

**MAUI PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 12, 2006**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairman Wayne Hedani at 9:04 a.m., Tuesday, September 12, 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: Public testimony will be taken 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 planning commission. Public testimony will also be taken when the agenda item is taken up by the planning commission. Maximum time limits on individual testimony may be established by the planning commission. A person testifying at the beginning of the meeting will not be allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered. Is there any person in the audience that would like to offer public testimony at this time? If so, please step to the microphone and state your name for the record. Seeing none, we'll move onto the first order of business under public hearings, Director Foley.

Mr. Foley: I believe there was a request to take an item out of order. Kivette was or Clayton, which item was it that asked to taken out of order?

Mr. Yoshida: I believe it's the Keaka final EA determination, but I think Commissioner Shepherd is supposed to come in about 10:00 a.m. and I don't know what time Commissioner Freitas will be here, but I believe Commissioner Amorin has to leave at 12:15 p.m.

Mr. Foley: Should we wait for Keaka until Shepherd or Freitas are here Clayton?

Mr. Yoshida: I believe so.

Mr. Foley: Maybe we ought to stay with the agenda until those commissioners arrive because we probably are going to need them for the vote.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes sir Mr. Chair, I believe that in a few minutes Nancy Heinrich from the Office of Environmental Quality Control will be here. She's coming from Honolulu and that's the agency that oversees the environmental assessment and environmental impact statement process.

As you recall on Keaka as well as the Central Maui Baseyard issue we had some disagreement about the proper process for receiving and reviewing EAs and OEQC has kindly offered to send a planner to give us some comments. She has to leave here at noon to catch a flight back to Honolulu for another meetings. So I'm requesting that time be made available for her to give us her comments and that relates to Keaka, it also relates to the other EA we're seeing today and there's a further agenda item under Director's Report which relates to that matter. So I request your courtesy in allowing her to speak while she's here.

Mr. Hedani: Commissioners what's your pleasure? I know in prior meetings we ask that any request for presentations, you know like in the case of the representative that came in from State Water Commission, the discussion amongst the commission was that requests for presentations should be presented to the commission before the individuals show up for meeting so that we can jointly decide on whether or not to take the testimony or take the presentation. What's the commission's preference in this case? Commissioner Iaconetti.

Mr. Iaconetti: Is there some way we can make a ruling so that this doesn't occur in the future. I don't have any objection to having this individual speak to us today, but I think for future purposes we ought to have definite ruling on this commission as to who will be able to present information to us so that we don't delay our meetings.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I appreciate that there is – Doc states that he'd be happy to hear from her today. I do feel that this is a pressing matter since the matter is on our agenda and there were comments at the last meeting regarding this process and there seem to be some confusion over what our rule making process had been in the past over this. So do I think it's very important that we deal with this issue because I certainly disagree with the ruling that I had gotten from the Director and Corp. Counsel at the previous meeting and I think it's better for us to hear from the agency responsible rather than have to go through a litigation process to discuss and settle this item. So I do humbly request that we take this up.

Mr. Hedani: How many minutes is the presentation?

Mr. Starr: I don't know.

Mr. Hedani: Okay, the concern I have is you've invited a person to speak before the commission, you don't know how long the presentation is, you've essentially scheduled matters before the commission without regard for the opinions of the rest of the commissioners. If it's the commission's desire to hear this person out of sequence, they are covered under the Director's Report on the agenda for discussion for a future presentation we can do that if there's no objection.

Mr. Giroux: Is she here because she can testify on any agenda item, and one of the items is the EA so she can let us know –

Mr. Hedani: Is she present now?

Mr. Starr: She's on the way from the airport.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I just like comments from Corp. Counsel, and also I'd like to make a comment that I think, we, as commissioners should be notified prior to somebody scheduling and I guess to be scheduled here on the agenda. You know, out of courtesy for other members and for the Planning Director.

Mr. Starr: Just to be clear on this matter, when it came up I e-mailed the Chair and requested that it be put on the agenda and the response I got was that I shouldn't e-mail the Chair because it could be a violation of the Sunshine Law for me to make a request to put something on the agenda. And then the Director e-mailed me back saying that the responsibility for preparing agendas rests with Clayton Yoshida and he wanted to know if the invite had come from her. So I did make an attempt several weeks ago to find a way to do this and let everyone know through the Chair.

Mr. Foley: Let me just make a clarification. Basically the Chairman was right when he said that the way this is done is you ask at a meeting to have it scheduled for a future meeting and that way the commission can decide whether or not they want to have it on a future agenda and that's the proper way to do it not to e-mail the Chairman and not to ask me, but to bring it up at a meeting that you want to have something scheduled for a future meeting and then we can talk about it and the commission can decide whether to put it on the agenda or not.

Mr. Hedani: Okay, if there's no objection from the other members of the commission, what we'll do is we'll go ahead and take the presentation from the person coming from Oahu. We'll restrict the presentation to about 10 minutes. We have a very full agenda today, to have their presentation from OEQC. Is there any objection? Seeing none – Commissioner Guard.

Mr. Guard: I don't have an objection but maybe we can just limit it to the questions that Jonathan wanted presented instead of them coming and doing a presentation that they don't know – if it's just a general presentation that they do for anyone we actually – she's here for some specifics, correct?

Mr. Hedani: When you made the request to OEQC, did you request that they address certain items/

Mr. Starr: What happened and I will be clear and open about this is that I had felt that by receiving partial final environmental assessments we were not following the process per 343, and Section 11 as well. So I contacted the Director of the OEQC, Genevieve Salmonson, and Genevieve Salmonson felt that based on my comments that we were indeed not following the process to the requirements of the Hawaii State Law. And it was her decision to send one of her staff planners to come to our meeting and try to enlighten us on how the process should be done. It was not my request it was her recommendation, well, not recommendation but she said she would send her planner to address the commission. They are the agency that is responsible for overseeing the EA and EIS process. At that point, I just, you know, contacted the Chair. I believe she's here now as well. So we can hear from Nancy Heinrich of the OEQC rather than me on this matter.

Mr. Hedani: Okay, what we'll do is we'll – according to Corp. Counsel he indicates that under Communications Item E-1, states August 22, 2006, the Maui Planning Commission request to review its current procedures in reviewing final environmental assessments is properly agendaed for this meeting. So what we'll do is we'll go ahead and take her testimony on this item, the Maui Planning Commission may choose to maintain or modify its current procedures. Since I don't know this person can you introduce the guest that you've invited from OEQC?

Mr. Starr: Okay, I'd like to introduce Nancy Heinrich from OEQC and thank you very much for coming.

Mr. Hedani: Nancy if you could step to the microphone please? Hi, good morning, thank you for coming. We'd like to restrict the overall discussion on the OEQC matter to about 10 minutes and I'm not sure how long your presentation is or if you have a presentation or if you're here just to answer questions.

Ms. Nancy Heinrich: Well, I have a presentation if you want it. It's up to you. It's just a very general overview of the Environmental Impact Statement Law, the whole process.

Mr. Hedani: I don't think we need an overview of the Environmental State Law in general. I think what we have is a very specific question relative to documents that were produced and whether or not the documents can be received I guess in the manner in which they've been received. And your office apparently believes that they cannot, is that correct?

Ms. Heinrich: Can you ask me a specific question?

Mr. Hedani: Jonathan please enlighten us here.

Mr. Starr: Yeah, what I'd like to do is present her, she hasn't seen this and my discussion was with Genevieve Solmonson who is the Director. So Nancy was sent here and I believe she's probably in dark as for what the specific issue is. But I would like to show her this final environmental assessment that we received.

Mr. Giroux: Jonathan, you know, the representations that you've made to this committee and to OEQC right now are really frustrating because we have somebody in front of us who obviously does not have all the information that you have represented to us that you presented to them for them to make an opinion. Okay, that's really frustrating. It's wasting our time as a committee and it's wasting the State's time. We have a planner in front of us, if she would like to make statements about how we're receiving documents –

Mr. Starr: Excuse me Mr. Counsel, you're on record as saying that –

Mr. Hedani: Mr. Starr, will you let Corp. Counsel finish?

Mr. Giroux: Yes, but they don't have that information. And you're bringing in front of us like you went and talked to the State, got an opinion and brought somebody here to clear it up for us and yet, now you're starting to give them information.

Ms. Heinrich: May I say something?

Mr. Giroux: That's not a proper use of the committee's time.

Mr. Hedani: Nancy.

Ms. Heinrich: I think in my discussions with Mr. Starr is that I would address what HRS Chapter 343 and the Administrative Rules say regarding the formatting of final environmental assessments. I don't think I really need to know the specifics of this particular EA.

Mr. Hedani: Please proceed. Ten minutes. Please proceed.

Ms. Heinrich: I'm not quite ready. I need a minute to get out my glasses and stuff, is that all right? I sent, by e-mail I sent a small word file, did you distribute that?

Mr. Starr: I didn't have a chance to do that. I'm sorry. And I didn't know what the mechanism for doing that as a commissioner.

Ms. Heinrich: I prepared word processing file I only brought my own copy. I know the question is the formatting of final environmental assessments, vis-a-vis, the formatting of a draft environmental assessment.

There are two parts to the Administrative Rules, HAR 11-200, Section 9, nobody has a copy of this, right?

Mr. Starr: We have in our binders.

Ms. Heinrich: No. A-8, in the file I underline the pertinent sections and I'm just going to read the underlying sections and where it talks about all the requirements for putting together environmental assessment. This is 11-200-9(a) and there are eight items and No. 8 says, "for the final EA to receive and respond to public comments in accordance with Section 11-200-9.1 for draft environmental assessments."

Mr. Hedani: Nancy, can you speak directly into the microphone, this is being recorded?

Ms. Heinrich: I'm sorry. Is that better?

Mr. Hedani: Yes.

Ms. Heinrich: The very last sentence in 11-200-9(a)(8) says, "the draft environmental assessment as revised shall be filed as a final environmental assessment as described in 11-200-11.2." Now 11-200-11.2 deals with the filing requirements but I've been working at OEQC for 12 years and we've always interpreted this or we treat it, it's customary to treat a final environmental assessment as a draft environmental assessment with minor changes and with normally an addendum that includes the correspondence. That is the incoming correspondence and all the responses to comment letters.

Mr. Giroux: So are those two documents?

Ms. Heinrich: Two separate documents.

Mr. Giroux: Do you receive separate documents?

Ms. Heinrich: Yes. And intervening, is a 30-day public comment period and at the end of the 30-day public comment period the applicant then goes ahead and responds to all the comment letters, all the comments, prepares the final EA and then the agency processing it makes a determination regarding significance. Whether it's going to be a finding of no significant impact or whether the project needs to undergo an EIS review. So, that's it.

Mr. Foley: Nancy I believe you're familiar with the way we're processing EAs and submitting them to OEQC. Is there anything illegal about the process that's being used by Maui County?

Ms. Heinrich: I don't know what process you're using. The thing is the agency that's

processing the EA makes the final decision about whether the document is acceptable. OEQC, we can only advise you about what the law says and what the Administrative Rules say.

Mr. Foley: Okay, but we've submitted numerous EAs, final EAs, to OEQC. Is there anything incomplete about those submittals?

Ms. Heinrich: I don't recall any specific one. You know, I must have seen 500-600 EAs over the course of my 12 years there. So I can't recall specific instance.

Mr. Foley: Okay, the point I'm trying to make is that the planning commission adopted a certain procedure and that procedure was to – for the final EA to be a combination of the draft EA plus an addendum responding to the comments on the draft EA. That's a procedure adopted by the commission. I'd like Kivette Caigoy to expand on that just a bit because Kivette's been the planner that's been responsible for our environmental process.

Ms. Kivette Caigoy: Thank you. I'd just like to clarify that the commission act your own request in an effort to save paper and try to reduce the mounds of documents that come before you, you requested that you keep the draft environmental assessment and that when the final EA comes before you that you only receive the changes. So the addendum that Nancy is referring to. But what's actually filed with Nancy or with OEQC for publication is the full complete document, the draft EA with the addendum. Only this commission gets the redlined version because it was felt that this would save paper and help focus you on what changes were made instead of having to review the whole complete document again.

Mr. Hedani: Okay, given that scenario, and given what you've heard Nancy, is the procedure that we're using not legal?

Ms. Heinrich: The way I look at it is this, provided you have – you're familiar with the contents of the draft EA and whatever has been added to make the draft EA into a final EA and on that you base your decision on your determination on significance, I don't see anything illegal.

Mr. Giroux: And just to clarify that is the exact opinion that I gave the last time that this came up. This is nothing different than what we discussed at the last meeting. The fact that we have a document that we're getting an addendum and we're basing information on all the information that's available.

Ms. Heinrich: The law says that you take all the information presented in the draft EA into consideration in addition to all the comments that are raised in the comment letters, you take them into consideration also, and then make the agency makes the determination regarding significance.

Mr. Hedani: So based on what you've heard today, do you have a problem with how we were processing our EAs?

Ms. Heinrich: No, I don't, but then OEQC would never, ever bring a lawsuit against you.

Mr. Hedani: Well, it's your office that's indicating that our procedure is not legal.

Ms. Heinrich: Well, if you submit a final EA that has only – doesn't include all the information that appeared in the draft EA, we normally kick it back. We say this is an incomplete document. Doesn't qualify as a final environmental assessment.

Mr. Hedani: Commissioner Starr.

Mr. Starr: What this discussion is about is a document that the commission receives on which we're doing our decision making and the last two documents, we were given documents that were not complete and we were given them with the transmittals and paperwork that says this is the final environmental assessment. In this case, here is a document that has page 9 and 10 and then nothing about 21, and then there's page 25 and so on.

Now we had a discussion at the last meeting where we were told that we have to go back to previous documents that we had received – you know, several months ago before previous discussion and pick out which parts go from that and which parts come from the new document. Now I find this confusing. Perhaps, you know, my other commissioners – the other commissioners are much more confident than me, but to me this is a shell game where we're getting a very confusing bits and pieces.

Now a previous EA at the meeting before last for the Central Maui Baseyard, we were given a whole bunch of pages of addendum on the morning of the meeting. So that we had no chance to review that before the meeting and we were supposed to insert those throughout the document and I found that very confusing. I was not able to do the review which I feel is my responsibility. If I can't figure it out then I don't feel that I'm capable of doing what I'm supposed to do as a commissioner which is to review this document and it is my belief that we should for review when the time comes for us to do our decision making receive a complete document so that we can read through it and know what's in it and what's not. Not have to figure out is it part of the document where you got two months before, is it the document we got six months before and the discussion from last meeting among commissioners other than myself pointed out that other commissioners did not know what we were in fact reviewing. And that, I really do not believe that follows the spirit of the process.

So my question is to you when we go to review it, should we receive a full document or

should we receive bits and pieces up to the morning of the meeting and then try to base our opinions on those piecemeal and partial documents?

Ms. Heinrich: The EIS Law does not really address that, but I think in the spirit of the law, if you feel that you've received full information whether it's in one document or in partial document plus attachments and so forth and so on, as long as you base your decision your determination of significance on full information, then you're in compliance with the law.

Regarding the format of the document, this is an internal matter and OEQC cannot, really cannot address that, but the official version of the final EA, in other words, what is available to the public and to the local Planning Department that has to be the same. That document has to be the same. Whatever's available to the public is the same as is available to the local Planning Department. Those documents have to all be the same amongst themselves. But what's circulated to the commission here is – it's an internal decision.

Mr. Hedani: Thank you Nancy. Kivette did you have a comment?

Ms. Caigoy: No, that was going to be my comment was that we've heard from OEQC that the process we've used to date isn't, you know, "illegal, " and that if the commission wishes now to receive a full comprehensive final EA, I mean, it would just be a procedural change with the department and the commission.

Mr. Hedani: Okay, thank you Nancy. Let me ask you one question before you leave.

Ms. Heinrich: Sure.

Mr. Hedani: The procedure that we have now is when we receive the draft, we hold the draft and then if there are any changes that are made to the draft for the final, we receive a second document that has all of those changes redlined.

Ms. Heinrich: Okay.

Mr. Hedani: And the question before this commission is, is it required that instead of following that policy that the draft and the changes be combined into one document for subsequent review by the entire commission? Is that something that you're concerned about?

Ms. Heinrich: No. Actually I don't know how many of you are familiar with the Federal Law on EAs and EISs, the Federal Government has fairly rigid guidelines about formatting whereas the State Law has no guidelines about formatting. So to put into a kind of informal terms, if the required information appears before the front cover and the back cover, in other words, it's in there then your document is complete. Now you don't need the

redlining or italics that show change in text or anything like that. Often there will be a change in the text of the environmental assessment that is – that appears in a response letter.

Mr. Hedani: Well, the question here is does the document need to –

Ms. Heinrich: But which is appended to the back – which is appended at the back of the EA, but the original text is not changed.

Mr. Hedani: Okay, in this case the question is, do we need to receive the original documents and the changes combined in one document?

Ms. Heinrich: No. OEQC, I'm sorry, the law doesn't address, it doesn't address that. We often get document in several volumes.

Mr. Hedani: Thank you. Any other questions? Commissioner Guard.

Mr. Guard: I guess this might be for Corp. Counsel. Is it typical I guess either in law school or any other times is it normally that you would get only the changes and not the entire document back like when you're reviewing documents and any transaction or negotiation?

Mr. Giroux: In transactional work and in contracts –

Mr. Guard: Isn't it typically redlined?

Mr. Giroux: You get originals and then you get subsequent materials that are clearly stated to be addendums or changes and there's incorporation, you incorporate those changes into the original document and that's what we're doing. When we get updates – with these documents because they are so thick and they are being asked for further review, you get public comments, you get agency comments, you get, you know, even you can have an agency make a comment at the draft stage and during the final stage make an addendum and they can do another comment and that can either supercede or it can enhance or it can change completely their prior statements. So those need to be clear on those documents.

Ms. Heinrich: Can I say something? This deals, I'm assuming this discussion only deals with environmental assessments because the rules are somewhat different for environmental impact statements?

Mr. Hedani: Yes, we're dealing with environmental assessments in this case.

Ms. Heinrich: Okay.

Mr. Hedani: Any other questions for Nancy? Commissioner Starr.

Mr. Starr: I just would like to comment that you know, it still remains my belief that receiving the total document before we do decision making is the process that would lend clarity to this process and allow us to go through it. We were in the case of Keaka, at least I was given a full document before this meeting and I appreciate it and that is the process that I, for one, would like to continue to have followed because this way there's a full document that we can go through without having to find out which page goes where and what is superceded and what has been taken out. So I would like to go record as having felt that this is the –

Mr. Hedani: If you would like to –

Mr. Starr: – this is what we should be deciding on not a partial.

Mr. Hedani: I think it's helpful, you know, that you've raised the issue of having the entire document for everybody that's on the commission. I think if you would like to change our policy, we should defer that discussion until Diane is here because she's the one that suggested the current policy that we have.

Mr. Starr: Yeah, I'm happy to do that and I just want to thank the Chairman, especially thank Nancy for her time.

Mr. Hedani: Thank you Nancy.

Ms. Heinrich: You're welcome.

Mr. Hedani: Okay, first item on the agenda. Director Foley.

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

- 1. MR. MICHAEL W. FOLEY, Planning Director transmitting A Bill for an Ordinance Amending Section 19.510.010, Maui County Code, pertaining to Application and Procedures. The proposed Bill was introduced by the Department of Public Works and Environmental Management.**

The subject Bill proposes to streamline the process by eliminating the transmittal to and from the Department of Public Works and Environmental Management. Upon receipt of the application, the Planning Department will review for completeness and initiate processing those applications that are complete. The elimination of the

inter-departmental transmittal will lessen the paperwork burden affecting the staffs from both departments and will shorten the process by about one week.

Mr. Foley: This is basically a housekeeping matter. This is a code amendment that was recommended by the audit of the department that was done, I don't know, six or eight months ago. And we would like to have the planning commission forward this recommended amendment to the Council. The primary advantage would be that it would speed up the review process of all planning applications that wouldn't have to go to the Public Works Department. The staff report as it is will be presented by Joe Alueta.

Mr. Joe Alueta: This report will be presented to all three commissions and it does affect 19.510. Mr. Alueta then presented the Maui Planning Department's Report.

Mr. Hedani: Any questions for Joe? Commissioner Amarin.

Ms. Amarin: Thank you Chair. Joe, according to the transmittal letter and reviewing the context with the Council, so you are primarily saying that there is no burden of responsibility to the Planning Department to keep the application and going through it for completeness?

Mr. Alueta: No, it would simplify. It does not change – the real process of how we're actually are doing it and who's doing it, it does not change. It actually simplifies the process both for Public Works and for us and it will reduce the workload actually, especially the clerical who are mostly doing the transmittals.

Ms. Amarin: Great I thought it was going to be more burden upon the department, the Planning Department, but hearing you say that right now it makes better sense. Thank you.

Mr. Alueta: Yeah, I think the main issue of what we thought was going to happen was and the way the, I guess the way the bill was first initially talked about was that there is Central Coordinating Agency is a title and that title of the Central Coordinating Agency still lays with the Department of Public Works and Environmental Management. We were concerned that they were changing the designation of who the Central Coordinating Agency was from Public Works to Planning and that's not what's happening. This is just designating that in 19.510 in the application procedures, for our applications it doesn't go to the Central Coordinating Agency, it just goes to Planning. So yes, no additional work.

Ms. Amarin: That's great, well we need to make you the responsible because it doesn't make sense for the department, Public Works Environmental Management to take over something that you have the resources for anyway. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, in the real world when an applicant is trying to get stuff processed they really have to kind of walk it through all the different agencies and then coordinates that it gets processed and it's always been a really difficult process. And it sounds like this will make it easier and more transparent. I just want to be sure that it's not going to make it more difficult in any way?

Mr. Alueta: No. I mean, it will simplify in the sense that all correspondence in – whether or not additional information is required from the documents is all being done by the staff planners who are then notified. So when they review and if they feel that, you know, traffic study is needed or if any additional information is needed that is not addressed in the application, and from the required submittals, they're the ones that write the letter to the individual applicant. And the way, I mean, Clayton can correct me if I'm wrong, but the way we determine completeness is when we get all the information, we've actually had it sent out to agencies for comments, all of those comments have been addressed and the agencies that review it are satisfied. And the actual official determination of this application is complete and ready is when we schedule it for public hearing is when you get it. That's when we determine that it's complete.

Mr. Hedani: Any other questions for staff?

a. Public Hearing

Mr. Hedani: We'll go ahead and open it up for public testimony at this time. Are there any members of the public that would like to offer testimony on this agenda item? Seeing none, the public hearing is closed.

b. Action

Mr. Hedani: Joe, the action that you're requesting from the commission at this time is for a recommendation to the Council?

Mr. Alueta: That is correct.

Mr. Hedani: Commissioners?

Ms. Amorin: Recommend approval.

Mr. Hedani: Move by Commissioner Amorin for approval.

Mr. Iaconetti: Second.

Mr. Hedani: Seconded by Commissioner Iaconetti? Discussion?

It was moved by Ms. Amorin, seconded by Mr. Iaconetti, then

VOTED: To Accept the Recommendation of the Department to Recommend Approval.
(Assenting - J. Amorin, W. Iaconetti, J. Guard, B. U'u, P. Eason, J. Starr)
(Excused - D. Shepherd, S. Freitas)

Mr. Hedani: Comment Commissioner Iaconetti? Carried by the way.

Mr. Iaconetti: Stupid housekeeping thing is on the page where it says, "the Planning Department staff reviewed the changes and have no objects to it's" It should be objection. Minor but it bothered me.

Mr. Alueta: Thank you.

Mr. Hedani: Item 2 Director Foley.

- 2. MR. MICHAEL W. FOLEY, Planning Director, transmitting Council Resolution No. 06-57 containing a proposed Bill for an Ordinance Amending Chapter 19.27 of the Maui County Code relating to the Maui Central Park District, Kahului, Island of Maui. The proposed Bill would allow for restaurant and gift shop uses for cultural and performing arts centers and for botanical gardens as accessory uses. (J. Alueta)**

Mr. Foley: The second item is also one that Joe is going to present. This is a request for an amendment to the Code with respect to the Central Park Zoning District. The proposal is to add two uses to this district, the restaurant and a gift shop. And as you probably can imagine this is related to the Maui Arts and Cultural Center. This also is a recommendation going back to the Council. It came from the Council and we need to have the commission review it and then we're recommending that it be sent back to the Council for approval. The staff report will be presented by Joe Alueta.

Mr. Joe Alueta: This is a bill that's coming directly out of Council so this is a Resolution 06-57. You are the only reviewing commission because the Central Maui Park District only applies to Maui County and you're the sole reviewing commission for this change to Title 19.

In reviewing the Council's minutes and reviewing – this came about because of, as you

recall you guys have a conditional permit that you have been granting to the Maui Arts & Cultural Center to a restaurant and I guess a gift shop there within the Central Maui Park District. They have come before the Council several times for a time extension and Council felt that it would be better to have both the Maui Arts and Cultural Center as well as the future or active Botanical Gardens which is the old zoo site to also have the opportunity to do restaurants and gift shops on the property.

The concern I guess at the Council level was they wanted to make sure it was limiting to those two sites without sort of specifically saying it and so that not anyone within the Central Maui Park area would be able to do these so that's why their language is very specific.

A bit of history as when the Maui Central Park District came about. It was adopted prior to 16.15 which is actually our PK District or our Park Ordinance District which outlines the various uses within Title 19 for parks. So it's kind of interesting that you have a Central Maui Park prior to the actual entitlement or establishment of the Parks Ordinance.

