

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
OCTOBER 13, 2009**

Approved: 11/10/09

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:03 a.m., Tuesday, October 13, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hedani: Planning Commission meeting of October 13th will come to order. We're going to open up the floor at this time for public testimony to accommodate any individuals who can't be present when agenda items are considered by the commission. Public testimony will also be taken up when the agenda item is taken up and maximum time limits on individual testimony is three minutes. A person testifying at this time will not be allowed to testify again when the agenda item comes before the commission unless new or additional information will be offered.

The first person that we have that's signed up for testimony is Mr. Dave DeLeon. Dave do you want to speak now or later?

Mr. Dave DeLeon: The first time ... (inaudible)... going to follow the agenda?

Mr. Hedani: We're going to follow the agenda.

Mr. DeLeon: I'll just go later.

Mr. Hedani: Okay, thank you. Are there any other members of the public that would like to offer testimony at this time? Please step to the microphone. State your name.

The following person testified:

Don Couch - Item B-3, Nona Lani Cottages, CPA, CIZ

His testimony can be found under the item on which he testified on.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Director.

Mr. Hunt: The Commission's first item involves the Planning Department transmitting Council Resolution No. 09-53 referring to the Lanai, Maui and Molokai Planning Commissions and the Hana Advisory Committee a draft bill pertaining to Rural Districts. The bill creates RU-2, RU-5 and RU-10 District categories. The planner assigned to this is Joe Alueta.

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

1. **MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-53 referring to the Lanai, Maui, and Molokai Planning Commissions and the Hana Advisory Committee a Draft Bill Pertaining to Rural Districts. The bill creates RU-2, RU-5, and RU-10 district categories. (RFC 2009/0206) (J. Alueta)**

Mr. Alueta: Good morning Commissioners. As you know, ordinances or changes to the code can occur in two methodologies. One is a director initiated change. The other is by Council resolution. This is where the Council sends down a bill that they are seeking comment on or changes to Title 19.

The first one that you have today deals with amendments to 19.29. On the surface it doesn't have much impact, all it does is create new standards. Currently, there's actually three development standards within the Rural District, two of them are half acres. That's the county half-acre and then you have an RU 0.5, half acre designation as well as an RU-1 which is a one-acre rural designation.

This bill would create three more. One would be RU-2, an RU-5 and an RU-10 which would basically be a minimum lot sizes of two, five and ten acres in addition to the ones currently in existence. Just want to be clear that this is not – we're not rezoning or the Council is not proposing to comprehensively rezone any lands at this time. As you can see we've done a pretty brief memo report outlining some of the pros and cons for this. Again, pros would allow for creation of lower density rural residential areas. These areas could be more easily converted to the urban areas in the future thus acting as an urban reserve. However, low density residential development sprawl. I mean, that's pretty much what it is resulting in greater impacts to agricultural lands, open space and the cost of providing infrastructure and services as well as commuter traffic.

One of the pros I guess you could say depending on your outlook is that could it meet agricultural requirement for existing agricultural subdivisions that aren't really farming yet prevent further resubdivision and could raise tax revenues for the county. This could create a conflict with those who are actually practicing agriculture in some of these agricultural subdivisions. I ...(inaudible)... there are agricultural protection of right to farm and it also by doing, by allowing the conversion of some of these agricultural subdivisions you would encourage more agricultural subdivisions in the hopes that someday they would also be rezoned into the rural district and create this speculation, further speculation with the agricultural district and this could also affect agricultural tax and water rates.

Again, it's kind of a – it's a tool. All it is another tool. It's very important how you implement or use the categories if at all and whether or not, you know, it's kind of like you want to be dog wagging the tail and not the tail wagging the dog in a lot of this land use planning and so this just allows a tool and whether or not you use it or not, it's going to up to Council and also the recommendations from this commission.

Mr. Hedani: Questions for staff? Is this coming from the Council, Joe? Or is it coming from the Planning Department?

Mr. Alueta: This is a Council resolution. It's coming from the Council.

Mr. Hedani: So the proposed change is being initiated by the Council?

Mr. Alueta: That is correct.

Mr. Hedani: Does the department have a recommendation? Director.

Mr. Hunt: The department recommends approval of the bill, but that rural zoning only be approved on a very limited basis due to its negative impacts.

Mr. Hedani: Any questions? Further questions? Commissioner Shibuya.

Mr. Shibuya: I just have a question that relates with the land uses and the level of service that's provided. When you do this type of expansion of the development standards for land uses such as RU-2 and RU-10 I guess as proposed here, are the standards, level of services standards also going to be ...(inaudible)... with this increase or is this still dependent upon the community plan to define the level of services in these areas?

Mr. Alueta: I think – as far as development standards if you go to Exhibit 1 of the resolution, there's a table. As far as individual lot, these would be the development standards as far as setbacks. Now as level of service as in the capacity of the roadway systems, water system, and such I guess that would be determined one, through the community plan process recommendations but primarily through the subdivision ordinance as they how they, what they will require as far as minimal infrastructure before moving forward with a subdivision and then again, that authority may stay within the Public Works under their subdivision provisions. However, you know, there are future bills that may move some of that authority to the planning commissions and to the Planning Department in the future with some of our future amendments. But at this time, whether or not you qualify and meet their minimum standards that would be kind of like during the subdivision process.

Mr. Shibuya: Okay.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I just have a other question relating with, I got a mental lapse here, maybe it's too early in the morning for me or I'm aging too quickly, I'll just defer it to the next.

Mr. Hedani: Any other questions from the commissioners? Commissioner Mardfin.

Mr. Mardfin: I apologize for missing part of your presentation, but I think I heard a lot of it. This was before the Hana Advisory Committee a couple months ago I guess. My understanding is that from that meeting it is primarily this is intended to provide an extra tool so that you can – instead of only having two acres you can have larger parcels which would limit the amount of houses that could be on things. My recollection from the Hana Advisory Committee was that they liked that idea of just having an extra tool where they could keep the character of the neighborhoods of the area the way they are. Is that more or less correct?

Mr. Alueta: Yes, in the sense that, again, Commissioner Mardfin, is that – this doesn't zone anybody, it just creates another larger category. Council in their zoning, they could theoretically if they wanted to without this bill could set their own restrictions on a case by case by basis

meaning even though comes in for rural they could always conditionally zone a parcel of land to say yes, you have RU-1, however, we're going to require you to do minimum of five-acre lots or no resubdivision. But I think this is a cleaner method rather than continuing to have a conditional zoning on very single parcel. I think that's where they're coming from as well as I think they're just, the Council is responding to the – I don't want say pressure, but just a community who have agricultural lots, and by, you know, obviously by the real estate agents association to try to potentially rezone some of these parcels that are in the agricultural district that have been chopped up into two-acre and five-acre lots and may or may not be farming as required. So I think that's the thing. And I guess you want to get – I think it also, you grappled with this in your general plan and every community during their community plan process will grapple with should we redesignate or should we not certain areas and that's where this is again, this is just a tool that's added but it's not really saying yeah, we're going to rezone all of these lots. They're going to wait and they're going to be respectful to the community plan and island plan process.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional questions from commissioners? Commissioner Shibuya.

Mr. Shibuya: I remember my question now. In terms of the family subdivision provisions that's currently on the books, how does this impact that or is this change actually going to support that family subdivision?

Mr. Alueta: I'm going to put the pressure on Public Works because I'm not familiar enough with it. All know is that family subdivisions it eliminates certain requirements but it doesn't impact your lot size. So if you are – you still have to meet the minimum lot standards but as to whether what triggers how big a – how much improvements you have to do, I'll leave that to Public Works to address. I don't think it impacts it negatively or positively. It just allows for another, again, another lot size.

Mr. Hedani: Mike, you have any comments?

Mr. Mike Miyamoto: Thank you Mr. Commissioner. Exactly like Joe says, you're just adding another category. You know, the overall state classification will determine the type of frontage improvements, the number of lots is just going to be what's dictated by the allowable size and zoning of that parcel. So the frontage improvements are pretty much automatic, it's just you're allowing another category of that type of size lot.

Mr. Hedani: Any additional questions? Commissioner Shibuya.

Mr. Shibuya: I see this movement here, it seems like maybe you can straighten me out. My impression is that when you start putting out these standards, you're inviting gentleman's estates would you not?

Mr. Hedani: Joe or Director.

Mr. Hunt: The issue of rural residential lots lends itself to gentleman estates. The existing county zoning ordinance in the agricultural district has two-acre lots which many people argue isn't a

feasible sustainable method of preserving our agricultural land. So that whole issue is joined at the hip with this bill. But all this bill is actually doing is providing the county with a larger minimum lot size in the zoning ordinance and if you focus just on that, the department thinks it's a good tool. We should have that tool. But like I said, our recommendation is to approve the bill but without pausing but that rural zoning only be approved on a limited basis due to its negative impacts. That's the message that I think we should – that the department thinks we should send to the Council. This is a good tool but we shouldn't be using it very much.

Mr. Hedani: Commissioner U'u.

Mr. U'u: This is probably for the Director. What example would it be that you would give someone the possibility of zoning in this three new categories? Could you give us some type of example where it will be a positive impact for the county so we can see what would happen or what type of projects would potentially get approved or get the okay?

Mr. Hunt: I think Joe did really good job in trying to present the pros and the cons in the staff memo and he broke them out and there's good arguments on both sides. One of the advantages of having a larger minimum lot size is in the future those lands are more easily converted to an urban use. And that would have less consumption of acreage at the urban level. A number of jurisdictions particular Oregon have urban reserves where they require that the subdivision of those lands be in a large lot acreage so that then in the future they can be converted to urban. So that type of tool they would designate adjacent to an urban area so that in the future that could be an expansion. So that's one example. Perhaps we would want a 10-acre minimum lot size for rural if it's adjacent to an existing urban area.

The other pro that Joe listed is that it could be used to change some of the gentleman estates agricultural subdivisions that some people will argue really aren't agricultural subdivisions and lets just call a spade a spade and get them out from underneath the guillotine of trying to be an agricultural subdivision when they're really not. So that's a positive. It could be used to say you're not longer agriculture, however, we don't allow you to subdivide down to the half acre minimum because we're going to put a two or five or even 10-acre minimum lot size on there. So it would remove the agricultural designation but not allow subsequent intensification of the density on that subdivision. So that's another area that it could have a positive effect.

Mr. Hedani: Additional questions? Commissioner Shibuya.

Mr. Shibuya: My biggest concern is that when we start doing this rural designation for larger areas we're actually taking the market out of the local residents opportunities here. I feel at this point, somehow very mixed feelings. I like the idea in the lower areas where you have RU-.5 and RU-1, RU-2 but when you start getting into RU-5 and 10, I have a little bit of heartburn here. On one hand, I would like to see agricultural land trust type of placement or requirement at least you go through that process when you have a prime agricultural land that you're planning to rezone into rural. That way you can keep your food production possibilities in tact. Once we start moving into RU-10, you have one person, one household living in that 10 acres and that's the problem I'm having. I would like to see it limited to that, but I wouldn't want to see that much land space occupied by one individual.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I have a question. Who would – what would be the process to determine whether a particular plot was RU-10 or RU-.5, would that be done by the Council, would that be initiated by the applicant, by the owner?

Mr. Alueta: Yes, but the guiding principles again is, it's a tool, but you have to have a really strong community plan process and a really strong island process – plan that points you in the right direction and guides the Council into what the community wants and desires for that area. And so that's why it's very important that those plans you know be the dog wagging the tail and not the other way around because it can easily turn into where – obviously who have subdivided agricultural lands sold them off, the people who bought them had an obligation that you're buying agricultural land there's restrictions on it. And then you know, down the line now they're saying well, no, I don't really want to farm I never intended to farm, I just wanted a house with a nice big lawn. And you kind of – you don't want to reward the bad behavior but you know, 10, 20 years down the line as a planning tool you might want to say, well, this is a natural offshoot, we should use this as more of a rural buffer and convert them to rural at that point. But that decision should not be dictated or determined by oh, this is where a subdivision has already occurred. It should be determined well, this is a natural place for a rural area. And so, I mean, and that's where I mean, I always use that phrase the tail wagging the dog is that if you solely based it upon existing subdivided agricultural lots as the only place you're looking for where you would apply this then you truly are not doing good community planning. The community plan should look at all lands say, hey is this an area that should be rural two-acre or rural five-acre or rural 10-acre. And without looking at what lands are already subdivided into these lots determine it. It's hard, but that's a real test of how strong your community plan is.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Suppose a community plan had a large stretch of land that they decided would be designated RU-10, rural 10, and there was a lot in it that was only two acres, what would happen to that. Would you pick that one out and say well, that's RU-2 or it's RU-10 but they could, since it's smaller than 10 acres that just means they can't subdivide it?

Mr. Alueta: That is correct and that's one of the things is as the Director pointed out is that you may have a two-acre agricultural subdivision and you may say, okay, we'll give you RU-5 acres meaning you'll never be able to subdivide. All it does is remove the provision that you don't have to require – you don't have to do a pretend farm, you can have your house and you know it's a rural community and you know, the principle use on that land is a single family residence and all the other uses that are allowed or within the rural district, both the county and state rural district. Again, one of the things is you have to decide because there are rural areas where there's farms and the right to farm is not protected under the rural designation. It's an allowed use in the rural district, but you're not protected by the nuisances that go along that go occur in any type of agricultural operation.

Mr. Mardfin: Thank you very much.

Mr. Hedani: What is the tax deferential between agricultural and rural currently?

Mr. Alueta: I do not know. I apologize. I don't know the answer to that.

Mr. Hedani: Okay, but it's higher?

Mr. Alueta: I would assume that the rate for ag and rural is because rural is basically a residential type of designation, but I do not know how the Tax Department figures, calculates things as to whether – even if you have ag land and if you have a certain part that's your house they say that's improved residential and they take that out from the ag land and then tax the rest of the land as ag rate. So I just don't know.

Mr. Hedani: Director, you have any comments on that?

Mr. Hunt: I don't know off the top of my head but we did discuss this during the Maui Island Plan and there was some discussion that you still have the potential to get agricultural tax and water rates in a rural designation but I believe the bar is higher or the – it's more challenging and that's my recollection, but I don't believe it precludes that.

Mr. Hedani: So I guess my question is so those that are engaged in agricultural activities can still engage in agricultural activities with the proposal. Commissioner Hiranaga.

Mr. Hiranaga: My discussion with the Water Department is that only properties zoned ag qualify for ag water rates. So if you're in a rural area and you're engaged in agriculture you do not qualify for ag water rates. Ag lots can receive ag exemptions for real property tax purposes, rural lots can if they do a 20-year dedication to the State of Hawaii and that's a fairly scary thing. You think, oh yeah, no problem I'll just dedicate my land for 20 years, but if you fail to meet the commitments then they will apply rollback taxes, interest and penalties which can be substantial. So I think the redesignation to rural really discourages ag activity or makes it a little bit more challenging.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: In direct answer to your question I know of one situation in the Hana area where right now the Real Property Tax Division is sending around notices to people that have ag lots to come in with a farm plan and demonstrate that they're using it for agricultural purposes and the tax distinction would be I'm approximating but between for a given thing of about two acres the difference between about a hundred dollars a year under ag rates and about \$2,000 a year under rural rates. So it's a significant – I'm not talking about the assessment, I'm talking about the taxes due. So it's a significant difference.

Mr. Hedani: Additional discussion? No further questions for staff? Okay, we're going to go ahead and open it up for a public testimony at this time.

**a) Public Hearing**

Mr. Hedani: Are there any members of the public that would like to offer testimony on this item, please step to the microphone and identify yourself for the record?



Mr. Dave DeLeon: Good morning and aloha. Dave DeLeon representing the Realtors Association of Maui and I'm here on the Rural issue that you're discussing. The Realtors Association sees the creation of 2, 5 and 10-acre rural districts as a necessary step toward correcting an existing disconnect between the county zoning for certain agricultural properties and those property's actual rural use.

It's our contention that many small lot agricultural properties are not truly being farmed. And were clearly developed as rural residential use. However, both state and county governments treat them as true farms and expect them to be farmed. Because of this farming requirement the owners have to demonstrate that they are following a farm plan and promise in a written agreement that they will be true a farmer. This is despite the economic ...(inaudible)... of trying to make a two-acre farm pay for itself. They are also required to maintain this fiction for as long as they're on the property.

We are currently seeing lenders refusing to lend on these properties because of thou must farm provision under the county farm agreements. Actually how much farming is going on right now as you noted is being determined by the Tax Department.

This commission got to participate in this discussion during its recent review of the Maui Island Plan and its discussion on this matter the GPAC proposed that all these properties be shifted to rural classification. The Planning Department proposed that in the plan that much more limited shift of some properties and this commission scaled that back quite a bit.

If such a plan were to be implemented there would be need to be if a for matching rural district so that the densities would be maintained. Two acre ag could become two acre rural, etc. Without these proposed categories such a transformation would not be possible. And I'd like to point out when you folks were doing the Hana District up in Pukalani and you had the properties that were rural and you shifted them over to ag, I don't know whether those folks want to be in ag. I mean, they have the requirement of being farmers now. If you had this level of zoning, you could have put them into higher requirements of the zone, say two-acre rural or two to five-acre rural. You would have had that option. This would give you another tool that you didn't have in that case. And I think shifting over to ag without asking the property owners is inappropriate.

When the county was divided up into four state land use commission categories just about half of the island was placed in agricultural use whether it was suitable for farming or not. The proposed land use categories, 2, 5 and 10-acre rural would give the Planning Department, the Council and property owners additional planning tools to work with.

Ms. Takayama-Corden: Three minutes.

Mr. DeLeon: Thank you, I'm almost pau. If a property owner chooses to change the property from agricultural to rural, planners could use these new agricultural district, I mean, rural districts, excuse me, to support such a shift without changing its density or its character.

Your question on level of service, I don't believe it changes at all. I mean, it's still, it's the same size property. I don't think it changes the level of service. We ask you to support the proposed ordinance thank you.



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

Mr. Hiranaga: Dave, which properties upcountry were changed from rural to ag, you just mentioned, you said, we shifted some land from rural to ag.

Mr. DeLeon: It was in Hana, in Hana in the community plan.

Mr. Hiranaga: Oh, in Hana. Oh, okay.

Mr. DeLeon: Not in the community plan, the Maui Island Plan.

Mr. Hiranaga: Oh, okay.

Mr. DeLeon: It was the coastal properties where the community was concerned about density along the coastline.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: You understand that if you redesignate land from ag to rural you're not able to qualify for ag water rates so the people who are attempting to farm on these two-acre lots would lose their ag water rates?

Mr. DeLeon: Well, we would propose, I mean, we're making a jump here. All I'm doing today is proposing support for this tool. We're not actually doing the shift of anybody's property. But our association's position is that nobody would be required to shift from ag to rural. That it would be something they could choose to do.

Mr. Hiranaga: Rather than create this new designation, what if you removed – (p.a. system malfunctioned)...

Mr. Hedani: That's not an allowable comment.

Mr. DeLeon: That's a possibility. It's not just a farm plan, it's the agreement as well.

Mr. Hiranaga: Right, but granted –

Mr. DeLeon: But you have to go to state law to do that. You're in the ag district, you're in the state requirements –

Mr. Hiranaga: Is that correct Corporation Counsel?

Mr. Hedani: Jim.

Mr. Hiranaga: The requirement to obtain a second dwelling on ag lands is a state statute requirement? You must implement a farm plan in order to obtain your second dwelling on ag land?

Mr. Giroux: Well, it comes out of 205, but the counties regulate it through their subdivision process.

Mr. Hiranaga: So if we eliminated the farm plan requirement for second dwellings on ag lots five acres or less is that?

Mr. Giroux: I'd have to look into that. We'd have to consult with the A.G. and see what their take on it is.

Mr. DeLeon: My discussion with the planning, excuse me –

Mr. Giroux: We're given the mandate to monitor this and the way we do it is through subdivision.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Any additional questions for Mr. DeLeon? Thank you Dave.

Mr. DeLeon: Thank you.

Mr. Hedani: Are there any other members of the public that would like to offer testimony on this item? Please step to the microphone and state your name.

Ms. Lucienne DeNaie: Aloha, my name is Lucienne DeNaie and refreshing the memory I'd like to address Mr. DeLeon's comments on this. I believe that GPAC had a long and spirited discussion about just this very matter just as this planning commission did and we shared many of Commissioner Hiranaga's concerns that in fact, you guys got the matrix of what the implications were of this switch and we were still asking for information because things were going pretty fast, but as I recall what we supported was the fact that the staff had done a lot of work in identifying some parcels that might be really seen as nonfarming and that those areas might qualify for switch to large lot rural. Not all of us agreed on every one of them but in the interest of moving on we agreed that they'd done their homework, they'd really tried to apply a concept here and that we would support it. But there were some members who didn't support converting any ag land to rural at all and I think you know, you've kind of heard why as folks have come into testify.

Now personally I feel that we need different categories of ag to recognize that there are different activities going on what we call ag land, but I agree with Commissioner Hiranaga, we don't want to throw the baby out with the bath water here. So if we could be specific about what we're trying to accomplish with these large lot rural designations and also the idea that came up during your earlier discussion that there's an opt in that if you have ag land now and it's proposed to be rural you can opt in or opt out. Now I don't know how that's going to affect your neighbors, they might hate you or they might, you know, hold it against you if you're the lone holdout. But for folks that are really trying to have farms and I know plenty who live on these two-acre lots, but do have significant kind of agricultural operations either you know, a nursery for orchids or they're raising eggs, or they're raising plant starts, whatever it is, it would be nice that they're not just sort of pushed off the edge and they can't qualify for ag water rates or ag tax rates. So you know, proceed, but proceed with caution and see if there's like maybe a third path here. Thank you.

Mr. Hedani: Questions from the Commission? Okay. Are there any other members of the public that would like to testify? Please state your name for the record.

Ms. Eve Hogan: Hi, I'm Eve Hogan and I actually didn't come in here for this item but I found it quite fascinating because I have about a 3.8 acre property and we are trying to do ag on it. We have a orchid farm and other plants, a greenhouse with a lot of different plants and it's open to the public everyday. I'm just wanting to just reaffirm what was just said and asking you to kind of think outside of the box of just rural or agriculture and see if there's a way to be flexible with the needs of certain properties which may be really difficult and impossible for you. I don't know. But we are trying to make a living selling plants and it's very difficult because the tourists can't buy plants, the locals, you know, it's like the last thing on the list of important things when you're strapped. So anything we do additional doesn't fit in the agricultural property, you know, the people before me were selling heroin, and we're trying not to go that route. Okay. So, we're trying to find things that we can sell to the tourists that are appropriate little items and still keep the property agricultural and still make enough money to keep it open. It's the Sacred Garden upcountry and it's a place where people come to pray, they come to mourn, they come to grieve, they come to celebrate and they want to take something home with them to support the Garden, but I can't figure out how to do that in a legal way that doesn't cost me an absolute fortune to get it – it doesn't fit in any of the special use boxes, if I become a church, does that work, will that work? I don't know how to do it and still be legal and still be agricultural. So I'm just throwing this out there to you guys saying that there are those of us on small lots who are trying desperately to be a viable farm but thinking outside of the box entrepreneurially to make it viable and need your help to figure out how to do that without being criminals. Thank you so much.

Mr. Hedani: Questions from the Commission? Thank you for not going the heroin route. Are there any other members of the public that would like to offer testimony?

Mr. Daniel Grantham: Hello, my name is Dan Grantham. I'm here on another item too, but this is such an intriguing question. I just want to briefly offer a philosophical thought. You know, we're importing 90% of our food as is. Because of the history of land and water distribution here, it's often very difficult for somebody, who wants to grow something to find an affordable piece of land that has water. I know a lot of people that are trying to do that. My almost next door neighbor is a carpenter who is planting fruit trees for this retirement. He's got two acres. He's got, I don't know, he just got done planting 40 mango trees, he's got avocados, he's got citrus, he does not have water. You know, it's – just the philosophical part of this is to consider whether this proposal if it becomes widespread will shift the financial incentive on property towards development of a home rather than sort of more a mixed kind of area where somebody would live and they would supplement their income with farm, with growing food or growing orchids or plants or whatever, legal plants, and you know, it's just a question I wanted to – I'm sure you guys have thought about this. I just want to, you know, highlight it a little bit again. Thank you.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony? Seeing none, public testimony is closed. Joe, I saw like in the case of Resolution 09-60 there was a department recommendation with like six recommended changes. Does the department have a recommendation for this ordinance?

Mr. Alueta: No, because again all it is, it's really just adding a new standard. We looked at – if you look on Exhibit 1 of the resolution, you can see what they've added as far as minimum lot width, the minimum frontage and they've added you know, the setbacks, increase the setbacks appropriately as well as side yard minimum setbacks and whatnot. So I don't – I mean, we didn't really get into depth, but we didn't have a problem with any of the development standards. They just pretty much carried forward what was in the RU-5, RU-1 and then tacked on a little more with regards to the lots, lot widths.

Mr. Hedani: Director.

Mr. Hunt: The next bill is very – both bills are somewhat complex and so we made some specific recommendations. On this one, it's essentially just adding these minimum lot sizes. So we're not recommending any changes to the bill, but the department recommendation is to approve the bill but that rural zoning only be approved on a limited basis due to its negative impacts.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: On this proposed change, the ag sliding scale ordinance would not apply here.

Mr. Alueta: I think that's, you know, one of the – that would potentially be a boon, is that yeah, it would eliminate the – you would no longer be ag, so there's no sliding scale to be applied to for.

Mr. Hiranaga: So you can bring back the 42-acre lot subdivision again because that's what the sliding scale was, you know, to try and prevent these 40-lot, 42 acre lot subdivision, you had to "x" amount two acres, five acres, ten acres.

Mr. Alueta: Correct, that's still in place, but if you change your zoning from ag to rural, you're no longer subject to the sliding scale. But again, if you have a five-acre lot and rezoned to RU-5 you still don't have any subdivision potential.

Mr. Hiranaga: Okay, thank you.

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

Mr. Mardfin: I move that the commission recommend approval of this to the County Council.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner U'u to approve the Resolution 09-53 or the recommendation by staff for approval of this ordinance change. Discussion? Commissioner Mardfin.

Mr. Mardfin: First I'll point out that in the Hana Advisory Committee voted unanimously to recommend approval of the bill as written but with the recommendation and consider creating even bigger designations, you know, like an RU-50 or something like that but they were pretty happy with it. I think it's a useful tool. I can see particularly in the Hana District how it could be usefully

applied. We're not moving people from one category to another. All we're doing is creating larger rural lot sizes that will in effect limit subdivision and limit building in a rural area. It seems to me that and I agree with the Planning Director's suggestion that this be used sparingly but it just an extra tool that allows more flexibility for the Planning Department and for the user. I understand my Commissioner Shibuya's concern that this conceivably could price people out of an area, but I think that's – because this isn't actually moving anybody into anything, that argument really doesn't apply in this particular case. All we're doing is providing the opportunity for larger rural units not mandating it or putting people into it. So I can strongly support this. Thank you.

Mr. Hedani: Additional discussion? Commissioner Hiranaga. Commissioner Shibuya.

Mr. Shibuya: I could support this if we had some kind of limited application of it. I have a problem in terms of having broad application because the population is growing. Housing requirements are growing and when you start designating more areas to rural you now have a lesser density and now you can't - you have more land and you we have finite amounts of land on Maui. My concern is this because of these limited resource the price is going to go up and when you start talking about one household for RU-10 that's almost unconscionable in my view of this arithmetic here. But be as it may this is a tool, it's a movement in the right direction but I think we've gone off the scale when we start going beyond RU-5 and RU-10. Thank you.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'm having difficulty ... (inaudible-changing of tape)... I think first of all, I don't think I've been given enough information regarding the ramifications of such an ordinance. I think for me, you know, I don't know how complicated the process is. Is basically you can create an RU two-acre category and change the minimum lot size for ag to five acres. But to create the R-5 and R-10, I just don't see the merit to that proposal. I think it's going to cause confusion among property owners and we're going to encounter a lot of unique individual situations that we're creating hardships and I don't think this thing has been studied enough for me to support it. So as the motion is on the floor, I will be voting against it.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the motion to approve the recommendation signify by raising your hand. Opposed same sign.

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

**The motion to Accept the Recommendation to Recommend Approval to County Council Failed.**

**(Assenting - W. Mardfin, L. Sablas)**

**(Dissenting - K. Hiranaga, B. U'u, D. Domingo, W. Shibuya)**

**(Excused - J. Starr)**

Mr. Hedani: Motion is lost. Can we transmit the results of the vote to the Council with no further action or do you need a negative?

Mr. Alueta: I think your Corp. Counsel will probably advise you that you should at least exhaust a

couple more vote attempts for another motion before you try to just say, Council here's our - just take our comments, and you know, how we felt as far as the votes.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'll make a motion to recommend approval of the proposed R-2 designation but not approve the R-5 and R-10 designation.

Mr. Shibuya: I'll second that.

Mr. Hedani: Moved by Commissioner Hiranaga, seconded by Commissioner Shibuya to recommend approval of the R-2 designation and not the R-5 and R-10. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: Well, you know, with the R-2 you can do three acre, five acre, 10 acre, it's up to the individual, but I really don't the need for an R-5 and R-10. I mean, it's just - you're creating these large lots with one dwelling and an accessory dwelling with no, you know, it just doesn't - I mean, it's - I don't see people doing that. It seems like an unnecessary level, levels.

Mr. Hedani: Additional discussion? Director.

Mr. Hunt: I believe the intent of the R-5 and R-10 would be to, hopefully the intent is to not create new lots of that size, but to go into these existing agricultural subdivisions that aren't true agricultural uses and put a rural designation on there, but it freezes the potential for future resubdivision. Due to the sliding scale there are agricultural subdivisions out there that have larger than two acre lots in them. And if you only put a two-acre minimum on there then lots that are four acres or larger could be subdivided if they're changed to a rural designation. So I believe that's the intent. I concur the concerns of an R-5 and R-10 designation in general just taking our farm land and cutting it up into five or 10-acre lots and I believe the department has tried to express that concern. What we, our position is, we would recommend approval of the bill and send a strong message that this is a tool that should be used very sparingly and you have the ability to send that message along with your recommendation and during future zone changes they would come through this body if it was an individual, if it was a community plan update it will come through this body and you would have the ability to modify that and say well, we don't agree with that five and 10-acre proposed subdivision out there.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I see the concerns about you know going back to those gentleman estates like, you know, Haiku Hill, Haiku Makai, Launiupoko where it's just all two-acre lots. I think with the R-2 it allows an opportunity for someone say who has 10 acres to basically create four lots. I know it opens the door up to someone who's got a hundred acres to build, you know, 40 lots, two acres each. But I guess for me, it would either be the R-2 or not have the changes. Just leave it the way it is at this point. I don't feel like, again, I've been given enough information to really make what I feel is a comfortable decision.

Mr. Hedani: Additional discussion? Commissioner U'u.

Mr. U'u: I agree with Commissioner Hiranaga. I think inadequate information of what could happen down the line is what concerns me when I voting. When we have, and I say prior and I say it again, when we development or developers come up here, they give us an EA, an EIS, we bump um up, we keep bumping them up for all the added possibilities of what could happen down the line and here we're asking to vote on it and the information is vague and we can - oh, potentially here's a negative impact and you listed two. I think there's more than two negative pros or cons. In fact I'm sure of it. So with that I'll be voting with Commissioner Hiranaga.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I'm unhappy that the prior motion failed. I liked the bill as originally written. It was only a tool. It wouldn't push anybody into anything at this stage. I think there's sufficient information. I sort of reluctantly I'm going to have to do this, vote in favor of this because voting it down would mean we're left with no additional rural things. I just think - I'm voting for something that's a half measure and doesn't really go as far as it ought to go.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the motion to support the R-2 designation and not the R-5 and R-10 signify by raising your hand.

Mr. Mardfin: Wait, wait, wait, isn't the motion to support the R-2 designation?

Mr. Hedani: Yes.

Mr. Mardfin: But not the part about not supporting the others, you're just supporting the R-2?

Mr. Hedani: That's correct, the motion was to support a change in the ordinance that would allow for the R-2 provision. Are we all clear? We can take up the negative connotation to the R-5 and R-10. I think we're still sending the same message though.

All those in favor of the motion signify by raising your hand. Opposed same sign.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, and unanimously**

**VOTED: To Recommend Approval to the County Council of the RU-2 District Category.  
(Assenting - K. Hiranaga, W. Shibuya, B. U'u, W. Mardfin, D. Domingo, L. Sablas, W. Hedani)  
(Excused - J. Starr)**

Mr. Hedani: Motion was carried unanimously. Commissioner Mardfin.

Mr. Mardfin: I move the adoption of an R-5 designation.

Mr. Hedani: Is there a second? Seconded by Commissioner Sablas. Discussion?



Mr. Mardfin: My argument is the same as before, it's one more tool for the Planning Department to control development, do better planning, I support the department's willingness to use this sparingly but I think there are places where it would be appropriate and I think we ought to approve it.

Mr. Hedani: Additional discussion? Director, you have any comments?

Mr. Hunt: Again, support the idea of having an additional tool and that's all this is doing. It's not rezoning anyone's property right today. During subsequent rezoning processes there would be a thorough analysis of whether that's appropriate, whether the department would support it, recommendations, etc. The community plans would also go through the similar process. So all we're suggesting is that we have an extra tool, and having the five acre and even the 10, would provide us with that extra tool and that's all it is. We're not rezoning anyone's property right today.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the motion to support an R-5 designation signify by raising your hand. Three. Opposed, same sign. One, two, three.

**It was moved by Mr. Mardfin, seconded by Ms. Sablas, and**

**The Motion to Recommend Approval of the RU-5 Designation to the County Council,  
Failed.**

**(Assenting - W. Mardfin., L. Sablas, W. Shibuya)**

**(Dissenting - K. Hiranaga, B. U'u, D. Domingo)**

**(Excused - J. Starr)**

Mr. Hedani: Motion fails. Additional discussion? Okay, Director, next item on the agenda.

Mr. Hunt: The next item involves the Planning Department transmitting Council Resolution 09-60 containing two bills, the first bill is entitled a bill for an ordinance amending Chapter 19.08 Maui County Code relating to residential districts. The purpose of the bill is to permit affordable accessory dwelling units on lots of 6,000 square feet or more in the residential district.

