

**MAUI PLANNING COMMISSION
REGULAR MEETING
MARCH 24, 2009**

Approved: May 26, 2009

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:30 a.m., Tuesday, March 24, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Jonathan Starr: Welcome. This is the March 24th, 2009 meeting of the Maui Planning Commission. And thank everyone for joining us here today.

B. INTRODUCTION OF NEW MEMBER - LORI SABLAS

Mr. Starr: It's an exciting morning particularly because we have a new Member here with us today. And we'd like to begin today's meeting by introducing our new Member who we've been awaiting and we're really happy to have joined us. And Lori Sablas has been involved in community and kinda quasi governmental stuff for a long, long time. She was Chair, I believe, of the Cultural Resources Commission twice so she's certainly been involved a long time. And let me begin by handing the floor over to Commissioner Sablas. If she wishes to just say hello or introduce herself, she's welcome to go ahead and do so. And we're really glad you're here, Commissioner Sablas.

Ms. Lori Sablas: Aloha kakahiaka kakou. My name is Lori Ululani Sablas, born and raised on this wonderful island, which I consider a privilege. And I'm excited to serve on this Board because in mind, to be able to make a difference, you need to be involved. And I have a passion for my home island. I think I've been fortunate in that being on Maui is my home island, I've also traveled to many, many places and got to experience different places and things. So I look forward to this Commission because I love my island. I believe in it. I believe in people power. And I believe in the process. So I hope to be a good steward while I serve on this Commission. So I look forward to doing this. Mahalo.

Mr. Starr: Thank you, and thank you for being willing to serve. We have a lot of work to do together and it's great to have that slot filled. And before we proceed, I'd like to introduce our Members. There's Commissioner Kent Hiranaga, Commissioner Bruce U`u, Commissioner Ward Mardfin all the way from Hana passing through Keanae with the landslide. Michael Hopper is Corp. Counsel who will be here representing us and helping us today. I'm Chair Jonathon Chair. We have Clayton Yoshida from Current Division, Administrator, who will be representing the Director, and also Mr. Yoshida has been with the Department a long time. He's really knowledgeable. And he does a lot of the work preparatory in helping set up these meetings doing the agendas and helping make sure that our issues are organized. And he works really hard not only with us, but also with the Molokai and Lanai Commissions. And it's always good to have him here. We have Commissioner Donna Domingo. We have Commissioner Doctor William Iaconetti. We have Commissioner Lori Sablas and Commissioner Wayne Hedani. Our Secretary for the Commission is Carolyn Takayama-Corden. And we have Mike Miyamoto, Deputy Director of Public Works. We have our Planner Paul Fasi, and other hardworking Current Division Planners will be here to help us out as the day goes on.

We – I'd like to switch now to public testimony portion of the meeting. We allow public testimony in two ways during our meetings. The first is before we proceed with any actual business of the Commission, we allow Members of the public to testify on any item for which we'll be doing decision-making. And then when we go through each item on the agenda, we also do our – have our presentation. Staff will present. The applicant will have an opportunity to present. And then before we do decision-making, we open testimony to the public at that time. So members of the public wishing to offer testimony are given either one of two opportunities: either at the beginning of the meeting or before decision-making on that specific item. We ask them to try to testify only once, you know, on a given item, and to keep it as short as possible because our time is limited, and in no case, over three minutes. Having said that, I'd like to open the floor for public testimony.

The following person testified at the beginning of the meeting:

Ms. Susan Moikeha - Item E-3, Conceptual schedule for the Maui Island Plan.

Her testimony can be found under the item on which she testified on.

Mr. Starr: I'd like to call on any other members of the public who would like to give testimony on any agenda item to make themselves known. Not seeing any, last call. Anyone wishing to give testimony? Okay, I'll close the initial public testimony portion of the meeting. And I'm going to call a one-minute recess just to organize something here. So we'll be in recess for one minute.

(A recess was taken at 8:42 a.m., and the meeting reconvened at 8:43 a.m.)

C. RESOLUTION THANKING OUTGOING MEMBER - WILLIAM IACONETTI

Mr. Starr: Okay, our March 24th 2009 meeting of the Maui Planning Commission is back in order. And our next item is one of those kinds of uplifting but sad moments because we have a resolution to thank an outgoing Member, Doctor William Iaconetti. And he's someone that I've looked at as a mentor, someone I've learned a lot from, who's held me certainly to task when I've stepped off track. And he's really just been a great, great asset. And I know – I think for a lot of us, it's sad to lose him, but we're happy that he's getting his life back. But I'd like to turn over the floor to Mr. Clayton Yoshida to read the resolution we have for Doctor Iaconetti.

Mr. Clayton Yoshida: Thank you, Mr. Chairman, Members of the Commission. First of all, we have a letter from the Mayor to Doctor Iaconetti. It reads:

Congratulations on a job well done. On behalf of the people of the County of Maui, please accept my deepest appreciation and gratitude for your dedication and service on the Maui Planning Commission. Your efforts and contributions have made a positive difference. I truly believe that it is important for citizens to play an active role within both our community and government. The process of recruiting and selecting nominees to the various Maui County boards and commissions has given me a greater appreciation for volunteerism and community service. I would like to commend you for your willingness to devote your time, energy, resources, and insight to the betterment of Maui County. Once again, thank you very much for doing your part to make our County the best that it can be. I hope that your

experience has been rewarding and worthwhile.

Sincerely,
Charmaine Tavares
Mayor, County of Maui.

We also have before you a resolution of the Maui Planning Commission which reads:

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

Whereas, since April 1, 2004, Dr. William Iaconetti has served as a member of the Maui Planning Commission; and

Whereas, Dr. William Iaconetti, has served the Maui Planning Commission with dedication and provided valuable guidance in serving the needs of the people of Maui County; and

Whereas, Dr. William Iaconetti's term of office will expire on March 31, 2009, now therefore

Be it resolved, by the Maui Planning Commission that it does hereby express its deepest gratitude and appreciation to Dr. William Iaconetti for his service during the past five years and does hereby extend its best wishes in his future endeavors; and

Be it further resolved, that copies of this resolution be transmitted to the Honorable Charmaine Tavares, Mayor of the County of Maui and the Honorable Danny Mateo, Chairman of the Maui County Council.

So if all of you could sign the resolution before we give it to Doctor Iaconetti.

Mr. Starr: Okay, and I'd like to – while we sign this, I want to turn it over the floor to Commissioner J. B. Guard, our Vice-Chair, who's helped arrange something additional. And thank you, Commissioner Guard, for organizing that.

Mr. John Guard: Thank you. It was a pleasure and an honor to do so. Doc, it's been great to be with you the past, I guess, my three years. And thank you for your service of five years. And it's always been amazing to see how much respect you've had in the community going to the West side or even on this side to see how many people that you've affected their lives either being a part of their own birth, or birthing their children and grandchildren. So it's been an honor and a privilege to work with you these past few years. And this is from all of us. We wanna give this to you now.

Mr. Starr: Okay, and I'd like to open it up for any Members who wish to make a comment at this time. Anyone wants to add anything? Commissioner Hedani?

Mr. Wayne Hedani: I just wanted to offer my own comments that I've always appreciated the Doc's comments at the Commission, his wisdom, and his guidance. And it comes from his, I think, deep aloha for the island and his knowledge of the people. And I truly appreciate it. And it was an honor

working with him. Thank you, Doc.

Mr. Ward Mardfin: I'd also – well, I've only known you about a little over a year and a quarter or something like that. I've appreciated everything you've done and I've learned a lot from you. I was also asked very sincerely by Patty Eason to convey her great best wishes to you. I know you're not supposed to have favorites, but you were her favorite.

Mr. Starr: Okay, thank you. Doc, you wish to make any comments at this time? It would certainly be in order.

Mr. William Iaconetti: I think that I'm the one that should be giving leis to you all, and let you know how much I appreciate having been accepted. And it's been an honor to work on the Commission. It's been an extremely educational thing for me. I have had no knowledge of planning before. I have some knowledge now. But I certainly appreciate the aloha. And believe it or not, I'm gonna miss coming here. But it's been great and I thank you all for everything.

Mr. Starr: Thank you, Doc, for your service. Okay, you're not finished yet, though. You have a full agenda to go through. I'll turn it over to Mr. Yoshida to introduce our first regular item.

D. UNFINISHED BUSINESS

- 1. A & B WAILEA LLC requesting a Step 2 Planned Development Approval for the proposed MF-10 Multi-Family Use Project at Wailea Resort consisting of nine (9) improved single family residential lots, 36-multi-family units housed in four (4) buildings, commercial center of approximately 64,000 square feet, and related site improvements located northeast of Wailea Ike Drive and Wailea Ike Place, TMK: 2-1-008: 121, Wailea, Island of Maui. (PD2 2008/0001) (P. Fasi) (Previously reviewed at the November 25, 2008 and January 27, 2009 meetings.)**

- 2. A & B WAILEA LLC requesting a Special Management Area Use Permit for the proposed MF-10 Multi-Family Use Project at Wailea Resort consisting of nine (9) improved single family residential lots, 36-multi-family units housed in four (4) buildings, commercial center of approximately 64,000 square feet, and related site improvements located northeast of Wailea Ike Drive and Wailea Ike Place, TMK: 2-1-008: 121, Wailea, Island of Maui. (SM1 2008/0007) (P. Fasi) (Public Hearing conducted on November 25, 2008 and further reviewed at the January 27, 2009 meeting.)**

Mr. Yoshida: Thank you, Mr. Chair, Members of the Commission. The first two items are for the same project. The first one is a request from A&B Wailea LLC for a Step 2 Planned Development Approval for the proposed MF-10 multi-family use project at Wailea Resort, and – which was considered by the Commission earlier in November and January. And the second item is for A&B Wailea LLC requesting a special management area use permit for the proposed MF-10 multi-family use project at Wailea Resort. Paul Fasi is the Staff Planner, and I guess he's the first Staff Planner that gets to use our new podium.

Mr. Starr: And just for clarification, Mr. Fasi, you're gonna handle both items simultaneously?

Mr. Paul Fasi: Yes, sir.

Mr. Starr: Okay, go ahead.

Mr. Fasi: Good morning and thank you. Doctor Iaconetti, congratulations and thank you for your service. This matter was brought before the Planning Commission on January 27th 2009. At this particular meeting, there were six items of concern that needed to be addressed by the applicant. I'm not gonna go into the details again of the entire project. We are familiar with it. We did review it at the January 27th meeting. However, the applicant's here to address your six concerns that were brought up at that meeting. I did hand out a letter from the Department of Planning to the applicant and these six items are listed. And I'm gonna turn it over to the applicant so they can get into it and start addressing your concerns. Thank you.

Mr. Starr: Okay, thank you, Mr. Fasi. Mr. Hirano, I believe, please proceed.

Mr. Mich Hirano: Good morning, Chair Starr, and Commissioners. And thank you for your service, Doctor Iaconetti. We'd like to just present the power point that provided the information in response to the six items that were raised in Paul Fasi's letter of February 2nd. And so we'll just start with the first item which was the view plane analysis from the single family component. As you may recall, this project involves ten single family lots on the mauka side of the project or the eastern portion of the development. There is approximately, 64,000 square feet of commercial in the middle section of the development, and 36 units of multi-family use in the makai side of the development. And those multi-family units are in four buildings. And the request in that letter was to take a pedestrian view analysis along the project from the single family area, the commercial areas, and then along the multi-family. So we've provided this view analysis. And basically it was to just look at the massing and the building heights and the rooftops in relation to the existing vegetation and the existing site conditions. And so the architects have superimposed an outline of the buildings. It's very difficult to see, but this is the existing terrain, and this is the outline of the single family units on the makai side of the development. And as you can see, the roof lines are very – are low profile. They're well below the existing vegetation, and kinda maintained the views in the area, and do not impact sort of the pedestrian views through massing or through heights.

The next slide is really the entry to the commercial area so the single family units are in this area. As you go down Wailea Ike Drive westward, there is the entry driveway into the commercial area. And as we had mentioned, the site is lower than the road elevation at the entry of the commercial area on the makai side. And therefore, as you can see, the roof lines again, these are single story buildings, and the roof lines are well below the existing tree lines, and the canopy of the landscaping along the Wailea Ike Drive.

The next slide again, as you go down Wailea Ike Drive to the west, this is the roof line in, the building massing of the commercial area just at the sort of the end of the commercial area, and again, well below the existing tree lines.

This is down towards the single – towards the multi-family. These are two condominium buildings

that you see. Again, these are the existing canopy heights of the trees along Wailea Ike Drive. The site does come up above grade or above the Wailea Ike Drive grade in the southern portion of it. And the view corridor from the pedestrian point of view as you walk down Wailea Ike Drive would be sort of over the roadway and out to the west. And as part of this project, there will be a sidewalk that will be built along this portion of Wailea Ike Drive from the mauka side of the project down to Wailea Ike Place which is this intersection here.

In terms of the site plan, Commissioner Hedani had asked to look at the site plan in the 30-foot setback line. And when the architects went back to the drawing board and put in the 30-foot setback which is this red line along here, we found that most of the project and the buildings along Wailea Ike Drive are actually set back 30 feet from the property line. So this light line is the property line. There is an easement of water, irrigation line easement. And then the buildings are set back from that easement as well. So it's really 30 feet from the property line.

The other comment that was made was in regards to the drainage. And Commissioner Hiranaga had asked to look at the possibility of retaining more of the storm water runoff onsite. ATA, the civil engineer for the project, had looked at that, had increased the capacity of the underground retention basins within the parking lot, and has actually been able to develop the site drainage system to accommodate the post development flow for the project. And the post development flow is made up of two components. There is the pre development flow which is the existing flow over the site in the undeveloped condition. And that is 15.88 cubic feet per second. The increase in the flow of storm water runoff due to the development of the project and the impervious surfaces is 45.66 cubic feet per second. All that in terms of its capacity is retained on the site. So we were able to retain post development flow for the project on the site.

And the final condition or the final comment was with respect to look at pedestrian linkages from the project site to Wailea Alanui. And we had met with the Department of Public Works, and we looked at crosswalks, the possibility of putting crosswalks around – across Wailea Ike Drive in front of the project entrance or at Wailea Ike Place. And there were some concerns with respect to the sight distance and the speed of vehicles that are on that roadway at that particular intersection. The speed limit along Wailea Ike Drive is 30 miles per hour along that area. And there was concern with respect to safety. So the applicant, A&B Wailea, had met with the Wailea Community Association because the Wailea Community Association is also looking at the overall linkages of increasing pedestrian linkages within Wailea. And we are proposing this condition, for the applicant to cooperate and work with the Wailea Community Association, and for the Wailea Community Association to coordinate the assessment of pedestrian interface between the adjacent property owners. Wailea – A&B Wailea owns the MF-10 site, but does not own or control the lands makai of that site which eventually will require a sidewalk or a pathway to connect to Wailea Ike Drive on the north side. And therefore, the applicant felt it would be appropriate for Wailea Community Association to take the lead to meet with the property owners to see if there was a way to develop the pedestrian linkage to those properties to connect the project site to Wailea Alanui. And accomplishing that would in the long term create a sidewalk on both sides of the street of Wailea Ike Drive from Wailea Alanui right up to Piilani Highway. And it's not unusual in the County of Maui to have these incremental developments do the improvements on their frontage, and then eventually over the long term. Sidewalks are developed and completed for a network of pedestrian walkways from Point A to Point B. Not everyone controls all the frontage from Point A to Point B so the incremental way of developing it has been done in the past, and it has in the long term worked for the County of Maui.

So thank you. That's our presentation for those six items. And the project team is available to answer any questions you may have.

Mr. Starr: Okay, Members, any questions for the applicant? And, you know, this can be any items relating to this application.

Mr. Kent Hiranaga: I'd just like to commend the applicant on their improving the – or increasing the capacity of their drainage system. And the reef thanks you and the marine life thanks you. And I think Wailea as a resort destination, one of the primary reasons people go there is the – are the beaches and the quality of the water, so I think it's a plus for everyone.

Mr. Hirano: Thank you for those comments. And the applicant has also taken that seriously. And the other part of the drainage system which we had mentioned previously is that there are pollution control devices that are – will be incorporated within the drainage system that would retain sedimentation and petroleum products. So that would also help increase with water quality.

Mr. Starr: Well said, Commissioner Hiranaga. Members, any other questions for the applicant on this?

Mr. Mardfin: In reviewing my notes for today's meeting from a previous meeting, I noticed we had raised a lot of concerns about the amount of water that's being used for irrigation, not for the buildings themselves where humans are involved, but for irrigation. And you didn't comment on that today. Did you have any other comments?

Mr. Hirano: The comment – I think it was in the condition that the applicant had voluntarily agreed to monitor water, water use, for the three years, and to then modify or make any changes to their irrigation system or planting, to monitor water and to minimize use of water. So that has been the condition that had been developed previously. We had met with the Planning Department and had felt that that would be the best way to address that particular concern.

Mr. Mardfin: So you're gonna put in the same kind of plants you were gonna put in anyway which basically needs a Hana-style use of water. And then you're gonna monitor it for three years. And then the plants are already in there. And then if it happens to use more or less, we're stuck with whatever happens?

Mr. Hirano: The planting scheme was modified to try to minimize the water use of the plants themselves. However, most of the improvements were done with the type of irrigation system that was proposed. Rick Quinn is the landscape architect. I'd just like to have him comment on that.

Mr. Starr: Have Mr. Quinn come up. And then I'm gonna call on Mr. Fasi to go over some discussions and conditions that had occurred so we understand where – bring us back to speed of where we were. Please go ahead, Mr. Quinn.

Mr. Richard Quinn: Yeah, my name is Richard Quinn. I'm the landscape architect. When the Planning Commission expressed their concern about water use, we took a very careful look and aggressive look at how we're gonna manage water, and the type of landscaping we're gonna have.

