

**MAUI PLANNING COMMISSION
REGULAR MEETING
NOVEMBER 28, 2006**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairman Wayne Hedani at 9:05 a.m., Tuesday, November 28, 2006, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hedani: We'd like to open it up for public testimony at this time. We'll take public testimony on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the commission. Public testimony will also be taken when the agenda item is taken up by the planning commission. Maximum time limit on individual testimony is three minutes. A person testifying at the beginning of the meeting will not be allowed to testify again when the agenda item comes before the commission unless new or additional information will be offered. Are there any members of the audience who would like to offer testimony at this time? Seeing none, public testimony is closed. Moving onto item B, Public Hearings.

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

1. **MS. JAE HEE KO requesting a Special Management Area Use Permit for KIHEI FARMS SUBDIVISION II, a 12 lot single-family residential subdivision and related improvements on approximately 2.83 acres of land, TMK: 3-9-003: 017 and 043, Kihei, Island of Maui (SM1 2005/0030) (J. Dack) (Public hearing canceled at the request of the Applicant after the Notice of Public Hearing was published in the newspapers. Matter will be renoticed if the Applicant wishes to proceed.)**

Mr. Foley: The first item on the agenda is a SMA permit for Kihei Farms, but the applicant requested that the item be canceled or postponed so, if it's going to be heard by the commission in the future it will have to be renoticed.

2. **SAMUEL and JOHN GARCIA requesting a Community Plan Amendment from Hotel to Single-Family, a State Land Use District Boundary Amendment from State Agricultural District to State Urban District, a Change in Zoning from County Agricultural District to R-3 Residential District, and a Special Management Area Use Permit for the proposed Garcia Family Subdivision, an 11-lot single family subdivision on approximately 5.947 acres of land adjacent to Makena-Keoneoio Road, TMK: 2-1-007: 067, Makena, Island of Maui. (CPA 2002/0009) (DBA 2002/0004) (CIZ 2002/0013) (SM1 2002/0016) (J. Hunt)**

Mr. Foley: The second item on the agenda is a request by Samuel and John Garcia for a community plan amendment and state land use district boundary amendment and change in zoning for a 11-lot subdivision in Makena. The staff report will be presented by Jeff Hunt.

Mr. Jeff Hunt presented the Maui Planning Department's Report.

Mr. Hedani: Any questions for staff? Okay, the applicant.

Mr. Rory Frampton: Good morning Members of the Commission. I am Rory Frampton representing Sam and John Garcia. Today we have assisting me is Raymond Cabebe from Chris Hart and Partners. John Garcia is here. Sam wasn't able to make it, he's out of town and we also have our engineer, Stacy Otomo who could answer any questions.

I'm going to briefly go over the project. We have been before the commission previously with a draft Environmental Assessment as well as the -- when we were here I believe, it was either late July or early August for the acceptance of the final Environmental Assessment. So today I just want to briefly review the site location and some of the existing information on the property and discuss a little bit about the decision before this body today.

While we're warming up, I will -- let me start by just presenting a brief regulatory overview. As Jeff mentioned, this is a public hearing considering four applications, a community plan amendment, district boundary amendment and a change in zoning. So there's three land use requests, and the fourth application is a special management area permit. The three requests for the land use changes will -- we hope to get a recommendation from this body that will then be forwarded up to the County Council and the SMA will be deferred until we go up to the County Council and receive a determination on those three requests at which time we'll come back and come back to this body for the specific decision regarding the special management area.

So having said that, let me just briefly go through some of these slides. The property area as shown on this figure, the location is essentially across the street from Keawalai Church right in the Makena area. The property is outlined in red. It's on the mauka side of Makena-Keone'o'io Road. It abuts the Maui Prince Hotel which is to the south. Across the street are some residential properties and the lands to the north and mauka are currently vacant.

The community plan designation for the property is hotel. So when the community plan was adopted in the, well, I guess it was way back in the '80's, they did designate the neighboring properties as hotel. So the whole property is hotel as is the Makena Prince property to the, let me just say, surrounding the property to the north and to the east is business designation and multi family designation as well as single family designation across the street.

The zoning map which was adopted in 1969 actually designated the property as business resort. However, at the time the land was designated in the state agricultural district and since the land was agricultural at the time and the county zoned it for an urban use, the County's interpretation is that that business resort zoning is not applicable and they consider it interim. So from the County's zoning map it is interim. On the State land use map, the whole area was zoned by Seibu back in the '70's for urban except those parcels that weren't owned by Seibu. So the surrounding area is all urban except for a pocket of agriculture that is the Garcia property as well as the property right next door.

So what we're requesting is that the State land use be changed to urban reflect the surrounding uses. That the community plan be changed from hotel to single family. So we're asking for a down designation in the community plan. And for the zoning, we're asking for the establishment of residential zoning.

Some site photographs. This is actually looking in the Kihei direction from the applicant's access road. This is the access road right here looking north with Keawalai Church and the public beach parking. Keawalai Church on the left and the beach parking on the right. Sorry, that Keawalai Church. This was looking in the opposite direction from the previous photo looking at the project access driveway. The property starts here and goes all the way around the corner and it's everything mauka there and on the right side is the makai side of the road which contains a couple of residential dwellings.

That's looking directly up the project access road with the property to the right. That's an existing structure on the property. Looking from Makena-Keone'o'io Road. This is back in the middle of the property looking towards the hotel in a southerly direction. This is at the southern end of the property looking down across Makena-Keone'o'io Road towards the ocean.

In terms of site topography, there are three residential dwellings in the front part of the property which front Makena-Keone'o'io Road. There's another parcel which previously has come before this body. They're requesting approval for four residential dwellings. But that parcel 65 is here. The Garcia property surrounds that. The Makena Prince property is over here. The center of the property there's a – it's a natural rock outcropping that's been modified and it's been referred to the Kalani Heiau. And there's a similar but smaller rock outcropping here as well as further up the hill, there's similar rock outcroppings as well. So the back portion of the property is relatively flat, the rest of the property slopes down this way. In terms of runoff, about half the property slopes off in this direction and the other half slopes in that direction. So the front portion of the property is developed with the three residential structures and the back is currently vacant right now.

There are a number of archaeological sites on the property most of which were associated with historic ranching activities. The one significant feature is Kalana Heiau that we do

have a preservation plan that we've prepared and has been approved by the State of Hawaii. That's a zoom in of the heiau site which again is a modified outcropping. If you want to go into detail on some of these figures I can later. These are just a couple of additional photographs looking from the property across Makena-Keone'o'io Road and you can see that there's a substantial amount of vegetation and structures which block the views towards the ocean from the property.

There is along the – this picture is taken along this property line right here and what we've incorporated into the heiau preservation plan is a view corridor which looks right down this property line and it is the best view of the ocean that exists on the property and it coincides with a – across the street there's a large sand dune that recedes and it's lowest at this point and it gets higher and higher and higher as it progress south. So what we've done is we've aligned that view corridor where the sand dune is at its lowest so that it maximizes the view towards the ocean. That's a zoom in of the view along that same property line.

So this is a zoom in of the previous site preservation plan which included a narrow access point along the road and a fairly uniform buffer around the entire site which was a minimum of 30 feet. We've since expanded that preservation area by a number of ways. One, we've increased the frontage on the property and that was done eliminating a lot in the lower area. We've expanded the preservation area to the makai side as well as mauka and there's an additional, there's a rock outcropping that had some remnants of some archaeological features on it. We've incorporated that into a preservation area and then established sort of a unified treatment which would visually connect the two areas and would also allow for mauka view planes towards the mountains.

This was the previous site plan showing the smaller preservation area. This is a current site plan with a larger preservation area and the reduction of lots from 11 to 10. We do have an extensive time line. This project has been in the Planning Department since August of 2002. Part of the reasons for the delays has been some requests for additional archaeological work as well as some cultural studies which were done. Anyways it's taken quite a while to get there. So that essentially is the conclusion of the power point presentation.

Again, what we have today that we'd like to receive a recommendation from this commission is a request to change the district boundary from ag to urban. We're requesting the community plan be changed from hotel to single family and requesting the establishment of R-3 Residential zoning. I'm available if you have any questions.

Mr. Hedani: Any questions for the applicant? Commissioner Starr.

Mr. Starr: Mr. Frampton I know you're someone who involves himself in some cultural Hawaiian practices and so I'm wondering if you don't have any feelings about building this

subdivision, you know, for multimillion dollar houses right around a sacrificial heiau, in fact, putting a driveway right through the heiau site. I know that I've heard from a number of Hawaiian practitioners who feel that this is not at all pono that this is something very, very wrong. That anyone with any respect for Hawaiian culture, for Hawaiian practices and our rich cultural history would feel is worse than a slap in the face, and also something that these unsuspecting buyers will probably come from the mainland and not know what they're getting into being clustered around and participating in this desecration. Don't you have any personal feelings about this and thoughts that this may not be the right thing to do?

Mr. Frampton: You asked me that question previously and you directed it in a more of a personal nature. I'll try to keep my – I'll respond a little bit later to the personal feelings, but in terms of professionally, the research that we've done which is quite extensive. In fact, probably it's the most detailed research that I've ever been involved with in about 15 years of doing this type of work. We've accumulated quite a substantial amount of information. Not from just the site, but from the larger Kaeo area and the vicinity and a lot of this information has been shared with the community. The person who performed the studies Kepa Maly recently spoke at the Keawalai Church 175th anniversary and it was largely the result of the work that the Garcia's requested Kepa to perform that resulted in him accumulating this incredible amount of information that he's now sharing with the community.

As part of this research, we tried to determine whether this heiau – well, one, we tried to determine its origin and its function. There was no determination, nothing clear in the record that this was a heiau for that matter or a sacrificial heiau. It certainly, the evidence that we uncovered about the – we have pages and pages in here that describes the typical features associated with Luakini Heiau which is a sacrificial heiau. I should say that the descriptions of what constitutes a Luakini Heiau do not match the physical characteristics of this property and of this heiau. So your claim or your assertion that it's a sacrificial heiau, we haven't found any evidence that would support that nor have we found any descriptions from previous work and quite extensive work and documentation of Luakini Heiau that would suggest that this is a Luakini Heiau. So in terms of its function, and I wish Kepa Maly was here today. He couldn't make it as well, he was off island. But, the function does not appear to be one of the Luakini which a Luakini Heiau is quite a significant heiau that was used often in times for during war when they would try to collect mana and there would be sacrifices and they were trying to get power so that they could go, you know, fight. It was a very kind of a aggressive – well, it was significant heiau that had quite a different feeling than the type of heiau that we believe this to be.

We believe this one to be much more related to natural resources in the area. We have established view planes mauka as well as makai. The driveway does not bisect the site. The driveway is between two separate preservation areas we've established for a

landscape sort of a continuance of the landscape so that there's a larger feel of continuity. But it does not bisect the heiau site. It's on the mauka edge of the heiau site.

The people that are going to be purchasing, the buyers that are going to be purchasing are going to be fully aware of the site. They're going to be provided copies and summaries of the preservation area – I mean, of the research that we've done, the description of the heiau itself as well as in the CC&Rs the preservation plan. Well, the preservation plan will be incorporated in the CC&Rs and it will be made part of the project itself. So the buyers will not be unsuspecting. We've established a relationship with Keawalai Church and they're going to act as stewards of the site and they will help oversee public access to the site as well as interpretative information. Again, it's a quite extensive amount of thought and work that's gone into this preservation plan and I am comfortable with what we've done to date and what we're presenting before you today.

Mr. Starr: Have you read a letter dated August 18th from Kahu Charles Maxwell where he states regarding Garcia property and Kalani Heiau, I seriously disagree with Mr. Kepa Maly's report on this project. Who in their right mind would allow a road to be built through a heiau complex? And to my understanding there is consideration among community members that this was a Luakini Heiau and that this was very sacred place. You may feel that it's better to try to make some money off of it but I, for one feel, that this is a very, very wrong, very evil thing to do against the Hawaiian culture. And I think that you should not be doing this. Thank you.

Mr. Hedani: Any other questions fro the applicant? Commissioner Amorin.

Ms. Amorin: Thank you Chair. I'm a Hawaiian. Good morning Rory. As far as the Garcia residence how far is it from the heiau?

