

**MAUI PLANNING COMMISSION
SPECIAL MEETING
NOVEMBER 13, 2006**

A. CALL TO ORDER

The special meeting of the Maui Planning Commission was called to order by Chairman Wayne Hedani at 6:40 p.m., Monday, November 13, 2006, in the Lahaina Intermediate School Cafeteria, 871 Lahainaluna Road, Lahaina, Maui 96761

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

Mr. Hedani: We have two items of business on our agenda for tonight and we'd like to open it up for public testimony at this time. Are there any members of the public that would like to offer testimony at this time, please step to the microphone and identify yourself.

Ms. Sharyn Matin: My name is Sharyn Matin, I request deferral to the public hearing portion. Is that acceptable commissioner?

Mr. Hedani: This is the public hearing portion.

Ms. Matin: You're calling for testimony only at this time?

Mr. Hedani: We're going to take testimony at two different times. You can provide testimony now if you have to leave and you can also provide testimony later after the applicant has made his presentation.

Ms. Matin: Will there be call backs if I defer to later so that I could work in perhaps two, giving me six minutes. One as an individual.

Mr. Hedani: You get three minutes at the beginning of the meeting and you will not be allowed to testify again unless you offer new information, and that would be after everyone else has testified.

Ms. Matin: So basically I can defer to following the presentation and testify at that time.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, lets go ahead with our staff presentation then.

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

1. **MR. ROBERT MCNATT of MAUI LAND & PINEAPPLE COMPANY requesting a Phase 2 Project District Approval for the Kapalua Mauka 1st Phase and Off-Site Utility Improvements project consisting of 51 rural residential lots (½ acre minimum), a redesigned golf course, new clubhouse, driving range, 22 condominium homes, and related improvements and off-site drainage improvements necessary to support Kapalua Mauka at TMK: 4-2-001: por. of 042, 4-3-001: por. of 006, 4-2-001: por. of 008, 4-2-004: por. of 036, and 4-2-004: por. of 037, Kapalua, Lahaina, Island of Maui. (PH2 2006/0004)(A. Cua)**

2. **MR. ROBERT MCNATT of MAUI LAND & PINEAPPLE COMPANY requesting a Special Management Area Use Permit for the off-site infrastructure improvements necessary to support Kapalua Mauka at TMK: 4-2-004: por. of 036 and 4-2-004: por. of 037, Kapalua, Lahaina, Island of Maui. (SM1 2006/0013) (A. Cua)**

Ms. Ann Cua presented the Maui Planning Department's Report.

Mr. Rob Iopa: Good evening, Rob Iopa, WCIT Architecture. I thought I'd start first tonight with a brief description of the site. I know you've all just returned from the tour so I don't think much need be explained. But the extent of Kapalua Mauka is highlighted by this area located here mauka of Honoapiilani Highway with a small segment of utilities located makai here shown in blue.

You were able to see some of these shots earlier today but the elevations range from about a hundred feet mean sea level to about 1,250 feet mean sea level as it goes up the mountain. The top shot here is located from what we're calling Mahana Estates and we'll be able to show you some of the plans for that a little later. Number one, being more mauka in the area and number two, being just above the highway obviously looking makai.

Some further shots. The top shot located where the proposed new golf clubhouse would be located. Shot number two taken from the existing Village Course which would be the new reconfigured golf course, and shot number three at the base here showing the entry, the extension of Office Road as it would extend up into the Kapalua Mauka property. Honoapiilani Highway right here.

As Ann has just stated some of the zoning and state land use districts from state land use district perspective urban, agriculture and rural as designated by the colors. Community plan is West Maui Project District 2, Kapalua Mauka and zoning also West Maui Project District 2.

The master plan. As stated the entire area of Kapalua Mauka is 925 acres. The Project

District Phase 2 application is highlighted in the yellow districts that you're seeing here. Mahana Estates is located here. The redesigned golf course located here. The golf clubhouse and mauka villas located central to the plan here and off site infrastructure improvements located here.

The future phases of the project will require additional Project District Phase 2 applications and approval are highlighted in the areas shown here in white.

As a brief overview I'll speak a little to the components of this application and then go into more specifics a little later on in the project. The first being Mahana Estates, 51 rural residential lots ranging in size from a half acre to four acres outlined in red here. The second component being the new golf course to replace the Village Golf Course, 18 holes mauka of Honoapiilani Highway designated in yellow here. The golf clubhouse, a new golf clubhouse located here in blue and 22 residential condominiums called the Mauka Villas located in the light blue area here.

Also as part of the master plan there are on and off site infrastructure improvements designed and sized to support the entire Kapalua Mauka area. On site infrastructure includes utilities as sewer, water systems and new reservoirs. Off site infrastructure includes water, sewer, utility lines and necessary to connect to the existing systems within the Kapalua Resort. We have connection points here and here and will further be highlighted in the presentation.

From a design perspective, the entire area of Kapalua Mauka is governed by architectural design guidelines. The design guidelines objectives look to create buildings appropriate to an elegant Hawaiian lifestyle. They look to draw upon indigenous building influences such as early Hawaiian, Asian, plantation, and Polynesian in a more modern and contemporary lifestyle and look to respond to indoor and outdoor living before components of the architectural design guidelines. Architectural components include Kapalua plantation, Kapalua kamaaina style, Kapalua craftsman style, and contemporary Kapalua style.

The building sites have several criteria and which look to minimize grading to optimize views while maintaining privacy. To maximize views from neighboring lots and common areas, to protect natural features and distinctive areas, avoid prominent land forms and skylines and preserve natural setting by siting of building to blend into the sites.

The landscape design objectives are one that look to blend the buildings into the surrounding landscape to enhance and blur the lines between indoors and outdoors, to implement sensible plans and details with indigenous landscaping, to use plant palettes sensitive to water conservation and emphasize a native landscape palette. The landscape design palette as illustrated here look to include natural ferns, grasses and ground covers

such as akiaki and ihe and then also the inclusion of some of the tree species, obviously the Cook Pine as a defining tree species and then the large canopies such as Monkey Pods.

Kapalua Nui as part of the project also includes an extensive trail system. This trail system has been worked on by Kapalua for quite some time and a master plan has been developed. The master plan includes over 75 miles of hiking, mountain bike and equestrian trails through Kapalua Nui. So from the makai section of Kapalua stretching up into Kapalua Mauka. Design development for the trail system has been completed and construction has already been completed on several segments of the plan. The future build out will include – will be built out as segments of Kapalua Nui as developed. More specifically at Kapalua Mauka the red and green trail systems are ones that are immediately identified. The Phase 1 as part of this application will be located here in red along Mahana and along the golf course and clubhouse areas here. And the green highlighting future phases of the trail system. We've also included a photograph of one of the recently completed trails along the Kapalua Resort area as an example of what some of these trails may look like.

The view studies. We've completed an animation and the purpose of the animation is to depict what the view studies as one is driving Honoapiilani looking mauka would be like. As part of these view studies we've included some of the structures that are being proposed, specifically the Mauka Villas and the golf clubhouse and then wrapping around to Mahana Estates. We've highlighted these buildings in white. Obviously the intention would not be to have white homes and structures up on the mountain. The design guidelines specifically call that these buildings be natural in tone. But for the purpose of this study, we've included these structures in white. We'll start up high and then move down low and it will be very reminiscent of what you've seen today.

So we're approaching down as if you were in a helicopter coming down into the highway. These white structures up here are highlighting the villas. Obviously as you can see we've done this void of any trees or landscaping to reduce some of the clutter, but with the trees and landscaping it would be much improved. We're moving, fastly approaching the new entry at Office Road and slowing down a bit. You'll see the new entry highlighted by several Cook Pines and we've included these four Cook Pines here to describe the entry and to give you an example of how Office Road would come up and extend into Kapalua Mauka. We're coming to the end of this segment and then we're going to jump back as we're approaching headed north, approaching the bridge. Again, no landscaping shown here but this area would be inclusive of the plant palettes that we've seen earlier as part of the landscape guidelines. Approaching the bridge, crossing over the bridge and starting to see again, in white, some of the homes at Mahana Estates and really coming to the end of our highway tour here and pulling back up. The reason why we pulled back up is to really express that there are structures, home sites as part of Mahana Estates here but as

the animation traveling in the northbound direction along the highway depicts, these structure are very tough to see at all from the highway.

Mahana Estates, one of the several components of Kapalua Mauka. Mahana Estates is divided into 51 lots. Overall density is .4 units per acre and a maximum of height of 30 feet. It's divided into the two sections. The lower division is 21 lots ranging in size from a half acre to one acre. Architecture is guided by the design guidelines. The lots are clustered and located off of the main road, off a secondary road system and the building or the siting in lots will be blended into the neighborhood to maximize views. No driveways are located off of the main road in the lower division.

The upper division includes 30 lots ranging in size from 1.5 acres to 4 acres, the larger lots again guided by the design guidelines with the intent of minimizing grading and again, siting building to blend into the site and maximize views.

View study looking back mauka to the Mahana Estates. The top photograph or representation again, buildings painted white to illustrate where they would be but this is a shot taken from the roof of the Ritz-Carlton. So a shot that not many people actually see. The lower shot is actually taken as if you are in a helicopter hovering off the coast. In both photographs we depict the location of Honoapiilani Highway much lower than Mahana Estates and again, as the animation showed would be one that would shielded, all structures shielded from public view.

The golf course clubhouse is located here in blue. The design is one that is about 19,000 square feet. The entry is off the main resort road and lined by Cook Pines arriving at motor court. The structure is located and accentuated ocean view. Service is tucked down at a lower level and shielded by landscaping with parking located on either side of the entry drive. The main plant palette again as stated in our landscaping theme is based in the native plant species. The design style is consistent with the architectural design guidelines. The clubhouse includes many of the functions located here including grill and bar, locker rooms, pro shop, golf cart storage. And some of the elevations, the four elevations. The one thing that we'd like to highlight here is that there's a 35-foot height limit of which we are adhering to.

The Mauka Villas located here in the light blue, they're located on the south side of the clubhouse. The clubhouse is actually right here. So again, the main entry drive or resort drive coming up from Honoapiilani. All the access points to each one of the units are located through private drives off of the main resort drives, 22 units in total. The unit design has four distinctive styles and floor plans ranging from two-story to one and a half-story and one-story structures. So these are the four different unit types. Maximum height level of 30 feet. Density .5 units per acre. Condominium ownership.

The golf course. The golf course is approximately on 236 acres, 18 holes mauka of the highway upgrading this to a members course as part of the Kapalua marketing strategy.

So discussion on infrastructure. The infrastructure as we highlighted before is designed to serve not only the current phases of Kapalua Mauka, the proposed Kapalua Mauka but also future phases of the resort as previously described in through this area and also some of the makai resort properties. This will be accomplished through the main types of infrastructure including water. The water is intended to have a dual system, a potable and nonpotable, an inclusion of existing and new reservoirs and storage tanks and with the intention of connecting to the existing system here makai of the highway.

The sewer master plan again like water is sized to include all future phases of Kapalua Mauka and also includes connection points to the remainder of the resort makai of the highway both here and here.

The drainage master plan like water and sewer is sized for all future phases. Includes new and existing basins and new subsurface drains. As in all conditions the intention is to store increase runoff due to development.

A brief discussion on affordable housing. As part of this project and part of Maui Land and Pine's ongoing affordable housing development, and I think you've visited those today, there's two projects, one, Pailolo Place, Site 6-0 located here, and the second, being West Maui Village, Pailolo Place, 54 affordable homes. It has been submitted for a SMA and PUD Step 1 and 2 applications. It's currently under review by State and County agencies.

The West Maui Village is a project that's not in the SMA area and mauka of the highway and all that's needed there is standard building permits for that project to move forward. The design as it's situated now includes a 158. So a combination of 58 affordable at Site 6-0 and a 158 at West Maui Village.

As just a recap and overview, current Project District Phase 2 application is for Mahana Estates located here, highlighted by red. The redesigned golf course of approximately 236 acres, highlighted here, outlined in yellow, the club house located here in the dark blue, the Mauka Villas in the light blue and off site infrastructure improvements associated in this area. Thank you.

Ms. Cua then continued with a summary of the analysis in the department's report.

Mr. Hedani: Questions for staff or the applicant from the commission? Commissioner Shepherd.