There's a number of steps that we're gonna take trying to reach kind of best practices for minimizing water use including the choice of landscape plant material. One of the things we're gonna do is minimize the amount of turf grass which is kind of a water-hungry landscape. We're also having technology such as soil moisture sensors and rain gauges to shut off the system during rain events so that we're not wasteful in water in that way. And also, we're also trying to maximize the use of drip irrigation. We're taking it very seriously, and we're aggressively trying to control the water use. It's in the best interest of my client to do that as well as for other reasons too. So there's a number of what I would call best practices that we're trying to engage in. And we feel that we're gonna have a significant water savings over a conventional system that would be existing elsewhere in the resort.

Mr. Mardfin: Do you have any anticipation as to how much water the irrigation portion of this would take?

Mr. Quinn: Yeah, we've done the calculations, and we know exactly – well, the design hasn't been finished yet, so we don't have exact numbers, but we anticipate 22,000 gallons per day.

Mr. Mardfin: Twenty-two thousand gallons per day?

Mr. Quinn: Yeah, I believe that was the number.

Mr. Mardfin: And what was it prior to—?

Mr. Quinn: Thirty-three thousand.

Mr. Mardfin: So you've dropped by about 50%? No, about a third, about 33 1/3%?

Mr. Quinn: Yes.

Mr. Mardfin: Okay, thank you.

Mr. Starr: I'd like to call on Mr. Fasi. I know that we're not at the point where we're ready to have the report or conditions, recommended conditions as a package, but we were kind of at a point of having gone through a number of things, and had a list of conditions. And then there was particularly some discussion regarding water at the last meeting, and I believe subsequent to that. So I'd like to have Mr. Fasi fill us in on where we're at and what those aspects.

Mr. Fasi: Yeah, at the last meeting on January 27th, the Department suggested that perhaps this Commission could monitor the water usage in the special management area. So the Department did investigate that alternative. And the State basically said, to put it very briefly, no, this Commission does not have the authority to monitor water usage in the SMA. It's beyond the jurisdiction of this Commission. Now, that being said, in a way, you know, this application and the applicant's voluntary, self-imposed monitoring is un-precedent. It's the first time, I think, that I've had any application come before me that the applicant has imposed self-imposed restrictions to limit their water usage. And so as the landscape architect just mentioned, they did modify their landscaping. And basically, the only spray irrigation that they were gonna use is to water the grass. Everything else will be drip irrigation whereas prior, they had spray irrigation amongst their plants. So they've taken that all out. And they've gone from 33,000 to 22,000 gallons per day. It's still a

significant amount, but it's a start. And the Water Department is willing to partner up with the applicant and the Planning Department to make this happen. And the Planning Department feels comfortable with it, and we feel it's a start. And we hope it raises the bar for the – other developers and consultants to advise their clients to do likewise.

Mr. Starr: Before I put it back to Commissioner Mardfin, did we have a list of other items that were – that came to us as conditions from the previous meeting?

Mr. Fasi: I have – I do have – there are three modifications to the conditions that I have here. And I'll get into that when we review the recommendations. I can review it right now if you want.

Mr. Starr: Just so we know that they did come to us, and we'll get to that later. Okay, thank you, Mr. Fasi. Mr. Mardfin, please continue.

Mr. Mardfin: I just wanted to thank Mr. Fasi for his concern about the use of water. And I like – with your words that the Planning Department is happy with these modifications, it allows me to change my vote from what would've been a no to possibly yes. Has anybody given anybody thought to getting the other developments in there to retrofit to say, you know–? If this development can save a third of their irrigation water, maybe we can get some of the other resorts to retrofit and save a third of their water, and do – have a major impact on saving water for human consumption rather than plant consumption. I think that would be a great thing to see developers step up to the plate and do that and retrofit it.

Mr. Bruce U`u: I like the idea of what they're doing. I'd also like to see future developments implement this in best management practices, if possible, like they do with any other project: put up the dust screen or fences as this is one of their BMPs in place for future projects.

Mr. Starr: Okay, so I think what's being asked is that the Department look at having a wording that we'll use on a normal basis as our BMP for water conservation and resort areas, and model it after what's happening here. Did I hear that right? Members? Okay, I have one concern here and I'd like to have a little more clarification. And that is, I still feel that nothing has been done about the fact that this is supposedly a smart growth mixed use development, but it's being done with no connectivity to the community. And that there's no way to cross Wailea Ike Drive to where there's a sidewalk so there's no way to get onto public transportation. There's no way for the people who live here to get to the beaches, or to the Shops of Wailea, or to any of the resorts without either risking their neck and committing a crime by trying to cross the Wailea Ike Drive, or getting into an automobile. There's just no other option. To me that makes it unsuitable. It means it should be built somewhere else, and I'd like to have the comments from the applicant why they feel that, you know, this is a suitable location when you cannot travel to it or from it except by automobile.

Mr. Hirano: I think the pedestrian crosswalks and pedestrian access and creating that within Wailea is a long term plan. It's not immediately available. But there are plans in the long term that are underway. For example, Wailea 670 has, as a condition, roadway improvements for Wailea Ike Drive, and that is a signalization at Kalai Waa Street and Wailea Ike Drive. That would be a controlled intersection. And that would be one that would have intersections and crosswalks. The Wailea Community Association has as well taken on the aspect of linkages. There is a State bicycle path that goes on South Kihei Road. The applicant had met with some of the

representatives of the bicycle community on Maui. And they felt that with the provision of bike access within the project, and the bicycle racks for parking within the project which the applicant had committed to, that short distance between Wailea Ike Drive – Wailea Ike Place and Wailea Alanui Drive would be, I guess, available and usable without too much safety concerns that that can be done. So the applicant is doing what it can with respect to providing smart growth, and opportunities for pedestrian and bicycle movement within the project. And the long term connection is a long term, and the overall connection is a long term plan. And the applicant will participate as much as they can in that regard to create those linkages.

Mr. Starr: Can you explain how one would travel from Wailea Alanui to the project up Wailea Ike Drive by bicycle without risking one's neck? I know I certainly – I bicycle a lot. I certainly wouldn't do it. Are you saying that there's gonna be a bike lane created?

Mr. Hirano: No, not a bike lane created, but when the applicant had discussed that with representatives of the bicycle community in South Maui, they felt that they could use that access or use the roadways, the existing roadways. The Piilani Highway is a shared bicycle route. It doesn't have a dedicated bicycle lane, but it's shared with pedestrian and street traffic. I think Wailea Alanui, although it is steep and the cars move quickly, there could be some sharing in the southern portion or the makai portion of that area along Wailea Ike Drive to access the project.

Mr. Starr: Members? Commissioner Sablas?

Ms. Sablas: Yes, thank you. I, too, share Chairman's concern about smart growth practices. I commend the applicant for the steps taken in the water. I still think there should – more should be done. Twenty-two thousand gallons is a lot for dry Maui, the South Maui area. And I also would be curious as to what other projects, you know, maybe that are approved, and what it's gonna – what impacts that's on that limited water resource. We're looking at this project alone, but again, being new to the Commission, I'm not familiar with other projects that are already underway that have been approved that will be tapping into this precious water resource in dry South Maui area.

The other thing, too, about, you said commitment. And I think it's a commendable thing to have a walking community. I'm familiar. I am from South Maui. Has there been an inviting from the Association to commit? And what time schedule? Because a lot of times you say, yes, it's our intention, but then the project gets built and nothing happens. So what assurance does the community have that you are serious about doing this smart growth practice of providing a walkabout – I mean, a walkaway from your project?

Mr. Hirano: Commissioner Sablas, the projects that have been – I'll answer some of the questions that I can – the projects that have been approved in and around the area, there's the Wailea Gateway Project, which is a commercial project on Piilani Highway and Wailea Ike Drive. The applicant, A&B Wailea, had recently received approval from the Commission for a subdivision of single family lots just to the east of this project, just on the mauka side of the other single family lots. So those are the projects that have been recently approved in the area.

With respect to making assurances for smart growth and the connectivity, at least within the project, it's part of the conditions, or maybe part of the conditions that it is walkable. It's part of the design that has been put forward to the Commission in terms of having bike lanes, having a bus stop within

the project to encourage transportation, intra resort public transportation, and commuter transportation within the resort. So those are parts of the project that will be built that have those design features. There's also a sidewalk that will be built along Wailea Ike Drive on the north side along the overall frontage of this project. And that would bring the sidewalk from Piilani Highway down to Wailea Ike Place almost 80% of Wailea Ike Drive on the north side. And on the south side, there is an existing sidewalk from Wailea Alanui to Piilani Highway. So that entire area is connected by pedestrian access.

Ms. Sablas: Do you have a letter of commitment from the Community Association to connect all of the walkways?

Mr. Hirano: There is a representative from Wailea Community Association, Mr. Larry Clark, who—

Mr. Starr: Yeah, Mr. Murashige, what do you have from the association?

Mr. Clyde Murashige: Well, actually, what I'd like to touch upon is the approval process from the association on this project which deals with the connectivity and also the issue about walkability. The project in its connection from – or within the project connects to Wailea Ike Place which is a surface street that serves as the main access to two existing projects. And that connectivity – that connection allows the walkability from approximately, 195 existing units directly to the center, and that's all within that five-minute walking radius. So there's two existing residential projects that are already built that will connect to this project and have access. Wailea Community Association – any project within Wailea is required to get the association's design committee's approval. And the design committee approves specific plans. And they have approved the alignment, the site plan for the project, which shows the connection to Wailea Ike Place. And therefore, any changes – we cannot build without getting re-approved by the community association's design committee. So it's one of those issues that if we wanted to change it and not have the connectivity, we'd have to go back to them.

Ms. Sablas: I guess my question was, I had earlier – I had heard a comment earlier which was smart, in that there is a plan, I mean, a recommendation to connect all of the Wailea community. And from my understanding, it's just in discussion stages?

Mr. Starr: Mr. Fasi, did you have a comment? And if we do have Wailea Community Association representative here, I'd like to hear from them, but, Mr. Fasi, please.

Mr. Fasi: Two things, in order to address Commissioner Sablas' concern, you have the prerogative to bring back the applicant before this Commission to get a review on what the final plans are. And I would suggest if your concern is that strong that you do bring them back to look at the final plans prior to building permit approval. Now having said that, secondly, you – I think it's incumbent upon this Commission to maybe obey—maybe too strong of a word—the wishes of the community and the people that live there, if they should decide to not have any connectivity for whatever reason. I think it's incumbent a little bit upon this Commission to listen to what they're saying because those are the people that are actually living in the community, and they would have their reasons for either having it or not having it. I couldn't see – I can't see why they wouldn't want to have it, but my point is that the wishes of the community, of the people, the residents that live in that area represented by the community association should be listened to.

Mr. Starr: Okay, thank you, Mr. Fasi. Mr. Clark, and then Commissioner Hedani will have the next shot. And welcome. Please introduce yourself.

Mr. Larry Clark: I'm Larry Clark. And I'm the Design and Covenants Manager for Wailea. Good morning to Chairman Starr and Commission. All the concerns you've raised today are exactly the same kind of discussions we've had not only on this project but every project over the last several years both on water conservation and connectivity within the community. At the end of last year, we had approved by the community, in fact developed with community input, a new strategic plan for Wailea that included the connectivity between all the various elements recognizing a significant complication which is a great deal of Wailea's already been developed, and it's been developed around an 18-hole golf course, the Blue Course that's there. So any true connectivity is gonna have to deal with that golf course either going around it or theoretically, through it.

Specifically on this site, MF-10, the design committee had been working with the developer on the connectivity not only within the development because it's a multi use development, but with the adjacent, the immediate adjacent properties, one being the Wailea Town Center, which is a very isolated piece of commercial development that this will have a direct connectivity which we will think will help both centers on development. It connects to the Grand Champions which is a very walkable commodity to that MF-10. And directly across Ike, not down towards Alanui, but south, are developments of Ekolu, which is a multi-family development, as well as a single family home development of golf estates, all of which will have walkable capability to the center and which the community has been looking forward to specifically for no other reason than having a grocery store. And having this kind of development, a center and commercial enterprise, we believe will cut down a lot of the automotive traffic that's going down into midtown Kihei, and will diversify that traffic.

We have been looking at connections between MF-10 and Alanui which is also looking at how it's gonna connect to not only the beaches but the hotel properties. Two items on that concern, and for instance even on Gateway Center, which is just mauka of this center, was developing a bus stop at Gateway. And we're also looking at internal shuttle capability within Wailea not only from the hotels, but to develop that with staffs within the individual subdivision so that we would have a shuttle capability both to Gateway and the MF-10 capability, as well as the – working with the hotels for their shuttle capability independent of our developing a possible shuttle.

On the walkway components, as was mentioned earlier, there is a restaurant just on the other side of Ike. So there's cross traffic right now between both sides of Ike Drive. And it has to take into account how we're gonna have commercial capability on both sides. The golf course property that includes that restaurant is also looking at some additional commercial development. And the golf course along the access point that you've been looking at here and we've been looking at with the developer for MF-10, if it crossed the golf course area, which is that – the north side of Ike Drive, that development is looking at restructuring how they're gonna put the golf course including putting a driving range at that corner. And so we'd like to work with them as well as the developers in the area for how best to deal with that access point whether it should cross exactly on the street where it needs to curve around some of the tunnel areas, whether it should take place in some of the center island development which we've been looking at along Ike Drive which is a very wide avenue, and actually has where the drainage ditch separates – runs down the center of the street and separates it. It actually has some very wide vistas that also have an opportunity for development in that pedestrian walkway system.

So we've taken it very seriously. We're looking at it. We're working with the individual subdivisions within Wailea. Some are far more isolated than others. How they can connect to what would be the main commercial development area within Wailea without necessarily always having to go down to Alanui.

Mr. Starr: Commissioner Hedani?

Mr. Hedani: Thank you. I guess I'm not sure if the question that I have is for you, Larry, or for Clyde. It seems like the golf course is the impediment to connectivity between the project, the MF-10 project, and Wailea Alanui Drive. Is that what I'm hearing?

Mr. Clark: Well, Ike crosses, in essence, through the golf course. The golf course has a tunnel under Ike, so it has access between the two sides so that there's not a mix of golf cart traffic on the street.

Mr. Hedani: I see. So the question I had was for pedestrian – well, pedestrian sidewalks from Piilani Highway to Wailea Alanui. It seems like the impediment is the golf course portion of the property. And what I hear you saying is that the golf course has to come to the community association for approval in the future.

Mr. Clark: And they'll be coming to you in the future. So you have what we foresee is a very near term opportunity for both us and perhaps the Commission to deal directly with the golf course on some of their own development there, which will include this connectivity issue and how that will cross their property.

Mr. Hedani: I guess my question is, is the golf course objecting to a sidewalk along Wailea Ike at this point?

Mr. Clark: They're not volunteering to retrofit this before they might . . . (inaudible) . . . in the project.

Mr. Hedani: Well, I can see where they don't have an interest in the project so they wouldn't be interested in putting in a sidewalk for the MF-10 project, but are they objecting to a sidewalk from their property?

Mr. Clark: No, no, but they're looking, as we are, as to how best to deal with this within their own development.

Mr. Hedani: Okay. I guess then my question is, the condition that was proposed by Mich, is that sufficient for Wailea Community Association to require the golf course to at least accommodate a pedestrian access along Wailea Ike that would provide connectivity between Piilani and Wailea Alanui?

Mr. Clark: Yeah, we've been talking with A&B, the developer, and specifically on what was shown here and presented, and we're in total agreement with that. We've enjoyed a very good relationship with A&B. And expect that to continue and especially on this particular component of the development since they have many of the properties that we're interested in trying to work with that pedestrian access.

Mr. Hedani: Okay. And I take it that no easements were reserved at the time the golf course was sold along Wailea Ike that would provide a pedestrian access or sidewalk?

Mr. Clark: No.

Mr. Hedani: It was an oversight?

Mr. Clark: I can't speak to 30 years ago. I don't know.

Mr. Hedani: Okay.

Ms. Sablas: You mentioned intra resort shuttle. I know at one time it was operating. Is it not operating any more?

Mr. Clark: There is a shuttle, very limited . . . (inaudible) . . . It's more from the hotels to the golf course or tennis club. And certainly at the concierge service at any of the hotels, well, they'll take you anywhere at any time. We were looking at some opportunity to augment that schedule and include far more the community, including the residential areas for either on-call or scheduled service for pickup, etc., etc., because we would like to see the traffic more controlled. We'd like to see safety—

Ms. Sablas: But it's still operating, the intra resort?

Mr. Clark: It's still operating today as is regular bus service. In fact, there was a regular bus stop in the Shops of Wailea which we're still working with to try to get that bus stop off of Ike. It's just not a — what we consider a very convenient location on a traffic basis to have that stop there.

Ms. Sablas: Thank you.

Mr. Starr: Members? I have one quick one for Mr. Clark. What's the WCA's position concerning a method to cross Wailea Ike? I know my concern with this project is I don't wanna feel responsible for creating a situation where people are crossing from the restaurants and communities across Wailea Ike to the new restaurants and facilities on the north side, and someone gets hit. I don't wanna feel responsible for — well, we're helping that. Is there a position regarding creating a crosswalk across Wailea Ike Drive?

Mr. Clark: Yeah, we specifically had been looking at and maybe don't have full agreement with the 670 solution, which includes the signal light at Kalai Waa, which is more of a T intersection and down from the main entry of Gateway. But we would like to see it at — a signal light at Ekolu Place, which will be in essence a direct T intersection with the main entry into MF-10 on the mauka side, which we think is a better connection for all of the Ekolu pedestrian traffic as well. So even if the Kalai Waa intersection were lighted, we'd still like to see a signal at Ekolu Place. So we're looking at exactly the same issues that you've been bringing up which are extremely important and is how that pedestrian traffic is gonna maneuver down that road especially since even though 30 miles an hour is the stated limit, it's exceeded far too long.

Mr. Starr: Thank you very much, and please keep up the— Oh, Commissioner Sablas.

Ms. Sablas: I do have another question again. I'm sorry. I'm a newcomer and I do know where the project is. It's adjacent but close to the Wailea Town Center?

Mr. Clark: It will be just between the Town Center and Ike, and then between the tennis courts and the golf course.

