's office, which is this little niche in the middle of the storage room which she's been working out of for a long time. And every time I delivered all this stuff, frozen, and chilled, and stuff, I was wondering, where is this gonna go? And it's like, they need the space. They're trying real hard to keep up with it. Anyway, we're definitely in favor, in case you haven't already guessed. And thank you very much.

Mr. Starr: Thank you much. Please, Kai, introduce yourself and welcome.

Ms. Kai Nishiki: Aloha. Good afternoon. I'm Kai Nishiki. I live in Haiku and I fully support the expansion of the Hanzawa Store. They support local agriculture as well as provide a place for local residents to shop for supplies and gas. And everyone in our community really appreciates the services and goods that they provide. And I think it's great to support local businesses especially in this economy. And it gives an alternative to the big box stores which we know greatly hurts our economy. So I fully support them, and recommend that you give them your support, and thank you very much for your time. Bye.

Mr. Starr: Thank you.

Mr. Wittenbrock: Gentlemen, deja vu. I forgot to present Exhibit A. To whom shall I give this? This is just some articles from the *Maui News* in case you haven't had a chance—

Mr. Starr: Okay, thank you.

Mr. Wittenbrock: Thank you.

Mr. Starr: Okay, come.

Mr. Richard Sato: Good afternoon, Mr. Chairman, fellow Commissioners. My name is Richard Sato. I'm here along with my brothers: Stanley, Gary, and Cynthia Ikeda. We're all relatives of Sandy.

And I'd like to add Stanley, Gary, and Cynthia, this is their very first time in attending a hearing such as this. Now, they've lived on Maui all their lives. And they lived in the Haiku area. Cynthia lives in Kuau. And obviously, they are very fond of Sandy and grateful to her that she came back and perpetuated the store and made it a success. Sandy and Cynthia's grandfathers, Taichiro and Tetsuji, and they are our uncles, founded the store in 1915. And they had served the Kaupakalua and the area surrounding it for over 90 years. It has survived The Great Depression. It survived World War II when they were both interred in New Mexico obviously, against their will. And I'd like to add that when they were in New Mexico freezing, the marines from the nearby camp used to come to the store and made it sort of a gathering spot. And it also survived the fire in 1974 that destroyed the store.

The store in recent times is now faced with another threat, an economic threat from the big boxes. It is also faced with another threat that is now the land use law that governs building use and construction. Its fate rests in obtaining – for continued operation, they need to have the proper zoning.

Hanzawa Store has served Kaupakalua and the surrounding areas for over 90 years. Many of our generation will tell you that their families would not have survived without the generosity of the founding brothers in extending credit for basic things during the war, during the Depression, and during strikes. Hanzawa Store has provided the community with a sense of place. And today, you can go to the store, get gas for the same price that you would in Kahului. You can fill up your tire over there. You can get a newspaper. You can have snacks if you're hungry. And there's not a store around for miles. Our family is very grateful to Sandy who decided to return to Maui not only to manage and perpetuate the store, but to care for her aging parents.

A mom and pop operation as you know are a dying breed in today's business environment. It takes skill, determination, courage, and a lot of energy to survive. And in addition, in Sandy's case, they will need a logical application of the government laws concerning land use. Many business properties facing similar fates were granted rezoning through the grandfather clause without imposing conditions on it.

Matt and Sandy are determined and feel that they can overcome the big box threat. However, they are concerned that without obtaining proper zoning, and without the condition that would require them to remove part of their store, the road-widening provision, they will not be able to sustain this operation.

It has been a long and stressful three years and costly, too, for Matt and Sandy to come to this point in their rezoning process. We ask that you provide them with a prompt approval without the life-threatening condition so they can – that will allow them for continuous operation of their mom and pop operation. Thank you.

Mr. Starr: Thank you very much for coming forward. And also I want to encourage your family guys to come back here again when anything of interest comes before us. It's good to see new people come in. Anyone else would like to come testify? Please go ahead, Angie.

Ms. Angie Hoffman: Aloha. My name is Angie Hoffman and I just wanna testify in support of this country town family business. And I think this is the type of cause that change in zoning is

appropriate for, you know, one that benefits the community around them, and supports local economy, supports local agriculture as was said before. And, you know, trying to mitigate the whole big box thing that's happening here on Maui. And so I definitely just wanna support them. Thank you.

Mr. Starr: Thank you. Dave, you're next.

Mr. Dave DeLeon: Hi, Dave DeLeon, Haiku resident and cyclist on Kaupakalua Road. Yeah, still breathing. I'm here to speak for the Daniells' application. If there was ever an application that came before you folks as a no-brainer, this is it. We're talking about saving a jewel. We all miss Ooka's. We miss Noda's. We miss Nagata's. We don't wanna miss Hanzawa's. If they cannot grow, they will die, I mean, eventually. That's just the nature of the economics they're facing. And I just wanna encourage this Body to realize these folks are going through a lot of hoops for something that's pretty obvious. And I hope that you would encourage them and give them your best along the way to the Council. Thank you very much.

Mr. Starr: Thanks for coming in.

Mr. DeLeon: And you really don't need a bike path. I mean, just cause it's so short. I mean, nobody's gonna jump over to the bike path when they're riding on the road.

Mr. Starr: They don't need a dedicated bike path, but I do want connectivity. Okay, who else would like to share mana'o? Come forward, please. Introduce yourself.

Ms. Moana Andersen: Hello, Chairman, and Director, and Planning Commissioners. My name's Moana Andersen. And I don't live in Haiku, but I wanted to just address how much I love Hanzawa Store. I actually buy more gas at Hanzawa's than I do in Keokea where I live in which does have a gas station there. And I especially love to get coffee and a hot dog in the morning. I buy my flowers, my newspapers, ice cream, and cards. And this store serves me as a Kula resident. I'm in Haiku fairly frequently and I'm very grateful for this store.

But I wanted to speak to you today that I was a Planning Commissioner during the years when the blanket zoning was done. I think it was—Carolyn could probably remind me—maybe 1999 around there. And yep, we did go to all the communities and did bring all of these properties which were completely from Keokea to Kula Store, Morihara's, all the way out to Haiku, to the Haiku Community Center for their review. And it's really too bad that because it was in the State land district that it didn't come forward because the only thing – there was only one property out of the entire community that was pulled from that and it was because it was a highly, highly controversial project which is still being settled to this day in the courts. This is not controversial. This is actually – this is the people's store.

And I wanted to thank Jim Niess. I thought your plans were great, Jim. I hadn't seen them. And I was raised on Oahu. And one of our last few stores that we have near the beach, oh, gosh, I just had a moment when I can't even remember the name, but I love when they've expanded, you know, from being little – just little canned good stores to being able to supply better coffee and things that we love.

And my big thing that Jim mentioned as well is I was on the Commission when Hasegawa burnt down. And every time I'm in Hana, I'm reminded of their plight. And I would hate to see that happen.

But my question to you would be that, what were the efforts of the Haiku community to create this community plan? And specifically how many years did the Haiku community go for it to meet – in order for that community plan map to be addressed and to be approved? And I am so in favor of their B-CT.

And I like their in-out driveways because that's how everybody goes. If you live in Haiku or even if you don't live in Haiku, you're used to going in and out, any old kind way over there. And it works. I don't know why it works, but it works over there. And even when the big delivery trucks are there, that doesn't stop me from pulling in for my hot dog.

I wanna say that commercial use and ag can coexist. And then in many of the small towns where the re-blanketing was done, there are many, many nonconforming ag-sized parcels. They are not all two acres and greater. There are dozens of them that are less than 10,000 square feet. So there are – there are many ag neighbors that are surviving on non-conforming sized parcels which are generally urban in nature.

And I personally want to say thank you to Sandy and Matt's family for 94 years of service not just to Haiku, but to the entire community of Maui. Mahalo.

Mr. Starr: Thank you. Who's next? Anyone else wishing to give testimony? Please make yourself known. Not seeing any, the public testimony portion is now closed. I'll call on Planner Loudermilk to come and give recommendations.

Ms. Loudermilk: I'd first like to start off with the State land use district boundary. We have the recommendation that this Commission recommend to the County Council approval of the boundary amendments from agriculture to both urban and to rural. And that concludes the recommendation. Just be of note that any proposed conditions, we would add on to the change in zoning component of the application.

Mr. Starr: Members? Commissioner Hedani?

Mr. Hedani: Move to approve the Department's recommendation.

Mr. Starr: We have a motion by Commissioner Hedani, seconded by Commissioner Vice-Chair Guard. Director, what is the motion?

Mr. Hunt: To recommend approval of the district amendment to the County Council.

Mr. Starr: Any discussion? Possible amendments? Commissioner Hiranaga?

Mr. Hiranaga: Explain to me why the Department is agreeing to a rural half acre zoning versus – well, I guess this relates to the County change in zoning, so maybe I should wait. This is only the State land use district boundary amendment.



Mr. Starr: Yeah, we're just taking them one at a time.

Ms. Loudermilk: Yeah, it may be more appropriate for the change in zoning component for the question.

Mr. Hiranaga: Well, I guess it won't impact your proposed – so whatever that acreage is proposed as B-CT and rural, that's set in stone? They're not gonna to be able to move the line left or right?

Ms. Loudermilk: Not unless they come in and do this whole process again.

Mr. Hiranaga: Maybe I should ask this question since it relates to minimum lot sizes.

Ms. Loudermilk: Okay.

Mr. Hiranaga: Explain to me why the Department is recommending rural half acre versus rural one acre since the surrounding areas are all agriculture?

Ms. Loudermilk: The – first of all, the community plan has identified the area for the rural designation. This was requested by the applicant in that the change in zoning for the rural to the half acre would not be straight zoning. It would be conditioned to– Excuse me. The total acreage under rural is slightly less than two acres. So we could not subdivide– And the community's response is that they only – they would like two lots, not four lots. If you went to the rural half acre, there was a possibility of four lots because under the rural designation, you can have one lot substandard in size if you went through a special use permit process concurrently. In order to show a good faith effort to the surrounding community that the slightly less than two-acre lot would just be subdivided in two. It would be the half acre which would then be conditioned that there be no further subdivision. This way, you'd have the land use consistencies with rural, rural, and then the acreage slightly less than two acres. So they would not be able to subdivide for the rural one acre.

Mr. Hiranaga: I guess the challenge I'm having is there exist two lots currently, right? The Hanzawa property comprises of two lots?

Ms. Loudermilk: Yes.

Mr. Hiranaga: And with this proposed change in zoning, they'll be able to create three lots?

Ms. Loudermilk: In total, yes.

Mr. Hiranaga: So I'm wondering why the Department feels this is endorsable, I guess. There are people who have said, you know, there's too much density. This is in ag district. We have this little area that's existed for many years. They had two lots, but now you're gonna allow them to have three lots.

Ms. Loudermilk: I think that we wanted to implement the community plan so the community plan did not say – well, the community plan did indicate where this line would be, and that in order to meet that, we'd need to consolidate the two lots. They would have to be re-subdivided anyways: one for B-CT and one for rural. And then for the rural, in terms of the zoning, we're allowing them to have

a total of two lots. So one additional lot only on the rural side of the community plan.

Mr. Hiranaga: I know what you intend to do, but I'm asking for a justification between rural half acre and rural one acre. If you go rural one acre, they get two lots again.

Ms. Loudermilk: No, they cannot get two lots.

Mr. Hiranaga: No, they start with two lots and they'll end up with two lots: one is B-CT and one is rural. I'm wondering why you're allowing this to become higher density.

Ms. Loudermilk: There are other rural half acres within a couple mile radius that are also rural half acre. So it's not out of the ordinary for the rural in the region. More on the Kokomo side, granted, but I have worked on— If you look at Exhibit—

Mr. Hiranaga: Page 32?

Ms. Loudermilk: Yes. If you look at Exhibit 32 to the left along Kaupakalua Road where there's rural, I have worked on at least one change in zoning from interim to rural half acre. I believe there is another application in. Unlike other community plan regions, there is no specific identification of areas that shall not be zoned rural half acre. The Department felt it was reasonable. I can have—

Mr. Hiranaga: Actually, the State land use district boundary amendment we're gonna vote on, but the zoning is a recommendation to Council. So I just wanted to voice those concerns and those questions.

Ms. Loudermilk: Sure.

Mr. Starr: Okay, you don't have any amendments or anything? Members? Commissioner Mardfin?

Mr. Mardfin: I don't know how appropriate this is, but I'm gonna ask it anyway. Last time we heard this, we had the battle of the testifiers. We had something like more than 200 people in favor. We had something like over 100 people against. Today I hear everybody was in favor. Were these people notified that this meeting was taking place? Have they changed their minds?

Ms. Loudermilk: My understanding is there's been a lot of discussion in the community. Legally, there are no additional notification requirements from the applicant or the Department to any of these people. It is through the agenda process. Haiku, the word of mouth, goes around.

Mr. Mardfin: Have the hundred people sort of accepted this or been informed? Are they still against it? Or you have no idea?

Ms. Loudermilk: I have no idea. I really have no idea.

Mr. Mardfin: Could I ask the applicant, then?

Ms. Daniells: We've taken a lot of time to work with our neighbors especially with a couple of people that came to testify in August. We actually had meetings with them, and I think it made a big

difference. We have our feelings about the petition that they submitted that it was three years ago. And people— We made a lot of changes to the plan. They didn't understand it. So I think there was a lot of misunderstandings, misinformation. And I think by us going to our neighbors and talking to them on a personal level, I think we got to resolve a lot of these issues, or at least they're in the works.

Mr. Mardfin: You're not suggesting a hundred percent of the people are in favor, but the number opposed are much, much smaller?

Ms. Daniells: Right, and we always make ourselves open to anyone who wants to stop in to the store and talk about the zoning request application.

Mr. Mardfin: Thank you very much. And thank you for doing that. I think that's a very smart thing to do.

Mr. Starr: Okay, we ready to vote on the motion? Okay, and once again the motion is—?

Mr. Hunt: This is a district boundary amendment, so it'll actually be your decision. So it would be to approve the district boundary amendment. Is that correct, Robyn?

Ms. Loudermilk: We make the recommendation to the Maui County Council, and then they make the final decision for the district boundary amendment.

Mr. Starr: Is that a State district boundary amendment?

Ms. Loudermilk: Yes, State land use district boundary amendment. The final decision-making authority for district boundaries within the County of Maui is with the Maui County Council. We do make the recommendation to the Commission, and they make the recommendation to the Council.

Mr. Starr: I thought under a certain size we were the—

Ms. Loudermilk: That's only for land use commission special permits the Commission has been delegated. So, yes, there is the 15-acre. And the 15-acre or less is also the Council can act or the designated. Anything greater than 15 acres, it goes straight to the Land Use Commission. And an example would be the Emmanuel Lutheran Church that came before you this morning. Their reclassification at the State level was greater than 15 acres, so they went to the Land Use Commission, and then they came before you this morning for the change in zoning and other land uses.

