

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
DECEMBER 9, 2008**

**Approved: 2/10/09**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:37 a.m., Tuesday, December 9, 2008, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Mr. Jonathan Starr: December 9, 2008 meeting of the Maui Planning Commission. Would like to welcome everyone who's joined us today and wish them the best of holiday season. We have with us today Honorable Commissioner Kent Hiranaga, Honorable Commissioner Bruce U'u, not quite so honorable but he's a good lawyer, James Giroux. Keeping us out of trouble. He will be, one day he'll be a judge. Mark my words. I'm Jonathan Starr, Chairman. We have Clayton Yoshida, Administrator for the Current Planning Division who will be staffing and leading us in the right direction today and he's the one who keeps our agendas going and works with the Current Division to make these meetings functional and work smoothly and I want to thank him, and Ann and everyone who does keep us on track and they're doing a great job. Commissioner Donna Domingo who's also quite honorable and glad that she's here and the Honorable Dr. William Iaconetti and Honorable Commissioner Wayne Hedani. We have Carolyn Takayama-Corden our secretary for the Maui Planning Commission. We have Deputy Director of Public Works Mike Miyamoto. We have Planner Livi Callentine, Planner Ann Cua and Kenny Hultquist in the back doing a great job, I believe it's for Maui Tomorrow, videotaping these meetings to be held and shown on Akaku.

Now without any ado we'll move along to our agenda today. Just one comment and that's the first item is being deferred for notification reasons. So anyone here for Kauhale Makai AOA item that will not be heard today.

And we do allow testimony from the public on any item on our agenda and members of the public are invited to testify in one of two fashions either before the meeting in general starts which will be in about a minute or two or during the hearing and process on the specific item before we take action we open up the floor for public testimony. So if you're here for a specific item, you're welcome to testify at the beginning of the meeting, if you have to go somewhere else or you're welcome to wait until that item is called and testify on that time after we've had the initial presentation and before we go into deliberations.

So to start off we have a few sign ups and it does help if you can sign up, if not, we do take testimony from the floor. The first testifier will be Irene Bowie representing Maui Tomorrow. Second testifier will be looks like Jason Huffalar. Irene, do you want to testify later.

Ms. Irene Bowie: Yes, please.

Mr. Starr: Okay. Jason are you wishing to testify now? Okay, please come up, introduce yourself. Once again, I apologize if I messed up your name, and Pamela from the Maui Chamber will be next up. Please go ahead Jason and thank you for coming down today.

The following testimony persons testified at the beginning of the meeting:

Mr. Jason Huffalar - Item C-1, Maui Lani 100 LLC, PH2  
Ms. Pamela Tumpap - Item C-1, Maui Lani 100 LLC, PH2  
Ms. Jackie Hariguchi - Item C-1, Maui Lani 100 LLC, PH2  
Mr. Randy Piltz - Item C-1, Maui Lani 100 LLC, PH2  
Mr. Rudy Prieto - Item C-1, Maui Lani 100 LLC, PH2

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

Mr. Starr: Any other members of the public wishing to offer testimony on any agenda item please raise your hand or step forward. Okay, not seeing any, the initial public testimony portion of the meeting will be closed. We will be having testimony during the presentation of each item. For our first agenda item, I pass it along to Clayton Yoshida to introduce it. I don't think we need action on the first item, Clayton.

Mr. Clayton Yoshida: No, it's just for information.

## **B. PUBLIC HEARING**

- 1. KAUAHALE MAKAI A OAO requesting a Conditional Permit to operate concierge services for the Kauhale Makai Project at 938 South Kihei Road, TMK: 3-9-001: 075-128, Kihei, Island of Maui. (CP 2008/0001) (J. Prutch) (Rescheduled to the January 13, 2009 meeting due to lack of proper notification of neighboring property owners.)**

Mr. Yoshida: Under Unfinished Business, good morning Mr. Chairman, Members of the Commission, I'm subbing for the Planning Director Jeff Hunt, who as you know, there's a special Council meeting today on the Makena Resort zoning change so he is monitoring that meeting.

Under Unfinished Business, we have a request from Maui Lani 100 LLC for a Phase 2 Project District Approval for the Maui Lani Village Mixed Use District Project consisting of a 150 multi-family residential units integrated with commercial retail, light manufacturing and live/work uses in a 57-acre VMX Subdistrict and approximately 114 single family and 211 multi-family units in a 34-acre VMX Subdivision at various TMKs in Kahului. The commission did conduct a public hearing on this matter on August 12<sup>th</sup>.

Related to that under Public Hearing Item D-1, is a request from Maui Lani 100 LLC for a County Special Use Permit to allow for automobile services and whole sale distribution storage uses in the village mixed use commercial residential subdistrict at TMK 3-8-007: portion of 151 and 152, Kahului, Island of Maui and the staff planner on both of these requests is Ann Cua.

Mr. Starr: Before we proceed I'd like to ask members if anyone has any concerns or issue with handling both of these items together since they're both on the same project but they're separate agenda items? Ann is that okay with staff.

Ms. Ann Cua: I just went and grabbed my other file.

Mr. Starr: Okay, we turn it over to Ann Cua.

**C. UNFINISHED BUSINESS**

- 1. MAUI LANI 100LLC requesting Phase II Project District Approval for the Maui Lani Village Mixed Use (VMX) District Project at Kuikahi Road and the Maui Lani Parkway, for construction of a Village Mixed Use Project consisting of 150 Multi-family residential units integrated with commercial/retail, light manufacturing, and live/work uses in a 57-acre VMX (CR) Subdistrict, and approximately 114 Single-Family and 211 Multi-Family units in a 34-acre VMX (R) Subdistrict, TMK: 3-8-007: (por) of 151, 152, and (por) of 155, Kahului, Island of Maui. (PH2 2007/0002) (A. Cua) (Public hearing conducted on August 12, 2008.)**

**D. PUBLIC HEARINGS**

- 1. MAUI LANI 100 LLC requesting a County Special Use Permit to allow for automobile services and wholesale distribution storage use in the Village Mixed Use Commercial/ Residential Subdistrict at TMK: 3-8-007: 151 (por.) and 152, Kahului, Island of Maui. (CUP 2008/0004) (A. Cua)**

Ms. Ann Cua: I guess I'll work on both of them together if you could pull both reports out. I'd like to take you through some background information so I'm going to be starting with the addendum report that the department prepared for this meeting, December 9<sup>th</sup> meeting on the Project District Phase 2 application which basically takes us from your last meeting to today and what's transpired in that time.

So at your last meeting on August 12, 2008, where you reviewed this project you conducted the public hearing on the project district application and at the hearing four people testified with concerns regarding the project. The concerns raised by the public included the adequacy of schools in the area, archaeological sites and history of the area and the make up of the missed uses within the project.

The commission voted to defer action on the application on a number of reasons and I'd like to take you through each reason and what's transpired.

The first thing you requested hard copies of the final EIS that was accepted for the Maui Lani project dated 2005. We distributed to you at your November 6<sup>th</sup> meeting and hopefully you all brought it if you needed a copy of the final Environmental Assessment documented dated February 2005. So you should all have that.

You also requested a site visit of the project and most of you who went to that, it was a very interesting experience with the weather but we conducted that on September 30<sup>th</sup> and we basically took a bus through the site. We did walk the site a little bit. It was a little different than we had

planned it originally and that was again, due to the weather.

The fourth area was the capacity of the area schools servicing the project and if you refer to the addendum report exhibit no. 4, the applicant provided a letter to the Planning Department dated November 12, 2008 and this is their comment letter in response to all of your comments basically. But Item No. 3 talks about the capacity of the schools servicing the project and they provided a table containing school capacity information which was obtained from the Department of Education Facilities Development Branch on October 14<sup>th</sup>.

Basically what they concluded was that based on student generation rates, this project is anticipated to generate a total 150 students in the following grade categories. Elementary schools, 74 students, middle school, 32 students and high school, 44 students.

You also asked for gross and net capacity of the three Maui Lani wells and if you look at Exhibit 4B there's a letter or a memorandum to Dave Gleason from Tom Nance indicating that "the gross capacity," they defined, "is the combined maximum production capability of the three wells. Each well will have a 500-gallon per minute pump. When operated continuously, each well will produce .72 million gallons per day. With all three operating continuously, total gross production would be 2.16 million gallons per day." And the applicant can get into that further when they come up before you.

You also asked for an overlay of the burials within the project area and we sent out with our agenda and it's also attached to this report updated site plan which shows the burials within the project site and the applicant can take you through that as well.

In terms of parks, you had asked for a Parks representative at your next meeting and we did request and I'm not sure if he's here, Pat Matsui and I believe another member of Parks Department is supposed to be here today, but we did receive a letter dated December 1<sup>st</sup> from the Department of Parks and Recreation indicating that they've recently met with representatives of Maui Lani to review the proposed pedestrian pathways which will provide access to the Maui Lani regional park. "This is to confirm our acceptance of the proposed pedestrian pathways with the following conditions: First, the applicant design, construct and maintain the proposed pathways indicated on the schematic site plan dated 11/10/08. And two, the applicant submit construction plans for their department's review and approval prior to construction of the pathways." And again, Parks should be here to address you today if you have any questions.

You had asked for photographs of the Ocean Point development in Oahu. The applicant did provide that. And the photographs are attached as Exhibits E and E1.

Then you also asked for conceptual plans of A & B's property's project, the Waiale project which is going to abut the particular project and the applicant did provide a conceptual site plan attached as Exhibit F. Two access points to the VMX project area are shown on the Waiale site plan and when the applicant goes through their plans I can have them point that out to you. The other access point is shown to connect with the VMX residential road and the applicant knows that adjustments will need to be made in order to align the connection to the project's VMX residential area.

One request from this commission was to have this project reviewed by the Maui County Cultural Resources Commission. And the department explained initially why that was not done. We had been working closely with SHPD. There's two accepted monitoring reports for this project. However, based on the commission's direction we did take the matter to the Cultural Resources Commission and although you met in August and the Cultural Resources Commission meets every month the first meeting we were able to get them on due to logistics because they flew to Lanai and I'm not sure where else, but was November 6<sup>th</sup>. So on November 6<sup>th</sup>, the Maui County Cultural Resources Commission reviewed the project. It was a very long meeting actually.

And at that meeting they discussed the archaeological and cultural issues associated with the project site. The commission commended the applicants for its work thus far in managing the burials program and following the rules with regard to preservation of cultural historic resources and after lengthy discussion, the commission provided three comments and request that these comments be attached as conditions to your approval if you will so grant the project approval.

And then they also wanted us to add a paragraph of just some comments that they wanted you to consider for all projects in the future. And I want to talk a little bit about that process with the Cultural Resources Commission because one of the letters and we'll get that to that point in terms of letters received, late last week I received a letter and I believe you all have copies from Claire Apana. The letter is dated November 23<sup>rd</sup>. Again, the department did not receive it until 4:17 p.m., December 2<sup>nd</sup>. And I guess the letter goes to kind of question the process and after reading her letter I wasn't exactly sure we were at the same meeting, but I wanted to explain what transpired at that meeting.

A presentation was made to the Cultural Resources Commission. There was lots and lots and lots and lots of testimony. There was discussion back and forth. And when it came to the time of the department actually taking comments, what I did was I informed the commission that there's a recommendation that the Planning Department has already prepared and I made a copy of page 5 of your recommendation on the Project District Phase 2 application which was passed out at your August 12<sup>th</sup> meeting. And page 5, there are six conditions dealing with archaeological issues. And so rather than having the CRC start with nothing, I gave them a copy of that recommendation, that one sheet showing the six conditions and I indicated to them that, you know, lets start with this as a base knowing that this is all ready before you and these are already proposed conditions and most likely will be accepted by this commission although they could be modified and lets go from there and see what other comments they had.

And granted, there were many comments and what the department did is I read back what I had heard as I do with you guys often. I say, "okay, this is what I've heard you say, and you know, let me know what you want as conditions and what you want as comments," and although we don't have the approved minutes, I can get you that in the future just for your information. But these are the three comments that they would like as a conditions.

They want a written plan addressing the perpetual preservation and respect of archaeological sites be developed and submitted to the community association responsible to maintain these sites. They indicate that any materials associated with archaeological investigations uncovered as part of project construction be returned to the land. And finally, that the community associations rules

governing this project identify the obligations and penalties pursuant to state law associated with noncompliance with burial treatment plans. In addition, the commission expressed its concern with continued development in a culturally sensitive area and asked that the planning commission exercise due care and consideration regarding future developments in this area. Finally, they request that in the future areas with known archaeological sites be brought to the Cultural Resources Commission for review and comment as early in the planning process as practicable.

The applicant in a letter dated November 18, 2008, Exhibit 6, acknowledged the commission's concern and you have that in writing.

Another thing that transpired after August 12<sup>th</sup> meeting was that the applicant had requested modification of the project site plan and so they brought an amended site plan in to me and although I thought it was a better site plan in terms of the layout and they're going to go through that, I thought it was enough of an amendment to have it go back to the Urban Design Review Board. As you recall, we've taken the site plan as well as design guidelines to the Urban Design Review Board previously and they did recommend that you approve the project based on the design guidelines or using it as a guide for the department in the future, but again, one of the things in the design guidelines was a site plan and they've submitted an amended site plan and again, I thought it was significant enough that it go back. And so we took it back on November 3<sup>rd</sup>, to the Urban Design Review Board and overall the board was pleased with the site plan modification as it provided additional visual relief of the large parking areas along the street rights of ways and based on those considerations within the board's purview, it voted to recommend approval of the amended site plan with five comments.

First, design elevations based on the amended site plan should include integration between large warehouse buildings and the smaller retail spaces and the applicant provided a response to all of these comments and it's attached as Exhibit 8 in a letter dated November 18, 2008. The applicant has indicated that they fully intend to comply with the board's comments to provide more integration between the large warehouse and buildings and the smaller retail spaces when they do their construction drawings and come in for each individual Project District Phase 3 application.

Also, the board requested that the 300-foot landfill residential buffer zone be clearly depicted on the project's amended site plan and that site plan has been amended to show the 300-foot landfill residential buffer zone and that's attached as Exhibit 4C and the applicant again, is going to go through all of this with you.

That assembly type uses should be removed from the 300-foot landfill buffer zone. The site plan has been amended to remove the daycare use from the previous open space area in the VMX R subdistrict. According to the applicant this area will be kept either in open space or in parking to conform to the State Land Use Commission condition regarding the buffer area.

The Urban Design Review Board wanted the proposed bus stops indicated on the project site plan and that has been done and finally they wanted the applicant to consider switching the parking and buildings in the area of the 300-foot landfill buffer zone so that the buildings would be farther away from the former landfill site.

So in Exhibit 3, a letter provided by the applicant dated November 4<sup>th</sup>, they provided clarification on the Land Use Commission's condition regarding the buffer from the former landfill site which is where this discussion came from. The Land Use Commission in their Condition No. 11, stated that "commercial development actively may be allowed in the buffer area." And so the remaining adjacent to the former landfill is portions of the VMX residential subdistrict. The applicant has committed to keep the open space area which was proposed for daycare as either open space or parking to comply with the State Land Use Commission's condition.

Now I want to go into the Special Use Permit request and because it's involving the same property and same set of facts I did a very abbreviated report and so my comments to you should take about two minutes and I'd like to start on page 6 giving you some background information on how this Special Use Permit came to be. First off, the application for a County Special Use Permit was filed on September 25, 2008, which is after we conducted the public hearing on the Project District Phase 2 application.

And what happened was that back in July, the applicant had sent the department a letter and it was reviewed both by our Current Division and our Zoning Division and they were requesting clarification on permitted uses within the Maui Lani Project District and I want to call your attention to Exhibit 2 of the Project District Phase 2 addendum report, I actually did a mix up and that Exhibit 2 was supposed to be part of the special permit report, but you could use them for both because all it is is the project district ordinance for Maui Lani. But if you could refer to that Exhibit 2 in your addendum report, on page 652-5, it kind of looks like this, I highlighted and I kind of blocked out the section of the code that pertains to the special use permits. So again, at that time in July the applicant had requested clarification on two uses. One, processing and packaging of recyclable materials within an enclosed building specifically glass, plastic, paper and cardboard and secondly, they wanted clarification on the use of having warehouses which is ancillary to a permitted principal use, specifically general office use. Examples noted by the applicant included Paradise Beverage and Kula Produce.

So the Planning Department had a quite lengthy discussions about these uses with our zoning, specifically with our Zoning Division and it was determined that packaging and recycling of materials within an enclosed building is a permitted use within the project district as it falls under the category of light manufacturing and processing which is identified as a permitted use within the VMX CR District.

The department further determined that a warehouse use as was described by the applicant would require a County Special Use Permit so that is what triggered the applicant filing the County Special Use Permit.

So in addition to the wholesale distribution use that the department had indicated would require a special use permit, the applicant is also asking that you approve automobile services as a permitted use.

The only thing I want to go through, the only other thing on page 8 with regard to zoning deals with the ordinance. Chapter 19.78.051 states that, "uses and structures that are similar to and compatible with the principal uses and structures of the subdistrict and which conform to the intent

of the is chapter may be approved by the appropriate planning commission.” Chapter 19.04 defines special uses to mean, “a use which meets the intent and purpose of the zoning district but which requires the review and approval of the appropriate planning commission in order to ensure that any adverse impacts on adjacent uses, structures or public services and facilities which may be generated by the use can be and are mitigated.”

The proposed automobile service station and wholesale distribution storage are similar and compatible with the following principal uses within the VMX CR Subdistrict and again, this analysis is based on the review of this ordinance which you have attached as Exhibit 2 to the addendum report for the Project District Phase 2 Approval. We believe that the proposed automobile service station and wholesale distribution are similar and compatible with light manufacturing and processing which is permitted, self-storage, garage storage and general merchandising.

The other proposed special use wholesale and distribution storage would be contained in a building which is required to comply with approved design guidelines which I spoke about for the VMX CR Subdistrict. And from the exterior of the building, one would not be able to notice a difference in this proposed special use from an outright permitted use. We feel the proposed use would not detrimentally affect other uses within the district or the nearby VMX Residential Subdistrict.

The automobile services use would provide a needed component of the mixed use concept for both the VMX CR and VMX Residential Subdistricts as people arrive to work or leave and return home for the day, this use provides needed service and products within the mixed use development. As with any other use in the VMX CR Subdistrict, design guidelines approved by the Urban Design Review Board must be followed prior to obtaining permit approvals. This use will also be required to be required to comply with all federal, state and county requirements pertaining to fuel storage and filtration of onsite drainage.

In terms of letters received, in addition to the letter I spoke about from Claire Apana, we received a letter dated December 5, 2008 from Leslie Kuloloio. This concludes my presentation but I would like to have the applicant go through that new site plan and maybe add any additional comments with regard to either the education facilities numbers or the water numbers that were provided if that's okay with the Chair and the commission.

Mr. Starr: Yeah, before we open it up for the applicant, I'd like to see if members have any questions for you and it's more, those would be more regarding the process and the staff's side of things and then we'll let the applicant deal with particulars of the project and also I'd like to ask if maybe Carolyn, could you call up and see if Water Director or someone could come down in a little while? Anyway, members any questions for staff regarding the process points that has been presented to us?

I have one. I'm a little confused on one aspect of this, and it, especially regarding the addendum and the change in use. Because it seems like, I'm trying to understand what that really entails. You know, I'm a real fan of mixed use projects. I really think that's the future that live, work, recreate is the way we want to go. And I was really happy when I read the final environmental assessment for this, you know, where it talks about the mixed use, commercial / residential. It's on page 8 of the EA. The intent of VMX is to bring together the opportunity for small scale commercial activities with



a residential component and a complimentary manner such as owner-occupant based businesses and local neighborhood commercial services which you know, I assume means people live there and they can walk to the shop and so on. And this seemed like a wonderful thing. But now especially with this change in use, and looking at the latest set of drawings it looks like what we're getting is a sea of parking with big box stores, now it's opened up for used car lots and for you know, giant offshore retailers that you know, have automotive as well as everything else. So how do you differentiate in terms of process between kind of the promise which is you know, small, mom and pop stores and small grocery to deal with the people in that community with something that's kind of – with the big box industrial scale thing which basically is not servicing the community but outside. Is there a mechanism inside our zoning and our process?

Ms. Cua: Well, I think what's going to – the uses are what they are. Whether it's in a 500-square foot space or a 5,000 square foot space. So I think maybe the best way to respond is that is why we spend so much time and that's why the design guidelines are so critical for this project and we spent a lot of time with the Urban Design Review Board and before we even went to the Urban Design Review Board we had the applicant modify its design because we were concerned with that. And the site plan has been changed a number of times to deal with that every issue and that's why you see a round a larger, a larger commercial space. You see the smaller retail spaces that's going to surround it so, you know, what you're seeing from the street and what you're experiencing from the parking lot are the smaller shops. What's happened with the latest site plan is that from the very beginning at the Urban Design Review Board, the department was concerned about the large parking areas and in the first Urban Design letter you'll see the comment about you know, trying to break up couple of the parking lots and what they did in breaking up those parking lots is they put some landscape strips and now what they've done is they've added more buildings around the parking lot so that that's what you're going to see and the parking is going to be behind it. So that's how I think that the large square footage is going to be taken into account and it's going to have to, every phase of the project is going to have to go through a Phase 3 application that would be reviewed by the department along with the design guidelines. We're going to have to apply those design guidelines.

Mr. Starr: Is there anything to prevent, you know, the next 100,000 square foot Walmart from coming in, you know, and being located here? You know, as long as it's kind of got, you know, some little stores around it?

Ms. Cua: I don't believe, the way the design guidelines are set up, it just wouldn't allow for that.

Mr. Starr: Why?

Ms. Cua: Well, one of the comments in the design guidelines, I shouldn't say it wouldn't allow for that, it definitely would trigger it to be whole review again with the Urban Design Review Board and that was expressed, that concern was strongly expressed by the department and the Urban Design Review Board and there is a comment in the design guidelines that any, any major deviation from what's represented and approved in the design guidelines would have to go back through the entire process again. And that's our – that's what's built into our review process to allow anything because we can't envision at this point in time what the economy or how the economy might affect how they want to do the site plan if they haven't built it out in 10 years. And so we wanted to make

sure there were mechanisms in place that allows the Planning Department to take it back through the whole process again, through the Urban Design Review Board.

Mr. Starr: Yeah, Commissioner Hedani.

Mr. Hedani: Mr. Chair, what I'd like to hear at this point is the presentation from the applicant that probably could answer a lot of the questions that we're discussing.

Mr. Starr: Yeah, I agree I was about to go there but I would like it a little later, maybe you could give a little more detail on how those Urban Design Guidelines really chime in on that especially in light of this change that we're being asked to make.

Ms. Cua: Okay.

Mr. Starr: So why don't you proceed with the applicant now and thank you for a great presentation.

Ms. Cua: Okay, I would like to call up Mich from Munekiyo and Hiraga and he would begin the presentation for the applicant.

Mr. Mich Hirano: Good morning Chair Starr and Commission Members. My name is Mich Hirano.

Mr. Starr: Mich, it's a big project so I'm not going to limit you on time but just out of curiosity about how long are we talking about?

Mr. Hirano: We are only going to have two speakers and we're going to review the site plan, just the revisions and as well, on the site visit Chair Starr you were asking about the explanation of the overall drainage in the area so Janine Clifford with Clifford Projects is the project architect and she will just review the site plan and the amendment to the site plan and then Darren Unemori who is the civil engineer for the project will go over the overall drainage for the project and that will be our presentation and we'll be available for questions. Okay?

Mr. Starr: About how long?

Mr. Hirano: I think it will be about 10 minutes.

Mr. Starr: Okay, 10, 15, maybe 20 if you want to stretch it is fine.

Mr. Hirano: Thank you.

Ms. Janine Clifford: Good morning Mr. Chairman and Members of the Commission. My name is Janine Clifford and I'm the architect for the project. What I'd like to do is review for you the master plan as we had it previously and then the current master plan that we're proposing to replace the project master plan with. I guess we have the original master plan that was approved by the Urban Design Review Board on the right here and as you can see that there several very long discussions and actually I have it here as well.

There were several long discussions regarding these three very big large spaces here that were outlined with smaller retail areas around edge and the whole concept has always been that we would have this sort of main area where the smaller shops would be congregated that would then connect to a ribbon park that would take you through the mixed residential community area as well. And a lot of concern was always regarding parking lot no. 4 and no. 5 and the fact that it did look very much like a standard parking lot.

So in conversation with local Maui retailers and taking into consideration the Urban Design Review Board's comments we did go back and rework the site plan. So if you look here on the right, shall I just use this? Okay, no problem. So if you look here on the right, what we actually did was this is Kuikahi the regional road that goes into Maui Lani Parkway. This is the regional park and the elementary school that's already been built and this is what we're proposing as our mixed use, multi-family, single family housing area with a ribbon park that connects through to the VMX CR area. And what we did is we listened very closely and a lot of the local retailers talked about how they thrived on being able to be seen from the road and that they would all like to be located much closer to the regional roadway.

So what we did is we took all the big parking lots that we had in the back and you can see it here on this slide here, on this photograph here, and we moved it all to the back and we put all the small retailers up front along the road here. And we always envision that across the street would be a live work much more industrial area. So that's still here but smaller in scale and again, with the parking either hidden in the back or not so prominent along Kuikahi Drive. So as you can see it's much more of a human scale. And then what we did is we lined what would be our larger retailer if you will, with smaller retailers around the edges here and we extended the ribbon park that used to end right here all the way through to the – through the VMX CR area and we moved it much closer to the front so that actually people driving by could see it as well and it would not only be an asset to the Maui Lani community but then it would become a regional asset. And this red dot here is actually the location of the bus stop that was discussed. So now it all kinds of ties in much more carefully.

And what we also were very careful to do what to make sure that the commercial – the office frontage that be the mixed use portion of this larger function that we're thinking of would be up front and that it was a comment from the Urban Design Review Board that we consider making sure that we fit in. So this was our previous elevation that we showed and what you'll see in your packet is that we've now intermixed this elevation. So this section which was the commercial area is now mixed much more carefully with the architectural sort of very human scale of the mixed use walking area such that you don't all of a sudden see this very large office space.

We've restricted the height of the distribution center that would be in back behind all of the smaller retails to 30 feet. So the actual retail mixed use residential facade that wraps the larger warehouse office use is 48 feet. So you will never see this facility in the back.

The other thing is we did, is we provided separate accesses so that entrances and access points so that the traffic that would traverse where the small commercial shops are and the mom and pop stores is not where the trucks would come in and out for the warehouse in the back.

Other than that, we still envision that along the edge, along the lower edge of the site, this would be live/work that would then transition into the industrial area here so it would be live/work along here transitioning into industrial and then again, transitioning back into live/work recognizing that adjacent right next door will be our VMX mixed use residential area. And we are respecting the restrictive use area related to the landfill and the request of the Urban Design Review Board.

And just to make a point, all of the retailers and tenants that the developer has been talking to are all Maui local based including the distribution commercial office use, the one large commercial office use and there will be no big box and that has been comment that we've held true through our entire plan. We recognize the sentiment and the need of the community and the idea is that this is a community, an affordable community, 51% affordable housing for the residents of Maui and it should be stores and shops that are of Maui and not necessarily imported from the mainland.

We also do feel that in order to do a smart growth compact, self-contained community that some sort of gas facility, a small one, the ability for the warehousing people to work on their cars but not do heavy industrial, just light industrial work would be an added benefit as well so that they don't have to drive offsite and that you can actually live, work, play and gas your car to go to work all within the same community.

Mr. Hirano: Thank you Janine, and I'd just like to ask Darren Unemori now to just come up and talk about the drainage.

Mr. Darren Unemori: Morning Mr. Chairman and Members of the Commission, I'm Darren Unemori, the project's civil engineer. I was told Mr. Chairman during the site visit you had with Maui Lani that you had some questions about the drainage solution for Maui Lani and also how it fit into the context of the regional drainage solution and how the – whether we connected with any of the natural bodies of water in the area.

So we came up with this graphic and what this is, you need to kind of orient yourself by turning your head slightly to the right to get the orientation that was on the map. This is the 94-acre VMX project area that's prominently shown in most of the exhibits you're seeing. This is the Maui Lani Project District, the 1,000 acre project district that it is a part of. Up above is the Kehalani master planned community. Waikapu Town is off to the left here. Wailuku Town is off to the right. You can see here this is Iao Stream. The orientation of this map is basically top of the mountain is here, the ocean is down here. This point here, you can see a portion of Kahului Harbor, and this is the Kahului residential area.

So the regional drainage basically works like this, up above in the Kehalani area, Kehalani actually splits its runoff in two directions. The upper portion which also picks up runoff from the West Maui Mountains goes into the upper portion of Kehalani up above Honoapiilani Highway. It is collected and then it is diverted to the south towards a large basin in Waikapu. Driving down Kuhikahi you've probably seen the big channels and the big culverts that are basically set up to take the runoff from the urbanized, the Kehalani area down to the south to the large open retention basin that is just opposite Jesse Spencer's subdivision. Spencer's subdivision by the way also drains directly into this basin down here. The only connection between this portion of the Kehalani system and the natural body of water there's Waikapu Stream which you can see here running out to Kihei is the

overflow spillway which is a required emergency feature for large reservoirs or large basins.

Lower portion of Kehalani which includes the section below the highway and a little bit of the section above the highway is taken down to the oh, seven or eight acre retention basin that is down near Waiale Drive. Right now it's grassed and manicured into a park. You can see people walking their dogs a lot in there. Basically this is a detention facility. Storm water from the lower portion of Kehalani empties into this basin. There's a small outlet pipe, not so small actually, it's 48 inches at the point where it leaves the basin, but it basically connects to the county's storm sewer system, storm drain system that eventually discharges into Iao Stream back there. So this was a tie in into an existing county storm drain system with a few upgrades to improve the capacity.

Now Maui Lani is a – Maui Lani as a whole is largely a self-contained drainage solution. The areas as they urbanize all discharge into basins that are distributed throughout the golf course, you see and there's a bunch of scattered, shallow depressions as opposed to one concentrated very large basin in, like the one in Kehalani, but nevertheless, that's their basic function so areas as they develop will simply drain into portions of the golf course. That's been true of all the residential subdivisions that have been developed so far.

Going back to the VMX area, this area here is served by two very large pipelines that would take runoff from these areas down Kuhikahi Drive and Maui Lani Parkway and eventually discharge them into this portion of the golf course. So all the runoff from this area basically ends up in the golf course and stays there. No connection with, no direct connection with Kahului Harbor or any of the adjoining streams.

The one area here that you see in green is basically a pass through. There's you know, looking up at the West Maui Mountains there's a number of ridges and valleys. A couple of these valleys pass through the Wailuku Heights subdivision and come down to the ag land here on the south side of Kuhikahi Drive. As it crosses, well, down near Waiale Drive the runoff comes through a culvert and it used to run through an existing gully that emptied into the second Waiale reservoir. With this area being developed this natural drainway basically was put underground in a large pipe and basically now serves the same function, connecting the natural gully to its original discharge point here in the Waiale reservoir.

So in a nutshell that's basically the drainage solution for the region.

Mr. Hirano: Thank you Darren. That concludes our presentation and project representative of Maui Lani and the project consulting team are available to response to any questions that the commission may have. So thank you very much.

Mr. Starr: Okay Mich before we go any further, I see we have Eric Yamashige came down from Water. Do you have your water consultant here as well?

Mr. Hirano: Our water consultant, Tom Nance is not here but Dave Gleason has worked closely with Tom Nance and is a member of the Maui Lani project team and as well has been responsible in overseeing a lot of the well construction. So he's very familiar with the area.

Mr. Starr: Could we ask Mr. Gleason to give us a little bit of a presentation on where the water for this will come from and then members can ask questions of him or Mr. Yamashige. I appreciate him coming down on short notice. I want to thank him for being here with us.

Mr. Dave Gleason: Good morning. Dave Gleason. I'm actually – primary job is to run the golf course, I've overseen that for about 10 years and I got involved in special projects for the Maui Lani development team one of them being the water.

We've put together a plan and had worked with Tom Nance, our hydrologist for many years. Was involved in our original system for the golf course and probably four years ago we started work on a potential domestic water system. Worked with the County at that time and in 2005, came up with an agreement with the County that we would provide domestic water for the Central Maui system. In so doing, we would reserve a capacity of the volume that we would produce for Maui Lani. It ended up that after testing the wells there are three wells that is as you may know, we built, drilled three wells approximately a year and a half, two years ago, had the water tested at a lab in the mainland that does much of the water testing for the state. The water was good domestic water for the three wells and the capacity was determined to be, the maximum capacity was 2.16 million gallons.

With that, we worked with the county and there is a general formula that 45% of that would come to Maui Lani in the form of reservation and 55% – excuse, I think it's just the other way around, 55% would go to Maui Lani and 45% would go to the county. We ended up with 960 thousand gallons or 1,600 meters that would be allocated over a period of the number of years it would take to develop Maui Lani. Could be as long as eight years.

So on day one, and the timing of this right now as we've just actually finished our bid process for the wells, for the pump system had been working with the county for over a year now in regard to getting the pump system that would accommodate their operations. So we would turn the operation to the county upon completion of the pump system which is targeted for third and possibly fourth quarter of '09, we would be finished with the well pump systems. As I say the wells themselves, the hole is in the ground as we speak. We have been working on the roadway systems, the transmission lines are in the roadway now and that will lead up to the Waiale reservoir which is up at the top of our planned development and right next to the Waiale Road. So we would be pumping from Maui Lani into that reservoir or the tank, reservoir tank and that would be a Central Maui system. So the original day for operations, the gallonage would go right into the Center Maui system and we had planned over a period of five years to take the incremental amount of water we would need for the development and that's an aggressive time table.

So in other words, we've basically just because you might be interested the cost is three and a half million dollars or thereabouts. We determined that in any well there could be contamination. We certainly haven't discovered any in our wells, but we know around the county and the state there have been wells that have been contaminated over a period of time and we also have committed if in fact it was necessary which we don't think it will be, but we would go through filtration system whether it be reversed osmosis or whatever the filtration system may demand if and in fact we would cure any future problem and that has been built into the plan. There are three different well sites about 500 feet apart. The one well site is a large, almost an acre that would accommodate

another facility if necessary for filtration in the future.