Ms. Sablas: So Wailea Town Center is pretty much the same? You have commercial. You have housing.

Mr. Clark: It has – it's mostly a commercial center, but it has residential above some of the commercial that's been developed there. There's some two-story commercial which is business and commercial.

Ms. Sablas: How long ago has it been in operation?

Mr. Clark: Three years.

Ms. Sablas: About three years? So what would you say—is it fully occupied, all those, or what percentage?

Mr. Clark: It has been struggling. There's been – and those were condominium, commercial developments. So they're individually-owned. There's probably, 40% vacancy. There are those that are in there that aren't doing as well as one might hope. I think that they lack the drive-by exposure since it's in a isolated island. And certainly with this development, our hope is that they'll piggyback off that.

Ms. Sablas: And bring more exposure.

Mr. Clark: And bring far more exposure to the Town Center. And this will become more collectively . . . (inaudible) . . .

Ms. Sablas: There was a restaurant – I'm sorry, there was a restaurant that was going to be put in there?

Mr. Clark: The restaurant . . . (inaudible) . . . 69, and as we've jokingly said over the last 18 months, it's gonna open in two weeks. They have virtually finished all of construction. It's fully furnished. Last we heard they're waiting for some operating capital, but we have not heard that that has been successful. So at the moment, it's still in question.

Ms. Sablas: So I do have a concern there that you have a Town Center that is as you said, 40% occupied.

Mr. Clark: It probably has 40% vacancy.

Ms. Sablas: Vacancy, rather. And then we're proposing to get another – yet another project kinda similar uses, from what I'm understanding, adjacent to this project.

Mr. Clark: I think a number of major differences that we see in this is, one, it has the exposure off Ike so you know it's there. I was probably— The Town Center opened before I was there. And I, like many residents in the area, just didn't even know where it was, let alone to go there. We heard that there was some little commercial area there, but we just couldn't find it. That will change with this. MF-10 also is trying to develop a major entity as a draw to this which in this case is viewed as the food store that will be a grocery store, a small grocery store, which will be a major addition and a big draw, and develop that commercial zone. So they have high hopes for this and we think good interest in it. And we think this will be ultimately successful and help the rest of the surrounding community.

Ms. Sablas: Thank you.

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

Mr. Hedani: I was wondering if we can take a look at a map that shows the signalization that you were talking about?

Mr. Hirano: We'd just have to get the old power point up and just show you.

Mr. Starr: Commissioner Hedani, please.

Mr. Hedani: While we're waiting for that, Mich, I just wanted to say from my perspective, I appreciated the fact that you did do the analysis relative to the view planes and the setback from Wailea Ike.

Mr. Hirano: Thank you very much.

Mr. Starr: Mr. Hirano, while we're waiting, I wanna pose a subsequent question that when this is done, you could get to which is I want to understand better about the workforce housing. And I understand there's an exemption based on an agreement that was made on another site and the transfer of development rights have back moved to this site. Can you give us a description of that after we finish with this discussion?

Mr. Hedani: What I'm looking for, Mich, is basically where the sidewalks exist, where the sidewalks will be completed up to the point when this project is completed up to the point when this project is completed, and what portions are missing, and how that relates to the signalization.

Mr. Hirano: This is Kalai Waa here. That's where the proposed traffic signal is going to be placed. This is Piilani Highway. This is the MF-10 site and this is Wailea Alanui. And the Blue Golf Course is in this section here. So right now, the sidewalk is from Piilani Highway down to the mauka side of the MF-10 site. When this site gets developed, it will be – there will be a sidewalk along Wailea Ike Drive down to Wailea Ike Place to this point. So this is the section that is currently without a sidewalk and in the future will be without a sidewalk. On the south side of Wailea Ike Drive, there is a sidewalk all the way from Wailea Alanui Drive right up to Piilani Highway.

Mr. Hedani: And the proposed intersections? The signalizations?

Mr. Hirano: The signalization is at this point. That's the proposed signalization is Kalai Waa.

Mr. Hedani: Okay. What about Wailea Ike Place?

Mr. Hirano: Wailea Ike Place, this is Wailea Ike Place, and connecting to Wailea Alanui, and there is no proposed intersection signalization at that point. There is a through traffic. You can come up Wailea Ike, or head mauka on Wailea Ike, and turn in and make a lefthand turn into Wailea Ike Place. And there's a refuge lane sort of in the median 'cause there's quite a large wide median.

Mr. Hedani: Is Wailea Community Association's position that both should be signalized?

Mr. Starr: Mr. Clark? Please stay at the microphone, Mr. Clark. We need that for the record.

Mr. Clark: Our preference – this intersection that is proposed, the main entry, the Gateway Center, is right up in here. So it's an awkward condition, from our perspective on a signal basis, and maybe more interfering to traffic getting in and out of the gateway center without a full engineering study on this. But Ekolu Drive comes across right now. This is the Golf Estates. This is all Ekolu, the subdivision development. This drive comes between, splits Ekolu, and I believe it's the entry to MF-10, which is right across from this. And this would be from our perspective, a much more logical place to have a signal intersection both coming off of Piilani, and exiting and entering Gateway, and providing a more midpoint and appropriate access point into the development. So this drive right now that exists, that street continues on, and that's what we would like to see. Whether there is an additional signal or not, that's the preference that we have and we'll be working to confirm that, and see what we could do to have that put in place or propose for having put in place.

Mr. Starr: Okay. Thank you, Mr. Clark. Members, any other questions? Okay, can you give us – Mr. Hirano, talk about the workforce housing?

Mr. Hirano: Yes, and again, in our response to the Planning Commission, there are two areas of residential development within the project. There's the ten-lot single family on the mauka side of the project, and a 36-unit multi-family on the makai side. The ten-lot, and we have a letter from the Department of Housing and Human Concerns confirming the, I guess, the application to the Workforce Housing Ordinance, the ten-lot subdivision was – went in for preliminary subdivision prior to the ordinance, and as a result of that, it was exempt from the Workforce Housing Ordinance because there is the provision within that four exemptions, and this met that provision. The multi-family unit, the ten - the 36 multi-family units will be subject to the Workforce Housing Ordinance. And the applicant will be working with the Department of Housing and Human Concerns to enter into a workforce housing agreement to cover those units. With respect to the transfer, I'm not clear on that. And I would like to ask Clyde Murashige to talk about that.

Mr. Starr: Yeah, Mr. Murashige, yes, please explain about the TVR.

Mr. Murashige: Thank you, Chair Starr, and Members of the Committee. The – in one of the graphics that was previously on there, the – we went through a planned unit development transfer about – in 2005 that basically moved around some land uses which included this site. There was no discussion at that time about the workforce residential housing. In fact, that ordinance wasn't even in place. And we did realize that in this case, we did have some transfers to this MF-10 site.

And whatever was done in terms of the multi-family provision, it would have to comply with whatever ordinance was gonna be put in place. So in terms of that transfer, there was no housing transfers. I think there was land use transfers that the Commission approved in '05.

Mr. Starr: The single family houses for which it's exempt from the workforce housing, was that actually initially approved for a different site?

Mr. Murashige: No, it wasn't. It was part of the subdivision, preliminary subdivision for this particular site.

Mr. Starr: So that wasn't transferred from another location?

Mr. Murashige: Right. If I may, Mr. Chair, just to add to the issue about the traffic light? The traffic signal that is scheduled to – or is conditioned to be at Kalai Waa Street is actually a specific condition of the Wailea 670 zoning approval. So we do not have any control over that specific condition. I do want to point, though, in terms of distance, when you look at the distance between the two intersections, it's very, very close. And I think if some of the Commissioners remember in Kihei on South Kihei Road by Longs, they actually had to pull out a traffic signal because it was too close and it was jamming up the entire area. And that's the kind of situation that would happen with two signals in very close proximity.

Mr. Starr: Thank you. Commissioner Hiranaga?

Mr. Hiranaga: Clyde, just for my education, why is that signal part of the 670 zoning?

Mr. Murashige: Very honestly, I don't know. When it went before the Council, it was a condition that was put on as part of the traffic mitigation impacts.

Mr. Hiranaga: So they feel that once 670 is developed, there will be traffic coming down Wailea Ike, and a signal might be appropriate for that intersection?

Mr. Murashige: Actually, Commissioner Hiranaga, I really don't know the rationale behind that condition.

Mr. Hiranaga: Because that intersection is not used much.

Mr. Murashige: Not a whole lot.

Mr. Hiranaga: Thank you.

Mr. Hedani: Clyde, from A&B's perspective, from the development perspective, what we're struggling with is how do get people across Wailea Ike safely without being squashed? From your perspective, what would be the best solution for that?

Mr. Murashige: I think there's a couple of issues facing this. Number one is when we looked at the service area of this MF-10 project in terms of pedestrians, we felt realistically, it's not that big of a center. So it would serve the connected area of the Grand Champions and the Wailea Town

Center, and those were where the 195 units, existing units, come from. At this point, you know, it's interesting. We see people once in a while walking up towards the tennis courts on the north side, but they walk on the grass. It's still traversable. I mean, you can walk on the grass and then walk up. On the south side in terms of getting people across, when we looked at the service area, basically I think as Larry said, there's a – the Ekolu Condominium and to an extent, the Golf Estates, the Kalai Waa intersection that was part of the 670 condition, if there's a traffic signal there, there can be a crossing because that serves the upper Ekolu area that they can walk across. With the other side, the lower Ekolu, Grand Champions' area, looking at that, and watching the people walking in that area, they tend to walk down the south side along that sidewalk of Ike Drive, cut across, and then walk up the grass strip. We've actually spent a lot of time out there at different points along Ike Drive and looking for the crossing. Ike Drive and Ike Place down to the lower end of the project, there's some sight distance issues. And the way the thing is placed on, you essentially have three seconds to get across there. When the cars come down, you can't see them. By the time they see you, it's really kind of a dangerous situation. So we wouldn't really advocate for any crossing at that point, but we still think that either the Kalai Waa intersection or if, as Larry said, if the Council can amend the condition, and have 670 look at an intersection further down, or give the flexibility to assess what's a better intersection would be good.

Mr. Hedani: So from your perspective, you agree with the Wailea Community Association that a more centralized intersection that signalized would service the entire community in that area better?

Mr. Murashige: We think for the overall community, it would be better, but we wouldn't advocate two signal lights.

Mr. Hedani: Right, right. And there's no underpass or something that they can use underneath Wailea Ike to get to and from in the meantime?

Mr. Murashige: The underpass is kind of an interesting one. Everybody–

Mr. Hedani: I guess you get mugged if you go in the underpass?

Mr. Murashige: No, no, it's a different safety concern. That underpass was designed to be part of the drainage system. So essentially what happens is there's a high volume of water that comes through that system. And if you've got somebody in there, although there's bollards in the crossing part, it could be pretty dangerous.

Mr. Starr: Okay, should be move to public testimony? Okay, we're ready to open up for public testimony on this item. Any members of the public who wish to give testimony, please make yourself known. Okay, Ms. Bowie, please come introduce yourself.

Ms. Irene Bowie: Good morning, Chair, and Commission Members. I'm Irene Bowie, Executive Director of Maui Tomorrow Foundation. We applaud A&B for this smart growth project in Wailea. In listening to the comments today, I just would ask that both A&B and the Planning Commission consider raising the bar on this development. And on the water issue in particular, while it's laudable that they have cut back on this use, I would ask for them to be an example to other developments down in that area, and look at putting in more drought tolerant landscaping. I think something– You know, we have created this idea that we think that the visitors can't accept coming

to a place unless it's very lush and looks like Hana. And I think we need to start re-educating as this resource gets more and more precious. So I would just put that out as something to consider. Also, pervious surfaces throughout this development, I think would be very helpful. To make sure that the number of bus stops are number one, covered bus stops, and that also that they are close enough together. I think studies find that people will generally not walk more than about five minutes to a bus stop. So in order to encourage that, I would ask that you look at the number of bus stops is about that ratio. And then as far as the signal issue, it sounds like Ekolu would definitely be a better signal. And I would ask also that you consider a raised crosswalk because it seems like you have an issue of speeding traffic in there anyway. It sounds like the way the road is laid out, I think a raised crosswalk would turn – would tend to make people slow down in the same way that speed bumps do. So even if you're going through with a green light, you kind of know you need to go a little bit slower in this area. So again, that and really the issue of sidewalks, bike paths. If this is really a smart growth project, the LEEDS score card for neighborhood development, you're looking at reduced automobile dependence, bicycle network and storage, connected and open community walkable streets, the transient facilities as I mentioned, the access to public spaces. So all of those things, we would just like to ask you to consider in this. Thank you.

Mr. Starr: Okay, questions for the testifier? Thank you very much, Ms. Bowie. Anyone else from the public wishing to give testimony on this item, please raise your hand or come forward. Okay, seeing none, public testimony portion is now closed. Members, do we need a recess or can we proceed and do this? Okay, we're gonna keep going. We're gonna call Mr. Paul Fasi up to give us the Department's recommendation on this item.

Mr. Fasi: Thank you, Mr. Chair. The Department recommends approval of this project and of the SM1 permit and the Step 2 application. If you can refer to your recommendations, there are some amendments to it: 22, 25, and 26. In 22 and 25, to address Commissioner U'u's concern regarding the water usage becoming a standard condition, keep in mind that this Commission has the prerogative to make and change standard conditions as it sees fit. And so if this Commission wants to make conditions 22 and 25 with a slight modification that I'm gonna recommend, these could also be incorporated as standard conditions for future projects. And so let me get to the modifications.

Mr. Starr: Just to comment, we'll have to take that up at another time. We can't – we can only deal with this project right now.

Mr. Fasi: Okay. Concerning Condition No. 22, I'm gonna add some language to it and it's gonna read:

That all irrigation for landscaping shall be drip irrigation with exception of presently established grass areas and newly proposed grass areas only as presented to the Commission on this date.

So in other words, they cannot add any more grass area beyond what they presented today to increase their water usage. And 25 shall read:

That the applicant shall meet with the appropriate Department of Water and Planning Department personnel to appraise the applicant's water consumption

usage and to make any necessary adjustments in order to be in compliance with the Department of Water consumption figures. The suggested review may include, but not be limited to the following categories.

And I took out the word "shall" because I don't want to limit the Department of Water's review and give them some flexibility on input on this particular condition. And Condition 26:

That the applicant shall be subject to current and any new requirements and standards imposed by the Water Department and/or the Planning Department for the purposes of achieving compliance to applicable water consumption standards.

And Condition No. 27, I don't think you have it in here, but it shall be removed in its entirety and not be included. And that would conclude the Department's recommendation.

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

Mr. U`u: Question: are we taking the planned development at the same time as the SMA? Are we breaking up in two?

Mr. Starr: Mr. Fasi, is there any reason to break them up or can we take them as one?

Mr. Fasi: You can – I know in the past we have addressed them separately, but for the purpose of presentation and discussion, we presented it together. So the motions should be separate.

Mr. Starr: So when it comes time for a motion, they should be sequential is my – what I heard. Members? Commissioner U`u?

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

Mr. Starr: That's for the first—?

Mr. U`u: Step 2 planned development.

Mr. Starr: Okay, is there a second?

Ms. Domingo: Second.

Mr. Starr: Okay, so we have a motion by Commissioner U`u, seconded by Commissioner Domingo. That motion restated is—?

Mr. Yoshida: To approve the Step 2 planned development request as amended.

Mr. Starr: Yeah, with conditions as amended.

Mr. Yoshida: Well, I guess the Department is not proposing conditions for the Step 2. We are proposing conditions on the SMA.

Mr. Starr: Okay, so for clarification then, the conditions are not on the Step 2. They're on the SMA. So the motion, just one last time is--?

Mr. Yoshida: To approve the Step 2 planned development request.

Mr. Starr: Okay, so that's now the property of the Body. Any comments, or amendments, or anything like that? Not seeing any, ready to vote? All in favor, please raise your hand. All opposed?

Mr. Yoshida: The vote was seven to two. Motion passes.

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

VOTED: To Approve the Step 2 Planned Development.
(Assenting - B. U`u, D. Domingo, K. Hiranaga, J. Guard, W. Mardfin,
W. Iaconetti, W. Hedani)
(Dissenting - L. Sablas, J. Starr)

Mr. Starr: Okay, Members, additional motions or questions? Commissioner U`u?

Mr. U`u: Motion for the special management area with conditions – with amendments.

Mr. Starr: Okay, is there a second?

Ms. Domingo: Second.

Mr. Starr: Okay, moved by Commissioner U`u, seconded by Commissioner Domingo. The motion is, Mr. Yoshida?

Mr. Yoshida: To approve the special management area use permit request with the conditions as amended.

Mr. Starr: Okay, Commissioner Hedani?

Mr. Hedani: Is the staff recommendation including the condition for connectivity involving the Wailea Community Association part of the recommendation?

Mr. Fasi: Could you repeat that?

Mr. Hedani: The condition that's included here for the wording including inter connectivity with the Wailea Community Association, is that the recommendation that we're voting on?

Mr. Fasi: Yes, that's correct.

Mr. Hedani: So that's included?

Mr. Fasi: That will be included.

Mr. Starr: So just for clarification, that is one of the conditions. And that's just – I believe to create a discussion regarding this. Members, any other questions, possible amendments? Seeing none, all in favor, please raise your hand. All opposed?

Mr. Yoshida: The vote is seven to two. Motion carried.

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

VOTED: To Approve the Special Management Area Use Permit with Conditions, as Amended.
(Assenting - B. U'u, D. Domingo, K. Hiranaga, J. Guard, W. Mardfin, W. Iaconetti, W. Hedani)
(Dissenting - L. Sablas, J. Starr)

Mr. Starr: Okay, congratulations. Build a great project, and thank you for your patience. And thank you, Mr. Fasi.

Mr. Hirano: Thank you very much, Commission.

Mr. Starr: Okay, we'll take a recess, a ten-minute recess at this time.

(A recess was taken at 10:05 a.m., and the meeting reconvened at 10:16 a.m.)