Mr. Starr: In this case, we're recommending to the County Council.

Ms. Loudermilk: Yes, yes.

Mr. Starr: Members, are we ready to vote? All in favor, please raise your hand. Any opposed? Director?

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

**State Land Use Boundary Reclassification**

**It was moved by Mr. Hedani, seconded by Mr. Guard, then**

**VOTED: To Recommend Approval of the State Land Use Boundary  
Reclassification from the State Agricultural District to the State Urban  
and State Rural District to the County Council.  
(Assenting - W. Hedani, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo,  
W. Iaconetti, J. Starr)  
(Excused - B. U'u)**

Ms. Loudermilk: The change in zoning, I'd like to first focus on the business country town component. And at this point, the Department would recommend to the Commission approval of the change in zoning from interim to business country town. And we have one condition currently at this point in time regarding historic resources. The Department, in consultation with the applicant, would like to amend that to include two conditions that were talked about earlier. The first one had to do with the applicant will voluntarily incorporate a pedestrian and bikeway through their property.

Mr. Starr: Or connectivity.

Ms. Loudermilk: Connectivity through their property. And then the additional condition would be that the applicant will voluntarily provide a separate petroleum filtering system that will filter the products prior to any discharge into the project drainage system. And I believe the Department – we'd like to add a fourth condition, and it would be the same as proposed Condition no. 3 for the rural regarding the rural scale. So that's the proposed language regarding the character of Kaupakalua Road. Initially, the Department only recommended that for the rural, but in light of the subdivision, should the proposed land use amendments be approved by the Council, the subdivision will impact both properties. So it would only be fitting to also incorporate that condition on the business country town portion of the request. So in summary for the change in zoning for the business country town would be four conditions. The first condition would be historic resources. Secondly, the connectivity for pedestrian and bikeway on the property. Thirdly, the separation and petroleum filtering. And then fourthly, for lack of a better term, the infrastructure condition for – rural infrastructure standard condition. And then that the Commission adopt our report and recommendation memorandum as its finding of fact, conclusion of law, and authorize the Director to transmit the recommendation for the business country town to the Commission – I mean, Council. And that concludes the change in zoning recommendation for the B-CT.

Mr. Starr: Just for clarification, that would cover both the B-CT and the rural .5–both of them, right?

Ms. Loudermilk: At this point in time, no, because there is one condition that the Department is proposing specific to the rural that would not be appropriate to the business country town.

Mr. Starr: So in other words, we're dealing just with the B-CT? So we're actually dividing this into three items? This is the second item?

Ms. Loudermilk: Yes, yes.

Mr. Starr: Commissioner Hedani, first.

Mr. Hedani: Move to accept the Department's recommendation on the change in zoning for the business country town as amended.

Mr. Starr: And is there a second to the motion? Okay, we have a motion by Commissioner Hedani, seconded by Dr. Iaconetti. The motion is--? Director?

Mr. Hunt: To accept the Department's recommendation regarding the business country town as revised.

Mr. Starr: Okay, discussion? Commissioner Mardfin?

Mr. Mardfin: I thought there was another condition. I thought there was a commitment to retain a hundred percent of the runoff. And you didn't put-- Stacy gave us that condition, and I didn't hear you read it off.

Ms. Loudermilk: Okay.

Mr. Mardfin: You might check with him on the particular wording. He's nodding his head.

Ms. Loudermilk: Yeah, okay. Thank you for that reminder. That is my oversight. So that had to do with the discussion in answer to Commissioner Hiranaga's question about the excess drainage. We can amend to include a fifth condition to indicate that the applicant voluntarily will retain a hundred percent of the runoff -- project runoff on the property to the satisfaction--

Mr. Starr: Commissioner Hedani?

Mr. Hedani: I'd like to restate the motion to include that fifth condition.

Mr. Starr: And Doc? Okay so, Director, you have that?

Mr. Hunt: Yes.

Mr. Starr: What's the motion now?

Mr. Hunt: The motion remains the same. We're adding a fifth condition. And the motion is to accept the Department's recommendation regarding the business country town zoning as revised to include the four additional conditions.

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

Mr. Hiranaga: Regarding the B-CT change in zoning, I would prefer that the proposed condition regarding street improvements be silent versus including that language. Even if there's gonna be three feet of road-widening lot, or four feet, whatever, that should be determined between Public Works and the applicant. Because what I'm thinking about is Kaupakalua Road, you might want a bus turnout. You might want a pickup area. People standing on the sidewalk. And you'd want

that flexibility. People say, well, we don't want Kaupakalua Road to be any wider, but 40 years from now, people will say, why is there that pinch in that road? You know? So I really – I'm not opposed to the change in zoning, but I would prefer that that item be silent in the B-CT zoning. I don't have a problem with it for the rural, but for the B-CT, rather than making it an affirmative type of recommendation, I would just rather it be silent. So at this point, I'm having difficulty voting for the motion.

Mr. Starr: Okay, there would be two ways to handle it. One would be to offer an amendment to that effect. Or to – I don't think we want to restate the motion a third time, but–

Mr. Hiranaga: Okay, I can propose an amendment to delete whatever condition number that is.

Mr. Mardfin: Which one is it?

Mr. Hunt: That would be the fourth condition under the change in zoning to business country town.

Mr. Hiranaga: Right, which is the language used in Item 3 under the rural zoning.

Ms. Loudermilk: So I believe that would – there will be a period instead of a colon in front of the "A," the alpha. And that would end the proposed amendment for that condition.

Mr. Hiranaga: Well, in your printed material to us, you do not include that language in your B-CT–

Ms. Loudermilk: No, that is correct.

Mr. Hiranaga: So I want that to be – an addition you proposed, I would like that removed so that it's silent on that matter.

Ms. Loudermilk: So that it would – the last sentence portion of the sentence would be–?

Mr. Hiranaga: No, that whole paragraph, "In order to protect and preserve traditional rural scale character . . ." just don't put that whole paragraph.

Mr. Hunt: The whole condition.

Mr. Hiranaga: Yeah, the whole condition.

Mr. Starr: Okay, it was part of the recommendation. So it is in there even though it's not on the green sheet.

Ms. Loudermilk: And again, it had to do with the subdivision. As Mike Miyamoto indicated earlier regarding the subdivision standards, this is the type of language – granted–

Mr. Starr: Let's see if there's a second, Robyn. Do we have a second to the amendment? Anyone wanna offer a second to that? Okay, we have a motion by Commissioner Hiranaga, seconded by Commissioner Guard. And now I'll ask that the amendment be restated either by the Director or Robyn.

Ms. Loudermilk: My understanding– I guess I need clarification.

Mr. Hiranaga: Yeah, can we have discussion?

Mr. Starr: Let's restate it, and then it's on the floor.

Ms. Loudermilk: The proposed condition as stated at this point in time is that:

In order to protect and preserve the traditional rural scale and character of Kaupakalua Road and to conform with the policies of the Paia-Haiku Community Plan, the applicant shall construct improvements to Kaupakalua Road fronting the project site in the following manner:

- a. No additional right-of-way shall be required.
- b. Pavement width shall be 20 feet.
- c. There shall be no curbs or gutters.
- d. There shall be no sidewalks.
- e. There shall be no street lights.

And that this condition shall exempt Matthew Daniells and Sandra Daniells and their successors and permitted assigns from improving any portion of Kaupakalua Road to urban standards.

And that is the condition at this point in time.

Mr. Starr: So Commissioner Hiranaga, the maker of the amendment, which my understanding is we'll leave that Condition 3 as is printed on the green sheet. Is that correct?

Mr. Hiranaga: Remove that from B-CT zoning. She's proposing to add that as part of B-CT conditions.

Mr. Hunt: Staff proposed or recommended that as a condition to the B-CT and that was part of the original motion. So now the amendment is to remove that just Condition 4 under the B-CT.

Mr. Starr: Condition 4? Condition 3?

Mr. Hunt: New Condition 4.

Ms. Loudermilk: No, it would be a new Condition – at this point at time, Condition no. 4 that was added on after–

Mr. Starr: We're gonna take a recess and then we're going to get clarity on these. We'll be back in five minutes.

(A recess was then taken at 2:35 p.m. and the meeting reconvened at 2:41 p.m.)

Mr. Starr: . . . is back in session. We have a motion. We have an amendment that's been offered.

I'm going to ask Planner Robyn Loudermilk to explain about the conditions, and then to restate the amendment so we have clear understanding of what it is and what it does. Please go ahead.

Ms. Loudermilk: In summary, the proposed recommendation has to do with the change in zoning for the portion of the property related to the business country town. As part of the motion, there are – for the B-CT, there are five proposed conditions. The first condition is written in our recommendation. The remaining four are as a result of today's meetings. The proposed Condition no. 2 has to do with the applicant voluntarily providing pedestrian and bicycle connectivity across their property. The proposed third condition has to do with the applicant voluntarily providing a separate petroleum filtering system in the location of the gas tank to filter out the products prior to any discharge in the project drainage system. The proposed fourth condition has to do with the rural scale and character of infrastructure. And in this case, it's specific to Kaupakalua Road. The fifth proposed condition is that the applicant would – is voluntarily containing all the additional runoff for the 50-year storm duration on the property. Commissioner Hiranaga's proposed amendment to the motion is in relation to proposed Condition no. 4 in relation to the rural infrastructure standard. My understanding is that he's requesting that that proposed condition be deleted and that the applicant would then work with the existing framework within Maui County to achieve those rural standards.

Mr. Starr: So this amendment would remove the wording that is now no. 3 on the green sheet but has become Condition 4?

Ms. Loudermilk: Yes.

Mr. Starr: Is everyone clear on that? Is there any discussion on that? Commissioner Mardfin?

Mr. Mardfin: I'm gonna vote against the amendment. I understand his position that he doesn't wanna micro manage it. And that's admirable. On the other – but I think it needs to be in there so we're giving guidance to the Council on the kinds of outcomes we expect them to achieve. If we're silent on it, if it's removed, they won't have any guidance that we think that they ought to be able to keep the rural character. So while I sympathize with the idea about not micro managing, I think it's necessary to convey to the Council what our intent is.

Mr. Guard: During our recess, someone mentioned that's what happened at some other subdivisions that wanted rural standards and they got held up for significant amounts of time. And with this after hearing it, I'd be willing to take away my second.

Mr. Giroux: Yeah, it's not necessarily that it was held up, it's just that – I believe it was Papaanui that we were kind of thrust into the situation where the community plan says that the road needs to be preserved and its character. And then we go ahead and we zone urban. We go and take the State designation and we turn it to urban. Now, Public Works is caught in the hard place of following Title 18 which says they have to give right-of-way standards, and roadway standards, and sidewalks, curbs and gutters if the State designation is urban. That's the way Title 18 reads. So as soon as you do that, you've kind of thrown the project into a quagmire because your Title 18 mandates and your Director isn't given discretion. He has to follow Title 18 when he's given out all of his requirements. Now, your community plan is supposed to drive your zoning. So your community plan is telling you in its policies and objectives that it wants to keep Kaupakalua Road



in its rural nature, rural in character and scale. And so you're basically as a landowner or a developer caught in a Catch 22. So what has happened in the past is, in zoning, in the change in zoning, what has happened is that the – since we're dealing with an ordinance and the change in zoning is an ordinance that the Council has basically taken upon itself to create a rural type of character in its conditions. This is not the best way that it's supposed to be done. The community plan says that the Planning Department is supposed to actually – or the Public Works– I need to read it. It's different in different community plans. But one or the other, and we're doing this again, needs to come up with these standards. It's supposed to have standards already so you're not put in this position, and the developer is not put in this position, Council is not put in this position. But now, this is basically the best that we have as far as the process right now. It's not the best way to do it, but it's what we have. It's basically telling the Council, yes, we agree with the community plan. We would like to see Kaupakalua Road remain in its rural character.

Mr. Guard: So it's not heavy-handed or kinda over the top on limiting Public Works?

Mr. Giroux: It's been done before.

Mr. Starr: Okay, are we ready to vote on the amendment? Go ahead, Commissioner Hiranaga?

Mr. Hiranaga: I wonder if Public Works could comment? You have no discretion on what standards would be required?

Mr. Miyamoto: Mr. Chair, the current County Code allows – in Title 18 allows only in the road right-of-way width and in the pavement width is the only area where the community plan can override it. When you look into the code, specifically where it talks about curbs and gutters and sidewalks, it's silent regarding anything regarding the community plan, so we have no discretion at that point.

Mr. Hiranaga: So for discussion, could we then just strike Item A in that condition regarding rights-of-way because Public Works is granted discretion, and if they're able to negotiate–? I mean, I'd hate to see, you know, zero additional right-of-way. If they can determine that the applicant can surrender five feet, I'd rather five feet than zero.

Mr. Starr: So you're looking to change your amendment?

Mr. Hiranaga: Yeah.

Mr. Mardfin: Mr. Chairman, if that's – if he – instead of deleting the whole paragraph, if you just wanna delete that clause, I would suggest withdrawing the amendment, and making a new amendment. It would be cleaner.

Mr. Starr: Yeah, I think so too. Either that or just have someone else offer a subsidiary amendment. But do you wanna withdraw your amendment?

Mr. Hiranaga: I'll withdraw my amendment.

Mr. Guard: Withdraw.

Mr. Starr: Okay, so the amendment has been withdrawn. Are there any new amendments to be made? Commissioner Hiranaga?

Mr. Hiranaga: I'd like to have the proposed Condition no. 4 be changed to eliminate the language regarding no additional right-of-way shall be required.

Mr. Starr: Okay, so it's just Item A that's being removed from that. Is there a second to that? Would anyone like to offer a second?

Mr. Iaconetti: I'll second that.

Mr. Starr: Okay, so moved by Mr. Hiranaga, seconded by Dr. Iaconetti. And that is—?

Mr. Hunt: That proposed Condition no. 4 be changed to eliminate the language regarding no additional right-of-way.

Mr. Starr: Okay, are we ready to vote on that? We have a lot more business to do today.

Mr. Mardfin: No. I understand. I have a question. I don't understand what the impact of this will be. Can somebody explain it to me?

Mr. Starr: Mike? Sorry, you gotta earn your pay. Not gonna let you go easy today.

Mr. Miyamoto: Thank you, Mr. Chair. The current Title 18 allows for the Director to deviate from what's currently in the code regarding rural and urban standards so long as it's – the community plan can override the requirement. So if within the business country town standards there is a definition of what that right-of-way width should be for rural standards, we would have to adjust to our standards to meet that.

Mr. Mardfin: If it's left in? If this clause is left in, you'd have to adjust?