Basically the agreement if in fact the wells failed, the agreement stops. We would not get credit at that point for any future meters if in fact the wells ceased operation which again, we don't think is going to happen, but it was built into the agreement with the county. So basically that's it. The 2.1 million gallons is a maximum capacity. The 900,000 is basically what we would use for the Maui Lani Project District and that would pretty much cover all of our needs into the future. Can I answer questions?

Mr. Starr: Yeah, members? You know, I want to jump in here. I've been involved in water development for about 35 years on several continents. I've had a bit of background on this. The – as I understand it, you're putting in three wells.

Mr. Gleason: That's correct.

Mr. Starr: And when you take a system of wells, what you do is you take the pump capacity and then you derate it by one-third for operational factors. In other words, though out of three wells, and Commissioner Hiranaga's been through this many times as well, there's the likelihood that one of them will be out of service for one reason or another. So you derate it by a third for that. And then you derate it by another third because you have – you have to take an average day and on a day like you know, Memorial Day when everyone's washing cars and partying there'll be more use. So when you – you actually derate it by a third twice and you end up with a 45%.

Mr. Gleason: Yes.

Mr. Starr: So in reality, that 45% which is the amount you're getting from the wells, is the amount that these wells will produce. So there actually will not be a 55% left over for the county. That you're taking everything that these wells if they function as promised will provide and there will not be any leftovers. Is this correct?

Mr. Gleason: Generally. We have determined that the average daily capacity for an annual period would be 1.2 million gallons. This would be the average capacity for the three-well production. That's obviously lower than the 2.1 which you can pump up to 2.1 for a period of time. And we actually limited that in the agreement with the county that they could pump for approximately 30 days at a maximum capacity. We didn't want the pumping to go on for any exceeding, excessive amount of time because of potential, you know, salt content, or you're drawing down too much water at one time. So the average capacity for an annual period would in fact to be lower than the, significantly lower than the 2.1 but little bit higher than the 900,000 that you mentioned.

Mr. Starr: If everything goes right. Now how far apart are these wells?

Mr. Gleason: They're approximately 500 feet apart.

Mr. Starr: Okay, now I'm going to ask a question of Department of Water Supply because my understanding is that wherever there's been a well, a closely spaced well field in the past such as Waiehu Terrace, you know, the joint venture wells, there's only been able to operate one or at most

two of those wells at a time otherwise up coning occurs. So you're not actually able to run all three of those wells at the same time. Have you taken this into account that there's a likelihood that over time considering that it's in a fairly dry area that only one or maybe at best two of these wells is going to be functional?

Mr. Gleason: I believe the hydrologist, Tom Nance, had determined that the 500 gallons a minute draw, and it's not excessive again, we have pumps that will draw a lot more gallonage per minute but at the 500 gallons, that would allow us to pump three at one time.

Mr. Starr: And what's the sustainable yield of this aquifer and what happens to the sustainable yield if sugar cane recharge from water being brought in from East Maui on the ditch system should be curtailed in the future because my understanding is that, you know, that may be a factor.

Mr. Gleason: Yes, it could be a factor. I don't think anyone is going to be bold enough to say exactly where that may lead, but our hydrologist felt there was also waters coming from Haleakala. It wasn't all coming in from HC&S from just the cane fields as well as very likely coming down from lao. This is in the Kahului aquifer actually for those that weren't aware that these wells are in the Kahului aquifer which again, this is something that will be the first wells for domestic purposes in that aquifer. We have again, gone out on the limb and tested it and drilled it and spent some pretty good money to try to determine that it is in fact a good aquifer to drill in. It isn't just dependent on HC&S.

Mr. Starr: How far is it from the political boundary of lao aquifer?

Mr. Gleason: I wouldn't be able to tell you exactly.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Mr. Chair, the applicant has made his presentation to the commission and I think it's appropriate at this point to open up the discussion to the members of the commission if they have questions regarding the presentation.

Mr. Starr: Go ahead and ask your question.

Mr. Hedani: I'm just pointing out procedurally that as chairman of the commission what you should be doing is allowing the members of the commission to direct their questions to the applicant and not put the applicant under a personal inquisition.

Mr. Starr: Okay please note I did ask members if they had any questions.

Mr. Hedani: And they did have questions that they wanted to have addressed.

Mr. Starr: Do you have a question Commissioner Mardfin?

Mr. Mardfin: I do and I was slow, but I would like to say I'm glad he asked first because he question sparked some interest in mine.



Mr. Starr: Sorry, I missed your hand.

Mr. Mardfin: I was slow. I want to make sure I understand what your answer to Chairman Starr's question was. I think I heard him say the question with these cutbacks, at one-third and one-third that basically you said that there was supposed to be 55% for Maui Lani, 45% for –

Mr. Gleason: The other way around.

Mr. Mardfin: 45% for Maui Lani, 55% for the county. And he said but with these knock offs, I mean, that's the wrong word, but the one-third and one-third that there would be virtually no water for the county and then you said yes, is that correct?

Mr. Gleason: I said that it was reduced and Chairman Starr is correct that it is an annual, that the annual average capacity that we have calculated was 1.2 million gallons and we would be receiving over a period of again, eight years or thereabouts, we would be receiving the possible capacity of 900,000 gallons.

Mr. Mardfin: So 1.2 compared to 900 means that there's .300 for the county? Effectively one-fourth of –

Mr. Gleason: But what it also means is we have paid for the entire asset we have gone on a limb. We have a risked – any time you're drilling a hole in a ground you're not necessarily going to get what you think you're going to get. We took the risk and we now are in an agreement with the county that would have a safeguard for the county. In fact, if these wells didn't produce and certainly we wouldn't get the credit that we currently think we will get if in fact the wells are productive. So there are safeguards against the county being shortchanged.

Mr. Mardfin: Let me, if I may follow up. Suppose the wells stop, I know you think it's unlikely and that's fine. Suppose they stop, what happens? These people don't have any water at all?

Mr. Gleason: This is again, the Central Maui system. This is into the Central Maui system, so there's a lot of water going into – well, certainly I forgot what the total gallonage for the Central Maui system is but we are part of it. This was also planned –

Mr. Mardfin: So they would have – they would still get water even if the wells went dry?

Mr. Gleason: I would have to direct that at the Director of Water Supply, but yes, in my mind, yes. This again, we were planning minimally for a bridge that would allow the county to explore future sources of water. If in fact this didn't work forever and ever, this is certainly going to give an opportunity for the county to develop more water. And there's nothing at loss from the county perspective that's the whole point. We felt it was a win-win situation. Day 1 the county can collect all the revenues for the water and they can actually pump to the consumer the lion's share of the capacity because we won't need it for a period of approximately eight years. We'll need it incrementally over that period of time. So there is an excess amount of water that the county could be using and that would give them a bridge to establish more sources of water. That was a concept.

Mr. Starr: Commissioner Mardfin, the Deputy Director of Water is here if you have a question for him.

Mr. Mardfin: Okay.

Mr. Starr: Do you want to? Commissioner Hiranaga, why don't you go ahead.

Mr. Hiranaga: You may have mentioned this before but you are dedicating the wells to the County of Maui?

Mr. Gleason: In time. Again, that was another safeguard. We have a license agreement with the county for a period of 10 years. Day 1 after the Health Department approved the well, the State Health will have to come in and say, yes, you've got a great set of wells here and this is all we need and they will allow us to start operating. Day 1 the county would have a license agreement to operate the wells. Because of the issues of potential contamination there was a feeling at the county at the time that they did not want to take dedication of the wells immediately. We have a 10-year license agreement and so after that period of 10 years if they're as productive as we think we they are, they county would then take them as a dedication.

Mr. Hiranaga: I guess I have a follow up question when the Deputy takes the podium. If other commissioners want to ask David more questions I'm willing to wait.

Mr. Starr: Any more questions for Mr. Gleason before the Deputy Director Yamashige comes up? Okay, Mr. Yamashige and thanks for coming down, and Mr. Gleason, we'll probably have more for you in a few minutes. May I present Eric Yamashige, Deputy Director of Water and thanks for being here.

Mr. Eric Yamashige: Morning Chair Starr, Members.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: So my understanding is the Maui Lani will drill these three wells, they'll have 10 years to kind of prove it's sustainability as far as water yield and if the county or department is satisfied then the county would accept the wells as part of the Central Maui water system is that correct?

Mr. Yamashige: Yes.

Mr. Hiranaga: What happens if the wells do not meet the criteria of the county? This will remain a private system?

Mr. Yamashige: No. The way the system is set up, they are using infrastructure that the county has to provide water, to distribute the water. I think as Dave has explained, the three wells will pump into the department's Waiale tank. It's the one you see right off of Waiale Road and then come back out and service the Kahului and Maui Lani areas. So because they're using part of our infrastructure it cannot remain private unless they develop their own system.

Mr. Hiranaga: So what happens if the county determines 10 years from now they don't want those three wells?

Mr. Yamashige: Then we wouldn't accept it and we would be responsible for what was already issued.

Mr. Hiranaga: I'll allow you guys to think about that statement for a while.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: When you say be responsible for what they've issued, does that mean that they wouldn't be cut off, that they would keep getting water and so that detracts from what other water needs there are, is that sort of correct? I mean, we're letting them put the system on, putting in all the housing and everything else with the assumption that they provided the water, but then if they don't get – if the water for some reason isn't available, they still get the water and we're deeper in the hole?

Mr. Yamashige: Certainly that's the risk of any well development. It could be a replacement for the Wailuku shaft or any well that's drilled there are no guarantees. You know, we could drill one well here, one well at the end of the room and the yield would be completely different or could be completely different.

In this case, it was an agreement that you know, the department has looked on favorably and disfavorably but as Mr. Gleason explained, the intent at the time was to create a source that would carry us through a period and we certainly will have some benefit from these wells until Maui Lani completely builds out. So if it ever happened that the wells went, I wouldn't say went bad or dry, but if it was not potable and remedies could not be made, then at that point we would probably cease or discuss with Maui Lani any issuance of further meters. But at this time, this is the agreement and it's an agreement we have to live with.

Mr. Starr: Commissioner U'u.

Mr. U'u: Good morning. We all know we have a water problem and the funny part is every time somebody steps up to do something about it we go to the "what if it doesn't work" or "what if it's contaminated," "it could be too close," yet I have no idea at one point did the county drill wells on their own. When was the last time the county went out, made a effort to drill wells? And the other "what if" factor could be, "what if it works." When was the last time the county actually went out and drilled wells to benefit Maui because we notice that the affordable housing is done by the developers it's not done by the county. We notice that the wells is being done by the developers again, it puts the burden on the developers yet we as the county supply nothing and I think it's a burden on government to supply water and now we're putting it on the developers.

Mr. Yamashige: Thank you very much. That's a very good observation. The county has taken the position of working with developers to develop that water source and the last well that we developed was the Pookela well up in Makawao. I think that came on line about two years ago. Two other wells that are being developed now that we just put out executed contracts for the

development of are the lao tank site well along Alu Road and then one in Waikapu at our Waikapu tank site. So those two wells will be developed and should be put on line in 2009. So those are wells that we have as a department pursued and developed.

Mr. U'u: So follow up, so since that is in line, and the Pookela is ongoing, when was the last well the county did from now not including the Pookela well. When was the one we did, the county?

Mr. Yamashige: Yeah, that would be the lao tank site.

Mr. U'u: When was that?

Mr. Yamashige: We drilled it already, probably around two years ago. We've been working on the development plans and we recently put it out to bid. So we have a contractor that's going to develop it. Okay, when I say develop, it means construct the improvements so we can put it out. So that well would come on line next year.

We also drilled and are putting out to contract the improvements for the Waikapu well tank, Waikapu tank well. And those are two really current projects that are ongoing.

I'm sure you all know about the Wailuku shaft. That's a very important source for the department and for Central Maui and that one has to be replaced. It's a very functional design but it's very difficult to maintain because of the current standards and regulations. So we are looking at replacing that well with several wells.

Kehalani is participating in the development of one well to help with their development. So we do try to partner with developers to get that done. And these developers do have affordable housing components in their developments so I think as a county we are supporting those kinds of developments.

Mr. Starr: The three wells in north Waihee the county put in, have those been finalized with all the power, the electric lines and transmission and pumps because I know the county put those in Kupaa and I forget the others.

Mr. Yamashige: Yeah, the Kupaa well is not yet completed. It's drilled, it's developed, you know, we can pump out. There was some problems with the construction of the concrete tank which has delayed our actual implementation into the system. But we're working on that trying to resolve those issues. That is another one that the county did take the lead on developing.

Mr. Starr: Okay, Commissioner Hiranaga please.

Mr. Hiranaga: About eight years ago I made the impulsive decision to go down the Wailuku shaft and still have some psychological effects from doing that. Anyway, so this license agreement is already executed between the county and the partners?

Mr. Yamashige: Yes, I believe it's four or five years old. I'm not sure.

Unidentified speaker from audience: April '05.

Mr. Hiranaga: I guess, you know, I'm not going to judge whether this agreement is right or wrong, but I guess, you know, prior to the Charter change taking the Board of Water Supply from a semi autonomous entity to a department or an advisory entity to the Department of Water Supply something like this would have been held in public hearings and would have required the vote of the Board of Water Supply. So I guess the individual that authorized this agreement was basically the Director of the Department of Water Supply. He's the final decision making entity within the county to execute an agreement with a private developer.

Mr. Yamashige: I believe at that time yes. Source developments now require the County Council to approve. So there is that check and balance.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Mardfin, please go ahead.

Mr. Mardfin: This is kind of getting away from this particular project but I want to ask kind of a big picture question. Excluding East Maui and so the EMI transfer of water from the East Maui to Central Maui, excluding that, does anybody have a clue as to whether there's enough, how much water there is, how much more housing and population it can support? You know, can you drill – I know you can't drill an infinite number of wells, there's got to be some limit to how much water there is under there. I presume we're working on an underwater lens type of situation?

Mr. Yamashige: That's correct.

Mr. Mardfin: I don't know how to actually ask the question but you're sort of getting the idea. What's the – you know, a hundred years from now are we going to be saying boy did they screw up back in 2008? Where are we?

Mr. Hiranaga: Point of order Mr. Chair, we have a very full agenda. I think we should stick to the agenda and if he wants to have a educational workshop we should maybe schedule one with the Department of Water.

Mr. Starr: We will have that another time, but the question is in order but please make it clear what the question is.

Mr. Mardfin: I think what I want to ask is, what are the supply potentials and demand potentials for the rest of Maui?

Mr. Yamashige: Let me give a real quick question because as Commissioner Hiranaga said it could be pretty involved. You know that several years ago, the sustainable yield, that's what the commission develops as the anticipated amount of water you can take out of an aquifer and since we're talking really lao aquifer at some time ago it was anticipated that 40 million gallons a day could come out of there. That was changed to 20 million gallons a few years ago. Withdrawal from lao is about 18 million right now, about 90% of the sustainable yield. So by all accounts you could

say that we're kind of at the limit of what we can take from Iao. Waihee we're taking about 5 to 6 million gallons a day. That has a sustainable yield of about 8 million gallons. These are numbers that somebody determined to dictate how much water. And so when you look for sources, say we don't go to East Maui, Waikapu has about two million gallons I believe, and we are investigating that something that we would be developing. Kahului aquifer also has I think about 2 million gallons. It's basal so when you get closer to the sea level you know your basal lens is going to be smaller so it's not something you're going to get a lot out of.

We also worked with the United State Geologic Survey and they've done some studies for us and they're telling us that going beyond Makaole Gulch on north side is not very sustainable. There's no – there's nothing holding the water from just going out into the ocean. So it's not going to be worth, you know, the county's time or the money to go out there. It's going to be an expensive venture with very little return.

So we're looking at surface water which we all know what's going on with the surface water issue. That's the Waiale treatment that we've been working on. And we're thinking it's planned for about 9 million gallons a day, so 6 million gallons average.

The other thing is, desalination. That's certainly a proven technology. We're surrounded by water although salty, but then we had a study done on that. It's going to cost about \$5.00 a thousand if we desalinate brackish water, water that we pump out of the ground which isn't as salty as ocean water. But it's about \$10.00 a thousand if we go to sea water desal. So the supply, although not infinite is there. It's just how much are we willing to pay to get it. I'm sorry if that was too long.

Mr. Mardfin: Thank you very much.

Mr. Starr: That was good. Any other questions for Mr. Yamashige? How about Mr. Gleason for the subject of water?

Mr. Yamashige: Thank you very much.

Mr. Starr: Thank you for coming down. I'm going to call a recess until 20 minutes after 10:00 and thank you for that presentation and for coming down on short notice.

A recess was called at 10:10 a.m., and the meeting was reconvened at 10:23 a.m.

Mr. Starr: ... Meeting of December 9, 2008 is back in session. We're still dealing with two items relating to Maui Lani VMX mixed use in Central Maui. We have with us a representative from the Parks Department, Mr. Pat Matsui, was kind enough to come down. He's the planner for Department of Parks and Recreation for the County of Maui. Pat, are you? Could someone grab Pat I think he's out in the hall. As soon as he comes back we'll ask him to come and answer questions we may have and I believe an agreement was issued. Pat, we're on the VMX, Maui Lani mixed use and I know there's some questions for you and was there an agreement reached about pathways and pedestrian access through the park and the school? Could you come up to the mike and introduce yourself?

Mr. Patrick Matsui. Good morning, my name is Patrick Matsu, I'm the Chief of Parks Planning and Development. Answering your question, we don't have a formal agreement. My understanding that the pathway would have been a condition of the SMA permit or the Maui Lani VMX approval permit.

Mr. Starr: Okay, I saw some document regarding that. Ann, what –

Mr. Matsui: It was a letter from us.

Mr. Starr: Members, we have questions? Because I know we had a lot of discussion about access through the park from the project toward the school. Anyone have anything for that?

Mr. Starr: Commissioner Mardfin, go ahead.

Mr. Mardfin: I remember where we were suggesting that it be, can somebody show me on the map where the new accesses would be? Okay, thank you very much.

Mr. Starr: Okay, I guess everyone's good with that. Members? Okay, thanks Mr. Matsui. Thanks for coming down and thanks for working it out so we don't have any issues. That's the best solution. Mich, did you have something to add?

Mr. Hirano: No, if there are any questions.

Mr. Starr: Okay, members we're open for questions to the applicant, to staff, to their consultants, discussion on any item regarding this project please. Okay, Commissioner Hiranaga and then Commissioner Hedani.

Mr. Hiranaga: I guess I was looking at the revised land plan. It would have been nice if there was a legend identifying the proposed buildings, but I guess it could over. The ones with the diagonal pattern, those are retail? In the orange.

Mr. Hirano: Have Janine Clifford again.

Ms. Janine Clifford: Actually the ones with the diagonal lines are two-story and the hatched are three-story. And if there's no hatched pattern or cross-hatched pattern then it's proposed to be one-story.

Mr. Hiranaga: And that's a mixed use commercial residential?

Ms. Clifford: Right.

Mr. Hiranaga: And then the residential area you've got blocks now?

Ms. Clifford: Yes.

Mr. Hiranaga: Used to have houses there. Is that –

Ms. Clifford: Yes, so we'll be doing single family on the very light colored ones and the darker colored ones will be multi-family.

Mr. Hiranaga: Looking at the commercial residential mixed use, I know you're redistributed the parking. It looks like there's less parking than before.

Ms. Clifford: I'm sorry I don't understand the question. Oh, between –

Mr. Hiranaga: From your concept design to your revised land plan, just from a visual perspective it just looks like there's less gray area.

Ms. Clifford: So if you look at this plan here, we're actually providing a lot more where we've done double row diagonal parking going around the perimeter where we didn't have that before. And also, we made a lot more cut ins so a lot of it's covered by our landscaping plan.

Mr. Hiranaga: And just one more question.

Mr. Starr: Yeah, go ahead.

Mr. Hiranaga: Is that a good idea to have diagonal parking because I know like in Paia Town that's a big issue with stoppage of traffic because people wait to go in and out on diagonal parking?

Ms. Clifford: I think if you were looking at planning or good planning principals 10 or 15 years ago, everyone would agree that diagonal parking on the road is not a good idea. But in today's sort of planning principals where we're trying to slow traffic down and we're trying to get people out of their cars and we're trying to put parking directly in front of the place that someone would be wanting to go to that diagonal parking is actually considered a very good planning principal and smart growth principal to slow the traffic down in a community. Get people out of their cars yet allow them to drive to say the store that they would like to go to then get out and walk around the community as opposed to park in a big lot then go to the one place, then drive around to the other side and then go to another place. It's actually a comeback, come full circle as progressive traffic calming, traffic slowing patterning for parking and road layout especially in small sort of where we envision there to be retail/residential areas.

Mr. Hiranaga: I know diagonal parking does slow the traffic down through Paia Town quite a bit, brings it to a stop actually. And so what you're saying is by doing this you'll make so difficult for people to drive that they won't want to drive once they find their spot, they won't want to give it up?

Mr. Clifford: That's the concept, correct. And what we've done is we recognize that this is not purely a mixed use residential/retail but that it's also mixed use with other uses. So on the perimeter we've lessened the amount of diagonal parking such that there's more drive through areas.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Hedani.



Mr. Hedani: One of the comments that I read in the urban design review letter was for flipping the parking area and the buildings on the landfill side of the project. Was that taken into consideration or accommodated?

Ms. Clifford: We talked a lot about flipping the buildings. We are concerned about how much pavement we're going to be doing and if we flip the parking to the backside then that means there's going to be a strip of paving going down each side of every building on every lot. And given that we are complying with the restricted use requirement of the buffer zone we felt that to just be adding more pavement for the sake of flipping a building over when it's in an industrial area seemed counter intuitive to the sustainable principal adding green space making sure we have adequate places to plant landscaping. So we didn't address that comment at the time other than we did start changing the shape of these buildings so that some of the parking now is the building comes forward, but it's not necessarily at every ...(inaudible)...

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I share with my fellow commissioner the concern that it really looks like a lot of the parking has disappeared and I'm not saying that's a good thing or a bad thing, can you tell me, under the old system, how many square feet of parking there was or how many acres of parking there was versus under the new one?

Ms. Clifford: I don't think we actually calculated the acreage. But what we did do is we did provide enough parking for all the footprints. And if you notice on this plan there are actually more triple-hatched.

Mr. Mardfin: Right.

Ms. Clifford: Which means that we had more three-story on this plan than we have on this plan here. So we are considering that there especially around this area that there will be some areas that are no longer three-story but lower, two-story.

Mr. Mardfin: My commissioner help me out. I shouldn't ask acreage or square footage, how many stalls are under the old plan and under the new plan?

Ms. Clifford: Actually I don't have that number off the – yeah, we're doing what the code requires, but I don't have that number with me right now but I can provide it for you.

Mr. Mardfin: How long would it take to provide it to us?

Ms. Clifford: Probably by tomorrow morning, would that be sufficient?

Mr. Mardfin: Yeah, I'm willing to defer.

Mr. Starr: Mich.

Mr. Hirano: Just on the parking, the parking analysis will be done during the Phase 3 application

when the exact footprint, the design of the buildings are in place. So at this point, we just say we will be complying with the ordinance, the parking ordinance. That's a requirement.

Mr. Mardfin: But is our impression correct that there will be less parking on this system than under the original.

Ms. Clifford: Yes there is because there's actually less square footage indicated on this plan than there is on this one. And Mich is correct, we're not exactly sure the exact total square footage so we're trying to show a representation for what was shown on every block making sure that we provided the parking there.

Mr. Starr: So my understanding is this isn't really what it's going to be. This is kind of a representational thing that you're saying is probably similar to what you're going to have?

Ms. Clifford: Yes, it's what's contained in our Urban Design Guidelines.

Mr. Starr: How much of this is going to be residential? How much residential you're going to have in this left orange segment of this project?

Ms. Clifford: We're envisioning that everything with these hatched lines above would have a residential component with the exception of the industrial area here which might be a mezzanine floor and then these are live/work units so the ground floor is intended to be you know, like a dentist office or whatnot, and this area here as well, and then back in here we're proposing an industrial live/work area. And the second floor is always the residential and the ground floor is always the retail or the commercial use.

Mr. Hirano: Just to answer as well Chair Starr, there are approximately 175 multi-family units projected for the VMX CR area.

Mr. Starr: Okay, before we go to public testimony, you mentioned before that you will not allow big box stores and there are some very massive retail areas that would allow for a number of them. I'd like you two possibly work with staff, with Ann Cua on a condition that would make us confident that your guarantee that there would be no big box stores will be enforced.

Mr. Hirano: For clarification Chair Starr, when you say "big box" could you give some parameter on what that means, because this I guess what is proposed is sort of warehousing distribution. It's about 80,000 square feet, 60,000 to 80,000 square feet so we wouldn't want to preclude that particular use.

Mr. Starr: So you are saying that there will be a 80,000 square foot big box store?

Mr. Hirano: It's a distribution center not a big box retail.

Mr. Starr: What's a distribution center? Like Costco or something?

Mr. Hirano: No. It could be like a bottling facility and warehousing, but not a retail center where

people would come to shop.

Mr. Starr: Okay, just put it together Ann and so we don't have to waste time later. Members any other questions or are we ready to go public testimony? Commissioner Hedani.

Mr. Hedani: I guess this would be for the planner. From the perspective of walkability within the project itself and I guess when I measured the distances between the bus stop. There's only one bus stop proposed for the VMX project?

Ms. Clifford: There's actually two, and we have gone through discussions with the county and those are the bus stops that they selected and the location that they selected. And for us the key one is this one here which is partially why we moved the start of the, what we call like the walk, the ribbon walk. We moved it from down there up to here so that we would be very close to the bus stop that was proposed by the county.

Mr. Hedani: I guess my question would be from the standpoint of usability from the residents that live within the area, how far would they have to walk to get to the bus stop or let me ask the question in a different way. If the County didn't say this is where we're going to put the bus stop and you had to figure out from a logical standpoint what is the approximate distance that a person can comfortably walk to a bus stop with groceries or whatever if they're going to go shopping some place what would that be and how would it look like?

Ms. Clifford: The planner's sort of rule of thumb is a quarter mile, and a quarter mile is about like that, but for you and I realistically we know especially for an aging community it's more like five to 10 minutes walking very, very slowly. So we did discuss that these are the two bus stop locations and if they become very popular that it can always be revisited and we would gladly put in more.

Mr. Hedani: Okay, because my personal opinion would be that you probably should have three bus stops within the residential areas that would be more convenient for the residents to use.

Ms. Clifford: Right. So what we're hoping is that as we start working on this, and if people actually start do using especially this bus stop here which we think would be a really popular one, that we can then go back and say hey, look, you know, people actually do use these bus stops so can we start looking at perhaps adding stops within the community.

Mr. Hedani: But that's not something that you would plan for at this point?

Ms. Clifford: Actually we have left, like see all these green spaces where these ribbon parks end, we've actually left space in the hopes that in the future there's that possibility because that's what makes a community really walkable and useable and I don't know about you but I personally couldn't walk more than five or 10 minutes holding two bags of groceries.

Mr. Hedani: Okay, it's almost like the chicken or the egg yeah, because if you put the bus stops in a place that's so inconvenient people won't use it.

Ms. Clifford: Right.

Mr. Hedani: So you'll get no utilization. Whereas if you put it in a location like you pointed out.

Ms. Clifford: Right. So we – actually we lobbied if we told we were only going to get two so we lobbied pretty hard and this one we're really happy with. This one, you know, if you look at the broader Maui Lani area, yes, it will serve other future communities well. But at some point in time as Maui Lani gets built out I think it would be prudent to go back and lobby that there are enough people and that there are enough people that perhaps we should start looking at bringing the bus system within the community.

Mr. Starr: Okay, are we ready to move on to public testimony? Okay, we're now at that point where we invite members of the public to give testimony.

**a) Public Hearing**

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

Mr. Jason Huffalar: First of all, yes you pronounced it correctly, thank you. I guess good morning. Thank you for letting me testify. My name is Huffalar. I'm 36 years old. Born and raised Maui boy. My trade is carpentry and I've been working almost five years straight. This is the first time I've found myself out of work like, you know, filing unemployment. In fact, I just got my first unemployment check. You know, it takes a while.

Bottom line is I need the work you know. I testifying in favor of the Maui Lani VMX project because my wife and I are 36 years old and my wife and I you know, we finally made enough money to put in some saving and you know, buy one place at some place we could afford called Harbor Lights. As all we could afford and I make like \$36 an hour and that's all I can afford.

So I don't know, I guess the economy whatever, just I hope that you guys pass this project because there's couple hundred guys like me, local boys that need work. I mean sad because I watching a bunch of my friends you know getting their trucks repossessed and houses, they cannot afford their mortgage. Fortunately I bought Harbor Lights, at the moment I can, but I don't know for how long. Once the unemployment runs out I going be in trouble. So I just wanted for ask you for please make this project happen or some project. That's all I really get for say. Thank you for listening.

Mr. Starr: Okay, thank you for coming up. Members any questions? Not seeing any, thanks for coming in today. You're always welcome here.

Mr. Huffalar: Thank you.

Mr. Starr: Thank you. Aloha. Next will be Pamela Tumpap from the Maui Chamber followed by Jackie Hariguchi. And welcome Pamela, thanks for joining us.

Ms. Jackie Tumpap: Thank you so much. Aloha and good morning. I am here in support of the Phase 2 Project District Approval for Maui Lani's mixed use district. You know, really this project has many benefits to the community. It is going to contribute to economic recovery as you've just

heard right now. It will provide construction work and additional jobs for people who are in much need of that work right now.

It creates additional affordable housing with 51% affordable units which exceeds the current residential workforce housing bill. It provides additional space options to existing Maui businesses and my understanding is to date all businesses interested in this project are local Maui businesses and they are looking to this project for their expansion. It provides much needed warehousing spaces and it will add to our local infrastructure by providing additional roadway, water source improvements and much more.

The Chamber supports development that is consistent with community planning as Phase 1 has already been granted for this project, the project is consistent both the General Plan and the community plan and much effort has gone into mitigating potential impacts. We ask for your support of this project. In these tough economic times as you've just heard it's imperative that we do everything possible to ensure that working citizens of Maui County do not lose their job and that we leverage opportunities such as this to provide additional work, increased affordable housing and expand our infrastructure. Thank you.

Mr. Starr: Okay, members any questions for the testifier? I have a quick question Pamela. What's the Chamber's position on the big box aspect of this project?

Ms. Tumpap: On the big box aspect of this project, actually we do not have an official position on the big box bill that has been proposed thus far other than to say it appears to be a governmental moratorium and we adamantly oppose unilateral governmental moratoriums.

Mr. Starr: Okay, thank you.

Ms. Tumpap: You're welcome.

Mr. Starr: Next will be Jackie Hariguchi. Please join us and thank you for coming to testify today.

Ms. Jackie Hariguchi: Hi, I'm Jackie Hariguchi from the Maui Contractor's Association. I am testifying in support of the Maui Lani VMX project. We have over 200 members. Our members are down and anywhere from 20 to 80%. I have owner's of companies struggling to keep their employees until the end of the holidays and have recently learned that some of them cannot wait any more. So we're in dire need of work, you know, and I hope that this body will consider that not only, you know, to put their employees, but it feeds their kids, it feeds, you know, everything we need. You know, it pays for their housing, it pays for everything. Work is what we need. We don't have any future work. So I ask this body to please pass this project and do the right thing.

Mr. Starr: Thank you. We have a question for you. Commissioner Hedani.

Mr. Hedani: Hi, thank you for testifying. Do you know whether or not the construction of the project will involve Maui contractors or mainland contractors?

Ms. Hariguchi: It actually, according to the developer it will include Maui contractors. We have

asked for all the plans to come into our office which give all of our local contractors a chance to bid it out.

Mr. Hedani: And it's your impression that the project will be basically one that will employ Maui people?

Ms. Hariguchi: Yes, absolutely.

Mr. Starr: Okay, thank you very much.

Ms. Hariguchi: Thank you.

Mr. Starr: That's all I have signed up, anyone else wishing to testify? Randy Piltz, please come, identify yourself and welcome and aloha.

Mr. Randy Piltz: Good morning. My name is Randy Piltz. I'm a local resident. I'm a local electrical contractor and I'm also a former member of the planning commission and currently a member of the State Land Use Commission, but here today I'm speaking on behalf of myself and I hope for members of this community.

I've heard and I've seen a lot of things that they're talking about this project, the VMX project. I'm for it and I believe it's of good use to the county. It will help our economy. It will bring people back to work, but mostly some of the business people in Maui need additional places to grow. I have a friend that has a hardware store and he was planning on going to that area and building, but because it's taken so long to come about he has changed his mind and because the economy changes, he said, well I can't wait. I need to look for some place else and it's too bad. We really need this and I ask each and every one of you on the commission to support this project.

Mr. Starr: Okay, members? Okay, thank you very much for joining us today and it's good to see you here. Any other members of the public wishing to testify at this time? Please make yourself known. Not seeing any, we will have testimony on each item as it comes before us. Excuse me, do you wish to testify now? Okay, come forward, identify yourself and welcome.

Mr. Rudy Prieto: Morning. I'm Rudy Prieto, live in Maui Lani for three years. I came to testify and support this project because I know this is a convenient location. I bring my two sons at the Legends with me because it's a location. Close to the school, close to the golf course. So please support this job because I work for Hawaiian Dredging for 28 years so right now construction industry is down. So please support that's it. Thank you.

Mr. Starr: Okay, wait you have a question from Commissioner U'u for you.

Mr. U'u: Good morning Rudy. Are you currently employed?

Mr. Prieto: Yes.

Mr. U'u: How things looking for Dredging?

Mr. Prieto: Right now it's really bad, it's really bad. The only thing job that we have now is the bypass, we're going to start next month. So that's it for the entire crew in Maui.

Mr. U'u: Okay, thank you.

Mr. Starr: Okay, thank you very much Rudy.

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

Mr. Starr: We're now at that point where we invite members of the public to give testimony. Yeah, Maui Tomorrow. Irene. And usually ask public testimony be kept to three minutes with a little bit more to wrap up. We actually have two agenda items so we'll be a little more flexible if people want to span that. And I know we have a special case where a number of people have gotten together and asked to bundle their testimony together under one presentation. Ms. Bowie thank you for coming and aloha.

Ms. Irene Bowie: Thank you good morning Chair Starr and Commission Members. I'm Irene Bowie, Executive Director of Maui Tomorrow Foundation and I'm going to leave the issues of water and archaeological sites to other people that have greater knowledge. There's just a few things I'd like to comment on on this as far as Maui Tomorrow.