Mr. Starr: The Planning Commission meeting will be back in session on the March 24th meeting. Two things to mention: one is that we're gonna have to break for lunch at 11:15 because of some arrangements that the Department has made. And we'll be proceeding with the next item. Before we – I'll ask Mr. Yoshida to introduce it. Before we start with that item, though, I want to stop for a minute because there's a disclosure that our Corp. Counsel will have to make, and I wanna do that before we get into the item, but I will ask Mr. Yoshida to go ahead and introduce the item first.

- 3. PACIFIC WAREHOUSE, INC. requesting a Special Management Area Use Permit in order to expand and renovate the exterior of the existing Kihei Foodland Super Market building and related improvements at 1881 South Kihei Road, TMK: 3-9-003: 012, Kihei, Island of Maui. (SM1 2008/0014) (P. Fasi) (Public hearing conducted on February 10, 2009)**

Mr. Yoshida read the agenda item into the record.

Mr. Starr: Okay, and I apologize because the disclosure item relates to the next item, not this, so there is no – nothing regarding disclosure on this item. And, Mr. Fasi, before you begin, I just wanna understand about the legality that we're not holding the public hearing today although we will certainly allow testimony but just to understand what the rules are.

Mr. Fasi: Thank you, Mr. Chair, yes, this is unfinished business. And we are here to review the Kihei Town Center expansion of 6,855 additional square feet of area. And at the last meeting where this item was discussed, it was February 10th 2009. And the Commission had an issue and concern with the drainage of the additional parking lot that is adjacent to the property. I'm not gonna review the entire project. You did review it on February 10th. I'm gonna turn this over to the applicant so they can address your concern immediately. Thank you.

Mr. Starr: And why are we not holding a public hearing on this?

Mr. Fasi: This item is unfinished business. We had the public hearing on February 10th. And so this item does not require a public hearing. This is listed under unfinished business.

Mr. Starr: That's because we deferred it to a date certain at that meeting, is that correct?

Mr. Fasi: That is correct, yes, sir.

Mr. Starr: Okay, and Corp. Counsel agrees. Okay. I just wanted to clarify that when we defer it to a date certain, then we don't have – we are not required to do the notice that a public hearing would have. Okay.

Mr. Michael Hopper: Let me clarify, Mr. Chair, we would still need to have public testimony.

Mr. Starr: Yes, which we will have before decision-making. Now please proceed, Mr. Fasi.

Mr. Fasi: Thank you. At this point, if there are no questions for the Department, I'm gonna turn it over to the applicant so they can address your concerns, and we can get through this next item. Thank you.

Mr. Starr: Okay, thank you. Welcome, Ms. Hiraga, Ms. Dagdag.

Ms. Gwen Hiraga: Thank you. Good morning, Members of the Commission. Congratulations, I guess, to Doctor Iaconetti, for his five years of excellent service to the Commission. Gonna miss you. And then welcome to Commissioner Lori Sablas to your first meeting.

My name is Gwen Hiraga representing the Kihei Town Center. As Paul mentioned, the Commission did review and conduct a public hearing on February 10th. And we'd just like to touch upon the areas or the comments made at the previous meeting, and address the comments and concerns that you have. In terms of– I'll be doing a very short power point presentation, but I did wanna note that Mr. Robert Domingo from the Retail Design Group is here; Todd Hondo, Pacific Warehouse; and Stacy Otomo from Otomo Engineering. We have the civil engineer today because the comments and concerns from the previous meeting focused on engineering-related questions.

Just by way of project background, back in December 14th 1999, the Commission did approve an SMA permit for the project scope of work. All but the last days of the work was completed prior to expiration of the SMA permit. And the purpose of the permit before you is to request – is intended to complete the unfinished scope of work. Again, this is South Kihei Road, Auhana, Kapuna. This

is the Kihei Town Center, location of Foodland. And across the street is Kihei Kalama Village. I have a couple of photos. This is the northeast view of the front of the Foodland building, south view along the rear of the Foodland building. This is the expansion, exterior renovation site plan. Again, this is the Foodland building, and the improvements are primarily interior renovations.

At the February 10th Commission meeting, we understood that there were three major concerns of the Commission: one being the need to address storm water runoff water quality from the parking lot; second, the need to retain runoff onsite in the new parking area; and thirdly, the need for an explanation of the drainage system on the property by a civil engineer. I am gonna turn the presentation over to Stacy Otomo at this point.

Mr. Starr: Okay, Mr. Otomo, welcome.

Mr. Stacy Otomo: Good morning, Chair Starr, Members of the Planning Commission. My name is Stacy Otomo. To give you an overview of the project, on this first slide here, what you see in the blue is the existing drainage system prior to the previous expansion of Foodland. At some point in time, I would say maybe about 15 years ago, the County of Maui put in a drainage system along South Kihei Road consisting of box culverts here, here, with a 7x4 feet concrete box culvert outletting into the Kalama Park drainage channel. This particular system was sized to take runoff from developed conditions between the area of Keala Place, Halelani Place, and a little portion along South Kihei Road to the north.

During the previous expansion, what happened was the parking lot was revised in the Foodland parking area along with the entrance from South Kihei Road which used to be down in this area. What happened was we maintained the existing drainage system. We put in a new drainage system within the project site that actually connected to the existing. Again, what you see in the blue was sized for developed conditions mauka of South Kihei Road. What we're proposing right now is for this parking lot expansion, which is basically this area right in the back here, we're gonna put in a drainage system to address your concerns about possibly retaining some of the developed runoff onsite, and what we're gonna be proposing is a perforated drain system in this particular area, which is capable of handling 100% of the developed flow from the new parking area. Again, I'd like to emphasize that this drainage system here was sized to accommodate runoff from this area, but to address your concerns, we will be putting in a perforated drain system in the back parking lot.

Mr. Starr: Thank you very much. Members, any questions for the applicant, for Mr. Otomo, for staff?

Ms. Sablas: Small question. To Gwen, the street is Kupuna, K-u-p-u-n-a, not Kapuna. That's my neighborhood. I live there. Just a correction, yeah, it's a K-u. The parking lot in the back, it's supposed to be back there, and then there's no door in the back there, right? So you'd still have to come back to the front? I shop there every night so-

Ms. Hiraga: Yeah, that's correct.

Ms. Sablas: Yeah. And by the way, I lived there 30 years. Never had a problem finding any parking

in all those times. And I applaud Foodland. They're my store so-

Mr. Starr: Any comments back, Ms. Hiraga?

Ms. Hiraga: No, but I - we do have a couple of conditions if the Commission wants to consider it that would address water quality concern and the runoff retention. So either Paul or myself can raise it at the appropriate time . . . (inaudible) . . . further questions.

Mr. Starr: Okay. And I just wanna thank you for being sensitive about these drain issues in the SMA. Commissioner Mardfin?

Mr. Ward Mardfin: You're getting into what I was gonna raise. One of the things we raised last time was not what was happening in the back where you were basically taking care of, but we wanted that the existing runoff have some sort of filter before it goes into the wastewater. We were concerned about the existing parking lot, basically, feeding into the ocean with a lot of pollutants, but it sounds like you're gonna be dealing with that so-

Mr. Starr: Why don't you give us - why don't we have Mr. Otomo give us a presentation of that part of it?

Mr. Otomo: What the applicant is proposing to do is one of the catch basins within the site, including the new ones that'll be putting in will be retrofitted with the catch basin filters, which will help sediment and to some extent, some of the petroleum products from outletting into the drainage system into the Kalama Park channel.

Mr. Mardfin: And will that take care of all the runoff from all the parking so that it's at least filtered before it goes in?

Mr. Otomo: That's correct. The proposal is to retrofit the existing catch basin on the site as well as the new one.

Mr. Mardfin: So from your site at least there should be no pollutants going into the wastewater?

Mr. Otomo: As much as practical, we're retrofitting everything within the site.

Mr. Mardfin: Okay, thank you. Let me just add, that's what we were asking about two weeks ago, and you got to the heart of, at least, my matter.

Mr. Hiranaga: Stacy, in a perfect world what we're looking at is retention of post development runoff. And maybe you can explain to the Commission why that's not possible.

Mr. Otomo: Well, two things: the County drainage standards, whenever there is an adequately sized drain line with an adequate outlet, the purpose is to connect up to the system, in which particular case is what we have here on the site: there is an adequate system along South Kihei Road with an adequate outlet. That's the reason why everything on the site presently connects up to that system. To answer your question, one concern we have particularly in the front here is the

elevation where this one in the parking lot is less than six feet in elevation, and the concern would be the groundwater table being so close to trying to put in a perforated pipe system.

Mr. Hiranaga: You did take a look at that possibility or—?

Mr. Otomo: We did not look at the front. We examined the back portion here. And it is possible to put in a system back there.

Mr. Starr: Are we ready for public testimony? Okay, at this point, I would like to open up the opportunity for members of the public to give testimony on this item. Anyone wishing to do so, please make yourself known. Anyone wanting to testify? Seeing none, public testimony portion is closed. I believe we're ready for Mr. Fasi to give a recommendation.

Mr. Fasi: Thank you, Mr. Chair. The Department recommends approval of this special management area application. The Department is comfortable that the applicant has addressed the drainage issues through their mitigation. So with the recommendations that they self-imposed, we will be including these two self-imposed conditions as conditions on the special management area permit under project specific conditions.

Mr. Mardfin: Could you put up that condition? Thank you.

Mr. Fasi: This would be Condition No. 19 as stated on the screen. And Condition No. 20 would be the next – this condition as stated on the screen. We would include these as project specific conditions.

Mr. Starr: Members, any additional questions or possible motions?

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

Mr. Guard: Second.

Mr. Starr: Okay, motion by Commissioner U`u, seconded by Commissioner Guard. The motion is—?

Mr. Yoshida: The motion is to approve the special management area use permit request subject to the 20 conditions including the two conditions proposed by the applicant today.

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

Mr. Hiranaga: Discussion: I just wanna thank the applicant. I cannot commend you, but I wanna thank you for the additional treatment of the storm water runoff that will be entering the ocean across the street through the drainage ditch through Kalama Park. I think the reef out there is pretty poor so anything you can do to help the reef come back is appreciated.

Mr. Starr: Okay, Members, we ready for the vote? All in favor, please raise your hand. All opposed? Mr. Yoshida?

Mr. Yoshida: Unanimous. The motion carries.

Mr. Starr: Oh, wait, wait, wait, wait, wait. Yeah, I did. Okay. I'm sorry. Please, go ahead.

Mr. Yoshida: It's unanimous. The motion carries.

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

VOTED: To Approve the Special Management Area Use Permit with the Recommended Conditions and the Additional Two Proposed by the Applicant.

(Assenting - B. U`u, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, W. Iaconetti, L. Sablas, W. Hedani, J. Starr)

Mr. Starr: Okay, congratulations. And again, thank you for being sensitive.

Ms. Hiraga: Thank you.

Mr. Starr: What was the vote?

Mr. Yoshida: Unanimous.

Mr. Starr: Oh, it was unanimous? Okay. Members, okay, order please, everyone. Members, I had a request from Mr. Rapacz who has an item that is further down on our agenda and he said that he would not be able to come back. It would be difficult. He wishes we could move it up, and he doesn't feel it may take very long. So if there's a sympathy to that, if anyone wants to make a motion to change our agenda, we could do so.

Mr. U`u: Motion to move E-2 to now, I guess.

Mr. Hedani: Second.

Mr. Starr: A motion by Commissioner U`u, seconded by Commissioner Hedani. That motion is—?

Mr. Yoshida: To move up Item E-2 – to consider Item E-2 to right now.

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

VOTED: To Take Up Item E-2 Before Item E-1.

(Assenting - B. U`u, W. Hedani, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, W. Iaconetti, L. Sablas, J. Starr)

Mr. Starr: Okay, thank you. Mr. Yoshida, please introduce Item E-2.

E. COMMUNICATIONS

2. **JOHN S. RAPACZ, attorney on behalf of SVO PACIFIC (SVOP) presenting its annual report by letter dated February 18, 2009 on the disbursements of funds to Intervenor WEST MAUI PRESERVATION ASSOCIATION and to the West Maui Community Benefit Fund in the Lot 3 Settlement Agreement pursuant to Condition No. 44 of the Special Management Area Use Permit for the Kaanapali Ocean Resort Villas -Lot 3 project at TMK: 4-4-014: 005 (por.), Kaanapali, Island of Maui. (SM1 2006/0006) (P. Fasi)**

Mr. Yoshida read the agenda item into the record.

Mr. Starr: Mr. Fasi, why don't you open it up?

Mr. Fasi: Thank you. The special management area permit that was approved for the SVO, the KOR Project on the West side of the island I believe was Condition No. 24 that required the applicant to report to this Commission, findings that pertain to the monies that were transacted as required by the condition, and Mr. Rapacz is here to address that.

Mr. Starr: Okay, Mr. Rapacz, please.

Mr. John Rapacz: Thank you, Mr. Chairman. John Rapacz here on behalf of Starwood. And thanks for taking the item out of order. I appreciate it. And good morning, Commissioners. I did ask to take it out of order because it's extremely brief. The permit was issued a year ago. A condition requires that we report to you on any disbursements that Starwood makes to the intervenors, the West Maui Preservation Association. There have been two disbursements as stated in the February 18th letter that you should have. One is a \$75,000 donation, and another is the \$27,000 reimbursement for attorney's fees. And those are the only expenditures made to date. It's been one year since the permit was issued. Further expenditures will be forthcoming when building permits are issued.

Mr. Starr: Members, any questions?

Mr. U`u: Question: what is a total payout that's gonna be paid in time, obviously, to WMPA?

Mr. Rapacz: For Lot 3, we'll be paying \$425,000 when building permits are issued, and then \$750,000 at the first certificate of occupancy. So we've got about – just about \$1.2 million for Lot 3.

Mr. U`u: Paid to WMPA?

Mr. Rapacz: That will be paid out when all payments are made.

Mr. U`u: To WMPA or to different groups?

Mr. Rapacz: Well, no, I'm sorry, I shouldn't say to WMPA. Those payments are to the West Maui Community Benefit Fund which is the fund established by WMPA for benefit to the community.

Mr. U`u: That's a lotta dough.

Mr. Mardfin: Is that \$27,000 for reimbursement of attorney fees is that the totality of attorneys' fees, or will they be getting more?

Mr. Rapacz: That's— Our understanding is that's all. It was limited to the fees spent in the settlement process on the intervention.

Mr. Mardfin: Thank you.

Mr. Iaconetti: I wonder if they're in a position to tell us the difference between the foundation and the fund?

Mr. Rapacz: Let's see. I don't think so. I know that the WMPA itself is – was the organization that intervened in the process. They created the benefit fund to benefit the community. Now, in terms of the – the difference between the foundation and the fund, I really can't say. I know that it is a fund that they created.

Mr. U`u: Next question and I think this will go to Clayton. I know we asked WMPA to give us a presentation on how their money is being spent because it was for the betterment of the community. And we asked them to and they have not yet as of to date gave us anything to state where the money has been spent. And they failed to even show up at this Planning Commission now that they have the money I guess appropriated to them. And I asked the question a while back. If they don't – what can we do, as a Commission, if they don't report how the money is being spent to us 'cause that was part of the agreement made by this Commission, by this Body? And if not, I would love to take that money and give it to somebody who really needs it like Lahainaluna High School.

Mr. Yoshida: Yes, I guess, we did previously write a letter to WMPA expressing the concerns of the Commission relative to reporting the disbursement of funds to this West Maui Community Benefit Fund. There is an annual reporting on the Honuakai SMA where there is a settlement agreement. And typically, Intrawest does do these annual reports. And we could again remind WMPA of the Commission's concerns regarding some kind of accounting of the disbursement of funds.

Mr. U`u: It wasn't a condition placed by the Commission? I'm just curious. Or am I mistaken that we held them accountable like we did SVO?

Mr. Yoshida: Yes, I believe it was a condition that there be annual reports to the— When the Commission granted the SMA for the Honuakai project, there was a condition that there be annual reports done. Based on the annual reports, I think the Commission has expressed concerns about how those monies are disbursed because Honuakai is saying, well, when we meet these milestones, we contribute this money, it goes into this West Maui Community Benefit Fund. And they've also heard testimony from members of the public saying that they would like to apply for these funds to operate their preschool or what have you. So I think it has been a concern raised by the Commission previously in its review of the annual reports from Intrawest on the disbursements of these monies that go to WMPA and the West Maui Community Benefit Fund.

Mr. U`u: Okay, so really that doesn't answer my question I'm thinking because we're gonna rely on them, we're gonna ask them again to report back to us, and they failed to do so yet. I'm saying, what can we do? I not saying we ask them 'cause I tired ask. Flat out tired. What can we do as a Body? Not ask.

Mr. Starr: Can we--? I'd like to suggest that the Department look into this with Corp. Counsel, and see what the legal ramifications are, and especially since no reporting has been done regarding who was on the Board. That was something discussed that was supposed to get back to us with that, and what the process is for disbursements, and what's been done. And that if that reporting, you know, is not done to us, if it's possible to stop further payments, or to redirect them? Commissioner U`u, is that the lines you were thinking?

Mr. U`u: That's the lines I'm thinking. Also, to note that as the years go by, we see Doc who asked to be a part of the Board being off the Commission. And if they choose not to report, at one point, there's not gonna be any of the Commissioners that approved the project who would be able to see the appropriation of funds that was promised to us by WMPA, and that's my fear that slowly by slowly, each year we get off the Commission, and the people who made the decision to approve these projects is not gonna be sitting on this Body.

Mr. Mardfin: I'd just like to, in part, defend this. It looks like they were paid April of last year. I don't know whether they're on a -- what their fiscal year is, whether it's January to December, or whether it's July to June. But if they happen to be July to June fiscal year, and they got in April, maybe they didn't spend any of it in the last fiscal year. They're in the -- this is really the current fiscal year. If they're July to June, then they might not wanna do anything until June 20th because of that, but that's in their defense.