Ms. Shepherd: How much water is coming from Honokohau Stream via the Honolua Ditch

and how much is well water?

Ms. Cua: Can I have the applicant respond to that?

Mr. Ryan Churchill: Good evening, my name is Ryan Churchill with Maui Land and Pineapple Company. To answer your question, I think if we pull up that one slide, it had it all detailed out there in Ann's presentation. Did you hand out your presentation to them Ann?

Ms. Cua: My power point?

Mr. Churchill: Yes.

Ms. Cua: No, you have to go back.

Mr. Churchill: The projected nonpotable use is 421,000 gallons per day and that's all coming from the ditch.

Ms. Shepherd: How much?

Mr. Churchill: 421,000 gallons per day. And the potable, from the wells, is 22,950 for the Phase 1 subdivision and 12,400 for the clubhouse and the 22 villa units.

Mr. Hedani: Any other questions from the commission? Commissioner Starr.

Mr. Starr: I actually want to challenge one of your water calculations. This is the calculation that says that the 51 units in the first phase are going to use 14,000 gallons a day of nonpotable. And you know, having had some experience in this, I think that's an impossibly low number. So I'd like to see the calculations where those 51 units are only going to use 14,000 gallons a day of nonpotable for the landscaping. The potable number assuming all the landscaping coming nonpotable is acceptable, but I'm just looking at the 14,000 number. How your average resort type unit is using over a thousand gallons for irrigation so 51 units would be over 50,000 gallons.

Mr. Churchill: If you give us a minute we could come back to that one once we pull up the engineering report that has those calculations and we'll give you the basis of that.

Mr. Starr: Okay, I have another water question which is I'd like to have a report on the chemistry of the three potable wells that will be used – that were mentioned, in terms of DBCP, in terms of chlorides and nitrates. I don't know if Mr. Pearson might know or someone you have with you might have that information.

Mr. Churchill: Yeah, the three wells are, you know, within both the State and Federal Safe Drinking Water Law. In terms of DBCP it's not detectible in those. There is annual testing as you know and two and five-year testing and all within safe drinking water standards.

Mr. Starr: Okay, I was confused about the traffic impact fee. There were two numbers quoted to us. I believe one was in the 200 and some odd thousand and the other one was in the 750 thousand. I'd like to ask the applicant which they're planning to pay.

Mr. Churchill: The way the condition is worded is at the time we were in at the County Council there was no fees set for the traffic impact fee ordinance for West Maui which is Chapter 14.62 of the Code. And the past study the County did have it at about \$3,200 a unit. So we just said, we'll volunteer at \$3,500 unit or whatever the County determines for that Code. And as Ann mentioned, that's what the County has now updated their study and that is for first reading this Friday at \$8,300 per unit. So we would be paying the \$8,300 per unit.

Mr. Starr: That's the higher number?

Mr. Churchill: It's the greater of.

Mr. Starr: Okay, now in a similar vein there is an affordable workforce housing policy that's before the Council and I'd like assurances that if it gets passed into law that the applicant will be complying with it.

Mr. Churchill: That's the way the condition reads, yes.

Mr. Starr: No, I'm not saying how it reads, I'm asking whether the applicant will be complying with it if it is passed into law.

Mr. Churchill: Complying with the workforce housing ordinance?

Mr. Starr: Yeah, as it's been written.

Mr. Churchill: Yes, we would comply with for portions of the project that are not already exempt.

Mr. Starr: Which portions are exempt?

Mr. Churchill: The Mahana Estates Phase 1 would be exempt.

Mr. Starr: Why is that exempt?

Mr. Churchill: We have preliminary subdivision approval for that portion of the project.

Mr. Starr: I would think that, you know, that's very unfair. That especially since you're building a very high priced luxury housing, you're building units that will be millions of dollars where other developers who are trying to build, you know, actual housing for people who work here are going to complying with that and for you to claim an exemption on something that you haven't begun yet is unfair. I would think that, you know, that to look for a loophole out of it is something you guys should be ashamed of. So I once again ask you, you know, in the spirit of being the good citizens that I know Maui Land and Pine is whether you would be willing to comply with it if it becomes written into law for all of the units.

Mr. Churchill: As you recall, as Ann pointed out, we have to do 40 units up front prior to building the first. So for these 51 units, we'd have to do over 56 units as written in the current unit, from the current condition. So I think we're already stepping up to the plate by offering the affordable units well in advance, you know, well in advance of the project going forward. And yes we are one of those developers who have many other projects that we're working and we will be meeting that condition. But the way the ordinance was passed out of the Council there's exemptions for projects that are already underway and we have vested rights in these projects. We're through preliminary subdivision approval. We're moving along. There's many projects like that through the island where, you know, you're exempt from ordinances that become law.

Mr. Starr: So you're going to try to weasel out of it then? Or are you going to comply with it?

Mr. Churchill: We're not going to weasel out of it. We're providing 40 units up front already. I wouldn't call that weaseling out of it.

Mr. Starr: Well, either you're going to comply with it as written or not. I'm just trying to get –

Mr. Churchill: Yes, we will comply with the workforce housing ordinance as written.

Mr. Starr: In regard to all of the – all the portions of this project.

Mr. Churchill: The entire project will be subject to the workforce housing bill if it becomes law prior to us developing.

Mr. Starr: So that will mean that you'll be providing workforce housing at the 50% number?

Mr. Churchill: No, we'll be complying with the ordinance.

Mr. Starr: So the answer is no, you will not be following the spirit of it then?

Mr. Churchill: We will be following the ordinance. Chair I ask, we're debating a legal issue on a bill that has not yet passed.

Mr. Starr: Well, I see where this is going. I'll change the subject.

Mr. Hedani: Ryan I think you just need to answer it directly. If your answer is that you would comply with the ordinance. It means that you would comply with the ratio for 51 units and you are not expected to comply with the ratio for the 22 units which is what you're saying.

Mr. Churchill: No, we're not expected to comply for the 51 unit portion.

Mr. Hedani: For the 22 unit portion.

Mr. Churchill: The 51. The 22 unit would be subject to the ratio in the proposed ordinance.

Mr. Starr: Okay, thank you.

Mr. Hedani: Okay, I think the question is asked and answered.

Mr. Starr: Yeah, I agree. It's been answered. My next question is, I'd like some information on what your maintenance program is on the pressure main because that's right behind Fleming Beach and it would be a catastrophe if that were ever to break and I know there have been corrosion problems in similar type of installation. So I'd like some details on how that's going to be maintained.

Mr. Hedani: Jonathan, can you hold that thought? Are there other questions from other members of the commission at this time on any items of the presentation? Commissioner Iaconetti.

Mr. Iaconetti: I have a question about the waste water reclamation of the area. According to the material that we received, the current capacity of the Lahaina wastewater facility is between 5.2 and 6 million gallons per day. The current average daily flow through the facility is approximately 5.2 million gallons per day and the County has budgeted \$2.5 million for design and work and is currently pursuing operational improvements to increase the capacity of the facility. Can we assume that this will be completed before your subdivision is?

Mr. Churchill: That's probably a question for Public Works.

Mr. Mike Miyamoto: Good evening Mike Miyamoto, Deputy Director of Department of Public Works and Environmental Management. Yes, those improvements are ongoing. They're primarily operational as you can see in the correspondence we're looking how to operationally change the way we work the plant. It's doing one type of feed process, waste water feed process and we're looking to modify it to another method, decreasing the length of time that which the wastewater sits in the plant for the organics to go ahead and eat the – the bugs to eat the organic matter within the stream. The end result will be a little bit higher sludge coming out at the tail end so to speak of the treatment plant. But we're somewhat prepared to go ahead and make that change.

Mr. Iaconetti: So it will be completed then by the time that the subdivision will be?

Mr. Miyamoto: Yes, it should be completed. It's purely operational. It doesn't involve any infrastructural modifications at this time.

Mr. Iaconetti: I have another question. On page 38 of our handout here, the Fire Department in their letter of July 14, 2006, commented that they are concerned about the long term future ability to provide emergency services in this area. In 2005, the Fire Department requested that the Maui Land and Pineapple Company consider setting aside property north of Honolulu Bay that would be used for emergency services in the future. Has this been settled?

Mr. Churchill: It was brought up at the County Council and discussed and we are open –

Mr. Hedani: We can see you, but can you state your for the record.

Mr. Churchill: Oh, Ryan Churchill again. And talked with Fire Department and they were saying 20 years plus out and, you know, we're fine if they want to come propose something to us, but they have not done so. There's not much planned out there and as you know, there's not much out there, but you know, as things progress, we're happy to hold a site for them and we've expressed that at the County Council, but there's been no movement since that.

Mr. Iaconetti: Is there a site that you would hold for them?

Mr. Churchill: We were waiting to hear back from them. They would need to pick a preferred site. As you know, there's the site right there in Napili pretty far out on that end. It serves the area, but if the Fire Department came forward had a preferred site, we'd be happy to explore that with them.

Mr. Iaconetti: I have one more.

Mr. Hedani: Go ahead.

Mr. Iaconetti: One more question. Since there have been several voluntary contributions for this development already mentioned and since I realized that a 15-acre area at Pulelehua has been earmarked in the future, but in my estimation as I've said before, the future is quite a ways in the future for a facility in West Maui. And there is at present, the likelihood that a urgent care facility for West Maui is being considered to be operated I understand by Maui Memorial Medical Center at the Maui Medical Group facility in Lahaina. I wonder if the applicant would be – have a positive attitude about contributing to the development of this urgent center, temporary urgent center since the Pulelehua acreage, although it may very well be developed there is not going to occur in the very near future. Would the applicant be acceptable to a contribution for a urgent care facility in Lahaina?

Mr. Churchill: We'd be more than willing to look at that. I think urgent care is very important and needed in West Maui but not as a condition of this project. I think we can sit down as Maui Land and Pine and the social giving, we give to the community and look at that. You know, we've offered the 15 acres of entitled land at Pulelehua if it does get through and we've given in many other ways. So we'd be happy to sit down and look at that because it is important to West Maui. I think it's inappropriate to this application today or tonight.

Mr. Iaconetti: Thank you.

Mr. Hedani: Any other questions for the applicant? Commissioner Shepherd.

Ms. Shepherd: The status on the instream flow standards is, a petition has been accepted. What does that mean and how soon do you estimate that there will be standards established so that you know how much you actually can take?

Mr. Churchill: The petition as you mentioned has been accepted. They're reviewing the studies and reports we gave them and we expect them to come back with more requests for additional studies and documentation on the two streams. They've never done this before, as you know.

Ms. Shepherd: I know.

Mr. Churchill: And it's, you know, sort of wait and see as we go through it, but a time table I don't know. They won't give us a time table so I can't give you one.

Ms. Shepherd: And as far as allocation of the water that you take out of the stream, where do – just rough percentages, where do you estimate that it will be going?

Mr. Churchill: The diverted water? I'd have to –

Ms. Shepherd: I mean how much do this project, Pulelehua is going to have some and then – I know it's hard to say at this point because you don't know how much you're going to be permitted to take, but –

Mr. Churchill: Can I get back to you on that one?

Ms. Shepherd: Yes.

Mr. Churchill: I mean, we could give you the percentages, I just have to run Pulelehua, Kapalua Mauka, the golf course and see where it's going in relation to the agriculture use. I can follow up with the commission on that one.

Mr. Hedani: Commissioner Starr.

Mr. Churchill: Returning to your question, Mr. Starr.

Mr. Starr: Yes sir.

Mr. Hedani: If you could restate that question Jonathan?

Mr. Starr: Okay, I think that's a question about the maintenance program on the forced main.

Mr. Churchill: Okay. I was going to answer the water question, but I'll answer this one first. The forced main we looked at today is at the Ritz-Carlton, at the bottom of the Ritz-Carlton and what that does is basically pump the wastewater back up just above the Ritz-Carlton and then it gravity flows back down the line. Looked into that, that was installed when the Ritz-Carlton was installed so those lines are relatively new around 15 years old and they are ductile iron so very solid pipes. Our inspection program is annual inspection at the manholes.

Mr. Starr: Okay, and your inspection program, you feel that that would cover, that would find a corrosion problem if there was an electrolysis related corrosion problem, is that correct?