Mr. Miyamoto: No, no, if it's taken out, as the Commissioner has proposed, you know, we would then go back to the B-CT to see if it has defined that right-of-way width.

Mr. Mardfin: And if it has, then these guys would be stuck with it?

Mr. Miyamoto: Yes. And if it hasn't, then we're probably gonna fall back to the urban standard because we don't have a – we have a rural standard. We can possibly – I'd have to check with – I'd have to get an opinion from Corporation Counsel if we could actually go back to the rural because it'll still be an urban designated lot.

Mr. Mardfin: Thank you very much. I'm gonna vote against this amendment.

Ms. Loudermilk: I would just like to note that any change to no right-of-way would impact the project as designed right now.

Mr. Starr: Okay, we ready to vote on the amendment? Okay, all in favor of the amendment striking Item A from Condition 4, please raise your hand. All opposed? Director?

Mr. Hunt: I got one in favor and six against.

**It was moved by Mr. Hiranaga, seconded by Mr. Iaconetti, then**

**VOTED: To Strike Item A from Condition no. 4.**  
**(Assenting - K. Hiranaga)**  
**(Dissenting - W. Hedani, W. Iaconetti, J. Guard, W. Mardfin, D. Domingo,**  
**J. Starr)**  
**(Excused - B. U'u)**

Mr. Starr: Okay, so the amendment dies. We're back to the main motion unless anyone wishes to offer any other amendments or comments. Seeing none, we're ready to vote on the main motion on the business country town. All in favor, please raise your hand. All opposed? Okay.

Mr. Hunt: That's seven in favor, zero against.

**Change in Zoning from Interim District to B-CT Country Town Business District**

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

**VOTED: To Recommend Approval of the Change in Zoning from Interim District**  
**to B-CT Country Town Business District to the County Council.**  
**(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, J. Guard, W. Mardfin,**  
**D. Domingo, J. Starr)**  
**(Excused - B. U'u)**

Mr. Starr: Okay, thank you. That passes. And now for the rural.

Ms. Loudermilk: The Department recommends to the Commission that they recommend to the Council the change in zoning from interim to rural half acre subject to the three conditions as listed. Then further that the Commission adopt the Department's report and recommendation memorandum for today's meeting as its finding of fact, conclusion of law, and decision and order. And further, to authorize the Director to transmit said recommendations to the Council. And that concludes the Department's recommendation.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: So moved.

Mr. Starr: Is there a second? Okay, we have a motion by Commissioner Hedani, seconded by Dr. Iaconetti. The motion is--?

Mr. Hunt: To recommend to the County Council the change in zoning to the rural .5 with the three conditions.

Mr. Starr: Any discussion? Amendments? Seeing none, we'll vote on this motion. All in favor, please raise your hand. All opposed?

Mr. Hunt: I had that seven in favor, zero against. The motion passes.

**Change in Zoning from Interim District to RU-0.5 Rural District**

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

**VOTED: To Recommend Approval of the Change in Zoning from Interim District to RU-0.5 Rural District to the County Council.  
(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, J. Starr)  
(Excused - B. U'u)**

Mr. Starr: Congratulations.

Ms. Loudermilk: Thank you very much.

Mr. Starr: Do we need time to set up? Okay, we're gonna take a short recess 'til everyone's back and ready to start.

(A recess was then taken at 2:55 p.m., and the meeting reconvened at 3:00 p.m.)

Mr. Starr: . . . the meeting of January 13, 2009, we're back in session. We're about to proceed with our next item, E-1. Take it away, Director Jeff.

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

- 1. FRANK GUMMICH requesting a State Land Use Commission Special Use Permit and a Conditional Permit for the Hale Maliko Bed and Breakfast to use up to six bedrooms for bed and breakfast purposes in the State Agricultural District at 166 Apuwai Street, TMK: 2-7-036: 020, Haiku, Island of Maui. (SUP2 2001/0022) (CP 2001/0029) (R. Loudermilk)**

Mr. Hunt introduced the agenda item.

Ms. Loudermilk: Good afternoon, Commissioners. As indicated, the applicant is requesting both the conditional permit and a land use commission special use permit. Since the Department's report and recommendation was signed and distributed, the Department has received numerous phone calls and letters in both support and opposition for the proposed projects. And as of last Friday, the Water Department has flagged the property in such a way that permits cannot be issued at this point in time. Some very additional information will be required of the applicant by the Water Department. In light of this, the applicant is requesting a deferral of the public hearing to the first meeting in March. And we have members in the audience who would like to testify on the project. They live in the neighborhood. One is a next door neighbor. One person lives two lots down. And also on behalf of the applicant, he had other neighbors who were gonna come in to testify on his behalf and they have since left with his request to defer the public hearing. I'd like to turn it over to the Chair and the Commission in terms of how they wanna proceed.

Mr. Starr: Okay, thank you very much. If it meets with the will of the Members, I'd like to suggest that we consider a deferral possibly 'til the first meeting in March. But before accepting any kind of motion to do that, there are people here who have come to testify on that. I think it's fair to let them say their peace and then we can deal with it from there. Is that acceptable with everyone? Okay, so I'm gonna open public testimony. Members of the public who want to testify on this, and we're not having our normal presentation at this time thinking that when we're ready to act on it, we will. Please come up, sir, introduce yourself. Thank you for joining us today.

Mr. Gary Coleman: Thank you very much. My name is Gary Coleman. I'm gonna read something here. And I'm slightly confused. I don't know if this is the time or place to ask for clarification, but I don't understand the deferral. Is something gonna change between this time and the time of the next meeting? Is that what's going on?

Mr. Starr: Well, we'll get to that after, but please continue your testimony.

Mr. Coleman: Okay, here we go. Thank you very much for clarifying that. I'm here to testify against the issuing of a special permit and a conditional permit to Frank Gummich. I live next to Mr. Gummich and we share a very long, one lane driveway. I have a small palm farm and a commercial green house. My property is well laid out and a very efficient farm. My land is classified as prime by the Agricultural Lands of Importance to the State of Hawaii. I am a farmer on agricultural land. Mr. Gummich has operated an illegal vacation rental for over seven years. The large number of tourists staying on his property has always been a problem. Over 20 guests in their cars coming and going in all times of day and night, loud parties with too many cars, lost tourists driving all over my property at night looking for Mr. Gummich's Hotel Hale Maliko. In the past garbage service was once a week in Haiku. The amount of garbage generated by over 20 guests on a Maui vacation was huge. The smell was greater. Operating a B&B with 20 people on the property needs more than one garbage can even today. The entire property is serviced by a 5/8th-inch water meter. The Water Department did not sign off on the permit application. Mr. Gummich built three structures on his property, but in 2004, he began to build a huge addition in order to connect two of these structures together. He marketed this project as a retreat for large groups. Mr. Gummich has been warned by the County to stop his vacation rentals. He stops and then he starts right back up again and again. On January 8<sup>th</sup>, 2009, which is just a few days ago, he was told to remove his website and he did by the County. In May of 2008, after his building permits had expired, and that's last year, May 2008, he called for a miscellaneous inspection. He was given a final inspection for the entire project. He was missing final permits for electrical for one instance and I believe it was plumbing as well. I feel that Mr. Gummich has not been a good candidate for a B&B permit. And now I'd like to read something – this is not in my handwriting. It's in Mr. Gummich's. He sent it to John Min. And it says:

At first I'd to apologize for the problems I have caused. I never intended to break any laws or imposed any kind of burden through my actions. In 1999, I at last was able to fulfill every American's dream to purchase a piece of property and to build a house as well as to provide a small retreat for visitors on Maui. I have never hidden the fact that I do operate a vacation rental. And as my understanding was as long as I pay transient accommodation and the GE taxes, I will be tolerated. I must now say that I have been misguided along the way especially as to the zoning violations are concerned. There is no excuse for that and I will comply with the

zoning regulations from now on and in all future.

One small little thing I'm gonna read to you know and then I'll be done. It says:

Aloha. I am writing you from the north shore of Maui. My name is Frank and I have been a long term resident of this beautiful island. Last year I finished building a small retreat located directly above Maliko Gulch overlooking the bay. We're just two minutes away from Hookipa Beach Park. The property has a total of six units, two one-bedroom, four four-bedroom units, and in total, all three buildings. In addition to the apartments, we have a 1,000 square feet conference room which is perfect for meetings, dinners, and all kinds of other activities. So far all of our guests have been very happy and in many cases have booked for the next year. All units have stunning ocean views and mountain views.

And I'll sum it up here. Just give me a chance.

Mr. Starr: Please wrap up, yeah.

Mr. Coleman: Yes, sir. It says, "Please visit our website at [www . . .](http://www...)," whatever. I'm not gonna give that out. And you can contact them at this phone number. He says, "For any bookings that are directly with me and not through agencies, I will extend the 15% discount on the published rates on my website." So, thank you for your time.

Mr. Starr: Okay, thank you very much for doing that.

Mr. Coleman: And I would appreciate any questions whatsoever. Okay? I'd really encourage them. Thank you.

Mr. Mardfin: One quick question, sir. What was the date of the last missive that you've read? Or was there no date on it?

Mr. Coleman: Yes, there was. And the first letter I wrote just for reference was January 2002. And the second letter was May 2001.

Mr. Mardfin: So these are old.

Mr. Coleman: Yes, but I can produce new, too, if you'd like.

Mr. Starr: Okay, we have questions from the Director.

Mr. Hunt: Mr. Coleman, is it your belief the TVR is still operating then today or in the recent past?

Mr. Coleman: As of November, I believe when these proceedings started getting closer, Mr. Gummich was attempting to lower his profile a little bit. Okay? And so I've seen up until November, let's say 16, 18 cars over there. I've lived next to him for seven years and I feel like I've been abused for that long. And I didn't want to be a bad neighbor and start this. I can't even go down the street now without seeing Frank and us making eye contact. And it's very uncomfortable so—

Mr. Hunt: November, you're referring to November 2008?

Mr. Coleman: Yes, sir; yes, sir; yes, sir.

Mr. Hunt: Thank you.

Mr. Starr: Okay. Thank you. Next, please, come forward and identify yourself for the record and welcome.

Ms. Sharon Wright: Hi. My name is Sharon Wright. I live two parcels above Mr. Gummich. I have for the last eight or nine years. We were two of the first people into the subdivision. And I am not apparently within the 500-foot because I believe, and this is a question I have for you folks, Mr. Gummich has a flag driveway which connects to his property that he and Mr. Coleman share. The flag is a separate TMK. So everybody around me got notified, okay, except for me. And if I can direct you to the packet because this is what I have a real problem with is the application that you're gonna be reviewing, and I need to point some things out about it, as well as my emotional position as a neighbor, and what I've had to deal with for the last eight years.

So if you'd look at Exhibit 1 and you orient the subject property, Mr. Gummich is where the arrow is. Mr. Coleman is directly to his right in yours. I sit up two above. So I sit, if you go counterclockwise, one, two, three, four. So I'm apparently outside, but I'm only three properties away. The flag connects to the bottom of the cul-de-sac, okay, which is used to access his property, which his business is gonna be run against. So my question is, where does the property line start? Does it start at the top of the driveway where the cul-de-sac terminates? Or does it start at the bottom of the driveway which is shared? Okay, so I wasn't notified. Had I been, I would've submitted written testimony to you. And had I been notified back in December, I would've dug into this. So I apologize if I'm a little discombulated today, but I've had one day because I received a call from Mr. Gummich on Friday evening which I assume was gonna be to ask me to write a letter in support notifying me of today's testimony. So I hustled yesterday, went to the Water Department, and investigated.

We all started with two blank acres. We were all able to develop our properties in different ways. Mr. Gummich erected two large structures. Over the years, he has erected and had lots of TVR activity. Imagine coming home on a Saturday night and seeing a Red Bull tent erected in your subdivision, and he was holding a party for a Red Bull event that had occurred at Hookipa. The next morning, beer bottles, cars all through the night in the subdivision. It's not what I signed up for. Okay? I cherish where I live. I expect that an operator of a B&B is going to have some discretion. Mr. Gummich could've easily had a community meeting with all of us back in December when he sent out the letters, explain to us what he was doing, heard our concerns, etc. We've been living with this not one year, but seven, eight, some of us. Okay? The activity we had to go through the whole progress of him being closed down, the violations. I question whether his 5/8th-inch water meter can accommodate all of these requests. And that is why a red flag has been put on it by the Department of Water Supply.

If I can direct your attention to a couple of things in the application, under the description of the project on page 5, it first talks about a transient rental comprised of six units, then the next sentence says, it's seven bedrooms. Okay? Six bedrooms, and then it says seven. Which is it? Then when

you go to the Office of Planning letter that was written— And one of the side notes I have is that I don't know why we're processing a State land use when you just worked so hard on creating B&B laws and rules, why Mr. Gummich is not converting? The site plan that is in here was done in 2004. The application was filed in 2001. There's numerous inconsistencies about the data within this application.

Mr. Starr: I'm gonna to have to ask you to wrap up.

Ms. Wright: Okay. In the Office of Planning letter, Item 3, his engineer has told him that Maliko – Hale Maliko septic system was designed to accommodate ten bedrooms. He already has nine. Six, seven, nine, ten—which is it? If you will take a look through your review of the application, there are fireflow calcs, there are water calcs, none of the information has ever been provided. This gentleman definitely highlights some of the problems. Advertisements for Hale Maliko have note that he has space for luaus, weddings, seminars and other meetings for up to 40 persons. Okay?

Mr. Starr: Okay.

Ms. Wright: So we are opposed to – I would like to recommend denial. I'd like to recommend that he process a B&B application where there is an ordinance and laws to support it.

Mr. Starr: Okay, thank you. And your comments will certainly be taken into account even though you may be outside that radius. The Director has a question for you, though.

Mr. Hunt: I just want to make sure I had your lot right. Is your lot no. 17?

Ms. Wright: Yes.

Mr. Hunt: Thank you.

Mr. Starr: And if you're off the notification list, could you be sure that you talk with Robyn afterwards and she'll make sure you're kept up to speed?

Ms. Wright: Yes, and is it too late to submit written testimony for the next meeting?

Mr. Starr: No.

Ms. Wright: That would be a little more thorough for me to do to go through application.

Mr. Starr: We would love that.

Ms. Wright: Okay. Thank you.

Mr. Starr: Thanks for being here today. Okay, who else would like to testify on this item? Anyone else wishing to testify today on this item? Not seeing any, public testimony portion of this is closed. We had a request for a deferral from both staff and from the applicant. The first March meeting would probably be a suitable time. Go ahead, Robyn.



Ms. Loudermilk: Just to reiterate that the request for the deferral for the date certain would be the first meeting in March.

Mr. Starr: That's March 10.

Ms. Loudermilk: March 10, yes, thank you. And then I also have the applicant here. And at your convenience, he would like to make some statements.