With that in mind the department would like to take that opportunity with this amendment to try to maybe bring some consistency and that's – our changes on the second page of our memo report we felt we should just add accessory uses and structures and we would as indicated on A, the restaurants and gift shop uses for cultural and performing art centers and zoos and botanical gardens. So that would cover the main intent of what the Council is intended.

However, if you read the Central Park District, comfort station, gymnasium, historical building, all of these stuffs are not listed as permitted uses within the Central Maui Park District. So we felt it would be cleaner or we felt at this time we should add these uses as accessory uses and structures to the Central Maui Park District and this would be consistent with the PK District which is in 19.65 because you know, park furniture, pavilion, those are all existing.

Mr. Hedani: So everything under paragraph 2 that's underscored is new?

Mr. Alueta: That is correct. That will be added to the 19.27 the Central Maui Park District and that's taken directly out of 19.6.15, the Parks District.

Mr. Hedani: Okay, questions for Staff? Commissioner Iaconetti.

Mr. Iaconetti: Clarify one thing. Contracts to restaurant groups or the sale of other material that is not being limited to those people that are now running a food establishment. This is contracted out to anybody that asks for the right to have a restaurant there?

Mr. Foley: What they're doing now is they're bringing in food from other restaurants and serving it, but they don't have a kitchen to prepare food and this would enable them to actually create a full-service restaurant on the site which has been their goal for many years and they haven't accomplished it yet. But that's the end result is that they would actually have a restaurant at the MACC instead of bringing in food and serving it from other restaurants.

Mr. Iaconetti: So would they be contracting out to a restaurant group to do this or it's totally up to the?

Mr. Foley: I have no idea. Yeah, that's up to them whether they would operate the restaurant or they would have a contract with somebody to operate the restaurant, but it would be a restaurant rather than basically what they have now is catering from several different restaurants.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Included in the Central Park District is the Central Maui Youth Center, Boys and Girls Club, and there's a new facility for Boys and Girls Club that's going to be inaugurated this coming Saturday that was funded by the County and Federal funds and the plan there also calls for the addition of a gymnasium for the kids as well as using the old facility for vocational training and other youth related uses. It came to my mind that while this is going through it might make sense to include that area as well to allow those uses. I mean, inside the Boys and Girls Club there is a snack bar area that has been existing. I'm not sure how that ties in with it. I doubt there would ever be plans for a real restaurant. But certainly there will be a gymnasium and it's possible that they may be vending some stuff at the gymnasium and I don't know the vocational training center and I'm wondering how that could fit into this?

Mr. Alueta: I did talk to someone about that. I just felt that at the time, one, we didn't get the information ahead of time to thoroughly analyze it. Also, it was clear in the minutes from the Council that they were pretty much specific on where they thought this was going to be. You notice they did not include the YMCA in that which is ..(inaudible)... So they were specific that they were trying to limit this to cultural center as well as the botanical. I think the Botanical Garden was more looking as like a snack shop.

In talking with someone from the Boys Club, I'm not sure who it was, somebody asked me about that, their description of it right, is that it's not a restaurant that's open to the public. It's more of like a little snack shop just for the internal. So I did not see that as the same thing and it would not be prohibited. It was just more of a part of their operation. It's not like they're advertising to have people come off site to that facility or it was visitors. It's more for the club itself. And if they wanted to expand, I felt that they should go and talk to

the Council themselves and get it clarified. I did not feel that it was appropriate for, at least for our department to try to propose something that was clearly in the language – from the Council. They specifically didn't include anyone else.

Mr. Starr: How about a gymnasium – if a gymnasium gets added to the Youth Center. Would that require any process right now?

Mr. Alueta: Technically it's under the Central Maui Park District. It's not a permitted use. However, if you look at the amendments that we are proposing, we would allow for gymnasiums to be added which is consistent with what's allowed in the other Parks Districts.

Mr. Hedani: Any other questions for Joe?

Mr. Starr: Would that pertain to the area around the Youth Center or just the area at the –

Mr. Alueta: It's all of Maui Central Park District and I believe the Youth Center is in the Maui Central Park District.

Mr. Starr: So this will allow for a gymnasium at the Youth Center?

Mr. Alueta: Yes it will. Yes.

Mr. Hedani: Okay, any other questions? Thank you Joe.

a. Public Hearing

Mr. Hedani: We'll open it up for public testimony at this time. Are there any members of the public that would like to offer testimony on this item? Step to the microphone. Seeing none, public hearing is closed.

b. Action

Mr. Hedani: Action.

Mr. Iaconetti: I move approval.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Iaconetti, seconded by Commissioner U'u. Any discussion?

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

**VOTED: To Accept the Recommendation of the Planning Department of the Recommended Amendments to 19.27.
(Assenting - W. Iaconetti, B. U'u, J. Guard, J. Amorin, P. Eason, J. Starr)
(Excused - D. Shepherd, S. Freitas)**

Mr. Hedani: Carried. Thank you.

Mr. Alueta: Thank you.

Mr. Foley: The third public hearing is an SMA application for a 12-unit subdivision called Kalama Hills in Kihei and staff report will be presented by Dan Shupack.

Mr. Yoshida: Excuse me Chair, I guess we're pretty close to the 10:00 a.m. hour so maybe if the commission would consider taking a five-minute recess and seeing where they're at at 10:00 a.m.

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

A recess was called at 9:55 a.m., and the meeting was reconvened at 10:04 a.m.

Ms. Shepherd is in attendance at 10:00 a.m.

Mr. Hedani: Clayton, did you want to take Keaka out of sequence at this time or did you want to move onto Item 2?

Mr. Yoshida: I guess we're waiting for the representatives from Keaka LLC who were here but maybe outside.

Mr. Hedani: Maybe we can go on with Item 3 at this time?

Mr. Yoshida: Oh, I guess they are here. I believe that at the last meeting on August 22nd, the commission was – there were seven members here and the commission was unable to take an action because the motion did not receive at least five affirmative votes. We have eight of the nine members here and I guess Commissioner Amorin and Commissioner Eason were not here at the August 22nd meeting. But I am informed by Commissioner Amorin that she has to leave at 12:15 p.m. because she has a important medical appointment. So we ask the commission again if they would consider taking the Keaka

LLC environmental assessment determination item up at this time.

Mr. Hedani: Any objection from the commission? Seeing none, lets proceed to Item D-1. Commissioner Shepherd.

Ms. Shepherd: How do the other applicants feel about this?

Mr. Hedani: It's the commission's discretion at this point. Director Foley.

D. UNFINISHED BUSINESS

- 1. KEAKA LLC requesting an Environmental Assessment (EA) Determination on the Final Environmental Assessment (FEA) prepared in support of a Special Management Area Use Permit for the proposed 71-unit condominium project and related improvements at TMK: 2-1-006: 037, 056 (por.), and 2-1-005: 084, Makena , Island of Maui. (EA 2006/0012) (SM1 2005/0015) (K. Caigoy) (C. Suyama) (Draft Environmental Assessment was reviewed at the June 27, 2006 meeting. Final Environmental Assessment was reviewed at the August 22, 2006.) (Commissioners: Please bring copies of the Draft Environmental Assessment and the Final Environmental Assessment with you. Copies of the Final Environmental Assessment in its entirety has also been circulated to the Maui Planning Commission since the August 22, 2006 meeting.)**

The EA trigger is the use of county lands for infrastructural improvements.

The public hearing date for the Special Management Area Use Permit application will be scheduled for a future date after the Chapter 343 process has been completed.

Mr. Foley: As Clayton said, this item was on your agenda previously and it was – the action was postponed to today's meeting and the item before you is to consider a final environmental assessment for a 71-unit condo project in Makena. I would just remind the commission that this is not a decision on approval or denial of the application. It's merely on the adequacy of the final environmental assessment and I would ask Kivette to add any comments that she would want to add. Incidentally, this is Kivette's last meeting. She's leaving us for Santa Cruz. So you may all say aloha to Kivette. Losing our hula dancer and surfer.

Ms. Kivette Caigoy: Thank you. All I wanted to note is that by memorandum dated August 25th, the department did transmit to the commission the full comprehensive draft final environmental assessment and that we also transmitted to Commissioner Starr, Amarin and Eason an audio tape of the meeting in addition to a copy of the applicant's power point presentation to bring you up to speed for today's meeting. That's all I have at this time.

Ms. Freitas is in attendance @ 10:12 a.m.

Mr. Hedani: Does the applicant have any presentation that they'd like to make at this point?

Ms. Caigoy: No.

Mr. Hedani: No?

Ms. Caigoy: No, they don't.

Ms. Shepherd: I have a question for Kivette.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: What if there is no way to mitigate an impact? This is predicated upon the fact that there's a finding of no significant impact. What if there's no way to prevent a significant impact? I mean, this is all assuming that eventually it's going to be made pono, but what if it can't be?

Ms. Caigoy: Well, that's the difference between an EA and an EIS. When an EIS is prepared it's saying that there are impacts or there may be impacts that cannot be properly or fully mitigated. So it's just disclosing that these are impacts, and the information is included in that document. So that's the difference between the two documents. If you feel that this proposed action is going to – causes an impact that cannot be mitigated or needs additional information then that's when you would require the EIS.

Ms. Shepherd: But what if there's no amount of information that's going to make something to have no – I mean – because everything is assuming that eventually they're going to be able to build. I mean, there's assumption that somehow we humans can always fiddle with something so it will be all right but that's not always the case. So that's why things are always getting approved eventually. So I guess my problem with the system is, there's – we don't really have a way to say no, this isn't going to work. You can't do this here.

Ms. Caigoy: Well, I guess when it comes to your review of the actual permit like the Special Management Area permit you could deny it.

Ms. Shepherd: But by that time they've already invested, you know, by that time they're already entitled.

Ms. Caigoy: Well, the whole purpose of the EA document –

Mr. Foley: No.

Ms. Caigoy: Is to give you that information. It's just a discretionary document to give you information and make a determination on what the discretionary approval this body is issuing. So if this document shows that there's an impact that the commission feels as a whole cannot be properly mitigated then your option is to deny the project.

Ms. Shepherd: At what point? At the SMA?

Ms. Caigoy: At the SMA because that's where you have the discretionary approval.

Ms. Shepherd: So how often does that happen? Never.

Mr. Foley: I just wanted to add that, you know, keep in mind that the environmental assessment and/or the environmental impact statement are merely information documents and those documents contain information upon which you are to make the discretionary decision about the project approval and in some cases that's a change in zoning or community plan amendment or in some cases it's an SMA use permit. But the intent of the document is to use that information to make your decision. So if you feel that there's an environmental impact that cannot be mitigated and it's so serious to cause you to vote against the project then that's the procedure that should be used and our only advice would be to make that known as soon as possible. The earliest discretionary review as possible so that the applicant is well aware of the opposition and I think they are in this case because it's been discussed from the beginning since we've reviewed this EA. But the appropriate action would be to decide on the accuracy and completeness of the environmental document and then later to take action on the project approval or denial.

Ms. Kivette: I don't think it's too late. I mean, that's the whole purpose of the Chapter 343 process is to provide you as decision makers a document where you can make an informed decision. So that's what you're acting on. Does this document have the information you need in order to make that informed decision when the SMA comes before you.

Ms. Shepherd: But when it's approved essentially we're saying we have a finding of no significant impact.

Ms. Kivette: And so that's why at this stage if you think there are going to be significant impacts you instruct the applicant to proceed with the environmental impact statement

process. Environmental impact statement process doesn't say there's no significant impacts. They're saying there might be significant impacts that cannot be fully mitigated. And it includes any additional like, technical studies needed for you folks to make a decision when the SMA comes before you.

Ms. Shepherd: But essentially that's just making you jump through a few more hoops with eventually the results the same at the end. So, Mike how often does it happen that a EIS or EA, you know, dances through here and then they don't get an SMA?

Mr. Foley: Well, what more typically happens is that the EA or EIS is used to modify the project. You know, quite often the project design is modified or the number of units is reduced or there are different mitigation measures adopted, for instance, for traffic mitigation. That's much more common. The one project that I remember that was denied based on the environmental document was the Puanoa project in Lahaina that was rejected by the Council based primarily on traffic identified in the environmental document and that was a large project, very controversial for a long time. It was denied twice by the Council on the same grounds.

Ms. Kivette: Let me further expand on that, the environmental impact statement also gives a more detailed discussion of alternatives. So if the project is modified during the EA process you can ask for additional technical studies on whatever alternative you feel would maybe lessen the impact to a more acceptable level.

Mr. Hedani: Corp. Counsel.

Mr. Giroux: I want to just take this opportunity to also comment just because really I think your focus is on, you know, this body reviews a lot of SMA permits. And a lot of time the discussion comes to, you know, what is the impact, how did we know what the impact is and if there is an impact what is the mitigating – you know, how can we mitigate it. This document, this informational document is really crucial to your basis. When you make that decision – if you make that decision in a vacuum with no scientific evidence, with no reports, with no data then when it's challenged then we're in a weak position. But if you have an informational document that has the scientific research there and it has – you have a document that tells you, it says you do not, we cannot mitigate this impact, we cannot do it. Well, when you're at the SMA level and you see that, and you're going to deny it, you point to that document and you say, based on this, now we have a basis. We cannot amongst ourselves create a mitigating factor. We can't see one and that is the basis for a denial. But anything less, if you're challenged, you're going to have a really hard time because we're all lay people here, we don't go out and do our own scientific research, we don't have the resources to do. So this informational document is your only source, well not your own, but it is your best source right now.

Mr. Shepherd: And there's the problem, because the informational document is being prepared at the behest of the applicant who hires their consultants and of course they're going to find there's no significant impact.

Mr. Hedani: Or they could hire consultants that find that there is.

Ms. Shepherd: But they never would. I mean, you pick your consultants to say what you want.

Mr. Hedani: Right.

Ms. Shepherd: Forget it, never mind.

Mr. Hedani: Is there any comment on the environmental assessment at this point? Commissioner Iaconetti.

Mr. Iaconetti: Do we have to declare reasons why we want an EIS in addition to the EA?

Mr. Foley: Yes.

Mr. Hedani: Yeah.

Mr. Iaconetti: We can't just say –

Mr. Hedani: It's not because you just feel like it. Because you find that the EA is inadequate in terms of providing you with specific information. And then you cite what that information is that you required.

Mr. Iaconetti: The other comment I have and this has occurred on several occasions, as Diane has just reiterated, the experts are hired individuals by the developer. We do not have the ability to hire our own experts. This just doesn't, to me, it's totally wrong. We should be able to have the ability to get people who disagree with their hired experts and we don't have that ability. We don't have the money to do it. And that to me is very one-sided.

Mr. Foley: Could I just comment on that? That's a topic of conversation that we should have about the environmental review process and we did have it several years ago and I think it was before you were on the commission. The procedure throughout Hawaii is for the applicants to hire the consultants and pay the consultants. The procedure throughout California is the for the consultants to be hired by the public agency with the applicant's money and the decision as to which consultant is hired is made by the public agency. And the public agency determines whether the application is complete and reviews the scope

of work, etc. And we talked about several years ago, we talked about adopted that procedure here instead of the one that we have, but at that time, the commission didn't feel that was appropriate or necessary. It would require some pretty significant revisions to our planning commission rules and the operation of the department. So it's not a small change. It's one that we may eventually want to make but it is a fairly complicated procedural change both for the applicant and for the county. It certainly has its merits. The way it operates in California and in other states is that the applicant puts down a deposit and then the staff does a request for proposals, reviews proposals, selects a consultant, agrees upon a price. The applicant puts up the money for the entire price of the consultants work and the consultant also pays the staff 10 or 15 or 20% of the contract amount for processing of the document. And that was the fee is related to the complexity of the project. But it is a significant modification from our current procedures. So it's not something that we could accomplish real quickly. But you know, if the commission wants to go that direction we should have a discussion about that, you know, not on today's, you know, not at this time, but at another time. And I can give you more information about you know exactly how it would work and what would need to be changed.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: I think this is extremely important because I've been impressed with the one-sided hearings that we have where the applicant is providing all of the professional information at their cost and we have no way of objecting to anything that the professional individual has to say because we don't have the back group. But if we had the ability to hire someone who may have a different idea about – about the thing that we're discussing. It would be must transferred and perhaps we would not have all of the developments that have come in question that we've had to approve. I would personally like to see this condition put this whole thing forward. I realize it's complicated, but on the other hand I think it's very important. I think that the two views ought to be presented when somebody has a development that is questionable to the commission and we only have the one individual that is telling us, yes, this is perfectly okay. I won't say any more, but it bothers me to see that the applicant is the only guy that presents the people to testify and we don't have any way of counteracting that.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Thank you Chair. For the years that I've been on the commission this has come up several times and every time it does, what we are told is all of the people that work for the county are supposed to be our resource people. So when we have a – that's why I asked for traffic to be here every hearing because the traffic engineers say one thing and we're like, well guys do you agree with them? So we're supposed to look to actually our county for those answers and they are supposed to be the one doing the checks and balances. Now obviously there's a problem with that and maybe that's where it is. Maybe

our superiors or heads aren't putting these employees to task because they're supposed to be giving us that information.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Well, that's all well and good except that a state as large as California with the problems they have don't feel that they're employees are adequate to counteract the professionals that the applicant brings in. I think our county employees have enough to do and I think it would be much wiser to get somebody other than the applicant's expert to testify. I would personally like to see this commission start the ball rolling so we can have that ability.

Mr. Hedani: Let me ask a question to Mike. Mike, can the commission initiate an action that causes another study to be generated?

Mr. Foley: Yeah, the commission probably on the agenda item that we already discussed partially maybe on E-1 with respect to the procedures for environmental assessment, the commission could ask the staff to prepare a document or a study addressing this issue. I think that would be appropriate. It's going to be somewhat difficult with Kivette leaving because she's our expert, but it is a subject that's come up repeatedly and it is something that the commission should debate again. The only additional thing I wanted to make with respect to what Commissioner Freitas just said is that in some areas we can offer expert analysis of an environmental assessments. But the problem is there are other areas where we cannot offer expert analysis. In archaeology for instance, we don't have an archaeologist on the staff, we have had in the past but we don't have right now. And that's also true for soils engineer or a hydrologist or a biologist or botanist. There are definitely specialties where it would be advantageous if we were able to independently contract with consultants to give us advice about the adequacy an environmental assessment or an environmental impact statement. So I think it's appropriate to have that conversation but I don't think we need to probably belabor it now other than to just have the commission to, you know, ask me to have such a study prepared and we'll do it. We'll give you updates as to you know, how long it's taking and how we're doing.

Ms. Caigoy: Can I just add something really quick? That's why we transmit the EA document out to all the various federal, state and county agencies to get their comments so you get their opinions and their technical expertise on the project and the technical studies that were included in that EA document.

Mr. Hedani: Okay, if there's no objection from the commission, we'll ask Mike to proceed with that action. You are so asked.

Mr. Foley: We probably just need to have the majority of the planning commission agree

by consensus that that's what you want.

Mr. Guard: Yes.

Ms. Shepherd: Yes

Mr. Hedani: No dissent. Okay, the question before the commission at this time is on the documents that have been provided to you, the environmental assessment. What's your pleasure? Commissioner Starr.

Mr. Starr: I do want to say I appreciate having received the full document but I'd also want to say that I'm going to need to recuse myself on this matter because I perceive a conflict because of a business dealing with a principal in this organization that occurred since the last meeting.

Mr. Hedani: Thank you. It's so noted. Any other discussion? Action. One way or another gang, we need to do something.

Mr. Guard: I have a question. In the draft EA it talks about the only impact is going to be construction of the water line. So is that what triggered them to have to do an EA versus the SMA permit at all?

Ms. Caigoy: The trigger was the water line because it's within the county lands.

Mr. Hedani: In the county right of way.

Ms. Caigoy: Is a use of county lands.

Mr. Guard: So is there a reason that we barely talk about the water line and all of the comments in here about how great this project is?

Ms. Caigoy: You can ask the applicant that question.

Mr. Guard: Okay, I mean, it just seems like it's two different questions. One presenting that we're doing the EA because of we're using county lands to do the water line versus is this a good project and because it is going to have significant impacts on that park in particular and so even if that's not part of it, I think it would be good to have next to the rec center for everyone to be able to see how close the restroom and the public facilities actually are and maybe the distance to the ocean in general in that pavilion area or the uncovered concrete that is used somewhat as a park. But I just don't want it to become absorbed into the Keaka Beach Club that what people thought was a open park is then – I think that is where – and people that are for this project know it is going to be an impact. So I don't know why

we read through all of this if the only reason we're seeing it is for the water line.

Mr. Hedani: Mr. Fujimoto.

Mr. Don Fujimoto: Mr. Chair, Don Fujimoto representing Keaka. The reason why the EA addresses the whole project is as I understand it for the environmental requirements we have to address the impact of building this water line, what it services. And what it services is –

Mr. Guard: Oh, the secondary cause.

Mr. Fujimoto: The project. So that's why it's – that's what it is. That's my understanding.

Ms. Caigoy: Sorry, I misunderstood. That's why the whole development project, the 71-units condo is addressed because you have to look at the whole picture. The water line wouldn't probably go in if they wouldn't have come forward with this project, I'm assuming.

Mr. Guard: The project.

Ms. Caigoy: Right. And the water line, the county wants the water line within the roadway. I mean, they could and they tried I believe to have that water line put within their property boundaries which wouldn't have triggered the EA.

Mr. Guard: Okay.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I'll make a motion to accept the EA.

Mr. Hedani: Is there a second?

Ms. Amarin: Second.

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

Mr. Guard: Well, even if it looks like this gets approved, I hope for the SMA, just for educational purposes, maybe not everyone here as gone to use that park, but the bathroom is fairly close to the property boundary line that it appears to be where the rock wall is. I don't know if memory serves me correct or not, I mean, there's barbed wire, I'm assuming that's probably not going to stay because then the Keaka Beach Club might not have the easiest way to get to the beach park if barbed wire stays, but it is a good buffer between private and public. I think it does have a significant impact and I don't know if

they'd want to defer to try to show us what kind of impact it's going to have, but for that reason I just feel like it's absorbing almost oceanfront property of the public and that's difficult for me. It could be a great project, it's LEED certified. I'd love to see them do this for all the Hawaiian Homelands that they build to be the real good guys. But to say, oh because of everything we've done in the past, I should get to do this project, I think 10, 20 30 years from now, you're going to be looking at, these guys – it was able to absorb a park by mega millionaires living there and I, for one, have a problem with that.

Mr. Hedani: Commissioner Guard. Is your question – Is that something that can be addressed at the SMA level in terms of a demarcation line between the park and the project?

Mr. Guard: I think for all of the commissioners to make a vote that's really – that is something that should be seen. Every map doesn't show where the actual ocean is and where the park features are located in that to then approve it without – I mean, I've been there recently, I paddled by there, I know the area, I don't know if everyone else does. So to give a blind yes vote, I know it's going to have an impact and I want to sleep at night.

Mr. Hedani: Any other discussion? Commissioner Iaconetti.

Mr. Iaconetti: I don't know if we, as commissioners, are supposed to go look it up each of these developments or proposed developments individually. I do not have that information and I think it would be appropriate to have a – to go out there and look at it as a commission.

Mr. Guard: Even if it's not a site visit on every project, I mean, I really, I'm not trying to propose that because I think we're all busy enough. But even just like we ask for story boards, we ask for this, we ask for that, it wouldn't be that hard to even to get a building a permit, you want to see how far you are from a boundary line, how far you are from this and that. They're calling it the beach club because it borders a park that borders the ocean and they – it will make more money having that beach club there than if the beach club doesn't go in. That's just how it is because if not, it's going to be the Keaka Golf Club and Maui sells beaches not golf courses alone. That's what Arizona and New Mexico do. So for all of us here we're giving up. I mean, I'm young, I'll be there in 30 years hopefully maybe longer, we'll see.

Mr. Fujimoto: Mr. Chair, if I may?

Mr. Hedani: Mr. Fujimoto.

Mr. Fujimoto: We'll be glad to do a site visit prior to the SMA hearing.

Mr. Hedani: Or you could do photographs and a story board of what the site looks like in the area of the park and the beach club.

Mr. Fujimoto: Either way. We thought that the commission didn't want to go out there prior to SMA.

Mr. Hedani: Okay. Commissioner U'u.

Mr. U'u: You know, I understand J.B.'s concerns and I understand the beach, it's a beautiful beach, but I think at times that's why you get the beach setback. I think it's in place. You know, I not saying – I saying they should follow setbacks and even more so follow what he's saying, but that's why we got the rules in place as far as the setbacks. Now you own the property, you have a setback you have to follow, granted it's – I like that beach, I hardly go there. I know the place. Actually I built that pump station right in the back of it so I'm very familiar with the beach access and I know I even took my family pictures there, but you know, we see a lot of the kayak guys there, you know, all through Makena. You know, that is an impact regardless if we say it now or say it later, we get the people who getting married there, the businesses making money, you know, that is another impact that impacts myself for beach parking. So we can look at it at that way, but yes, I agree with JB into saying that if it affects the beach park area that we should do a follow up on it.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: I'd like to make an amendment to the motion. That we defer decision on the motion until a site visit has been accomplished by the commission. That's an amendment to the motion.

Mr. Hedani: Okay, the motion is to defer –

Ms. Freitas: No.

Mr. Hedani: The motion is to defer the motion until we do a site visit of the project?

Mr. Iaconetti: Or approval of the motion whichever they want to –

Mr. Hedani: I think we need a clarification on procedure, Corp. Counsel.

Mr. Giroux: I think a cleaner option would be if – were you the maker of the motion?

Ms. Freitas: No.

Mr. Iaconetti: No.

Mr. Giroux: Okay.