Number one, Maui Tomorrow applauds Maui Lani on this type of smart growth community and with that being said, we'd just like to really ask that some conditions be put in to make sure that it stays in an active living community and things like that would be exactly as Commissioner Hedani just mentioned with the bus stops. I think you need to make sure that there are enough bus stops to encourage people. If you have inadequate bus stops you're never going to see the use go up enough to add more. So I would say, two probably is not adequate and you might look to have a few more.

Number two, I think what is really important as I've toured that area, the school crosswalk is really lacking and when you look at a lot of smart growth principals and walkable communities there's some very innovative ideas for crosswalks and especially I think when you want to encourage the decrease in use of automobile traffic and encourage people to let their children be able to walk to school that Hoku development that's right across from the elementary school, there's only one crosswalk down at the very end of the block nothing directly across and it's a very old fashioned just flat crosswalk that could potentially be dangerous for children. A lot of times what they're doing now is almost a speed bump of a thing and a little bit of an elevation that the children can walk across that would also not only be more visual for drivers but would encourage them to slow down. It's probably too narrow a street to look at doing any kind of an island but some type of a speed bump. And again, having at least one more crosswalk that would be directly across from where the children are leaving the school would be I think a really good condition to pu into that.

The bike paths also, I would just ask that you really look that the bike paths are continuous they don't just end in the middle nowhere and that they're wide enough that you don't go into the storm drains as you're biking. I live in this area and bike around there and I know that can be a little bit dangerous. So I think again, going with smart growth principal, you could really look at adding that.

In the earlier information it sounded like there is progress on the pedestrian pathways through the parks. So that's encouraging I think. You know, we would really want to see that being something that was included and I hope the Parks Department can work with Maui Lani on that.

And then lastly, I would just like to comment on this whole issue of the big box stores and see what kind of a condition could be put in to really ensure, it seems a little bit vague and I know Chair Starr has asked for the folks to look at that. Big box guidelines that I've looked at say 90,000 square feet. So certainly anything that large you, you know, it would be a good idea I think to have a condition that nothing that large could go in and really keep it village mixed use. If that means small scale commercial activities then just really try to keep it at that. And that is my comments for today. Thank you.

Mr. Starr: Okay, members any questions? Okay, thank you very much for being patient. Next on our sign up list, Rudy Prieto. Is here still here?

Mr. Hiranaga: He already testified.

Mr. Starr: Oh okay. I'm sorry. It looks like Bianna Davis Hookano. Welcome, please introduce yourself and excuse me if I mispronounced your name.

Ms. Bianna Davis Hookano: Good morning, my name is Bianna Davis Hookano. I'm the Executive Assistant to the Executive Director for Hawaii Operating Engineers Industries Stabilization Fund on behalf of Perry Artates. We have witnessed on a weekly basis the crisis of our membership and contractors being out of work more so the membership of Hawaii Operating Engineers Local 3. Our members are at 30, 60, 90, 120-day default on their mortgages. This project once approved would at least help our picture to some extent. Our members are 80% on the bench and going up daily. So we humbly ask for your support to move this project forward. Thank you.

Mr. Starr: Okay, members questions? Commissioner Hedani has a question for you.

Mr. Hedani: How many members do you have in the Operating Engineers?

Ms. Davis-Hookano: On Maui, actually I don't know the number.

Mr. Hedani: A rough idea.

Ms. Davis-Hookano: 180, but that doesn't include our apprentice and our retirees.

Mr. Hedani: And you said you're 80% on the bench right now.

Ms. Davis-Hookano: Yes. I could be wrong though, I just started in September. Perry could answer that better than I could.

Mr. Starr: Thank you for coming today and I wanted you to thank your members. When we did our site inspection we had a tour bus and we got stuck in the mud three, four times and your guys came



over with chains and got us out. They saved our necks. Thank you. Next will be Claire Apana. Please Claire come. I think Freddie Akupan is going to go first with the permission with Claire Apana. Please introduce yourself.

Mr. Freddie Akupan: Hi, my name is Freddie Akupan. And I'm just testifying to say how good a community I live in the Dunes at Maui Lani. I work at the Dunes at Maui Lani. I have lived there for 10 years. All small families. My wife is a school teacher at Pomaikai Elementary. It's just a nice place to live. We were lucky enough to buy 10 years ago when it was affordable. And if you can approve this thing and there's more people like me that can, you know, benefit from something like this, I mean, I say yeah, to the approval. So that's just all I had to say.

Mr. Starr: Okay, Members questions? Thank you for being patient and waiting and testifying.

Mr. Akupan: You're welcome.

Mr. Starr: Okay, Claire, you're up. And were you going to make a longer presentation and have some people signed up.

Mr. Claire Apana: I am. I have my computer – I mean, I'm not quite sure how to put my computer into the system.

Mr. Starr: Ann, Claire needs some help. She wants to show something on the projection and –Someone help plug her in. We're going to take a two-minute recess while we get it set up. Technical.

A recess was called at 10:49 a.m., and the meeting was reconvened at 10:51 a.m.

Mr. Starr: ... back in session. We're ready for testimony of Claire Apana. Welcome Claire.

Ms. Claire Apana: Thank you very much. Good morning. So first of all, I'd just like to clear up the – as you know I'm very interested in the cultural aspect of this project and the entire project district. I have a few questions about how the mechanics work of this. Like I understand there's the Burial Council, there's SHPD, there's a Cultural Commission and I'm not sure altogether how they work together like whether all things are in place before it comes before you and like the burial treatment plans, the cultural preservation plans, everything, all the business is finished before it comes to you or not. Because this is my concern is that it's not. It's not ready. I notice that tomorrow the Burial Council has the Kuhikahi Road on their agenda. I don't believe there's a burial treatment plan. I haven't seen it and so I'm just wondering what the sequence is because I'd just like to see that all the pieces are put in place so that the cultural aspect, the ...(inaudible)... burials that have been disturbed in this area, the sand mining that that all gets counted in. That all gets a fair place in this project development. Thank you.

So I attended the October 4<sup>th</sup> Cultural Commission, CRC meeting where you referred this to them. And there was a very – lot of very good discussions. And in my letter to you, I outlined what my concerns were and I hope that you read that and take that to heart. But I find the greatest piece that is missing is the commissioners were very concerned about the sense of place. There was a

very long discussion about it and saying that, how do we know this is actually Wailuku, Maui, as opposed to somewhere else? And that was not added into your letter to you. And they didn't have any condition or anything to vote on to send to you.

The second thing is the missing archaeological monitoring reports, the burial treatment plans and the preservation plans that one commissioner was asking for. This was also not voted upon and brought to you as a condition or a recommendation, but there was a very lengthy discussion. For me, that's the key. That's the crux is have all the things been done that are set up and we know that it's precious little, for me it's precious little that there is in place to help preserve the history of this area. The respect and honor of the burials and this is a cultural burial site, the sand dunes and it's not me saying it. I have consulted with several archaeologists who have confirmed this for me and so this is a traditional cultural burial site in the sand dunes and we have allowed sand mining to go there. The least we can do is get a report on what was disturbed before we put up a shopping center, before we have people's homes there.

And in your letter I gave a letter from the State of Hawaii, Department of Land and Natural Resources, SHPD, asking and requesting reports of this – of the archaeologists of this project and that was dated July 15, 2008. I have another letter dated December 5, 2008, I don't think you've seen it, and this is another question, I'm not sure how come you don't get these, but asking again for the same information. It's still outstanding. It's still not done. And I can give you a copy of this if you don't have it. I'm pretty sure that it comes to you. It comes to the Planning Department. And they're asking again.

I feel such frustration with the system and how a project like this and it's taken so many hours to get it ready and your time to get it ready to come and listen to this and it's not ready. It doesn't have the reports done. They don't have the things from SHPD that have been requested. Can you help to bring that to past before you make a ruling on this? And to stay in the framework of our laws.

Mr. Starr: I'm going to have to ask you to wrap up.

Ms. Apana: Okay, I am. If I was a developer and I had a project district such as this, where it is a known precontact cultural burial ground, where it is a site of a very crucial important battle in Hawaiian history, in the history of Maui, where many iwi would have to have been dealt with and where there are many, many reports through the early 1900's of seeing bones scattered in this area. What would I do to so that I could get my project done? And I just hope that we could make this the last day that we look the other way so that we can develop. Maybe we could learn from the wisdom of nature that balance the winds across the isthmus of Maui with vegetation and trees and sand dunes to slow the wind and balance that so that we could have watersheds in the West Maui Mountains. When you look up and see the drying going on up in Wailuku Heights as the tree line creeps up as we have filled in this isthmus with shopping centers, concrete, homes, where's the balance?

Mr. Starr: Please wrap up Claire.

Ms. Apana: So why not embrace the history of these unique sand dunes? For it is here below the

sand hills of Wailuku that one of the most unique and power battles has occurred. When you take the written descriptions from the great Hawaiian historians such as Samuel Kamakau, Abraham Fornander, W. D. Alexander, Steven Daysha, Albert Pierce Taylor, David Malo and more, when you take descriptions and place them over the land, you find that the stories confirm by the land forms and the land is the backdrop an amazing battle strategy by Kahekili. When you take the descriptions and overlay them on modern day development you will discover that the Maui Lani project district encompasses Kakanilua Valley and the Battle of Kakanilua and we would like to do our presentation now.

Mr. Starr: Thank you very much Claire. Members any questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: I only received your letter today. I don't think we've received the December 5<sup>th</sup> letter and I would like to see it at some point.

Mr. Starr: I want to ask the department whether we have that?

Ms. Cua: I don't. I can go and make copies. I think it was a letter to DSA. I'm not sure who the letter's addressed to. I have not seen it.

Mr. Starr: Yeah, if you could get copies for us, that would be much appreciated. And thank you for bringing it and thank you for the efforts you put in on this. Go ahead Commissioner Mardfin.

Mr. Mardfin: I'd like to continue with that. I did, although I just received it today, your November 23<sup>rd</sup> letter to us, I read it as carefully as I could in the time that I had. Short of stopping the project all together. I recognize that you're saying that we don't have sufficient information and that sufficient information hasn't been submitted and I acknowledge that. But short of stopping it all together, can you think of mitigation measures that would generally address the concerns that you've raised. I know you seem to have one on page 4 where you said, we should discuss recommending a preservation area be set aside in Maui Lani to serve as a memorial and acknowledgment of history and the burial practices in the sand dunes. So that's one specific. Are there other things that could be done to at least mitigate the concerns that you have?

Ms. Apana: I believe that – well, I would like to see that this sand mining reports be turned in so that when they come up again for – to ask for an extension that we can really make an accurate and good decision about how we want to sand mine and take the iwi with the sand out of there. I would like to see that the sense of place be firmly put in as a condition to this development that we know that we're in Wailuku, Maui, and that the entire development reflects that. And I'd like to see that the appropriate measures for the treatment of the cultural resources, the cultural area, be actually made as a plan integral with the development of this lot which is the responsibility of the developer. I would love to see that private citizens who are really concerned such as myself be allowed to sit on an impartial board there.

Mr. Mardfin: Thank you.

Ms. Apana: And there's one more thing on here, and that's the extension of the boundaries of the

historic district of Wailuku to include the whole area.

Mr. Starr: Okay, thank you.

Ms. Apana: Thank you.

Mr. Starr: Thank you for all the good work. Who's going--? I understand that we have five people signed up and someone's going to represent and give a presentation. Daniel? Mr. Kanahale, welcome. You have 15 minutes which represents the time of five people who signed up. And thank you for putting together a presentation.

Mr. Hiranaga: Mr. Chair, can you please explain to me what is happening now?

Mr. Starr: Okay, there are five members of the public who have signed up to testify and they've asked that their testimony be encompassed in a presentation that will run less than 15 minutes, and that Mr. Kanahale, I believe, will be giving the testimony for these five persons. Is that problematical for anyone?

Mr. Hiranaga: I guess I have a question--if this is consistent with the rules of the Commission? I know when we had the B&B TVR applications, people were like playing tag team. They'd stand up, talk for three minutes. I didn't see a problem with that. I'm just wondering if this is consistent with the rules of the Commission, and are we setting a precedent here for future applications whereby can get ten people to sign up and give a 30-minute presentation?

Mr. Starr: The Chair rules that it is proper in that the people are here, that they did sign up today. You know, I wouldn't want a list of people who are not here to do that. But since they are here and we could sit and listen to them, and we could actually listen to each of them for six minutes since there are two agenda items, I think it's a fair thing.

Mr. Hiranaga: A followup question?

Mr. Starr: Yeah, go ahead.

Mr. Hiranaga: So you're gonna afford this same privilege to other applicants -- other applications in the future?

Mr. Starr: Yeah, if they're physically here, signed up, and in the room, I think that it would be fair. We do give everyone their full three minutes, plus a little bit.

Mr. Hiranaga: Does the Corporation Counsel wish to comment on this groundbreaking procedure?

Unidentified Member: (Inaudible)

Mr. Hiranaga: You are out of order.

Mr. James Giroux: Yeah, this is a matter of order. And, you know, the Chair is gonna make a ruling

on that. And, you know, the Body can either appeal that, or discuss it, or do what it will with it. It's an issue of order

Mr. Starr: Commissioner U`u?

Mr. U`u: Just for all fairness, could we have the names of all five? Like there were – just to – clarity, that they are actually sitting in the audience, and if they could identify themselves that they're willingly giving up their testimony . . . (inaudible) . . . ?

Mr. Starr: That's fair enough. I have someone and I see a Shane . . . (inaudible) . . .

Ms. Donna Domingo: I think that they – those – that two of them may be testifying at the Makena Project 'cause it's taking so long to get there.

Mr. Starr: So they are not here? Did they sign themselves up?

Ms. Domingo: Yes, they did. They were here this morning.

Mr. Starr: And how about Katherine Smith.

Ms. Domingo: I think they're all at Makena.

Mr. Starr: How about Robin Reed?

Mr. U`u: Three.

Ms. Domingo: Yeah, they're at Makena.

Mr. Starr: How about Annette Hew? Okay. And Daniel? Okay, well, you know, are you testifying on the one agenda item or the two agenda items? First there were the two VMX?

Mr. Daniel Kanahele: Yes.

Mr. Starr: Okay, so what I will allow is I'll allow 12 minutes.

Mr. Kanahele: That's fine.

Mr. Starr: And that will cut you off sharply at 12 minutes since there are two agenda items, and I'll take that you'll testifying on those two agenda items for the two people that are here.

Mr. Kanahele: Shall I proceed?

Mr. Starr: Please proceed. Let's not waste any more time.

Mr. Kanahele: My name is Daniel Kanahele. Thank you, Commissioners, for the opportunity to testify this morning. I'm going to be addressing the historic significance of this project area along

with the adjacent areas. And specifically, I am going to be telling the story of the historic battle of Kakanelua that was fought in the Sandhills area below Wailuku in the 1700s, the latter part of the 1700s, between the armies of Kalaniopuu, who was the King of Hawaii, and the armies of Kahekili, who was the King of Maui, along with his allies from Oahu.

Kalaniopuu landed his armada in South Maui coastline and his objective was to come here to Kalanilahale which is the residence – which was the residence of Kahekili, which was very close to this vicinity. Because of the time constraints of using the broad strokes to draw this picture, and mostly I'll just be quoting excerpts from the writings of historians, various historians, I will begin by quoting William Westerfill:

Kalaniopuu was the Moi or King of Hawaii at whose feet Captain Cook was slain in 1779. He had been the ruling Chief since 1754. He was a restless warrior and signalized his reign by bloody battles with the chiefs of the neighboring Island of Maui. His supreme desire was to rule two islands instead of one and he was willing to fight for it. He called upon the high chiefs of the various districts of his island for a more thorough preparation of men and war supplies that when a new and larger army or with a new and larger army, he might be able to subjugate the Island of Maui. A large number of young chiefs throughout the island was organized. The young men of royal blood, the King's sons and cousins, were set apart as body guards of the old King. They were the supporters of the King and whatever move he might make. They were personally responsible for his safety. The chiefs were separated into two regiments—the alapa and the piipii. The alapa chiefs were the followers of Hawaiian nobility next to the highest chiefs. Eight hundred warriors were in its ranks. They were of almost equal nature averaging nearly six feet in height. Their spears were of equal length. In 1776, Kalaniopuu set sail with a cloud of boats. Hundreds of canoes crossed the channel between the two islands.

“Landing at Maalaea Bay, Kalaniopuu sent his favorite regiment called ‘the Alapa’ towards Wailuku,” W. D. Alexander. “Across the plains of Kula, O Kaumaumau, shown the feather cloaks of the soldiers woven in the ancient pattern and cuttered like the hues of the rainbow,” Samuel Kamakau. “No regiment ever looked more splendid. They were all members of the aha alii or company of chiefs.” Mary Ann Alexander.

The scouts of Maui had faithfully reported the movements of Kalaniopuu and the coming of the Alapa chiefs. Keaulumolo, the man who composed the genealogical chant concerning the birth of Kamehameha was present when news reached Kahekili. Kahekili was at Kalanilahale, his home in Wailuku. There was no other King so genuinely accomplished in making war as Maui's King, Kahekili. It was said that at the house of Kahekili, the heaps of little stones used in kunani were maneuvered for battle strategy so that his generals need only fulfill the movements. Steven Daysha.

The Alapa pushed on towards Wailuku offering no resistance. While crossing the Waikapu commons, Kahekili distributed his forces in various directions on the Wailuku side of the common and fell upon on the Hawaii courts as it was entering

among the sandhills southeast of Kalua near Wailuku. Abraham Fornander. Below Wailuku lies a sandy tract through which the winds swept with power. It has long been a tangled group of large, rounded sandhills. As they entered this rough region, their first serious show of resistance met the exalted Hawaiians. There was obstinate resistance, but the onset of the Hawaiian chiefs were irresistible. They literally trampled the warriors of Maui beneath their feet. William Westerfill.

The Maui and Oahu warriors await their opponents hiding at the sand dunes of Waikapu and nearby at a spot seaward of Wailuku. Soon Kalaniopuu's armies arrive and are surrounded by the enemy who ensnare them like fish in a net just as Kaleopuupuu had prophesied and predicted. Daniel Harrington.

When they were drawn into conflict in the sandhills, their ranks were broken. Still, up the loose end, the Alapa struggled putting to death every foe as they took possession of one hill after another. The conflict continued hour after hour. The blazing tropical sun filled the struggling warriors with raging thirst and the waters of Wailuku were still nearly a mile away. William Westerfill.

"The fish have entered the sluice. Draw in the net. Like a dark cloud hovering over the Alapa, rose the destroying host of Kahekili seaward of the sandhills." Samuel Kamakau.

A certain kind of fighting which caused terrible slaughter of the Alapa and the Piipii was the fighting by the Oahu people which was called "The Whirling of Many Pointed Spear." In this way of fighting, perhaps ten spears were bound together with a cord. When that weapon was employed, the cleverness of the Hawaii people at dodging spears was of no help. Steven Daysha.

They slew the Alapa on the sandhills at the southeast of Kalua. There the day lay in heaps strewn like kukui branches. The corpses lay heaped in depth. They were slain like fish enclosed in a net. This great slaughter was called "Ahulau Ka Piipii Kakanilua." Samuel Kamakau.

This was the first day of battle. After Kalaniopuu learned of the virtual annihilation of his Alapa regiment, his chiefs regrouped. And the second day, they sent another army. They went more mauka. They met Kahekili. It was a tremendous battle. Both sides suffered heavy losses. Eventually, Kalaniopuu sued for peace by sending his son, Kiwalao, who was a high Prince or high Chief to Kahekili, who was his Uncle. Kiwalao was the son of Kahekili's sister, Kalola. And so he was able to arrange a peace between the two Kings for a time. And this the story of the Battle of Kakanilua. Thank you for your kind attention.

Mr. Starr: Thank you for sharing that. I think a lot of us learned something. That was quite – quite a story. Members, any questions for Mr. Kanahale? Okay.

Mr. Kanahale: I just wanted to make one quick comment that the presentation that I just made to you when were at the Cultural Resources Commission, they asked that this be presented to you folks because we presented it to them. We presented it to them and they wanted us to present it

to you. So it's really why we're here.

Mr. Starr: Yeah, I, for one, am glad you presented it. It's compelling. Commissioner Mardfin. When the light went on, I couldn't see what happened, but it looks on that last slide, it said "Possible Battle Site?" And I just want to make sure I understand where that is with respect to this project we're considering today. Does anybody know?

Mr. Kanahela: I think it would be helpful if you allow the next person behind me to give their testimony because they're gonna kinda cover that, your question.

Mr. Starr: Yeah, we'll get into discussion afterwards.

Mr. Mardfin: I hope the developers will be able to identify that site when they put things so I'll be able to see how close it is.

Mr. Starr: Okay, and also Uncle Les is here as a resource as well for us. Okay, thank you, Daniel. Okay. That's all I have signed up here. Would anyone else wishing to testify? Ms. DeNaie, welcome. Glad to see you here.

Ms. Lucienne DeNaie. Thank you. I did sign up, but I guess the sheet hasn't made it way over to your table. I'm Lucienne DeNaie. And I'm here to fill in a few gaps to ask – answer the last question about where the battle site is. From the descriptions that were given, it appears that the sandhills that are surrounding the Waiale reservoir were the place that was the fish trap. And just from the USGS map, the contours, the description of being one mile from Wailuku, and in between Wailuku and the Puunene Mill, when you look isthmus in that way in that configuration, that's the likely site, but the battle spread over the whole entry, including the area where the VMX project is now. That was part of probably like the pre-battle site where the forces were lured in. And this is not the only battle that ever occurred in this area, too. This is the most famous battle. But the point is, this is why you have so many burials here. Not only was it a convenient place for the many, many generations of folks who lived in the Wailuku area, which was the center of Hawaiian civilization, and Wailuku had the largest contiguous area of taro cultivation, kalo loi, in the whole State of Hawaii, that means people lived there. People tended those loi, and people died there. And all the dunes, the ones in Waiehu, and Waihee, and the ones in Wailuku, became their final resting place. So what we know is 25, 30 years ago, the idea of developing in the Maui Lani area was brought forward, but folks didn't really realize that it was a cemetery, and now we know more.

A lot of decisions were made back in that time. For instance, a friend shared with me yesterday. He was at the Land Use Commission hearing when that land was reclassified. A group of citizens begged for 25% affordable housing to be a condition. The developers at that time, the owners of that time, A&B, were not offering any affordable housing. They just didn't feel that it was, you know, an issue. The compromise was 10%. And we're still waiting. This project is delivering that affordable housing 25 years later. Two hundred and 55 units of affordable housing are coming out of this phase of the project.

I sit on the General Plan Advisory Committee. When folks from the public see Maui Lani spread out, they go, "Why are you folks even meeting here? There's nothing left to decide in Central Maui.



It's all been decided." But that's not actually true. We still have land that is not developed as part of Maui Lani. And I think, you know, what Daniel Kanahale, and Claire Apana, and Annette, and folks are trying to say is it's time to reconsider the grand plan of things and realize we are building on a cemetery. We can't undo the past. We have degraded the shapes of these hills, which are a very, very unique feature. Eighty thousand years ago these sand dunes were formed, and we have only remnants now. And we really need a way to have a sense of place and a sense of peace. So we beg of this Commission to as you look at this and future developments, make sure that a significant chunk is set aside for a memorial park that everyone can benefit from, and these souls can be at peace. Thank you.

Mr. Starr: Thank you. Questions for Ms. DeNaie? Okay, thank you for coming. Oh, wait a second, Lucienne. Commissioner Mardfin?

Mr. Mardfin: In addition to a memorial park, would it be appropriate to have a small – smallish area within the shopping area where there would be photographs, artifacts, some sort of mini Bishop Museum sort of display so that people could understand the history and culture? I mean, the thing that Daniel read was very compelling. And if people understood what was going on, would that add – would that be sort of at least a mitigating impact – mitigation effort?

Ms. DeNaie: I am not a resident of this area, but I'm an amateur historian, and I think what you're suggesting would be highly appropriate. And when you read the Wailuku-Kahului Community Plan which folks put many, many hours into, there's a number of policies in there that say establish cultural parks, establish, you know, displays and educational programs to educate folks about our local history. The sad thing is when the history just disappears and all we have is a shopping center that could've landed from California. That is sad. I think that's sad to Hawaiians. It's sad to people who came here from any place. So I think your suggestion would be a very good. And I can't imagine that the developers would find that not a value added sort of thing. I mean it's something that people would be interested in.

Mr. Mardfin: To draw customers in.

Ms. DeNaie; Yeah, yeah, it's a plus rather than a sacrifice for anyone to make.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, thank you very much. Any other members of the public wishing to give testimony on this? Please make yourself known. Yes, please introduce yourself.

Mr. Steve Miller: I'm Steve Miller, and I'm actually part of the project team. And I just wanted to clarify the letter that was brought up from SHPD dated December 3<sup>rd</sup> which you didn't receive and you're just now looking at. That is a response to our application of subdivision and construction plans for this project. And there's four items at the end of the letter, which are not complete, which have been in progress for I guess really months and longer, but they are very close to completion. So your question about is there a mitigation measure for in response to that letter, the mitigation is, is that DSA will not approve the subdivision application or the construction plans until those items are complete and SHPD is satisfied. So just so that you know they are in progress. Thank you.

Mr. Starr: Questions? Okay, thank you very much. Anyone else wishing to offer testimony? Uncle Les, thank you for coming to share today.

Mr. Leslie Kuloloio: Aloha mae. I'm the advisor cultural consultant for Maui Lani. I know before all of you signed December 5<sup>th</sup> received my testimony. And I would like each and every one of you to really read that testimony because what it has is a number of places that I've been respectfully representing the Wailuku District representative for the Maui-Lanai Island Burial Council, bullet no. 1.

Two, in working with the Protect Kahoolawe Ohana when we did the 1980 service to have that whole moku, that whole island as a preservation site, never in history has an whole island has been preserved as a site preservation island. And by working in that from that 1979 to 1980, the ahihikinau which I worked with many of our kupuna, Charles Keau, when archaeology just became significant where Hawaiians Charlie Keau, and me being his student were told by archaeologists from the Mainland, wow, we have Hawaiian archaeologists at hand. Hawaiian archaeologists, thanks to Charles Keau, who brought me as his student to become a Hawaiian archaeologist really knowing the terms, definitions, of what archaeology and anthropology is all about.

Secondly, you have here about community and cultural representative for the Honokohou burials. Please, I'd like to add this slight correction. Instead of 1979, from 1987 to 1990, this is where everything began to happen. At Honokohua, what we're hearing, and listen to me, gentlemen, and Hawaiians, and kupuna, at Honokohua, all the kupuna said that Piilani had a battle at Honokohua look in the records in your County, Department of Land and Natural Resources' historical notes, Hale . . . (inaudible) . . ., Alexander & Baldwin, Maui Land and Pine, and guess what? None of the burials found in regards to burial goods, . . . (inaudible) . . ., battleground or ruins to the individuals on the bones, on the iwi, showed that it was a burial. Zero story. Duh. Duh. Zero story. I'm a member of the Burial Council. And I wanna continue this because what I'm seeing the testimony that is given here by visual aids like that, that will not past as me being a kupuna testimony to have people took picture square on a map and say this was a burial place. Let's not even go there. Let's get fact and finding. Let's get the legendaries, the chants from Maui. Please. There's so much. If I knew there was a battle there, then darn it, Iao Battle was more significant than Kalaniopuu's one. He mahaoe to Maui. That's what you call a "mahaoe" story. It doesn't belong to Maui. Iao is more superficial – significance, but people attack Maui. So, please, don't bring this kinda of story back. And it's an insult to have Lucienne here. And she put the dig.

Mr. Starr: You're out of order, please.

Mr. Kuloloio. I'm here. I'm here. I'm here. I'm testifying. I'm testifying. And I wanna be very, very clear. Please let's deal with fact and finding. Look at my notes. If there's any notes about this story, Kamakau, fragmentations, the stories that you listen is piece by piece, but no fact-finding. Please, if you want, Hinano Rodrigues should've been here. He knows it. The State Historic Preservation Office has the records of the archives.

Mr. Starr: Okay, please wrap up, Uncle Les.

Mr. Kuloloio: In closing, all I'm saying – I'm here to do the best that I know how in my mission

statement to help this project. And to hear this stories of make up upsets me. And I wanna protect the kupuna story. I wanna protect my history the right way. I'm not against research, but do it right. And if there's anything I said wrong, forgive me.

Mr. Starr: Okay, wrap up, Les.

Mr. Kuloloio: Thank you.

Mr. Starr: Okay, aloha. Questions for you. Commissioner U`u?

Mr. U`u:: Good morning. Good afternoon. Oh, good morning, Uncle Les. Question—would the possible battle that we had a short presentation on, and I agree we need evidence, and I like the story, but we gotta stick to facts, was there any findings that would suggest it happened in that area? And I know you would know. If anyone would know, it would be you.

Mr. Kuloloio: Thank you, Commissioner U`u. In this dot area called, Maui Lani, which is a dot, which is in the part of Kealia Pond, Waihee, the Paia sand dunes, Kahului, Wailuku, that's all a combined make up of a pattern of a sand dunes, windblown sands. In this area that we did the study at Maui Lani, there has not been any findings of the fragments or iwi found of individuals that's been damaged, hurt, or been hit by a club. It is all cemetery burials. And I don't wanna go into it today because this kind of information is so what you call? Protective. I won't go descriptively. But there's been no battleground artifacts, no individuals that has been buried in the Maui Lani properties that show warfare, no artifacts, no stone . . . (inaudible) . . . , no spears, no nothing. Where is it? No, nothing in warfare, and nothing also in ruins below the surface or above. These are all kupuna that is first time found in the process of being buried in these windblown sands. Nothing. And the State didn't— We didn't find nothing. We checked with the State. Unless some other archaeologist know. And if they know, then something is wrong in their violation, in their violation. Did I answer your question? No. So far nothing.

Mr. U`u: Thank you.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I asked Lucienne a question, and I'll pose essentially the same question to you but in a slightly different way. It sounds like there's some scientific disagreement between – about the exact history of this area. Would you find it appropriate within the development to have a – maybe in the shopping center to have a smallish place, a mini Bishop Museum where you could put out what evidence there is either pro or con about what went on, something describing the culture, the ancient culture, that occupied the general area where you might have whatever – perhaps some artifacts, but a way to tell the story? And maybe there are two stories to be told or maybe some anthropologists could get together and figure out what you all agree on and what you disagree on. I guess what I'm asking is, would you find it appropriate to have an educational building within the shopping area that would help do this sort of like, you know, at Maui Mall there used to be a small airplane museum? And I guess I'm kind of picturing the same sort of thing where within the development, there'd be something acknowledging the historical past and trying to tell the story so that modern day people will understand what went on.

Mr. Kuloloio: I think a center like that already exist at Hale . . . (inaudible) . . . , a place where education, fact-finding, people can go to. That's the place to go. That's the place to get your facts—Hale . . . (inaudible) . . . , the Bailey Museum. To have anything asking of what you're asking, sir, we already did our laws. Our laws is about find the iwi, go through the process. Yeah? Go through the process, and relay to the State, and just give the facts and finding. I'm not here to promote a cultural center. I'm not here to promote a cultural center or Maui Lani. Yeah? That is some day I hope so—whatever wants to come out in developing a cultural center, but not at the Maui Lani. I mean, I find it very uncomfortable to ask – to answer your questions.

Mr. Starr: Okay, thank you, Uncle.

Mr. Kuloloio: Yeah.

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

Mr. Kuloloio: Thank you.

Mr. Starr: Any other members of the public wishing—? You've already given your time to someone else. Thank you. You're out of order. Anyone else wishing to testify, please make yourself known.

Mr. Mardfin; Commissioner—

Mr. Starr: Okay, with that, any other person who has not testified? Public testimony is closed.

Mr. Mardfin: Commissioner Starr?

Mr. Starr: Commissioner Mardfin, go ahead.

Mr. Mardfin: I wanted to ask if one person provides – if a person provides his given testimony, and then another person provides very conflicting testimony, does the first person have a right to attempt to rebut that, or do they no longer have an attempt to rebut it? Okay.

Mr. Starr: No, no. No, everyone has their opportunity to say what they wish to say. And I think we've been more than fair in giving time. Commissioner Hedani?

Mr. Hedani: If there's anybody in the room that would like to offer testimony, I would like to hear what they have to say.

Mr. Starr: Okay, even if they've already given their time up to someone else?

Mr. Hedani: My opinion is that – my opinion is that everyone should be allowed to testify for up to three minutes which is what our rule is. And I think when we start making exceptions, and we start adopting ad hoc rules relative to that testimony, you know, we begin to step on the slippery slope of at what point, you know, if I come in with a petition that has 2,000 signatures on it, do I get 2,000 signatures times three minutes' time to present testimony before the Commission? But if there's someone in the audience that would like to testify for three minutes, I'd like to hear them.

Mr. Starr: Okay. Does anyone have any objection to that? Commissioner Hiranaga?

Mr. Hiranaga: My concern is not with this specific individual that may want to testify, but she did give or pledge her six minutes for this presentation. And I have similar concerns as Commissioner Hedani as we start graying the boundaries of rules of this Commission is when do we stop? She voluntarily pledged her six minutes to the presentation since there was only—

Mr. Starr: Okay, I don't want to waste more time with it.

Mr. Hiranaga: Neither do I.

Mr. Starr: Frankly, you know, my feeling is that, you know, this is gonna prevent us from wanting to do what we've done for you today, but I will give you a one-minute opportunity to make your rebuttal. And please introduce yourself and be very, very brief. Thank you.

Ms. Annette Hew: It is sincere— My name is Annette Hew. And it is with sincere appreciation that I stand here right now. I prepared a map.

Mr. Starr: What's your name?

Ms. Hew: My name is Annette Hew. I have prepared a map that was done in 1885 by Monseratt and revised by the State of Hawaii. It is there for anyone who wants to see it, which will show you the District of Kalua where the testimony from W. D. Alexander written for the Department of Education in the best interest of the people of Hawaii. All of the testimony that you heard can be documented in these books. *Kekuhaupio and His Warrior Kamehameha* was done by Kamehameha Schools with the assistance of the State – State Historic Preservation Department. It's here. I didn't make up any of these stories, neither did Lucienne. And I can respect the position of kupuna. This is what we teach our kids. So if we're gonna put this history out there in books and in schools, then show respect for burials, and show respect for the history of Hawaii nei, not just Maui, not just your army, Hawaii's history. And I have all of the books and the maps for anyone who would like to be informed historically. I didn't write any of it. Thank you.

