

**MAUI PLANNING COMMISSION
REGULAR MEETING
AUGUST 22, 2006**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairman Wayne Hedani at 9:05 a.m., Tuesday, August 22, 2006, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hedani: We're going to go ahead and take public testimony on any agenda item at this time in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limits on individual testimony is three minutes and a person testifying at the beginning of the meeting will not be allowed to testify again when the agenda item comes before the commission unless new or additional information will be offered. Is there anyone in the audience that would like to offer testimony at this time? Seeing none, we'll move onto the first item of business.

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

- 1. CHRIS HART & PARTNERS, INC. on behalf of the following land owners requesting a State Land Use District Boundary Amendment from the State Agricultural District to the State Rural District and a Change in Zoning from the County Agricultural District to the RU-0.5 Rural District at Makaena Place, TMK: 2-3-032: 005, 006, 007, 008, 010, 011, 012, 014, 015, & 016, Kula, Island of Maui.**

The individual landowners making the request for the land use changes and their parcels involved are as follows at TMK: 2-3-032:

Leonard Paul Gomes Sr. (parcel 005)	DBA 2004/0009 & CIZ 2004/0020
Sibyl Padgett (parcel 006)	DBA 2004/0010 & CIZ 2004/0022
Frank Padgett (parcel 007)	DBA 2004/0011 & CIZ 2004/0023
Patricia Matsumoto (parcel 008)	DBA 2004/0012 & CIZ 2004/0024
Louis J. Cambra, Jr. (parcel 010)	DBA 2004/0013 & CIZ 2004/0025
Steven J. Sadler (parcel 011)	DBA 2004/0014 & CIZ 2004/0026
Robert Kimball (parcel 012)	DBA 2004/0015 & CIZ 2004/0027
Eugene P. Carvalho (parcel 014)	DBA 2004/0016 & CIZ 2004/0028
Frank Carvalho (parcel 015)	DBA 2004/0017 & CIZ 2004/0029
Robert Watanabe (parcel 016)	DBA 2004/0018 & CIZ 2004/0030

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

Mr. Chris Hart: Thank you very much Ann, and I'd like to thank Ann for all of her cooperation. This was a little bit of a unique project in that we basically had to get together 10 property owners and in terms of putting together the application and working through some of the logistics as far as the processing. So I really appreciate all the work that Ann's done.

I just wanted to point out to you that the property was identified in the community plan, in fact, I remember when Mr. Gomes actually went to the Citizens Advisory Committee for Upcountry with a proposal that this parcel, this subdivision actually should be identified, this was back in 1992, in the Makawao-Pukalani-Kula Community Plan as Rural. I think it's important also to note that the area immediately on the Pukalani side is single family and it's proposed for urban and of course, we have this Makaeha Gulch that actually comes up the side and which separates it from Kula Malu which essentially has multi family and business in close proximity. Also I think it's important to note that Pukalani Terrace which was the original rural subdivision on Maui is located just makai of the project. So it fits and of course across the street, across Lower Kula Highway we have King Kekaulike High School. So it fits as a use in the area. When the plan was adopted by the Council on July 23, 1996, it was proposed that it would be rural.

Just a little bit of background, the neighborhood, the community itself did not have infrastructure and the subdivision occurred, agricultural subdivision so the community got together and actually put together a little bit of an application or basically a joint venture to actually install the water line which is an 8-inch water line as Ann indicated. I think it was increased from a 6-inch water line or a 5-inch – 6-inch it would have been and Mr. Cambra, Louis Cambra is here to talk about any of the details relating to the water.

Also, Steve Sadler seems to have been kind of like one of the administrators of this and he came to me in 2002 I think it was, and discussed the possibility of going through the Land District Boundary Amendment and Change in Zoning. And so, from that time on, our application was actually made in 2004, but we did have an initial group and then at the very end, actually two additional were added. So it started out as eight and end it ended up as 10. So with that, I'd just like to say that I think it's every efficient way for the neighbors to get together. It was a little bit challenging for all of us, but everybody has paid their fair share along the way and cooperated and as far as letters of authorization, ownership documentation and so on and we have the application and again, we thank Ann for her patience and the Planning Department in helping us to process this application. Thank you very much. If there's any questions, we'd be certainly happy to answer them.

Oh, one thing about the— I'm sorry, the name, the street name and I – obviously it did not go through the Street Naming Committee but certainly we would be willing to do that and

lets say that the owners would be willing to do that as a neighborhood to get the blessing of the Street Naming Committee but it was essentially a negotiation with the post office and the post office eventually – there was a suggestion I think by Leonard Gomes as to what the actual name would be and it would be after the gulch, Makaeha but they felt that had been taken so they changed it to Makaena and so that's how the street actually got named. Thank you very much.

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

Mr. Iaconetti: Chris do you have any comments about the letter that you received from Grace Church about the water line?

Mr. Hart: Actually the only comment that I have is that Grace Church did participate in the water improvement and there was a discussion about getting a rebate from the Department of Water Supply. As a result of decision on the part of the majority of the individuals in the community, in the neighborhood that essentially participated. It was felt that if the Department of Water Supply - it has been dedicated as a County water line, but if they basically took the rebate it apparently would not – the water resource or the amount of water that would be in the line could actually be shared with others I guess below the project and they felt as a community that they didn't want to do that. That they really did have plans that they would like to see the opportunity available for some additional subdivision and so therefore, they decided not to take that rebate. And so that seems to be the concern as I understand it. I have talked with the pastor and he basically, you know, informed me that that was their primary concern. There are improvements like the refuge lane that will be a real assistance to them because they operate a school and he also have church services in that church facility and so it will definitely enhance the safety and basically the roadway geometrics and so on.

Mr. Iaconetti: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, is the Water Department currently issuing water meters in this area?

Mr. Hart: We don't know that actually.

Mr. Starr: Can we hear from the Water Department?

Mr. Hedani: Is there any representative of the Water Department here?

Ms. Cua: We can probably call them. I know there's a list and you have to get on the list.

I don't know if – They are on the list, I don't know where they are on the list, but whether they're actively issuing upcountry, I can't answer for sure. We can try and bring someone from Water.

Mr. Starr: I would like to hear from them because I don't think meters are available. And if they are – you know, properties are on the list, they're on the list for the ability to build a single house. I'd like to know how this impacts that issue. I know the situation upcountry will get a lot worse now that they Hamakuapoko wells are not going to be able to be used in terms of drought. So I would like to hear from the Water Department.

On another issue, how will children from the subdivision walk to King Kekaulike School? Will they be able to?

Ms. Cua: I believe there is a – I think there's a crosswalk, but it would be by the entrance to King Kekaulike School. The one thing I didn't mention is that along this side of Kula Highway along the property boundaries along Kula Highway there are no sidewalks, curbs, gutters. What there is on the school side of Kula Highway is basically a walking path.

Mr. Starr: That's a point I'm getting to and a concern I have is that I like the project because it's close to the two schools. You know it's between the two and I would hope that, you know, if it becomes subdivided then the families that live there would be able to send their kids to either to Kekaulike or if they're in Kamehameha. The problem is I don't believe there's a sidewalk there. So the only way for them to get to Kekaulike would be to walk in the actual highway which is dangerous. So I'm wondering if there's some mechanism for the applicant to create a sidewalk to the crosswalk from the roadway that services this subdivision?

Mr. Hart: Could I just point out that as part of the subdivision process the Makaena Place Road will have to be improved, widened and basically improved to County standards. Right now it's a private road and that's a process that will take place over a period of time. As far as the improvements to the State highway, Lower Kula Road, there currently are no plans that we're aware of for improvements to that road for pedestrian.

Mr. Starr: I mean, this is the only time this is before us and this is the only opportunity when we could have some impact. And for me I would want to see some way for pedestrians to be able to get out of this subdivision from Makaena Place at least to the traffic light and crosswalk by Kekaulike. Would the applicant be willing to work with the – the applicants be willing to work with the State to create a sidewalk from Makaena Place to that intersection?

Mr. Hart: Well, there is currently I believe a paved shoulder, but it's not – you know, when you say a sidewalk I'm kind of –

Mr. Starr: I mean a sidewalk where it's safe for children to walk to school. It doesn't have cars on it. I don't believe a paved shoulder is in that category.

Mr. Hart: Well, it's something that we'd have to discuss. You know certainly there's a willingness on the part of this project in terms of the traffic impacts to work with the State Department of Transportation and to do the refuge lane. We have not talked about literally the possibility of building the sidewalk on the State highway. We haven't done that and that's something that we'd have to discuss before I'd be at liberty to volunteer that.

Mr. Starr: Is it true that the reason why none of the LOS levels are being kicked up is because the ones that would get kicked up by this project are already at "F" and so there's no lower grade for them to be kicked to? That seems to be –

Mr. Hart: That's not true.

Mr. Starr: I do see quite a few, at least in the morning, level of services "F" and, you know, so when we get a traffic report that's saying it won't have any impact because it doesn't make the level of service any worse when it's already at "F," I mean, where it can it go to?

Mr. Hart: Well, the proposal is to not do any left turns out of Makaena Place obviously during peak hours. The recommendation was that the opportunity would be available for left turns from Lower Kula Highway into Makaena Place would be available. And the proposal is to make an improvement. Now those are peak hour levels that obviously Ann indicated is a concern. Obviously in the context of the operations of the school which is in the neighborhood. But there are many times during the day when the level of service is greatly below or above level of service F. Obviously, you know, we are going to be making an improvement to the highway to address that during the peak hours.

Mr. Starr: So you think that your improvements will change the fact that Kula Highway at Haleakala Highway is at "F." Do you think your improvement will change it from an "F."

Mr. Hart: Well, lets look at it in the context of time. Each one of these ten property owners are not proposing to subdivide their properties immediately. They have a potential plan to subdivide but they're not going to be doing it – this is something that's going to be taking place over many years. I would like to think that the level of service, you know, at that intersection would improve over time in terms of the improvements.

Mr. Starr: You mean a lot of people will go away from the ...(inaudible)...

Mr. Hart: No. No, I don't say that.

Mr. Starr: How will it improve? You know, I would think that if there were a way for people

to walk out of this neighborhood maybe that would help a little bit, but you can't walk from here without walking on the road.

Mr. Hart: All right, point well taken. So in other words, you're saying that if there was a sidewalk that was put in together with the State Department of Transportation as an improvement that you would feel better about the project?

Mr. Starr: Absolutely.

Mr. Hart: I see. Okay, I got the message. Okay, I'll have to check with the owners.

Mr. Hedani: Any other questions for the applicant? Seeing none – Commissioner Guard.

Mr. Guard: It looks like right now there's one ag piece that has three dwellings on it. Is there going to be a limit – I guess in the interim before they actually go through the subdivision process you'd be able to do theoretically two-full size homes and one ohana once it goes to rural?

Mr. Hart: Well, actually right now in the context of where it is, you'd basically be using the ag district and so it would be one farm dwelling full size, and an additional farm dwelling at 1,000 square feet.

Mr. Guard: Okay. So once if we go through this and you get the rural?

Mr. Hart: Then it's essentially one main dwelling and –

Mr. Guard: Two main dwellings if it's over one acre, correct.

Ms. Cua: Right.

Mr. Hart: Right, that's true.

Mr. Guard: And you're going to have ...(inaudible)... lots.

Mr. Hart: Without doing the subdivision you could do two main dwellings if it's over an acre with one accessory dwelling not exceeding 700 square feet.

Mr. Guard: So realistically they may not even – some people may not do a subdivision.

Mr. Hart: Correct.

Mr. Guard: So with that, I mean, because it's coming all at once which is probably better

than each person doing it on their own, some of these subdivision requirements may not ever come into play. So I mean, this is – to me, it's going to be somewhat collateral damage residential workforce housing policy. I don't know if the whole group has talked about that on how they want to even start. Someone could just get that, condominiumize it and bypass everything.

Ms. Cua: Well, except that even now when you condominiumize at a certain point when you do certain improvements you're going to get hit with subdivision requirements where that didn't used to be the case before. And so you've had subdivisions, well not even subdivisions, lots in the past who maybe condominiumized and was able to avoid subdivision requirements. That doesn't happen anymore once you get, I don't know if it's past the third building, third or fourth building you get hit with the subdivision requirements.

One other point I did not mention and again this is in terms of the processing of the district boundary amendment application. If you look in the staff report as Exhibit 14, we have a letter from the State Land Use Commission and when we first received the application we checked with our attorneys and we called the State Land Use Commission because as all of you know, parcels of land in excess of 15 acres, the jurisdiction is with the State Land Use Commission. And so we wrote a letter to the State Land Use Commission, we explained the situation and we got confirmation back from them and they saw the application as ten individual applications. One comment they did make is that each application should have their own reference docket number. When it does go up to the County Council we will prepare ten separate ordinances. So again, it's just – it's merely a joining of the ten individual applications. They've done one traffic report. But I just wanted to give you that information that we did check on the legal ramifications of processing the applications in this manner.

Mr. Guard: So altogether and then I guess the other issue then on the subdivision and part about Jonathan saying on the two lots are going to be encumbered more with the refuge lane and then now if we need – even just to give the dedication to get a sidewalk there, you're going to have a – right now from the highway to Makaena with the refuge lane going straight out of an acceleration lane that could become a hazard for people without that dedication. So I guess those two lots have to decide if they're going to give away more of their space.

Ms. Cua: Well, definitely on the refuge lane, we're jumping a little bit on the recommendation. You know, the recommendation that we are making to you is to have a condition of zoning that would prohibit these left turn movements as recommended by the traffic report and that they install that median refuge lane.

This condition if you so choose to support it would be imposed on each of the ten individual properties so it would be part of their ordinance. And so even if they don't subdivide,

they're all – they're imposed with that condition and so the first person that tries to subdivide you know, that is going to have to happen and they're going to all have to contribute to that and they've all agreed. We had Chris Hart and Partners check with them. They've all seen Department of Transportation's letter and they're all aware of this requirement and they have indicated and we've indicated in our report that they are willing to comply with this improvement at no cost to the State.

Mr. Guard: So would it be better then to limit the number of dwelling they could build on each lot while they're still one parcel instead of being able to jump – instead of doing the subdivision to build four dwellings on each one?

Ms. Cua: Well, that is definitely your choice. I mean, the zoning again as I mentioned, the zoning would restrict them to a point and then the number of dwellings would be restricted to a point that I believe it's after they build a third dwelling, is it the third, that they're hit with the subdivision improvements. So it's sort of self policing.

Mr. Guard: It happens.

Mr. Hart: Could I just – I did have a chance to talk to some of the applicants and there is a willingness on the part of the applicants. Obviously they do believe that because of the fact that this area is essentially proposed as urban, you know, all around, that urban facilities are definitely going to be part of this neighborhood in the future. They're not necessarily all provided for at this time. It's in transition. That they would be willing to work with the State Department of Transportation in terms of creating a safe pedestrian walkway along this area down to the intersection which would then have the crosswalk at the intersection where the signal is. Now it would be a pro rata share, but they are willing to work together with the State as they have already indicated that they will construct the refuge lane.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, has the Kula Community Association or the Pukalani Community Association given any comments and have they been asked to comment on this?

Mr. Hart: No.

Mr. Starr: Have they been sent a copy of the package or contacted in any way?

Mr. Hart: No, they're not. No, we didn't actually do that, no.

Mr. Hedani: Any other questions for the applicant?

a. Public Hearing

Mr. Hedani: Okay, we'd like to open it up for public testimony at this time. Are there any members of the public that would like to offer testimony on this item? Seeing none, the public hearing portion on this item is closed. Staff. I'm sorry, is there public testimony? Please step to the microphone and identify yourself for the record. You'll have three minutes. Ann, is this being monitored by the Water Department. Are we going to have a representative from the Water Department answer Commissioner Starr's questions?

Ms. Cua: I haven't had a chance to call. I would have to call during the break.

Mr. Hedani: But are they monitoring this meeting?

Ms. Cua: I don't know.

Mr. Hedani: Okay, go ahead.

Mr. Steve Sadler: My name is Steve Sadler and I joined the Makaena Hui in 2001, I'm the newcomer on the block here. This subdivision was formed like 25 years ago and most of the lot owners here that are applying are the original owners of their properties and now they've got grandkids and their kids are having more kids. And with housing as costly as it is and the fact that we're not a bunch of wealthy people, for our children to have a place to live, my daughter's 18 and going to college now when she comes back I would like to be able to offer her a place to build a home and live here on the island with us. Most of our residents here that are applying are in the same boat. They have kids, cannot afford a million dollars to buy house for their children and we simply want to offer that for our families.

We have been cooperating with the State and County for many, many years with our water situation and we've improved, as I said, done the water line for improvements. For the long term plan we could do this subdivision and I know it will have impacts on whatever traffic or neighbors. There's always somebody that will be impacted by it but no matter where our children live there will be an impact because they have their body that wants to live here on Maui continuing with our families here and we have to live somewhere. And whether that subdivision is built further down in Kula or further down in Kahului, there will be an intersection there will be cars and we're just trying to deal with this as best as we can with the County and State. So anyway, I just thank you for listening to our proposal here and hope for the best.

Mr. Hedani: Thank you very much. Questions for the testifier? Commissioner Guard.

Mr. Guard: Hi there Mr. Sadler. Has your group, I talked about this as collateral damage,

if this was looked at as a 38-lot subdivision, have you guys discussed the impacts on the residential workforce housing bill that something like this would have? This is a great idea and I've seen other places in Kula do the same thing where to keep the families together. I mean, it would be just be scary to me if this was considered almost a 40-lot subdivision up there and what the impacts it would have on each person's ability to subdivide.

Mr. Sadler: As I said, the impacts no matter where you put 40 lots the impacts will be there. Unfortunately do we live very close to the Kula Highway which is a very trouble free highway with the exception of our rush hour school traffic right there. So if you're going to place a 40-lot subdivision somewhere, it's a very logical place to put it. We have our 12-inch water main right out in front. And like I say, we've done that water improvements. As far as the workforce housing goes, the County adopted their ohana bill how many years ago where any home can build an ohana which is basically a cheaper rent, you know, than building a three-bedroom, two-bath house and give some young couple a place to start and that of course, doesn't exempt us from pitching in whatever we need to pitch in and we've worked with the State and County all a long in bowing to their wishes to whatever they wanted for allow us to do this. But ohana dwellings are by nature that type of a workforce housing.

Mr. Guard: Okay, definitely. Maybe, I don't know if Chris has looked into that for this project, maybe he could – if he has any ideas to I guess avoid that.

Mr. Hart: Commissioner Guard, yeah, it's important to realize that this is 10 individual lot owners and they're like two-acre lots to three-acre lots and you know the potential could be there, you know, like for instance in a three-acre lot to do a subdivision of six lots. And there would never be a situation where I believe that everybody would go in together and you would create 38 subdivided lots. It would be individuals for whatever reason, either because of family or whatever the circumstances wanting to subdivide individually at any particular given time and road improvements and so on would be assessed in the context of that subdivision. And if the workforce housing bill which is currently in process is adopted there's probably going to be a cut off in terms of the number of individual lots in the subdivision that would be considered. I think this commission or at least the department recommended that subdivisions of five lots or less would not be essentially assessed.

Now you now, I believe personally that's fair from the point of view of local families. ... (inaudible - changing of tape)... square foot accessory dwelling with 240 square feet of open deck, you know, provides a real affordable unit. Now that's not looked upon in the context of the workforce housing ordinance as an affordable unit. But I believe that it truly is and it's an opportunity that exists today. So, you know, whether or not there's going to be a requirement to participate is not clear at this time. I'm fully confident that if the ordinance gets adopted that the individual owners will participate if they're required to

participate.