Ms. Freitas: Withdraw the motion, withdraw the second?

Mr. Hedani: Okay, who was the maker of the motion?

Mr. U'u: Me.

Mr. Hedani: Commissioner U'u, the comment from Corp. Counsel is that if the maker of the motion agrees to withdraw the motion then we can consider the motion to defer?

Mr. U'u: Well, this is the way I look at it. We still can do a site visit prior to the SMA, so I will not – you know, I'm all for the site visit, don't get me wrong. I want to go there. I want to look at the boundaries. I want to see everything, but we still can accomplish the site visit prior to the voting.

Mr. Giroux: We need to address the main motion. The motion to defer is a contrary motion to the main motion so it's not going to be accepted by the chair at this time and we're going to take care of the motion that's before us that's been seconded.

Mr. Hedani: Kivette.

Ms. Caigoy: Can I just clarify that if you're – the decision before you is the completeness of the EA document. So in order to – if you feel like you need a site visit in order because there's some criteria that you are not comfortable with yet, then yeah, I can see doing the site visit before the EA. But if you feel that the significance criteria has been met, then you can act on this document and still do the site visit before the SMA and then any concerns be addressed at the SMA where you could put conditions on the project, but what's before you if you turn to Chapter 8, page 82, is the significance criteria and that's your criteria to use in order to determine whether this document is a FONSI or it requires an EIS.

Mr. Hedani: Okay, are you ready for the question? Clayton.

Mr. Yoshida: Mr. Chairman, I guess I point of order, maybe I missed it, but I was wondering if there was a request for public testimony before the – I know there's a motion on the floor, but –

Mr. Hedani: I think we had the public hearing at the prior meeting.

Mr. Yoshida: But I guess under the Sunshine Law –

Mr. Hedani: We need to open it up for public testimony again?

Mr. Yoshida: Well, maybe Corp. Counsel can clarify but I believe this is an agenda item and
—

Mr. Giroux: Yeah, you know, we are in the middle of deliberation but if the Chair feels more comfortable you can just ask if there's any further comment from the public at this time?

Mr. Hedani: Is there anyone from the public that would like to offer further testimony at this time, please so signify by stepping to the podium and stating your name. Seeing none, public hearing is closed. Thank you. Any further discussion on the main motion which is to approve the EA? Commissioner Amarin.

Ms. Amarin: Thank you Chair, it's just my comments. What triggered the EA was a water line and I believe the applicant went through the whole duration of bringing all of these consultants and I believe integrity should be there, but there is always a question behind everything. But more information has been brought before us. I think the EA should go forward and if there's any concerns let us do it at the SMA. Thank you.

Mr. Hedani: Any other discussion?

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

**VOTED: To Approve the Environmental Assessment as a Finding of No Significant Impact (FONSI).
(Assenting - B. U'u, J. Amarin, S. Freitas, P. Eason, W. Hedani)
(Dissenting - S. Shepherd, J. Guard, W. Iaconetti)
(Recused - J. Starr)**

Mr. Hedani: All those in favor please signify by raising your right hand. Commissioners U'u, Freitas, Eason, Amarin.

Mr. Giroux: Chair needs to vote.

Mr. Hedani: Those opposed? Commissioner Shepherd, Guard, Iaconetti. The Chair votes in favor. The motion carries. Thank you.

Mr. Iaconetti: Point of order.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: I believe we are working under Roberts Rules and Roberts Rules as I recall state that if the Chairman expects to vote on a motion that he has to declare that before the

vote has been taken.

Mr. Giroux: At this point when the vote was taken there was no expectation that the Chair would vote. We have quorum. If all the members were to vote in favor the Chair would not have had to vote.

Mr. Iaconetti: That's all very true, but if the Chairman is going to vote he is supposed to declare the fact that he is going to vote before we have a vote.

Mr. Giroux: The Chair was forced to vote because we forced into a non-action. So he could not have predetermined his need to vote in this case.

Mr. Iaconetti: I don't think that's stated in Roberts.

Mr. Hedani: What do you suggest Commissioner Iaconetti?

Mr. Iaconetti: I suggest that in the future if the Chair intends to vote that he so states that he's going to vote before a vote is taken.

Ms. Freitas: How could he know?

Mr. Hedani: Okay, in order to correct the situation in this case would you like to do a revote? No. Okay, motion carries. Next.

Mr. Fujimoto: Thank you.

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

A recess was called at 10:42 a.m., and the meeting was reconvened at 10:52 a.m.

Mr. Hedani: Commission is back in session.

B. PUBLIC HEARINGS

- 3. MR. RICK ARMOUR requesting a Special Management Area Use Permit for the Kalama Hills Subdivision in order to develop the existing vacant lot into a 12-lot single-family residential subdivision in the R-2 Residential District at 55 Auhana Street, TMK: 3-9-017: 023, Kihei, Island of Maui. (SM1 2005/0042) (D. Shupack)**

Mr. Dan Shupack: In interest of time and to prevent a kind of overlapping of information I'm

going to allow the applicant to present a power point presentation and then I'll give a summary of the department's comments.

Mr. Mich Hirano: Good morning Chair Hedani and Commissioners. My name is Mich Hirano with Munekiyo and Hiraga. Our firm is representing the applicant, Rick Amour, with the project before you this morning and we've prepared a power point presentation to explain and describe the project for you.

The project is located in Central Maui, Auhana Road and South Kihei Road. It's approximately 500 feet from Kalama Park. Piilani Highway is approximately 1,500 feet to the east. Auhana Road transitions to Kanani Road and there's a signalized intersection at Kanani and Piilani Highway. Auhana Road has a right turn and a left turn lane onto South Kihei Road and southbound South Kihei Road has a left turn lane into Auhana Road.

The subject parcel is on the north side of Auhana Road. It's a 3.24 acre parcel. The parcel is zoned R-2 with a minimum lot size of 7,500 feet or square feet. The subject parcel is surrounded by single family residential developments as well as multi family apartment units on the Kanoe Street. This is a single family zoned parcel to the west of the subject parcel and Island Surf Condominium is the next property over which has commercial uses on the first two levels and multi family uses on the remaining floors. South Kihei Road of course is to the west and Kalama Park is on the other side of South Kihei Road.

This is looking at the subject parcel. This is the driveway entrance into the property. This is Auhana Road and this is Kanoe Street and we're looking across sort of north westerly view to the subject property.

This is the property and this is approximate location of the driveway into the property and the property slopes from a – gradual slope from a easterly to westerly direction and the underlying soils of the property are pu'uone sands.

This is again, looking at the subject property on the north eastern view. This is Auhana Road and this is the driveway into the subject property. As you can see it's heavily treed and vegetated.

The subject property and the proposed project is basically a 12-lot subdivision with a single driveway cul de sac into the property and all the properties then have driveway off of this main entrance road.

There is a 5,000 square foot burial site in the subject property that will preserved for burial features that were discovered during the archaeological inventory survey and I'd like to explain a little more about the particular aspects of that feature and the archaeological inventory survey at a later point in the presentation.

The subject properties range in size from 7,600 square feet to 11,300 square feet. The larger units and properties are on the eastern side of the property and there's another few larger lots on the western portion of the property.

The applicant proposes to develop the subdivision and offer four model homes. This is model 1 and model 2. The homes range in size from 1,600 to the larger size at 2,100 square feet. The homes are three-bedroom and four-bedroom homes. And one of the models, model number 4, has a attached ohana and there four model number 4's available on the project. And I'll just go back, these are the model number 4, and this lot is a model number 4, and there will be the option to build an attached ohana on this particular floor plan. The rest of the homes will not have ohana units. So there would be a maximum of 16 units in the property.

This is just a typical elevation of the homes. They're two-story homes with double garages and this is a split level home. I believe that's the model number 4.

In terms of grading, the project, the subject property has a gradual slope from the east to the west. The existing storm water runoff is calculated at approximately 3.1 cubic feet per second. After development the proposed storm water runoff was calculated at 11 cubic feet per second. So the project's – I'm sorry 12 cubic feet per second, so the development will generate approximately 9 cubic feet per second and the drainage basin – it's an underground detention basin for the drainage which is located on the western portion of the property. Basically the grading will be just to develop the house pads, building pads and this is the burial site and that will remain as it is in the current situation but there will be a grading done on these upper properties and there will be a little bit of fill put into the lower parts of the subdivision.

This diagram is basically – we wanted to bring it forward for the commission's review that during the preliminary subdivision review by Department of Public Works and Environmental Management the turning radius of this roadway was such that they requested that it be a 30-foot turning radius into the driveway into the property. And in order to achieve that radius, the applicant is looking at a possible boundary lot adjustment with the adjacent property to the west to take about approximately 800 square feet to increase the radius of the driveway into the subject parcel and take out and transfer this portion of the project area to the adjacent property. This slight amendment will not affect the site plan that was presented before you today.

An archaeological inventory survey was carried out on the property. Nine burial features in situ were documented. The features were believed to be in the historic period. There were three displaced human skeletal remains that were found as well during the inventory survey. Two of these remains belong to the in situ burial features that were previously discovered in the nine burial features. And there was one additional feature that was

discovered that was not part of the previous nine burial features. There were as well human skeletal fragments representing eight individuals recovered from the subject parcel in May 2001. This was discovered during the unpermitted grading activity on the site. I believe that this particular SMA application will correct that and will resolve those outstanding issues that resulted from that particular previous grading. The burials are believed to be of non-Hawaiian or nonnative Hawaiian and believed to be of Asian descent.

SHPD has accepted the inventory survey. We understand from the archaeologist who is present this morning that upon recent contact that a burial – the burial treatment and preservation plan that was submitted to SHPD for review and approval in May of 2006, has been reviewed and with one minor correction regarding the terminology that was included in the plan that SHPD has accepted the burial treatment and preservation plan.

The burial preservation site has been incorporated into the site plan as I mentioned earlier. It's a 5,000 square foot area and the area would preserve in place the existing burials and would also allow for the re-interment of the burial fragments that were discovered in 2001. Those fragments are, I believe, are stored at the SHPD field office in Wailuku. Archaeological monitoring will be carried out in association with ground altering activities to mitigate adverse impacts to cultural and historic resources.

Another item with respect to this property is the presence of coqui frogs and there is a coqui frog management plan that has been instituted with the Maui Island Invasive Species Committee (MISC) to eradicate the coqui frogs. There has been approved eradication plan that is in place for this property as well as three surrounding parcels. The eradication plan includes a number of I guess methods. It includes hand capture, spraying with citric acid solution and habitat modifications. To date, five spraying operations have been carried out on the subject property. MISC feels that the treatment plan has been successfully implemented. The applicant has committed to develop and implement the management plan until there is full eradication of the coqui frogs on this particular parcel and will work in conjunction with MISC throughout the operations to insure that there is no spreading of the coqui frog. The development of the property will as well, eliminate the coqui frog habitat. All the vegetation that you see on the property will be ground or relocated and this will be all under the supervision of MISC.

In terms of affordable housing and parks and recreation. The applicant has met with the Department of Housing and Human Concerns and the applicant will comply with the workforce housing guidelines that have been circulated for review and the applicant has indicated that they will meet this requirement through a contribution towards the South Maui Resource Center. So affordable housing will be provided through a contribution of funds to a nonprofit organization developing affordable housing and will not be put on site. The applicant, as well, will comply with the Parks and Recreation facility development

pursuant to Maui County Code, Section 18.16.320.

In terms of project summary, the applicant has met with neighbors on March 23, 2006. The project was well-received. The adjacent neighbor to the west however, had expressed some concern regarding drainage and privacy. The applicant assured the neighbor that there would be no impact on drainage and in fact, the drainage would be improved by the improvements that the applicant will make on the onsite drainage retention basin to prevent the drainage from flowing onto the adjacent property. And the applicant also committed to establish landscape screening between the western property lots and the adjacent neighbor.

The Kihei Community Association reviewed the project plans at their April 18, 2006 general membership meeting. No concerns were raised at that meeting and in fact, the project was very well received.

I think in summary the proposed project will have a positive and beneficial impact on the neighborhood. The target market for the project is basically the existing Kihei residents who want to have a location that is conveniently within walking distance to commercial areas as well as to beach and parks and would probably like to upgrade their residential living quarters. So that is the presentation of the applicant. And if you have any questions Mr. Rick Amour and the applicant is available and as well, the project consulting team.

Mr. Hedani: Questions from the Commission? Commissioner Iaconetti.

Mr. Iaconetti: The previous digging into this area that produced the skeletal remains, was that done with proper permits?

Mr. Hirano: No, it wasn't Commissioner Iaconetti. It wasn't and the activity was terminated at that point and the property sat idle until this particular application is coming forward. The applicant has met with Public Works as well as Zoning Administration Enforcement Division to clarify and resolve the actions of the previous activity. This SMA application before you this morning, approval of this application will to a great extent resolve the permitting for that action as well as approval of the re-interment of the features that were discovered during that activity.

Mr. Iaconetti: I understand that one of the individuals that is involved with the application was the same individual that did the unpermitted digging in that lot?

Mr. Hirano: Yes.

Mr. Iaconetti: I wonder if our legal counsel can tell us is there – are there any problems with this? Is this just ignored or what do we do about it?

Mr. Giroux: I'm not sure what the department would do as far as notification of any violations at that point. I think the department should probably be asked if they were notified of the violation.

Mr. Iaconetti: Was the department notified of the violation?

Mr. Foley: I would defer to Dan. I'm not aware of it.

Mr. Shupack: The department is aware of the violations and that matter is being handled by Zoning Administration and Enforcement Division of the Planning Department. Currently I believe that they are working to resolve the violation. Part of it of which is going to be resolved through burial treatment plan. But as far as any fines or any issues regarding the previous violations has not been resolved as of this date.

Mr. Iaconetti: Do you expect them to be resolved?

Mr. Shupack: Yeah, I would have to check with Aaron Shinmoto who is the Manager, who is dealing with this issue. He's the head of our Zoning Division.

Mr. Hedani: Dan, is there normally a fine that's imposed, and if so, what is that fine?

Mr. Shupack: There is a fine, there's a potential fine because it's an SMA violation I believe there's standard fine and then there's like up to a thousand-dollar fine per day once they decide to impose the fine.

Mr. Hedani: Can the applicant answer the question as to whether or not it's been resolved at this point Mich?

Mr. Hirano: My understanding, we've contacted Mr. Shinmoto and he has referred it to Corporation Counsel to see if that status of that, and it wasn't Mr. Giroux, it was another Corporation Counsel representative to see what the status is of that, and if it is effective, if it was properly served. It wasn't a clear-cut situation.

Mr. Hedani: Okay, I think you can always make it a condition of approval if you wanted to attach something like that.

Mr. Iaconetti: I think the terminology "clear cut" pertains here because whoever this individual was was actually grubbing and digging into an area that he had not gotten proper permission for.

Mr. Hirano: That's correct.

Mr. Iaconetti: I would like to know what the resolution of that offense is going to be.

Mr. Hirano: I think the applicant is committed to resolve the matter and it's before the County to determine what the resolution action will be. As far as the grading activity, the applicant has met with Public Works and can resolve that with the reapplication of a grading plan and a permit application as well as to pay the penalty for the previous action. That was resolved, or that in principle that would resolve that matter. However, the special management area permit resolution has not been determined, however, approval of this special management area use permit would to a large extent will bring that forward so that he could resolve the grading permit.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I believe that this is premature for us deal with this until this issue has been resolved and also I understand this property is still infested with coqui frogs and it's still one of the vector points. I'd like to hear from MISC. Are they here with us?

Mr. Hirano: We've asked if MISC would be available for this meeting. I'm not sure whether they're here or not.

Mr. Hedani: Is there a representative from the Maui Invasive Species Committee here? Seeing none, does the applicant have a response?

Mr. Hirano: Yes, the applicant has been working with MISC. Five sprayings have occurred to date and feel that the implementation of that program, the coqui frog eradication program is being effective. The applicant is committed to continue to work with MISC until there is eradication of that. And basically as I mentioned in the power point presentation habitat modification is going to be a well a method of eradicating the coqui frog. And development of this project will definitely modify the coqui habitat. And the precaution that MISC is taking and the applicant will be taking in conjunction is that to insure that there is no spread of the coqui frog and that's being undertaken.

Mr. Hedani: Did you indicate that the vegetation on the site was going to be ground?

Mr. Hirano: Yes.

Mr. Hedani: Ground up, so it will be sprayed and ground up and destroyed essentially so that you don't export the problem to other areas.

Mr. Hirano: Yes. And anything that does leave the site will be under the supervision of MISC.

Mr. Hedani: I see. Commissioner Shepherd.

Ms. Shepherd: We know the traffic is – well, the road, Auhana Road itself is problematic and Kalama Heights Senior whatever it is has committed to making a design for the entire road to improve it. So is the applicant participating in efforts to – are they making a donation to the – to?

Mr. Hirano: No, not at this point.

Ms. Shepherd: All right.

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

Mr. Guard: I believe the park fees changed. Do you know what those new fees are?

Mr. Hirano: I don't have the exact figure. I know that it has gone up substantially. When we discussed this with, I guess with Parks and Recreation Department had reviewed the application and made their comment it was a \$102,000. However, I think it's close to double. But the fee is paid on the subdivision approval. So that's when the fee will be paid. What is effective and current at that time will be paid.

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

Mr. Guard: We've been talking about drainage and the runoff kind of the similar – are there either catch basins or cinder pits anywhere in there?

Mr. Hirano: I'll have Stacy Otomo just describe the drainage plan.

Mr. Stacy Otomo: Good morning Mr. Chairman, Members of the Commission, Stacy Otomo. To answer the question there will be a graded inlet catch basins along the roadway. And what will happen is there will be a underground perforated storage pipe on the western boundary roughly in this area ...(inaudible - not talking into microphone)

Mr. Guard: To catch excess runoff, anything created. I think we've been in some other projects have been looking into absorbing more from what is there and then it's natural state to irrigated and landscaped and ...(inaudible)...

Mr. Otomo: The County's drainage requirement is to maintain the increase in runoff. When these systems are designed we normally design with a factor of safety. At this point, we don't have an actual design for the system so I cannot tell you what it is. But there would be a factor of safety included in the design of the perforated drainage pipe.

Mr. Hedani: I have a question for Mich. The recommendation of the Urban Design Review Committee I think was to have access to the burial site. Has that been provided?

Mr. Hirano: Yes, there will be an easement from the end of the cul de sac as you can see here to the burial site. So there is a walkway. There will be a walkway from the roadway, end of the cul de sac to the burial site.

Mr. Hedani: Okay, and as far as the burial site itself there was a recommendation for a low rock wall, has that been incorporated?

Mr. Hirano: Yes, there's there a three-foot rock wall and I believe that that's part of the burial treatment plan.

Mr. Hedani: In your presentation you indicated that the site would be left in its present condition or is it going to be –

Mr. Hirano: It will be slightly modified I think in order to create the walkway and the rock wall.

Mr. Hedani: Is it going to be landscaped and grassed at this point?

Mr. Hirano: I'll let Lisa discuss that, the archaeologist.

Ms. Lisa Rotunno-Hazuka: Good morning Commissioners. Lisa Rotunno-Hazuka. Yes, we're going to grass the 5,000 square feet. There'll be a low rock wall around the perimeter and each burial that we found will be marked on the surface.

Mr. Hedani: Okay, the concern that I had was, I guess if you try to improve it with grassing then you'll have kids thinking it's a park and playing all over the place. And that's the intent of having a rock wall is to separate it.

Ms. Rotunno-Hazuka: Right. Right to separate, and then we're going to have signage that explains that it's a historic cemetery, please respect the area. If the burials are marked then hopefully, you know, they won't jump on the burials in that area. But you know, just like any historic cemetery where you can walk and it's peaceful, that's what we're going to try to do here.

Mr. Hedani: And the grass is going to be maintained by the community association?

Ms. Rotunno-Hazuka: Yes.

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

Mr. Starr: Yeah, I see that the environmental representative for the county is here with us and since MISC has not deemed it important to come, I wanted to ask Mr. Parsons who is familiar and has been involved whether he knows if the coqui frogs have indeed been eradicated and whether these sprayings have done the job.

Mr. Hedani: Mr. Parsons.

Mr. Rob Parsons: Hi, Rob Parsons, Assistant to the Mayor for environmental concerns. I just got off the phone with Teya Penniman, Manager of MISC and asked for the status of frog control on the Kalama Hills parcel. Actually, going back a few months I submitted comments to the staff planner back in March. I spoke with the applicant, with Rich Amour, with Mich Hirano, subsequent to that toured the property, also met with MISC down there, Teya Penniman for MISC came down at that time as did Adam Radford who is the leader of two frog crews that MISC now has.

What Teya just told me on the phone is that there's a four to six-week rotating control spray operation that's been happening on the property for some time and it has been effective is how she put it. I don't know that it's possible to say that there are no frogs on the property at this time, but they have established protocol to control them. And because the perimeter is on part of the – the adjacent parcel has a bunch of irrigated nursery stock and has coqui frogs there I think the efforts that were made were to establish a perimeter so that – because there's no irrigation at this time that I'm aware of on the Kalama Hills parcel, it wouldn't be a desirable place for the frogs to be. They like it wet. They have to be in moist environments. So I guess without knowing any more the specific details that the frog crew might know, and Teya also regretted that they couldn't attend the meeting today. They were aware that it was going on, but she advised me just to come down and say that control has been ongoing and effective.

Mr. Hedani: Thank you very much Mr. Parsons. Any other questions? Commissioner Iaconetti.

Mr. Iaconetti: The introduction of the coqui frogs on this property apparently was as a result of the applicant or at least one of the applicants putting nursery material on the lot which also was not permitted I understand, is that correct?

Mr. Parsons: I don't know the specific answer to that. I know that there was some nursery stock there. I was told by Mr. Amour that it was his intention to remove that nursery stock.

Mr. Iaconetti: But isn't there a member of the applicant group that is responsible for utilizing that property for nursery stock?

Mr. Parsons: That's probably better answered by the applicant.

Mr. Hedani: Does the applicant have an answer to the question?

Mr. Rick Armour: Yes, good morning. My name is Rick Armour. Yes, I am the applicant. Now, I have a partner on the property who is a owner of the nursery next door. That is where in some opinion where the frogs originated from. At one time there was nursery stock on the property for storage and that is no longer happening. We no longer have active irrigation, we no longer have active storage of nursery stock there. So that's the condition of the property now.

Mr. Iaconetti: But the property was being used without permit for irrigating the nursery stock that your partner put on the property, is that correct?

Mr. Armour: When I became involved in the property approximately two years ago, there was nursery stock on that property at the time. It has since been removed.

Mr. Hedani: Any other questions? Commissioner Shepherd.

Ms. Shepherd: I have questions for the Mikes. When we were discussing Kalama Heights the senior living, we made a condition that they draw up a plan to improve Auhana Road and I asked you, I said, "is this going to help?" You said, "the county didn't have money to do anything about it at the time, but having the design would help." I mean, it's something drawn. So I think it's appropriate for this developer who's going to be adding possibly 24 more cars on the road to contribute to improving Auhana Road. We're going to have the design, now we're going to need some funds to be doing something. Is that – I mean, obviously it would help. You have any suggestions?

Mr. Hedani: Mr. Miyamoto.

Mr. Mike Miyamoto: Mr. Chair, the frontage improvements obviously will have to be – are required by County Code, beyond that that's certainly going to be something that the commission is going to make a decision on. The frontage, if the design is completed, the applicant will be required to do their portion of the improvements. If that includes a bike lane, then it's a matter of widening the pavement. It's not a separate bike path. I think we were looking at putting a bike lane, not necessarily bike path in that area.

Ms. Shepherd: Right, okay. So that should be part of the design, right?

Mr. Miyamoto: That could be included as part of the frontage improvements, the width, depending on which side of the property. If I remember right the Kalama Heights property was looking to put the bike lane on their side of the property as they had control over it whereas this is on the opposite of the roadway, the bike lane may not be on their side of the frontage improvements, but certainly the pavement width and the right of way width

required as stated in our comments would be –

Ms. Shepherd: Yeah, well I'm not thinking so much about what they would have to do anyway, I'm talking about, you know, contribution to the eventual redesign of – well, not the redesign but the actual rebuilding of Auhana Road, and do they have a traffic impact fee for the project?

Mr. Miyamoto: Mr. Chair, at this time one has not been established. I think Director Foley may be better to answer of the status of where that establishment of the traffic impact assessment fee project is at this time.

Mr. Foley: The traffic impact fee study is on the Council Planning Committee's agenda I believe for two weeks from yesterday which would be the last week of this month. I haven't seen the draft report yet, but we're expecting it in the next few weeks. I suspect that the Council Planning Committee will be forwarding a recommendation to the full Council, but until I see the report and we analyze it I don't know whether it will be, you know, complete enough for it to be implemented by the Council in the next couple of months. But that's the status, is the consultant's report is due eminently. Until then there is no formal traffic impact fee established. What the commission has done in the past has been to ask the applicants whether or not they'd be willing to make a contribution based on the size of their project and its potential impact on the regional traffic or the neighborhood traffic and in this case, we're talking about a maximum of 16 units, 12 houses and potentially four ohana units. So you could ask the applicant whether they would voluntarily make a contribution. It is important to recognize that any contribution like that needs to be proportional with the impact. It needs to be somewhat related to the amount of impact that 16 units could have. In other words, you couldn't ask them to, you know, do a major improvement for the whole region.

Ms. Shepherd: So what is appropriate? That's what I'm trying to get out of somebody.

Mr. Foley: What's appropriate is to ask them if they would be interested in making a contribution.