The second bill, and we believe we should review these together, that's how they're intended, the second bill is a draft bill entitled a bill for an ordinance amending Chapter 19.35 relating to accessory dwellings. And the purpose of that bill is to permit affordable accessory dwelling units on lots of 6,000 square feet to 7,499 square feet, increase the maximum gross square footage of accessory dwelling units and require that accessory dwelling units built on lots between 6,000 and 7,499 square feet remain affordable. Joe Alueta is the planner assigned to this project.

**2. MR. JEFFREY S. HUNT, AICP, Planning Director transmitting Council Resolution No. 09-60 containing:**

**1) A draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.08 MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS."**

**The purpose of the draft bill is to permit affordable accessory dwelling**

**units on lots of 6,000 square feet or more in residential districts.**

**2) A draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.35 RELATING TO ACCESSORY DWELLINGS."**

**The purposes of the draft bill are to: (1) permit affordable accessory dwelling units on lots of 6,000-7,499 square feet; (ii) increase the maximum gross square footage of accessory dwelling units; and (iii) require that accessory dwelling units built on lots of 6,000-7,499 square feet remain affordable. (RFC 2009/0215) (J. Alueta)**

Mr. Joe Alueta: Good morning Commissioners again. Again, this is a change in the standards to existing zoning. So it does have implications. Again, this is a resolution that is coming down by the Council with regards to primarily accessory uses. The department supports in general the concept of providing affordable housing and affordable rentals for the local population but we are going to point out some concerns and give you the information as best we can as to what implications are going down the line should the bill be adopted.

Right now as you the accessory uses or accessory dwellings often referred to as ohana units, and I've provide you kind of a belabored history going back all the way to Act 229 back in the State Legislature with regards to some of the history of second dwellings and ohana provisions and allowing the county to adopt accessory uses and increase the density on existing residential lots.

At the time the county had set it up where it restricted, you had to have a minimum lot size of 7,500 square feet within the residential district and it set out the standards for how big you could build your cottage. Typically in Kahului where you had a 10,000 square foot lot you got yourself a 600-square foot cottage and then from 7,500 to 10,000 you were limited to that 500-square foot, your standard two-bedroom, one-bath, CMU cottage that you see are very popular in town.

This provision would reduce the size of the minimum lot size down to 6,000 square feet. So those who are within that 6,000 square feet to 7,499 would now be eligible to do either detached or attached cottage and that size would be 500 square feet. We're estimating of the lots that would be eligible for such an entitlement or enhance entitlement of allowing to build an accessory is in the neighborhood of about I believe 2,800 I think, I came up with. Due to budgetary cuts I've only passed out a few of these colored maps. Hopefully the commissioners can share and this is basically for - our database, I was only limited time, able to do it for the island of Maui only and that was passed out, it's on the table.

Mr. Hedani: Joe, can you make sure you use the mike please?

Mr. Alueta: I'm sorry. I try to be unclear whenever possible.

Mr. Hedani: I'm befuddled enough as it is.

Mr. Alueta: Yeah okay, sorry. There's less accountability. If you look at the maps that you have before you, all the red lots are the lots that are between 6,000 and 7,499. And besides increasing the density, a lot of these subdivisions that came in that were done at the 6,000 to 7,499 because they knew what the restrictions were your infrastructure may not be adequate to accommodate the additional density of an ohana unit. Roadways, sewers and water systems. In some areas they may be and there is an existing provision that requires for adequacy in the - and I attached a copy of the form that is used by Department of Public Works to determine whether or not you qualify and are able to come in and get your building permit for an accessory dwelling. However, one of things they do not accommodate for is cumulative impact of whether or not, you know, if every lot comes in this subdivision and builds another cottage is the water, sewer and all of those systems going to be adequate at the time? So that's one of our concerns that we have.

Some of the provisions that was incorporated by the County Council again was lot coverage, 19.35.25 they created a lot coverage. This is a development standard that needs to be within the residential district and as you know we came through with 19.08 and we proposed a 40% lot coverage and with no floor area ratio. So we believe this provision should be stricken and we don't support that adding because one, we feel it's an inappropriate section of Title 19, but two, it's already in, we're proposing to add a lot coverage provision with Title 19.08.

The affordability, 19.35.110 which is the affordable accessory dwelling. Basically what it means is although you have the right to build a 500-square foot ohana or accessory dwelling on lots between 6,000 and 7,499 that lot, the rental of that dwelling, one, has to be restricted to family members which is fine or if you rent it, it is limited to the very low to gap group, okay, and that's where they came up with these numbers. The very low is anyone less than - that meets 50% of the median income. Gap group is a 160% of the median income. The rental charts that I attached if you look on Exhibit 8, I provided you, this is from the County's website and the Housing and Human Concerns with regards - their rental doesn't go up to a 160, it only goes up to a 140% of median income. But if you look at it, one of the concerns I guess the department has is that the rate that you could charge for that ohana on typically a two-bedroom, one-bath, two-bedroom cottage if you were in the 50%, below 50%, it would range anywhere between \$170 to say \$884, but if you went up to the 140%, you could rent that cottage to someone who's making a 140% of the median income, you could charge them \$2,375 a month for a two-bedroom cottage and so that is above what market rate is. So it basically doesn't really focus what the intent of this affordability of adding this increased density and creating an affordable unit. You've opened the gap group and also there's no "encouragement" so why should I rent to someone who's making 50% or less of median income and be able to only charge you know, \$500 a month when I could rent it to somebody who's making a 140% of median income and charge the higher market rate. I mean, hopefully we never get to that \$2,300 for a two-bedroom cottage in Kahului. But that's the range.

The purpose and intent was to, you know, we are going to add increased density to our smaller lots, increase the housing inventory by having these ohana dwellings or accessory dwellings and the intent was to focus it on as an affordable issue, but in reality it's just going to add more inventory with no provision or restriction to the lower income classes who actually need the affordability. And so that's one of our thing is that we should potentially look at reducing that group of eligible renters for these lots so that you are focusing on. And I believe in our recommendations we also think that maybe the Council should look at amending to all accessory dwellings that are built should be

focusing on the affordability side of it. Because if you look at the original intent going back decades of why we allowed for accessory dwellings, it was really to provide for housing for your family or an affordable rental to the community.

The other provisions that are I guess minor in changes is that besides creating that 500-square foot accessory dwelling on smaller lots it would increase the sizes of the existing ohana units that are currently allowed so everything would be bumped up a 100 square feet with the exception of agricultural lots, not agricultural lots, but lots greater than 87 they still would be capped at a 1,000 square feet.

That's pretty much the highlights. Is there any questions at this time?

Mr. Hedani: You want to walk through your six recommendations or seven recommendations?

Mr. Alueta: One is that the county should analyze the issues of adequate infrastructure for existing lots between 6,000 and 7,499. Again, the maximum lot coverage and floor area ratio should be deleted because 19.08 will cover that. County Council should consider requiring all future accessory dwellings to meet the proposed affordable accessory dwelling standards. Language should be added to require deed restrictions to be recorded to affect the subject property. And the County Council should explore adding incentives to encourage the rental of affordable accessory dwellings to lower income categories. And then language should be added to revise 19.35.10C to read rural districts.

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

Mr. Shibuya: It sounds good in some respects that if you're going to have this restricted rentals to the affordable, how are we actually going to implement, verify and certifying that there's some kind of a affordability of that renter?

Mr. Alueta: That's where the Housing and Human Concerns would go through their process for the affordability.

Mr. Shibuya: So the rental would be actually handled through the HUD?

Mr. Alueta: Well, that person would have to get certified as being appropriate through the Housing and Human Concerns.

Mr. Hedani: Are we going to have rent police that are going to go out and enforce this Joe?

Mr. Alueta: I believe Housing, they already do as far as -

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I guess a follow up to Commissioner's Shibuya's question. So the intent is that a potential renter would go to the Housing Department, be certified for that person's income level and then start going on Craig's List looking for rental apartments and showing up with his little

certificate saying I'm certified to rent this affordable housing. It seems like a big burden you're placing on this department. I'm sure they've been asked that they can handle this burden.

Mr. Alueta: Again, this is a resolution not generated by the department. We did not create this ordinance. This is something that the Council has sent down to us for our comments and for the commission's comments. And so, we kind of go into damage control mode when we review these ordinances, we try to pick out what's good, would could have potential unseen impacts and we try to point those out to the three commissions and then we rely on you to double check our work to see what are the other implications. We can only from a planning standpoint, Planning Department standpoint, the impact is very minimal. All we're going to check for is lot size, and the size of the dwelling when they come in. Public Works would check for, again, they would be checking for adequate infrastructure on a single, case by case basis. I guess the department's concern is are they going to be able to, or the county should look at it more as comprehensively if all of these lots all of a sudden come in with a accessory dwelling, do we have adequate infrastructure within that particular subdivision in itself to handle the increased water, drainage and sewer capacities rather than on a case by case basis. That's our comments that should be considered.

As far as implementation, again, the ordinance or the resolution comes up with how they expect it to be, you know, what is the limitations as far as accessory dwelling or the affordability for those. And again, this is only for those lots that choose to do it within the 6,000 to 7,499 would be required to be, you now, restricted to some level of affordability. How Housing implements it, they have their own inspectors you could say as to whether this list would be shared. You know, how through their administrative rules whether or not, when someone comes in for a building permit and they get a deed restriction on their property that this unit can only be used for certain affordability, hopefully that list will be transmitted to Housing and Human Concerns and say, hey, this guy came in and built a cottage, he's now on the list and if you have applicants who wish to, need a place to stay or rent this is one of the certified areas. So all it is that I think they're trying to do is increase the inventory of these units on the market hopefully and set some type of restriction on who can rent it and how it gets implemented on the housing, I'll leave that to them. But again, that's Council's intent.

Mr. Hedani: Director.

Mr. Hunt: Let me take a different tack. Essentially what Mr. Molina's is trying to do is increase the number of accessory dwellings in the community. And I think most of us can agree that's a noble goal. The way the bill is proposed is he would allow affordable accessory units on these smaller lots. He would also increase the existing size on just an accessory dwelling. It's important to distinguish between the affordable accessory dwelling that he's proposing which is new and the existing accessory dwellings which is already in our code. So what the proposal is, is right now you can't get a accessory dwelling on lots smaller than 7,500 square feet. He's suggesting that, well, why don't we allow them down to 6,000 square feet, these smaller lots if they are affordable. So that affordable provision only applies to the 6,000 to 7,500 square foot lot. The bill also includes a maximum lot coverage and floor area ratio and to be honest, the department originally suggested that. We were working with Mr. Molina on this bill and in further review we don't think it's a good idea given the fact that we already have lot coverage ratios in virtually of the districts except for the interim district. So, that in a nutshell is the essence of the bill.

In terms of administering a deed restriction, most communities that have accessory dwellings and affordable housing programs they go out and they administer the deed restrictions. It's not a monumental task. The question that the Planning Department raised and I'd like to hear some honest debate on that is should that deed restriction be actually expanded so that any future dwelling that's an accessory dwelling not just these affordable ones on the smaller lots should those be deed restricted to family members and affordable members of our community. Again, if you look at the legislative history of the ohana units, that's clearly the intent. Those two categories of our citizens. It hasn't been implemented, of course the market and other things, people don't want that restriction, they want to just be able to rent them out to anybody and we can understand that argument but that has impacts to the affordability and the number of affordable units in our community. So that's the discussion. That recommendation by the Planning Department that the Council consider the deed restriction for all the units that came from the department, that's not part of the bill. The bill just restricts that to the affordable accessory dwelling units. But we think it's worthy of debate.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: One of my concerns about this affordability requirement say on all accessory dwelling is for those of you who do not have experience in owning a rental unit and renting it out, it is not necessarily a gold mine. Real property taxes are very prohibitive. You've got to carry insurance. And because you know, the way the real property tax structure is set up now, you don't have the homeowner's exemption and that's rental property the taxes are pretty – it's really high, not pretty high, it's really high. I don't think the Real Property Tax Office assessors now will at this point will give you a discount because your house is now, your cottage is designated affordable. They're going to assess it at market value by construction cost so there's a lot of things that have to be changed if you're going to start placing this income restriction on rental units.

Now say you don't have family or relatives and restricted to this affordable requirement and you're unable to meet your mortgage, then what, you have to sell your house? And now you're looking for a rental. So it's a very complicated thing. So I just want to say that just because you have a rental unit, don't think that it's a goldmine because it's not. There's a lot of carrying costs involved.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: agree with Commissioner Hiranaga having gone through that type of situation not only here but on the mainland. But I also, endorse Director Hunt's provision or requirement that they have a deed restriction placed on these properties once you start putting an ohana and that we stay with the actual definition of ohana. Ohana is for the family members and that's basically what it is. I think we've expanded that beyond the actual intent and I think we need to bring it back into clear definition and application in this respect.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: On page 2 of the staff report, I guess it's the third paragraph that starts with 19.35 Maui County Code, second to the last line. I guess it's in quotes, well, it starts on the third to the last line, "this will assist residents of the County of Maui to secure affordable housing and to

preserve the extended family.” Is that the actual – where’s that quote coming from? It’s within the section that created accessory dwellings. So you’re quoting exact language from the ordinance?

Mr. Alueta: If you go on Exhibit 6, second paragraph under Section 1, “the Council finds that there is a need to provide for additional housing within areas in which residential dwelling units are permitted. This will assist residents of the County of Maui to secure affordable housing and to preserve the extended family.”

Mr. Hiranaga: Okay, so to me, the key word is “assist.” It does mandate affordable housing. It’s creating – it’s basically to create additional supply that will assist people to find affordable housing. It’s supply and demand. The more supply, the less demand for higher priced units. So I just want to make that clear that the County Council did not create accessory dwellings to mandate that they be affordable. It’s to help assist in creating affordable or securing affordable housing.

Mr. Hedani: Additional discussion? Any additional questions for staff? Commissioner Hiranaga.

Mr. Hiranaga: So the 25% lot coverage just to clarify, so on a 6,000 square foot lot you can have 1,500 square feet of floor area, is that correct? Excluding garage.

Mr. Alueta: No, it would include all covered areas. Lot coverage is based on the covered area. The provision that we – that this board recommended as 40% if you remember. His bill is going with a 25% but again, we feel that the 40% that was adopted or recommended for adoption by this body is the restriction that should be applied.

Mr. Hiranaga: So on a 6,000 square foot lot, 25% is 1,500?

Mr. Alueta: Yes.

Mr. Hiranaga: So if you have a, say you have a 1,000 square foot house with a 200 square foot garage that’s 1,200, so you could build a 300 square foot cottage.

Mr. Alueta: Correct, or you could build a – that’s assuming that all of those were single-story. So if you did a lot coverage, you know, 1,500 would be the lot, you could be a two-story house which is very common and you would have a garage and then have a one-bedroom, one-bath or a two-bedroom, one-bath attached ohana with back entrance. That’s very common in Kihei.

Mr. Hiranaga: But if you had an existing home.

Mr. Alueta: Then you could build an additional, yeah, you could build a small ohana or accessory dwelling up to whatever your lot coverage would allow under the 25% but again, our recommendation was for 40%.

Mr. Hiranaga: And the other – the floor ratio is just total floor area.

Mr. Alueta: Correct.



Mr. Hiranaga: Two-stories, be doubled.

Mr. Alueta: That is correct. And as we discussed I guess back when we first discussed 19.08, the department doesn't feel that that should be applied to the residential district and it would become cumbersome. We currently do it for commercial districts but for the residential district we feel it would be a little too cumbersome and we should just stick with a lot coverage and that would be easier to implement.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just for clarification on Exhibit A, Item H. When you say an affordable accessory dwelling and at the bottom, located – main is house is located on 6,000 square feet or more, so the way this is worded that any lot that has an accessory dwelling that's over 6,000 be it 7,500 or 10,000 now fall under the affordable housing requirement for rent?

Mr. Alueta: No. And again, just to be clear again, I didn't draft this, nor did our director. This is coming from the Council. So I feel that – actually I feel that that statement in looking at it, H is actually redundant because if you look at G above it, it just comes up with accessory dwelling. And then if you go to the actual 19.35, that's when it lists your definition of an affordable accessory dwelling. I think his intent was to make it clear that you know, not only could you have an accessory dwelling but that affordable accessory dwelling was also listed as a permitted use in the residential district. I guess – I'm not an attorney but from aspect it just seems like redundant. So I'll wait this goes through Corp. Counsel for final review.

Mr. Hiranaga: I think the intent might be better specified if it said located is 6,000 square feet – is more than 6,000 square feet but less than 7,500 square feet and not or more. I think they're talking about that category, 6,000 to 7,499.

Mr. Alueta: Right. If that's the recommendation of the commission, we can make that recommendation to Council.

Mr. Hedani: Additional questions for staff? Okay, if there's no further questions, we'd like to ahead and – this is a public hearing item, right. Okay, we'd like to go ahead and open this up for public hearing. Are there any members of the public that would like to offer testimony on this item? Please step to the microphone and identify yourself for the record.

**a) Public Hearing**

Mr. Tom Croley: Aloha, I'm Tom Croley and I'm just...(inaudible)... on my own behalf today. But you have heard me give testimony before regarding bed and breakfast and such. I want to make clear that we would not support this bill from a bed and breakfast standpoint in any way, shape or form, okay. And what this bill would do is increase density and it would increase density in a way that often times bed and breakfasts are being accused of doing, more dwellings on a smaller lot creating more parking situations and so forth. And as I drive around Maui and I see various neighborhoods where this is a problem. It's generally not visitors that are creating the problem which it's generally long term rentals.

You also heard me give testimony on the other hand recently about my neighbor with 15 cars in their driveway. Now I wasn't complaining about their 15 cars in their driveway. They live on a relatively large lot. But it's clearly outside of code what they're doing. They've split their property into four or five dwellings there. But there's opportunity there, right there, to come up with something that would work, would provide affordable housing rather than trying to cram these onto little bitty lots. So I would look at this completely on the other side and say where are there opportunities to increase the density without creating problems and on larger lots that potential is there that would create some affordable housing. On these smaller lots, I think it would create nothing but problems.

There's one other part of the bill that I didn't hear any discussion on and that is the idea of allowing the existing accessory dwellings to be slightly larger than they currently are. I think it's upping them each by 50 square feet. And again, I think there's some value in that again, in creating more housing opportunities that don't create more problems. A two-bedroom with 750 square feet is a little more spacious and creates a little bit more of a good situation than a 700 or 600-square foot, two-bedroom cottage. So I would like you to consider that portion of the bill which I do think has some merit. Thank you.

Mr. Hedani: Questions for Mr. Croley. Are there any other members of the public that would like to offer testimony?

Mr. Chris Hart: My name is Chris Hart, Chris Hart and Partners. I would like to offer testimony because I think this is a good bill and really feel that the position of the department is a good one. First of all, I'd like to point out in the context of the Island Plan, the emphasis on establishing an urban growth boundary is for the purpose of increasing density within that boundary. That's basically a new urbanist approach to community development, number one.

Number two, I really feel that in the context of the workforce housing bill. The workforce housing bill requires that a subdivision of five or more lots would be required to have workforce housing. What's happening here on Maui because of the fact that the workforce housing bill does not make, does not give consideration to accessory dwellings as affordable you have a lot of land subdividers basically dividing their land into four lots because they don't want to divide it into five and have basically a requirement for workforce housing that would be either they would satisfy some place else if they can't satisfy it in their subdivision or they would have to pay a certain amount of money to basically dedicate to a nonprofit and that's something like \$130,000 something a per unit.

So essentially what the community is doing is creating a situation where there's less housing and I think that in the context of workforce housing it would be appropriate for lets say a person who had a 10,000 square foot lot -- or lets say a -- basically wanted to do, had a 50,000 square foot lot and he wanted to basically five lots, in the R-3 residential district that he would be able to essentially provide the workforce housing in the context of his subdivision as accessory dwellings. So I think that the ordinance is a good ordinance. It's a step forward. Thank you very much.

Mr. Hedani: Question, Chris. Do you have any concerns about the affordability criteria that's attached to the ordinance?

Mr. Hart: I believe as the department believes, the Department of Human Concerns you know, is involved and actually administering, you know, affordable housing and there are a lot today through HUD I think it's 208 funding that basically the department administers. I think it was something around a thousand or so units. And I think that they do that job and if a person has to dedicate it through a deed restriction as affordable I believe that the department can do that. And of course, you've got to understand I also understand Commissioner Hiranaga's concerns, but I mean, it's a choice that we make. You know, affordable housing, you know, can be affordable in the context of a member of your family, children, you know, older senior citizens in your family or it can be others in the community that are need. It's your choice. You basically interview the individuals and you put them in your house. So I mean, I think it can be a positive, doesn't have to be a negative and it can be administered by the County.

Mr. Hedani: Thank you. Question? Commissioner Hiranaga.

Mr. Hiranaga: Chris, one of my concerns when you increase density anywhere is street parking.

Mr. Hart: I understand.

Mr. Hiranaga: And you basically create an unsafe condition when you have cars parked on both sides because you restrict view planes and people come walking in between cars and so that's one of my concerns in subdivisions like say Skill Village where you know, you're going to create this high density issue. How would you – is that a concern for you and how would you control it?

Mr. Hart: Well, it is a concern. Obviously the off-street parking, basically the off-street parking and loading ordinance and the accessory dwelling ordinance actually established that you have to have parking you know, on site. ...(inaudible– changing of tape)... in the context of the building permit process. When the individual comes in there has to be the carport or the place to park or for all of the cars. In a single family residence it's two stalls. For the accessory dwelling it's one stall, but I mean, they have to be on site. And I think and then it's another management thing. I mean if, you know, if a individual living in a house has you know, parents, both parents driving and you know they have three children and they have cars, you know, then it's – I don't think that's right. I think there should be some enforcement on the street. Somehow, if you don't have room on your property to basically park your cars, then there should be some enforcement personally. I mean, I live on a street where people park all over and so I know. But you know, we put up with it. So it is a problem, but I think there needs to be some kind of an enforcement.

Mr. Hiranaga: Thank you. Additional questions? Thank you very much Chris. Commissioner U'u.

Mr. U'u: Just like to add I think it's almost unwritten rule for local residents to rent out to their family members as it is now. I think we all rented or a lot of people rented from family members at well below cost. So you could save up your money and potentially buy a house. I know I did it and that was the options given to me. I paid \$400 for a three-bedroom house and it gave me the opportunity to save up the money and purchase your own home in the future. So I think this goes with the spirit of what's being asked right now. That the fortunate thing was we didn't have a parking problem. We had adequate parking and I know that is a concern even for houses like for myself in Paia where you don't have that additional, nobody has that addition but the kids keep piling up and so

does the cars. So I think you should invest in a yellow van like a bus, transit bus. But it's happening with or without the cottage now where you just get, you crunch to more per room because you don't have the money to extend. So I think it's there whether we like it or not the parking problems with or without an accessory dwelling.

Mr. Hedani: Okay, are there any other members of the public that would like to offer testimony? Please state your name for the record.

Ms. Lucienne deNaie: Lucienne deNaie testifying as an individual. This is something that a lot of families would look forward to. It would affect older neighborhoods more than newer neighborhoods because if you're looking at lots of that size it's places that were built, you know, back when places in Makawao, places in Haiku, places in Paia, places in Kahului, Wailuku. It gives people some choices. I do support the affordability aspect. I've been a property manager and qualified properties for HUD. It's a pretty cut and dried system. You know, either it is or it ain't and they have a guy that comes out and checks it out and so forth. So I think it would be possible to kind of keep it accountable. I agree with Commissioner Hiranaga that you know, there are impacts that should be, you know, looked at square in the eye. There's parking, there's water, there's sewage. A lot of times these older areas aren't going to have maybe the same level of infrastructure so the department is going to have to do their homework and see if they think this is going to be a good fit or not. But you know, you don't have a ton of these lots and the fact that they are older properties usually means they're probably owned by local families and I agree with Commissioner U'u it's like either those families gotta cram more people in one room or they could have a choice now and build a little separate thing. And sometimes too, you know, for a person that doesn't even have family you'd like a caretaker to live on site and you may have an older property like that and this would just give you some options especially if you already have like one small house then you could have a second small private dwelling or attache dwelling. So I really think that it's a tool, another one of these tools we discussed in GPAC that we needed to be more flexible about letting people adapt their family circumstances. So I would recommend that the commission give it their support. Thank you.

Mr. Hedani: Additional public testimony? Are there any other members of public? Please step to the microphone and state your name.

Mr. Daniel Kanahale: Aloha Commissioners. Daniel Kanahale here. I just wanted to talk a little bit about the parking issue that was mentioned. I lived for many years in the Makiki area, Downtown area and Paua area of Honolulu. It's the highest density in terms of people and homes in the State of Hawaii second only to Waikiki. So as far as parking people park on both sides of the street. They park on the sidewalks, they park wherever they can and it is a problem. There is enforcement but there's also a hands off policy I think by the county government as far as actually ticketing people every day. They ticket them once in awhile but they understand that that's an issue and some of these neighborhoods are very old and you have many families living in the same home. So the way you get around that is you have to rely heavily on public transportation. As you increase the density in Maui, public transportation is going to be key so that people can get on the bus, get away from their cars. They can use their bikes. When I lived in Honolulu, I did own a car. I got around by bike only. I didn't ride the bus. I went the grocery store, bought all my groceries, put it on my bike or in my backpack and that's how I did business in Honolulu and that's – we're eventually going to be

moving towards here on Maui as we increase density. So the need for public transportation, the need for bikeways, the need for places that are accessible by foot are going to become much, much more important as you start moving in this direction. So I just wanted to share those thoughts with you. Thank you.

Mr. Hedani: Thank you. Are there any other members of the public that would like to offer testimony? Seeing none, public testimony is closed. Department recommendation.

**b) Action**

Mr. Hedani: Just want to beat up on you one more time Joe.

Mr. Alueta: Again, this would impact about 2,800 lots, just over 2,800 lots. Over 800 of them are located in Lahaina, but again, I already went over the recommendations and they're on page 4, and our six comments again is that, the Council shall analyze the issue of adequate infrastructure for the existing lots for 6,000 to 7,499. The lot coverage ratio and maximum floor area ratio should be deleted. The County Council should consider requiring all future accessory dwellings to meet the proposed affordable accessory dwelling standard. Language should be added that requires a deed restriction be recorded to affecting the subject property. And the County Council should explore adding incentives to encourage the rental of affordable dwellings to lower income categories and that the language should be added to 19.35.10(c)(5) to read the rural district.

Mr. Giroux: Chair, do you want me to comment on the language of I guess Section H? I think Kent wanted that.

Mr. Hedani: Go ahead Jim.

Mr. Giroux: Reading this, you know, where it looks like they were trying to mirror Section G where it says, you know, 7,500 square feet or more, but mirroring it it does create a little bit of an ambiguity as to what their intent is because if you build an accessory dwelling lot on any lot with 6,000 square feet or more, it sounds like they're giving an option if you own a 7,500 square foot lot to build an accessory, affordable accessory dwelling unit. Is that what they're intended to do or is this just what's going to happen because the language is vague and ambiguous?

Mr. Hedani: Joe.

Mr. Alueta: Again, I'm assuming that an attorney wrote it, no just kidding. Sorry, sorry, again, I did not draft it. I do not know --

Mr. Giroux: I don't do accessory unit law.

Mr. Alueta: Where it came from, but I'm assuming that that's a good question that we could probably raise to Corp. Counsel and to the County Council when they come up as to what their intent was. I do not know what the intent was with that.

Mr. Giroux: Because as an attorney I would have to do legislative intent to see if, you know, if you

guys – I mean if the department were to come to Corp. Counsel and ask us hey, somebody wants to do an affordable accessory dwelling on a 10,000 square foot lot, I would say this and say well, yeah, it looks like that allows it, but is that really the intent? So I think that discussion should be on the table so it's clear in the legislative history that yes, that is the intent or are we creating something that has a secondary maybe beneficial, may not be beneficial but it's a secondary impact.

Mr. Alueta: During the transmittal can raise that issue, during our transmittal to our Council.

Mr. Hedani: So Jim, what you're saying is that you would – would you suggest that they rewrite the bill to amend paragraph G as opposed to adding a paragraph H?

Mr. Giroux: No, no, no, I think they just need to set the parameters of where do they want the affordable housing dwelling units to be? Do they want to stay on lots that are 6,000 square feet or do they want you to – or do they want it to be possible to do an affordable accessory dwelling on bigger lots? As a homeowner, I'm thinking as a homeowner I don't see why people would want to do that, but if somebody wanted to do it, reading this, it wouldn't be illegal.

Mr. Alueta: Correct.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I don't understand, I mean, suppose H were not in there. H is a proposed addition, the way it is, if you have 8,000 square feet you can build an accessory dwelling and it can be affordable.

Mr. Giroux: If you wanted to.

Mr. Mardfin: Yeah, so I don't think that H confuses that issue. It just allows that if you're going to be between 6,000 and 7,500 that it must be affordable. So I don't – I'm not a lawyer but I don't see will it be a problem.

Mr. Giroux: No, that's what I'm asking for. I'm asking can we have this debate in the record so it's clear.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I think if you look at H at the beginning, "an affordable accessory dwelling," versus G where it says, "an accessory dwelling." Now if you take H as it stands by itself, it's basically saying if you have 6,000 square feet or more, so it's 6,000 square feet up to 50 acres, you may have an affordable accessory dwelling. Does that mean you cannot have a non affordable accessory dwelling? Doesn't mandate you to have affordable accessory dwellings.

Mr. Giroux: Yeah, as I'm reading it now, I mean, and this is not a legal opinion, but I'm just saying that just reading it on the surface it appears that it's allowable but not mandatory. But it doesn't seem, when you can just build an accessory dwelling, I mean, is it redundant, is it you know –

Mr. Hedani: What it's saying I think is that if you have a 6,000 square foot lot, it must be affordable. You don't have the choice of having an accessory dwelling that's not restricted by the affordable –

Mr. Hiranaga: It does not say that. It says, "may be permitted." It does not say, "you must have." It does not say – so who's going to want to build an affordable dwelling if you're not mandated to do it?

Mr. Alueta: No, it does because when it goes back to – it says that you have to be – if you're building one pursuant to 19.35.110 and that's when the definition of the requirement for the affordability comes in. So it's saying if you build one, that's under the provision of being an affordable, you have to meet that criteria of 19.35.110.

Mr. Hedani: Clarify this for me, in Mr. Potato Head language, Joe, if I have 6,000 to 7,499 square foot lot can I build an accessory dwelling that's not affordable?

Mr. Alueta: No.

Mr. Hedani: No?

Mr. Alueta: No.

Mr. Hedani: So that's clear enough. Mr. Mardfin.

Mr. Mardfin: I move the adoption of department's recommendations that the commission endorse the department's recommendations for transmittal to the County Council, Maui County Council.

Mr. U'u: Second.

Mr. Hedani: Is there a second?

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner U'u, discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'd like to make a suggestion that we handle each recommendation individually because I'm not in agreement with all six and if you're going to require me to adopt all six, I'm going to be voting against it.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I would suggest that my motion stand, that you make amendments to remove specific recommendations you don't like.

Mr. Hiranaga: No, I'm not going to do that. I'm just going to vote against it.



Mr. Mardfin: Okay.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I have a concern. One of the reasons I'm going to vote against the motion is I have a concern about the maximum lot coverage being eliminated because we had that proposal 40% and now Council's now saying 25% for these R-1 lots, 6,000 to 7,499. So why are you saying get rid of – don't have a lot coverage maximum.

Mr. Hedani: Joe.

Mr. Hiranaga: I mean, they could build to the setbacks.

Mr. Alueta: No, we're saying is that we've already made – have an amendment for 19.08 that would require a 40% lot coverage to prevent people from going from setback to setback.

Mr. Hiranaga: What if that ordinance doesn't get passed?

Mr. Alueta: Then we would be setback to setback.

Mr. Hedani: Director.

Mr. Hunt: It's a little more complex than that. Also, the hotel district and the apartment districts already have lot coverage. So this would setup standards that conflict with those existing standards. If the 19.08 bill that's already, almost up at Council, it's ahead of this one certainly, if that isn't adopted or if that provision is removed and this bill comes up, we would then consider some kind of lot coverage. We're not against lot coverage. We just don't want conflicting lot coverages.

Mr. Hiranaga: Well, the recommendation doesn't say that. Just says to delete it.

Mr. Hunt: Giving the scenario that there's already a bill up there and the existing language in the hotel district and apartment district.

Mr. Alueta: We also don't believe that development standards such as that should be placed in an accessory dwelling location. The only provision – because then you're creating a conflict between, because the development standards are located in each of the zoning categories and this is called an accessory dwelling category which just regulates whether or not you can or cannot build a second accessory dwelling. If you are trying to – if the purpose I guess is to say, I guess it should be more clear is that if you do an accessory dwelling you have to have – these are now your thing, but it just creates this conflict between existing zoning standards, development standards in each of the zoning categories and then all of a sudden you're throwing a second one on here and there should only be one and it should be in each zoning category.

Mr. Hedani: Shouldn't we state that then?

Mr. Alueta: If that's the will of the commission to be more clear that you recommend removing it provided that because it's located within each of the zoning categories itself.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Since these are recommendations and we're not making statements or crafting ordinance language, I would prefer to say a maximum lot coverage ratio should be established. Because we're making recommendations.

Mr. Alueta: Okay.

Mr. Hiranaga: And if someone's looking at this document, our recommendation and not knowing all these other ordinances that are floating around, they're going to be saying why don't they put a maximum lot coverage in there?

Mr. Alueta: Okay.

Mr. Hiranaga: You know, I think we need to be clearer and that's why I'm voting against the motion because I wanted to go with these one by one.

Mr. Hedani: The purpose of the department recommendation to eliminate the lot coverage was because you didn't agree with the 25% versus the 40% is that it?

Mr. Alueta: No. Primarily we disagree with the percentage but we also disagree with the location from a structural of the hierarchy of the Title 19, the development standards are located in each of the zoning categories. This accessory dwelling is not a zoning category, okay, so that's why we felt the development standards shouldn't be in the accessory dwelling category, should be in the zoning category. So if they want to create a separate FAR lot coverage, then they should put it in 19.08, they should amend 19.08 and place it there. But because we already amendments, we didn't feel it was appropriate to be in this location.

Mr. Hedani: Shouldn't we say that?

Mr. Alueta: Well, we're trying to make it streamlined by just saying just delete it. But if you want to be clear that there should be something, but it should not be in this location, it should be in 19.08 then that's fine also.

Mr. Hedani: I think the problem that Commissioner Hiranaga has is when the recommendation is for the deletion of the maximum lot coverage. It's like saying we don't need a maximum lot coverage provision.

Mr. Alueta: Okay, then I understand his concerns and I think that –

Mr. Hedani: I don't know if I'm putting words in your mouth.