Mr. Starr: Okay. And when we do that, is there some way we can be sure that all the people who may not be notified by the applicant--? I don't know.

Ms. Loudermilk: We'll work -- they can contact me at the Department and we'll make sure that those who want to be notified, we'll make sure that we get the information to them.

Mr. Starr: Okay. Commissioner Guard has a--

Mr. Guard: Just a quick question.

Mr. Starr: And then I'll let the applicant have a few words.

Mr. Guard: You can apply for a six-bedroom B&B and live in another bedroom, right? Just to maybe clear up some confusion for Mrs. Wright or the other--? It doesn't matter if you have a larger house, you're applying for six bedrooms to be part of a bed and breakfast.

Ms. Loudermilk: The clarification, yes, is that for the bed and breakfast permit, you can apply for up to six rooms.

Mr. Guard: But you need to live in one yourself if you have to be onsite?

Ms. Loudermilk: Yes.

Mr. Starr: Okay. Director?

Mr. Hunt: Could I ask Sharon Wright one more question?

Mr. Starr: Yeah, I wanna ask Sharon Wright to come back, if she comes back in. Dr. Iaconetti, please.

Mr. Iaconetti: Could someone clarify to me why we are deferring this? Have we voted to defer?

Mr. Starr: No.

Ms. Loudermilk: No.

Mr. Iaconetti: I'd like to know why we're deferring.

Mr. Starr: Well, we're not deferring yet. We were asked to defer. But if a different motion is made,

we could do something else.

Mr. Iaconetti: No one's made a motion?

Mr. Starr: We haven't got there yet. I said I'd give the applicant a chance to briefly speak.

Mr. Hunt: At this point the recommendation is to defer. If you wanna go down another road, then we should open up the full process, and listen to staff and listen to the applicant. We don't have to go through that whole process if we're just going to defer it.

Mr. Hiranaga: I just wanted clarification. With the adoption of the new B&B ordinance, I thought this is the process that ag districts would have to go through. Is that correct?

Mr. Hunt: With the adoption of the new B&B ordinance, it's conceivable this application could meet the new definition of a B&B. We would need a letter from the applicant stating he wants to switch it over from a conditional permit to a B&B permit. This Body would still need to review the State special use permit.

Mr. Hiranaga: Oh, I see. If he was applying under the new B&B ordinance, it would say to obtain a State land use commission special permit and a B&B permit?

Mr. Hunt: Correct. The B&B permit would be handled administratively. We would hold that pending the outcome of the State special use permit by you folks.

Mr. Iaconetti: On page 5, description of the project, it states, "No meals are served nor does the applicant provide prepared foods. Guests can prepare their own food utilizing the existing kitchen facilities." If you recall, I asked the Director at the beginning of this meeting if this was going to be appropriate for B&B. And I was told that it would not be, that a simple development of a kitchen facility was not adequate, that they did have to provide food.

Mr. Hunt: The first thing we need to realize is the Planning Department cannot forcibly just switch an application over. We have to be requested by an applicant. At this point, we have no request from the applicant to switch it. If he does switch it over, we would review it against the criteria under 19.64, the new ordinance. That new criteria does require it. So if we get a request to switch it to a B&B, we'd sit down with the applicant and say here's what you need to do in order to comply, and we would condition it. In all likelihood, one of the conditions would be you have to make breakfast available regardless of this application.

Ms. Loudermilk: These are the first two and the next meeting we'll have two more that were scheduled prior to the adoption of the bed and breakfast ordinance. So we anticipate a lot of questions in terms of the transition going on such as this there in the ag district. But at this point in time, this application and the next application that you have before you, they are in the ag district. They both may possibly qualify for the bed and breakfast. But as Director Hunt had indicated, they would still need to have the land use commission special permit, the public hearing, and that approval. And then should we receive the application for the bed and breakfast, then the bed and breakfast permit can be handled administratively should approval be given for the land use commission. And again, it's because the projects that we have before you are in the State

agricultural district. It would be straightforward, just the bed and breakfast application, but these applications are located in the State ag district.

Mr. Hiranaga: Are you informing these applicants of the option to switch over to B&B applications?

Ms. Loudermilk: They are asking me. Yes, we are informing them that they have the opportunity to do that. With these – the applications that I have right now, all of them are in the agricultural district, and all of them have structures that were built priority to the requirement for farm plans. So technically, none of these applications can – they would need to apply concurrently for a farm plan as well as a bed and breakfast. So they are being made aware of that. And for these two and the next two in the meeting, the future meeting, I have advised them to be conservative. Let's go – we have the public hearing scheduled already. Let's conduct both for the special use permit and the conditional permit. You make the decision whether you're gonna be coming in for a bed and breakfast permit, whether you qualify, and – so they, as of right now, two of the applicants are in the process of trying to put together a farm plan. And so this is just part of the transition that is – will be occurring over the next few weeks, two months, for the properties located in the ag district. And I just happened to have a bunch of them, and they're gonna be here today and next week.

Mr. Starr: Can we move along? We're kind of following a path that we may be looking at a deferral. If that's not the way we're going, we would probably wanna have a full presentation. Is that acceptable to everyone? Or do you wanna change direction?

Mr. Hedani: I'm concerned with some of the comments that I heard today. And what I'd like to see is to insure that when we review this particular application that we make sure that all of the notifications that needs to be made have been made. And it seems like it's an interpretative question about whether or not it's the lot – if the flag driveway is a separate lot. From my perspective, you cannot have a landlocked lot. So the driveway would have to be included as part of property where you would measure the 500-foot distance from. And it seems that notification was defective if somebody two properties away is outside of a football and a half away from the property.

Mr. Starr: Yeah, I agree with that. Is there any other action other than where we're headed that you want to take, though?

Mr. Hedani: My concern is that in this particular case, the Department recommendation to us was for approval.

Mr. Starr: No, it's for deferral.

Ms. Loudermilk: Initially, it was approval. And with the—

Mr. Hedani: And I'm just concerned from my perspective that if we're gonna recommend to the Commission that everything that needs to be done is done so that everybody that needs to have a say has a say.

Mr. Starr: I would assume that the staff report is gonna be redone, though, because there's new information from Water.

Ms. Loudermilk: Yes, I have been contacted by a number of the different County agencies. And I think it would be prudent just to make sure everything is clarified. Right now there's just a lot of—

Mr. Starr: Confusion.

Ms. Loudermilk: Yes, thank you.

Mr. Hedani: I'm just trying to understand what the new process is. If they switch from conditional permit for transient vacation rental to B&B, the next door neighbor in and of himself cannot object unless he gets 30% of the other neighbors in that neighborhood to agree with him that it comes before this Commission?

Mr. Starr: If it's contentious, it may not be 30%, Director?

Mr. Hunt: Anyone can object to the B&Bs. And if it's handled administratively, we would take those into consideration, those comments. If 30% of the neighbors within the 500-foot noticed area offer objections, then the law requires us to take that to you folks for a decision, not to handle that administratively.

Mr. Starr: Director, say that there's only 29%, but there are a lot of issues and a lot of arguments, then what would your likely action be?

Mr. Hunt: Well, I'm not gonna paint myself in a corner, but that would raise some concerns. So there's also options. The law – in terms of streamlining, we asked for and got approval for three-year approvals. It's conceivable that if there's issues and concerns, we might only grant a two or a one year. Maybe only give a one year transition or trial period. We'll cross that bridge when we get to it.

Mr. Starr: Could you refer it for a public hearing if it's less than 30% but it's contentious, if you felt that it was the right thing to do?

Mr. Hunt: I'll look into the law and see if it allows to do that.

Mr. Starr: Okay. Let's hear from the – let's hear briefly from the applicant.

Mr. Guard: I have a quick question to follow up with Robyn. I don't like hearing that one person is going to all the County agencies and who may have some influence with their families, connections with the County. I don't know if that's the case.

Ms. Loudermilk: No, it's not.

Mr. Guard: It would really be bad to be a neighbor of someone like that.

Ms. Loudermilk: No, no, no, believe me. It is a big neighborhood issue. That, again—

Mr. Guard: I live across a long term tenant, and I had more cop cars in my house in the driveway than people have guests in their place because of a long term tenant. So if people want issues,

they should come into a party neighborhood.

Ms. Loudermilk: And again, some of the questions that Chairman Starr and Commissioner Hedani had of Jeff in terms of should the applicant come in for a bed and breakfast, basically this morning I received all this paperwork from the neighbors. And I think I really do need to sift through that because it is – it's only fair for the people who submitted. It's only fair for the applicant. And it's only for you folks as the Commission to–

Mr. Guard: The same thing happened with Matt and Sandy Daniells the last time–

Ms. Loudermilk: Yeah, yeah.

Mr. Hiranaga: I would prefer that we conclude the public hearing on this. If we're gonna make a motion to defer, to defer, versus starting to allow applicants to make statements.

Mr. Starr: We have concluded the public hearing. I would prefer to give the applicant at least a couple of minutes.

Mr. Hedani: I thought we were gonna defer the application until March at which point a new public hearing would be held, and we were taking testimony from those that were just present today. I don't know that if we concluded the public hearing it means we don't have to have another public hearing before this application comes before us?

Ms. Loudermilk: Maybe public testimony might be the more appropriate term?  
Or did you mean that we closed the public hearing?

Mr. Starr: Yeah, the public testimony.

Ms. Loudermilk: Public testimony.

Mr. Starr: And if I mispoke, I apologize and retract it. But anyway, does the applicant feel a real need to speak today or can he hold off 'til we hear it? Please come to the microphone and introduce yourself.

Mr. Frank Gummich: Okay, my name is Frank Gummich and I'm the applicant. And I basically wanna thank you guys for being here. As there have been some issues that arose over the last few days that I was totally not aware of, we felt that it is in the best interest of the entire neighborhood to resolve those issues, and talk to the neighbors that do have an issue, and try to resolve those problems through a mediation process, and see what their concerns are in order to come back to the Commission in the March hearing and basically having addressed those issues. And I think that looks like a very fair step towards the people that have concerns and also towards me being the person accused of certain things in regards to this application.

Mr. Starr: Thank you very much, Mr. Gummich. Is there anyone who would like to make a motion at this time?

Mr. Iaconetti: How about a question? You heard some of the comments made earlier. Do you have

any response to the fact that—?

Mr. Gummich: I guess we all learn in life. If you have noted that those letters dated and events that were there dated back seven, eight years ago. And I do admit we had a party there at one time. That was the only one that we've had. And I realize that this is totally not the way to go. What I have been trying to do actually I've been trying to be in compliance and have been in compliance especially also with the short term and the long term rental. The last year and a half ever since the Department actually told us we cannot do short term rental, I conducted long term rental operations. And I actually did go to the Zoning Enforcement people and showed them the long term rental contracts including the tax stubs that were actually filed by the long term rental . . . (inaudible) . .

Mr. Hedani: How did you find long term rentals?

Mr. Gummich: Those people were staying for like eight, ten months.

Mr. Hunt: What's your response to the allegation that you were short terming as recently as November of 2008?

Mr. Gummich: Well, as I said, before I did have long term rental agreements that I actually presented to the Zoning Enforcement Department. And I – I mean, there has been long term rental because I really wanted to be in compliance and have been in compliance because I knew that in some point in time I would be in front of the Commission. And I just really didn't want to have the lightning over me that said, hey, you haven't done what we asked you to do. I mean, everybody can make accusations. I'm sorry. That's just that the way it is.

Mr. Iaconetti: I thought the question that the Director just gave you was, the use of short term rental? Isn't that was you asked?

Mr. Hunt: I was asking him about the allegation that there were short term rentals on that property as recently of November of 2008.

Mr. Iaconetti: You didn't answer that.

Mr. Hunt: I thought he did.

Mr. Gummich: I did not have short term rentals. I had long term tenants staying there. And I had not only the rental contracts, but also the tax stubs to prove that I had paid GE taxes on the long term rental agreements that . . . (inaudible) . . .

Mr. Hedani: Does your long term tenant have the ability to sublet?

Mr. Gummich: No, they did not. As a matter of fact, those were people that worked – building an attraction. Some of those people are here at the County of people. They did not sublet. I mean, I live on the same – I live in the house, actually. So I know pretty much what's going on. The impact of the long term rental was much harder on everything and everybody than the short term rental.

Mr. Starr: If we're gonna defer, let's do that. If we're going have the hearing, let's do it. We're kind of in a gray area here. Someone had a question for you. We're gonna hold it off 'til we have a proper session on this. Is there anyone who would like to make a motion? The recommendation is to defer.

Mr. Hedani: Move to defer.

Ms. Domingo: Second.

Mr. Starr: To March 10<sup>th</sup>?

Mr. Hedani: Move to defer to the point where the Department is ready to bring it forward again.

Mr. Starr: Okay, fine. Corp. Counsel reminds me that if we don't defer to a date certain, there are notice issues. But I think there are notice issues anyway. And by deferring to a date uncertain, that will create a need to properly re-notice, and I think that is a desire that I'm feeling. So if that's a desire, so be it.

Mr. Gummich: Chairman, may I ask?

Mr. Starr: No, you may not. So we have a motion to defer 'til staff feels ready with this. No, not to a specific date, 'til staff feels ready. And that's been seconded by Donna Domingo. Director, you got that? Okay, any discussion? Any amendments? Yeah, Commissioner Hiranaga?

Mr. Hiranaga: I would just to suggest that he try to apply this under the new B&B ordinance 'cause I think it's gonna be a tough sledding to get conditional permits since the new ordinance has been adopted.

Mr. Starr: Okay, we ready to vote? All in favor, please raise your hand. All opposed?

Mr. Hunt: I have that six in favor, one against. The motion carries.

**It was moved by Mr. Hedani, seconded by Ms. Domingo, then**

**VOTED: To Defer the Matter Until Such Time the Department Places it Back onto the Agenda.**  
**(Assenting - W. Hedani, D. Domingo, K. Hiranaga, J. Guard, W. Mardfin, J. Starr)**  
**(Dissenting - W. Iaconetti)**  
**(Excused - B. U'u)**

Mr. Starr: Okay, thank you very much. And we'll – can we keep going or do we need a break? Let's keep going. Robyn, do we need a break to set up for Ledesma.

Ms. Loudermilk: Just three minutes. We have a power point.

Mr. Starr: Okay, a really quick break.

(A recess was taken at 3:38 p.m., and the meeting reconvened at 3:39 p.m.)

Mr. Guard was excused from the remainder of the meeting at 3:39 p.m.

**2. CLAUDIA & KEVIN LEDESMA requesting a State Land Use Commission Special Use Permit and a Conditional Permit for the Hale Mauka Makai three-room bed and breakfast within the County Agricultural District at 279 Pauwela Road, TMK: 2-7-008: 142, Pauwela, Island of Maui. (SUP2 2007/0001) (CP 2007/0003) (R. Loudermilk)**

Mr. Hunt introduced the agenda item.