Mr. Guard: Okay, so at that time, it will just be – Ann touched on it in her presentation. So like that would have been some serious increase in fees to each owner if that was the case. So if each one can do that individually which you're saying I guess, you're hoping is the case. So good luck with that.

Mr. Hart: Right.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Being we on that affordable housing policy. If I'm not mistaken was there a out of this – if you were to subdivide and give it to your immediate family members if you go before the Council.

Ms. Cua: I believe one of your comments that you amended the document, one of your comments said that for five lots or less, and I don't think you said family, I think you just said five lots or less you felt should be exempt and that's what I was trying to touch upon that at the point where each individual person applies to the County for a subdivision to subdivide their own lot if the policy is adopted or if it becomes law as you have recommended, these individual subdivisions would not be subject to that. If however, the law is passed where that provision is not in there, they may be subject to it. And so basically we're putting them on notice at this time. There's no condition we're recommending because we don't know how that task force, Affordable Housing Task Force bill is going to end up. So however it ends up, when they come into the County they're going to have comply if they're required to comply.

Mr. Hart: And I just wanted to add, you know, that in the context of this project, it is – it has been community planned as rural and the densities that exist around this property are urban. I think that it is essentially a land use that's really compatible in the context of upcountry.

Mr. Hedani: Any other questions? Commissioner Guard.

Mr. Guard: That's the map of the existing parcels now, so are there just going to be 12 little cul de sacs or 16 cul de sacs or at least one cul de sac with three to four lots off of each lot?

Ms. Cua: That's correct.

Mr. Guard: Okay.

Mr. Foley: There is a drawing in the –

Mr. Cua: There is a drawing. Exhibit –

Mr. Foley: Exhibit 5.

Ms. Cua: Exhibit 5 shows you how they're looking to lay out the subdivision. This is just a suggestion at this point in time.

Mr. Hart: And again, I'd just like to add that you know, we were requested to do that by the Planning Department because of the fact that, you know, from the point of view of analysis it's important and so it was done. But it may not happen that way because individuals may not choose to subdivide their lots together. There might be a choice to do it separately.

Mr. Hedani: Any other questions for the applicant? Staff recommendation.

Ms. Cua: I believe that we do have the Water Department that has just walked in. So if you'd like to question.

Mr. Hedani: If we could have the representative from the Water Department, we have a question from Commissioner Starr if you could step to the microphone and identify yourself.

Mr. Arnold Imai: Arnold Imai. I'm with the Water Resources and Planning Division.

Mr. Starr: First of all, thank you for coming down on such short notice Mr. Imai. Are you familiar with the project that is before us which is a change in zoning to allow subdivision to these parcels down below Kekaulike School?

Mr. Imai: I'm not familiar with the project but I'm familiar with the area.

Mr. Starr: What is the – right now I understand a number of the property owners are on the waiting list and I'm curious to know what is the status as far as being able to get water meters in this area currently?

Mr. Imai: As you know there's a problem about the source for upcountry in general. At the present time the department is not issuing any water meters.

Mr. Starr: Now, is it – what happens – so say one of these property owners wants to do a subdivision and divide it into several lots, and lets take two different conditions one is that they're not currently on that waiting list and the other is that they do have a place on that waiting list and say more source comes on line so that some of those people on the waiting list will be served. What happens in those two cases?

Mr. Imai: In the case of being on the waiting list, it depends on what number you are on the list. The next available source coming on line would be our Pookela Well. Probably by the end of the year, hopefully by November. It just depends on how much water is available from that well. And I'm not sure what number –

Mr. Starr: How many names are on the list right now?

Mr. Imai: It's over a thousand at the present time. And it will depend on how much water is available as to how far down the list the department is going to go.

Mr. Starr: You know, I had pushed to get that well put into work years ago when I was on the Water Board. You know we thought it would be in action about four years ago. It's been taking a long time but when we looked at the list and that well because there's so many subdivisions on the list, it only seemed like it would get down to about the first hundred applicants on the list leaving 900 to be served and there's no plan for additional source. Is that pretty much correct summary?

Mr. Imai: Yes, it will depend on who is ahead of the applicant.

Mr. Starr: Anyway what would happen to an applicant who is on the – say, there was the second person on the list just theoretically were one of these people and they had an application for an additional meter and now they get a change in zoning and apply for a subdivision. What happens when they come up on the list? Would they just get that one meter or would they be able to get meters for their subdivision ahead of other people waiting?

Mr. Imai: I would have to confer with our Engineering Division. I'm not certain about that.

Mr. Starr: Because I do believe that's something that's unclear in the rules about whether it would allow them to jump ahead or not. Another question regarding upcountry. I understand that you're on the verge of losing the ability to pump Hamakuapoko Wells 1 and 2 to serve as a drought remediation for upcountry. If that happens and I know we are in a dry summer, will that tend to make things worse for you in terms of having to force mandatory cutbacks?

Mr. Imai: I would think it would, yes.

Mr. Starr: Does the Water Department has any comment on this body's actions to give the I guess, to give land use opportunities for additional subdivisions while there's still such a shortage going on?

Mr. Imai: I don't think I can answer that question right now.

Mr. Starr: I thank you for coming up.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Thank you Chair. Is there anything to prevent anybody from putting up a catchment system or having their water trucked up?

Mr. Imai: As far as I know, no.

Ms. Freitas: Okay, so anybody that wants water can get water.

Mr. Imai: If they're going to truck it up, yes.

Mr. Hedani: Commissioner U'u.

Mr. U'u: What other sources other than the Pookela Well is going to be available for the future of upcountry or that's all we got?

Mr. Imai: Right now we're still negotiating with Maui Land and Pine for their Piiholo Well.

Mr. U'u: And say we get that Piiholo Well, being the list is at a thousand and we could knock it down to 900 with the Pookela Well, what would be the difference and end result be if we do get that source of water?

Mr. Imai: The Piiholo Well is approximately the same as the County's well that's coming on line in November. I cannot say how far down the list we're going to go on the priority list as far as issuing meters. It just depends on who's on the list, how many meters they're asking for, some are asking for just one, others are asking for several. It's hard to say how many meters will be issued even with the two wells on line.

Mr. U'u: So we're looking at one water shortage for life time up there? Is that what we're looking at?

Mr. Imai: There are other sources that may be coming on line but not in the next few years, well, it may be within five years but probably within five years there'll be others.

Mr. U'u: And the list will continue to grow for the waiting list at the same time, correct?

Mr. Imai: Yes.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: So explain to me, so the State actually has control over the water and a certain amount of water is allocated to the authority of lets say the administration or the Mayor and then he decides who's going to get water and where and where you're going to drill and pump is that correct?

Mr. Imai: You're referring to the State Commission?

Ms. Freitas: Yes.

Mr. Imai: on Water Resource Management?

Ms. Freitas: Yes.

Mr. Hedani: Can you speak directly into the microphone because it's being recorded?

Mr. Imai: Well, they're controlling the ground water and if you wanted to drill a well I guess all you have to do is apply to the Commission. The County has nothing to do that although we comment on those wells. Anyone can drill a well in the upcountry area if they wanted to.

Mr. Hedani: I think the commissioner is talking about the County drilling.

Ms. Freitas: Yeah, exactly.

Mr. Imai: About the County?

Ms. Freitas: ...(inaudible)... to draw water, distribute water, allocate water. Okay, let me start again. Okay, the State has the authority for our water. They rule the water and what I understand is they allocate a certain amount of water to the administration to distribute.

Mr. Imai: I don't know of anything.

Ms. Freitas: You don't know about that?

Mr. Imai: No.

Ms. Freitas: Okay, so when you go to drill a well it's just – okay wait, lets back up. Okay, so lao, anybody wants to draw any water out of lao, who's authority is it under?

Mr. Imai: Well, that would be the State.

Ms. Freitas: The State?

Mr. Imai: Yes.

Ms. Freitas: Now when that happens, doesn't the State go to, I had thought it was the Mayor, the administration and say, okay, you're allowed to draw out of this lao aquifer so much water and distribute it. Is that correct?

Mr. Imai: I'm not sure. I'm not too familiar with the Central area.

Ms. Freitas: I'm sorry, what did you say your name was again, I'm sorry.

Mr. Imai: Arnold Imai.

Mr. Freitas: And what part of the Water Department?

Mr. Imai: Well, I'm with the Water Resources and Planning, but my district is Molokai and Upcountry. I don't have a lot of knowledge of the Central area and the lao aquifer.

Ms. Freitas: Okay, so as far as you know, if the County wanted to drill another well upcountry they do it?

Mr. Imai: They can do it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I've got to put my two cents in here because this was something I was little bit involved with for many years and the State Water Code is a very unusual document the way it was implemented. It was implemented as a compromise. It was basically, the idea was to give control over the – the original idea was to give control over the public trust resources in terms of water to a state entity, the Commission on Water Resources Management. But before it was put in place, it was changed in a way that makes it a two-step process. In other words, the areas of the State can be designated as a ground water or surface water management area and if they're so designated then the State has control. But if they're not designated then it's kind of like the wild, wild west there's basically no rule of law. It's anything goes.

Anyone can drill a well, anyone can take as much water and there's no one who keeps track of how much water gets pumped or how gets used. It was only lately that lao was designated after many, many years of certain people feeling that it was being abused and over pumped a resource management area. Molokai is another designated area. So those are places that are under State jurisdiction and that water users have to file for permits or petitions with the State for their uses and those uses are kept within sustainable yields.

But areas such as Upcountry and Central Maui and East Maui are not designated. So anything goes. But politically, you know, I'll tell you why I worked for four years on the Board of Water Supply to get Pookela Well approved and drilled and I was amazed at all of the behind the scenes people that fought it. And it's still not operating and I'm amazed at that because it's been many, many years and it should have come on line years ago, but all I can say is that, you know, unless the succeeding part of it I think is pretty basic fact but I'm going to end with an opinion that there were a lot of entities that like to keep the upcountry water system I would call it barefoot and pregnant and it's although there are many places where wells could be drilled but there's a lot of very unusual opposition to them when it actually comes time to get them approved and get them done by the County, but the County should be drilling many more wells to get rid of that horrible waiting list. I'm sorry for all the ...(inaudible)..

Mr. Hedani: Any other questions for the Water Department, any Commissioners? Thank you very much Mr. Imai. Staff recommendation.

b. Action

Ms. Cua presented the Recommendation for State Land Use District Boundary Amendment and Change in Zoning.

Mr. Hedani: Any questions for staff? I have a question Ann, in terms of the access to the south to Loha Place when is that supposed to happen?

Ms. Cua: We don't know at what point that property south of Makaena Place would be developed and I don't know if legally to put a condition or how you would even word a condition at this point that doesn't has a time certain because the traffic report does recommend that an alternative access point to the project be developed and it would be through Loha Place. It doesn't really say through Loha Place it just says an alternative access. The logical access when you look at what's there would be through Loha Place. At such time when the area south of the project is developed.

Mr. Hedani: Has any discussion taken place between the applicant and the land owner to the south or is that in agricultural use at the current time?

Ms. Cua: I don't believe there has been any discussion that has taken place between the applicant and the owners to the south.

Mr. Hedani: Okay.

Mr. Foley: I just wanted to add that if you look at Exhibit 1 you see how close the ends of these extremely long cul de sacs are, and we're – you know, we've been reminded

constantly by the Fire Department that they really want connections wherever possible and I think it would be good to have this condition because it would be a warning in writing that this connection is expected to occur some time in the future. We can't actually accomplish it with this subdivision but we need these property owners and future owners to know that the County expects this road eventually to be connected to Loha Place so that we eliminate two very long cul de sacs.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I believe this is a question to Director Foley. Is there any reason why we could not condition this project that they make that connection to Loha Place happen at their expense?

Mr. Foley: Yeah, the reason we couldn't do that is because there is a property between the end of Loha Place and this property that they don't control or own. If necessary some time in the future if that parcel doesn't come in for development the County could condemn a very narrow strip in order to connect those two roads but that would be kind of a last resort. I think we just need to have a condition on this change in zoning that at the time of future development or at some time in the future the county expects this road to be connected to Loha Place.

Mr. Starr: If we did so condition it though as I stated, I mean, wouldn't that provide a very strong incentive for these property owners to go and purchase an easement or ..(inaudible)...

Ms. Cua: ...(inaudible)... do that.

Mr. Foley: That would maybe a question for James but I don't think you could require them to buy property –

Ms. Cua: No.

Mr. Foley: That they don't currently have any interest in to make that connection. We certainly would strongly encourage them to do that and if that parcel ever comes in for anything including a building permit, we ought to get these two cul de sacs connected.

Mr. Starr: Could the department create wording as strong as possible in this area?

Ms. Cua: I think that one thing you can do, and again you have to do something that's in the applicant's control and they have no control over that parcel that's south of them. But you could require that the road improvements that they make on Makaena Place shall include provisions for connection to Loha Place at such time when the area south of the

project is developed. So again, Makaena Place is in their control and so they can – what they can do is when they do improvements to Makaena Place which they're going to be required to do by Public Works which you've already seen that, they're going to have improve Makaena Place to a 40-foot right of way. Fire Department is saying they're going to have to have 20 feet of pavement. When they do those improvements, you know at the cul de sac here you could assure that they make provisions so that there can be future connection in the future. So a cul de sac to me would allow future connection. You know, they could do it in another way where maybe it wouldn't allow future connection.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: I propose two conditions. One being that Makaena Place shall be constructed so that to accommodate a connection with Loha Place. Condition two, that a sidewalk shall be constructed on Kula Highway that will –

Mr. Foley: Could I just suggest that that be sidewalk or pedestrian path? Because since this is a rural area, we'd really prefer that it be a separated pedestrian path not a walkway right along the highway?

Ms. Shepherd: Fine.

Ms. Cua: I have a question about that, maybe if we can ask Corp. Counsel —

Mr. Hedani: I think what the applicant had agreed to was a pro rata participation in any improvements for a pedestrian access in the future. So I don't know that they've actually agreed to that condition at this point, yet right, correct me if I'm wrong Chris.

Mr. Hart: We're in agreement to the pedestrian access and I think it's like Mr. Foley said and that we would like to work with the State Department of Transportation in the context of a pro rata participation in something like that. It's their right of way. As was indicated we do have to work with the State to the refuge lane and we would like to work with the State in a pro rata share relationship to establish a pedestrian access.

Mr. Hedani: Okay, we actually don't have a motion on this particular item at this point yet we have two suggested conditions for addition. Commissioner Starr.

Mr. Starr: On the sidewalk I would want to see the same wording that is there for the refuge lane. I don't want to see –

Ms. Shepherd: I don't want to see work with.

Mr. Starr: Yeah, I don't want to see work with, I don't want to see pro rata. I want to see

that they will construct at no cost.

Mr. Hedani: Okay, can we have a motion to bring this on the table at this point so that we can move this forward one way or another. Commissioner Shepherd.

Ms. Shepherd: Move to approve.

Ms. Freitas: Second.

Mr. Hedani: Moved by Commissioner Shepherd, seconded by Commissioner Freitas to approve. Discussion? We have a recommendation for two conditions.

Ms. Shepherd: Okay, lets move on the first condition which is that Makaena Place shall be constructed such that it can connect with Loha Place at a future date.

Mr. Hedani: Ann, you got that?

Ms. Cua: What I have is, "that roadway improvements on Makaena Place shall include provision for connections to Loha Place at such time when the area south of the project is developed."

Mr. Hedani: Is there a second?

Ms. Freitas: Second.

Mr. Hedani: Seconded by Commissioner Freitas. Discussion on the amendment? It's actually an amendment, adding a condition. Commissioner U'u.

Mr. U'u: The only concern I have is it's looking to be very expensive to get this thing moving forward. And if I, for one, had a property there I would definitely pull out because I don't have the money. I would not have the money to do any improvements. I get hard time making a living on this island alone and going be forced to do things that is better for everybody but I would have to pull out and I have to tell my kids, eh you know what, you guys gotta go sign up on the affordable housing list because that's the only way you getting a home because I cannot build one here because I no more the cash flow. And that's the bummer here. We're imposing all these regulations and where normal trying to subdivide for their kids you're getting screwed.

Mr. Foley: Could I just comment on that? By changing the zoning from agriculture to rural, you're quadrupling their potential density. That's an incredible advantage financially and so this is the time when we are able to get improvements to a road that probably should have been widening years ago. And you know, it really is justified.

Mr. U'u: So cost shouldn't be looked at. Cost Shouldn't be looked at.

Mr. Foley: Yeah, cost should be looked at but these properties have become significantly more valuable in the last few years and if the zoning is changed they quadruple in value.

Mr. U'u: I understand the value of land. My mom lives in Kuau. Her land went skyrocket. We only get one cottage there. But what about the money that it takes? I'm don't want to put anybody in the bind. I know what you guys bringing up is a good thing, but is it feasible for some of these people?

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: Well, it is a rural area so I'm not talking about sidewalks and gutters and all that. I don't particularly like sidewalks. But if it's a rural road, I mean, lets at least make it so that if you build it up at the end so it just can connect. I don't see how that's going to be that much of a burden. Just to build it so that you're set up so you can just go through when you – other than having to go back maybe in five years and redo stuff which would be more expensive. And as far as the walkway goes, again, hey a pathway is fine. Lets just make it so that people aren't walking on the highway.

Ms. Cua: I think the condition – it would be Condition No. 2 because we have Condition No. 1, –

Mr. Hedani: Lets deal with the first condition first and then we'll move onto the second.

Ms. Cua: Well, it's actually going to be your Condition No. 2 because you have a Condition No. 1, but the first condition that you're talking about which deals about –

Mr. Hedani: Lets talk about the motion that's on the floor right now.

Ms. Cua: The thing on that is that you're just – if they do a cul de sac, if they cul de sac Makaena Place, they would have met this condition because at some point in time when the adjoining property to the south develops, it will be incumbent on them to make the connection. And so all this is doing is not prohibiting those lands south to make a connection in the future. That's all it is.

Mr. Hedani: Any other discussion on the motion? Are you ready for the question?

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

VOTED: To Add the Following Condition: "That roadway improvements on Makaena Place shall include provision for connections to Loha Place at such time when the area south of the project is developed."

**(Assenting - D. Shepherd, S. Freitas, J. Guard, B. U'u, J. Amorin,
W. Iaconetti, J. Starr)**

(Excused - P. Eason)

Mr. Hedani: Carried. Thank you. Commissioner Shepherd.

Ms. Shepherd: Okay now as far as just establishing some sort of safe walkway along Kula Highway, again, all right not a sidewalk but –

Mr. Hedani: To rural standards.

Ms. Shepherd: To rural standards and I'm uncomfortable with, "working with" because that could mean it will never happen. So what kind of wording can we put in here so that we're not making it and Mr. Guard has wording.

Mr. Guard: I don't have wording but what are "rural standards?" I mean, if they're dedicating the land and if we can either grade or grub it down wide enough that maybe it's above the highway is that safe? Is that adequate? I mean, I used to have to walk home from Kula School to Upper Kula Highway and there's no sidewalk. I made it. But Upper Kula Highway doesn't have anything up there and there's at least as long as we have the space, the width greater than the highway is that adequate?

Mr. Hedani: Mike do you have a recommendation on it?