Mr. Starr: Thank you for providing that resource. Members? Okay, thank you. And that will be it for public testimony on this item. And thank you for everyone who has presented. Now we're at the point in our meeting where Members can ask questions again of applicant, of staff, raise any other points of concern before we have our – any recommendation. Members? Commissioner Hiranaga?

Mr. Hiranaga: I have several questions, but I'll just limit my first opportunity to just two questions. The architect for the applicant made the statement that they will be using Maui, local-based – or they've been talking to Maui, local-based merchants. And I was wondering if you can define what "Maui, local-based merchants" means to you.

Mr. Hirano: I'd like Stacy Takaba who is with Maui Lani. She is the Vice-President.

Mr. Starr: Yeah, Stacy, please, introduce yourself for the record.

Ms. Stacy Takaba: Hi. Stacy Takaba with Maui Lani. And we, in the process of going through this Planning Commission approval, we have concurrently been working with Maui businesses who are interested in either expanding their operation or relocating to Maui. I'd prefer not to give specific examples because some of the – their existing landlords don't know they're thinking of moving, some of their competitors don't know they're thinking of expanding their operations, but they are all businesses currently with employees and located in Maui. They may be – have their corporate headquarters on Oahu. Some may have their corporate office on Maui, but all local Maui residents, you know, with existing businesses currently here on Maui.

Mr. Hiranaga: So no entities with corporate headquarters out of the State of Hawaii is what you're saying?

Ms. Takaba: Some of them do, and possibly they're franchise businesses. So they may have a corporate headquarter somewhere in Texas, but they have local franchises that operate throughout the State.

Mr. Hiranaga: So what you're saying is anyone that employs local people is considered is a local merchant?

Ms. Takaba: No, not necessarily, because–

Mr. Hiranaga: I'm trying to get a more precise–

Ms. Takaba: Like a franchise business, the owner of that franchise is located here on Maui.

Mr. Hiranaga: You mean like a Starbucks?

Ms. Takaba: Or for like maybe a McDonalds, you can have your corporate McDonalds headquarters somewhere, but you have a–

Mr. Hiranaga: Chicago.

Ms. Takaba: Right, but you have a local franchisee that owns several McDonalds. I would consider that a local business because they're a local Maui resident that owns that franchise and employs local Maui people.

Mr. Hiranaga: Okay, and my second question then, and this may not – you may – it's not really directed towards you, but Waiale reservoir, I guess that remains the property of Alexander & Baldwin. And I know that it's elevated above the Maui Lani Project. And so does Maui Lani, in conjunction with A&B, have any type of a plan if that reservoir should breach? Is it still being filled with water?

Mr. Hirano: Yes, yes, it is. When you say it's "elevated above," it's actually below. I have Darren Unemori.

Mr. Unemori: I don't know– You're correct. The reservoir actually sits above the golf course

immediately in front of it. I don't know if there is a plan in place, but I know HC&S has been studying the consequences of something happening to this reservoir. They are, of course, aware of the liability that goes with it. Surrounding the reservoir itself, though, at the moment, there's – it's not immediately surrounded by houses. The golf course serves as a buffer between the existing residences in The Island, for example, and the reservoir itself.

Mr. Hiranaga: If the reservoir were to breach, the water would go beyond the immediate surrounding area and flow downhill. And do you have any idea what areas would be impacted?

Mr. Unemori: It would be primarily the golf course, and of course, it would depend on how much water was actually in the reservoir and the severity of the breach, but no, I don't have a specific quantitative study that has looked at that in detail.

Mr. Hiranaga: I guess I'll make my question more finite. Is there any possibility of the water from a Waiale reservoir breach impacting your proposed development?

Mr. Unemori: I don't–

Mr. Hiranaga; You wanna get back to me?

Mr. Unemori: Well, okay. Well, I guess we could, it's just that I don't believe that study has been – I don't know that that study has been conducted.

Mr. Hiranaga: I'm just concerned about what happened on Kauai. And I believe the Waiale Reservoir did breach at one time 40 years ago or so. And someone told me the water did reach Papa Avenue. That was before all the development changed the topography, but– So I'm just kinda wondering where that water would go if the dam did – the reservoir did breach.

Mr. Unemori: I see. Beyond the qualitative – understanding that it would hit the golf course and primarily inundate the golf course, I, again, don't have any specific data.

Mr. Hiranaga: Maybe the developer in the future should look at that.

Mr. Unemori: We could request it from HC&S, but that may be their own . . . (inaudible) . . . information.

Mr. Starr: Commissioner Hiranaga, would you be interested in working or craft a condition that a study and if necessary, mitigation measures be put in place before, you know, whatever? That's something when we get to that.

Mr. Hiranaga: No, I just want – I would just like them to, you know, be concerned about that. I mean, the water's gotta go somewhere. I mean, it is an earthen dam, so they should plan for a worst case scenario.

Mr. Starr: Yeah, I mean, we should – I think it's a – we should. And thank you for thinking it up.

Mr. Hiranaga: Maybe the staff could work on something.

Mr. Starr: Yeah, Ann, could you work on something? Okay, Members, other questions for the applicant for staff on this? Commissioner Hiranaga?

Mr. Hiranaga: I was looking at these photos of the – I'm not sure what project it is on Oahu that you provided as a hypothetical: Exhibits E and E1.

Mr. Hirano: Yes, Commissioner Hiranaga?

Mr. Hiranaga: Where–? I don't see any parking spaces or garages.

Mr. Hirano: I'll have Janine Clifford just respond.

Ms. Janine Clifford: The parking is all in the rear and alleyways. So what you're looking at is the front street along the public street area, and the parking would all be in the back.

Mr. Hiranaga: Is that what you're proposing for this project?

Ms. Clifford: Yes, as well. So you get a very nice, walkable streetscape and landscaped front yards.

Mr. Hiranaga: My other second question, I'm looking at the revised land plan with the overlay of the burial sites. And I'm looking at Site C, 60-61. And it looks like you've got your building is gonna be built around the site. I know it's conceptual, but I'm just wondering how accurate–

Ms. Clifford: Yeah, we were just trying to show that we do need to leave a space, and it doesn't have to be shaped like that, but we are respecting that site, and we are going to require that they leave in-place space around it.

Mr. Hiranaga: Thank you.

Mr. Hedani: Mich, one of the testifiers that came before us indicated that there were 150 burials within the area. Can you verify that or provide me with some information relative to . . . (inaudible) . . . ?

Mr. Hirano: I'd have to ask Steve – Steve Miller of Maui Lani.

Mr. Steve Miller: Yeah, Steve Miller with Maui Lani. And could you repeat the question?

Mr. Hedani: Testimony that was given to the Commission indicated that there were 150 burials within the Maui Lani – within the area. Is that something that you can verify or quantify?

Mr. Miller: The 150 number was discussed in generality at the CRC as being a number within all of Maui Lani and not within the project area. We have five specific sites, and they were shown on another map that was in your packet which showed – was requested the last time. You asked for



an overlay map of archaeological or burials on the project site plan which we've provided. Some of those sites have more than one. The initial part of the development at the entry of Kuakahi Drive, we found a number of burials right in the middle of the right-of-way. And we worked with the Burial Council and State Historic Preservation for a little over a year on different engineering analyses to try to realign the road to satisfy both safety and Public Works' requirements for dedication of the road as well as the relocation of those. And at the end of the day, we established preservation areas on each side of the road to relocate the critical burials that could not remain because the elevation of them was higher than the grade of the road. We preserved what burials we could on each side. And we are in the process of designing the landscaped treatment for those preservation areas. They'll also be shown on our subdivision maps as specific easements. And they will be landcourted for future posterity, but the total number to get to the point within the VMX area is probably in the neighborhood of 28 to 30 between those five different sites. And again, the 150 number was thrown out as something for all of Maui Lani.

Mr. Hedani: Thank you, Steve.

Mr. Starr: Okay, Members? Go ahead, Commissioner Hiranaga? That's good. That's what we're here for.

Mr. Hiranaga: I know Maui Lani is a planned development. I'm just wondering. You know, Maui Lani's received some bad press recently: Sandhills Estates, The Fairway Subdivision above Palama Drive, the Safeway Commercial Center on Kaahumanu. So I was wondering, how is Maui Lani Partners— What are you calling yourselves? Oh, how is Bill Mills of the Maui Lani 100, LLC, affiliated with these other three projects? You guys aren't building a very good track record. And so how do we know that this project is will come out as you're proposing?

Mr. Hirano: I'd like to have Dave Gleason just respond to that.

Mr. Dave Gleason: Thank you. First off, let me start by talking about the original land, and who was involved in the purchase from A&B. And actually the site that you mentioned, the Safeway site, was one of the original owners with Bill Mills. That's HRT. It was part of the Weinberg Group. So it wasn't the sale from Maui Lani Partners. It was actually part of the original division of property that HRT coordinated with Bill Mills. And they had moved forward with mostly the commercial, and the Kaiser site, and the hospital site. So it was fairly independent. And it is an independent relationship. We had the original A&B plan, and we've stuck to that plan that was originally in the early '90s, late '80s that was formulated. So that specific issue with Safeway was not a whole lot do with the Maui Lani Partners. That was something that HRT wanted to move forward on. They coordinated the roadway issue that was so controversial with the State, County. They put in the original Maui Lani Parkway that comes off Kaahumanu. I think they expected to get access onto Kaahumanu and didn't. That was really their coordination. Our roadway plan which we do have coordinates the real estate within Maui Lani for primarily our residential community. We do have another. We're building Maui Lani Parkway in Kuikahi as it's been mentioned. We have one more phase of our roadway development that is an arterial road that will go from Kuikahi, Maui Lani Parkway all the way up to above the Island Subdivision that runs right up to Mahalani. So we do have a plan. Maui Lani Partners has had a plan for many years, and has worked out with Public Works that plan to accommodate certainly those concerns that we had. We didn't know exactly

what was gonna happen with the commercial site down below. And I don't think HRT did until recently. And the detail of egress and access was not something that was necessarily thought of way back when because there was no Safeway way back when. But the decision to move forward as the Planning Commission did, that was certainly something that they felt good and probably good for the community. So that really isn't something that Maui Lani Partners had anything to do with.

The other two parcels that you mentioned, the Fairways and the Sandhill area, we did sell that property to two different organizations, LLCs, that came in and bought the property. I believe the Fairways was first. And they – when we sold the property, we didn't give them any specific restrictions in regard to development which is maybe something that we could've and should've. At the same time, we said they had to abide by the ordinances, codes, laws. In both cases, they got their permits through the County. We do have an architecture review committee that would talk about houses. And that's why Maui Lani looks the way it does. It looks very nice. We have a lot of consistency from architectural review. And we are conscientious in regard to following up. We have a common area of restrictions which we're conscientiously following up. In these two cases, again, they met the letter of the law. And that is now being – obviously, there's a suit with the County, and the plaintiffs. Again, Maui Lani Partners isn't involved in that suit, but at the same time, if you have to ask me if we were going to do it over again, we'd probably say no. It did cause us a lot of consternation, a lot of bad press. And obviously, the residents of Palama Street got a little on the short change of that deal. But at the same time, what we did was, we sold the property, and said you had to abide by the law. And they made it through the process, and this is where they are right now.

So those are the three projects that you mentioned. And I have to agree with you that we did get pulled in in something we certainly don't want. We have common area restrictions in our VMX area. We've been dealing again with the Planning Department. We hopefully have done a great job in the plan that you've seen. And we certainly wanna do a good job.

Mr. Hiranaga: Thank you.

Mr. Starr: I have a question for you, for the applicant. I'm not sure who wants to answer, but I see a big change between these two drawings here. And the 3/18 drawing, it shows, you know, kind of what I visualize as a mixed use type of thing. It shows small residential lots, and the VMXR, you know, I guess small townhouses. And, you know, the retail is broken down into little blocks. And then I see the latest one dated 11/03, and now the residential seems to be a lot more massive without a lot of little green areas in between. I guess it looks like about 20 apartment buildings or something in here instead of what we had before and the commercial looks like big masses, you know, just big masses, elongated masses, rectangular masses whereas in the previous version there was a lot of small things, community size things where now it's kind of industrial strength. I'd like your comments about how the nature of it shifted and particularly you know, what happened to the residential, why we're not seeing all those little house lots and townhouses, what we're seeing is big.

Ms. Clifford: I'm sorry, are you referring this area here versus this area here?

Mr. Starr: Yeah.

Ms. Clifford: Well, when we went from –

Mr. Starr: Wait a sec. I'm looking – those look very similar. I'm looking at this here which was your handout today. This was a previous one we were looking at and all this residential as little town – small houses and –

Ms. Clifford: Yeah, actually these are just plans where we took off the footprint of the house so that you could understand the lot layout. So this is just the lot size and it doesn't show the footprint. We haven't changed the houses at all.

Mr. Starr: So it's still –

Ms. Clifford: Yes.

Mr. Starr: This is still represented of what we're going to be looking at?

Ms. Clifford: Correct. The houses – we didn't reproduce the sheets with the houses and the elevations and the footprints. These are just the lot layouts.

Mr. Starr: You're not showing us big apartment buildings?

Ms. Clifford: No, this is just the land area, that's all.

Mr. Starr: Thank you.

Ms. Clifford: And we're following the same plan. And then regarding the VMX CR area, we actually used to have three really big blocks and there was a lot of conversation about these three parking lots here being very large and right on Kuhikahi Road, the regional road. And in discussions with a lot of local vendors who would like to move there, they were saying, you know, they were saying what the Urban Design Review Board said to us as well. So what we did is we broke down a lot of these and we placed them actually along here, along the street. So the only big block that we have is this one that remains here and it replaces the three that we had previously.

Mr. Starr: Okay, thank you. Members, any other questions? Commissioner Mardfin.

Mr. Mardfin: Maybe I'm picky, but the thing you addressed just a couple minutes ago looking at the two residential areas.

Ms. Clifford: Yes.

Mr. Mardfin: I'm looking at the same thing that Chairman Starr was looking at, the concept design of 3/18/08, you don't have it there?

Ms. Clifford: No, it's the one with all the house footprints on, right?

Mr. Mardfin: Yeah, it doesn't seem. I'm trying to compare the two and I'm looking at say, number 72, you see 72 on your thing here?

Ms. Clifford: Yes, which is here and then lot 72 which is here.

Mr. Mardfin: And I don't see how what you have –

Ms. Clifford: The other difficult thing is these two drawings are not the same scale. Unfortunately, this board is just slightly smaller.

Mr. Mardfin: But that doesn't show all the individual houses either.

Ms. Clifford: No, but here is Lot 72, and here's Lot 72, and it's identical.

Mr. Mardfin: Right, and I'm looking at this one which Chairman Starr was referencing.

Ms. Clifford: And yes, and this is also Lot 72.

Mr. Mardfin: Right that's the old one and I'm looking at this, and I don't see how this match onto the other one.

Ms. Clifford: Oh I see. I see. We just rearranged roads. One of our concerns, I understand now what you're talking about. The houses will remain the same, so the sheets with all the houses and the multi family footprints that you saw once before will remain. But what we were trying to do is in the realignment of connecting to the park on this side, and then connecting back to the VMX CR area, and trying to realign these roads, what we ended up doing was reworking this ribbon park and we were trying to get this connector, this vertical connector. So if you look very carefully from service road M or residential road M, we're envisioning the park is going to now continue through so we tried to provide even more connector components if you will so that parcel 8B which is not a part of this project would also be able to connect. And then we were trying to create some sort of larger anchor park at the end to try to distribute the park instead of just having one long ribbon that went through the whole thing but to try to provide nodes of park space. And so in the realignment came the movement of the single family and the multi family and the like –

Mr. Mardfin: Okay, look at say no. 72, it looks like a fairly big piece.

Ms. Clifford: Correct, yes.

Mr. Mardfin: What would be on there? Would it be like five houses or six houses?

Ms. Clifford: No, it would be one multi-family building. It would be like an eight-plex or a twelve-plex.

Mr. Mardfin: So the big ones, the big ones are going to be multi-family?

Ms. Clifford: Correct. One building per lot. And it would be the same floor plans that you saw

previously. We haven't changed the floor plan and the idea is that you access from the back as opposed to from the street side.

Mr. Mardfin: Are there more multi-family in this version compared to the earlier version. Are there more multi-family housing than in the first place than the original?

Ms. Clifford: There might be a little more only because we had to some how – in order to make this larger park, we did have to find some land so we did give up a few more single family in order to make a few more –

Mr. Mardfin: So there are fewer single family and more multi-family?

Ms. Clifford: Yes, yes. That's correct.

Mr. Starr: I think it's time for lunch. I want to thank everyone for their patience this morning. We'll be back 1:00 p.m. to continue.

A recess was called at 12:04 p.m., and the meeting was reconvened at 1:04 p.m.

Mr. Starr: The Planning Commission of December 9<sup>th</sup> is back in session. I hope everyone had a great lunch and is in a cheerful mood ready to continue. Our deliberations on Maui Lani VMX mixed use and we've had our public testimony we're in the part of our meeting where we are able to ask additional questions of staff and the applicant and when we've run out of questions then we'll be looking to our planner par excellence for recommendations. So members, do we have any additional questions to ask the applicant or staff on this project? Commissioner Mardfin, take it away.

Mr. Mardfin: I would like to ask the applicant, in this morning's testimony we discussed the problems with – there were some issues raised about whether appropriate documents were turned into appropriate offices. In particular, Claire Apana's letter says that "archaeological cultural reports for the Maui Lani project district were not turned in. There was a final sand mining reports are overdue. Projects required by law to have approved cultural conservation sites and burial treatment plans," and that might or might not have been done.

The letter that the applicant referred to, the one we got today December 5<sup>th</sup> from SHPD, says "phased archaeological monitoring ...(inaudible)... supposed to be submitted, to date we haven't received any. Proposed construction work in the area considered extremely culturally sensitive. We continue to anticipate verification correspondence from the contracted archaeological firm regarding the erection of orange construction fencing surround previously established protective buffer zones. We continue to request updated maps depicting current SIHP numbers. We continue to request documentation of the full implementation of the data recovery and preservation plans. We continue to request the submittal of phase monitoring reports." This morning we were told that this refers to something else. But I'm bothered by we're being asked to vote on something. I understand once we vote on it it doesn't ever come back to us and that a lot of data and reports don't seem to have been done. Would you like to comment?

Mr. Hirano: Yes, I would like to have Steve Miller just respond to those.

Mr. Starr: Yeah please.

Mr. Steve Miller: Steve Miller with Maui Lani. Comment is the same that the letter that you're referring to from SHPD as well as the comments although I can't speak for Claire Apana in her letter, but I'm presuming that they are the same thing that's she's referring to. And the process of completing these reports is very time consuming and timely but we do have a draft report which we're expecting to turn into SHPD this week. And as far as the preservation and the burial treatment plan and all of that, most of that is done, but until it's reviewed by SHPD and the Burial Council, it's not a final plan. So it's a process that can go for a long time.

The protection as far as the commission's decision and judgement on the issue is that until SHPD is satisfied they will not give DSA their concurrence to approve our subdivision application and beyond the subdivision application, the construction plans. So there's – it has to be done. And we're in the process of doing it. That's the best answer I have.

Mr. Mardfin: But you're asking us for entitlements essentially before the data is in.

Mr. Miller: Well, those conditions are not a condition to Phase 2 approval. They're a condition to subdivision approval which is another entitlement but it is part of that.

Mr. Mardfin: But it's outside of this commission's ability to do anything about. It's in somebody else's hands.

Mr. Miller: Well, yes. Unless this commission took on the review of subdivision plans and engineering drawings and construction plans.

Mr. Mardfin: Can I ask a second question?

Mr. Starr: Yeah, go ahead.

Mr. Miller: The other thing I would say just a quick comment is, and it was concurred by the members of the CRC as well as Hinano Rodrigues who's head of SHPD and a State Historian that Maui Lani has gone out of its way and has consistently through the history of the development basically followed all of the State's as well as the Burial Council rules and beyond. So as far as a risk or concern on behalf of SHPD who is not here to testify but in their writing and in their previous testimony, they commented that we are basically doing what we are supposed to be doing when we find burials.

Mr. Mardfin: My second question is this morning we started, this morning I started to discuss possible mitigation in the form of some sort of educational display or room where the history of this region of Maui could be preserved and used to educate future generations about what the significance of these places are. I understand we had sort of conflicting testimony even now about what the history is but that's not difficult to deal with different interpretations of something. What's the development position regarding that sort of educational facility within the development?

Mr. Miller: We have always encouraged and I know Uncle Les has, everything we can learn about the area. But in order – we don't have an objection to having a facility, whatever you want to call it that would do that, but in order to accomplish that you would have to know what the history it is that you're displaying, what artifacts you have to put on display and that is not determined. It's in – as far as continuing to study it, I mean everything that we learn gets reported to the State and the State Historian. So having a museum is fine, but I don't know what the history would be. There are no artifacts to put in it and we certainly wouldn't be displaying human bones.

Mr. Mardfin: I agree with the human bones you're not going to be displaying them, but you could –

Mr. Hirano: The applicant would be amenable to putting in recognizing cultural history of the area.

Mr. Mardfin: As a condition?

Mr. Hirano: It can be a condition.

Mr. Miller: If we knew what the condition was.

Mr. Starr: I'm sure that there are greater minds than ours can figure that out. But I mean, would you be willing to craft a condition that a space be made available for a memorial for those who came before us and a place to recognize their culture in the project and you can craft it how you wish. Is that, Mr. Mardfin, is that?

Mr. Miller: We actually are already doing that in the form of burial preservation areas.

Mr. Starr: Okay, well put it as a condition and lets move forward.

Mr. Hirano: Yeah.

Mr. Starr: Okay, next questions? Lets get on with this folks. Any more questions? Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if this is the appropriate time but I was looking at the recommendations and it references a Maui Lani education agreement dated December '05. I was just wondering if they have a brief explanation.

Mr. Hirano: That agreement it was entered into with State Department of Education during the Phase 1 change in zoning and entitlements in 2005, and it covers the additional residential properties or residential units that were approved during that entitlement and there is an allocation of so many dollars to the State Department of Education for multi-family and for single family that's part of the VMX project.

Maui Lani originally had allocated school lands, the Maui Waiena as well as the new Pomaikai Elementary School as part of the contribution on the original entitlement and then the additional entitlement for the VMX is covered by this education agreement.

Mr. Hiranaga: It goes into the state educational general fund?

Mr. Hirano: I believe so, yes.

Mr. Starr: Okay, members? Commissioner Hedani.

Mr. Hedani: Mich, this morning we had testimony from people in the construction industry about jobs that they need and the jobs that this particular project would produce. I like the project. I think the village mixed use concept is a very intelligent way of doing development. I like the, you know, the concepts that have been incorporated into public spaces and open spaces and other kinds of human scaling that's done to the project.

One of the concerns that's been raised in the past is, and we've had it in Kaanapali, where Immigration and Naturalization Service comes down arrests a whole bunch of people, yanks them off of the job because the guys that are working on the project are not people that we had hoped were coming from the island that were in need of construction jobs but were being imported from the mainland. Is that the same case here?

Mr. Hirano: I would like to have Stacy. That won't be the case here, but I would like to have Stacy Takaba just respond to that in terms of the employment.

Ms. Stacy Takaba: Stacy Takaba for Maui Lani. That is absolutely not going to be allowed in Maui Lani. We have ready to execute a contract with a licensed local contractor on Maui to begin our site work and all of the vertical construction will be by licensed, hopefully union subcontractors.

Mr. Hirano: Thank you Stacy.

Mr. Starr: Yeah, Commissioner Hiranaga.

Mr. Hiranaga: So what is the penalty if your contractors do violate your agreement. You say it's absolutely not going to happen. So what is the penalty if it does happen?

Ms. Takaba: They don't do any more work in Maui Lani.

Mr. Starr: I want to ask Corp. Counsel if there's a way to enforce that sort of thing. You know, I know you get into like prevailing wage and local – hiring local people. I believe there's some discussion at some other process going on right now.

Mr. James Giroux: Thank you Chair. We've always looked at those types of conditions as possibly raising issues of right to travel and equal protection so, we just try to keep away from those and look at what's actually happening on the ground I guess is the best way to look at that.

Mr. Hirano: I'd like to just add Commissioner Hedani, that the record of Maui Lani to date has been very good in that regard as well. You know, the contractors and the employment that has been generated has been stellar.



Mr. Starr: Okay, Dr. Iaconetti.

Mr. Iaconetti: I'm concerned about the funding of the project like some of the projects that are ongoing now where the funding has suddenly disappeared and they are not complete, what assurance do we have that you have the funding to complete the project?

Mr. Hirano: That's an excellent question in this environment. Again, Stacy Takaba.

Ms. Takaba: We've already procured all the funding required for this project through First Hawaiian Bank. So we think that issue is resolved. We have a project budget in place with an adequate contingency to complete all of the site work and the offsite improvements and vertical construction.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I apologize for coming in late this morning so I'm not exactly sure what's on the table. Are we looking – there are two issues dealing with this, a County Special Use Permit and Phase 2 Project District.

Mr. Starr: Commissioner Mardfin, we've been handling the two items together. However, once we get to the very next stage which is the recommendation we'll be separating them and dealing first with the Phase 2 Project District and then after that the change in use. Go ahead.

Mr. Mardfin: Then I'd like to ask. I just wanted to make sure I was in order to ask about the County Special Use Permit. Mich, you want County Special Use Permit to allow for automobile services and wholesale distribution. Can you give me a sense of what would be there in the scale. I heard somebody early say, you know, you could be having soda distribution and stuff and warehousing. To me, it strikes me as very valuable property and you're putting something with a, not a hugely profitable thing on it, I mean, that's a business decision which I don't really care about, but give me a sense of what's likely to be there.

Mr. Hirano: Commissioner Mardfin, the warehousing distribution would be in a sense a bottling company that is warehousing and distributing, you know, the products. And the reason the site plan was amended was to accommodate a very interested tenant to do that. The automobile services is more convenience and there would be a convenience store that may have a gas outlet selling petroleum, that sort of idea. So that was the idea and the request for the special use permit.

Mr. Mardfin: And, if I may? The distribution one, the beverage distribution, what would that look like roughly from the outside?

Mr. Hirano: The elevations are on I believe this – so the idea was, and this is the site which is the central area then there would be kind of covered or flanked by smaller retail with a larger space behind and then the frontage elevation would resemble and kind of replicate smaller retail and fit into the mixed use elevations. So it would be hard to tell.

Mr. Mardfin: You wouldn't know there was a warehouse there unless –

Mr. Hirano: You wouldn't know there would be a large building there because of the way the frontage elevation on the street would kind of be broken up and –

Mr. Mardfin: And could you go back to the earlier diagram. You said it would be in that big –

Mr. Hirano: It will be – yes, it's in this area and it would be kind of fronted by smaller –

Mr. Mardfin: And how would you get beverages in and out through that –

Mr. Hirano: There would be an access. There's an access road here and as well, another access road entering within the inner courtyard and parking area of these buildings.

Mr. Mardfin: Do you anticipate any traffic problems because of that?

Mr. Hirano: No there will be access only from the larger vehicles through one of these access points and there is enough roadway and as well, turning moving to accommodate that.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Mich, I'm not sure what I'm looking at at that particular diagram, yeah. For a warehousing wholesaling type of an operation, I would think you would need to have access not from the storefront itself but like a service corridor or service loading dock type of an entrance. Is that what the side road is for or is that just – is it buildings that are going to butt right up against each other or is there a service road in between?

Ms. Janine Clifford: Actually the plan is that what you're looking at here is this facade here and they are going to bring with them their offices. So the facade along the street frontage will be their office and one of the Urban Design Review Commission's comments, Board's comments was that to try to integrate these two. So what you have in your packet is we redone this section so that it looks a little more integrated and while this still reads a little bit like commercial office it also looks a little more human scale than goes with this, the residential retail on these two sides.

The warehousing facility is actually in the back here and what we're proposing is two entrances, one on this side and one on this side. And they're going to bring their trucks through here and most of this parking back here is intended to be for all of these people here and the distribution warehouse and all of their bottling and packaging and everything is intended to be done inside the building and then we'll be doing fire rating around the perimeter. So that's why it looks strange because this is actually their offices.

Mr. Hedani: So they could actually drive their vehicles directly into the building itself?

Ms. Clifford: Correct. The idea is that they come in this way and then they go out that way and they're only on this side of the road. And this one is really meant for the people, the retailers on this side. So that's why we have three access points and it looks a little strange because they're also

bringing their office space and moving it up front.

Mr. Hirano: Thank you Janine.

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

Mr. Hedani: I'm not sure if this is for Mich or Dave, but the question that I brought up before was for Maui Lani to address the problems that were created on Palama Drive as part of the drainage problem and ...(inaudible)... elevation problem. I heard Dave's response before about, you know, the project was not done by Maui Lani Partners.

Mr. Hirano: Yes.

Mr. Hedani: That it was a third party entity in that particular case.

Mr. Hirano: Yes.

Mr. Hedani: And that the requirement was that whatever was legal was the requirement. But has Maui Lani done anything beyond that or has it just washed its hands of the problem?

Mr. Hirano: And you're referring to the Palama Drive situation?

Mr. Hedani: Right.

Mr. Hirano: Maybe I'll let Dave Gleason talk.

Mr. Dave Gleason: Good question. We haven't washed our hands of anything necessarily. We try to work with the community in a sense that we were part of a mediation group. I don't think we should get into the details of what was being asked of the County, the suit. There's a dollar number that came out during mediation that was very high. There was a number as a participant in the – we were actually an intervenor and that's a word that doesn't come off real softly but it was one that we wanted to participate in the solution. Unfortunately the current mediation isn't moving forward because we were so far apart in dollars. We have talked about other things that might be done such as additional park that we had at the entry and this and that might provide some sort of asset to the Palama Street group.

The one area that we did get involved in from day one was the golf course. And the Public Works Department had asked the developer of that particular parcel to aid in solving the flooding problem that had existed for many years on Palama Street and that had nothing to do with Maui Lani. That was just a natural drain problem that they had. So the developer of the project was asked to put a basin, a drainage basin in which is currently there today. They were looking at getting an easement from one or two of the landowners on Palama Street to take the drainage from a cul de sac or an area at the low end of Palama and get that water to get into this newly subdivided and developed property ultimately to be pumped on the golf course. And we as the golf course said, yes, we'd like to do that. We'd like to be able to solve that problem. And again, that's something that hasn't come to fruition at this point. The basin is there, the easement to getting through the

property would be an underground pipe has not been approved by the Palama Street residents as I know it and I haven't been directly involved in those discussions.

But we have tried to participate in that type of solution. To tell you that we will be able to solve the problem, this is a suit between the County and the plaintiff and I don't know how much more we can do at this point. We're certainly here to listen and to take suggestions, but at the same time I don't know what the answer is.

Mr. Starr: Okay, members any other questions? Are we ready to move to along to recommendations? Oh, mich, did you want to say something? Okay, thank you. Ann, we'll start with the first item.

Ms. Cua: Could I ask if it's possible that we deal with the special permit uses first? Because I think  
—

Mr. Starr: I would actually prefer that. Members is that okay? We're going to invert the two from the way they're set up on our agenda? Okay, yeah, go ahead.

Ms. Cua: Thank you very much. What I'd like you to pull out to get us through the rest of the day on this matter are the two reports you received for today's meeting which is the County Special Use Permit report and that's what we're going to go through first. I also passed out to you just for your information two sheets from Maui County Code, Chapter 19.04 which is the definition section in Maui County Code. It was two individual sheets and I highlighted the two special uses that the applicant is asking for storage, wholesale distribution and automobile services and I'll go through that in a little bit.

And then the other two documents I'd like you to pull out are the addendum report on the Project District 2 application and then we need to pull out the recommendation report from the August 12<sup>th</sup> meeting and if you don't have your copy, I made some additional copies. So if I see a show of hands of who might not have it, I will have it passed out to you.

Mr. Starr: Give us one minute here. Okay, does everyone got that now? Go ahead. Proceed.

Ms. Cua: Yeah, most of you have a green copy. The copy I made is just in white. Okay, so now we're back to the County Special Use Permit. And I'm on page 10 of the County Special Use permit report.

The proposed request for additional uses meets the intent of the subdistrict within the project district which is "the village mixed use district is intended to provide flexibility in the planning and development of a village commercial district with an integrated residential community." The proposed request also meets the criteria for granting of a County Special Use Permit pursuant to 19.78.051 and as such, the planning commission is able to permit the proposed special uses.

And I do want to go over those two sheets I gave you because I don't know if there was any confusion on what a storage wholesale distribution is and what automobile services means to the County of Maui. So in Chapter 19.04.040 which is some of the definitions in Maui County Code,

storage, wholesale and distribution is defined as “wholesale and distribution storage means activities and facilities for the storage of goods and bulk sale and distribution of products. Examples include, warehouses, freight forwarding and delivery operations, self-storage lockers, markets in which products are sold directly by their producers and construction supply businesses.”

The second special use that the applicant is requesting is for automobile services and that pursuant to Chapter 19 means, “a facility providing fueling, greasing, lubrication and cleaning services for vehicles. Additional services may include but are not limited to minor engine repair such as replacement of spark plugs, batteries and tires. Minor repair of engine parts such as fuel pumps, oil pumps and lines, belts, carburetors, brakes, mufflers and emergency wiring, radiator cleaning and flushing, towing, safety inspections and motor adjustments not involving repair of head or crankcase. Services not included are tire recapping and regrooving, body work such as straightening of frames or body parts, steam cleaning, welding, painting and storage of automobiles not in operating condition.”

So now that you’re clear on both of those uses, the Planning Department is recommending approval of the automobile services and wholesale and distribution storage uses as special uses within in the VMX CR subdistrict of the Maui Lani Project District. And if you’d like to vote on that, we could do that separate from the Project District application.

Mr. Starr: Commissioner U’u.

Mr. U’u: Motion to approve.

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Commissioner U’u, seconded by Commissioner Domingo, that motion is Mr. Yoshida?

Mr. Yoshida: To approve of the County Special Use permit request for automobile services and wholesale and distribution storage uses within the VMX CR subdistrict of the Maui Lani Project District.

Mr. Starr: Members any questions, comments? Go ahead Commissioner Mardfin.