Mr. Hiranaga: Yeah, I'm just looking at the recommendation as it stands alone, not being aware of

all these other information that's floating around. Just looking at the recommendation.

Mr. Alueta: Would, Commissioner Hiranaga, feel more comfortable if we put down that the maximum lot coverage ratio should be relocated to 19.08 and not – because that's the main crux that we want is that we just feel that it should not be in 19.35.

Mr. Hiranaga: I'll defer to your expertise, but I just feel that there should be a maximum lot coverage ratio, what it is and where it is I don't really –

Mr. Alueta: Then if my boss is okay then No. 2 on the recommendation would read that a maximum lot coverage ratio should be relocated from 19.35 to 19.08.

Mr. Hedani: Director.

Mr. Hunt: It's a little complex. The bill also is proposing a maximum floor area ratio and we don't support that at all in any form because it's very laborious to calculate and it's really not necessary in a single family residential district. You can virtually accomplish the same thing with a lot coverage ratio. It's generally floor area ratios are more generally used on multi family or commercial uses. So the suggested revision should address the maximum floor area as well.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I had the same concerns with Commissioner Hiranaga on Item No. 2, and I would like to use the language that maximum lot coverage ratio and be consistent with apartment and hotel zoning requirements to ensure that we have adequate light and air ventilation and the quality of life amongst the neighbors.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, I will accept as a friendly amendment the notion of changing 2, to be basically as Joe had stated, that the maximum lot coverage ratio be addressed in whatever the number is 19.08, and that the maximum floor area ratio should be deleted. And I'll take that as a friendly amendment to clarify what No. 2 meant.

Mr. Hedani: Consent of the second. Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: On Condition 1, I would like emphasis placed on impacts to on-street parking due to the increase in density.

Mr. Hedani: That's due to concerns over safety and light of sight is what you're talking about.

Mr. Hiranaga: And you know, where I live there is restrictive covenants preventing overnight parking. One of the issues you don't know if someone is scoping out your house, they're parked there at night and by having the streets clear you don't have these loitering issues at night. During the day you have people darting in and out of cars.

Mr. Hedani: Additional discussion? Is that an amendment Kent? Did you want to amend the language?

Mr. Hiranaga: These are the comments why I'm going to vote against the main motion.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I wish, even if he's going to vote against it, Commissioner Hiranaga would suggest language, I agree with his concern. In fact, the Hana Advisory Committee had some concerns also in this regard and they recommended that there be two onsite parking lots be required per accessory dwelling is their concern. But if Commissioner Hiranaga has some wording for Condition 1, I'd be happy to probably incorporate it.

Mr. Hedani: Director.

Mr. Hunt: How about if we add after 7,499 square feet, especially parking.

Mr. Mardfin: I would take that as a friendly amendment.

Mr. Hiranaga: On street parking?

Mr. Hunt: Pardon me?

Mr. Hiranaga: On street parking?

Mr. Alueta: No, it's off. It would just look at all.

Mr. Hiranaga: Parking –

Mr. Hunt: We would look at all.

Mr. Hiranaga: Parking concerns.

Mr. Hunt: Essentially the parking ordinance requires on site parking.

Mr. Alueta: Right now it's one.

Mr. Hiranaga: So off site parking ..(inaudible)...

Mr. Hedani: Are you saying all parking both on site and off site. Commissioner Mardfin.

Mr. Mardfin: Since the recommendation is that they should analyze the issue of adequate infrastructure, just adding especially parking I think covers both on site parking which is what the Hana Advisory Committee recommended and off site parking. So I think that's – but the focus is on infrastructure in general and parking in particular. So I think that helps to resolve some of the issues.

Mr. Hedani: Mr. Shibuya.

Mr. Shibuya: I just have a question for staff. Mr. Miyamoto may be able to clarify or confirm for me if these residences that currently have 5/8 inch water meters if they put in an accessory dwelling, will they be required to put in a larger than 5/8 inch meter?

Mr. Hedani: Mike. You know if this bill passes and there's all kinds of problems this is going to be your fault Mike.

Mr. Miyamoto: Thank you Mr. Chair. As the question refers to Water Department, you know, I think in the past we've seen Water Department has had challenges with residential because generally they have not been evaluating residential. They've just been looking at a fixed amount say a residential of say having a 600 gallon per day demand and basically that's what they would be basing it upon. But when you look at the issue of as Commissioner Hiranaga has brought up, you know, whether you allow the accessory dwelling unit on the property versus that person expanding their existing structure, what is going to be the differential impact there? Basically, it's going to be pretty much the same. If you expand an existing facility to its maximum capability you're having the increase in facility demands, you're going to have increase in electricity, the sewer, water rates are going to go up and everything. So it's pretty much going to be a wash when you look at it from an overall aspect of this – the impacts are going to be same, very similar.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I also want to look at the water flow in terms of the Fire Department. I don't want the Fire Department come later on and say, well these people are allowed to have ohanas but all of a sudden now that the standpipes of two and a half inches is inadequate to support this area, you gotta put in a four-inch or fire hydrant or six-inch fire hydrant. What are some of these restrictions or conditions?

Mr. Hedani: Anybody?

Mr. Alueta: If I may? I believe that type of restriction or concern would come up during any building permit regardless of whether you're expanding or building a brand-new structure. I think the Fire Department would come up with that same issues as we are finding out with even nonbuilding permit issues they're coming up with those comments during bed and breakfast review permits.

Mr. Hedani: Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'll be voting against the motion because I'm against Item No. 3. I think that if you – the Council considering making all future accessory dwellings meet the affordable accessory dwellings standards you're actually going to reduce the amount of accessory dwellings being built which I think exacerbates the housing situation. I think that because this lot is 6,000 to 7,499 they're giving you a privilege here or an opportunity to build an accessory dwelling but it needs to be affordable. But to start applying that to all lots 7,500 and greater which is 10,000 square, half acre, one-acre, two-acres, they all have to be affordable now, I think you kind of actually start to reduce the amount of rental dwellings or accessory dwellings being built and that will have a

negative impact on the housing rental market.

Mr. Hedani: Is that a motion to delete?

Mr. Hiranaga: No, I'm making comments as why I'm voting against the motion.

Mr. Hedani: Okay, I have the same concern regarding – my concern about the affordability component is that whenever government gets involved in the free market it generally has a tendency to muck things up big time. I can swallow to 6,000 to 7,500 square feet being attached to that because only the poor people that own 6,000 square foot lots should be able to rent to poor people that can afford the affordable units and we want to keep poor people poor and rich people rich is that the bill seems to stay, but on the flip side I think that you know, like Commissioner Hiranaga indicated, you know, attaching it to all accessory dwellings makes – it makes the prospect of big brother getting involved in the private marketplace huge from the standpoint of not accomplishing what you want to accomplishing and accomplishing the opposition of what you want to do. So I would encourage some reconsideration to that paragraph as well. Commissioner Mardfin.

Mr. Mardfin: In response to these comments about No. 3, it only says considering requiring but take your points and would reword three to read, as a friendly amendment, "the County Council should consider," instead of requiring, "adding incentives to encourage," and take out requiring all, "the County Council should consider adding incentives to encourage future accessory dwellings to meet the proposed affordable accessory dwelling standards." So we're softening it.

Mr. Hedani: That's kind of what paragraph 5 says.

Mr. Mardfin: No, 5 is talking about using lower income standards, and 3 is the one talking about just affordable accessory and so I could have lived with requiring all but think if we change – it would soften it to say, "the County Council should consider adding incentives to encourage future accessory dwellings meet the proposed affordable accessory," that's not forcing it and it's not – and it's giving incentives to do that. So I think it softens, and since it's my motion I'll treat that as a friendly amendment to try to resolve some issues.

Mr. Hedani: Joe, you're okay with that as one of the department's recommendations?

Mr. Alueta: I'm going to have to go back to the minutes and see what he said. I lost exactly what the motion was going to be.

Mr. Mardfin: Do you have 3 in front of you?

Mr. Alueta: Yeah I do.

Mr. Mardfin: It would read, "the County Council should consider," strike requiring all, insert where requiring all was, the words, "adding incentives to encourage."

Mr. Alueta: Okay.

Mr. Mardfin: Okay.

Mr. Alueta: Okay, I mean these are your recommendations.

Mr. Hedani: And the rest would remain the same.

Mr. Mardfin: That's part of my motion. The rest would be the same.

Mr. Hedani: Director.

Mr. Hunt: The department's okay with that language. We can live with that. I would like to respond to some of the comments about requiring affordability on these accessory units. In a number of communities that have affordable housing problems on a scale similar to Maui's this is a way – this is one way that the community deals with it and there are arguments against it on the market side and having the ownership of the home to – the owners of the homes to have flexibility but there's also arguments on the other side that if the intent of the ordinance by allowing an accessory dwelling is intended to provide for ohana and affordable housing then one of the ways you accomplish that is through a deed restriction. But again, we can live your language.

Mr. Hedani: Okay, so the proposed amendment is to change No. 3 to, "the County Council should consider adding incentives to encourage future accessory dwellings meet the proposed affordable accessory dwelling standards." Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I have a concern with Item 4, because it's too vague. My concern is some type of deed restriction that requires this affordable unit remain affordable for eternity because life circumstances change and –

Mr. Hedani: Can we put 3 to bed first before we move on?

Mr. Hiranaga: Oh, okay, sure.

Mr. Mardfin: I don't think we need to vote on it. I took that as a friendly amendment, just changing my wording.

Mr. Hedani: Is there any objection to the amendment of Item 3? Okay, by consensus we'll accept that as an amendment to Item 3. Got that Joe?

Mr. Alueta: Yep. Thank you.

Mr. Hedani: Discussion on Item 4?

Mr. Hiranaga: I was just saying I think it's a little vague. Whenever you put a deed restriction for eternity, you know, life circumstances change over 50, 80, a hundred years and so I would like this to be more specific as to what type of deed restriction is recommending to the Council versus just language, whatever language or deed restrictions would be fine with us. We're just giving them carte blanche to come up with language.



Mr. Hedani: Joe.

Mr. Alueta: Well, the intent, purpose and intent of the recommendation to the board is that there be a – that some type of deed restriction be recorded affecting the subject property that would require that once – if they build an accessory dwelling, accessory dwelling that's between – on a lot between 6,000 and 7,499 that it be an, you know an affordable rental. So I think it's – it's not only – it seems obvious that you're stating the obvious if someone built a cottage on a smaller lot that it would be - that it's going to be restricted to that, but I think a lot of times we're just trying to make it a little more iron clad so someone buying the property knows ahead of time knows. Like buying a house and there's a cottage on it that cottage is restricted. So at least information is passed on in a legal format.

Mr. Hedani: Discussion? Director.

Mr. Hunt: I guess there's two issues regarding recommendation No. 4, and I'm not sure if Commissioner Hiranaga is addressing our concern or if he's coming up with a separate concern. Our concern was that if you read 19.35.110(d), it just simply says, "deed restrictions." It doesn't say a deed restriction is required or shall be recorded or whatever. So we were just sending, trying to send just a general message that this bill should elaborate on that language. The language itself isn't implementable, it simply says deed restrictions and we need a verb or something to actually take some action on that.

Now Mr. Hiranaga I believe has a different concern and it may be under – you can lump it in with our recommendation No. 4, but it sounds like his concern for the life of the unit. The department's response to that is, it's not in perpetuity which was a phrase kicked around but it is for the life of that unit. So if that unit is ever torn down then that deed restriction would be no longer applicable to that unit. That's how this language is written right now as proposed by Council.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My concern when you institute rent control is you're using a certain measure to determine what the rent maximum can be, but you're not also looking at the carrying cost, real property tax, maintenance, water and so if someone owns a unit that has this restriction and the rent's not paying for the services they're basically going to allow the unit to deteriorate. You know, if real property taxes continue to rise as they have been, that you've got this rent ceiling and also now you're negative on your income versus your cash flow, most people are not going to spend money on the unit, you're going to have a deteriorating property. That's my concern is I think you can put a period say 20 years or whatever, to encourage people build those units because all the affordable housing, and you can correct me if I'm wrong, but the affordable housing projects have this buy back or you have to hold it for 10 years or 20 years or whatever. I have concerns about placing for the life of the unit being 50 or 60 or 80 years. I think there should be a – in order to create an incentive to put some type of a cut off period. That's my concern about making a very vague statement about deed restriction. What deed restrictions are we putting on there.

Mr. Hedani: Additional discussion? Personally Joe, I think you know, from the perspective of this particular bill, the good thing is that it's allowing accessory dwelling units to be built on 6,000 to

7,500 square foot lots to increase the housing supply and that one simple step is addressing the question of affordable housing. The more supply you have, you know, that in the marketplace itself will drive prices down I think for rentals for affordable housing units. But we're attaching so many things to it that it's getting so complicated that the good thing is being offset by all of these negative things that are making life difficult for everybody.

Mr. Alueta: Yeah, I think also, I mean, I think you also have to understand is that when you had the zoning provisions for the residential district you did not have the entitlement to build an accessory dwelling. It was always, you had one house, that was your legal entitlement. The state as well as the county felt that we can live with or at least the purpose and intent of when you look back at the legislative history was that, we can live with a little bit of higher density on certain lots in the residential district because it will, as you pointed that would increase the supply of dwelling units. It would accommodate family members and it hopefully will create a range of affordable rentals for the community. And as time has gone on, you know, that whole concept of that's an additional entitlement is now considered a right. Now people don't look at accessory dwellings as you were granted something by the government as an entitlement, you're now granted it as a right. I think that's one of the issues that people view it as. Now the county, and again as time goes on, those so called ohana units or affordable accessory dwellings have no longer become affordable to many people. Some of them have been converted to accommodate affordable tourist rentals more than they are for family members.

So the County Council again, to the credit of Mike Molina is trying to figure out how do you increase supply, and how do you require it to be affordable and he's come up with this language and he's taking his best shot at it. And so I think that again, the purpose and intent is we're going to grant a new entitlement to those lots that do not have that right to build an accessory dwelling. For that additional right, the government is saying, we'll put up with higher densities on smaller lots but in exchange you gotta make that rental, that ohana or accessory dwelling as an affordable unit. And I think that's – so again, now you're sounding like – remember, there is no right to build an accessory dwelling on these smaller lots. We're trying to encourage because we feel from a, I guess from the County Council's side there's a social need and there's always a social need I feel for affordable rentals. And if the only methodology again that to bring about affordability is through increased supply. Okay, and that free market tier and I fully understand that, but we have other external forces that skewed that market and they're trying to find a way to address some of the community concerns for local people and the long term rental market. I think that's – the real propose and intent of this bill. So if the intent – that you don't feel there should be any regulations then, yeah, drop it down and say let the free market and we'll see if we get some type of affordability, but I think the Council is saying, we kind of seen what happened in the past with our free market tier and affordability of ohanas and we don't want to make the same mistake and therefore, we want to put some type of clear restriction on who's going to rent these.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I just want to be clear that these affordable rental units or ohanas are not restricted only to rural districts but it is with residential as well as apartment in other areas. Is it not?

Mr. Alueta: Yes.

Mr. Shibuya: Because your No. 6, says to read rural district. What does that mean? It seems like it's a restriction only to rural districts.

Mr. Alueta: Jeff.

Mr. Hedani: Director.

Mr. Hunt: The way the bills are crafted is they are only proposing the affordable accessory dwelling unit in the residential district. That's your first bill. There's two bills here. So the first bill in 19.08 is adding H, that's what you discussed earlier between G and H. So that adds that affordable accessory dwelling unit to the residential district.

The next bill doesn't add it in any zone. It just adds the criteria for that. You could, as one of your proposals suggest that it be allowed in rural district, interim district, hotel, apartment. Those are the five districts where an accessory dwelling, the existing language, not an affordable accessory, but just the accessory dwelling is allowed in those five districts. But as proposed, it would only, that affordable accessory would only be in the residential district.

Mr. Shibuya: I'm more supportive of being all inclusive rather than exclusive.

Mr. Hedani: So what is the department's recommendation Jeff?

Mr. Hunt: We didn't make a recommendation regarding expanding it to the other districts, but I think Shibuya brings up a valid point, what about the rural district, why not?

Mr. Hedani: So the department's recommendation is to make it inclusive of rural and residential districts?

Mr. Hunt: I don't think we've thought about it to come out and say that's our recommendation. I think earlier we used the phrase we can live with that or we're comfortable with that recommendation and between now and going up to Council we would do some more analysis.

Sorry, Item No. 5 on our recommendation is kind of a wordsmithing, housekeeping item. Under 19.35, accessory dwellings are allowed in the five districts. Well, the fifth districts that's listed in our existing code says the state rural district and all we're suggesting is we clean that up since we're going into 19.35 anyways, lets clean that up and just simply say rural district, so it's all the county districts.

Mr. Hedani: That's Item 6?

Mr. Hunt: Yes.

Mr. Hedani: Okay. Did we beat Item 4 to death. Did we make any agreements to changes or is that acceptable as it reads?

Mr. Mardfin: I think it got explained well enough. Basically deed restriction in there, this is a

clarification of what you do with the deed restriction that it just be recorded and I think that makes perfect sense. I don't want to – I prefer not ...(inaudible -changing of tape)...

Mr. Hedani: Joe.

Mr. Alueta: I believe that the point is to, on amendment on 19.35 as pointed out by the director, B, it says, deed restrictions on page 2 of the ordinance. I'm sorry, so that the county, – the language should added that requires deed restriction be recorded be recorded affecting the subject property.

Mr. Hedani: So can we clean up No. 4 so that it reflects what you intend? Director.

Mr. Alueta: On B, it's deed restriction be recorded against the subject property.

Mr. Hunt: What intended by Recommendation No. 4 was to bring to your attention and the Council that we need some more language on proposed 19.35.110(B) and like I said earlier we need some kind of verb or some kind of action so it just doesn't simply read deed restrictions. The intent of our language on the staff report, Item No. 4 under our recommendation isn't to proscribe specific language but to work with the Corporation Counsel and Mike Molina and come up with some added language. That's all we're saying is we need to add some language to say what these restrictions are intended or what action is intended.

Mr. Hedani: So can we clean up Item 4 so it reflects that?

Mr. Alueta: Well, I think we're not proposing to try to rewrite that whole section. I think all we're doing is pointing out that there seems to be ambiguity or a flaw in the way it's currently crafted because there needs to be something added there and we're just pointing it out to the County Council as well as Corp. Counsel that when it does get up there they need to readdress it. We're not proposing any language at this point. We didn't have time to do that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm having a difficult of time with 4 when we don't have a recommendation on what the language or not exact language but what our intent is. It just says, add some language that requires a deed restriction be recorded with the property, but what are those deed restrictions? What's the intent?

Mr. Alueta: If you look at it on page 2 of the reso, that section says, it says deed restriction, and it says, "1. Accessory dwelling must remain affordable for the life of the unit. 2. The owner must notify the –"

Mr. Hedani: Joe, Joe, where are you?

Mr. Alueta: Section 19.35.110, affordable accessory dwelling, Section B.

Mr. Miyamoto: Exhibit B.

Mr. Hedani: What Exhibit?

Mr. Alueta: The bill, Exhibit A, I'm sorry, Exhibit B of the bill. Under Exhibit 1 you have the resolution.

Mr. Hedani: Okay, we're on page 2 of 2, page 2 of the resolution?

Mr. Alueta: Correct.

Mr. Hedani: And where are we?

Mr. Alueta: On 19.35.110 it says, "affordable accessory dwellings." And then it's got A, and it defines the permitted uses. It says, "B. Deed restriction." And then it goes on to say, "1. Accessory dwelling must remain affordable for the life of the unit. 2. The owner must notify the Director of Housing and Human Concerns upon decision to sell the property. And 3. Any new owners must comply with the deed restriction."

Mr. Hedani: But what you're saying is it doesn't have a requirement that it have recorded deed restriction. So it's an unenforceable provision? Is that what you're saying.

Mr. Alueta: Yeah, we're not sure what - It sounds like they want certain deed restrictions but we want it to be. They should discuss it and should this be recorded against the land, how long should the deed restriction be? Sounds like forever.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I think maybe I have language for 4, that will satisfy your concern. Try, "language should be added that clarifies what the deed restrictions are and how they are recorded." Because we were looking for clarification at this stage, we weren't trying for exact wording. You want me to repeat that Joe?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My understanding and I'm not an attorney but when you say a deed restriction, the restriction is in your deed. Now you're not required to record a deed but if you record a deed it protects you because it's public notice and it turns up in title reports, but you can convey land with a deed and not record it. It's just that no one else will know except between you and that guy. So I think you don't really have to say a deed restriction be recorded because most people record their deeds so it's recognized in the public record. So it's kind of redundant to say deed restrictions be recorded. If it's in the deed we have to assume the deed's going to be recorded.

Mr. Hedani: So you're saying the recommendation is not necessary because it's a matter of common practice?

Mr. Hiranaga: Yeah. That any restrictions in the deed are going to be recorded when the deed's recorded because it's in the deed. It's not like a CC&R which is a separate document that may or

may not be recorded.

Mr. Hedani: I think the department's concern here is - well, it talks about deed restrictions but there's no action to initiate it. Is that your concern, Joe? Director.

Mr. Hunt: We could be happy with another verb, but we would really love a verb in there.

Mr. Hedani: Give us an example of a verb.

Mr. Hunt: Deed restriction shall be established. Deed restriction shall be -

Mr. Hiranaga: No, deed restrictions should be incorporated into the deed language.

Mr. Hunt: Incorporated.

Mr. Mardfin: I will accept that.

Mr. Alueta: Accept it, yeah.

Mr. Shibuya: It's like recorded.

Mr. Mardfin: I'll accept that if I can have a question answered.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Would this run with the property so any future owners would be required to adhere to the same restrictions?

Mr. Hunt: As proposed by the Council bill.

Mr. Mardfin: Yes. Then I'll accept that clarifying language from my fellow commissioner.

Mr. Shibuya: To the unit.

Mr. Hedani: You got that Joe?

Mr. Shibuya: To run with the unit.

Mr. Hedani: You got the change to Item 4?

Mr. Alueta: Language should be added that requires that deed restrictions should be incorporated and be recorded affecting the subject property.

Mr. Hedani: Kent, is that what we're talking about?

Mr. Hiranaga: It's basically, deed restrictions should be incorporated into the deed. I mean that's

-

Mr. Hedani: And delete the language relative to recordation.

Mr. Hiranaga: You can put for eternity or for the life of the land.

Mr. Shibuya: Life of the unit, right?

Mr. Hiranaga: Well, you don't deed units. You deed land. You don't deed -

Mr. Shibuya: But it's a use of the land because it's a accessory -

Mr. Hiranaga: It's a permitted use on the land. So it runs really with the land and it should be runs with land, not life of the land.

Mr. Hedani: Joe, give 4, revised.

Mr. Alueta: Language should be added that the deed restrictions should be incorporated into the deed. That's what you just said.

Mr. Hiranaga: Which shall run with the land.

Mr. Alueta: Which shall run with the land.

Mr. Hiranaga: You can polish that up later.

Mr. Hedani: You might want to reference 19.35.110(B) for that paragraph.

Mr. Hiranaga: Yeah.

Mr. Alueta: Okay.

Mr. Hedani: Just so that they know what you're talking about. Commissioner U'u.

Mr. U'u: Joe, I know I going off the track, but say you buy that affordable accessory dwelling for affordable. Your family down sizes. You now move into the accessory dwelling and rent out the main dwelling. What do you do? You rent it out?

Mr. Hedani: That's a plausible scenario actually.

Mr. Alueta: It is. It is.

Mr. Hedani: Director.

Mr. Hunt: As the bill's proposed, I wouldn't interpret any restriction against that.



Mr. U'u: Okay, that's my interpretation also.

Mr. Hedani: So you can't do it?

Mr. Alueta: You can do it.

Mr. U'u: You can do it.

Mr. Hedani: You just gotta pay yourself the affordable rate. Additional discussion? Commissioner Shibuya.

Mr. Shibuya: Yeah, the retiree would definitely qualify for that affordability, right?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Moreover, you're your own ohana. So you're using it for - remember it's affordability - it's ohana or affordability. So it can be either way. And if you're living in it, it's part of your own ohana and you can rent out your main building.

Mr. Hedani: So you move into the ohana and you can rent out your main building for a \$5,000 a month.

Mr. Mardfin: Absolutely. Nothing wrong with that.

Mr. U'u: Free market.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm sorry, can you explain No. 6, I'm trying to locate 19.35.101.C-5.

Mr. Hunt: It's not in the bill, but if you pull up the ordinance. Again, this is just a housekeeping cleanup measure.

Mr. Hiranaga: I don't have a copy of ordinance.

Mr. Hunt: So under the ordinance and I can give you a copy, but for the sake of the audience.

Mr. Alueta: Exhibit 9 in your staff report - I did attach a copy of the existing accessory bill.

Mr. Hunt: But essentially it says the provisions of this Chapter 19.35 shall apply to any lots in the following county zoning and state land use, residential district, apartment district, hotel district, interim zoning district and then the fifth one is state land use rural district. So technically it's not allowed. They're not allowed on county rural districts and we want to just clear that up.

Mr. Hedani: So Item 5 would be revised? Would be revised from state land use rural district to rural district.

Mr. Hunt: Correct.

Mr. Alueta: Correct. Because we may have lands that are either state -

Mr. Hedani: Then I think the department recommendation should be 19.35.101C-5 should be revised from state land use rural to rural district.

Mr. Alueta: Rural district, yes.

Mr. Hedani: As the department's recommendation.

Mr. Alueta: Yes.

Mr. Hedani: So clear.

Mr. Alueta: Yes.

Mr. Hedani: Because that's not what it says right now.

Mr. Alueta: Oh, I'm sorry.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Is it possible for us to defer this matter to the next meeting and have him come up with revised language since it says we must transmit by November 7th?

Mr. Hunt: And we have time to do that.

Mr. Hiranaga: I would prefer doing that before I put a Maui Planning Commission stamp on it.

Mr. Hedani: Is that a motion to defer?

Mr. Alueta: I believe you still have a motion.

Mr. Hedani: Yeah. Commissioner Mardfin.

Mr. Mardfin: Well, the motion's on the floor. We spent a lot of time with it. I think we've - you know, we're not creating specific language for them to insert. Almost all of these are process things. The first one says, "Council should analyze the issue." Second one says, well it is a deletion but that was, I don't think that was a huge problem. The third one is consider adding incentives. So that's a process sort of a thing. Four was language requires a deed restriction be incorporated and that seemed clear. And six was delete three words in the bill. We spent a lot of time on this. I think it's perfectly clear, perfectly easy to support. I don't really know why we have to defer it.

Mr. Hiranaga: Okay, so hopefully you'll have the five votes.

Mr. Mardfin: Well, lets try without it and then go for a deferral.

Mr. Hedani: Any further discussion?

Mr. Hiranaga: I would like to know exactly what we're sending to the Council and right now I don't know exactly what we're sending to the Council. It is a recommendation from the planning commission to the County Council.

Mr. Hedani: Yeah, for which do you have a concern over any particular paragraph.

Mr. Hiranaga: No, everything. It's like you got our drift. You know, this, put this in, I mean, we're going to meet the November 7th deadline.

Mr. Hedani: Director.

Mr. Hunt: I agree with Commissioner Mardfin. The recommendations aren't intended to craft specific language. It's giving information to Council, suggestions to Council. It's giving except for the one specific deletion, it's more generalities and we don't really need to come back.

Mr. Hedani: Additional discussion? I think we've kind of beat this one into the ground already. Ready for the question? Question on the floor is to approve the department's recommendation as amended for Resolution 09-60. All those in favor signify by raising your hand. Three. Opposed same sign. Three.

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

**The Motion to Adopt the Department's Recommendation To Recommend Approval with Amendments to the County Council, Failed.  
(Assenting - W. Mardfin, W. Shibuya, L. Sablas)  
(Dissenting - K. Hiranaga, B. U'u, D. Domingo)  
(Excused - J. Starr)**

Mr. Hedani: Motion fails. Motion to defer. Commissioner Hiranaga.

Mr. Hiranaga: Motion to defer to the next meeting, if it's proper or appropriate we could make it the first agenda item.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. All those in favor signify by saying aye. Opposed nay. All those in favor, please raise your hand. One, two, three, four, five. Opposed same sign. One.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, then**

**VOTED: To Defer the Matter to the October 27, 2009 Meeting.**  
**(Assenting - K. Hiranaga, W. Shibuya, B. U'u, D. Domingo, L. Sablas,**  
**W. Hedani)**  
**(Dissenting - W. Mardfin)**  
**(Excused - J. Starr)**

Mr. Hedani: Motion is carried. Deferred to the next meeting.

Mr. Alueta: Okay, thank you.

Mr. Hedani: We had too much fun with that. We're going to beat ourselves up again. Director.

Mr. Hunt: Can we take a break?

Mr. Hedani: Why don't we take a 10-minute recess.

A recess was called at 11:40 a.m., and the meeting was reconvened at 11:50 a.m.

Mr. Hedani: Okay, planning commission meeting of October 13th is back in session. We actually deferred Items 2, 1 and 22, so we're on Item 3, Director.

Mr. Hunt: Item 3 involves Mr. David Kong, Sr., Manager of Nona Lani Cottages LLC requesting a Community Plan Amendment from multi family to hotel and a change in zoning from R-2 Residential to H-1 Hotel for the Nona Lani Cottages existing 12-unit transient vacation rental business at 455 South Kihei Road, TMK 3-9-041: 001 in Kihei. The file numbers are CPA 2006/0001 and CIZ 2006/0001 and Jeffrey Dack is the planner assigned to this.

- 3. MR. DAVID KONG, SR., Manager of NONA LANI COTTAGES, LLC requesting a Community Plan Amendment from Multi-Family to Hotel and a Change in Zoning from R-2 Residential District to H-1 Hotel District for the Nona Lani Cottages existing twelve (12) unit transient vacation rental business at 455 South Kihei Road, TMK: 3-9-041: 001, Kihei, Island of Maui. (CPA 2006/0001) (CIZ 2006/0001) (J. Dack)**

Mr. Jeffrey Dack: Yes, good morning. The intent of the owners by these applications is to establish consistency between the county's Kihei-Makena Community Plan and county zoning land use designations and with the current vacation rental use on the site. The Kong Family will continue the transient vacation rental use as established over the last 36 years. The family does not intend to pursue any additional development on the property at this time. However, the proposed entitlement actions would establish consistency and would allow future flexibility for possible future improvements.

The property is located on the mauka side of South Kihei Road. Land use designations are state urban, community plan multi family, zoning is R-2 Residential and it is located in the special management area.

Surrounding uses include multi family residential to the north, vacant and single family to the east, multi family residential to the south and park land across South Kihei Road. To the community plan and zoning designations are also listed in your report. It's notable that there are adjoining the site on the south side a hotel, community plan and zoning, HM hotel uses which would be close to, either the same or close to that which is being requested at this point.

The site is relatively flat with uniform slopes in the range of approximately 10 feet above mean sea level. The parcel currently contains 10 structures with 12 transient vacation rental units and it has been operated by the family as such since 1972. The property has all normal urban services available to it. I'd now like to introduce Chris Hart and Raymond Cabebe from Chris Hart and Partners who will, along with other members of the project team including possibly family members give a brief history of the site and further describe their request and then return very briefly for an analysis after their presentation.

Mr. Chris Hart: Thank you very much Jeffrey. My name is Chris Hart, Chris Hart and Partners and with me today is Raymond Cabebe who is also going to share some of the power point duties and as the project planner. And also have David and Winona Kong and their daughter Sherilynn Kong present in the audience. Thank you.

This is an application for Nona Lani Cottages. It's an application for a community plan amendment and change in zoning as Jeffrey indicated.

As a preface to our presentation, what we're seeking is compliance with HRS Chapter 343 environmental review, which was triggered by a community plan amendment application. The Kong Family has owned the property since 1938. The first cottages were built in 1972 and operated as a transient vacation rental for 37 years. The use of the cottages as vacation rentals was determined to be existing and nonconforming. No development of the property is proposed at this time. It's important to note that actually there was no limitation on the rental of units within the residential district until the 1980's in Maui County.

The intent of the owners is to establish conformity and consistency between the county's Kihei-Makena Community Plan and county zoning land use designations and the existing nonconforming transient vacation rental use.

The location is North Kihei. Best way to describe is actually it's north of the Maui Lu site fronting South Kihei. This would be South Kihei Road, this would be ocean and this is 2.27 acres. The existing land use designation is residential and it's been that since 1952. And the transient vacation rental use again, was initiated in 1972, 20 years later.

The existing land use designation, the state land use classification is urban. Kihei-Makena Community Plan is multi family. The county zoning is R-2 Residential. The flood zone designation is A4 and the special designation of this property is located within the special management area.

This is the Kihei-Makena Community Plan. It shows the site. Again, 2.27 acres. Kihei Road, South Kihei Road. The adjacent hotel development. This would be the Maui Lu which is actually at the intersection of Kaonoulu and this would be the Kai Makani multi family project which is immediately

to the north. This would be the South Point multi family project which is mauka.

The zoning map, which is the county zoning. It's probably been in existence since 1969. Actually shows the site which is shown as residential, R-2 Residential. But to the south, actually following this row of lot lines along South Kihei Road is H-1 Hotel and actually H-1 Hotel continues all the way to the intersection of Kaonoulu. So the front portion of the Maui Lu Hotel site is also H-1. That's two-story hotel. And it's important to note that the areas that's immediately north which is the Kai Makani project is A-1 Apartment which is also two-story. So as far as the character of development is concerned, there's going to be no change in the character. We're proposing H-1 which would be consistent in terms of the two-story basic building heights along South Kihei Road.

Kihei-Makena Community Plan is multi family. We're proposing to change that to H Hotel. The Maui County zoning is R-2 Residential, we're proposing to change it to H-1 Hotel District.

This shows the site actually in 1975, which shows the Nona Lani Cottages. This is the residence in the back. But certainly you'll note that there's very little development area. The beginnings of the Maui can be seen, but mauka and to the north there's no development. So this was the Kong Family were essentially early pioneers in the visitor industry in Kihei, in South Maui.

This is 2007, which shows the development of course. This is the Maui Lu site which is, was going, undergoing at soon redevelopment, but you can see the development that's occurred, the row of lots along South Kihei Road. The Maui Beach, the Kihei Holiday is immediately to the south. Kai Makani is a new project which is immediately to the north and that's again, that's two-story and the South Point condominium project is mauka and that's also two-story.