Mr. Foley: Well, I did want to comment that we're talking about an area between two schools and if the schools weren't there we probably wouldn't be quite as concerned about any safety of pedestrians. But this is an area between two schools where there is likely to be pedestrian activity. The kids may go between athletic facilities for example, between the two schools. And by rural standards I think what we're talking about ideally would be an asphalt pedestrian path separate from the highway shoulder so that kids are not walking on the shoulder of the highway but they're also not in an urban sidewalk next to curbs and gutters. The rural standards that we envision for rural areas are grass swales for drainage and not vertical curbs and concrete sidewalks and that's what I would anticipate on this cul de sac. Grass swale for drainage, maybe a asphalt walking path on side or the other but not concrete paths. And if we could accomplish an asphalt walking path along the highway between these two schools, I think it would significantly improve the opportunity for safe pedestrian travel for students.

Mr. Hedani: Commissioner Starr.

Mr. Starr: The way I suggest we deal with it was Ann had some wording before regarding the refuge lane and I would like to incorporate that wording and after refuge lane I would like to add the wording, "and a pedestrian path connecting Makaena Place and the crosswalk by Kekaulike, across from Kekaulike School, the existing crosswalk."

Mr. Foley: That actually is in this project. I mean, that portion is a part of this property so that would be a lot easier than trying to extend it anywhere else along the highway.

Ms. Cua: Can we look at this map though because I think we need to look at something here. This is King Kekaulike School.

Mr. Hedani: Where's the access point, Ann?

Ms. Cua: To the subdivision is here. You see Makaena Place.

Mr. Hedani: No, where's the access point to the school that we're talking about?

Ms. Cua: When we did the Cambra subdivision this is the Cambra lot, their lot lined up with the driveway to King Kekaulike School. So what you see here is that the church property which is here is not part of this application. So you cannot require them to do a pedestrian path on property that is not theirs. So what you're talking about basically is right here on these two properties. This property is I believe the Watanabe property and this property is Frank Cravalho's property. Frank is here. I don't see the Watanabes here. So the path that you're –

Mr. Hedani: I think the motion was for Makena Place to the intersection with the crossing for the school.

Mr. Starr: Where the traffic light.

Mr. Hedani: So it's on the southerly direction not the northerly direction.

Mr. Starr: And I would leave it them exactly how and where it is.

Ms. Cua: I don't know if legally we can put a condition – okay, can you explain to me what you're saying? To this area here?

Mr. Guard: There's a crosswalk by Jacaranda Junction right there.

Ms. Cua: There's a crosswalk, oh over here. Okay, so that would be okay then.

Mr. Starr: And it can either run right along the highway or it can run up however they want to do it. I just want to connect Makaena Place with the crosswalk so the kids can walk from there to school.

Mr. Hedani: So you're talking going north?

Mr. Guard: North.

Ms. Cua: So what happens just out of curiosity and this is a question for James. We don't have any comments from Department of Transportation on this. What if for whatever reason the Department of Transportation has a problem with this? How will they meet that condition? If it's on their own property I think we should be okay.

Mr. Giroux: At this stage we're making a recommendation to Council. I think this project has a lot of review to go through and I think we need to get clarification from DOT to see about, you know, do they have space to do it on their property or are the owners going to have dedicate property going through their property. Right now you can do the condition. As far as, all you're doing is asking the Council to incorporate this into their deliberations and make it a condition. At that point we're going to have to nail down legalities as far as from DOT and the from land owners to see if we can get that done somewhere.

Mr. Hedani: Okay, can we get a motion for this condition that's clear at this point. Commissioner Starr.

Mr. Starr: As I said before I'd like to start with the condition that Ann already wrote with regarding the refuge lane and add the words, "and a pedestrian path connecting Makaena Place with the existing sidewalk at Jacaranda Junction."

Mr. Hedani: Okay, is there a second?

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. Discussion?

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

VOTED: To Add the Following Condition: A median refuge lane shall be designed and constructed on Kula Highway and a pedestrian

path connecting Makaena Place with the existing sidewalk at Jacaranda Junction.

**(Assenting - J. Starr, B. U'u, D. Shepherd, S. Freitas, J. Guard,
J. Amorin, W. Iaconetti)
(Excused - P. Eason)**

Mr. Hedani: Carried. Any further discussion?

Ms. Shepherd: ...(inaudible - changing of tape)...

Mr. Hedani: You don't have make a motion on the call for the question. Any further discussion? All those in favor of the main motion.

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

**VOTED: To Accept the Recommendation to Recommend Approval of the State Land Use District Boundary Amendment and Change in Zoning with Conditions.
(Assenting - D. Shepherd, S. Freitas, J. Guard, B. U'u, J. Amorin,
W. Iaconetti, J. Starr)
(Excused - P. Eason)**

Mr. Hedani: Carried. Thank you.

Ms. Cua: Thank you.

Mr. Hart: Thank you very much.

A recess was called at 10:35 a.m., and the meeting was reconvened at 10:45 a.m.

C. NEW 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.)**

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.

Ms. Colleen Suyama presented the Maui Planning Department's Memorandum.

Mr. Hedani: Questions for staff? Commissioner Starr.

Mr. Starr: Yeah, is this the document you were referring to?

Ms. Suyama: That's correct.

Mr. Starr: Okay, yeah this was transmitted to us I believe on August 8th with a cover letter from the director stating that that is the final EA document is that correct?

Ms. Suyama: This is the final document, draft document for your consideration, that's correct.

Mr. Starr: Okay, now my document is missing most, a lot of the pages. Like I go from page V to page 9, then I have page 10, then I don't have other pages until I get to 21. Then I have a blank to page 25 and then the next page at 37. How can this be the document?

Ms. Suyama: It's my understanding that because the draft document was submitted to the commission previously that it is the practice of the commission that when the final document comes back to the commission they only include the redlined areas where the commission had asked specifically for changes or new information was incorporated.

Mr. Starr: Since this arrived to us with a transmittal saying that this is the final EA document it is my belief it would be illegal and wrong for members – as members of the commission to act on it. That we are provided with incomplete document. This is similar to what happened at the last meeting two weeks ago where we were given amendments on the same day of the meeting and asked to review on that. Here we're being given a document that's partial with no comments that part of it lays in another document that was not being delivered with it. So I really do not see any way that we can act on it. I really advise my fellow commissioners that they also not act on it because it's my understanding that if lawsuits occur then we can be liable for acting on a document that is partial and does not follow the needs of Part 343. So I, for one, feel that we must defer this item until we receive a complete document and I will be at this point making a motion that this item be

deferred until a complete document is received. So I move that we defer this item until we receive the proper documentation.

Ms. Shepherd: Second.

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

Mr. Iaconetti: Could we hear from the legal department over there as to the adequacy of the two documents?

Mr. Hedani: Corp. Counsel.

Mr. Giroux: From my understanding is that we've had a longstanding agreement as far as what procedures we would like to see the department follow. We've been dealing with these massive documents as far as drafts and the final documents. My understanding and we probably could look in the minutes to clarify that is that the commission requested that because of these documents were so big that when we got a draft EA and then when we were going to get a final that we would only be given at the time the amendments to that document. So as far as my understanding is, and I have a – in my office I have a draft EA and it's about four inches thick, and also I've received the final draft which is about another three inches thick so you could see that the document that you would receive if you wanted one incorporated document would be about seven inches thick and that would be very cumbersome for everybody to have to reproduce, transport and get around. It was the understanding that you would have this document as a draft and you would hold onto it and when you got the final that you could then have both documents and that would incorporate one final document that you could look at and either decide to receive or reject.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Do you recall approximately when that was in the minutes?

Mr. Giroux: Almost a year ago. I would believe that that when I first came onto the commission that was probably within the first two or three meetings that that discussion came up.

Mr. Iaconetti: I recall the same time that whole discussion occurred and agree with that you just reiterated.

Mr. Hedani: Other discussion, Commissioner Shepherd.

Ms. Shepherd: So when, I forget, when were we given the initial draft? It was over a year ago, right?

Mr. Giroux: No, for this document?

Mr. Hedani: Colleen.

Mr. Iaconetti: It's dated May 6th.

Ms. Suyama: August 8th, oh I'm sorry.

Mr. Foley: May.

Mr. Iaconetti: May of this year.

Ms. Shepherd: But I remember Susan Moikeha going ballistic and we were discussing the EA then and that was – when was that?

Mr. Giroux: That was the draft.

Ms. Shepherd: That was the draft.

Mr. Giroux: This is the final. Because from that meeting they went back and then augmented and then commented on those.

Mr. Shepherd: So that was when the draft was –

Ms. Suyama: My understanding it's the June 27th meeting of this year that you received the draft, that you discussed the draft.

Mr. Hedani: Okay, so from the department's perspective, the applicant is complying with the department's directive as far as what to produce?

Ms. Suyama: Right, and this directive came from the commission, so we're following the commission's directive?

Mr. Hedani: Have you ever got the feeling that you want to go and just really wanted to stay? Commissioner Starr.

Mr. Starr: I'd like to ask Corp. Counsel where this is enshrined in our rules because our rules seem to state otherwise.

Mr. Giroux: As far as we're concerned is that this is an informational document. If you received the draft and you received the final then you have received the full document in order to review and make your decision of whether it's an adequate document or not.

Ms. Shepherd: So question for Colleen. So everything that we have in this is comments on – is replies to our comments?

Ms. Suyama: Right. It's relies to your comments of that – when we reviewed their draft as well as additional information that was gathered since that time.

Ms. Shepherd: At which time?

Ms. Suyama: From the time of the draft.

Ms. Shepherd: A year ago?

Ms. Suyama: No, the draft.

Mr. Hedani: June.

Mr. Foley: June.

Ms. Suyama: June.

Ms. Shepherd: The second draft?

Ms. Suyama: Yeah.

Ms. Shepherd: Because the first one was withdrawn?

Ms. Suyama: No, there was only one draft that the commission reviewed and that was in June. There was no draft last year.

Ms. Shepherd: Okay, so what was the meeting where this came up before?

Mr. Giroux: That was the general discussion.

Ms. Suyama: He's talking about when in general that they were talking about EAs in the process.

Mr. Hedani: On other projects.

Ms. Shepherd: I'm sorry too many people talking at one time.

Mr. Hedani: I think it was general discussion on all future applications.

Ms. Shepherd: No, no, no, no. Who remembers Susan Moikeha going off because we were here late and it was her son's birthday and this was the item we were talking about?

Mr. Iaconetti: No. I don't believe so. That was another item.

Mr. Hedani: I think it was different project.

Ms. Shepherd: No, it wasn't.

Mr. Hedani: It was an intervention case.

Mr. Giroux: We need to look at the minutes, but from my understanding is that that meeting was about a cultural resource archaeological survey that –

Ms. Shepherd: But it was this.

Ms. Suyama No, it was this project but there was a hearing on the Special Management Area Permit, and as a result of that, the commission had asked the applicant one, to redo their archaeological inventory survey because there were questions about the adequacy of the survey which they've since done. And there was also the question of the water line. At that time the applicant was going to put their water line within their private property which it would not have triggered the Chapter 343 compliance. But what happened is at the request of the Water Department, the Water Department had asked that the applicant put the water line within the County right of way and to extend the water line all the way to the County park and because of that, it triggered compliance to Chapter 343. So the applicant went back and did the draft environmental assessment in compliance with Chapter 343 to accommodate the water request for the water line and that is what we're reviewing now.

Ms. Shepherd: Okay.

Mr. Hedani: Okay, now that we got all that clear. Commissioner Starr.

Mr. Starr: Chair, just from this discussion, it's clear how confusing this is and we had a similar discussion at our last meeting about an EA that was given to us in little pieces and some of it on the date of the meeting. And I think that by the fact that it is confusing means that there's no way not only that we can understand it much less the public. And as a public body, a body representing the public interest, we have to err on the side clarity. If we're going to approve a document, we have to be given a document with the transmittal that says this is the document. Now the transmittal we received with this does not refer to a previous section. It say, this is the document. The document that we received with that transmittal is partial. I really think that we need to at this point begin the process of making

sure that there's clarity in our action and that when we rule on a document we have the document and also the public if they want can access that document as well. I don't know if this is an intentional attempt to confuse and obfuscate the matter and I don't want to believe that because I have respect for the Director and staff and don't believe that they would do such a thing. On the contrary, I think that they try to make things clear and I also have respect for the applicant and for the consultant in both the case last meeting and this meeting. But I really feel that there is no question that until have a document that is submitted to us as the EA, as the final EA in it entirety that we can act on it. And then if we do, then we are acting irresponsibly and outside of the purview of Section 343.

Mr. Hedani: Director.

Mr. Foley: This planning commission unanimously approved a very detailed environmental document process and this applicant has followed that process as had their consultants. Commissioner Starr may not like that decision but that was the decision that was made by this commission and as it's been said already twice, the procedure is for the draft EA not to be reproduced and redistributed but for the final EA to be distributed to the commission subsequent to the review of the draft and that's what's happened in this case and this matter is properly before the commission. If the commission wants to reconsider that process, we can do that at a future meeting, but this is the process that you've been following for at least a year and we don't see any problem with it.

Mr. Hedani Commissioner Shepherd.

Ms. Shepherd: Well, it was at my suggestion that we did adopt that procedure because we were getting duplication of materials, but I do agree that the cover here is misleading because it says draft, it says draft, it says final when actually what this is is these are responses to questions about the draft into – we need to somehow make it clear that what this is is responses to what we wanted to know and therefore, the initial draft in conjunction with this should constitute the final. But it is misleading because you look at this and – I mean, I looked at it and said, is this the draft, is it the final, so it's just a partial document essentially. So we need to somehow make that clear.

Mr. Hedani: Colleen do you have comments?

Ms. Suyama: Well, we were following the procedure. We thought it was clear because it was our understanding that the commission would look at the final, the draft of the final and compare it with the original draft document note what changes and what the responses were to those changes.

Mr. Hedani: Maybe in the transmittal that goes to the commission in the future you can reference the original document and request that the commissioners remember to bring

their original documents with them.

Ms. Suyama: Yeah, that would be no problem.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Yeah, I was just going to agree with Commissioner Shepherd that maybe we just need to reword as you stated how this comes across so it's not so misleading.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Move the question.

Mr. Hedani: Question has been called for. Is there any further discussion?

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

The Motion to Defer the Matter was Lost.

(Assenting - J. Starr)

(Dissenting - J. Guard, B. U'u, S. Freitas, W. Iaconetti, D. Shepherd)

(Excused - J. Amorin, P. Eason)

Mr. Hedani: Motion is lost. Any further discussion before the body?

Ms. Shepherd: Yes.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: I'm going to move that we defer it because it doesn't adequately address the questions. Can we start with drainage?

Mr. Hedani: I'm sorry, you have a motion to defer? Which we just defeated.

Ms. Shepherd: Well, let's go through what we have here and I think at the end we'll see that it's not enough. We do need an EIS.

Mr. Hedani: Okay, so what you'd like to do is you'd like to address questions to the applicant?

Ms. Shepherd: Yes.

Ms. Suyama: The applicant has a presentation. Can he do his presentation first before the questions?

Mr. Mich Hirano: Good afternoon Chair Hedani and Commission Members, my name is Mich Hirano with Munekiyo and Hiraga and our firm is the author of the draft final environmental assessment. We've prepared a power point presentation just to highlight some of the responses that were made in light of the comment period. Just for I think clarification from our perspective it is a draft final until it is accepted as FONSI from the commission and then it will be the final EA so that's why we put draft final EA. There's a bit of, I guess, conflicting wording in that but that's the procedure in the terminology that we use.

Just to refresh the commission's memory with respect to the process, on June 27th, the commission reviewed the draft environmental assessment, the draft environmental assessment then on July 8th was published and the 30-day comment period ended August 8th. The draft final EA had all the comments that were received from the public and as well from the planning commission review of June 27th and we've provided the amendments to the draft EA which included a Chapter 11 which was the chapter where all the comments were received during the comment period and our responses to those comments as well as to the comments from the planning commission. And our power point will just highlight some of those responses and comments.

We've for clarity and organizational sort of presentation we've grouped the responses and comments in these particular categories. There are five categories which we felt were common themes in terms of the comments that were received. They reflected comments on archaeology and cultural resources. Comments regarding landscaping. Comments on site work and infrastructure. The other comments were and our responses were tied to the leadership and energy and environmental design which is LEED and the project is seeking LEED certification so we wanted to provide comments on that particular process and some of the features of that certification. Finally there were comments regarding the socio economic impacts of the project.

With respect to the archaeological and cultural resources our comments were that the burial treatment plan regarding site 5706 was unanimously approved by the Maui Lanai Islands Burial Council on July 27, 2006. The applicant had presented the burial treatment plan which was summarized in the final EA and as well in the draft EA to the Maui Lanai Islands Burial Council and they approved the burial treatment plan as presented.

The preservation plan, a proposed preservation plan measures were reviewed by the Maui Cultural Resources Commission on July 6, 2006. And it called for a preservation, a proposed preservation for a religious complex site 5711 and archaeological documentation for site 5795 which was a habitation – it was a agricultural enclosure and that was

reviewed. Those proposals for preservation and documentation of those features was reviewed by the Maui Cultural Resources Committee and they approved it unanimously on July 6, 2006.

During that process regarding the architectural documentation for the agriculture enclosure, the applicant will do architectural documentation for the agriculture enclosure. The applicant will do architectural documentation for that particular site and the applicant as well has committed to prepare an oral history report for the Makena School site.

The final EA was amended as requested by the Planning Commission to incorporate the site plan for the supplemental archaeological survey that was carried out or the inventory survey that was carried out. The features that are of significance in the archaeological inventory survey was this is site 1007, this is the Makena School site. That's on parcel 84. The mauka parcel where the parking lot will be expanded and the retention basin will be developed. The applicant has committed to do an oral history of that particular feature and site. Site 5076 is the burial and there is a burial treatment plan for this particular site and that's 5706 with some features. And site 5710 is the koa, the ceremonial shrine that was preserved in the site plan and there's a preservation plan that was proposed for this particular feature which included the koa, some terraces that were related to the ceremonial significance of the particular site and so those features were preserved in the site plan. This is the agricultural enclosure 5795, and architectural documentation of this particular site will be carried out by the applicant. Again, this is the detail of the burial treatment plan that was approved by the Maui Lanai Islands Burial Council and that was incorporated into the landscaping plan for the proposed project.

A comment that was made by planning commission review was to look at the existing landscape and put – and superimpose the buildings as they will be developed with the existing landscape in the foreground and we've also provided what the proposed landscaping would do and look like for the particular project. So we've put this particular slide into the final environmental assessment.

Just in regards to the urban form that is being proposed and the urban design elements and project design elements, the Urban Design Review Board had reviewed the project on June 6, 2006 and during that process they reviewed and approved the view corridors as requested. They had requested an earlier meeting to widen the view corridors at the southern and northern driveway entrances and that was done and the Urban Design Review Board recommended approval of the project design elements to the Maui Planning Commission.

Regarding site work and infrastructure comments were made during the draft EA review about quantities of fill and where that fill will come from. During the response to that we had the engineer do more detailed calculations on the grading plan. The findings were the

grading will involve approximately 20,000 cubic yards of fill that will be required for the site. The 4,000 cubic yards of fill will be obtained from the excavation of the mauka retention basin. The balance of the fill will be obtained from within the Makena Resort area which would eliminate the need to import fill material from outside of Makena Resort.

There were comments during the draft EA and planning commission review regarding water demand calculations and there were a number of water demand calculations for the project and I'd like to just give background and how the water demand calculations were refined during the SMA, draft EA and final EA process.