Ms. Loudermilk: Good afternoon, Commissioners. I have two very brief power point presentations. As indicated, we're here for a land use commission special permit. And I have Claudia & Kevin Ledesma here. They are the applicants and their supporters back here.

So just real quickly. The Hale Mauka Makai bed and breakfast--this is the property location. This is the Paia-Haiku Community Plan. This is Hana Highway.

Mr. Hunt: Into the mic., Robyn.

Ms. Loudermilk: Oh, excuse me. Thank you. Paia-Haiku Community Plan. This is Hana Highway. Right over here is the elementary school and community center, Pauwela Road, and this is the property. It's located in the State agricultural district, designated agriculture by the Paia-Haiku Community Plan. The zoning is agriculture and it is located outside of the special management area.

Mr. Starr: Hold on a second. Dr. Iaconetti?

Mr. Iaconetti: Are we to--? The paperwork that we have is a permit to operate a transient vacation rental. Now, are we talking about a B&B or are we talking about a transient vacation rental?

Mr. Hunt: Because it was on agricultural land at the time they made application, they couldn't apply for a B&B. Now, as I understand it, they are using their ohana as well and so that also did not meet the definition of a B&B under the old ordinance. This is one of those applications that there's a good likelihood that they will meet the new definition, but they still need an SUP, and we suggested to them that there's no harm in at least asking for the recommendation on the CP, and that gives them time to then review the B&B ordinance and make a determination whether they should switch it over.

Mr. Iaconetti: Thank you.

Mr. Starr: Please, continue.

Ms. Loudermilk: Tax map key of further identification of the property right here. The surrounding uses to the north are agricultural lands. Basically, the pineapple fields are not in cultivation. To the east back here, we have Ohia Gulch and agricultural lands. And to the south and west, we have



agricultural lands with farm dwellings.

What we have here is the layout of the house in terms of the garage and the rooms. So it's a single story structure, a little bit over 2,000 square feet, three bedrooms, three baths with a kitchen. The – in response to Dr. I's earlier comment, should the applicant determine that they do wanna come in for a bed and breakfast permit, then as part of the kitchen and the operation, they will need to provide breakfast. However, at this point in time, they do not.

And in summary, you know, as indicated earlier, it's a single story structure with three bedrooms, a bathroom, and a swimming pool. The maximum number of guests they allow is six. The length of stay ranges from one week to a month. And as indicated earlier, no meals are served. The applicants do live on the property. No special events are held on the property. Prior to ceasing operations as other transient vacation operators did, they were in operation for nine years, and they had no complaints filed with the Department. And since the completion of the Department's report and recommendation, five letters of support were received. Those letters were provided to you this morning. In addition, the applicant provided an updated aerial photo of the property so you could see it in relation to the surrounding land uses, as well as their response to the Office of Planning's letter regarding their activity. I'm going to switch over to a second power point that the Ledesmas had put together, and we'll just – they wanted to show the agricultural activities in relation to the existing property.

Mr. Starr: About how long does that run, Robyn?

Ms. Loudermilk: About four or five minutes? Maybe add an extra minute. Claudia will do it. She's gonna cry for a minute, then she'll be fine. And then– She's invested a lot of time and–

Mr. Starr: No, that's fine. As long as it's not a half an hour or an hour.

Ms. Loudermilk: Yeah, yeah. We'll ask Carolyn to maybe one minute. Yeah, so she wants to share with you what they've been doing with the property over the nine years.

Mr. Starr: Okay. Welcome. Please come up to the mic. and share with us. And feel at home.

Ms. Claudia Ledesma: Hi. My name is Claudia Ledesma. And I was fine until just a little while ago when I saw what happened with Mr. Gummich's application and recommendation of the Department. And it just felt like it puts me or us into – if you can just erase what you heard and just start from scratch, that would be . . . (inaudible) . . . And I promise as I keep talking, I'll stop crying.

Okay, 279 Pauwela Road. It's a 4.3-acre property. And we purchased it in November of 1995. The land was overgrown, unproductive pineapple field at the time of the purchase and the land had sat fallow for 11 years. And the clearing of the land and the building permits were initiated in 1996, and the main house was completed by November with owner/builder supervision. This is the main house that we use for our bed and breakfast or, well, TVR as it was then because there was no bed and breakfast ordinance.

This is the cottage that was built in 2000; and Kevin and I and Nohea live there. This is the adjacent property. As you can see, this is an aerial view. It was taken December 15<sup>th</sup>. This is the

bed and breakfast. Oh, I'm sorry. I'm shaking. The bed and breakfast there. The cottage is in the corner. These are our neighbors. . . . (inaudible) . . . The front is A&B Property. It's a 24-acre lot that has been vacant now or not in production for over five years. And it is for sale right now. And then behind, you have the gulch. And then behind there as well, that also used to be pineapple fields and it's not in production any more. The only one that's still in production is to your right out there. Okay?

So quick, in summary, south and west, there are four directly adjacent properties sized two to 13 acres which for . . . (inaudible) . . . and direct enclosed neighborhood with their residences living in single family homes. You've heard one neighbor this morning and then my bookkeeper reading the testimony of the other neighbors who are too old to come here today. And to the north there's a 24-acre A&B lot I mentioned that's not been in production actually for over six years. I just looked up some photos. And to the east, we're separated by the gulch, and that's Maui Land & Pine properties which are also fallow pineapple fields now.

We are the owners: Kevin, Claudia and Nohea. Kevin has been a Maui resident for 33 years, and he's a landscape contractor and owns his own business: C&K Home and Garden. I'm born and raised in Switzerland. I'm a Maui resident since 1997. And I became a U.S. Citizen in June of 2007. I'm helping Kevin to take care of the business and the property. This is—

Mr. Kevin Ledesma: That's our little angel.

Ms. Ledesma: She makes me cry. She's born in Maui and she really is our little angel. This is a photo documentation of our ag activity that we have on property. And I started documenting it in January of 2006, and you see photos over the period of three years. The different areas that are documented is a nursery. I have a commercial onsite nursery with potted plants. And we have several field stock areas: one in front of the cottage, one next to the rental, next to the nursery. We have food orchards. I have two aerials where you can compare. And then I'll tell you about the Department of Agriculture visit. And that's our ag plot plan. And by the way, I just found out myself yesterday about the decision to make – if we have to – should go on to the conditional use permit or if we apply for a bed and breakfast permit, we hadn't – did not have an approved farm plan when we built the cottage because it was not needed then. I sat down last night until one o'clock, and I put the whole document together. I went and saw Jay Arakawa this morning, and showed him the document. And he actually said it looked good. He would probably be able to approve it right away. And then it just has to go to the Bureau of Conveyances. So we – our desire would be to go under the bed and breakfast.

Okay, this has been a long three years. Okay. This is the view of the nursery. This is from – to the east. I have four photos that shows you how our inventory changes. That was in January of 2006. That is November of 2007. I know it's a big time span but you can see the inventory has completely changed. You'll see bigger changes now coming up. That's again, the same view. So you see thousands of plants have grown and sold to nurseries, commercial nurseries and landscapers. And that's again, the same view November of this year with a completely different inventory. Okay? Now, this is the view from the other side of the nursery. And again, completely changed inventory. Once again, completely changed inventory. You see that that coral tree is always there. So it's always taken from the same spot. And one more, this November with again a completely changed inventory. And it has changed again since.

This was the potting area at the time of the application. So we didn't have a shed or anything. We just had everything out in the sun. And then we built a shed. You can see in the back. And then to the left, that whole area now is also used – has been enlarged for our nursery operations. We have literally thousands of arecas growing. When we pot up from 15 to 25-gallon, we obviously need the help of machinery. You can see that just happened a month or two ago. When we pot up into 25-gallon, there's no way we can lift those.

This is the field stock in front of the cottage in 2006, 2007, and 2008. So you can see the trees are growing fairly well there. We have another field stock next to the big house, as we call it, next to the vacation rental – well, the bed and breakfast. And that was planted – that's also taken in January of 2006. This is November of 2007 and this is November of 2008. So the soil is so poor there that you can see those plants have not grown in three years. And we amend – obviously, we dug the holes the same way, we amended it the same way. Absolutely no growth. And we're gonna go further into it with soil testing and stuff. I'm really curious. This is the third field stock area that we have. Those are . . . (inaudible) . . . , the small palms you see in the front. Theirs is a slow-growing variety. There we go. That's a year and a half later, and another year later. Just a little bit bigger. I wanna make this point. And these are our fruit orchards. And here a couple of closeups of the fruit that we grow: oranges, breadfruit, lemons, and many others. I just took some photos.

That's the aerial view that you can see. In May 2004, in the background, top corner, you can see that was the Maui Land and Pine behind the gulch that was still in production then. It's fallow now but you can see that was – in the front, the A&B lot, the 24 acres was already fallow. And you can see there's no field stock whatsoever there. We have a fruit orchard that's much smaller. And then we have – we already had the nursery then, but we've been growing slowly as we've been able to financially. And so I have the aerial, closer aerial, from the same perspective next. It's split up into two. You can see the field stock right above that green roof there. That's not growing. And then you can see our fruit orchards have been enlarged. We have a big compost area at the very corner. And then to the right, you can see the nursery, and how much it has grown, and how much surface it covers. And the next slide will actually show you a close up of right in front of our cottage and then again the nursery. You can see where the cars can drive in or the truck can drive in when we have the delivery of dirt and of things. That was an aerial I think from the roof of my cottage over the nursery. And the next slide will show you similar so you can see all the different varieties of plants that we grow and how extensive that is.

We did have a visit of the Department of Agriculture this last September because you probably all heard about the big problem with the stinging . . . (inaudible) . . . caterpillar. I detected it on my property and on my plants and reported it to the department. The department came out the next day, the very next day. And they called me a couple of weeks later because Haiku School which is right below us had a huge problem. My daughter goes to Kindergarten there. And he asked us for permission to bring out 30 researchers from the outer islands which that's the photo. They came. They visited. We discussed the problem. And I actually took them all to the school. And they looked at the problem there. And the Department of Agriculture gave the groundskeeper of the school a bottle of seven. And the lady used the seven straight. She didn't dilute it. She sprayed that straight on the plants. And so we were able – I was able to show the Department of Agriculture that, and thanks to that, they actually now dedicated a person to go and spray the school grounds in the future so the straight poison is not sprayed on the plants. It's true. And I

think we're getting to the end. That's it. Thank you very much for bearing with me and my emotions.

Mr. Starr: Thank you very much. That looks like a very beautiful place and a lot of hard work. Okay. Robyn?

Ms. Loudermilk: The Department doesn't really have much more to add to the presentation other than I did do a site visit on the property. And the smoke detectors are already in place, the evacuation routes. Much of the standards for a bed and breakfast have been met. As Claudia has indicated, we did meet yesterday and we discussed the bed and breakfast option for her property that they – it looks like they're a likely candidate. So they are going forward with it. And really no outstanding issues from the agency comments. Fairly straightforward.

Mr. Starr: I have a question. In light of the fact that it looks like they'll go for the B&B, I know that in any case, they would require the special use permit, does it make sense for us to act on the conditional permit? Director?

Mr. Hunt: The Planning Department's feelings is as long as they're here for the special use permit, they've been through a lot, why don't we at least review the conditional permit? If you grant them or if you recommend approval, it doesn't do them any harm at all. They can always then switch it over to a B&B later.

Mr. Starr: Okay.

Mr. Mardfin: I'd like to ask the Director: which would be better to have?

Mr. Hunt: If you can meet the B&B criteria, it's a lot quicker. It doesn't have to go to Council. We could probably within weeks get them that approval. But they haven't made that official yet. And as Claudia mentioned, there's criteria that they have to meet. They have to have a fully implemented farm plan.

Mr. Mardfin: Is one more permanent than the other?

Mr. Hunt: One permit?

Mr. Mardfin: Is one more permanent?

Mr. Hunt: I'm not sure about permanent. They both have renewals. The B&B is definitely the better way to go if you qualify. The ordinance was just adopted a week ago and they haven't– I think we should give them time to fully analyze it before they make that decision.

Mr. Starr: Okay, any more analysis, Robyn?

Ms. Loudermilk: No, I believe we have people here for public testimony unless there's any additional questions.

Mr. Starr: Are we ready for public testimony? Commissioner Hedani?

Mr. Hedani: Has everyone that's on that tax map key within the 500-foot radius been notified?

Ms. Loudermilk: Yes, they have.

Mr. Starr: I have a question in that regard. How do we know--? I'm sure that in this case, they did, but how do we know that they have been notified? It's my understanding that it's up to the applicant to get the list and to do it.

Ms. Loudermilk: Yes, the mailing requires a registration as well as a certified signed mail receipt. So it's the signed receipts that's another documentation that come back to the Department and we review that against the list that the applicant has developed.

Mr. Starr: So you check it against--?

Ms. Loudermilk: As best as we can. We don't check -- we don't do the 500-foot buffer all the time, but we -- okay, okay, okay, okay. Yes, we try to do that, yes.

Mr. Starr: Okay. Public testimony? Commissioner Hedani, please.

Mr. Hedani: I was just going to say, Robyn, the correct answer is, absolutely.

Ms. Loudermilk: Absolutely.

Mr. Starr: Okay, members of the public wishing to give testimony on that, please come on up. Introduce yourself.

(The following testimony was given at the beginning of the meeting.)

Mr. Richard Ross: Okay, I'm Richard Ross in a hoarse voice, and happy to be first. I'm a neighbor of Claudia and Kevin. I wanna testify on their behalf. We share a common property line. I've never -- I've hardly been aware that they've had a bed and breakfast. In fact, I think at one point maybe a couple of years ago I heard some children playing next door, and I thought it was a nice thing. And I can't say anything bad about it at all. I just think that they should be able to continue with their activities.

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

Ms. Patrice Tuzon: Good morning. My name is Patrice Tuzon, and I'm testifying this morning for Kevin and Claudia Ledesma. I have a bookkeeping business and I've done their bookkeeping for the past three years for their landscape contractor business as well as their home -- their commercial nursery located on the property. Until their B&B got shut down, I was occasionally also doing bookkeeping for their B&B Hale Mauka Makai. The Ledesmas had to let go of several of their maintenance people such as gardeners, cleaners, pool guy, general maintenance and repair people. And I have seen the family go through a major financial and emotional crisis this last year. They do everything by the book, and have followed the rules, and had an exemplary operation. Since the Ledesmas' neighbors are not available for personal testimony today due to absence from Maui or because of immobility, I would also like to take the opportunity to read a testimony from one

of their neighbors, Jim and Pat Hackett, a retired author and music professor, who lives on the direct – who lives directly adjacent to the property to the west of them:

Aloha from what is surely one of the best neighborhoods on Maui. Retiring to Maui in 2000, we found our dream home and property in this very special area on and near Pauwela Road in Haiku. From the very beginning, all of the residents personally welcomed us and we began to share our lives with one another. In the times since this has continued, we all know the names of one another's families, children, and pets, and have met or entertained many of them. We are familiar with each other's interests and activities, and discussed them over the fence and at neighborhood dinner parties. In particular, the Ledesma Family have been supportive in every way. For example, they've volunteered to trim the edge along our mutual fence—something we appreciate as seniors. They even help us find our pets should they somehow stray from our fenced property. When they entertain, we have never heard any disturbance from their personal residence. And when they're away from the island, they have taken care to have responsible individuals living in the home. It would be a shame if their beautiful vacation rental cannot be reopened. It is a fabulous house and attracts splendid guests several of whom we have met and enjoyed. This rental has never to our knowledge housed any guest who behaved in an inappropriate manner. Please feel free to contact us if you have any questions.

