

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JULY 14, 2009**

Approved: 11/24/09

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:00 a.m., Tuesday, July 14, 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: Maui Planning Commission meeting of July 14th will come to order. We will take public testimony at this time on any agenda item in order to accommodate those individuals that cannot be present at the meeting when the agenda item is considered. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limits on individual testimony may be established by the commission and person testifying at this time will not be allowed to testify again on the agenda when the agenda item comes up before the commission unless new or additional information will be offered.

The following individuals testified at the beginning of the meeting:

Keeaumoku Kapu - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Noe Akima - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Hanalei Peters - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Thomas Muromoto - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Colleen Kapu - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Kekai Kapu - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Thomas Fairbanks - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Rick Tanner - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Makalapua Kanuha - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Uilani Kapu - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Jeremy Kozuki - Item B-1, Kaanapali Beach Hotel, SMA Time Extension
Kenny Hultquist - Item B-1, Kaanapali Beach Hotel, SMA Time Extension

Their testimony can be found under the item on which they testified on.

Mr. Hedani: Director.

Mr. Hunt: The planning commission's first item involves Mr. Michael White, General Manager of the Kaanapali Beach Hotel requesting a three-year time extension amendment to the Special Management Area Use Permit and Shoreline Setback Variance to complete construction of the restaurant, canoe hale project at TMK 4-4-08: 003 in Kaanapali. The file numbers SM1 90/0040 and Ann Cua is the planner assigned to this project.

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

- 1. MR. MICHAEL WHITE, General Manager of the KAA NAPALI BEACH HOTEL requesting a 3-year time extension amendment to the Special Management Area Use Permit and Shoreline Setback Variance to complete construction of the restaurant/canoe hale project at TMK: 4-4-008: 003, Kaanapali, Island of Maui. (SM1 90/0040) (A. Cua)**

Ms. Sablas: Mr. Chair?

Mr. Hedani: Commissioner Sablas.

Ms. Sablas: I need to disclose that I am a 20-year employee of the Kaanapali Beach Hotel so I need to recuse myself from voting on this application.

Mr. Hedani: Right. Thank you Commissioner Sablas. Kaanapali Beach Hotel is also a member of Kaanapali Operations Association, so I will also be recusing myself from voting on this particular issue although I may participate in discussion. Ann.

Ms. Ann Cua: Good morning Mr. Chairman, Members of the Commission. How we'd like to have the presentation go today, you know, this is for a three-year time extension. But because the SMA permit was granted so long ago and there's so much history, we thought that it's very important to bring you up to date as to kind of what happened along the way and why are we here because there are time extensions, SMA time extensions that you see on almost every agenda that basically do not come before you. This one is coming before you in the context of a public hearing and so we want to get into a little bit of the reasons as to why that's happening.

So I'm going to go through some chronological information and then I'm going to turn it over to the applicant to go through the project itself and then I'll come back on with some additional analysis.

So the primary hotel structures that exists on the site right now were built between 1964 and 1973. And in December of 1990, Kaanapali Beach Hotel received an SMA permit for a parking structure, the addition of 215 guest rooms and a free standing restaurant and related facilities.

Then in May of 1998, the KBH received an SMA permit amendment asking for the deletion of the 215 guest rooms that were originally approved in 1990, but they asked to maintain the parking structure and the restaurant and the other minor improvements that were proposed as part of the original SMA permit.

So then in May of 1999, the parking structure that was originally approved was actually constructed and for any of you who have been to the hotel, you've probably parked in that parking structure.

Then in March of 2001, the planning commission approved amendments to the SMA and Shoreline Setback Approvals for the restaurant and canoe hale. And what basically happened here is that you know, initially there was a restaurant that was approved as part of the original approval, but in 2001, excuse me, I'm sorry, yeah, in 2001, the amendment placed the portion of the restaurant within the shoreline setback area. That required a Shoreline Setback Variance. Being closer to the ocean than previously proposed the applicant decided to construct a canoe hale as part of the restaurant design. And again, the SMA and Shoreline Setback Variance were granted in March of 2001 after an intervention by several owners of the units in The Whaler at Kaanapali and I'll go over that a little bit later.

The approval that was granted in March of 2001 is subject to 25 conditions and I've attached for your review a copy of the findings of fact, conclusions of law and decision and order and that's attached as your Exhibit No. 5.

Then in February of 2002, the planning commission granted approval of a third amendment of the SMA and Shoreline Setback Variance permits for revised plans that were dated January 2002, and amended the time period to start construction to February 12, 2004. One thing I want to point out is that the approval letter of 2004 is attached in your report as Exhibit No. 6, and at that time, the commission added two additional conditions, Conditions No. 26 and Conditions No. 27.

And then in February 2008, the Kaanapali Beach Hotel requested approval of minor modifications to the project plans that were outside the shoreline setback area. The modifications did not change the seating area or building height or overall design of the 2002 approved plans. The renovations or the modifications included removal of pool restrooms that were accommodated in an existing structure and expansion of the kitchen in the northeast or mauka corner of the building increasing the overall building size by approximately 388 square feet.

In March of 2008, the Planning Department approved these plan modifications. And in October of 2008, the applicant filed grading and building permit applications for the restaurant and canoe hale project and those are currently being processed through the county. And then November of 2008, the applicant filed an extension of the SMA permit. This extension was timely filed and we have been processing this extension from that point in time.

Okay, in terms of location of the project, this is Honoapiilani Highway here. This is Kaanapali Parkway and this is the subject property, Kaanapali Beach Hotel. Some of the surrounding uses are The Whaler's Village here, immediately to the south is The Whaler hotel condominium and then to the north is the Sheraton Hotel. Now The Whaler Condominium, actually specific owners within The Whaler Condominium was the subject of the intervention that we speak about. Let me get that information. The individual people that intervened were Charles and Shirley Swartz, Renee Shepherd, Dr. and Mrs. Zimmel, Kent McKnotten. And during the time of intervention of those owners, the Association of Apartment Owners of The Whaler also petitioned to intervene, however, they withdrew their petition to intervene after reaching a settlement with KBH, but the remaining intervenors, we went through the contested case hearing and the decision on the contested case hearing is attached as Exhibit 5 and the permit was approved.

The property is zoned H-2 which permits the hotel use and any related hotel facilities which would include the restaurant and canoe hale. And the community plan also designates the site for hotel use.

So with that, I would like to turn it over to the applicant. There was one letter, one additional letter that was passed out at the start of your meeting and it was from Shelley Kekuna dated July 10, 2009, she's the Executive Director of Kaanapali Beach Resort Association and she submitted a letter in support of the extension. So with that I turn it over to Chris Hart of Chris Hart and Partners and he will take you through the project and also some additional analysis. One thing that you're aware of that needs to be looked at when someone files a permit extension, a time extension of an SMA permit is has there been any changes in the area and so based on what the commission normally reviews or has been reviewing as part of its SMA permits, the department had asked the applicant to provide additional analysis in a number of areas. One was infrastructure. One was analysis of the shoreline setback rules even though they did receive a variance, based on the old rules we wanted a comparative analysis of the new rules that exists today and the old rules that existed at the time that the variance was granted and then also the commission has been looking at transportation demand management measures for these resort properties and so we asked the

applicant to look at that as well and indicate what type of measures the hotel has incorporated into their program right now and what they intend to do in the future. So with that, again, I turn it over to Chris Hart and I'll return to the podium when he's done.

Mr. Chris Hart: Thank you Ann for all your help in this project. Thank you Mr. Chairman and Members of the Commission for the opportunity to speak. My name is Chris Hart, President of Chris Hart and Partners and our firm, together with Carlsmith Ball and Mr. B. Martin Luna have been retained to basically process the application for the time extension of three years for this Kaanapali Beach Hotel restaurant and canoe hale. Jordan Hart has been the planner assigned to the project.