The original special management area water demand calculation was based on a hotel zoning designation and the consumption guidelines for hotel were used at 340 gallons per unit. This hotel designation was used because originally short-term rentals were to be permitted within the project. During the draft environmental assessment review water demand had changed based on a multi family residential consumption guideline which has as a base use per day of 560 gallons per unit. This was done since the developer is prohibiting short-term rentals so at that point we felt it would be more appropriate to use a multi family residential consumption data.

The average in the report we put in – the average water demand is estimated at 98,340 gallons per day. This figure is based on average daily domestic consumption which is calculated or estimated at 59,340 gallons plus landscape irrigation demand which was estimated at 39,000 gallons per day. Maximum daily water demand which was included in the preliminary engineering report is another figure is determining water demand parameters and this is calculated at 1.5 times the average daily domestic consumption plus landscape irrigation demand. And that figure which was in the preliminary engineering report is estimated at 128,000 gallons per day. However, based now on the LEED certification that the applicant will be pursuing, the current landscape irrigation plan for the water is estimated to 68,740 gallons per day and that's based on the average daily water demand which is 59,340 gallons per day plus a very reduced amount of water for irrigation purposes and that's because of the landscape management plan that has been proposed as part of the LEED certification.

In terms of water source development the question arose during draft EA review about water source development. Following up with that the project engineer, Austin Tsutsumi and Associates had contacted the Department of Water Supply and they verified that three water sources are being developed by the Department of Water Supply which would increase water availability in the Central Maui water system and those resources are the Kupaa Well, the Waiale Surface Well Treatment Plant which is scheduled to be in operation by 2008, and Maui Lani Wells which will be developed and will yield approximately 2.1 million gallons per day and their target production date is 2007.

Regarding the proposed roadway improvements on Makena-Keone'o'io the applicant and this arose by virtue of the I guess the conflict in language between the community plan which states that the intent is to keep the Makena-Kenone'o'io road in rural character as it is in front of Keawalai Church and as in conflict with the zoning of the property which is hotel which would require sidewalks on both sides of the street. The applicant went before the Board of Variances and Appeals. Made a application for a variance to not be required to put in the sidewalk on the sides of the Makena-Keone'o'io roadway. The Board of Variances and Appeals heard the application on August 10, 2006 and voted unanimously to approve the requirement that it not be developed with sidewalks and that the roadway be maintained in rural character. As part of that, the right of way and pavement width of the roadway was set at 44 feet and 28 feet respectively. The applicant will be improving the roadway somewhat to make the 28 feet wide pavement width. There's enough right of way right now within the roadway, it varies from approximately 46 feet to 55 feet. So it meets the roadway widths and the pavement width right now is approximately 24 feet with two, 12-foot travel lanes. So the applicant will be widening the roadway two feet on either side of the roadway.

With respect to the walkway, if place of the sidewalk the applicant will be working with Na Kupuna O Maui as the cultural resource representative for the Makena area as well as Joe Bertram's bikeway group to develop the walkway in the character of a rural nature as defined in the community plan.

Comments were made about traffic mitigation, construction traffic mitigation. Construction related traffic during the installation of the water line on the project roadway will be controlled as required through traffic control measures. Discussions will be carried out with the Department of Public Works and Environmental Management and a traffic control plan will be submitted for approval prior to development of the project.

Regarding the parking survey, the applicant did a parking survey over two consecutive weekend days at the project site. The existing park includes 30-stall parking lot which is on the parcel 84. There are nine marked parking stalls on the cul de sac of Makena-Keone'o'io Road as well as public parking to the north of the King's Trail and this is at Keawalai Church, Keawalai Congregational Church. There's a public parking lot, 25-stall parking lot in that particular vicinity and it has a signage that shows that there's a public trail to the beach access.

The parking survey found that the parking is heavily used by clients of kayak tours and beach wedding operators. During the analysis that was carried out it appears that 45 parking spaces will meet parking needs 95% of the time. During testimony during of the parking variance, a resident who spoke in favor of the variance to keep the roadway in rural character testified that he and his wife walk that roadway almost daily and on very rare occasions, only on very special events such as the marathon that's hosted by the Makena

Prince Hotel is there ever parking along the roadway that he's experienced. Most of the time his testimony was that parking is adequate during the week and weekends. In our analysis that was carried out during the final EA is that 45 parking stalls will meet the parking needs 95% of the time.

The applicant proposes to expand the parking lot, the existing 30-lot stall parking lot by 10 stalls. And overall, 49 parking stalls then will be available. The analysis concludes that the expansion will meet public parking demand more than 95% of the time. And it's only in those very special times of large public events that have been hosted by Makena Prince Hotel that the parking will exceed the 95 – the 49 stalls that will be available.

Regarding the Makena wastewater treatment plant, we've been in touch with the Makena Resort regarding the treatment plant and we have the following information that was added in the final environmental assessment. The design capacity for the Makena Resort wastewater treatment plant is 720,000 gallons per day. Current monthly average of flow into the treatment plant is approximately 80,700 gallons per day. The maximum recorded flows at the plant was 105,000 gallons per day. 100% of the treated effluent is recycled and used in the landscape irrigation and the facility had been inspected by the Department of Health and determined to be satisfactorily maintained and operated and the Department of Health had given it a general rating of acceptable. And so this transmittal letters from Makena Resort wastewater treatment plant and as well as the Department of Health letter were included in the final EA.

Regarding drainage improvements, the project storm water design exceeds the county drainage standards for a 50-year, 1-hour storm by reducing the post development runoff by 47% of predevelopment flows. The county drainage standard is that you retain all additional increase and storm water runoff caused by the development of the site on site and not have it flow onto adjacent or downstream properties. This particular drainage improvement design actually reduces the runoff from the predevelopment flows by 47%. And that's due to the mauka retention basins as proposed on parcel 84 which is upslope from the proposed project.

The drainage improvements meet the Department of Health National Pollution Discharge Elimination System as well as the LEED requirements for storm water management for a one-year and two-year, 24-hour storm events.

The drainage improvements will be designed to contain a filter for the first flush storm water which contains approximately 90% of potential pollutant loads by natural and mechanical storm water best management practices. The natural measures to control storm water, absorption of phosphates and nutrients will be by bio-retention basins and grass swales. Percolation as well through crushed – through soil and crushed rock will absorb and eliminate the phosphates and nutrients from absorbing into the groundwater. Storm water

events greater than 50-year, one-hour storm will overflow via underground piping to the next downstream retention basin, then to the open retention basin which will have a emergency overflow weir. The excess overflow from the larger open retention basin will then discharge onto a low laying area of the existing golf course fairway. So the overflow beyond the 50-year, 1-hour storm event for which the drainage plan has been designed to handle will flow onto the golf course and will be absorbed in the low laying of the golf course. The Environmental Protection Agency best management practices classify percolation as an effective mitigative process in the removal of pollutants.

The mechanical devices that are proposed to control storm water, catch basins and field inlets will have filtering devices to capture large debris. Mechanical filtering devices located within the drainage manholes will remove petroleum products. Suspended solids, nitrates and phosphates from the first flush storm water prior to entering into the underground retention chambers. Mechanical storm water filtering devices are rated for removal of 80 to 90% of the total suspended solids.

Regarding water quality monitoring. The applicant will install downstream monitoring wells from the detention basins. The storm water will be monitored and tested for a total suspended solids, phosphates and nutrients. And storm water best management practices will be reviewed and corrective action will be implemented as required.

As mentioned earlier, the project is seeking certification for the LEED which is Leadership in Energy and Environmental Design. The green building rating system to reduce environmental impacts in five areas and for the certification the applicant will be looking for the LEED certification will involve aspects relating to the site water use, energy, materials used in the project and the indoor environmental quality. ..(inaudible - changing of tape)... and will demonstrate no net increase in storm water runoff. And as earlier indicated, the project will reduce the post development flows by 47% of predevelopment flows. At 50% of the reduction in water used for landscape irrigation compared to conventional landscape design. So the landscape design will reduce water use for irrigation by at least 50%, 20% reduction in potable water use in the buildings compared to energy policy act of 1992 and 18% reduction in total energy use compared to the ASHRAE 90.1- 2004 standards.

There'll be use of nontoxic and low emitting materials, VOC volatile organic compound.

Ms. Shepherd: Volatile.

Mr. Hirano: Volatile. Volatile organic compound materials and finishes. The applicant will also be implementing a sustainable landscape management plan. The plan involves the use of native Hawaiian and drought resistant and low maintenance plants. The project design will reduce the amount of turf area to minimize irrigation use or water use and the project will incorporate a high efficiency irrigation system including moisture sensors and

drip irrigation.

List of native species that are used in the landscape plan. There are a number of native species for the trees that will be used and their canopies for shade. The shrubs will use Alii Alahe'e as well as Beach Naupaka and the ground cover we'll use a variety of native landscape plants and materials.

The landscape plan will also incorporate an organic landscape maintenance plan. The project will implement an organic landscape maintenance plan and use organic compounds and mulches for landscape fertilization and weed control. Use of organic fertilizers, pesticides, herbicides and biodegradable products and reduction of total suspended solids and total phosphates and other landscape maintenance chemicals in storm water runoff and infiltration. And so these are all kind of proactive stances and applications that the applicant will use in the development of the project.

Applicant will incorporate and integrate a pest management program. It would minimize spray application of pesticides and focus on long term mechanical and administrative measures to control pests. These involve a number of methodologies. One would be cultural treatment by reducing pests by making their environment less favorable. Physical methods would be barriers and traps and mechanical would be cultivation or tillage which will expose and eliminate soil insects. Biological applications will be the use of natural enemies of pests and botanical and mineral applications will involve the using of least toxic substances such as plant derivatives and oils and soaps.

Highlights of the socioeconomic impacts of the project, the average annual occupancy of the project is estimated to be 32 households totaling 48 persons. We've included a socioeconomic or fiscal assessment of the project which was done by John Childs, that's included in the appendix of the environmental assessment. The affordable housing will be provided in compliance with Section 2.94.060 of the Maui County Code. The applicant will provide approximately \$1 million in park assessment fees to the County. The applicant has made a voluntary contribution of a \$125,000 to facility improvements to the Maui Memorial Medical Center. The applicant has made a voluntary contribution of a \$150,000 to Kamalii Elementary School in Kihei. Based on the fiscal assessment by John Childs, approximately \$142,000 per annum will be the net State tax revenue and the project will contribute approximately \$2.2 million in County taxes per annum.

Employment tenure. The employment impacts of the project were estimated as follows, the total expenditures of the project direct and indirect, during construction will be \$435.4 million and on a long term basis on an annual basis, total direct and indirect expenditures are estimated to be \$2.5 million per year. Projected new jobs indirect and induced during construction, 3,190 new jobs will be created during construction and on a long term basis approximately 25 jobs per annum. And projected employment income, indirect and direct

or induced is estimated to be \$130.2 million during construction and on a long term annual basis \$820,000 per year.

Regarding the project in relation to the objectives of the Focus Maui Nui report, the proposed project is supportive of the following priorities: Access to affordable housing was identified as one and the applicant will continue contribute – well, the applicant will contribute to affordable housing.

Take action to assure water supply, the applicant will continue to work with the Department of Water Supply to ensure that water sources are available for the project. The project will incorporate water conservation measures to reduce the total domestic water demand by 20% and landscape water demand by at least 50% following the LEED certification.

Strengthen the local economy by diversifying the economic base and taking steps to address the high cost of living. The project will result in the creation of short-term jobs and provision of salaries and wages. The project will result in the creation of approximately 25 permanent jobs and project will provide positive tax revenues to the State and County.

Site security. In 2005-2006 from July to June the Maui Police Department responded to 178 criminal calls for service in the Wailea-Makena area. The majority of future homeowners in the proposed project will be part-time residents. Short-term rentals will be prohibited therefore, many units will remain vacant for a good portion of the year, and as a result of concerns for security and safety, the proposed project will be secured by two gated entries for security purposes.

Comments on shoreline access. The adjacent property at Maluaka Park provides shoreline access. The proposed project is not a shore-fronting property. The Makena Golf Course is located between the shoreline and the subject property and the proposed project will not adversely affect the shoreline access to Maluaka Park.

Finally, questions were raised regarding the Makena Resort water quality monitoring program and any of the reports that were prepared for that water quality monitoring, so the Makena Resort has been carrying out water quality monitoring and it was required since 1998 for their Land Use Commission's district boundary amendment application as part of the Decision and Order. However, the resort has been carrying out biannual water quality monitoring reports since 1995. The 2005 marine water quality monitoring report for Makena Resort has been included in the final EA as requested. The report has been accepted by the Department of Health pursuant to the conditions of the State Land Use Commission's Decision and Order and we've included both the report and the State Department of Health's letter, review letter in the final environmental assessment.

There's a lot of information which I quickly went over and highlighted that has been

included in the final environmental assessment. And the project team members as well as Mr. Steve Dollar, who is has been doing the water quality monitoring reports for the Makena Resort are in attendance today as well as members of Na Kupuna O Maui, who are the cultural overseers of the particular project and they are available to answer any questions that the commission members may have on the information that's been provided. Thank you.

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

Mr. Iaconetti: Thank you. The archaeological sites will be available to the general public.

Mr. Hirano: They will be available and I'd like to ask Mr. Charlie Maxwell as well to comment on that.

Mr. Iaconetti: The question I had, however, was that this is going to be a gated development so how does the general public get to the archaeological sites?

Mr. Hirano: That question came up during the Cultural Resources Commission and I think the ...(inaudible)... mentioned that anyone who wants to see the site, the archaeological resources site, will be allowed access to sites for observation or to pay their respects or just for observance. There will also be signage that would indicate the importance of the site and its relationship to the project. I'll let Charlie Maxwell as well comment on that.

Mr. Charles Kauluwehi Maxwell: Good morning Mr. Chairman and Members of the Commission. My name is Kahu Charles Kauluwehi Maxwell and I've made the cultural assessment for this property. As far as the question you asked Dr. Iaconetti, is that this particular site was there and we knew it was significant so we asked for it to preserve. However, unless people are from the area and know what that site is all about, they have no business visiting that site unless you're family and that's how it was. So far – and if that happens we have made it available for someone to contact the Burial Council or the Cultural Committee and they would have access, but they got to say if they have genealogy to prove that they can access that site not any Tom, Dick and Harry.

Mr. Iaconetti: Thank you.

Mr. Hedani: Unless they're related.

Mr. Maxwell: Unless, yeah, they're family, right.

Mr. Hedani: Okay. Commissioner Freitas.

Ms. Freitas: Thank you Chair. So I'm assuming then that this has changed with the Burial

Council? Because when we did a project up in Pukalani and we had remains and we had to relocate them and we had to put a marble plaque and site it and everything. One of the conditions was is that we had to allow the public to go and visit the site at any time without calling anyone or doing anything and didn't have to be a relative or anything. It was open to everybody. So I guess that's changed huh?

Mr. Maxwell: You know, Susan let me ask you a question. Is this the same parcel we're talking about that you said that I wanted to obtain to build a house next to it?

Ms. Freitas: I don't know about a house but that you wanted –

Mr. Maxwell: And ...(inaudible)...

Ms. Freitas: Yes.

Mr. Maxwell: It's all wrong. Your comments were all wrong. It was for John Tavares not me.

Ms. Freitas: Well, no I'm – but that is a different thing. I am now speaking to not that. I am speaking to when we relocated what we had to do. And so I am just saying that evidently the rules have changed because at that time you had to be able to allow the public to go there and now you're saying that that is not it.

Mr. Maxwell: You now since the Honokohua burials which is our – where all this was created 16 years ago, this was put in. Not everybody can go to a burial site unless they're relatives, they can prove their mookuahau means their genealogy that they have to that particular site. At that time, I think we were talking about – it was over 16 years ago.

Ms. Freitas: No, it wasn't.

Mr. Maxwell: It wasn't?

Ms. Freitas: No.

Mr. Maxwell: Well, I don't know what happened. I was on the Burial Council for 16 years.

Ms. Freitas: Yeah, I know.

Mr. Maxwell: So I was surprised that –

Ms. Freitas: That's why I'm surprised.

Mr. Maxwell: It was a common thing that –

Mr. Hedani: Other questions? Commissioner Guard.

Mr. Guard: Out of the sites you oversee, how many people actually take the time to phone in to go into a gated community to take a look at a site?

Mr. Maxwell: Almost none, unless they're family. And we had just our last Burial Council we had a family that came from Oahu that wanted to go to a burial site in Lahaina and we insisted that the developer and owner permit them the access that we decided upon back then.

Mr. Guard: So not very many then?

Mr. Maxwell: Not very many, no.

Mr. Hedani: Other questions for the applicant? Commissioner U'u.

Mr. U'u: If you prove that you have history there, genealogy there, how long would the process take?

Mr. Maxwell: You can call up, you know, Maui we have a Historic Preservation Office and if you say your name U'u and you have family connection to that, it's so easy to prove because all belong to either Maui, Molokai or Ka'u or wherever we come from. So it's easy to prove. It would be a matter of so many hours that you could go there.

Mr. Hedani: Other questions for the applicant? Commissioner Shepherd.

Ms. Shepherd: Congratulations on following the LEED standards. I wish we could have everything on Maui follow the LEED standards because many of the components that you've shown in here are very fine. I have many questions. One, is Maui Lani drawing from the lao aquifer?

Mr. Hirano: Maui Lani is the Wailuku aquifer.

Ms. Shepherd: Wailuku aquifer. Okay. And the Waiale surface water is from?

Mr. Hirano: Surface water from West Maui mountains I believe.

Ms. Shepherd: West Maui, okay. Page 68 on the new document, you're relying on soil as is natural to absorb nutrients from runoff. How much soil is there? And the reason I ask is it's fairly fresh a'a flow. So how much soil actually is there to take these contaminants

in and store them, you know, process them, etc?

Mr. Hirano: I'll have the civil engineer, Mr. Stan Watanabe from ATA respond to that.

Mr. Stan Watanabe: Good morning, Stan Watanabe with Austin Tsutsumi and Associates. Can you repeat your question?

Ms. Shepherd: How much soil is actually in this area because for example, the subsurface retention infiltration systems will further extend detention on storm water on site and provide slow release rates to allow the storm water to infiltrate into the surrounding soils and provide ground water recharge which is my question. How much soil is there and is this really going to recharge into an aquifer or is it going to go out into the ocean?

Mr. Watanabe: We believe it's going to be going into the aquifer. As far as percolation rates, we have not done any soils investigation. We're waiting before we do any soil disturbance we're wanting to get through this process.

Ms. Shepherd: You can't do coring?

Mr. Watanabe: Not with major disturbance of the area here.

Ms. Shepherd: Okay, so you have no idea how much soil was actually there? So this actual – this mechanism perhaps might not work at all?

Mr. Watanabe: We believe it will based on the soil.

Ms. Shepherd: ...(inaudible)..

Mr. Watanabe: Yes.

Ms. Shepherd: But you don't know?

Mr. Watanabe: Not for certain.

Ms. Shepherd: You're guessing.

Mr. Watanabe: Not for certain.

Ms. Shepherd: And you're also guessing that this will go into an aquifer?

Mr. Watanabe: Yes.

Ms. Shepherd: When you're that close to the ocean?

Mr. Watanabe: Well, no, I mean for certain – as far as where the ground water is going to go we still need to have the soils borings.

Ms. Shepherd: Okay. Someone's next to you there. Someone who knew it was volatile ... (inaudible) ...