Ms. Shepherd: Well, if it's a condition, of course, they're going to be interested.

Mr. Foley: Well, we don't have any particular number. We could look at other projects in that area, but I don't know off the top of my head.

Mr. Hedani: Mike Miyamoto, do you have an idea of what it would cost to – the bike lane is paint, right? Painting on the roadway?

Mr. Miyamoto: The bike lane is primarily a little bit wider asphalt area that gets striped onto

the roadway edge area.

Mr. Hedani: So the asphalt would actually have to be widened as well as marked?

Mr. Miyamoto: Yes. But it would somewhat be discontinuous at this point because it's going to be on the other side in front of Kalama Heights and there's an area of houses that aren't being improved so there would be no bike lane and then some how it would magically appear in front of this property.

Mr. Hedani: So it's going to be a hopscotch bike path? Okay, any other comments? Commissioner Guard.

Mr. Guard: Well, as Mich mentioned, I know the parks fee is going to up so they're going to be encumbered with some fees, but just out of I guess standardizing what we're doing, we also sent a condominium back a few months back for these same issues on educational I guess donations. It's not really a fee, it's just ..(inaudible)... them wanting to do it, and that person came up saying, well this is primarily going to be vacation homes. We're not going to do anything with education. This is probably needed in this community the 12, the 16 homes. They will have impacts but just so we aren't hitting a few, missing a few even on the drainage and the Wailea was asked to go beyond just the drainage that they're going to create and try to collect more based on irrigated water flowing to the ocean and with nutrients in it may be worst than rainfall on a vacant piece of property of kiawe trees that you're not really throwing a bunch of fertilizer around out there right now I hope. So I'm just concerned with that. It's going to come back where so and so go tagged with a bunch of requirements and then the next guy didn't and then next guy did just to either start keeping track of what people are being asked to do. I mean, it would –

Mr. Hedani: Does the applicant have any comments regarding the discussion on bike paths at this point?

Mr. Armour: Yes, as far as the bike path, I'm in full support of that and we would very much enthusiastically support contributing to the developing of a bike path on the frontage of our property. So that's something that we would be favor of.

Mr. Hedani: Okay. Commissioner Shepherd.

Ms. Shepherd: I can't see that it makes much sense to have just a section of a bike path going on the other side of the road there's going to be a bike lane. So I'm more concerned with, what would you like to contribute to the improvements of Auhana Road?

Mr. Armour: That's a pretty big question. ...(inaudible)... answering the right way. I'm not sure what the improvements are. I'm not educated to what's the general plan they have

there.

Ms. Shepherd: I mean, obviously we're not asking you to redo the road, but there is going to be a design to – it's rather a mess up at near Piilani Highway and the county always says, well gee we don't have the money for it. So what I'm asking is, what would you like – and nobody can give me a dollar figure.

Mr. Armour: And I'm not going to be able to do that either. I mean, it would be something that we would certainly consider. Yes, absolutely.

Ms. Shepherd: Right, because it's to your benefit also to have Auhana driveable without accidents.

Mr. Armour: I totally agree.

Ms. Shepherd: The other thing we'd like to see is that when you do your drainage, make it not just what your minimum requirement is. Make it for more than that.

Mr. Armour: That's actually already been in discussion. We've already discussed that fact and that point is well taken.

Ms. Shepherd: And do you anticipate having families with children?

Mr. Armour: Yes, we do.

Ms. Shepherd: And what would you like your voluntary contribution to DOE to be?

Mr. Guard: Or to the school direct.

Ms. Shepherd: Or the school directly.

Mr. U'u: Maui High.

Mr. Armour: Certainly will be another consideration that we would be willing.

Ms. Shepherd: I don't know at this point do we go let them mull it over and come back this afternoon? I don't think we should leave it open ended. I mean, yes, they have all the best intentions in the world but I think we should have a dollar –

Mr. Hedani: Whatever conditions you attach is totally up to you at this point. Commissioner U'u.

Mr. U'u: Comment. You know this project has a sour taste in my mouth and it is because of all the illegal activity that been leading up to where we are now and it seems like there's no penalties against you guys and it seems like you can come your way, con your way and we can approve a project to make a profit even though you was – this project was – started off on the wrong foot.

Mr. Armour: Well, I'd like to address that first.

Mr. Hedani: Mr. Armour.

Mr. U'u: I'm not finished yet.

Mr. Armour: I'm sorry, go ahead.

Mr. U'u: You know, here we are you coming in front of us for a SMA project and I thought you supposed to be penalized for doing bad things. Maybe it wasn't you, granted I have no idea, but it seems to me that you can do a wrong – do wrong, keep going through the process with no penalties and then here you go, I want a SMA for my project regardless of what happened prior and I think we do need to hear from MISC before we move on. That's part of my concern and the illegal grading and the illegal activity. You know, my kids I scold them when they do wrong. You know, wrong is wrong and that's simple. No come back ask me for go some place when you did wrong in the first place. And that's how I see it. It's a sour taste in my mouth and that's just my opinion.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Yes, I would like to also contribute to that. As Commissioner U'u stated, you know, we can't have people be encouraged to do the wrong thing and say well, I'll pay the penalty later and then we don't even know what the penalty is. And I'd be very interested in seeing those dates. Okay, so there was a violation, still no penalty, then another violation and then later another one and I also have a really bad feeling about that. I would be very interested in finding out what those penalties are and when they're due. And if those numbers aren't great enough to discourage people from doing this then we're in trouble, no wonder the Planning Department has a hard time processing things. Things are in default, you know, in violation. So I'm very interested in those numbers.

Mr. Hedani: Does the applicant have a response?

Mr. Hirano: Yes, in terms of Commissioner U'u's concern and just, you know, the bad taste in your mouth as you expressed it, the applicant made every effort to try and resolve this before the SMA hearing. There was this matter discussed with the Planning Department in May. We've continually had called to see if there has been any resolution or progress

on this matter. My recent email to the Planning Department to Zoning Administration and Enforcement was in late August, and as well, I just received a comment in September that there's just no comment back from Corporation Counsel. I don't want to put the blame on anyone, however, I think the applicant has made every effort to try and get this matter resolved, it just hasn't been timely in terms of the resolution. I don't know if it ever will be an ...(inaudible)...

Mr. Hedani: Was the fine a thousand dollars or a hundred thousand dollars? Do you know what the scope of the fine was?

Mr. Hirano: I think the scope of the fine I think was \$10,000.

Ms. Freitas: And a thousand a day.

Mr. Hirano: And a thousand a day. But, it wasn't enforced and it wasn't – the applicant has –

Mr. Hedani: It was never followed up on.

Mr. Hirano: It was followed up on by Mr. Armour.

Mr. Hedani: No, but it was not followed up on by the department.

Mr. Hirano: Yes, because I think – I'm not sure, I'm not sure why or what the surrounding or the circumstances are about it. But I think the applicant has made every effort to try and resolve the matter prior to this hearing.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Okay, but – and Mich, nothing towards you but, a violation is one thing, okay, and a mistake, but you know, this is unreal. The grubbing and repeated violations and then over to the coqui frogs and putting materials on there. So it's – you know what we see. You know, so it's one thing. Like a say, for a violation, my God he made a mistake, you didn't know. But ...(inaudible - changing of tape)...

Mr. Hirano: We're not denying that and we're not trying to minimize the action. But I think this applicant has made every effort to try and resolve it and put things back into a way in which it can be adequately handled. I think I went through with respect to the archaeological inventory survey to do the archaeological inventory, to meet with SHPD to submit a burial preservation plan so that it can be properly dealt with and documented and respectfully treated in terms of resolving this matter.

Mr. Hedani: Commissioner Guard.

Mr. Guard: And Mike left, this may be for him. Off of parks, this goes back to the bike lane and everything else and I'll finish up with what I was talking about – can some of those fees go towards improving like there's a bike lane go into parks or no? Even though that's recreational use? Okay. Or if you can tag some of those funds to go that route? Because the park fees did go up extremely. I mean, they're On –

Mr. Hirano: They're around \$23,000.

Mr. Hedani: Park fees I think are set by ordinance.

Mr. Guard: Okay. Well I guess if they can come back saying where they want to start using that. I'm wondering if – I hear everyone's concerns on this side and I think it's valid. Maybe we should either table it to the next meeting to say how much drainage we think we can incorporate, talk with Stacy and then – I think if someone came up with a, oh we're willing to work on it, we're willing to work on it, I don't think because of the past that may not work on this project where you would be willing to do that with people who have a track record of stepping up to the plate and doing their part. I think with these little, already a couple strikes on them maybe we should have some concrete figures to look at on either computers for the schools, how much drainage we can take off of the street going to Kalama Park instead of just – we can't keep talking about what happened about a few years ago, right?

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: There is a note on page 24 that deals with the north-south collector road. It states it is also important to mention an assumption that the report makes that in the projected completion year for the project 2010, the north-south collector road will be completed. And then it says, as of the date of this report, the Planning Department has not been able to confirm as to whether this is a viable assumption or not. In other words, we're being asked to approve something that deals with the completion of the north-south collector road and there's no statement as to whether it will be completed by the time the project is completed. It also states, this issue will need to be addressed by the traffic consultant at the Planning Commission hearing. I haven't heard that gentleman.

Mr. Hedani: Is the applicant's consultant present?

Mr. Hirano: The traffic consultant is here and there was discussion between Public Works and the traffic consultant so I'd like to just ask Mr. Miyamoto.

Mr. Mike Miyamoto: Mr. Chair, if I may respond?

Mr. Hedani: Please.

Mr. Miyamoto: In response to this comment I checked with staff, the design plans for the north-south collector road as stated in here is complete. It's a matter of getting the fundings from the Fed. As you heard, the previous funds were deobligated and we're in the process of reapplying to get the construction funds for this project. As part of that process we have to do an additional study. Because the community came out so strong against north-south collector road being four lanes it reduced the transportation capacity, regional transportation capacity in this area so the State Highway Administration has required the county to do an additional study to look for two additional lanes, travel lanes paralleling the coastline possibly mauka of Piilani Highway. So we're in the process of developing that study and working with the SDOT to get approved so that we can get back on the STP, the STP for funding for this north-south collector road.

Mr. Iaconetti: So should we go ahead and approve something without having this cleared up?

Mr. Hedani: The question is, should we go ahead and approve something without having this cleared up?

Mr. Miyamoto: As part of the north-south collector the design that's been completed and we're just waiting for the funding. We're also going to be looking at this terminus point to possibly do other traffic transportation improvements along that Auhana corridor. As you're familiar with that one area between where Auhana, Kanani and Kanakanui meet that area, the county has a wide right-of-way. We're looking at other alternatives as to possibly how to reconfigure that roadway to create more of a mauka-makai flow from Piilani Highway to South Kihei Road, suggestions from area residents have included possibly realigning Kanani Road to create that corridor. So there are other studies that we are working on as Public Works.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: Well, given that we're spending a hundred billion dollars a year in Iraq, I think if we're waiting for the funding for the north-south collector road we should try and put a little some on the side so that we can actually get it done. I move that we defer the issue, give the applicant a chance to go back and come – return to us with, you know, more concrete figures, a number that they're willing to contribute to schools, to traffic, and a design for the drainage. I think – and again, I would want to do this with anybody frankly, I don't think it's good enough to let anybody go by with yes, we intend to or we will work with, and –

Mr. Hedani: Is there a second?

Mr. Starr: Mr. Chair.

Mr. Hedani: Is there a second?

Ms. Freitas: Second, for discussion. I'll second that.

Mr. Hedani: Seconded by Commissioner Freitas.

Mr. Starr: Mr. Chair, we need to do public hearing. I was going to make a similar motion, but just for process I think it's premature until we finish with it.

Ms. Shepherd: Yes, withdrawn.

Mr. Hedani: Okay. Mich, did you have a response?

Mr. Hirano: About the impacts and traffic impacts?

Mr. Hedani: Right.

Mr. Hirano: Again, I think that we take our direction from the comments during agency review. In terms of what the significance of the project will be and the impacts and mitigation of those impacts. Those issues did not come up during project review. The TIAR was revised because when it was originally done, there was – the traffic signal at Kanani Road and Piilani Highway was not in place. And the traffic TIAR assumed that it would be in place, but they didn't have the traffic counts. So the comment from – or from Department of Highways or State DOT, Department of Transportation was that to redo the TIAR, revise it with empirical data with traffic counts. The applicant did that, went out, revised the TIAR, resubmitted it and State DOT had indicated that there would be no impact from the redistribution of traffic from this particular project. So there was no – the imposition about a regional traffic impact on that particular comment.

With respect to the Department of Education, you know, we've received comment that they are not imposing fees or impact fees on educational SMA – on SMA applications. And we did not receive any comment on DOE on that particular basis.

So those are the two things I can say regarding traffic and as well as Department of Education fees.

With respect to drainage we discussed that in our project team meeting that approximately 15% – 10 to 20% extra could be handled through the drainage design in terms of the margin of error that Mr. Otomo had indicated. So I think that if a number can be done achieving 20% additional storm water retention will be achievable within design. So if that

could be a condition. I think that would be something that can be achievable.

Mr. Hedani: Okay, thank you. Commissioner Amarin.

Ms. Amarin: Thank you Chair. I know there's a motion on the floor, but I just wanted more clarity being that Rob Parsons is there if I can address a question to him regarding the coqui frogs?

Mr. Hedani: Sure.

Ms. Amarin: Thank you for being here. You being the expert with the environmentalist of Maui, the coqui frogs have been contained in this area. It's been a breeding station and I just want to make sure that the adjacent properties and residents in the area are protected from these coqui frogs. Now I would assume that these coqui frogs have been breeding in this area for at least one, two years. So I want to make sure what is the protection to the radius outside of this property to make sure that the applicant or whoever is responsible for putting those frogs there take responsibility for two years, I mean, you're saying just the adjacent property. How far do you think those frogs have traveled within two years?

Mr. Hedani: Mr. Parsons.

Mr. Rob Parson: Thank you. Rob Parsons, thank you for the question. There has been a coqui frog population in this part of Kihei associated with the nursery activity for at least five or six years. To a lesser degree on this subject parcel that you're reviewing today there has been some frogs there and I believe that is because they moved plant materials there and moved some irrigation there. In reviewing the paperwork that I have from Mr. Hirano from Munekiyo and Hiraga in letter dated June 15th, it said that after our site visit to the property with MISC officials on March 24th, that at the time this letter was written June 15th, the subject property had been sprayed four times and they're on a somewhere between a four and six-week basis of going in. Subsequently there's a period of about two to three weeks, a gestation period if there are eggs they'll hatch out. So it's necessary to go in repeated times to control the frogs. I can't say exactly how much the population has spread outside of that nucleus. It has spread a little bit. I know that a detailed plan has been prepared with the applicant and with MISC. That was a suggestion that I made to Planning back in mid-March and they responded that they were interested in going ahead with this. Also relevant is that the larger nursery property on the adjacent lot and across the street has also been sprayed repeatedly since this time. So finally we have some cooperation with that landowner in controlling the large population which was there. I've heard anecdotally from people that I've been in contact with over the past three years that live in that immediate area that it sounds much better. I'm no longer a South Kihei resident so I haven't been down there at night to check for myself for quite a while. The best report would be from the MISC frog crew who's been there a number of times on about a monthly

basis since last spring and it's unfortunate they weren't available to be here today. So I'm passing along the information that I have from them.

Ms. Amorin: Thank you very much. I just want the effort to be adequate and like we say those things are pilau. Thank you.

Mr. Guard: Yeah, I just think on that note for all of us if they're intending to sell these lots I think we would all know that it's in their best interest to get rid of them as well, right? So I think that's probably just capitalism at it's finest should take care of that problem.

Mr. Foley: Rob, I just have a follow up question. Is it possible to prevent frogs from traveling from one property to another with say, a solid masonry wall? I mean, I know they're very small, but is it possible to keep them from going to property to property?

Mr. Parsons: I think there's a number of mitigative measures that MISC would recommend. Just having a border of any kind is helpful. Reducing the amount of vegetation along the borders is helpful, and I think when we were initially there in late March, we discussed moving any vegetation back from the property borders and moving it inward to contain what's there and to spray systematically after you've established a perimeter. And I would also note that it was a small portion of the overall property that had frogs and it was close to the neighboring parcel but the back portion of it I believe was not determined to have frog population. It was more towards the Auhana Road itself.

Mr. Hedani: Any other questions for Rob? Thank you Rob. At this point, we neglected to go through the public hearing for this particular agenda item so we'll have Diane withdraw her motion and Suzanne withdraw her second.

a. Public Hearing

Mr. Hedani: And we'd like to open it up for public hearing on this particular project. Are there any members of the public that would like to offer testimony at this time? Please step forward. Seeing none, the public hearing is closed.

b. Action

Mr. Hedani: The motion, you can entertain a motion be reintroduced again at this time. Diane.

Ms. Shepherd: Same one.

Mr. Hedani: Same motion. Motion to defer subject to those conditions?

Ms. Shepherd: Yeah, more information. Participating in –

Mr. Hedani: Can you speak into the microphone please?

Ms. Shepherd: To allow the applicant to come back with more information on mitigating traffic impacts, drainage impacts and education.

Mr. Hedani: And zoning violation fines?

Ms. Shepherd: Okay.

Ms. Freitas: Yeah, that too.

Mr. Hedani: Is there a second?

Ms. Freitas: Second it.

Mr. Hedani: Moved and seconded to defer. Discussion? Commissioner Starr?

Mr. Starr: Yeah, I would like to see the resolution of the zoning violations. I'd like to hear that those are resolved. I would also like to hear that the coqui frogs have been eradicated, that this property is free of coqui frogs before we act.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: The motion to defer, point of order should we not have it to a date definite?

Mr. Giroux: If it's not to a date definite then we're going to have to go through the renoticing process.

Mr. Iaconetti: So why don't we make it to a definite date that it'll be deferred to and then we won't have to go through this again?

Mr. Giroux: We kind of don't know how long it's going to take them to resolve some of these issues?

Mr. Iaconetti: So we give them two months.

Mr. Guard: Should we ask the applicant?

Mr. Hedani: Does the applicant have any comments?

Mr. Hirano: The applicant would like to be before the commission as soon as possible and would make every effort to resolve these issues. However, dealing with the infraction is really outside the control of the applicant. He's made every effort to try and get that resolved and get an opinion from Corporation Counsel and hopefully a deadline by the next meeting may be able to spur action on that particular item and the applicant would request to come back next meeting.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: That's what I would say. I mean, what they did in the past and the fines, etc., really are not our purview. I mean, what we're looking at is what's the impact of this project going to be on South Maui not what they did in the past and won't do again. So I would say two weeks.

Mr. Guard: On Jonathan's note, I don't think they're going to know if the coqui are eradicated if we'd be agreeable to saying prior to some stage in the permit process and if they want to come back in the two weeks, Mike, the Planning Director should know if the – okay, is that under your jurisdiction or can we put it together as a package if they're saying we want to – we know we did these fines or these infractions and we're willing to – where does that money go to? Would it be better used going to education, traffic, drainage, parks? At least go somewhere instead of some kitty in the back corner.

Mr. Hedani: Mike.

Mr. Foley: The list I have by the maker of the motion includes traffic, drainage, fines, education and frogs. Five different topics. I don't think it's realistic to expect those to be resolved much satisfaction in two weeks. I can meet with Corp. Counsel and we can get you a report on the status of the fines and maybe that will be resolved, but I think we also need to get a representative here from Maui Invasive Species and I think it would be more realistic to postpone action for a month rather than two weeks. And hopefully we'll have all of these things resolved in a month and will be – and the commission will be able to take action.

Mr. Hedani: Dan, you have a comment?

Mr. Shupack: Yeah, I just wanted to quickly address a couple of the laundry list items. First was the educational impact fact and I guess just to reiterate what Mich had mentioned was that we did transmit to the Department of Education and I guess per their policy for developments that since I guess 2003 for developments that require only an SMA permit that they don't require an educational impact fee.

Mr. Foley: We've had numerous applications where they have made a contribution to a

local school irrespective of DOE's inactivity regarding requiring fees for small projects.

Mr. Shupack: Okay. And secondly regarding the MISC, in a letter from Ms. Penniman back in – a few months back, she stated that MISC has no objection to development of the subject parcel so long as a list of five conditions were met and those conditions address the ongoing efforts to eradicate the coqui frogs. The applicant doing a cost share agreement to control the costs that are incurred by the coqui frog eradication. That the property owners would agree to inform MISC about any subsequent infestations that might occur after eradication is believed to have been achieved. And then also we – actually this was in April, April 21st, I spoke with Ms. Penniman and I was kind of discussing the fact that you know, when they get to grading and grubbing and that's kind of going to be the final, you know, eradication effort because you're moving basically all the current vegetation from the lot, and so we kind of added a – we agreed on adding an additional condition that the property owners would agree to coordinate with MISC prior to enduring grading and grubbing activities to insure eradication of any remaining population of coqui frogs which remain on the subject property. So basically all these conditions would be added or actually are added in the staff recommendation and it would be basically prior to grading that they would have to have the eradication complete insured.

Mr. Hedani: Coqui frog eradication has been in effect for five years and they haven't solved the problem yet, right? Commissioner Starr.

Mr. Starr: I don't see what the rush is to give them the entitlements so that they can cash out on it. I feel that these people have acted in or at least some of the individuals involved in it has acted in bad faith with the grading and grubbing, with the burials, with the – I mean, they brought us the coqui frog nightmare and for years refused to do anything with it. I really feel that we should defer until they've completely once and for all settled these issues. I don't see why we need to rush in two weeks or a month to give them their entitlement here. I think that we ought to wait until these conditions are met and however long it takes, if it takes a week, if it takes years, whatever it takes.

Mr. Hedani: Any other discussion? Commissioner U'u.

Mr. U'u: I'd just like to - if they give voluntary contribution that it goes towards Maui High which recently had their buildings burned and it serves also the region on Kihei if there is one to be made.

Mr. Hedani: Comment is noted. Any other discussion on the motion? Commissioner Iaconetti.

Mr. Iaconetti: From the Department of Parks and Recreation, it states that the fees and rate – the rate and fees are valid until June 30th, 2006 which has long since passed. Does that

mean that we have new fees or are we going on the basis of the old fees?

Mr. Foley: No, we have new fees. We'll let you know at the next meeting how much the new fees are.

Mr. Hedani: Any other discussion? Commissioner Guard.

Mr. Guard: I have a question on one of the notes was regarding the fine, Planning Director. If there is a fine ever collected, where does that go?

Mr. Hedani: Into the fine pot.

Mr. Guard: Yeah. I mean would it be better to actually say where it's going?

Mr. Hedani: Goes into the general fund, right?

Mr. Foley: Yeah, I think it goes in the general fund. I don't think we can designate where it goes. I'll find out but my recollection is that it goes into a general fund.

Mr. Hedani: Okay, for the record the Chair for this meeting for any motions, for any future meetings will always vote whenever there is a need to break a tie except in cases where I recuse myself from a vote ahead of time.

Mr. Iaconetti: Thank you.

Mr. Hedani: Are you ready for the question?

Mr. Starr: Could you restate the motion?

Mr. Hedani: Okay, the motion is to defer the project at this time subject to resolution of five items.

Ms. Freitas: Do we give a date?

Mr. Hedani: There's no date attached to the motion. Ready for the question?

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

**VOTED: To Defer the Matter in Order to Address the Five Concerns
Raised by the Commission.
(Assenting - D. Shepherd, S. Freitas, J. Guard, B. U'u, J. Amarin,**

W. Iaconetti, P. Eason, J. Starr)

Mr. Hedani: Carried. Thank you. Going to take a break for lunch right now.

A recess was called at 12:05 p.m., and the meeting was reconvened at 1:07 p.m.

Ms. Freitas and Ms. Amarin not in attendance.

Mr. Hedani: Maui Planning Commission meeting is back in session.

C. NEW BUSINESS

1. **A & B PROPERTIES, INC. requesting comments on the Draft Environmental Assessment (DEA) prepared in support of its Special Management Area Use Permit application for the proposed Kahului Town Center Redevelopment project (primarily the Kahului Shopping Center site) located at TMK: 3-7-007: 005, 008, 009, 010, 027, & 050, Kahului, Island of Maui. (EA 2006/0008) (SM1 2006/0010) (K. Caigoy) (A. Cua)**

The proposed action involves the redevelopment of the existing Kahului Shopping Center into a mixed-use commercial/residential development, including retail, office, and other commercial spaces, 442 multi-family residential units, and related off-site and on-site improvements.

The proposed action does not trigger compliance with Chapter 343, Hawaii Revised Statutes. However, the applicant is voluntarily submitting the proposed action for environmental review in conjunction with the filing of a Special Management Area Use Permit.

The Planning Commission is being asked to:

- a. **Provide concurrence on the filing the Draft Environmental Assessment and the Anticipated Findings of No Significant Impact (FONSI) with OEQC for publication.**
- b. **Provide comments on the draft Environmental Assessment.**

The public hearing on the Special Management Area Use Permit will be scheduled for a future date after the Chapter 343, HRS process has been complied with.

Ms. Kivette Caigoy presented the Maui Planning Department's Memorandum.

Mr. Chris Hart: Thank you very much Kivette. My name is Chris Hart of Chris Hart and Partners. Don't turn off the lights off because I'm giving the introduction prelude. We're very honored to be able to work on this project. It's a very exciting project that A & B has undertaken.

One of the really important aspects of it is that Kahului has undergone a real change from the plantation era in the 1950's to basically our major service and industrial center for basically Maui Island with the harbor and the airport located there and all the industrial development that exists in Kahului.