One other thing I would like to just point out. There has been, there were a couple of letters received. I think the commissioners did receive them about the issue of drainage and it's from the individual who lives in this particular area. His name is Mr. Zebsta. One of the important aspects of this is first of all, South Point has a retaining wall and essentially all of their storm runoff in this area is retained on site and discharged. Actually there is a drain line out actually to an outfall ... (inaudible) ... the ocean. The Kai Makani actually maintains all of their runoff on site. And in fact at this particular corner, there's actually a retention basin. Mr. Zebsta bought the property in 2002, but in 1991, the Corp. of Engineers came in and established that there is actually a wetland in this particular area of the site. This is his home here. But there's no contribution of runoff water from Nona Lani site or from the South Point site or from the Kai Makani site. The wetland basically, essentially fills up in periods of really intense rainfall and the rainfall comes from essentially natural rainfall and from storm water actually coming from the mauka side of the property. So you know, any changes to the wetland whether proposals to fill the wetland by Mr. Zebsta or proposals to drain the wetland by Mr. Zebsta would have to be the subject of a United States Army Corp. of Engineer Permit and also it would also have to be reviewed by the U. S. Fish and Wildlife. So the concern is certainly, you know, I understand the concern, but you know, from the point of view of this project there's no proposal to do any development, everything is going to remain the same. At some point in time in the future once the zoning is changed, the family members may decide to increase the density but that will be the subject of a separate Special Management Area permit that will have to come to the commission and address all the potential impacts and storm runoff will be one of those impacts. The project will have to comply with the Flood Hazard District Ordinance at that time. But

at this point, there's no change and the storm runoff, actually this is the mauka side is a little bit higher than the makai side. Storm runoff actually flows toward the ocean or flows toward the makai side, but essentially it ponds on site and basically it's sandy soil and it just essentially percolates into the soil. There's no storm runoff actually that actually flows uphill into Mr. Zebsta's site.

With that, I'm going to turn it over to Raymond to finish the power point.

Mr. Raymond Cabebe: Good afternoon Commissioners. Raymond Cabebe with Chris Hart and Partners. This is a site plan with the - showing the eight cottages here and this is the main house where the Kongs live. There's actually four units on there, in there that's not being used right now for - until they get their designation to hotel. So there's 12 total units that would be using as transient vacation rentals.

These are some photos of the site. Looking down South Kihei Road towards Nona Lani. Looking South. This is the main driveway. If you look at this little key here, it shows you looking down the driveway towards the main house and this is looking back towards South Kihei Road. This main entrance into the main house into the residence which is also the check-in area for people who stay there at the cottages. This is a view of the front of the house and there's a gazebo that's in a little garden area in front of the house also right here.

The cottages in the front, there's four of them right along South Kihei Road. And then there's four of them there on the interior. This is looking down a secondary driveway on the north side of the property it goes down to access the cottages in the back and this is looking back towards South Kihei Road.

As was mentioned before, this went through the Chapter 343 process with a draft Environmental Assessment which was published by the Office of Environmental Quality Control in December 2007, and was reviewed by this body in 2008. The final EA was accepted by this body in 2009, February and it was published in April.

There were 10 county agencies, one state agency that were solicited for comments. I believe eight of the county agencies responded with either no comments or comments regarding future development. There were three divisions of the State DLNR that responded with similar type of comments.

In comparing Nona Lani Cottages to the H-1 zoning standards, you can see as far as lot area it meets the minimum lot area. It doesn't exceed the height. As far as lot coverage it's way below the density, the maximum density allowed by H-1 Hotel.

So in summary, the proposed entitlement actions are the community plan amendment to Hotel and a change in zoning to H-1 hotel just to say that there's no additional development planned at this time. The Kongs want to keep their hotel...(inaudible)... same kind of character that it is right now, just small scale. It has kind of unique and special character compared to the other visitor destinations in Kihei. And the existing transient vacation rental use has been determined to be legally nonconforming and with this change in zoning it would become conforming. That's all the Kongs want to do is bring their property into conformity with the zoning laws. You know, they're an



old time family that's been there for 70 plus years and the area around them has grown they just want to become good neighbors to everybody and just bring their property into conformity. And today, we're just asking for the commission's recommendation to the Council, hopefully a favorable recommendation. And thank you for listening.

Mr. Dack: Provide the department's analysis briefly. The project is in conformance with the goals, objectives and policies of the Hawaii State Plan. There will be no impacts to archaeological, historical or cultural resources. Since no development is proposed at this time, no traffic impacts will be associated with the project. Department of Water Supply commented in a letter that consumption for the current operation is well below system standards for hotel use. Regarding drainage which the consultants touched on a bit, the final environmental assessment states that development of the site to it's hypothetical full build out likely significantly increase storm water runoff of the property but as required by Maui County Code any increase in storm runoff with any future development would be contained on site and most likely in above ground or underground retention basin that would be incorporated in the landscape planting scheme so no drainage impacts are anticipated. As of today, the Planning Department has received one email and one letter from the public in opposition to the proposed action and one letter in support of the action; all of those you should have received on your table this morning or in your packet. The email is from Mr. Zebsta as was indicated who indicated he owns property adjoining the land mauka of the cottages. The commissioners also have a written response from the consultants, Chris Hart and Partners to Mr. Zebsta's comments. Are there any questions from the commissioners?

Mr. Hedani: Commissioners? Commissioner Mardfin.

Mr. Mardfin: We're into the full body of this thing is this correct?

Mr. Hedani: I'm sorry?

Mr. Mardfin: We're into the full body of this. I can ask questions about anything in the report?

Mr. Hedani: Right.

Mr. Mardfin: Okay. On page 12, in the second paragraph from the top, there's a comment about the full build out and I didn't understand what the words meant. It says this would yield approximately 80-500 square foot units. Is that 80 units at 500 square feet each?

Mr. Dack: Correct.

Mr. Mardfin: Oh, okay, then I do understand it.

Mr. Hedani: Any additional questions for staff? Okay, lets open it up. Is the presentation complete Jeff?

Mr. Dack: Yes.

Mr. Hedani: Okay, we're going to open it up for public hearing at this point.

**a) Public Hearing.**

The following testimony was received at the beginning of the meeting:

Mr. Don Couch: Good morning Commissioners, my name is Don Couch and I'm a resident at the Kai Makani Condominiums that are right next door to the Nona Lani complex, cottages. I'm testifying in support of the change in zoning so long as it stays to H-1 where there's a two-story limit that's consistent with what you know, the Maui Isana's down there and several other time share - not time shares but rentals along that road. So we don't have an issue with that so long as it doesn't become a six-story hotel and I believe H-1 doesn't allow for that. So as a resident out there, I don't speak for the homeowner's association. I know they were considering coming in support as well, but we are in support of that project. Thank you.

Mr. Hedani: Thank you very much.

This concludes the testimony received at the beginning of the meeting.

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

**b) Action**

Mr. Dack: The change in zoning meets the necessary zoning criteria. It is consistent with the policies of the existing community plan. So the department recommends that the commission in turn recommend approval of the community plan amendment and that the commission recommend approval of the change in zoning subject to three conditions in the staff report regarding water conservation and assessing and mitigating impacts from possible future development in the future.

In consideration of the foregoing the department recommends the commission adopt the department's report and recommendation prepared for today's meetings as its report to the County Council and authorize the Planning Department transmit the report and recommendation to the County Council. Any questions?

Mr. Hedani: Commissioners what's your pleasure?

Mr. Mardfin: I move approval of the recommendations of the department.

Ms. Domingo: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Domingo, discussion? Commissioner Mardfin.

Mr. Mardfin: I'd just like to say one thing. On page 11, about half way down, I'm going to read the paragraph, it says, "Nona Lani LLC is owned by David Y.S. Kong Trust and Winona K. Kong Trust. According to the applicant, the trust provide for restrictions that bar the transfer of ownership

outside the Kong Family until 20 years after the passing of last of the seven children. This ensures the property would remain in the family for several decades preventing an outsider from purchasing the property and developing a denser project." I'd like to congratulate the Kongs. I think that's a wonderful thing to do. It relieves any anxiety I might have had about what the build out on this is likely to be. You deserve applause for what you've done. Thank you very much.

Mr. Hedani: Any additional discussion? Ready for the question? All those in favor of the motion, signify by raising your hand. Opposed same sign.

**It was moved by Mr. Mardfin, seconded by Ms. Domingo, then**

**VOTED: To Recommend Approval of the Community Plan Amendment, Land Use District Boundary Reclassification and Change in Zoning to the County Council.**  
**(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, W. Shibuya, L. Sablas, W. Hedani)**  
**(Excused - J. Starr, B. U'u)**

Mr. Hedani: Motion is carried. Thank you. The approval was unanimous.

Mr. Hart: Thank you very much Mr. Chair and Members of the Commission.

Mr. Hedani: Okay, we're going to go ahead and take a break for lunch at this time. It's 12:15 p.m., we're going to have to cut our lunch to 45 minutes this time because we have an agenda item that has to come before the commission at 1:00 p.m.

Mr. Mardfin: No, it doesn't. It doesn't say that.

Mr. Hunt: No sooner than 1:00 p.m.

Mr. Hedani: We'll reconvene at 1:00 p.m.

A recess was called at 12:15 p.m., and the meeting was reconvened at 1:03 p.m.

Mr. Hedani: The meeting of October 13th is back in session. Director next item on our agenda.

Mr. Hunt: The next item involves Mr. Bob Flint and Alice "Sunny" Jordan requesting a State Land Use Commission Special Use Permit in order to operate the Wild Ginger Bed and Breakfast. The use of a cottage in the agricultural district for a bed and breakfast at 355 Kaluanui Road, TMK 2-7-002: 121 in Makawao. The file number is SUP2 2009/0009 and Livit Callentine is the planner assigned to this project.

- 4. MR. BOB FLINT and ALICE "SUNNY" JORDAN requesting a State Land Use Commission Special Use Permit in order to operate the Wild Ginger Falls Bed and Breakfast, the use of a cottage in the State Agricultural District for bed and breakfast at 355 Kaluanui Road, TMK: 2-7-002: 121, Makawao, Island of**

**Maui. (SUP2 2009/0009) (L. Callentine)**

Ms. Livit Callentine: Good afternoon Commissioners and Mr. Chair. If I could have the lights off please? Okay, thank you. As the Director said this project is -

Mr. Hedani: Livit can you use the microphone please?

Ms. Callentine: Yes. This is for a special use permit in the agricultural district in conjunction with a bed and breakfast use on the property. The land use designations are agriculture all the way across and it's not in the special management area.

The surrounding uses are agricultural and some of them - actually they all have farm dwellings on them that I know. You have Kokomo Road to the north, Kaluanui Road to the east and to the west, you have Kamole weir reservoir and this property is located approximately here on the map. And here's the satellite view of the property with the oval just showing the approximate dimensions of the property.

The topographic map shows you that the property is towards the base of Maliko Gulch and as you'll see in some photographs that come next that the property is very much surrounded by very steep basalt cliffs.

Your public hearing today is on the Land Use Commission Special Use Permit for bed and breakfast use on agricultural land and the legal authority is Chapter 205, Hawaii Revised Statutes, Title 15, Chapter 15 of the Hawaii Administrative Rules and Land Use Commission Rules. For this type of use on ag we go through the unusual and reasonable use test which I will take you through.

The B&B application will be processed administratively according to Ordinance 3611 because there are no other approved B&Bs within 500 feet, because fewer than, no one protested the application and because there has not been a variance received, applied for or received on this application so it will be administratively issued should you approve the special use permit.

The first use test is that the use will not be contrary to the objectives sought to be accomplished by Chapter 205 and 205A and the rules of the commission. And the response to this is the bed and breakfast use would not preclude or to reduce the agricultural use on the property. The ag use will continue to the extent possible as you'll see by the configuration of the lot that they're doing quite a lot with it. 45% of the land is cultivated with coffee trees, palms, tropical plants and landscaping, banana trees and citrus fruit trees. 55% of the land is not in cultivation as 80 to 90 degree - 20% of the land is composed of 80 to 90 degree change in elevation and the property atop the cliffs part of that is in their lot and that's 7%. There's property along and in the streambed, crushed rock soil from the old quarry, and the driveway, residence and cottage which occupy about 13% of the property.

The second and unusual and reasonable use test is the desired use would not adversely affect surrounding property. The property sits in Maliko Gulch surrounded by basalt cliffs and 80 and 90-degree sloping hillsides. None of the surrounding properties are closer than 1,500 feet and the project application received three letters in support of the project including two from the closest

neighbors.

Use number three listed in the state land laws is that the use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, police and fire protection. The commenting agencies as you've I'm sure seen in your report did not indicate that there were any, would be any increased burden on public services from a B&B use and further no burden exists, no more burden exists with a B&B use than would exist from long term rental use.

Use number four, unusual and reasonable tests number four, unusual conditions, trends and needs have arisen since the district boundaries and rules were established. The land use district boundaries set in 1960's before the visitor industry became central to Maui's economy. There is now an increased demand for alternatives to hotels. And Ordinance 3611 permits bed and breakfast use in county ag zoning district as long as a special use is obtained first .

And fifth, the land upon which the proposed use is sought is unsuited for the uses permitted within the district. This parcel is just over two acres in size and it's not conducive to large scale ag. It is suited to limited ag use and the B&B use would not end ag us.

The property has a colorful history of which I am not fully acquainted but I do know that the property was used at one time probably in the late 1800's as a quarry and the actually mined rock out of this area and off this parcel to build a flume as part of the Hamakua irrigation ditch and this story enriches understanding of Maui island history and I know the owners are very proud of being part of this history and of wanting to share this with visitors and family and friends.

So with project just so that you know, a notice of warning was issued for an illegal TVR operation in June of 2007. The owner immediately ceased operation of the TVR and in 2009, of January 2009, of course the county adopted the new B&B ordinance no. 3611 and March 6th of this year, a land use commission special use and B&B applications were both filed.

The project is the operation of Wild Ginger Falls Bed and Breakfast. It is a one bedroom - the bed and breakfast would be in a stand-alone cottage and it's actually a studio. I've been to the site and been in the cottage so it's a studio. You'll see a floor plan a little bit later on.

The applicant lives on the property in the main dwelling. There are only two dwellings on the property. A farm plan has been approved and implemented. The applicant will serve coffee grown on the property to their B&B guests.

Now this map shows you, the green circle is the 500-foot radius. The red dots are pending, other pending B&Bs. So there are not no other pending B&Bs within 500 feet of the property. And also I did cursory analysis of how many bed and breakfast permits have been approved in the Paia-Haiku Plan, Community Plan. Just so you know, to keep track of it. Just under 20 is the best I could tell. It looked like there was one and it wasn't quite approved yet. So the maximum number that they can have in the Paia Community Plan, Paia-Haiku Community Plan is 40. So they're at about the half way point as far as the number of B&Bs, but we're at the half way point I should say.

This is a site plan and I've just drawn a - well, that one seemed to disappear, there was one there. This is the owner's quarters. This is their main house, which is an L-shaped configuration. The dark area right here is the bed and breakfast cottage. I was really taken by the site and when I drove in and when I looked at the site plan when I first got the application I couldn't quite figure out what it was going to look like, but when you come down - the drive way is so steep and you're just going down, and down and down and all of this is just continuing on down. So it's really nestled at the base of -- hillsides all around it and cliffs. This is the floor plan of the cottage which you can see the bed area is right here, the kitchen area is here, bathroom is here, washer/dryer, closet and then there's a very nice screened in lanai for sitting on and I'll show you a picture of that in just a moment.

This is one of the parking areas for the bed and - so this is the cottage and can't really tell but under the trees here there is a carport so this is a place for one car parking and then right next to it up here, just out of the photograph is another parking space if it should be needed. And this is the rear of the cottage. This is showing the porch and the architecture and lounging area.

The owners live in this residence as you recall on the site plan down towards the bottom of the site plan. If you'll note this is all very steep hill which I'm amazed they got up and planted. I can't even imagine how they did that, but they did it and so they've planted all, every bit of land that they can plant, they've planted.

This is a further away shot of the main residence and this is just showing that there's quite a bit of parking area for them to use for their parking needs.

The rear yard of the owner's residence, just another kind of look at how they've really - the owner took me around and showed me all the different plants and you know, just the steepness of the hill, it's just quite a lovely spot. And this is one of the photographs of the basalt cliffs. If you'll see what right here, down here the bottom, this is one of the owners standing here so you kind of get a sense of how tall these cliffs are. And here another one of him standing on this side and again, the cliffs are, they say 40 feet.

This is their project notice sign. I just wanted to point this out to you. This is their entrance. They have a mirror for being able to see around the bend and that is the end of my presentation. At least one of the owners is here today. She doesn't have a presentation. But if you have any questions of her, she'd be happy to answer them.

Mr. Hedani: Thank you very much. Any questions for staff? Commissioner Mardfin.

Mr. Mardfin: I'm glad Mike's here, Mike Miyamoto's here because in Exhibit 17A, 17B and 21 - well, 17A and 21 and 17B, there was a suggestion that things could have been amiss. I'm not sure. 17A says, we meet with Mike Miyamoto this morning to go over our plot plan which showed several miscellaneous small buildings, blah, blah, blah. We don't have a problem with someone inspecting these but the finances are tight paying \$60 for each building would be hard on hard on us considering the amount of money we've already spent. I'd like to ask Mike if I could whether he was - have all these buildings been properly permitted and appropriate?

Mr. Hedani: Mike.

Mr. Miyamoto: Mr. Chair. Those buildings are not related to the B&B practice, but there are certainly buildings that we have concerns with. They're not habitable buildings at this point, the ones that are remaining. So we're working with the applicant to get those resolved and as we have worked with the Planning Department, any structures that do not permit to the B&B breakfast business, you know, we will work with the applicant in this time period to try and get those resolved, but we did not object to having the B&B operate to try and generate the income to try and provide the funding to mitigate some of these outstanding issues. So we are working with the applicant. We are aware of some of the smaller buildings, some of the smaller sheds, the gazebo, to try to get those properly permitted at this point.

Mr. Mardfin: But your department has no objection to granting this?

Mr. Miyamoto: No.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional questions for staff? Okay, Commissioner Shibuya.

Mr. Shibuya: Livit, on our slide you mentioned that the Fire Department had some inputs but when I look through the material here, it didn't have anything on the Fire Department. Is there an exclusion of Fire?

Ms. Callentine: I'm sorry, did you say on my slide I mentioned Fire Department?

Mr. Shibuya: Yes.

Ms. Callentine: When I mentioned Fire Department Commissioner Shibuya, I believe it was, I believe it was in regards to the public services. And as far as, it was in the language of the law, I was reading you the law.

Mr. Shibuya: Right, right.

Ms. Callentine: As far as whether the Fire Department - we did not get a comment from Fire. Fire Department has actually asked us in the past not to transmit bed and breakfast permits to them.

Mr. Shibuya: Well, this one here begs a public safety issue here and you have a commercial operation and you're not taking due care of your customers. It's a steep driveway and I understand it's narrow. The Fire Department would have an issue in terms of responding go down that steep incline and then lets say the fire gets out of control, they gotta get out of there, it's a problem.

Ms. Callentine: It might be.

Mr. Hedani: Director.

Mr. Hunt: In working in the implementation of the B&B ordinance we've worked with a number of departments and tried to get blanket approvals from them in order to facilitate the processing. The Fire Department essentially says their comments are going to be the same for any bed and breakfast and so therefore, they've requested that we not send them every individual bed and breakfast application. Their comments are incorporated as standard conditions and actually their comments were incorporated in the ordinance that was recently adopted by the Council. So in this case what I imagine the Fire Department would say based on past discussions with them is the operation of the bed and breakfast, short-term rental poses no greater threat from fire or to the occupants in a long-term rental. And so therefore, they don't see any additional requirements beyond the standard ones for smoke detectors and evacuation plan and a fire extinguisher.

Mr. Hedani: Additional questions for staff? Commissioner Mardfin.

Mr. Mardfin: Livit, I notice that, maybe I'm jumping ahead a bit, but in your recommendations there was no condition about giving up the home tax exemption and that sort of thing is that because we're doing this and when you administratively grant or fail to grant the B&B, you'll deal with it at that time?

Ms. Callentine: Yes, all of the detailed conditions regarding the B&B use and determining or stating the standards by which the permit must be -- the operation must -

Mr. Hedani: Right, house rules and that sort of thing.

Ms. Callentine: Right, all of that stuff. That goes into our B&B permit.

Mr. Mardfin: So it's not relevant to us as this point.

Ms. Callentine: Correct.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Any additional questions for staff? Seeing none, we'd like to go ahead and open it up for a public hearing at this time.

**a) Public Hearing**

Mr. Hedani: Are there any members of the public that would like to offer testimony on this agenda item? Seeing none, public testimony is closed. I'm sorry, please step to the microphone and identify yourself for the record.

Ms. Eve Hogan: I'm Eve Hogan and I am the nearest neighbor other than one that shares the driveway and just wanted to let you that we're in full support of their desire to have a B&B on their property.

Mr. Hedani: I'm sorry, what was your name again?



Ms. Hogan: It's Eve Hogan.

Mr. Hedani: Thank you.

Mrs. Hogan: Thank you.

Mr. Hedani: Question from Commissioner Mardfin.

Mr. Mardfin: Eve, do you plan to open a B&B yourself?

Ms. Hogan: You know, I thought about it, but after watching all of this, I think I'm going to probably not do that. But we are within the 500 square foot and I do know that if she gets her that it may be more difficult for us and I still support her. She's done the work and she's ready to go.

Mr. Mardfin: That's what I was going to ask. Thank you very much.

Ms. Hogan: Yeah, yeah, thank you.

Mr. Hedani: Are there any other members of the public that would like to offer testimony? Seeing none, public testimony is closed. Staff recommendation.

**b) Action**

Ms. Callentine: After reviewing all pertinent information -

Mr. Hedani: Livit can you please use the microphone?

Ms. Callentine: Okay, after reviewing all pertinent information, the department has come to the conclusion that this application for a Land Use Commission Special Use Permit complies with all the applicable standards for an unusual and reasonable use within the state agricultural district. And in your recommendation report, I did go through each of those. But since I kind of covered that in the slides I will only read through all of that if you desire that I do Mr. Chair.

We recommend, the department recommends to the Maui Planning Commission approval of the Land Use Commission Special Use Permit subject to the following conditions and this would be that the permit is valid for three years till the end of October 2012. There are no project specific conditions. Commissioners there are a total of six standard conditions for land use commission. I'd be happy to answer any questions about those conditions if you have them.

In conclusion, the - I'm sorry, -- in consideration of the foregoing, the Maui Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the October 13, 2009 meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the Planning Commission.

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

Mr. Shibuya: I just have a question for Mr. Mike Miyamoto. On exhibit 7, look at the lanai. There's a stairway up to the doorway, there's no landing. It is very unusual that you would enter the door without a landing. Normally there is a level landing that is at least the width of the doorway. Is this acceptable?

Mr. Hedani: Mr. Miyamoto.

Mr. Miyamoto: Thank you Mr. Chair. As the building permit was approved for this, all I can assume is that at the time it was approved, it was acceptable.

Mr. Hedani: Any further questions for staff? Commissioner's what's your pleasure? Commissioner U'u.

Mr. U'u: Motion to approve.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Motion by Commissioner to approve the department's recommendation. Seconded by Commissioner Domingo. Discussion? Ready for the question? All those in favor, signify by raising your hand. Opposed same sign.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit with  
Conditions as Recommended.  
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, L. Sablas,  
W. Hedani)  
(Dissenting - W. Shibuya)  
(Excused - J. Starr)**

Mr. Hedani: Motion is carried. Thank you. Director.

Mr. Hunt: The next item, actually the next several items involve the Grand Wailea Resort. In talking to the Corporation Counsel, I believe his recommendation was to take the decision and orders first. It's up to the Chair and if there's no objections from the body.

Mr. Hedani: Commissioners the recommendation is that we move Items D-1, 2 and 3 which are the actions on the decision and order, the three items, three interventions that we review and take action on those before we consider the Step 1 Planned Development Approval or the Special Management Area Use Permit application. Is there any objection? Seeing none, we'll go ahead with item D-1. Director.

Mr. Hunt: These items involve the adoption of decisions and orders. The commission make take action to approve the written orders denying the following interventions for votes taken at the

September 22, 2009 meeting.

Number 1. Mr. Isaac Hall attorney for Shawn Horwitz, Terri Zager, Craig Zager, etal submitting a petition to intervene dated September 8, 2009 on the applications of Mr. Wade Fisher, Vice-President of Resort Development, Pyramid Project Management LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval and Special Management Area Use Permit for the proposed renovations and guest room expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK 2-1-008: 109 in Wailea. The file numbers are PD1 2009/0002, PD2 2009/0001, SM1 2009/0006. Ann Cua is the planner assigned to this.

#### **D. ADOPTION OF DECISION AND ORDERS**

- 1. MR. ISAAC HALL, attorney for SHAWN HORWITZ, TERRI ZAGER, CRAIG ZAGER, TIM CONNER, KENNETH HAWKINS, ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, JEFFREY MANDELBAUM, NINA S. YOSHPE, ANDRE MAGNINOT, R. TYLER WHANN, DEBORAH CROSS, and MURRAY JAFINE submitting a Petition to Intervene dated September 8, 2009 on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua)(Action taken to deny the intervention request at the September 22, 2009 meeting.)**

Mr. Shibuya: Mr. Chair?

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I have procedural question here. I was not here when this case was presented. However, I did read the minutes and the handouts associated with this case and I'm familiar now, but I do remain to participate or do I leave?

Mr. Hedani: I don't think you have to leave Warren, but let me check with Corp. Counsel.

Mr. Giroux: As far as the procedure for this part of the hearing goes is that you're looking at adopting the findings of fact, conclusions of law. You don't have to have been present but you do have to have reviewed the record so that you can verify that this document is in accordance with what happened at the hearing. So you don't have to have voted in favor of the action and you don't have to have been present as long as looked at the recording of the hearing and to verify that this

document complies with what happened at the hearing.

Mr. Shibuya: Thank you.

Mr. Hedani: Any further questions? If not, what's your pleasure on Item D-1?

Mr. Giroux: I guess, do you want to allow the two attorneys to have one final say, any comments on the findings of fact.

Mr. Hedani: Are the attorneys, Isaac Hall or attorneys for the applicant present? And if so, do you want to make a statement before the commission rules on this item. Mr. Kobayashi.

Mr. Blaine: Kobayashi: Good afternoon Chair Hedani, Members of the Commission, Blaine Kobayashi on behalf of the applicant. I don't have any other comments to make to the order, proposed order.

Mr. Hedani: Thank you. Mr. Hall, do you have any comments to offer to the commission on the - we're currently on Item D-1 on the decision and order?

Mr. Isaac Hall: Yes, I do. I had submitted - excuse me, my name's Isaac Hall. I represent the three sets of intervenors. I was served by the applicant and developer with proposed order on Friday afternoon. They had 17 days to prepare that and they served it on me Friday afternoon. So I had basically a day to prepare objections and exceptions. Did you folks get those? You have them.

Mr. Hedani: We have received those for the record.

Mr. Hall: Thank you. And I have also for each one of those prepared, my proposed order which I'll circulate now. This is a proposed order denying Dana Hall's petition to intervene. Basically one of the main arguments I made -

Mr. Hedani: Isaac you need to use the microphone.

Mr. Hall: Basically all you did on September 22nd, Commissioner Starr made a motion to deny intervention because each intervenor was clearly, their interest were clearly not distinguishable from the general members of the public number one. And number two, that their admission, the admission of additional parties would render the proceedings inefficient and unmanageable. And in both cases there was no factual support, no reasons given by any commissioner for why either one of those two statements were true. Commission simply voted and that's all you did.

Now there's case law in Hawaii that you can't just make up reasons after the hearing why those two things are true. You had to do that on September 22nd. You didn't do that. Commissioner Starr simply said, I move to deny the petition because the interest of the petitioners are not clearly distinguishable from the public and he never said why and none you ever said why, and he said the addition - the admission of additional parties when there hadn't even been any parties admitted would render the proceedings inefficient and unmanageable the second grounds. None of you ever said why that was true. It's not on the record anywhere. Now you're not permitted to have the

developer's attorney draw up some findings of fact later and speculate why that might be true. You're stuck with the record that you developed.

So I've submitted an order denying the petition to intervene by Dana Hall saying exactly what she did. And I've said that you've denied her petition to intervene finding that a native Hawaiian interest are not clearly distinguishable from the general public. When the PASH case says that when the Hawaii Planning Commission did that and the Nansay developers did that that was culturally insensitive. It's the same thing you're doing. It's culturally insensitive not to understand the obvious that a native Hawaiian's interest are clearly distinguishable from the general public yet that's what you've done. So I prepared an order for you to sign saying that.

Now I've also prepared another order -

Mr. Hedani: You need to use the microphone Isaac.

Mr. Hall: Can I give this to someone?

Mr. Hedani: Sure.

Mr. Hall: This is an order denying the petition to intervene of the Hoolei intervenors and it's the same thing. It just denies the intervention on the only grounds that you folks ever said that their interest were clearly distinguishable - not clearly distinguishable from the general public. That's what you voted on. And that their intervention would be - render the proceedings inefficient and unmanageable without ever making any findings about why that was true. So this is, just reflects what you did clearly on the record.

And I prepared a third order doing the same thing for the Wailea Beach Villas owners which reflects as the law requires what you did. All you did was to deny the intervention saying their interest were not clearly distinguishable from the general public without saying why or giving any reasons for why that was true and you denied them admission. Said the admission of additional parties when there weren't any parties in the proceeding would render the proceedings unmanageable and inefficient when none of you ever gave any reasons why it would be true.

So I also filed objections and exceptions to the proposed order that was drafted. I guess your attorney didn't find it, he couldn't draft one himself, so he had the developer draft one. And the developers self-serving statements in there aren't true. They're not accurate. They don't comport with what's on the record. They're not true as a matter of fact and they're not true as a matter of law. They go into disqualification. They don't state the law with respect to disqualification correctly. I've stated that law in there I think correctly and state the facts with respect to disqualification correctly. We were denied administrative due process by not having fair tribunal. We don't have a fair tribunal today. The same disqualifications apply to today. I show in there why the - everything in addition to what we have in our order is superfluous and shouldn't be in these - in the proposed order by the commission.

Anyway, I'm going to assume that you've looked at my objections and exceptions and I trust that you won't sign that because anything beyond what you actually did can't be in your order.

Mr. Hedani: Any questions for Mr. Hall? Thank you very much.

Mr. Hall: Thank you.

Mr. Mardfin: Mr. Chairman, I do have a question.

Mr. Hedani: Mr. Mardfin.

Mr. Mardfin: You referred to declarations that you submitted. I have one from Dana Naone Hall. I don't think I have one from you for your other two clients, sets of clients.

Mr. Hall: Did I refer - what are you speaking of?

Mr. Mardfin: Well, you referred to something that I'm not sure that I have.

Mr. Hall: I'm not sure I referred - did I refer to declarations plural?

Mr. Hedani: Isaac can you use the microphone please.

Mr. Hall: Yeah, I'm sorry. Excuse me.

Mr. Mardfin: Well, from today what I received were the proposed findings of fact from the applicant's attorney. I have your objection - maybe that's what it is, objections from you. Maybe that's what you're referring to. If it's the objections from you, I have that. Okay.

Mr. Hall: Yeah.

Mr. Mardfin: And I have one additional thing from a declaration by Dana Naone Hall, but not to comparable things compared to this. Is that correct?

Mr. Hall: I think you're right. In other words, there was a declaration that she filed couple days after the hearing or the day after the hearing.

Mr. Mardfin: Right.

Mr. Hall: Yeah, that's correct.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Commissioners any further questions? Seeing none, thank you very much.

Mr. Hall: Thank you.

Mr. Hedani: The commission may take action to approve of the written decision and order with or without modifications. Commissioners, what's your pleasure? Commissioner U'u.

Mr. U'u: For clarification, could you repeat that again?

Mr. Hedani: The commission may take action to approve of the written decision and order with or without modifications. That's the question that's before us right now. So there are three decisions and orders. Items 1, 2 and 3. We're on Item 1 right now.

Mr. U'u: Okay.

Mr. Hall: Mr. Chairperson, are you talking about the proposed one that they've submitted. I haven't seen anything other than the proposed one.

Mr. Hedani: I'm sorry Mr. Hall, can you use the microphone please.

Mr. Hall: I just want to make sure I'm on the same page. I received a proposed one. Do you have something different from that?

Mr. Hedani: No, I'm talking about the proposed decision and order.

Mr. Hall: Submitted by Mr. Luna?

Mr. Hedani: That's correct.

Mr. Hall: Thank you.

Mr. U'u: Question to Corp. Counsel. Could Corp. Counsel clarify exactly what we're voting on first step.

Mr. Hedani: Jim.

Mr. Giroux: Thank you Chair. So right now the applicant before you has submitted three proposed findings of facts, conclusions of law based on the last hearing you had. The intervenor's attorney has submitted three sets of exceptions and also a proposed findings of facts, conclusion of law. So from what I hear from the Chair, he wants to entertain if there's anybody who has a motion to adopt the first proposed findings of facts, conclusions of law that's in order with your agenda. So if anybody has any questions about what's in the document, this is a proper time to raise anything that's in the document that your feel that is objectionable or is not accurately reflect what happened during that hearing.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Motion to adopt D-1. Is that what we're looking for?

Mr. Hedani: Right. So motion by Commissioner U'u to accept the proposed findings of fact, conclusions of law, decision and order on Item D-1. Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Seconded by Commissioner Domingo. Discussion? Commissioner Mardfin.

Mr. Mardfin: I have a whole series of questions and I don't know whether we need to do - some of it is for our attorney that might or might not be wanted to be done in an executive session, but I can tell you in general, these findings of facts, conclusions of law, decision and order by the attorney for the applicant, has a lot of things in here that refer to the memo of September 23rd. Well, it's time stamped September 23rd, related by the declaration of Dana Naone Hall. In particular, information was provided in that memo, that declaration that the attorney for the applicant has referred to in here. Stuff about Commissioner U'u for instance. That was not raised at our last meeting and some additional material on Commissioner Domingo.

Now I guess I want to understand if the findings of fact, conclusions of law and decision and order by the applicant's attorney can legitimately include these or not legitimately these or I guess I want to know what the deal is because it wasn't raised. These issues were not raised at our meeting and yet they're part of the decision - conclusion of law and decision and order and I want to know what the status of that is and what the law requires, expects of us.

Mr. Hedani: Is that a question for Jim?

Mr. Mardfin: I think it's a question for Jim.