Mr. Churchill: For the time being I think as a system gets older the inspection program would step up. And we have completed just last year with CH2M Hill an evaluation of all our wastewater and potable and nonpotable water systems throughout the resort looking at the age of pipe that may be corroded and what needs to be replaced and we have a long term replacement plan for those systems.

Mr. Starr: Okay, and you'll be following up with the CH2M Hill program?

Mr. Churchill: Yes.

Mr. Starr: Okay, good. Now as far as the nonpotable for the 51 lots?

Mr. Churchill: You're correct. The nonpotable for the lots is at 14,280 for the lots themselves, but if you take in all the common area and the roadway landscaping which is a lot of the landscaping, it's 74,000 gallons per day.

Mr. Starr: Okay, thank you. That's what I thought. Next question. That area to the right, the long strip that was planted – I guess that's ALISH pineapple land that's now fallow, will you commit to a program to plant it in some kind of groundcover until it's developed?

Mr. Churchill: Well, the pineapple's been left in this area, a good portion of this area and I think the fallow dirt area you saw earlier, yes we will be planting that out. The area that's already been turned over, and tilled, yes, we will plant that out.

Mr. Starr: Okay, I know the portions of that that we saw were getting pretty dusty. So my concern was that anything that's not planted in pineapple will be planted with some kind of groundcover.

Mr. Churchill: Yes, we'll plant that out.

Mr. Starr: Okay, good. Next question. How did the title for this property derive? What's the history of that?

Mr. Churchill: The Land Commission Award to Kalei Davis and subsequently, H.P. Baldwin.

Mr. Starr: About how long ago?

Mr. Churchill: 1855 she acquired title and the transfer was 1890's.

Mr. Starr: Okay, good. Thank you.

Mr. Hedani: Other questions for the applicant? Any commissioners? Commissioner Guard.

Mr. Guard: Would the applicant have any studies on I guess post sales in the existing Kapalua Resort for actual sales comparisons to what taxes are being paid by those owners now? Just to kind of possibly to help the property tax department keep up and everyone's all these EISs and EAs that we receive we talk about what a great benefit these projects are going to be, but then after the initial sale, the taxes, the burden falls on the tax department and then we're not getting the full amount of taxes that we possibly could be

getting. So on your first sale, if this goes through, the 73 parcels, they'll know what those sell for. Right, I think you probably submit it. So to possibly assist the County with a study of your own resort saying, I mean, almost like self-policing to say, okay, the Golf Villas are \$500,000 below what most of the sales have been. That might alleviate a lot of the developer themselves having to pony up these fees that keep increasing if the actual tax department was getting what they should be getting.

Mr. Churchill: I think that's a good question and a couple years ago, ...(inaudible)... real problem. I think what the – the bigger question is not the value because they usually do mark to market, once you sell them. So if we sell these 51 lots they'll take those prices and that will usually be their assessed price. At last that's how they've done in the past projects. Where I think the shortfall has been is the timing of that. Two years later they're still assessing at the old values before they've just updated the information and they've gotten quicker on that. But I think it's more Real Property Tax branch getting the information and updating by the next appraisal period. But they seem to be pretty good in updating the property tax values at least for the resort from what I've seen. You know, they've updated them and they've – you know, we see it with our own properties, all the vacant properties around there and they're usually pretty on top of it in terms of value. It's the timing I think where they've missed a lot of money.

Mr. Guard: Right, so that's why I'm wondering if as projects come in developers could look at the surrounding area that they're around and say, hey here's the sales data we're looking to decide if we want to do a project to then also assist the Property Tax Department with that. You probably do it more often in-house.

Mr. Churchill: I think they have it. The problem is the timing is even if you give it to them and give all the information then what happens to it. So I think the challenge is the bureaucracy and the procedures once they have the information and how quick do they get updated for the next January 1st update.

Mr. Guard: Well, just anything if even working with the Property Tax Department to start doing that that might alleviate new construction projects from having to pay all these fees when property owners are enjoying the benefit of some of the lowest taxes in the country that that may be a better way to get these park fees and traffic fees out instead of people coming with a project from the mid-2000's. So maybe they'll look at that for – might not be this project or this 73 units but each time you come up here, I mean, that may alleviate a lot of these problems, workforce housing as well.

Jonathan and I are the two newest guys so this may have been addressed in previous meetings. State land still own that stretch of ...(inaudible)..., that land. Did you guys do a land exchange there?

Mr. Churchill: Yes, we did a land exchange with the State two years ago. I think it was the end of '04.

Mr. Guard: Oh, last one. Regarding nonpotable water, that clubhouse, there's so much roof line that could be catching some water up there for irrigation instead of just putting it into cinder pits actually trying to do either underground storage under some of these buildings to start looking into that for even if it was just for gravity feeding, you could probably bury a large tank under that clubhouse.

Mr. Churchill: Well, I think, great point. We're looking at that for all our buildings up there especially the higher elevation where rather than going into a big thank you just put it right back into the reservoir. And so, channel it, filter it, and goes back into your reservoir which then feeds the irrigation water for the golf course.

Mr. Guard: Okay, good. Thank you.

Mr. Hedani: Other questions from the Commission? Commissioner Shepherd.

Ms. Shepherd: Given that your calculations for nonpotable water were incorrect, do you still believe that this statement on page 30, "the applicant further comments that no additional water beyond what currently flows to the Honolua Ditch is expected to be diverted from streams in the region as a result of the first phase." Do you think that's still correct?

Mr. Churchill: Yes, we're not going to be withdrawing additional water for this project.

Ms. Shepherd: How much is going into the stream at this point? Or how much are you putting back?

Mr. Churchill: The minimum you have the two Aotake Gate and Taro Gate which is a little over a million gallons a day at each. So the minimum there's two million. In terms of the exact numbers, if you hold on one second, I'll get you that. Average over the diversion is 10.9 million gallons a day. One million at Taro Gate, one million at Aotake Gate, and then you have 300,000 from McDonald's Dam that comes back in after it's diverted there that comes back in below at the lower elevation.

Ms. Shepherd: And up at the diversion itself?

Mr. Churchill: It's 10.9 million gallons a day average.

Ms. Shepherd: What's the range?

Mr. Churchill: The range would be zero to, you know, a flood event.

Ms. Shepherd: Okay.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Thank you. This is a question for Mike Miyamoto. The sewage plant capacity that this is going to use, is this coming out of the reservation for Hawaiian Homes for the part of the plant they paid for that's expiring?

Mr. Mike Miyamoto: Again, Mike Miyamoto, Deputy Director of the Department of Public Works and Environmental Management. No. The answer is no. There were other allocations that were paid for and I think it's states in the documents, it's coming out of their allocation.

Mr. Hedani: Any other questions from the Commission? Commissioner Iaconetti.

Mr. Iaconetti: There's a mention here of increasing the number of holes in the golf course from your expected 18 to what, 27? Where's that going to be? Is it in this location or?

Mr. Churchill: Currently there's two holes below the highway in the Village Course and 16 above. What we're planning right now is 18 holes not the 27 permitted. So in the planning right now and before you is the 18 holes. So it's just one, 18-hole course.

Mr. Iaconetti: I have one more.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: If I can remember what I was going to ask him. I've drawn a blank, wait a while.

Mr. Hedani: Any other questions from the Commission?

Mr. Iaconetti: I've got one. I know it's noted in the handout that we received and I've asked this question today during the site visit, there will be no gated communities in this entire development, is that correct?

Mr. Churchill: Correct, no gated communities.

Mr. Iaconetti: Is this in perpetuity or can it be changed in the future some time?

Mr. Churchill: In perpetuity. That's the way it's planned, yes.

Mr. Iaconetti: Thank you.

Mr. Hedani: Any other questions from the Commission? Commissioner Starr.

Mr. Starr: The golf course here I understand that's going to be a private golf course and the public will not be allowed to use it. What's the reasoning behind not allowing the public to use this golf course?

Mr. Churchill: A couple reasons. One is market position is the main reason. You see a lot of the owners at this high end looking for that private members only type experience. We believe we've lost our competitive edge to the Big Island on some of the courses there with many private courses there. Our owners are asking for it, demanding it. So that's one reason.

Another reason is as some of you may know, the golf play is going down. It's going down at all the resort courses throughout the island. Year over year that trend's been consistent despite increased guest stays, the play is going down. So rather than having sort of three struggling resort courses we felt it appropriate to have two resort play courses and one members only course.

Mr. Starr: What does that mean, members only? I mean, say I wanted to become a member what would I have to do?

Mr. Churchill: If you're a homeowner, the membership is a \$100,000. If you're not a homeowner, it's a \$150,000 and that's the membership program for the course.

Mr. Starr: So is the course for very wealthy people who can pay that kind of money?

Mr. Churchill: Or avid golf lovers. Depends on where you want to spend your money.

Mr. Starr: Okay, are there any other requirements other than paying the money?

Mr. Churchill: The annual fees.

Mr. Starr: How much are those?

Mr. Churchill: I think around \$800.

Mr. Starr: And that's it then?

Mr. Churchill: Yeah.

Mr. Hedani: Any other questions from the Commission? Okay, I have a few questions that I'd like to toss out. First of all, regarding the interpretation, the strict interpretation of the

affordable housing requirement for the project, my personal perspective is that when Kapalua does a project the project is extremely well done. It has extremely high standards. But I find that your interpretation of the policy to strict legal standards not in keeping with the spirit of the Kapalua Resort and its past commitment to the community.

If I had to say going just by the strict legal interpretation of what you qualify for and what you don't qualify for the question that I get is going back like to our discussion of the Kapalua Bay Hotel, you have a project that's hundreds of millions of dollars worth of property and I found that at that particular point there was deficit in commitment to the community to bridge the requirements that are necessary in order for the entire community to benefit from the project and that's the same deficit that I heard here this evening. There are more colorful words to describe it, but I cannot express to you the dismay that I have that you would take a position like that over an issue like that given the values of what's being considered tonight. Do you have a response to that?

Mr. Churchill: Yeah, I think as I pointed out for these first 51 units we're providing 56 affordable units. I don't think there's any other project on the island doing that. If we can step back and comply with the Workforce Housing Bill in its entirety then we'll only be providing 26 units up front. So, you know, I think we've gone more than the Workforce Housing Bill, but if we can take the Workforce Housing Bill in account, you know, if that's the tradeoff, we're happy to do that. Then we'll do 50% for these first 51 units, but I think from the community's perspective, 26 units or 56? So to answer your questions, happy to comply with the Workforce Housing Bill in its entirety and the percentages for the first phase of this project.

Mr. Hedani: Okay, going back to the Kapalua Bay Hotel, if I had to coin a word relative to the position that you're taking I would say it's, chicken shit. That's just my personal perspective.

Mr. Churchill: We're not – you're going back to a previous project.

Mr. Hedani: Exactly.

Mr. Churchill: I think, you know, we've looked at projects today that we've had underway hundred percent affordable projects, 50% plus affordable projects, they're all in the pipeline in advance of the Workforce Housing Bill. So I think they're underway. You know, these projects take considerable investment. Kapalua Bay is yet to make a penny. Kapalua Mauka is yet to make a penny. Hundreds of millions of dollars are invested in these projects. We've talked about park fees, \$29,000, traffic fees, \$8,500, sewer fees we're already paid \$4, \$5 million. It adds up, it adds up, it adds up and you know, profits are a long way for us. There's a lot of investment here and I think we've done more than our part for the affordable housing on this island and we'll continue to do that and we'll continue to

lead any development company on this island in terms of providing workforce and employee housing to the community. So, you know, I take it personally when you're calling it chicken shit because, you know, we're doing more than anyone else.

Mr. Hedani: Okay, I recall when the ...(inaudible)... project was done, there was over 300 homes that were done for the employees of Kapalua and when we asked you the question on the Kapalua Bay Hotel because those were all at market if you were going to meet an additional affordable housing requirement for the employees of the Kapalua Bay Hotel, your response was no, because it's already been met 30 years ago which is correct from a legal standpoint. I'm saying from an ethical standpoint there's a deficit there. Because some people can do something about affordable housing and other people cannot. And the perspective that I get is that the people that can, should, and the people that cannot, cannot. Maui Land and Pine can because you're given the assets, because you're given the ability to do great things on this island if you step to the plate.

Mr. Churchill: And we are.

Mr. Hedani: Okay, asked and answered. Regarding your Exhibit 28, the Department of Health's conditions on new golf courses may be imposed upon the redesigned Village Course. Could you explain what that is?