In terms of writing a letter, I would ask one thing in addition to what has already been mentioned, I'd be interested in what goes for administrative expenses, you know, if they have an executive director or something. What goes for those kinds of costs as opposed to what goes out to serve the beneficiaries. I served as treasurer for a nonprofit, the Hana Cultural Center. That's an important question 'cause you don't want to have it all eaten by some executive director with a new SUV every year and that sort of stuff.

Mr. Starr: Okay, can we leave it to the Department and Corp. Counsel to report back to us? Commissioner Hedani?

Mr. Hedani: Just a question for John. John, you know, if my memory serves me correctly, in prior discussions that we had regarding the West Maui Benefit Fund, there was supposed to be an independent nonprofit that was gonna be set up as a charitable organization with a board of directors that was supposed to be coming from a cross section of the community. And in prior meetings, we were told that that wasn't being done, that it wasn't being set up, and it wasn't active and operating. Do you know what the status is of that right now?

Mr. Rapacz: My understanding is that that process was completed. It took far longer than expected, but it was completed, and the fund is official and operating.

Mr. Hedani: Okay, and is there a board of directors that was set up that's independent and a cross section of the community? Or is the board of directors of WMPA the board of directors of the fund?

Mr. Rapacz: It is across the community and I believe that there's a representative from – well, there isn't currently a representative from Starwood. There was. He is no longer with Starwood and no new representative has been appointed yet. So that will happen soon that Starwood will have a member on the board.

Mr. Hedani: So the 501C3 or whatever has been established?

Mr. Rapacz: That's my understanding. Now, I don't know whether Intrawest also has a representative on the board. That, I don't know.

Mr. Hedani: And the \$1.2 million goes to that fund, not to WMPA, correct?

Mr. Rapacz: Correct.

Mr. Hedani: Okay.

Mr. Mardfin: I don't know if they're looking for board members, but I think there's a Doctor William Iaconetti who'll have time on his hands who might be interested in serving.

Mr. Iaconetti: Let's clarify something: there are two different funds here. The one that Mr. Rapacz is reporting on is the one that is set up with the – yeah, the SVO . . . (inaudible) . . . The other one is the one that's set up with Lot 4, isn't it?

Mr. Rapacz: Right. And I don't know whether that's a separate fund or–

Mr. Iaconetti: And that is the one that I am on now and we just recently organized. We just recently set up a bank account. I am the treasurer of that account out of which I hope to get . . . (inaudible) . . . rather soon, but I don't know whether I can yet, but there are two different organizations. And the one that I'm on has just now come into fruition.

Mr. Starr: So in any case, the Department and Corp. Counsel will get back to us with options. And we'll also ask that a presentation be given to us by that nonprofit so that we can understand the status. I believe our concern is that we wanna see that the funds are actually going to community benefits because these are tough times. Okay? Do we need any action on this?

Mr. Rapacz: An acknowledgment of receipt, I guess? I don't think there's an approval required. We were just required to present the report.

Mr. Starr: Okay. Thank you, Mr. Rapacz and Mr. Fasi. And the Department will come back to us at the next meeting or the meeting after on this item. Now, for our next item, Mr. Yoshida.

- 1. STATE LAND USE COMMISSION transmitting the Decision and Order filed on March 9, 2009 remanding the State Special Use Permit application by the**

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, COUNTY OF MAUI for an approximately 14.615-acre portion of the existing 29.05-acre Hana Landfill and an approximately 5.39-acre encroachment area situated within the State Land Use Agricultural District at TMK: 1-3-06: por. of 7 and 12, Hana, Island of Maui. (Docket No. SP08-402) (P. Fasi)

The State Land Use Commission has remanded the Application to the Maui Planning Commission for further proceedings pursuant to subsection 15-15-96(a), Hawaii Administrative Rules (HAR), to specifically review proposed Condition Numbers 7 and 19 and to confirm whether the modifications requested by the Applicant to said conditions reflect the intent of the Planning Commission with respect to the Application and are supported by the record as established by the Hana Advisory Committee.

Mr. Yoshida introduced the agenda item.

Mr. Starr: Mr. Fasi, before you go back to work, there is one unusual matter with this, and Mr. Giroux could not be here today, so we're being represented by Mr. Michael Hopper, also Deputy Corporation Counsel. Now, Mr. Hopper also represented the County Department of Environmental Management in their pleadings before the State Land Use Committee. It's my understanding he drafted their petition for that, and today he's here in a different role, which is representing us. And that if there's representation for the County Department of Environmental Protection that it would be provided by a different member – a different representative of Corporation Counsel. In addition, Mr. Hopper informed me that he had drafted a suggested decision and order that we could just approve and sign that takes one of the options that the Department felt was maybe preferable. And so it's kind of an interesting situation. I'll let Mr. Hopper go into that. And before we proceed, I'd like the Body to, you know, weigh in if there are any concerns regarding this. Mr. Hopper, first.

Mr. Hopper: Just in interest of disclosure as Chair Starr said, I represented the Department of Environmental Management before the State Land Use Commission. I oftentimes represent the Department of Planning before the Commission, and I represent other Departments basically, you know, that way each Department's individual attorney would not have to get up to speed on the Land Use Commission rules. I typically represent Departments in front of the Land Use Commission. In this situation, I am advising you, the Maui Planning Commission, today. I've done that in the past as some of you may know. I advise other boards and commissions. And in this particular case, I don't believe that the fact I represented in front of the Land Use Commission creates a conflict such that I can't give you objective legal advice today. Today, I'm your attorney. I am not the EM's attorney. I'm representing you as the Commission. I did check with my office as to whether or not that was okay, and our office doesn't have a problem with that issue. If any of you have a problem with that issue, we could look to address it, but at this point, I don't see a reason why I would not be able to give you clear and objective legal advice based on that situation, but it would be a better idea to disclose that and get that in the open to you rather than not say anything. So that's why I'm here and I did speak with the Chair before the meeting today.

Mr. Starr: And thank you for bringing that to our attention. Members, anyone has any concerns or

comments regarding that? Commissioner Hedani?

Mr. Hedani: I do not have any concerns regarding that.

Mr. Starr: Okay, thank you very much, Mr. Hopper. Mr. Fasi, please proceed.

Mr. Fasi: Thank you. This matter was brought before the Planning Commission as Mr. Yoshida said on July 22nd 2008. At that meeting, we did approve the County special use permit and made recommendations for the State special use permit. It was the intent of this Planner and the Department that the conditions mirror each other as well as the dates mirror each other. And I think that it's properly reflected in the minutes, and you do have a copy of the key paragraphs of those minutes. On February 19th, this item went before the Land Use Commission. And this same item came up and there's a little bit of discussion on the intent of this Commission on the two conditions: Condition 7 and Condition 19. So they remanded it back to this Commission just for clarity. So the Department is asking that the discussion for this purpose today focus strictly and very concisely and very precisely where the language so I can take it back to the Land Use Commission and there be no confusion over what the intent was of this Commission. Having said that, the findings of fact, conclusions of law, decision and order before you has some suggested language here for Conditions 7 and 19. And the Department strongly urges you to approve these conditions.

Mr. Starr: Yeah, I'd like you hold off on your recommendation 'til we're further in the process.

Mr. Fasi: We would like to have the conditions as stated. Thank you.

Mr. Starr: Okay. Could you please read those two conditions and try to delineate--? Were you at the Land Use Commission meeting?

Mr. Fasi: Yes, sir, I was.

Mr. Starr: Okay, then I would ask you to first of all, read the conditions, and try to explain to us what the areas of discussion and concern regarding them was. And I also understand that there was an attempt to change the conditions by the Department from the wording that was accepted this Body, and that that lead to some of the confusion.

Mr. Fasi: Yes, at the State Land Use Commission meeting, an attempt was made by the Department to get the intended language modified and amended as was discussed at this meeting on July 22nd. However, that met a little bit of discussion with the Land Use Commission. And we didn't wanna see that language that we felt wasn't the intent of this Commission be passed. So therefore, the Department of Environmental Management requested that the – before they approved it that it be remanded back to this Commission for clarification purposes, and that's why we are today to clarify Condition 7 and 19.

Mr. Starr: Okay, please read Condition 7.

Mr. Fasi: Condition 7 shall read:

That the applicant shall begin construction of the landfill storm water drainage retention basin within three years from the issuance of the Land Use Commission's decision and order.

Mr. Starr: What was the—?

Mr. Fasi: The issue is basically that the wording changed from – “landfill storm water drainage retention basin,” that's the new language. We took out “expansion,” because the landfill is actually not expanding. So we replaced the word “expansion” with “storm water drainage retention basin,” which was clearly reflected in the minutes. Condition 19:

That a recycling program begin immediately thereafter permits are issued and/or the Department of Health grants approval. The recycling program may consider but limited to glass, aluminum, plastic, batteries, newspapers, cardboard, appliances, and oil.

The wording was modified at this meeting on July 22nd. We replaced the word “shall” with “may consider.” And the reason for that was if the word “shall” was there, it would be incumbent and mandated upon the Department of Environmental Management that they be forced to recycle these particular products. And we felt that it would be in conflict if the Department of Health had not approved, for instance, recycling of batteries out in Hana. And so with that one word “shall,” that's a strong word and it be mandated to recycle batteries. And if the Department of Health said, well, you're not allowed to recycle batteries, then they would be in violation of their permit. So we wanted some flexibility in there, and we replaced “shall” with “may consider.” Now, it's the intent of the Department of Environmental Management to recycle all of this and maybe more, but we do this just to prevent being in violation of the Department of Health standards.

Mr. Starr: I have a question for Corp. Counsel. What I'm understanding has happened here is that there were a set of conditions that came from this Body and that were changed by staff to different conditions and presented to the Land Use Commission. And the Land Use Commission must've gone back and read the minutes and seen that the conditions that were being presented to them were different from the ones approved by this Body. And I'd like to understand what the legality is of staff changing the conditions that were approved by this Body and taking that to the State Land Use Commission and presenting not what was approved by this Body but something different.

Mr. Hopper: The issue was there's two separate permits: the County special use permit and the State special use permit. The County special use permit, when you go back and read the minutes, and I have that here, if anybody wants to read them, the County special use permit is very clear that the word “may” was placed in to replace “shall.” That permit was decided on subsequent to the State Land Use Commission permit.

The State Land Use Commission permit, in this particular case, I can actually read to you from the minutes exactly what happened. It states, this is on your July 22nd 2008 meeting, page 58, Mr. Fasi presented the recommendation. Again, this is on the State special use permit. Mr. Fasi said:

The Department recommends that the Planning Commission recommend approval

of the State special use permit. There are no conditions attached to it. The County special use permit conditions will be brought before the State Land Use Commission and they will probably add on to that.

And then Chair Starr states, "So there are standards that do." Mr. Fasi says, "There are no standard conditions for the State Land Use Commission." And then the Chair states, "Okay, Commissioner Hedani, do you want to add anything to that? An amendment, perhaps?" And Mr. Hedani states, "I guess the question for staff is, do you support the recommendations of the Hana Advisory Committee?" Mr. Fasi states, "The Department does." Mr. U'u says, "Call for the vote." Mr. Starr says:

Okay, so in that case, we have a motion on the floor. It's been seconded to recommend approval of the State Land Use Commission special use permit. That's the one, right? And we're ready for the vote? All in favor, please raise your hand. All opposed, please raise your hand.

And then there was a vote. One, two, three, four, five, six, seven, eight for, and one opposed. That was on the State special use permit, which is at issue here because the State Land Use Commission doesn't review the County special use permit. The Department was always under the impression that that's a recommendation that's being made to the State Land Use Commission. However, the State Land Use Commission use the Planning Commission action as its own final action that it can modify in certain situations, but cannot make conditions less restrictive than the Planning Commission conditions. After this happened in the minutes with the State special use permit, Director Okuma came in and stated her position with respect to the "may" condition, if you read in the minutes. That's what happened. And for the County special use permit, which was a final action of this Body and not subject to review, that "may" language was placed in for that condition. I believe it was also Condition 19. The confusion at the Land Use Commission was with in the minutes, Mr. Fasi states his recommendation:

There are no recommendations attached to it. The County special use permit conditions will be brought before the State Land Use Commission, and they will probably add on to that.

And then Mr. Hedani states, "I guess the question for staff is, do you support the recommendations of the Hana Advisory Committee?" And then that went on. The motion was made and approved as recommended. And with the Commission I think ended up getting from staff was actually the "shall" condition. I think they got the Hana Advisory Committee conditions sent to them verbatim, but there was some question as to whether staff was correct in transmitting that because the issue was Mr. Hedani may have stated, "Do you support the recommendations of the Advisory Committee?" Mr. Fasi states the Planning Department does. However, Mr. Fasi's original recommendation was to approve with no conditions attached to it. What the remand issue gives you the ability to do is to state what your intention was in this case. The Land Use Commission, all indications were that they understood the "may" wording and the reasoning behind it, but they were told by their attorneys as in all cases, their practice is they cannot be less restrictive in a condition. For example, if you recommend a permit for ten years, they could not change that to 20 years. However, if you recommended a permit for ten years, they could limit that to five years, just

as an example. And so while it was – while the Department of Environmental Management's position was that's consistent with the County special use permit that the recycling was permissive rather than mandatory, the State Land Use Commission did not feel comfortable making that change because the minutes were ambiguous. And so now you have the ability to clarify this condition to say, did you mean "may?" Did you mean "shall?" And going forward, what does – what's the will of the Commission? And that's why it was sent back to you. The minutes were up there.

And to address the Chair's question, I don't believe staff tried to change a condition. It tried to reflect what was in the minutes. Now, staff may have incorrectly transcribed what was actually recommended. At the very least with this motion, it's a bit ambiguous, and this is why I think the practice of having the Planning Department restate every motion to be very clear on what all the conditions are is very important. So we could've had that in front of the Commission and avoided having to have the Commission remand to us on these two conditions.

So that's my understanding of the background here. Again, I was advocating for the Department of Environmental Management, but I believe that's an objective assessment of what happened there. And what you are being requested to do now– You have a specific decision and order sent to you, the Commission asking you what to do. The draft decision and order that I did assist Paul with writing, you can modify that. Basically, what are the – what's your intention behind the conditions, and that should be, I believe, the Commission's response in the form of the decision and order stating what – answering the questions essentially, of the State Land Use Commission.

Mr. Starr: Thank you. Commissioner Mardfin?

Mr. Mardfin: When I got this in the packet that we received, I read it very carefully. And I thought that it was incumbent upon me to try to find out what the Hana Advisory Committee felt. So I spoke to one Member of the Committee. She went on to talk with two other people on the Committee. The Chairman is out of town so we weren't able to get a hold of her. And I'd like to deal with the two issues. On Condition 7, there's not a problem. We – they understood from the beginning that it wasn't an expansion of the – the landfill's already been expanded. What they're trying to do, as far as I understand, is just to get that legalized so that they're not in violation of the law by having expanded it, but they don't expect to expand further. And so the drainage thing is the only part that's being built. That's not an issue for anybody in Hana that I can detect.

The second issue, Condition 19, is a problem. And they were very careful, and they said they wanted to be careful to say "shall" recycle. Now, I would like to at some point the Director of Environmental Management, Cheryl Okuma, to address some issues. I have some questions for her. But I wanna address the general view that the Hana Advisory Committee, and I don't think anybody in particular in Hana wants to see the place shut down, we're not trying to stop this from going through, but they were very strong that they wanted to do the maximum amount of recycling that can be possibly be done. And they feel very strongly about the recycling. We don't think that we ought to be dumping our problems onto Central Maui, particularly. We'd like it to be done as much in-house. There's a side note to this, and I don't know where it came from. This person probably wrote it on, "Partnership with community nonprofit groups to help with recycling." So I think you'd find the community very helpful in doing the recycling.

Now, one question I have of the Director is basically the report we got had two alternatives for 19: one was change the "shall" to "may," and the other was put in a statement about practicability. And it seems like the Department's chosen one over the other, but I'd like to ask about the two issues.

Mr. Starr: Before we proceed, we will be looking for a presentation from the Department. We are going to have to break in five minutes. And that was something set up by the Department. I don't want to mess up their plans. I'm wondering if perhaps we should open for public testimony and then that way if there's anyone in the public wants to testify, they can do that. They don't— And then we'll break for lunch and then come back. And so if that's okay? It looks like it is. We'll come back with more presentation and questions afterwards, but if any members of the public wishing to testify on this? Ms. Bowie, please come forward. Introduce yourself. Thank you for being here.

Ms. Bowie: Irene Bowie, Executive Director, Maui Tomorrow Foundation. I have an issue that I'd like to bring before you for consideration regarding Hana Landfill. And this came up after attending the Planning Commission meeting last year when it was discussed in general. Because Hana Landfill was constructed in 1969, this was just at a time when there was a conversion to line landfills and Hana was not. It is an unlined landfill. It's 350 feet from the ocean on a lava field which brings up a lot of issues of concern. Following that Planning Commission meeting last year, I began calling public health in Honolulu, Clean Water Branch, EPA, U.S. Fish and Wildlife. There has never been any testing of the near shore waters off of this landfill. And what needs to be done is testing of the tissues of fish, crabs, opihi, any animals. They said that the water really would not be a real test but in the fatty tissues of animals in that area. And I think that this is an incredibly long overdue necessity because people use that area not only for recreational uses, but for fishing. The people of Hana really depend on the fishing. And because this landfill has had a number of cars deposited there over the years, herbicides, pesticides from the Ranch, and many, many other uses, I really ask that this be something that you can consider in the requirements in giving these permits. U.S. Fish and Wildlife recommended that we submit a request to the Planning Commission to see that the County of Maui does do this testing. And the County of Maui is the entity that would be responsible for this, so I'd just like to put that before you to consider with everything else. I think it's incredibly overdue. And it is the responsible thing to do for the community in Hana. Thank you.

Mr. Starr: Okay, thank you, Ms. Bowie. Wait a minute. First, Commissioner Mardfin and Commissioner Hiranaga.