Mr. Frampton: The current structures?

Ms. Amorin: Yes.

Mr. Frampton: I'm estimating right now it's probably between 70 and 80 feet. The closest structure is currently occupied by Jon Garcia. I'll point it out. The current structure is right here and the heiau is right here. So it's right below the heiau mound.

Ms. Amorin: Okay, so that resident has been there for how many years?

Mr. Frampton: 25 years.

Ms. Amorin: 25 years.

Mr. Frampton: Yes.

Ms. Amarin: Well, the Garcias have lived on that property for longer than that.

Mr. Frampton: Correct.

Ms. Amarin: And the other structures and the division with the 10 other structures that's going to be built, are they relatively at the same distance from the heiau?

Mr. Frampton: Yes, if not farther, yes.

Ms. Amarin: Okay, thank you.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Has there been a site visit out to this property to show this to people?

Mr. Frampton: We've had extensive site visits primarily with the State Historic Preservation Division, the County Council was there which will be the next body that considers this request.

Mr. Guard: So did Charlie Maxwell go out there?

Mr. Frampton: Charlie Maxwell's never been involved in commenting on this except from the letter which my understanding was he was referring to a comment that was made by one of the commissioners. I don't know if he was – I don't know if Charlie Maxwell actually read the report or if his information came from just reviewing what was presented on Akaku.

Mr. Guard: But it's okay across the street that you can build close to burials and heiaus, on the other side of the hotel. I guess what we're looking at then is either keeping the hotel zoning and not going to single family and possibly trying to do condos here or is this something that either with a site visit that if it came to someone else's knowledge to possibly move the road during the SMA?

Mr. Frampton: I think your comment that this question, I mean, what's before you today is the consideration of designations, land use designations, current designation as hotel. The Garcias very much want to keep this property in a lower density form of development which is why they're requesting to go to single family. There was serious consideration to doing a multi family unit development or smaller scale hotel development, but the Garcias because they want to live there and they want to stay on the property and keep it residential in nature have made this decision to go this way and we'll have to – we're

hoping that we can get through the process and they can continue the pursuit of the single family development. The other options are still options. But right now that's not what they're pursuing.

Mr. Guard: Okay, I don't know enough about it and I think Jonathan brings up a good point and I don't think anyone would want to go right through the middle of structure that if it was together. I don't want to get stuck right now trying to put conditions or talking about things that we feel like we've discussed them and then six months or a year later it comes back for an SMA and we're going to be oh no, we already talked about that they're doing that because that happened to us two weeks ago where we kept beating around the bush regarding is the final EA okay, and then when it came down to approve the SMA, none of the conditions that we even talked about were on there and we felt like, oh we had already discussed it. So I would like to say if we're either going to approve a community plan amendment, we move forward so we don't waste our time putting conditions on something and by the time it comes back to an SMA we don't do anything about it. I've had a hard time dealing with this for two weeks and I just don't want to see the same thing happen again. So I'd prefer to, if we think it's a good idea, to recommend it. Maybe we can recommend to the Council that we want to put our conditions when it comes back at the SMA level. If we want to change the road or anything else, we have time to do that and to keep things moving forward unless we want it to stay hotel community plan.

Mr. Hedani: Is that a question to the applicant?

Mr. Guard: Oh, it was at first but he answered my question that he's trying to keep on moving forward, but I guess that's more of a comment to us asking questions and asking for changes now when it comes to the SMA none of things we ask for are on this green sheet of paper, and we loose out on huge opportunities or any opportunity for that matter. I mean, if you're talking about someone trying to stay on their property, I think it's a little different than the other item that I'm referring to.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Good morning Rory. In your experience, have you found when you come across sites that a lot of times they're broken down by animals and the environment and starting to get desecrated?

Mr. Frampton: Yes, absolutely.

Ms. Freitas: And doesn't preserve mean that they will then be preserved and then we won't have to worry about that happening to sites?

Mr. Frampton: Yes.

Ms. Freitas: And we've developed a process that I think is incredibly difficult to go through and it's even worse now than when I did it in '88. And even then, we had somebody that was down our throats about wanting to buy the adjacent property. So people do want to live right next to sites. So we can't say they don't because they do. And so, I just – I'm glad you went through the process and as far as everybody agreeing, you're never going to get everybody to agree. So even the Hawaiians themselves, have disagreements on how to preserve. So I would like to know in the site process, about how long has it taken you, it's like three years?

Mr. Frampton: Well, we've submitted the application in 2002. The Garcias have been pursuing some type of development on the property for a lot longer than that. But it's in been in the process for about five years. I would add that, we did extensive oral history interviews with longtime residents from the area as well as people who have worked in the area and there was nothing to suggest, in fact, we actually comments that they felt that this site or this feature had good mana. I mean, that's not my interpretation, this is what people have told us about it and they didn't feel it was a type of a site that you wouldn't want to be near or – and I'm not saying that in terms of proximity, but in terms of its general sense or its general feelings.

Ms. Freitas: Okay, thank you.

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

Ms. Amorin: Thank you Chair. Rory, the applicant, can he come forward and tell us about his experience or him living on his property next to this heiau?

Mr. John Garcia: Well, I'm still alive after 25 years living there. So I guess that's a good place to start.

Mr. Hedani: Sam, can you identify yourself for the record.

Mr. Garcia: I'm John Garcia. What a lot of people don't know is that our family is half Hawaiian. My mom is a Cockett. This piece of property was given to her and subsequently given to my brother and I. My mom and dad have lived there or had lived there for about 30 years starting in the '70's, the early '70's. Although we had the property since 1955.

When the community plan designation came out as hotel, we were already living on the property and so at that time we couldn't subdivide it because there was no water down there and things like that. So we just left the property as it was although we had three homes built for my brother, myself and my parents.

But since about I would say, 15 years or so, we've started to look at trying to develop the

property and looking at various things, where we could still stay there and so one of them was doing a multi family in the back acreage and keeping our homes up front. And just as time went by things got so expensive that we couldn't do it ourselves and so we went to trying to do it as a single family residential so we could retain three of the lots. So that's kind of the history back there.

You know, as answer to Mr. Starr's comments, we have talked to a lot of people, Charlie Keau, Aunt Mary from Makena, Marie Olsen, people like that to get an idea of the heiau because we basically didn't know anything about the heiau. Except there was nothing bad that ever happened to us. And in talking to people like that, they feel that what we're trying to do is not bad and it would add to the subdivision. And you know, what Rory said about the church coming in as a steward, I think we have something in the reports that allude to that. We're going to try and make this a positive thing. I just can't tell you anything bad that's happened down there. I think my brother and I wanting to live there shows that there's a lot of good in Makena and a lot of good in our property and we feel that this is a best way that we can maintain that property down there. Because my brother and I have gone into a lot of debt to pay the taxes over the last few years if you can imagine. And if we don't do something like this, we're going to be just like the other people down there that are forced to sell and have to leave and we don't want to do that. That's kind of the history of what we're trying to do.

Ms. Amorin: Thank you very much.

Mr. Hedani: Any other questions for Commissioner Garcia? Commissioner Freitas.

Ms. Freitas: I believe that you are a perfect example of what we are supposed to be passing and had that had been done all along, we wouldn't have all these condos and apartments and hotels. So I'm so pleased that you are doing this. I feel sorry for you because I know how long it's taking you and how much money it's cost you and what it's putting you through, you know, that's tragic I believe. So I just have one question for you, I'm sorry for the comment. Do you have any children or your brother?

Mr. Garcia: Yes, we both have. He has a daughter and I have a daughter.

Ms. Freitas: Okay, excellent. Thank you.

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

Mr. Iaconetti: Mr. Garcia this is a tangent, but are you paying a reduced amount of taxes on that property because of the two heiaus?

Mr. Garcia: Not that I know of. I mean, there's nothing stated that that's taken into effect.

The only tax break I think we're getting is just because we live there. To the best of my knowledge we're not.

Mr. Iaconetti: It seems to me that the family has owned this property for a long period of time. You've lived on it for a long period of time. You apparently have been paying real property taxes like the rest of us, without any lowering of your tax because of these two occupying over an acre of your land. I find it very difficult to say no to your development. It seems quite appropriate to me. Thank you.

Mr. Garcia: Thank you.

Mr. Hedani: Any other questions for the applicant?

Mr. Garcia: Can I make one more statement?

Mr. Hedani: Please.

Mr. Garcia: A lot of the questions you have are concerning the road through there too, and Rory, is it okay if I say something? I'd like to address one thing. That upper knoll that we're also keeping as part of the preservation plan, it has no archaeological reason for us keeping it. It's been dug through and everything and we're just doing it as a view corridor basically. And by putting the road in there it stops us from having to put a road around the top and then come back in and do a cul de sac. And so, you know, it's not a heiau there, the road is not intersecting the heiau. It's just intersecting that preservation plan that has two sites. So I wish you could keep that in mind because that road becomes a very small part of the subdivision and if we had to go all the way around and then come back and do a cul de sac it would really make a lot of – it would really be big anyway.

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

Mr. Guard: It's more of a statement. I agree with you on the mauka/makai view. I think that's a noble effort to preserve that. I know a lot of culturalists really like that part of it with the archaeological sites. Ideally other people follow in your footsteps. And just to be building something that everyone would be proud to live in and next to. I guess my only question would be if you ever have any little, even just friendly footsteps in your houses at night from I guess if it's not really burials, you may not, but just that people that have been there before you might still be enjoying living in your house with you.

Mr. Garcia: Well, there's not too much room in my house, it's a very small house and I'm sure we would have known if anybody were there, but thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, Mr. Garcia, hasn't it ever occurred to you that this was kept separate from the other properties out there and was given over to your family to basically preserve and malama because of the sacredness of the place and that that responsibility was put onto your family to respect this and take care of it. That was often the way that holy places were separated out and were given to someone that was considered to be a steward of it and that maybe there was a reason why this was separated from everything else and given to your family that the intent was to preserve it and that you may be doing yourself and future generations a real disservice by not protecting this place that was put into your care?

Mr. Garcia: Well, I definitely feel that we should preserve it and that's what we are doing. My mom's property just to give you the correct history of it. My mom's property was located in the middle of Ulupalakua Ranch up on the mountain. And when Pardee Erdman purchased Ulupalakua Ranch, he wanted to take all the landlocked parcels of property and become the owner within the ranch. So what he did was exchange that property with my mother. So the property we have was actually exchanged to us from Ulupalakua Ranch. So, – you know, but to answer your question, yes, and I think that this is the best way we that we can do it. That's why we went to the church and that's why we got their input and got their agreement to be a steward.

Mr. Starr: And you don't think this is desecration to build these resort houses all around it and put a driveway right through the site? You don't think that that – that the old ohana guys are going to look at unkindly at this?

Mr. Garcia: No, I really don't.

Mr. Hedani: Any other questions for the applicant? I have a question for Rory.

Mr. Garcia: Thank you.

Mr. Hedani: When I look at the subdivision, I like – well, first of all, I appreciate the fact that Mr. Garcia has been paying probably hotel zoned taxes on this land for the last 25 years. I like the fact that he's moving towards a lower density project which is single family as opposed to hotel. I like the fact that he's expanded the area to preserve the cultural sites on the property. I do have a concern, I share a concern with Commissioner Starr that the roadway that bisects the visual connection between the two sites appears on the surface at least from a lay perspective to be inappropriate. I also think that there's probably a better way to do it that takes less of the land and dedicates less of the land to roadway surface because you do have a loop road that goes around the top right now and your only purpose in putting the middle road through it is to provide access to the lower two lots on the southern side. What about – and even from the landscaping perspective when you look at it as it's presented, it appears like there's a need for continuity between the two sites. If you were to cut the road off that bisects the two cultural sites, and bring it down from the

road that you have on the top of the property, possibly providing access directly from the furthest, the apex on the north side, on the top side, the mauka side, for access to the cultural site, you would end up with less roadway surface and be able to service the two lots on the furthest southern side from the top. Have you folks considered that alignment?