Mr. Hedani: James.

Mr. Giroux: Thanks Chair. Yeah, you're correct. It's a little confusing because this issue of recusal is - it's a collateral issue. However, I think the applicants because it was raised in some fashion want to address it. If you agree with that, then you would adopt those findings.

The issue arose at a very strange part of our hearing. We had already voted on one petition and then the issue of recusal was raised before the second vote. So it - yeah, it puts the applicant in a strange position they do want to address issue as something that did happen during the hearing. The issue wasn't raised during the pleadings or in the main hearing but because it is something that will probably be brought up once or if or once this gets to circuit court I believe that the applicant wants to make sure that this document does contain that information as well. And you can ask the applicant to clarify their position as far as why they feel that information is important to be included in the findings of facts, conclusions of law.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: My question, yes I agree it was - some of the issues were brought up of conflicts during our discussion, but two of them were not. At least two of the issues that were brought up were brought up the next day. And I guess I don't understand how our conclusions of law can be certified on stuff that wasn't put into the record until the following day.

Mr. Hedani: Mr. Kobayashi.

Mr. Kobayashi: Thank you Chair Hedani, Members of the Commission, Blaine Kobayashi again,



on behalf of the applicant. I think the problem that you're having is the problem I had also when I was preparing the findings. To make matters easier, I don't have any problems with the commission deleting any reference to the declaration that was filed by Ms. Hall after the hearing. And I think her filing is I think demonstrates the problem that I have when they just go ahead and file stuff. They don't follow the rules. They just file things. And I was left in my office wondering what am I supposed to do with this filing that she made. And again, I think the concern which was raised by Mr. Giroux was the same concern I had was that I didn't want the record to go up on appeal and left with how come the applicant's attorney didn't address it. But again, I hear your concern. I think if the vote was taken at the previous day, this declaration is not going to be considered by the commission, I think you need to do one of two things. One, I think you should deal with the declaration today that was filed by Ms. Hall a day after the hearing, and I don't know what the procedural thing should be done. Perhaps just strike it or just file it for the record, but it shouldn't be part of the hearing that was done on the petitions to intervene. So again, secondly, I don't have any problem with the commission redacting or modifying the proposed findings that we've submitted taking on any reference to the declaration that was filed by Ms. Hall because I think it was untimely, not in compliance with the rules.

You know, I gotta make one other comment. It's interesting that Mr. Hall comes before you today and cries foul to the applicant's attorney about the submission of our proposed findings when you know, he doesn't even bother serving me with his proposed order. And again, lets now remember the reply memo that he files, again, not in compliance with the rules.

Mr. Hall: Can I respond to that please?

Mr. Hedani: Mr. Kobayashi.

Mr. Kobayashi: Yes.

Mr. Hedani: Your reference is to Items 22, 23 and 24 and 25? No, 22, 23 and 24 relative to the declaration from Dana Hall?

Mr. Kobayashi: Correct.

Mr. Hedani: 22, 23 and 24?

Mr. Kobayashi: Yes.

Mr. Hedani: Okay, thank you.

Mr. Hall: Can I respond to that please?

Mr. Hedani: Please.

Mr. Hall: It is the duty of Mr. U'u and Ms. Domingo to declare their, fully what their conflicts of interests are. It's not our duty to ferret them out. And so when they didn't fully disclose them on that hearing, we had to do that. I agree it didn't come up during that hearing, but lets be clear now

it's not our duty to make sure that Ms. Domingo who's paid by the dues of ILWU workers and has a financial interest in this proceedings shouldn't disclose that. She still hasn't done that. And I want to make it clear that we think both Mr. U'u and Ms. Domingo should disqualify themselves from voting on this permit today as well as the rest of the people we talked about. They still have a conflict of interest and shouldn't be able to vote on this matter. This public confidence there is none in a tribunal when people are in the pocket of the applicant, when it appears that. There's an appearance of impropriety when hotel workers are coming before you to testify and they're ILWU employees and we have somebody sitting on this board who is employed by them. So I'm not ashamed at all of asking Commissioner Domingo to disclose it fully. She hasn't yet done that and if she won't disclose it, I'm asking her to disqualify herself. And you as a commission know all these facts and if you're just going to let her sit and vote then you're part of it too. So I'm not embarrassed to stand up in front of you and say someone who's a paid officer of the ILWU who's going to benefit from the approval of this application should not vote on that application.

Mr. Hedani: Any further discussion? Any further discussion on the motion on the floor? Motion on the floor is to approve the proposed findings of fact, conclusions of law, decision and order. Do you have a preference as to Items 22, 23 and 24?

Mr. U'u: Can you point out the items 22, 23, 24?

Mr. Hedani: Right.

Mr. U'u: On which?

Mr. Giroux: Page 6.

Mr. Hedani: This would be on page 6. It says Item 22, "on September 23rd," was a day after our planning commission meeting, "after the close of the hearings on September 22, 2009, a declaration of Dana Hall was filed." Item 23, "in her declaration, Ms. Hall alleged that Commissioner Domingo is an officer of the ILWU, Local 142, etc." And Item 24, "Ms. Hall further alleged in her declaration that Commissioner Bruce U'u is a Maui Field Representative of the Carpenters Union." Basically all of those items were not covered during the course of our meeting. Any further discussion? Ready for the question?

Mr. Kobayashi: Mr. Chair?

Mr. Hedani: Mr. Kobayashi.

Mr. Kobayashi: Thank you. I think again, depending on what the commission does with those findings of fact that we discussed earlier, I think if the commission decides to strike references to those findings of fact, then I believe certain of the conclusions of law need to be modified to that extent as well and I think that would be conclusion of law, --

Mr. Giroux: I think 14, and partially 15.

Mr. Kobayashi: Right. I think your Corp. Counsel could probably assist you in that regard.

Mr. Giroux: It's page 10, 14 and 15.

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

Mr. U'u: Clarity on what's being asked as made by the comments by Mr. Kobayashi and James. I looking for clarity James, and there's not much clarity. You're talking mumbo, jumbo attorney and I want it in plain simple English. So clarify that for me James.

Mr. Giroux: Okay, what's happening you've ruled on the petitions to intervene and basically what's happening is that your votes are being challenged but it's not - as far as this document goes, it's not being addressed because the issues were brought up subsequently. There were some matters that were brought up in the same course that are similar but the actual allegations are different. I think there was - You know, Jonathan Starr brought up his concern and I think Kent brought up his concern and Donna brought up her concern. Those issues I see were fairly disposed of in the hearing, but what's happened is that there's been collateral accusations so I don't think that, you know, I mean, as far as what Mr. Hall is doing, he's trying to solidify his position and that's for him to do, but I don't think it's going to stop you from actually taking action on what you've already taken action on. What you're looking at is a record. You're establishing your own record and that's what we're here today to, we have a document memorializing what you did justifying what you did so that the courts can understand it and anybody who reads it can understand what action was taken.

Now if in the future Mr. Hall wants to take action as far as challenging either the vote on your action or the vote on you ratifying your action, that's his prerogative. But it doesn't have anything to do with this document per se. It may arise in and around it, but it's a collateral issue.

Mr. Hedani: Basically Bruce from my perspective, what we have is the proposed findings of fact, conclusions of law and if you'd like we can take out references to Items 22, 23 and 24 which occurred subsequent to our meeting as well as references to items 14 and 15 which refer to that if that's the pleasure of the commission. We've heard from Mr. Kobayashi as to what happened and he's documented what's happened and basically in these documents, but it's up to us as to whether or not we want to include it, you know, as our final decision and order. Commissioners? Commissioner Mardfin.

Mr. Mardfin: I want to make one comment and then ask another question. My first comment is or statement, if those portions are left in, I can't vote for the document because we're affirming something that we did on that date and these are put in subsequent to that date. So on that grounds alone, I would vote against it.

The second issue is Mr. Hall has alleged that because he gives us a short form thing to say but he has alleged that even in the rest of the document prepared by the applicant's attorney that there are things that are in there that we didn't fully discuss at our meeting. And I would like somebody to address the issue of - And Mr. Hall has further said that Jonathan Starr - Commissioner Starr's motion was fairly narrowly written but that the attorney has put in things that would cover more of it I think is part of the allegation and I'm just trying in my own mind clarify what's there, what - I guess from James' point of view if the decision - I can't remember the firm, if the findings of fact, conclusions of law decision are appropriate in view of what we have on the record from that first

meeting.

Mr. Hedani: Mr. Giroux.

Mr. Giroux: This is really putting me on the spot there Ward.

Mr. Mardfin: Sorry.

Mr. Giroux: No, I'm just kidding. I reviewed it, and I found it to be substantially, you know, defensible. So what I'm saying is that you have a transcript that's about this thick for this one hearing and what's the attorney's done is he summarized the facts of that hearing into a document this thick and then he's concluded at the end to match those facts with the law. So if you find that the facts as stated are inaccurate or nonexistent in the record you can raise that objection and say, you know, you want it stricken just like we just did on the issue of the recusals. But this document is substantial representation of what happened at the hearing. I think the petitioners, the intervenor's attorney has raised an issue of that there was not a hearing on the facts, but I think what you have to take into account is that, from his own words, he said that we had to take whatever he said as true. So in the court of law where you have a trial that's a stipulated fact trial, all facts as stated are taken as true. And that is the standard for summary judgement. So you're taking all of your pleadings, you're talking all of your everything that's on the record and you're basing your decision on that and that's what was attempted to be summarized in this proposal. So if you're confident in it then you would adopt it to accurately reflect what you heard and what you were thinking when you made that decision so that when the judge reads it, he can look at that. He's going to look at the transcript, look at the pleadings and then look at this document and see whether or not you know, it's supportable.

Mr. Mardfin: Thank you. One more question. At the meeting we had, I voted against the - I was on the minority side on the decision. On this document we're asked to essentially - we're being asked I think essentially to sign it as an accurate representation. For myself, do I put I voted against it, but I agree that it's an accurate representation?

Mr. Giroux: Yeah, you can do that. I mean, as long as, if you vote today to adopt it then that's what you're signing that this is an accurate representation of this order.

Mr. Mardfin: I'm not saying that I agree with the position that they shouldn't be allowed to intervene.

Mr. Giroux: Yeah, I think I've seen people write, you know, signature and then at the end, you know, opposed or whatever.

Mr. Mardfin: Okay.

Mr. Hedani: Any further discussion? Are we all clear? Commissioner U'u.

Mr. U'u: On No. 24, where I think we can read um, "Mr. Hall further allege that Commissioner myself is a Field Representation of Hawaii Carpenters Union." I don't remember Mr. Hall bringing that up or did I miss something?

Mr. Hedani: I think this is the allegations that were contained in the declaration that she filed after our meeting. So it's what was contained and what was received on the 23rd. Is that correct Mr. Kobayashi.

Mr. Kobayashi: Yes, that's correct.

Mr. Hedani: Mr. Mardfin.

Mr. Mardfin: Is anybody moving to remove those paragraphs that dealt with items subsequent to our meeting?

Mr. Hedani: Not yet. Is that a motion?

Mr. U'u: I'll make a motion.

Mr. Hedani: Commissioner U'u.

Mr. U'u: To remove 24, 14 and 15.

Mr. Hedani: You want to include 22 and 23 as well?

Mr. U'u: 22 and 23, correct.

Mr. Hedani: Motion to remove Items 22, 23 and 24.

Mr. Mardfin: On pages 6 and 7.

Mr. Hedani: On pages 6 and 7. And Items 14 and 15 on page 10 and 11. Discussion?  
Commissioner - you're going to be elevated to commissioner by the time this is done?

Mr. Hall: You're referring to?

Mr. Hedani: You have a comment Mr. Attorney?

Mr. Hall: You're referring to Mr. Kobayashi?

Mr. Hedani: Mr. Kobayashi.

Mr. Kobayashi: Yes, I just have one comment on the motion made by Mr. U'u, Commissioner U'u. I think with regard conclusion of law 14 and 15. I don't believe they should be deleted in its entirety. It needs to be modified because and if the commission decides to delete findings of fact 22, 23 and 24. For example, conclusion of law 14, could be revised to state that, "the mere fact that Commissioner Domingo's husband is an employee bartender at the Grand Wailea Resort and Spa and that Commissioner Hiranaga's wife is a subcontractor of the Grand Wailea Resort and Spa does not automatically mean that they have a financial interest in the applicant thereby requiring recusal." In other words, delete reference to Commissioner U'u since that was not raised at the

hearing.

And the same would hold true for conclusion of law 15 which would be just a deletion of the reference to Commissioner U'u. But I do believe those conclusions of law should remain in the order.

Mr. U'u: I'll withdraw my motion and restate.

Mr. Hedani: Okay, any further discussion?

Mr. U'u: I can withdraw my motion. Does the seconder have to?

Mr. Hedani: Yes.

Mr. U'u: Deletion of 22, 23 and 24.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo to remove 22, 23 and 24.

Mr. Mardfin: On what page?

Mr. Hedani: On pages 6 and 7. Discussion? Mr. Kobayashi?

Mr. Kobayashi: Yes.

Mr. Hedani: If we remove Items 22, 23 and 24, you're going to make adjustments to 14 and 15?

Mr. Kobayashi: Yes, I can. If there's an appropriate motion and it's approved by this body.

Mr. Hedani: Okay, thank you. Discussion on Items 22, 23 and 24? All those in favor deleting Items 22, 23 and 24 signify by saying aye. Opposed nay.

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

**VOTED: To Delete Items 22, 23 and 24 on pages 6 and 7.  
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya,  
L. Sablas, W. Hedani)  
(Excused - J. Starr)**

Mr. Hedani; Carried. Thank you. Any further discussion? Mr. Mardfin.

Mr. Mardfin; Are you going to do anything with page 9 and 10? I'm sorry, 10 and 11.

Mr. Hedani: Yes. Blaine, what is your recommended language on 14?

Mr. Kobayashi: On conclusion of law 14, on page 10, I would propose that that conclusion of law be restated to state, "the mere fact that Commissioner Domingo's husband is an employee bartender at the Grand Wailea Resort and Spa and that Commissioner Hiranaga's wife is a subcontractor of the Grand Wailea Resort and Spa does not automatically mean that they have a financial interest in the application thereby requiring recusal."

And on conclusion of law 15, the revision and proposed language would simply, delete Commissioner U'u's last name.

Mr. Hedani: Thank you. Commissioners? Commissioner U'u.

Mr. U'u: Motion to accept.

Mr. Hedani: Motion to accept the revised language on items 14 and 15. Is there a second?

Ms. Domingo: I second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo to revise items 14 and 15 to read as was recommended by Attorney Kobayashi. Discussion? Commissioner Mardfin.

Mr. Mardfin: This is a conclusion of law we're proposing here, and I guess I'd ask James, sorry, if we as rerevised it is a conclusion of law. I see our attorney nodding his head yes.

Mr. Giroux: Sorry about that. Since we're all about the record, the - yeah, most conclusions of law have to contain conclusions of fact because sometimes it's the fact that the conclusion of the fact that points to the conclusion of the law and that's why you see 16, it says, "if any conclusion of law is later deemed to be a finding of fact it shall be so deemed." So the law acknowledges that sometimes a statement of fact is actually a conclusion of law.

Mr. Hedani: Any further discussion? Ready for the question? Question on the floor is to modify 14 and 15 on the conclusions of law as was stated. Any further discussion? All those in favor, signify by saying aye. Opposed nay.

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

**VOTED: To Accept the Revised Language for Conclusion of Law No. 14 and No. 15, as Follows:**

- 14. "The mere fact that Commissioner Domingo's husband is an employee bartender at the Grand Wailea Resort and Spa and that Commissioner Hiranaga's wife is a subcontractor of the Grand Wailea Resort and Spa does not automatically mean that they have a financial interest in the application thereby requiring recusal."**

**And in regards to Conclusion of No. 15, the revision and proposed language would simply, delete Commissioner U'u's last name.**

**15. "There was no evidence adduced at the Commission's September 22, 2009, meeting, and there has been absolutely no showing, that Commissioners Domingo, Hiranaga, or Starr has a financial interest in the Application, thereby requiring disqualification from voting."**

**(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya, L. Sablas, W. Hedani)**

**(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you. Any further discussion on the main motion? Commissioner Mardfin.

Mr. Mardfin: Yes, it's at least accurate from my point of view as to what happened on the 22nd. And I don't know whether we should vote on it now or whether - I'll raise the issue to find out. Attorney Hall has raised several other issues. This issue about other conflicts and I'm wondering if that should have any bearing on our action on this motion legally.

Mr. Hedani: You want an opinion from Corp. Counsel?

Mr. Mardfin: Yes, I'd love an opinion from Corp. Counsel.

Mr. Hedani: James.

Mr. Giroux: I think we - you know, the issues have been raised and as far as, you I think that right now the, you know, the participants can analyze their situation and they can see what's happening as far as the allegations that are arising and they can act accordingly and if they feel that it's - you know, their participation is not jeopardizing the process then it's up - they are to decide whether or not they are to act or not. It's not for somebody else to tell them.

Mr. Hedani: Any further discussion? What we're considering is the adoption of the proposed findings of fact, conclusions of law, decision and order on Item D-1 as modified. Any further discussion? Commissioner Mardfin.

Mr. Mardfin: Yes, I'm thinking about how I'm going to phrase this. While I think it's accurate now as to what was said and what was discussed and just mention that the attorney for the people appealing it, we did raise some of those issues at the last meeting. I remember I raised them even though I voted against the motion. But if the vote were on the findings of fact, conclusions of law, I could vote in favor of this motion, but it also has a decision and order and again, and the decision and order is that the petitioner's petition to intervene is denied and so I guess I'm asking James if I think it shouldn't be denied then I have to vote no on this?

Mr. Giroux: No, that's not accurate. The decision of the five votes did that already. It denied the



petition. This is just memorializing that decision. So even if you --

Mr. Hall: Can I say something?

Mr. Giroux: Even if you voted against it that doesn't mean you can't vote to ratify the action of the membership.

Mr. Hall: Can I say something? It may help you.

Mr. Hedani: Attorney Hall.

Mr. Hall: It's very common for someone who votes against a motion not to sign the order. That's it. I don't know why your attorney is not telling you that. Just don't sign it. That's what happens. Period.

Mr. Hedani: Thank you. You have that option Ward.

Mr. Hall: I'm surprised he's not being advised that. But that's what normally happens on a commission when you don't - and you didn't vote in favor of it, you don't sign it period.

Mr. Mardfin: I do think it's factually accurate up to that --

Mr. Hall: No, but that's -

Mr. Mardfin: It is factually accurate that the decision and order denied. I happen to vote in opposition of that but it's factually accurate.

Mr. Hall: I guess you could - that's not really the point. The point is that you wouldn't sign it because you -

Mr. Hedani: Thank you very much Mr. Hall. Your point is well-taken.

Mr. Hall: I hope so.

Mr. Hedani: Any further discussion on the motion on the floor? Are you ready for the question? All those in favor of approving the proposed findings of fact, conclusions of law, decision and order on Item D-1 as amended signify by raising a hand. Two, three, four, five, six. Opposed same sign. Abstentions. One abstention.

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

**VOTED: To Accept the Decision and Order with Modifications.**  
**(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Shibuya, L. Sablas,**  
**W. Hedani)**  
**(Abstaining - W. Mardfin)**  
**(Excused - Jonathan Starr)**

Mr. Hedani: Motion is passed. Director.

Mr. Hunt: That was the first of three decision and orders. The second item involves Mr. Isaac Hall, attorney for The Protect Wailea Beach Committee, etal., submitting a petition to intervene dated September 8, 2009, on the applications of Mr. Wade Fisher, Vice-President of Resort Development, Pyramid Project Management LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval and Special Management Area Use Permit for the proposed renovations and guest room expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK 2-1-008: 109 in Wailea. The file numbers are PD1 2009/0002, PD2 2009/0001, SM1 2009/0006 and Ann Cua is the planner assigned to this.

2. **MR. ISAAC HALL, attorney for THE PROTECT WAILEA BEACH COMMITTEE, SCHUYLER W. LININGER, JR., MITCHELL VAN KLEY, JAMES L. PAYNE, and LEE MINSHULL submitting a Petition to Intervene dated September 8, 2009 on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua)(Action taken to deny the intervention request at the September 22, 2009 meeting.)**

Mr. Hedani: Okay, we're on Item D-2, on the proposed findings of fact, conclusions of law, decision and order on denying The Protect Wailea Beach Committee, etc., petition to intervene filed on September 8th. Commissioner U'u.

Mr. U'u: Motion to accept.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo to accept the proposed findings of fact, conclusions of law, decision and order as proposed. Is there any discussion? There are similar items, 22, 23 and 24 on the findings of fact on page 6. Attorney Kobayashi, what does that correlate to on your conclusions? 14 and 15?

Mr. Kobayashi: Yes, that's correct.

Mr. Hall: Mr. Chair, I'd just like to make it clear for the record that -

Mr. Hedani: Chair recognizes Mr. Hall.

Mr. Hall: That we for the rest of this proceeding have asked Mr. U'u and Ms. Domingo to disclose their conflicts of interest. They have not denied what I alleged about them. Since they have not denied it, I take it to be true and I ask them to disqualify themselves now so that this proceeding is not tainted further. Any votes that they take from now on taint this whole proceeding.

Mr. Hedani: Thank you for your comment Mr. Hall. Commissioner U'u has disclosed from his initial service on the commission that he's a representative or serves as a representative on the Carpenters Union.

Mr. Hall: The difference though is that -

Mr. Hedani: Commissioner Domingo has also disclosed that she is a representative with the ILWU. It's up to the commission to decide whether their respective positions in those positions serve as a conflict of interest in their deliberation on any item that comes before the commission and it's for the commission to decide on whether or not they should be recusing themselves from voting on any particular issue.

Mr. Hall: Well, the commission has not made any decision. Your attorney is just saying it's up to them.

Mr. Hedani: Thank you very much Mr. Hall.

Mr. Hall: In addition, it's not -

Mr. Hedani: Thank you very much Mr. Hall.

Mr. Hall: This is a proceeding and that the carpenters have been promised jobs at this hotel. And with Ms. Domingo it is organized by ILWU workers and her salary is paid by those ILWU workers so it's different in this proceeding.

Mr. Hedani: Mr. Hall, we've heard your arguments. Thank you very much. Any further discussion? Commissioner U'u.

Mr. U'u: Just for the record, I did disclose at the beginning prior to coming on to serve on this board that I was and am still working as a apprentice coordinator with the Carpenters Union. It was taken up prior to the Council, to the Board of Ethics and I was approved to serve on this commission. It was stated prior to me stepping foot as a commissioner, just want to make it clear. And I will get no financial gain from this project, none whatsoever. I'll be poor prior. I will be poor after. That's a fact. Thank you.

Mr. Hedani: Any further discussion on the motion on the floor?

Mr. Hall: I don't hear Ms. Domingo saying anything.

Mr. U'u: Motion to delete 22, 23, 24 and to restate I guess 14 and 15.

Mr. Hedani: Mr. Kobayashi, do you have recommended language for 14 and 15?

Mr. Kobayashi: It would be the same language that I referenced in -

Mr. Hedani: In the first decision.

Mr. Kobayashi: Correct. Yes.

Mr. Hedani: Okay.

Mr. Kobayashi: I can, if the commission goes ahead and approves with the modification, I can - I'll submit the revised order to the commission for signature.

Mr. Hedani: Thank you. So the motion on the floor is to delete 22, 23 and 24 as well as modify 14 and 15 to coincide with the language that we accepted on the first decision and order. Is that clear? Is there any further discussion? All those in favor, signify by raising your hand. Three, four, five, six. Opposed, same sign. Abstentions, one abstention, Commissioner Mardfin. Thank you.

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

**VOTED: To Accept the Decision and Order with Modifications.**  
**(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Shibuya, L. Sablas,**  
**W. Hedani)**  
**(Abstaining - W. Mardfin)**  
**(Excused - Jonathan Starr)**

Mr. Hedani: Motion is passed. Director.

Mr. Hunt: The third and final decision and order involves Ms. Dana Naone Hall, Intervenor, Pro Se submitting a petition to intervene on the applications of Mr. Wade Fisher Vice-President of Resort Development, Pyramid Project Management LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval and Special Management Area Use Permit for the proposed renovations and guest room expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK 2-1-008: 109 in Wailea. The file numbers are PD1 2009/0002, PD2 2009/0001 and SM1 2009/0006.

- 3. MS. DANA NAONE HALL, Intervenor Pro Se submitting a Petition to Intervene on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape**

**improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua)(Action taken to deny the intervention request at the September 22, 2009 meeting.)**

Mr. Hedani: Mr. Kobayashi, the deletions for this particular application would refer to if we were to so act on it, refer to 24 and 25 and 26?

Mr. Kobayashi: Yes. And conclusion of law 14 and 15.

Mr. Hedani: Thank you.

Mr. Hall: Commissioner Hedani, may I make one comment?

Mr. Hedani: Attorney Hall.

Mr. Hall: There's one egregious factual error that Mr. Kobayashi has inserted in here. He's tried to imply that Ms. Hall, Naone Hall was wrapping iwi in her capacity as the Chair of the Maui Lanai Burial Council. That was never stated and that's not the truth. She was doing that as a native Hawaiian on her own.

Mr. Hedani: Do you want to identify what reference, what page you're referencing so we can keep up with you?

Mr. Hall: In your capacity as chair of the Maui Island Burial Council she's familiar with the Grand Wailea Resort and Spa property the native Hawaiian -

Mr. Hedani: What page are you referring?

Mr. Hall: Page 3, paragraph 6.

Mr. Hedani: Page 3, paragraph 6, can you use the microphone please.

Mr. Hall: I'm sorry.

Mr. Hedani: Thank you.

Mr. Hall: Starts at page 5, goes on to 6 and goes through there 7. I want to make for the record, her capacity was not - she wasn't acting when she wrapped and reinterred burials in any capacity other than as a native Hawaiian exercising her traditional and customary rights and that's what was put on the record on the 22nd.

Mr. Hedani: I see. Thank you. Mr. Mardfin.

Mr. Mardfin: I move the change of Item No. 6 to reflect the corrected language by Mr. Hall. In other

words, "past chair of the Maui Lanai Island Burial Council."

Mr. Hedani: She did state that she was past chair of Burial Council.

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

Mr. Hedani: But she wasn't wrapping the iwi.

Mr. Mardfin: It was in her capacity as a native Hawaiian.

Mr. Hedani: Right.

Mr. Mardfin: Not as the past Chair and so that's what I believe Mr. Hall was referring to.

Mr. Hedani: So I think what you probably want to do is identify how you want the language to read.

Mr. Mardfin: That's what I was going to do. In her capacity as a native Hawaiian, petitioner is familiar with the Grand Wailea and the native - In her capacity as a native Hawaiian -

Mr. Hedani: Hold on, hold on Ward.

Mr. Mardfin: Okay.

Mr. Hedani: Blaine.

Mr. Kobayashi: Thank you Chair Hedani, Members of the Commission. You know, from listening to what Mr. Hall was stating, it seemed like he had an issue with the findings stating that in her capacity as the chair she wrapped and reinterred many of the burials encountered. And I'm not sure what document he's looking at but I'm looking my findings of fact 7, and there's no reference in there in her capacity as the chair, past chair of the Maui Island Burial Council that did she wrap and reinter the burials.

Mr. Hall: I'm talking about paragraph 6 where the confusion comes in where he's mixing her capacity as chair.

Mr. Hedani: Mr. Hall, can you use the microphone please?

Mr. Hall: I'm very sorry.

Mr. Hedani: Thank you.

Mr. Hall: Paragraph 6 is where he starts confusing it with - he talks about her capacity as the chair.

Mr. Hedani: Isaac can you state in paragraph 6 what you believe is an error.

Mr. Hall: I think what would be simplest is that if you just rewrote 5, 6 and 7 and say that she is a

native Hawaiian and cultural practitioner, she is also chair of the - was the chair, she was past chair of the Maui Lanai Burial Council. And then -

Mr. Hedani: Is there anything in Item 6 that's factually incorrect?

Mr. Hall: Well in her capacity as the - and as a cultural practitioner she's familiar with the property and the burials that were encountered. Yeah, if you add, "and as a cultural practitioner."

Mr. Hedani: Blaine do you have any objection to that?

Mr. Kobayashi: Well, I'm not sure. I don't have the transcript in front of me. I don't know if the words, "cultural practitioner" was used. So you know, I -

Mr. Hall: ...(inaudible - not speaking into a microphone and speaking while Mr. Kobayashi was speaking at same time)... during the hearing.

Mr. Kobayashi: I crafted my findings based on my review of the transcript and the pleadings and files. I don't recall as I stand here today the words, cultural practitioner being used. So I would object on those grounds.

Mr. Hedani: Okay, thank you. Mr. Mardfin.

Mr. Hall: We can live with native Hawaiian. I don't -

Mr. Hedani: I'm sorry Isaac. Commissioner Mardfin has the floor.

Mr. Mardfin: My motion is to, in Item 6 on page 3, to delete the words, "past chair of the Maui Lanai Island Burial Council" and substitute the words, "a native Hawaiian." So it would read, "in her capacity as a native Hawaiian, petitioner is familiar with the Grand Wailea Resort and Spa property and the native Hawaiian burials which were encountered during grading that took place between."

Mr. Giroux: Chair, I've got a section of the transcript if I could read it, just to clarify what the transcript reads.

Mr. Hedani: Mr. Giroux.

Mr. Hall: Can I read it too? I didn't have ...(inaudible - not speaking into microphone.)

Mr. Hedani: I'm sorry, Mr. Hall can you step back please.

Mr. Hall: I'd like to make sure he's just not cherry picking things.

Mr. Hedani: Mr. Giroux.

Mr. Giroux: Well, I may be Mr. Hall.

Mr. Hall: I want to make sure you don't.

Mr. Hedani: Isaac, Isaac, the transcript for this particular meeting is being totally corrupted by the fact that people are speaking before being recognized by the Chair. So I'd appreciate it if you request recognition from the Chair before you speak and then I'll grant the ability to express your opinion in an orderly manner. Thank you. Mr. Giroux.

Mr. Giroux: This is page 146 from the transcript and it's Mr. Hall speaking on the petition. I'm starting at line 18, and it says, "she has filed a petition to intervene as a native Hawaiian, who is, was the chairperson of the Maui Lanai Island Burial Council for eight years and who has herself, has standing herself because she wrapped and reinterred many burials on the Wailea coastline from the 1980's to the present. She wrapped and reinterred the 344 burials. I'm sorry, thank you. 344 burials."

Ms. Cua: Mr. Chair?

Mr. Hedani: Ann.

Ms. Cua: I can also read from the initial, if it helps the commission, from the petition to intervene that was filed by Dana and page 2 says, "Dana Naone Hall is the past chair of the Maui Lanai Island Burial Council. She is familiar with the burials on the Grand Wailea Hotel property. As a native Hawaiian she intervenes to protect and preserve these burials and to make sure that they are treated with the respect that they are due."

Mr. Hedani: Thank you. Mr. Mardfin.

Mr. Mardfin: I would contend that my substitution language is accurate. She did not do the interment as past chair, she did it as a native Hawaiian and so the wording that I proposed I believe would be accurate.

Mr. Shibuya: Second.

Mr. Hedani: Okay, the motion from Commissioner Mardfin is to strike the words, "as past chair of the Maui Lanai Islands Burial Council."

Mr. Mardfin: And substitute, "as a native Hawaiian."

Mr. Hedani: On Item 6 on page 3. Mr. Kobayashi, do you have any objection to that language?

Mr. Kobayashi: Well, I just like to stick with the language I proposed because I believe that accurately reflected the underlying pleadings as well as what happened at the hearing, so I -

Mr. Hedani: Thank you.

Mr. Hall: I don't think the documents ever -



Mr. Hedani: Mr. Hall.

Mr. Hall: Excuse me, can I please be recognized?

Mr. Hedani: You're recognized.

Mr. Hall: Thank you very much. The documents as a whole do not say that she was acting in her capacity as chair of the Maui Lanai Burial Council. The council itself does not wrap and inter burials. She did that as an individual native Hawaiian. I think it was clear in the documents that we presented and I want that clear because Mr. Kobayashi for the developer is trying to make it look like she was acting in some public capacity to bolster his argument that it's general, but that's not the case, she did it as a private individual.

Mr. Hedani: I understand what you're saying.

Mr. Hall: Yes.

Mr. Hedani: When I read paragraph 6 as it's stated, "in her capacity as chair of the Maui Lanai Island Burial Council, petitioner is familiar with the Grand Wailea Resort and Spa property and the native Hawaiian burials which were encountered during the grading that took place between January 1988 and October 1990 and other burials which were encountered in 2006." That's all it states. It doesn't state anything about wrapping iwi.

Mr. Hall: That's incomplete. Her knowledge is as a native Hawaiian, as an individual native Hawaiian and that's what's in the petition to intervene.

Mr. Hedani: Right, but all paragraph 6 is stating is an item of fact that she was the past chair of the Burial Council.

Mr. Hall: Five says that. Six implies that her knowledge comes from being the chair of the Maui Lanai Burial Council, but that's not what she testified to and that's not what the petition to intervene says. She has knowledge as an individual native Hawaiian also.

Mr. Hedani: I understand what you're saying, thank you very much.

Mr. Hall: The record needs to be clear about that.

Mr. Hedani: Thank you very much. Additional discussion? Ready for the question? Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'll be voting against the motion to amend the language because this should be a record of what - a summary record of what occurred and I believe the maker of the motion I guess I don't have the reliance that he's looking directly at the record and reading from the record to create the proposed language change.

Mr. Hedani: Additional discussion? Motion on the floor is to amend paragraph 6, to read, "in her

capacity as a native Hawaiian, etc." Is that correct?

Mr. Mardfin: "In her capacity as a native Hawaiian, petitioner is familiar with the Grand Wailea."

Mr. Hedani: Right. Additional discussion? Ready for the question on the amendment? All those in favor of the amendment, signify by raising your hand. Two, three. Opposed, same sign, two, three, four.

**It was moved by Mr. Mardfin, seconded by Mr. Shibuya, and**

**The motion to Amend Item 6 on page 3, to delete the words, "past chair of the Maui Lanai Island Burial Council" and substitute the words, "a native Hawaiian., to read, "in her capacity as a native Hawaiian, petitioner is familiar with the Grand Wailea Resort and Spa property and the native Hawaiian burials which were encountered during grading that took place between," Failed.  
(Assenting - W. Mardfin, W. Shibuya, L. Sablas)  
(Dissenting - K. Hiranaga, B. U'u, D. Domingo, W. Hedani)  
(Excused - J. Starr)**

Mr. Hedani: Motion is lost. Any further discussion? Ladies and gentlemen, do you want to deal with 24 and 25? 24, 25, 26 and the amendment to paragraphs 14 and 15.