Mr. Churchill: 28 in the staff report?

Mr. Hedani: Correct. Or staff can answer that if they have an answer to that.

Mr. Churchill: Okay, what Department of Health has is it's a handout for guidelines for new golf courses. It has a variety of items in there, I believe like installing lysimeters up in the course to track the flow of chemicals through the ground and what may filter through, but there's a pamphlet they have that has a bunch of different things for golf courses, best management practices for them. I don't know if we have a copy of that.

Mr. Hedani: Okay, there's a request from the audience if you could speak a little louder into microphone because they can't hear you in the back.

Mr. Churchill: Okay. You want me to repeat that?

Mr. Hedani: Please.

Mr. Churchill: There's a pamphlet Department of Health hands out and that I don't think there's a copy of it here tonight but has best management practices for golf courses, new built golf courses to include BMPs, installation of lysimeters and other measures, environmental measures.

Mr. Hedani: Okay, thank you. The other question that I had was on the educational contribution agreement for Kapalua Mauka that was struck I guess back in July of 2003, my comment that I had on the side, on this note is, Pat is retarded. The question that I have is the total cash contribution that you're looking at is \$697,590 as an educational contribution. How does that equate to the contribution that was made at Pulelehua for education where you essentially contributed an equivalent of \$3 million worth of property.

Mr. Churchill: Pulelehua as, we've dedicated the 15 or so acres or will dedicate the 15 or so acres there along with the fees at Pulelehua. I think the big difference between the two projects is Pulelehua will generate school kids, Kapalua Mauka will not.

Mr. Hedani: So the educational contribution that was determined by the Department of Education is solely based on the number of students that would come out of the project?

Mr. Churchill: No, it's based on their formula.

Mr. Hedani: Which is?

Mr. Churchill: Gets you to that number you just read. They determine that number not us.

Mr. Hedani: Okay, the next question that I had was on Exhibit No. 43, and this is coming from the Acting Deputy Director of the Commission on Water Resources Management. When they're talking about Honokohua water course, the second paragraph, it says, "this water course is not considered to be a "stream as defined by the State Water Code." Why is that?

Mr. Churchill: Honokohua is not a perennial stream. It only flows when it's raining. You don't have it – you have that confused with Honokohau. Honokohua is the one in the project area and it only runs when it's raining. So I guess under their definition, it's not considered to be a stream because it's not –

Mr. Hedani: It's just intermittent?

Mr. Churchill: Yes.

Mr. Hedani: Okay, the other question that I had was actually on the decision and order. I guess this is either part of Exhibit 46 or it's Exhibit 47. On transportation improvements, "the petitioner shall implement traffic mitigation measures for project generated traffic at no cost to the State of Hawaii. All roadway improvements shall be designed to Department of Transportation standards and shall include but not be limited to right turn deceleration lanes, left turn deceleration lanes, storage lanes, signage, pavement markings, and street lights. Petitioner shall also provide signalization at Honoapiilani Highway/Office Road

intersection when warranted.” The note that I have is, part of the impetus for the bypass highway is to insure that adequate transportation facilities exist to projects like Kapalua and Kapalua Mauka. And that actually calls for a very significant commitment of resources by the State. In the case of the bypass highway, we’re talking about \$600,000 million. What is the contribution that Kapalua Mauka is making towards that bypass highway.

Mr. Churchill: As discussed earlier it would be \$114.62, if passed this week it would be \$8,500 per unit plus the computation on the commercial. So for the application today, I think as Ann went through it was around \$750,000 for this first phase. But in total, I guess a rough number take $690 \times \$8,300$ in today’s dollars. But the County’s number will change based on the projects as they come on line.

Mr. Hedani: $690 \times \$3,500$?

Mr. Churchill: Times, it’s \$8,300.

Mr. Hedani: Times \$8,300.

Mr. Churchill: Plus all the commercial. And that’s the fair share as determined by the County.

Mr. Hedani: So you’re looking at \$5.7 million roughly.

Mr. Churchill: Minimum yeah. That’s the number, today’s dollars.

Mr. Hedani: Okay, out the total cost of \$600,000 million.

Mr. Churchill: Is that the total cost?

Mr. Hedani: That’s the estimate today’s dollars I guess. I’m not sure if it will be built today or 20 years from today. Another question that I had was on page 75 of the decision and order, paragraph 12, the Hawaii Right to Farm Act. I was quite concerned when I learned that 50 employees from Maui Land and Pine were being laid off as a part of a cutback on cost on the ag side of the operation. How will or what kind of commitment does Maui Land and Pine have, towards agriculture in total and towards the employees that you have in agriculture into the future?

Mr. Churchill: First we need to have profitable operations. As you know, we’re a public company and we’ve lost a significant amount of money in the pineapple business the past how many years. We’ve lost money in the resort business and the community development business our third division provides some money. So it all depends how we’re doing as a company and the viability of it and I think projects like this if profitable, will

help with that. But in terms of the commitment to West Maui, you know, West Maui continues to be planted out here although we're less plantings in total on the island, West Maui continues to be planted and that's expected for the foreseeable future. But the company, priority one is the company needs to be viable, and it's been a rough few years for all divisions.

Mr. Hedani: Although the agricultural side has a rough time, the real estate side is doing pretty well.

Mr. Churchill: I don't know about that. It's keeping me up every night.

Mr. Hedani: What is the estimated sales value of the 690 units that's proposed in Kapalua Mauka?

Mr. Churchill: You can assume the units sell anywhere from one to three million dollars in today's dollars, but you got to look at the cost side and offset both of those. Big investment.

Mr. Hedani: So you're looking at \$2.07 billion in sales possibility at the high end?

Mr. Churchill: If you took the high end. But that was the range, so they all wouldn't be at the high end.

Mr. Hedani: And the cost side would be approximately how much?

Mr. Churchill: Hopefully a little bit less than that.

Mr. Hedani: Approximately a billion dollars?

Mr. Churchill: No, no. If, for example, to deliver a \$3 million condo, your costs are well in the \$2 million plus range for that condo. So it can be – or you can lose money on it. It all depends on where you are in the market. You know, we've seen on this island a lot of big landowners go under whether it's C. Brewer who had all that entitled in Kehalani and disappeared. Where it's Amfac, had all that entitled land, couple bankruptcies. So there's a lot of investment that goes into it and a lot of risk in this business. You know, we're going into a down market now and sales have slowed down significantly on this island. So there's a lot of risk in the projects we do. So the goal is to make some money on it and the goal is to get rewarded for that risk and hopefully the bet's right.

Mr. Hedani: So what is your estimate of the investment that you're looking at in the 690 units?

Mr. Churchill: We don't have a estimate.

Mr. Hedani: You don't have an estimate of what it would cost?

Mr. Churchill: No, because it's a 20-year project. So we haven't estimated out the entire project. And even if we did, since we're a public company we don't forecast or release that information to the public.

Mr. Hedani: So even if you knew, you wouldn't say?

Mr. Churchill: Correct.

Mr. Hedani: The recording of conditions for the decision and order that came down from the Land Use Commission would be recorded with the Bureau of Conveyances. Would you be willing to do something similar for the County of Maui's requirements for this project?

Mr. Churchill: It's already recorded.

Mr. Hedani: It's already recorded.

Mr. Churchill: It records before they grant final approval.

Mr. Hedani: Okay, on page 20, of Exhibit 49, it talks about a – under Paragraph I, it talks about a voluntary contribution of \$500,000 to a first-time home buyers rental assistance fund. Would you explain that to me?

Mr. Churchill: What that is, is we contribute \$500,000 to a fund managed by a couple, I think it's three trustee types would then appropriate funds to employees who need assistance either with renting apartments or assistance with say, a portion of their down payment for an affordable home, all going to affordable qualified buyers and renters. So for example, a employee would submit an application stating their need requirement and then these trustees or directors would then decide based on a different merits who's appropriate to receive those funds. Some would be loans, some would be outright grants.

Mr. Hedani: And that's something that's being done that's not required by any ordinance?

Mr. Churchill: It's required as a condition of affordable housing Condition No. 11 I believe of –

Mr. Hedani: The Land Use Commission?

Mr. Churchill: The County Council.

Mr. Hedani: The County Council. Okay, the last comment that I had was on page 3, I guess of the July 7, 2006, well Exhibit 52, paragraph five, traffic impact fee, it says, "the impact fee is established as a function of an agreement reached amongst the petitioner, the County of Maui and the State Office of Planning and will be applied towards the funding design construction of local and regional transportation improvements and programs necessitated by the proposed development of the property, but in any event will not exceed \$3,500 per unit or lot developed on the property. In the event a change in the circumstance proves that a fee up to \$3,500 is inadequate, the State and/or County may seek to amend this order." And this was amended from \$3,500 or is it still at \$3,500? Maybe Ann can answer that.

Ms. Cua: This condition has not been amended. Again, the whole discussion on the \$3,500 contribution both before the State Land Use Commission and with the County Council was that the County had nothing in place. You know, we'd been talking for a long time about the traffic impact fee ordinance and so we were putting, I don't know if you recall, but we were putting conditions on projects that you comply with this ordinance if it's in place prior to certificate of occupancy which looks great as a condition. Problem is that ordinance till today is not adopted. So there were a number of projects that got certificate of occupancies that when they were ready to pull those certificate of occupancies, there was no traffic impact fee in place. So when these larger projects started coming through the department basically had taken the position that we can't rely on that kind of a condition. So we talked with these, some of these applicants and we said, you know, there needs to be some way of trying to mitigate impacts not dependent upon an ordinance. And so that's how this voluntary contribution came from and the number didn't come out of the sky. As they talked about there was that Kaku Study that was done and so that's kind of where the \$3,500 fee came from because the thought at that time was at least we would have something. But the way the condition was crafted was that if there was a policy or if there was an impact fee in place and it was more restrictive then that would apply.

But if it wasn't in place, then at least we would have the voluntary contribution. And even though it was a voluntary contribution, you know it was made a condition but, you know, that kind of got tricky, but it was a voluntary contribution and that's kind of how the story happened. That gives you the history of how we got there. So, you know, when we went to the Land Use Commission for this project, you know, the fee was offered at that time. It went on through the County process and that's why it's a condition of both the State District Boundary amendment and the County zoning. And the way this condition is worded is that if the fee changes pursuant to law, then the State or County can ask the Land Use Commission to amend its order, and no, we haven't done that yet because we don't have a legislation yet, we may soon.

Mr. Hedani: Okay, any other questions from the Commission? Commissioner Starr.

Mr. Starr: Question for Planner Cua. Under the project district, when is final subdivision approval considered approved?

Ms. Cua: Well, as I mentioned, the project district process is a three-step process. This is the Phase 2 step. If they pass this step then they have to submit to the Planning Department their construction drawings of this segment of Kapalua Mauka. We also ask for compliance reports as you look at the conditions, we ask for a preliminary compliance report prior to either, I think it's prior to building permits and then we ask for a final compliance report prior to either final subdivision approval or a certificate of occupancy. In this particular case there's not going to be certificate of occupancies issued for the units because they're single family units. So we're basically looking at a final subdivision approval.

The Planning Department, our Zoning Division, does not sign off on a final subdivision approval until the Current Division has granted approval of the final compliance report. And that means is that for the project the conditions that apply to that particular project need to be fully complied with to the extent that they can for a first phase. When you compare that to lets say just an SMA permit for a hotel project, it's a one phase thing, they build the entire project and they have 25 conditions. Before we sign off on the certificate of occupancy we go through every single condition. If they need Department of the Army permits, if they need NPDES permits, we have to see a copy of those permits. If there were traffic improvements that needed to be constructed, roadway improvements. We have to make sure that those were put in. All the conditions have to be met before they can either get final subdivision approval or certificate of occupancy.

Mr. Starr: So in your opinion, the first phase, particularly the 51 units, has final subdivision approval been granted for those units?

Ms. Cua: No, definitely not. I wasn't even aware that preliminary subdivision approval was granted. But no, I know definitely final subdivision approval was not granted.