Mr. Don Fujimoto: Don Fujimoto representing Keaka. Going back to what Stan had just said. We have not gone in to an ... (inaudible) ... investigation. We were planning on doing that once we get an SMA to get on the property. We didn't want to go prior to that and start to –

Ms. Shepherd: How invasive is the procedure?

Mr. Fujimoto: We'd have to cut down on the trees and get the rig in. That would be one of the toughest parts and I know that will bring up a lot of attention to the project without having an SMA. One of the things that we are looking at is to, as Mitch had mentioned earlier was to put in monitoring wells. We anticipate that these wells would be done downstream or outside of the retention basins and that way we can monitor what's getting down into the ground water or if it reaches the ground water. If it does and if the results are getting bad or whatever, we can change our irrigation practices, our fertilization practices, our best management practices to accommodate that. That's basically what we're trying to do short of not knowing what's out there right now. But we will, once we get out there.

Ms. Shepherd: Is Seibu doing anything to see what they're doing with the ground water?

Mr. Fujimoto: My understanding is that they're monitoring the nearshore marine waters. I'm not sure as to what other activities they are doing.

Ms. Shepherd: Okay, so just on your experience, would you anticipate that irrigation water, etc., from this site is going to go, become ground water or is it going to go out into the ocean?

Mr. Fujimoto: From my experience, I'm not sure.

Ms. Shepherd: Because we don't know.

Mr. Fujimoto: Yeah, and that's why what we wanted to also do was to do a set of wells prior to development so that we have a base line – we can collect base line data of what's happening right now versus what happens in the future after development. You know, just

trying to come up with some preventative measures.

Ms. Shepherd: Well, as I say, it looks great on paper, but my big concern is what's happening with the nearshore waters and we know that they're impacted. I mean, by human activity period. I mean, there's no way you can have human activity and not have an impact on nearshore waters.

Mr. Fujimoto: I mean, I read Dr. Dollar's report and I don't understand it but he's here.

Ms. Shepherd: I know, I'll be asking him about it.

Mr. Fujimoto: Yes, if you have any questions.

Ms. Shepherd: Since you're still here you might want to correct the spelling of device on page 69. In the second paragraph, we're still on drainage and it's the bottom of the second paragraph it says, "the overflow will be discharged on the low laying areas of the existing golf course fairway which currently retains the existing runoff." So that's mauka?

Mr. Fujimoto: Makai.

Ms. Shepherd: Makai?

Mr. Fujimoto: Right now there isn't any retention basin. The water just sheetflows off of the project into a low spot on the fairway. So like Mitch had said earlier we're reducing the predevelopment flows by 47% so we feel it's improving even the existing condition.

Ms. Shepherd: Page 71, underground retention system. Again, my question is how much surrounding soil are we going to have to utilize, and we don't know.

Mr. Fujimoto: Yes.

Ms. Shepherd: Page 72, and again, I commend the developer for looking at landscaping which is going to be using vast quantities of water or pesticides and herbicides. The paragraph starts, "through the use of native and drought tolerant plants and a reduction in the area of turf, the landscape design effectively reduces the need for significant amounts of irrigation, 56% reduction." Reduction from what?

Mr. Fujimoto: That was the –

Ms. Shepherd: I mean, it's zero now. How can you go down from zero?

Mr. Fujimoto: No, it's 56% from conventional irrigation practices for the landscape plan, but

what would have been on if we hadn't done these sustainable landscape.

Ms. Shepherd: So it's still 44% more than now?

Mr. Fujimoto: Oh yeah, right.

Ms. Shepherd: I'd like to go to the water quality reports, but let me give other people a crack at questions first.

Mr. Hirano: Commissioner Shepherd, I'd just like to correct about the source for Maui Lani wells, it's the Kahului aquifer not the Wailuku, but Kahului.

Ms. Shepherd: Which is still lao. It's all connected.

Mr. Hedani: Any other questions for the applicant?

Ms. Shepherd: I mean, I have loads for Mr. Dollar.

Mr. Hedani: You want to call him up now?

Ms. Shepherd: Okay, please.

Mr. Fujimoto: Just a minute.

Mr. Hedani: We have to go find Steve.

Mr. Steve Dollar: Sorry, I didn't hear your question.

Ms. Shepherd: You have to say who you are.

Mr. Dollar: Oh, I'm sorry. My name is Steve Dollar.

Ms. Shepherd: Well, I've got a page of questions. Through no fault of yours part of your report was given to us in black and white which makes it impossible to interpret. The second, the December report was in color, so that can be looked at so as I say, it's not – but it did mean it was very difficult for me to interpret the June '05 report.

I have a question about your selection of sites because lets look at the color picture in the December report.

Mr. Dollar: Could I make a comment first before we start?

Ms. Shepherd: Sure.

Mr. Dollar: I'm here at the request of the developer to talk about the work that I've in Makena. I have, at this point, nothing to do with the project that's on hand today.

Ms. Shepherd: I asked to know what had been done on nearshore waters in this area because I believe that their project is going to have an impact on the nearshore waters. So I wondered what – and Mr. Figueiroa has been telling me for years that he's having no impact on the waters and he is. Anyway, site no. 1 is I assume what we properly call Five Graves?

Mr. Dollar: Correct.

Ms. Shepherd: And site no. 2 is Makena Bay.

Mr. Dollar: Correct. Makena Landing I call it.

Ms. Shepherd: Landing. Okay, and site no. 3 is Red Sand Beach Puu O Lai.

Mr. Dollar: Right, it's directly off hole 15 of the Makena Golf Course.

Ms. Shepherd: And site no. 4 is, is that really where you were or is this just as close as you could get on this map because it's not at the north boundary of Ahihi-Kinohiwa Marine Reserve.

Mr. Dollar: It's the closest I can figure without –

Ms. Shepherd: Getting a different map?

Mr. Dollar: Yeah.

Ms. Shepherd: Okay, all right.

Mr. Dollar: But it is where we're trying to get as down beyond any development other than a couple of houses.

Ms. Shepherd: And what is mauka of site no. 4, and the reason I ask is there are several houses in the conservation area and some of them are on cesspools still because someone came before us about four years ago wanting to expand and they were still on a cesspool in the conservation area. So what is mauka of site no. 4?

Mr. Dollar: As I said there are several houses on the beach there and above it, it looks to

me like it's old pasture land. But it's impossible in any kind of ...(inaudible)... to get a really perfect control. So this is the best we can do. I will acknowledge that there are other land uses there. It's not totally pristine.

Ms. Shepherd: Okay, any idea if those residences are on cesspool or septic?

Mr. Dollar: Most of them look new so I would guess they're on septic systems. I don't think the Department of Health has allowed cesspools for quite a while now.

Ms. Shepherd: Why isn't there a site right opposite the hotel?

Mr. Dollar: That's a good question. We just picked four sites. The main emphasis on this was the golf course, what started it. So I picked the sites that – actually moved site 3 was over up here before, but I wanted to get it off that golf course hole because that's where we're going to see the most effect.

Ms. Shepherd: Because I dive along here and right opposite the hotel is where the turbidity is the worst.

Mr. Dollar: The debris?

Ms. Shepherd: Turbidity.

Mr. Dollar: The turbidity.

Ms. Shepherd: Yeah, and this is – the site opposite the hotel is going to be closest to where the project is going to be. Anyway that was just a question. Why are nitrates and nitrites lumped together as nitrates and does this have any biological significance?

Mr. Dollar: No, it doesn't. Nitrate and nitrite– Nitrate is NO_3 , Nitrite is NO_2 . Nitrite rapidly becomes a nitrate in the presence of oxygen. So they're analyzed separately but reported the same and the Department of Health recognizes that.

Ms. Shepherd: So lets go to Figure 2, the one that's in color from the December report and as you comment there obviously is loading in the nearshore waters. More in some sites than others. You can see the nitrates and the ammonium. This is primarily at Makena Landing. So obviously there is stuff getting into the water and we would presume it's from human activity.

Mr. Dollar: Well, let me amplify on that. One of the things, it's the hardest concept for me to get across when I talk to people about this, and let me say, we've been doing – I've been doing this kind of thing with this method since 1985 or so. It's based on scientific studies

that were done in estuaries. So what we have here is kind of an oceanic estuary where you have fresh water from land combining with oceanic water from the ocean. We're lucky here in that we have the ability to this because we can detect the fresh water at the shoreline. The point that I need to make that I always try to make is that there's natural input of these compounds and nitrates, phosphate to the ocean from natural sources. So what I'm trying to do is look at the subsidy on top of that from the activities of humans. And so, it's hard thing to get that people don't understand nitrates in the ocean is a bad thing. It's a natural thing and without it, we wouldn't have the reefs and ...(inaudible)... we have. So I just want to make that point real clear here. You seem to understand it, but a lot of times it's a little bit subtle.

Ms. Shepherd: Did a lot of chemistry in school.

Mr. Dollar: Good.

Ms. Shepherd: But going onto the biology of it, on page 14, you're summary here, "as in past surveys there appears to be a definite input of nutrients," so this is above and beyond the natural input, "to ground water that enters the nearshore ocean at sampling sites down slope from parts of the Makena Resort. However, this input is not increased relative to previous surveys." So it's been, you know, a decade or more. "And does not appear to be detrimental to marine community structure." How do you know that?

Mr. Dollar: There are several reasons. One, if you look at this scale here on Figure 2, the increase that we're seeing is a very small vertical or horizontal distance offshore, me to you.

Ms. Shepherd: It's 25 meters. A really significant 25 meters.

Mr. Dollar: Well, not that I'm seeing in this one. It's looks to me it's all like within 10 meters.

Ms. Shepherd: Oh, okay. All right. Got you.

Mr. Dollars: So 10 meters, 30 feet. Within that distance, where we're able to detect it there's so much turbulence from natural wave wash and everything that there's not much of a biological community there. There might be some limu. You got to get further off shore before you see coral reefs and that sort of thing.

The second point is that these nutrients are entrained in fresh water. That's how they get to the ocean. So if the mixing isn't thorough enough to just dilute it to background level it remains in the surface layer. So when you get beyond 10 meters, say you got a really calm day, like today is pretty calm you might be able to detect that further offshore. By the way in December this is probably the lowest input we've seen because I was only able to do it

at a –

Ms. Shepherd: At a high tide.

Mr. Dollar: High tide and it was a pretty rough day.

Ms. Shepherd It was ebbing.

Mr. Dollar: You compare June and December you can see there was a huge difference.

Ms. Shepherd: Right.

Mr. Dollar: So if it's contained in the surface layer it will never see the bottom.

The third reason is that these levels of nitrates, phosphates, whatever, are while they're a subsidy above what we would normally see here, they're well within the natural range of tolerance of the marine community. On the Big Island where I do tons of work, lots of these kinds of studies, because the Big Island is so much bigger, the ground water is much older by the time it gets to the ocean so it has a much higher concentration of nitrate and phosphates. So we're not looking at anything even though it's a subsidy here over the natural levels that's beyond the overall envelope of adaptability of our reef organisms. You go to the Waikiki Aquarium, there are papers written on this, they use ground water, oceanic ground water, they have the well right there. It's got levels higher than anything we've ever seen here and the corals there grow out of the enclosures. There's a huge body of scientific literature on the effects of nutrients on coral reefs now because it's always kind of been one of the things that's been accepted that nutrients are bad for coral reefs. Most of the work until you get to ridiculously high levels, way higher than it could ever be found in this kind of situation of a golf course or a resort has no effect and I'd be happy to share those with you if you're interested. There was a big report done in Australia called ONCORA forget what that acronym is for but for two years the enclosed micro atolls, little coral reefs and dumped nutrients on them as much as they could they got no change. So most of what we're talking about here even though I can detect it by the method I'm using is not sufficient to cause detrimental impacts.

Ms. Shepherd: Well, as I say I'm in the water there a lot and I do see much less, but compared to Ahihi-Kinau there are much fewer fish. Maybe they're getting fished out.

Mr. Dollar: ...(inaudible)... fish.

Ms. Shepherd: We're looking at the entire community, right?

Mr. Dollar: Right.

Ms. Shepherd: The corals appear to be pretty healthy but I just don't see the other critters.

Mr. Dollar: Have you done any comparison on the amount of fishing pressure between them?

Ms. Shepherd: Yeah, that's another thing we have to take into account.

Mr. Dollar: What we're talking about here would actually if this was only the thing going on you'd see more fish not less. We're adding nutrients that's going to spark the system a little bit.

Ms. Shepherd: What was the last project that you looked at that you did feel was having a detrimental effect?

Mr. Dollar: The last project I looked at that was having a detrimental effect?

Ms. Shepherd: That you couldn't, you know, say – yeah – it was having a detrimental effect to marine community structure.

Mr. Dollar: The one that I've actually published a paper on was at Honolua Bay.

Ms. Shepherd: Honolua?

Mr. Dollar: Yeah. Exactly that. From sedimentation, but I two or three years ago published a paper. We have a similar long term program there and we had an event there with a storm. I think we talked about at the last meeting I would at here and it reduced the coral cover in the bay by about 30% that one incident. In fact, I'm due to go back and see what kind of recovery we have.

Ms. Shepherd: You commented that in here that part of the problem with Makena Landing was a flooding event in 1999.

Mr. Dollar: Correct.

Ms. Shepherd: Was that related to building up on the upper slopes or is the potential for that happen?

Mr. Dollar: Well, in talking to Roy Figueiroa, his opinion on that, and I of course, wasn't here when it happened so I didn't see it. But his opinion was that it resulted from activities above their property, from land clearing or whatever. My understanding and again I haven't seen it, but from talking to him is they've done quite a bit of restoration or things in that area to prevent it from happening again. They had a dry gulch there I think that washed through.

But I'm not that involved with the land side of things, but my understanding is that that that flood event that caused the Makena Landing problem which stayed – the water stayed turbid as you say for several years before it finally flushed out.

Ms. Shepherd: So lets move on from what you've done for Seibu to the project before us today. You've looked at what they are proposing.

Mr. Dollar: I have not.

Ms. Shepherd: Oh, you haven't. Okay.

Mr. Dollar: That's why I wanted to make that disclaimer right at the beginning. I will say that they've asked me for a proposal in concert with Tom Nance who's a hydrologist that I work with who would be able to address a lot of the questions you had previously. But at this point in time I have no knowledge of the project.

Ms. Shepherd: Okay, let me go over my page here and make sure I asked you everything I needed to. The inorganic nitrogen is not from fertilizer, correct?

Mr. Dollar: No, it is.

Ms. Shepherd: So the inorganic nitrogen is the fertilizer input?

Mr. Dollar: Inorganic nitrogen in this is a little confusing. Is nitrate, nitrite and ammonia.

Ms. Shepherd: Okay.

Mr. Dollar: The organic is what –

Ms. Shepherd: In living creatures.

Mr. Dollar: Well, chemically are dissolved. When we do our tests we collect our water and we send it to the lab and they analyze it for several things. The inorganics which I just listed and then they do a test for what they call total nitrogen which is all the nitrogen of any form in the water. To calculate what the organic nitrogen is, you take that total and you subtract the inorganic off of it. It's explained in the method section in the report you have and what's left and it's sort of a residual of sorts of different compounds. That's what we call organic. And it's the product of biological activity.

Ms. Shepherd: And so what would you – if you were going to make recommendations to the developer to be sure that they weren't having an impact on the near shore waters what kind of suggestions would you make and my thought on long term monitoring is do some

kind of a biological survey because it's one thing to know what the chemical inputs are but what we're interested in is not the chemistry, we're looking at what's happening with this living structure, this living structure. So what would you suggest to that?

Mr. Dollar: Two things. First of all this as I said, I have not been familiar with this project so coming here today and listening to the presentation and seeing that the idea of putting monitoring wells in between the project and the ocean is great. I mean, in terms of what I do, the chemistry that gives us a point to be able to look at that we can't see otherwise.

Ms. Shepherd: So we could get Seibu to do it too.

Mr. Dollar: You can talk to them. On the Big Island we have that sort of natural opportunity with ...(inaudible)... ponds which are brackish ponds, but there's some on Maui but there's —

Ms. Shepherd: Right.

Mr. Dollar: Now, the second point you talked about the biological. That's in the proposal that I just submitted to them to do biological assessment and my idea for this one is to do two sets of survey sites, one right at the shoreline to look at algae that might be developing primarily algae from these nutrient subsidies and then offshore on the coral, the reef areas. Secondly that also you might be aware is part of Makena's new requirements and I just submitted the first biological report to them for the four sites that we looked at on the first phase.

Ms. Shepherd: Thank you.

Mr. Dollar: And to finish that up, all the best management practices, all the things that are inherent now in the new golf course design and operation of course are important for minimizing the amount of material that gets through the turf or landscaping or whatever into the ground water.

Ms. Shepherd: I'm sure you've been swimming in front of the hotel, right?

Mr. Dollar: Yeah.

Ms. Shepherd: And so you notice that really sometimes very marked turbidity and then you get to a certain point and blank and I presume that's where currents are mixing.

Mr. Dollar: Right. I was going to say that's a circulation thing more than anything else. Most of that to me it looks like it's plankton which is, you know, entrained that's again, a natural part of the water that just gets entrained in that circulation.

Ms. Shepherd: But there is going to be more of it if there's nitrogen in the water and phosphate.

Mr. Dollar: Possibly. I mean, the potential if there's potential for more because you have more nutrients for ...(inaudible)...

Ms. Shepherd: When you propose to doing a biological ...(inaudible)... is there any way you can look at the influence of – well, on recruitment and growth of larval fish because that, you know, we may see healthy coral but what's happening to the other organisms that are part of that reef? And very small amounts of things can effect that. Is there any way you can do that?

Mr. Dollar: You can do anything you want. There's many studies that have been done on fish recruitment. I mean, that's not my particular area, but I think you have to look at such a multitude of other factors that are affecting the fish primarily fishing. I mean, my opinion and many of the people that I work with say that the real problem in the main Hawaiian Islands is not pollution whatever, it's fishing. The fisherman say it's pollution. So you have this thing and nobody really has the data to prove one side or the other. But that's my opinion and you know, just in the 35 years I've been here I've seen a huge change in fish populations, not just here but everywhere. So, you can do whatever you want in terms of scientific studies. I think what you're asking was a little bit far removed from the direct effect of this project on the marine ...(inaudible)...

Ms. Shepherd: Thank you.

Mr. Hedani: Any other questions for Mr. Dollar? Thank you Steve. Any other questions for the applicant at this time? Okay, seeing none, we do have one person that signed up for testimony. Robin Knox. If you could step to the microphone, you have three minutes.

Ms. Robin Knox: Good afternoon, thank you for your time and the opportunity to testify today. I have three main points. I'd like to reiterate what was said earlier about the accessibility of the documents and the ability to understand them. Access is limited to the public due to the fact that you have to either go up to the planning commission offices or pay to have a copy made which at .25 a page was estimated to be well over a \$125.00 for the original draft. Access is also difficult for mobility impaired persons because there are steps between the handicapped parking and the elevators. I know you just moved to that building recently perhaps that's going to be addressed.

Specific to this EA the draft final EA I found also hard to understand with just the redlines out of context since I wasn't able to pay \$125 to get a copy of the full initial draft. I'm requesting that you reconsider your policy and that you require all applicants to do electronic PDF documents and that the EA and EISs and those type of documents could

be distributed that way. That would make it accessible to people who don't have either the cash, the time or the mobility to get up to the Planning Department and get copies or camp out there and review. It would also solve your problem of getting an integrated final comments and with your document if it was all electronic it wouldn't be such a burden to reproduce.