Mr. Mardfin: We have in the testimony by Claire Apana a comment on page 3 of her thing. She said, “imagine the construction of a big box shopping center larger than Maui Market Place on Dairy Road built over the Maui Lani site where ancient burials have been desecrated by sand mining. As it now stands, it’s precious little to protect our culture iwi or cultural sites.” Do we have any – and while it’s not technically a big box store, it’s sort of the dimensions of a big box store for this warehousing. How will the developer ensure – what are they going to do? Are they going to be going down five feet or something to scan for iwi or is there some other protection that’s going to take place to make sure that we don’t build over places where there are sacred bones?

Ms. Cua: Well, if you look at – well, first of all, we have two monitoring plans that are in place. And actually this discussion is probably best with the – when we discuss the Project District Phase 2

recommendation because right now we're only talking about the adding two uses.

Mr. Mardfin: I understand that but this is a large area.

Ms. Cua: But we can go there now. So they have two monitoring reports in place and we have a letter from SHPD that says that they also have, I don't the terminology, burial preservation plans that have been approved. But they say because they feel this is a significant area they want monitoring to occur during project construction. So that is how it would be assured that as they are starting to construct and they're moving earth around that if they find anything, the law requires that they stop immediately and they report to SHPD, Burial Council, depending on what they find and SHPD comes in. So that mechanism is in place for anybody not only for this project.

Mr. Mardfin: How deep do they plan to go?

Ms. Cua: I would have to have them.

Mr. Starr: Yeah, go ahead Mich.

Mr. Hirano: As we mentioned on the August 12<sup>th</sup> meeting, most of the site is graded and when you went on the site visit you saw that there was some grading done. The additional grading that will be required is really trenching for the utilities and the road but basically trenching for the utilities. So most of that site area has been already graded.

Mr. Mardfin: But when we did the site visit we were down in the residential area, we weren't I don't think we were up in the VMX CR.

Mr. Hirano: That's right we were concentrating down below, but that area as well.

Mr. Mardfin: Has also been graded.

Mr. Hirano: Was graded, yes.

Mr. Mardfin: And down how deep was it graded?

Mr. Hirano: Steve Miller will just respond.

Mr. Miller: When we were on the site visit that was the last place we got stuck and decided not to go venturing.

Mr. Mardfin: I recall that.

Mr. Miller: But you could see from there that the area was basically level and flat and it had been graded already. The remaining grading to be done in there is all fill, it is not cut. Well, it varies, I mean, in some places we may have cut three to four feet. In other cases it might be five to seven. It's a balance. But in the process of doing it, because we were monitoring it with one archaeologist with each piece equipment that is how we discovered the burial locations that are shown on your

map. So those are already found. They're already identified and to assure that further ones would not be desecrated as mentioned in that letter, they're never desecrated, but we will have monitoring again with each piece of equipment while we're doing utility work to put in water lines and drainage within the subdivision. So to answer your question is basically it's already done.

Mr. Mardfin: You say on the map they showed the burial places, the burial ...(inaudible)... I remember where it was when we walked it.

Mr. Miller: It doesn't show on this map, but one of the requests of our Phase 2 deferral was to provide a map that showed an overlay of the burials and we did provide that and it should have been in your packet that was handed out to you. It looks just like this but there's a table and it was actually on the screen this morning.

Mr. Mardfin: Does anybody know how deep bones might have been buried if they were buried intentionally? I guess I'm trying to get a sense of whether you went deep enough to find them or whether you went so shallow that we're likely to be putting stuff over graves?

Mr. Miller: What I think it was discussed in Burial Council that the experiences that we had have thrown out a lot of mis- a lot of the original assumptions that archaeologists had because generally you expect to find them within the top five to six feet of the surface. And certainly within the sand layer before you get to hard clay. There have been some dunes that we found that because of the wind blown nature of the dunes and the way they were formed we actually found some as deep as 15 to 18 feet. So there's no rule any more as to where they will be.

Mr. Mardfin: Thank you.

Mr. Starr: Any questions or comments? I have one. Regarding these change of uses in a mixed use area. I'm supportive of making it more inclusive so that there's a possibility of jobs where people can live and work and shop in this thing. I have a little bit of concern about whether any noxious elements from, you know, kind of light manufacturing if there's any other control or if this is something we should be aware of? You know, say, you know, in the bottling there's beer brewing and brewery may smell bad or you know, noise from the automotive. Are there other mechanisms that will deal with that or is that something we should be concerned of? Because I understand that's why these more industrial type uses are left out of the ordinance as written. Here we're adding them.

Ms. Cua: Well, a couple things that comes to mind. You know, the Department of Health has a noise permit that people need to obtain depending on what they're doing. There's also air quality permits, but you have been told pretty much these uses are going to be confined within existing buildings. You know, one thing that we did mention in our analysis of the automobile service use, is that in addition to following the design guidelines they're going to also have to comply with Federal, State and County requirements pertaining to fuel storage filtration of onsite drainage, you know, things like that. Again, you know, we don't know exactly who's going to come in. I'm sure the applicant has some ideas, but you know, once they actually have construction plans for a user, a specific user coming in, you know, that individual will have to go through the Phase 3 and the building permit process and you know, through that process they're going to have to meet all

Federal, State and County requirements.

Mr. Starr: And can we be assured that the department when looking at this will make sure that you know, noxious fumes or noise or you know, runoff pollutants from automotive use will not be able to reach any of the housing elements in it. That this is something the department will ordinarily look at, look for, or is it something we need to deal with here?

Ms. Cua: I mean, we would look at. We'd obviously look at the design guidelines. We're not charged with things like noise permits or air quality but if we feel that something needed to be sent out to get comments then definitely we would. There may be additional permits that would need to be required in addition that they'd need to receive and, oh I'm sorry, what the applicant is pointing out to me that in the design guidelines under 2.1-3 it talks about CC&Rs. It says, "the CC&Rs exclude any land use which creates an unsafe, obnoxious or offensive impact upon residential, office, commercial or light industrial uses by reason of the emission of odor, dust, gas, noise, vibration or emissions, excuse me, vibration or similar irritants unless appropriate mitigative measures to control such emissions have been reviewed and approved by the Maui Lani VMX Design Review Committee." I guess that would be an additional –

Mr. Starr: Okay, that kind of satisfies me. Commissioner Hedani.

Mr. Hedani: Ann, in this particular project is the commercial spaces being sold in fee or is it being leased?

Ms. Cua: I –

Mr. Hedani: I guess my question is, who enforces the CC&Rs? Is it an association of owners or?

Ms. Cua: I believe it's an association. I know the County has nothing –

Mr. Hirano: Stacy Takaba.

Ms. Takaba: There is a combination of ground leases, build to suits and for sale product in there. But there is a subassociation for the commercial development itself that will govern all of the users within the Maui Lani Village Mixed Use Commercial and Residential area. So they'll make sure that everyone's in compliance with the CC&Rs and design guidelines and all of the rules.

Mr. Starr: Okay, Members we ready to vote on this? Okay, we have a motion on the floor, it's been moved and seconded, the motion is for approval of the additional uses. All in favor, please raise your hand. All opposed, please raise your hand.

**It was moved by Mr. U'u, seconded by Ms. Domingo, then**

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



Mr. Yoshida: The vote is seven to zero with Commissioner Guard excused. The motion passes.

Mr. Starr: Thank you Ms. Cua. Next item.

Ms. Cua: Yes, Mr. Chair. The next item is the action on the or the recommendation on the Project District Phase 2 application.

Pursuant to the Planning Department's Report and testimony presented at the public hearing on August 12<sup>th</sup> as well as the testimony presented at today's meeting, the Planning Department is recommending the following amendments to conditions and additional conditions for the Project District Phase 2 application.

So again, I'm going to be working from two documents. The document I gave you today and the August 12, 2008 document.

So as part of our standard conditions and that would be conditions no. 1 through 15, we would like to amend two conditions. Condition No. 1 we would like to amend the date for proposed start construction of project being that we normally have it start from the month that the permit has been issued and when we originally did it it was in August and now we're in December.

"That construction of the proposed project shall be initiated by December 31, 2011."

That's one amendment. And then Condition No. 3. We'd like to reflect the most current plans in this condition.

"That final construction shall be in accordance with conceptual plan as approved by the Maui Planning Commission on December 9, 2008."

Mr. Giroux: Ann, I don't want to mess you up there or anything, but you know, when we were looking up, you know, we run into SMA problems sometimes when there's plans that are presented. Would the department be okay with adding the word, "substantial accordance." Something that –

Ms. Cua: Oh, substantial accordance with –

Mr. Giroux: Because, you know, our department always, you know, when there's a little tiny change and then we have to look at this and say, wait a second, it just says in accord.

Ms. Cua: I see.

Mr. Giroux: So we want to give the department that flexibility if that's the intention.

Ms. Cua: Yes, thank you. So we would amend that to say:

"Final construction shall be in substantial accordance with the conceptual plans as approved by the Maui Planning Commission on December 9, 2008."

The remaining standard conditions, excuse me and they go till 13. There are no changes to those.

In terms of project specific conditions, I'm not going to go through all of them. I just want to highlight. I've broken it up into categories. So conditions 14 and 15 are just general conditions. Condition 16 to 21 are dealing with archaeological issues. I would like to add three additional conditions dealing with archaeological issues and those come from the Cultural Resources Commission and on the addendum report they're listed as 29, 30 and 31 and I would like to put those under the section if you agree with those as 22, 23 and 24 under archaeological and those read,

22. "That a written plan addressing the perpetual preservation and respect of archaeological sites be developed and submitted to the community association responsible to maintain these sites."
23. "That any materials associated with archeological investigations uncovered as part of the project construction be returned to the land."
24. "That the community association's rules governing this project identify the obligations and penalties pursuant to state law associated with noncompliance with burial treatment plans."

The water conservation condition would remain the same. Then we have conditions on fauna. And then condition on design guidelines which is on page 6 of the August 12<sup>th</sup> recommendation, I would like to amend that condition and it would now read,

"That full compliance with the final design guidelines dated July 16, 2008, and amended site plan as approved by the Maui Urban Design Review Board on November 3, 2008, shall be rendered. If substantive changes are proposed to the design guidelines as determined by the Planning Department, the guidelines shall be submitted to the Urban Design Review Board for review and approval."

And then the condition on affordable housing, education. Oh I know what, I'm sorry. I'd like to go back under the design guidelines. In keeping with having all the Urban Design Guideline conditions together I would like to add the two conditions that are on your addendum report as 32 and 33. I would like to add that under the section of Design Guidelines. They came directly from the Urban Design Review Board and they read,

32. "The design elevations based on the amended site plan should include more integration between the large warehouse building and the smaller retail spaces."
33. "That assembly type uses are prohibited in the 300-foot landfilled residential buffer zone in the VMX R residential area."

And then we have conditions with regard to traffic and roadways and the one final condition that I would like to add which is reflected in your addendum report as Condition No. 34, is

34. "That as represented by the applicant there shall be no vehicular entry exit gates within the

VMX CR and VMX R subdistricts. Pedestrian access gates from the VMX R to the regional park are permitted.”

And I want to explain that just a little bit. At your August 12<sup>th</sup> meeting, someone from the commission I believe asked that and you asked about gates and you got that response from the applicant and we just thought that to basically memorialize what they’ve indicated and represented that we would include that as a condition.

Now based on what we’ve heard today, comments from the commission we have two other conditions, Condition 35 and 36 that we offer up for consideration. You might want to change language. You need to decide if you want it at all. So 35 would read,

35. “That no big box stores over 70,000 square feet shall be permitted.

And Condition 36,

36. “That the applicant work with the adjacent property owners and applicable governmental agencies to the extent practical to study and mitigate any potential threats of possible breaching of the Waiale Reservoir.”

Mr. Starr: Okay, members. Comments, questions, possible motion? Commissioner Mardfin.

Mr. Mardfin: I thought there was – you left out a condition that you were going to get together with them over an –

Ms. Cua: I have it, sorry.

Mr. Mardfin: Go ahead.

Ms. Cua: I didn’t turn my page. So I do have a proposed Condition 37, we can talk about it a little bit.

37. “That an area be provided within the project that explains the history of the project area.”

Mr. Starr: And on it maybe and honors.

Mr. Mardfin: History and culture and honors.

Mr. Starr: Those that worked walked before us on this land or something like that. If someone wants to state it better. Okay, want to read it Ann.

Ms. Cua: I’m going to take your wording. “That an area be provided within the project that tells the history and culture of the project area,” oh, excuse me, “that explains the history and culture of the project area and honors those that walked before us on this land.”

Mr. Starr: I think memorializes is a better word. Memorializes instead of honors. Anyone has a

better idea? Okay, Commissioner Mardfin.

Mr. Mardfin: Ann, just, I mean, as long as it's in there, it's in there. I don't know if you do this after the fact, but after the fact that one should be probably, the last one you talked should probably be under archaeological maybe, but the ordering of these things is sort of immaterial from my point of view.

Ms. Cua: Yeah, if you would allow me, you know, I would like to be able to move the conditions. So I'm saying it's Condition 37, but you know, I would like to move it so that it's clear for everybody, for the applicants, somebody reading it five years from now that these were all the conditions regarding archaeology and culture and this is traffic.

Mr. Starr: I think you have our permission to fine tune this stuff.

Ms. Cua: The numbering.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Ann, is there a way to increase the number of bus stops as a condition?

Ms. Cua: You could. I know you brought – I know the applicant has had discussions with the County's Department of Transportation and did Don Medeiros address you on this project?

Mr. Starr: Yeah, no.

Ms. Cua: I know he's met with them and as a result of meeting with them, my understanding is that's why the bus stops were, the amount of bus stops were placed where they were placed. I can't verify that. Maybe you want to ask the applicant, but that was my understanding.

Mr. Starr: Commissioner Hedani, why don't you, maybe within an eighth of a mile of any residential areas. Why don't you go for it.

Mr. Hedani: Well, what I'm suggesting is that you know, we heard from the applicant that from a convenience standpoint, a convenient walking distance of 10 minutes I think from most residential areas would probably indicate that the VMX area should probably have three to four bus stops and that they set aside areas for those bus stops. They can implement the bus stops. It's up to them whether they want to implement the bus stop or not but set it aside so that in the future bus stops can be created in that area and if you build it maybe that would encourage the County's Department of Transportation to utilize it.

Ms. Cua: To stop there.

Mr. Starr: Kind of the cargo cult –

Mr. Cua: So you're not saying – the only question I have in terms of I'm thinking of when this project tries to get compliance reports and we need to make sure they can meet their condition, we need

to make sure we can put a condition on them that they can comply with –

Mr. Starr: How about like a condition that best efforts.

Mr. Hedani: How about one in the light shaded area that would handle the residential.

Ms. Cua: So it doesn't mean that the county bus has to stop there? You know what I'm saying? Because you might be putting a condition –

Mr. Hedani: Can we force the county bus to stop there?

Ms. Cua: That's my question. I don't – I talked a little bit to Don Medeiros and I know he had discussions with them and based on discussions as of today, that's why those two bus stops were put there. I don't think the planning commission can mandate the county bus to stop at various bus stops that you decide you might want to put in a project. I don't know. That's a question for your attorney.

Mr. Giroux: You could craft a condition that says, "that the developer will make a good faith effort to increase the amount of bus stops in his project." I think that's the best you can do with that.

Mr. Hedani: Capital language.

Mr. U'u: Yes.

Mr. Hedani: Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Just a follow up question regarding bus stops, why is that one bus stop not in the project district? Why would that be included in this project?

Mr. Hirano: As Ann had mentioned, the applicant met with the Department of Transportation, the County Department of Transportation and those were the designated bus stops that they identified on the site plan.

Mr. Hiranaga: It assumes the bus will just be going down the regional Kuhikahi Drive.

Mr. Hirano: Yes, and there is single family on that white area that's between the VMX R district and the Maui Lani Parkway and Kuhikahi Drive road segment.

Mr. Hiranaga: So maybe you could say something like, "there will be adequate bus stops along Kuhikahi Drive to service the project."

Mr. Starr: Ms. Cua.

Ms. Cua: I kind of like that generalized language that was offered, "that the applicant shall make

a good faith effort to increase the number of bus stops within the project area.” You know, it’s out there saying that you want them to consider that. They’re going to need to go back and talk with the County Department of Transportation to see if they would support additional bus stops within the area and when they come in, when the applicant comes in and gives the Planning Department their compliance reports they’re going to have to show us how they’ve tried to meet this condition and then that doesn’t lock the Department of Transportation into a bus stop in an area where they might not want.

Mr. Starr: Members we ready for – Commissioner Hedani.

Mr. Hedani: I think that’s good language and I think keeping it flexible would be good so that they can analyze it from their perspective. I think in other communities, the idea of having a community that you can live in without a car increases the value with the real estate by six times in some cases because people with a lot of money that no longer can drive a car will vote to live in this particular community. So I think it’s important from that standpoint that you make it as flexible and as convenient as possible for them to do that.

Mr. Starr: Okay, members anyone would like to make a motion or any other comments?  
Commissioner U’u.

Mr. U’u: Motion to approve with amendments.

Ms. Domingo: Second.

Mr. Hedani: Second.

Mr. Starr: Okay, we have a motion by Commissioner U’u, seconded by Commissioner Domingo, that motion states.

Mr. Yoshida: To approve the Phase 2 Project District subject to the 38 conditions as enumerated by the staff planner.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I would prefer if those three last conditions were handled separately because I have some issues with a couple of those. So if it’s handled in totality I’m going to be voting against the motion.

Mr. Starr: To the maker and the second would you be interested in amending the motion to separate those out or do you want to keep it as it stands? Commissioner U’u.

Mr. U’u: I would vote on it to keep it as stands and if it doesn’t go we vote on it again.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, one way to do it would be for Mr. Hiranaga to vote to amend by deletion.

Mr. Starr: Well, he can offer an amendment if he wishes.

Mr. Hiranaga: Yeah, Okay, I'll offer an amendment to handle the big box issue and the educational resource center issue separately.

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

Mr. Hedani: Second.

Mr. Starr: Okay, we have an amendment by Commissioner Hiranaga, seconded by Commissioner Hedani, that amendment is to?

Mr. Yoshida: To consider the conditions relating to the big box stores and the condition relating to the educational resource center separately.

Mr. Starr: Okay, we ready to vote on that amendment?

Mr. Hiranaga: Actually do I have to state some type of action because like to deny or to delete?

Mr. Starr: No.

Mr. Hiranaga: We'll just handle it as a separate matter?

Mr. Giroux: It's a motion to bifurcate.

Mr. Starr: Okay, all in favor please raise your hand. All opposed? Did you get that? Want to vote again?

Mr. Yoshida: Yeah.

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

**It was moved by Mr. Hiranaga, seconded by Mr. Hedani, and**

**The Motion to Handle the Big Box Issue and the Educational Resource Center Issue Separately Failed.**

**(Assenting - K. Hiranaga, W. Hedani, W. Iaconetti)**

**(Dissenting - B. U'u, W. Mardfin, D. Domingo, J. Starr)**

**(Excused - J. Guard)**

Mr. Yoshida: The vote was three to four. So the motion fails.

Mr. U'u: I'd like to offer, I'll revoke my motion if possible and try to work with our planner commissioners. I will be withdrawing my motion in hopes to work it out with the commissioners.

Mr. Hiranaga: ...(inaudible)...

Mr. Starr: Yeah, I think it's really too late for you to do that.

Mr. U'u: Okay, okay.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Maybe Commissioner Hiranaga can just identify his concerns with those two conditions.

Mr. Starr: Yeah, I'm happy for you to do that.

Mr. Hiranaga: Yeah, you know, I think it's micro managing when you start saying no big boxes and having to require them to establish some type of educational resource center somewhere, somehow, someday. I don't think this is the appropriate forum for it. That's why I'm against those two issues. So I'll be voting against the motion because of that.

Mr. Mardfin: Well, I don't agree with Commissioner Hiranaga on the issue. I would suggest he can – the previous motion that just failed was to bifurcate. If he's opposed to those two things he could ask that they be deleted.

Mr. Starr: Yeah, that would be suitable action. But if you don't want to do that then we can just vote the whole thing up or down.

Mr. Hiranaga: I'll propose an amendment to delete Condition No. –

Ms. Cua: The Condition 35 is the big box stores over 75,000 and Condition 37 is the providing an area within the project that talks about or that explains the history and culture so on and so forth.

Mr. Starr: Is there a second to this?

Mr. Hiranaga: I wanted to complete my motion.

Mr. Starr: Okay.

Mr. Hiranaga: Motion to delete Items 35 relative to the big box requirement and Item 37 relative to the educational resource center.

Mr. Hedani: Second.

Mr. Starr: So we have an amendment by Commissioner Hiranaga, seconded by Commissioner Hedani. And that amendment Mr. Yoshida please read.

Mr. Yoshida: To delete proposed Condition No.35 regarding prohibiting the big box store over 70,000 square feet and deleting Condition 37 regarding the provision of a educational resource center.

Mr. Starr: Okay, Dr. Iaconetti.



Mr. Iaconetti: I wonder if the two amendments can be separated because I would vote for one of them but I wouldn't be too happy with the other one.

Mr. Hiranaga: I have no objection.

Mr. Starr: The seconder of the amendment would have to be willing. Okay, so you have taken back your amendment. Now there is no amendment on the floor so if you wish to offer an amendment for one of them then now would be the time to do it.

Mr. Hiranaga: I offer an amendment to delete No. 35 proposed Condition 35 relative no big boxes.

Mr. Hedani: Second.

Mr. Starr: Okay, so there's a new amendment on the floor. That amendment is?

Mr. Yoshida: To delete Condition No. 35, proposed Condition 35 regarding the big box stores.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: I'm just curious. I want to make sure I understand the motion. The amendment on the floor – not the amendment to delete, No. 35, did that specify a size?

Ms. Cua: It read, "that no big box stores over 70,000 square feet shall be permitted."

Mr. Mardfin: And what is the square footage of the distribution center?

Ms. Cua: Well, that wouldn't be a big box store that's a distribution center and that is like 80,000 or 90,000 square feet.

Mr. Mardfin: 90,000?

Mr. Starr: Okay, so we have an amendment on the floor that's been seconded and any other comments? Commissioner Hedani.

Mr. Hedani: Ann, does that include the store front area?

Ms. Cua: No. Oh, you mean the office space?

Mr. Hedani: Right.

Ms. Cua: I guess so. If that office part of that larger space then yes, I would say.

Mr. Hedani: Well, I'm just asking a technical question.

Ms. Cua: It's a good question.

Mr. Hedani: If the 90,000 square feet includes the front or it doesn't.

Ms. Cua: I would say it includes the office that supports that distribution center, but it would not include all the other stores that would surround it that might be not part of that business.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: I agree with Commissioner Hiranaga, I think we're micro managing and I don't think that's our job. So I intend to vote in favor of.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I agree with both Kent and the Doc on this. I think what you're looking at is what you're looking at and if that square is filled with a tenant and the attached offices it restricts the total size of the project itself.

Mr. Starr: Any other comments? I just wish to offer a comment. I cannot support this project in its entirety if there is a likelihood of big box stores and we did have a willingness on the part of the applicant to limit them. Anyway lets vote on the amendment. All in favor of the amendment please raise your hand. All opposed, please raise you hand.

**It was moved by Mr. Hiranaga, seconded by Mr. Hedani, and**

**The Motion to Delete Condition No. 35 Relating to Big Box Stores Failed.**

**(Assenting - K. Hiranaga, W. Hedani, W. Iaconetti)**

**(Dissenting - B. U'u, W. Mardfin, D. Domingo, J. Starr)**

**(Excused - J. Guard)**

Mr. Yoshida: Three to four. Motion does not pass.

Mr. Hiranaga: I'd like to offer another amendment to delete Condition No. 37 as it relates to the educational resource center.

Mr. Starr: Do we have a second?

Mr. Hedani: Second.

Mr. U'u: Second.

Mr. Starr: Moved by Commissioner Hiranaga, I saw Hedani arm go up first, seconded by Commissioner Hedani. That amendment is to?

Mr. Yoshida: Delete proposed Condition No. 37 regarding the provision of a educational resource center.

Mr. Starr: Okay, are we ready to vote? Commissioner Mardfin.

Mr. Mardfin: It doesn't make much difference one way here or there, but if this one passes then I'll vote against the entire project.

Mr. Starr: Okay. Commissioner U'u.

Mr. U'u: The reason I support the amendment is I don't feel maybe this not the right place for something like this. I wouldn't want to propose something and years down the line, you know, somebody tells me this is not the appropriate place to have an educational center and I believe in Mr. Kuloloio who has the background and the history and the knowledge that was shared with us today.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Yeah, the reason I offered the amendment is because again, I think it's micro managing a project and also you have two very different and passionate opinions about what happened there so who's going to decide what actually happened there. So are you going to show two scenarios. I mean, you're creating this burden for the developer that really has no control over. So that's my motion.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I agree with the commissioner that we have –we've had expression of two different versions of history, but most museums and cultural centers can deal with that. They can appropriately figure out how to deal with these kinds of issues and I think it's terribly important that we recognize the people that went before and – I didn't ask a condition of a memorial park as was suggested by one of our testifiers but I do think that this is an appropriate way to recognize – the history and culture of this area. I think too often we lose touch with our history because we put a modern structure on things and it seems to me this is a small, very small gesture toward recognizing what came before. To me it's very important.

Mr. Starr: Okay, ready to vote on the amendment which will remove that condition regarding recognition of the Hawaiian nature. Commissioner Hedani.

Mr. Hedani: The concern that I have on this particular condition is that I think it's difficult to do something well that reflects, that properly reflects your respect and understanding of the culture of an area and to force a developer into a situation where they don't know what the history was how to properly in a dignified manner represent that and to present it in a way that's meaningful puts them in a situation where I wouldn't want to be in that situation to try to do something.

Mr. Starr: Lets deal with the amendment. All in favor of the amendment to remove that condition, please raise your hand. All opposed please raise your hand.

**It was moved by Mr. Hiranaga, seconded by Mr. Hedani, and**

**The Motion to Delete Proposed Condition No. 37 as it Relates to the Educational Resource Center Failed.**

**(Assenting - K. Hiranaga, W. Hedani, B. U'u, D. Domingo)**  
**(Dissenting - W. Mardfin, W. Iaconetti, J. Starr)**  
**(Excused - J. Guard)**

Mr. Yoshida: The vote is four to three, motion does not pass.

Mr. Starr: Okay, so once again we have the main motion which is for approval with 38 conditions.

Ms. Cua: That's correct.

Mr. Starr: Are we ready to vote on the main motion? All in favor of the main motion with the 38 conditions, Doc did you have a comment?

Mr. Iaconetti: No.

Mr. Starr: Please raise your hand. All opposed please raise your hand.

**It was moved by Mr. U'u, seconded by Ms. Domingo, then**

**VOTED: To Approve the Phase II Project District Approval with the 38 Conditions as Discussed.**  
**(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Iaconetti, W. Hedani, J. Starr)**  
**(Excused - J. Guard)**

Mr. Yoshida: The vote is seven to zero with Commissioner Guard excused. The motion passes.

Mr. Starr: Congratulations to the applicant and we hope that the nature of the village type and village style, smart growth, well-planned community will be adhered to and you'll build something really wonderful.

Mr. Hirano: Thank you very much Commissioners.

Mr. Starr: Okay, we'll take a recess till 2:20 p.m. to set up for the next item.

A recess was called at 2:16 p.m., and the meeting was reconvened at 2:23 p.m.

Mr. U'u was excused at 2:16 p.m. for the remainder of the meeting.

Mr. Starr: Maui Planning Commission of December 9<sup>th</sup> is back in session. We're ready for our next item our public hearing which will be introduced by Clayton Yoshida.

Mr. Yoshida: Moving right along, we're on Item D-2 which is a request from Maui Beach Place, LLC for a Special Management Area Use Permit for the Maui Beach Place condominium project, a three unit residential condominium and associated site landscaping, parking and utilities at 2192 Illili Place in Kihei. Jim Buika is the staff planner. We have produced our fairly voluminous report and

we have about five more items to deal with. So if you could summarize the high points.

#### D. PUBLIC HEARINGS

##### 2. MAUI BEACH PLACE, LLC requesting a Special Management Area Use Permit for the Maui Beach Place Condominium Project, a 3-unit residential condominium and associated site landscaping, parking, and utilities at 2192 Iliili Place, TMK: 3-9-005: 033, Kihei, Island of Maui. (SM1 2007/0017) (J. Buika)

Mr. Jim Buika: Thank you good afternoon Chairman, Commissioners, Corporation Counsel and Planning Program Administrator. Thank you for your expertise and continued service to the people of Maui County. My name is Jim Buika, planner with the Planning Department. This afternoon I will, along with the applicant's representative provide you with an overview of the property, a project description, time for questions and the Planning Department's recommendation for approval of the project.

Before I begin I would like to alert you on your desk I handed out two replacement exhibits, Exhibit 26 and Exhibit 29. Exhibit 26 replaces the Planning Department correspondence with the applicant, added several missing pages that weren't copies and then adds two additional letters from the Planning Department to the applicant. The letters that were added are the June 12, 2008 shoreline setback determination letter that inadvertently did not make it into the report, and then just a recent letter sent from the department determining that the annual erosion hazard rate for the parcel along the shoreline is zero. So these two – neither of these required any response from the applicant. So that completes the correspondence with the Planning Department.

The purpose of the application is to approve the applicant's request for a special management area use permit in order a construct a three-unit residential condominium and associated site landscaping, parking and utilities. The owners are the Barton family who has owned the property since 1950. John Barton and Sandra Barton are here present today. The property is a shoreline property and I will ask the owner's representatives, Chris Hart and Jason Medema from Chris Hart and Partners to provide a short presentation to orient you to the existing property and the proposed projects. You have not seen this project before as there has not been a required environmental assessment. So this is the first time you've seen it. Before doing this, I'd like just to point out a few things about the project regarding the planning aspects and environmental assessment perspective.

First, the land use is consistent for the proposed project. It is essentially an infill project similar to and consistent with the surrounding properties and second. all issues regarding the subject property and project and potential environmental affects, impacts, have been resolved to the satisfaction of the Planning Department. There are no flood hazards on the property and the department has not received any written or oral testimony for or against the project to date. This concludes my opening remarks, and with the Chairman's permission I'd like to ask the applicant's consultant Chris Hart and Partners to provide you with a short overview presentation of this.

Mr. Starr: How long will this short presentation be?

Mr. Buika: Ten minutes maximum.

Mr. Starr: Can you make it shorter than 10 minutes?

Mr. Buika: Sure.

Mr. Starr: Okay, you'll tell us in nine minutes?

Mr. Buika: We'll be done in eight minutes.

Mr. Starr: Good eight minutes.

Mr. Hart: Unfortunately we're having problems with our power point. My name is Chris Hart of Chris Hart and Partners and as Jim indicated to you we have John and Sandra Barton here who are the owners of the property. They have actually owned the property, the John's family owned it back in the 1950's. We have Adam Hillhouse who is the architect. Stacy Otomo who is the civil engineer. Bill Mitchell of our office who is the landscape architect and Jason Medema is the planner and my name again is Chris Hart.

This is a Jim indicated to you an infill property. Ilili Street is an older street in Kihei just south of Kalama Park and in this particular case, it's just north of the Charlie Young Bridge beach access and park. So the proposal is basically because the property's have been zoned A-1 Apartment, to essentially build the property to its maximum density. In this case, it's three units.

I think that guys we should try to abandon the power point. Okay.

Mr. Hiranaga: Mr. Chair?

Mr. Starr: Yeah, Commissioner Hiranaga.

Mr. Hiranaga: The only comment I have about the power point is some of the photographs are not the greatest detail so if you have better photos on your power point you may want to continue trying to resurrect that.

Mr. Hart: All right. Well we do definitely have a good presentation for you. This is a site plan, this is our landscape planting site plan and this would be Ilili Street at the top of the drawing and then the Charlie Young beach access is located immediately to the south and along the north side of or the northerly direction are basically lots that have been redeveloped over time to small apartment projects. Again, the area is community planned multi-family and zoned A-1 Apartment and at the end of the street, essentially – there's a transition into Kalama Park so this is the area. Kihei Road, South Kihei Road is above mauka and there is parking for Charlie Young Beach along South Kihei Road. There's separate parking lot. Essentially the area on the makai side and basically the beach park actually have been, actually a State beach reserve goes all the way north to Kalama Park. This is a very steep bank that comes down to actually the beach and the ocean.

I'd like to ask Bill Mitchell to come and just basically talk about the development of the site and if we can resurrect the power point we'll show you some additional information.

Mr. Bill Mitchell: The good old days, photos. Afternoon Mr. Chair. My name is Bill Mitchell, the project landscape architect. I'll make this brief. I think these exhibits are all in your package. They are photo simulations of the proposed three unit condominium project on this particular site. I'll hold this up and point to these. This is a representation looking from Ilili Drive makai so that would be the view from the street. As you can see the units there with landscaping in front of it. The existing beach park parking is to the, would be to your left of that photo. To the right is existing development and across the street is a vacant lot. The south side or the makai elevation looking mauka would be this one, be standing on the beach looking back towards the property itself. This unit photo simulated again into the existing site. Interestingly enough with the State beach reserve in front it there's a lot of existing rock outcropping so we're just proposing to maintain those rock outcroppings and then add to them as part of our site plan to keep that look essentially intact from the beach reserve itself.

The other photo simulations. This is looking, this shot is looking up from the beach reserve standing on the beach looking back to the project. A number of large existing trees there both to the south and to the north of the project. Our landscape just essentially amplifies existing coconut trees and ground cover because we don't have a lot of area to work with around the building itself.

The other elevation, the east elevation there, looking back from – that would also be looking back from Ilili Road. You can see the landscape placed in that one. And then in your packet I think there are a couple of other photo simulations that illustrate the architecture.

I would say that we have been to Urban Design Review Board. They've looked at the project and they did approve the project as presented. We've made a couple of adjustments to landscape and screening but essentially the architecture was approved as you see it in your existing packet. Thank you.

Mr. Starr: Chris, you have about five minutes left, but I can see your screen is up.

Mr. Chris Hart: I would just like to show you a little bit of the character of Ilili Street I think.