The project team, the applicant is Michael White; he is the General Manager of Kaanapali Beach Hotel. And this is a shared presentation that's going to be made to you this morning. We have also with us, architect, Robert M. Fox, ...(inaudible)... Fox Hawaii Inc. Robert Fox will be presenting commentary about the architecture, the unique architecture of the restaurant. And Mike White will also be talking about some of the circumstances in the context of the time since what has actually taken place over the period of time since the original SMA permit was granted. Our civil engineer is John Chung of Belt Collins. Landscape architect is Aaron Akau. The land use planner is our firm, Chris Hart and Partners and legal counsel of course, is B. Martin Luna, Carlsmith Ball.

The construction that has been completed to date and again, there was an amendment to the SMA permit in 1998 to eliminate the expansion of the hotel rooms. However, parking is an issue at Kaanapali and the parking structure was completed. Also in the context of the restaurant and support facilities, there have been haies that have been completed that basically support the activities of Kaanapali Beach Hotel and the restaurant. It's important to take note of these because the architectural style is similar in terms of the materials and the style of architecture to those that have been incorporated into the restaurant. At the top, we have the garden hale. In the lower left we have the pool hale and then we have the beach service center on the right.

Our aerial location map identifies the parcel. It identifies the existing hotel buildings which again were constructed in 1964 and this was of course, prior to the adoption of the shoreline setback law which was adopted on June 23, 1970 and the location of the restaurant which is behind the two existing buildings at the wings of the Kaanapali Beach Hotel.

The proposed restaurant location in the context of the lawn interior courtyard at Kaanapali Beach Hotel. This is looking southwest. The proposed restaurant and pool location again looking, this is looking northeast in the courtyard. This is looking north along Kaanapali Beach.

And this is our site plan which again, identifies the wings of the hotel which were built in 1964. The setback that exists and the location of the restaurant which is mauka of the wings of the hotel. Identifies the restaurant, identifies the new pool facility and also identifies the area of the existing restaurant will be replaced with a cultural exhibit consisting of haies and taro loi's.

This is a typical hale structure. And in the context of the issue of erosion in that context to look at the history and it's something that Mr. Kozuki was talking about and also that Ann was talking about. It happens that in the context of shoreline setback in 1989 we passed the average lot depth setback. And this parcel is more than 600 feet deep and therefore, the average lot depth setback is a 150 feet.

In 1991, I'm sorry, trying to think what year that was now, that the erosion-based setback was actually incorporated and this is the erosion rate map at Kaanapali which shows the transects for Kaanapali Beach Hotel and you'll note that there is no erosion in the context of this particular segment of the Kaanapali Beach. In fact, over the years, there's been accretion. The actual amendment of the shoreline setback law that took place in 2003 that incorporated the erosion rate setback. So in this case there is no erosion rate setback for this project and the average lot depth setback is 150 feet. The annual erosion hazard rate for the shoreline at Kaanapali Beach Hotel shows accretion for each of the seven transects.

These are photographs of existing beach conditions. This is looking south at the upper left and then going clockwise, the northwest and then, again, to the northwest and then to the southwest in the lower left.

The existing pool facility which will be retained and the proposed pool facility in the context of the location of the restaurant.

This is the existing restaurant facility which again is in the, it's in the northern mauka corner of the courtyard. This restaurant is approximately 19,000 square feet and it will be demolished and it will be replaced by a cultural exhibit existing of hales and taro lo'is.

The project summary. Traffic and transportation demand management, again, we have looked at these additional concerns that have come up with regard to Kaanapali as a result of the passage of time. We're decreasing 36 seats from the 286 restaurant seats. The proposed total 250 seats in the new restaurant and canoe hale. The project is not anticipated to create added traffic as a result of the new restaurant, canoe hale and related improvements.

KBH has a number of transportation demand management measures in place to mitigate traffic impacts of the hotel. Currently Kaanapali Beach Hotel provides 100% per month cost of commuter transportation subsidy for employees utilizing Maui Bus commuter service. KBH has 31% of employees living outside of West Maui has regular riders that commute daily to Kaanapali from Wailuku, Makawao and Kihei areas.

Inter resort travel, KBH contributes to the Kaanapali inter resort shuttle in constant operation for approximately 30 years. KBH contributes 7% annually to the operation of the shuttle system. Shuttle services is provided from Maui Kaanapali Villas, to the Hyatt Regency Maui every 20 to 30 minutes from 10:00 a.m. to 10:00 p.m., seven days a week.

Water. The use increase of 833 gallons per day of potable water is anticipated. The applicant has verified with Hawaii Water Service Company which is a private water company serving Kaanapali Resort. There is sufficient water resource to accommodate the increased demand.

Wastewater. Replacement facilities will result in a net decrease in .01 million gallons per day in wastewater generation due to net reduction in seats from the existing to the proposed restaurant.

Utility infrastructure. Existing on site utility infrastructure is adequately sized to accommodate the proposed use. No impacts will result to public rights of way due to utility connection work.

Drainage. All increase in runoff from the project will be retained on site. After retention no net

increase in storm water runoff is anticipated. It's important to know that in context of our discussions with civil engineer, again, from Belt Collins, that 100% of the natural and the project generated storm runoff will be retained on site. Kaaanapali Beach Hotel is kind of unique in the sense that it has a large courtyard area and there have been several porosity tests done within the courtyard and essentially the retention of water in the retention system that they have results in a dissipation of storm runoff very, very quickly. And so, therefore, all of the storm runoff will be retained on site and 100% of basic disposal of storm runoff will be on site.

At this time, I'm going to call Bob Fox to come up and to discuss the architecture, unique architecture of the project.

Mr. Bob Fox: My name is Bob Fox. I'm an architect. I'm very fortunate to have an opportunity to work with Kaaanapali Beach Hotel on a number of projects for over 15 years. This being my favorite project. My marching orders on this project were to do something that was absolutely environmentally compatible, it functioned as a canoe hale, it functioned as an extension of the hotel's facility with the restaurant and that fit the environment as a very green building using very little mechanical ventilation or air conditioning. So the building is designed to be totally open in all the public areas.

The location of the building as Chris had just pointed out is here. This is restaurant bar on this, in this area, the kitchen area is back in here. The canoe hale, this is the access from the water with canoes coming up and they go under the building at this point.

These are the elevations we originally developed for the building back in 2002, and it's exactly the way the building is now being – in our construction documents it looks very similar to this. This is the makai elevation. This is the north elevation. The canoe hale is underneath this area and the next slide will show you where that is.

This is a section through the building. As you can see, the building is built on piers. This is the main dining level. The construction is ohia wood, very similar to the haies that were presented earlier, the ones we have constructed there. It has a thatched roof and the columns are all wood and also the trusses are wood and we have basically a free span inside the building and as you can see there are no walls or even windows on the makai side of the building so that it's actually a very open building. There's no air conditioning in this portion of the building only in the restaurant. So we're relying on everything with the gable – only in the kitchen. AC is only in the kitchen. So we're relying the gable roofs and ceiling fans to be able to make natural ventilation for the building.

The canoe hale is placed in this area directly below the building and what we're doing with it is we're actually going to have the canoes suspended. They'll be lifted at the outside of the building. They'll be lifted up and there'll be harnesses placed onto them and then they'll be moved a long a track into the building to accommodate the 40-foot length of it so they'll be totally covered in there. If we leave the amas on we have room for two full canoes. If we take the amas off we can actually accommodate four canoes. But this makes it a very easy way to be able to store the canoes in a very safe and protected environment.

This again is a hale that has been built. It's in the garden area. These are the ohia posts. This is the thatched roof and the structure in this is also exactly the same that's going to be used for the building, the new building.