In Kahului essentially in its process of evolution actually became a very much of an automobile oriented community and I would just kind of compare Kahului with Wailuku which is more pedestrian oriented type of community and obviously it was because of the increased traffic, because of the emphasis on the need for the automobile and transportation the community that it became that. But A & B in the '50's essentially undertook to do essentially a shopping center, Kahului Shopping Center which – it was designed typical of a lot of shopping centers with a lot of parking and shops and it really became a landmark in the community. And of course, there was a fire, and Grant Chun will be explaining that to you.

But I think that right now at this particular point in time it's really exciting that A & B has decided to make departure from the strict strip mall approach to commercial development and has decided to use its B-2 Business District zoning that it has on this property which is Community Business District and to actually develop a more neo-traditional type of mixed use project that would consist of commercial retail, office and residential and a much more pedestrian kind of configuration. It's basically to their credit I believe that they're doing this. Because I think it not only is it to their credit but I think that over a period of time we've learned in the direction of planning, the thrust of planning has been to try to recapture, to reestablish the pedestrian within the heart of our communities. Try to get people out of their automobiles, try to downplay the use of the automobile. And so that's kind of the thrust.

And also, currently we're working on our general plan, and there's a nice map on the board there and it shows the urban core of Kahului and Wailuku. And in the context of the challenge of Bill 84 in the General Plan is to really take steps and to basically take initiative to stop urban sprawl and you can see the potential for urban sprawl that exists around Wailuku especially. And this kind of a project where we're doing infill within the community is an opportunity to absorb density that's going to need to be provided for in terms of the future of our community, our County of Maui, our Island of Maui and to do it within the core of an existing urban area where infrastructure already exists instead of expanding and

doing something out into the agricultural district in the form of sprawl. So I think this project is really a very creative project and precedent setting project in a place that I think that we will want to go as a community. So with that, I'd like to introduce Mike Summers to begin the power point.

Mr. Mike Summers: Thank you very much Mr. Chairman, Members of the Commission, I want to thank you for allowing us to be here today to present this very important project. My name is Mike Summers. I'm a land use planner with Chris Hart and Partners and today I'll be giving the initial orientation to the project and will be followed by Grant Chun who will present the project history and proposed action and he'll be followed by Steve Marlette of MC Architects who will present the project architecture. Steve will be followed by Mike Ishikawa who will address drainage and Mike will be followed by Phillip Rowell who will address traffic, and finally Bill Mitchell will address the project's landscape architecture. So we have quite a crew here to give you a presentation.

A & B Properties is the owner and applicant/developer of the subject property and the consultant team of course, includes Chris Hart and Partners. We're responsible for the development permitting, the landscape architecture. MC Architects based in Honolulu, Hawaii is the lead architectural consultant and they're working with NGA Hawaii and Les Lippich and Associates who are both California-based firms. Sato and Associates is the civil engineer. Phillip Rowell and Associates is the traffic engineer and Scientific Consultant Services did the archaeological and cultural work for the project.

This is a good kind of orientation map to the project. It really serves two purposes. It gives you a good kind of orientation to where the project's located and also it gives you a perspective on the character of development that's in the area. Project site is mauka of Kahului Harbor. It's adjacent to the Maui Mall which is to the east of the subject property and it's in close proximity to the Queen Kaahumanu Shopping Center which is to the west. The major roadways which abut the project include Kaahumanu Avenue, Puunene Avenue, Kamehameha Avenue and Lono Avenue.

Just from a kind of a settlement pattern perspective and Chris touched on this a little bit earlier, as you can see the area, the form of development in the area doesn't really provide a sense of place. Doesn't give you a sense of community. There's no real nucleus to Kahului Town and the primary reason for that are really twofold. One being that you've got large typical 1960's style shopping centers on either end of the project site where the parking has basically been amassed around the perimeter of the building up against the roadways and then you've got this large area here which is probably about 50 acres combined which is really rather under developed. Now this place, you know, this area in here really does probably provide the last opportunity for Kahului to develop a town core just like Wailuku's got a town core and Paia's got a town core. This is probably the last opportunity for that for Kahului.

The evolution's actually taking place right now. The Kane Street mixed use project was approved recently. It's going through development permitting right now. The student housing project is currently under construction and Vevau Street improvement project is being implemented right now in association with those two projects. So what you're going to see is with the build out of this project you will see a higher density urban core development take place that will link itself horizontally along a grid street network and it will be a pedestrian oriented development with lots of activity generating land uses and will provide that sense of place that Chris was talking about.

Project profile, it's a mixed use town center project. It's a integration of commercial, retail and residential space. We're proposing a 144,000 square feet of retail commercial space, 96,000 square feet of new office space, 57,000 square feet of existing office space that's currently there and 442 multi family residential units.

Now just a little clarification on the 144,000 square feet of retail. The project site previously had about 100,000 square feet of retail. So it is an addition but it's not a 144,000 square feet of new, but it's been reconfigured.

Project area is approximately 20 acres and the required permits include the SMA permit, NPDES permit, the grading permits and the flood development permits.

There are really five core kind of objectives for this project. The first being to develop a very pedestrian orientated downtown for Kahului where residents can live, work and play. And this probably is the most important objective in the sense of creating something that's really going to be economically viable. If it's not pedestrian orientated it's simply not going to be a place where people want to go.

We want to revive the Kahului core by creating exciting urban retail and residential housing opportunities for local residents. We want to unify existing planning – and planned neighboring developments and that's what I spoke of earlier, very important to take a look at that development that's surrounding the project site and do something that's mutually beneficial so that it really kind of revitalizes the whole area. We want to build upon the tradition of the Kahului Shopping Center as a gathering place for Maui residents. Obviously extremely important and we want to enhance the entry experience to Maui which is really isn't very – really all that appealing at least from a Kahului perspective.

When you're doing a project of this significance and lets not kid ourselves, this is a pretty significant project, we want to step back and kind of ...(inaudible)... what we're proposing to some of the current thinking on planning. And you know, smart growth may seem a little worn to some people that see term a lot but these terms are really actually very important guiding principles for development. And so we just wanted to touch upon those briefly.

We are redeveloping the existing underdeveloped infill property to accommodate local needs and Chris stressed that we don't want to continuously push out our urban boundaries we want to look within our existing communities, the areas that are underdeveloped to try to redevelop those places. We're providing a variety of housing choices within walking distance of daily needs. I'll just add a note. I've personally lived in Wailuku Town for nine years. I've worked at the County and I've worked at Chris Hart and Partners and lived in three different houses. I haven't once in nine years driven my car to work. So it's really about where you live in relationship to your employment that's important.

We're creating a pedestrian oriented streets. Placing off-street parking within the interior of the lot. Again, we've got these two major projects on either end where that parking's around the perimeter of the project. We need to do something different here. We are obviously providing multi family above ground floor retail and incorporating place based or traditional architectural styles into the design of the project. Again, we want this project to be kind of unique and special to Maui and to basically use some of our local traditional styles of architecture.

Just going to quickly take you through the land use designations. This is a community plan map. Here's our property. You can see there's a lot of business commercial in the area. There's heavy industrial, light industrial, single family residential to the south. Some public/quasi-public uses, the church, the library, etc., the shopping mall and the heavy industrial that's the cannery. So it's a pretty interesting I guess settlement pattern from the community plan perspective.

The zoning is B-2 Community Business District which allows for the mix of uses we're proposing as well as the different heights and densities, etc. Chris can you just back up? I just want to point out again that we do have single family to the south of us and we feel that that's actually very beneficial to the single family, the folks that live there because they'll have these services that are within a close proximity.

We are in the SMA so we have filed a special management application.

And this is our flood insurance rate map and you might notice that we've highlighted the tsunami inundation line or the velocity line. This is our subject property. You can see that we are partially affected by potential tsunami inundation and we'll have to design for that. There will be mitigation measures required. We are also within the flood zone and again because we're in the flood zone we'll need to develop mitigation measures for that as well.

We did provide you folks and I hope – I see the copies on your desk, we have a draft environmental assessment which documents the project impacts and identifies mitigation measures with respect to physical environments, socio-economic environment, infrastructure and public facilities.

We do have drainage. We have our civil engineer here and our traffic engineer to address drainage and traffic. We're not going to go through all the different impacts that the project might have in this presentation but if you have any questions about water or any other issues, just please let us know and we can address those issues. Grant.

Mr. Grant Chun: Good afternoon everyone, my name is Grant Chun. As Commissioner Shepherd mentioned a few months ago, we had come before the commission to offer an introduction to the concept, introductory presentation to the concept of the Kahului Town Center.

Today, I'm just going to run you all through a brief history of the site and a short overview of the proposed town center, and after I'm done, our architect, Steve Marlette, will be providing you with a more in depth explanation of the plan.

As you all know the fire that we suffered at the Kahului Shopping Center in February 2005 was really devastating. But as in life, through every crisis an opportunity arises. I will say that being that I grew up in Kahului, in fact, if you look at the first slide, my grandmother's house is right about there. This has been a very exciting process for me to be involved with to help to envision the next incarnation of this property and what it will be like in the coming years. I'm very happy with the resulting proposal.

This is a picture of the property in the 1940's, and just to get our bearings here's Kaahumanu Avenue, Puunene Avenue, Kamehameha Avenue and Lono Avenue. As you can see Kahului back then was pretty much, this was Kahului. Kahului ended about here on Kaahumanu Avenue. The block was very densely populated with a large number of single family homes, shops, a market, a theater and other businesses that catered to the daily needs of the residents in the area.

Something of interest that gave us a particular clue as far as what existed there in the past and what might be appropriate for consideration as we move forward is the grid pattern of streets that existed within the block historically. Here you can see Kinau Street which ran mauka-makai through the block and Vevau Street which ran across the block this way. Of course, Vevau Street still exists today on the Lono Avenue side of the block. Interestingly enough, the entrances which were the historical points of entry into the block exist today. They were retained by our forefathers as the entrances into the shopping center block.

This is the property in the 1950's and here you can see the evolution of the concept of the shopping center which of course came into great vogue in the '50's and '60's across the country. Gradually the old houses that were there started to come down and the grid of streets that existed within the block also gave way to a large parking area. The feeling of Kahului have a sort of center of town sort of started to dissipate at this time.

Interesting points of reference in this photograph are the Ah Fooks Supermarket building. This building here which still exists where Ichiban Okazuya is located. The A & B Supermarket where Central Bank is now situated was also there. Also in this photograph you can see remnants of some of the old commercial buildings that existed here when the block was little bit more densely populated here along Kaahumanu Avenue and Puunene Avenue.

This is just a streetscape of the old Ah Fooks Grocery Store years ago. You can see how in those days the store fronts were pushed up to the street. So there was a real presence of a streetscape ...(inaudible - changing of tape)... sort of a welcoming feeling for pedestrians as well.

The next slide shows the shopping center at full build out. Most of the old buildings were gone. This was around the time when I was, you know, a very little kid. So this is sort of what I remember of the property. Back then of course, A & B Supermarket was still located on the block here and the old theater building where Burger King is now remained into the '60's and were among the last buildings, last historic structures that were removed from the property and some of the old houses are showing here too.

This is a more recent photo of course, taken before the fire and you can see how Kahului has evolved over the years.

This photo shows the site after the fire. A significance to me in looking at this site, sort of jumped out at me when I saw this picture is the amount of parking that exists within these blocks. The large fields of parking that essentially replaced the small neighborhood that existed here in the '40's and '50's.

After the fire, and even before that, A & B spent a good deal of time and resources considering what would be the most suitable use for the next incarnation of the property and we have two slides here that essentially run us through that analysis. We thought about doing a pedestrian mall, something like Fort Street Mall in Honolulu. However, these sorts of areas tend to be very poor performers from a retail perspective. In fact, a number of very famous pedestrian malls such as State Street in Chicago have actually been opened up to through traffic to bring back some vitality to the area. Another consideration of course, was doing another regional mall comparable to Maui Mall or Kaahumanu Shopping Center. We thought that might be the thing, but as you know, these kinds of facilities are extremely vehicle oriented with large fields of parking visible from the surrounding streets. And so, by definition they didn't really do a great job of defining a town's core. And more than anything I personally feel that this is the site that should be the place people look to when they say this is the center of town.

Of course, the earliest and probably – the easiest and probably the most profitable option

would have been the single use commercial facility as it's shown in this part of the slide. But again these kinds of facilities rely on large fields of parking and obviously they lack a certain sense of place that, you know, we're looking to contribute to for this location. I mentioned I think when I met – when I came here previously, that like some of you in this room I went to Maui High School and people think I'm crazy because I always say one day we're going to win the State basketball championship. When we do, Kahului needs a place to have a parade, right? And so, the last option here this pedestrian oriented main street was to me the most attractive design alternative for us where Maui High will enjoy a nice parade.

This design alternative is attractive to retailers who really enjoy strong performance in these kinds of settings and so you can see countless of downtowns across the country that are be revitalized and countless old shopping centers actually across the country as well that are being raised or retrofitted to accommodate for this kind of a setting. This alternative is also attractive to pedestrians who actually are encouraged by the setting to just park once and sort of walk and do the different tasks that they've arrived on property to do.

And finally from my own perspective I think that the design concept is conducive to promoting a sense of place as Chris mentioned and a setting where people can really feel like this is really nice place to live. I guess what sort of ran through my mind as we were going through this process is, you know, you know like when you're in college and you go visit friend's home towns and stuff and everybody has sort of that place where they take you to, and you go, oh this is a nice place, and when I would bring friends home to Maui, I kind of didn't have that same place to take people. You know, we go to the mall or wherever. So that's the idea is that that's just that sort of special place where you'd actually maybe even take a picture with your family before you go off to college or what have you.

To pursue this concept we contracted with some great professionals, conducted workshops with different folks in the community. We held a community open house and we engaged in preconsultation with government agencies and community organizations which are listed on the next slide. So these are the different folks that we had an opportunity to engage in a preliminary discussion with including this body as well.

The community input was very helpful and really good. People surprised us because they got their arms around the concept right off the bat and they like the pedestrian friendly concept and the atmosphere. The reception was even clearer for us when we went out for initial reservations for our mixed use residential condominium project on Kane Street which was very well received.

As I said, Steve will be covering the details of the plan but just to give you some context of the plan we've come up with, you can see here that they're beginning to be a bunch of very

cool and exciting things happening around this block. This is Kaahumanu Avenue, Lono, Kamehameha and Puunene Avenues. Right here, just off of Lono Avenue is the 400 student housing facility that will accommodate students at Maui Community College. Right across Vevau Street is the Kane Street multi family mixed use project that I referred to. And here mauka is the county's proposed senior citizen housing, multi family housing project. So you can see there's a lot of different things happening in the area which sort of bring a certain synergy to the proposition that this could be a very, very pleasant place for folks to go and do their business, do their shopping and actually do it by walking.

The two main streets that historically existed on the property are reintroduced in this plan and they would be Kinau Street and this street cutting across here, Vevau Street.

This is a conceptual drawing of sort of the feel that Mike and Chris referred to, you know, the idea that the buildings would not all look the same, that they'd have – they'd take their influences architecturally from structures here on Maui and throughout Hawaii that are very dear to us.

As I indicated, the concept is a downtown setting with a mixture of uses. So we're thinking that a mixture of unit types targeted for Maui residents would be appropriate. I will share with you that when we rolled out the Kane Street residential condominiums a few months ago, pretty much all of the people that put in reservations and expressed interest in the property were actually people from Maui and actually as you would imagine, about 95% of those people were actually from Central Maui, Kahului and Wailuku. So we see that as the market place for product in Kahului. So we anticipate a full range of pricing and we're working with the Director of Housing and Human Concerns to accommodate for affordable units as well.

The project is a mixed use project so of course it will include commercial space for office and retail. We intend to seek a diverse tenant mix that would make it this a really interesting and enjoyable place to spend time while providing for the essentials of daily living that will bring shoppers to the center of town to run their errands.

So we really foresee a synergy between the residential, retail, restaurant and office uses. As I said, I'm going to pass the baton now to Steve, who will give you a little bit more detail as far as the plan for within the block.

Mr. Steve Marlette: Hello, my name's Steve Marlette. I'm with MC Architects. I'm the project architect, the lead project architect for the project. One of our major efforts here and I want to go through some of our designing objectives is the first one to utilize Maui inspired architecture. The site is ...(inaudible)... heavily in the plantation era history and we want to use this little bit of history for reference in the architecture for the overall development. Other points of reference are places like Front Street in Lahaina, Market

Street and Main Street in Wailuku, imaging of prominent buildings found in the Paia Town area and various Upcountry communities as well as we're using, working with Stan Solamilo from the Planning Department that's put together some historic Maui images on prominent commercial, historic architectural buildings.

Again, it's not our intent to provide sort of a historic revival with this architecture. It's the intent to use these images and existing Maui architecture as references and to provide buildings with individual style and character that's really unique to Maui.

Second major objective is to provide a human scale to the overall environment. Buildings have generally single level of retail at the street level with multiple levels of office and residential above. Ground level retail space utilizes covered walkways and various landscape treatments to get a sense of enclosure to the streetscape and a human scale to the overall development which is very, very important to us. A retail storefront reflect sort of the old-style retail storefronts that you see in Lahaina and on Market Street in Wailuku. We want to provide very pedestrian friendly streets. Very, very important for us to create a comfortable walking environment that could relieve the need to get into your car to go to the various retail developments that are adjacent to the project. Again, we try to keep those cars off the street and provide a comfortable environment.

We're doing that by providing the major streets within the development of 28-foot wide with angled parking on both sides of the street. Parking is necessary to provide, one, to slow down the traffic a little bit and it also provides the convenience that the retailers really mandate for a viable retail environment. Still want to be able to drive up and walk in to some extent.

We want to provide raised speed tables at all the intersections and pedestrian crossings with different paving patterns so that we can slow the traffic down and when you come to an intersection with pedestrian interface that people are very conscious that there's pedestrians involved there.

And generally the sidewalks along the streetscapes are 20-foot wide landscaped areas with comfortable pedestrian oriented areas along the streets capable of supporting events, not events but activities like outdoor seating and comfortable shaded area. In other words, a place that you could sit and watch people.

We want to allow for the interaction of various mixed uses. The combination of uses here is really important. The commercial is an amenity to the residential and an amenity to the surrounding community. The park generally as an amenity for the residential and sort of that balance of uses. We have located a great gathering place at the intersection of the main street in the element of – or roughly a half-acre park which can be a great community building place available to things like hula halaus, art in the park, farmers market and things

like that.

As Grant had indicated, this is the overall site plan from top to bottom it's the restoration of Kinau Drive from left to right in the plan, we're calling it town center drive which is a revival of Vevau Street. At the intersection of those right in the middle we're using a signature icon and a roundabout, a traffic calming technique and we anticipate contracting with various artists for options for what that icon will actually be some time in the future. Just off that in quadrant 3 where is roughly a half-acre park which these two elements are sort of the center of the overall community we're developing.

The streets themselves divide the site up into four individual quadrants. Quadrant 1 which is on the upper left-hand side is primarily a commercial quadrant and is anticipated to be ground level retail with upper levels of office space. Quadrant 2 is primarily a residential quadrant. However, along the town center drive portion we do have a ground floor, small ground floor retail spaces. This quadrant as well as the rest of the quadrants you're seeing really are varying all of its parking within the confines of the center of the quadrant and is ringed around the outside with housing generally. Quadrant 3 is centered around the park area, again, throughout the whole periphery we're looking at single level retail spaces with primarily residential on the upper level of this quadrant. Again, a parking structure buried in the middle of the quadrant. Quadrant 4 will have retail and two-story office spaces on the town center drive portion and then on the lower portion down here retail on the ground level and multiple levels of residential above. As a point of reference, this is the existing Kahului Building that will remain and CPB building on the corner.

Here is just a brief indication of what the exterior elevations are on the exterior streets, what you'll see from outside the site looking in. Generally you're seeing a mass of, this is the Puunene Street frontage, mass of buildings of different scale typified by ground level retail space and upper levels of commercial space and residential space. Again, we're trying to accomplish a lot of breakdown in scale. Definition from lower level to upper level and a variety of building types, sizes and shapes.

Similar exterior elevation on the interior streets where it's primarily commercial on the interior streets and a little bit lower in overall scale but at the same concept. Lower level of retail with commercial space and residential space above. The next slides, four or five slides gives you a little bit closer up feel of what the overall architecture is. This is quadrant 1 along town center drive, again, a definition in trying to bring a human scale with canopies to the lower level of space and two levels of office space above. A lot of images with cornice and canopies and things like that you're seeing in Lahaina Town and various other locations.

Similarly the images of quadrant 2, the residential townhouses that are along the back. Again, this is entirely residential and that Maui sort of feel to it.

Quadrant 3, again, lower level definition of retail spaces. Upper level a variety of various forms and setbacks of the residential product above.

Quadrant 4, single level retail spaces on the lower level, offices up above. You can start seeing the break down and uniqueness of the individual buildings and the character that you're seeing. Again, reminiscent of Lahaina and Wailuku Town.

Next one, and I think this is the last sort of image that has a little bit of detail to it that we're showing you. Again, there a lot of variety of color, a lot of variety of canopy to bring scale to the lower level.

What we've done here also is on the street frontage this is an image of existing condition at the corner of Puunene Avenue and Kamehameha Avenue. This is the image with the project superimposed on it. The exact image. This is the corner of quadrants 1 with the two-level retail and showing the proposed landscaping on the streetscape.

Similar image at the corner of Lono and Kamehameha. Again, you can see the prominence of the existing trees and the new development that comes with it maintains the existing trees and reflecting the development in behind. Again, trying to keep that streetscape and the scale down at that location.

This is the Kaahumanu Avenue and Lono Avenue. You can see the existing Kahului Building in the foreground and this is the image with the project. Again, maintaining the street tree presence on here and you can see quadrant 3 and quadrant 4 buildings in the background.

And the last one, you can see the existing Burger King on the corner, the other corner looking west and again, with the project. Again, scale of landscaping on the frontage and the scale of the buildings and angulation of the buildings along the overall frontage.

And with that, I'll turn it over to Mike who will talk to you a little bit about some of the engineering issues.

Mr. Mike Ishikawa: Good afternoon, Commissioners, Director Foley, Chairperson Hedani. My name is Mike Ishikawa, we're the civil engineer on the project and I'd like to basically talk to you about the project as it relates to drainage, but before we can do that, lets take a step back and look what's happening now currently at the site.

Basically the site if you can think back to one of those past slides, the majority of the site is paved except for that small portion right here by Kamehameha Avenue right adjacent to Aloha Shell and what used to be Kahului Garage, fronting the Kahului Credit Union. Basically what happens on the site is there's not too much drainage infrastructure in place

at this time so mainly you get a sheetflow condition. There is some drain inlets mainly on the top portion or the east portion of Puunene Avenue and the runoff in this area gets sheetflows into those inlets and piped into a drainage system which connects to the Maui Mall system. If you recall, similarly the State did some drainage improvements along with the intersection improvements at Kamehameha Avenue, and if you recall back prior to these improvements this intersection would always flood during a big rainstorm and it doesn't flood any more. That's that same system that was put in. Along the Kaahumanu frontage from the existing Kahului Building down to Burger King, what do you get? You have a sheetflow condition where runoff basically pond and then sheetflows out to Kaahumanu Avenue where it gets picked up by existing catch basins. And then finally on the 3rd quadrant or in the third area by the old Dell's building behind the A & B Building you get a sheetflow condition again, but because the adjacent roads are higher, you don't have the runoff sheetflow rather the runoff here are being ponded and picked up by some drywells that A & B put in in the past and if you recall, during the big storms, these drywells reach capacity and then you basically have ponding in the parking lot. Well, that's what happening now.

What's happening when we develop this project? Well basically at full development we'll have an increase of roughly 22 cfs and the reason for that is basically development of this area which I had previously said that was basically grassed field right now at times it's used for parking for the farmers market but it's basically undeveloped and as you can see we're adding pavement and impervious areas so naturally we'll have an increase.

To mitigate this increase what we plan to do is naturally install catch basins throughout the site. This system will be designed to County drainage standards and will be reviewed by the County during the building permit process. If we go back again to what's out there now, the existing site because of the lack of existing current drainage system there is no real attempt to address water quality. Basically you have sheetflow condition out or water either getting captured and put in drywells or being sent through the Maui Mall system. So there's no real attempt to address water quality.

With this project what we plan to do is along with our drainage system, you want to sheetflow as much runoff as possible into landscape areas. There's a perimeter landscape swale which will handle a lot of runoff and also the park area. In addition to that, we'll put the runoff in a perforated drain system. In other words, in these areas where it would be impractical to get the runoff to the swale, we would be picking it up and putting it into a perforated pipe system.

So getting back to water quality, what we'd be doing those inlets we'd be installing mechanical filtration devices which are pretty good now days. They remove approximately 80% of the suspended solids as well as the petroleum byproducts. And by swaling other areas into landscape areas we'll do kind of a natural filtration where we'll allow the

landscaping to break down the petroleum products and as well as to filtrate out the total solids.

Other than that, that's about all I have.

Mr. Phillip Rowell: Good afternoon, I'm Phillip Rowell. Briefly I want to go over or summarize the mitigation measures for this project because we have a long list of mitigation measures and then talk about the measures that we put in to enhance pedestrian safety and let them get across the streets and the traffic calming associated with that.

This figure is the summary of the mitigation measures. These are only the primary or the major mitigation measures. The first is at Location A we are recommending that the northbound approach of Lono the lanes be reconfigured to provide a second optional left through or right lane.