And this letter is from James and Patricia Hackett, once again, retired professor and a retired author who live in Haiku. On their behalf I'm just here saying that they have been exemplary with their excise taxes paying everything—their TAT taxes. They're up to date on all of that. And I just on my behalf for them I would wish that you would grant them a permit this morning. Thank you very much.

Mr. Starr: Okay. Thank you very much for joining us.

(This concludes testimony given at the beginning of the meeting.)

Mr. Tom Crowley: Hi. My name is Tom Crowley. And I've come to know Claudia and Kevin as part of Maui Vacation Rental Association. They've been participating with the Maui Vacation Rental Association over the past few years to help bring about the changes in the ordinance that we're now taking a look at and making the process easier. They've been folks that have been very forthright about what they've been doing from the very beginning. They made application a long time ago and it's been a long process that has led them here.

And I did want to point out that during the process of the Council considering the bed and breakfast ordinance, four of the Council Members had the occasion to visit Claudia and Kevin's property. And really see it as a model for the type of thing where agriculture and a bed and breakfast can coexist. And their place was one of the places that helped people understand how this could work. You guys are charged with a very difficult situation looking at some paperwork and deciding is this really going to fit? I can say that I know these people. I've been to their property and I would be proud to be their neighbor. And I would be proud to own their property. It's pretty sure. And I would say that everyone in the Maui Vacation Rental Association would support them. But further I would say

that all of the Council Members who visited their property went away both impressed with the agricultural activities that they were doing and the high level of vacation rental that they were able to offer, and felt that it was a good fit for the community. Thank you.

Mr. Starr: Thank you, Mr. Crowley. Thank you for being here. Who is next? Other members of the public wishing to testify? Come on along.

Mr. Spence: Hello, Commissioners.

Mr. Starr: Are you working for them?

Mr. Spence: No, I'm not.

Mr. Starr: Then you're public today?

Mr. Spence: Yes. In this particular case, I am a member of the public. My name is William Spence, and I did help them put together their application package, but I keep in touch with them off and on throughout this process. As a consultant, I'm approached by a whole lot of different kinds of people say, you know, can you come do my permit? And when I go see what they're doing— When they invited me onto their property, and I got to know the Ledesmas, and their little angel, as well as I have, this was one of those cases where you just are so impressed with the people, so impressed with the operation, it's like you can give not support just as a consultant, but you give them support as a friend. This is exemplary. This is what you want. This is what is the alternative visitor experience is about where you want people to come into your home, and you want to get to be their friends, and get this thing up and running. So they fully have my support. I really ask for your vote in favor of their operation. Thank you.

Mr. Starr: Okay, thank you, Will. Other members of the public wishing to testify on this one? Come on, Dave.

Mr. DeLeon: Dave DeLeon, Haiku resident. In this case, I'll represent the Realtors' Association of Maui. And I got to know the Ledesmas in the same situation in working with the Vacation Rental Association in trying to develop the B&B bill. Literally, the poster child of how this could work and why it should work 'cause they're really doing agriculture. And agriculture on four acres is a challenge. It's not— They need the economics. They need the extra to make it work otherwise— I mean, most people would be— If they had money, but they just wanted to get some extra money by vacation renting, they'd be living in the main house and renting out the ohana. They live in the ohana and rent out the main house when they were able to do it. Honest, straightforward people doing a really good job, and they really deserve this permit. And I wanna encourage your support. Thank you.

Mr. Starr: Okay, thanks for being here. Any other members of the public on this one? Seeing none, public testimony will be closed. Okay, recommendation.

Ms. Loudermilk: First for the land use commission special permit, the Department is recommending approval subject to a number of conditions. And further that the Commission authorize – excuse me, further that the Commission adopt the Department's report and recommendation memorandum

prepared for today's meeting as its findings of fact, conclusion of law, and decision and order on behalf of the Commission. And that concludes the Department's recommendation for the land use commission special permit.

Mr. Starr: Thank you. Members, any questions?

Mr. Hedani: Robyn, the State laws does not prevent a transient vacation rental unit on agricultural land?

Ms. Loudermilk: It does not as long as a special permit— A special permit can be applied for. It does not preclude—

Mr. Hedani: It's not prohibited?

Ms. Loudermilk: It's not prohibited. Well, I should clarify that. In a portion of the State land use law, it indicates that something could be prohibitive, but it has to be part of the County Code. And I would defer to Mr. Hunt to further clarify 'cause I'm sure these are the types of questions that he entertained with the Council Members during the deliberations on this.

Mr. Hunt: The State laws are somewhat ambiguous. There is a provision under the ag tourism where it says overnight accommodations are prohibited, but that clause is for an outright permitted use. So our interpretation is, yes, it's prohibited as an outright permitted use. Further on down on that same law, it says, however, other uses may be allowed by a special use permit. We've gotten concurrence from the State Office of Planning. And at one point, we had it from the Land Use Commission also. To be up-front with you, there are other people who take a different interpretation of that.

Mr. Hedani: The other question that I had was what is the amount of revenue generated from the agricultural operations on the site?

Ms. Loudermilk: I didn't ask.

Mr. Hedani: Does the applicant have an answer?

Ms. Ledesma: I'm Claudia Ledesma again. I just started to prepare my tax papers and actually this year our income is \$35,066. That's not repeatable, though, because, you know, of the inventory of the plants, when you have—

Mr. Hedani: I was gonna say you have some beautiful foxtail palms and we may be interested in purchasing.

Ms. Ledesma: Very good. I will gladly sell to you.

Mr. Mardfin: You had up on the screen, and my note-taking was slow, you don't have them for one or two days. You said the length of time that the visitors stay was six days?

Ms. Loudermilk: One week to about a month average. Sometimes longer, but a minimum is usually



seven nights, so one week.

Mr. Mardfin: And I was gonna comment on the same thing that you just answered. I had seen and heard a September letter that they had \$23,400 dollars of revenue. And I was gonna say that's not gonna make it to the \$35,000, but you did.

Ms. Ledesma: I think the \$35,000 is required for lots that are over five acres in the new bed and breakfast law.

Mr. Mardfin: So that wouldn't apply?

Ms. Ledesma: No, it wouldn't apply.

Mr. Mardfin: So some lower number for smaller acreage?

Mr. Hunt: A fully implemented farm plan.

Mr. Mardfin: A fully implemented farm plan which they seem to have in spades.

Mr. Starr: They seem to be a model not only as a B&B but as agriculturists on small property.

Mr. Mardfin: Do any of your guests--? I just had one of my former students come back. She traveled around the world. And she was going to a lot of places and staying where she was -- instead of paying for the bed and breakfast, she was putting in her labor. Do you--?

Ms. Loudermilk: Wolfer.

Mr. Mardfin: What is it?

Ms. Loudermilk: Wolfer. Wolfer Central will be in the next-- I'll explain that. They do not have--

Mr. Mardfin: They don't do that.

Ms. Loudermilk: They don't do that, but--

Mr. Mardfin: They need the cash.

Ms. Loudermilk: Well, every operation is different, but the next meeting, I think both of our applicants are Wolfers, and we can explain what the Wolfers are.

Mr. Mardfin: I'd just like to comment that the other thing I really like about this is this isn't a -- well, I'm gonna go before the Planning Commission, I'm gonna plant a few fruit trees, and maybe my tenants will get an orange. This looks like a long term plan for agricultural development and it's very impressive.

Mr. Iaconetti: I'd like to approve the recommendation to the County Council.

Mr. Mardfin: Second.

Mr. Starr: Okay, we have a motion by Dr. Iaconetti, seconded by Commissioner Mardfin. The motion is—?

Mr. Hunt: The motion should address the State land use permit which is under your jurisdiction.

Ms. Loudermilk: Yeah, so you folks can—

Mr. Starr: Okay, so what's the motion, Director?

Ms. Loudermilk: To accept—

Mr. Hunt: I think the motion should be remade.

Mr. Iaconetti: To accept the recommendation of the Planning Department.

Mr. Hunt: So the recommendation is to approve the State special use permit.

Mr. Starr: As recommended. Okay, ready to vote?

Mr. Mardfin: I have a question. It says, "land use commission special permit and a conditional permit."

Mr. Starr: We're only doing the first one.

Ms. Loudermilk: Yes, separately.

Mr. Hedani: Originally when we were considering the bills relative to transient vacation rental and bed and breakfast, we had two different versions: one that was for bed and breakfast, and one that was for TVRs. The bed and breakfast bill made it through the Council. The TVR bill apparently was hung up. Is it still hung up or what is the process on that?

Mr. Hunt: The Committee thought it would be better to divorce the two and just focus on the B&B. And so that eventually was revised and adopted. At this point, the package of TVR bills is still at the Planning Committee at Council. And it's up to them whether they'll want to move on it, and how soon, if at all.

Mr. Hedani: And so the current application complies with the law as it relates to transient vacation rentals—the old law?

Mr. Hunt: I believe so. I mean, again, we've gone through that whole iteration of, well, we have a prohibition against TVRs, yet we're allowing them via conditional permits. The ones that are close to B&Bs, we tend to support. This one is very close to a B&B and probably can meet the new definition of a B&B.

Mr. Hedani: It's just a question of whether or not they want to prepare breakfast.

Mr. Starr: Okay, are we ready to vote? Director?

Mr. Hunt: Claudia, I have a question. I think I know the answer, but when the County suggested or directed everyone to shut down, what was your reaction on that?

Ms. Ledesma: Well, we obeyed. I went online within the same week and I took my advertising off as of July. I have a record of it. You can imagine. I'm from Switzerland. As of July 6, 2007, I took all advertisement off. And I did – we did not accept any new reservations. So, yeah, we've been drying out here so–

Mr. Hunt: I think you've been a model application in more ways than one.

Ms. Ledesma: Thank you.

Mr. Starr: Okay, are we ready to vote? All in favor, please raise your hand. All opposed? Director?

Mr. Hunt: We have that six in favor, zero against. The motion passes.

#### **State Land Use Commission Special Use Permit**

**It was moved by Mr. Iaconetti, seconded by Mr. Mardfin, then**

**VOTED: To Accept the Recommendation of the Department to Approve the  
State Land Use Commission Special Use Permit  
(Assenting - W. Iaconetti, W. Mardfin, K. Hiranaga, D. Domingo,  
W. Hedani, J. Starr)  
(Excused - B. U'u, J. Guard)**

Ms. Loudermilk: So we are also recommending that this Commission recommend to the Council approval of the conditional permit subject to a number of conditions. And that again that you adopt today's report and recommendation as the findings of fact, and that we can transmit to Council. And that concludes our recommendation for the conditional permit.

Mr. Iaconetti: So moved.

Mr. Mardfin: Second.

Mr. Starr: We have a motion by Dr. Iaconetti, seconded by Commissioner Mardfin. The motion reads, Director?

Mr. Hunt: To accept the Department's recommendation to recommend to the Council approval of the conditional permit with conditions.

Mr. Hiranaga: Since the special permit has been granted or recommended for approval, is there any requirement for a public hearing if they should apply under the new B&B ordinance? Or if there is no opposition, does that become an administrative process by the Planning Department?

Mr. Hunt: The triggers are 30% of the neighbors objecting, another B&B being within 500 feet, or a variance, or on ag, and you've already dealt with the ag.

Mr. Hiranaga: I guess I'm having a philosophical difficulty granting a conditional permit. We have a new law that's in place. And unfortunately, the timing is not the best for them. I think they should comply with the new law. And I would prefer that the conditional permit be deferred. And if they are unable to qualify for a B&B permit, they can come back for this conditional permit, because if they do not have any opposition, or less than 30% opposition, it'll be processed by the Planning Department. They won't have to come back before the Planning Commission. So it's unfortunate the timing is such, but I think we should start implementing the new law 'cause there is a new law. So I'm having difficulty unless you can convince me otherwise. They're not exactly the same as far as how you qualify.

Mr. Hunt: I think you raise an interesting question whether you could just defer it. Again, I don't see any harm on all you're doing is recommending approval in between now and it'll be months and months before it gets to the Council. They can then make their decision whether to switch it over.

Mr. Hiranaga: Well, I'm not sure I'm prepared to recommend approval.

Mr. Hunt: And I guess we would look at – they made an application for a conditional permit. Is there some criteria you folks are supposed to weigh against the regulations? Is there some aspect of the application that you feel doesn't meet the conditional permit criteria? And if that's the case–

Mr. Hiranaga: I guess I would be more comfortable if you defer this even to a date certain, have them apply for a B&B, and if it cannot be granted, they have to come back. I mean, it seems unnecessary for us to be sending a recommendation to Council if they already can be approved under a new and existing law.

Mr. Hunt: And I understand your logic. Again, we're all kinda treading in new territory. If that's the will of this Body, I don't see any real problems with it. They still have the opportunity to switch over. And from all indications, they would likely meet the new B&B. We were just trying not to have them come back in the very small chance that they don't meet the new B&B.

Mr. Hedani: I guess the question that I would have with this is the differences between the two would be the serving of the meals and the approved farm plan? Is that the difference between the two?

Mr. Hunt: We will ask them to post a sign because the new B&B ordinance requires a sign, but again, the process should be much, much quicker at an administrative level. I don't know anyone in their right mind who would – unless they really have trouble meeting a B&B would, you know, pursue the conditional permit.

Mr. Hedani: From my perspective, I think if there were a situation where we would consider approval of a transient vacation rental, this seems like it qualifies, at least from what I've seen.

Mr. Hunt: The law also says that they may choose to switch their application over. And I believe we inserted the word, "may" just because we didn't want to say you have to. So I think in theory,

somebody could say, no, I don't want to for whatever reason. I want to continue on with a conditional permit. Maybe they analyze it and maybe we're missing something. Maybe it's a benefit for them to pursue the conditional permit. So they don't have to switch it over.

Mr. Hedani: Maybe they might hate making breakfast.

Mr. Mardfin: I have a question. Do they serve breakfast?