This is a rendering showing the architectural character and the environs of where the building will be located. To the left we can see the canoes that are stored outside being ready to be put under the building or just being taken out of the building and that's where the canoe hale is in this area here. This is the restaurant across the facade here, the makai facade looking in the direction of the ocean. This is based on our current construction documents, this is a computer generated image of the actual building which is almost exactly as it was and when we originally proposed it in 2002. Thank you.

Mr. Hart: At this time, we'd like to ask Mike White who is the General Manager to come and to give his testimony and to discuss the reasons for the extension.

Mr. Mike White: Good morning Commissioners. I'm Mike White the General Manager of Kaanapali Beach Hotel and thank you for allowing us time to come and present. The reasons for asking for this extension are really due to the fact that the initial approval took about three years and the final approval came just shortly after the event of 9/11 so we weren't really in a position of moving ahead because focus really had to be on building the business back.

One of the challenges that we have with this project is because it's so centrally located, it's not just the construction cost that we have to consider but also the revenue we would lose during that time. So we thought we had left ourselves enough time as we were enjoying good business and one of my boss's things is he doesn't like to miss on getting revenues when the business is there. We obviously aren't going to displace much revenue in this environment so we feel this is a really good time to move ahead. The design took much longer than we thought it would and then we also realized that with a year's time frame on the building permit process that we just couldn't get it done in time. So we asked for an extension and we feel that if the extension is approved that we can be under construction within about six months. And at this point, we don't need to depend on outside financing. This can be financed by the owner.

As you've heard from a number of folks the facility is our first chance to, you know, our facility lets face it, it's a modest old facility. And this is our first really brand new facility that we're going to be constructing in the 23 – well, except for the parking garage, but the first time we have an opportunity to provide a facility that truly reflects who we are and this facility is going to provide us an opportunity to show the Hawaiian connection to the sea and we feel that the focus on navigation and canoeing is especially important.

We are recognized as Hawaii's most Hawaiian hotel by a wide variety of entities and it's because we've been committed to doing things that give back to the host culture for over 20 years. We believe that the visitor industry really had a responsibility to give back to the culture that supports us in many ways. We're engaged with the Hawaiian community in many, many ways. If you want further details, I'd be happy to provide them. National Geographic, Travelers Magazine this past year recognized KBH as one of the 150 most authentic and sustainable hotels in the United State, Canada, Mexico and Caribbean and we wear that with honor because we feel that we've been very good stewards of the place and very good stewards of the culture. And this has to do with both our cultural programs and our environmental focus.

We also operate the hotel in a very open and welcoming way. We don't require wristbands. We don't have security guards maintaining our grounds and keeping people out. One of the things that we do to support the Hawaiian community is that we bring in halaus every Friday night. We spend

much more money bringing the halaus in than we need to on nightly entertainment, but it's our way of providing a fundraising opportunity to the halaus. The halaus love it because it's an opportunity for them to have their kids actually perform in a venue other than their practice venue. As we look at how we're going to operate the canoe hale, we're also looking at in addition to having a canoe club operating there, we're also looking at the possibility of having a couple of our own canoes so that we can make like we do halau night, we can do maybe a canoe Saturday or something of that sort where we have different canoe clubs come in and we would pay them to come in and actually take our guests out and then it would be an opportunity for them to also make some extra money through donations from our guests. So we're always looking for ways that we can bring the community in because our visitors are wanting to interact with residents and we feel that this restaurant is a really, really good opportunity for us to do just that. Because if we have people coming into the hotel, taking their canoes out to practice on a daily basis, it's just a very easy way to invite interaction and we're very comfortable doing so.

We look forward to having – I've already covered the canoe paddlers. We've also committed to Ed Lindsey just four months ago that we would house the double hulled canoe, Na Lelehua on our beachfront property. That canoe is under construction currently and everyone else that was involved in the development of that canoe has committed to carrying on Ed's wishes. We're certainly sorry that Ed's not going to be around to see the fruition of his dream.

The facility will provide support for our Pookela process. Again, it just reinforces what we do as a Hawaiian hotel. Our employees are very much looking forward to a facility that they can be proud of and that will allow them to generate a greater livelihood than they're able to do with the restaurant in the current facility.

I'd also like to just point out that right now when we have halau night, when we have our nightly entertainment, it's 300 and something feet back from the ocean. And the backdrop behind the stage is the pool restrooms. So if you can envision when we move out to the current location that we're asking for the backdrop for the entertain, the backdrop for the halau performances is going to be Molokai, Lanai and Puu Kekaa. So it's a very, very different presentation for our guests, it's a very different opportunity for our employees, and very different opportunity for the halaus as well. We understand and will comply with all the conditions outlined in the various documents that we have been provided and I think are contained in today's Planning Department report and recommendation. We would like to ask for your assistance in giving us a little more time to move ahead with this.

I'd just like to add one last thing, and that is the contested case process that we went through, it sounds like somebody was really against it, but to put into perspective, The Whaler owners, the four Whaler owners that were against it were against it because of a couple of concerns, one was music and the other one was smells. So part of our agreement is that we will have a sound engineer focus speakers so that we don't bother them and we've also, part of the design delay was because the scrubbers that are having to go in our mezzanine level to handle the kitchen exhaust are humongous and really hard to position. We've fought with our mechanical engineer for months. But those are there, so we've addressed the concerns that The Whaler had.

The other concern was two, I think it was two of them owned the corner oceanfront units. And from there – they were concerned about their visual. Well, the Kaanapali Beach Hotel Kauai wing was there before The Whaler was built. They didn't contest their right to build, but 72 rooms of ours had

their view impacted by The Whaler which takes up this much of their view. The only Whaler condos that can see our restaurant are the front corner units, that 12 units and the total impact of their view is this much. So I just wanted to add that context because when you hear a contested case you generally feel that's a really serious environmental issue or has a real serious community issue. But I don't think that was the case in this particular instance. So with that, I'm going to close and we're certainly happy to answer any questions.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Well, I hope you ban that four from coming to your restaurant since they didn't approve.

Mr. White: Well, in our business, the restaurants don't always make money. So we'll let them come, might charge them double but

Mr. U'u: Just a question. What's your occupancy level at right now?

Mr. White: We are – we don't like exposing that, but it's – we're down about 12 to 15% in occupancy but we've had to join the discounting that we've done before. So our revenues are down between 20 and 30%.

Mr. U'u: Well, I'd like to thank you for keeping the employees working and appreciate that that you're keeping them employed because we all know how important it is right now.

Mr. White: If I could just add. We look at our – because we don't have a fancy facility and we're not spending the tens of millions of dollars on upgrading to create a new fanciful environment. We, and our owners look at our employees as our main asset. And so when we say that, we're one of the few that are willing to put our money where our mouth is.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, Mr. White, first of all I do appreciate a lot of the really good work in cultural things that happen at the hotel. I appreciate it. I have friends and relatives that have been involved in it and you certainly do wonderful works there and it's probably the nicest place on Maui in terms of aloha. But I do have some real concerns about the shoreline setback and our Shoreline Setback Rules which were put in place for a very good reason really are very clear that major construction should not be done in the setback area, new construction. And the justification I heard today was well, there was other restaurants that are close to the ocean so there should be one built close to the ocean here. I just having trouble understanding the compelling reason why you have to bust setback especially in an age of awareness of rising sea levels and that is a very, you know, we do know that that shoreline moves back and forth. It almost hit your buildings in 1998.

Mr. White: Not in '98, '81 it came closer.

Mr. Starr: Why don't you build it back behind the 150-foot setback and then following the letter and spirit of the law. There's plenty of space and you could put your, you know, your haies and places for you know, luau and hula and canoes up closer to the water. What this the compelling reason to have to bust the setback rules?

Mr. White: Well, there's a couple of reasons. One of the reasons is that if we move significantly

further back, actually we're about 50 feet into the setback area where we are located now, part of the reason for keeping it in the setback or asking for it to be in the setback is that we felt that it was unnecessary, wasn't good to have the canoes all the way up to the restaurant. We want the canoes put at the end of the day near the restaurant because that's part of the interaction that we're trying to generate.