Mr. Frampton: Yeah, very much so. What we've tried to do, the overall intent is to keep a very low impact kind of a project, kind of rural in character and to not have very wide streets, to not have curbs and gutters that would be required with the typically required roadway improvements. Now, the main access road which runs along the north boundary of the property is established is actually ...(inaudible)... a roadway easement that's owned by Seibu. So we're coming off of that. We do have to do the improvements going up the road. We're coming off of that to feed the lots. If you come off of that and feed more than three lots, you trigger the requirement to go to the 44-foot right of way with 28 feet of pavement and that has a really large footprint and it's a very harsh kind of a nature and it requires a significantly more or greater amount of land area and I haven't done the calculations but I would guess that it would be at least equivalent to the similar pavement area but all in one place. So it would be a much harsher appearance. And so that's why we took the care to design these roadways more like driveways so that the feel is much more residential in scale and not really with the urban character.

If you came in over the top as you suggested, you'd have to bring the cul de sac right down to this area and take up a large footprint and you'd probably obliterate one or two more of the lots and have a very negative impact just on the overall character. The idea is to try to feed the homes from behind so that they can have some makai views. A lot of those makai views are going to be blocked by the development which has previously been before this commission that's makai of that. But still the idea is to try to minimize the impact of the automobile and that's why we've come up with the site plan that we have.

Mr. Hedani: Okay, I agree with your perspective from the standpoint of if you're going to be required to go to a 40-foot wide roadway, it doesn't make sense. From my perspective, it doesn't make sense to go to a 44-foot roadway. In case where you can have – and you might end up with a consolidation of two of the lots that you have on the top side. The one at the very apex at the top and immediately next to it, if you consolidated those lots, brought the roadway down between the two lots, the house perspectives that you on the rendering ...(inaudible - changing of tape)... area to try to maintain the rural character of Makena-Keone'o'io Road and of the – over the community in that area. To me, you would actually enhance the value of the remaining lots that you have because you wouldn't have a roadway in front of the lot as opposed to behind it and still come out with an equal to or greater than value to what I see on that map. You have any comments on that?

Mr. Frampton: I think you would be –

Mr. Hedani: Well, maybe the question should be this. If you weren't required to go to a 44-foot roadway, would it make sense to do the loop from the top?

Mr. Frampton: I still I have a preference –

Mr. Hedani: With the purpose being to avoid bisecting the two cultural sites.

Mr. Frampton: I think that's the part that I have a difficulty with because the site, as John Garcia mentioned, the mauka site is just a modified knoll as – this is basically the side of a lava flow that has a lot of knolls that pop out as you go further up. And we've decided to preserve that knoll, from an archaeological perspective it's not required, it already has enough information that's already been gleaned from it that it wouldn't be required to be preserved. There's absolutely nothing in the documentation that we've done that suggests that that was in any way connected to the heiau. So however, because it's kind of an unusual rock outcropping and it provides an opportunity to do a visual connection in terms of a cultural landscape and having just a larger area and having the visual mauka-makai views from that they decided – we thought we were doing the right thing by just saying okay, lets just go ahead and preserve that as more of a cultural landscape feature and provide some continuity between the two sites so that when you're in that area you don't feel as dominated or as crunched in by the homes. So it's sort of a site planning feature. It almost is ironic that by doing that we're – it's bringing up suggestions that we, you know, go even further and we were hoping that – we thought – we did put a lot of thought into it and we really felt that this was the most appropriate plan. Given the fact that the roadway requirements for the 44 feet and 28 feet of pavement would kick in once you access more than one lot.

Now your comment earlier about maintaining the rural feel of Makena Keone'o'io Road that's provided for in the community plan and we hope we can do that. But that refers to the frontage, the frontage of the road, and there are a couple of projects that have come before this body and they're currently up at Council right now and they're trying to figure out how they can do that because the requirements in the law says you got to go to these urban standards. The community plan says we want to maintain the smaller standards and it refers to Makena Keone'o'io Road. Once we're off that road and into the inside of our project I think it would be harder or it would be a higher hurdle to jump over to try to get a variance from that requirement as opposed to getting a variance or some kind of waiver from the road frontage requirements. So I'm hesitant to go forward and to –

Mr. Hedani: Well, I appreciate your situation. To me, you know, it just seems when we absolutely don't know, discretion is the better part of valor and in this case, we may not know, you know, what the significance of both sites were. And to me, if the main collector arterial road on the lower portion, well, Makena Keone'o'io Road is allowed to go to a lower standard then logically the feeder roads which are smaller should be smaller than that road

should also be allowed to go to a lesser standard in order to maintain the character of the area. I mean logically you would expect that, unless logic has nothing to do with this.

Mr. Frampton: I think you made a good point.

Mr. Hedani: Commissioner Guard.

Mr. Guard: And there's not enough room, oh, you'd be stuck with the same thing. Now actually on the bottom three, only the green roof, lot – parcel 3 there or proposed parcel 3 is actually fed by that driveway?

Mr. Frampton: It's a driveway here.

Mr. Guard: And you don't have enough room to meander along the boundary of the property to get to feed those bottom two lots off of that feeder?

Mr. Frampton: No, and we'd be even closer to the physical knoll. The heiau is situated on top of a knoll.

Mr. Guard: What's that distance?

Mr. Frampton: Well, the base of the knoll comes all the way down here to the property and it basically stops right up on the back side of it. But it ...(inaudible)... a lot wider – it's a reason for the previous – the previous preservation plan that we did encompass the entire knoll as well as the buffer around the mauka side and that was the area that we were proposing originally for the preservation plan and we've since expanded that area to provide for a greater sense of open space buffer around it. But to come in from the bottom side, it would impact the topography.

Mr. Guard: Okay so based on everyone else it's somewhat the lesser of two evils to go right above the – well, not above the heiau, you have more space buffered between two properties.

Mr. Frampton: It's a space and it's a flat plateau and we basically sited the road so that it would be in an area where there would be minimal requirements for grading and the like.

Mr. Guard: And then is there – I don't know if there's any issue on even maybe actually just using stone or you have to go with what's the, I guess County code requirements on that if you could actually just use pavers instead of.

Mr. Frampton: It's a good comment. We do plan on treating it differently than the rest of the pavement so that it blends more in naturally. What we've indicated is that it would be

stamped or molded colored – a colored surface, yeah. So it would be more earth tone and stamped, kind of similar to the patterns in which the roadway was preserved in front of the Maui Prince Hotel.

Mr. Guard: Well, obviously there's concerns here and if it either moves forward it is going to come back again.

Mr. Frampton: Yes.

Mr. Guard: So I guess either for the director or the chair, we're going to see this again. So the answer is if we feel that we should be changing the community plan amendment or doing a community plan amendment not necessarily. I mean, you guys have months or time to look at do we have any other options here? Is that correct?

Mr. Frampton: Yeah, and we have looked at it and I do have just a preliminary sketch of one possible rendering but I don't know if it would work and we didn't do an analysis of how it would impact the lot layout. When we went through the site planning options, we looked at all these options. We don't have a lot of those draft drawings because they were done prior to 2002, when we went through the extensive round of determining what would be the best appropriate site. But we certainly can when we do come back to this body, we could present you with a visual alternatives so that you could really see what the impacts are to the number of lots as well as physically what would be required in terms of roadway widening list. I do, I would like to think Commissioner Hedani that if we went before the BVA that you could use some logic. They have to apply the code requirements and the thresholds for making decisions are based on hardship and the fact that you have to be unique and different from the other properties and it's just really high standards and I don't know if – I'm not confident that we could go before the board and be successful in reducing the roadway requirements for this property.

Mr. Foley: Let me make a couple of clarifications specifically regarding Commissioner Guard's comment. The State District Boundary Amendment, the Community Plan Amendment and the Change in Zoning are not specifically related to this site plan. They changed the designation of the property to urban to resident and to R-3 but they're not attached to this development. So the real opportunity for making changes to the site plan are at the SMA period and so you still have that opportunity.

Secondly, I just wanted to comment on what Rory just said regarding the BVA considering reduced standards for this area. They have recently reviewed similar – well, somewhat similar applications in the Makena area for reduced standards but in this case, what you'd be doing is changing the current design to extremely long cul de sac and one problem that you would have that you don't have now is that the Fire Department would be very concerned about the length of the cul de sac wrapping all the way around the top of the

project to serve those two lots on the south side. So that's a problem that wasn't encountered with these other requests for change in the standards and I don't know what their reaction would be to that change in design, but you know, Rory may or may not have already talked to them about that, but normally we do everything we can to prevent the creation of long cul de sacs and in this case, I don't know where you could have an emergency exit from that other end. Maybe there is a place, but it's not readily visible.

Mr. Hedani: Commissioner Guard.

Mr. Guard: On that note then, I've definitely – I've seen a few projects and that may be hopefully an option that might alleviate some concerns. Is possibly having only a fire lane there that could be locked off and not used except in case of a fire possibly that normal traffic could go down a longer rural cul de sac and to appease fire issues if they had a fire lane for emergency use to cross that plateau.

Mr. Frampton: We would still be forced with the requirement of having the large right of way and the large –

Mr. Guard: But if you could get away from that because it's mainly a fire issue, right, having the large cul de sac for the turning radius for a –

Mr. Frampton: Well, I think it's more than that, and it's a code requirement that's applied to every new subdivision and it's hard to justify a reduction in those standards without triggering a precedent for everybody else to come in.

Mr. Guard: Well, we've seen a lot of people come in and say that these are all going to be part-time residents that that road's never going to be used and we're not going to have any impact on education because it's going to be part-time millionaire vacation homes. So you could almost make that – I would see that coming at us later for any development down there that there's going to be very little impact because no one's going to live in those homes full-time. Anyway, I guess back to the main point is, are we looking to keep it hotel zone, I guess I'll ask the Chair that. Do we want to keep it hotel zoning or are we? Because the concern is now there. So Rory and the owners know that there's obviously issues out there regarding the heiau, so if it comes back to us, I don't want to waste Jonathan's comments now and have them not come back at the SMA is what I'm –

Mr. Frampton: If I may summarize, the comments that I've heard have to do with the roadway layout, and we've provided an option which provides for the two driveways which reduces the requirements for the pavement widths. The commission or couple members of the commission would like us to explore consolidating those roadways and looking at how that would affect the project. We're certainly capable of doing that. We have done that and we can do that in a visual manner that would portray the impacts to the project in

a way that the commission more readily grapple with these issues. I have a feeling that this issue will also come up at the County Council. If it's come up here, it's likely to come up there. We will have those additional figures available when we're at the County Council. And they may or may not attach conditions to this project through the zoning.

I would just like to add, this is an unrelated subject to the issue we were just bringing up, but it was raised before by Commissioner Shepherd and she was very concerned with the impacts of runoff from the property and I do have a figure here that I did not address in my opening presentation. The red areas are areas where we would provide for collection of runoff through natural landscaped basins that were more sculpted into the land. And we're providing for a greater – we're going to be retaining more runoff than we're going to be generating through the project. So the net impact is going to be a decrease in runoff in the property. Stacy Otomo who's here could provide you with more detailed explanation of our proposed runoff scheme if you do have any questions. I know there's been a letter that was submitted to the commission concerned about runoff from the property. I mentioned earlier about half the site runs off to the north and the other half runs off to the south. This blue line is the approximate demarcation of where the runoff from one side of the property drains one way and runoff from the other property drains the other and we're going to collecting areas from – collecting runoff from both of those areas so that we do result, at least from our property, in a net decrease in runoff occurring off the property. There's a substantial amount of runoff coming down the hill through a drainage basin that's just to the north of the property that does go across the swale in the road and does enter into the property which is on the makai side of the road. But that's a very large drainage basin. We're a very small part of it and we hope that what we do will provide at least a small percentage reduction in the runoff coming from the property.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Okay, great drainage plan. Did you present the other plan, the one that you had up there first, did you present that to the Burial Council?

Mr. Frampton: We didn't go to the Burial Council because there's no burials on the property. We did go to the CRC. We went to them in 2005, in which point they had a lot of questions about the function of the heiau, the name of the heiau, how was it named Kalani Heiau. And that's what really lead us to go into the more in-depth oral interview and the archival research that we did and we came back to them and presented all of that information in 2006, in this year, and they basically did not have any comments or conditions on the project. So they basically accepted what we presented to them.

Ms. Freitas: And that road was there?