Location B which will be the major entrance off of Kaahumanu, we're eliminating the left turns out of the project and the through movements out of the project so it will be only a right out. We are still allowing left turns into the project, but we are extending the left turn pocket to provide more capacity. Right now, it's not a legitimate turnout lane. It's more of a taper. We're also looking at, can we implement right in, right out only on the north side coming out of the parking lot.

Location C is Puunene Avenue, we've recommended that a median be installed from Town Center Drive up to Puunene and that intersection be improved to allow a landscape median that would be – we're not providing left turn pockets we're saving that for a pedestrian refuge crossing. But it would also allow us to modify the northbound approach of Lono to put in a second left turn only lane. So in the future we would have two left turn lanes then a through and right rather than a left and then a left turn lane.

Intersection D is a new intersection. We're proposing a new traffic signal there and that intersection would have to be coordinated with the existing signal over Puunene.

E, the first...(inaudible)... Town Center Drive, we're converting that to a four-way or an all-way stop controlled intersection. As we'll see in the next slide, it enhances the pedestrian – it gives them a safe crossing but it also brings that level of service down to a level of service D, whereas, if we don't, traffic coming out of these side streets would be level of service F. So there's a condition there.

Intersection F, we are putting in a second left turn only lane and we're extending the length of those left turn lanes because right now they do back up during the peak hours.

The E on the far lower left is an existing unsignalized intersection that we did a warrant

analysis and we determined that under existing conditions that the warrants for a signal is satisfied. So we recommended that, are recommending that a signal be installed there and the cost is pro rated between this project and the Kane Street retail project that's going in just north of that.

What is not shown on this map is improvements that we recommended for the west bound approach of Kam Avenue at Hana Highway. We are recommending that that approach be widened to provide an additional lane. That new lane would be in the median area. It would be a left and a through then we can an additional right turn only lane because our projections indicate that in the future that right turn from Kam going onto Hana is the constraint.

Also, maybe worth mentioning is we have made some recommendations for the intersection of Kahului Beach Road at Kaahumanu as part of the Kane Street project and those are under review so we picked up those two bottlenecks along ...(inaudible)... with some mitigation measures.

To enhance the pedestrian crossing the driveway or the entrance along Kaahumanu at Kinau as I mentioned we restricted those left turn movements that seem to be encouraging pedestrians to cross there. So we put that in.

The second one, actually refers to the median that I mentioned along Puunene Avenue and what you see on the right there are – is a concept plan that shows how we would put that median in there to provide a refuge and whether that median is landscaped or not and how the final design looks in terms of length of those pockets is all subject to plan review and approval by DOT.

On the side of the project at Lono and Town Center Drive, we've converted that to a – from a two-way to a four-way stop. It means that vehicles will stop and allow the pedestrians to cross. The pedestrians will have the right of way on all four sides of the street.

Lastly, within the project we put in the roundabout in the center. Not only does that act as focal for the project but it also from a functional standpoint slows traffic down. It discourages that roadway from becoming a through street and it also gives us a lot of flexibility if you want to close one section of the street for a public event or special event or whatever, we can still route traffic into and out of the project.

Lastly, also in there is we – we're not proposing any crosswalk but we're proposed raised crosswalks also known as speed tables and that should again, slow traffic down, give the pedestrians a good, safe crosswalk.

With that, I guess it goes to landscape.

Mr. Bill Mitchell: Good afternoon Mr. Chair, Members of the Commission, Director Foley. Just to run through the landscape, ...(inaudible)... closing today's presentation and then we'll open it up for questions. I guess you know, if you think of the old shopping center the thing that I know I think of and most people think of is the monkey pod trees and that shade canopy that when you go there any time of day it's comfortable and you always see people hanging out on the old benches around those trees and sort of the character and ambience that the old shopping center has. And it was interesting when we looked at Grant's historic slides one of the common factors in this site and this property over the years has been shade canopy trees and that's really something that we want to try to not only preserve but enhance and build upon because for pedestrian friendly streetscapes without the shade canopy it could be a pretty hot and uninviting environment. Want to show that first slide.

We did a quick tree survey of what's there and have taken this to the Arborist Committee, Maui County Arborist Committee and looked to see what of the existing trees we might use and reuse and there are a number of them that we will try to reuse. A lot of the older monkey pods are so large they don't work well in new streetscapes but they'll work wonderfully in our town center park area. So we're going to try to use the nicest of the existing monkey pods in that town center park area and then bring in new monkey pods along the streetscapes.

Some of the things that we're trying to incorporate are the Hawaii built green standards into our landscape plan and landscape details. Typical things like use of mulch and drought resistant native plant material. Water saving irrigation systems and different siting of different types of plant material provide not only just shade but color and interest to the streetscapes.

As we showed you the first – as Steve went through the streetscape plan, you can see these large canopy trees are all new monkey pods that are going to line these streets and that's really what we feel is going to maintain that character of the existing shopping center and then using those real big large old monkey pods in the park area is just going to give this project an instant on and an instant sort of appeal for a streetscape and pedestrian friendly project.

As we go through some of the elevations I'll show you some of the exterior elevations and how we've addressed building massing but as Steve mentioned, I just wanted to reiterate is these – the raised crosswalks are right here under these canopies and those are going to be tabled with future paving and we feel like that's important not only from a traffic calming standpoint but just from a user, sort of a user enhancement standpoint that it gives you a sense of comfort as you're crossing streets and you're interacting and interfacing with the automobiles and the street frontage.

The overall site plan we just showed is the ground level, but interestingly enough on the top

level of these parking garages we're doing amenity decks and on those amenity decks we're going to have landscaping. There's going to be a pool and a recreation area in the quadrant 3 deck and then a landscaping amenity back in the quadrant 4. So this is another way where we can accomplish the density and still provide a lot of very user friendly spaces.

This was the photo enhancement or the photo image slide that Steve showed you previously. And what I wanted to point out on this was the importance of using large mature palm trees, both coconut palms and royal palms. We'll be using those on the streetscapes to give the project not only a sense of scale but also a feeling of permanence that we'll get right at the beginning of the project. This is sort of a blow up of that corner and plan view.

This was in quadrant 2, Steve mentioned primarily residential housing. We have a little mini park in here which is really kind of nice. Gives users a place to go and hang out with kids. Not a full service sort of active park but something where we can have a tot lot and a barbeque area and pavilion. So sort of a community neighborhood kind of small park in there and that's an enlargement of that space.

This is Steve mentioned is sort of the signature roundabout for the intersection of the two main streets. This element that will be in the center which is not completely defined and designed but will likely be some sort of sculptural or water element and really give a sense of identity and traffic calming to the intersection of the streets. Surrounded with the large canopy of monkey pod trees and the mature palm trees. We think it's just going to be a dynamite setting for everybody that uses it.

This is an enlargement of the town square showing where we want to use those existing monkey pod trees and as Steve mentioned, you know what a wonderful space for concerts and art shows and farmers market. There is a temporary farmers market defined on the perimeter of this town square and I think that's defined in the EA submittal but we see that as a use that can be incorporated immediately with the development of the town square.

These are just some images of typical downtown sort of projects that have the same sort of scale of feeling to what we're proposing. This is a little mini park like similar to what we'd be using in quadrant 2. These are streetscapes where we have nice wide sidewalks and then landscape, streetscape furniture and benches and trash receptacles. Seating areas, we have incorporated some raised seating areas along the streetscapes and then relationship of hardscape to the sort of common area park space. So really multi functional and multi amenities.

Just some more images of typical projects where use of outdoor dining along the streetscape and how that interfaces with hardscape elements such as decorative paving

and lighting, planters. Sort of the park interface as you move through the town center how that sort of adds scale and interest to people using the space, and of course all of the adjacent uses to retail and restaurants.

This is a little section of what the typical streetscape would look like with the shade canopy monkey pods and relationship to parking, pedestrians and raised planters and places to sit, decorative lighting and park benches and similar to what we've done or will be completed on Market Street in Wailuku Town.

Just another elevation. This is the main entry off of Kaahumanu Avenue. And we framed that with royal palms to give it scale then we have lower color combinations of orchid trees and then firecracker plant and other sort of colorful ground covers and shrubs to offset the buildings.

This is the Vevau Street entry off of Puunene Avenue framed again with coconut palms and the shade canopy monkey pod trees.

Just typical plant material we'll be using. Of course the monkey pods and coconut trees and large palms, pink tecomas, jatropha trees. Water friendly, maintenance friendly kind of plant of materials what we're looking for and we think with that combination that we'll provide kind of a project that it can not only look nice to begin with but they can maintain for a lot of years to come. I think that's it and we'll open it up for questions. Thank you very much.

Mr. Hedani: Questions for the applicant? Commissioner Starr.

Mr. Starr: First of all I'd like to say I think this is the best large project I've ever seen on Maui. I think you're going in a great direction. I'm curious with the parking. How much of it is stacked and I'm glad to hear you are stacking but from the presentation I didn't think any of it was stacked. So could you show us how many levels the different parking areas are?

Mr. Marlette: Generally quadrant 1 which is the commercial quadrant, all of the parking is ongrade on quadrant 1. Quadrant 2, the parking for all of the residential is a 100% contained and actually gated back here so it's fully secured. The commercial parking for quadrant 2, there's just small retail spaces here, is actually accommodated on all the frontage.

Mr. Starr: Is that all ongrade in 2?

Mr. Marlette: That's all on grade, correct. Quadrant 3 is when you get into a podium type of product. Where on the ground level we're showing retail spaces and ground level

parking to service the retail spaces. The upper level residential product is accessed by parking ramps that come up here and another parking ramp that comes up, actually it isn't shown on this one but comes up on the other side and we have one raised level within that and the housing that sits on top of that, again, with the idea that we can completely secure the parking for the residential users. In quadrant 4, we have again on-street parking for the small retail uses and there is five levels or excuse me, four levels of parking structure located in here that is centralized to service the existing Kahului Building, the office and upper level functions here as well as a secured area in the intermediate levels to service the residential in that quadrant.

Mr. Starr: Thank you. As far as drainage goes, right now all of the runoff from the site and I guess it's about 90% impermeable goes into either the harbor or into the pond bird sanctuary. It sounds like a lot of that going to continue. I had thought that with a completely new project like this that the amount of retention was going to have to be the difference, the delta, the increase from what it would have been had it been in its say, whatever precontact original state not the delta from the current parking lots and buildings to what it's going to be. So I'd like an answer on that. It sounds like you're only going to retain a very trivial amount, still going to pollute the shoreline.

Mr. Ishikawa: Well, yeah, you're correct in a way. First, I believe that the drainage standards don't call for you to take care of your additional runoff based on an undeveloped condition. It's based on what is there now. So what is there now we are talking about the existing shopping center. But we are going to take care of the increase, the 22 cfs and probably more than likely a lot more due to just the hydraulics of the surrounding area. We are going to utilize the Maui Mall system, but basically because it's located on the Maui Mall side and this project is so big, it's not going to be practical, hydraulically practical to get the runoff across to Maui Mall. So in likelihood, a lot of runoff is going to be maintained in the permanent swales, put underground and sheetflowed into landscaped areas where we're going to pond it and let it percolate. But by standard, you are correct as whereas we only need to take care of the increase, but in likelihood we're going to take care of a lot more.

Mr. Starr: Okay, I hope you can take care of as much as possible. I would foresee some concern if most of it going to continue to sheetflow. Anyway one of the question on another matter which is, --

Mr. Hart: Commissioner Starr, you know as part of our response to comments from the commission, we'll provide a detailed analysis of that so you'll be able to understand how much additional drainage runoff will be accommodated on site.

Mr. Starr: Please do as much as you can. ...(inaudible - changing of tape)... analysis better than many we've had, but I'm pretty concerned with what's going to happen in Kahului post superferry and this project because it's already getting to a point where

Kahului is getting gridlocked at least twice during the day and I really have a concern that - you know, this is going to be a wonderful thing but it's going to draw a lot of people coming and going and then add the superferry to it, you know, there may not be any way to get from Wailuku back toward to the airport. It's just going to be one solid jam. Is there anything that could be done looking ahead to maybe alleviate that?

Mr. Rowell: Well, I think there's two questions there rather than. First is the superferry. What are the impacts of the superferry? The superferry people have prepared a traffic impact analysis which we got several weeks after we did our traffic study. That is for whatever whether you agree with it or not is the official document and it says that there are - not going to be any impacts during a.m. and p.m. peak hours. We now have their assignments and we are going to adjust our projections to incorporate the superferry to look at a worst case scenario. What would happen if the superferry should happen to dock in Kahului in the middle of the afternoon peak hour, we'll reassess those impacts. There's also some impacts associated with that in terms of pedestrians and that study did not provide any ...(inaudible)... but it's my feeling, I don't know if everybody agrees with me or not but there will be a tendency to drop off these pedestrians or these pedestrians can congregate in our project and then somehow we got to get them across Kaahumanu to the project. Okay, I'm well aware of that and we're working on a solution for that.

Mr. Starr: I wish there was maybe an overbridge over Kaahumanu or something.

Mr. Rowell: The issue of the traffic along Kaahumanu I agree with you that Kaahumanu has pretty much reached its saturation point and we've talked to the State, we've talked to the consultant that's coordinating the signals and we all agree with that. What is happening right now is that traffic is starting to move down to Kamehameha Avenue. As you come across town Kahului Beach Road, they take Kane Street down try to make that left. That's why we're recommending, one of the reasons why we're recommending that signal at Kane and Kam. We're also putting in a signal. We're doing some improvements along Kam that will facilitate the flow to that area from Kane Street on over to Hana Highway.

There is also a tendency of traffic coming from Wailuku to take Wakea and drop down to Wakea and go over to Kane whatever. We don't know if we can make any improvements along there because there's a section there where we have big metal power poles on both sides of the road. But we don't know if we can do anything but we have been asked to look at that. So we hope that we will get some diversion and we're pretty sure we will. Diversion will continue. How much that diversion is I don't know. I couldn't tell you.

And we're also looking at the next generation of traffic signal progression I guess beyond the transect 7F but it goes to the next system that - don't want to get into the details but we are looking at the next generation of progression along Kaahumanu.

Mr. Foley: Phil, I just wanted to add, I hope your traffic study also includes analysis of the increased number of cruise ships and both the rentals cars related to the cruise ships and also the pedestrians related to the cruise ships. And also the reconfiguration of the cargo areas at the harbor where they'll be different types of traffic on Puunene because of the proposal to change some of the uses along, you know, between Kaahumanu and the harbor taking out some of those existing uses and replacing those with harbor oriented uses.

Mr. Rowell: That's in the master plan?

Mr. Foley: Yeah.

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

Ms. Shepherd: Not for Phil.

Mr. Hart: Can I just make one comment? One additional comment is, you know in the context of the project, there's going to have to be an ongoing, you know dialog with the State Department of Transportation and the County of Maui regarding traffic related issues because the build out of this project, you know, it's been indicated to you before is going to be quite a long period of time and probably about 2012, you know you might be talking about 2012 which would be six years from now starting the fourth phase of the project, that's optimistic. I'm sorry.

Ms. Shepherd: You're anticipating 442 multi family residential units, but as far as the office and retail, how many different businesses do you think will be there?

Mr. Hart: I don't know. Has anybody done any kind of analysis of that?

Ms. Shepherd: And what kind of business is -

Mr. Hart: Retail. Well, a lot of the retail, for instance there's definitely an effort being made to reestablish Ah Fooks as part of this redeveloped Kahului Town Center. When we were meeting with the community, when A & b basically held their community meetings there was a lot of interest on the part of individuals who actually have shops in the area to reestablish themselves within the redeveloped Kahului Town Center. So yeah basically the intention is to establish a mix that's not a visitor oriented kind of mix like say Front Street in Lahaina. It's going to be much more of a local type of service, community business district with bookstores, barber shops, beauty parlors.

Ms. Shepherd: Could hundred?

Mr. Hart: Could be, yeah. Yeah, I would think, yeah.

Ms. Shepherd: Then we can raise Wailuku and rebuild Wailuku.

Mr. Hart: No, no, no. Wailuku is its own self.

Ms. Shepherd: Wailuku needs a lot of buildings taken out and redone. Then my other question was you touched upon the water conservation measures with the irrigation. I assume that you'd be getting water from the lao aquifer?

Mr. Hart: Yes.

Ms. Shepherd: Okay. Any idea of how much you'd be needing?

Mr. Hart: We've done a ...(inaudible)... calculations regarding water, Michael?

Mr. Ishikawa: I apologize for that. That was my call. I thought the presentation was going to be lengthy so I told them cut that slide out. But to answer your question, basically based on a planning standard from the Department of Water supply the project will use as far as domestic demand roughly about 263,000 gallons per day. I believe the calculations are in the preliminary engineering report in the back of the EA.

Ms. Shepherd: It's residential?

Mr. Ishikawa: Total.

Ms. Shepherd: Total. Okay, right. And then I had an energy question. So water conservation is going to be the type of planting and I assume all the standard, you know, what about energy conservation? Are you following any of the directives from leadership on energy and environment planning.

Mr. Ishikawa: LEED, yeah, Steve will talk to that one last thing on the water conservation is we are looking at doing a well for irrigation. Actually well water just down the street at Christ the King Church they have really good quality. We haven't tested this site but we're hoping we can get at least good enough quality that we can either water either a hundred percent or a high percentage of the landscape through well, and then of course, incorporate all the water saving standards of irrigation technology.

Mr. Marlette: Generally -

Mr. Hedani: Could you identify yourself for the record?

Mr. Marlette: Oh, Steve Marlette, MC Architects. Generally related to your other question relative to energy standards. We have included in your EA package the checklist of we're trying to follow some of the LEED standards.

Ms. Shepherd: Where is that because I didn't - where in this volume is it? Front, back, mid?

Mr. Marlette: It's on page 19, 19 and 20.

Ms. Shepherd: But you're not seeking LEED certification for any of it?

Mr. Marlette: No, not at this point. We're just a standard of practice, generally we're really trying to follow that with just about every project now as much as we practically can just as a matter of practice.

Mr. Foley: Could I just follow up on that? I notice there are no solar panels in the architectural drawings and there's no solar referenced here. I assume all these buildings are going to be air-conditioned both residential and commercial. I think you need to do a lot more analysis about you know, your energy conservation and especially why you're not incorporating solar energy.

Mr. Marlette: We haven't necessarily gotten into that level of detail yet, but yes, it is definitely something that, you know, it's included with that check list as an issue. As the project develops try to incorporate as much of that as we possibly can.

Mr. Foley: Good.

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

Mr. Iaconetti: I seem to recall the power system along side the roads there, are you going to have underground electricity or is it all going to be up?

Mr. Marlette: Generally it's our intent for anything coming into the site to keep it all underground as much as possible. The power lines that are in front of the project right now are major transmission lines that I'm not sure exactly where they go or whether our power even comes from those. But generally those will probably be maintained on the frontage although we would like to do something with them. I think it will be prohibitive actually to accomplish that but around the other three sides of the site, generally I believe it's all underground now and it will be maintained underground and throughout the streets and within our property it will all be maintained underground.

Mr. Iaconetti: I, too, would like to congratulate A & B. This is just a terrific project. I'm

certainly all for it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, regarding that power lines, there may be some concern regarding the emissions from the transmission lines since the residential units will be pretty close to them when you're up on the forth floor, you'd probably be 20, 30 feet away from those high voltage transmission lines so that maybe something that would be worthwhile looking in to.

Mr. Marlette: Yeah, we will look at that. Generally as, you know we have a pretty substantial setback from that street to the retail portion. It's 20, 25 feet I believe and then again, the residential steps back beyond that and so we're probably in the range of 30 to 40 feet probably from the power lines at that point and it is an issue that we are definitely going to have to address. Visibility and just the proximity.

Mr. Starr: I know it's possible to do calculations on it. Also, going back on the - thank you for including the LEEDS checklist. I would like to try to encourage you to at least attain a basic LEED certification which I really don't think would be very hard or expensive but would give certainly, give another, just another positive aspect, you know, of greenness to this project that when you go into the silver and gold and platinum level of LEEDS that becomes expensive, but I think you probably could with some solar hot water and you know, just - energy conservation. Get the basic certification level.

Mr. Marlette: Yeah, as the project moves forward. Again, we're very, very conscious just as a matter of design principle about getting as close to that as we possibly can.

Mr. Hedani: Before we continue with other comments, Corp. Counsel, did you have a comment to make?

Mr. Giroux: Just a small comment to the commission. At this point we're looking at the environmental assessment and I just want to remind you to refrain from making any comments about the quality of the project at this point because we still have an SMA permit to review and it is a adversarial type of permit review. So I just want to remind you to keep your focus on the environmental aspects of the project ...(inaudible)... information of that type and stay away from comments of what you think about the actual project itself.

Mr. Hedani: And the reason for that is?

Mr. Giroux: Because in the future if there are challenges to your impartiality as far as your review of the project, I want to keep everybody out of that kind of situation where we're going to be asked to recuse ourselves.

Mr. Hedani: Okay. So although we all like the project - Commissioner Shepherd.

Ms. Shepherd: And maintaining my impartiality, obviously this is going to have to be staged. Any idea where you're going to start? 1, 2, 3 and 4?

Mr. Marlette: Yes. There's actually a detailed phasing plan in your - generally the first phase of the project will be quadrant 1, the commercial portions of quadrant 1 anticipated the second phase would likely be quadrant 2. Again, there seemed the acceptance of the Kane Street project and various other things and will likely move into quadrant 2. Potentially along with quadrant 1 at the same time would be the generally the streets, the park and the commercial portions of quadrant 4. Likely it would go onto quadrant 3 and then sort of finalize with higher density parking structure in quadrant 4.

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

Mr. Iaconetti: I've got a problem with the Corporation Counsel's last statement. You know, I don't appreciate being censored as to what I can and cannot say. You know, if I do like the project I don't see any problem with that. I'm not committing myself to final approval or not. I'm just saying what they're showing us looks great. And so, what is the problem with that?

Mr. Foley: Let me put it in a different context and not a legal.

Mr. Hedani: It's actually saving ourselves from ourselves.

Mr. Foley: Yeah, there have been instances in the past, not in this county of course, where commissioners have made statements about projects prior to the public hearing. And the votes by those commissioners were challenged because they were making up their mind before they heard from the public. And the process that's been adopted by the Council and in fact, by the State is that the commission is supposed to be impartial and collect information from the applicant, from the staff, from the public prior to making a decision. So if you do anything that telegraphs how you feel about the project at the beginning you're placing yourself in a position where it's going to be very difficult to change your position when you hear some bad news. You know, we've had projects before where towards the end of the process we've discovered that there were elements of the project that really needed to be changed and if you've already made a big pitch about how great the project is, you're going to be kind of in an awkward situation to change your position. But the main thing is that you're supposed to be impartial as you collect information from the applicant, the staff and public before you make a decision. That's not a legal interpretation that's just kind of a planning protocol. There have been decisions in other counties overturned because commissioners were determined by evidence in the minutes that they weren't impartial, they were in favor of a project before the evidence was disclosed. So that's the

planning answer.

Mr. Hedani: Tough to swallow, yeah.

Mr. Iaconetti: I'm having a very hard time swallowing it. I think the concept looks great and I don't see any reason why I can't say that. I don't expect to get invited to dinner or anything. All I'm saying is that I think this is an exciting project and I may change my mind if I find something else, but I haven't committed myself in any way.

Mr. Foley: Okay.

Mr. Hedani: You may need to recuse yourself at some future point because of what happened today but your comments are well noted. Any other questions for the applicant at this point? For the commission, just so you know, four commissioners plus Mr. Director Foley here have been served with a legal notice this morning on a prior case. So the possibility of something happen is not totally remote.

Mr. Iaconetti: Thank you.

Mr. Hedani: So it's not something we're intimidated by anyway, right? Any further questions for the applicant?

Mr. Foley: Oh, I had one. I'm not sure who it was, but somebody mentioned that there's been some excellent response with respect to interest in the project preliminarily and I think that may be related to the residential units in a nearby project and I wondered if you could give us any more information about that? Because I remember that when we originally talked to Grant Chun that there were some corporate concern about mixed use projects and whether you could mix a residential above commercial and I just wondered if there's been some good response that is encouraging you with the mixed use project.

Mr. Chun: Thank you Mr. Foley. Grant Chun for A & B Properties. Yeah, I think what you're referring to is when we met last with the commission we hadn't tested the waters yet so to speak as far as the mixed use concept as far as whether folks on Maui were actually open to the proposition of residing on the same location as retail activities. And I think our comfort level has been eased to a great degree by the rollout and the introduction of the Kane Street mixed use project a few months back. That was not an issue for the buyer. There was a comfort level on their part. In fact a lot of folks were I guess personally very familiar with the concept having traveled to other parts of the country. I mean, all you have to do is go to Kaimuki or any number of places in the islands even where it's widely accepted that to live in close proximity to conveniences is a good thing. So actually what my comment was predicated on is that we just weren't sure whether the Maui market place was ready for that. But it seems like there's that comfort level.

Mr. Hedani: Any other questions for the applicant? I had one question and Chris maybe you can answer this is that, I've noticed that in West Maui the traffic situation has been greatly mitigated by the synchronization of the signals which was put in I think at a cost of like \$250,000 and they synchronized nine or ten lights in the Lahaina area and the traffic situation has improved by a hundred percent I think over the prior condition. Is the existing system on Kaahumanu Avenue synchronized and is there is a move to incorporate that type of an improvement?

Mr. Hart: As far as I know it's not synchronized. It is? Really is?

Mr. Hedani: We just can't tell.

Mr. Rowell: I got to add a little bit to that. That's one of the reasons why I mentioned earlier that we were looking at the next generation of synchronization. That system was synchronized using transit 7F that basically takes input in and adjusts the timing and offsets and splits and you do after that manually. The next generation does that every minute through series of computers and detectors. So we're looking at what would be involved in doing that or if it's even feasible.