Another part of the reason we feel comfortable asking for the restaurant to be where it is is because we have two existing buildings already well within the setback area and if you look at the spirit of the setback law, I think it really applies to places where there is no building and you're starting with a clean slate and you can put your buildings where, you know, they're not going to be a challenge to one part of your operation or another. But we have one building that's already 45 feet into the setback and I think the other Kauai wing is about 90 feet into the setback. The restaurant is going to be between 856 on one side and 100 feet on the other. If you look at the fairness of the 150-foot setback I'm not sure that it's fair to someone with a 600 and some foot lot depth to have a 150-foot setback where on the same beach there are a lot that have a depth of I think around 300 feet so under the law, as applied to all of us, their setback would be 75 feet. So if I had one of the other lots and I wanted to build a restaurant, I wouldn't have to come for a variance. So I would hope that you could each ask yourselves whether that's really fair.

The other part of it is that I've been there 23 years and yes, we realize that there's a threat of damage to the buildings, but it hasn't happened in the 44 years that the hotel's been there and yes, it could happen, but that's our risk and we recognize that and so we are placing it beyond the reach of the existing building. If there's an erosion event that happens, it's – the biggest erosion I think was back in 1981, when there was a severe, not a hurricane but a hurricane that passed by and we had where the restaurant is now, I don't believe there was even a wash of the waves. So we feel that the things that we have done to ameliorate the challenges we've raised the restaurant up on piles so it's built like a dock so if there is a time when the waves come up there's not going to be any impact to the beach processes by virtue of what we're building. So I'm not sure if I've covered enough of your question.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You talk about the fairness of the setback ordinance and apparently you don't think that the way it's written the ordinance is fair, but and I know you've served as a legislator and as a very good one with the principle of fairness something that you represented and represented it well. Now, in you know, day to day, the setback ordinance keeps many, many projects from being built in the setback area in places a lot less volatile and lot less subject to erosion. And here you know, you're asking us to flaunt the ordinance which everyone else has to adhere to. And I understand you have a lot of high-powered talent here, you have a lot of wonderful cultural practitioners that we all feel emotionally sympathetic to, you know, we all know people who work there. But can't you see that you're asking something that is not just in asking for an exemption to the setback ordinance which virtually everyone else has to adhere to and the logic of the fact that two canoes are going to be kept under the building. I mean, they can be wheeled up just as easily. That's not really a great justification.

Mr. White: I don't believe we're flaunting at all with our request. When you look at the number of things that we have in place, we are actually giving – we believe we're giving the commission ways in which to deny other requests because we have for example, if someone comes to you without

other buildings already in that area, this was approved because or initially I believe because you had two buildings already within the setback and so, I think one of the values of this setback is to protect view planes. If it was simply to protect against beach processes I'm not sure that you have to a 150 feet back. So no, I don't believe we're flaunting it. I think we are doing something responsible.

If you also take a look at the site plan where we have – we have the two buildings in the setback, we've drawn a line between the buildings and we are keeping the structure. I believe we're about 25 feet mauka of that line. So, in addition to that, we have the involvement of the canoes, the canoe clubs. We believe that it's a reasonable thing to ask when from – also it's competitive purposes, it's best for us to have an opportunity to compete. I bring that up because Tom had touched on the fact that we, we want to be able to offer our employees gainful employment in the restaurant. It's very difficult to keep employees if you're not providing them good level of sales and we're not being able to charge the kinds of prices the guys next door do because they can provide a much better experience.

In addition to that, our employees are all union. Leilani, Hula Grill are not. So our cost of employment is probably about 50% higher than theirs. So for us, to ask for an opportunity to give them a reasonable livelihood, we're not asking for the opportunity to make money. Our food and beverage operations seldom do. It's a service to our guests. It's something we feel we have to upgrade in order to be a competitive hotel overall.

In addition to that, the community benefit that we provide through our marketing and the community benefit that we provide by paying much higher taxes. Leilani's and Hula Grill back when, I looked at these numbers in 1998 or 99, they were doing about \$14 million in total revenues compared to our level at that time I think it was about \$22 million. The two restaurants combined paid to the County of Maui about \$49,000 in property taxes. In TAT and property tax we paid, at the time we were paying a little over \$900,000. As Tom alluded to the restaurants don't have to market on the mainland. They wait until we bring the customers in. Our marketing expense on an annual basis is about \$5.5 million. If add up the total marketing, taxes we pay to the county and taxes we pay to the state the amount of that – if I look at that as a community benefit because I think it is, we're bringing people in and we're paying all these taxes, we're not complaining about that, but we just feel we should have a fair shot at being able to create things good for our guests and good for our employees and don't impact the beach process. If I take those expenses and divide them by the number of employees we have, I'm paying – I'm generating community benefit of about \$28,000 a year. That's more than my housekeepers make. That's \$28,000 per employee, put that up against anyone else in the county. We're doing our fair share, we're just asking to be treated with some fairness and respect with respect to the setback being of somewhat – I don't want to say it's – it's not an arbitrary line but if the setback allows for a 75-foot setback in some cases on the same beach, I have to say that there's a little bit of unfairness to that.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Comment. I understand where Commissioner Starr is coming from and I would object to it if it was a 10-story concrete building and I would, but it's not. It's a thatched roof. I like the look. I honestly feel that to be competitive you guys need that. One of the two major attractions I think for Lahaina and I was there Saturday eating breakfast two weeks ago, is if these laws were in place we would never have Front Street, mauka or makai. We would have none. I was sitting there,

thinking wow, what if the laws was in place, we would never have a Front Street. There's a lot of history in Front Street.

Second, that I think it's a tourist attraction is that walkway, huge. I went to eat at Lahaina Cannery, there was no one there. Food is pretty cheap though I gonna have to say that, but there's no one there, but if you walk to Front Street, it's lined with people. You walk in front the Hula Grill it's also lined with people and we gotta understand that the tourism is huge and it was stated by Charmaine in yesterday's newspaper how much we need the tourism. And I think your hotel which does a great job of marketing and employing such good people to stay sustainable you going need that restaurant. I think it's a missing component to your hotel. Always could be better, you're encroaching on the shoreline, you're in the shoreline but like I said the building justifies itself. I think the marketing standpoint going be excellent for you people and I think that's one of the tourist attractions on Maui especially on the west side that walkway and Lahaina. And I think at times the – you brought up the rules that set the depth of your lot applies differently for each lot and to be competitive at times you going need that setback or I should say that, to be in that area, just to compete with the Hula Grills.

Mr. White: For us the competition isn't just local especially in today's world. If you go on line and go look at where hotels are in Cancun, where they are in Tahiti, where they build out into the lagoons. Obviously we have a much more active beach. We would never ask to do something like they do in Tahiti, but the reality is you are drawn to come and visit a place based on what you see on line. And you know, right now, I can't show any dining experience that's attractive at all. Our main, the Tiki Terrace that we are replacing I think was built when a group was coming to the hotel or something and they needed some outdoor, they needed some coverage for pre function area or something because it's just corrugated iron roof with a couple of metal posts. So, we're dealing with a situation that I don't think is fair to leaving our employees doing nor do I think it's fair to ask our owner to rebuild, spend a bunch of money ..(inaudible - changing of tape)... destinations far, far away that are very excited about hooking in our business. I just wrote a letter to my boss again saying we gotta keep everything open, we gotta keep everything operating, we gotta keep everybody on even in the face of this downturn and the discounting because you know, now we're bleeding. Right now there are dozens of hotels in Las Vegas that are offering rates of \$50 or less. There are 16 hotels in Las Vegas that are offering rates of \$20 or less. The rates in Cancun are – we're getting a rate right now, year to date about \$165 a night, Cancun are offering rates right now for our level of hotel of less than \$85 a night. To get to Cancun is quicker, it's cheaper. Maui is a much better product so we're able to – hopefully we're going to be able to maintain rates higher but the bottom line is we've got to create some visuals that are attractive for our guests when they look on our website.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Back when this report was written, you estimated, you said, "total estimated construction costs are \$2 million, duration of construction activity is not expected to be longer than nine months." This is back in 2001?