Mr. Jason Medema: Mr. Chairman, Members of the Commission, apologies for the technical difficulties. I'll just take you quickly through some representative photos of the site. This just as a quick view of the aerial here. This is the project site. I wanted to show you this because this is Walaka Street which is approximately a 100-foot walk from the site. That's the nearest bus stop. This is public parking for Charlie Young's Beach. This is Charlie Young's Beach. This is Cove Park. So for a bit of a better aerial representation.

This is the existing use on the site. This is a single family residence consisting of two structures connected with a breezeway. The southern structure was built in 1950, the northern in 1964. This will be demolished prior to construction of the proposed project. Here's another view facing makai to the northwest.

This is looking up from the beach reserve fronting the property. So the home is set up about is it 20 feet approximately.

Here's a representative neighboring property. The neighborhood surrounding us is characterized by fairly massive single family and multi-family development. This is a single family home, three properties to the north.

This is facing north northeast along Iliili Road. Facing south at the terminus of Iliili Road and this is the beach access to Charlie Young's Beach.

Photographic context, and I think you've seen – I can go through some of these photos sims on here if you care to see them otherwise I think you've seen and heard an explanation of most of what's up here. So Mr. Chair if would like I'll turn it over to you for questions.

Mr. Starr: Yeah, if any of the members want to see any in detail. Commissioner Hedani.

Mr. Hedani: This particular area is heavily utilized by fishermen for right at that apex of the corner of the lot for access to the point. The rocky outcrop being that you're talking about and the renditions that you're showing kind of bother me because they look like they're encroaching into the State beach reserve. Is there some map that you have that shows where the State beach reserve is in relation to your aerial photograph?

Mr. Medema: It's shown on the site plan. This is the property boundary. This is actually where the State land begins at the property boundary, right here.

Mr. Hedani: I guess my question is, is there – this entire has always bothered me in that you don't have lateral access along the shoreline between Charlie Young Beach access and Cove Park. Is there enough room for lateral access, pedestrian access along the shorefront in that area?

Mr. Medema: John, you want to show the area? I mean, there certainly is in front of the subject property. The property use this right now coming from that stub at the end of Kaiiau Place. Now further down –

Mr. Hedani: Okay, if you go back to that photograph, I just couldn't figure out where the property line is at that point between the State beach reserve and the private property.

Mr. Medema: If you can see, right here. It's right there. So there's a hedge right now along here. You can barely see it from –

Mr. Hedani: There's a fence that's there now, right?

Mr. Medema: I could call John Barton up here. He's the property owner and developer.

Mr. Starr: Yeah, please Mr. Barton.

Mr. John Barton: Thank you Mr. Chairman. The situation down there is that, what formerly was a parking spur at the end of Kaiiau Place facing makai toward the ocean is paved and at the end of that is a low rock wall and there is good pedestrian access from there south along Charlie Young Beach, Kamaole 1 Beach and to the north there is also good pedestrian access but there is a rather



narrow point between the corner, the southwest corner of my lot and a lot of ironwood and rock formations down there. It's not so narrow that there's no pedestrian access and it's heavily used as we're well aware out there. But it is used and you can walk on state land from Cove Park to the ocean frontage in front of my place and then you can continue through the county park or down the stairs at the beach access to the beach from there and continue south. So there is unobstructive access there and we plan to maintain that. In fact we plan to not build out to the very southwest lot corner in such a way that it would form any kind of pinch point or, you know, spot that would cause people to feel uncomfortable passing through there. So that – but there is access through there now. It could probably be improved by cutting some of the brush that's out there actually which is invasive ironwoods.

Mr. Starr: Commissioner Hedani? Members further questions? Commissioner Hiranaga.

Mr. Hiranaga: Reading through the staff report there's quite a bit of discussion regarding a existing concrete walkway and stairs. And I was just wondering if you have better photos of that?

Mr. Buika: And also in the handout that I gave you Exhibit 29, if you would turn to the back page, these stairs are, there is a picture of it there in the Exhibit 29, Exhibit 26. It's Exhibit 29. It's not in the staff report but in the handout. Actually it's in the staff report, the very last one, the very last exhibit.

Mr. Hiranaga: Right, I was asking for a better photo. I did see that photo.

Mr. Buika: Oh, okay. Concrete doesn't photograph very well, I guess.

Mr. Hiranaga: Well, you reproduced it in black and white. I was just wondering –

Mr. Buika: That will be removed just to answer your question as part of the demolition plan agreement with the Department of Land and Natural Resources, that is an encroachment onto State lands and it will be removed prior to construction as part of the demolition plan.

Mr. Hiranaga: I understand that. I read the report.

Mr. Buika: Okay.

Mr. Hiranaga: But those walls on the side, are those manmade or is that a natural change in elevation from the walkway. From the photo it looks like it's covered with concrete.

Mr. Buika: The owner can answer that question.

Mr. Barton: The walkway that you're referring to in this photograph, unfortunately it is a black and white print and this was constructed by a neighbor on the north side in the 1950's along with a mortared lava rock wall that surrounds an inlet, an ocean inlet or beach inlet just to the north of us and this walkway is at the southern end of that seawall if you will that the neighbor built in front of 2182 Iliili Road and it goes down and no longer actually accesses the beach and the rocks below because the stairs at the bottom have fallen into disrepair and so it's actually kind of a dangerous

feature there and it's certainly unslightly and something that needs to be removed. The DLNR originally in 2006, when we applied for a shoreline certification rejected it based on this feature and also on a concrete slab that straddles the seaward extension of our property lines that's been there since at least 1930's and it's shown the 1939 Territory of Hawaii Survey. That slab was the foundation for an antenna tower or a watch tower of some type that we've not been able to determine but that exists also. The DLNR subsequently decided that that slab was not an encroachment because it preexisted the granting of the Kamaole Beach lots, however, this walkway that you see in this photograph was considered an encroachment so we put in place an agreement with the OCCL and DLNR backed up by a letter of credit with the Bank of Hawaii that we will remove this by a certain date and we have subsequently extended that agreement to December of 2010 so that we can the convenience and with their agreement, have the convenience of removing this at the same time we do demolition on the property thereby not damaging landscaping and you know, other things and inconveniencing the public at different time.

Mr. Hiranaga: Is that it on the left side of the photo?

Mr. Barton: No, it's not. The walkway that we're referring to would be farther to the left and almost on the lot line. Jason, do you have the shoreline survey photo? The one that shows the shoreline setback because I believe it's in there. If you can bring that up, the one I gave you yesterday.

I'm not good with these light pens so I'm just going to walk over here. This is all makai lot line, this is the surveyed and certified shoreline and right at the – this is the lot line between us and Lot 39, the neighbor with Ilili Road being on the right side of the view here. So the walkway we're talking about is this structure right here where the stairs is it shows in the survey here falling away from the bottom of the paving that you see in that photograph in the handout and this also is the slab that I was referring to as no longer considered an encroachment, maybe a historical object. Our intention is to offer to DLNR to remove it and if State Historic Preservation doesn't disagree that it – feels that it has any historic value then we would remove that also as a contribution in the course of doing the demolition for this project. Conversely if they decide to or that it has any value then we will leave it there, but this part will be removed and the neighbor, of course, would be responsible, occasion of any development he does for removing anything north of here.

Mr. Starr: Commissioner Hedani please.

Mr. Hedani: Can you point out where your property line is on that map?

Mr. Barton: I'm sorry, your question sir? Property line, the makai side? This one right here and this is the south, the Ilili Road and this is the property line dividing us from the neighbor on the north.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I saw some discussion regarding the parking area and landscaping, you're saying it's a problem for loitering and wasn't quite sure what you're proposing to do with that paved area south of your property.

Mr. Bill Mitchell: My name is Bill Mitchell, the project landscape architect. This photo simulation,

what you see here is and you'll see it in your site plan as well, there's an existing rock wall within that park access area. That's that existing rock wall. What we've proposed in building a new privacy stone wall on the property boundary is to screen in front of that existing or behind that existing rock wall in front of our new screen wall as a both as an aesthetic barrier as well as to provide both park users and the owners, the Bartons a little more privacy between the two uses which they essentially don't have now. That was the proposed treatment.

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

Mr. Hedani: Question for the landscape architect. The rock wall, would it wrap around the makai side?

Mr. Mitchell: No. No, it does not wrap around the makai side. Stop short, if you want to flip to the site plan real quick. Wraps around mauka side, but not makai. The rock wall stops right here. It stops short of the actual property line itself. There was some discussion, the Urban Design Review Board how that wall would be treated and we're actually stepping that wall down as it approaches or as it runs makai.

Mr. Hedani: Okay, in that exhibit that you have that light shaded area –

Mr. Mitchell: Out here?

Mr. Hedani: No, on the makai side.

Mr. Mitchell: Okay, right here.

Mr. Hedani: Does that represent vegetation?

Mr. Mitchell: There is some existing vegetation through the boulders and the rock outcroppings that are there.

Mr. Hedani: That's not a hedge or landscaping that you're incorporating into the plan?

Mr. Mitchell: No, we're not doing any work within the State beach reserve, no.

Mr. Hedani: How is the makai boundary line being demarcated?

Mr. Mitchell: What we're going to propose to do, I don't know if Jason you can zoom in, we are going to replicate some more of those boulder rock outcroppings that are there to give us a visual barrier if you will between the State beach reserve and this property. And because there's a grade change as we step up, we're proposing to place rocks and landscaping, boulders and landscaping along that makai edge to delineate that edge if you will. And it works with the elevation change and that's what you see right here.

Mr. Hedani: Okay, my only comment is that when you look at the area now, maybe it's because of the way the neighbors have treated the state property but it's landscaped in such a way that it looks

like you're entering onto private property and there's no clear demarcation of what is State land and what is private property so most people won't go that way.

Mr. Mitchell: Right, right. And obviously we don't want to put a fence a boundary so we're going primarily delineate with landscaping. So our new hedge and landscaping through our rocks will not be inviting to enter into but it won't be a visual barrier. It will look like what the rest of the beach frontage looks like essentially.

Mr. Hedani: Yeah, from my perspective it would be – I always have a problem with that picture because it makes it vague where the boundary line is a straight line.

Mr. Mitchell: Right and you don't perceive that – on site you would not perceive that straight line because if you go back to the rock outcroppings they're so irregular the intent is to make it look irregular like the existing condition looks. That one right there. So what we'll do up here is to replicate what's in here but with more vegetation through it to give us a barrier but not to look so different that we're creating a wall if you will.

Mr. Hedani: Okay, but your boulders would all be on private property?

Mr. Mitchell: That is correct. Absolutely.

Mr. Hedani: I would almost prefer that the boundary line be clearly delineated so people know what's private property and what's not.

Mr. Mitchell: It's a very good comment. That's a very good point.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: This won't be for you. I think it's for our planner. OHA in Exhibit 17 addressed three issues, one was they said there was no cultural impact assessment and that's in a letter that they wrote on February 12, 2008. And yet, I found actually what I considered a very good cultural impact statement dated I think it was I don't have the date, maybe it was July or something like that of 2008, so it was after OHA's first letter.

Mr. Buika: The cultural impact assessment was completed in response to the OHA letter, yes.

Mr. Mardfin: Was that cultural impact assessment sent to OHA after it was completed?

Mr. Buika: Yes it was.

Mr. Mardfin: What was their response?

Mr. Buika: I'll have Chris Hart and Partners, Jason, address that.

Mr. Mardfin: There's nothing in our document about it that I could find.

Mr. Buika: No, there isn't, but there is a email.

Mr. Jason Medema: Thank you Jim. Commissioner Mardfin, the consultant Jill Ingledow had a lot of phone calls, a number of phone calls and emails back and forth with OHA upon transmitting this cultural impact assessment to them and they accepted it as legitimate, reasonable, due diligence.

Mr. Mardfin: So they've essentially retracted their objection on that issue?

Mr. Medema: Yes.

Mr. Mardfin: By the way, I kind of like the cultural impact assessment unlike many that don't really find a cultural practitioner, they found a few and I found that very refreshing. I do want to continue however.

Mr. Starr: Try to step it up though Ward.

Mr. Mardfin: Okay. Issue two, public land trust. OHA was contending basically that this might, land title might be a little unclear and that this might be part of ceded lands and therefore part of OHA's mandate. Did they say, did they change their position on that or is that still their position that land titles still need to be clarified?

Mr. Medema: In our response to that letter, we presented a title search of the land. This land was sold to the Barton family in 1950 by its prior owner, homestead of the land I gather and a search of ... (inaudible)... I'm sorry if I'm murdering the pronunciation, I think it's Waihona Aina data base which is the data base of land claims. I did not uncover any claims on the land or in the area. There wasn't much that we felt we could pursue beyond that to substantiate it. There was a response from them, they did not have a counter to our response, thus we assumed that it was adequate.

Mr. Mardfin: Okay, so they're more or less, your interpretation of their position is they're more or less satisfied with the title search?

Mr. Medema: That is our interpretation, yes.

Mr. Mardfin: Their third issue was, the cumulative impact of any coastline development. They basically wanted it all stopped. I presume there's no way to overcome that objection that they have or did you respond to them and they said, oh well, it's only one place so it's okay.

Mr. Medema: Well, no I mean, in terms of stopping all coastal development to some extent is an undue hardship on the property rights of the property owner. The response to that was simply that the environmental impacts paying the utmost attention to the impact of the property on the shoreline and on the nearshore environment and not only in the context of complying with the State Coastal Zone Management Act, but also through incorporating a great number of sustainability principals into the building design itself to lessen its impact on the shoreline environment as well as on the neighborhood.

Mr. Mardfin: That's all of my questions.

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

Mr. Hiranaga: I know from the staff report that you're going to retain all post development drainage on site. I'm wondering if you're agreeable, the applicant to retain predevelopment drainage on site also?

Mr. Medema: I'll our engineer and developer speak to that.

Mr. Stacy Otomo: Good afternoon Mr. Chair, Members of the Commission, my name is Stacy Otomo. Commissioner Hiranaga, we did have that conversation with the client and he's agreeable to handle the entire 50-year storm runoff on site.

Mr. Hiranaga: Pre and post development?

Mr. Otomo: Yes, that's correct.

Mr. Hiranaga: Okay, thank you.

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

Mr. Hedani: I'm not sure if there's a way to clearly delineate the government beach reserve boundaries and whether or not DLNR or in this particular case the private property owner could actually point out where the boundary line is somehow either with signage or – because if you look – not in regards to this particular property or what you're proposing since all of your landscaping is proposed on private property but I think there's a need to identify where that makai boundary line is because the current situation in that area allows people to presume that the entire area is private property.

Mr. Hart: Chris Hart, Chris Hart and Partners. In the context of this particular site, you know the area of the beach reserve from the property line drops off and it's basically a rocky slope down to the ocean, down the sand beach. You know, in the past the State Department of Land and Natural Resources has allowed individuals to have enter into basically a revokable permit to essentially do a landscape planting and that's the kind of treatment that you're talking about. At this particular time, the State Department of Land and Natural Resources through the Land Division doesn't enter into those agreement any more. Now we could, you know, take it upon ourselves to actually identify in some way, you know, by a marker, you know, where the corners of the property are in relationship to the beach reserve but you know, our intention really is to try perpetuate the character of the natural rock slope and to just basically you know, on our own property have a certain barrier.

Mr. Hedani: My question at this point Chris is that, or actually my concern is heightened if you pick the south corner of the property would that be at the top of the rock cliff or –

Mr. Hart: Yes, it would.

Mr. Hedani: Or is there a way to walk from –

Mr. Hart: Well, the south –

Mr. Hedani: The loading zone on the south side, is there a way to walk from the loading zone on the south side laterally around the property toward the north?

Mr. Hart: Yes, yes there is.

Mr. Hedani: Because that particular picture shows what looks like naupaka hedge which you wouldn't be able to go through. I guess my question is at the top of the bank can you laterally access from the loading zone north?

Mr. Barton: Yes, you can and we always have been able to. One of the problems in the loading zone is actually cars parking in there sometimes and tying up dogs and so forth. Some times it restricts pedestrian access across the loading zone, but as soon as you reach the corner of our property which would be exactly where you are standing when you take this photograph you can see that we now have delineation which is a natal plum hedge along that makai property line that is inside our property at the property line which forms a obvious barrier and where this photograph is taken from if you were to walk to your right, you could easily walk under a milo tree and into that parking lot. I would estimate that the level, semi level dirt area is 10 to 15 feet wide in there between our southwest corner and the bank that drops off down to the beach. As I said that because of roots and erosion that occurs there from runoff from the parking lot, the loading zone, it's not a real good footing in there for children and everybody but if that could be improved with a little bit of dirt and sand.

One thing I'd like to add also is we have been in contact with the South Maui Heritage Corridor about this in conjunction with removing that encroachment out there because anything that happens on the shoreline they are interested in. And in discussions with them we've indicated to them and they've been very supportive of us in supporting a coastal corridor trail and we would like to see that on the State land on the makai side of us. Now, coordinating that with the DLNR is another matter but ultimately I would expect because of the efforts going on farther south in Kamaole that eventually you'll see some type of a mulch path, broken coral path, something built across there to continue the county park area starting with the loading zone to the north and on around to Cove Park. In fact, my understanding from some of the neighbors is that the DLNR is already beginning to send out some letters about some of the landscaping that exists that's very manicured all the way out to the rocks in front of those condominiums to the north of us.

Mr. Starr: Okay, members any other questions? Lets move along to public testimony.

**a) Public Hearing**

Mr. Starr: This is a public hearing item, any members of the public wishing to offer testimony please make yourself known. Okay, last time, any public testimony please come forward or raise your hand. Not seeing any, public testimony is closed. Okay, members we ready for recommendation?

**b) Action**

Mr. Buika: The conclusions of law. The Special Management Area Use permit application complies with all the applicable standards of the special management area rules. Planning Department based on the facts presented in the department report finds that the proposed action will not have a significant adverse environmental or ecological effect provided mitigation measures are incorporated into the project. The proposed action essentially meets the objectives, policies and guidelines of the SMA rules and the proposed action is consistent with the County zoning in the Kihei-Makena Community Plan.

The department's recommendation. The Department recommends approval of the SMA permit application request subject to 14 standard conditions which are in front of you which I will not read if that's okay with the Chair, and with 22 project specific conditions that with the Chair's permission I will just highlight a few or if –

Mr. Starr: Feel as you need to, go ahead.

Mr. Buika: No. 20, 21, 24 and 22, 24.

20. That the applicant remove the existing shoreline setback encroachment, the fence.
21. The best management practices shall be implemented to insure water quality and marine resource protection.
22. That detailed drainage and erosion control plans as well as site specific best management practices will be submitted to the Department of Public Works and approved.

and that 24, deals with the demolition and recycling plan which includes a certified asbestos inspector on site during any demolition.

And I would like to ask the Chair if you do want to include a condition regarding delineating the linearity of the property boundary or if you are satisfied? Would you like to? Wayne, I've written one here that I can pass by you.

Mr. Starr: Yeah, I know I would like to make it really clear to the public that they do have a right to access there. So if you would please, why don't you read your suggested wording.

Mr. Buika: This would add I guess number 36, Condition No. 36, "that the linear property boundary be clearly marked to delineate between private and public lands."

Mr. Starr: Commissioner Hedani, does that work? Okay.

Mr. Buika: Yes, okay. And also for Commissioner Hiranaga, he had mentioned that he asked the applicant that the pre and post development runoff be contained on site as a condition. Would you like that as an additional condition?



Mr. Starr: Commissioner Hiranaga? Okay.

Mr. Buika: Yes, so we'll add those. So that concludes our recommendation of approval.

Mr. Starr: Members any questions or would someone like to make a motion? Commissioner Hedani.

Mr. Hedani: Move to approve or as recommended.

Mr. Starr: Looking for a second.

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hedani, seconded by Commissioner Domingo, the motion is?

Mr. Yoshida: To approve the request subject to the 37 conditions as delineated by staff.

Mr. Starr: Okay, motion is now property of the body. Any comments, questions, possible amendments? Commissioner Hedani.

Mr. Hedani: I was sensitive on this particular project because it is a very special place, Charlie Young Beach for a lot of the residents of the island. I know that they use lateral access along the beach from the top of the embankment right now and I think the applicant has demonstrated that that will not be needed. I think the delineation between public beach reserve and private property once it's made clear will allow the public to understand that they actually have a lot more right to access along the shoreline than they believe do at the present time.

Mr. Starr: Well said. Members? Commissioner Mardfin.

Mr. Mardfin: I'd just like to make a couple of comments. I'm glad I live in Hana because these three buildings look like they're awfully close to each other. Is it 12 feet or something between the two buildings? Is that about right?

Mr. Buika: Between the condominium units?

Mr. Mardfin: Yes.

Mr. Buika: I believe they're connected. It's one building with three units.

Mr. Mardfin: Oh, I don't see the connection. That's okay. I'm looking at this is this the plan?

Mr. Buika: That's the site plan.

Mr. Mardfin: Figure 12A?

Mr. Buika: I'll have the architect address that question for you.

Mr. Starr: Okay, Commissioner Mardfin we have a motion on the floor, kind of keep it to that.

Mr. Adam Hillhouse: Just real quick, my name is Adam Hillhouse with Hillhouse Architects and just to clarify, the first floor is each unit is separated by a breeze way but the second floor each unit is actually connected so it is considered a single building. So that maybe is why you're confused. If you're looking at the first floor plan, the footprint of the building is split into three portions, but the second level it's one.

Mr. Mardfin: Okay, I got it. I got it. Thank you. I mean, this really is the maximum capacity, the saving grace on this from my point of view is that Mr. Barton's been a owner for a long, long, and his parents have been an owner for a long, long time and they seem to be kind of trying to do what is right as it can be done and still use it to the maximum. So I'm not going to vote against this, but I kind of agree with OHA that we ought to limit development. The other aspect of it that makes it okay in my mind is that it's an infill, it's surrounded by places that are equally large and imposing.

Mr. Starr: Thank you. Commissioner Hedani.

Mr. Hedani: One other comment I think that's important is that the applicant understand that the irrigation system for the landscaping within the lot itself should not be construed in such a way or constructed in such a way that it would encourage landscaping from the property to encroach into the beach reserve.

Mr. Starr: You want to add anything to that or you're happy with them.

Mr. Hedani: I think it's probably an understanding with the DLNR, yeah at this particular point, Jim?

Mr. Buika: Yes it is and I think the applicant is aware of these issues being a Maui resident and will comply with at 100%.

Mr. Hedani: Right.

Mr. Starr: Okay, I just have a real quick comment. I want to thank the applicant for being willing to maintain all the runoff on site and to clarify public access. I do have a problem with any increasing density in the shoreline when there is sufficient existing use especially in proximity to the park in general, but that's my own feelings not meant to change anyone else's. Anyway are we ready to take a vote on the motion on the floor? All in favor please raise your hand. Okay, all opposed.

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

**VOTED: To Approve the Special Management Area Use Permit, as Recommended.**  
**(Assenting - W. Hedani, D. Domingo, K. Hiranaga, W. Mardfin, W. Iaconetti)**  
**(Dissenting - J. Starr)**  
**(Excused - J. Guard, B. U'u)**

Mr. Yoshida: We have five in favor, one opposed Chair Starr and two excused Commissioners Guard and U'u. The motion passes.

Mr. Starr: Okay, Commissioner Hedani.

Mr. Hedani: What I was wondering was whether or not the Chair could direct a letter to DLNR to ask them for additional signage along the property not necessarily – well, along this area between Cove Park and Charlie Young Beach to identify the government beach reserve.

Mr. Starr: Yeah, I'll be happy to do so assuming that does anyone have a problem with that? Okay, I'll be happy to do that and thank you for that suggestion. Okay, good luck and congratulations.

Mr. Buika: Thank you very much.

Mr. Starr: Okay, we ready for the next one? We're really running late folks. Can we just move straight on?

Mr. Yoshida: Next public hearing item is a request from Brandis Sarich of Hunton Conrad and Associates for a Special Management Area Use Permit in order to construct an additional single family dwelling and garage at 450 Front Street, TMK 4-6-006:005, Lahaina, Island of Maui. Livit Callentine is the staff planner. The department has produced a report and guess we would ask if the planner and the applicant could kind of highlight the main points.

Mr. Starr: Livit do we need a break or can we just move?

Ms. Livit Callentine: I believe that probably short break, a three-minute break might be appropriate.

Mr. Starr: Okay, we're going to recess to the call of the Chair about three minutes.

A recess was called at 3:12 p.m., and the meeting was reconvened at 3:15 p.m.

Mr. Starr: Take it away.

**3. MS. BRANDIS SARICH of HUNTON CONRAD & ASSOCIATES requesting a Special Management Area Use Permit in order to construct an additional single family dwelling and garage at 450 Front Street, TMK: 4-6-006: 005, Lahaina, Island of Maui. (SM1 2007/0011) (L. Callentine)**

Ms. Livit Callentine: Good afternoon Mr. Chair and Members of the Commission. My name's Livit Callentine. I'm staff planner for you from the Planning Department and as you know this is for a single family dwelling. It's the second main dwelling on a parcel in the SMA and – this project would be exempt except for the fact that it's the second main dwelling and for the fact that it's value is over the minimum amount for – over the maximum amount for an exemption so that's why you're reviewing it. It's one of those kind of projects that we wish we didn't have to bring to you but it is a really good project so I hope you'll take some pleasure in that.

So, single family dwelling. It's in the urban district. Community plan is single family and the County zoning is R-2 and it is located in the National Historic Landmark District.

On your desk this morning you should have received two letters in support of the project and secondly, I just received just prior to this meeting I had a consultation with our cultural resources planner. I had requested comment from the cultural resources planner when I transmitted the application out to agencies and didn't get a response back, but today I was able to corner him and ask his opinion of this project and he pointed out something that I was not aware of which is that the existing dwelling on the site has in August of 2008 was placed on the Hawaii Register of Historic Places. Further it has been nominated to the National Register. So I was encouraged to hear that and Mr. Solamillo felt very comfortable with the design of the new proposed dwelling.

There is in addition, the other thing I want to point out that is not really a change for impacts in the special management area but is possibly a change in the actual site plan of the project is that the applicant has been working with the Department of Public Works Engineering Division because the site plan that is shown on this diagram shows the driveways being in very close proximity to each other. I'm not sure if it's probably about six to eight feet perhaps in between them and Public Works requires 45 feet in between driveways. So there's some possible solutions and the applicant is working on them, but the site plan itself may change slightly but the configuration and the size and so forth will remain the same. And with that, I would like to turn the podium over to the applicant for a brief presentation. It will be no more than five minutes with your permission.

Mr. Starr: Okay, please.

Ms. Brandis Sarich: Hello, my name is Brandis Sarich and I'm here representing Hunton Conrad and Associates. The designer, Hunton Conrad is here and the owners, Tom and Christine Brayton are here also. So I'm going to mostly talk about the design and just show you what we have here and what we're proposing.

The site is on Front Street and it is south of Shaw so we're outside of the historic district. The site itself is this shape and the existing structures on the site right now are the house that's been nominated for the National Historic Register. Here's a picture of the house and here's another picture of the house. There's a two-car garage that's been added. Here's the existing two-car garage again. There's also a small gazebo in the back and here's a picture of that gazebo and we are proposing to build on this portion of the lot which is pictured right here. So you can see it's totally undeveloped right now and we are planning to just infill into this neighborhood, a very small scale house that fits with all of the guidelines in the style book for Lahaina. We also went through the Secretary of Interior Guidelines for integrating new homes in historic neighborhoods and followed those as well and that's all in our SMA report.

So some of the pertinent features are it's a very small scale home to fit in with the small scale of the neighborhood. We're using wood windows and doors which are historically appropriate. We're using a board and bat siding. The roof will either be a corrugated metal roof or a wood shingles which also fit very well with the neighborhood and we have a two-story lanai facing Front Street which fits in well with the neighborhood. I think that's most of the design features.

The color of the house also is from the Style Book of Lahaina. We've chosen a green and it will be very muted so it looks a little weathered and the creme trim as well is just very calm and weathered looking to fit into the neighborhood. Thank you.

Mr. Starr: Members, questions? How are you dealing with the increase in runoff?

Ms. Sarich: We actually have a drainage plan, do you want to answer that or shall I answer that? Okay, we have two, we're going to collect the rainwater with gutters and downspouts and then from there we have a drainage plan where we will take everything to drywells and just reintroduce it into the ground. The driveway itself is grass block pavers so that will not be a hard surface. We're trying to absorb as much as we can in this lot, everything.

Mr. Starr: Good. I appreciate that you're doing that. It looks like too, using, breaking up the, you know, all the blocks like that with grass strips will help.

Ms. Sarich: Yes, actually this will look more like a lawn. You want to discuss that more?

Mr. Hunton Conrad: I'm Hunton Conrad. It's actually subgrade grass pavers so it looks like a lawn but it's actually completely structurally stabilized to be able to carry traffic. So it will look just like a lawn right up until you drive into the garage.

Mr. Starr: Well, thank you for using pervious surfaces and I ask the department to keep note of it and if it's okay we may like to use that as a little bit of a showcase in the future. Commissioner Hiranaga.

Mr. Hiranaga: Just to clarify your previous comment is the applicant agreeing to retain pre development and post development drainage on site?

Ms. Sarich: Yes.

Mr. Hiranaga: And that's inclusive of the existing house and garage?

Ms. Sarich: Yes.

Mr. Hiranaga: Thank you.

Mr. Starr: Good. Commissioner Mardfin.

Mr. Mardfin: Two quick questions. First one is when did the Braytons buy this property? You don't need the month, a year is close enough.

Mr. Tom Brayton: I'm Tom Brayton. We bought it probably two and a half years ago.

Mr. Mardfin: Okay, that gets to my second question which is the Department of Public Works in Exhibit 12 says there's no building permit for the gazebo and garage. I presume that predated when you bought it.

Ms. Sarich: It did and we actually have applied for those permits. The garage has a permit, that is referring to a structure that was built in '84 and demolished before the Brayton's bought the property. That's all in final review right now in the Building Department.

Mr. Mardfin: So are you going to have to pay an after-the-fact penalty?

Ms. Sarich: We paid our after-the-fact fees for the SMA to do that demolition permit.

Mr. Mardfin: And there's about a carport and a gear shed but it sounds like it was never built in the first place is that?

Ms. Sarich: That's what I'm talking about. This garage does have a building permit. And then there was something in the property this carport, gear shed and that's the one that we had to do an after-the-fact SMA and demo permit.

Mr. Mardfin: That's not what this says. I mean, it may be different but on Exhibit 12, it says, no. 2, "we have found no building permits for the gazebo and garage."

Ms. Sarich: Yes, we cleared that matter up. There actually is a permit for the garage –

Mr. Mardfin: The gazebo.

Ms. Sarich: The gazebo is in final review right now. We had an SMA done on the gazebo and we were told when we took the plans in when it was built that there was no building permit required but when the whole project has been reviewed again, they told us we do need a building permit so we have turned in those plans and they're now in final review.

Mr. Mardfin: The gazebo was built after the Brayton's had bought the property?

Ms. Sarich: Yes.

Mr. Mardfin: Okay. And then this item 3 was a building permit of '84 for the carport and shed. This structure is not shown on the site plan. Is that demolished?

Ms. Sarich: It was demolished before the Brayton's bought it.

Mr. Mardfin: Or never built in the first place.

Ms. Sarich: Well, there was a building permit for it, so that's the one that we did the after-the-fact demo permit for.

Mr. Mardfin: Okay. Thank you.

Ms. Sarich: Thank you.

Mr. Mardfin: One more question if I may?

Mr. Starr: Yeah, go ahead.

Mr. Mardfin: This is kind of a funny question but what's the purpose of the second building? Is one going to be used for a TVR or something and the other for a residence?

Ms. Sarich: The second building will be a long term rental or it will be sold. They will condominiumize the lot, but that would be a different application and then they will sell that home.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: In looking at the lot, was it a consolidation of two lots in the past that was converted into one lot and then is to be subdivided in the future?

Ms. Sarich: I don't believe it was in consolidation. This has always been the shape of that TMK.

Mr. Hedani: Really.

Ms. Sarich: It may have been way in the past, but we never found any records of it and the Braytons didn't do that if it was done.

Mr. Hedani: Okay, so when they acquired the property it looked exactly like it is?

Ms. Sarich: Yes.

Mr. Hedani: The property immediately mauka side of the proposed dwelling, is that landlocked or where does that get access from?

Ms. Sarich: You can see the house here and it's accessed from this road back here that's Rosenna Paris's house it's like a Balinese style compound back there.

Mr. Hedani: I see. Okay.

Mr. Starr: Ready for public testimony?

**a) Public Hearing**

Mr. Starr: Okay, this is a public hearing item. Any members of the public wishing to offer testimony on this please make yourself known. Okay, last opportunity for public testimony on this item. Not seeing any, public testimony portion is closed. Ready for recommendation Ms. Callentine.

**b) Action**

Ms. Callentine: Yes, thank you Mr. Chair. The Maui Planning Department recommends approval of the Special Management Area Permit. I want to make a couple of changes to the conditions.

Condition 3 shown on page 3 of the recommendation report is actually been mistakenly – two conditions are combined there. So I'm going to separate those two into two separate conditions and revise this recommendation for you. Further I noted that our standard clause regarding insurance had been inadvertently omitted from this version, so I will be adding that back in and finally, in what is now called Condition No. 8 on page 4 regarding the submittal of compliance reports, because this is a residential improvement it is – it's not required to get a certificate of occupancy so I will be amending. I'm recommending that you accept my recommendation to amend this condition. The last sentence will be changed to read, "a final compliance report shall be submitted to the Planning Department for review and approval prior to final building inspection." So strike issues.

Mr. Starr: I don't think we need to amend it because it's coming to us as your recommendation. So if accept your recommendations then that's how it is.

Ms. Callentine: Yes, I have changed my recommendation from what's written here. You probably won't have to see that amendment again, I'm not suggesting that. But I'm going to for the record, amend the report or the recommendation portion. So unless you want me to go through the other conditions, I will trust that you have read them.

Mr. Starr: Only if any of the commissioners have a question. Commissioner Hedani.

Mr. Hedani: I just had a question did this go through the Urban Design Review Board?

Ms. Callentine: No, this did not go because we typically do not take single family dwellings to the Urban Design Review Board.

Mr. Hedani: What about it in – oh I see, it's outside of the Historic District?

Ms. Callentine: It's in the National Landmark Historic District. It's not in the County Historic District. Lahaina is a National Historic Landmark so it's not National.

Mr. Hedani: But it's not within the Historical Design District?

Ms. Callentine: Not within the County Historic Districts 1 or 2.