Mr. Hedani: So that's something that's being looked at?

Mr. Rowell: I will be making a recommendation on that one way or the other.

Mr. Foley: Phil wasn't there another project that was required to synchronize the lights on Kaahumanu like Mercedes?

Mr. Rowell: Right. The system from Maui Mall entrance over to Wakea I believe is a synchronized system. The signal at Hana/Kam/Hobron is not tied to either system. So one of the recommendations was to synchronize that signal with the rest of Kaahumanu.

Mr. Foley: And on a slightly different location there was talk about or a requirement to synchronize the signals on Dairy Road that was attached to Costco gas station which never proceeded.

Mr. Rowell: Okay, that is moving forward.

Mr. Foley: Oh it is?

Mr. Rowell: The equipment has been ordered. We will be doing the before studies in about three weeks.

Mr. Foley: But it's not associated with Costo?

Mr. Rowell: No.

Mr. Foley: Okay.

Mr. Hedani: Okay, are there any other questions for the applicant at this point?

Mr. Hart: I'd just like to make one comment. You know we talked about the time, timing of the project and usually as far as the commission is concerned there's a period of time within which you have to start which is two years and then a five-year completion time frame. What we've talked to you about before when we came as a workshop was the possibility because it's a larger project kind of modeling it after the Maalaea Triangle which basically - you know their time was open ended but subsequent to the approval of the project the five-year completion was added. We would like consideration of some additional time that we'd like to propose to you in the future and also in the context of building it in phases, we're also looking to propose for adoption some urban design guidelines which we would be working probably with the Urban Design Review Board and the Planning Department staff on in the context of these architectural designs that are more sympathetic to local architecture. I'd like to thank Ann and also Kivette for their help. You know, this is a big project and we appreciate it.

Mr. Hedani: I think we can address all of those issues at the SMA level.

Mr. Guard: Sorry, I might have skipped it. Anyone should be able to answer this one. If this is going to be the core of Kahului is there a spot for either mass transit drop off points either in it or around it? Just to be able to pull in without stopping traffic?

Mr. Marlette: Let me take a shot of that because I have sort of sculpted out at least a pull off space that we have sort at the entrance, at least it's preliminary. We have located a bus stop up along this side with the intent to eventually bring the bus service in at this point, bus stop located right there back in - I'm not sure exactly how they'd go out of it. But the intent is to facilitate that function.

Mr. Hedani: That could also work for shuttle service from the cruise ships as well. I had a question on affordable housing. Is there a component of affordable housing that's been incorporated into the project?

Mr. Chun: Yes, Mr. Hedani, we're working with Alice Lee, the Director of Housing and Human Concerns to address that.

Mr. Hedani: Any other questions for the applicant? Are there any members of the public that would like to offer testimony at this time on this particular project and agenda item? Seeing none, the public hearing portion is closed. Additional questions, concerns?

Commissioner Starr.

Mr. Starr: Just for clarity what are we being asked to do today?

Mr. Foley: You're commenting on the draft Environmental Impact Report and several of us are taking notes and those will be transmitted to the consultants and so they can respond to all the questions and issues that came up today. So this is your first view of the environmental report.

Mr. Hedani: Okay, so the action items are a and b, that's listed providing concurrence on the filing of the draft environmental assessment and the anticipated findings of no significant impact with OEQC for publication and b, provide comments on the draft assessment.

Mr. Starr: I'm a little bit confused. Are we accepting the EA today or are we just making comments?

Mr. Foley: You're commenting on the EA today and the final EA will come back to you and then the third time you will actually see an SMA application at which time you'll be asked to take an action.

Mr. Hedani: Is there any formal action that's required at this point? Kivette.

Ms. Caigoy: I believe what we've done in the past is just ask the commission concurs with the department on filing the draft EA with OEQC for publication as an anticipated findings of no significant impact. And I've taken notes through your discussions for your comments to the applicant.

Mr. Hedani: So it's two-step on the EA, one on the draft and one on the final?

Ms. Caigoy: Right, on the EA you're just concurring with the department on filing it for publication with the anticipated FONSI. We'll come back again for the final EA and that's where the commission will need to make a determination whether it is a FONSI or will require the preparation of an EIS.

Mr. Hedani: Okay.

Mr. Iaconetti: Does that require a motion to approve? So move if that's all right with the Corporation Counsel.

Mr. Giroux: If there's consensus, there's no need ...(inaudible)...

Mr. Hedani: Commissioner Starr.

Mr. Starr: I will be voting in favor of the motion or as part of consensus, but just to comment. It always seems difficult to look at a project this size and feel that it has no significant impact because you know, this is a very large project it will have significant impact. Hopefully it won't be a negative impact, but it definitely has an impact. Every time we do something major like this, it's going to change our community.

Mr. Hedani: Sure. Any other comments?

Ms. Caigoy: Well, I think if you can look at the Chapter 343 and the process, you know the first stage of it is the EA so the applicant can elect to go do the EA process but that doesn't necessarily mean you as the accepting agency, just rubber stamps a FONSI. I mean, you make the determination what the information whether it is a FONSI or it does require an EIS. So they can either elect to start with the EA or they can just bypass the EA and go straight for the EIS. Most cases they start with the EA.

Mr. Foley: At the next review when you review the final EA you'll be determining whether or not the mitigation measures reduce the impact to a level where they're not negatively significant. The impacts could initially be quite significant and quite negative, but with the mitigation measures suggested by the various consultants such as traffic consultants, those mitigation measures can reduce the impacts to a level of insignificance and at that point you can support the FONSI which is finding of no significant impact.

Mr. Hedani: Why don't we take a second to the Doc's motion? We have a second.

Mr. Starr: Yeah, I'll second.

Mr. Hedani: Seconded by Commissioner Starr.

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

**VOTED: To Accept the Department's Recommendation to File the Draft Environmental Assessment for Publication with an Anticipated FONSI.
(Assenting - W. Iaconetti, J. Starr, D. Shepherd, J. Guard, B. U'u, S. Freitas, J. Amorin, P. Eason)**

Mr. Hedani: We'll take a five-minute break.

A recess was called at 2:47 p.m., and the meeting was reconvened at 2:55 p.m.

Mr. Hedani: Next on the agenda, is Item C-2.

Mr. Foley: This is also soliciting comments on the draft Environmental Assessment.

2. **MR. JOHN COOK requesting comments on the Draft Environmental Assessment prepared in support of the Shoreline Setback Variance application in order to construct a swimming pool, spa, and landscaping improvements within the shoreline setback area at 1391 Front Street, TMK: 4-5-013: 001, Lahaina, Island of Maui. (EA 2006/0011) (SM1 2006/0012) (SSV 2006/0002) (K. Caigoy) (T. Abbott)**

The applicant is seeking a shoreline setback area and Special Management Area Use Permit for a proposed swimming pool, spa, landscaping, and existing steps and CMU sidewall at a single family residential property.

The EA trigger is the work within the Shoreline Setback area.

The Planning Commission is being asked to:

- a. **Provide concurrence on the filing the Draft Environmental Assessment and the Anticipated Findings of No Significant Impact (FONSI) with OEQC for publication.**
- b. **Provide comments on the draft Environmental Assessment.**

The public hearing on the Special Management Area Use Permit and the Shoreline Setback Variance will be scheduled for a future date after the Chapter 343 process has been completed.

Ms. Kivette Caigoy presented the Maui Planning Department's Report.

Mr. Mich Hirano: Thank you Kivette and good afternoon Commissioners. My name is Mich Hirano with Munekiyo and Hiraga and our firm is assisting the applicant Mr. John Cook with this shoreline setback variance and special management use permit for a pool and spa and some related improvements in the shoreline setback area. I've prepared a brief power point presentation for the commissioners to just explain the background and the project details.

The subject property is located at 1391 Front Street. It's a single family residential property. This is Front Street down this ...(inaudible)... road. This is Honoapiilani Highway and the property is located to the north of Mala Wharf. Puunoa Point and just where Front Street -

It's just south of where Front Street meets Honoapiilani Highway. The property is surrounded by single and multi family residential properties.

This is the subject property. To the north of the subject property is the Lahaina Roads multi family development and then further north and surrounding the property are single family residential properties.

The property is zoned R-1 which has a minimum lot size of 6,000 square feet. The subject property is 8,300 square feet and as you can see from this particular slide the property is a shore fronting property as well as all the others to the north and to the south of the subject property.

The proposed action involves a development of a pool and a small spa within the shoreline setback area. This is a seawall that was built in 1949, and it is a nonconforming seawall. This was verified through review of area photos that were taken of the subject property in around 1949. And you can see the outline of the seawall. This was also confirmed during a cultural impact assessment that was carried out as part of the environmental assessment when I interviewed Mr. Frank Neizman.

This is the shoreline setback area and as you can see the residence was built in 1998, and it's a 3,000 square foot residence. This is Front Street and the driveway into the subject property. As we were doing the assessment and reviewing of the documents we understood and realized that there is a portion of the front patio steps on the makai side of the residence approximately three feet of the steps are within the shoreline setback line as well as this boundary, CMU boundary wall it's the northern boundary wall and it was built, they couldn't determine the exact date of when it was built.

I interviewed the manager at the Lahaina Roads condominium project and unfortunately that individual was only on the job for a few years and it was existing at that time. Looking at photographs, I looked at a photograph of a 1998 photograph, photo mosaic of the shoreline and the wall showed up in that particular photograph. This wall is a CMU, three-foot high wall and approximately 20 feet of that wall is within the shoreline setback. So this application is to do an after the fact permit for this portion of the wall within the shoreline setback. Three feet of the patio steps on the makai side of the residence which is located within the shoreline setback and as well, the action of the proposed pool and spa. The pool is four feet deep.

The reason the applicants, Mr. and Mrs. John Cook, want to develop and build this pool is for therapeutic purposes for Mrs. Cook where she needs the daily exercise. She's an elderly individual and it was recommended that she has some daily exercise. So Mr. and Mrs. John Cook wanted to develop this pool on their property.

The land use permits that are being sought. The first item is the shoreline setback variance and there are three items or components of this project that fall within the shoreline setback. A portion of the CMU wall which was that three-foot CMU wall within the shoreline setback area, a portion of the makai patio steps approximately three feet into the shoreline setback area and the proposed pool and spa.

The second permit item that this application involves is an SMA use permit for the proposed pool and spa. The evaluation of the pool has been determined at approximately \$80,000. However, upon planning commission's review due to the location of the pool within the setback and the potential impacts to the shoreline rules and the SMA rules they felt that an SMA use permit major would be appropriate.

This is a photograph of the front of the residence. There's a driveway off of Front Street. This is the rear or the makai portion of the property and as you can see this is the seawall. There's a grass and landscaped area where they want to propose to build the pool. There is an existing portable spa located on the site and the applicant will be removing this from the site and out of the shoreline setback area. And this portion of the patio steps are within the shoreline setback.

This is a picture of the seawall. It was built approximately 1949, it's a fairly large structure and all the properties along this for some extent along this portion of Lahaina is protected by a rock mound seawall armored rock seawall. And as you can see the rock – the shoreline in front of the seawall is rocky and there's very little shoreline lateral access. And in fact, when the tide does come up there is no shoreline. The water level comes right up to the seawall.

A cultural impact was carried out on the property as part of the environmental assessment and requirements under HRS 50. We were fortunate to have a native Hawaiian descendant Mr. Frank Neizman to interview and he was selected by Na Kupuna O Maui. In fact, why I say it was fortunate is that Mr. Neizman's maternal grandparents David and Elizabeth ... (inaudible) ... once owned the property. And when they passed away Mr. Neizman parents, Frank Niess and Helen Haiku-Neizman took over the house and property. Mr. Neizman actually grew up on the subject property and he recalled as a young boy that there was sand three feet deep in front of the property. However, he said when the Mala Wharf was built which in the regional location map is approximately to the – it's about a quarter of a mile to the south of the subject property, he said when the Mala Wharf was built, it affected the lateral process of sand movement and the sand moved away he said.

Mr. Neizman has lived in Lahaina all his life. He is a fisher and his family are fishers and they fish the coastal waters in front of Lahaina. The final analysis was during the cultural

impact assessment he believed that the proposed action would not adversely affect shoreline use, cultural practices or gathering rights that are carried out in front of the property or in the Lahaina area.

In terms of the compliance with the shoreline setback rules and criteria of the planning commission, I just – one of the main criteria is that the permit, the shoreline setback should be granted due to hardship to reasonable use of the land. And when you look at the subject property it is R-1. It's 8,000 square feet and when you take into account the front setback or the shoreline setback of 25 feet as well as the side yard setbacks and the front yard setbacks when you account for all the setbacks on the subject property the livable area is reduced by 53%. So it is a hardship for the reasonable use of the land based on setback criteria.

The shoreline conditions and the erosions, part of the proposal is that because of that rock mound seawall that was build in 1949 which really separates the shoreline process from the upland portion of the property and all the improvements will be built on the mauka side of that rock mound seawall, the proposed action will not adversely affect shoreline erosion rates. And as well, in terms of the way the pool is designed, the proposed pool is a self-enclosed system with recirculating water and it has a – the water will be a salt ... (inaudible)... type of – purifying water process and there will be a cartridge type filter. The cartridge type filter reduces the need to dispose of backwash, filter backwash. In fact, in this particular system you just have to remove the filter and insert a new filter.

In terms of whether the pool needs to be cleaned and how that will be handled, no water will be exposed or be put out into the property. As septic service will come in, will pump the water out or put it into a septic tank and take it off site for disposal.

We've completed the environmental assessment. We had determined that anticipate a finding of no significant impact. And if you have any questions I'm available to answer them. Thank you.

Mr. Hedani: Questions from the commission? Commissioner Shepherd.

Ms. Shepherd: What's the function of a shoreline setback area?

Mr. Hedani: Who are you asking the question to? Director Foley.

Mr. Foley: Well, one of the functions is to provide a buffer between any structures and the ocean in case there is erosion to protect the structures from erosion. And in this particular case there's an existing rock seawall between the structures on the property such as the house and the portable spa and the water. But I think that's generally considered the primary purpose of the setback.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'm wondering why as an alternative, consideration was not given to demolishing the house or perhaps just a garage portion of the house and putting the pool and spa there.

Mr. Hirano: The applicant had purchased the house in 1998. The house was built, it was an existing structure and the house is setback from the Front Street so there was no room to move and do the pool in the front portion of the home.

Mr. Starr: If the home were demolished and a smaller house were built though there would be room is that not correct.

Mr. Hirano: It was almost a brand new house when the applicant purchased it and that was the concern.

Ms. Shepherd: For Mich, it sure looks to me like there's room to put it in the mauka. I can understand why you'd want to have a pool because there's no sand any more, but you know, if it's just to build a pool for exercise purposes it certainly could be put at the other side.

Mr. Hirano: Well, that is the driveway into the carport.

Ms. Shepherd: Not over here.

Mr. Hirano: Well, that will be in the backyard setback.

Ms. Shepherd: Well, if you want a variance for shoreline setback, you can ask for a variance for a backyard setback.

Mr. Hedani: Other questions? Commissioner Iaconetti.

Mr. Iaconetti: I think Mr. Neizman not Niezman, Mr. Neizman is not old enough to remember sand in that area two feet deep before Mala Wharf was built.

Mr. Hirano: Mr. Neizman is 80 years old.

Mr. Iaconetti: I know, but that wharf's been there for longer than that. The wharf was there during the war. We have pictures of the Navy coming off that wharf into Lahaina. And so, for his comment about the fact that sand was there before they built the wharf, he's not that old.

Mr. Hirano: He's 80 years old.

Mr. Iaconetti: I know.

Mr. Hirano: He was born in the 20's.

Mr. Iaconetti: But the wharf was there a long time ago.

Mr. Hedani: When was the wharf built Mich?

Mr. Hirano: I'm not exactly when the wharf was built.

Mr. Iaconetti: The wharf was built to transport people between islands. They used to land there. In fact, the ships couldn't come in there. They used to take them off the ship onto a landing thing and bring them into shore.

Mr. Hedani: So it was built in the 1800's?

Mr. Iaconetti: I don't know but it's been there a lot longer than 80 years.

Mr. Hirano: I don't recall. I mean, that will be something that we will do in the final environmental assessment.

Mr. Iaconetti: I'm just wondering if the reason for the lack of sand is the seawall that was built in '49 not the war, but that's neither here nor there. Why do we, as Diane said, why do we have a setback rule if we don't adhere to it. That has would built quite a while ago, but we'd have a setback rule for quite a while too and too suddenly said, okay, this pool guard needs a variance before he doesn't have enough room for a pool. I have a hard time accepting the fact that they're going to put it right there, that close to the ocean.

Ms. Shepherd: As I've stated before, I believe nothing should go into a shoreline setback that can't that be picked up and moved if you have to. And obviously this area is going to hit by storms at some point or another. And no matter what kind of care they're taking of the pool, you're going to have that pool water mixing with ocean water. It certainly seems like there's adequate room to put it somewhere else. But another, just a general concern I have is, well one of them was touched upon by Doc here so a variance here, variance there. Why bother to have a shoreline setback area if we're going to keep giving a variance to anybody who comes by and says they really need it. But a bigger problem I see is allowing things to be built this close to the ocean when like it or not there is sea level rise. We are going to feel the impacts of it sooner or later. I mean maybe some of us won't be here to see it, but the county may be stuck with a whole bunch of things that are essentially in ruins. I really think if anybody is going to be putting anything close to the ocean, they should post a bond so the money is there to clean up the shoreline if we have to go back and take out rubble and I can see that in many spots and I think that's something that we

should give consideration to is as a planning commission, Planning Department looking ahead to, you know, trying to make up for mistakes that were made in the past.

Mr. Hedani: Commissioner U'u.

Mr. U'u: The way to address this will be one is to it probably be cheaper will be renovate his bathroom and put a Jacuzzi tub in there.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, you know, I seem to remember a plaque reading 1918 on the end of Mala Wharf when I used to go diving there. But I tend to be more in favor of removing the seawall and letter the, you know, the chips fall where they may so the beach will come back rather than adding more stuff in there. But I'm a little confused about what action we're being called to take here and if we did not think that there would be a findings of no impacts, what we do at this point.

Mr. Foley: You're being asked to comment on the draft EA, so you need to determine whether or not there are additional issues that need to be addressed or whether they've addressed the issue of the shoreline setback adequately. There have been several alternatives suggested, different places to put the pool and different facilities instead of a pool like a Jacuzzi hot tub. So ultimately you need to decide whether or not you want more information in the EA or whether you want to make a decision that the EA isn't going to be adequate and you need an environmental impact statement and if you go that direction, you need to be specific about what additional information you want. But you are not deciding on the merits today of the shoreline setback variance. You're just deciding on the completeness of the EA.

Mr. Starr: What if in a hypothetical case what if we felt that no matter what information we were given that we're still going to have significant impact. Then what do we do? Do we kick it up to an EIS or can we can just say, it doesn't matter what would happen in that theoretical case but it's just going to have an impact.

Mr. Hedani: Kivette did you have a comment on that?

Ms. Caigoy: In that case, if the information that they come back to you with is still not enough and you still believe it's going to pose a significant impact you kick it up to an EIS. You would require the preparation of the EIS. But right now all you're being asked to do is give that information or make comments and what request whatever information you feel is going to be needed in order to make that determination>

Mr. Starr: Well, I'd like to see more alternatives to other places outside of the setback

where the pool could be located.

Mr. Hedani: Mich, just as a general comment though you have a photograph that's in figure 4, of the subject property that's dated 1949, and to me it looks like there was a beach immediately to the left of the subject property in 1949.

Mr. Hirano: Figure 4? This is in the draft EA?

Mr. Hedani: Right. That sure looks like sand to me as well as sand offshore.

Mr. Hirano: You mean the right area sort of the mid portion of it?

Mr. Hedani: Off to the left.

Mr. Hirano: It's very difficult to say based on the resolution of this. We'll as well do a little more research on that as well to get more information on the conditions.

Mr. Hedani: Can you also provide information on the erosion transects for this area too?

Mr. Hirano: I looked for the erosion transects I think because of the seawall they're not in there, but yeah I'll double check that as well. But I recall trying to find that – determine what that erosion rate would be.

Mr. Iaconetti: Would it be appropriate to ask some questions about the pool at this point? How often do they expect to drain and refill the pool since that's the only way they're going to get rid of the water.

Mr. Hirano: I think it would just be drained and filtered or drained as required. And it won't be very often. There is a – we have included the technical specifications on it. I would think that it would be filled as needed as evaporation takes the water. Normally I don't think that they would be draining it and then filling unless there was repair work to be done.

Mr. Iaconetti: Well, maybe I got the wrong picture in my mind from what you said, but I got the impression that they were going to either remove the water from the pool and filter it and replace it, is that what they're going to do?

Mr. Hirano: No, I said if the water had to be removed from the pool, it would be taken from – with a septic hauling tank. And it will be drained into the –

Mr. Iaconetti: So how do they clean the pool then?

Mr. Hirano: Just through the filtration and just skimming it and –

Mr. Iaconetti: And what do they do with the – they're going to have to backwash the pool aren't they?

Mr. Hirano: No, because the filter is a cartridge filter it won't require backwash.

Mr. Iaconetti: So often do you change the cartridge filter?

Mr. Hirano: I'm not sure exactly how often that is done. I could get that information and put it in there.

Mr. Iaconetti: Yeah, because it seems to me that be an awfully expensive thing to – it's none of my business, but that would be an awfully expensive way to keep your pool clean to change the filter or clean the filter as often as one does as when one has a pool.

Mr. Hirano: But you don't need to drain the pool to clean the filter.

Mr. Iaconetti: No, I know that. Now that you've told me, yes. But you're still going to have to change the filter periodically.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Has this project been running into I guess either obstacles for a few years from some of the letters transmitting back to either previous parties as well it looks like?

Mr. Hirano: Well, the previous parties – there was a comment letter during the early consultation where the Planning Department wanted to make sure that the home that was built in 1998 had the proper certificate of occupancy and that's why I had to research some of the letters that were transmitted to the applicant or to the builder at that particular time in 1997 and 1998 that had cleared it for certificate of occupancy. We started this project probably we've been working on it for about two years. There were some technical, in terms of getting the pool technical design worked out with the pool designer, the engineer, that took time. And so it was a very – it took a long time to get the plans and specs that we had to – that we needed in order to do that environmental assessment, it took a while to gather that information.

Mr. Guard: And this might be for Mike Foley. Are the same regulations in place that if you have your certain setbacks from the ocean but if your lot is too small and you're given less than 50% of a buildable area is that the hardship Mich is talking about there. Is that still in place and that's one reason they're asking for the shoreline setback variance instead of being say 40 feet back. You know in the past it was an automatic kick up to 25 feet.

Mr. Hirano: 25 feet I believe is the minimum setback.

Mr. Guard: The minimum no matter what.

Mr. Hirano: Yeah.

Mr. Foley: Yeah.

Mr. Hirano: and the criteria for the hardship and the application for the variance is in the Maui Planning Commission Shoreline Setback Rules. And within the rules they allow certain conditions upon which shoreline setbacks may be granted. And there's a number of criteria that it doesn't affect shoreline processes, it doesn't affect lateral process and movement along the shoreline that there is not potential for damage and rocks falling from the structure into the shoreline, into the waters. So we assessed the application against that criteria. And the one that I thought was most pertinent is the buildable area which was the hardship. Through the document we've looked at all the criteria and responded to each and everyone, but I thought for the planning commission review the hardship one is the most significant.

Mr. Hedani: Other questions. Mich, I have one question on lateral access. Is there any proposed means to address lateral access along the shore?

Mr. Hirano: We mentioned in the EA, first of all, there is access approximately 300 feet to the south of the subject property off of Front Street. But the lateral access throughout that whole area is restricted because of the rocky shoreline and the tidal conditions. So when it's high tide you can't walk that area. So I don't know how you would be able to provide lateral access in that situation.

Mr. Foley: I just want to mention that I walked it once at low tide all along there from basically Kaanapali to Lahaina, and this is one of the most difficult, dangerous locations on the whole stretch. I mean, you are walking on wet rocks for quite a long distance along there. Even during low tide you're basically, you're very close to be walking in the water. I haven't seen it at high tide but I'm sure the water is up to the seawall.

Mr. Hirano: Yes it is.

Mr. Hedani: Is there a seawall at the Lahaina Roads property also?

Mr. Foley: Yes, just like this one.

Mr. Hirano: If you have the document, photo number 7 I believe is –

Mr. Foley: Yeah, all along here. One house it hangs out over the seawall over the water. The water's behind the seawall.

Mr. Hirano: Just trying to find the section where the photographs are. Section 13 near the end of the application right – just a few pages to the end of the application, photograph number 7. Chair Hedani?

Mr. Hedani: Okay, I got that.

Mr. Hirano: I'm sorry maybe you didn't get the application, but the EA.

Mr. Foley: Yeah, we don't have that.

Mr. Iaconetti: We don't have that.

Mr. Guard: It was on the – it's on your slide.

Mr. Hirano: I apologize. There were two documents prepared. One was the SMA shoreline setback application, the other was the draft EA and the draft EA doesn't have it, but this is the Lahaina Roads.

Mr. Guard: Yeah it's on the slide.

Mr. Hedani: Okay, what are our options?

Mr. Guard: When you get these properties that have the hardship that more people come in for the setback variances? There's not that many properties but I guess –

Mr. Foley: We're not talking about the setback variance. We're talking about the EA. We're just talking about whether or not this document is adequate.