Mr. White: Yeah, but the most recent projection we had was that construction cost is probably going to be closer to \$4.5, possibly \$5 and part of that increase is because I'm taking the approach with my owners that we are either going to do it with ohia and thatch or we're not going to do it at all, because we are far more convinced now than ever that authenticity is critical in our business. We

have made our money by being authentic and right now, the average Maui hotel has about 40.3% of its rooms occupied by independent travelers. We have 61% of our rooms occupied by independent travelers. So we have penetrated the FIT market 50% more than the rest of the hotels on Maui and we believe that it's because of the cultural approach we've taken. It's not because of our facility. It's because of our people.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Personally my feeling is you know, the state of the economy, being able to compete in the global market, construction, creation of jobs are I guess emotional pleas and we're looking more at the objective justification for the granting of this shoreline variance and I think Commissioner Starr has asked some very good questions. I'd like to kind of continue on that. I did read the staff report and maybe I missed it, but what is the deepest encroachment of the proposed building into the shoreline setback area?

Mr. White: Our existing building?

Mr. Hiranaga: No, the proposed building.

Mr. White: And actually it's just the extension that we're requesting not requesting the variance, because the variance was approved. If you look at the right-hand side of the building that is approximately 100 feet behind the setback line. The corner of the – this corner is approximately 100 feet behind the setback line and this one is about 86 feet behind. So both of those positions we are – this building I believe is around 45 or 50, this building's about 95.

Mr. Hiranaga: So the encroachment is about 50 feet?

Mr. Mardfin: 64 feet.

Mr. White: The maximum encroachment is 50 feet.

Mr. Hiranaga: I'm hearing other numbers in the back of my head. Which is the correct number?

Mr. White: This is a 100 feet behind the setback. This is the line there. I mean, I'm just taking a 100 minus the 150.

Mr. Hiranaga: Right, is that? I'm looking at staff, I'm not looking at Commissioner Mardfin, I'm looking at staff.

Mr. Hedani: Director Hunt.

Mr. Hunt: I believe there's two corners of the building. So could we get information regarding both setbacks?

Mr. White: Yeah, as I said just now this corner is a 100 feet behind the setback line. This corner is 86 feet behind the setback line. So you're right. So one is –

Mr. Hiranaga: So the deepest encroachment into the setback area is 64 feet, 86 minus 150 is 64.

Mr. White: Correct. I'm sorry, you're right.

Mr. Hiranaga: I have more questions, but I'll limit it to one more question. You're elevating the building by piers. Is the portion of the building that encroaches into the setback area is that portion of the building all elevated?

Mr. White: Both sides of the building are elevated. This is up I believe a foot and a half.

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

Mr. White: I'm sorry. This side is elevated by six feet. This side I believe is three, but I know we're – in order to not take a whole lot of fill out when we do this pool, we're actually elevating the pool deck over existing grade a little bit. So I'm not sure, well, I believe that's about three feet.

Mr. Hiranaga: No, my question is, the portion of the building that encroaches into the shoreline setback is that portion totally elevated by piers?

Mr. White: Yes it is.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Any additional questions for the applicant? Director Hunt.

Mr. Hunt: You spoke of a thatched roofing material, could you elaborate on that? Is it natural materials or is it synthetic, is it fire treated?

Mr. White: It's fire rated and it's good for winds up to 95 miles an hour or thereabouts. It has been tested by the Maui Fire Department and very successfully passed their requirements. It is I believe – I called to see if they used any recycled materials but they don't and I believe it's because they need to be in total control of, because of the hurricane rating, they have to be in control of the mix. It's high – it's PVC material, so it's not recycled. But the pictures that we've shown, the thatch's been there for I believe five years and we see absolutely no degradation of it.

Mr. Hedani: Ann.

Ms. Cua: Mr. Chair, if I could just add a couple comments. One is I just want to reiterate the request that's before the commission today. A Special Management Area permit and a Shoreline Setback Variance was granted by the Maui Planning Commission, not this body, this individual people here but by the through planning commission through the process of a contested case hearing. The part I forgot to mention which in my presentation was the reason why we're having a public hearing today is because the rules say that when you file for an amendment to permit terms and conditions and an extension is that, that if there is intervention, you must have a public hearing unless you are able to receive written waivers from all the parties. The applicant was not able to receive written waivers from all the parties. The applicant was not able to receive written waivers from all the parties even though they were able to receive a letter from The Whaler itself. So that's the reason why we're here. So that's one point. But if you do not grant the extension, they don't have a permit anymore. You're not asking to grant the initial – you're not being asked to grant an initial SMA permit and a Shoreline Setback Variance. That was already done.

Another thing I want to point out, the measurements that Mr. White was alluding to, you can refer to Exhibit No. 15 in your report. That's one of the things that we had requested the applicant do to measure the distance of the two points of the – the two corners of the proposed restaurant from the shoreline.

And then the other thing I want to mention is, if you look at Exhibit 6, this is one of the amendments that the planning commission granted at its meeting on February 12, 2002, Exhibit 6, that letter is dated February 19, 2002. And if you look at the second page of the letter, second to the last paragraph, you know, Mr. Fox went over the design with the ohia posts, the thatched roof, that's always been the preferred design. But back in February of 2002, when they went to the commission, the applicant had proposed two alternatives. I want to read that last paragraph. It says here, "it should be noted that the commission reviewed two architectural building designs for the restaurant canoe hale. The applicant's preferred design includes the use of ohia wood for the structure with a thatched roofing. A second design which included a wood building with a shingle roof as was originally approved by the commission was also presented. Architectural plans for both designs are dated January 2002 and both designs were approved by the commission."

As the Planning Department reviewed further amendments we felt it was really important, you know a lot of times we see projects do value engineering and you know, we felt for the character of this property and what it represents and what it represented to the commission at that time and through the contested case hearing, that this type of design really as much as possible should be carried through and value engineered out. And we've never really – the applicant has never really asked to deviate from that, but I did want to point out that you know, it was originally – a design was originally proposed that way. On the books right now the applicant would be able to go back to the other design because the commission back in 2002, allowed for that. But you know, they're indicating to you, they're not asking. They're still trying to maintain that architectural design with the thatched roof and the ohia posts.

Mr. Hedani: Additional questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: I have two. One is a follow up for Commissioner Hiranaga. You told us what the heights on the building, you told us what the height was of the piers at the ends closest to the ocean. I want to look at the part farthest back from the ocean. You were on the right slide.

Mr. White: He wants to know how far back the –

Mr. Mardfin: Right about there.

Mr. White: This is, if I can hold it steady, basically the kitchen starts right about here.

Mr. Mardfin: Okay.

Mr. White: And so, I would guess there's maybe three or four feet.

Mr. Mardfin: So the kitchen's on piers too?

Mr. White: No, the kitchen is – yeah, the kitchen's on piers until it gets back to the loading area where it's – there aren't piers. So the whole structure is on piers.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: My second question is a totally different topic. You talked about the incorporation of the outrigger canoe club facility to be used by Maui Canoe Club. Is Maui Canoe Club or any other canoe club actively working the area?

Mr. White: No, we have had about a 20-year relationship with Kahana Canoe Club and they initially were the ones that were going to come and move a couple of teams. But when they brought it to the whole group, their club I think is around 250 people if I remember their numbers correctly and they said, you know, we've discussed it amongst ourselves and we're such a family organization and the older kids and older folks help the younger kids and the younger folks and we just don't feel that this is something we want to do. We don't want to break a couple of teams away and have them operating out of a different facility. So we're probably going to have a smaller club get involved there but we still hope to incorporate all the clubs on the basis that we'll do a canoe day.