Mr. Starr: Dr. Iaconetti please, did you have something?

Mr. Iaconetti: I was just going to move approval if appropriate.

Mr. Starr: That's fine. Yeah, go ahead.

Mr. Iaconetti: I do move approval.

Mr. Starr: All right, do we have a second?

Mr. Hedani: Second.



Mr. Starr: Okay, moved by Dr. Iaconetti, seconded by Commissioner Wayne Hedani. That motion is.

Mr. Yoshida: To approve the request subject to the conditions as presented by the staff planner.

Mr. Starr: Okay, any amendments, questions, whatever? Commissioner Mardfin.

Mr. Mardfin: I'd just say, I'd look at this a little closer perhaps under other circumstances, but we have two letters of it sounds like neighbors or close supporters both in support of this, from Mr. Freeland and from JoAnne Johnson and she's not known as an over development freak. So happy with that recommendation.

Mr. Starr: Okay, I guess that's a positive comment.

Mr. Mardfin: It's a positive comment. It was intended as a positive comment.

Mr. Starr: Are we ready to vote? All in favor please raise your hand. All opposed?

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

**VOTED: To Approve the Special Management Area Use Permit as Recommended.**  
**(Assenting - W. Iaconetti, W. Hedani, K. Hiranaga, W. Mardfin, D. Domingo, J. Starr)**  
**(Excused - J. Guard, B. U'u)**

Mr. Starr: What do we got?

Mr. Yoshida: Six in favor, two excused, the Commissioner U'u and Guard. The motion passes.

Mr. Starr: Okay, congratulations. It looks like a beautiful property and you're doing well with it. Thank you. Chris do you need time to set up or are you ready to go? Okay, we will recess till 3:35 p.m.

A recess was called at 3:30 p.m., and the meeting was reconvened at 3:35 p.m.

Mr. Starr: Mr. Yoshida, please introduce the next item.

Mr. Yoshida: Next item Mr. Chair is Unfinished Business, a request from Western Apartment Supply and Maintenance Company for land use changes for the Maui Oceanfront Inn and Sarento's on the Beach Restaurant project at 2980 South Kihei Road which encompasses a community plan amendment, conditional permit, shoreline setback variance, special management area use permit and off site parking approval. Staff planner is Robyn Loudermilk. We would state again that the commission has seen this project twice before in terms of the environmental assessment review. So if the planner and the applicant in the interest of time summarize their remarks and kind of keep it to the main points.

**E. UNFINISHED BUSINESS**

1. **WESTERN APARTMENT SUPPLY & MAINTENANCE COMPANY** requesting the following land use changes for the Maui Oceanfront Inn and Sarento's on the Beach Restaurant project at 2980 South Kihei Road, TMK: 3-9-004: 029 and 3-9-004: 149, Kihei, Island of Maui (R. Loudermilk) (Public hearing conducted on November 25, 2008.)
  - a. **Community Plan Amendment from Single Family Residential to H-M Hotel (CPA 2006/0005);**
  - b. **Conditional Permit to maintain current hotel and restaurant uses of the subject property and improve Parcel 149 with the construction of a paved parking lot (CP 2006/0012)**
  - c. **Shoreline Setback Variance to maintain current hotel and restaurant uses of the subject property and improve parcel 149 with the construction of a paved parking lot. (SSV 2006/0004)**
  - d. **Special Management Area Use Permit to maintain current hotel and restaurant uses and construct a parking lot on parcel 149. (SM1 2006/0017)**
  
2. **WESTERN APARTMENT SUPPLY & MAINTENANCE COMPANY** requesting an **Offsite Parking Approval** for the Maui Oceanfront Inn and Sarento's on the Beach Restaurant project at 2980 South Kihei Road, TMK: 3-9-004: 029 and 3-9-004: 149, Kihei, Island of Maui (OSP 2006/0002) (R. Loudermilk)

Ms. Robyn Loudermilk: Yes, thank you. I'd like to turn the presentation over to Chris Hart. We have a very brief power point presentation hitting the points that Mr. Yoshida has requested of us.

Mr. Starr: Okay, about how long will that run?

Mr. Chris Hart: Probably about five minutes.

Ms. Loudermilk: Five minutes.

Mr. Hart: Thank you Robyn. Thank you Commissioners this has been a long day already. This is Maui Oceanfront Inn, Sarento's Restaurant on the Beach and the project actually received a FONSI, a Finding of No Significant Impact back in September of 2008. As Clayton said, it's an application for a community plan amendment and that's why we had to do the environmental assessment. Conditional use permit, special management area use permit, shoreline setback variance and off site parking approval.

Now the issues that we're talking about today are recommendations to the County Council for the community plan amendment and the conditional use permit. The special management area use permit, shoreline setback variance and off site parking approval will be held in abeyance pending,

well, I'm sorry, also the off site parking approval request that will be dealt with today pending the approval of the County Council on the community plan amendment and conditional use permit.

This is our project site. This is essentially the Kiawekapu area of Kihei. This is the Kihei boat launching ramp. This is the Mana Kai condominium project. Now the land that you see around these buildings actually belongs to the State of Hawaii and it's basically a state beach reserve.

This is the Kihei-Makena Community Plan 1998 which actually identified our parcel as single family residential and of course the parcel adjacent which is parcel 149 is park.

The state land use district boundary is urban for both parcels and for all of the land in this area below Piilani Highway.

This is the Kihei Civic Development Plan map which was done in 1968. In 1968, the parcels both Hale Hui Kai which is immediately to the south and the Maui Oceanfront Inn were identified as hotel and the area to the north was identified as park which is the state beach reserve portion.

The Maui County zoning map of 1969 identifies both parcels Hale Hui Kai and the Maui Oceanfront Inn as HM Hotel and the parcel 149 which belongs to the State of Hawaii under a revokable permit is identified as park.

This is, looking at our project, this is the Maui Oceanfront Inn from South Kihei Road. This is looking at the Sarento's on the Beach Restaurant which was built as part of the original hotel which was built actually in 1972 and 1973. This portion was originally a lanai and a man by the name of Mr. Habib got approval to use the area for outside dining and eventually over time it actually took on a roof and so that's one of the substantive issues in the shoreline setback variance. This is actually the property line. This is state beach reserve.

This is our site plan that shows parcel 29, it shows the Maui Oceanfront Inn. You can see the state beach reserve, the sand beach below. This is all state land. This is parcel 149 which essentially is under a revokable permit. It's in the process of being leased by the Maui Oceanfront Inn in the context of an agreement to provide parking, additional parking for the Maui Oceanfront Inn, but 51% of the parking which consists of 82 parking stalls total is for the general public. This is the access entrance to the parking lot from South Kihei Road and this shows the parking lot which is currently gravel.

This is the type of lighting that we'd be using which would actually be consistent with basically the rules for night lighting which would cast all of the light down, it's a shaded light. This preliminary site plan and grading plan and essentially it's designed to maintain the water runoff on site.

So what we're respectfully requesting is recommendation for approval of the community plan amendment, of the conditional use permit and then we're also asking for deferred approval of the shoreline setback variance and off site parking and special management area permit. Thank you for your consideration.

Mr. Starr: Okay, Members, questions of the application and staff? Commissioner Mardfin.

Mr. Mardfin: I can't find my exact notes but my recollection is the last time we dealt with this was with a final environmental assessment.

Mr. Hart: Right.

Mr. Mardfin: That I saw, so it had to have been some time in 2008, and my recollection is that there was some real problems with having stuff too close to the ocean and I don't remember the exact details of the issues but there were illegal buildings and they were encroaching on somebody else's land and it was too close to the ocean. My recollection could be wrong.

Mr. Hart: Could we go back to a site plan? The Maui Oceanfront Inn site parcel 29 is here. What I indicated to you and of course, the land beyond belong to the State of Hawaii, the land on the makai side continuing down, Mana Kai condominium is in this location.

The owner of the restaurant, Mr. Habib actually did a paved area and put a roof on it, so that structure requires a shoreline setback variance. There was also some issues related to the actual renovation of the project. It was built in 1972 and then it was renovated and there was some electrical storage lockers that were actually built to enclose the electrical meters for the project and they were actually, they required a variance and then there's also an enclosure for trash that required a variance. There was also an addition on the area, an addition to the restaurant or handicap bathroom facility that would be included as part of the SMA permit.

Mr. Mardfin: And I'm looking at, I don't know what exhibit, Figure 4B from your EIS and it says, "shoreline setback methods" and you have to two average lot dept method and the annual erosion hazard rate method and both of them cut off about half of the restaurant.

Mr. Hart: Yeah, well, the project itself was built again, in 1972, and at the time the shoreline setback, well there was, it was built – basically June 23, 1970, the shoreline setback law came into effect but because there was a beach reserve, a parcel located in front of the property there was no shoreline setback requirement. Now that got changed actually in 2003 when Maui County adopted essentially an amended shoreline setback rules which required computing the shoreline setback by the average lot depth method and the erosion rate method and essentially a parcel that was in the vicinity of the shoreline was required to have the shoreline certified and actually identify those shoreline – the shoreline setback lines. So currently today, you know, portion of this project is existing and non conforming located in the shoreline setback, but when it was built, it was okay.

Mr. Mardfin: So your argument is it's a preexisting structure and we shouldn't be applying modern, current standards to previously built buildings?

Mr. Hart: That's correct. And if they proposed lets say to intensify the use or they proposed to basically redevelop the property then they would have to comply.

Mr. Mardfin: At some point I'd like the planner to comment on these issues too.

Mr. Hart: Yeah sure.

Mr. Mardfin: I don't know if it's now or later.

Mr. Starr: Yeah, could we have some comments. We also want to be clear about how this lanai area was built. Whether it was built legally in compliance and when it was added.

Ms. Loudermilk: I'll start off with the shoreline setback variance and that would be on page 20 of the department's report, Item No. 8 on down. As Chris had indicated earlier when the property was developed it was not considered a shoreline property pursuant to the rules in effect at that time. There was a separate beach reserve tax map key makai of that property. So the shoreline setback rules did not apply. It was not considered a shoreline property. At that time your property line had to touch the ocean. Back in 2003, the shoreline setback rules were revised to incorporate an additional method for determination and that was the erosion rate. Prior to the establishment of erosion rate in certain locations, the method used for determining a shoreline setback was the average lot depth method which Chris had described earlier and using that method, that property had to be adjacent to the beach. It was not until – step back and finish up with the shoreline setback rules and the structures inside the shoreline setback area. Pursuant to the department rules the structures are considered nonconforming structures as they both received valid building permits prior to June 16, 1989. So that's the dates set forth in the rules.

Regarding a number of structures that were added on that Chris had identified, the covered outdoor seating area, some of the electrical areas, I'd like to have you turn to page, lets start off with page 11, which is a brief history of the property. You know, basically a number of permits and leases were issued to the property legally. On page 12, Item No. 14, we have a minor permit issued in 2001 for interior alterations to the restrooms. Improvements that were done prior to 2001 or 2002, we do not have any documentation on whether they were exempt or issued a permit and that has to do with the change in the special management area law at the legislature. During that time a provision was added for the special management area. We have that long list, well a short list of what is a development, pretty much everything's a development and then we have the much longer list indicating what's not a development. And what was also added is that the department's had to look at cumulative impacts. So instead of an administrative review it then became a discretionary. So a majority of the structures were built legally, however, there are some that were not and that's where the variance that Mr. Hart talked about came in.

There was a, again, page 12, Item No. 16, excuse me, No. 15, we get into some of the SMA minor permit applications that were issued and then on Item No. 18, is where we have an intervention for variances for a number of the structures that Chris identified. And again, it was based upon the petition to intervene that a settlement agreement was received and what we have before you today is a result of that. The variance will not kick in until all of these other land use requirements are met. So at this point in time, the determination regarding the special management area and shoreline setback is premature. Technically we cannot process it. We need to deal with the community plan amendment first in terms of the land use consistency. But, that's one of the things that needs to be done to bring the entire property into compliance with the code for today.

So we will be discussing I guess in greater detail at a future meeting the next steps after today is that the recommendation would be to defer action on like the special management area, the shoreline setback variance and the offsite parking because we cannot process it at this point in time

until Council takes action on the community plan amendment as well as the conditional zoning.

With the community plan amendment we will have land use consistency and then we can process these additional permits. Should the Council determine not to grant that then we cannot process at all. Same thing with the offsite parking. The conditional permit needs to be approved, off site parking is not allowed in the park district. Conditional permit will allow that to occur and should that occur then we can grant the off site parking approval. So it is a lot of little things at this point in time.

Mr. Starr: Can I just get a clarification on that?

Ms. Loudermilk: Sure.

Mr. Starr: So because of the – trying to get an orderly process that we're looking to get a recommendation that will involve the community plan amendment and the conditional permit but not the SMA, the setback variance and the off site parking. Do I have that right?

Ms. Loudermilk: Correct.

Mr. Starr: Okay. Members? I have a question which is, and you know, hearing what I just heard it may be a bit premature so you don't necessarily have to answer this today, but I want to know why with the proximity to the shoreline and the sensitivity of the shoreline resources there in this parking lot you're not looking at pervious surfaces so that we're not creating additional runoff and possible automotive type pollution. And as I said, you don't have to answer this today, but this is something that –

Mr. Hart: It's – you know, obviously it's something that we could look at. You know, we've been basically working with the State Department of Land and Natural Resources and in the context of the settlement agreement, the desire was to basically provide a public paved parking lot and that's been how we were, it was presented to us, you know, this is what the improvement was. If there's a desire on the part of the commission to basically have it be – it would probably be something like a stabilized gravel parking lot would be, you know, would basically essentially have to develop it so it would be somewhat stabilized. Right now, it's pretty much just gravel.

Mr. Starr: : There are numerous mechanisms, but this might be a really good location to do one of a number of possible different types of pervious surfaces. So that the, you know, the water hitting it turns into recharge rather than sheetflow.

Mr. Hart: Sure, we understand that. One thing I just wanted to go back. You know, what Robyn said is essentially correct, but you know, I did have a drawing or a power point picture, photograph showing the old 1968 Kihei-Makena General Plan and it showed the properties as hotel and it's important to realize that they were hotel at the time the building permit was issued, but in 1985, when the community plan came into being, somehow those two parcels Hale Hui Kai and this parcel were shown as single family residential. And so in order to go forward and to basically have, to basically be able to get an SMA permit to do this work there has to be consistency. In other words, you can't have a hotel and hotel zoning and single family residential community plan. So we have

to go back and amend the community plan. That's part of the settlement agreement.

And then also in order to use the park parcel which the state has essentially granted to this Maui Oceanfront Inn and Sarento's Restaurant under a permit, a revokable permit and they're in the process of negotiating a lease. We have be able to get a conditional permit so that the parking you know, for the restaurant and the parking for the hotel that would be additional can be provided on the site. The parking lot is 82 parking stalls so essentially 41 of those – 42 of those stalls would be for the general public and 40 would be for the hotel. That's kind of what the – it just clarifies it a little bit. And after we get the conditional permit from the Council and the community plan amendment then we come back to you and get the permits, the shoreline setback variance and the SMA permit.

Mr. Starr: Question for Planner Loudermilk. Robyn isn't it a bit unusual to kind of drop these all into one bucket here?

Ms. Loudermilk: No, this is part of the concurrent processing that the County and department try, we try to do. This is a bit more complicated than some of the other ones, but as Chris had indicated, when the property was constructed it was community-planned hotel and the department did research and we could not find any reason why this property and next door was then community planned to single family. We just couldn't. But in terms of the processing, I think we'd like to do concurrent. What is slightly different about this is that if it's a community plan we usually come in with maybe a land use district boundary amendment or a change in zoning. You know, we're changing everything to where in this case, we're only changing one land use designation and the remainder of the approvals are more of a discretionary type approvals. So it is a bit more complex because there are a lot more pieces to a discretionary use approval versus making a determination whether yes, you want to redesignate a property from ag to urban or community plan it from ag to single family or change in zoning from ag to maybe residential. So it is a little bit, it's more unique, it's in an urban type setting that's been around for 30 plus years.

Mr. Starr: Okay, but even if we need to handle this in steps, is it more efficient for you to process it like with everything in one?

Ms. Loudermilk: Yes, yes it is.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Could you go back, earlier you had a thing on the screen it said Chris Hart Partners it was what you're asking for now and what you're asking for deferred approval on and then I want to ask Robyn about it.

Okay, today you're asking for recommendation of approval for the community plan amendment and the conditional use permit.

Ms. Loudermilk: Yes.

Mr. Mardfin: And you need that because without that you can't go to the Council?

Ms. Loudermilk: No, without that we cannot process a special management area permit or shoreline setback approval because we do not have land use consistency.

Mr. Mardfin: So you need those two things to be done first. And then what is deferred approval mean? We don't do it now or we approve it now and say, well when it's done.

Ms. Loudermilk: Well, how the department would phrase it, we would say we would defer any recommendation at this point in time.

Mr. Mardfin: So we're not dealing with those.

Ms. Loudermilk: Yeah, so the department would phrase it differently. We're deferring any recommendation at this point in time on those three items.

Mr. Starr: We are premature though because we haven't had public testimony. So I don't really want to get too deep into the –

Mr. Mardfin: Okay, I just wanted to know the process. You need it in two steps because you need something to be done first before you can do the second.

Ms. Loudermilk: Yes.

Mr. Mardfin: Okay, thank you.

Mr. Starr: And if should be kept in there because if the first two are not only approved by us but the County Council, then they go to the next three.

Ms. Loudermilk: Yes. For the special management area, our rules indicate if there is not land use consistency between the zoning, community plan amendment or state land use district we can't even process a permit, a special management area permit. So that's where we're at this time.

Mr. Mardfin: But if we approve these two things today, we're not committing ourselves that we'll approve the other three when we get there.

Ms. Loudermilk: No, you are not. You are not.

Mr. Mardfin: So this is more pro forma vote than anything else.

Ms. Loudermilk: Well, this deals – I wouldn't say pro forma, I would say this would deal with for the community plan, the hotel property the department does recommend it should be community plan hotel, that's what it has always been versus single family. So from the land use point of view. And so it's basically a land use determination.

Mr. Mardfin: What about the conditional use permit?

Ms. Loudermilk: Conditional permit is slightly different. We're saying that, identifying that in the



County zoning, the park zoning district park in of itself is not an allowed use. And so since it's not an allowed use and I'm not sure why because you need to park to go to a park, well, it's been determined as commercial parking. However, is nobody's paying to park. Our zoning code said it's not a permitted use.

Mr. Mardfin: Okay, I get it. These are not huge land issues, these are sort of - The first one is there was somehow a mistake done in maybe making the - changing the community plan and so -

Ms. Loudermilk: Yes, it's unclear why.

Mr. Mardfin: ...(inaudible)... find a reason for having it done in the first place. So we're sort of correcting an error that might have been done administratively in error.

Ms. Loudermilk: From the department's point of view that would be accurate for the community plan amendment.

Mr. Mardfin: And the parking issue seems to be just, you know, it's reasonable to expect that you park in this kind of an area so there's no particularly good reason to deny a conditional use permit for the parking.

Ms. Loudermilk: Well, I would say parking is occurring there already. There have been no complaints because - I have no idea why. This is getting it all formalized.

Mr. Mardfin: Okay, thank you.

Mr. Starr: Right now it's private parking. It's not their land but this would formalize it. Anyway lets move along. We ready for testimony? Okay, members of the public wishing to give public testimony on this item please make yourself known. Anyone? Last call for public testimony on this item relating to Sarento's in Kihei. Not seeing any, public testimony portion is closed. Now we have two items and I believe that we are just in a position to make a recommendation on those first two items.

Ms. Loudermilk: That is correct.

Mr. Starr: Why don't you give your recommendation to us regarding our recommendation on those first two and our possible action on the last three?

Ms. Loudermilk: So the department is recommending to this body one regarding the community plan amendment we recommend that the commission recommend to the Council approval from single family to hotel.

Mr. Iaconetti: You want to take these separately?

Mr. Starr: Well, why don't we have the full recommendation and then probably the motions should only relate one at a time.

Ms. Loudermilk: The second action is for the conditional permit, and the department recommends to this body that you recommend approval to the Maui County Council subject to five conditions.

Regarding the special management area use permit, the shoreline setback variance, and the off site parking approval, the department recommends deferral of any action until Council has taken action on the community plan amendment and the conditional permit. And that concludes the department's recommendation.

Mr. Starr: Okay, members any questions or possible motions regarding these items?

Mr. Iaconetti: I would like to move on the first one, community plan amendment from single family to hotel.

Mr. Starr: Okay, you're moving that we recommend approval?

Mr. Iaconetti: Yes.

Mr. Starr: Is there a second to that motion? We have a motion by Dr. Iaconetti, seconded by Commissioner Hedani. The motion is -

Mr. Yoshida: To recommend approval of the community plan amendment from single family to hotel to the Maui County Council.

Mr. Starr: And on that first one, you're not recommending any conditions?

Ms. Loudermilk: No conditions.

Mr. Starr: Any discussion? Any possible amendments? Commissioner Hedani.

Mr. Hedani: I'm confused Robyn. I guess it's a confusing application because it's just complicated. Going from single family to hotel, we're talking only about parcel 29?

Ms. Loudermilk: Yes.

Mr. Hedani: So what we're considering right now is just rezoning parcel 29 or recommending rezoning parcel 29.

Ms. Loudermilk: Community plan amendment.

Mr. Hedani: Okay, not zoning.

Ms. Loudermilk: Community plan amendment for parcel 29.

Mr. Hedani: It's already zoned.

Ms. Loudermilk: It's already zoned hotel.

Mr. Hedani: It's already zoned hotel.

Ms. Loudermilk: Yes.

Mr. Hedani: So this is just bringing it into compliance.

Ms. Loudermilk: Yes with the zoning.

Mr. Hedani: Why are proposing commercial parking on park land? Maybe that's a separate issue.

Mr. Mardfin: That's the separate issue.

Mr. Hedani: Maybe that's a separate issue. Okay, forget I asked that.

Mr. Starr: It's a good question.

Ms. Loudermilk: It's a good question and I think we'll note that down for when we come back. No, that is valid. That is very valid yeah.

Mr. Starr: So we're still dealing with the community plan amendment. Any other comments, possible amendments? Seeing none, we're ready to vote on that. All in favor of doc's motion to recommend approval please raise your hand. All opposed.

Community Plan Amendment

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

**VOTED: To Recommend Approval of the Community Plan Amendment to the County Council.  
(Assenting - W. Iaconetti, W. Hedani, K. Hiranaga, W. Mardfin,  
D. Domingo, J. Starr)  
(Excused - J. Guard, B. U'u)**

Mr. Yoshida: Six in favor, two excused. Motion passes.

Mr. Starr: Okay, next.

Ms. Loudermilk: Then shall I clarify that for the conditional permit it's for parcel 129, excuse me, 149. Excuse me 149.

Mr. Starr: 149. So now that would be a good question.

Ms. Loudermilk: I believe the state has asserted its right as a state entity at that point in time to bypass county rules and regs which they can do. I mean, that's what they had indicated in their

agency response as part of the agency review. They were very surprised, that one, their property was being called down zoned and, you know, I can't -

Mr. Hart: The state actually owns the Hale Hui Kai property and the Maui Oceanfront Inn property. There's a long term lease on both of those properties and basically the state, you know, essentially looks at it as a - application states that in 1985 the Kihei-Makena Community Plan redesignated parcel 29 from hotel to single family residential. However, it's our understanding that the state - at the redesignation of parcel 29 occurred as part of a 1998 Kihei-Makena Community Plan, well it occurred at both and it was an inadvertent type of - we thought originally it was a mapping error. Our firm got involved in this, you know after the renovation of the hotel was undertaken basically at the time when renovation or repair of existing structures could be considered as exempt from the SMA permit. So the work was being done to renovate the old hotel and the restaurant and there was a complaint filed. And as a result of the complaint there was a settlement agreement that was finally negotiated but our firm got involved and as we researched all the issues and found that this situation existed, okay, and so the process in order for it to be, come forward, go forward to a conclusion and to be in compliance, community plan has to be amended. And the State is concurring with that. They concurred with it in a letter to us back in March 2007.

Now parcel 149 is also a State parcel and it was a subject of a revocable permit, it's no. 7235 and the State granted Maui Oceanfront Inn and Sarento's Restaurant permission to occupy and use the premises for the following specified purposes only, parking lot purposes, to use it for parking. And the reason is that Sarento's on the Beach is a popular restaurant and it was creating a nuisance in the neighborhood as far as people parking on the street and there wasn't control and it was unsafe. So the State agreed to grant this, grant the parcel to be identified, carve it out in a form of a revocable permit for Maui Oceanfront Inn and Sarento's on the Beach Restaurant subject to basically a condition that 51% of the parking that would be created on the lot would be available to the general public. So that's how it ended up. But you know, again, in terms of, you know, Maui Oceanfront Inn and Sarento's Restaurant, negotiating with the State nobody considered the fact that it was, that's zoned park and you can't really use park land, public park land for commercial parking purposes. So that's why we have to go through the conditional permit process.

Honestly this project is very complex and it would be great project or problem to present to a masters in Urban and Regional Planning at a colleges, honestly it would. It would be a really interesting. It got a little bit of everything in it. Anyway, I know it's not clear and straightforward like some of the other projects that we get to deal with, but you know, hopefully if we're allowed to go through the process in the way that we've - it's been pretty much outlined in the settlement agreement which by the way the County has been a party to, in other words, they've worked with us to basically itemize all these issues to basically come up with some logical process to move forward. You know, we will come to an end and hopefully it will be an agreeable end and we appreciate your cooperation.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: How much does Sarento's pay to the State for use of the parking?

Mr. Hart: It says basically at this time it's a sum of \$127 rent.

Mr. Mardfin: Per month?

Mr. Starr: Per annum.

Ms. Loudermilk: If you look at Exhibit 5 in your report. Exhibit 5 in your report, we have the revocable permit number. And on Item No. 2 provides the amount.

Mr. Starr: How much is it?

Ms. Loudermilk: \$127 each month and any unpaid delinquent at 1% percent per month plus a service charge of \$50.

Mr. Mardfin: \$127 a month.

Ms. Loudermilk: That's what the DLNR asked.

Mr. Hart: As part of, you know, again, discussing this issue with the State of Hawaii there is a lease that's being proposed. In other words, to essentially replace or supercede the revocable permit and in the context of that lease, you know, the State's going to basically lease land based on an appraisal and it's going to be substantial, but yeah, it will be, but just to let you know that that's in the process.

Mr. Starr: Okay, lets move it along. Commissioner Mardfin.

Mr. Mardfin: How many parking stalls are there?

Mr. Hart: There's 82.

Mr. Mardfin: And how many go to the public?

Mr. Hart: 51%.

Mr. Mardfin: How is that distinguished?

Ms. Loudermilk: There's 82 stalls, 51 for the public. Anybody can park any place. I've been there a number of times. It's never entirely full. Should the project go forward then there will be signage put indicating public versus non public, but really first come first serve.

Mr. Mardfin: So nobody controls it. They could be 100% filled by Sarento's we'd never know.

Ms. Loudermilk: No, I don't think so because they would go on the Sarento's property first.

Mr. Mardfin: Okay, but there's nobody saying you can go here, you can't go there.

Ms. Loudermilk: No.

Mr. Mardfin: Okay.

Mr. Starr: Members we ready for some -

Mr. Mardfin: The parking's free to the public?

Ms. Loudermilk: Yes.

Mr. Starr: Okay, would anyone like to make a motion on this wonderful item? For, against or defer. Any of the above.

Ms. Loudermilk: And as a reminder this is for the conditional permit for parcel 149 for the commercial parking on park zoned property.

Mr. Starr: And it would be a recommendation to Council.

Ms. Loudermilk: And it would be the recommendation to the County Council subject to conditions.

Mr. Starr: And what are the conditions?

Ms. Loudermilk: The conditions deal with at this point in time, just deal with the permit itself. Anything specific to the use we would recommend that that goes on either the special management area should it go that far or the shoreline setback. So this would be the duration, you need to be in compliance, your liability insurance, generally the management of the permit.

Mr. Starr: Someone please make a motion, can recommend approval, can recommend denial, can recommend deferral. Please someone do one of the above.

Mr. Iaconetti: I recommend approval of the conditional permit.

Ms. Domingo: I second.

Mr. Starr: We have a motion by Dr. Iaconetti, seconded by Commissioner Domingo, the motion is?

Mr. Yoshida: To recommend approval of the conditional permit request for parcel 149 to the Maui County Council subject to the five conditions as outlined by staff.

Mr. Starr: Okay, motion now the property of the body, discussion, amendments? Commissioner Mardfin.

Mr. Mardfin: I'm going to vote for it but I think the State negotiated very poorly, they should get a lot more money for it.

Mr. Starr: Dr. Iaconetti.

Mr. Iaconetti: I was going to ask if the parking area is up for bidding? Can anyone bid on the?

Ms. Loudermilk: At this point in time the revocable permit is a 30-day lease to lease can be broken at any time. It's through the leasing process that there's a actual public bidding that occurs. Right now there is no public bidding because it's a revocable permit. But the intent as Mr. Hart had indicated it that the State will be going out for a lease and at that time it will be for a long term, that's where the appraisals would come in and that's when the - I'm sure the fees and rentals would be negotiated very differently.

Mr. Iaconetti: How soon will that happen?

Ms. Loudermilk: I talked with the Maui land agent, he could not provide a time frame at this point in time.

Mr. Starr: Okay members, Commissioner Hedani.

Mr. Hedani: Question Robyn. Who owns parcel 87? Is that part of the State beach reserve as well?

Ms. Loudermilk: I believe that it's owned by the State.

Mr. Hedani: Does the State have any plans for this property, long term plans?

Ms. Loudermilk: They have not provided us with that at this point in time. I talked with the land agent and as of right now, if it's in a long term lease there's really - they're going to be honoring the lease at that point in time. There's been no action at this point for anything else.

Mr. Iaconetti: Isn't there a motion on the floor for 149?

Mr. Starr: Yeah. Commissioner Hedani more discussion, questions, go ahead if you want to.

Mr. Hedani: I guess my question would be this way. If this were not approved, Sarento's as well as the apartment would be in noncompliance with their parking ratios?

Mr. Hart: Based again, Chris Hart speaking, on the research you know that was done in the context of when the project was actually built, which was in 1972 they do comply, just barely comply. I think there's one extra stall on site. Something like 52 stalls in site. But in practical, from a practical reality, the restaurant is a popular restaurant and you know, there's always a need for employee parking and so on, so it doesn't comply. Like for instance the Hotel District zoning ordinance basically the parking requirement was one parking stall for every three rooms in 1972, now it's one per two rooms, you see.

Mr. Starr: Okay members? I have a quick comment which is that that's one of the nicest beaches in South Maui right there and I think if the public knew that there was parking, it's never been really open to the public there would be a lot more people using that beach. Anyway, we ready to call the question? Okay, members we have a motion on the floor that's been seconded to recommend approval with five conditions. All in favor please raise your hand. All opposed?

Conditional Permit

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

**VOTED: To Recommend Approval of the Conditional Permit Subject to Five Conditions to the County Council.  
(Assenting - W. Iaconetti, D. Domingo, K. Hiranaga, W. Mardfin, W. Hedani)  
(Dissenting - J. Starr)  
(Excused - J. Guard, B. U'u)**

Mr. Yoshida: Five in favor, one opposed Chair Starr, two excused, the motion passes.

Mr. Starr: Okay, now we have three subsidiary items and I understand there's a recommendation that we defer those?

Ms. Loudermilk: Yes.

Mr. Starr: And then proceed with them at a later date.

Ms. Loudermilk: Yes.

Mr. Starr: The Chair would entertain a motion.

Mr. Hedani: So move.

Mr. Mardfin: Second.

Mr. Starr: Okay, so it's moved by Commissioner Hedani, seconded by Commissioner Mardfin that motion is to?

Mr. Yoshida: To defer action on the SMA, shoreline setback variance and off site parking approval requests.

Mr. Starr: Okay, and my only question is, should we keep, you know, if this passes should we keep this report or will you be issuing a new -

Ms. Loudermilk: You should keep the report and we will provide supplemental information.

Mr. Starr: Members, we ready for the motion? All in favor, please raise your hand. All opposed?

Special Management Area Use Permit, Shoreline Setback Variance & Offsite Parking Approval



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

**VOTED: To Defer Action on the Special Management Area Use Permit, Shoreline Setback Variance and Offsite Parking Approval.  
(Assenting - W. Hedani, W. Mardfin, K. Hiranaga, D. Domingo,  
W. Iaconetti, J. Starr)  
(Excused - J. Guard, B. U'u)**

Mr. Yoshida: Six in favor, two excused, the motion passes.

Ms. Loudermilk: Thank you very much.

Mr. Starr: Congratulations, go get um Chris. Good presentation Robyn. Okay, members while they're setting up for the next item, if it's okay, I'd like to - there's one item that Corp. Counsel that asked us to take care of today. Should we attempt to deal with that while they're setting up or do we need a recess, where we're at?

Mr. Mardfin: Is this Intrawest.

Mr. Starr: They're setting up for Intrawest and there's selection of a hearings officer which shouldn't take too long. Perhaps we could move that up. You want to call Mimi? Corp. Counsel, Mimi is on her way down. If it's okay, I would entertain a motion to move that up and take that really quickly.

Mr. Mardfin: So move.

Mr. Iaconetti: Second.

Mr. Starr: Okay, moved by Commissioner Mardfin, seconded by Commissioner Iaconetti. The motion is to move Item F-3 up to the next item on our agenda so that Corp. Counsel can get that in motion and I apologize to the folks who are getting ready for the Intrawest item. We'll be with you in a few minutes. We're going to recess for about a minute until Mimi Johnston gets here.

A recess was called at 4:29 p.m., and the meeting was reconvened at 4:32 p.m.

Mr. Starr: ... back in order. Chair calls Mimi Johnston to the podium.

## **F. COMMUNICATIONS**

### **3. Selection of a Hearings Officer on the following SMA appeal: (T. Kapuaala)**

**THOMAS D. WELCH of MANCINI WELCH & GEIGER representing DOUGLAS and DONNA ANNE POSELEY for an appeal of the Planning Director's decision to not process a Special Management Area Assessment (SMX 20080118) for a proposed single-family residence because the action is inconsistent with the West Maui Community Plan unless the appropriate applications are submitted to establish consistency for property that is located off of Honoapiilani Highway, Olowalu, Lahaina, Maui, Hawaii. (APPL 20080002)**

Ms. Mary Blaine-Johnston: Good afternoon. Deputy Corporation Counsel, Mary Blaine-Johnston appearing on behalf of Planning Director Jeffrey Hunt. Thank you for moving me up on the agenda.