Mr. Frampton: Absolutely.

Ms. Freitas: Okay.

Mr. Frampton: And I would add that that preservation plan, we have a detailed preservation plan which is included in the EA, that's been turned into the State and it's been accepted by the State of Hawaii, State Historic Preservation Division.

Ms. Freitas: So the plan has gone through the process and been approved.

Mr. Frampton: Yes.

Ms. Freitas: Okay, thank you.

Mr. Hedani: Commissioner Amarin.

Ms. Amarin: Thank you Chair. I just had one more question going back to drainage. You know, I'm reading one of this United States Department of Ag, the soil in the area is a loam, stony complex that may be suitable for compaction. Firm compaction is needed within the retention basin. So are you saying that what is in place is resolving the concern?

Mr. Frampton: I'd say so, but let me ask the engineer to specifically address your question.

Ms. Amarin: Could he define also what is a loam?

Mr. Stacy Otomo: Good morning Mr. Chairman, Members of the Planning Commission, my name is Stacy Otomo. I'm the civil engineer for the project. You were correct. The soil, the general soil classification in the area is called Makena loam, stony complex and it's based on a USDA manual which classifies in general the soils in the area and in this particular case they broke the definition up into two portions. Makena loam, and to answer your question commissioner, I don't know the exact definition of a loam. I'm assuming it's something that makes the soil a little softer than usual. In the Makena loam portion they classify the runoff as being moderately rapid. In the stony complex portion, they classified as very rapid. So in terms of permeability in the soil according to the classification it is there which makes it ideal for this type of retention basin. And normally what happens in the retention basin is that it gets compacted but not to the point where it cannot infiltrate. If we have problems with the soil itself, you know, we can mitigate it by putting some kind of erosion control matting on it, but it's not going to get compacted to the point where it cannot infiltrate into the ground.

Ms. Amarin: Thank you.

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

Mr. Starr: What is the current runoff, what will be the after project runoff on a 50-year event?

Mr. Otomo: On the 50-year storm I believe we calculated somewhere around six cubic feet per second for the five and a half acres, and the after development went up to approximately 13. So what we'll mitigate is the increase plus we're looking at an additional 20% on top of that on site. So the net reduction would be less runoff getting off of the site than is currently happening right now.

Mr. Starr: But the 80% that is going to remain that will be filled with nutrients from the lawns and the other landscaping, is that correct?

Mr. Otomo: What is the finished product, maybe landscaping or, you know, roof tops, it would get into the basins, sure.

Mr. Starr: Okay, and it will end up in the ocean and onto to the reef where there's already the first clouds of algae. So in your opinion will the landscaping that will affect the runoff when it does hit the ocean will that effect the nitrogen levels and phosphate levels in the ocean to some extent?

Mr. Otomo: That's beyond my expertise, but in terms of landscaping, you know, our experience has been that the project site mauka is somewhat vegetated. What landscaping does in a developed condition is you know, help the soil and things from running off. So you improve it in that sense. Like I said, beyond that regarding nutrients is beyond my expertise. I don't know how they'll –

Mr. Starr: You don't find that in places where there's been landscaped development that the reef is dying? I think that's what many people who actually go in the water seem to find.

Mr. Frampton: I'm sorry, if I could interject here. That's a very broad statement that you made about the landscaping. What is recommended in some guidelines and guidebooks that the Department of Health has put out is that you try to put in plants and design – or use plants that are suited to the area, that are adapted to the area so that they don't require high levels of nutrients, I mean, high levels of pesticides and other types of chemicals to promote good growth. So what we've done here, and then a large part of the preservation area is that we've recommended, not recommended, we've spec out that there be, that it be substantially native Hawaiian plants that are from that area and that helps reduce the need, the future need over the long term over the next 20 years for having to heavily load the areas with nutrients. So that's something that we're going to be putting into the design guidelines for the homes in terms of a recommended plant palette to try to encourage those types of plants and shrubs that are from area so that the requirements are less and the other thing that these manuals really recommend strongly is that you have vegetated plant

filters and that the vegetated filters which these retention basins will be act as a sediment trap. They do retain, they don't eliminate all, but they do help absorb the nutrients and the other materials that might find their way to the ocean. So I think by doing what we're doing what we're doing, we're doing everything we can to try to minimize the negative impacts to the offshore water.

Mr. Starr: So would you be –

Mr. Hedani: Commissioner Starr, Commissioner Guard has a question.

Mr. Guard: I'll let –

Mr. Starr: So would you be willing to endorse a condition that would say none of the lots as well as the areas that you're putting in preservation shall have chemical fertilizers, grassy lawns or other type of greenery that would put nitrates and phosphates into the ocean?

Mr. Frampton: What I would suggest is that we, when we come back for the SMA we have a detailed plan or condition worded out that addresses those concerns. To make a blanket requirement like that is going to be awfully hard to enforce over the years, but I do think that we could come up with some language that would address those concerns to a large degree.

Mr. Starr: Where's the sewage going to go?

Mr. Frampton: The Makena sewage treatment plant.

Mr. Hedani: Okay, for all the commissioners, what I'd like to do is when directing questions to the application, you know, direct your questions to the applicant and I'll allow one or two follow up questions, but in the interest of insuring that all of the commissioners have an opportunity to present their questions, if we could restrict our follow ups to one or two follow ups before yielding to another commissioner. Commissioner Guard.

Mr. Guard: Those are all excellent points, so I guess one concern for all of us would be if Jonathan isn't there on that day that we have something from staff noting these concerns that we had today on that and then possibly then we'll at least have that in our notes that we want to address either the – maybe the size of the lawns could limited, etc. And then – well, either Stacy or Rory, would this – these surfaces are these good candidates for permeable asphalt? The Makena soil that it is.

Mr. Otomo: The soil strata would make it ideal. However, again, going back – this question has come up a number of times. There's also a lot of maintenance that goes along with

permeable concrete so if you put it in and it's not properly maintained, then you know, your problem doesn't go away.

Mr. Guard: But something that could be – if it is a good site, if it could possibly be passed through to home owners or design guidelines if it was going to help out.

Mr. Otomo: Definitely

Mr. Guard: Oh yeah, so maybe something else to look at, but possibly just to make sure we don't forget these if it comes back at SMA level.

Mr. Hedani: Any other questions for the applicant? Okay if not, we have an opportunity for public testimony at this time.

a. Public Hearing

Mr. Hedani: We'll open up the public hearing. We have one person that signed up for testimony. Tammy Perkins. Will you come to the microphone? Three minutes.

Ms. Tammy Perkins: Hi, a little nervous here. My name is Tammy Perkins and I live directly across the street from the proposed subdivision and I'm here on behalf of the entire Makua ohana that owns the two lots directly across the street.

I have a signed letter and I have some pictures to distribute. The letter was also given to you ahead of time, but the pictures weren't clear so I brought extra copies down for your review if you'd like.

Mr. Hedani: Tammy, can you point out on the map which lot you're talking about. The bottom is makai.

Ms. Perkins: We're here. We're between this property and the ocean, and we're oceanfront.

Currently the rainfall from East Maui Mountains makes its way to the ocean by following a natural fault line located fairly close and along the side of the applicant's property and this rainwater along with the debris and other foreign matter drains directly onto our property. Over the years, the natural runoff from the rain has flooded the Makua property and has continually gotten worse over time with constant development of roadways, buildings, golf courses because there's no installation of proper drainage to prevent the overflow and damage. This ultimately is hurting the environment and it's been a growing concern for several reasons.

The erosion along the coral reefs from this type of drainage is a constant and ...(inaudible)... issue. We have over or nearly 300 feet of coastline with a big chunk of coral reef that is affected every time it rains.

It's been an enormous and burdensome effort on our part to prevent the runoff from entering the ocean, yet with each passing flood it's become increasingly difficult for us to prevent irreparable damage to the ocean and reef through no fault of our own.

The recent application to change the entire neighborhood zoning, community plan, district boundary amendment in order to accommodate 10 additional rooftops we believe will further encourage damage to our coral reef. Proposed expansion of a community that presently has very little infrastructure to support current use of the area cannot allow said development without proper consideration as to the effect of the runoff from 10 additional homes.

It is for this reason that we ask the commission to consider postponing any decisions in favor of the applicant's rezoning applications until further research can be obtained to determine the actual environmental impact this would cause to the Makua property and the coral reef system located directly in front. We don't know if we can, but we would like to request that an environmental engineer or some engineer can determine how much additional flooding would run into the property as well as into the ocean. Through this process solutions could then be presented and discussed prior to making any permanent developmental decisions.

In addition, we believe a new community plan is near completion and we would ask that the planning commission wait for the conclusion of such research prior to making any developmental decisions that may inadvertently effect the new plan. The applicant's proposed restructuring of the Makena community will greatly impact the future of this entire area and it is our hope the planning commission agrees that the information obtained from the study needs to be considered prior to creating long term rulings as to permanent changes in the community plan.

You know, in closing, careful planning and foresight has gone into the creation of previous community plans and zonings. Great care and consideration has been given to the Makena area making one of the most desirable places on earth.

Mr. Hedani: Three minutes Tammy. You have one minute to conclude.

Ms. Perkins: Did you want to take a look at the pictures? I have a picture here of flooding on the Makua property?

Mr. Hedani: You could circulate it.

Ms. Perkins: The top one basically is just a picture of the fault line is on the Makua property and this is just a regular rain right here and we're struggling with it and especially with the heavy rains that we've had over the last few months it's been getting really, really bad. And then this is just the – the bottom picture is just a picture of the coral reef. It's just a small picture of the coral reef that fronts the property. And the parking issues. The infrastructure has always been a concern for the church and the public beach access that's currently down there. It's a dead end road. We have tons and tons of traffic and cars with no outlet and, you know, we're constantly battling not only theft and, you know, everything else from the public beach and goes and the parking that is generally there right now, but everything else.

You know, we just basically, you know, I have a signed letter from the entire Makua ohana as well and that could be attached and I do have that. They couldn't be here today so they asked me to speak on behalf of them as well.

We also had previously submitted a petition listing over a hundred individuals not in favor of this proposed development for the change in zoning or any of the amendments. And we just want to do smart growth. And we're just asking that together with your help we can create an environmentally friendly plan that can be developed to accommodate our growing neighborhood while responsibly protecting our precious community and our natural surroundings.

Mr. Hedani: Questions for the testifier? Commissioner Freitas.

Ms. Freitas: So now that you've heard the engineer's plan for the drainage, you must feel much better?

Ms. Perkins: I do feel much better but I still am not, you know, I always hear a lot of things but then ultimately it's like okay, well, what guarantee is that there's not going to be additional runoff on the property and there's not going to be any seepage into the ocean?

Ms. Freitas: Well, honey you already know what's going on, so I would say, you know, now that you've seen this engineer's study that it would feel better. And as far as waiting till they finish the new community plans and that, you're aware that this is hotel. I'm sure you must not want it to stay hotel. Wouldn't you be happier with it like this?

Ms. Perkins: Well, you know the Makua ohana has been trying to not develop their property, to try to keep it Hawaiian. I mean, we could easily, you know, develop. They could easily develop. Being hotel use, or no matter what kind of development is in there, the reef in front of this property is always going to be an issue and proper drainage wasn't put in before. I mean, is just one engineer is going to determine that this is going to be proper drainage not only for now but in the future.

Ms. Freitas: Well, Honey, didn't you listen to all of the different reviews that this has gone through?

Ms. Perkins: I have listened to all of the reviews.

Ms. Freitas: And these are all professionals.

Ms. Perkins: But you know, also – Right.

Ms. Freitas: I mean, they know what they're doing.

Ms. Perkins: And I've also listened to them say that they have interviewed and talked to all of us. We have not been contacted. The entire Makua ohana has not been contacted. Nobody has been discussed or asked us any questions in regards to the property that directly is right across the street.

Ms. Freitas: Okay, but this has been going on since 2002, and it's been noticed in the paper and they've had meetings. And so, you know, I don't know what to tell you. I mean, four years it's been in your face.