Mr. Starr: I'd like to read to you item 11g on page 19, this is coming from the County Council's approval of the project and the wording is, "that prior to final subdivision approval any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply." Now we've heard the applicant state that because of a loophole in the way the ordinance is written that they don't intend to comply with the new workforce housing ordinance. That though they are going to be building a certain number of affordable units up front that they'll be using them to comply with a 20% requirement and I guess using them to offset later portions of the same portion since we know that there's other wording that says that no affordable housing units built for this can be applied for another project. So, does not it seem that the letter and spirit both state that if the workforce housing ordinance is indeed passed into law that this 11g would

mandate compliance?

Ms. Cua: You asked a lot of questions in that comment. And I don't know if I'm going to be able to remember them all. You also made a couple of incorrect statement that I want to correct. First of all, the condition 11 which is quite lengthy and the first part of that condition talks about the requirement being one affordable unit for every four market-priced dwelling units. So that's 25% not 20%. But in addition to that --

Mr. Starr: One to four would be one out of five.

Ms. Cua: No.

Mr. Starr: No?

Mr. Cua: One affordable dwelling unit – it's like twenty-five cents to the dollar. So they – by condition, they were required to have a 25% affordable housing requirement. But the first point listed, point A under that condition 11 says that they have to build 40 units up front. After they build the 40 units up front which nobody has had, nobody has ever had a condition like that, after they build the 40 units up front, then they have to provide one affordable dwelling unit prior to or concurrently with the completion of every four market-priced dwelling units. So that's the first comment.

That whole little table exercise that I – that mathematical table exercise that I did was based on condition 11g which you just read, that said, "prior to final subdivision approval any affordable housing policy adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply." That calculation was done based on that condition 11g, and pursuant to the residential workforce housing requirements that are proposed, we have to remember they are proposed which says that "when 50% or more of the dwelling units in the development are offered for sale for \$600,000 or more 50% of the total number of units or lots shall be sold or rented," you know, yada, yada. That's what I mentioned and that's where the numbers came from.

The part I didn't cover because I didn't think it was applicable, there is a section in the proposed workforce housing policy on page 4, under applicability, no sorry, oh, yeah under applicability, 2.96.030(b), exemptions. It says here, "this chapter shall not apply to any development that falls into one or more of the following categories," and there's six categories, and one of them is what I guess Ryan mentioned, a subdivision granted preliminary subdivision approval prior to the effective date of this chapter. I wasn't aware they got preliminary subdivision approval for the 51 lots. Personally, I'm not sure how that applicability will work because you're dealing with two things. You're dealing with condition 11 that has nine subparts, subsections, and one of those sections says, that if there's a policy out there that requires more units, then you shall do more units. So you have this

policy that says you shall do more units but it also says other things and that's why we have attorneys because the attorneys are going to have to, you know, when the policy gets finally adopted they're going to have to go through it and decide what applies and usually what it is and we can ask our attorney, usually the stricter of the two things will prevail and I don't know how exceptions falls into that. So I kind of really didn't answer your question but that's the honest information that I can give you.

Mr. Starr: It sounds like it's going to keep attorneys busy for years. Could I ask Corp. Counsel for a comment on that Mr. Chair? Would that be in order?

Mr. Hedani: Corp. Counsel.

Mr. Souki: Thank you Chair. Just to restate the provision that we're looking at under the conditional zoning, this is 11g which state, "that prior to final subdivision approval any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply." And planner Cua just read that there's an exception in the proposed bill which hasn't been signed into law yet, that says that there's an exception if preliminary subdivision approval was granted. This is speculative because the bill hasn't passed. But it looks like that, what "g" is saying that adopted by the County of Maui which would result in a greater number of affordable housing and that the bill would exempt this project because it has preliminary approval and so, if the workforce housing bill exempts this project because it already had preliminary subdivision approval then we would need to fall back to "g" which provides more affordable housing and the workforce housing affordable bill wouldn't apply in this case.

Ms. Cua: That's a hard question. We need to see – I tried to give you information, hopefully not to make it more confusing but this is not passed. We were just trying to say, okay, if it does get passed this is kind of what we're looking at but then there's all these other things and that's when we have to at some point the attorneys are going to have to get together and figure it out. Any other questions? Did I answer all your questions? You had so many.

Mr. Hedani: Any other questions from the Commission? Okay, we'd like to – you have something you want to add Ryan?

Mr. Churchill: Closing comment. You know with this project we've been working on it. It was on the community plan in – back in 1996, and before that dating back to 1983. We've been to the planning commission were given our conditions, went to the Land Use Commission were given our conditions, went to the County Council, those who create the ordinances in this county were given conditions and now we're back here before you today for Project District Phase 2 approval which is to confirm that our preliminary site plan is consistent with the ordinance and I think we've shown that today for our presentation and

that's all I have to say.

Mr. Hedani: Thank you. Any other questions from the Commission? If not, we'd like to go ahead and take a short 10-minute recess at this time and reconvene in 10 minutes.

A recess was called at 8:46 p.m., and the meeting was reconvened at 9:02 p.m.

Mr. Hedani: Commission is back in session.

a. Public Hearing

Mr. Hedani: We would like to open it up for public testimony at this time. First person that have signed up for testimony is Sharyn Matin. Nice and loud and clear Sharyn.

Ms. Sharyn Matin: Thank you Chair. Commissioners, I wanted to begin by thanking you so very much for the –

Mr. Hedani: I'm sorry, we have people in the back of the room that need to hear you.

Ms. Matin: Thank you. Thank you Chairman, thank you all Commissioners for the hard work I can see has been done in evaluating the sewer documentation that I provided to you the last time I was before you. For the record, Sharyn J. Matin, President of West Maui Preservation Association.

I do have some documents to hand out today. And it's a packet and includes some of the previously submitted to you material for a second time, but because I submitted the Hill ...(inaudible)... report last time indicating we had 4.2 capacity, 5.6 processing at Lahaina plant, and because that was subsequently somewhat argued to be untrue, after my testimony I went to the trouble of obtaining part 1 report for you which is before you in the event you do not already have that. You'll find that that was a month-long study. Therefore, the provisions of part 2 which were a short weekend were in fact, just that, but the previous report was one month study and the results are identical. The results are the same. The 1974 plant remains idle. It was idle the month of the study. It was idle on the 2004 I gave you. We don't even have 5, we have 4.2. It does show that the equipment changes can take that up to 6. To get it to 9, takes the millions that are indicated in the alternatives. That would be alternatives three through the end. That is not going to happen immediately. What are we going to do about the developments that were already entitled based on a misrepresentation of a capacity of 9 that we know now does not exist?

I would suggest that at least be explored that a private sewer plant might be an appropriate condition for this particular Kapalua project and the reason is not necessarily the capacity problem, it's the way it links with the other documents in front of you specifically the

consent agreement under which the County has already paid a \$300,000.00 fine following EPA violations. Those spills will continue. We have a problem. Every hookup that goes into that sewer plant will give us more spills and we already have spills that have continued since that consent agreement. What are we going to do in the interim? Are you going to level a private plant on the already approved and entitled developments that thought the capacity was 9 when it's not?

Mr. Hedani: Three minutes.

Ms. Matin: Thank you. May I request a call back? I get one more minute extra first, don't I?

Mr. Hedani: Please finish up.

Ms. Matin: And can I request a callback? I'm concerned about the drainage problems, remember that I addressed the drainage problems on the Intrawest project as being insufficient given the grading that was to be performed. We have a Hawaii State Supreme Court case that came in since then. It turned out that my predictions of the drainage being inadequate were accurate. We have a problem there folks.

A Hawaii Supreme Court has found the County responsible for insuring that drainage at grading is adequate to keep the water from the pristine oceans ...(inaudible)... I would ask that you defer and obtain complete legal counsel advice concerning the case. It's Kelly v. 1250 Oceanside Partners. Given that there is a golf course being graded, and the case refers to a 20-acre maximum grade, Intrawest was slightly above the 20, there was a drainage problem there that did flow into the ocean. I'm very concerned that this could be the case here. The specific case in question did involve a golf course. It seems quite appropriate that drainage be fully explored and the matter be deferred for that complete exploration and legal opinion before it's approved. And I do ask for a callback so I may address a new topic, traffic which will be shorter.

Mr. Hedani: We can grant you an additional three minutes because there's two public hearings at this point. One on the SMA and one on the application for Phase 2. So if you'd like to finish up at this point you can go ahead and do that.

Ms. Matin: Thank you so much. Traffic. Well, let me briefly address a personal item. I live at The Mahana. And everyone's throwing around the name Mahana to you on this project. It's in West Maui. It's only a few miles down the road. I feel that that name would carry particular confusion in the public eye. There is no Hawaiian language reason for the Mahana as a word to apply to the Kapalua project. There is with a 30-year-old condo that has used that name for 30 years. Mahana means either warm or twin. Kapalua is not warm. Mahana happens to refer to the twin towers that the Mahana condo where I live.

We've used the name for 30 years and I find it a bit problematic that Kapalua who is litigating use of Kapalua's name by a golf package vendor selling Kapalua golf course reservations is being sued by them and they turn around and use the same name of the condo right down the street from them. I would ask that that be a condition.

Secondly, traffic, our problem is we have only had 225 lockout units open at North Beach since our traffic basically ...(inaudible)... Why? Because we have 14 construction projects in our area surrounding North Beach and Kaanapali and a couple down the road at Ukumehame and Olowalu that are smaller. Only one in Lahaina Town. I watch on the pali all of those cars are construction vehicles to the extent of 80%. Folks, when you grant a grading permit and a construction permit, we get the traffic then. The contributions at certificate of occupancy don't give us roads. Please look for yourselves on the pali while you're sitting there going very slowly. Count the oncoming cars. As Dr. Iaconetti pointed out, it takes me from Honokowai Star Market, one hour and fifteen minutes to get to my 5:00 p.m. Hawaiian language class at Princess Nahienaena just down the street. Three minutes, an hour and fifteen minutes and every car is a construction vehicle leaving their construction projects, 14 of them around us. No new roads in sight.

Golf. Golf coursing comes down because the prices have gone up to the point that no kamaaina can afford to play at any Kapalua course. We're required to drive the pali to go over to the other side to find affordable golf. Mainland consistently places conditions on golf courses of opening one day to public pay with the rates set cheaply or in the alternative since there are three courses two of which will be private making the prices very inexpensive on the one course that would be available.

Mr. Hedani: Finish up.

Ms. Matin: I'm done.

Mr. Hedani: Thank you very much.

Ms. Matin: Thank you very much.

Mr. Hedani: Any questions for the testifier? Seeing none, thank you very much. Eve Clute.

Ms. Eve Clute: I appreciated spending the day with you going on the site visit. My name is Eve Clute. I'm a doctor of public health. I'm speaking as a public health professional. I'm a 30-year resident of West Maui. As a member of the Department of Health, West Maui Watershed Task Force I studied the runoff from Maui Land and Pine as it goes into the ocean. As you know it's chocolate brown many times of the year even with 3,000 acres of agriculture there to absorb the rain.

At this point, there's a 150 acres in pineapple, and with a hundred plus acres to be used as open space, that leaves thousands of acres that will be used for asphalt roads, concrete wood structures. This will greatly limit the drainage capacity of the land and the runoff into the ocean will increase substantially.

I spent 20 years studying this. And Wes Nohara who is a Maui Land and Pine employee took out a huge hose and demonstrated how well pineapple land, that red dirt absorbs rainwater. And when you think of 3,000 acres of land absorbing the rain and it still lands into the ocean, think of how much rain is going to be runoff when you have asphalt and you have housing. It's going to look just like that with rivers running down into the ocean.

We were told by Corp. Counsel that we were not allowed to ask questions because of Sunshine Laws during the site inspection and there were many questions that came up for me and I'm sure they came up for you as well. So I'd like to ask them here. One of the issues is loss of habitat for owls and other birds that nest and live in the Kapalua Mauka. Where will they go when you start putting in houses and roads? Will the 75 miles of trails be open to the public? A majority of hiking sites are across the pali. If this 75 miles of trails that Maui Land and Pine is going to be providing, if they were for West Maui residents then we wouldn't have to go across the pali and add to the traffic on that road. If tourists are not allowed to use the 75 miles of trails, they too, will be joining Maui residents in going across the pali to hike. So that needs to be looked at. Who is going to be using the trails that are now going to be developed there.

Maui Land and Pine has provided mortgage counseling to their employees. With the 1,400 Maui Land and Pine employees who work on the West side –

Mr. Hedani: Eve, three minutes. Do you have three minutes more of testimony?