Mr. Mardfin: But nobody's currently using it for canoe activities?

Mr. White: No.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I wanted to thank Ann Cua for her comments. The reason I'm asking questions about the shoreline setback issues is because no extension the variance is moot, right?

Ms. Cua: That's correct.

Mr. Hiranaga: So that's why I'm asking questions. Also, the SMA permit was granted in March of '01 and the Shoreline Rules were revised in October of '03.

Ms. Cua: Correct.

Mr. Hiranaga: So the variance was granted based on rules that no longer apply and third, even though there was no contested case – if there had been no contested case on this application it would still come before the planning commission to determine whether we were going to waive the need for the commission to review this extension or not. So it would have come before us anyway with or without the intervention. But going beyond that, I'm looking at the erosion rate map which you had up there in color. Unfortunately, ours is in black and white. So we can't tell where the 1912 shoreline is in the our staff report. So maybe you can show us where the 1912 shoreline is in comparison to the current shoreline.

Mr. Hedani: Can you use the microphone please and identify yourself for the record?

Mr. Jordan Hart: This is Jordan Hart of Chris Hart and Partners. It's pretty bright in here so it's difficult to see the color, but the 1912 appears to be the pink here. And the '97 is orange, that's this color, that's the furthest it goes on this particular map. We don't have the shoreline overlay, the current shoreline overlay on this for the property.

Mr. Hedani: Jordan, what is the line that's furthest out in the ocean? It looks like white, what year is that?

Mr. Hart: There's this beige line here.

Mr. Hedani: Right.

Mr. Hart: This beige line is '63, and then again, like I said, this pink line here that runs out that's the 1912.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: The latest shoreline that's displayed on the map is?

Mr. Hart: '97, is in orange and that runs here.

Mr. Hiranaga: Follow up question.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So in the staff report it shows that the shoreline is actually accreting versus eroding, but then why is the current shoreline further back than say a hundred years or ago or close to a hundred years.

Mr. White: If I could suggest, you know, you've dealt with the situation where the Alii runs out of sand. Where the sand is at any given time of year or any given year really depends on where the sand is along the beach. I don't know when this picture was taken, but it makes it look like the previous years were way out in the ocean, but in fact, when the sand's not down at the Alii, it's down in front of our place. And so, it depends on the direction of the wave action and when the wave action switches during different times of the year, we've had situations, we've lost 50 or 60 feet of beach and it does down and fills in at the Alii. So I'm a little concerned because I don't know when the photograph was taken, but I know looking at that, it could be during the time when the sand was down at the Alii.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: When you – I hesitate to ask my question because I'd like if my colleague wants to do follow up I'd be happy with that, but for the restaurant itself how many piers would you be sinking?

Mr. White: It's actually going to be on a spread footing where the piers – I'll let Bob answer that.

Mr. Bob Fox: Yeah, the way the piers are there's actually a spread footing below and that's the support like a foundation for the piers.

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

Mr. Fox: I'm sorry, Bob Fox, the architect on the project. The way the structure is set up is that we have a spread footing and the piles then go down to the spread footing and that is specifically given

where load bearing at the base of the pier. And then the piers probably, I'm just taking a guess now, probably about 50 piers and they will be at different heights depending on the load bearing at whatever depth in the soil.

Mr. Mardfin: Would you explain the spread footing to non engineers?

Mr. Fox: Okay. The spread footing is the piers coming down like this, the spread footing means at the base of the pier there's actually a spread footing, like a footing you find on a normal building.

Mr. Mardfin: And that will be on the surface on the sand?

Mr. Fox: No, that will be below the sand.

Mr. Mardfin: At what depth?

Mr. Fox: I believe it's six to eight feet below the surface.

Mr. Mardfin: And so in construction you're going to dig a hole, put the spread footing in, put the pier on top of that, put the restaurant on top of that is that pretty much?

Mr. Fox: Not really dig a footing, ... (inaudible) .. core footing that will be big enough for that. In other words, we'll do it with a coring machine so that we're not digging the whole thing up. We're just digging enough to make the size of the spread footing itself.

Mr. Mardfin: And what is that resting on?

Mr. Fox: It's bearing –

Mr. Mardfin: More sand or is it – or are you down to coral by that point?

Mr. Fox: I think in all cases, we're still on sand, but because of the spread footing, the basis of the load bearing on that we've spread it large enough so that it has the bearing capacity.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: What is the elevation at the restaurant?

Mr. Fox: I believe it's 10 feet. The grade elevation?

Mr. Starr: Yeah.

Mr. Fox: I believe it's about approximately 10 – at that point, I believe it's about 10 feet.

Mr. Starr: That's above high?

Mr. Fox: Yes, above mean tide line.

Mr. Starr: I have a couple of questions. I believe Mr. Abbott walked in. Would you honor us with a touch of your wisdom Mr. Abbott. Good to see you. I was surprised to look at the transect, the cell's transect chart for this and see, you know, the range of, you know, the shoreline at different years and also, you know, we have pictures here from 1998 when the Sheraton had to put in a steel – the steel plates to preserve and it got pretty narrow there and then I believe Mr. Hultquist has a photo there I was looking at earlier too which shows a really old picture of the old beach. I've been looking at the ...(inaudible)... website picture. So it seems to be a huge amount of variation. And looking at those lines it seems to show a progression inward, but yet, it doesn't show a recession. But I also remember that when ...(inaudible)... originally put the erosion-based maps in effect, we had presentation, – we had a presentation by them by Chip Fletcher who said that the data that they were starting the first go around with was pretty small because they had a team of people for a couple of years running that were setting out stakes in the water and measuring.

Mr. Hedani: Commissioner Starr, do you have a question for the applicant?

Mr. Starr: Yes, I do sir.

Mr. Hedani: For the applicant?

Mr. Starr: I have a question for our staff.

Mr. Hedani: Okay, we haven't had the staff recommendation yet, so do you want to ask Thorne question now or –

Mr. Starr: No, I want to ask a question of our staff.

Mr. Hedani: Okay, ask the question.

Mr. Starr: I'm asking the question please. I understand you're trying to stifle discussion. I also understand –

Mr. Hedani: I don't want to stifle discussion, I just want to stifle mindless banter, okay. So if you could ask the question I'd appreciate it.

Mr. Starr: Thank you. I have the floor sir. Thank you. Okay. When Chip Fletcher introduced them, he explained that these are something that would have to expand over time with increasing data acquisition. Could you talk a little bit to this and especially in light of sea level rise and trends?

Mr. Thorne Abbott: Yes sir. Thank you very much for the opportunity. Thorne Abbott, staff planner and I think maybe this will clarify some of the other questions I believe Commissioner Hiranaga also had. The squiggly lines that you see on the map are various shoreline positions over the last 50 years plus one from the early 1900's from a T-Sheet. So in generally, a hundred-year time frame.

This particular beach cell has tremendous long shore transport from the Kaanapali Alii down to the Sheraton and then when the waves change and you'll see another presentation hopefully today on this, it moves from the Sheraton back up to the Alii. Right now the beach in front of the Alii is I'm guessing 200-foot deep in front of the sidewalk. That can change in a heartbeat. Literally in two or three weekends it can go from 200-foot in depth to you know, 10 or 20 feet in depth. All that

sand moves down to the Sheraton Resort. Then our current change, weather changes and it gets pushed back. So there's a tremendous amount of variance going on. At the same time there is overall the island sinking, the sea is rising so there is this kind of slow progression of a retreat in a long time frame over a hundred years. So when Chip did his study, he wouldn't necessarily capture that seasonal change. It's in there, but over a hundred years it kind of is a wash because one picture you might have it in there, then next time, it won't be in there. So you want to pull the variants out and look more at the long term trend that's going on and that long term trend, down at the very end there's some erosion, but in the middle actually where this particular hotel is over a real long period of time, it's pretty much okay, there isn't erosion going on. There's actually a little accretion I believe. So does that make sense? It's kind of like the stock market goes up and down, up and down, up and down every day. But generally it's a trend.