Ms. Perkins: Well, in four years we've stressed our concerns but they have gone unnoticed. I've also got letters that have been previously submitted but yet we've had no response. We've requested that there be an extensive EA because of the natural fault line. This was, you know, just previously submitted as well, earlier this year and still no response. So, I don't know what else to do. I am just simply here just stating that, just basically to generate awareness of what is happening down there. And nobody has talked to the Makua ohana, nobody has talked to me, nobody has come knocking on my door which I'm directly across the street.

Ms. Freitas: But they did what you wanted. You had concern about the drainage and look at what they did.

Ms. Perkins: Yeah, I mean, this is the first I've heard of it. So, you know, and the Makua ohana hasn't heard of it. So when I go back to tell them, of course, then they're going to ask me questions like what specifically is it which I don't know, and all the details of it, just because it's not my specialty.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Yeah, actually that does raise awareness. I've been down to that property quite a bit growing up and I've never been down there during a flood. So that is interesting. I know the Garcia property probably isn't the beginning of that flood water. I would think you

feel the same way. ...(inaudible)... is it coming from up above?

Ms. Perkins: I think it's generated from the East Maui Mountains I really do. I think that it's like from the just, the Mother Nature, you know.

Mr. Guard: Yeah. Well, I mean above that is all the golf course and everything else.

Ms. Perkins: Yes, and all that seeps down and we're constantly battling invasive species. We get it all. It's just amazing.

Mr. Guard: Well, that's probably a bigger part of the problem and we'll see what happens with that later. I guess, yeah, one concern of that that may be something that the applicant might have to look into is seeing if they can take on even more drainage in there, if that would alleviate it. But I do agree with Commissioner Freitas, would we prefer it to stay hotel and possibly have a 60-foot tall building back there. I mean, well, that's what's happened on the other side.

Ms. Perkins: Would they do adequate parking? Would there be an escape route to the road? Would the infrastructure be better in place because they have the budget to put it in place because right now the traffic, the cars, the vehicles, the parking are all concerns as well.

Mr. Guard: Yeah, but with the Makuas they're trying to keep – I mean, that's the ...(inaudible)...

Ms. Perkins: They're trying to ...(inaudible)... as well.

Mr. Guard: They can't even live down there though. They get to use it two weeks a year or one week.

Ms. Perkins: No, one month.

Mr. Guard: One month, they keep.

Ms. Perkins: Yeah, they go down there one month a year. They could go down there more if they choose, but they do not because there's six owners. So it's very difficult to agree who and when and how and everybody's going –

Mr. Guard: So here we have the applicants trying to keep it. That's what I want to see. I mean, there's not very many people left down there and right next door and across the street from you there's a proposed development.

Ms. Perkins: Yeah, we understand.

Mr. Guard: Of apartments, so hopefully I don't know if that's a concern.

Ms. Perkins: It is, you know. All of it is.

Mr. Guard: For the community there and even across on the other side of the hotel I don't know if the family feels as strongly with development over there to see hotels going in over there.

Ms. Perkins: We're not sure what's going on. We're not sure what's going on over there. We haven't been notified of any thing at this time. I'm not aware of anything that's going on in over there. We're only really, you know, because of the growing concern of the reef system and the drainage already currently on the property and, you know, which is a huge issue. Also the development, you know, there's some matter that you cannot prevent when you're developing directly across the street from the ocean. And ultimately, we're going to be responsible somewhat for trying to maintain it.

Mr. Guard: So you feel the community would prefer hotel use?

Ms. Perkins: I'm not sure what – I can't speak for the community. I can just say that before making any decisions of whether to change it from hotel to urban to rural to this to that, that we make sure we gather all the data.

Mr. Guard: Well it is hotel right now.

Ms. Perkins: It is hotel right now, yeah.

Mr. Guard: So we're trying to go down to residential and possibly – I mean, any kind of street those people are going to have –

Ms. Perkins: I know that the Makua ohana would prefer that their property be hotel because then they could do more things with it to hang onto their property versus – but we're not talking about that.

Mr. Guard: Right.

Ms. Perkins: So I can only speak for the Makua ohana though and ourselves. I can't speak for the community in general.

Mr. Hedani: Commissioner Amarin.

Ms. Amorin: Thank you Chair. Tammy, thank you for being here. How long have you been a resident?

Ms. Perkins: I'm in my fourth year.

Ms. Amorin: Okay, you're in fourth year. I live maybe seven minutes away from the project site. And I know it's pretty much dry in Makena, but when it rains, it pours.

Ms. Perkins: It pours.

Ms. Amorin: But you know, that should give you some peace to understand the project and what the owners are trying to do and it will actually lessen as everyone has said, the runoff. But thank you for being here.

Ms. Perkins: You're welcome. Thanks for your time.

Mr. Hedani: Any other questions for the testifier?

Mr. Foley: I just want to make one correction for the record. In her oral testimony and also in her written testimony it says that the new community plan is near completion and I just wanted to clarify that the community plan won't be started for at least three years if this community plan is chosen to be the first of nine community plans to be updated. The General Plan that's being prepared now won't be reviewed or adopted for another couple of years and it won't deal with, you know, very precise kind of land use decisions like we're talking about today. So, the applicant and the neighbors and the commission shouldn't, you know, rely on that General Plan and community plan review to resolve these particular questions.

Mr. Hedani: Okay, are there 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

Mr. Hunt presented the recommendation.

Mr. Hedani: Commissioners? Commissioner Freitas.

Ms. Freitas: I have a question and a motion. My question is, is that when this does go to the Council it will have attached with it the comments? They'll be aware of the comments that were made here today? Concerns?

Mr. Hunt: The minutes will.

Mr. Foley: Yes.

Ms. Freitas: Okay. So can I move? Can I make a motion?

Mr. Hedani: Yes.

Ms. Freitas: Move to approve as noted.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Freitas, seconded by Commissioner U'u to approve as noted. Discussion? Commissioner Starr.

Mr. Starr: Well, my conscience will be clear. This is desecration of a sacred, one of the few sacred sites left. This is desecration of a sacrificial heiau. We're putting a road right across a heiau site. This is not what we should be doing. It's a very sensitive, sensitive area of our shoreline. Let this rest on the conscience of those who vote for it because I really think you're doing something very, very wrong and something you'll regret later.

Mr. Hedani: Other discussion? Commissioner Guard.

Mr. Guard: Is there a way to have a lot of these points actually highlighted instead of only in the minutes?

Mr. Hedani: You can attach it as a condition, right?

Mr. Guard: Well, I mean just to – when it goes to the Council to really itemize our major concerns that we want to address during the SMA and then possibly – okay, well the change in zoning isn't necessarily 10 lots like Jonathan's saying. Even if they change the zoning and make five lots, right I mean, that's – it doesn't have to be – that site plan is not set in stone?

Mr. Hunt: You're not acting on the site plan. All you are acting on is the change in zoning and community plan amendment.

Mr. Guard: But a lot of these concerns that were addressed if they can be itemized regarding drainage, access to lots, and possibly even –

Mr. Foley: They can be emphasized in the staff report that goes to the Council that Jeff will prepare and the minutes of this meeting are also attached but the staff report is probably the best place to highlight the specific issues that were addressed at today's meeting and addressed in the EA and addressed, you know, for the last six years.

Mr. Guard: So that when it comes back to SMA those may be still highlighted so that in case Jonathan's not here or Commissioner Freitas is gone or Commissioner Amarin, whoever brought up valid points that we don't just lose them like we've done in the past?

Mr. Hunt: I've taken, I hope, good notes and the intent is when this comes back for an SMA we will include that in the staff report. As Michael said, we can emphasize those concerns to the Council, but again, we don't want to confuse Council and have them act on those because those are site specific issues. If you have issue that's more associated with the change in zoning or community plan amendment which could affect any future site plan we can send that forward as a condition of approval, but –

Mr. Guard: I guess just those like three or four items of concern that we've discussed for an hour and a half now.

Mr. Hunt: We'll emphasize those to the Council.

Mr. Hedani: Any other discussion? Commissioner Amarin.

Ms. Amarin: Thank you Chair. Just my comments. What this project is all about is keeping a local family there in Makena and doing what is necessary to live their lives and their families and as far as the heiau, there's several in Makena and what the Hawaiians and people or Hawaiians at heart respect. You respect. There's a Hawaiian church right across the street. People from all over the world go to that little church. I've been there. And it's a great project. And this thing can't happen too soon for those local families. Thank you.

Mr. Hedani: Any other discussion? Okay, the only comment that I would make Jeff, you know, for your consideration in the staff notes is that if there is a condition or if there is a situation which would lean toward a variance or an exception, you know, for consideration by the Board of Variances and Appeals, this would be one of them. You have a cultural site, you have a potential connection between to potential cultural sites and not every project is going to have that situation occurring. It's an unusual situation and it's an exception to the rule. And if there is an opportunity to give exceptional consideration to honoring and respecting the cultural legacy of the area, this would present itself as that. And that if the rules can be amended through consideration by the Board of Variances and Appeals then they should err on the side of discretion in this particular case. That would be my perspective.

Mr. Guard: ...(inaudible - changing of tape)... community plan hotel and the area is ag, right. So even if they wanted to subdivide the three homes to have separate entities, they couldn't do that, right?

Mr. Foley: With the ag zoning they could apply for farm dwellings and accessory farm dwellings on each parcel but they already have two or three houses, you know, between the heiau and the road. So, –

Mr. Guard: They couldn't subdivide right now. They couldn't have their own parcel?

Mr. Foley: They couldn't subdivide because of the interim zoning and as was pointed out previously this is a small island of ag designation in a sea of urban designations.

Mr. Guard: So whether we're looking at this site plan right now versus them just wanting to subdivide to have their own TMK on the houses that exist, they could not do that?

Mr. Foley: Well, the houses that are there could continue to exist and they could build farm dwellings on other parcels, but you know, in the long run it doesn't make sense to have this very small island of agricultural designation with urban on three sides of it. And you know, it is I think far more preferable to have a single family designation here than a hotel designation. This isn't a site that lends itself to development as a hotel. And so that's why we recommended that these designations be changed to urban, to residential and to R-3. Whether it ends up being five lots or 10 lots or some number in between is yet to be determined but under any of those circumstances it makes more sense to be single family than to be hotel.

Mr. Guard: So I'm just saying that unless we change the community plan and the district boundary amendment, unless we go forward with that, the three dwellings that are there now are on one parcel.

Mr. Foley: I don't know that for sure.

Mr. Hunt: As I understand it the zoning would have to be changed to subdivide it.

Mr. Guard: So you could not even subdivide to have their own parcel if they wanted to keep the three.

Mr. Hunt: Right.

Mr. Foley: Yeah, there's a conflict between the zoning and the community plan.

Mr. Guard: So it stops the subdivision right there. Even to keep the three existing homes as is. So, okay, hopefully on that note even not looking at the site plan we should move forward with the community plan amendment.

Mr. Foley: Yeah.

Mr. Hedani: Any other discussion? Ready for the question.

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

VOTED: To Accept the Recommendation to Recommend Approval to the County Council for the Community Plan Amendment, State Land Use District Boundary Amendment and Change in Zoning, and to Defer Action on the Special Management Area Use Permit.
(Assenting - S. Freitas, B. U'u, J. Guard, J. Amorin, W. Iaconetti, P. Eason)
(Dissenting - J. Starr)
(Excused - D. Shepherd)

Mr. Hedani: One nay, motion is carried. Thank you. Take a 10-minute recess.

A recess was called at 10:44 a.m., and the meeting was reconvened at 10:57 a.m.

- 3. GREAT WHITE DEVELOPMENT requesting a Special Management Area Use Permit for a 2-story commercial building to contain six (6) offices and two (2) storage/maintenance units comprising 4,960 square feet on 10,108 square feet of land with on-site parking, landscape planting, and related improvements at 2662 Wai Wai Place, Kihei Business Park, TMK: 3-9-051: 046, Kihei, Island of Maui. (SM1 2006/0005) (L. Callentine)**

Mr. Livit Callentine presented the Maui Planning Department's Report.

Mr. Rick McGovern: Good morning, my name is Rick McGovern. I'm the architect on this project and with me today is the two owners of the project, it's John Dobrovich, general contractor and Pete Sullivan, on this side behind the t.v. monitors, also a contractor. They're jointly building this building to use as their own personal offices as well as to lease out other office space to other people.