This is here just to select a hearings officer for the Poseley appeal. I talked with Tom Welch this morning. He's actually in Honolulu attending a funeral and he's authorized me to come before you and we've agreed on asking that John McConnell be appointed the hearings officer.

Mr. Mardfin: I'm sorry who was it.

Ms. Blaine-Johnston: Judge John McConnell.

Mr. Starr: Yeah, Commissioner Hedani.

Mr. Hedani: So move.

Mr. Starr: Is there a second?

Mr. Hedani: Okay, We have a motion by Commissioner Hedani, seconded by Dr. Iaconetti and the motion is?

Mr. Yoshida: To select retired Judge John McConnell as the hearings officer on the Poseley SMA assessment appeal.

Mr. Starr: Just out of curiosity is this an unusual process, don't we usually get a list and we select or is this a different kind of item where you would agree on someone and then bring it to us.

Ms. Blaine-Johnston: Well so far the ones I've been involved with we have agreed ahead of time. I mean, we had the list. This list was sent to us and we looked at it and actually several weeks back I communicated with Mr. Welch and we came to that agreement. So we respectfully ask that the commission support us.

Mr. Starr: Okay, because I know there have been cases where we've been asked to select from a list. I have no problem with it if none of the other commissioners has a problem we can proceed. Looks like it's okay. Are we ready to vote on this item? So we have a motion and second for Judge McConnell to be the hearings officer. All in favor please raise your hand. All opposed.

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

**VOTED: To Select John McConnell as the Hearings Officer.**  
**(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, W. Mardfin,**  
**D. Domingo, J. Starr)**  
**(Excused - J. Guard, B. U'u)**

Mr. Yoshida: Six in favor, two excused, motion carries.

Ms. Blaine-Johnston: Thank you very much.

Mr. Starr: Thank you very much. Okay, we will now proceed. Mr. Yoshida, please introduce our next item and do we want to take the two items together until we get to the point of actual action?

Mr. Yoshida: Yes, because they're for the same action.

Mr. Starr: Okay.

Mr. Yoshida: We have a request from Anthony Plitt on behalf of Intrawest for an amendment to the Special Management Area Use Permit and Step 2 Planned Development Approval for North Beach Honua Kai project to include a redesigned restaurant at Kaanapali. We also have a request from Mr. Anthony Plitt on behalf of Intrawest for a Step 3 Planned Development Approval for the development of that restaurant at Honua Kai site at Kaanapali. The staff planner is Joe "the planner" Prutch.

- 1. MR. ANTHONY PLITT on behalf of INTRAWEST requesting an amendment to the Special Management Area Use Permit (SM1 2004/0017) and Step 2 Planned Development Approval (PD2 2004/0005) for the North Beach Lot 4 Honua Kai Project to include a redesigned restaurant on the 34.8 acre site at TMK: 4-4-014:006, Kaanapali, Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (J. Prutch)**

Mr. Joe Prutch: I'll never get away from that name now. Good evening. First off, separate these two that we only act on the SMA amendment and the Planned Development Step 2 amendment first. If that gets approved then we move onto the PD3 as the next item.

I'll go through a brief history just to kind of summarize where this has been and where we are now and then the applicant if you want has a power point presentation. They can do like a five-minute short presentation for you.

Back in February 22, 2005, the Planning Commission granted Step 2 approval and SMA approval for this Honua Kai Resort including the restaurant which at that time was a sail roof building about 49 ½ feet tall. In November 20, 2007, the applicant requested restaurant revisions including a redesign and an increase in square footage from 4,200 to 7,600 square feet with a plantation style building, 22-foot height.

Mr. Starr: Excuse me, I want to ask those folks having a conversation to take it outside.

Mr. Prutch: To accommodate a Dukes Canoe Restaurant at the time. That restaurant revision when to the Urban Design Review Board back in February of 2008, they commented that they did not want to ascertain whether the proposed building revisions were in accordance with the preliminary plans approved by the commission in February. However, they did vote unanimously to recommend approval of the building redesign stating further that the revisions were an improvement to the original proposal. That then came to the planning commission in May of 2008. You guys reviewed the Urban Design Review Board's request and determined that this redesign

should come back to the commission as an SMA amendment and a PD2 amendment through the public hearing process.

Things kind of stalled for a little bit and then recently on November 13th, the applicant applied for the amendment to the SMA and PD2 which is before you today for the restaurant redesign with two waivers from, waivers of public hearing from the two intervenors including WMPA and Charlie Fox. I'll let the applicant get up and give their five-minute presentation if you so want and then I can come back with the staff's recommendation after that time.

Mr. Starr: Sounds good.

Ms. Karlynn Fukuda: Good afternoon Chair and Members of the Maui Planning Commission, my name is Karlynn Fukuda and I am with Munekiyo and Hiranaga, Inc. We are before you today regarding an amendment to the SMA approval and Planned Development Step 2 approval for the Honua Kai Resort. The request for the amendments is focused on the proposed design revision to the previously approved restaurant at the Honua Kai Resort. We note that the design revisions to the restaurant provide for a more plantation style of architecture, significantly reduces the height of the restaurant that was previously approved and keeps the same square footage as the original restaurant.

The members of our project team are here today to answer any questions you may have regarding the proposed restaurant revisions.

This is a rendering of the Honua Kai Resort's master plan including the proposed revised restaurant.

The next three slides are recent aerial photos of the Honua Kai Resort currently under construction. This first photo is taken from the ocean side of the resort. Honoapiilani Highway is located at the top of the photo.

This photo is taken from the mauka or east side of the resort facing the ocean. The Mahana condominium is located on the top right.

This photo is taken from the makai, west side of the resort as well.

This is a brief overview of the densities allowed on the site per the zoning designation as well as what was approved in the SMA permit.

This slide is an overview of the review and approvals for the Honua Kai Resort by the Maui Planning Commission as well as building permits received to date. We note that in the future we will be seeking a Planned Development Step 3 approval for the portion of North Park improvements that were bifurcated in the SMA permit.

This is the location of the restaurant in the Honua Kai Resort. We note that it is in the same location as the originally approved restaurant in the SMA permit.

This is the plan and elevations for the originally approved restaurant.

This is the construction plan for the proposed revised restaurant and the next slide is the floor plan for the revised restaurant. Again, we note that original restaurant included both indoor and outdoor seating and the footprint square footage of the new restaurant remains the same.

The next two slides are the revised elevations for the proposed restaurant. So we have east and west and south and north.

This next slide is an overlay of the previously approved elevations, sorry, floor plans shown in red was the original approved restaurant and the black outlined floor plan is the proposed revised restaurant.

Here we have the overlay of the previous approved elevations. Again shown in red, maybe a little bit hard to see but you can tell the height difference versus the revised restaurant elevations shown in black. We note that there is a significant decrease in the height for the restaurant, an over 25-foot reduction.

This next slide is just the revised landscaping plan to accommodate the proposed restaurant revisions. Then we have sample planting material.

This is the originally approved SMA landscape plan for the entire Honua Kai Resort, and the next slide is the revised overall landscape plan including the new restaurant revisions.

This is the shoreline setback map and we note that the restaurant and all outdoor seating will occur outside of the 150-foot shoreline setback for the property.

The next two slides, this show the distance from the restaurant. This first slide is the distance from the restaurant to the property line and then this is the distance from the restaurant to the neighboring I guess structures. On the bottom left-hand side we have the existing Mahana condominium and 336 feet that you see on the right-hand side would be to the proposed Westin Kaanapali Ocean Resort Lot 3 project.

We note that the proposed design revisions reflect a more plantation style which is in line with the island architecture. Examples of structures in close proximity to the proposed restaurant include Kahekili Park's comfort station which is also located within the North Beach Subdivision and the proposed North Park comfort station. And we just have some slides to show you this is the existing Kahekili Park comfort station again with the plantation architecture and the elevations for the propose North Park comfort station.

Thank you for your time, and we are available to answer any questions you may have. Sorry, I would like to make one comment and apologize to the commission. Regarding the square footage, we had erroneously taken the square footage off of unscale drawing and we realized that later and so in the staff report it notes that there's a 130-square foot difference and really there's not. Because when we went back and we looked at the table of the square footages in the originally approved SMA application the restaurant was planned for 444 square feet which is what the

existing, I'm sorry, what the proposed - I'm sorry what did I say?

Mr. Starr: 400.

Ms. Fukuda: Sorry. 4,400 square feet. So there is no difference in the square footage floor area. Thank you.

Mr. Starr: Okay, Members any questions? Dr. Iaconetti.

Mr. Iaconetti: What will be the capacity of the - how many individuals or tables will you have seating, will the new restaurant hold?

Ms. Fukuda: I'll defer to Anthony Plitt from Intrawest Resort.

Mr. Anthony Plitt: I believe it's a 165 inside and approximately the same on the outside and it matches the exact same seating as pointed out in our original SMA application.

Mr. Iaconetti: So there won't be an increase in the number of seatings as was always.

Mr. Plitt: Part of waivers of public hearing that we got mandated and part of our negotiations with our intervenors mandated that we needed to keep the exact number of seat count as well as the same square footage as originally approved in our SMA.

Mr. Iaconetti: Do you expect the, may I?

Mr. Starr: Yeah.

Mr. Iaconetti: Do you expect the usage of this restaurant will be both from the public as well as those people staying in your unit?

Mr. Plitt: We anticipate, you know, our full build out is 700 room resort. The anticipated function of the restaurant is primarily to focus on our guests itself. But obviously that we're building a beach walk that connects, you know, North Park all the way through the entire subdivision, we do anticipate obviously people from Lots 1 and 2 that are currently built and occupied as well as guests from the future Lot 3 to also use it.

Mr. Iaconetti: Will there be a need for a greater number of parking stalls since you are expecting?

Mr. Plitt: We do not figure so. Again, it's the same count and volume that we originally anticipated at the time of SMA. Actually if you look at our SMA, we actually originally anticipated having a restaurant inside the south tower that had a number of parking stalls that were allocated for that. We're currently not building that restaurant inside the south tower. So our, originally we had, I believe it was 904 stalls that were required for our build out which included staff parking. We proposed and it was accepted in part of our SMA to have 1,000 stalls total. So we obviously had a surplus of around a hundred. So with the decrease in the commercial spaces in the south tower we actually have even more surplus. We assume it to be about 20 stalls extra.

Mr. Iaconetti: Thank you.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: On page 14 of your revised elevation is the roof going to be capped with glass? Is that the intent?

Mr. Plitt: No it is not. It's going to be open.

Mr. Hedani: It's going to be open?

Mr. Plitt: It's -

Mr. Hedani: Okay, so what I'm seeing is what I'm seeing. There's no glass in between.

Mr. Plitt: There is no glass, correct.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: The roof is going to be open you mean like Texas stadium, there's going to be hole in the roof?

Mr. Plitt: No, it's a mechanical roof well right there but we wanted to keep - we show the rafters there that obviously support the balance of roof structure but the roof well is pretty much open but we kept the trusses in there just as an architectural feature.

Mr. Hiranaga: So you can close the roof if you wanted to?

Mr. Plitt: I don't know if mechanically it would be allowed to do that because it needs the required ventilation.

Mr. Hiranaga; So is there a hole in the roof or not?

Mr. Plitt: There's a depression in the roof that you can't see from this angle.

Mr. Hiranaga: Oh, I see and then it drains that way.

Mr. Plitt: Correct.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'm just curious. Why did you - if it's the same seating, same square footage, different shape I gather, why did you change it?

Mr. Plitt: Well, we actually had comments from the community. There's a North Beach Advisory Group that we meet with monthly that we go over all of our existing designs and there were

comments, Karlynn can you go to the site plan? Where the originally we had a restaurant that was, you know, had a over 50-foot kind of sail like structure. If you look where the restaurant is sited it kind of prevented. There's a view corridor that comes in through the, in between the north and south building and with that 50-foot sail we couldn't preserve that view plane and so one of the suggestions from the north beach advisory group was to lower the restaurant and create more a plantation style home with the ideology that you know, it could potentially look like a home that existed previously or prior to the development of the existing resort.

Mr. Mardfin: Pardon my cynicism but is it cheaper to build also.

Mr. Plitt: Yes, that would be a correct statement.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, go ahead Commissioner Hiranaga and keep in mind we have to close up shop at 5:00.

Mr. Hiranaga: What is the proposed building material or roofing material?

Mr. Plitt: I'm going to call on the design build.

Mr. Starr: Okay, really briefly please.

Mr. Don Freeman: Name's Don Freeman, I'm with the Joslin Group. The proposed roofing materials is called an eco shake. It's basically a 100% recyclable vinyl material. So it's got a LEED certification and it withstands winds over a 110 miles an hours and has a 50-year warranty.

Mr. Starr: Thank you. Commissioner Hedani.

Mr. Hedani: I guess this is a question for Karlynn. Has the revised plan gone through Urban Design?

Ms. Fukuda: Yes, essentially as Joe pointed out, you know, that it did go, actually in for a larger restaurant back in February of this year and the restaurant has since been reduced by the design elements of what was presented at the Urban Design Review Board are the same.

Mr. Hedani: Has the revised plan been shown the Urban Design Review Board?

Ms. Fukuda: The smaller version, no it has not, but again, it was, I think that the Planning Department had made a recommendation because the design elements stay the same it remain the plantation feature, the plantation architecture that that's why it did not need to be reviewed again by the Urban Design. What Urban Design Review Board had reviewed earlier was actually a larger building.

Mr. Hedani: The sail fin building.



Ms. Fukuda: No, they had actually reviewed a larger plantation style building. However, in the discussions that Intrawest held with the intervenors it became apparent that there was not going to be agreement on that larger size building. So it had to be scaled back to reach the original square footage of what was approved in the SMA. But still the plantation architecture was reviewed by the Urban Design Review Board.

Mr. Hedani: Have they seen this roof line?

Ms. Fukuda: Yes. I mean, they've seen essentially that design, yes.

Mr. Hedani: And they approved it?

Ms. Fukuda: Yes, that comment letter that Joe I believe had included in your packet from UDRB was on that revised plantation design.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: Is there any difference between the old and the new in terms of runoff. It looks like there might be a difference in the area. The blue print, the footprint area of the roof and might involve different amounts of runoff of rainwater is or is that just so minor it's to be inconsequential?

Ms. Fukuda: I believe it's a - it was looked at and I believe it is minor but we do have the civil engineer here who can -

Mr. Mardfin: It's minor, I'm fine with it.

Ms. Fukuda: Okay.

Mr. Starr: Okay, we ready for public testimony? Okay, members of the public wishing to give testimony on this item please make yourself known. Okay, I ask you to please keep it as brief as possible. We have to finish up at 5:00. Please introduce yourself.

Ms. Linda Nie: Yes, my name is Linda Nie. I am a member of West Maui - not a member, a director and secretary of West Maui Preservation Association, one of the intervenors in this matter. As Mr. Plitt and the consultant mentioned West Maui Preservation has waived the right to a public hearing with the agreement that the restaurant would be scaled back and we do support the restaurant as it's being presented today.

We are coming before the commission with one comment and that has to do with the park. It was a long time ago but back in March of 2007, there - it was important to the commission as well as my organization that there remain public access to the shoreline in that area. And to that end, part of the plans included a park which has parking place, a landscaped area and easy access to the shoreline as well as comfort station, bathrooms. That is a long ways from completion. And we want to make sure that that park is open prior to occupancy of the hotel. That requirement is in the SMA but we don't want to have to be in the position of having to sue to enforce the SMA. And for that reason, we would ask that the commission include as a condition out of this proceeding that that

park be open which means, landscaped, the construction fence that's there now gone so that the public can actually access the shoreline and the comfort station be completed prior to occupancy of the hotel.

In speaking with Intrawest they project that the occupancy should be, they're hoping for January 26th opening date I believe. And they said that they will pour all the resources necessary so that that park is open come hell or high water is a direct quote.

In case that doesn't happen, we would like there to be part of the condition that ties the permitting of the restaurant to the completion of the park. We have limited resources and we don't want to have to sue to enforce something. I'm sure that they'll be done with it, but if Murphy's Laws operates and it doesn't, we want to have something in writing that is enforceable. That is the extent of our comment. As far as the design itself, we do support the design as presently presented.

Mr. Starr: Thank you very much. Members any questions? Commissioner Hedani.

Mr. Hedani: ...(inaudible)...

Mr. Starr: Oh, okay. Thank you very much for your testimony. Any other members of the public wishing to give testimony. Ask you to please keep it brief because we have to finish up in five minutes or we gotta defer this.

Ms. Patty Nishiyama: Aloha, my name is Patty Nishiyama, born and raised in a village up in Kaanapali called Puukolii which is now in the ahupuaa of Hanakao which is called Kaanapali. I'm here again to ask you to support this restaurant to move forward because it's going to help us in 2009 to have more jobs for our people and the restaurant will be serving breakfast, lunch and dinner and I think it's a local owned and I'm just here to ask you please support this plan for our restaurant. Thank you.

Mr. Starr: Thank you for coming forward. Dr. Iaconetti.

Mr. Iaconetti: Do you agree with WMPA's request that the -

Ms. Nishiyama: Yes, they have made a compromise for this restaurant. They have come together to settle the arguments that they had earlier, yes I do.

Mr. Iaconetti: I don't quite understand what hell and highwater means, but I'm hoping -

Ms. Nishiyama: Oh well, you know.

Mr. Iaconetti: I hope that -

Ms. Nishiyama: But I think the restaurant right now looks a little bit more Hawaiian instead of that roof looked like some place in outerspace. So it looks much nicer now.

Mr. Starr: Thank you Aunty. Aloha. Any other members of the public wishing to give testimony

please make yourself known. Last opportunity for public testimony on this item, on both items regarding IntraWest, seeing none, public testimony is closed. Members any other questions before we get recommendation? Commissioner Hedani.

Mr. Hedani: I circulate a couple of renditions that were provided by the applicant of the rendition that went through the Urban Design Review Board. I'm kind of concerned about the roof line of this particular structure because I've never seen a plantation design architecture with exposed studs like that. And I don't think Urban Design Review Board has seen it either.

Mr. Starr: This is the post hurricane look I think.

Mr. Hedani: But I'm not an architect and I'm a poor judge of quality but this looks like it's not finished to me.

Mr. Mardfin: Can you hold it up so I see what you're talking about. Is it this one?

Mr. Starr: Yeah. Well, that's the one that they approved. Could you hold that up Commissioner Mardfin.

Mr. Hedani: That I like.

Mr. Hiranaga: Can I see that?

Mr. Mardfin: It's the one I just passed you.

Mr. Hiranaga: It's not the same.

Mr. Mardfin: It's not the same?

Mr. Starr: Could we get a comment from the applicant because this is, kind of looks like a fish, you know that's been.

Mr. Iaconetti: Filleted.

Mr. Starr: Yeah.

Mr. Plitt: If that's an issue we can remove those and revise the design to -

Mr. Starr: To make it look like a regular roof up there?

Mr. Plitt: I mean, the prior design also had a roof well that was hidden, but it just didn't have the stud look that protruded out. It's an easy change that we could make.

Mr. Starr: It sounds like that's a popular suggestion here. Okay, I have one quick question, is there any slow down in the construction over there of the resort in general? I've heard some rumor.

Mr. Randy Piltz: My name is Randy Plitz and I'm a employee of Ledcor Construction. We're the contractors on the job and I was speaking to you earlier this morning that I was a electrical contractor, but now working for Ledcor. As far as slow down, we have the second building in construction. The exterior envelope will be completed by the end of this year and the complete building will be done by next at this time with a certificate of occupancy. So we're moving along. As far as I know right now we're one of the few large jobs in operation on this island. We have over 350 construction workers on the job everyday.

Mr. Starr: Good. We're glad that it's continuing and good shape and thank you. Joe you want to give a recommendation.

Mr. Prutch: Yes, pursuant to foregoing the Maui Planning Department recommends approval of the amendments to the special management area use permit and step 2 planned development approval with the incorporation of conditions of approval as stated in the approval letter dated February 25, 2008, with the exception that Condition No. 4 shall be amended to read as follows, "that final construction plans shall be in accordance with preliminary plans received on June 16, 2004 and revised plans received on February 4, 2005 and further revised plans presented at the December 9, 2008 Maui Planning Commission meeting."

Mr. Starr: Okay, members would anyone like to take any action? Dr. Iaconetti.

Mr. Iaconetti: Is it necessary to put one of the requirements that the bathroom facilities be completed before this is done as recommended by WMPA?

Mr. Starr: Joe you want to really quickly write something to that effect?

Mr. Prutch: I can. I just wanted to direct to Condition No. 29 in the original approval. It is worded saying that essentially improvement North Beach Park shall be completed prior to issuance of the certificate of occupancy for Phase 1 of the development unless that improvements are bonded. So there is already a condition in there for them to prior to the c of o and if they complete by c of o, I guess there is the option of bonding. That's already a condition of approval from the original SMA.

Mr. Starr: Does that satisfy you Doc?

Mr. Iaconetti: Satisfies WMPA yeah.

Ms. Nie: The condition -

Mr. Hiranaga: Out of order.

Mr. Starr: Yeah, please you're out of order. Doc, you want to ask WMPA rep for further info?

Mr. Iaconetti: Please.

Mr. Starr: Please come to the microphone now and be really brief.

Ms. Nie: It was my understanding from Mr. Plitt today and his superior that the occupancy permits have already been granted.

Mr. Starr: Occupancy permits for what?

Ms. Nie: For the south tower.

Mr. Plitt: Anthony Plitt again. As Joe mentioned there is a condition that exists already in the SMA, Condition No. 29 which states that the occupancy of the south building needs to be completed or the park needs to be completed, North Park A needs to be completed prior to the occupancy of the building. We anticipate the hotel opening on January 26th. As we have also mentioned to WMPA we also anticipate that the park will be open and completed by January 15th. They've also requested which we would accept if Joe would like to add it, but we will make it a condition of the building permit for this restaurant that the park needs to be completed if that satisfies WMPA.

Mr. Iaconetti: Please.

Mr. Starr: Okay. Joe you got that?

Mr. Prutch: The one thing I was going to suggest if this makes sense is just amend Condition No. 29 where it says that "shall be completed prior to issuance of the certificate of occupancy for Phase 1," just to say that, "completed prior to issuance of or prior to opening of the hotel for Phase 1." Would that make sense? Is that? It's essentially what it is. As long as the park's done before the opening of the hotel.

Mr. Starr: Doc, is that good for you?

Mr. Iaconetti: Yeah.

Mr. Starr: Okay members anything else? Does anyone want anything regarding the fishbones in the roof? Commissioner Mardfin.

Mr. Mardfin: In a sense I think we're rushing this. We're out of time and if we defer this to our next meeting in January we get two advantages. One -

Mr. Starr: Chair would prefer not to defer it. We already have about eight items for that meeting.

Mr. Mardfin: It would solve two problems we'd know whether they built the comfort station and they would have time to take the new design. I don't want to tell them how to design the thing, they'd be able to take it to the Urban Design group.

Mr. Starr: We'll be deferring it to February or March not January. Our agenda is full.

Mr. Prutch: If this may help if I may? I talked to the applicant about this and I can place a condition on here saying that the, I had something worded here, that the roof top shall, essentially the applicant shall remove the exposed trusses or whatever they're called, the roof items so that the

building appears as a solid roof. Something to that extent. Essentially if they chop off that top fish scale part you would just have a roof line that came up just like the original building. I can make a condition if that would satisfy and we can move on.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: But why? I mean, I don't know that it's necessarily an improvement to cut that off. I'm not an architect. I want somebody that understands this stuff to make that decision not us.

Mr. Prutch: Well, when the Urban Design Review Board did review that other plan with these solid roof line they did appreciate that building and they preferred that building over the sail building. So they've already reviewed something very similar to that except that this one does have the exposed roof line that one did not. They liked that one.

Mr. Mardfin: They liked this and they didn't see the exposed.

Mr. Prutch: Yes, they didn't see the exposed.

Mr. Mardfin: So if we go back to this but just smaller scale, they should be happy.

Mr. Prutch: That was our assumption. We didn't take it to Urban Design Review Board because we felt it was similar to the last building and they had like the last building.

Mr. Starr: Commissioner Hiranaga followed by Commissioner Hedani.

Mr. Hiranaga: I believe we're micro managing the design of the restaurant roof. If the architect feels he wants those trusses exposed it's their call. They may be trying to give the impression that outside light is entering the roof, but I mean, lets not delay this request just because we're looking at some artist rendition. Let them figure it out. It's the same footprint, they've lowered the roof line, it looks plantation. I mean fine tuning it, leave it up to the architect.

...(inaudible - changing of tape)...

Mr. Hedani: With the language we just proposed only because you're talking about structural elements of the roof and whether or not if you just cut it off or you know, how you're going to adjust the structural elements of the roof in order to make sure that it's stable. So I would feel more comfortable if the final design gets reviewed by the architectural review committee.

Mr. Starr: Okay, why don't you make a motion that encompasses that?

Mr. Hedani: Well, or that the condition, that the condition be that the final design as presented today gets reviewed by the design review committee, Urban Design Review Committee.

Mr. Starr: Okay, Joe, you got something for us?

Mr. Prutch: No, I don't have that. I was working on a different condition. I was trying to say that the

applicant shall redesign -

Mr. Starr: No. You have suggested wording from Commissioner Hedani.

Mr. Prutch: Okay, then I need to hear that again.

Mr. Giroux: To speed this up, you know, you're condition number 4 if you just put, "that the final construction shall be substantial accordance," you know, the language we talked about before, and then another condition that Urban Design can have a final look at this outside of the SMA process.

Mr. Starr: Okay, does that work for everyone? Okay, we ready for a motion? Anyone wishing to make a motion? Please? Approved, deny, defer.

Mr. Hedani: Move to approve as amended.

Mr. Starr: Okay, is there a second?

Mr. Mardfin: I'll second that.

Mr. Hiranaga: I'm not sure how the motion has been amended or the recommendation.

Mr. Starr: Okay, we'll read back the motion as soon as it's on the floor.

Mr. Mardfin: I'll second it.

Mr. Starr: Moved by Commissioner Hedani. Seconded by Commissioner Mardfin, that the motion is Mr. Yoshida, and if you need help from Mr. Prutch take it.

Mr. Yoshida: To recommend approval of the request subject to the revisions as outlined by the Deputy Corp. Counsel.

Mr. Prutch: And let me just add a little to that just to make sure that condition no. 4 be changed to say, "that the final construction plans shall be in substantial compliance," that's the addition there. That Condition 29 be changed to say, "that the park shall be completed prior to opening of the hotel for Phase 1 of the development." Rather than prior to certificate of occupancy. And it sounded to me if I'm correct, that you wanted to add a new condition that the Urban Design Review Board review the final design plans of the restaurant building prior to building permit issuance or I didn't get the prior to on that.

Mr. Giroux: I just said, outside of the SMA process. Urban Design Review can review anything, any time, any where. And you need to add under Condition No. 4, the date of new plans you submitted today. Just that after this date, they'll go back to Urban Design Review for further comment on their substantial plan.

Mr. Prutch: Prior to building permit I guess.

Mr. Giroux: That's fine.

Mr. Starr: To the maker and the second is that substantially? Okay, are we ready for the vote? All in favor please raise your hand. All opposed?

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

**VOTED: To Approve the Amendment of the Special Management Area Use Permit and Step 2 Planned Development Approval, as Amended (Assenting - W. Hedani, W. Mardfin, K. Hiranaga, D. Domingo, W. Iaconetti, J. Starr) (Excused - J. Guard, B. U'u)**

Mr. Yoshida: Six in favor, two excused. Motion passes.

Mr. Hiranaga: Mr. Chair, I think there's a second item.

Mr. Starr: Okay, there is a second item requiring action. Sorry about jumping the gun. Joe, recommendation on the second item.

**2. MR. ANTHONY PLITT on behalf of INTRAWEST requesting a Step 3 Planned Development Approval for the development of a restaurant on the 34.8 acre Honua Kai site at TMK: 4-4-014:006, Kaanapali, Island of Maui. (PD 3 2008/0004) (J. Prutch)**

Mr. Joe Prutch: The applicant's requesting Step 3 Planned Development approval of the construction drawing for the restaurant improvements including the 4,400 square foot, one-story structure at the Honua Kai Resort. The construction plans for Step 3 development are in accordance with Step 2 plans approved by the commission on December 3rd with the revisions possibly to the roofline. Pursuant to the foregoing the Maui Planning Department recommends approval of the Step 3 Planned Development application.

Mr. Starr: Okay, Members, any comments, questions?

Mr. Mardfin: I move approval.

Mr. Starr: Okay, I just want to be clear if there's any public testimony please make yourself known.

Mr. Plitt: I'd just like to state.

Mr. Starr: Mr. Plitt, you're not a member of the public, you're the applicant. Okay, and please whatever it is say it in 10 words or less.

Ms. Linda Nie: Linda Nie, I'm going to say what Anthony Plitt was going to say. If we could have the condition here in this item regarding tying the permitting of the restaurant to the completion of the park in case something happened and it wasn't completed by occupancy. That gives us more



leverage.

Mr. Starr: Okay, Members? Okay thank you. Joe. Any other members of the public wishing to give testimony? Last chance, public testimony on the second item. Seeing none, testimony is closed. Joe, it's now or never.

Mr. Prutch: I thought we placed a condition on the PD2 and SMA for the North Park A not - the last condition of the previous action was that the North Park A needed to be completed prior to opening of the hotel of Phase 1. So that means that it needs to be completed prior to opening of the south enclave. And that was a condition placed on the last project on the SMA amendment.

Mr. Starr: No. We're looking for recommendation Joe on the Step 3.

Mr. Prutch: My recommendation is pursuant to the foregoing the Maui Planning Department recommends approval of the Step 3 Planned Development application. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for this December 9th meeting as its finding of fact, conclusion of law, decision and order and authorize the planning director to transmit said written decision and order on behalf of the planning commission.

Mr. Starr: Okay, Members.

Mr. Hedani: So move.

Mr. Starr: Is there a second?

Mr. Iaconetti: I want to make sure that last condition is again noted.

Mr. Starr: We can add that as an amendment if you want.

Mr. Giroux: It's going to be contrary to the SMA ... (inaudible)...

Mr. Starr: Does anyone wish to offer a second to the amendment?

Mr. Iaconetti: We can't have an amendment until somebody seconds the original motion which I do reluctantly provided you add that condition.

Mr. Starr: Well, I think that's reasonable. So will you give a second for discussion Doc?

Mr. Iaconetti: Yes.

Mr. Starr: Okay, so we have a motion and a second to approve the Step 3, do we have an amendment? Does anyone wish to offer an amendment to the motion that's on the floor.

Mr. Mardfin: I don't want to offer an amendment, but since there is a motion on the floor I'd like to ask the planner if there have been any recent developments like in the last 10 seconds or so.

Mr. Prutch: From my understanding talking to Anthony and WMPA is that they withdrawn the request because the condition was already placed on the SMA approval.

Mr. Iaconetti: Okay.

Mr. Starr: Okay, so anyone want to make an amendment to any discussion? Seeing none, we ready to vote? All in favor please raise your hand. All opposed?

Mr. Mardfin: Mr. Chairman, may I ask. I just want to be clear in my own mind what we voted for. Can I just ask the one question? Did we tell them they have to change the design of the restaurant or did we say they should bring the -

Mr. Starr: Okay, please wait, you're out of order. Thank you. Mr. Yoshida, what is the vote.

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

**VOTED: To Approve the Step 3 Planned Development Approval.  
(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, W. Mardfin,  
D. Domingo, J. Starr)  
(Excused - J. Guard, B. U'u)**

Mr. Yoshida: The vote is six in favor, two excused to approve the motion. The motion carries.

Mr. Starr: Okay, congratulations. Do you have a question Commissioner Mardfin.

Mr. Mardfin: Yes, I want to make sure I understand what we just voted to approve. What I want to know is did we tell them they have to change those structures going up on the restaurant or did we say they may do it or did we say that they should talk to the Urban Design Board. Take it back to the Urban Design Board and probably cut them out. Is that your understanding too? Thank you. I got it.

#### **H. ACTION MINUTES OF THE NOVEMBER 10, 2008 AND NOVEMBER 25, 2008 MEETINGS**

Mr. Iaconetti: I'd like to move the Minutes of, approval of the minutes, action Minutes of November 10th and November 25th.

Mr. Mardfin: Second.

Mr. Starr: Okay, we have a motion. The motion is?

Mr. Yoshida: To approve the Action Minutes as listed on the agenda, November 10th and November 25th.

Mr. Starr: All in favor please raise your hand. All opposed.

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

**VOTED: To Approve the Action Minutes of November 10, 2008 and November 25, 2008.**  
**(Assenting - W. Iaconetti, W. Mardfin, K. Hiranaga, D. Domingo, W. Hedani, J. Starr)**  
**(Excused - J. Guard, B. U'u)**

Mr. Starr: That leaves us with the Director's Report is as you see.

**I. DIRECTOR'S REPORT**

- 1. Planning Commission Projects/Issues**
- 2. Discussion of Future Maui Planning Commission Agendas**
- 3. EA/EIS Report**
- 4. SMA Minor Permit Report circulated for November 25, 2008 meeting.**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report circulated for November 25, 2008 meeting.**
- 7. SMA Exemptions Report**

Mr. Yoshida: In interest of time we just want to thank you. This is our last commission meeting for the year 2008. It's been a long year. We just want to thank you for your time and dedication and wish you all a happy holiday season.

Mr. Starr: Okay, thank you. I just want to add I'm really proud to be a part of this organization. We're getting a lot done. Thank you for patience. Thank Doc Iaconetti for our wonderful florals and stuff. And thank staff for the hard work and great work. Happy Holidays.

**J. NEXT REGULAR MEETING DATE: January 13, 2009**

The meeting was adjourned at 5:20 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Jonathan Starr, Chairperson  
Donna Domingo  
Wayne Hedani  
Kent Hiranaga  
William Iaconetti  
Ward Mardfin  
Bruce U'u (excused @ 2:16 p.m.)

**Excused**

John J.B. Guard IV, Vice Chairperson

**Others**

Clayton Yoshida, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works