Mr. U'u: Motion to delete 24, 25, 26 and to adjust 14.

Mr. Hedani: 14 and 15.

Mr. U'u: 14 and 15, correct.

Mr. Hedani: To reflect the changes as we had previously noted.

Mr. U'u: Correct.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo to delete Items 24, 25 and 26 on pages 5 and 6, and to adjust paragraphs 14 and 15 to reflect the changes that we made on Item D-1. Discussion? Ready for the question? All those in favor of the motion to delete 24, 25, 26 and adjust 14 and 15, signify by raising our hand. Opposed same sign.

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

**VOTED: To Delete Items 24, 25 and 26 and to Amend 14 and 15 to Reflect Changes Made on Item D-1.  
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya,**

**L. Sablas, W. Hedani)**  
**(Excused - J. Starr)**

Mr. Hedani: Motion is carried unanimously. Thank you. Director.

Mr. Mardfin: That was the motion to delete. We haven't voted on the main motion.

Mr. Hedani: I'm sorry, that's right. Any further discussion on the main motion as amended?  
Commissioner Mardfin.

Mr. Mardfin: Unlike the previous two items we've dealt with, I'm going to actively vote against this motion. I believe that on page 3, Item 6, it's an incorrect reading of the record and so I am going to vote against this.

Mr. Hedani: Thank you. Any further discussion? All those in favor of the motion to approve of the proposed decision and order, findings of fact, conclusions of law on Item D-3, as amended signify by raising your hand. Opposed same sign. One opposed, Commissioner Mardfin.

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

**VOTED: To Accept the Decision and Order with Modifications.**  
**(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Shibuya, L. Sablas,**  
**W. Hedani)**  
**(Dissenting - W. Mardfin)**  
**(Excused - Jonathan Starr)**

Mr. Hedani: Motion is carried. Thank you. Director. Your agenda now goes back to the applications for the planned development and the SMA. Do you want to take those on now. We've been going an hour and a half. Do you want a break?

Mr. Hedani: Okay, why don't we take a - Ann, do you want to say something?

Ms. Cua: Yeah, I need to. We have representatives from the State Historic Preservation Division here as well as Charlie Maxwell, Chairman of the Maui Lanai Islands Burial Council that are here. Uncle Charlie to testify but SHPD, in case you have any questions and you know, I did tell them 1:00 p.m., and so they've been here and I don't know if there's any way you could, Uncle Charlie does have to leave and I don't know about SHPD, I didn't get to check with them yet.

Mr. Hedani: Would they like to address the commission at this time? Thank you for waiting.

Mr. Giroux: I think you should read the SMA.

Mr. Hunt: I should read it into the record.

Mr. Hedani: Okay, the director is going to read into the record agenda item C-1. Director.

Mr. Hunt: So without objection I'll read both the planned development and the SMA into the record. Mr. Wade Fisher, Vice-President of Resort Development, Pyramid Project Management, requesting a Step 1 Planned Development Approval and a Step 2 Planned Development Approval for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109 in Wailea.

And likewise, Mr. Wade Fisher, Vice-President of Resort Development, Pyramid Project Management, requesting a Special Management Area Use permit for the proposed renovations and guest room expansion at the Grand Wailea Resort and Spa at 3859 Wailea Alanui Drive, TMK: 2-1-008: 109 in Wailea. Mr. Chairman.

### C. UNFINISHED BUSINESS

1. **MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval and a Step 2 Planned Development Approval for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (A. Cua)(Requests previously considered and deferred at the September 22, 2009 meeting)**
  
2. **MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua)(Public hearing conducted on September 22, 2009 meeting.)**

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Question. Are you opening up the public hearing section of this agenda item or what are we doing?

Mr. Hedani: Ann.

Ms. Cua: I know that there's probably people in the audience that do want to speak on this item. I would believe you'll be doing that later. However, Uncle Charlie has indicated that he does have to leave and so I just thought I'd bring that to the commission and I guess you would have to decide. SHPD is not here as giving public testimony. They're here only if you have any questions of them.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I need clarification. So Mr. Maxwell is speaking as general public or?

Mr. Hedani: Mr. Maxwell basically was requested to be here by staff in the event you had any questions related to Burial Council. So if you have questions or if you would like to hear what he has to say then. We are going to have a public hearing on this agenda item.

Mr. Hiranaga: So it's not public hearing section, it's –

Mr. Hedani: It's actually part of the staff presentation and the resources that they brought to the table basically.

Ms. Cua: If I could clarify. I did contact Uncle Charlie in his capacity to inform him what happened at the other – at the last meeting on September 22<sup>nd</sup>. I did run some of the proposed language that the department was looking at in terms of a condition. He did indicate to me that he would want to come here and testify. So he is here to testify.

Mr. Hedani: Is there any objection Commissioner Hiranaga? No. Mr. Maxwell please proceed.

Kahu Charles Kauluwehi Maxwell: Thank you Mr. Chairman and Members of the Commission. My name is Kahu Charles Kauluwehi Maxwell. I am the present Chair of the Maui Lanai Island Burial Council, but first of all, I'm a cultural practitioner. We all are.

When the Grand Wailea was built we rewrapped the 344 remains and in 2007, when they were building a trap for grease trap, they encountered 20 more burials and Dana Hall and myself as cultural practitioners, and I kind of emphasize this because I want you to know that even the word native Hawaiian is foreign. It's kanaka maole or we are cultural practitioners. My expertise along with Dana goes back from Honokohua and the Burial Council is part of the state and we have laws that we have to follow like you here.

But there's some very – some incidents I want to tell you about. Nancy McMann and it's Exhibit No. 45A sent a letter to you saying that, and in her letter in the last paragraph, the third line from the bottom, it says, "we believe that the current project will have no effect on historic resources because appropriate mitigation in the form of precautionary archaeological monitoring during associated ground altering disturbance." I implore you not to issue any permits until you do an AIS and this is the reason why. We had numerous problems with projects that were built. The plans were submitted then we'd do an AIS or a archaeological study and then when we find the bones, burials, we have to move them, not the building. We want it to be a ground floor where the building can be moved to leave the kupuna in place. And this is just awesome what's happening to our burials in Hawaii. And a lot of it, this is the second incident that Historic Preservation dropped the ball and then that's when the Burial Council came in.

But you know the pathetic part about it, you go to everywhere else in the world, Japan, China, to Arlington Cemetery, they respect the ground that people were buried in. Everybody that has dead

ancestors want it to be there. And come along, after they're buried there, come along a hundred, two hundred years later the land looks like because the ocean, the sunset and they dig up burials with no – they don't care. They don't do that to a Japanese burial, they don't do that to a American burial, then who are we? It's so important that we keep the legacy of our past in our iwi kupuna because then we know our future. If not, everyone that comes to Hawaii should share this legacy. Being Hawaiian is in the heart and you folks are one of the bastions of watching this and some of you are terrific. I mean, and the staff everything, but I implore you that more thought has to be, you know, make the developers go around. If they want the land so much let them go around. Grand Wailea has been nice to us, but I really don't want to move burials. So that's what I'm telling you. Make sure that the AIS is in before the plans are made, before the building permits are issued and I implore this to you. Thank you.

Mr. Hedani: Any questions for Mr. Maxwell?

Mr. Mardfin: Aloha, thank you for coming today.

Kahu Maxwell: Thank you.

Mr. Mardfin: I don't know if you've seen the recommendations by the department?

Kahu Maxwell: I did.

Mr. Mardfin: On page 10 and 11 I believe they refer to some of the concerns and particular on page 11, – on page 10, number 34, 35, and 36. Could you take a moment and read those and let us know whether you think they're adequate?

Kahu Maxwell: Okay. Okay, the first statement, 36, is adequate if you add the language that if burials are to be found that the buildings, the plans for the building could automatically be moved to accommodate of leaving the burials in place then that might work. And then we have that protection for the iwi and there is a lot of places around Maui where the building goes in a U and the burials are right in the middle giving them access to the ocean and to the mountain. The view, we're talking about view plane and that's why it's so traumatic when people cover the burials with concrete and step on them as steps. It's an insult, a cultural insult. Thank you.

Mr. Hedani: Any further questions for Mr. Maxwell. Commissioner Mardfin.

Mr. Mardfin: Is No. 36 adequate?

Kahu Maxwell: Yes, if you add that language I said.

Mr. Mardfin: I thought you were referring to 35.

Kahu Maxwell: Oh, okay. Ann.

Mr. Hedani: No, he mentioned 36.

Kahu Maxwell: Yeah, again, "all work shall cease, " which should be done which is done. But for me the more important thing is that Burial Council and the SHPD have the authority to leave the burial in place and the building, configuration of the building be moved.

Mr. Mardfin: I think that's what 36 says. 36 says, "an archaeological inventory survey shall be prepared for each phase of the development, shall be submitted to DLNR, SHPD for acceptance and to the Maui Lanai Islands Burial Council for comments prior to issuing of building permits for each phase." So they'll do the study first, refer to your folks and then, and only then issue building permits. Is that acceptable?

Kahu Maxwell: But no, no. I tell you why and because we've had incident like this with the Kapalua Hotel where the plans were made again, we had to move six or seven burials from the path of the wall because they had no other place to go. And so what I'm saying is that put some procedure in there so that we don't have to move the burials and I think that would be a perfect place to put it. But once the plans are made, it cost millions of dollars to make the plans and to reconfigure the building it's not – you know, millions more.

Mr. Mardfin: So you think that they ought to do the full archaeological survey now essentially.

Kahu Maxwell: Yes.

Mr. Mardfin: And only then get permits.

Kahu Maxwell: Because of the 344 burials, that's a lot of burials and the 20 that was 20 feet down. When they went 20 feet down, we had to climb down a ladder and perform all the ceremonies 20 feet down and I know, because I skinned my knee. So you know, they gonna find burials. That's a burial ground, over 300 something, that's a burial ground.

Mr. Mardfin: Thank you very much for your kokua.

Kahu Maxwell: Any additional questions for Mr. Maxwell?

Mr. Hedani: Charlie, if the building cannot be moved, if it's in a location where it would be impractical for the building to be moved or say if it was moved next to a burial where the building once relocated would totally obliterate the line of sight to the sea or to any other area, would there be an area or an opportunity to relocate burials to a more appropriate location?

Kahu Maxwell: Wayne, let me ask you this question since you asked me. What if your grandma and grandpa was there would you move them?

Mr. Hedani: Well, from my perspective, if my parents were buried in a location that people were stepping on today or that were, would be tucked right next to a building where it would be in the backside of a building in a service area or preserved intact in a location that was not respectful I would probably prefer to have them moved to a location that was culturally dedicated to that purpose.

Kahu Maxwell: Okay, we have preservation sites all through Makena, Kihei, Lahaina where they're mandated, the property owners have to mandate and preserve the property in perpetuity and that's what is expected. So that's why I asked you that about your grandparents. When I handle iwi, I think it's my ohana, and I try to treat it as such.

Mr. Hedani: Right.

Kahu Maxwell: But you know, we've had to move years and years, we had to move iwi to accommodate tourism, hotels and buildings and everything else, no more. We don't move them no more. So they either reconfigure the building or that's it and that's not playing hardball, that's culturally correct and spiritually correct.

Mr. Hedani: I understand. No disrespect to the way you know, the Burial Council operates. Commissioner Shibuya.

Kahu Maxwell: I understand, you and I know each other long time Wayne.

Mr. Shibuya: Uncle Charlie just trying to keep peace in the family here and I'm saying, you know, Maui family.

Kahu Maxwell: I think it's important.

Mr. Shibuya: I grew up in Camp 5 Puunene and grandpa and grandma were buried where Dream City is today. We had an option of leaving it there, you know, both of them but we didn't know what was going to be over them and we couldn't honor them. So we had the priest relocate them to Maui Memorial, but it's a compromise. Sometimes you have to do this and it's – I'm not saying this is the right way and I'm not saying your way is the best way too, but I can't understand the frustration when you have over 300 of them in one location, yes, it's painful. And then we have other developments throughout Maui, senior housing, assisted living type of structures. Yes, it's very difficult, affordable houses. We need those things but yet, how do we draw this balance?

Kahu Maxwell: Easy. Those people were there first. Easy. It's their land. People came and stole the land away, you know, from these people who never know nothing. This land was theirs. They buried where they lived then all of sudden it's not theirs any more in western law. But spiritually we still own the land. That's how we – see it's different than the Japanese culture. Hawaiian culture where they kanu, where they bury, that's where they stay. That's where they stay.

Mr. Shibuya: Thank you.

Mr. Hedani: Thank you Charlie.

Kahu Maxwell: Thank you.

Mr. Hedani: Ann, did you have somebody else that was also a resource?

Ms. Cua: We have SHPD here if you'd like to question them on their letter that I believe Uncle



Charlier referred to.

Ms. Patty Conte: Hi, I'm Patty the Maui archaeologist of SHPD. Are there any questions that you have?

Mr. Hedani: Commissioners? Commissioner Shibuya.

Mr. Shibuya: Uncle Charlie mentioned that he would like an AIS completed before the plans are even drawn out. When you do an AIS and you start looking and investigating a property how certain are you that after you've completed your survey that there's no pilikia once you marked the area?

Ms. Conte: The truth of the matter is you can't ever be certain and that's why in many cases after an AIS is done we still have mitigation such as monitoring, data recovery, preservation in place because just because you do an AIS you can never – for example, the Grand Wailea property is I think 36 acres or something like as it is today, in order to be 100% sure that you have gotten everything possible, you would have to essentially grub, grade and excavate the entire horizontal plain of the parcel. That just obviously cannot be done and so when you do an AIS it's a sampling process and you use the information that you get from the sampling to predict what else is likely to be there. And so, in the case of the Grand Wailea a series of studies have already been done. There's already been an inventory survey, there's already been data recovery. There were preliminary field investigations before the inventory survey. There was monitoring after the inventory survey and after the data recovery to get more information. There's an MOA in existence which talks about future burials should they be found on the grounds. There's been monitoring after that. So this is not one of those cases where none of the work was done and we simply recommended monitoring. The process was completed however flawed it may be, that's not something that I can single-handedly correct. But the process was followed and there are a number of people who came before me who worked at SHPD who had a part in that so I really can't speak to the role that they played. I can only answer for the role that I played which was to accept a revised monitoring plan that had already been accepted which wasn't challenged in any way and then most recently to acknowledge when I reviewed the permit application for the SMA and the Project Districts 1 and 2 to acknowledge that we do believe there could be some impact, but the process that we have to follow and the rules that we have follow are that where we believe there's a chance that additional culturally significant properties could be identified we consistently recommend monitoring and it has been done throughout Makena, I mean, throughout the whole area, over and over again without incident. So I'm not saying that an AIS could not provide further information and it's my understanding that the owners are willing to conduct a phased AIS even though it has already been done. I'm certainly in favor of that. I mean, any time a landowner is in favor of doing anything proactively that's great. I would like to say though that if an AIS is conducted phased or otherwise, I would like to see it proceeded by an inventory – what's called an archaeological inventory survey plan. And the reason I say that is because it sounds as though as the inventory survey work that will be conducted if it is, will occur over an extended period of time with different things occurring in between. And so I think that if an archaeological inventory survey plan was submitted prior to actually beginning the inventory survey work it would help clarify things for a lot of people who are interested in this project and the outcome.

Mr. Hedani: Additional questions from the commission? I have a – I'm sorry, Commissioner Mardfin.

Mr. Mardfin: You talked about SHPD having an MOA if iwi are found.

Ms. Conte: Actually it's an MOA that was signed in 1988 between OHA and –

Mr. Hedani: You're referring to a Memorandum of Agreement?

Ms. Conte: A Memorandum of Agreement, yes and it's very archaic in its construction and it was created before the Burial Councils were in existence. However, it is very specific to the fact that there were burials previously found, what would happen to those and there was a paragraph at the very end that specifically states that it will be expanded to additional previously unidentified native Hawaiian burials on the grounds of the property. And that particular MOA was used up through the initial development of the MOA lasting through 1991. So it didn't just apply to those found during the original inventory survey. It was applied without challenge through 1991 and the monitoring report that is in on file for that work, for the data recovery and the monitoring for the actual grubbing and grading and infrastructure placement for the hotel itself specifically states that that monitoring – that work was conducted in accordance with that MOA.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Would it be appropriate two decades later almost to do a new MOA with OHA, with the Burial Council?

Ms. Conte: Absolutely. I don't see any problem with that. And I think that would probably have been the better way to approach this was – is to say, hey you know, we did this MOA way back when, we didn't have the Burial Council in existence, things have changed, we would like to update this and any signatory on a document like that has the ability to go back and revisit that and say, hey, we're not really happy with any more. I don't have the authority to do that but those involved certainly do for whatever reason.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: You referred to a monitoring plan. Is that sort of after the fact?

Ms. Conte: Well, here's what happens. The normal process is we're afforded the opportunity to review permit applications that are forwarded to us by the county. The bottom line is if the county doesn't send it, we don't see it and we're not given an opportunity to actually review and comment. When we are given the opportunity, we review the project information, sometimes it's a letter from a planning consultant that says hey, my client's getting ready to do this, what do you think we should do? Other times it's actual permits and project plans. We review all the information that we have on file and based on that we make a recommendation back to the county what we feel should be made as a condition of that particular permit. A lot of times it's an AIS, sometimes an AIS has already been conducted so then we take the recommendations from that AIS and we incorporate it into the next letter which might be monitoring, it might – you know, there might be

sites that are known that are subject to preservation, might be data recovery. It's different in every case.

Mr. Mardfin: And does this, I take it the monitoring plan for this project has gone to you?

Ms. Conte: Yeah. Actually what happened was before I came on board at the SHPD, a predecessor who is now our Big Island archaeologist Theresa Dunham reviewed a monitoring plan for this very project and she reviewed and approved it.

Mr. Mardfin: And this was what date?

Ms. Conte: It was January of 2008 I believe.

Mr. Mardfin: Okay.

Ms. Conte: Okay. And then subsequent to that, I guess there were some changes even though I have not seen defined set of project plans because we haven't received any building permits to comment on, subsequent to that there were some changes in plans and so the archaeologist on behalf of the client proactively revised that approved monitoring plan and sent it back to us. That's the one that I reviewed and we now have on file. And what we said when we accepted that was that we expected the monitoring to occur just like it had in the past with previous phases of the projects either on the Grand Wailea parcel or otherwise and then in the fall, I got the permit in question which again, did not come with any detailed project drawings because it's not a building permit application. It's just a project development and SMA and so we didn't say that no further work was necessary, that's not what we said at all. But again, you have to remember that within the confines of our program rules there's specific language that we also have to pay attention to and it's not perfect. It's not perfect. There's definitely room for improvement, but again, I don't have – I can't single-handedly change that.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Do you happen to know if that monitoring plan also goes to the Burial Council?

Ms. Conte: Actually the Burial Council doesn't review things like we do. They're certainly welcome to but it's not standard practice for us to receive them and then forward them. So I – but you know, all of our records are public domain and so anybody can come into our office and say hey, do you have anything for this particular area?

Mr. Mardfin: Thank you very much.

Ms. Conte: Yeah.

Mr. Hedani: Additional questions? I have a question. If – I don't know if you were present when we were listening to Charlie Maxwell address the commission.

Ms. Conte: I had to move my car so I missed the first few minutes, but I did hear the last part.

Mr. Hedani: He is concerned if additional burials are found that they remain and preserved in place.

Ms. Conte: Right.

Mr. Hedani: Does SHPD have a program to accommodate?

Ms. Conte: Well, here's the way that works. When the burials are found during an AIS, the Burial Council has a statutory right to determine treatment and preservation, location, everything that has to do with what happens to the burial. When it's found after construction begins such as would be with a monitoring plan then that right falls to the SHPD. However, here and what it says is that when they're found after construction begins, only the geographic representative of the Burial Council needs to be consulted not the entire Burial Council with regards to the determination or the preservation. However, it is practice here on Maui for our Cultural Historian to involve the entire Burial Council in every burial that's found inadvertent or otherwise. And so they regularly do see these things, but there is a difference in the timing and who legally gets to make the determination depending on whether it's found during an AIS or after the AIS is completed and the construction has begun.

Mr. Hedani: I'm not sure if you answered my question.

Ms. Conte: Well, that is the process. The process is that the Burial Council gets to make the determination by statute if it's found during an AIS.

Mr. Hedani: And if it's not.

Ms. Conte: If it's not, it falls to the SHPD, however, the SHPD, the Maui Cultural Historian brings every burial that's found on this island under his watch, to the full council for comments and consultation.

Mr. Hedani: When that happens, say a burial is found and when that goes, say in the course of construction, that goes to SHPD, what happens at that point?

Ms. Conte: You would have to talk to the Cultural Historian, Hinano. Is he here? He can explain that process, because that's his role in our office is dealing with those burials and making those decisions. So if you have a specific question related to that, you should talk to Hinano who's right over there.

Mr. Hedani: That's not something that your officer decides?

Ms. Conte: He works for our office. He just has – he's the Cultural Historian, I'm the archaeologist. So when it comes to a burial, Hinano handles it.

Mr. Hedani: I see.

Ms. Conte: Okay.

Mr. Hedani: Thank you.

Ms. Conte: Yeah.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: Does your office ever say oh, we found some bones here we have to move the building?

Ms. Conte: We, our office is not – we do not serve the role of limiting or prohibiting development. We only have the opportunity to review and mitigate the potential impacts of that and so we could never tell somebody oh, – we couldn't outright say, but we would certainly want to work with the landowner, the developer and whoever else was involved in coming up with a satisfactory resolution if it meant moving the building or the house or whatever it was absolutely. But I understand where Charlie's coming from. I understand it's frustrating because a lot of times by the time – actually every time, by the time the permits come to us for review the project has been passed by the County Council, it's already on its way to happening, designs are final and it's very difficult when it's – especially when it comes to – well, even if the small landowners, say a small landowner has a small lot and they've gone through the whole process and then at the 11<sup>th</sup> hour they find a burial that's in the middle of their living room. It's difficult no matter which way you slice it. It's very difficult, but we have in the past worked with the landowners and again, that would be a more appropriate question for Hinano because he's involved in the burial treatment components of preservation plans which would address the end result of where that burial was going to be placed and why.

Mr. Hedani: Thank you very much. Any additional questions for SHPD? Thank you very much for your presence. Ann, we're going to go ahead and take a break at this point. We'll take a 15-minute recess.

A recess was called at 3:11 p.m., and the meeting was reconvened at 3:30 p.m.

Mr. Hedani: The planning commission meeting of October 13<sup>th</sup> is back in session. Ann.

Ms. Ann Cua: Mr. Chair, I believe Hinano would be our next resource person from SHPD, Hinano Rodrigues.

Mr. Hedani: Welcome back sir.

Mr. Hinano Rodrigues: Thank you. Hinano Rodrigues, State Historic Preservation. I was wondering if maybe I could ask the planning commission if Dana Naone could go ahead of me in that she has to leave. Dana has a lot of history with the Grand Wailea.

Mr. Hedani: Any objection from the Commission? Dana.

Ms. Dana Naone Hall: Good afternoon Commissioners my name is Dana Naone Hall. Thank you for your accommodation.

Mr. Hedani: Dana, can you pull the microphone closer please?

Ms. Hall: I believe an AIS should be conducted before the SMA permit is granted. And there's lots of precedence for this. In the early '80's Seibu when they owned Makena Resort did an archaeological inventory survey of much of its property. Since then that survey or those surveys have been found to be inadequate because archaeology has progressed in the last 20 years. And so, as Seibu – as the Makena Resort develops each parcel a new AIS is required. The same should be held for the Grand Wailea Hotel. Its AIS was conducted in 1986, that's a long time ago. Only two burials were found at that time. During monitoring for that project for the Grand Wailea, the actual development project, 344 individuals, a minimum of 344 individuals were identified.

An archaeological inventory survey according to Section 13.276.3 of the Hawaii Administrative Rules shall, and I'm quoting, "determine if archaeological historic properties are present in the project area and if so, identify all such historic properties." Patty Conte is correct, an archaeological survey is a sampling, but if it's a good sampling it gives you a good idea of where these historic properties may be located. And in the case of burial sites it's crucial because burial sites by law are considered a special class of historic properties because of their sensitive cultural nature.

In the Grand Wailea the AIS will be performed after the SMA permit is granted then there will be much more pressure to relocate burial sites if they found in inconvenient locations for the permitted development. That's the problem. This is not the way an AIS should be conducted. The information about historic properties and cultural and historic sites must be available to decision makers prior to the granting of a permit in particular the last discretionary permit for development in the coastal zone as is the case here. A monitoring plan is no substitute for an AIS.

Lets review briefly the history of the Grand Wailea site with respect to archaeological issues. In 1986, PHRI, Paul Rosendahl's firm conducted an AIS for the project area which resulted as I said, in the identification of two sites of particular interest. Site 2012 was a rectangular walled enclosure located on a sandy knoll in the northeast corner of the parcel near the area later designated for interment of burials from Site 2802 and 2804. This site was dated A.D. 1620 to 1890. The enclosure was interpreted as ceremonial in nature and one of the ironies of this is that there is a modern day, I wouldn't call it quite fake, but I'll call it a pseudo ahu on the shoreline of the Grand Wailea when in fact the real thing was destroyed back in 1986. Site 2013 included two raised stone platforms which marked two burials. This site complex included hearths or imus and other subsurface features and was used prehistorically as a habitation site from approximately A.D. 1340 or mid 14<sup>th</sup> Century to the 1600's. Interestingly, 1,000 artifacts were recovered during the inventory survey indicating intensive habitation of this area.

In 1987, monitoring commenced for construction of the Grand Wailea Hotel. This was approximately the same period of time during which excavation of the Honokohua burial site was begun. The difference is that the Hawaiian community and the public at large did not know about the extensive disturbance of burial sites at the Grand Wailea. Neither PHRI, the archaeologist, the hotel development, TSA International, the State Historic Preservation Division or the Office of Hawaiian Affairs informed the general public and native Hawaiians of the potential effects of this project on native Hawaiian burial sites.

Mr. Hedani: Ann, can you adjust the microphone please?

Ms. Hall: The result of this monitoring project was the identification and relocation of a minimum of 344 individuals including the disinterment of 119 primary in situ, meaning in place, burials. Among the individuals identified were the human skeletal remains of burials unearthed in the 1970's during the construction of a county sewage pump station and associated pipelines. These burials were unearthed a second time during the 1987 to 1991 monitoring program. Monitoring resulted in the identification of three additional burial sites within the project area. 63 artifacts directly associated with human skeletal remains were recovered. 59 of these artifacts were found in association with burials located at Site 2802 where 79 burials were recovered, the majority of which were primary burials. Now these are discrete areas that are marked on a project area map and those are the areas that would be fruitful for further investigation as well as any new areas for development.

It should be noted that almost all of the burials were disturbed by mechanical excavation either bulldozer or backhoe. It may sometimes abstract to talk about burial sites and their disturbance so I will attempt to give you a sense of the individuality of some of these burials. For instance, Burial 5 was found in a seated position. The burial pit in which the adult male was buried was filled with 11 layers of large rocks and midden, midden is like fish bones and things that you eat. Interlaced with the large rocks immediately above the burial were small smooth stones ili ili. This burial was found at a depth of almost three meters or 10 feet deep. Or Burial 9, the remains of an infant which were severely impacted by a backhoe. This severe damage to the remains of infants was a case throughout the project area. The skeletal remains of small children are very fragile and often disintegrate when contacted by machinery no matter how controlled the monitoring. A number of burials were found covered with black or white fibrous material, kapa. Burial 28, 25 was a female found in a seated position on a layer of ili ili, her body wrapped in black kapa. Burials were found with ...(inaudible).. placed a few centimeters away from their mouths. Burial 46, an older adult male found facing west with his arms crossed on his chest was found with a lei niho palaoa placed in the neck region a symbol ordinarily thought to be of a alii rank. Site 2803 consisted of 28 primary burials and 13 clusters of previously reinterred remains. The monitoring plan notes that during the excavation of the main sewer drain the remains of five individuals were disturbed by heavy equipment. These five individuals were buried at depths between 4 and 6 meters or 13 to nearly 20 feet below surface.

In another instance during excavation for the luau building, four burials were disturbed, all were found in sand and were severely impacted by construction activity. Site 2804 parallels – Site 2804 another burial site parallels the coastline extending for a distance of over 65 feet, 12 individuals were excavated from the sand at Site 2804. The remains of a four or five-year-old child disturbed by grading activities was found buried with a dog which was placed to the west of the body of the child and this is a practice that's documented by Pukui and Handy and Handy. Site 2804 was used for burial purposes contemporaneously with habitation so it's quite an early site.

Now the first monitoring was done as we know between 1987 and 1991, but the monitoring plan for that project was not prepared and accepted by SHPD until 1999, eight years later. I'm sorry, the monitoring report was not prepared and accepted by SHPD until 1999, eight years later apparently due to some contract dispute between the archaeologist and the owner.



The second monitoring occurred in 2007 when a grease multi-ceptor unit was proposed. And this resulted in the identification of yet another burial site on the property, the five burial site of concentrated human remains. And this is site 6507. 6507 is in the northeast quadrant, no, no, no - sorry, southern quadrant of the project area. There was quite a bit of fill moved into this area to build it up because there was a lot of cutting and grading, the topography was changed drastically and I remember I was on the Burial Council at that time, it was my last year, remember asking for as bills or plans that showed where the cut and fill had occurred so we could have some idea of how to look for burials and there weren't any plans available apparently from the hotel. But in any case, this is the one that Charlie referred to earlier when they were digging for this multi-ceptor unit which had to go very deep into the ground, through the fill, throughout the fill they found fragmented remains from the earlier monitoring project. So monitoring is by no means a panacea. It's not the way to go because number one, you're contacting most of these burials with mechanical means. Number two, you miss a lot. So fragmented remains were throughout the fill and then low and behold we hit the original surface. And in the original surface were six primary in situ burials or probable burials. To their credit, Grand Wailea at that point decided that they would do a less invasive system, break it up into smaller units and place it in areas on the property devoid of human skeletal remains so I thank them for that.

This monitoring, the fieldwork for this monitoring ended in 2007 and Charlie and I reinterred the remains in that same year. The monitoring report on that work has not yet been completed and it's two years later. Ordinarily monitoring plans are supposed to be reported - prepared - monitoring reports are supposed to be prepared 180 days after the end of fieldwork. So you know, in the Grand Wailea's case we've had delayed reports for both monitoring projects.

You know one thing about the Island Burial Council duties is that Chapter 6E 43.5 which is Chapter 6E 43 is the Burial Law states unequivocally that the burial council shall make recommendations regarding appropriate management, treatment and protection of native Hawaiian burial sites on it or on any other matter relating to native Hawaiian burial sites. So they have wide latitude to comment and make recommendations in order to insure the protection of the burial sites.

The one thing I noticed when I looked at all the things that have been printed up for this project is that number one, not in the monitoring plan, not in the consultant's submissions to the commission, not in the Planning Department's report to the commission did I find anything with any specificity about the actual number of burials found on the Grand Wailea in the past and what may be present in the future. Nothing. No predictive model, nothing. And that concerns me, that's why I think that an AIS, an updated AIS should be done for this project area because if you try to look at where the burial sites were found in the past and look at for instance, 6507, the most recent burial site is located near where they're proposing to do the Molokini Makai addition. Wouldn't that be an appropriate place to do an AIS so that we know what we're dealing with before construction begins or before, you know, building permits are issued? I think so.

And SHPD in the past used to always cc the Maui Lanai Island Burial Council, since then there's been a real breakdown within SHPD particularly between the Archaeological Branch and the Culture and History Branch under which the burial councils evolve.

The letter that Patty Conte drafted on June 24, 2009, your Exhibit 45A is cc'd to, and it's a no effect



letter, no effect on historic properties, hah. Can you open that Ann to the last page, it's cc'd to Mich Hirano, Munekiyo and Hiranaga, Jeff Hunt the Director of Planning and the Maui Cultural Resources Commission, but yet, the one agency probably with the greatest interest in whether or not a monitoring plan is appropriate for this project or whether or an AIS should be done, the Maui Lanai Island Burial Council is not cc'd at all. Never put a notice, not one bit of notice to the Maui Lanai Island Burial Council. And that council is very, I mean, it's full of people that have a great deal of experience with burials.

And then one other thing, you know, when we're talking about areas too that might be the subject of an AIS prior to the issuance of the permit, I looked at the conceptual drainage system that's included in your packets and I note that most of the drainage is going to be handled by 48-inch underground perforated drain pipes within near to or within the 300-foot shoreline setback area, that's where most of the drainage is going to be handled and you know, that means that 48-inch drain pipe, that means you'd have to go six feet deep because you need two feet of cover and one foot on each side so six-foot by six-foot drain pipes. That's a big area man. You ought to do some testing there to see what there is.

Anyway, I hope this helps you somewhat and I hope you do the right thing and require an AIS before issuing the SMA permit. Thank you.

Mr. Hedani: Questions for Ms. Hall? Dana, have you had a chance to review Condition 36 on the SMA permit application?

Ms. Hall: Just now yes. You want to ask me if I think it's adequate?

Mr. Hedani: I wanted to know what your opinion was on Condition 36.

Ms. Hall: I think it's a, excuse me for saying so, I think it's a dodge. An AIS is conducted before you make your decision about granting the permit. That's the whole point. It's a disclosure document like an EIS if it's required. You need it in order to make an informed decision.

Mr. Hedani: Thank you.

Ms. Hall: You're welcome.

Mr. Hedani: Any additional questions from the commission? Thank you very much.

Ms. Hall: You're welcome.

Mr. Hedani: Ann.

Ms. Cua: So I'm assuming you want to go back to hearing from Hinano. I know the applicant's Kahu has to also leave as well. So I don't know it's the commission's choice who you want to hear from first.

Mr. Hedani: Commissioners? Can we hear from Hinano.

Mr. Hiranaga: Mr. Chair, could I just get clarification. So we're not in the public hearing section of the agenda.

Mr. Hedani: No.

Mr. Hiranaga: And Mrs. Hall spoke as? In what capacity? I know Charlie Maxwell spoke as Chair of the Burial Council. So is her capacity general public or just for clarity.

Mr. Hedani: I afforded Dana the opportunity to speak as one of the petitioners on this particular project. Mr. Rodrigues.