This, as Ms. Callentine noted, is in the Kihei Franks Subdivision. It's lot no. 46 and is surrounded by other business properties. Give you a little bit of an overview. Right across the street from the cul de sac is Eskimo Candy and to the other side of the cul de sac is Brian Maxwell's design office and then further around is a project that you approved for Pat's Quality Roofing which has been recently completed. The rest of the cul de sac is currently being built out right now and this is a vacant lot that is fairly flat and it only has one location that you can come in because it's on a cul de sac. So that kind of tends to start shaping where the building goes, where the parking goes. With the parking requirements we actually ended up getting slightly more than the county required which is great because the real world says we needed more.

We have the dumpster located and fenced. The loading zone accessible outside the building and the building is a two-story building because again of the small size of the lot. We're allowed to go within two feet of the property line based on the CC&Rs and so we're doing that on two sides and then opening up to the other side for, again, the parking and the access and egress.

We're building two stories of space that are the same. They stack on top of each other. We've got 2,480 square feet on each floor for a total of 4,980 square feet. Building height is approximately 30 feet, slightly less.

Give you an idea what the building will look like. It's a very simple structure. Again, this is in a fairly industrial area. It's surrounded by B-2 zone. So there's no residential abutting this property so it's going to have commercial on all sides of it. Very similar to this building there are the two structures that I've done on lot 42, were also two-story structures and the two behind this building are also two-story structures. So they're very similar in the character. We're trying to make it so that it's not like a real boxy building either.

So we're putting sloping roofs on it and trying to downsize it, make it a little more residential in feeling with the banding around the building, but very utilitarian in nature. The owners want to do the building primarily in concrete block but they want to use a nice block, they want to use a split faced brown block so they've got some good color to it, but it makes it very low maintenance. They want to make the roofing asphalt shingles again to keep the cost down but also to make it just very economical and easy to maintain. This is not a real high profile building.

I'd like to pass around the little sketch or the little model I've got just to kind of give you a feel for the scale of things and also the colors that are on it represent the colors that the owners picked and that the UDRB has agreed to. I changed the one green to a darker green based on the UDRB's recommendation.

Brian Maxwell Design has done the landscape plan and it's a very simple landscape plan because again, the site is very small. So what we've doing is we're just doing kind of a hedge around the property to give it a little bit of screening. It's going to be mock orange and of course that can be grown in a variety of different heights and you can cut it off, making a hedge out of it or you can let it grow a little bit higher. We're also providing the large shade trees which is required by the County Code. And then just some little infill areas to kind of soften wherever we don't have to have asphalt for a turning radius and parking.

As far as the lighting goes there's one light fixture that's currently on the cul de sac which is a downlight for the entire subdivision area. We are not providing any other lighting on the site itself. We're going to provide just light on the building which will be simple lights

just to light the doorways and some downlighting on the walkways. So again, no exterior lighting.

I think with that I'll just open it up for questions.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I know it's in the report, but I forgot. How many parking stalls are you required? You said you're providing more than what's required?

Mr. McGovern: We're required 10 and we're providing 13.

Ms. Freitas: Good. Okay, and one more question if I may? The B zoning I know that there's something in there, there's no residential but I believe they allow like a maintenance man or a caretaker, something like that to live there and one of the things I've noticed in another complex that's like this all businesses, they're using that and they're making almost all of the tops in these businesses residential. You know, I'm just – I'm wondering are you going to set these up like residential homes upstairs or? Are any of them being set up like living quarters? I mean, so much is allowed, I do know.

Mr. McGovern: Right, the answer to your question is no. If you look at the floor plan I think it tells you how these are set up and they're very office oriented. There's only two restrooms on each floor and they're general restrooms that are accessed from the outside hallway. So there's no way these could be utilized as residential at this point in time.

Ms. Freitas: Thank you very much. That's good, very good.

Mr. Hedani: Any other questions? Commissioner Eason.

Ms. Eason: No, I wasn't raising my hand.

Mr. Hedani: Commissioner Starr.

Mr. Starr: It's actually a decent looking building, but I'm wondering if you're doing anything to try to reduce the energy load. It looks like it's something that will be air conditioned full time with a very dark roof. Are you going to be getting solar hot water for the bathrooms or anything else that will help to make it a little more energy efficient?

Mr. McGovern: Yes, we will be using solar for the hot water in the building, but that's about all we really can do at this point in time.

Mr. Starr: How about insulation to try to –

Mr. McGovern: The building will meet all the energy standards. We're R-19 in the roofs and we're R-13 in all the walls. So we're complying with the Energy Code. In fact we're a little bit in excess of it.

Mr. Starr: Okay.

Mr. Hedani: Any other questions?

Mr. Foley: Is there a automatic sprinkler system for the landscaping?

Mr. McGovern: Yes there is an automatic sprinkler system for the landscaping. It's a combination of drip – well, actually its full drip. We decided not to use the heads, the spray heads because of the limited amount of landscaping and the way we got it spaced we can do drip all the way through.

Mr. Hedani: Commissioner Guard.

Mr. Guard: On the perimeter it's just going to be the mock orange? No grass or any natives like the peanut grass, something that might not take any nutrients or they might actually supplement the mock orange. Just for drainage that might get into those waterways. I think across the street there's a wetland, right?

Mr. McGovern: No, the wetland is quite a ways down the way. I can show you on the site plan.

Mr. Guard: Oh, it's in the same project.

Mr. McGovern: It's in the same project but it's a considerable distance away. The wetland is way down here, and we are way, way up here and our property is draining back this way, the natural flow. It's about a two and a half foot drop from the back of the property to the front of the property and this entire area has had a storm system installed when they did the subdivision back in 1988 which handles all of the lots storm as well as the retention and then sends it to the wetland which then cleans it again before it goes to the ocean is what I've been told the original concept was. We are taking and also putting in drainage on our own property with a retention facility and filtering system to take care of what we need to for our property and then in the big floods where things, you know, get out of hand, it would then got into the system that was designed for the whole subdivision.

Mr. Guard: So does that include maintenance of construction of vehicles? So for oil, there's another project we limited the use on the property to make sure there wasn't heavy use of oils or fuel being repaired, that's what it was, wherever that, whatever building that was.

Mr. McGovern: Yeah, this is not a repair facility of any nature. This is strictly office space, office buildings.

Mr. Hedani: Any other questions? I had a question. On the two faces of the building that are abutted on the property line, what does it face or what looks at it?

Mr. McGovern: Currently nothing. It's going to be future B-2 – I mean, they're zoned B-2 as part of the same subdivision, but there's nothing on there right now. There'll be office buildings also probably very similar in nature, probably going fairly close to the property line. A lot of those properties up there are being developed like within a foot to two feet of each other because the lots are so small. The current Paradise Auto if you've been there recently is just under construction and it sits about two feet away from the Eskimo Candy building. So a lot of these buildings as they're being developed there's not a real exposure to one side or the other and I think that's going to be the same way on this one.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: The plants haven't changed from this May 2006?

Mr. McGovern: No, we've not changed any, no.

Ms. Freitas: You don't want to start construction for three years?

Mr. McGovern: Well, we say three years because it takes so long to get a permit and go through the process. We want to give ourselves plenty of time. If you pass this, we're going to go in for a building permit next week and then as soon as we get one they want to start.

Ms. Freitas: Good because people will build around you and then, you know, yours expires and you come back and then maybe it's overload and then we're looking at different things.

Mr. McGovern: No, we want to get this thing going as soon as we can. As soon as this process is done, immediately into the building department and then construction.

Ms. Freitas: Good.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Yeah, I believe it was equipment rentals might be building or is in the process of getting a permit next door to you or somewhere close. Do you know?

Mr. McGovern: They're right next door to us.

Mr. Guard: Okay, so on that one, if you're not going to be doing any heavy machinery repair say like a company backhoe or forklift coming in, just to either make sure we have appropriate catch basins on site for the oil or limit it to not doing equipment repair on site because of the wetland.

Mr. McGovern: Well, we have both. They're not planning on doing it number one, but we also have filtration system attached to the retention basin. So if somebody else came in there in the future it would at least be prepared for it.

Mr. Foley: It's condition no. 12.

Mr. Guard: That is a condition already. Okay. Sorry about that, redundant.

Mr. Hedani: I have a question for the director actually. There's no requirement for setback or landscaping on the two sides that are butted up against the property line?

Mr. Foley: No. There would be if it was residential. And some of the other lots in the subdivision we've had that issue but not in this location.

Mr. McGovern: The last two I brought to you had that and we had to have 10-foot setbacks.

Mr. Foley: Yeah, and they need masonry walls and landscaping, but this is an interior lot.

Mr. Hedani: Any other questions for the applicant? Seeing none, thank you very much. Staff recommendation.

Mr. Foley: Public hearing.

a. Public Hearing

Mr. Hedani: Sorry, are there any members of the public that would like to offer testimony at this time? If so, please step to the microphone. Seeing none, the public hearing is closed. Staff recommendation.

b. Action

Ms. Callentine presented the Recommendation.

Mr. Hedani: Questions for staff? Commissioner Starr.

Mr. Starr: Yeah director mentioned that there was condition regarding the use of this as a

baseyard for maintenance and cleaning of heavy of equipment. I don't see that.

Mr. Foley: I was referring to the filtration required for the drainage and it's condition no. 12. Because Commissioner Guard was asking about separation of petroleum products and condition no. 12 addresses the filtration.

Mr. Starr: If the chair would allow me to ask the applicant a question because I would have asked it before if I had understood that whether they would be willing to accept a condition that this not be used as a baseyard location for maintenance and cleaning of heavy equipment.

Mr. McGovern: ...(inaudible - speaking from the audience)...

Mr. Starr: Okay, could I ask staff to draw suitable up? And with that in mind, may I make a motion?

Mr. Hedani: Any other questions for staff at this point? Did the applicant consider the use of permeable asphalt?

Mr. McGovern: No, we did not.

Mr. Hedani: Was there a reason for that or just to avoid the cost or?

Mr. McGovern: Well, no. Just the ground itself is not really conducive to it at this point in time and the small area that we're talking about, the engineers looked at it and said it really was not a good candidate.

Mr. Hedani: Okay, any other questions for staff? Commissioner Guard.

Mr. Guard: I guess this doesn't apply, but I believe in the affordable housing draft it discussed commercial buildings as well, correct?

Mr. Hedani: Director.

Mr. Foley: Yeah, I'm not sure how it applies either.

Mr. Guard: Okay, wasn't it any building over a thousand feet is then subject to and – I don't think it passed but – excessive fees for commercial?

Mr. Foley: I don't know, we don't have it yet.

Mr. Hedani: Any other discussion? What's your pleasure?

Ms. Freitas: May I make a motion?

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Move to approve as stated.

Ms. Amorin: Second.

Mr. Hedani: Moved by Commissioner Freitas, seconded by Commissioner Amorin. Discussion? Commissioner Starr.

Mr. Starr: Yeah, I want to be sure that that includes with the recommended conditions along with the condition that's being written. Was that the intent of the maker?

Ms. Freitas: Well, won't we have to make vote on his?

Mr. Hedani: You should move to amend by adding a condition.

Ms. Freitas: But we haven't voted on the condition. I don't want to vote on that condition.

Mr. Hedani: The motion for amendment hasn't been made yet.

Ms. Freitas: I know, but he's making the condition.

Mr. Foley: So you can vote on the motion to amend and then Jonathan can make a separate.

Mr. Hedani: Commissioner Starr would you like to amend the motion?

Mr. Starr: Okay, yeah. First of all, I have two amendments and the first amendment is that the motion include all of the general as well as project specific conditions as recommended by staff.

Mr. Hedani: I'm sorry, that would be included in the main motion.

Mr. Starr: I asked that and I didn't get that.

Mr. Hedani: I'm sorry. The motion is for approval as recommended by staff.

Mr. Starr: Okay, that wasn't how I heard the motion.

Ms. Freitas: And no. 12 is in there.

Mr. Guard: So there's no added conditions right now.

Mr. Foley: Yeah.

Mr. Starr: Okay, then I move to add a condition that shall read, --

Ms. Callentine: I was actually hoping that you would rephrase it. I got that it shall not be used as a baseyard --

Mr. Hedani: Something about a baseyard or repair of heavy equipment.