My second comment regards being a recreational user of the water and down gradient of the proposed project area and adjacent to the existing golf course, I did recently snorkel there and in my perception the uses were impaired due to turbidity. I found the aesthetics offensive. I also had concern for my health and safety because the turbidity impairment made me have cause for concern that there might be hazards lurking in the murky waters. Anything as small as a microbe or as large as the top of the chain predator like a shark. My third point is from the perspective of a water quality scientist. The draft Makena EIS that Seibu did way back when showed early data from the late '70's, early '80's that would comply with today's water quality standards. However, Dr. Dollar's report which were the December reports were amended into the draft final EA document 16 events that include many values where the geometric mean of the data, those concentrations exceeded the standards concentrations. By my count there were approximately 191 dry weather exceedences noted or exceedences of dry weather criteria noted and 91 exceedences of wet weather criteria noted.

Dr. Dollar's reports which were as you heard designed to assess the impacts of golf course discharges conclude that because these water quality standards violations also occurred at the control site that it wasn't due to the project. I think that this is an inappropriate conclusion. I think that the control was not perfect as you heard Dr. Dollar said earlier and there's some real issues with hydrology there that may make it not a good comparison.

I also think that the method that he uses to distinguish between natural sources and anthropogenic is based on a complete mixed model and you heard him testify earlier that there's stratification and there's not complete mixing and his data shows this. So I draw different conclusions from his same data.

My conclusions are is that there are documentation of existing water quality standard violations and that these exceedences that water quality in this area is a measure of cumulative impact. Not only the golf course and hotel, but everything else that's going on with the land use. So, when you measure water quality and you see exceedences, you're looking at cumulative impacts. Any new development even after removal of 90% of the pollutions from the storm water will add pollutants to the system and it will therefore, potentially have an impact.

The work that's been done to date is monitoring, it's not impact assessment. I would say that you don't have enough information to make a finding of no significant impact and the

EA did not look at cumulative impacts sufficiently.

I would recommend similar to Dr. Dollar further studies, some biology –

Mr. Hedani: Robin, can you wrap up in a minute or so?

Ms. Knox: Yeah, I think there needs to be more frequent monitoring and of a different sort. It needs to look at ecology which not only includes biological parameters but total loads of pollutants and driving forces in the system to further understand what's happening. That's all. Thank you very much.

Mr. Hedani: Thank you. Questions? Commissioner Freitas.

Ms. Freitas: No, questions.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: Well, given that the reports are about Seibu and not about project before us, I can certainly see opportunities when Seibu comes to us again for not only demanding that they cut back on what they're putting into the ocean but improving their monitoring. But as far as this project itself, from what you've seen in their plans, you think that even though they might take out 90% of the nitrates, phosphates, whatever, that there still is potential for 10% to get into the ocean, right?

Ms. Knox: That's what I would conclude and we don't know how much that 10% is because things have not been quantified in terms of mass loadings. We're looking only concentrations. If you keep concentration the same, but you increase loading for instance by irrigating and more waters moving that's the driving force, you're going to get more massive pollutants. An ecosystem can absorb and assimilate and process a certain amount of these naturally occurring constituents and some manmade portions to some extent but we don't know where that boundary is or that tipping point that's going to push the reef into some sort of collapse that may not be – we may not be able to recover from. So again, I think monitoring is not just monitoring needed, it real impact assessment. They didn't just monitor how many cars are going down the road today in the traffic assessment report, they projected in the future how many cars there would be and what those impacts would be. They haven't done that with water quality in this environmental assessment.

Mr. Hedani: Any other questions for the testifier? Seeing none, thank you very much Robin. Staff, you have a recommendation at this point? Oh, sure Bully. If you could identify yourself?

Mr. Kimokea Kupahulehua: Chairman Hedani and Members thank you so much. I'm

President of `Ao `ao o na loko i`a which is the Maui Fish Pond Association on Maui which includes Molokai and Lanai with a group there. I'm also a Board of Director for the Loko i`a Association in the State of Hawaii which consists of Hawaii, Lanai, Molokai and Maui, Oahu and Kauai. Just recently included was the island of Kahoolawe. Telling you that we are a group of people that restore fish ponds all over the State of Hawaii.

I wanted to just to mention to you that the developer recently had made a donation to the fish pond thing and purely on the part of his own self to come down and study and listen on what we have. Some of the questions you ask Commissioner Shepherd, University of Hawaii has all the information for you on water quality because Sea Grant and University of Hawaii has been through the State of Hawaii testing water quality and also as far as to the northwestern Hawaiian Islands. So you can get that kind of report if you ask for it at that.

We also have a EPA officer in the island. Her name is Donna Kahakui, environmental law officer that can tell you people who has violated any of these quality water thing throughout the State of Hawaii. Because she would be the one that be called on. The EPA officer call Donna Kahakui.

I wanted to tell you that in our fish pond here on Maui which is located at the County park called Kalepolepo which is better known as Ko i`e e loko i`a. Throughout the year we have more than approximately 1,500 students come there. Each of the students are taught about the water quality not only in the fish pond but also go different areas in the county and get water quality and bring it back. And it's also in cooperation with the marine science at Maui Community College and all the marine science in high school. Recently in the past couple years the Kihei Charter School, the Kalama School had worked with all the water quality down in this area. Besides that they're able to track all the different species that we have in the water and the different corals and the different seaweeds. In the Makena area and all this area you're talking about we looked in the partnership with Ocean Institute and Anuenue which is Ocean Institute been in the island more than 40 years in trying to get more ...(inaudible)... over here and also Anuenue and later working with cages and to enhance most of the fish live. We do have a reef grant that going on right now in studying the reef and see how we can maintain the life of the reefs that's not happening in working with Maui Ocean Center. So I just wanted to tell you that the developer did that part of his own self coming down to learn the project what we're doing and hopefully that will be able to carry our educational knowledge further down there to check on the situation, maybe monitor and see if we can help with the situation down there. I just wanted to bring that to you. Thank you so much.

Mr. Hedani: Thank you. Questions? Commissioner Shepherd.

Ms. Shepherd: So what relationship does that have to this project?

Mr. Kapahulehua: This project, we would later take the kids that we have in our project and probably go down there and get some information for you or information for the developer or information for anyone who wants it. This will be taking Kihei Charter School, Kalama School down there and using their instruments and to GPS and find out how many animals we have and type of corals and seaweed and see where we go with the life they have today and what will happen tomorrow or what we can do to prevent from what you're saying to have any detriment situation happen down there.

Mr. Hedani: Any other questions? Seeing none, thank you very much Bully. Are there any other members of the public that would like to offer testimony at this time? Okay.

Ms. Suyama presented the Department's Recommendation.

Mr. Hedani: Commissioner's what's your pleasure?

Ms. Freitas: Clarification.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I just want some clarification please. So after today's vote, if it does move on do we see this project again?

Ms. Suyama: Yes you do.

Ms. Freitas: Thank you.

Mr. Hedani: Commissioner Guard.

Mr. Guard: From when Uncle Bully came up, a few of them – the original project was 500 rooms on the 40 acres, is that correct?

Ms. Suyama: No, we're talking about –

Mr. Guard: I know the new project is now 72 units on the 12 acres.

Ms. Suyama: It always was. It always was. I think you're talking about a different –

Mr. Guard: Well, in the EA it talked about 500 units, hotel units on 40 acres.

Mr. Hirano: Commissioner Guard, on that, in the alternatives section we looked at what the alternatives were on the project. The upland area is community planned designated hotel and the original proposal for Makena Resort in the rezoning was to look at a – there was

a market study done that at that time said that 500 room hotel on the site would be – well, the market would support it at that time. I think – but that was a 40-acre site. That was both mauka and makai parcels. This particular proposal is on the 10.9 acre site, the makai side which is currently zoned hotel and designated hotel in the community plan.

Mr. Guard: Okay, so per acre it's actually – in this it talked about going down to seven –

Mr. Hirano: Unit per –

Mr. Guard: Per unit, but that's you're comparing rooms to units now and all of the units are now three to four so it's actually going up to about 21 units, room units per acre correct?

Mr. Hirano: No, well we were talking about hotel density in terms of rooms.

Mr. Guard: All over the 40 acres, yeah so room for room it's actually increasing the density.

Mr. Hirano: Pardon?

Mr. Guard: On the 10 acres.

Mr. Hirano: The density is per unit and there are 71 units over 10.9 acres.

Mr. Guard: Well, the comparison it was a room to a unit is a apple to an orange. I guess my other comment is the beach club part is probably the most ocean front piece of that property, right?

Mr. Hirano: It's closest to the ocean.

Mr. Guard: Closest to the ocean and that is going to be I guess going to that park right now is you have this backdrop of even though the kiawe tree it's a more natural state than having a three to four-story beach club right there behind. I think that is going to be an adverse impact on the general public. I probably will never go in behind the gates. It's probably not my ancestors in there. My side's from the Big Island. You're going to have 72 people that wouldn't care who that was yet they're going to be the only ones that can visit those archaeological sites unless you're family. Right? That's exactly what we discussed.

Mr. Everett Dowling: I think there are two issues. One is the burials and one is the archaeological sites.

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

Mr. Dowling: Everett Dowling, I'm the developer. There are two issues. I think what Uncle Charlie was referring to was the burial site.

Mr. Guard: Okay.

Mr. Dowling: We will follow the protocol that the Cultural Resource Commission and Burial Commission – Counsel tells us to do, and their call visiting the burial, they want it to be restricted to family. In terms of the archaeological sites, we're putting actually plaques on the archaeological features and anybody who wants to come in and see those, all they have to do is go to the agency, we want to visit the archaeological sites. And I think long term what we'd like to do is with the acreage across the street and with the other property in the area is to come up with a map and a tour which basically takes you to every site, basically like the Freedom Trail in Boston have the archaeological trail in Makena.

Mr. Guard: And so your LLC isn't just going to sell these units off they're going to keep some sort of interest in this because in the EA it also talks that Keaka LLC will do water quality testing.

Mr. Dowling: That's correct.

Mr. Guard: So once they sell, is every owner then part of this LLC?

Mr. Dowling: No, they're part of the homeowners association. But our LLC is retaining ownership of the recreational building. So we're here for the long term.

Mr. Guard: And then on that building I don't know if there's any way to push that back to create a larger buffer for the public/private.

Mr. Dowling: There's actually a –

Mr. Guard: Well, if it's going to be like Wailea Point where it's walled off to the very end and they all can walk right through and pack up the beach and the public parking by Four Seasons, it's just this totally concentrated area of people visiting the beach.

Mr. Dowling: If that's what it were I would agree with you. In this case, there is a buffer and there's also between our building and the ocean is actually – or between our building and the park for that matter and the makai side there's actually about an acre of land that's owned by Seibu.

Mr. Guard: Which was discussed in the EA about the County trying to work on that as part of a Seibu, I guess, zoning issue and they rejected that proposal is what I just read in there.

Mr. Dowling: There's still a buffer though.

Mr. Guard: Okay, that buffer is there. And then the beach parking to me is a concern because I've been there just to take kids that I coach down there and parking is a major issue, but I think just like we've discussed that about between the water quality, traffic and this, traffic we're looking at future and if we only get the minimum requirement for parking now, two, three years in the future once the next book, place or Maui Revealed says this is the beach to come to we're going to then be stuck with not enough parking on that beach.

Mr. Dowling: In terms of park improvements, we're paying over a million dollars in park improvements. In addition to that, even though our guests aren't going to be pulling out of the project parking into public parking lot to go to the beach, we're adding 10 stalls. So we're really having no impact on the demand for parking in that beach parking. In addition to paying the million dollars we are adding 10 stalls. What's kind of disturbing to me in the sense the – I think we're being asked to increase parking which we're happy to do and I'm proud that we can step to the plate and do that because no one else is doing it. But at the same time it bothersome to me to hire someone to go out there and count the use of the parking and get the report back. Hey, when the kayak groups aren't using the parking, there's plenty of parking.

Mr. Guard: Definitely.

Mr. Dowling: You know, – improving the kayak business parking lot, you know, I don't feel a whole lot of aloha for that or sense of responsibility to improve another business's parking.

Mr. Guard: Yeah. They weren't there the day I was there.

Mr. Dowling: But in terms of the public, I'm proud that we are adding 10 stalls and I'm proud that we're doing the million dollar park fees. That's good.

Mr. Guard: Okay, definitely that is good.

Ms. Suyama: Can I just clarify one thing?

Mr. Hedani: Sure.

Ms. Suyama: We're dealing with the EA document at this point, environmental assessment document at this point which is a disclosure document. It does not necessarily mean that by approving the FONSI that all issues have been resolved. There are still the special management area use permit application that the commission still needs to act on and still

has to resolve the issues of such things as your beach parking, impact on view corridors, you know, the final schematic schemes for drainage, etc., in approve an SMA permit which also may include conditions. Some of these conditions may end up being through a unilateral agreement recorded against the property. So any future landowners are subject to those agreements. We've done that before in the SMA district. Is that if there are certain things like public access, we have made it as a condition recorded against the property so that it could not be taken away later by future landowners. Just to let you know.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I'd like to make a motion to approve if possible with the County's recommendation and take it up at a future time.

Mr. Iaconetti: Second.

Mr. Hedani: Motion to approve made by Commissioner U'u, seconded by Commissioner Iaconetti. Discussion? Commissioner Shepherd.

Ms. Shepherd: Well I'll be voting against. I was down that way last night and drove back along the lower road and got back and felt kind of sick because there is so much that's not – that shouldn't be happening that is going in down there. And part of that is not even coming before us, but there are some just monster houses that are going in and we cannot sit here and say that there is going to be no impact. There is impact, it all adds up, and aside from the fact that this is not the kind of housing we want, we're making this into a have and have not society. We're building on that. It's not a reasonable and beneficial use of our water. It is going to have an impact on nearshore quality, but I don't know that an EIS is going to make a difference because I don't see any way to mitigate the impacts.

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: Okay, having said that, so when – so then what are the rights of a private property – I mean, land ownership and entitlements and such? So I understand exactly where you're coming from –

Ms. Shepherd: So why should the people of Maui bear the burden of –

Mr. Hedani: Wait, wait, one at a time.

Ms. Freitas: I understand what you're saying and given that there as supposed to be hotel zone or whatever and now they're down sizing. Okay, just given that, right. So then what would be your suggestion, nothing? Because they own this property and you know, their entitlements. So we can't say, too bad there's too much so you lose. Okay, so tell me then

where do we go with this then?

Ms. Shepherd: We're not responsible for making sure the developer makes a profit on his investment.

Ms. Freitas: No, its got nothing to do with profit. The thing is, is that –

Mr. Hedani: Commissioner Freitas.

Ms. Freitas: I'm sorry.

Mr. Hedani: Commissioner Shepherd, you want to respond?

Ms. Freitas: Oh, I thought she did.

Ms. Shepherd: Oh, no. That's all right, lets go to lunch.

Ms. Freitas: No, no, no.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Yeah, I have a major difference between hotel zoned properties, the public can go to those properties very easily. I can walk through any hotel as the general public and go to a restaurant, go walk through the pool to the beach, that is a major difference of a gated community versus a hotel. I like the merits of this project, my biggest problem is archaeology and I have a lot of friends that feel that every burial and every piece that they work hard to go and find and they may have relatives, it's going to get bulldozed. Like it has in the past, there's going to be people shaking their heads. I mean, this is a tough one for me to stand up on because I know a lot of the people in the room and see them all the time, but I also see a lot of people that are never here that are like we're just losing interest in the system because it's the same thing, we've lost this, we've lost that. I have a major concern with South Maui trying to take away Paia's water that I'm on the lao aquifer so is everything that recommend going to take away my chance of keeping the lao aquifer system and not going to Hamakuapoko wells? But to answer your question, that is the major difference between hotel zoned property. That I could go to the Prince and walk through it and rent a room and stay there and this I probably cannot. But I would like to take a recess and go to lunch.

Mr. Hedani: Other discussion Commissioner Freitas.

Ms. Freitas: Okay, the idea is impact and the hotel does have a larger impact than 71 units will. And your thing about being able to go there and if it's a Prince you can go. If it's not

a gated community you can go there and if we put conditions on there that even if it is gated, that there's access and things like that, that's where that lays is here. But if you think the impact of 71 units is the same as a hotel, it isn't. I mean, all you got to do is look at your staff –

Mr. Hedani: Okay, what I'd like to do is see if we can concentrate discussion items – what we're discussing is the relevance of the environmental assessment and whether or not there are deficiencies in the environmental assessment, and if so, point those out and direct them in that vein. Commissioner Guard.

Mr. Guard: Okay, what I got onto before is the 72 units are all multi bedroom units.

Mr. Hedani: 71.

Mr. Guard: Okay, 71. So total rooms, I can't remember what that is, on the 11 acres. So we still have a balance of 30 acres that is still zoned hotel above, correct? No? That's now open space?

Mr. Hirano: The zoning for the mauka portion.

Mr. Hedani: Mitch you need to identify yourself.

Mr. Hirano: I'm sorry, my name is Mitch Hirano with Muneikiyo and Hiraga. The mauka portion is interim zoned. It's community planned designated hotel but it's zoned interim. I think just to clarify the comparison we're making with respect to the alternatives is a 500-room hotel as opposed to a 71-unit condominium.

Mr. Guard: Well, there's room to bedroom. Like we got to go room to room.

Mr. Hirano: No, I think you have to look at the persons, the people in terms of that and we said that, you know, there may be 38 or 48 families in the –

Mr. Guard: At any given moment.

Mr. Hirano: At any given time as opposed to the densities and I guess the use of a hotel.

Mr. Hedani: Any other discussion?

Ms. Shepherd: Call for the question.

Mr. Hedani: Question has been called for, is there any further discussion? Commissioner Iaconetti.

Mr. Iaconetti: May I please tell the Chair that if he intends to vote he should say so before the vote occurs according to Robert's Rules.

Mr. Hedani: I intend to vote if there's a tie or I intend to vote if there's a lack of votes.

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

The motion to Accept the Department's Recommendation of Approval of the Final Environmental Assessment as a Finding of No Significant Impact Fails.

(Assenting - B. U'u, W. Iaconetti, S. Freitas, W. Hedani)

(Dissenting - D. Shepherd, J. Guard)

(Excused - J. Amorin, P Eason, J. Starr)

Mr. Hedani: Okay, the motion is lost. It's two votes against and four votes in favor. You need five to pass on this particular item. Commissioner Freitas.

Mr. Guard: Can we recess?

Ms. Freitas: If the – shouldn't they say what information they want in order to vote against?

Mr. Hedani: Yes.

Ms. Freitas: So can – Diane, I know we heard yours. What about yours?

Ms. Shepherd: A lot of their drainage is predicated upon having a decent soil bed to absorb things and they don't know how much soil they have. I'd like to know that because what we're talking about – when we talk about drainage we're talking about nutrient loading into the nearshore waters which are already affected by human activity. So somehow they're going to have to figure out how much they're going to be able to stop. You need to know how much soil you've got.

Mr. Hedani: I'm getting some legal advice here. If Corp. Counsel could just share that information with the entire commission.

Mr. Giroux: What's happened is there's been no action taken so we haven't – a motion that fails to adopt is not a denial of the EA at this point. What we need to do is then recalendar it when we have further quorum and we'll take another revote. The option is to recess or just to recalendar it on another date. I don't know what kind of quorum we're going to get as far as –

Mr. Hedani: My only comment on this particular discussion is that I personally feel that in this particular case the applicant has gone through more measures than other applicants have gone through in terms of an environmental assessment. In terms of the relative depth of soil, I think that can be determined at some point in time and the depth of the soil for filtering purposes can be created if necessary in order to address the concerns of filtering. But from that perspective, you know, I'm feeling that if we are going to require extraordinary measures for any applicant to go through then we should apply it consistently to everyone. Commissioner Guard.