Ms. Clute: Yes. How many will be eligible for affordable homes? With 240 employees who were fired this year, how many more will be fired? If someone has a house and they're fired, what happens to them? Do they lose their home? We have not yet heard enough about how this employee housing issue will work. What happens when people are laid off? What happens to their housing?

One of the other concerns is that Maui Land and Pine has not considered adding pipes to use reclaimed water. I'd like that to be looked at. Why wouldn't Maui Land and Pine want to use reclaimed water? Just by adding pipes they can receive water for their irrigation and for their golf courses.

Another issue is that for the design of some of the units will be living spaces over retail units. This design failed at 505 Front Street. So I'm concerned why use a failed design in Kapalua.

So that's – these are questions that I hope you will ask to determine if this project is really ready to go forward or if it really has more to be looked at. Thank you for your consideration.

Mr. Hedani: Thank you very much Eve. Any questions for the testifier? Seeing none, thank you very much. The last person that we have that signed up is Kenny Hulquist.

Mr. Kenny Hulquist: Good evening, my name's Kenny Hulquist. My main reason for testifying is that I would – there's a lot of things with a lot of developments on Maui, but my main reason about, concern about this one is the affordable housing. In light of the fact that Maui County is trying to or has already introduced this policy of 50%, I'd like to see that be made a condition of this development.

In the Sunday Maui News back in March of 2003, there was an article, Developing Old Cane Lands. Not so simple. Cane lands I would say I would change that to ag lands. There's a lot of ag development going on as you guys know. I think a lot of it should be kept for ag. There's still a lot of land left but a lot of it is promised out. 17,138 homes on the books. If you read just for West Maui there's 4,720, this is last June, already approved and then there's 14,187 ready to or proposed. That's going to make things crazy around here. And three days later the Maui News front page, Makena project gets the green light. I thought that was pretty funny when I was walking up to buy my newspaper, I thought well, no wonder the traffic is so bad. Not only are these projects getting approved but they're giving away our green lights too. All we got left is red lights and stop signs. Enough of the jokes.

So the DOT is like approving a lot of these high end developments and there's really not, doesn't seem like there's a lot of left for the common folk and one of the few things that is left is to try to get as much affordable housing in here as possible. Harry Eger wrote a letter, an article a few months ago about these guys, the Fisher Brothers. They were realtors and musicians here on Maui and they all moved to Guam. And one of the quotes was "Guam reminds me of the way Maui was 30 years ago." This is Jack Fisher's quote. You can see the pot bubbling. So here these guys came to Maui, became realtors, they all became realtors here, sold off a lot of land and then it got too crowded for them and they moved onto Guam. So what do they do after Guam? That's kind of what's going on here. A lot of people are developing and this place is getting so crowded that where is everybody, you know, people that aren't going to want to live here, where are you going to go?

We have the buses now and we're starting to move a little bit towards mass transit but it's been a long time coming.

Mr. Hedani: Three minutes Kenny, can you finish up in three minutes?

Mr. Hulquist: Yeah I can. I'll speed it up here. I got a friend that comes down from Kula once a week or so and I ran into him today. He's one of the owners of Expeditions. He told me they're about to deliver the brand-new ferry boat, it's going to be operating out of Maalaea and probably by the end of the year. He told me, I write a lot of letters to the editor and he said, I really like your letters, but I got to tell you you're not going to change anything. You can write all the letters you want, you can testify all you want, you're not going to change anything. And my answer to him was that, you know, I know full well nobody is going to stop development but to me it's kind of like a train, you know, it's hard to stop it once you get going. All you can hope to do is like steal away some of the coal and slow the damn thing down a little bit. So that's what these conditions that you guys are attaching to these projects, the many, many, many projects that are out there is just designed to make them smarter, smart growth and to sort of try to get the affordable housing thing going on and address the traffic issues. So I was kind of hoping that maybe one of you guys could make a motion that 50% affordable housing be for this whole project and somebody else could second that and then maybe you could have some discussion about attaching that to the whole project and just help out the little guy a little bit with some of these big projects and these guys all make money. You guys all know that, you know, some of the developers are saying that, geez if you guys do 50 and 80%, we're going to quit building. I've been hearing that quite a bit lately. Well, we're just going to stop developing. And I seriously doubt if that's ever going to happen. And if it does, well good riddance to those guys and lets get us some other guys to come in and are willing to build affordable housing. So thank you for your time. Appreciate it.

Mr. Hedani: Thank you very much Kenny. Any questions for the testifier? Seeing none, thank you very much. Are there any other members of the testimony at this time? Please step to the microphone and identify yourself.

Ms. Ellen Lavinski: Aloha, my name is Ellen Lavinski. I've lived on Maui since 1979 and I've been living in Lahaina since 1985. I just found out about this meeting this morning so a little bit of testimony but I really appreciate all of you coming to this side of the island to listen to us because I know I wouldn't have been able to drive to the other side.

First I have a little bit of personal testimony. I'm an artist and I used to sell in the lobby of Kapalua Bay Hotel for about 15 years. After Maui Land and Pine purchased it back, all of us artists received a letter saying they were going to terminate the program. I know the month was November when the program for the artists stopped and a year and a half later in April was when the hotel closed. So not only losing a really nice venue because it's such a beautiful place and a lot of the guests there would come every year and really enjoy seeing the artists again, but it was kind of – questioning why for a whole year and a half resident artists who had been there for quite a while were not going to be able to be there.

I also work with children here on Maui and I know at Kamehameha III School right now

there are some students who are learning at a picnic table under the tent because the school is so crowded and all of our schools on this side of the island need more space for the children. Because it's the State Department of Education that decides what's built as far as the buildings for the schools, Maui doesn't always get what is needed. And on page 37 of this report, at the top of the page is how they're addressing the issue of schools because with more housing there will definitely be more children living on this side of the island needing to go to school. It says Maui Land and Pine will pay \$1,011 to the Department of Education within 30 days of the sale of each unit. The problem with that is that money goes into the State's general fund and as we all know that money could go anywhere. It is not going to be assigned to schools here on West Maui for the children of people living in the units. So, I don't know how that could be fixed, but it's not going to help the children going to school here.

And the other concerns are golf courses. Golf courses use a lot of water and we all know there's a problem with fresh water for all of the water. So to have more golf courses using more water instead of more water for the residents, doesn't seem to make sense.

So again, I want to thank you all for coming here so we can give this testimony.

Mr. Hedani: Thank you very much. Any questions for the testifier? Seeing none, thank you very much. Any other members of the public that would like to offer testimony at this time? Seeing none, the public hearing is closed. Staff recommendation.

b. Action

Ms. Cua presented the Recommendation for the Phase 2 Project District application.

Mr. Hedani: Questions for staff? Commissioner Iaconetti.

Mr. Iaconetti: First is a minor question. The standard condition no. 6, I know this has been brought up before by the planning commission, is a million-dollar policy adequate for a development as large as this one?

Ms. Cua: Well, it is a standard condition and we apply it regardless of the valuation. We apply it to events within the Lahaina Historic – an annual event within the Lahaina Historic District and I think the question – not I think, I know the question is asked, do we really need this because you know, it's an event that happens every year and so it kind of goes both ways. Until the commission changes that standard condition we do not unilaterally change that condition and make different recommendations. We just kind of go with that standard policy.

Mr. Iaconetti: I would like to get a feeling from the other commissioners as to whether or not this is adequate and seeing some of the movies of the recent event in Lahaina I wonder if a million dollars cover that as well, but that's not in question tonight.

The other question I have, being a totally lay person on this commission, I don't know how to deal with the sewage problem. I can't ignore what has been testified to this evening by one of the testifiers and totally accept this as no problem and I'm talking about sewage again. I don't know how to handle this personally because I don't have the knowledge to determine whether or not the statistics that were presented to us by the testifier and those presented to us by the applicant, what do you do with them? I mean, they're opposed.

Ms. Cua: I can respond very briefly and then I'm going to call in the deputy director. I cannot speak to what was presented by the testifier today. All I can speak to is two things, what was represented to me both in writing and in verbal conversations that I had with the Wastewater Division of the Department of Public Works. And before I wrote that section in my report, I actually met with them to make sure that I was accurately representing what they are actually doing with that West Maui facility. And the last time that Kapalua Mauka came before this commission we had reported that there was I think, it was something like there was either a million dollars of funding that the department and they were seeking another \$1.5 million and now they have \$2.5 million and they're making these upgrades. The written comment that Public Works has issued us is pretty typical to what they issue us on any other project is as of this date there is a capacity but capacity isn't issued until you get a building permit. In this particular project they have been issued capacity for the 51 units and that was done, was it in October? I wrote that somewhere in my report. They've been issued already. And then in addition to that they bought capacity years and years ago and they have this agreement. So with that, I would want to maybe have the deputy director take it a little bit further. That's all of the information I can give you at this point.

Mr. Hedani: Mike.

Mr. Mike Miyamoto: Thank you. Mike Miyamoto, Deputy Director with the Department of Public Works and Environmental Management. Regarding the consent decree ...(inaudible)... the County, if you look at a lot of the articles they're dated '98 and '99. That was when we were getting ready to settle that settlement and make the \$300,000 payment to DOH and EPA. That has already been done. What came out of that consent decree is a lot of good programs to do preventative actions. For example, you may be aware of the grease traps that all restaurants were required to put in. That has reduced the number of spills tremendously because now every restaurant that captures a lot of the grease before it can get into the sewer line. That has resulted in biodiesel being so viable an industry at this point. A lot of that organic matter is also put into the composting. So the eco program has really benefitted from a lot of that organic matter and the green waste. So as far as the

consent decree it was a great tool against the county that got us to move in a progressive manner, develop some programs. We do annual capacity assessments of all our wastewater pump stations. We go out and test and see what the current capacity. One concern was about the forced main. How can you tell when your forced main's deteriorating? Well, we can look at the pump station data. We can see how the pumps are really straining. Are they straining to get that water through the pipe. That means the pipe has problems. So there's a lot of things that you know, programs that we're doing currently that addresses those issues. So EPA consent decree we still have a ways to go because there's some long term actions like we're looking at all I think it's 200 miles of collection lines. We're periodically looking at all the lines to investigate, camera and repair what we have to do. So that's an ongoing program.

With regard to Lahaina treatment plant, the data that's in here, our report that was provided by CH2M Hill was the worst case scenario type of analysis. What the report doesn't say is that when the analysis was done it was assumed like one of the clarifiers was down. One of the A basins was not operating. So it prevented a worst case scenario. Like if we had system failures, this is what it would be. So we looked at that and it was really typically counter to what we were doing at the time. So since then we've had a lot of discussions and looked at is that the way we should be defining what the capabilities of treatment plants. So we sort of moved towards that definition. So what we've done is, the 75 side, you saw in the tables, can produce we're estimating about 2 million gallons. That estimated to come on line in about mid to late 2007. We had in-house staff go out and do some structural analysis, some mechanical analysis and we're moving with internal staff to go ahead and reinstate that side of the treatment plant. We worked with DOH because there was some concerns about the nitrogen levels coming out of that facility so we had to do some modifications. So that's due to come on mid 2007. That will provide at least 2 million gallons additional capacity.

Then as I said previously the operational changes that we're looking at changing what the solids retention time. I think right now we're over five days and we might reduce it down to three days so that way we can process more capacity through this plant. So that would probably add somewhere about a million gallons. I was just on the phone with the division chief to confirm those numbers. And he gave me rough numbers, 2.0 for the 75 side and about a million if we do the operational changes. So within the next year we could probably put about 3 million gallons of capacity in that treatment plant. So I hope that answers your question.

Mr. Hedani: Corp. Counsel has a comment.

Mr. Iaconetti: Well, good. Because I'm interested in liability in the event that something does happen as a result of this. Does the County the assume the liability, does the developer assume the liability? Certainly not this commission because we don't know

enough about it.

Mr. Miyamoto: When you say liability you're referring to? What are you referring to?

Mr. Iaconetti: If for some reason, yeah, there's a spill.