Mr. Hinano Rodrigues: Hinano Rodrigues, Cultural Historian for SHPD and Maui District Office Manager. Do you have any questions? If not, let me take off from some of the good questions that were asked and I think somebody asked a question, I don't know if it was asked of Uncle Charlie or Patty but the question was have you ever moved a building because there was a burial there? And the answer is yes. In fact, coincidentally it was Grand Wailea who was one of the first developers within my experience who actually moved their three-story grease interceptor. That was one. Another one was out at Kapalua where they moved a \$50 million building five feet to accommodate a burial. So yeah, it is done, but it is done with a lot of sensitive and meticulous and detailed negotiation skills. But it's done. And it's also not done, thank you Dana.

Another question is well, what's the difference between a monitoring plan and AIS? A huge difference. Very big difference. The first one is who has jurisdiction over the burials that are found when an AIS is being done and the second, who has jurisdiction over burials done during monitoring? Two separate parties. The first one is the Burial Council and the second one is SHPD. I have to agree as a cultural historian that's it's really important to do an AIS first and that helps both parties. If the developer has a master plan and he does an AIS and burials are found he is still at his master plan stage. He can still make changes that aren't that expensive. But if you're going to wait for AIS to occur in stages, what happens if lets say at stage 1 we find nothing you build your spa and at stage 2, you go in to build your swimming pool and you find burials? There is a possibility that we're going to say well, you can't have your pool. Well, you can't have your spa building without your pool. So it really makes more sense to do an AIS from the very beginning and again that is from a cultural perspective. Thank you.

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

Mr. Hiranaga: So an AIS is there law mandating at which time an AIS should be performed?

Mr. Rodrigues: There's no law mandating when an AIS should be performed but logically speaking it should be done at the very beginning. In fact when this issue was brought to my desk I was a little bit disturbed in that we're going forward with a monitoring plan instead of an AIS. The stages are really, AIS plan, AIS, some kind of mitigation, maybe preservation and then when construction starts, monitoring. So it looks as though we're starting at the end rather than at the beginning.

Mr. Hedani: Commissioner U'u.

Mr. U'u: We heard comments from I guess SHPD earlier stating that the process was completed so I don't get - she said the process was completed and now we saying we doing it backwards. So what part am I missing? She stated the process was completed or is completed I should say, the process is completed and granted we no agree with the process and we probably all can find arguments that what we should - what the process could do to be better but now you're saying that they're starting at the tail end of the process. What's the difference between what she said and what you said.

Mr. Rodrigues: Thank you. I normally don't second guess my professional staff, so I will defer the answer to that - I will defer that question to our Archaeology Department that handles that. I'm not too sure I agree with the statement that the process has been completed.

Mr. U'u: Thank you.

Ms. Conte: I can actually clarify that.

Mr. Hedani: Can you restate your name for the record?

Ms. Conte: Patty Conte. What I meant was that in this case this project the overall Grand Wailea development in the very beginning went through the process. Now we do, the SHPD does review permits on a project by project basis. So over the years different things happen and we take Information that we found before and we incorporate it into our - our subsequent recommendations. What I meant when I said that before is that prior to the Grand Wailea being originally constructed an AIS was done, data recovery was done, monitoring was done and so the process has already been completed for the overall development. That's not to say that additional AIS work would serve no purpose. But that's the difference. In this case we're not talking about a situation where an AIS has not been done ever. We're talking about doing additional AIS work on top of a process that's already been completed.

Mr. Hedani: What would your recommendation be Patty?

Ms. Conte: I have no problem with doing additional AIS work, none at all, I've already stated that. I, honestly, I guess when the letter I wrote back in June or September whenever it was, if the people who had a problem with it would of just called me up and said, hey we think this is wrong, I could have revised it, honestly.

Mr. Hedani: Okay.

Ms. Conte: But that didn't happen.

Mr. Hedani: We have a condition in our SMA permit requirement that requires an AIS to be performed for each phase of the project. Do you have any recommendations as to changes to that language?

Ms. Conte: Well, I do agree with Hinano in that when you do an AIS in phases like that for such a large development it could create problems down the road. I mean, the whole gist of the

conversation here is appropriate planning for the larger development and so you don't want to do an AIS for the corner over here and find nothing and then have them start their building with an intent on completing it everywhere else and then suddenly having a problem next door to it where they can't - so the whole idea of doing the AIS before the project design is finalized is what I think people are interested in seeing happen.

Mr. Hedani: I guess my question -

Ms. Conte: And if I had, I'm sorry, and if I had to - answering that question I would like to see an AIS all in one.

Mr. Hedani: Okay, I guess my question is if you can take a look at paragraph 36 in our SMA permit conditional requirements and let us know if you have any suggested changes.

Ms. Conte: Yeah, I'd have to say that the "each phase of development" is the problem. What I'm trying to tell you is that doing it as phases of development occur is the problem.

Mr. Hedani: So your recommendation would be for?

Ms. Conte: Do an AIS.

Mr. Hedani: To do five surveys or 10 surveys whatever it takes to -

Ms. Conte: No, no, that would be the AIS for each phase of the development. You do one AIS. What you do is look at the entire project area and you do your archaeological inventory survey of all previously - it's hard because it's a sampling process and in a built environment it's hard to, you know, sometimes you start doing an AIS and you run into problems but obviously if you do the AIS for the entire project all at once for all of the proposed ideas for the redevelopment then the developer can plan appropriately. I'm hundred percent in favor of that.

Mr. Hedani: Thank you. Commissioner Mardfin.

Mr. Mardfin: It was, I think it was stated earlier that we don't have a map of where all the archaeological finds and iwi have been found to date. Is there a map available for their property that would show that?

Ms. Conte: There are, but a lot of those things are pulled from our shelves because of the confidentiality and so I do not have access to that particular information right now. Hinano may have it in his files. But in terms of burial location, those are things that aren't generally left on the shelf.

Mr. Mardfin: Even if they've been moved?

Ms. Conte: Yeah, because it's an overall sensitivity, privacy thing.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much. Commissioner Hiranaga.

Mr. Hiranaga: Are you willing to put your recommendation in writing?

Ms. Conte: Well, I can certainly talk about it with SHPD administration and if they say yeah, go ahead and write a letter that says you know, we've reconsidered and this is what we're thinking now based on additional information, sure, I have no problem with that.

Mr. Hiranaga: It would make me more comfortable if it was a formal communication from your department.

Ms. Conte: Okay, yeah.

Mr. Hedani: Any additional questions for Hinano or for Patty? Commissioner Mardfin.

Mr. Mardfin: I have one for Hinano.

Mr. Hedani: He was off to the side because –

Mr. Mardfin: I know he was, I saw him slip in there. Hinano.

Mr. Rodrigues: Hinano's thinking about lunch.

Mr. Mardfin: You know, I'm putting this particular project aside. Well, maybe keeping this particular project in mind, how come with projects like this we don't routinely forward this onto the Burial Council for input? Should that be something done by the Planning Department or by SHPD?

Mr. Rodrigues: It's something that we could do. But no, it's not something that we could do, but no, it's not something that we normally do. The Burial Council has consultation rights. And personally I think if I took every matter to the Burial Council I wouldn't be able to get through my monthly agenda. However, and this is what caught my eye or this is what raised the flag in this case, we have 344 burials guys. You know, this should have been given strict scrutiny but it wasn't. So yeah, to answer your question we could flag parcels.

Mr. Mardfin: Right. I mean, it seems to me in this case in particular I mean it should have been in their hands from the get go. And I just hope you have a good relationship with them because I think – I can see a lot of projects where you know, we shouldn't just get one side, we should really get two sides and maybe it's Current Planning that needs to be more proactive in going after the Burial Council for input. If they don't want to give input, I mean, I've said this before on other projects with other circumstances, but if we don't get input, that's – we're at a disadvantage but we can't do anything about it. But at least, they should be given an opportunity to comment on different things I would think. Anyway, thank you very much.

Mr. Rodrigues: I think that – I don't want to blow my horn, but I think in all these years the Burial Council and the SHPD representative have an excellent relationship.

Mr. Mardfin: That's wonderful to hear.

Mr. Hedani: Any additional questions for Hinano? Thank you very much. Oh, Director Hunt.

Mr. Hunt: For Patty. The issue on proposed Condition 36 was kind of two issues, one was sequencing or splitting the AIS. You said you would be in favor of just doing one. The other issue is the timing of it. The condition as worded says prior to issuance of building permits, but we've had people suggest that it should be prior to issuance of the SMA permit. You have an opinion on that or could you include that in your letter?

Ms. Conte: I don't have the same understanding of the permit process that Dana may. She believes that it's the SMA permit process that's the heavier weight in this case because it will allow certain things to proceed that can't be undone later. So normally it would be upon our review of a building permit. Sometimes we get SMA and building permits together as one, sometimes they're separate. Sometimes one comes ahead of the other. And maybe that's where a change can be made, because obviously if I, if we review and comment on a permit that doesn't involve actual alteration or ground altering disturbance but then later complicates the process of reviewing permits that do involve, it creates a problem all around. So I think it really does depend on what this SMA permit is going to open the door to. If it's going to still allow the opportunity for us to review and comment and effectively treat any culturally significant remains that will be found during construction without having to move them then maybe that's okay. But again, it depends on what this particular permit approval is going to open the door to and what it's going to prevent us from reversing later. Does that make sense?

Mr. Hunt: Yes, thank you.

Mr. Hedani: Ann.

Ms. Cua: So I believe we're done with our resource people at this point. Let me just kind of recap what we have left to do. We have public testimony. I do have my addendum report that I would like to go through but it is the pleasure of the commission as to what you would like to take place first. I know there are people that do have to leave.

Mr. Hedani: Was there a cultural practitioner from the applicant that had a time constraint that you would like us to hear from?

Ms. Cua: Yes, please.

Mr. Lyons Naone: Aloha iau kou. My name is Kahu Lyons, Kapi'ioho Lyons Naone. As usual, I'd like to address my ancestors first. (Spoke in Hawaiian) Grant us the wisdom that comes from above. (Spoke in Hawaiian). Let wisdom that is found in the music, in the chants, in the sound of the wind and the birds. (Spoke in Hawaiian). Let that come in the form of intelligence, compassion for one and other and spiritual strength.

Chairman Hedani and Commissioners and having passed out my written testimony, my name is Kahu Lyons Naone. I am with E Ola Pono. We are the cultural advisers to the Grand Wailea. We

are providing cultural oversight to Pyramid Project Management and the Grand Wailea on the proposed renovation program that is presented to you for SMA permit approval.

One of the first tasks we have been asked to provide guidance on is the project drainage requirements and the relationship this may have on potential impacts to archaeological resources, native Hawaiian burials and potential impacts on the near shore coral reef environment.

The native Hawaii perspective is not to prioritize one resource over the other. In this context, both respect and avoidance of native Hawaiian burials and not to harm the coral reefs are equally important. It is not a matter of one being more important than the other. It is a matter of both native Hawaiian burials and the coral reef need to be dealt within the appropriate ways.

On face value we understand the relationship to be as follows: Storm water runoff leaving the project site eventually flows into the ocean. There are sediments that are harmful and other particles. Kalamai. Stormwater runoff that may be harmful to the coral reef.

No. 2, creating more capacity to retain the storm water on the Grand Wailea property will reduce the amount of storm water runoff leaving the site and thereby reduce the potential impact on the reef.

There are known Hawaiian burials on the Grand Wailea property. There are several hundred known burials on the site and there is a high probability that there are more native Hawaiian burials.

Creating more subsurface drainage retention basins on the Grand Wailea property then, has a potential impact native Hawaiian burials.

As I noted before, protecting the iwi and the coral reef are both very important and we should not be looking at this as "either," "or" situation. Culturally we have to protect both.

Another culturally important principle that may help to shed light on this dynamic is the concept of balance. Culturally, if an action may potentially harm something then we would leave it alone. However, we also have to look forward and therefore, we need to balance action with "leaving things alone."

For the protection of iwi, subsurface investigation and archaeological inventory survey prior to construction needs to be done to ensure we do not adversely impact native Hawaiian burials. During construction archaeological and cultural monitoring will need to be carried out during ground altering activities to again make sure no inadvertent cultural finds are impacted, and if found, they are appropriately dealt with.

For the protection of the coral reef, Pyramid and the Grand Wailea will have to take positive measures to ensure that they are doing all that they can to maintain the quality of the nearshore marine environment and not adversely impact the reef. They have to move forward with a low impact development. This would involve minimizing storm water runoff as well as taking measures to minimize the harmful petrochemicals and pollutants that may enter the ground and storm water. They must also find ways to minimize the storm water runoff without more storage under the

ground. We cannot speak on what amount is appropriate. This decision is for you to determine or decide as the planning commission.

I hope my comments are helpful to provide guidance to the commission on the subject of the drainage and protection of the cultural resources.

Mr. Hedani: Thank you very much Kahu Lyons. Any questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: Aloha.

Kahu Naone: Aloha Ward.

Mr. Mardfin: You've been here through most of the testimony I think in the last couple of hours and I really enjoyed, appreciated your paragraph for the protection of the iwi, subsurface investigation, archaeological inventory survey prior to construction needs to be done. Do you agree with the previous testifiers that it would be a really smart idea to do the AIS now for the entire project so that they could make adjustments in where they put the buildings?

Kahu Naone: I think there's so many different opinions that are flying back and forth. It's very confusing. And personally, everything possible should be done to protect them. I can say that. I don't know anything about procedures, laws, things like that. 65 years basically I've been a kahu. I make sure that protocols, proper things are done culturally. You folks need to interpret the law, what comes first, what comes next, things like that. I just hope you folks are sensitive to the culture as well as the community, as well as commerce. It's a heavy burden on you folks to have to carry that load. I don't envy you, but I can say one thing that as the cultural monitors we have been given assurances by the Grand Wailea and Pyramid that our recommendations on culture they will listen to it.

Mr. Mardfin: Mahalo nui loa.

Kahu Naone: And I need to say that we're still in the planning part of the monitoring plans and things like that. As far as adding cultural monitors, the concept of cultural monitors is very new and I have to comment – and I have to compliment them on looking at that, taking the time to look at it.

Mr. Mardfin: I agree with you. I think the Grand Wailea is a good actor in all of this and I've spoken with their people and particularly the cultural people and I know they want a cultural resource center there. I think they're doing absolutely the right things in terms of what they're planning and the only – I just would like to see the archaeological inventory study done in advance so that adjustments can be made easier and cheaper and in the long run by doing a comprehensive approach and I'm really glad that they're working with you. I've known you for a while and I know that you'll do a wonderful job for them and I want to thank you very much.

Kahu Naone: Mahalo.



Mr. Hedani: Additional questions from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: Previous testifiers have advocated moving the location of the buildings if remains are encountered or identified. Are you in agreement with that that these remains should not be relocated and that they should remain in place and the buildings themselves redesigned and relocated?

Kahu Naone: I think that there has to be the mitigation process in that and I cannot come out and just say yes, this or that because you know, again, like I say, I don't really know, understand what the rules are that you folks have to follow or other people have to follow and for me to give my personal opinion, I represent E Ola Pono and I have to be careful because what I say here even though I am my own person, I say on behalf of them and so I can't really say much more on that.

Mr. Hedani: I think every case is different and you would have to take it based on what you find and the circumstances.

Kahu Naone: I think saying move the building or things like that, it's you know, it's more of an emotional thing but it is emotional opinion, but I think everything has to be taken into consideration. If it is that the building has to be moved then those that are responsible to make that decision, you know, needs to make it.

Mr. Hedani: Thank you. Additional questions? Thank you very much. Commissioner Sablas.

Ms. Sablas: Aloha Kahu.

Kahu Naone: Aloha.

Ms. Sablas: Can you tell me who are the other members of E Ola Pono and some of the processes that you have been involved within this, up to this stage? You know, it's hearing Dana talk about all of the findings, you know, even for me it's been kind of like a wow. I'm just curious, now from you and your E Ola Pono group, if all of what Dana had presented to us were you as a group aware of all of that findings?

Kahu Naone: I have been involved with the Grand Wailea for quite a while, at least since certain members of their executive board had returned to the hotel and asked me to be involved including during the finds of all of these things. Of course, I was not a cultural, a hired cultural advisory for them. I could only advise them in some of the protocol things. My advice to them was go to the Burial Council, go to SHPD and yes, I am aware of a lot of the findings. I have been there to help with protocol. I've also been there to help with post discovery counseling because the employees get really intense and they need counseling because rumors fly about all kinds of things and they do need counseling. In that sense, yes. But as far as being their cultural monitor on projects, no I have not.

You asked the other question who is involved with E Ola Pono. I can tell you and it is myself, Clifford Naeole, Terry Goreman and Ramsey Tom. We are the E Ola Pono team and we hire people to help us as staff. We are – we have been in business for about four years basically doing

cultural monitoring and cultural advisory work.

Ms. Sablas: So for clarification purposes you are all paid consultants?

Kahu Naone: Yes. We have to eat.

Ms. Sablas: Yes, I understand and I support that, but I just wanted to clarify that.

Kahu Naone: Yes, yes.

Ms. Sablas: Again, my question was because you know, again, Dana has a lot of experience there and you know that, so has the group involved Dana in some of your deliberations?

Kahu Naone: A member of the group was asked to approach Dana and talk to her and that report has not come back yet.

Ms. Sablas: I think she had mentioned the monitoring report that was two years overdue. I'm sorry if I'm just going one, but –

Mr. Hedani: Go ahead.

Ms. Sablas: Do you know of that, the status? Has your group been privy to that monitoring study that was referred to earlier?

Kahu Naone: No, we were not involved in that at that level, at that time and we were not even aware that the monitoring report was this late. Today, we found out and we'd really like to see that monitoring report. Definitely would, yes.

Ms. Sablas: Thank you Kahu. I think you know, this is a really sensitive issue we all agree and the more information we have, the better informed, the better hopefully decisions we make for our na kupuna and so I just wanted to be in my mind satisfied that you, as the cultural advisors to the group you know, your name is pono, you know, that you feel that that's what you're doing to help this process along and I am very should I say, I'm pleased and I'm grateful that times have changed now over the years that practitioners are involved. It's better late than never because you know, it wasn't always like that. Specifically when we first developed and the Chair would know, when we developed the Kaanapali area and we didn't have any of this in place. So I think sometimes things happen for a reason and I'm here to kind of listen and to try to get the best information to be able to do what is right for all that's involved and I appreciate that you are involved in that process. So thank you.

Kahu Naone: I might also add that we're also forming a advisory board of elders, specialists in different areas to sit on an advisory board besides the cultural advisors.

Ms. Sablas: Okay, sorry, yeah, but you bring up a point. So the members that you mentioned are any of them have lineage to Wailea, the four members that you said are on the – your holopono?

Kahu Naone: Just myself. Just me.

Ms. Sablas: You're considering to have more people who have lineage to that area and part of this advisory board?

Kahu Naone: If they agree, if we can find them and they agree, but it's kind of difficult now days because times are economically hard and you know a stipend isn't really going to help them. So it is very difficult. We've been trying to reach out into many different areas.

Ms. Sablas: I think perhaps after today's meeting you'll find people who would be willing to stand up to that.

Kahu Naone: I hope so, yes.

Mr. Hedani: Any further questions? Thank you very much Kahu.

Kahu Naone: Mahalo.

Mr. Hedani: Ann.

Ms. Cua: Again, Chair, do you want to complete public testimony at this point or do you want me to –

Mr. Hedani: Commissioners, shall we open it up for public testimony? Ready? Okay, why don't we go ahead with – Commissioner Hiranaga.

Mr. Hiranaga: Just a comment, if we do not conclude the process today, are you going to limit public testimony to one time only or if we have to reschedule this you will open it up to public testimony once again and allow people to testify today and the next meeting?

Mr. Hedani: Director.

Mr. Hunt: You're required to hold a public hearing and I believe we've already done that. Today is an opportunity for the public to provide testimony. As we understand it, there's an opportunity for the public to testify on and so if it's another meeting in the future we would anticipate there would be an opportunity then. If there's a meeting that's recessed to a specific date and it's not a separate meeting, then that's a different situation.

Mr. Hedani: Okay, why don't we go ahead and open it up for public testimony at this time. Are there any individuals in the audience that would like to testify? Please step to the microphone and identify yourself for the record.

Mr. Wayne Nishiki: Anyway, I don't see Bruce here but I'll start my testimony. I first want to apologize today to anyone here attending if I what I say offends me but –

Mr. Hedani: Wayne, can you just state your name for the record?

Mr. Nishiki: Oh yeah, Wayne Nishiki, Council member of South Maui. I just want to first start off by saying that I want to apologize if I offend anybody by my statements today. This may knock you all out of your heels also. I've had a tough time deciding on my testimony today, but based on various consideration and after wrestling with this issue I can support this project if it includes the following conditions:

No. 1, proposed beach parking condition. "The applicant shall fund and construct 75 new public parking stalls including 34 onsite on the south of the property as depicted on the attached map and the offsite parking stalls 41, with 21 located on the north side of Keawakapu Beach and 20 within the county beach access on the south side of the Grand Wailea Resort. Construction of the 21 beach parking stalls at Keawakapu Beach and 20 within the county beach access on the south side of the Grand Wailea Resort and 10 onsite parking stalls shall be completed prior to the receipt of the first certificate of occupancy for the project. The 24 additional parking onsite stalls shall be completed in association with the first hotel guest rooms. The 10 onsite and 24 addition onsite shall be located within the oval circle of the attached map."

And I think all of you commissioners have the attached map that I'm alluding to. What we have currently in this area is 93 stalls. What this proposal adds on is another 54 making it a grand total of 147 onsite stalls. The other 20 that I talked about would be in the area ...(inaudible – changing of tape)... the stalls.

If you look at development in the South Maui area pretty much all the beach front areas are all developed. The only thing we can see right now is probably small little pockets. Why we need to do this now is because the area of concern affords now perhaps, not perhaps, will afford the people that don't visit the hotel, the people that don't live near the ocean with the ability to bring the hibachis there, tubes, whatever else they take to the beach and have close foot access to this wonderful beach in Wailea.

No. 2, proposed condition on the R1 water, and I think Lyons touched this but I want to put in language what should be there if you accept it. "In order to minimize the use of potable water for landscaping irrigation, the applicant shall enter into an agreement with the Department of Environmental Management to set forth terms and conditions for pro rata funding for the planning and construction of an R1 recycled water line from the existing South Maui R1 water distribution system, Kihei wastewater reclamation facility to the Wailea area. The pro rata funding shall be based on the number of lots, residences, condominium units, hotel rooms and all other properties that will be served by R1 recycled water line. Such agreement will be executed prior to the issuance of the first certificate of occupancy for the project."

Let me tell you what I've learned about the water that we now transport from the lao aquifer all the way to South Maui Wailea.

Mr. Hedani: Wayne, can you kind of wrap up your testimony please?

Mr. Nishiki: Yes. 60% of that, 12.6 million gallons of potable water is transmitted to South Maui and used for irrigation purposes. Finally I was watching you people in you watching the testimony for the cultural concerns and I see a lot of you local people here sitting on this board and hey, you're

the final determination, you're the big bosses here for what occurs to the kupuna iwi. I saw Kent say and ask the Department from DLNR say please come up with the necessary language. I heard many of you say after listening to both sides well, perhaps the cumulative efforts should be done. And let me tell you as a member of the Council in dealing with two important issues that I face as the Chairman of Human Services Committee which is dealing with housing. You know, one has to do with the 50 acres that was donated by A&B for an affordable housing project over there both for rental and for fee. Because of Dana Hall and other native Hawaiians they came out and testified and commented on the AIS, the archeological inventory survey and we found that to be totally not fulfilling for the concerns that were raised. We were told there's a major burial site in that area, so because of this, the Council decided to ask for more work to get the archaeological inventory survey complete. And so we're waiting on this prior to making any decision on whether we're going to accept that parcel that has the grave sites.

In the Kula, I'll finish, this is the final one. In the Kula one where you know and you read about an housing project there and also an agricultural project there and I went up and listened to DLNR and also the Burial Council which had that meeting there, that inventory also was found to be insufficient. So because of this JoAnn Ridao and I in consultation again with Dana Hall and Charlie Maxwell said we would not accept that housing project until a complete AIS is done. So this is a sensitivity that I think a lot of us are looking at when it comes down to iwi kupuna. It's not us any more, it's you people and I trust when I see the sincere hearts and what has been said today, I would only say for myself that unless this study is completed and segmented, I don't know how you people could make a decision on this project. And so, I don't know, we live in Hawaii. We have friends on both sides of the fence, but I only ask you people to do what is right and you're the bosses. We're looking from this community to you people making a good decision. Any questions?

Mr. Hedani: Thank you very much Wayne. Questions from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: How did you come up with the 75 new stalls? Did you have a formula based upon number of rooms or number of the proposed parking stalls, land area of the parcel?

Mr. Nishiki: Yeah, okay, and I was fortunate enough when this situation came up to be invited by Mr. Hoonan and also Jim Hyde and they took me on a onsite tour of the area that was to be dealt with in regards to parking. We looked at the area and had some discussions with them and at that time they were using their consultant to look at the overview of where all these parkings were going to be put. And in it, Planning Department had recommended that an additional 30 stalls I think Kent be put in this area, put 21 in the Keawakapu area. I looked at that and thought that if the developer was going to be a good partner that perhaps we could ask for more. I, therefore, contacted Mr. Wade Fisher and along with Mich Hirano, they agreed in concept to this language. And so again, I have only good things to say about this developer from the fact that they were sensitive enough, they agreed in concept and to me, the people of Maui County can thank them for the additional parking stalls Kent.

Mr. Hedani: Additional questions for Mr. Nishiki? Thank you very much Wayne. Director.

Mr. Hunt: Mr. Nishiki on item 2, just some clarification, the suggested language is "such agreement

will be executed prior to the issuance of the first c.o.” Am I to understand that that means the written document will be finalized or the actual R1 water will be delivered?

Mr. Nishiki: The actual document will be finalized. I think we’re a long way – if you read that language here, thank God they’re the first one to step up to deal with the recycling of the water Jeff. And so here again, is a developer that does not want to pollute nearshore waters. I agree with them. There are visitors that are coming there are going to swim in that water. We already have information I think the statement that I want to use is one that our honorable Mayor said on August 24<sup>th</sup>. It says the Mayor wants to “get rid of all injection wells.” I agree. The studies show that injection wells are contributing to the destruction of our reefs.

Mr. Hunt: And I agree. We’re not – I’m not arguing about the integrity or the nobility of the condition, I’m just trying to understand the mechanics of it and all you’re suggesting is that the document be finalized, that the actual water not be delivered prior to c.o.

Mr. Nishiki: That’s right.

Mr. Hunt: And have you discussed that with the applicant?

Mr. Nishiki: You can talk to the applicant if he has any problems with the language. I’ve spoken with them and they seem to not have any problems with this language.

Mr. Hunt: Thank you.

Mr. Nishiki: Again, aside from the sensitive burial issue, I like what they have given to the people of Maui. So that’s why I support it.

Mr. Hedani: Any additional questions for Council member Nishiki. Thank you very much.

Mr. Nishiki: Thank you.

Mr. Hedani: Are there any other members of the public that would like to offer testimony? Please step to the microphone and identify yourself for the record?

Mr. Michael Friday. I’m Michael Friday. I’ve been an employee of the Grand Wailea Resort.

Mr. Hedani: Just so you know Council member Nishiki had nine minutes to speak but we generally restrict it to the three minutes of testimony. Go ahead.

Mr. Friday: I’ll try to keep it to two and a half. I’m Michael Friday and I work at the Grand Wailea Resort. I’ve worked there for nine years and I’m proud to be a part of that hotel. It’s a landmark hotel. People fly from all over the world to look at it even if they don’t even stay there, they have to come and look at it.

We’ve got an upwards to 1,400 people working there. This project would employ for five years countless construction people and then between 100 and 300 permanent staff would be added to

maintain and work in the additional rooms.

We've heard a lot of moving testimony today. Some of it quite sad and I just want you to know that why you are balancing the interest of the community at whole and I'd like to think we could all work together on this. That you would always keep in your mind these working families and the benefit to the community of working families, steady paychecks, healthy children and the taxes they pay. Thank you.

Mr. Hedani: Thank you very much. Questions for Mr. Friday? Thank you very much. Are there other members of the public that would like to offer testimony at this time? Please step to the microphone, state your name for the record.

Mr. Daniel Kanahale: Good afternoon Members of the County Planning Commission, my name is Daniel Kanahale and I'm speaking on behalf of myself. I came here today to educate myself about this proposed renovation by the Grand Wailea because I live within walking distance of the Grand Wailea so it's like right down the road from me. If I was to release my brakes I could coast most of the way to the hotel.

You know the longer that I live in South Maui and the more I learn about it the more impressed I am about just how culturally, historically, ecologically and environmentally sensitive that place is especially as it continues to grow and more and more people move there. I think you as decision makers have to strike a really fine balance between making sure our economy is healthy and prosperous on the one hand so people have jobs and places to live. And then making sure that our unique and fragile environment and our cultural and historical resources are protected and preserved and available to be used in a beneficial manner by the community at whole. On the other hand, and you know, I'm grateful that so much of the testimony that has been given today has educated us all on many of those issues.

I just wanted to take a minute or two to express some of my concerns many of which have been shared with you already. Whenever I go to the Grand Wailea I always pay respects to the people who live there before I was there. I always pay respects to the iwi kupuna and Akone Akana taught me the importance of doing that. And so after I pay my respects to the iwi kupuna then I feel like I can enter on the grounds of the Grand Wailea. And the fact that, you know, there are so many iwi found on the property it's probably good evidence that it's highly likely that an area close to the beach where there's lots of sand and place where many, many people once lived the chances of finding more iwi kupuna is very, very high. And so I would encourage that anything that can be done, whether it be an archaeological inventory survey or addendum survey be done as soon as possible. You know, before it costs big money to change things around. Just makes common sense.

The other concern I have is with the impact on Wailea Beach. The hotel fronts Wailea Beach. I'm a user of Wailea Beach. A lot of the guests in the hotel use that beach. A lot of the residents and the community are going to use the beach. I'm just wondering now if any counts have been done as to how many people are currently using the beach. Dr. ... (inaudible)... does counts at Oneloa Beach every day and maybe a count done by the Grand Wailea to show how many people are using it now and whether the potential impacts of more people using it as this development moves



forward.

I'm not for or against the project. I'm just here to educate myself as a resident of the area. Thank you.

Mr. Hedani: Thank you very much. Questions? Question from Commissioner Mardfin.

Mr. Mardfin: In earlier things that I've seen or in discussions I've had about this project, I think the owners of the property believe that if they are able to go forward with this it will make their grounds more attractive and I think they're hoping that even though they have more guests the beach usage per se will go down because the people will stay on the - are more likely to stay on the property as they develop it. You think that's a reasonably good possibility?

Mr. Kanahale: I have two comments. The first is that, it's a heavily used beach. At some times it looks like Waikiki Beach because there are so many people that are using the beach both guests of hotels and also people that live in the area. And in terms of the grounds, you know, one of the things I've always loved about the Grand Wailea is they have such beautiful landscaping. To me it's like a beautiful lei around their project. I'm a little bit saddened to think that some of that landscaping is going to be displaced by more buildings. So whether or not that is true or not I don't know, a lot of people use their swimming pools, but a lot of people also use the beach based on what I see with my own makas going down there on a regular basis. So I would hazard to guess that the use of the beach will increase with more people there because that's why people come right? They want to go in the ocean and enjoy the beach. Those are my thoughts.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony? Please state your name for the record.

Ms. Zandra Souza-Amaral: Aloha ahiahi ko mai ho aloha, good evening my friends. I am Zandra Souza-Amaral. I'm a resident of Kihei, South Maui. Have been for over 22 years. Prior to that I was born in Lao Valley in the Territory of Hawaii and I was raised in Paukukalo on a pig and cow farm where my mama still lives. I'm here - I utilize that path behind the Grand Wailea every day and right now I'm going to be little late today, but I take that path from the Kea Lani Hotel all the way down and then come back along the road. The beaches are heavily utilized by myself and my 10 mo'opuna kanes. We go down to that that beach quite often. I listened to the testifiers and Ms. Hall regarding the iwi of our kupunas and I look at all of you and I know that all of you have got some kind of vested interest because you have kupuna here as well, most of you do.

I would - the only thing I'd really like to say, everything else has been said, but I remember as a child we used to camp in Wailea and Makena, Maalaea and all these places where the iwi is, where the Hawaiian ancestors buried their elder and their dead and I remember unfortunately how we trampled on it because we did not know it was there. Having been a resident 50 plus years going on 60 almost of this beautiful island, what I have seen through the growth of Kihei is that these hotels have made available to me as a native to the Territory of Hawaii which I was born into my children and my mo'opuna kane, all 10 of them, the ability to go and look at the sites that are not



desecrated because of our ignorance rather it is being preserved. So I humbly ask you to like my predecessor said, we need to balance, we need to balance commerce because this is our children, our mo'opunas need jobs, yeah. But we also need to respect the iwi of our kupunas. And I honestly believe that there is a way to facilitate both and respecting the people who paid the price so you may sit where you sit and I may be able to live the lifestyle that I do. I do believe with all the testimony put before you this evening and today and previously that you will do what is pono and there is a way and I know that you know and I know with people Naone, Mr. Hall and the rest, Uncle Charlie Maxwell and the counsel from the Grand Wailea all working together I know this can be done.

In closing, all I say is weigh that you've got without sacrificing the iwi of our kupunas and without sacrificing the jobs for our mo'opuna. Mahalo ahui ho.

Mr. Hedani: Thank you. Any additional members of the public that would like to offer testimony?

Ms. Lucienne DeNaie: Thank you Chair Hedani. Lucienne DeNaie speaking on behalf of myself. Really a great educational effort here today. Passing out an article, of course, it's one of the key questions who will take care of the iwi of our kupuna and the answer is you folks because you actually have the power under your SMA review. You are the source, you are the final authority and the rules support you taking these actions and I think you've gotten a great range of information to bring things pretty clear.

First, the AIS process can really be beneficial. AIS done some place like Keawalai Church a number of years ago revealed a tremendous amount and helped guide the church about where they wanted buildings. They didn't miss things, they actually found a lot of things even in a place that's been as developed as long as that has. Really, the AIS should happen first and then the decision should happen second. When you have 96 burials per acre which is what my rough math comes out, you know, you have a place where maybe the next set of folks whose iwi is found deserve a little different treatment than being dug up by the bulldozers. I've heard members of the commission say that were the old days, I don't know still happening in Kula. You know, here's the newspaper headlines. These aren't the old days. We still have this problem.