Mr. Guard: I'm not against going through with the EA. I would like the motion to recess and eat some lunch and get some glucose going before I get grumpier. The one issue that I would like to go over is I feel this project really tried to rush through some of the archaeology that people were told that there was not anything significant, then every layer we kept finding more issues there. And so that is one thing I kind of had a problem with from the get go on this and kind of tends to not allow me to sleep when I have to think about this and I want to be able to rest easy from years on up when I either paddle or swim this complex and know I did the right thing and not the wrong thing on the archaeology, everything else there. But if we could I'd make a motion to recess and eat some lunch and rethink it.

Mr. Hedani: Why don't we go take a break and get some food and then ...(inaudible)... once we get back. We'll reconvene the meeting in one hour.

A recess was called at 12:48 p.m., and the meeting was reconvened at 1:50 p.m.

Mr. Hedani: The meeting of August 22nd is back in session. We left off on Item C-1 on Keaka relative to their environmental assessment. Corp. Counsel has suggested a motion for reconsideration. I don't know that that would make a lot of sense necessarily at this point. What's your pleasure? It's up to you at this point. Commissioner Shepherd.

Ms. Shepherd: Move to defer.

Mr. Hedani: Move to defer. Is there a second?

Mr. Starr: Second.

Mr. Hedani: Seconded by Commissioner Starr, discussion?

Ms. Shepherd: We're not going to make any decisions with who's here now. There's not going to be a majority for anything.

Mr. Hedani: Right. Corp. Counsel.

Mr. Iaconetti: Excuse me.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: You can't defer something that you've already turned down. You're going to have to reconsider it to defer it.

Mr. Giroux: No, the action is a non-action. So at the next – on the next agenda item it will be posted as something that we're going to have to take up again.

Mr. Iaconetti: So movement to defer is unnecessary.

Mr. Giroux: Well, it's going to be automatically put on our next agenda.

Mr. Iaconetti: You can't defer something you've already voted down.

Mr. Hedani: Okay. So if there's no motion for reconsideration at this point what we'll do is we're going to just move onto the next item and this subject will come up again before the commission at its next meeting I guess.

Mr. Foley: Yes, September 12th.

Mr. Hedani: September 12th meeting. Commissioner Iaconetti.

Mr. Iaconetti: Does that mean that we're going to go through the entire discussion as we did today again?

Mr. Foley: It's up to you.

Mr. Hedani: It's up to you if you want hear the whole thing again or for the people that weren't present or Commissioner Guard.

Mr. Guard: Is this for water line improvements only?

Mr. Foley: No, no, no, this is the one – this is the EA that you talked about before lunch.

Mr. Guard: Okay.

Mr. Foley: So it's the EA for 71 condos.

Ms. Shepherd: Call for the question.

Mr. Guard: Okay, I have one more question then. Is the EA, would that have been here anyway for the 71 units or would it have just been an SMA? What triggered the EA?

Mr. Hedani: The water line.

Mr. Guard: The water line.

Mr. Foley: Yeah, the SMA still is to come back before the commission.

Mr. Guard: The 71 units in its entirety.

Mr. Foley: Yeah.

Mr. Hedani: Okay, so we don't need a motion for deferral, we don't need a second, we don't need a vote. It will be pushed forward to the next meeting that we have on September 12th. And hopefully we'll have our full contingent of all of the commissioners here at that time. Don, I'm sorry, can't take any action today. Next item of business is Item D-1.

D. UNFINISHED BUSINESS

- 1. MR. CHRISTOPHER L. HART of CHRIS HART & PARTNERS on behalf of MARTY HERLING of BANYAN TREE BED & BREAKFAST to obtain a State Land Use Commission Special Use Permit for the continued operation of the Banyan Tree Bed and Breakfast on approximately 2.20 acres of land in the State Rural District at 3256 Baldwin Avenue, TMK: 2-4-002: 002, Hamakuapoko-Makawao, Island of Maui. (SUP2 2000/0007) (R. Loudermilk) (The public hearing on this application was held on July 24, 2001 and action was deferred until the Maui County Council had acted on the State Land Use District Boundary Amendment, a Change in Zoning, and the Conditional Permit.)**

Ms. Robyn Loudermilk: Mr. Chair, we have a power point presentation, can we take about a five-minute recess to set up?

Mr. Hedani: Okay, a recess for five minutes.

A recess was called at 1:55 p.m., and 1:59 p.m.

Mr. Hedani: The commission is back in session.

Ms. Loudermilk: Good afternoon Commissioners, today we're here for the special use permit for the Banyan Tree Bed and Breakfast. As nobody was on the commission when this first came to us in 2000, different attorney, different director, same secretary to boards and commissions, we're going to have the Chris Hart and Partners do a brief 10-minute presentation about the project site and what has occurred as fast as they can because there are a couple of land use entitlements that occurred at the Council that you may be interested in. So I'd like to turn it over to Mike Summers of Chris Hart and Partners.

Mr. Mike Summers: Thank you very much Commissioners for allowing us to be here today. My name is Michael Summers. I'm a land use planner with Chris Hart and Partners and today we have Chris with us as well. He'll be here to help answer any questions you might have. We also have Mr. Marty Herling. Marty's the applicant, owner of this operation so he's here to answer any of your questions. We do have a power point as Robyn had mentioned. It's been quite a long time since we made our initial presentation to the planning commission. That was actually done in July of 2001. So you certainly deserve an orientation to the project.

So the owner again is Mr. Marty Herling. Marty purchased this property in 1998, and he acquired it from a previous property owner who had acquired the property in 1994, from Maui Land and Pineapple Company. The property has been used a bed and breakfast or vacation rental since 1994, and when Marty acquired it his intention was to continue on with that operation. Now the property has been used as seven-bedroom bed and breakfast home. It's been used as a seven-bedroom since Marty acquired the property. There are no special events that are conducted on the property. Now exterior live amplified music and the owner resides on the property.

Just a quick overview of some of the land use designations. The State Land Use Designation is Rural, County zoning is Rural one acre, the Community Plan is Rural and a conditional permit was granted by the County Council to Mr. Herling to allow him to operate his B&B use.

The project site is located in Upcountry Maui and you can see that it's along Baldwin Avenue. It's approximately one mile northwest of Makawao Town and six miles southeast of Paia Town in the historic community of Sunnyside. This aerial image of the area shows a pretty good depiction of the existing land use pattern that really makes up a rural kind of urban agricultural area. Of course you can see in yellow that we have an urban concentration of uses in Makawao Town and that urban land use quickly stops and you get really this broad open plantation agricultural experience as you travel south on Baldwin Avenue.

The project site is approximately 2.2 acres. From this slide here you can see the front exterior elevation of the Banyan Tree residence. This residence is approximately 2,876

square feet. It's a three-bedroom, three-bath unit and it is used again for the vacation rental operation. Chris can you go back to that slide? Just one other quick point you'll notice that this residence is very historic in its architecture. It was constructed in the early 1920's by Maui Land and Pineapple Company to serve as the Haliimaile manager's residence.

These are the "servant quarters" and they were also constructed by Maui Land and Pineapple Company in the 1930's. This total area here provides approximately a thousand square feet and there are five bedroom, bathroom units that are currently being used.

You can see the property is very much an open space type of an experience. You can see one of the prominent banyan tree - or monkey pod trees on the property. There are several of these that really gives the area a very unique kind of character.

This basically - fence, it's an eight-foot high fence along the northern boundary line and across that boundary line you have the only single family residence that might be impacted by the project. That residence happens to be about a 170 feet off this boundary line. As you can see from this slide, it's a very agricultural area. You're looking in a southerly direction from the property line and again, very much open space in character. And again, more agricultural lands looking west along the boundary line and agriculture along the eastern boundary line.

This is a picture looking east along Baldwin Avenue. Now the entrance to the subject property is right here and as you can see one of the issues that has come up is the issue of sight distance along this roadway. The applicant has initiated mitigation measures. This bank was graded quite a long time ago to improve the sight distance along this roadway and a parabolic mirror was installed. So that was one of the issues that we have been working to address. This would be the driveway entrance into the property and as a requirement of the conditional permit, this driveway would need to be paved.

This is just a picture of the site plan. As you can see you enter the property from Baldwin Avenue and the driveway takes you up to the primary residence. The servant quarters. Marty is proposing to construct a small ohana dwelling unit right here. And also, if this property, our project is approved, there would be a parking lot with 15 stalls, it would be constructed.

I'd just like to talk a little bit about some of the kind of the special qualities or redeeming qualities that this particular operation has. It's as I mentioned a very unique historic property. I think that kind of historic ambiance makes it very suitable for a bed and breakfast. In this case, it's kind of a quasi bed and breakfast vacation rental use. It's buffered. You know, the site is buffered by open space and agricultural lands. So it really has minimal impact on the adjacent property owners.

The neighbors are comfortable with the existing operation. When we initially proposed this project there was a neighbor that had concerns about the project and we've worked very closely with them to mitigate their concerns.

The operation provides a very important service to the upcountry community. It's used by businesses in the area. Various nonprofits use the facility when they have guests and so it is a very important service. And you know, lastly, you know, Marty has been in operation for seven years. He hasn't had any objections from neighbors. He's been a very conscientious person on Maui with respect to his operation. I would like to ask Marty to come up if he has any comments, make any statements Marty?

Mr. Marty Herling: Thank you for meeting with us. I came to Maui about nine years ago and I purchased this property. My name is Marty Herling. So I've been working on this project ever since to try to get this legalized and we've gone through with some attorneys with my neighbor and myself and then we went to the planning commission and then it was sent to the County Council and we kind of sat there for about three years for different reasons and then finally it moved ahead and we've just been approved. It's wonderful for me because I get to meet so many people in Maui you know having this place. It's really used by so many organizations up there including the Hui, Kamehameha Schools, all the different school systems, the rodeo and the intramural teams that come and play in Eddie Tam Center there. Sometimes we have 20 or 30 kids swimming in the pool or something like that. So anyway, you know, everybody seems to like it and I haven't had any objections from any neighbors and neighbors use the place for their guests and friends who come. That's basically what it's all about and thank you very much for your consideration.

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

Mr. Starr: Do you and your family live there?

Mr. Herling: I live there with my mom.

Mr. Starr: I mean do you serve as like a host and serve breakfast.

Mr. Herling: We don't serve any breakfast. I serve as the host but we don't provide any food.

Mr. Starr: How many rooms are you renting out now?

Mr. Herling: Seven rooms.

Mr. Starr: And you're looking to expand as I see?

Mr. Herling: No, I've made an agreement with my neighbor that it would be - I wanted a few more rooms at the time, but we agreed on seven rooms and that's all it's staying at is seven rooms.

Mr. Starr: I though we just heard that you're planning to build an ohana?

Mr. Herling: There is an agreement because the zoning has changed to rural that I could put up an additional ohana for my own use, but not for use of any - for anybody to rent that. Nobody will. There'll never be more than seven rooms available for short term rental.

Mr. Starr: I have a question for staff, for the planner, Robyn. I'm a little bit confused on one issue here. And you know, I happen to really like you know traditional bed and breakfast which to me means there's the host living there, you know, serving breakfast but I guess maybe doesn't have to, but you know, to me that differentiates it from TVRs. I feel very differently about creating a precedent for vacation rentals in an ag district. So can you explain? I was looking at this, I thought okay, fine it's a B&B but then the consultant for the applicant started calling it a vacation rental and I started thinking maybe this is a precedent. So could you?

Ms. Loudermilk: First of all, this discussion has been occurring since 1999 when the B&B Breakfast Ordinance was passed because what is the appropriate terminology versus what does one want to call their own business. In this case, the Banyan Tree Bed and Breakfast, it did not meet the County definition for a bed and breakfast for that code.

Mr. Starr: Why?

Ms. Loudermilk: Because bed and breakfasts are not allowed in the rural, state rural or state ag district. In this case, it's in the state rural district. And even if the applicant did live in the house, we still could not issue a bed and breakfast permit because the zoning code does not allow for that. In terms of the use, it is a transient vacation rental utilizing a maximum number of seven room. They property owner lives on site. As part of the zoning, due to the acreage, the property owner was allowed by the zoning code to build another single family unit. However, as part of the settlement agreement that unit would be more ohana, what we consider as an ohana unit and him and his mother will live on the property in that house. Currently him and his mother lives in one of the existing rooms. So at this point, a total of seven rooms is not being utilized. They will be utilizing a total of seven rooms after that structure is built. And that structure is not covered under the conditional permit or the land use commission special use permit for rental purposes. It's strictly for the owner/operator to be able to live on the property.

There has been precedent in the rural district for transient vacation rentals most notably in Maui Meadows, in that area that we have those that actually live in the house, but we can't

give them a B&B permit because the permit doesn't cover rural districts so we have to go through the conditional and special use permit process until Council decides to take action on some bills that have been sent up to at least explore the possibility of extending this bed and breakfast type permit that we're more familiar within the urban district to other zoning districts.

Mr. Starr: Does this break any new ground creating a precedent for TVRs that, you know, Mr. Dantes organization or others could use?

Ms. Loudermilk: No. We have been very consistent that if you're in the rural district, the uses in the rural district do allow for single families. Whereas, our - we differ in terms of the agricultural district because the agricultural dwelling is actually an accessory to the agricultural use so you go back and forth in terms of do you get the house first or you get the agriculture first. So this will not set any new precedent for operations located in the state rural district. Clear?

Mr. Guard: All the other items have been either taken care of -

Ms. Loudermilk: Yes.

Mr. Guard: You know like the ones the Fire Department wants fire flow and all that in the units and -

Ms. Loudermilk: Yeah everything else has been taken care of for the conditional and special use permit. Yes.

Mr. Hedani: Robyn, transient vacation rental are allowed in the rural district whereas bed and breakfast are not?

Ms. Loudermilk: Yes. Can I explain why?

Mr. Hedani: Sure. Please.

Ms. Loudermilk: By - we have to use the definition that's within Title 19, our zoning code. So if we go into the definition section of the comprehensive zoning code as well as each section sometimes they have further clarification or definitions. For zoning that's what we need to do. Bed and breakfast is specifically defined under Title 19 as a single family dwelling. One single family dwelling or unit in which the owner lives within the structure and rents rooms. And within the zoning code it's further clarified that the bed and breakfast permit is only allowed in the residential districts and business districts. If you are in any other district such as a hotel, you're not allowed which is sort of ironic. So that's where the bed and breakfast comes from.

The TVR is one of seven different terms in Title 19. If you look them up, that defines essentially a hotel. You're either a bed and breakfast or you're a hotel. And depending on what you call yourself it more has to do with semantics of how many days somebody is staying on your property.

Mr. Hedani: So the bed and breakfast criteria is based on the single family dwelling unit itself and the owner has to occupy that particular dwelling unit?

Ms. Loudermilk: That is correct.

Mr. Hedani: In this particular case, there's two structures on the property and the possibility for a third.

Ms. Loudermilk: There are two structures on the property and both of the structures are being utilized for rent out.

Mr. Hedani: And the plan is for an ohana where the owner would reside which would remove him from the structure.

Ms. Loudermilk: From one of the bedrooms and the two structures. Yeah.

Mr. Hedani: The recommendation that we sent forward was to allow for bed and breakfast in rural districts. That was the department's recommendation as I recall.

Ms. Loudermilk: I believe so, yeah.

Mr. Hedani: Okay.

Ms. Loudermilk: Because single family dwellings are a permitted use which is no different than the residential zoning district.

Mr. Hedani: Okay, I'm clear. Thank you.

Ms. Loudermilk: I have nothing more to add other than we conclude that the use does meet the unusual and reasonable use of the state land use commission special use permit and that earlier this year the conditional permit specific to this operation was passed by the Council. And Mr. Herling has patiently been waiting as well as doing everything that was required of him. He came in at that time when bed and breakfast - discussion of bed and breakfast and TVRs really started and still continues. And the type of property that he has with the older home, historic is a way to preserve it. It's not registered on the national register but it is eligible. He has been a good neighbor. He does live on island.

Mr. Hedani: As far as the surrounding agricultural properties there no move afoot to urbanize or upzone that property as in the Haliimaile case?

Ms. Loudermilk: Not by Maui Land and Pine. However, it is unclear what the existing property owners of Sunnyside want to do because the parcels range anywhere from ... (inaudible)... to 30 acres. - families and should any one of those families want to come in for rezoning they can. That whole Sunnyside area is community planned rural and -

Mr. Hedani: Does that abut against this property?

Ms. Loudermilk: The parcels along the streetline, but behind that is still in agriculture and active use by Maui Land and Pine, yeah. That concludes our report and discussion. I guess any further questions?

Mr. Hedani: Is there any members of the public that would like to offer testimony on this item? Seeing none, public hearing is closed. Action.

Ms. Loudermilk presented the Recommendation.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: Move to approve.

Mr. Hedani: Motion to approve.

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. Discussion?

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

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

Mr. Hedani: Carried. Thank you.

Mr. Foley: That was with the conditions, right.

Ms. Shepherd: Yes.

Mr. Hedani: Yes. Thank you very much Robyn.

E. MINUTES OF THE JULY 25, 2006 MEETING (Volumes 1 and 2)

In Volume 1, Page 17, bottom line, the word "and" corrected to "down", which then reads, "there's a big gulch down the mountain."

Mr. Hedani: The minutes will stand approved as corrected.

F. DIRECTOR'S REPORT

1. **Scheduling of a public hearing date, time, and place for a special meeting in the West Maui Community Plan region on the following applications because a Phase II Project District application is involved:**

MR. ROBERT MCNATT, Executive Vice-President of MAUI LAND & PINEAPPLE COMPANY requesting the following: (A. Cua)

- a. **A Phase II Project District Approval for the Kapalua Mauka Phase One project consisting of 51 rural residential lots (half acre minimum lot size), redesigned golf course, new clubhouse, utilities installation, and related improvements at TMK: 4-2-001: 042, 4-3-001: 008 (portion), 4-3-001: 006 (portion), 4-2-004: 036, and 4-2-004: 037, Kapalua, Lahaina, Island of Maui. (PH2 2006/0004)**
- b. **A Special Management Area Use Permit for the proposed Waterlines and Sewer lines Installation for the Kapalua Mauka Phase One project consisting of the installation of a PVC sewer line, and electrical, cable, and television ductlines at TMK: 4-2-004: 036 and potable and non-potable waterlines, a PVC sewerline, and electrical, cable, and telephone ductlines at TMK: 4-2-004: 037, Kapalua, Lahaina, Island of Maui. (SM1 2006/0013)**

Mr. Foley: The first item is scheduling of public meeting in West Maui on the applications by Maui Land and Pine. Two applications for Kapalua Mauka. One is a Phase 2 for 51 rural lots and the second application is related to water lines and sewer lines also for Kapalua Mauka. The staff report will be presented by Ann Cua.

Ms. Ann Cua: No staff report, just I wanted to discuss a possible -

Ms. Shepherd: Why does a Phase 2 Project District Approval need a public meeting?

Ms. Cua: Because it always does.

Ms. Shepherd: All right.

Ms. Cua: I'm sorry. I don't mean to. The project district is three phases. The first phase is the actual enactment of the zoning ordinance, the standards and that requires a public hearing by this body in the community plan region and then approval of the ordinance by the County Council. Phase 2 is the actual establishment of the site plan. That phase also requires you to hold a public hearing in the affected region. The phase 2 project district approvals are the individual approvals that get done with the department. This is different from planned development now.