Mr. Miyamoto: The spill is all the County's responsibility but we would not be granting the building permits if we did not think that the plant could handle the capacity. The plant, the pump stations, the transmissions system. So whenever these developments come in we take a look at it from that whole aspect and whatever's off site for example, lets say this development ties in and a pump station can't handle the additional pump station, we would require them to go ahead and upgrade that pump station. We're currently doing that on an existing project. I don't know if you know of Waiehu Ko Phase 4 which is a Hawaiian Homes development. That was sort of a recent purchase that they bought that additional land and came in with this Phase 4. So it wasn't accounted for when they developed their sewage plan. So they have a pump station that they just built within the last five years that they now have to slightly up size because it's going to carry additional waste. And then that feeds into the County system. There's a pump station by Hawaiian Homes just prior to Iao Stream that needs to be up sized. They're going to be assisting of getting that – paying for that pump station being up sized.

Mr. Hedani: Corp. Counsel.

Mr. Souki: Thank you Chair. Commissioner Iaconetti had a question about procedure that I wanted to hopefully clarify for the commission. Planner Cua had presented you with three documents that have conditions in them. And only one of them is before this board today for approval and that is the Phase 2, preliminary site plan. Exhibit 49 which – and the other two she went over with you as far as the conditions were for context so you would know the context of the project and the other conditions that are the project. So one of the exhibits, Exhibit 49, were about the zoning conditions and there was some conditions of zoning when the zoning change for this property. And Exhibit 51, which is the Project District Ordinance, both of those ordinances, the zoning conditions and the Project District Ordinance were approved by Council and this board cannot at this point amend any of those conditions or the Project District Ordinance. And oh, I should also mention the third document that she referred to was the Land Use Commission Order and Decision which also had some conditions in them and that is not before this board for approval or modification.

What is before this board is the recommendation that she gave for approving Phase 2 of the Project District and at this point what this commission is charged with is to determine if the preliminary site plan conforms to the Project District Ordinance in Exhibit 51. And so that's what you're looking at. You're looking at the conditions that were recommended by

the Planning Department in the green sheet. I hope that helps.

Mr. Hedani: Okay, I'm not sure if that helped, but does anyone have any other questions for Mike at this point? Thanks Mike. Commission, Members, any other questions for staff or any of the testifiers? If not, what's your pleasure? There's no pleasure here. Commissioner Shepherd.

Ms. Shepherd: Move to deny. This project may be appropriate at some time. It is not now. My primary concerns are traffic. People are suffering out here and everything that we add on is going to make it worse for them. I'd also like to see the instream flow standard established and we're thoroughly confused about the affordable housing component. So I suggest they come back in five years.

Mr. Starr: I second the motion.

Mr. Hedani: Corp. Counsel.

Mr. Souki: The affordable housing component is a condition of zoning. It's not part of the project district. So it's not a condition that this board could put on the applicant. It's the County Council who put that condition on the applicant. So it would have to be amended at Council. What you're looking at now is whether the preliminary site plan conforms to the Project District Ordinance and you may approve the preliminary site plan with or without modifications. And if you decide to deny the project district approval, you should look at the recommendations that Planner Cua has made and make findings that show otherwise. That is required before you can deny the application.

Mr. Hedani: Run that by us again Mr. Souki.

Mr. Souki: Before you have the Project District 2 approval, and there are recommendations in here from Planner Cua. The recommendations on the green sheets of what I'm referring to start on page 3. There are standard conditions that she spoke about and made recommendations for and there are project specific conditions that she spoke about and made recommendations for. These recommendations are based on inquiries made to the State departments, made to County departments and this is the evidence that she relied on in making this recommendation. What I'm saying to the commission is that if you decide to deny this application, you need to make findings about why you're denying that application. And it should be – a good starting place would be to look at the recommendations and point to what was presented today that is maybe contravenes that recommendation.

Mr. Hedani: Okay, any other discussion? Commissioner Starr.

Mr. Starr: Yes, I don't think that we need to comply with the project specific conditions recommended to us. I think it's up to us to decide whether it complies with the letter and spirit or not. And that's why we're here. If we're just here to rubberstamp everything then there's no reason for us to put in the hours and days and there's no reason that staff has put all the work into it if our only option is to approve it. But I mean, as far as I'm concerned there are numerous reasons where it's not in compliance and I know that the original ordinance makes reference to – for example to the EIS and the EIS if you note on pages 21, 87, 105, 120 and probably placed to the added that recreational opportunities afforded to residents and visitors by the golf course which we now find is going to be private and not to be used by residents and visitors unless they play a \$150,000. So, you know, that's one additional place where it's not in compliance. I also feel that they are not adhering to the letter and spirit of the workforce housing. That they're using a loophole to get out of it and that it's our duty to make sure that that's not done. And the only mechanism that we have to do that is to deny.

Mr. Hedani: Other discussion?

Mr. Iaconetti: Can I hear the motion again? I thought it was to defer not deny?

Mr. Hedani: The motion was to deny. Commissioner Iaconetti, any comments?
Commissioner Guard.

Mr. Guard: Did the commission see this for the Phase 1 part before it went to Council to make recommendations?

Ms. Cua: The planning commission conducted the public hearing and made a recommendation of approval to the County Council with condition.

Mr. Guard: And so most of those conditions are in the Council ordinance or got increased on the affordable housing –

Ms. Cua: Yeah, they definitely – they didn't decrease, they definitely increase – They didn't decrease, they definitely increased. Yes.

Mr. Guard: Yeah, there's definitely questions on everyone from sewage to – well, stream standards and even water retention. I know we've talked about that on other groups in Wailea. But I probably wouldn't go with the denial. I don't know if there's other questions that need to be answered. If there's anything else from the applicant to answer any of those questions I don't know.

Mr. Hedani: Bob, is there anything that you can add at this point in terms of clarification of some of the items that were brought up?

Mr. Bob McNatt: Mr. Chairman, Members of the Commission, I'm Bob McNatt with Maui Land and Pineapple Company. What's the question?

Mr. Hedani: Well, is there any comments that you would like to offer at this point relative to any of the issues that have been raised?

Mr. McNatt: As Corp. Counsel has pointed out, the application before you tonight is for basically a site plan review to see if that site plan conforms to the zoning that the County Council has adopted. The Planning Department staff has recommended approval with conditions based on our request for site plan approval. This is almost at the level of ministerial review. It's not quite because you're reviewing it. It's simply a site plan review. We're not opening up any of the conditions related to affordable housing to traffic impact fees, to any of those things that have been discussed for last two years with the County Council and with the Land Use Commission. So we would ask that you be reasonable, look at what you're actually supposed to be looking which is the site plan and make a decision.

As far as sewer, Mike Miyamoto has probably said this 15 times. There is sewer capacity. We've prepurchased the sewer capacity. It's there. It's not an issue.

On drainage, we're required to comply with the National Discharge Standards and design the systems so that they work properly and of course, you saw today in Kapalua that it's a beautiful place. It's well designed. We take very great pride in creating a very special place and protecting it. So I don't see any issues there. What were the other?

Traffic. We're paying more. We were the first one to offer a voluntary fee to pay our fair share for traffic, for regional traffic impacts. At this point, the County Council is suggesting that that fee be almost tripled and we, of course, will comply with that if that's what they do. We – this project certainly is not adding to any traffic at all at this time or in the near future. It's years away. It's very low density in the first few phases, and by the way, I'm chairing a, or created a taskforce called the Lahaina Bypass Now that has quite a few members and we're working very diligently with the Department of Transportation to get the bypass done and they have awarded or about to award a contract to Hawaiian Dredging to build that first chunk which will take traffic off of Lahainaluna Road or around the Lahainaluna Road bottleneck within the next 18 months or so.

We're also going to be chairing a workshop in early January, of citizens. It's a public workshop with the Department of Transportation and with the County to figure out what's going to happen on the south end of Lahaina with the widening of the road from Lahainaluna to Eholu Street which is just past Shaw Street to four lanes and also using Mill Street which is a cane haul road to be able to add some redundancy finally to the highway that hasn't existed before and that's a fairly near term solution. Mike Foley and his staff

and Public Works and Mayor Arakawa have been working on the solution and putting some real time and dollars into it. So we have a lot of things kind of in the pipeline. We just recently did a study of employees within the west side, 2,400 people responded to the survey telling us what are their travel habits, what is their inclination to ride in a bus and so forth and we're creating these systems now. In fact, the County has added 20 buses to their system and ridership is up several hundred percent since the beginning of the year and the buses, and we're working now with all of the resorts to add direct bus, express buses from the other side to the resort. So the traffic is being worked on at many different levels and it's not the responsibility of this site plan review to solve those problems. We've already talked about that over the last couple years.

So I would ask for your what, your favor in this regard and support this. It's been a project that we've talked about for a long time. It's gone through tremendous scrutiny by several different agencies including this one which recommended approval a couple of years ago. So we would ask that you approve this Phase 2 application and let us move on to the next 15 years of development of this site. Thank you very much.

Mr. Hedani: Any other further discussion? Commissioner Shepherd.

Ms. Shepherd: I have a question for Mike. Where'd he go? There he is. Other than the bigger question of why bother to have a planning commission, why waste our time? Some members have spent practically nine hours on this and it's just to sort of dink around with little details. I mean, we can't really make any major decisions at this point. So what's the point? And further along there's going to be a whole to do with the Phase 3, so really this is administrative. Phase 3 is definitely administrative. Do you have an answer to that?

Mr. Hedani: Director.

Mr. Foley: Well, the actions that you're being asked to take tonight are not administrative, they're discretionary and they require public hearing which you had tonight. There are a number of issues that, you know, we have asked you to address by, we've recommended additional conditions and, you know, this is a discretionary step in the long process of review. Yes, it's been reviewed and approved previously by this body. It's been reviewed and approved the Council and by the State Land Use Commission, but if you find that the recommendation by the staff is inadequate in some way, as the Corp. Counsel has stated you need to be very specific about what changes you feel are necessary in order to not approve the project as recommended. If you have different conditions or findings for denial those should be included in the motion.

Ms. Shepherd: So since I didn't approve – I mean, I didn't move to have this approved and sent onto the Council in the first place, I should just have stayed home, right? I mean, I can hardly be expected to approve it when I didn't want to approve it the first time?

Ms. Cua: Could I add to that just briefly? I don't think anybody's saying that because the Council approved the Phase 1 Project District application that you must approve this application tonight. I think what you need to look at and what I tried to go over very carefully is the law. And the law says certain things and the law is what the department had to use to evaluate this project and basically what it says for the Phase 2 Project District application is that the applicant submits this preliminary site plan. The site plan shall, it doesn't say may, shall conform to the Project District Ordinance, and that's why I went through the Project District Ordinance to say how it complied with that. They're required to submit proposals for drainage, streets, parking, utilities, grading, landscaping, architectural design, concepts and designs, building elevations, building sections, construction phases, etc., etc., this is all in the law.

Ms. Shepherd: Call the question.

Mr. Hedani: Question has been called for. Is there any further discussion? No further discussion? I would like the Corp. Counsel to reiterate what he just reiterated to me. What the options are before the commission under the current ordinance. And if you could just restate what you just stated to me.

Mr. Souki: Under Chapter 19.45.050, subsection b, numeral 2 of the Maui County Code the planning commission may approve the preliminary site plan with or without modifications. And that would also mean that you may deny it but if you deny an application, any application, discretionary application you need to make findings on the record.

Mr. Hedani: And the third option?

Mr. Souki: You may defer. That was a question that the Chair asked me as well for additional information and I think it would be useful to give the applicant guidance about what kind of information you would need and again, what we're looking at is whether the preliminary site plan conforms to the Project District Ordinance and includes what Planner Cua had read off about drainage and parking and so forth.

Mr. Hedani: Question has been called for. Is there any other further question? Commissioner Eason.

Ms. Eason: First of all, I'd like to agree with Dr. Iaconetti. Like the doctor, I am not a professional in this area, I'm a lay person. So I do depend a lot on our Planning Department and look over the report and also the recommendation. So I do depend on what Ann is saying tonight. And so, unlike Commissioner Shepherd, I would recommend approval and not denial.

Mr. Hedani: ...(inaudible - changing of tape)... Okay, if not then all those in favor of the

motion which is to deny the application please signify by saying aye.