Mr. Mardfin: I'd just like to respond to you. Thank you for what you've said and I think we all agree with that. My understanding was this was to get the Land Use – the purpose of this was to get the Land Use Commission to make their decision. And then it would come back to us for another go-around 'cause I have a real problem when it comes back to us that they dig a fourth well because when they dug the initial wells, they thought it was running east into the Pacific Ocean. And then after they dug the wells, they found out that it's running south into some fish ponds and into Hana Bay. And so I wanted to – when it comes back to us, I'm gonna be quite as insistent as I can be that there be a fourth well dug, protesting, but – and I also agree that the fatty tissues, there are some documents that you need to test the fatty tissues of animals, critters, in the ocean. And I think that can be done. I'm not sure it needs to be done – my understanding is that it would come back to us, so we don't we need to put it in the Land Use Commission issue about how we divide up

lands. But when they come back for the other permits, that's when I'd try to see those conditions put in. So I don't think we need to do it at this point.

Ms. Bowie: Okay, I just more wanted to introduce this information to you because this is the next meeting that's really been about the landfill. Thank you.

Mr. Hiranaga: I just wanted clarification with your – regarding your request: if you wanted the testing to be done prior to the issuance of the permit or taken – the testing would occur after the permit's been issued.

Ms. Bowie: And I really have no preference on that. I would defer to what you need to do to follow your rules of order. And as Mr. Mardfin pointed out, I just more than anything wanted to bring this to your attention and hopefully have this be an action that would happen in the not too distant future.

Mr. Hiranaga: So you're not opposed to the landfill continuing to operate?

Ms. Bowie: No, I would just really say that this needs to be a part of that operation however that needs to be placed.

Mr. Hiranaga: Okay, thank you.

Mr. Starr: And I just – one clarification from Mr. Fasi that they will come before us for an SMA? Am I correct in that?

Mr. Fasi: You are correct. This issue should be brought up at the special management area permit process. I'd like to remind this Commission that the Land Use – the State Land Use Commission remanded this item, come back before this Committee specifically for Condition 7 and 19 only, and that you focus your discussions very precisely upon these two items.

Mr. Starr: Thank you, Mr. Fasi. Okay. And I'm sure the Department is also hearing the comments. So we're going to take a recess for what? One hour? Okay, we'll take a recess 'til approximately, 12:45. Okay, thank you.

(A recess was taken at 11:15 a.m., and the meeting reconvened at 12:26 p.m. Ms. Domingo was excused from the meeting at 11:15 a.m.)

Mr. Starr: Okay, the Director of the County Department of Environmental Management will give us a few words of what we're being requested to do.

Ms. Cheryl Okuma: Thank you, Chair Starr. Good afternoon, Commissioners. We appreciate the opportunity to be here today. And I'd just like to point out a few things just to stress and highlight a few points for you. When we found ourselves before the Land Use Commission on the State special use permit back in February 19th of this year, we believe that it was the wording of the conditions of the Hana Commission that was being presented to the State Land Use Commission. But the confusion appears to be that we really thought that the County special use permit conditions

would be the same as the State special use permit. And perhaps that's where the confusion was and I believe that's what Mr. Fasi had indicated, but in any event, if I can just focus on Condition 19 for the moment?

When we were here before the Maui Planning Commission, I guess it was the summer of last year, we had actually suggested as the applicant to change the wording from "shall" to "may." It is true that when we were at the Hana Commission that that discussion did not occur. And the reason for that is because it was only afterwards once we've had internal discussions within the Department, we realized that if we didn't make the request to change that "shall" to a "may" that we might risk being in noncompliance with the permit, which is not what we want. Just to remind everybody, the reason why we're going through this land use permit process is it is a fairly recent State Department of Health requirement that in order for us to even apply for the landfill permit which would also legalize the recycling activities, we needed to show them that we went through the proper process, obtain the proper permits, and obtaining the permits also means, in my mind anyway, compliance with those permits. So we have been going through this last year and a half or more to basically find ourselves in – to put ourselves in compliance with respect to the operations out in Hana with the landfill and recycling.

I will say that I do recall 'cause both myself and Mich Hirano, our consultant, was there at the Hana Commission hearing that recycling was certainly a very important issue to the community, and we appreciated those comments. We feel that that is important also. And it's certainly our desire that we do as much as we can in accordance with the law, in accordance with whatever the State Department of Health will allow, and so that's very important. We did hear that message. And so I can say that that is our intent.

When we found ourselves again before the Maui Planning Commission, we realized that we would be at risk at being in noncompliance the minute the permit is issued because we had not considered what this meant with respect to what we need to do as far as getting State Department of Health approval.

There is also another component that we've learned within the last several months with the turning of the economy. We realized that the recycling market has just been affected as other markets and commodities. And we know that that has a very drastic effect on the vendors. And in the recycling activities we do, we deal with the vendors to do the processing and the shipment. So that is certainly something well beyond our control. So we have these two factors going on that we're concerned with. It is not our desire to be noncompliant. As I said, we are trying very, very hard to put ourselves into compliance with respect to State and Federal laws. And also just to mention that as a result of the hearing before the Maui Planning Commission, after all that discussion, the Maui Planning Commission as reflected in the minutes did approve the language with the "may," and so that's reflected in the minutes.

With respect to Condition No. 7, we do believe that the minutes clearly outline – clearly lay out the fact that we were never talking about expanding the landfill portion, the footprint for the receipt of municipal solid waste. And thank you, Commissioner Mardfin. You did indicate that. So that was very clear even before the Hana Committee. So we believe that the suggested language would reflect on both conditions actually, what occurred as far as the intent of the Maui Planning

Commission when we were before you last year.

And so in terms of the language that we would recommend with respect to Condition No. 7, we would recommend deletion of the term, "expansion." And so that language would read as follows:

That the applicant shall begin construction of the landfill storm water drainage retention basin within three years from the issuance of the Land Use Commission's decision and order.

That's Condition No. 7. And with respect to Condition No. 19, we would recommend that the language "shall" be deleted, and "may" be inserted so that the language reads:

That a recycling program begin immediately thereafter permits are issued and/or the Department of Health grants approval. The recycling program may consider but not be limited to glass, aluminum, plastics, batteries, newspapers, cardboard, appliances, and oil.

Thank you.

Mr. Starr: Okay, thank you, Ms. Okuma. Now, there's a document before us. Does everyone have a copy of this, yeah, finding of fact that looks like this? I just wanna clarify that from Mr. Fasi and from Mr. Hopper that this reflects what Ms. Okuma just requested. Is that correct, Mr. Fasi?

Mr. Fasi: That is correct.

Mr. Hopper: Yeah, this was – I helped Paul prepare this. Normally, there's a staff recommendation and everything. This would be the appropriate form of the staff recommendation. Because the Land Use Commission gave a specific order asking for specific things, I essentially helped him with the staff recommendation in this situation. If you choose to not go along with this then would be a good document to start from modifying that.

Mr. Starr: Okay, so we have a request from Ms. Okuma, and we have that put in writing by staff. Commissioner Hedani?

Mr. Hedani: You know, I'm not sure if we're looking at the same thing. On the sheet that says "Hana Landfill Chronology of Events," under paragraph 19, the first sentence doesn't make sense to me. "That a recycling program begin immediately thereafter permits are issued and/or the Department of Health grants approval," what does that mean? Does it mean that a recycling program begin immediately after permits are issued, or thereafter from what? It doesn't seem to make sense to me.

Mr. Hopper: I don't think that wording is any different than– It's the second sentence with "may" versus "shall." I think that first sentence is the same as your original condition, though. Maybe staff could clarify that.

Mr. Fasi: Yeah, that's correct. Essentially what that means, Commissioner, is that the latter of the

two would trigger the recycling program initiation. In other words, if the permits are not approved – if the permits are approved, and the Department of Health permit hasn't been received yet, they still have to wait for the Department of Health permit approval in order to start the recycling program. Basically it's just whichever comes at the later time is what will trigger the start of the recycling program.

Mr. Starr: Commissioner Hedani, is that—?

Mr. Hedani: I guess I'm just questioning the grammatical correctness of this statement or the sentencing. "That a recycling program begin immediately and thereafter" makes sense if there's a period.

Mr. Starr: It does sound awkward. I agree.

Mr. Hedani: I just— Or maybe it should say, "That a recycling program begin—?"

Mr. Starr: In other words, I believe Mr. Hopper is suggesting that "there" be struck.

Mr. Hopper: Just to say "Immediately after permits are issued and/or the Department of Health grants approval?" I mean, is that the intention from the Department? It's immediately after they get permits – after the permits are issued and the Department of Health grants approval? Is that the intent?

Mr. Fasi: Yeah, that's the intent. I think basically, they both say the same thing. The intents are equally the same. I think we can strike "there" and just go with "after."

Mr. Starr: So we're gonna strike the word "there," and it'll just be "immediately after."

Mr. Hopper: That's a grammatical change.

Mr. Starr: Commissioner Mardfin? Oh, Commissioner Hedani, you still going?

Mr. Hedani: Yeah, I just – I think that works. Works for me. I just – I mean, if we're picking nits over a "may" versus "shall," then we should at least make the sentence make sense.

Mr. Starr: Yeah. Commissioner Mardfin?

Mr. Mardfin: I'm not sure we're picking nits over "may" versus "shall." I would like to ask the Director a question or two.

Mr. Starr: Yeah, please.

Mr. Mardfin: First of all, I'd like to say thank you. You were very clear in what you wanted. And I – it sounds like we're in general agreement with the community, but I – just to get it in on the record, so when you're looking into the T.V. camera, my understanding is it's not that any of these you particularly don't want to do, it's just whether you're gonna be able to do it or not. Is that correct?

Ms. Okuma: Whether we're able to do it, and whether we can get State Department of Health permit and approvals to do it.

Mr. Mardfin: Okay, so your intent is to do whatever is possible in this area?

Ms. Okuma: Yes.

Mr. Mardfin: And let me be really, really nit picky. Let me go through them. Glass recycling?

Ms. Okuma: Glass, we already currently do.

Mr. Mardfin: Aluminum?

Ms. Okuma: Our intent is to do aluminum.

Mr. Mardfin: Plastics?

Ms. Okuma: The same intent.

Mr. Mardfin: Batteries?

Ms. Okuma: We already do batteries.

Mr. Mardfin: Newspapers?

Ms. Okuma: That is our intent.

Mr. Mardfin: Cardboard?

Ms. Okuma: And that's also our intent.

Mr. Mardfin: Appliances?

Ms. Okuma: We currently accept some appliances.

Mr. Mardfin: And oil?

Ms. Okuma: And we currently accept oil and tires.

Mr. Mardfin: Okay. Do you see any--? The document we got from the Land Use Commission gave two alternatives to the way to word Condition 19. Do you see any fundamental difference--? The first-- They give you two options on page 4 of the Land Use Commission report. The first one just substitutes "shall" for "may," and that's what Mr. Fasi has picked up and given to us, but then it -- after aforementioned material, it says "Or clarified that such mandate be contingent upon its practicability." Do you see any difference between those two alternatives?

Ms. Okuma: I'm sorry, what page are you referring to?

Mr. Mardfin: I'm on page 4 of the—

Ms. Okuma: Of the order? The decision and order remanding State special use permit?

Mr. Mardfin: Yeah, and it's the top paragraph on page 4.

Ms. Okuma: The top of page 4 where it says, "Clarify that the applicant—?"

Mr. Mardfin: Yes, and then one, two, the third line down. Basically, the first two and almost three lines give exactly what you've basically said. It's basically substituting "may" for "shall." Then it says, "Or clarify that such mandate be contingent upon its practicability." Do you see any difference between those?

Ms. Okuma: Well, first of all I don't know that I can speak for what the Land Use Commission was thinking about, but "practicability" could mean things such as the economy, as I mentioned. Maybe economy is gonna have an effect on our ability to put together a recycling program.

Mr. Mardfin: Do you see one version as stronger than the other? I mean, maybe the answer is no. Maybe they're basically the same.

Ms. Okuma: I think I can see a slight difference. As I look at our language that we were talking about, we were basically looking at legal approvals, but since last summer, we've now learned that the economy has an effect on the recycling market. So actually, the language of practicability would probably address that. That's not a legal question. That's a question of whether it's practicable – practical given the market. So I think there could—

Mr. Mardfin: Oh, then I like your first – the first language with "may," 'cause it sounds like it's stronger.

Ms. Okuma: Well, the first language speaks to legal authority or legal approval. The second could be beyond the legal approval. It could also include, as I mentioned, economic considerations.

Mr. Mardfin: Just a brief comment. As I said earlier, I'm repeating myself a little bit from before lunch, but the Hana Planning Commission – the Hana Advisory Committee to the Maui Planning Commission, the Members that I was able to indirectly or directly contact wants you to know that it's very important that it's very important that we do as much recycling as possible. And I appreciate what you've said in that that's your goal as well and your Department's goal as well, and we really appreciate that. We don't wanna stop the project going through. And I do wanna pass on that they said that nonprofit groups in the community may well be willing to work with you on this sort of thing. And so I wish you luck. And I will – when you come back for other things, I will be asking for that fourth well to be drilled and testing animals, but for now, I'm happy with both the revisions to Condition 7 and Condition 19.

Ms. Okuma: Thank you.

Mr. Mardfin: Seven is not an issue. That's exactly what-- That was just a wording issue, but the intent is there.

Mr. Hiranaga: For clarification, you're agreeable to that word "and/or" in Condition 19, the last--?

Ms. Okuma: I think that's probably okay because one of the things as we know from the Department of Health as we deal with them, first of all, we need a permit before we can do anything. And subsequently, even with a permit, they may -- we may need to go back and get them to approve certain things like a plan. They may have already approved the permit such as what they've done in this case is I believe it's -- or maybe it's for another landfill where they approved the permit, but we have to submit plans subsequently like a recycling plan, for example, and then they approve the plan. So that language is fine. I think that covers what actually happens when we deal with the Department of Health.

Mr. Hiranaga: If you're happy, I'm happy.

Ms. Okuma: Okay, thank you.

Mr. Hedani: Let me take that point one step further. If it says "or," and you get a permit, then you'll comply as soon as you get the permit before you get the Department of Health approval?

Ms. Okuma: Right, other than the permit may not always have the plan at that time, and so what I've seen in at least one of our permits, and I can't recall which landfill it was, but we got the permit, we weren't quite in place, we didn't have the -- what the plan was.

Mr. Hedani: My only point is that if you have the word "or" in there, and if you have one without the other, you're still out of compliance.

Ms. Okuma: Yes. Right, it should be "and" is what it should be. I mean, that's probably better: "and."

Mr. Starr: So do we have another change?

Mr. Hedani: I would think to be clear, it should say, "and Department of Health."

Mr. Starr: Mr. Legal, legal?

Mr. Hopper: The purpose of the remand was to clarify your intent with respect to the condition. I've note that this -- aside from "may" versus "shall" here, this is exactly how your County special use permit condition reads already. I mean, if you are more comfortable with "and," if you believe that's more correct and reflective of the intent of the Commission, then I don't see a legal problem with you changing this to "and" at this point. I mean, substantively, it says "and/or." The legal effect I think is going to be "and" because if you're required by the State Department of Health to get permits here, they can't -- and if they can't operate the recycling without permits, then that's going to be the substantive effect. So reflecting that as "and," I wouldn't necessarily see that as a problem.

Mr. Mardfin: I'd just assume see that "or" in there. I agree it can lead to some confusion potentially, but I don't want to stop them from starting a recycling earlier if they're able to. And putting an "and" in there may make it so they – and maybe they can start with some things with one permission and not the other permission. I don't wanna handicap – I don't wanna do anything that unnecessarily lengthens the process. Now, it may be that in fact the "and" will be the operative condition, but I don't wanna insist that it be an "and." If an "or" will let them go ahead, I'd just assume they go ahead, so I'd prefer to see it "and/or."

Mr. Hedani: Personally, I don't care, but if they're arguing over it, you know, I think we should be clear as to what our intent was. I mean, whatever.

Mr. Hopper: The Commission did not have any question with respect to this first sentence. It was completely that "may" versus "shall," just as information.

Mr. Hedani: I guess my question would be, in order to fix this properly, what exactly do we need to do?

Mr. Hopper: The "may" versus "shall" language is the only language the Commission questioned about. I don't think unless DEM has a different view that the "and/or" language would give them a problem. I mean, that's up to them to clarify, but if that would cause a problem– I mean, that's already on the County special use permit. That's already an effective condition on the other permit that has been finally granted. And I would not construe that to require the Department to do recycling prior to having a permit. Now, the "shall" condition could be construed that way but, you know, the "and/or" language, I don't see that as mandating that. Mr. Fasi, I guess–

Mr. Starr: I mean, it sounds like we're okay with it. We're okay with this. You know, we don't need to– Is everyone happy with–?

Ms. Okuma: And maybe I can just say this that we would never move forward with the program unless we had all the legal authorities. And Department of Health would certainly let us know. And I know that everyone would want us to be sure that we're complying with all those legal requirements: the permit and/or – and any subsequent approvals that are needed. So I just wanna say that for the record.

Mr. Mardfin: Is it appropriate to make a motion?

Mr. Starr: Just before you do it, I just want to be clear, Mr. Fasi. My understanding is that your recommendation is that we proceed with this finding of fact language with the one change of removing the "there."

Mr. Fasi: That is correct.

Mr. Starr: Okay. So with that in mind, a motion would be in order.

Mr. Mardfin: I'd like to move the adoption by the Maui Planning Commission of Condition 7 and Condition 19 as grammatically modified to be the way it is, namely, "That storm water drainage

retention basin be substituted—“ I won’t— The wording as – Condition 7 as in the decision and order, and Condition 19 as written with the exception that “thereafter” be changed to just “after.”

Mr. Starr: Is there a second?

Ms. Sablas: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Mardfin, seconded by Commissioner Sablas. That motion is, Mr. Yoshida?

Mr. Yoshida: To adopt the proposed findings of fact, and conclusions of law, and decision and order presented with the exception that on Condition 19 the “there” be deleted from “thereafter” as the Maui Planning Commission’s findings of fact, conclusions of law, and decision and order.

Mr. Starr: Okay, we ready to vote on this? Commissioner Hedani?