Also, the cultural review committee looks like a great group of people that really have the interest at hearts. Give them the good tools they need. Make sure this is reviewed by the Burial Council which it's never had the opportunity to be reviewed by and has that AIS.

As far as the drainage, that's a big SMA issue and it's unfortunately in a way that the folks from Hoolei weren't involved in this process because they have a gulch where a whole bunch of water is draining into their gulch. There is big, big pipes that then go into the Grand Wailea. I've walked this myself. I've walked that gulch all the way up practically to Ulupalakua, there's a lot of water that goes through it. So it would be great to have more cooperation than just the one property and maybe through this process they can all be talking to each and other see if they can all be part of a solution.

Parking. You know, I can't believe Mr. Nishiki came up with the same thing I did. I read the report, I said gee, they have a formula now, there should be 75 new parking spaces. It's based on the

acreage, it's a great formula, I commend the staff for looking at how we can figure out what parking should be where to really serve the people's needs. And like Mr. Nishiki I noticed that big open space. I've sneaked in there a few times to park myself and it would be a great place to have those additional stalls. So I'm happy to hear that that is under discussion by the developers.

Water. Big promises on water that there's going to be a lot of water conservation. Admirable, really a good thing, but a lot of - It's going to be dependent, if you read the proposal, lots going to be dependent on mechanical processes. Now will these always function and will they, you know, will they do the deed. I agree with Mr. Nishiki that if we could help this resort minimize the non potable use that is the low hanging fruit and all is needed is that line. It's good that they've taken the first step. Lots of others should step up because we are wasting that water. I also suggest a condition if possible that there be a yearly water audit and maybe some penalties attached if the audit doesn't reveal what's being promised today. Thank you.

Mr. Hedani: Thank you very much. Questions from the Commissioners? Seeing none, thank you very much. Are there any other members of the public that would like to offer testimony?

Mr. Isaac Hall: Yes.

Mr. Hedani: Please step to the microphone, state your name for the record.

Mr. Isaac Hall: Yes, my name is Isaac Hall, I'm speaking for the intervenors. I just circulated a letter, it makes three points that I'll just leave alone. And because I know you'd like to move on I'm just going to focus on the last point.

The first part of the last point has to do with the archaeological inventory survey. First, this application is incomplete because you - it is required to be circulated to appropriate agencies. I think by now we would all agree that the Burial Council was an appropriate agency to which this application should have been circulated before the public hearing ever got scheduled and before you take action on this. So that's the first point.

Second. I think you might have been misled to some extent. There has been no archaeological inventory survey for this entire property and there's certainly has not been an archaeological inventory survey for the whole area that is now proposed for development. So we do not have that at this point in time. And then you may have seen it in the record, but an archaeological inventory survey was begun months and months ago for this project and it was the archaeologist and SHPD and the hotel agreed to stop it. They stopped it because the hotel was full, and because the people in the restaurant were disturbed by the work that was going on. Now those are two ridiculous reasons for stopping an archaeological inventory survey. If they had only continued on, we would have that archaeological survey right now and you would have the benefit of that and you would be able to make a decision now. The reason you can't make a decision now is because they've stopped doing the archaeological inventory survey for ridiculous reasons in my view.

Now the other thing is, is that what I think you need to do is defer action, have the archaeological inventory survey done, send this to the Maui Lanai Burial Council. One thing that you've got in your condition is that they comment. Well, I think there's a little confusion here and this may help you.

The Maui Lanai Burial Council has statutory standards for when burials are preserved in place, when and when they're not. They're the only entity that has statutory standards for making those decisions. So what you need is to have that archaeological inventory survey, then after that's completed send this to the Maui Lanai Burial Council they have the standards for deciding whether or that these burials are preserved in place and then you come back here and make your decision. That's the only rational way to do it.

And finally, the Kapaakai Decision that we talked out before requires that. You cannot delegate this decision to other people. Kapaakai says you are the ones that are responsible for determining where the valued resources are including burials and determining whether they need to be preserved in place and whether buildings can be located. You have to do that first. You can't delegate that to other people. Thank you.

Mr. Hedani: Thank you very much. Questions from the Commission? Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Ann.

Ms. Cua: Mr. Chair, I would like to go over my addendum report briefly. Since you met on September 22nd, I did a tally of the public testimony that you had at that meeting. We had 15 people in support, two in opposition and two people testified with concerns. In terms of letters that we had received up to the preparation of this addendum report, we had 21 letters in support of this project, 19 in opposition and two letters of concern. I'll dispense with the intervention portion of my report because you've handled that and the decision and orders as well.

In terms of additional information received since the public hearing, but letter dated October 8, 2009 and it's attached to this addendum report but it continues the exhibits that were presented to you in your report for your September 22<sup>nd</sup> meeting. And in this letter submitted additional information in response to comments that were raised at the public hearing.

The first issue dealt with the shoreline setback assessment. The applicant confirmed that the shoreline setback assessment application is only for a new pathway to connect the formal pool deck expansion to the existing public boardwalk pathway. They note that the hibiscus pool deck expansion is outside of the 150-foot shoreline setback.

They also confirmed that the seven proposed – that proposed seven dry wells that were part of the original SMA application have been eliminated from the plans and we actually discussed this at your September 22<sup>nd</sup> meeting and you were presented with revised drainage plans that showed that these were taken out and this was partly in response to discussions that the department had with the applicant and specifically with our shoreline planner.

The applicant further indicated that previously the Grand Wailea received an SMA minor permit for minor activities in the shoreline setback for pathways and minor structures to install menu kiosks and public beach walk posts and rope rails within the 150-foot shoreline setback area. The SMA approvals are attached to the applicant's letter. The applicant notes that in 2000 and 2001, – in the 2000 and 2001 SMA approval letters the shoreline setback was 40 feet from the certified shoreline. The applicant notes that portions of the existing active pool deck and chaise lounge

cabanas, beach umbrellas and other moveable items are within the 150-foot shoreline setback area. These improvements were part of the original construction of the Grand Wailea Resort when the resort opened in 1991 and when the shoreline setback was 40 feet. The applicant states that all other activities located within the 150-foot shoreline setback area have either been previously approved or have been removed or relocated behind the 150-foot shoreline setback area.

In terms of additional beach parking, the applicant states that based on direction from the Planning Department an additional 20 public beach parking stalls will need to be made available on site in addition to the 10 public stalls that will be provided at the vendor parking area adjacent to the Wailea Beach access road and the 21 beach parking stalls that will be developed along South Kihei Road in the vicinity of Keawakapu Beach. The applicant states that they have investigated the ability to provide additional beach parking along the Wailea Beach access road and they've attached some plans as Exhibits B and C to their letter. The applicant indicates that if the commission is supportive of additional beach parking at this location and if the County of Maui, Department of Public Works approves the proposed improvements the applicant will carry out these improvements in fulfillment of this requirement.

If the applicant cannot provide the additional beach parking at the Wailea Beach access road they will make available the additional 20 public beach parking stalls onsite. In total, the applicant, by virtue of the letter that they had submitted to us indicated that they will provide 51 public beach parking stalls as part of the proposed improvements at the Grand Wailea.

I do want to point out some additional exhibits that I had given you. I provided you I believe three letters. Do I have extra copies of those there? Some old letters, some old approval letters, the SMA permit approval letter and Planned Development approval letters that showed a couple of things and I wanted to kind of point that out now. We went through our files and we found this really old plan and you can tell you by the color that it's very, very old. I think it was submitted as part of the original application. One of the conditions that's evident in the – original SMA approval of the hotel and in the Planned Development approvals is that the hotel when it was originally constructed was required to provide 40 beach parking stalls and this plan that we found in our old files show in this red area here the location of the 40. It says here, "additional public parking 40 stalls for SMA." So we did want to share that with you that that was originally a part of the requirement. That parking, that 40 stalls, I don't know how it got to from 40 to 60 because in your record that you have you see that there's a total of 93 parking stalls in that beach access parking area. There's 60 at the top and then there's 33 as you move towards the beach.

I visited that parking area two specific times. I went and did site inspections and the first time that I went, the 33 stalls that take you close to the shoreline was completely filled and the 60 stalls in the back there were about may five cars in there. I also went there yesterday again. It must of been a slow day at the beach because not all of the 35 stalls, 33 stalls I'm sorry, were filled and maybe there were about eight stalls that were taken out of the 60 parking stalls. So I just wanted to provide you that additional information.

In terms of the archaeological inventory survey you've heard testimony, but the applicant has in writing indicated that an archaeological inventory survey will be carried out for each phase of the project. Further the AIS will be submitted to SHPD for review and approval prior to issuance of a

building permit for each phase of construction. The applicant has hired Archaeological Services Hawaii to carry out the AIS and oversee archaeological monitoring during construction. The applicant also confirms that E Ola Pono has been retained to carry out a cultural sensitivity awareness program for the contractors on site. They're also going to develop a cultural advisory council to oversee and provide cultural guidance during the archaeological inventory survey work.

In terms of storm water runoff management, that's another issue that was brought up. The applicant reiterated its position that due to the potential impact to native Hawaiian burials and cultural properties on site especially in the western and southern portions of the site, retaining additional storm water runoff equal to predevelopment flows would be difficult to achieve and the applicant does have all their consultants here and if you want to question their engineer about that, because I know you have not been able to question them yet, you can do so. They have indicated the project will increase the overall storm water runoff by 3.7% representing an increased flow of approximately 3.62 cfs.

So they are providing a low impact storm water runoff system with management practices which they believe will improve the water quality of the storm water runoff through filtration and bio swales in the new drainage system. Application of organic fertilizer and systemic pest control in the landscape maintenance program. Their system is also going to minimize the amount of storm water runoff by collecting and storing runoff from the new photovoltaic panels on the northern parking garage and southern parking garage and incorporate a green roof on the existing roof adjacent to the back of house and the new Molokini wing extension.

With these low impact development storm water management practices, the applicant indicates that the storm water runoff from the site will reduce, be reduced up 70,000 gallons per day, excuse me, 70,000 gallons. This represents an additional reduction of 4.8% of predevelopment flows. In addition to reducing the quantity of storm water runoff the applicant will also incorporate measures to improve the quality of storm water runoff by removing the petrochemicals, pollutants and sediments in the runoff.

Finally, the Planning Department by letter dated October 8, 2009, granted an environmental assessment exemption for improvements within the shoreline setback area and that is attached as Exhibit 91. The exemption notes that proposed work within the 150-foot shoreline setback area is limited to extending pathways from the existing beachwalk pathway leading to the hibiscus pool and repair and maintenance of existing landscape improvements. The letter notes that proposed improvements are still subject to the SMA permit and shoreline setback assessment review. The department indicates as we did on September 22<sup>nd</sup>, that the review of the shoreline setback assessment will be done once the commission has dispensed with the SMA use permit and Planned Development applications.

The other thing I did want to note in my site inspection yesterday, I did verify that there were some temporary cabanas that were within the shoreline setback area as pointed out by the applicant and all of those has since been removed. Are there any questions?

Mr. Hedani: Questions for Ann? Commissioner Mardfin.

Mr. Mardfin: I've got a couple but I'll start with actually a fairly minor one. How did the parking stalls number get arrived at and have you talked to Wayne Nishiki and decided, you know, I don't know where his number came from?

Ms. Cua: Okay, when you say parking stall number are you meaning the department's parking stall number, the numbers that are in the parking analysis that was in our report or?

Mr. Mardfin: I guess I'm asking about how is it determined how many additional stalls the applicant is supposed to provide?

Ms. Cua: Okay. Well, up until this project it was on a case by case basis, how the commission or the department felt at the time based on the analysis of the project. However, when we were looking through this project our Director asked us to take a better look at that and to take a look at all the different approvals that had been done for West Maui and South Maui and to come up with a table. It would be us but then it would also be you which we talked about this. And so, Gina Flammer, our planner there, she put the data together and she did it basically – she looked at calculations basically in two ways. One is, per acre calculation and secondly, I'm sorry let me get my – I'm sorry, I'm trying to get to that table.

Mr. Hunt: Unit count.

Mr. Mardfin: It's coming back to me.

Ms. Cua: I'm sorry. And then the second was by unit count. And so what that translated to for this development in terms of if you apply the formulas it ranged from 51 stalls to 75 stalls. So the applicant as you recall, was initially proposing 10 parking stalls where the vendor parking is located. And then also the 21 stalls offsite by Keawakapu Beach. The department had talked to them about providing an additional 20 stalls on site. To bring it up to the 51 number which is the lower of the two numbers. Council member Nishiki was given a copy of the report. It's public information. He did meet with me as he did with the applicant and you know, he has recommended a condition which he has indicated in his testimony for 75 stalls. I think you would want to hear from the applicant on that. My understanding is that they're okay with it. I'm not sure about all the language about having that attached map. What did mention I believe even at the last meeting is if the applicant is going to do any kind of improvements within that beach access area, they would have to get permits for that. Because there would be use of county lands and for work that possibly would occur within the shoreline setback area, I'm not sure where the shoreline setback line is there those are triggers to Chapter 343. So there would need to be some kind of an assessment or exemption and that probably could be done through the Parks Department because they have control of that beach access area. And then they would also be subject to the SMA permit process. Right now, they're not asking you as part of this SMA permit to include plans for approval to do stalls there. So that is something that they would need to do before they would be able to construct parking stalls in that area.

Mr. Mardfin: But if they did put in more parking, I can see two adverse effects. One is you're dealing with more land which might affect more iwi and two, you're dealing with more impermeable surfaces which could increase runoff. So there are two negatives to doing it. I mean, it's certainly

a positive to have parking but there are two negatives.

Ms. Cua: And I think also in SHPD's letter if I recall correctly, they indicated I think this was the project, I'm doing the Renaissance too, so I always get them confused but I think this is the project where they're saying that there hasn't – oh no, I'm sorry, it's not this project it's the other project.

Mr. Hedani: Ann, in light of the hour, what is your recommendation as to how to proceed at this point?

Ms. Cua: For the rest of the day or?

Mr. Hedani: Are we going to go to 9:00 to night or how we're going to finish up?

Ms. Cua: Well, let me tell you I mean, what's left. I mean, we do have a recommendation, it's before you. You've all read it. The two conditions that member Nishiki had talked about are not in our recommendations it's something that you know, he's been working out with the applicant. I don't know if the commission needs to question the applicant on any issue. We haven't done that yet. So that's what's left and so I would have to ask you how you would want to proceed in light of the 5:10 hour.

Mr. Hedani: Does the applicant wish to address the commission at this point? ...(inaudible - changing of tape)... what's your pleasure? Commissioner U'u.

Mr. U'u: Dinner, movies, kidding. I can stay till 5:30 that's about it.

Mr. Hedani: Shall we go to 5:30? Mich go ahead.

Mr. Mich Hirano: Thank you Chair Hedani and Commissioners my name is Mich Hirano with Munekiyo and Hiranaga. Just to keep it short, I'll just add three comments, that with the proposed conditions that Council member Nishiki had proposed we are or the applicant is favorable to that language and I think that the parking condition would replace the proposed condition of the staff report on parking, beach parking which is Condition No. 27.

The applicant as well, is amenable to the R1 as it's worded in Council member Nishiki's memo to the commission and that would be in addition to Condition No. 37. And finally, because of the testimony today regarding archaeological inventory survey, the fact that the SHPD said that they would prefer it to be in the single phase as opposed to the phased development that was originally proposed in the language. And the reason that it was being proposed in phases was that it is a large project and that it would be just in terms of the archaeological inventory survey and the way it would proceed, to do that subsurface testing you would have to close down certain sections of the resort and perhaps even move and relocate some of the utilities so that you can do the subsurface testing. It was thought that that would be a practical way to go in terms of phases. We are as well, aware of the comments that were made that the second phase may be predetermined by decisions made in the first phase and so the applicant has reconsidered that and would be doing that archaeological inventory survey in one phase prior to building permit, issuing of building permit. So that they would be amenable to that and that's something that would be amended in that



archaeological condition. That would be Condition No. 36, "that the inventory survey shall be prepared in a single phase."

So those are my comments. That's the comments from the applicant. Thank you.

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

Mr. Shibuya: I have a question for Ann Cua. At the last meeting, a former planning commissioner way back in 1972 mentioned that the planning commission approved the A&B Corporation's Wailea project. In that agreement one-third of the units would be for workers. It was signed agreement for housing for Wailea's workers. Are you aware of this?

Ms. Cua: I understand that has been brought and we actually do have a copy of it here. I haven't had a chance to go through it. I just received it today. I believe it's been brought up for other projects as well in the area, but I have copies here I can pass out to the commission if you'd like.

Mr. Shibuya: Thank you.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: Yeah, this is for Ann, but I'll preface by saying that you know, I think this applicant and this Grand Wailea they do a hundred great things right and I'm glad Mich said that they're willing to do it in one phase. The problem on the iwi to my mind still is do we need – we decided that there was no EIS required, no trigger for the EIS but we're giving – they're asking us to give an SMA. We're the final authority on that. To do that we have to be certifying that certain things are okay. One of those things has to do with archaeology and cultural things. I'm not convinced yet that we don't have to get the archaeological survey not before building permits but before we can adequately pass on the SMA. Now, I welcome their willingness to do it in one phase at least so that they get it right, but we're being asked to do it on the SMA level without adequate information and the case that Isaac Hall cited and that James had shared with a few months ago, says that a planning commission cannot offload statutory requirements that are on our shoulders to some other agency and I tend to think that we'd be doing that if we put it off to the building permit side and I need to have at least some discussion about this issue and maybe from James is to our legal requirements before we can approve it prior to a complete AIS.

Ms. Cua: Let me try and answer a little bit. Going back to when this project was sent out for review. You know, we did get that no effect letter from SHPD and you know for us I know we've said this before, we're not the authority on archaeological issues and so we do rely heavily on SHPD with comments and we took that no effect letter as that you know, it was okay and you know, we could move forward. There's that approved monitoring report and then we came to the September 22<sup>nd</sup> public hearing and we had the testimony and then the applicant had come forward had said, you know, okay, we're willing to do this AIS. You know, we talked with – you know, I called Uncle Charlie, I talked with SHPD about some possible language in the conditions. You know, before we came to this hearing I did read Uncle Charlie the language and he definitely had indicated that they did want to see the archaeological inventory survey. He initially said they wanted to approve it. In talking with SHPD they informed me or reminded that, you know, there's a process and the process



is that it should go to SHPD and SHPD would refer it to the Burial Council. So you know, again, the wording that I put in the condition was based on, you know, my discussions prior to writing the conditions. And so it definitely has been a challenge this whole issue because you know, I think we did follow the process that we normally follow and you know, we did get that no effect letter and we moved forward and you know, now we're here and we're trying to deal with the additional testimony that's been raised and the applicant offering to do certain things and— I mean, with the way the condition is worded it is a risk for the applicant because they will be farther along in the plan process. Before building permit they're at the construction drawing phase and so definitely much more money is spent on plans to submit for building permit level versus the kind of plans that we get, the conceptual kind of plans that we get in this level. I think in perfect world what you've heard here is that if we could turn back the clock it would have been done differently, but again, we got as far as the public hearing with a no effect letter for SHPD and then we're all trying to figure okay, so how do we move on? So it is ultimately the commission's decision. That is the department's recommendation and again, based on discussions that I did have with Uncle Charlie and SHPD prior to this meeting.

Mr. Mardfin: I want to follow up if I may. I want to mention two things in connection with this. One is the Superferry got in trouble because they tried to avoid an EIS and if they had done the EIS in the beginning they would be operating today I believe. That's a sort of giving an analogy. Second thing is, I agree that— I'm not blaming the Current Planning Department for doing this, you had the letter from SHPD. I think that you did the appropriate things given what you had. But we had three groups trying to intervene on this whole issue. And I wasn't really pleased with the implication that this commission couldn't do its job on an SMA permit that we needed intervenors to do the job right. While I voted against it, I'm not unhappy that their petition was denied. But that means it's in our court. We've got to do it right and if we need information to protect the public interest and the interest of iwi, I think that we may need that information before we can act. And I know it can delay things but— and maybe we can look at everything else except the iwi issue and have an EIS, an AIS done and we can dispose of all the other issues, but this is one that I don't think we can unload onto anybody else and I'm not sure we can unload it onto the SHPD or the Burial Council or the Building Department or anybody else. I think it's our kuleana. I mean, that's just kind of my view of it. I'd like you to respond maybe.

Mr. Hedani: Director.

Mr. Hunt: It's my interpretation and you might want to talk to your attorney but it's my interpretation that you're not unloading it or fobbing it off on somebody else just by having the AIS come in at a later phase in the development. If that AIS comes in and shows that there's no— shows that— it doesn't discover anything then the building permits can proceed. If it shows that there are findings then the obligation would be to come back and perhaps change the SMA permit and you would have that authority. So I don't see where you are violating the law or fobbing it off. It's just a timing issue.

Mr. Mardfin: So if the SMA were approved by us, then they did the AIS. Lets assume the worst case they find 9,000 burials there then it would come back to us for what? We'd already approved the SMA. What would come back to us?

Mr. Hedani: The building permit can't be issued with a resolution of the issue.

Mr. Hunt: That's how I would see it. Is if the building permits are in violation of the AIS then they couldn't issue the building permits and it would come back and you could even, we could work with you on some language to say that if the AIS triggers something then the SMA review comes back.

Mr. Mardfin: We're not going to finish this today anyway. I would like to see wording like that for the next time we meet on that. That would be very important.

Ms. Cua: Maybe I could add to that. You know, how the process works in terms of your conditions, is you have some conditions that say you shall do x, y or z prior to issuance of a building permits. And then you have some other conditions that say you shall do x, y and z prior to issuance of a certificate of occupancy. You have another condition that talks about compliance reports, preliminary and final. The preliminary report is prior to issuance of a building permit and the final compliance report is prior to c.o.

How the department uses those conditions. Before the Planning Department is able to sign off on any building permits, there has to be an approved preliminary compliance report that's done. And what that is is the applicant has to give the report to the Planning Department saying how they have complied with the conditions thus far. All the conditions that are linked to being complied with prior to building permit have to be met. So in the case of that Condition No. 36, we would need to know that that AIS was accepted by SHPD and the way that condition is worded, "accepted" means they're going to have to send that AIS to the Maui Lanai Islands Burial Council for their comments before SHPD can even accept the AIS. And the Planning Department would not be able to approve the preliminary compliance report and then sign off on the building permit until that was done.

Mr. Mardfin: You're making me feel better about this.

Mr. Hall: That's not what it says.

Ms. Cua: We can read the condition.

Mr. Hedani: Mich, did you have a comment that you wanted to make?

Mr. Hirano: We've had SMA conditions before where the SHPD or the Maui Lanai Islands Burial Council review and comment on applications. So I think that the process in place. I think that the appropriate body, the State Historic Preservation Division as it deals with cultural resources or the Maui Lanai Islands Burial Council as it deals with burials are the appropriate bodies to review these inventory surveys if they discover iwi. So I think the process and I think the condition allows for that. I don't think that the commission is abrogating their responsibility by not having that information. That information flows to the SHPD through this condition.

Mr. Hedani: Ann, you have four minutes.

Ms. Cua: Okay, then if I have four minutes, you have the recommendation in front of you. We're recommending approval of the project. This recommendation report has 36 conditions, but with

the-- and Director maybe correct me if I'm miss speaking but I'm assuming that we will propose to amend our recommendation replacing Condition No. 27, our Condition 27 on page 10 with Mr. Nishiki's condition. The only thing that concerns me about the condition is that map that attached map. But anyway we can talk about that.

Mr. Hedani: Especially if you find 400 burials right under there because it's sand.

Ms. Cua: Well, yeah. And then 36, Condition No. 36 I believe would now read that as represented by the applicant an archaeological inventory survey shall be prepared in a single phase and shall be DLNR, SHPD for acceptance and to the Maui Lanai Islands Burial Council for comments prior to issuance of building permits for the project.

And then Condition No. 37 would be the R1 water condition.

Mr. Hedani: Commissioners? Commissioner Mardfin.

Mr. Mardfin: Are you going to add anything on the water section about a yearly water audit as Lucienne suggested?

Ms. Cua: We have a couple of - we have four conditions under - they have to performance report that the Water Department is asking for and the report shall be updated annually for a - that should be period not permit, for a period of five years after the first certificate of occupancy. So there is a condition that's already requiring five years of performance reports.

Mr. Hedani: Commissioners what's your pleasure? Commissioner U'u.

Mr. U'u: Just to add comment. It's rare when you have an applicant come before the body and give in to almost everything that people ask, that's pretty rare. To add to the fact that this is probably the worst of times that I've ever been in my life which is too, 42 years, worst of times that people actually stepping up to the plate in this regard is exceptional. I always thought that KBH was the level that people need to raise to as far as being in the hotel industry and I feel that Grand Wailea might even surpass that right now. I think we need to take a good look at what's actually happening in front of us, take into consideration this is probably the worst of times and that into consideration where people are asking that they do an AIS and they agreed to in a heartbeat. Take into Wayne Nishiki, Councilman Wayne Nishiki's conditions that they agreed to in a whim. I never heard of that. Been here four and a half years, looking forward to get off in a half year though. Financial gain is white hair and you know, going home late at night, that's not gain, it's a drain, but that's I add to it. And I'm ready to vote. Make a motion to approve as amended.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Moved Commissioner U'u, seconded by Commissioner Shibuya to recommend approval as amended. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: Clarification, you said you were going to send the AIS to the SHPD and the Burial Council. I thought you said the process was you would send it to the SHPD then they would send it to the -

Ms. Cua: Yeah, is that not what the condition says?

Mr. Hiranaga: I don't know that's what you said, you would send it to both.

Ms. Cua: I'm sorry.

Mr. Hiranaga: I just want clarification.

Mr. Hedani: It's submitted to SHPD for acceptance.

Ms. Cua: And they send it to -

Mr. Hedani: And they send it to the Burial Council for comments.

Mr. Hiranaga: You know, Mr. Chair, I still have several questions before I'm ready to vote. So I'm not sure if we are going to continue because I'm not ready to vote about other issues.

Mr. Hedani: Would you like to move to defer?

Mr. Mardfin: That's what I was going to do was to move to defer.

Mr. Hedani: Commissioner Mardfin. I move to defer to -

Mr. Hiranaga: There's already a motion on the floor. Is there a second?

Mr. Shibuya: Yes.

Mr. Mardfin: A motion to defer is appropriate only after -

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Something's on the floor.

Mr. Hedani: Go ahead.

Mr. Mardfin: I move to defer until, I want somebody to tell me when you can, earliest you can be ready.

Mr. Hedani: By next meeting.

Ms. Cua: Be ready for what? We're ready. So I would say the next meeting.

Mr. Mardfin: Is our schedule for the next meeting full?

Ms. Cua: I know it's very heavy. I know it's heavy. But I think Clayton mentioned the next couple of meetings are heavy.

Mr. Hunt: We can schedule it and something else will get bumped.

Mr. Mardfin: I move to defer to the next meeting.

Mr. Hedani: Is there a second?

Mr. Shibuya: Seconded by Commissioner Shibuya. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: So we'll schedule it for 1:00 p.m.

Mr. Mardfin: That's fine with me.

Mr. Hedani: 1:00 p.m.

Mr. Mardfin: Fine with me.

Mr. Hedani: Any further discussion? Do you have questions that you would like Ann to work on between now and then? We should get that resolved. Commissioner Hiranaga.

Mr. Hiranaga: One of the questions I have regarding the AIS, and it's been the practice when these applications come in that they want the SMA approved and then Step 1 Planned Development Approval and Step 2 Planned Development Approval and I'm not that clear about Step 1, Step 2, but can you issue the SMA permit and withhold the Step 1 and Step 2 approval subject to the AIS? I'd like that to be explained.

Ms. Cua: We can explain that.

Mr. Hiranaga: Because you'd want the AIS to be performed simultaneously with whatever the applicant is doing so as to be as efficient as possible. Of course, the applicant's taking the risk that whatever they're doing may not be acceptable at some point but you hate to have everything consecutively, you'd want you know, concurrent.

Ms. Cua: Whether you approve, you know, just the SMA, you really should approve it as a package because one permit is no good to them without the other.

Mr. Hiranaga: I understand that.

Mr. Mardfin: I share my fellow commissioner's concern about this whole thing and I don't really care whether it's concurrent or consecutive particularly in terms of process, but I would like it, if you can work with the Director maybe on strengthening the language of 36 so it's really, really strong, that would make me feel a lot better. Almost everything else about this project I think is pretty good.

I love what they're doing and as I say, they do a hundred things right and this is the one thing that kind of - could be the - provide a real difficulty. So the stronger 36 is, the happier I am.

Ms. Cua: And may I ask when you say stronger, can you help me out on that?

Mr. Mardfin: I don't know exactly. I think the Director had some good ideas.

Mr. Hedani: One suggestion Ann would be a possible update to the memorandum of agreement that Patty talked about.

Mr. Mardfin: That would be helpful. Patty also talked about having a AIS survey plan and then the AIS. I don't know if that fits in here or not. Maybe it's the same thing. I don't know enough about it to know. But I just want there to be a lot of teeth in this particular condition.

Mr. Hedani: Any other items for discussion? Ready for the question? Question on the floor is to defer till the 22nd at 1:00 p.m. Is that right Ann?

Ms. Cua: I believe it's the 27th.

Mr. Hedani: 27th at 1:00 p.m.

Ms. Cua: Yes.

Mr. Hedani: Any further discussion? Any further comments? Any further turmoil that we can inflict on the applicant? No? Okay, all those in favor of the motion to defer signify by raising your hand. Opposed same sign.

**It was moved by Mr. Mardfin, Mr. Shibuya, then**

**VOTED: To Defer the Matter to the October 27, 2009 meeting at 1:00 p.m.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, B. U'u, D. Domingo,  
L. Sablas, W. Hedani)  
(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you. So we'll hold the motion for approval in abeyance until our meeting on the 27th.

## **E. COMMUNICATIONS**

- 1. MR. CLYDE MURASHIGE, Vice-President of A&B WAILEA, LLC requesting a Step 1 Planned Development Approval for the Wailea Planned Development for parcels off of Okolani Drive and Kalai Waa Street, TMK: 2-1-008: 127 (por.), 128 (por.), &130, Wailea, Island of Maui. (PD1 2009/0001) (D. Dias)**

Item deferred to the October 27, 2009 meeting due to the lateness of the hour.

Mr. Hedani: Director, the balance of the items on the agenda you want to - is there anything that you need to cover or shall we dispense with the balance of the items.

Mr. Hunt: All your public hearing items have been addressed. We have communications items and we do have approval of action minutes. If we could get approval of the action minutes. This is Item F.

**F. APPROVAL OF ACTION MINUTES OF THE SEPTEMBER 22, 2009 MEETING.**

Mr. U'u: Motion to accept action minutes.

Ms. Domingo: Second.

Mr. Hedani: All those in favor say aye. Opposed nay.

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

**VOTED: To Approve the Action Minutes of the September 22, 2009 Meeting.  
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya,  
L. Sablas, W. Hedani)  
(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you.

**G. DIRECTOR'S REPORT**

**1. Notification of the filing of a Special Management Area (SMA) Appeal of the Director's Decision pursuant to the Special Management Area Rules of the Maui Planning Commission:**

**MR. DANIEL GRANTHAM for the WAIPIO BAY BENEVOLENT ASSOCIATION, LLC appealing by filing dated September 22, 2009 the Planning Director's decision to grant a Special Management Area Exemption to JEFFREE TRUDEAU for a 3-lot subdivision at TMK: 2-9-007: 052, Haiku, Island of Maui. (SM5 2009/0242) (SMX 2009/0274) (APPL 2009/0003) (C. Cortez)**

Mr. Hunt: There is a notification item regarding Mr. Daniel Grantham for the Waipio Bay Benevolent Association is appealing the Planning Director's decision to grant an SMA exemption to Jeffree Trudeau for a three-lot subdivision at TMK 2-9-007: 052. This is just a notification. There's no action required.

Mr. Hedani: Noted.

**2. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following request:**

**MR. HARRY HASEGAWA of HASEGAWA GENERAL STORE, INC. requesting a 2-year time extension on the Special Management Area Use Permit condition to initiate construction of the new Hasegawa General Store at TMK: 1-4-003: 031, Hana, Island of Maui. (SM1 2005/0013) (P. Fasi)**

Mr. Hunt: There are - if you want to try to do the SMA Time extension there is one for Harry Hasegawa General Store requesting a two-year time extension to the SMA. The Commission shall acknowledge receipt of the request and you may decide whether to waive your review. If you waive your review, the Planning Department will merely issue the time extension.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move we acknowledge receipt and waive review.

Ms. Domingo: Second.

Mr. Hedani: Move by Commissioner Mardfin, seconded by Commissioner Domingo to waive review of the time extension of the time extension on the Hasegawa General Store. Any discussion? All those in favor signify by saying aye. Opposed nay.

**It was moved by Mr. Mardfin, seconded by Ms. Domingo, then**

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review.  
(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, B. U'u, W. Shibuya,  
L. Sablas, W. Hedani)  
(Excused - J. Starr)**

Mr. Hedani: Carried. Thank you.

3. **General Plan Update status report**
  - a. **Countywide Policy Plan**
  - b. **Maui Island Plan**
4. **Comments on the 2009 Hawaii Congress of Planning Officials Conference - September 23-25, 2009**
5. **Planning Commission Projects/Issues**
6. **Discussion of Future Maui Planning Commission Agendas**
  - a. **October 27, 2009 meeting agenda items**
7. **EA/EIS Report**
8. **SMA Minor Permit Report**



**9. SMA Exemptions Report**

**10. Proposed 2010 Meeting Schedule**

Mr. Hunt: The rest of the items are discussion items. We will have to defer the communication item regarding A&B Wailea requesting a Step 1 Planned Development Approval and we can just reschedule that.

Mr. Hedani: Okay, so can you integrate the rest of the updating items in the next meeting report.

Mr. Hunt: We'll try to do that yes.

Mr. Hedani: Okay, thank you. With that, we're adjourned.

**H. NEXT REGULAR MEETING DATE: October 27, 2009.**

**I. ADJOURNMENT**

The meeting was adjourned at 5:38 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson  
Bruce U'u, Vice Chairperson  
Donna Domingo  
Kent Hiranaga  
Lori Sablas  
Warren Shibuya  
Ward Mardfin

Excused

Jonathan Starr

Others

Jeff Hunt, Planning Department  
James Giroux, Department of the Corporation Counsel  
Michael Miyamoto, Department of Public Works