Mr. Starr: That the project shall not be utilized as baseyard for cleaning and maintenance of heavy equipment.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. Discussion?

Ms. Freitas: I have a question first for the director.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: This is B zoning. Would you be able to even do that in B zoning? Don't you have to be in M-1 zoning to do that?

Ms. Callentine: That's a good point.

Mr. Foley: Don't know.

Ms. Freitas: Well as far as I know you can't because we've been working on that. And you can only do that kind of stuff in M-1 I thought and this is B. You couldn't do that anyway could you?

Mr. Hedani: Staff.

Ms. Callentine: It's my understanding that that is a correct point. And also I would just point out to the commissioners as well that to write a condition that says you can't do this, there's lot of other things that you could add as conditions, well -- and you won't do this and you won't do that. But the application is for a specific use and you're approving a specific use. You don't really have to say and we are not approving this use and this use and this use.

Just my staff opinion.

Mr. Foley: I think Brian's checking the zoning --

Ms. Callentine: Okay.

Mr. Foley: District to see about the uses.

Mr. Hedani: Corp. Counsel. Welcome Mr. Moto.

Mr. Brian Moto: First of all, good morning. I'm Brian Moto and I'm substituting for James who's out sick today. I'm looking at 19.18 which is the B-2 Community Business District zoning. This is correct, B-2? So, it doesn't say much at all about cleaning and maintenance of vehicles. It does as you know like other zoning districts have a long laundry list of permitted uses. Since this is an SMA setting, it's not unusual to have restrictions on specific activities that if in the mind of the commission you believe to be either environmentally unwanted or dangerous and it's up to you to make that determination as to whether you want to include that as a restriction or not.

Mr. Hedani: Thank you. Commissioner Guard.

Mr. Guard: I believe the history of this was that the neighboring property was an equipment rentals business and we added that condition for them so that they weren't repairing a lot of oil using machinery and having that get into the system and maybe potentially clog a system or overflow and get into a wetland that has a few native species and endangered species as well. I don't think that's the intent of the owner, but maybe even for subsequent tenants of the property that they're aware that if you have a backhoe or a forklift that all of a sudden hey we'll just go take it and do it on the weekend. Just so we know lets try to go to an industrial area not somewhere close to the wetland that in a time of rain you may get that oil into the water.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Well, yeah in a case of point there are a lot of people who do this in B-2 and it is designed to be a headquarters for a contractor and I think that's a proper use for the property. But the reason why we're here is because of the shoreline management issue. And if there were -- you know, I spent several years in my early career greasing and oiling machinery and I know, you know, a lot of it does get on the ground and so, one of the things we've been doing is when that is going to be the case a system is designed to be able to separate it out. And since we're not requiring a system to separate that out, I think we just want to make sure that that use doesn't occur whether it's in normal hours or weekends. And keep it from getting into the shoreline which we are managing and for

which we are sole responsible and final authority.

Mr. Hedani: Okay, any other discussion? Commissioner U'u.

Mr. U'u: I was wondering if we could hear from the applicant?

Mr. Hedani: I think the applicant has already said he has no objection to the condition, right? Commissioner Freitas.

Ms. Freitas: Okay, and agree with that. If he has no problem with it and you want to put on there, fine. It's just that if it's not a permitted use, it's not a permitted use. And if next door we knew what they were going to be doing so that was a protective measure because of that. But the point I was making is that we can't say and you can't do this, and you can't do this, and can't do this, and you can't do this. What they say is what you can do, and everything else you can't do. So that was my point, is really don't have to put it on there because they can't do it anyway. But if they don't care and you want it, I don't care either. But I don't want to list everything.

Mr. Hedani: Is there any other discussion? Commissioner Starr.

Mr. Starr: Okay, I just want to thank Suzanne for that. I think we're in agreement but you know, one comment is because of the SMA, none of it's permitted until we approve it. You know, in other words, it's like in the shoreline area, we are granting the authority to do stuff. It's not like we're taking it away. But I think we're in agreement and all is good in the world.

Mr. Hedani: Okay, any other discussion?

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

**VOTED: To Add an Additional Condition of: "That the project shall not be utilized as a baseyard for cleaning and maintenance of heavy equipment."
(Assenting - J. Starr, J. Guard, B. U'u, S. Freitas, J. Amarin,
W. Iaconetti, P. Eason)
(Excused - D. Shepherd)**

Mr. Hedani: Carried. Main motion. Any other discussion?

It was moved by Ms. Freitas, seconded by Ms. Amarin, then

VOTED: To Accept the Recommendation of Approval of the Special

Management Area Use Permit, as Amended.
(Assenting - S. Freitas, J. Amorin, J. Guard, B. U'u, W. Iaconetti,
P. Eason, J. Starr)
(Excused - D. Shepherd)

Mr. Hedani: Carried. Thank you. You want to push onto the next item? Five-minute recess.

A recess was called at 11:27 a.m., and the meeting was reconvened at 11:37 a.m.

C. COMMUNICATIONS

1. **MR. MICH HIRANO, AICP, of MUNEKIYO & HIRAGA on behalf of the STATE OF HAWAII, DEPARTMENT OF EDUCATION requesting an amendment to the Special Management Area Use Permit in order to extend the time by one year to initiate construction of the Hana High and Elementary School 6-classroom addition project and related improvements at TMK: 1-3-006: 008, Hana, Island of Maui. (SM1 2004/0016) (D. Dias)**

Mr. Hedani: Item C-1, the application from the Department of Education has been withdrawn because they already have their building permit.

Mr. Foley: Yeah, we discovered this morning that the DOE got a building permit. So they don't need this extension. They activated their SMA permit by having a building permit. So that item is moot.

2. **MR. EDWIN FUJINAKA requesting a one-year Special Management Area Use Permit on the period to initiate construction of the Kihei NAPA Auto Parts Store, a 6,042 square feet one-story building containing retail area, warehouse space, restrooms, offices, and employee lunchroom at 185 Halekuai Street, TMK: 3-9-051: 038, Kihei, Island of Maui. (SM1 2003/0017) (L. Callentine)**

Ms. Livit Callentine presented the Maui Planning Department's Report.

Mr. Hedani: Questions for staff.

Mr. Foley: Livit, would it be a good idea to make it two years instead of 18 months just to give a little bit of flexibility given the – I mean, we'd hate to have them come back 17 months from now and need another six months. I don't see any harm in making a two-year extension.

Ms. Callentine: I don't see any problem with that.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Actually that was my comment. Is that I would like to see if we could vote on making it two years. May I make a motion?

Mr. Hedani: Commissioner Starr.

Mr. Starr: I actually have no problem with the request. I just want a little bit of clarity I guess from counsel as whether this is procedurally the right way to do it since it's listed as a communication whether – I mean generally a body receives a communication and then at that meeting, you know, decides what process to follow. Whether it's okay for us to do decision making on something agendaed as a communication.

Ms. Freitas: Can I say something while he's looking it up?

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I just want to make a comment while he's looking it up. Oh, you're ready? I'm sorry, I was just going to ask if – I thought this was the kind that just went to the director and he okayed.

Mr. Foley: My recollection is that we always do time extensions under communications.

Ms. Freitas: Okay.

Mr. Hedani: Corp. Counsel.

Mr. Moto: Mr. Chairman, no two boards, commissions do their agendas exactly the same way. Some boards and commissions and the Council does this, it's not necessarily required but for example, where they think action may be taken they have a statement saying as much. But based on my experience working with the commission, I haven't been with you recently but over the years, the format of the agenda that the Planning Department has used has remained relatively consistent throughout the years. That's not to say they couldn't change or be improved. But generally speaking, items under Communications where those that did not – were not subject to a public hearing requirement for whatever reason. Maybe because it already had been subject to a public hearing or was subject to a different procedure. So even though it's listed under Communication, those items that have been listed there traditionally have been action items or potentially action items, and therefore, I do believe the commission could proceed and take action on Mr. Fujinaka's

request.

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

Mr. Starr: Mr. Chair, I feel we should proceed with taking action on this but I would like to request from the director that in the future when an item comes up under as a Communication that that wording. I know we used to have that in Water Board be added on saying that action may be or decision making may be taken on this item just so that there's clarity to anyone in the public reading the agenda. Is that acceptable?

Mr. Foley: I guess. I don't think it's necessary, but I don't see any problem with it.

Mr. Hedani: Your comment has been noted. Any other discussion?

Ms. Freitas: Could I get a second?

Ms. Amarin: Second.

Ms. Freitas: Thank you. For two years.

Mr. Hedani: Motion for two years, seconded by Commissioner Amarin.

It was moved by Ms. Freitas, seconded by Ms. Amarin, then

**VOTED: To Amend Condition No. 1 to a Two-Year Time Extension.
(Assenting - S. Freitas, J. Amarin, J. Guard, B. U'u, W. Iaconetti,
P. Eason, J. Starr)
(Excused - D. Shepherd)**

Mr. Hedani: Carried. Thank you.

Ms. Freitas: Okay, I move to approve as amended.

Mr. Hedani: Motion to approve as amended.

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard.

It was moved by Ms. Freitas, seconded by Mr. Guard, then

**VOTED: To Accept the Recommendation of Approval of the Time Extension of the Special Management Area Use Permit.
(Assenting - S. Freitas, J. Guard, B. U'u, J. Amorin, W. Iaconetti, P. Eason, J. Starr)
(Excused - D. Shepherd)**

Mr. Hedani: Carried. Thank you.

D. MINUTES OF THE SEPTEMBER 12, 2006 MEETING

Mr. Hedani: Any additions to the minutes? Commissioner Iaconetti.

Mr. Iaconetti: I have a question, if you recalled during that meeting I brought up the idea of when expert testimony is obtained that it is at the expense of the individual trying to get something through the commission. I felt that this was unfair since the commission doesn't have the ability of getting expert testimony which may or may not be in agreement with what the applicant's individual had to say. Mike suggested that this had been brought up in previous planning commissions on the mainland and I think it was in California that he said that a fee is given to the applicant or made to be paid by the applicant so that commission has the ability or has the money in order to employ an expert in whatever field it feels necessary. Has any – does everyone remember this? It's in the minutes. Has any progress been made there?

Mr. Foley: This issue was brought up I think specifically with respect to the preparation of environmental documents, EAs and EISs and I explained that yeah, in California the common procedure is for the public agency to be the client and to hire the consultants, to choose which consultant to hire and to use the applicant's money for that contract. We have talked about it within the department but we haven't yet prepared any ordinance amendment or rules amendment that would accomplish that procedure. It's fairly complicated because it requires soliciting money from the applicant, getting bids from consultants, setting up a whole procedure of interviewing potential consultants. But it is something that we have on our "to do list." And I think it was an issue that was brought up in the department audit. So it is something that hopefully the department will pursue in the future. As I said, it's on our "to do list" to do. Right now we don't have an environmental planner. Kivette left and moved to California. So we don't have an environmental planner and we hope to replace her with somebody and that person would probably be tasked with setting up this alternative procedure for consideration, you know, not only by the planning commission but also by the Council. It would probably require Council approval because of the transfer of money different than we do it now. But yeah, hopefully it will be pursued and approved.

Mr. Iaconetti: Well, this probably is not appropriate for this commission but I think this is one, just one small example of how much time and effort and energy is lost when we have a change of administration and therefore, a change in the directorship of various commissions especially this one. Mr. Foley has presented to this commission and to the community a lot of great plans about changing the traffic situations, improving things and unless he remains in this position, all of this goes down the drain. And if he, someone else takes the position over and doesn't think much of what he has been trying to do for the last three years, it just postpones things that should be done. Again, I realize this is not the venue where I should be saying this, but it seems to me that we ought to have some change where directorships don't drop with the change of administration.

Ms. Freitas: I second that motion.

Mr. Iaconetti: I know this happens in many states and communities.

Mr. Foley: Actually it's quite rare. I don't know of it. It's common in Hawaii, but not to my knowledge in any other state.

Mr. Iaconetti: Just a waste of our time.

Mr. Hedani: Commissioner Starr.