It was moved by Ms. Shepherd, seconded by Mr. Starr, and

**The Motion to Deny the Application was Lost.
(Assenting - D. Shepherd, J. Starr)
(Dissenting - J. Guard, B. U'u, W. Iaconetti, P. Eason)
(Excused - S. Freitas, J. Amorin)**

Mr. Hedani: All those in favor of the motion to deny please signify by raising your right hand. Those opposed same sign. Vote is four to two. The motion is lost. Is there any further discussion or is there any further motions before the commission? Commissioner U'u.

Mr. U'u: I'd like to make a motion to accept as recommended by the Planning Department with the conditions.

Mr. Hedani: Motion by Commissioner U'u to accept. Is there a second?

Mr. Iaconetti: I second it.

Mr. Hedani: Seconded by Commissioner Iaconetti. Discussion? Commissioner Guard.

Mr. Guard: With the project specific conditions the applicant came up and talked about either reservoir storage, things of that nature, is that something that would happen between Phase 2 and Phase 3 to say yeah, we can absorb an extra 100,000 gallons or million gallons into a reservoir under the clubhouse or anywhere. Is that something that can happen between two and three that would – someone could review in during just the administrative process?

Ms. Cua: Well, whatever they decide on doing it's going to have to be reflected in their construction drawings. So whatever they're able to work out and decide that's going to have to be included in their construction drawings.

Mr. Guard: Okay, and then yeah the other one that I'd brought up and I guess I'd like to see more of is trying to see what your sales are from actual just sales history in Kapalua Resort. I mean, if anyone's willing to accept it at the Tax Department, I mean, they have to go out and do a lot of work that if you have it and you're hiring consultants to do that, that hopefully the County can just play a little catch up quicker with your hired guns that have a lot of that on file instead of one or two people in the Tax Department that might be understaffed as it is so that we don't keep having these same problems from the developer coming up that actual tax dollars start doing what they're supposed to do. Again, hard to

make it a project specific condition. I think they have to come before us, but I think that would alleviate a lot of the problems that everyone's testifying about now if the tax dollars were starting to catch up with what they're supposed to be paying in taxes.

Ms. Cua: I don't know if the applicant wants to respond to that.

Mr. Hedani: Corp. Counsel has a comment on that.

Mr. Souki: Commissioner Guard, this might clarify some things about how tax assessments are done. The Real Property Tax Assessments are done by the Real Property Tax Division and it's required by ordinance and actually statute that the department actually makes those assessments. So it's not something that we could require as a board.

Mr. Guard: More on just like statistics for research that they may not have those facts updated as frequently that maybe people in a certain area could start to furnish some of that material.

Mr. Hedani: Any other discussion on the motion? Commissioner Starr.

Mr. Starr: I wish to offer several amendments. The first is that in areas of the project district where crops are allowed to go fallow that groundcover, drought resistant groundcover shall be planted and maintained until those areas are further developed.

Mr. Hedani: There's a motion to amend through the addition of a condition, is there a second?

Mr. Iaconetti: I second it.

Mr. Hedani: Seconded by Commissioner Iaconetti. Discussion? No discussion? Commissioner Guard.

Mr. Guard: You had a first and second without conditions, so do we need to open it up for amendments?

Mr. Hedani: Right this is a motion to amend. It's a motion to amend by adding a condition for, you want to restate your motion Commissioner Starr?

Mr. Starr: Yes sir, this would be condition 16, and that drought resistant groundcover be planted and maintained in all areas where previous crops have been allowed to go fallow.

Mr. Hedani: It will be condition no. 21 under specific conditions.

Mr. Starr: 21?

Ms. Cua: I think it's 21.

Mr. Starr: I'm on the wrong page. I'm sorry.

Ms. Cua: Yeah, it's 21.

Mr. Starr: Okay sorry, 21.

Mr. Hedani: Any other further discussion? Okay, we've lost one commissioner.

Ms. Shepherd left the meeting at 10:08 p.m.

Mr. Hedani: Commissioner Shepherd is gone for the night.

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

**VOTED: To Add a Condition No. 21, "that drought resistance groundcover be planted and maintained in all areas where previous crops have been allowed to go fallow."
(Assenting - J. Starr, J. Guard, B. U'u, P. Eason, W. Iaconetti)
(Excused - J. Amorin, S. Freitas, D. Shepherd)**

Mr. Hedani: Carried. Main motion.

Mr. Starr: Mr. Chair, I have one further amendment to offer.

Mr. Hedani: Go ahead.

Mr. Starr: I move to offer, is this 22 or 23? I'm worry.

Ms. Cua: 22.

Mr. Star: 22, that requirements of the County's Workforce Housing Ordinance be adhered to in regards to the 50% rule in the event that the Workforce Housing Ordinance is passed into law prior to December 31, 2006. And as an aside, I understand this may need to go back to the Council to be affirmed but I'm willing to do it on that basis.

Mr. Hedani: Okay, there's a motion to amend, to add the affordable housing, workforce housing requirements to the project. Is there a second?

Ms. Eason: Can someone just make it simple?

Ms. Cua: Personally I'm just confused by that condition because if the Workforce Housing, the Residential Workforce Housing Policy if that get gets signed into law, they're going to be subject to it by virtue of condition 11g of their zoning change. I don't think anybody in this room right now can interpret how exactly if the policy is enacted or made into law in the manner that we see it here, how that's going to correlate with a document that's been recorded with the Bureau of Conveyance. And so, I'm not an attorney but to – I don't know how – I'm not sure how this condition would work. I just think it further complicates an already somewhat complicated issue. I mean, they are – they have told you they're going to comply with the policy, they're still going to do the 40 up front. You know if the ordinance says they have to 25, the policy says they would have to do more. They're willing to comply with the policy, to do whatever the policy says in terms of units. But we're going to have to see how that works out and it's not going to be me to decide that. I think it's going to come down to the attorneys.

Mr. Hedani: I'm sorry, we didn't have a second on that motion. Is there a second to the motion? The motion dies for lack of a second. Is there any further business before the commission? Are you ready for the question on the main motion? All those in favor of the main motion which is to approve with the conditions recommended by staff with the addition of amendment and condition no. 21 regarding drought tolerant plants in the fallow area.

Ms. Cua: And this is the Project District Phase 2 application.

Mr. Hedani: Right. For the Project District Phase 2 application.

It was moved by Mr. U'u, seconded by Mr. Iaconetti, and

The Motion to Approve the Project District Phase 2 Application with the Additional Condition No. 21 is Lost.

(Assenting - B. U'u, W. Iaconetti, P. Eason, J. Guard)

(Dissenting - J. Starr, W. Hedani)

(Excused - J. Amorin, S. Freitas, D. Shepherd)

Mr. Hedani: We have for ayes, and one nay.

Mr. Souki: ...(inaudible)... five.

Mr. Hedani: Chair votes nay. Motion is lost. Any further business before the commission?
Commissioner Guard.

Mr. Guard: What are our other options? Is defer and recess? Or if we recess, do we have

to come back out here? Is there any way to take this back to Wailuku?

Mr. Hedani: The other option would be to defer at this point.

Ms. Cua: To defer you don't have to come back. You held the public hearing in the affected community plan region. The public hearing has been closed. So your deliberation can occur in Wailuku. You could recess. You know you have a meeting tomorrow. You have the Keaka project on that agenda. I'm not sure how long your meeting would go. That's an option. You could recess till tomorrow. Clayton has provided me with a schedule of our conference room in terms of its availability. We have to do it within six days if we recess. Is that correct? Six days.

Mr. Starr: Mr. Chair, can I request a very, very short recess? A one-minute recess?

Mr. Hedani: For what purpose Commissioner Starr?

Mr. Starr: To stretch and consult.

Mr. Hedani: Okay, we'll take a five-minute recess.

A recess was called at 10:15 p.m., and the meeting was reconvened at 10:21 p.m.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I would like to move that we defer to a date certain on December 12th.

Mr. Hedani: Is there a second? Is there a second to the motion to defer?

Mr. U'u: What would that entail if we defer it to the 12th? Would it be a benefit?

Mr. Hedani: It would allow us to have additional commissioners present that might want to weigh in on the issue.

Mr. Cua: The only additional commissioner you would have that hasn't heard all the record would be Johanna. I've been told by Clayton that on the 12th, he does not expect Commissioner Freitas to be here. So you would still be missing that commissioner. But you may have Commissioner Shepherd to vote.

Mr. Starr: Mr. Chair, as the maker of the motion to comment, it would allow two things. It would allow us to see whether the Workforce Housing Ordinance becomes law and if so, it would give Corp. Counsel an opportunity to have a better understanding or perhaps the same understanding I don't know, but at least to look into the issue of whether the

Workforce Ordinance trumps or which ruling trumps.

Ms. Cua: I just want to make sure it's clear in your minds that you know that condition 11g says that if there's a policy in place prior to final subdivision, they have to comply with the additional units, and they're not disagreeing with that. So I just want to make that clear.
Mr. Starr: I still want to hear from Cor. Counsel at that time.

Mr. Souki: What Planner Cua said is exactly what I have said and would say.

Mr. Hedani: Okay, we have a motion for deferral, is there a second? There's no second. Motion dies for lack of a second. Is there any further business before the commission?

Mr. Iaconetti: Is there some way we can do this tomorrow at our regular meeting?

Mr. Hedani: That would be a motion to recess till tomorrow.

Mr. Iaconetti: Good. So move.

Mr. Hedani: Moved by Commissioner Iaconetti to recess this meeting until tomorrow. Is there a second?

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. Any discussion? Commissioner Guard.

Mr. Guard: Well, on that one, tomorrow's going to be fairly lengthy possibly too, so at that point, are we either going to have to either recess it or defer it again potentially and then we're going to have to open it up to public hearing tomorrow?

Ms. Cua: No, the public hearing is closed. You're in deliberation. What you would need to do is recess to a date and time and place certain. So tomorrow is November 14th, and you would need to give a time and a place would be the Planning Department Conference Room. That's where your meeting is tomorrow. But you would need to set a time. At that point in time, you would have to recess the meeting that you're in, the 14th agenda and then you would take up this recessed agenda. You could open it and close to another time or you could open it, finish it and then come back. That's going to be your choice tomorrow. But you need to decide a time tomorrow that you want to take this up.

Mr. Guard: So we could take it at a certain time and even – if we needed to, could we push back something from tomorrow that?

Ms. Cua: Tomorrow you could make that decision. You could see where you're at and

when it's time to open up this recessed meeting, you could decide where you're at and what you want to do. If you want to again, take this matter up, or you want to just open it up and recess it till another time, either later that day or another day, you could do that I believe. Attorney can they do that?

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: As the maker of the motion, can we recess this meeting until the opening of our regular meeting tomorrow. In other words, get it done then or say at 1:00 tomorrow afternoon. So the recess is being asking for to a definite time, a definite date and a definite place.

Ms. Cua: So what's the time?

Mr. Hedani: Okay, so would you like to amend your motion to say 1:00 p.m. tomorrow?

Mr. Iaconetti: Well if the seconder agrees, I'd like to add that to the motion.

Mr. U'u: I'll agree to that.

Mr. Hedani: So the motion is restated to recess this meeting until 1:00 p.m. tomorrow at the Planning Department Conference Room. Okay.

Ms. Cua: Okay.

Mr. Hedani: Any other discussion?

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

**VOTED: To Recess This Meeting to 1:00 p.m., November 14, 2006, in the Planning Department Conference Room.
(Assenting - W. Iaconetti, B. U'u, J. Guard, P. Eason, W. Hedani)
(Dissenting - J. Starr)
(Excused - J. Amorin, S. Freitas, D. Shepherd)**

Mr. Hedani: One nay. Motion carried. We're recessed.

Ms. Cua: Thank you.

C. DIRECTOR'S REPORT

D. NEXT REGULAR MEETING DATE: November 14, 2006

E. ADJOURNMENT

The meeting was recessed at 10:28 p.m., to reconvene at 1:00 p.m., November 14, 2006 in the Planning Department Conference Room, 1st Floor, Kalana Pakui Building, 250 S. High Street, Wailuku, Hawaii 96793.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Diane Shepherd
John Guard
Bruce U'u
Patti Eason
William Iaconetti
Jonathan Starr

Excused

Suzanne Freitas
Johanna Amorin

Others

Mike Foley, Planning Department
Ann Cua, Planning Department
Clayton Yoshida
Jessie Souki, Department of the Corporation Counsel
Michael Miyamoto, Department of Public Works and Environmental Management
George Tengan, Department of Water Supply