Ms. Loudermilk: No.

Mr. Mardfin: I'm gonna vote in favor of the motion for a couple of reasons. One, if they do have to go to Council, let's get them on their way as quickly as possible. Two, I wanna have it on the record that we've approved this one. I'm not gonna throw this one away. I'm gonna keep this in my box. And it's gonna be a high bar for future applicants because this is what they all ought to be striving for. So I'm gonna vote in favor of the motion.

Mr. Hiranaga: I have a question. So at what point we anticipate two additional applications for conditional permits? At what point do we draw the line saying the transition is over?

Mr. Hunt: I believe the law says these pending conditional permit applications may be processed under 19.64, but they don't have to. We are in the process of drafting a template letter that we will send to these applicants in trying to encourage them. I agree with the earlier comment—we should encourage them to go down the B&B road. Again, most of them, I can't understand why somebody wouldn't unless they really don't meet the criteria and then this is their fallback.

Mr. Hedani: One additional comment that I had was I think, and I may be totally wrong, the Director can correct me if I'm wrong, but from my perspective in observing what the Council is doing, the B&B ordinance is their transient vacation rental ordinance. And they may bottle the TVR section forever in committee and not come out with something new relative to transient vacation rentals. So from that perspective, it may be appropriate for them to pursue the B&B in their best interest, but I think what we need to do here is take every application as it comes before us, and make the decision based on what's presented to us. And what's presented at this point is a TVR.

Mr. Hunt: And again, we will be trying to encourage and weed people over to the B&B process. We don't want to clog up your agenda with these if we don't need to.

Mr. Iaconetti: In the event that the motion does not carry, will they still – they won't be able to operate on any basis?

Mr. Hunt: Hypothetically, if you recommend denial, that would go to the Council, and all that is, is a recommendation. They still can submit a letter asking that their application be switched over to 19.64, the B&B ordinance.

Mr. Iaconetti: So I don't see the disadvantage to giving them what they're asking for now, personally.

Mr. Hedani: My last comment is that I appreciate the fact that at the time that they were notified by

the County to cease operations that they did.

Mr. Starr: Okay, we're gonna call the question. The motion is on the floor to recommend approval to the recommendations. All in favor, please raise your hand. All opposed?

Mr. Hunt: I have that six in favor, zero against. The motion carries.

### **Conditional Permit**

**It was moved by Mr. Iaconetti, seconded by Mr. Mardfin, then**

**VOTED: To Recommend Approval of the Conditional Permit to the County Council.**  
**(Assenting - W. Iaconetti, W. Mardfin, K. Hiranaga, D. Domingo, W. Hedani, J. Starr)**  
**(Excused - B. U'u, J. Guard)**

Mr. Starr: Congratulations.

Ms. Loudermilk: Thank you.

### **G. COMMUNICATIONS**

- 1. December 2, 2008 letter from GREGORY D. KAUFMAN, Managing Member of IWA IKE, LLC requesting that the District Boundary Amendment request for the Iwa Ike Subdivision, a 4-lot subdivision and related improvements at Lot 4 Makena-Keoneoio Road, TMK: 2-1-005: 118, Makena, Island of Maui (DBA 2007/0007) be re-heard at a date certain and that the transmittal of the recommendations on the boundary amendment request from the November 25, 2008 Maui Planning Commissions be held in abeyance until the matter is re-heard including testimony from the Applicant. (J. Prutch)**

**The Commission may take action on the request to re-hear the matter at a future date certain and hold the November 25, 2008 recommendation by the Maui Planning Commission in abeyance until the matter is reheard or take some other action.**

Mr. Hunt introduced the agenda item.

Mr. Starr: With this item regards an application that was denied for – I believe it was an SMA. And the applicant did not – wanted to comment on it. Sent I believe two letters. Joe, is that two separate letters or were they the same letter?

Mr. Joe Prutch: No, you should've received – we received the original letter on December 2<sup>nd</sup>, I believe. That request came forward. And you just got a letter today from Mr. Kaufman that I handed out at lunchtime dated today.

Mr. Starr: There were two letters. I just want to comment for the record that on October 14<sup>th</sup> at the meeting, the applicant had testified for about 20 minutes. And if you look at our minutes from page 109 to 125 is all testimony by the applicant. The applicant was introduced and noted on page 94, the minutes on page 94 on November 25<sup>th</sup> meeting. He did not make any signal that he wanted to comment or testify at that time. He did wish to testify after there was a motion that was on the floor and seconded and the property of the Body. And in that case, that's not – we've never allowed testimony when we're actually deliberating on a motion. It's my feeling that if the Members are willing, we would give the applicant a few minutes to address us, but I wanted to hear if that's the desire of the Members.

Mr. Hedani: I think if there's the possibility of avoiding potential litigation in the future if we offer sometime for the applicant to state his case that we should do so.

Mr. Starr: Yeah, that was my feeling, too, just for fairness. Is that okay with everyone?

Mr. Hiranaga: Just clarification, you're saying give him an opportunity now or give him an opportunity to be put back on the agenda?

Mr. Starr: No, give him an opportunity to address us now. And if anyone wants to make a motion to do anything: to reconsider, or to put something on the agenda, we can do so, but right now, the action would be to allow him to address us.

Mr. Hedani: I think it would be appropriate to hear him and then listen to what he has to say. I think the request is to be placed on a future agenda.

Mr. Starr: So we can hear his request or whatever he wishes to address us with. So with that in mind, I'd like to call Mr. Kaufman and ask you to please keep it brief under five minutes or so.

Mr. Greg Kaufman: Thank you, Chairman Starr. Thank you. I appreciate the long day you've had here. Contrary to the statement that was made, I think it was just a – the process went fairly quickly on November 25<sup>th</sup>. And Planner Prutch did an admirable job. However, there was numerous times where I had flagged him for attention. And I think at some point probably as you correctly stated, as you got into your decision-making process, I think you did raise a point of objecting indicating at that point that perhaps the applicant shouldn't be able to come forward and speak. And I think rightfully so when you're in a decision-making process, *Robert's Rules of Order* is gonna preclude that from happening.

Nonetheless – and I do wanna make it clear at the onset here that I'm really appearing here today to insure that there's a complete and accurate record here. I do believe in the fact that because the public hearing was continued from October 25<sup>th</sup> – October – excuse me, 14<sup>th</sup> to November 25<sup>th</sup>, and because new public testimony was undertaken at that time, I think that the applicant does have a right to reintroduce the project, and to address the concerns that were raised by the public and additional concerns raised by the Commissioners at that point. And specifically, there were three new testifiers who testified at the November 25<sup>th</sup> meeting. And they raised issues that were not brought up on the October 14<sup>th</sup> meeting, including issues relating to the impacts to NARS, endangered species in the surrounding area. There was an issue brought by one member of the public regarding the archaeological review and the recommendations by SHPD to the Cultural

Resources Council. There was issues regarding traffic. And there was discussions of impacts on coral reefs that were brought up by Commissioners in addition to clauses that would trigger workforce housing and school-related contributions. None of those were discussed at the October 14<sup>th</sup> meeting. None of those were addressed by the applicant at that time. Furthermore at the October 14<sup>th</sup> meeting, Commissioner Mardfin asked for the disposition of OHA. And at that point when this meeting was held, there were additional letters that have been received or made aware of by the applicant that were not presented to this Body which would've affected the deliberations on that topic. And since then, there have been subsequent letters that have been received as well. There was also – after the October 14<sup>th</sup> meeting, you would've learned, had I been able to testify that there was an actual two and a half hour meeting by SHPD on the property with the cultural specialist, and the archaeologist, chief archaeologist here on the island, as well as the archaeologist's consultant. We would've relayed to you communications that they'd undertaken not only with OHA, but with the applicant. None of those were presented to this Body, and I think it would've weighed heavily on your determination had you been able to hear those findings of fact.

Based on those issues, and based on the inability for the applicant to present those issues to this Body, and based on the fact that we were going forth from the October 14<sup>th</sup> with 12 recommendations, seven of which was crafted by this Body right here, all of which were suddenly tossed out on the November 25<sup>th</sup> meeting, I believe that this project has – warrants rehearing, and warrants that the action taken on the 25<sup>th</sup> be held in abeyance until such time that the applicant can address these issues that have been brought forward. Thank you.

Mr. Starr: Members, any questions for Mr. Kaufman? Okay, Commissioner Hedani?

Mr. Hedani: I'd like to hear staff's comments relative to the applicant's position.

Mr. Prutch: What exactly do you mean? How do you–? My comments on–?

Mr. Hedani: Is staff recommending that the item be brought up for reconsideration?

Mr. Prutch: My understanding is we are not making a recommendation either way. This is to be brought up by the applicant to request a future public hearing so that all the new information that he just went through can be brought out in a public hearing, can go on the record, and then your decision can be made in light of the new information, but it's completely up to you guys on whether or not you want to stick to your original recommendation of denial, and just have him move onto the Council. Or in light of some of the new information he brought up, allow him to come forward at a public hearing at a later date, and then redo the hearing, redo all the testimony, and listen to some of the new information that he might have relative to some of the testimony that came from the public at the last meeting. So it's a chance to reconsider, and redo the public hearing, and re-vote on it as well however you choose to do so at that time.

Mr. Starr: Members, we have some – I believe we have members of the public who have been waiting patiently all day to be able to testify on that. And with your willingness, I'd like to open it up to them.

Mr. Prutch: I just have one question maybe to Jeff. I don't believe this is a – this isn't a public hearing, but–



Mr. Starr: Yeah, we allow testimony on every agenda item before any potential action. So we're being consistent with that. Anyone would like to come up and testify? Please introduce yourself. Kai?

Ms. Nishiki: Aloha. I'm Kai Nishiki. I believe that this development provides no real benefit to the community and therefore should not be approved. The approval will set a precedent of continued over development in the Makena area. Please do not continue the practice of changing zoning to allow more density. We have many issues such as water, environmental impacts, inadequate parking, road-surfacing, and additional traffic that are not being addressed with current zoning. Allowing a zoning change for this and other developments just compounds the already overburdened needs in this area. This request is not brought by an individual who bought some property and wishes to subdivide for his family or friends to make it feasible for him to live on the property. This is simply a moneymaking development. He has already done this before on a nearby property and has proven to be extremely unneighborly. If the zoning change is approved, there should be requirements for the developer to pay impact fees to mitigate impact to the sensitive coastal area that must be protected. This matter has already been heard by this Commission and denied. Unless the plans have been significantly changed, there's no reason to examine it again. I trust that the Maui Planning Commission has good judgement and will uphold its original decision. Thank you for your time.

Mr. Starr: Thank you very much. Any questions? Thank you. Next? Anyone else? Please come up, Angie. Introduce yourself. Thank you for being patient.

Ms. Hoffman: Aloha. My name is Angie Hoffman. I believe there is no reason to put this matter back on the agenda. I believe your decision to recommend denial of this project was a good one. I urge you to stick to that decision. One point I'd like to make is that I've been attending GPAC meetings over the end of last year, and have been seeing some of the South Maui area maps from the County Planning staff. And Jeff Hunt can correct me if I'm understanding things wrong, but one thing they recommended was that the land just mauka of this project in question remain in ag. It's 98 acres above this parcel. The reason given was because the area is a sensitive cultural area. That it's near by a State park. And this project that is being talked about today is even closer to the State park and has recorded, you know, cultural sites. So both of these issues apply directly to this little parcel here too. One of the things talked about in the GPAC meetings about this area is, you know, going for lower density, pushing for lesser zoning and lower density in this area because of the sensitive nature we were talking about, and because of what we know now, you know, from some of the infrastructure problems on Maui.

I'd just like to throw in also speaking on behalf of Hawaii Wildlife Fund, I ran a turtle watch program on Oneloa Beach right across the street in Makena State Park, and this was the most successful year for the Hawksbill which is a very endangered turtle. So it's only getting better for them, you know, not worse. And we need to not jeopardize, you know, such a sensitive species in a sensitive area. And that's just one of many species that – many endangered species that live in the area.

So just kind of like to conclude by reiterating a point that was made by a testifier last time. Pat Borge and also Commissioner U'u both made the point that there is no public benefit from this project. You know, the community really gets nothing out of it. The only person that benefits or the only party that benefits is the landowners. And if it was to be left in zoning, ag zoning, they would

be allowed a house and cottage. And you know, to have a house and cottage across from Makena State Park I think anyone would be very happy with. And I don't see why they're not satisfied with that. And, you know, I really believe less density is called for in this area, not more. I don't believe there's any need to subdivide further. The community gets nothing out of up-zoning and subdividing further. Your Body's decision to recommend denial of this project was a very good one, and I really urge that you guys stick to it. And I really thank you for your time. Mahalo.

Mr. Starr: Thank you very much. Anyone else? Hannah, you coming up? Welcome.

Ms. Hannah Bernard: Good afternoon. Thank you. I'd like to commend this Body on your decision. I guess it was November 25<sup>th</sup>. It was unanimous, as you may recall. I think that you did the right thing. And in these times with some of the decisions that have come down for land use practices, we don't have enough of those right decisions being made. We need to stop the pace of urbanization. I'm not gonna say "forever," because I don't wanna be painted as an "anti development zealot," but at least until such time as we can get to the place where we can be on top of the damage and the deficit that we're already in with our natural resources. Our ability to process our sewage appropriately is not there for any of our large sewage treatment plants. There is no need for us to continue to support further urbanization of areas that are both culturally sensitive and ecologically inappropriate for urbanization. I do have with me a copy of the Hawksbill nesting success summary for this particular beach over the last nine years, ten years, that this particular individual sea turtle's been nesting on Oneloa. And this year, we had another individual come up and nest. This beach is extremely important for the very few Hawksbills that do nest on Maui. I mean, I'd be happy to past out the graph that shows the increasing importance of this particular beach. The success of the nest, the success of the hatchlings coming out of the nest is increasing. It's increased every year that the nest has occurred there. So this beach is critically important. We have had to ask the current landowners nearby to turn off lights to support the success of this beach staying dark. And the high amount of sand and the quality of sand on this beach is extremely important. And further urbanization in this area jeopardizes the possibility for the success of these nests.

In addition, we do have information on the loss of wetlands. As you all know, I'm sure you've probably seen this graphic from Teryl Ericksen of the Natural Resources Conservation Service that shows the loss of wetlands in Kihei alone. And it's incremental but it's almost complete. So the yellow represents what was once wetlands. And so I have a couple of these handouts. We must recover what we have lost already versus continuing to go down the path of increasing the loss of our areas that allow for the drainage to be reabsorbed.