Mr. Hedani: Thorne, could you explain the red bars on the bottom because I don't think that's ever been explained to the commission?

Mr. Abbott: Sure. Okay, the red bars are what's called a histogram and they line up with little yellow lines that are drawn perpendicular to the shoreline. So 124 is the very last one and that's a measure of the annual erosion hazard rate or the amount of erosion over the last hundred years. And as you can see it's just about half a foot at transect 124 where is right next Black Rock. So it's just kind of a surrogate indication of how much erosion is going on.

Mr. Hedani: And in front of this particular hotel?

Mr. Abbott: Zero.

Mr. Hedani: Zero. Commissioner Mardfin.

Mr. Mardfin: The presentation by Kenny earlier today or the handouts he had was shocking. I mean, that is something we definitely would avoid, but you're basically saying that's – looking at that photo to the left of that where the red bars are and right where we're talking about isn't an issue. Isn't much of a problem. At least it doesn't appear to be much of a problem.

Mr. Abbott: Over a long period of time, a hundred years, it's you know, not a problem. Does that mean from one hurricane or one big storm it could be? Yes, it could be. The sand moves quite a bit. I think one telling thing is the sidewalks. Sidewalks have been there up at the other end by the Kaanapali Alii about 20 years. They get threatened. It gets very, very, very close, but generally those sidewalks are 20 years old and they haven't moved. So there's a variants going on here and if I was going to build something, I'd certainly want it to be on post and piers so that the sand can move back and forth and the water can move back and forth.

Mr. Mardfin: Commissioner Guard.

Mr. Guard: Thank you. I think a lot of those photos and I don't know if you got to see them from '08, a lot of that was in the public area, so I don't think that was in any of the people's actual private property. I guess just for the – I think everyone knows where the sidewalk is, how far is that from the ocean? It might be a good –

Mr. Abbott: Well, it depends on – right now at the Alii it's probably 200-foot, back in the winter, it

was probably 20 feet away from the ocean. It's from the shoreline, what the state certifies as the highest wash of the wave at the highest time of year.

Mr. Guard: So we're measuring from that not from the water's edge?

Mr. Abbott: Correct.

Mr. Guard: Right, okay. So that might –

Mr. Abbott: So that way you keep very conservative. Kind of eliminate the variance of sand moving back and forth.

Mr. Guard: And then the post and pier I think you just said that if you were going to get a variance that's how you would like people to build?

Mr. Abbott: It's actually in the 2003 rules. That if you were going to build in the shoreline setback area it would have to be on post and pier and elevated out of the flood zone.

Mr. Guard: So then a residential lot, maybe if it was a hundred feet deep versus this one being 600 how far back from the ocean would like a 100 or 200-foot.

Mr. Abbott: A 100-foot lot would – not considering erosion, just lot depth, the setback would be 25 feet. A lot from a 100 to 160-foot average depth would be a 40-foot setback and a 160 and beyond would be 25%.

Mr. Guard: So for a \$5 million restaurant build out this might be a pretty safe one for a few years?

Mr. Abbott: Well –

Mr. Guard: Oh, sorry, that was the annual budget, I apologize.

Mr. Abbott: Given that – you know, you have a findings of – you have a recommendation from a hearings officer so I'm not going to, you know, second guess that.

Mr. Guard: I thought it was time extension. It sounds like we're going into an SMA.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: This question is not for Thorne.

Mr. Abbott: Okay, thank you very much for your time.

Mr. Mardfin: I have one for Thorne.

Mr. Hiranaga: My question to the applicant. Can you clarify your statement regarding storm water runoff? Did you say that because of the size of the property all predevelopment and post development storm runoff is retained on site and this includes all the existing buildings or were you just talking about the proposed building?

Mr. Hart: No, we're talking about – Commissioner Hiranaga, we're talking about the total project. In other words, we're looking at this particular restaurant together with the whole project. We have four seepage pits that have been added to accommodate additional runoff for this particular restaurant, but the natural runoff from the site together with the project related runoff is already being retained on site and the restaurant runoff will also be totally retained on site. So what I'm saying is that a 100% of the runoff natural and project related will be retained on site.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Why is the new pool or proposed pool also have to encroach into the setback area?

Mr. Hart: The pool itself is not. The apron, this is the shoreline's setback line. So you see a portion of the apron is in the setback. Basically the swimming pool is mauka of the 150-foot shoreline setback line.

Mr. Hiranaga: Why does the apron have to encroach in the setback area?

Mr. Hart: It's just part of the proposed development. You can see that there are other walkways that are identified, you know, as being in the setback. There are minor structures that are allowed in the shoreline setback. Just in terms of how the pool was designed and the circulation and you know, basically the relationship of basically the use of the pool apron to the restaurant, it was designed that way.

Mr. Hedani: Additional questions for the applicant?

Mr. Hiranaga: More answers.

Mr. Hedani: I'm sorry, Commissioner Hiranaga.

Mr. Hiranaga: They were still answering my question.

Mr. Hedani: Oh, okay. Mr. Fox.

Mr. Fox: This is Bob Fox again. Just to answer that. At the time, the drawing we had up there was the original 2002 site plan which shows where the building is and where the pool was at that time. At this time, we had moved the pool back slightly and we had taken the pool and that's on one of the slides that's there. This is the landscape architect's pool drawing that the line of the hardscape is actually behind the 150-foot line and then that's what we're proposing now on our existing construction documents>

Mr. Hiranaga: Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have a follow up with Thorne Abbott if he's available. The other scary part of Kenny's presentation was the comments about – there had been beach hardening in front of the Sheraton and a lot of that got, he showed bags of sand and things that had gone out and hit the reef and all the rest. Is there any beach hardening of any sort in front of the applicant's property?

Mr. Abbott: Not that I'm aware of and if they got a state certified shoreline survey, it's very unlikely at that at time the state would have done that if there was hardening at the site that wasn't permitted and authorized.

Mr. Mardfin: Thank you.

Mr. Abbott: I will comment that the whole Kaanapali area they have taken a great amount of initiative. I think all the hotels, but especially like the Alii who's right out on the point there, so they're very subject to this – think of it as a sand spit, because that's kind of what it is. They're right at the point and it moves very fast. So they're very aware of what's going on there and all the hotels have taken a great amount of initiative to deal with that situation on a long term basis instead of these short term reactionary things which I think in the presentation you probably saw was the big steel plates going in which is dramatic and scary. So they've hired some of the best people in the world to come out here and take a look and give them some proposals for beach nourishment and basically how do we manage this situation long term.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I have a question for Ms. Cua. You know, we're here about an extension but since this really has been ongoing since 1990, it kind of – it's an unusual circumstance so I think it does logically have merit to ask questions about the underlying issues.

Ms. Starr: And that's part of why Mr. Starr that when you look at what the department had asked the applicant for even though in the report we say that a shoreline setback variance was granted, it's not – this restaurant is not subject to the current rules, but we felt again, for the commission's information and just to put it out there on the record to have the analysis of this based on the existing rules and then other things like infrastructure and the transportation demand management which is not something that was taken into account when we went through the contested case hearing. But that's something that you as a commission deal with now. So you know, we did try and ask the applicant to provide additional information to help you in your decision.

And one other thing, we haven't gotten to the recommendation yet, but if you notice and if you read our recommendation, the department is, although we're supporting this extension, we're saying this is it. That if they're not able to construct within the three-year time then the permit would become null and void and we would not support any further extensions and they would have to start from scratch again and they're aware of that.