Mr. Hedani: I think for purposes of the State Land Use Commission and for our minutes, I think it’s important that we reflect that I believe the intent of the Commission was to comply with the Department’s request and not mandate something that they would not be able to comply with. And that’s where our decision initially was to indicate that “may” versus “shall” was the decision.

Mr. Starr: Okay, I think that’s good that that’s on the record. Any other comments? Okay, all in favor, please raise your hand. All opposed?

It was moved by Mr. Mardfin, seconded by Ms. Sablas, then

**VOTED: To Adopt the Proposed Findings of Fact and Conclusions and Law and Decision and Order Presented with the Exception in Condition 19 that “thereafter” be changed to “after,” as the Maui Planning Commission’s Findings of Fact, Conclusions of Law and Decision and Order.
(Assenting - W. Mardfin, L. Sablas, K. Hiranaga, B. U’u, J. Guard,
W. Iaconetti, W. Hedani, J. Starr)
(Excused - D. Domingo)**

Mr. Starr: Okay, thank you for your patience, and we’ll see you back at the next stage.

Mr. Mardfin: Will the result of the vote be announced?

Mr. Starr: Oh, I’m sorry. Mr. Yoshida, what was the vote?

Mr. Yoshida: Oh, the vote was unanimous.

Mr. Mardfin: At eight-zero?

Mr. Starr: Yeah, nine-zero.

Mr. Yoshida: Yeah, eight to zero. Commissioner Domingo: excused.

Mr. Starr: Oh, yeah. Thanks for reminding. Okay, we're going to take a recess to the call- Well, maybe we'll go out of order.

Mr. Yoshida: We have before you the-

Mr. Starr: Hold on, we are gonna take a very, very short recess to the call of the Chair.

(A recess was taken at 1:11 p.m., and the meeting reconvened at 1:14 p.m.)

Mr. Starr: We're awaiting the Long Ranger. So we might as well finish our housekeeping items while we're awaiting the Long Range Division. So if someone wants to make a motion, we can move Items F and G up to now and take care of them.

Mr. Mardfin: So moved.

Mr. Iaconetti: Second.

Mr. Starr: Okay, motion by Commissioner Mardfin, seconded by Doctor Iaconetti. The motion is to-?

Mr. Yoshida: Move up Items F and G on the agenda.

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

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

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

Mr. Yoshida: Unanimous with Commissioner Domingo excused. Item F is the action minutes of the March 10th 2009 meeting and regular minutes of the January 27th 2009 meeting.

F. ACTION MINUTES OF THE MARCH 10, 2009 AND REGULAR MINUTES OF THE JANUARY 27, 2009 MEETING

Mr. Starr: Okay, anyone have any comments or wish to make a motion regarding those? Commissioner U'u?

Mr. U'u: Motion to accept.

Mr. Iaconetti: Second.

Mr. Starr: Okay, motion by Commissioner U`u, seconded by Commissioner Doctor Iaconetti. The motion is—?

Mr. Yoshida: To adopt the action minutes of the March 10th 2009 meeting and the regular minutes of the January 27th 2009 meeting.

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

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

**VOTED: To Approve the Action Minutes of March 10, 2009 and the Regular Minutes of the January 27, 2009, as circulated.
(Assenting - B. U`u, W. Iaconetti, K. Hiranaga, J. Guard, W. Mardfin,
L. Sablas, W. Hedani, J. Starr)
(Excused - D. Domingo)**

Mr. Starr: Okay. Mr. Yoshida?

G. DIRECTOR'S REPORT

1. Planning Commission Projects/Issues

Mr. Yoshida: Under Director's Report, Mr. Chair, we have the Item 1, the Planning Commission projects and issues.

Mr. Starr: Okay, I guess our main Planning Commission project/issues is relating to the General Plan and our meeting schedule. And we have Dave Michaelson arriving here. So I guess we can take that with the General Plan stuff.

2. Discussion of Future Maui Planning Commission Agendas

a. April 14, 2009 agenda

3. EA/EIS Report

4. SMA Minor Permit Report

5. SMA Exemptions Report

Mr. Starr: And as far as discussion of future agendas, we do have our next regular meeting agendas here in the package. And do we have any comments on the EA/EIS report, or the SMA minor, or SMA exemptions report from anyone? No? Okay, not seeing any, we can—

Mr. Mardfin: Jonathan?

Mr. Starr: Yeah?

Mr. Mardfin: What are these for?

Mr. Starr: I don't know. What are they?

Mr. Mardfin: They were on the desk today. (Inaudible)

Mr. Starr: We had a question on—

Mr. Yoshida: Yes, I guess the two items are just notification to the Commission that items which you've dealt with previously: the telecommunications facility conditional permit at the former Paia Mill site has been – where the several cell phones wanted to co-locate on the pole, that has been transmitted to the Council. And also, when the Commission dealt with the Ameron Batching – I mean, the Ameron activity there at Puunene along with the Central Maui Landfill Expansion, they needed a conditional permit for the concrete batching and concrete casting facility operations, and that has been transmitted to the Council, as well as Council Resolutions Nos. 09-21 and 09-22 transmitted from the Council Planning Committee which calls for the elimination of stacking in the hotel districts and the light industrial districts. That will be coming forth before the Commission I believe sometime in early June, but just for your information.

Mr. Mardfin: So the first two were just notifications. The third one we will deal with in the future?

Mr. Yoshida: Yes.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, so anything else under Director's Report? Not seeing any, we'll go back to our Item – what is that? E-3. And we have the Long Ranger and Tanto with us today. Don't have Silver. And we'll turn it over to Mr. Summer and Mr. Michaelson who are certainly a very hardworking duo here.

3. DEPARTMENT OF PLANNING, LONG RANGE DIVISION transmitting a conceptual schedule for the Maui Island Plan review for Planning Commission comment.

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

Ms. Susan Moikeha: Thank you, Chair. And good morning to all of you. I'm just gonna give a brief testimony to your Item Communications E, No. 3. And this speaks to the issue of a conceptual schedule for the Maui Island Plan review which you will soon undergo. I tried to get a copy of the schedule from the Long Range Department, and unfortunately, I haven't received that yet, and I don't even think you folks have it. I'm sure it'll be a discussion and you'll receive it later in the meeting. Briefly, I just want to let you know that I am speaking on my – as an individual, and not representing the GPAC as a whole, but I was a member for three and a half years. And it was an incredible process: both good and bad. I would like to say to you, and be very direct about this: start with the directed growth and the land use element first, and follow that up with the maps. Do not do what we did. We went from other elements in the plan, and went through all those

objectives, goals, and policies. And at the very end of the process, we had very little time, maybe three, four meetings as a whole of the GPAC to work on the maps. And this is the most critical, critical part of this entire plan. So I would strongly encourage you to start with the land use element, which follows up with the directed growth element, which incorporates the maps, and begin with that. And in answer to what the Department might say to that because we did try to do that and had discussion about it, their feeling was that you had to lie the nexus, the basis, the ground work with the other elements. Basically, you've done that already. You've done that in the Maui Countywide Policy Plan. And when you go back and look at these elements that we've reviewed within the Maui Island Plan, you'll see that many of those things are repeated. So I would strongly, strongly encourage you to start with the land use, the directed growth, and the mapping, and begin your review with that, and give it the time that it so deserves. And I appreciate that – I understand that you're gonna go out to the various community plan areas. I think that's really well planned out to do that, and incorporate much of the public as you can because this is a public process. That is my conclusion on that item.

I would like to thank all of you for your hard work. I know what kind of commitment you make, and congratulations to Doc for surviving five years. Sometimes it seems like a jail term, but it was an incredible learning experience, and as I talked to him earlier, I think he has come a long way from the beginning to the end. And the public needs to appreciate all the time that you do put in especially, for something that is so important to this island. So thank you.

Mr. Starr: Any questions for the testifier? Commissioner Hiranaga?

Mr. Hiranaga: Good morning. I'm just wondering. I think we're gonna have several new Commissioners that did not go through that policy process. I'm just wondering if we go through that process, it might educate them and allow them to understand where we're headed as far as the land use and maps. So I'm a little – I'm hoping that with nine of us, we can go through that initial process fairly quickly, but I know with a group of 25, it was probably hard to–

Ms. Moikeha: Was much harder.

Mr. Hiranaga: Yeah. So you still feel that we should do the–?

Ms. Moikeha: I think you still can do it. Again, I – my concern about what happened with this amended ordinance which occurred back in October '06 is they split that process. Initially, you were supposed to be reviewing both of these documents simultaneously. And when that ordinance was amended by the Council, and there was some other reasons for that, too, it split the process. And I'm gonna tell you right now, you're gonna see the same thing all over again. You're gonna have the same objectives, goals, policies as you did in the Maui – in that Countywide Policy Plan. What it does is at an island level is it gets more specific to the island, but you've got the basis there already. You have a sound foundation already. And to say that you couldn't start with the land use and the directed growth and the maps, in my opinion, I think you can. And even for those that are new, even if they took what you did, the draft and reviewed that, and then jumped into the land use, I think you'll be well prepared. So I wouldn't let that deter you from thinking about doing that.

Mr. Starr: And, Ms. Moikeha, just thank you for your comments. And just to let you know, because

we will be having six meetings out in the different communities, and those will start almost immediately upon our working with the plan, the proposal today from Long Range Planning will include that those discussions that you wanted to suggest we bring forward will actually begin in each of the communities at those meetings with those maps, you know, if the Commission decides to follow that recommendation. So pretty much from the get-go, we will be into that aspect of it in terms of the plan district, by plan district, including the maps and including directed growth right out of the box.

Ms. Moikeha: And that's – I totally would agree with that. I mean, you're gonna be in that community area. Why not be starting with something that's familiar to the public and that they would have the most input on, and that would be the maps, yes.

Mr. Starr: And hopefully, what we'll hear later today will be in accordance with what you're looking for us to do.

Ms. Moikeha: Great. Good luck.

Mr. Starr: Okay, and thanks for your comments. It's appreciated. And thanks for your hard work on the GPAC.

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

Mr. Dave Michaelson: Thank you, Mr. Chair, Members of the Commission. My name is Dave Michaelson. I've met several of you. I'm with the Long Range Planning. This is John Summers who's the Administrator of the Long Range Division. First of all, I want to – I can't tell you how nice it is to almost be in front of you. The GPAC process, as you're fully aware, was quite an exercise. I think it was very valuable ultimately. I often make the analogy that it was kinda like chaos and harmony holding hands, and it was a very long walk. What I'd like to do just very briefly, I've met with Chairman Starr about sort of the process where we can start working through with you folks. I gave you all a handout. Does everyone have a copy?

Mr. Starr: Yeah, I wanna – I just wanna–

Mr. Mardfin: No.

Mr. Starr: Commissioner Mardfin. Before we begin, I just wanna make a comment that in a perfect world, it would've been better to wait to have this discussion until our first meeting on the General Plan, but because we had a necessity for Clayton and Carolyn, the Department, to start arranging for the meetings, it was probably better for, you know, for the Commission to be up to date on what the Long Range Department is planning on using in terms of process, what's gonna – they're gonna bring before us at the initial several meetings, and when we go to the community. And I felt it was really useful to start discussing this as soon as possible so that their planning can proceed, so that the scheduling of meetings can proceed, and then if there's a desire to change it as it goes along or even at this point, the Commission can do so, but, you know, I did wanna thank them for coming and explaining how they're intending to work this and what'll happen at the different meetings and so on.

Mr. Michaelson: Thank you. Let me first describe what you'll be receiving. We're gonna give you ample time to review it. It's very dense. It's very comprehensive. We're preparing binders for each of you that include essentially, the April 2008 draft that was prepared by staff and submitted to GPAC. You'll also have the directed growth strategy that was approved by GPAC in hard map form, as well as on a CD. It'll be in PDFs so you can pull it up in your screen, and zoom in and zoom out. Then you'll be getting a series of spread sheets. And this is a lesson that we learned through GPAC was that one of the most important things with getting the review process moving and into some sort of finality was a very clear method for you to review this. So you'll be getting a series of spreadsheets. It's by element. There's nine elements to the plan: housing, transportation, cultural resources, infrastructure, implementation, capital improvement, planning. Each of those are put in a spreadsheet that has the GPAC recommended goals, policies, objectives and action plans. Then there's another column that has the Director's recommendation. The good news is, I think we're 90% of the recommendations from GPAC are supported by the Director's recommendation. We don't have that many divergent opinions. The most significant are probably with the urban growth strategy. And they're not so much radically different in terms of the geography that they're portraying for future growth. It's more what's inside it, what's outside it, how green spaces work and things like that. So we'll be giving you that binder on the 1st. We would love it if we could bring it some place where you can pick it up as opposed to mailing it, but whatever works, and we can talk about that. So that's the first delivery. And that will sort of launch us off onto our first public hearing which is April 24th – 21st. I'm sorry.

The second deliverable is the narrative to the text to all the goals and objectives. And we expect on submitting that, correct me if I'm wrong, John, but I believe it's May 5th which gives you all the background data.

We're also going to give you all the technical studies. There were 23 technical studies, typical planner fashion, that range everything from infrastructure analysis. There's a lot of land use issues that are addressed. There's a housing needs assessment – or a housing study, technical study. And we'll provide all of those to you on a CD, PDF. If you would like a hard copy, we have copies of that. So that's what you'll – you'll get the full package. You'll get everything you need to get started on the 24th. A little bit about what we learned with the GPAC process. I'll describe in detail on the 24th, the entire Maui Island process from the initial public meetings all the way –

Mr. Starr: 21st.

Mr. Michaelson: 21st, I'm sorry. But just briefly when we brought that draft, the April 2008 draft, to GPAC, we went through a very rich public process not only with the GPAC as a whole, but we went out into a public, a series of design charettes, a series of workshops. And from there we gleaned an enormous amount of input. Hundreds of pages of spreadsheets marked up, public hearing documentation. Then we went back as staff, put those into spreadsheets, brought them all back to GPAC for their review to see if we were getting close. Then we broke them into smaller groups. They made final recommendations to GPAC and that's what GPAC has reviewed over the last three months.

The most valuable lesson we learned is that – and it's described in this cover sheet right here is that when GPAC was prepared – in other words, they made concrete comments about changes in

policy, the discussion caught. The wheels met the road. We got things done. When we got into the inertia of like word-smithing a policy, it broke down. And I tried to put that in a graphic describing when the process worked and when it didn't. So what we're hoping is when you get these spreadsheets, you can come in with concrete suggestions on policy changes, and we can stick with what are the fundamental flaws in your eyes, as a Planning Commission, and what are the major pukas. This thing has gone through enormous review, and has been beaten up and put back together. So we're hoping that we're gonna bring you a draft, when you see it that we'll stick with flying at a pretty high altitude, and knocking things home that are – that you feel are major flaws, and not getting – not caught in word-smithings of “shall” and “would.” And the GPAC did that. If you were a party to any of those meetings, you'd understand where I'm going with that.

The second two sheets: what we've tried to do is give you a road map, and it starts on the 21st of April, which will be a staff presentation probably no longer than maybe 20 or 30 minutes of the whole process. And then we started with GPAC on the core values, and those will be provided in your document. And that was actually a really good place to start because we essentially laid foundation for the whole plan in two meetings: one in Hana and then we finished up I believe in Lahaina. And those were approved at that time. We were also showing a sequence of meetings by element, all right? Starting with after the core values, starting with population, and you can walk yourself through it, and culminating on October 20th with clean up in any residual issues that are left over. 'Cause I can tell you for doing a whole bunch of these plans, at the end of the day, you'll find policies that are kinda bouncing off each other. You did something in transportation that doesn't jive with housing. And we have to rectify those because if the plan is internally inconsistent, it's gonna make your life difficult. It's gonna make Current's life difficult. It's gonna make the Council's life difficult. So we save one meeting for that. In some cases we found that these moved faster than we thought. So what we're always going to do, for example, on the last thing we'll do on the 21st is we'll give you a presentation on population, which is all the data that we have, what it's telling us, what it told GPAC, how it drove policy. And then we'll launch into population that next day. So we'll always give you a presentation in – pretty short: 15, 20 minutes that we'll hopefully, if we make more ground, work on one evening, we're not left with, well, staff hasn't given us data on housing so how can we talk about housing?

I think we've done a pretty good job based on our experience with both the GPAC and then the IRCs, the Investigative Review Committees, of how quickly we can cover these. Like I said, if we're faster, that's fine. If we get hung up on like infrastructure, for example, which is very dense and very complex, we've built in some room, so hopefully, we're not gonna leave you guys hanging. With that, I think I hope that's a pretty quick and dirty summary of where we're going. Statutorily, by Bill 84, you have six months, all right? That was a similar deadline to what was given GPAC, and hopefully, we're gonna meet it on the head this time.

Mr. Starr: When does that begin and end?

Mr. Michaelson: It begins on that first public hearing which is already noticed and scheduled for the 21st so it culminates on October 20th. Now, the other thing that we did with GPAC which was I think very valuable is, let's say we conclude population. We conclude that element. You folks have made the changes and you've given staff direction. The following meeting, we'll make those changes and bring those to you so you'll have a running record. And you'll have a binder where

you can keep all this stuff. If you remember GPAC, they would come in with literally, wheelbarrows of stuff. We're gonna try to keep the wheelbarrow to a binder so you don't have to buy another car to come to the meeting. So – and that helped a lot because then they could review their changes, and then we didn't go back in a loop where all of a sudden we're back talking about population, or back talking about housing. So that's our intent.

Mr. Starr: Mr. Michaelson, is it my understanding that there's actually sort of two different sections of this. One is, you know, the difference segments divided by subject whether it's population, and, you know, or education, whatever. And the other is where you get into the projected densities and the maps. And my understanding is that we had testimony earlier today by one of the GPAC members who suggested that we get our teeth as early as possible into the density segment and the maps. And I believe that you had also made a suggestion when we were sitting that when we do the community meetings, we structure those so that the first half of the meeting which begins I believe at 1:30 p.m., we'll have testimony, and then you'll start working on one of the modules. And then it will break at about 5:00 p.m. with time for dinner. When we come back, then you'll actually be getting into the – I think you call it the density regarding that district, and then a presentation on the maps, and then have testimony for the community, you know, say after about 6:00, 6:30, for people living there. Could you illustrate on that more? Am I correct?