Mr. Starr: First of all I want to express appreciation for Dr. Iaconetti for bringing that back to our attention. And it is important and I note there were two environmental documents just in the last several months that came before us, and you know, the runoff figures were very, very far wrong and you know, both of them were in – to the extent they were far understated. I don't think this is the right item to be discussing it under as far as agendas but I would like to request at one of the few remaining meetings before the end of term we add a short item toward the end of the meeting where we could just add a – make a list of those, some of those things that are on our plate, that are on our mind, especially that Director Foley has brought up to us and we can possibly make a list of things that we want to put on our plate for next year. And if Mr. Foley is still with us, and you know, I really think the service has been great, that can give him some forward momentum in addressing them. If it's someone else whatever it is, but that would be an opportunity to jog our memory and make just a sort of informal list of these things that we've discussed and want to move forward. So can we have that as an agenda item at that next meeting please?

Mr. Foley: Yes.

Mr. Hedani: What we're considering right now is the review and approval of the minutes. Although your comments are well noted Doc. You always come up with good ideas.

Mr. Starr: Can I move to accept and approve these minutes.

Mr. U'u: Second.

Mr. Hedani: Moved and seconded to approve the minutes.

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

VOTED: To Accept and Approve the Minutes of September 12, 2006.

Mr. Hedani: Carried. Thank you. So we'll agenda an item for a future meeting.

Mr. Foley: Yeah, the only meeting in December.

Ms. Freitas: Can I just add something to his request? Is for it to go on the agenda. I would just like to at that point suggest that maybe they look at having actual workshop where you could discuss these things ...(inaudible - changing of tape)... and I wish that we would have had something like that.

Mr. Starr: The passing of baton in end of March, April.

Ms. Freitas: I think that it would be great.

Mr. Starr: Yeah, that would be a good time to do that.

Mr. Hedani: Okay. As a followup to what the Doc said, just for your information when I served on the planning commission, the Police Chief reports to the police commission. The Police Chief is hired and fired by the Police Commission and that actually provides continuity for the department.

Ms. Freitas: Oh whereas we should hire and fire you? Oh, very good, good idea.

Mr. Hedani: So a potential consideration would be for the director of the Planning Department to be hired and fired by the planning commission which is not unheard of I think in other jurisdictions. Commissioner Starr.

Mr. Starr: Just a comment. I've been on the other side of that on the Water Board when the Water Board was semi-autonomous or whatever and we had the ability to hire and fire the director and at that time we had a director whose approval – you know, when we would do the evaluation year after year it was between 30 and 35%. Any meeting would have a roomful of people very complaining and yet it's a lot to put on unpaid commission members to fire a director. And it also creates an onus for a director to get stuff on board members.

Seriously, in the real world it happens. Mike would never do it, but it has happened in the past. So it's a twin edge sword.

Mr. Hedani: There are always two sides to every story. Next item on the agenda.

E. DIRECTOR'S REPORT

1. Status of the Maui Planning Commission Site Inspection of Kahoolawe

Mr. Foley: We have made some progress but we're not there yet. We have a list of dates. Clayton got a list of dates from the Kahoolawe Commission but we still don't have the letter from the State Attorney General. So he will – Clayton will be following up with the Attorney General's Office and the Kahoolawe Commission to try to schedule this. We got a list of dates in November which are now history. And we have a list of dates for December and maybe we'll need them for January. But we are making progress. That's all I can report.

2. EA/EIS Report

Mr. Foley: The next item is the EA and EIS list which you have before you and you'll notice that today you received two more documents, one for the Hyatt which is on your agenda for December 12th, and the other for the Pali to Puamana Parkway Environmental Assessment that's related to changing the community plan and zoning all along the Pali to Puamana corridor basically from agriculture to park. So that one's also on your agenda for December 12th. It's going to be a fun meeting. Hopefully Santa Claus will come. Do you have any questions about the EA/EIS Report.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Item on page 12 of 22, replace fence with wall on Puunoa Beach Estates. What is that?

Mr. Foley: Actually that's the SMA Report rather than -- I don't have the EA/EIS Report so we're skipping to items 3 and 4, the SMA Permits.

3. SMA Minor Permit Report

4. SMA Exemptions Report

Mr. Foley: Did you say 12 Jonathan?

Mr. Starr: Yeah, page 12 of 22.

Mr. Foley: And which one?

Mr. Starr: Puunoa Beach Estates. I'll be honest with you. I don't know where it is or what it is. I'm just concerned when I see shoreline replace fence with wall whether that's something that's cutting a shoreline view.

Mr. Guard: That's by the restaurant we eat at. Kaipali Place on North Beach.

Mr. Hedani: No, Puunoa is where the Jodo Mission is.

Mr. Guard: Where's Kaipali Place right below that. I believe that's – oh, no, no, you're right that's closer to the – like Baby Beach.

Mr. Hedani: Kaiala Drive.

Mr. Guard: Yeah.

Mr. Foley: Well, I think this is the cul de sac where they're just bought, built four or five little houses and it's not anywhere near the shoreline, but I'll check to make sure. But I'm pretty sure this is an interior lot across from the Mormon Church.

Mr. Starr: Yeah, if that's the case I have no concern.

Mr. Foley: Okay. Any other questions about these?

Mr. Guard: Not about these. I have a question when we're done with that.

Mr. Hedani: Okay, if there's no other questions for either the SMA Minor or Exemption Reports then those will be accepted as circulated. Our next regular meeting is December 12th, and before we close I'd like to actually reiterate the doc's comments. Mike has done a great job for the commission and ... (inaudible)...

Mr. Guard: I have a question for counsel, it just came up over the past few weeks. What is the, and I apologize that this is all redundant for the other commissioners. I don't know the process on a contested case if someone thinks a decision was made say like the one we just did, that building gets an SMA and enough people feel that some items weren't addressed. What's the time – I've heard conflicting answers on time frame. Is that in the conditions? One person told me it was in the conditions.

Mr. Hedani: So the question is how long does a contested case take?

Mr. Guard: No, no, no like to actually turn in a –

Ms. Freitas: ...(inaudible)...

Mr. Foley: Or is it an appeal?

Mr. Guard: Or an appeal or object to a decision.

Mr. Moto: Let me preface my remarks by saying that I'm taking these as sort of abstract questions. We're not talking about any particular item. But in general where a SMA permit has been filed, issued and really I think the – one of the questions is when does the clock start running and usually it doesn't start running until the order is completed and served. So even though a decision might be made, voted on today, it takes a while sometimes for the paperwork actually to be signed and someone to be given, said, here's a permit and decision and order. But once that decision and order is given, I think under Chapter 91, and I'm sorry, I don't have this memorized but I think it's 30 days essentially for a party, an aggrieved person and then the question would come up, are you an aggrieved person which is a question of standing of who can bring a lawsuit. But assuming that you meet that standard then you would have 30 days to file a lawsuit essentially appealing the decision, challenging the decision before the circuit court and the circuit court would review the order and record on appeal. That would start the whole process of civil litigation in the circuit court.

Mr. Guard: And so there's nothing that could come back at us as commissioners?

Mr. Moto: Well, you know, it's a possible that someone could file for a motion for reconsideration on the part of this commission. It doesn't happen very often, but it could in theory. I have to be honest with you, I haven't read your rules on reconsideration recently so there may be rules regarding who may file such a motion.

Mr. Guard: And where's that?

Mr. Moto: It would be in your rules of procedure or possibly if you are dealing an SMA matter it would be, it possibly would be addressed in your SMA rules which are separate rules from your Rules of Practice and Procedure. So anyone who's interested in these topics, should first take a look at both sets of rules to get a sense of what their rights are and what their deadlines are.

Mr. Hedani: That's all in our commissioner's binders.

Mr. Guard: Yeah, I'm just more concerned – I don't want to get stuck in a meeting longer than we're already giving here. On another topic, well maybe even later on and even next year but to it in there on trying to limit the amount of time. I don't think we make good decisions when we're at one place all night the night before and then we come here and

do double duty and things feel like being slipped away, that all of the work that I do researching and reading to then be like lets vote and get out of here. I think we do a disservice to the community when we're double stacked and all the planners are there with us all night on a Monday night, all day on a Tuesday when we have other aspects of our lives that no matter what, our own probably personal greed may get involved with hey, I got to take care of other issues, lets get out of here, we're tired, cranky, make a decision and well, we're not paid.

Ms. Freitas: Yeah, but you sign on for that. You know that going in.

Mr. Guard: But to limit the amount of time, 20 hours in two days?

Ms. Freitas: No. You should have been here during Bill 84.

Mr. Hedani: But I think what the commissioner is saying is just in terms of scheduling that it be considered in terms of scheduling so that we take it in bite size chunks.

Mr. Guard: Definitely. Just to look at the schedules that we're doing. Poor decisions for the benefit of the general public are probably made when our heads are not clear. I mean, I could say that at work any given day.

Ms. Freitas: Yeah, right.

Mr. Guard: Right? I mean, could you deny that there's a potential for bad decision to be made if someone is tired, cranky, overworked.

Ms. Freitas: Yeah, but you can have that in your own personal life. So you could have that all going on and walk through the door? You know?

Mr. Guard: Well, we know we're setting ourselves up for it with an eight-hour Monday night get home at midnight to be back here at 9:00 and try to run everything through the mill and possibly – well, I'm here to serve the public and I feel that is one way to benefit that.

Mr. Foley: Just so you know, all of those special meetings are scheduled by the commission. We always take them to you and ask you when you want to have those special meetings. Your point is a good one, but I want to make sure that you remember that the main reason we've done these back to back meetings is to accommodate our Hana representative who can stay overnight between those two meetings. Now we could have them two days in a row but then we'd have a problem with people that have businesses like Dr. Shepherd who already has a problem with the number of hours she spends away from her business. So it is tricky. And maybe the problem is that the evening meeting was much longer than we expected it to be and so everybody was more tired and more cranky

than we had hoped. But that's the reason that those back to back meetings are typically chosen and they are actually set by the commission. So if you think it's a bad idea then come up with a different one.

Mr. Guard: Well, I think for that reason we have to, and maybe as long as people know that when they sign up to come in front of – that it's on the agenda, that there is the potential that hey, this meeting may have to be recessed for a number of days. I mean, I'm going into a situation now that I'm going to be coaching full-time as well. And granted, I signed up for it, but I feel like I'm doing community service on that part too, and I've got 30 to 40 kids waiting for me and people that are being paid to come to develop things at some point everyone else's – It's like if we're making a bad decision this is repercussions for 30, 40 years not just I want to go home now.

Ms. Freitas: But that's why you have to be careful when you sign up for this. And if you have that complaint, and let me tell you there's a line full of people out there that would beg to be on the planning commission. So that's one of things. All of us, all of us have lives, businesses, families, we all have it, but we all knew that this was going to be a challenge going in. When I signed on we had 11:00 p.m. meetings. That's when we were getting out of here, 11:00 at night. So you know, this is heavy and that's what you sign on for and for five years.

Mr. Guard: I've just seen people get tired and they want to go home. I've heard it. I'm sure we could go over the things and say lets get out of here, come on lets go to a vote, and is that in the best interest of oceanfront property that has an impact on the public. I think some of those items, the people know, these are heavy areas. You got parks next to you, you got burials, you got archaeological sites –

Ms. Freitas: I'm sorry, I think you missed my point. The point is –

Mr. Guard: This isn't only for me. I think in general

Ms. Freitas: No, no, it's all of us. No, but the thing is, the people that you hear saying I got to get out here, shouldn't be here.

Mr. Hedani: Time out. Commissioner Starr.

Mr. Starr: I agree with Commissioner Guard, but I don't want to belabor this. I move to adjourn.

Mr. Guard: Yeah, okay.

Ms. Freitas: Yeah.

Mr. Hedani: Okay, there's no objection, we're adjourned.

F. NEXT REGULAR MEETING DATE: December 12, 2006

G. ADJOURNMENT

The meeting was adjourned at 12:07 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
John Guard
Bruce U'u
Suzanne Freitas
Johanna Amorin
William Iaconetti
Patti Eason (in attendance @ 10:05 a.m.)
Jonathan Starr

Excused

Diane Shepherd, Vice Chairperson

Others

Mike Foley, Planning Department
Brian Moto, Department of the Corporation Counsel
Milton Arakawa, Department of Public Works and Environmental Management