Ms. Caigoy: This is just the draft EA. So right now we're just asking for comments or information you feel you may need when the final EA comes before you to make a determination of either a FONSI or preparation of an EIS.

Mr. Foley: For example, based on your earlier comments, you might want to ask for more information about alternatives to the pool such as locating it somewhere else or some hydrotherapy pool. You might ask for information about seawalls on neighboring properties but this is an opportunity to comment on this report not to act on the shoreline setback variance.

Ms. Caigoy: The comments I've collected so far was you know, I guess a further discussion on the function of the shoreline setback area and how this project meets that, alternatives of demolishing a portion of the house to accommodate for the proposed action or locating the proposed action somewhere else on the property outside of the shoreline

area setback area, more information is the lack of sand in front of the seawall from the war as figure 4 seems to indicate that it might be because of the wall. So provide further research and analysis or more documentation. Also to provide the documentation as to the erosion transects for this area. I have from the – any proposed means to address lateral access and we'll have the site photographs included in the final EA as well.

Mr. Hedani: I think I'd also like to request if we could get comments from people like Zoe Norcross on the appropriateness.

Ms. Caigoy: I believe we did transmit to her.

Mr. Hedani: Commissioner Starr.

Mr. Starr: And alternatives just for different kinds of exercise. Perhaps using public pool or taking up –

Mr. Hedani: Any other comments? Commissioner U'u.

Mr. U'u: Just one question. You know, I know you're using this for therapeutic reasons, just the age of the applicants?

Mr. Hirano: They're elderly people. I don't know their exact age, but they're an elderly couple, 75 to 80 years old.

Mr. Hedani: Any other comments? Seeing none, there's no action that's required in this particular case?

Ms. Caigoy: Again, just that commission concurs with the department on filing the draft EA and anticipated FONSI determination with OEQC for publication.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: Well I don't think it's going to have no significant impact but the way it's structured.

Mr. Iaconetti: Do you need a motion to concur with what she just said, so move.

Mr. Hedani: Moved by Commissioner Iaconetti.

Ms. Eason: Second.

Mr. Hedani: Seconded by Commissioner Eason. Any more discussion? Commissioner

Starr.

Mr. Starr: I have a real problem with concurrence that this is going to have a FONSI. I know that's the process, but on principle it really sticks in my ...(inaudible)...I can't vote for that.

Ms. Caigoy: Again, this is just a process and the 343 process what OEQC requires on a draft EA is when you file that draft EA with OEQC it's with an anticipated FONSI determination. But again at the final EA the commission can find that there's in accordance with the significance criteria I mean, one of your options is to find that there are significant impacts and they require an EIS.

Mr. Foley: And beyond that when you review the shoreline setback variance you could theoretically use the EA or EIS to deny the shoreline setback variance. You will then have the information before you either in an EA or in an EIS.

Mr. Hedani: Are you ready for the question?

It was moved by Mr. Iaconetti, seconded by Ms. Eason, then

VOTED:

Mr. Iaconetti: Could you repeat the motion I made?

Ms. Shepherd: I thought we don't need.

Mr. Hedani: The motion was to concur with the department's finding of an anticipated finding of no significant impact and filing with the Office –

Mr. Iaconetti: I withdraw the motion.

Ms. Caigoy: Maybe I can –

Ms. Eason: Do we need to make a motion on this because people are asking why do we have a motion if we don't need one?

Ms. Caigoy: The anticipated FONSI, it's probably a poor choice of words that the State has chosen. It should be that the draft EA is just made available. You know maybe not an anticipated FONSI. So even though we're – I mean, to file it with OEQC with the anticipated FONSI just kicks the 343 process into action. It's not necessarily saying you're going find that there's – I mean, that it is a FONSI. It's not a rubber stamp. So it's –

Mr. Hedani: If the commission does not concur with this particular finding at this point what action do we take?

Mr. Guard: We're not finding anything.

Ms. Caigoy: Right. Well see at the draft EA what you're allowing the applicant to do is to come back to you with whatever information you've requested at this stage and then when they come back with the final EA that's when you can find that there are significant impacts and require an EIS or –

Mr. Hedani: What about if the commission does not concur?

Mr. Caigoy: Basically that's what would probably happen but I'm not sure, Corp. Counsel might need to comment on this because in order for you not to concur you've got to state right now which in accordance with the significance criteria why it's – you see why it's going to be a significant impact at this point.

Mr. Hedani: In other words, if we do not concur then we need to identify why we believe there is significant impact?

Ms. Caigoy: Right, and then I mean, once you identify those points, really what the EA process allows the applicant to do is to go conduct further research and get that information together and come back to you.

Mr. Iaconetti: Would it be appropriate to just accept the draft EA. In other words, it's a document. We've accepted it. We don't concur or not concur with it.

Mr. Hedani: That's basically what Kivette is asking us to do is to accept it and allow them to process it.

Mr. Iaconetti: Well that is my motion.

Ms. Caigoy: The concurrence is just to allow the applicant to proceed through the EA process to gather the information that you're requesting in order for you to make a determination of a FONSI on this project or not. It's not approving the project, it's not saying you're going to issue a FONSI.

Mr. Hedani: Understand. Commissioner Starr.

Mr. Starr: I feel like we're in a Catch 22 here. On one hand if we accept it we are saying that we feel that there'll likely be a no significant impact. However, I'm also reluctant to say that I feel that they're – at this point in the process I'm reluctant to say that I feel there will

be significant impact because it's not been brought before us and I don't want to be accused as Corp. Counsel chastised us earlier of having a presupposed position on it. Now I do believe that if in the past we've never really voted on this.

Ms. Shepherd: Right.

Mr. Starr: We've just given our comments and then they went away and then they came back with a final document and then we acted on that. So I don't understand why today we've changed our procedure and now we're being asked to vote on this. I don't think we need to.

Mr. Hedani: Is that correct Kivette.

Ms. Caigoy: I guess the difference today is that because there's different opinions amongst the commissioners, you're calling for a motion on concurrence, but I don't know if you necessarily need to do that Corp. Counsel?

Mr. Giroux: First of all, OEQC before anything happens they need a document. And basically we have given the authority to the department to look over this document and forward it to OEQC for us. They've done that already. What they're asking us to do is to say that we also have looked at the document and that we think it's fit to at least go to OEQC right now. Okay, so if we're not okay with that, then we have to tell the department that they can't be forwarding documents to OEQC.

Mr. Starr: Then I make a motion that we recommend that the department forward the document to OEQC with our comments.

Mr. Giroux: And that's what they're asking you to do today.

Mr. Starr: But I don't want wording in there saying that we ...(inaudible)... FONSI.

Mr. Giroux: Well, that's the language that they use.

Ms. Caigoy: The department has already forwarded this OEQC and it's already been published. But what we can do, maybe this is what we can do in our comment letter to the applicant. We can say that the commission at this point does not feel or believe that there may be significant impacts and you know, these are the reasons why and that can be your comment letter.

Mr. Foley: Yeah we can do that.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Would we not take care of the problem if we just said, we will file the – move to file the document. That way we haven't concurred, not concurred. Just says that we've received the document.

Ms. Caigoy: The governing rules for Chapter 343 require in order to initiate the environmental assessment process you file the draft EA with them for publication with the "anticipated FONSI determination," I mean that's what it says in the rules. So it's not that I can file it and say you know, they have –

Mr. Hedani: So there is no option for not processing?

Ms. Caigoy: I'm sorry?

Mr. Hedani: There's no option for not processing this request.

Ms. Caigoy: Right. I mean, that's what – the applicant has every right to go through the EA process but you as the accepting agency has every right to deny the – or deny the FONSI and require the prep of an EIS.

Mr. Hedani: But we can't do that at this point?

Ms. Caigoy: That's what I'm not sure about because in order for you to make that determination you're going to have to point out in the significance criteria where it's lacking and then that might not be fair to the applicant because then if you're making that determination without the information and you're not allowing them an opportunity to go get that information. If they bring that information back to you and you still feel it's lacking then that's to me that would be your legal basis then for issuing –

Mr. Giroux: I think it's very important for this body to understand that this a production of an informational document which means that the further they get along the more information you have, the better choices you can make and to stop it before you even have any studies or anything and to say that we feel from our gut or from God or whatever that this project is going to have significant impact, you're going to be on weak legal ground, you're going to be looking at law suits. The smart thing to do is say bring us on all the information you got and keep bringing it and when we get it we'll decide whether or not we're going to look at this project and say if there's impacts and if there are – we can get mitigation and if not, then the project's going to fail. You are being asked to help in this process of collection of information. By saying that we're not going to concur with the department to even pass on this document we're not helping the process of collection of information.

Mr. Starr: Can I try another motion? That we recommend the filing of the document with

the OEQC. However, there may be significant impacts due to the building of the project in the shoreline setback area.

Mr. Hedani: Kivette.

Ms. Caigoy: Well, then what I would suggest if you're going to state that is to then go one step further and define in accordance with the significance criteria where you feel it's lacking so that the applicant has an opportunity to gather that information and come back to you. I mean, to simply state that you know you think it's going to cause significant impacts, well, -- I mean, why. You're going to have to come -- you're going to have to justify that if you do make the determination that an EIS is required. So I think what you need to do is go through the significance criteria and outline which areas you feel the project doesn't quite meet so that the applicant can come back or have an opportunity to address those concerns and gather that information.

Ms. Shepherd: Well, the State has set the procedure so we really don't have the option of fiddling with the wording or anything like that.

Ms. Caigoy: Right.

Ms. Shepherd: But if you want to know how this is inadequate is they have no alternatives and that's what the informational document is supposed to do. So that's what they need to come back with. I think the problem is the State has picked a poor choice of words. But as we -- we don't have too many choices to what we do.

Mr. Foley: Well, maybe the appropriate action would be that Mr. Starr's previous motion which was that the commission forwards the environmental impact to OEQC and directs the consultants to respond to all the comments from this meeting especially the alternatives.

Mr. Starr: So move.

Mr. Hedani: Is there a second?

Mr. U'u: Second.

Mr. Hedani: Any discussion?

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

VOTED: To Forward the Environmental Assessment to OEQC and Direct the Consultants to Respond to the Concerns Raised by the

Commission.

**(Assenting - J. Starr, B. U'u, D. Shepherd, J. Guard, S. Freitas,
J. Amorin, W. Iaconetti, P. Eason)**

Mr. Hedani: Carried. Thank you.

Mr. Hirano: Thank you very much for your comments.

E. COMMUNICATIONS

- 1. August 22, 2006 Maui Planning Commission request to review of its current procedures in reviewing Final Environmental Assessments. The Maui Planning Commission may choose to maintain or modify its current procedures.**

Mr. Foley: I think the, unless I'm mistaken, I think the commission dealt with the Item E-1 which was to discuss the process for reviewing EAs and you did direct me to prepare a study or analysis regarding changing the process so that the staff would hire the consultants instead of developers.

Mr. Hedani: So before we leave that Mike, so does that mean the current policy remains in place?

Mr. Foley: Yeah, the current policy remains in place unless it's changed. It would take a number of steps to change the current policy. I mean it is a commission decision but it has budgetary ramifications and the process would need to be described in a lot of detail before we would want you to adopt it.

Mr. Hedani: Well, the actual question is do we retain the current policy ...(inaudible)... in a document.

Mr. Foley: The current procedure is – we would continue with the current procedure until it's changed.

Ms. Caigoy: Well, I think there's two issues from what I understand here is one, the director was speaking to earlier about, you know, setting up a new – a different procedure in where the department hires the consultant to prepare the EA. Second item was more of a procedural for the commission because right now what we do is at your request for the final we just give you the changes to the draft. And I think Commissioner Starr's requesting a full comprehensive document on the final instead of the two different parts. And so that's what I think we need to –

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I would like to have more discussion on this but not today. Someday when we have a slow agenda if it ever happens. But I just would like to quickly comment, because of my slow brain process which I admit to, I much prefer having a single document that I can read through. I also don't like to waste paper. If someone's got it on Adobe Acrobat I'd be happy to receive it by email or if that could be posted on line then we could – you know, as far as I'm concerned, get rid of all the paper and just read through it and then it becomes real easy to have changes. But lets not discuss it today.

Mr. Hedani: Okay, so lets defer the discussion at this point. Kivette.

Ms. Caigoy: I'm sorry Mr. Chair, there's a lot of projects coming up that are going to be a final EA and –

Mr. Hedani: No change until we decide to change.

Ms. Caigoy: Okay, so that means I'm still going to pass on that to those that inherit my projects that for the final EA they just give you the changes?

Mr. Hedani: Right. And instruct the commission to retain the draft, original copy before they receive the final changes.

Ms. Caigoy: Okay.

F. MINUTES OF THE MAY 23, 2006, JUNE 13, 2006 and JULY 10, 2006 MEETING

Mr. Iaconetti: Am I possibly losing my mind here, but it seems to me that we received minutes after these minutes that occurred after these minutes. Why are we now getting these minutes?

Mr. Foley: Some of the minutes are prepared by our staff and some are prepared by court reporters. So the sequence is not always perfect. This is May, June, July, these are actually in order.

Mr. Iaconetti: Yeah, I know but we received some for July and –

Mr. Foley: Yeah, when the court reporters do it we pay them to do the minutes faster and they're being paid by usually by someone else. But that's reason that they're not always in order.

Mr. Hedani: Commissioner Starr.

Mr. Starr: As far as the minutes, I want to make a motion that was a process that was long term used by the Water Board which is I move that we accept these minutes and file them and that if no one comes up – no members come up with any comments within in the next 30 days then they be deemed accepted.

Mr. Foley: Well, we have a problem with that because the day after these are accepted they go to the Council for a number of projects that are already up there waiting for the minutes.

Mr. Hedani: So we need to approve.

Mr. Starr: I move to accept and approve.

Mr. U'u: Second.

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

VOTED: To Accept and Approve the Minutes of the May 23, 2006, June 13, 2006 and July 10, 2006 Meetings.

G. DIRECTOR'S REPORT

- 1. Commissioner Jonathan Starr's request to have the Office of Environmental Quality Control (OEQC) to conduct a workshop on the review of environmental documents. The Commission may vote to schedule such a workshop for a future date and time.**

Mr. Foley: The first item is the request initiated by Jonathan Starr to have an OEQC workshop.

Mr. Hedani: I think we've covered that.

Mr. Starr: Done. Pau.

- 2. Commissioner Jonathan Starr's request to form an Infrastructure Subcommittee. The Maui Planning Commission may vote whether or not to form such a subcommittee and who should be a member of the subcommittee.**

...(inaudible - changing of tape)...

Mr. Hedani: No objection. (To defer the matter)

Mr. Foley: I would just add that we're going to be giving you two volumes from our consultants that are doing infrastructure studies, probably around a month.

3. EA/EIS Report

Mr. Foley: I don't see the EA list. I guess we don't have an EA list.

4. SMA Minor Permit Report

5. SMA Exemptions Report

Mr. Iaconetti: Would you explain to me on the back of the first page what is happening with the Westin Kaanapali whatever, OCE, water lateral installation. What is that?

Mr. Foley: What page are you on? Page 31?

Mr. Iaconetti: It's page 1 of 3. I guess this is the – well, that's the opening page I have. And then if you turn that back which is the second page.

Mr. Foley: Westin Kaanapali water lateral SVO. It looks like that's a Water Department, water supply connection to one of the Westin building at North Beach.

Mr. Iaconetti: It says SMA Exempt Permits up on top. Does that mean that?

Mr. Foley: It's probably less than a \$125,000. It's just the water lateral. The two under construction and there's one big project coming to you for lot 3.

Mr. Iaconetti: I've got a few of these questions. This is on page 3 of 31, it's the second page after the yellow. Pineapple Grill, that's been void for years or months. Is that going to be removed or is that going to stay in there?

Mr. Foley: It should be done because the interior alterations must be completed. Yeah, we'll see if we can get that off. It's been there for a long time.

Mr. Iaconetti: The next one I have is a short term rental in the Napili area, transient vacation rental ...(inaudible)...

Mr. Foley: Which page are you on?

Mr. Iaconetti: We are now on page 10. There's another short term rental on the next page. Are we approving short term rentals before the Council has decided?

Mr. Foley: The short term rentals there have been some that have gone to the Council, this one I'm not familiar with it. Jeff just left, but I can check into that.

Mr. Iaconetti: And then on page –

Mr. Foley: When was the other?

Mr. Iaconetti: The other one was Dinoto.

Mr. Foley: Yeah, that one we've been processing a complaint and violation and he applied for a transient vacation rental and now he wants to withdraw it because he's moving back into the house. So that's kind of where that one stands. I'm not sure whether he's going to withdraw his application or not.

Mr. Hedani: Step in the right direction.

Mr. Iaconetti: And then we've got one on page 13 of 31 Spy Glass B&B, SMA assessments for B&B and vacation rentals.

Mr. Foley: Yeah, I don't know where that one is.

Mr. U'u: It's in Paia.

Mr. Foley: Paia?

Mr. U'u: Yeah, ocean side.

Mr. Foley: Do you know that because of the owner?

Mr. U'u: No, Spy Glass that's where it is.

Mr. Foley: Is that an existing B&B?

Mr. U'u: That's your answer.

Mr. Guard: I don't think – it's not a B&B yet. It's been a vacation rental for a few years.

Mr. Foley: Well, there are – I don't know whether this will answer your question or not but there are a lot of B&B and transient vacation rentals applications being held by both the staff and the Council pending action by the Council on the ordinance that we recently sent up there. They have approved a few that have been extensions of existing B&Bs and existing – well, I don't think they've approved any TVRs that weren't B&Bs but they have

granted some extensions. But most of them are waiting for that legislation to see whether they'll – it will be easier or impossible to pursue.

Mr. Iaconetti: Is there any hope that we're going to get that legislation?

Mr. Foley: Not before the election probably. I wouldn't imagine they'd act on it before November 7th.

Mr. Iaconetti: After the election we'll all be gone anyway.

Mr. Foley: Well, you won't.

Mr. Iaconetti: Now on page 15 of 31. Kapalua Bay Club demolition.

Mr. Foley: Yeah that's underway.

Mr. Iaconetti: The Bay Club is the restaurant is it not?

Mr. Foley: Yeah, they got a permit to remodel that restaurant and so this is the part of that.

Mr. Iaconetti: That didn't require coming before the commission?

Mr. Foley: Well, I don't think so. I thought – I was thinking it did, an SMA. I thought there was an SMA that came before the commission to remodel that existing building into a restaurant.

Mr. Iaconetti: Not while I have been here.

Mr. Foley: Okay, well I'll find out about that one too.

Mr. Iaconetti: This is on page 20 of 31, Lahaina Land Investment, install an entry gate in Lahaina. What is that?

Mr. Foley: I don't know. We need more information on these. Because you can't tell where it is. Yeah, I don't know where it is either. It sounds like gating off a residential project, but I don't know where it is. I've never heard of Lahaina Land Investors.

Mr. Hedani: Maybe we can have the staff planner assigned to each project do a report to us by the next meeting or something.

Mr. Iaconetti: Is this going to be another one of these places that we gate off the general public?

Mr. Foley: I don't know, I'll find out. And I'll suggest that we get – put more information on here like the description because the description is partially under the permit name but it doesn't have an address for any of these.

Mr. Iaconetti: The next one I have is on page 21 of 31. And this is the Maui Hyatt model unit. Are they allowed legally to put up a unit. This is assuming that we will approve the high rise time share place at the Hyatt and they're going to put up a model unit. This is the way I'm interpreting that.

Mr. Foley: Yeah, I suspect it's within the existing building but once again, I'll find out and report back to you on all of these. And I'll also tell the staff that we need to start filling these out in a lot more detail so you can actually understand better what they are. I mean some of them are – seem pretty obvious like the Hawaii Telcom at Honokowai Beach Park is obviously a phone line – and a lattice at the VanHorne residence, but some of them aren't easy.

Mr. Iaconetti: And the last thing is on page 23 of 31 on the top of the page, Maui Land and Pine sewer connection at Kapalua. What are they connecting to? What are we approving? What's the action on that?

Mr. Foley: Yeah, that's kind of strange because they have their own sewer plant. I don't know.

Mr. Hedani: I think the sheer quantity of all of these listings gives you an appreciation of what the department goes through.

Mr. Foley: I'll ask everybody to make sure that there's enough description here. Some of them are really obvious. You know, reroof, replace damaged rafters, ADA improvements for somebody. But some of them are just not enough description.

Mr. Iaconetti: And the last one I have is on 31 of 31 and it's the second one down, Ritz Carlton Marketing retail space at Kapalua. Is the Ritz putting up something or is that the Maui Land and Pineapple thing that the Ritz Carlton is taking charge of? What is the deal there?

Mr. Foley: I don't know. It looks like an internal retail shop at the Ritz.

Mr. Hedani: Robert Iopa, that's the architect tied to the –

Mr. Foley: He's the architect for the Westin. He's not usually for the Ritz.

Mr. Hedani: No, he's doing the Kapalua Bay Hotel. So it could be a model for that.

Mr. Foley: Could be a model for the Villas at Kapalua Bay. I'll find out more about all the ones you've asked about plus a bunch of others that just aren't enough description.

Mr. U'u: Question Mike, all of these applicants here are SMA minor?

Mr. Foley: Or exemptions.

Mr. U'u: Or exemptions.

Mr. Foley: Some of them are just exemptions that we're granting and a lot of them are minors.

Mr. Hedani: An exemption is when they don't hit the threshold, \$125,000 threshold if they're less than that.

Mr. U'u: Right. Because we have a two-story dwelling, covered lanai in Spreckelsville.

Mr. Foley: Where are you? What page?

Mr. U'u: Page 2 of 3. Two-story dwelling and Mr. Guard brought this up.

Mr. Guard: There's a few of them that are houses all over.

Mr. U'u: He must be getting good cheap labor. Material must be free.

Mr. Foley: Single family dwellings are often exempt unless they're on the shoreline. The ones on the shoreline I almost always require that they be SMA majors and come to the commission, but they are allowed to be exempt regardless of price.

Mr. U'u: Okay.

Mr. Foley: Like I said, if they're on the water I think I've sent them all to you.

Ms. Shepherd: So how come there's a spaceship being built at Makena?

Mr. Foley: A spaceship?

Ms. Shepherd: Well, we got the Mexican jail on the shoreline at Keawakapu, now there's a spaceship.

Mr. Foley: Well, there's two houses down there that planning commission approved over my objections.

Ms. Shepherd: Oh, not me.

Mr. Foley: You remember those?

Ms. Shepherd: Yeah, I remember those.

Mr. Foley: At Palauea.

Ms. Shepherd: They were supposed to be built up on stilts and they're being built on grade.

Mr. Hedani: There's no way to legislate good taste. Commissioner Starr.

Mr. Starr: Do we get a listing of special use permits that are out there?

Mr. Foley: No, they automatically come to you and then go to the Council.

Mr. Starr: I have a question about a special use permit that was apparently issued to SOS Island Recycling. That was for the -

Mr. Foley: That was approved by the planning commission.

Mr. Starr: Last year?

Mr. Hedani: That's the light industrial park.

Mr. Starr: Even though we just looked at the EA a month ago?

Mr. Foley: Well, I know the permit was approved for them to start and they were given a certain number of months where they could operate under a tent before they built the building. I don't remember what month you approved it.

Mr. Starr: That was the temporary one and now the one we're working is a permanent?

Mr. Foley: I guess. They're in for a building permit right now to build a building there. And I know we've already signed it off, but I don't know other than that what - I know they got a permit from the commission. I know they're applying for a building permit for a commercial building or industrial building and they're operating temporarily with a tent and they recently won the award or the low bid for the recycling contract.

Mr. Hedani: Okay, any other questions for the EA, EIS, SMA or SMA exemptions report? If not, next regular meeting is September 26th. Commissioner Iaconetti.

Mr. Iaconetti: You received a correspondence from Charles Maxwell Sr., is that going to warrant a response from you?

Mr. Hedani: No.

Mr. Iaconetti: You're going to ignore it? Good.

Mr. Foley: Is there any more information from commissioners about who's going to the HCPO conference and who's not?

Mr. Hedani: I'm going.

Mr. U'u: I'm going.

Mr. Foley: Wayne is going and Bruce is going. Doc, you're not.

Mr. Iaconetti: I'm going to be gone.

Mr. Hedani: Okay, who's not going raise your hand.

Mr. Foley: Jonathan.

Mr. Guard: I'm not sure yet.

Mr. Foley: Well, the longer you wait the more we pay.

Mr. Hedani: There's a difference between \$200 and \$300 for the registration if it's late.

Mr. Foley: Okay, Wayne and Bruce for sure.

Mr. Guard: Did you get feel of the people that knew they were going by the earlier registration.

Mr. Hedani: There's a tunnel tour of the Oahu system.

Mr. Starr: I did give Carolyn my -- that I am going. Helen's going separately. I look at doing that but I want to attend the GIS.

Mr. Hedani: I'm going to go do the tunnel though.

Mr. Iaconetti: Why did receive the Wailea Gateway Center, LLC addressed to Ferdinand Cajjgal.

Mr. Foley: I have no idea. Only because it's cc'd to the chairman, but why I don't know.

Mr. Hedani: Next meeting is September 26th, we're adjourned.

H. NEXT REGULAR MEETING DATE: September 26, 2006

I. ADJOURNMENT

The meeting was adjourned at 4:15 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Diane Shepherd, Vice Chairperson
JB Guard
Bruce U'u
Suzanne Freitas
Johanna Amorin
William Iaconetti
Patti Eason
Jonathan Starr

Others

Mike Foley, Planning Department
Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Michael Miyamoto, Department of Public Works and Environmental Management