And one final point, I don't know if you folks have seen this graph: The Status of the Hawaiian Monk Seal. This is the trend and population. This is on the path to extinction. It's declining still at nearly 5% per year. And because we live in a time when all of Maui is home to these critically endangered species particularly, the Hawksbill and the endangered Monk Seal that are found in this area, we need to be looking at what we can do support their recovery versus increasing urbanization and human population density in places that may be extremely important because they are isolated, they don't have the development that are in other parts of the areas that are currently all over. Thank you very much.

Mr. Starr: Okay, please come and introduce yourself.

Ms. Ellie Cochran: Aloha, Planning Commission. My name is Ellie Cochran. And I'm here also – sort of wanna to reiterate what my fellow ladies here have already said. And as I am told, this was originally, you know, denied. And so, unless like Kai had mentioned, if there was some major changes to this application, then possibly revisit it, but other than that, your original decision was very pono. You can hear that there's lots of natural resources, environmental impacts, cultural impacts that's not – that does not benefit the community. You know, this up-zoning here is strictly for the landowner's profit. And it's just happening way too much. Your original decision really mirrors, you know, what a lot of people here on Maui and abroad are striving for. And it's really, really far and few in-between these decisions are being made. You know, the Hanzawa Store up-zoning, that benefits community. Something like this does not. So I just wanna quickly, you know, just say please stick to your original decision, and, you know, all the marine life, cultural, environmental, natural resources will appreciate you for that, including all our future generations. So thank you for being here. Aloha.

Mr. Starr: Okay. Thank you. Anyone else wishing to testify? Okay. Seeing none, testimony portion is closed. Members, what's your pleasure? If there's any action desired, you might want to talk with – hear from Counsel Giroux.

Mr. Hedani: If the question is on due process, and if there's a question that the applicant is posing that he was not provided with due process, I would opt to err on the side of an abundance of caution to consider rehearing the issue and allowing him to make responses to the items that he felt he was denied an opportunity to respond to.

Mr. Starr: If that's the case then, you know, I would suggest that the Body to vote to proceed down that path. I'll let Corp. Counsel explain what that process would be, which I understand would be an actual motion to not reconsider but to rehear would have to happen at a noticed meeting. But please go ahead, Mr. Giroux.

Mr. Giroux: According to *Robert's Rules of Order*, you can't do a motion to reconsider because the term's already passed. However, there is a procedure that's a little cumbersome, so I'm gonna kinda explain to you. There's a motion to amend something that's previously been adopted. And in that family of motions, there's also a motion to rescind or a motion to annul. So both – well, of that family of motions can be made; however, there's a requirement that there be notice at a previous meeting, which if you would wanna take that course of action at this meeting, a Member would have to announce I'm strongly considering moving to amend something previously adopted so everybody's put on notice. And at the next meeting, the motion could be made, seconded, and discussed as far as taking action on that. So once the motion to reconsider is taken, you could probably – part of that motion would be a motion to open up the hearing for further testimony.

As far as the due process issue, I think I made a pretty full analysis of what our purpose is in this hearing because we had two motions to intervene. And part of my research was to basically look at what is our role in the process. And that's why you raise a due process issue. In denying the intervention, we stated that in the State boundary amendment process as written in 205, it basically makes us a recommending Body to the Council. We do not make the final decision. Council, according to Title 19, when reviewing this permit will also have the opportunity to take full testimony and open it up for hearing itself. They can take further testimony and have further hearing on it themselves. So we're not really a determinate Body. However, that caveat, I would say that, you

know, we still have to try to maintain decorum, order, and all fairness and fair play. You know, that being said, that gives you the full parameters of your duties and responsibilities.

Mr. Iaconetti: As I recall, the decision made was a unanimous decision. Does not it – am I incorrect in believing that the only way you can reconsider a decision is someone who voted in favor of the decision ask for a reconsideration?

Mr. Giroux: I think that's true for a motion to reconsider, but I don't believe it's true for a motion to amend something previously adopted. I would have to do further research.

Mr. Iaconetti: I mean, what you just said doesn't make sense.

Mr. Giroux: Because you cannot take a motion to reconsider outside of the session that you're in. That's the difference. It's a different family of motions although it's similar. One is the rules they make up is because you're in the same session. The other one– There's also the issue of the two-thirds vote. For reconsider, there may be that requirement. For a motion to amend something previously adopted, there's not that requirement. So it's just a different family of motions.

Mr. Hiranaga: Can a Commissioner who was excused from the voting make that request? I was handling a personal matter of dire importance. I was quite surprised the vote had taken place so quickly.

Mr. Starr: I think that I would allow that motion to be made if someone wanted to make it, but someone would have to start the process.

Mr. Hedani: Jim, run this by me again. How can we reopen this hearing? It would be a motion to–?

Mr. Giroux: To amend something previously adopted. You would get a second, and then I guess the most efficient way is then at that point, you may want to introduce whatever the applicant has to say, and then just introduce that in that portion of discussion so that there's all new information that needs to be brought out is brought out. And then at the end of that closing, you can just vote on that motion. If the motion fails, then there's no amendment and it doesn't amend.

Mr. Hedani: So a motion to amend something previously adopted doesn't have to be specific?

Mr. Giroux: Well, you would say your vote. The vote on this issue would be – you would say, I would move to amend something previously adopted, and that is the denying the district boundary amendment.

Mr. Starr: However, that cannot occur today.

Mr. Giroux: Yeah, you would announce that today. And then it would be put on for a motion at a subsequent hearing.

Mr. Starr: So you're saying that it would not need to be – it would not need to take a vote on whether we're gonna put it on a future agenda?

Mr. Giroux: Well, that's up to – that's for you. I mean, if you want to do that, that would just eliminate the whole discussion.

Mr. Starr: My preference would be that if someone wanted to do that process that they make a motion today that will be putting it on an agenda in the future. And then we vote on that. And if that passes, then it will go on that agenda at that time, and then we can possibly reopen it. And it is a communication item.

Mr. Giroux: I guess what you should probably– A preliminary motion would be that – a motion to do a rehearing. And then that would say if everybody – or if there's even a reason to put – to announce at the rehearing, you are going to ask for a motion to adopt – to annul or rescind something previously adopted.

Mr. Hunt: So, James, today's action is just to get the okay to put it on an agenda, and then you vote on it on the agenda whether to hold the–? So there's three steps?

Mr. Giroux: Theoretically, if today we just stopped this conversation and this conversation stopped, then basically what would happen is nothing. Whatever you voted on would stand. Now, the Body has to decide does it want to actually take up the matter in order to entertain a change in their previous decision, but that decision has to be based on additional information. So you have to accommodate the fact that you're gonna have to have a future hearing date. And you're also going to need a time that everybody knows that that's the time to present new information in order to influence a decision to change your previously adopted decision.

Mr. Hunt: But the next step would be to set an agenda. This Commission then takes a vote whether to set a hearing date? The next step is not the hearing date itself?

Mr. Starr: No, the next step would be on an agenda item, and then we would have a vote whether to rehear it.

Mr. Giroux: Yeah, I mean, because of the letter, at this hearing is basically to decide whether or not this Body wants to go forward and decide to change something it already adopted. But it's at this meeting that somebody would have to announce that's what I'm going to do. I am going to move to change something previously adopted.

Mr. Hunt: Then we'd put it on an agenda, and they vote to hold a hearing, then the next agenda or whenever you hold the hearing? So it's three steps?

Mr. Giroux: I don't know if you wanna drag it out to–

Mr. Hunt: Just two?

Mr. Giroux: Yeah.

Mr. Hunt: Okay.

Mr. Iaconetti: Is there any reason why he can't just reapply? I mean, why put us through all this?

If he wants to reapply, is there anything keeping him from doing that?

Mr. Giroux: Well, his application hasn't been denied. It just has a recommendation of denial. That's the issue.

Mr. Hedani: The Department's recommendation on this particular item as it came to the Commission was for approval.

Mr. Hunt: I believe it was based on the community plan. Is that correct, Joe?

Mr. Prutch: Yes, it was.

Mr. Hunt: I mean, to be honest with you, like we talked about this morning, we generally use our community plan as our guidance. Sometimes you guys go down roads, and we shake our heads. In this case, I understand your reasoning. I understand your decision. I wouldn't, as a Planning Director, I wouldn't object to the decision you made.

Mr. Mardfin: In regards to what Doc was suggesting earlier, I think, the – if I understand our Counsel correctly, basically what we've done is to make a recommendation of denial, but we're not the final decision. It goes to the Council with a recommendation of denial. If there are other issues that the applicant wants to make, he can make them to the Maui Council. The Maui Council, in their wisdom, can overturn our recommendation. I think the applicant had, in general, a fair opportunity to make his case. In future times, if at the end of things, a future applicant for a future issue wanted to request a last say, a last chance to rebut, I would be tempted to support that, having learned from this lesson, but I don't think we did anything wrong in my own opinion. I don't think my vote would change. I'm happy to have the Council overturn me if they so choose.

Mr. Starr: And just as a comment, you know, whenever an applicant shows that they want to speak, you know, they – we permit that. The one case where we don't and haven't is when there's a motion the floor because *Robert's Rules* is quite specific on that. And that was the case here the only time at that meeting as . . . (inaudible) . . . by the minutes when there was a request to put in additional comments was after the motion was seconded.

Mr. Hedani: In previous meetings, I know we've allowed the applicant to make comments even during the course of deliberation on final motions. I believe that's the case. And from my perspective, frankly, I've had second thoughts about the way I've voted on that particular day. In reviewing the minutes of that day, I believe Commissioner Hiranaga was opposed to voting on that item on that particular day because not all of the information was in relative to OHA's comments in the letter that they were purportedly to be making, and consideration, you know, from those perspectives. . . . amend something previously adopted in this particular case not because the decision was wrong, but in the interest of allowing the applicant due process if he believes right or wrong that he was not given due process.

Mr. Starr: I request you make a motion then to put it on a future agenda.

Mr. Hedani: I so move.

Mr. Starr: Is there a second? So we have a motion by Commissioner Hedani, seconded by Commissioner Hiranaga that this be put on a future agenda. Yeah, Commissioner Hiranaga?

Mr. Hiranaga: (Inaudible)

Mr. Starr: Yeah.

Mr. Hiranaga: (Inaudible) I think the point here is not whether you agree with the decision that was made or not, but whether due process was properly applied. And I think if there's a question, it would save us probably in the long run a lot more time and money if we allowed him to come back to us because he may – you know, he could file a lawsuit saying he wasn't given due process. And the recommendation from the Commission is against the Department's recommendation. So I'm not sure if the Commission would be indemnified from lawsuits. I was absent temporarily, but–

Ms. Domingo: Yeah, you were busy taking a phone call.

Mr. Hiranaga: Right, a personal matter.

Ms. Domingo: You came in–

Mr. Hiranaga: And the vote was over.

Ms. Domingo: And you know I will support this motion only because I believe in due process. And I feel that even the minutes, the way things have gone, I believe that we need to be able to give the applicant that due process. I feel that we need to do that. 'Cause I think it just went really fast on the second – on November 25<sup>th</sup>. So I think I'll support that motion.

Mr. Hiranaga: I actually had some more comments. But you know, in looking at the minutes, there was some public oral testimony. Presented some – they provided some testimony which could be verified or not, could be true or not true. And the applicant did not have a chance to respond to those – that testimony. And also looking at the minutes, you know, I stated it, we had this cultural assessment that had not been – that did not receive a response from OHA. So I felt that the application was incomplete. And now with this question being raised, I get – I really think it is a due process issue. Thank you.

Mr. Starr: Members, you ready to vote? Dr. Iaconetti?

Mr. Iaconetti: What percentage of a vote does it require in order to get this motion passed?

Mr. Starr: A simple majority, so five.

Mr. Iaconetti: I intend to vote against the motion. I think we're gonna hear this all over again regardless of what we do here and now. If the Council accepts our recommendation and denies, it will probably go to court in which case, we will hear it again. I think we're going to hear it again anyway, but I don't – I intend to vote against this.

Mr. Starr: You ready to call the question? Okay, all in favor, please raise your hand. All opposed?

Director?

Mr. Hunt: I have that three in favor, three against. The motion fails.

**It was moved by Mr. Hedani, seconded by Mr. Hiranaga, and**

**The Motion to Place the Item Back on the Agenda Failed.  
(Assenting - W. Hedani, K. Hiranaga, D. Domingo)  
(Dissenting - W. Mardfin, W. Iaconetti, J. Starr)  
(Excused - B. U'u, J. Guard)**

Mr. Starr: Okay, thank you. So moving along. I think we still have some end of the Director's Report—the SMA, SMX. Director?

**I. DIRECTOR'S REPORT**

- 4. EA/EIS Report**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

Mr. Hunt: The last three items on your agenda are under – I believe it's 1-4, 5, and 6. And they regard our reports that we send in on every Commission meeting concerning the EA/EIS Report, the SMA Minor Report, and the SMA Exemption Report. I do have one from Dr. Iaconetti regarding a Longs Drugs Store in Napili. And we can look into that, and inform him on what that exemption was.

Mr. Starr: Anyone else have anything on the SMA, SMX Minor report? I have one request on the format of that. Could I ask you to put kind of a district that they're in or the area something just so we have clue if something's in Hana, if it's in Molokai or—? We don't need an address, but just—

Mr. Hunt: For all of them?

Mr. Starr: Yeah. You know, it doesn't have to be immediately, but—

Mr. Hunt: I'll talk to my staff and see if that's reasonable to achieve.

Mr. Starr: Some of them have it. About a quarter of them have it. You know, they'll say, "Pukalani" or "Hana."

Mr. Mardfin: A new thing?

Mr. Starr: Yeah.

Mr. Mardfin: If you're interested in Hana, per se, just look at the 2-1. Anything 2-1 anything for a tax map key is a Hana.



Mr. Starr: That's too – yeah, but what's Maalaea?

Mr. Iaconetti: What's Napili?

Mr. Mardfin: Maalaea is not considered Hana.

Mr. Starr: Okay, case closed.

Mr. Mardfin: You can find out what the tax map keys are for Hana and look for those.

Mr. Hunt: We could come back with a code.

Ms. Domingo: I think if you give us a legend maybe that would help.

Mr. Starr: Or just give us the town.

Mr. Mardfin: If you're gonna make changes, what I would prefer is to see it instead of listed by the date that it was put in, I'd list it by tax map key. Then you can find everything in your area real quickly. If we're sorted on tax map key, it would make things real easy.

Mr. Starr: Well, it's sorted by date, which is better. Anyway, everyone, good meeting. Thank you. 'Til next time, aloha. We got through. Meeting is adjourned.

**J. NEXT REGULAR MEETING DATE: January 27, 2009**

**K. ADJOURNMENT**

The meeting was adjourned at 5:09 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 @ 3:39 p.m.)  
Donna Domingo  
Wayne Hedani  
Kent Hiranaga  
William Iaconetti  
Ward Mardfin

**Excused**

Bruce U'u

**Others**

Jeff Hunt, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works