Mr. Hedani: Commissioner Iaconetti.

Mr. Iaconetti: Does the Council have to approve phase 1 before we get phase 2?

Ms. Cua: Okay, the Council has approved the community plan amendment, change in zoning and project district phase 1 applications for Kapalua Mauka. Okay, and it's getting confusing because phase 1, phase 2. What the applicant is requesting is phase 2 project district approval for phase 1 of Kapalua Mauka. So do you kind of get that?

Mr. Hedani: So this is a 50 unit out of the 700 unit portion application.

Ms. Cua: It's a 52 rural lots, some multi family type units around the golf course and then the reestablishment or improvement of the golf course area. That's in this first phase. But this first phase has to go through the project district phase 2 process and when you're done with that process, it's going to have to come back for phase 3 which is the construction drawings.

Mr. Iaconetti: What happens if we don't approve of phase 2?

Ms. Cua: Then it doesn't move forward. All you're doing at this point is scheduling.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm - I declare my ignorance of Kapalua Mauka. I didn't come on board, I cam on board after it. So I know nothing about it and I - is this the only phase that's in progress right now, this phase 1?

Ms. Cua: This is the first phase. When this came through this body you were informed that this is like a 10, 15, 20-year project. So this is the first phase and first phase is going to involve several things. The redesign of the golf course, the existing golf course, 52 rural lots along the northern side of the property and then the club house facility and some units around the golf course. That is the first phase. They will have other phases, but each phase has to go through the project district process.

Mr. Starr: I'm sure that there was adequate site inspection before but for those of us how don't know much about the project is it possible for us to do an abbreviated drive through maybe on the day we're going to have the meeting? I don't think it needs to be in depth.

Mr. Hedani: A quick refresher course would be helpful.

Ms. Cua: That's totally not a problem. What we can do and we've done that before and then we can see what other projects in West Maui may need a site visit. We just did one not too long ago but there's always projects coming up there. And so we could do maybe site visits in the day if it's just this one and maybe others and then we usually hold the public hearings in the evening. And the dates we wanted to discuss with you, when we hold these special meeting and this has to be a special meeting because you cannot hold the hearing here because the project is in West Maui. So you have to hold it in the affected community plan region. So the earliest that you could schedule a meeting based on today with our legal notices would be in October. Your first meeting in October is October 10th, that's the Tuesday. But I know you don't care to meet that Tuesday night. So we usually have you meet on the Monday night prior to your meeting because that way we can bring Commissioner Eason in, she stays overnight and then she's able to come to your meeting on Tuesday. So that's why we try and do the Monday night as opposed to the Wednesday. So the date that we're looking to schedule this would be October 9th, Monday. We could do a site visit in the day and we could do the meeting at night.

Mr. Foley: I just wanted to mention that the HCPO Conference which some commissioners will be going to is October 3 - 5, so it's the previous week.

Ms. Cua: Okay, so that would work.

Mr. Foley: As long as you don't work for a few days.

Mr. Hedani: As long as you don't work for a living. So what time on the 9th Ann?

Ms. Cua: We normally start the meetings 6:00 p.m. or 6:30 p.m. and your site visit depending on what we schedule. You know right now we're looking at one unless there's anything else you want to see in West Maui.

Mr. Foley: There's a big house proposed on Front Street near the big house that they reviewed recently. So we could probably take a look at that one in addition to going up to Kapalua Mauka.

Mr. Hedani: Is 2020 coming up to?

Mr. Foley: No.

Ms. Cua: Not that I know of and that's not my project.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Another thing that I would love to do is have a quick visit to the two county water treatment plants and the sewage plant out in West Maui and see.

Mr. Hedani: Just to work up our appetite.

Mr. Starr: I think we ought to check out the sewage plant there.

Mr. Hedani: What's your pleasure ladies and gentlemen?

Mr. U'u: I don't mind missing that one. It's fine if he wants to go. I'm not objecting to his decision.

Mr. Foley: So is that October 9th good?

Mr. Hedani: That works for me. Doc.

Mr. Iaconetti: I don't know how you manage to do this but every time this subject comes up I'm off island.

Ms. Shepherd: When will you be back?

Mr. Iaconetti: Well, probably the end of October and I'm leaving before the beginning of October.

Mr. Starr: Since Doc is the one most familiar with that area I would feel much more comfortable if it's done when he's available.

Mr. Iaconetti: I think November would be great.

Mr. Guard: 13th?

Ms. Cua: When do you come back?

Mr. Iaconetti: Hopefully I'll be back by the end of October.

Ms. Cua: So you won't be here on the 24th?

Mr. Iaconetti: No.

Mr. Hedani: November 13th.

Ms. Cua: I'm not going to be here for part of November, but I'll be here on the 13th. We need to ask the applicant because we were all going based on the 9th. So we just need to ask the applicant if they're available.

Mr. Hedani: Okay, why don't we tentatively say the 13th of November which is a Monday and take it up on the - 14th for the meeting.

Mr. Guard: You need to listen to all the public testimony, Doc?

Mr. Iaconetti: Yes.

Mr. Guard: You'd like to?

Mr. Iaconetti: I need to vote against it.

Mr. Guard: Are we going to take action or are we just going to listen to public testimony?

Mr. Foley: No, you're going to take action.

Ms. Cua: That's normally what we do.

Mr. Iaconetti: I guess that's on the record.

Mr. Foley: When's the election, the 12th? No, it's the 7th because that's a holiday.

Mr. Guard: So we're looking at November 13th.

Ms. Cua: There's a holiday November 7th and November 10th.

Mr. Hedani: Why don't you check with the applicant and then get back to us by email.

Ms. Cua: The applicant's here.

Ms. Pam English: Aloha, Pam English with Maui Land and Pine.

Mr. Hedani: I'm sorry, I didn't get that.

Ms. English: I said, aloha, Pam English with Maui Land and Pine. We would really appreciate it if you could hear us on October 9th. We've got a lot of our consultants all lined up for that and it would be very, very helpful if you could do that. We've been waiting for a long time and really preparing for this.

Ms. Shepherd: Not if Dr. Iaconetti isn't here.

Mr. Hedani: Okay I see three heads shaking like this so that's three out of nine.

Mr. Guard: When do you leave Doc?

Mr. Iaconetti: It will be around the beginning of October.

Mr. Hedani: Okay, why don't you check for alternate dates Ann, and get back to us?

Ms. English: Well, we'd like to get it scheduled today. I mean, if that's the best that you can do.

Mr. Hedani: Okay, what we're looking at is November 13th at this point for the public hearing. November 13th at 6:30 p.m. with a site visit at 1:00 p.m. If the applicant is not available then maybe we can reschedule that.

Ms. Cua: And the time be – I don't know if 6:00 p.m. or 6:30 p.m. We need to get back to you on the time. We need the date and we need to find a facility now, now that you agree on a date and then based on that. It's going to be around 6:00 p.m. or 6:30 p.m. and depending on – I didn't get a consensus on what you want to see because that's going to determine what time we need to start in the day time. Because if it's one person that wants to see certain things then maybe that doesn't necessarily need to be on the visit. So I need an agreement of what you all would like to see and then we can plan the time accordingly.

Mr. Hedani: I think we have the house on Front Street.

Ms. Cua: Right I have that and Kapalua Mauka.

Mr. Hedani: That's all I need to see. Doc.

Mr. Iaconetti: Have we actually ever had a site visit of Kapalua Mauka?

Mr. Foley: Yes.

Mr. Iaconetti: Was that when we went up to that place where they had –

Mr. Hedani: I missed one, and that's why I would like to actually catch up on it.

Mr. Hedani: I'll pass on the sewer plant.

Ms. Cua: So then we'll go ahead and schedule for these two things and then maybe if the Commissioner Starr wanted to just drive out earlier, maybe you could –

Mr. Hedani: Maybe Mike can arrange for the Water Department and Mike can arrange for a tour of both those facilities for him also.

Mr. Starr: Yeah, I've seen them in the past before some upgrades were made and I wanted to look at the upgrades, but maybe some other commissioners would be interested too.

Ms. Cua: Okay, so we'll just do the Front Street house and Kapalua Mauka for this time, and depending on later on, if you guys want to go see some of these public facilities, we can set that up separately.

Mr. Hedani: Okay. Any thing else? That's it.

Ms. Cua: That's it for me.

Mr. Hedani: Thank you.

Mr. Foley: On the HCPO Conference the date is October 3rd through the 5th. And I think you got a flyer in your packet. The 3rd is a Tuesday, the 4th and there's a golf tournament and mobile workshop on the 3rd. The 4th there's a full day and then Thursday there's a full day. So all I need today is just a rough idea of anybody who is definitely going or not going and we'll confirm later. We need to make early reservations for as many as we can because there's a big price difference.

Mr. Hedani: Show of hands for those that can make it.

Mr. Foley: You four are going? Yes?

Mr. Hedani: There's a tunnel tour of the water system Commissioner Starr.

Mr. Foley: Lets see we've got Starr, Guard, U'u and Hedani. Oh and Dr. Shepherd. You are planning to go?

Ms. Shepherd: Yeah, if I can I'll let you know.

Mr. Iaconetti: Can't we as a commission request that the legal department –

Mr. Foley: Yeah, you can request that. You want to pay for it? I don't remember if –

Mr. Giroux: I went to the one on Kauai.

2. EA/EIS Report

No questions or comments.

3. SMA Minor Permit Report

4. SMA Exemptions Report

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: I've been trying to explore how we can, you know I've got a thing about the near shore waters. Apparently the Department of – MCC has a Tropical Ag Division and they have set up or tried to set up a program for hotels and large owners for how to minimize your water use and your fertilizer use. They haven't had the funding to actually set it up and get it going but it's, you know, fairly well formed. I'd like to have Harold Kaiser from MCC come and give us just three minutes on what this thing is because it sounds like it could be really, really good because if we can make it a condition for all of these developers who are trying to go in on the shoreline to go and actually learn so that they know what harm they might be doing, you know we may be able to cut back on some of the stuff that's going in the water.

Mr. Hedani: Okay. Commissioner Starr.

Mr. Starr: I'd really like to see that and the other thing that maybe we could schedule at the same time I don't know what the organization responsible is but I'd really like to have a presentation maybe a power point presentation to us on the nitrogen and phosphate levels and other water quality monitoring that's been done around the shoreline of Maui. I know certainly on the south shore and the up north there are numbers that are current I'd really like to see what they are. I don't know who that would be?

Mr. Hedani: Is that the same group that would do that?

Ms. Shepherd: Department of Health is supposed to monitor that and they did issue a report of impaired waters and I'll dig it up because it's –

Mr. Starr: Can we ask that we get a presentation on it from whoever's doing it, the monitoring?

Mr. Foley: We could figure out who it is.

Ms. Shepherd: We can ask Zoe who she would recommend to do it.

Mr. Foley: Who is it we need to invite for the first part?

Ms. Shepherd: His name is Harold Kaiser. He's at Tropical Ag.

Mr. Foley: Harold Kaiser.

Ms. Shepherd: Tropical Ag at MCC.

Mr. Foley: Okay. Any questions about the list of SMA permits?

Ms. Shepherd: Oh, I have a question. Sort of about the SMA permits but also about the phase 2 of project district - at what point do things get locked in? And what I'm referring to is the nightmare down here with the fill and the houses and all that and the problem apparently is that these things got approval decades ago.

Mr. Foley: 16 years in that case.

Ms. Shepherd: Shouldn't there be some kind of a time limit?

Mr. Foley: You do that. You've been doing that for the last several years. But it wasn't done 16 years ago. So we now have a standard condition about when they start. They have to start within one year, two years typically and they have to finish within four years, five years depending on the project. But that wasn't done 16 years ago.

Ms. Shepherd: Okay, so nothing that's going past us is going to pop up as a nightmare for someone else down the line.

Mr. Foley: I hope not. We solved that problem several years ago.

Ms. Shepherd: How many other things are out there that could do that? Do you have an idea?

Mr. Foley: I really don't know. I'm sure there are others because there are projects that have been - you know that were approved long ago that just for one reason or another haven't proceeded. Sometimes they're sold. But I don't know what other -

Ms. Shepherd: Then couldn't the Council do something at this point and say, you know, we've now established the time limit on things?

Mr. Foley: No, not retroactively. You can't go back and say we decided that you now are caught by the new rules. You can do it at the time you adopt it. You can decide who it applies to and who it doesn't.

Mr. Hedani: I took a drive by Halama Drive on that particular issue where I read that it was 20 feet high, you know, it didn't seem that way to me. It looked more like eight feet, eight to ten feet of fill maybe. On the Nakoia Street side, I guess that's a cut issue versus a fill issue and I don't know how severe it is in that case. Did that come before this commission the issue of cut and fill? I think it did, right?

Mr. Foley: Well, the phase 2 project came before the commission approximately 16 years ago. None of us were here then so what was discussed exactly I don't know.

Ms. Shepherd: And so none of these SMA things that are getting a go ahead, have an unlimited time frame, they also have a drop dead date?

Mr. Foley: I don't know, with just a regular like a building permit for a house, there is a limit but you can get extensions and I don't know if there's a limit to how many extensions you can get. I know there is some in states because that's how people try to avoid a new property tax assessment that never finish their building permit. I think that loop hole's probably been fixed here. I'm not sure on just a regular building permit.

Mr. Hedani: Commissioner Starr, did you want to bring up your question on infrastructure?

Mr. Starr: Yes, if it's in order I would love to.

Mr. Hedani: I think in terms of just discussing -

Mr. Starr: There's an item and I'd really, at this point just request that it be put on the agenda and that would be to create a mechanism possibly a subcommittee of the planning commission on specifically infrastructure to again an understanding of where our infrastructure is at right now and where it needs to be and then possibly to work as advocates because I feel that we're kind of - we're always at the tail end of the problem where we don't have - you know, the roads are insufficient or the water is insufficient and we're deciding whether a project should be allowed at the end of tail end of insufficiency. I would feel a lot more comfortable if we were at the head of the thing and saying well we're going to need this road project or this sewage project done and then maybe we can be advocates. So this subcommittee if it's done in that form would be purely advisory. It wouldn't have the powers to act necessarily except as advocates. So request that we put

that on an agenda and have a discussion of how we can be - find a way to be more proactive instead of just reactive and voting up and down on stuff when it's too late to really do any good.

Mr. Hedani: Any objections or comments or questions. Director Foley had a comment.

Mr. Foley: Yeah, I want to address this. We have two large infrastructure reports that are being completed by consultants and they will be distributed to the commission probably around a month from now and you'll be able to use those. They will describe the condition of the existing infrastructure and they'll also address future infrastructure for the next 22 years. And those reports are being prepared as part of the General Plan update. So they will be distributed to you and I think it's - they will be resource documents kind of like the General Plan is now and the community plans are now. And the Countywide Policy Plan will be coming to you probably also late in September for your review. So I think it's appropriate for you to review those documents. They're not for your comments or revisions. They're resources, and like I say, they'll be background information for you to review the Countywide Policy Plan and the Maui Island Plan which will come to you in February or March.

Mr. Hedani: Is there a possibility of a power point presentation along with those reports that we could get a quick summary, digest -

Mr. Foley: I don't know, they're not complete yet, but we can contact the consultants and ask them to do that rather than just doing a summary. Austin Tsutsumi is doing one of them and Towell is doing the other one. They're both engineering firms and they've been working on these reports for probably between a year and two years.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I think that that will be a really useful tool and if we're able to receive them, that will at least some thing to start with.

Mr. Hedani: It's to get ahead of the problem rather than just react.

Mr. Starr: Yeah.

Mr. Hedani: Commissioner Shepherd.

Ms. Shepherd: Mike, do either of these address the expanded use of recycled water. So that one, we're not putting nitrogen loaded water into the injection wells, and, two, so that we're drawing less on the aquifer and the streams?

Mr. Foley: Yeah, they will definitely address the issue of potable water versus irrigation water.

Ms. Shepherd: And does it talk about how to actually implement this because the problem we always get from Public Works is oh, well we don't have the money to do the line. You're never going to have the money to do the lines unless you start putting a tax on it.

Mr. Foley: Yeah, the Bill 84 which is going before the Council for revision on September 1st which is a week from Friday I think, includes a provision for infrastructure to be prioritized in the General Plan, in the new General Plan and it requires a annual comparison of capital improvement projects to the General Plan which is in the charter now but it's never been done. So there will be a lot more identification of implementation and who's responsible for the implementation and also the schedule of the implementation for future infrastructure and that's all required in the legislation for the General Plan update.

Mr. Hedani: Okay, one comment to staff if we can get to Commissioners Eason and Amarin for the next meeting that we have scheduled a reminder for them to bring their original copies of the 71-unit document on the EA. That would be good. So they can have the whole picture with them before we make a decision.

Mr. Foley: Yeah.

Mr. Hedani: Anything else for the good of the order?

Mr. Foley: I just want to mention that last night we had Walk Story event for the General Plan in Makawao and tonight it's at the Lahaina Civic Center at 6:00 p.m. So if the traffic is moving again on the ...(inaudible - changing of tape)... get there by 6:00 p.m.

If you're interested in the revisions to Bill 84, the legislation for updating the General Plan that goes to the Council on September 1st. One of the revisions clarifies that we will be submitting the countywide policy plan to all three General Plan Advisory Committees at the same time next month. It also clarifies that the Maui Island Plan will be reviewed by the General Plan Advisory Committee and the Planning Commission overlapping. So we are tentatively scheduling that to come to this commission in February or March but you'll get the countywide policy plan probably at the end of next month.

Mr. Guard: What other Walk Story sessions are there?

Mr. Foley: Tonight is the third and last one, I think. We did three Walk Stories in addition to the Focus Maui Nui effort. There will be other meetings where we go to community associations with the draft plan. And then of course, you will have public hearings and the Council will have public hearings, but we will have some more informal meetings once we

have the draft plan. The Maui Island Plan which is going to the Maui General Plan Advisory Committee will include designation of important ag land. It will include urban growth boundaries and hopefully it will go to the Maui GPAC probably in November or December.

Mr. Guard: Do you anything that's going on with the kuleana rights around here, like the water that got shut off from Kehalani that used to go down like Kalua Road, all the people that used to have kuleana rights and water that got shut off about a year ago?

Mr. Foley: No.

Mr. Hedani: Kahoolawe, is that scheduled?

Mr. Foley: I haven't heard anything yet. Bruce.

Mr. U'u: As far as the tours for the HCPO Conference, is it just for the people attending the conference?

Mr. Foley: I think so.

Mr. U'u: What if I like bring my daughter, she's there. Is it possible to pay the fee?

Mr. Foley: I don't know.

Ms. Freitas: I think the last time you were able to pay. You just pay and you can go. Jack went on all of them.

Mr. Hedani: Any other announcements?

Mr. Iaconetti: I just wanted to thank everybody for your consideration on my being able to be there when you vote on the –

Mr. Hedani: Hey, it's right in your backyard. Okay, we're adjourned. Thank you very much.

G. NEXT REGULAR MEETING DATE: September 12, 2006

H. ADJOURNMENT

The meeting was adjourned at 2:58 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
William Iaconetti
Jonathan Starr

Excused

Johanna Amorin
Patti Eason

Others

Mike Foley, Planning Department
James Giroux, Department of the Corporation Counsel
Michael Miyamoto, Department of Public Works and Environmental Management