Mr. Michaelson: Sure. First of all, the two– Jonathan's right about the two sort of parts to the plan. The first is policy-based, policy and action plans are directing staff to essentially, change how we do business, all right? And that's words. The second part, which is the most important are the directed growth strategy maps. The most concrete perspective that people will see the outcome of this plan is through their windshield or walking down the street. It's what they see, what their urban form becomes over the next 22 years. And that's the directed growth strategy. And one thing that we did with GPAC, we also had regional meetings with GPAC where we would go out and we would have – I would do a public workshop where we would essentially make a presentation on– Let's say we were in Kihei, and I would make a presentation on the portions of the plan that are specific to Kihei, and I would un-furrow this Turkish rug, 72 inches long of the Kihei directed growth strategy map that was the Department's recommendation. And we would have people physically draw on these maps. And they would use Planning staff that had design background. There's a couple of us that had done design work. And we would help them graphically portray what they wanted to see for Kihei. What we're envisioning with this, since we've gone through that public process, and we've gone through several charettes is that when we're in Lahaina, for example, part of my – one of the focuses of my presentation would be what is GPAC and the Department suggesting for urban growth boundaries around Lahaina? And then the idea is that people who haven't followed this process would have an opportunity to essentially have a dialogue with you about do you think it's close, or these guys are nuts, or you know, you're not being very careful about this, did you think about that? So then those locational meetings are valuable. They have sort of a regional context to them, and it allows people to essentially dialogue with staff and yourself about what those maps say. So that's how I would envision trying to get that input because some of the policies are very general. They're island-wide, but the maps themselves are very specific. And that's what those people, when you get in these rooms, that's really where their grounded is, what is my neighborhood, or what is my drive home gonna look like? So I think we put the maps together in a way that communicates that pretty well. So that would be my intent. I think Jonathan's right on that.

Mr. Starr: So my understanding is that we'll have two different types of meetings. The first Tuesday of each month we'll be out in one of the community areas, and we've reserved the rooms in – Carolyn, what are the dates in the different–?

Mr. Michaelson: Actually, I put this on the calendar for you. Meetings that are just in Wailuku in this room are labeled just "Wailuku." And those that are labeled "community centers," or for example, the first sort of outreach meeting is in Haiku on the 5th of May. Then on June 2nd, we're in Hana in Helene Hall. On July 7th, we're at the Kihei Community Center. On August 4th, we're at the Lahaina Civic Center. In September 2nd, we're at Pukalani. And then we're at the Wailuku Community Center on the 6th. So those are the regional meetings that we've set up.

Mr. Starr: So the first meeting each month will be in one of the districts. And those will be 1:30 'til about – 'til when, John? 1:30 'til 8:00 p.m.? I hope so. Okay. And then with a break at 5:00 p.m. for a quick dinner. And then public testimony twice: once at 1:30, and then again after the presentation. And then the third Tuesday of each month, we'll be here. And you've asked that that start at 9:00 a.m., not 8:30 a.m., so you have time to organize. Is that correct, Dave?

Mr. Michaelson: That's correct.

Mr. Starr: So that's something that the Body will have to take up because our usual starting time is 8:30. And perhaps at the next meeting, we'll decide whether we're gonna continue at 8:30 or move it to 9:00. And then those meetings will be specifically on the different modules. Okay, Members, questions? Commissioner Mardfin?

Mr. Mardfin: You said only the third meeting will be on the modules, but it looks to me like there are modules on every meeting.

Mr. Michaelson: That's correct. The core values will start – I think Jonathan's point is that when we're in the communities themselves, not only we'll be working on the modules, we call them "elements," same thing, but we're also gonna make sure that we have an opportunity to let that area, that . . . (inaudible) . . . area of the County also have . . . (inaudible) . . . put on the directed growth strategy that affects that community plan.

Mr. Mardfin: And so basically if we're looking at the binder, we're dealing with the element, if we're looking at the map, we're dealing with the community. Is that–?

Mr. Michaelson: That's correct.

Mr. Mardfin: I wanna ask a general question 'cause I was looking at – and I think I've mentioned this to you in the past, to do a lot of this you gave the GPAC members projections of various items by community. In particular the ones I wanna mention are for each of the various communities, you gave population projections by age group. I have a huge amount of difficulty with the way that was done because it basically kept the relative size of the age groups constant and projected against size, and that's not the way populations age. They age on a lexis diagram going up.

Mr. Michaelson: That's correct.

Mr. Mardfin: Second big issue I had was the way community projections were made on visitor count. And it was basically tied to the number of sort of legal overnight facilities 'cause the assumption was that the number of visitors would stay overnight in that district, and for Hana, that is just an outrageously bad way to do it. So I guess what I – so I have some serious methodological concerns with age distributions by community and visitor counts by community, which I think are at least for Hana are outrageously off. Now, if none of the policies depend on that, then I'll kinda shrug my shoulders and say, well, it's bad methodology, but our decisions aren't based on that so who cares? On the other hand, if the policies are based on those projections as being even moderately true, I may have some huge problems with it because I don't believe the numbers.

Mr. Michaelson: Two answers to a really good question. The first answer deals with how the policies relate to those numbers. And those come out of what's called, the Socio Economic Report, which you'll get a copy of. And then they feed into the land use forecast. Very few of the policies deal with those sorts of numbers with the exception of the directed growth strategy, all right? One thing – and you and I – we had a very long conversation, very valuable conversation, in Hana about this. And I agreed with your assumption that on trend extrapolating age distribution in the day and age we live in is dangerous, all right? And thankfully, not many of the policies connect back to that.

What I would suggest, and I'll make a presentation when we do population that talks about not only the projections that you're pointing out and the methodological problems that might be associated with it, but more importantly point out that when we go to the community plans, when we start getting out into community plans, we have to be a little more sensitive to that than we have in the past because those policies at that level that much more lower elevation than the island plan, those numbers will come into play. And so what we should be thinking about at staff level is, can we rectify those when we get down to that level? And I think for the most part, we can. But you know it's – trend extrapolation by definition is a dangerous exercise particularly, in a place like Maui. So we'll talk about that. We'll – my presentation certainly addresses–

Mr. Mardfin: And as I say, to the extent that the policies have – really don't rely on that data, I'm not gonna make a big deal about it. As a trained demographer, I go aah, you know, you shouldn't be done that way, but if the policies don't matter, then it doesn't matter. When the policies do matter, then I'm gonna do depend on the data, then the data's gotta be fixed to make the policies make sense.

Mr. Michaelson: Fair.

Mr. Mardfin: And the visitor counts for Hana community, they are way, way off, probably. I pointed that out. Is it Bill King that's in your office?

Mr. Michaelson: I'm sorry?

Mr. Mardfin: Was it Bill King?

Mr. Michaelson: Mark, Mark King.

Mr. Mardfin: Mark King. Yeah, I spoke to him about it over the phone, and he basically got what

was wrong. And I don't know if they made any— They probably didn't make changes to the numbers because they were coming out of DBED.

Mr. Michaelson: DBED, yeah, that's correct. And I think just like we spoke in Hana, the foundation – the lowest common denominator of any demographic projection which is the base data, that's where you start, and you're right, there's some weaknesses in there. I think that when you – when I describe the methodology of the directed growth strategy driven numbers, those are – I think we have a lot more confidence, and for good reason, in those. And those are much more heavily linked with policies and the maps, if you will, than some of the other projections that you're citing. But I think that I agree . . . (inaudible) . . .

Mr. Mardfin: Okay. I'm just being kinda open as to where how I'm gonna be looking at things.

Mr. Starr: Yeah, we'll have plenty of time to get into the actual mechanics of it but, you know, I'm glad we've had an opportunity to discuss it. One other thing I want you to mention, there are two fifth Tuesday during the six-month period: one in June and one in – is it September? And, Carolyn, is it September? And Carolyn reserved the room. And we can meet if needed on those fifth Tuesdays, and if we don't, we don't have to. It'll be up to the Body as we move along.

And also, before we get too far into it, you know, the Body will have to decide kinda the ground rules on a lot of – on testimony, how long to give people, whether we wanna have a policy regarding projects to have – you know, an opportunity for developers to bring their projects and get a fixed amount of time. You know, there's a lot of different things. And I'm hoping that there'll be a list of things that we can – that the Department will come to us with that we can deal with up-front at least for a starting point, and make decisions on how we'll deal with them so that it's fair all the way through the process. But you guys know what those are. We don't. You've been through it and we haven't. So if you could bring those to us at a subsequent meeting as a list of things we should think about and decide on.

Mr. Michaelson: You know, our role as staff, and this is how I looked at with GPAC is, you're our client. We're not gonna drive your meetings. We're not gonna manage your meetings. If you come up with a process that we feel uncomfortable with or we think is gonna go sideways, we'll tell you that, but you folks are your own Body, and you know how you work with each other a lot better than we do. So our role is just to get you through it, to get the information you need to make sure we provide you with what you ask us for. If we can't do it, we'll tell you that. But that's our perspective. I think we learned some valuable lessons through GPAC, for sure.

Mr. Guard: Regarding the developers, I guess you guys have a good idea of which ones were there to testify, or which ones would wanna do a presentation to, I guess, send out this calendar to them to see which meetings you think would be best for them to come to so that we're not inundated with the same people testifying. And maybe even for GPAC members to pick and choose what they wanna talk about so we don't have an hour of testimony from GPAC members each time.

Mr. Michaelson: See GPAC got it twice. They set up a process where the development community had a formal opportunity to make a presentation. And then at the same time, at virtually every meeting, particularly when we were in directed growth, they would use the public testimony process

to further expand on their presentation. And it's your call how you wanna handle it. There's disadvantages and advantages with both. Clearly, they— What we do, yourself and ourselves, has a dramatic impact on the way they do business, and where they do business, and how they do business. So they— Obviously, we recognize that the process should be open for them. Now, the mechanics of that is what you have to kinda work with. In some cases, I wouldn't say that meetings were taken over, but I think if you go back in the minutes, we heard a lot of the same things more than once. And so that's your decision how you wanna handle it.

Mr. Starr: So I think that what would be good is if you come back to us with areas that we can discuss and do decision-making on that will help make our process fair. And I know all of us really wanna make sure it's efficient that we don't want to have to do the same thing over and over again. I don't — I wanna turn to counsel on this 'cause I don't think we should be doing real decision-making on this process until the process — until after the plan's given to us and the clock starts. Or is this something we can start doing now? I certainly would feel better certainly after the next meeting when our other Members are with us. But as far as actually doing decision-making on how we're gonna handle it, is that something we need to wait 'til the clock starts on—?

Mr. Hopper: The only thing your agenda says is that you may provide comments on the schedule. So I would recommend not making substantive actions on anything but the schedule at this point.

Mr. Starr: Yeah, but what I'm saying is, you know, is that something we should wait 'til after April 21st, or is that something we could do like at the next regular — you know, at our next regular meeting?

Mr. Hopper: As far as setting the precise process, testimony, and things like that?

Mr. Starr: Yeah.

Mr. Hopper: I would wanna check. I have to double check with the Bill 84 says about when your actual time begins. I don't want the clock to start before the 21st because that's your public hearing. If you're not in — I know there's language like "in receipt of the plan" or something like that. As a practical matter, I think I'd recommend waiting until it's before you to set the process so everybody knows. It might be not illegal for you to look at setting some ground rules prior to the meeting, but I think as a practical matter, I'd recommend seeing what you have before you, what the schedule is, and waiting until you have a plan until you actually come up with exactly how you wanna hold those meetings. And it could be subject to change if you feel the process isn't working.

Mr. Starr: So that is a function we should do at the 21st, April 21st meeting. Vice-Chair Guard?

Mr. Guard: Well, maybe for the 21st meeting, just have a list. I mean, you're treating us like we're your client, but we don't know what developments came in front of you where you might have a list of the number — like I don't think it would be real good to have say a couple more hotels that wanna go up in Hana, being at the Kaanapali meeting, or the Lahaina meeting, and vice versa, right?

Mr. Michaelson: I understand.

Mr. Guard: But if you know that then we can, maybe at the 21st meeting, break down how many you think we can get in at each community meeting. And then I guess that would be a great opportunity for one of those fifth Tuesdays if we needed to to catch up on that kinda homework.

Mr. Michaelson: Well, why don't we do this? We'll put together a summary of how the GPAC dealt with it, and give you some options of how you might wanna do it. Because what it really is about is, one, fairness, right? The process has gotta be open. And then you're dealing with this efficiency sort of statutorily, established deadline. And I think you can – I think both of them can be addressed in a way that is fair and doesn't get you bogged down. So we'll make some recommendations, and you can make a decision on how you wanna do it.

Mr. Hedani: I guess what I'd like to hear, Mr. Michaelson, from the perspective of what you've learned over the past year, two years, three years? How long did the GPAC take on this?

Mr. Michaelson: Three years.

Mr. Hedani: Three years is, how you can make the system work better? How can you make it more efficient? How can you make it fair as well as not get bogged down so that we don't have to come begging for an extension on October 20th?

Mr. Michaelson: First of all, I'm the last person that wants to get an extension. I don't know if you sat through that Council meeting, but it was somewhat painful. I guess I learned personally, two things. The first is that we share an equal responsibility: staff and the Planning Commission. And if the Planning Commission does their homework, and comes to meetings prepared to address issues directly, and furthermore make concrete policy suggestions on how they could resolve those issues, that gets us a long way. Secondly, when we make our presentations, they have to be very laser-beam precise about the issues that are out there, and how we're gonna deal with them, and how we think you should deal with them – suggestions, policy suggestions, just from those of us who work with the stuff every day. And what you ultimately do with that is your decision. And also we have to be responsive to if you feel that there's additional information you need to make your decision, we get you that when we say we're gonna get you that. If those two things happen – when those two things were sort of in harmony with GPAC, we made progress, and we got through it. When either one of those broke down, the process slowed sometimes to a frightening crawl. So those are the two suggestions that I would make that you folks – if you folks do your side and we do our side, we're gonna be fine.

Mr. Starr: Commissioner Mardfin?

Mr. Mardfin: I'd just like to first say I think we're a smaller in number of people than GPAC, and we've been playing this game for different amounts of time: some five years, some shorter, some one day, but I think we tend to work together pretty well. I – when we come to making decisions on how we're gonna operate, I would – and tell me if this is practicable, I tend to favor shorter speaking times for people presenting and encourage written in advance papers. 'Cause we – I know this group. We do our homework. If you give us a ten-page, or 20-page, or a 30-page paper, we'll read it. And if we can get people to have a short time for oral presentation and present most of their ideas in writing, it makes it a lot more efficient, I'm speaking for myself, it makes it a lot more

efficient from my point of view.

Mr. Michaelson: I think GPAC found that out as well. There was a point where we spending two and a half hours of a four-hour meeting having public testimony. And when the Chair and the Co-Chair and Members of the Planning Commission decided that that was inefficient, the public responded by submitting much more detailed testimony in writing. It came part of the public record. Oftentimes when those were distributed, they became a point of discussion, which was much valuable than eating up an enormous amount of time. And what I would suggest is that when we talk about framing your process, we put that in writing and put it on the web. And beginning of meetings, you essentially reiterate that that you folks do read this stuff. And that in some cases, that's gonna be more efficient. And it may be, in fact, more effective for whoever's trying to communicate any perspective, whatever that may be, to do that. And then they can testify in terms of sort of clarifying where they're coming from.

Mr. Mardfin: I also find it helps us test statements. You know, if page 19 is radically different from page 3, we're on to it. Where you do it verbally, it's tough to catch the inconsistencies. And so we're— I think it leads to clarity of policy if we know what's going on, and we know where they're going, and if we get it in advance, because then we can read it. And this group reads in advance, so we're prepared when somebody gives testimony. If we get it the same day they testify, it's much, much less useful.

Can I ask one more question? When will the—? You're gonna give us a packet of stuff. When will the public have access to that? Or will they not?

Mr. Michaelson: They'll have access three ways. They'll have access on the web. And we found that to be pretty efficient much more even so than three years ago. They'll have an availability to purchase a CD with all of that stuff on it. I think it's five dollars. And finally, if they wanna purchase a hard copy, they can purchase that hard copy from Long Range Division for the cost of reproduction.

Mr. Mardfin: Will each public library in this island get a copy? At least one copy?

Mr. Michaelson: Yes, they will. And we also put it in community centers in areas that didn't have ready access to libraries. We tried to everything but drop them from airplanes.

Mr. Mardfin: I know in Hana they've complained about we've gotten some stuff with EISes. And the day of the hearing, there's an EIS that suddenly appears in the library that thick, and that's useless. I mean, that's gotta be there a couple weeks in advance.

Mr. Michaelson: We'll do everything we can to get it out there.

Mr. Mardfin: Thank you.

Mr. Starr: Okay. Anything else? Okay, thank you for a good presentation. And I know you guys are working hard, and you'll do a great, great job. So until the 21st of April, thank you.

H. NEXT REGULAR MEETING DATE: April 14, 2009

Mr. Starr: I guess that's our last item: April 14th. Doctor Iaconetti, please.

Mr. Iaconetti: Since we are coming to the very end, I first of all want to thank you for a very nice lunch, and all of the goodies that I have here on my desk, and the leis, etc. And I also want to thank you for allowing me to work with you all. It's been a pleasure, and it's been a learning experience for me. And I will watch you people on T.V. from time to time. Thank you very much.

Mr. Starr: Thank you, Doc. Okay, 'til the next time, meeting is adjourned. Aloha, one and all.

I. ADJOURNMENT

The meeting was adjourned at 1:56 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson
John J.B. Guard IV, Vice Chairperson
Donna Domingo (excused at 11:15 a.m.)
Wayne Hedani
Kent Hiranaga
William Iaconetti
Ward Mardfin
Lori Sablas
Bruce U'u

Others

Clayton Yoshida, Planning Department
Michael Hopper, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works