Mr. Starr: Yeah, I want to thank you for the in-depth analysis you did. My question is, the justification for putting it in the setback area seems to be a desire to be economically competitive with other restaurants that were built previous to the current SMA and setback regulations. I want to ask you whether the SMA and setback regulations would utilize a desire to be economically competitive as a reason to bust the setback regulations?

Ms. Cua: No, economics is not something that's used as part of a variance. But if you go back and you look at the decision and order in terms of what was used, and you know, what is still used in the rules, there's different criteria. They've spoke about some. Does it artificially affect the natural

beach process, boating and maritime facilities, you know, that was another justification used in terms of the canoe hale. They were – it wasn't based on economics that a variance was granted in 2001.

Mr. Starr: Thank you.

Mr. Hedani: Okay, we've gone two hours and fifteen minutes on this one subject, and I'm wondering if you guys need a break at this point in time?

Ms. Domingo: Yes.

Mr. Mardfin: Mine will be a quick question.

Mr. Guard: Break.

Mr. Hedani: Why don't we take a 10-minute recess before we come back with our recommendation from Ann Cua?

Ms. Cua: Thank you.

A recess was called at 11:15 a.m., and the meeting was reconvened at 11:25 a.m.

Mr. Hedani: When we went into recess we were having questions for the applicant. Were there any further questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: This is for Ann Cua. Ann, back in 2001 or whenever this was done, Robert Carroll among others was one of the three hearing officers and I see here in paragraph 163 that he dissented on this. Do you have any even vague recollection of what his reasoning might have been? I mean, if you ask me what I thought back in 2001, I couldn't tell you, so.

Ms. Cua: And you're talking to the person who can't remember what she did yesterday. So I was at every single hearing. I scheduled all the prehearing conferences, but I am very sorry, I can't. I can't remember. I did look over the order and I cannot –

Mr. Mardfin: It was probably setback would be my guess but I don't know.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just for my personal information. How did the shoreline setback of 150-foot maximum come about?

Ms. Cua: Is that question for me?

Mr. Hiranaga: For staff.

Ms. Cua: The setback is based on the average lot depth.

Mr. Hiranaga: No, 150-foot maximum setback. That's the maximum. How did that 150, why is not

130 or 145?

Ms. Cua: Because of how you calculate shoreline setback based on average lot depth which is basically you take three points, the two side property lines, the middle property line, you take those distances, you divide it by three.

Mr. Hiranaga: Isn't 150 the maximum?

Ms. Cua: It is the max, and that's what it comes up to for this property.

Mr. Hiranaga: No, how was the 150 determined as the number, instead of 200 or 180 or 90?

Ms. Cua: Oh, oh, okay, that I don't know.

Mr. Hiranaga: Okay. Maybe someone in staff knows.

Mr. Abbott: Thorne Abbott. The Maui Planning Commission in 1989, okay, thank you Chris updated its rules to expand them beyond the state minimum requirements and 150 setback was set as the maximum at that time and was reaffirmed I believe in '97 when the rules were updated again.

Mr. Hiranaga: My question is how was 150 selected?

Mr. Abbott: Arbitrary, same as the SMA \$125,000 number. It's arbitrary.

Mr. Hiranaga: Okay, that's what I was looking for. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I want to ask Mr. Abbott to explain the three different relevant measurements that are used by the Sea Grant people. I believe it's the high water mark, that's the maximum wash of the waves and the tow.

Mr. Abbott: Yes, thank you very much for pointing that out. Could you flip the lights off in the back there? Thank you. A very important note to make, these little lines are not the shoreline. The shoreline's back here along the vegetation line or wherever the state set it. Now why are these moving around? What that is is called the tow of the beach. So when you walk in the water, you know how sometimes it just drops off a little bit, you're walking into the water and all of sudden it drops down. That's call the tow of the beach. In essence, it's the end of the sand. It's the makai extent of the sand. The reason this was used and there's all kinds of different statistics we could talk about but the reason they use that is in Hawaii when you fly over the water and look down, the water is so clear that you can't see where the wet or dry line is or the high water mark because you're seeing right through the water. If you're in Virginia where the water is nice and gray, they use that line, but here, you can't see it so they look at what the tow of the beach is and that's actually a more powerful measure in some context because that's the actual makai extent of the geomorphologic sand. So you have this big chunk of sand mauka and makai. Now the shoreline which we're measuring the setback from is way back here at the edge of the vegetation line where the highest wash of the waves at the highest time of year. So that's why you have a little bit of difference between these squiggly lines and the shoreline. And the setback is measured from the

shoreline not from the tow of the beach. That's a thing to keep in mind. Thank you.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: At about this location the lines are clear but those were done with precise, reasonably precise scientific measurement I would presume. But on the photograph we see sand. We can see I think where the edge of the beach is. I think we can distinguish wet from dry sand.

Mr. Abbott: Correct, in this photo.

Mr. Mardfin: At this point, how far out into the water is the tow line likely to be? Very approximately. I mean, one foot, 20 feet, 50 feet?

Mr. Abbott: That would require a beach profile and I'm not qualified to answer that, but what I can say is wherever the state sets the shoreline, we can envision that as being at that – at the worst time of year, that's underwater. All that sand from the vegetation line here all the way – so all the beach chairs that you see here, I'm assuming those are beach chairs, they're all underwater at some time of year.

Mr. Mardfin: But that's because of periodic migration?

Mr. Abbott: The highest wash of the waves are the highest time of year. It comes up to the beach. That's the shoreline and that serves as your baseline to measure your setback from. That's mauka of the tow of the beach. The percentage of the tow of the beach is always underwater.

Mr. Mardfin: Okay, thank you.

Mr. Abbott: Does that make it clear as mud?

Mr. Mardfin: ...(inaudible)...

Mr. Abbott: Thank you.

Mr. Hedani: I think the setback line Thorne is measured from the edge of the certified shoreline which is based on the vegetation line.

Mr. Abbott: Or the highest wash of the waves at the highest tide –

Mr. Hedani: As evidenced by the vegetation line.

Mr. Abbott: It can be as evidenced by the vegetation line.

Mr. Hedani: And that's the actual language, "as evidenced by the vegetation line." Director Hunt.

Mr. Hunt: Thorne, if the tow of the beach is moving towards the shore, that doesn't necessarily mean that the shore is moving equally.

Mr. Abbott: No.

Mr. Hunt: There's been a statement that the shoreline is actually accreting.

Mr. Abbott: Think about Big Beach and you know, great place to body board because you get these nice curling, very – it's a very steep beach profile. Compare that to Keawakapu where it's a very, you know, you can walk in there 15, 20 feet before you're even up to your waist sometimes. So those two don't have any correlation to each other necessarily and they will change throughout time especially seasonally when you have these big changes from March to July. That sand that's shifting down, the tow is going to shift too and the steepness of the beach is going to shift quite a bit. So the reason we don't use – the reason you use the tow of the beach to measure what's going on over the last hundred years is when you can see it. Two, vegetation you can irrigate, you can artificially induce that. Three, you can't see the wet/dry line anyhow because our water's clean. Thank God. So you're getting a surrogate measure of what's going on with the width of this beach overall. So it could be over time moving inland based on the tow, but the shoreline which is much further inland is where you're measuring your setback from. So you have the beach as a buffer in essence. Does that answer your question Director Hunt?

Mr. Hunt: Yeah, I think before you came in there was concern, people were looking at those colored lines and they seemed to be shifting towards the shore and I think that caused concerns.

Mr. Abbott: Correct.

Mr. Hunt: As I understand it, you're saying we shouldn't assume what the shoreline is doing based on those colored lines.

Mr. Abbott: No.

Mr. Hunt: Thank you.

Mr. Hedani: Any additional questions for staff? Staff recommendation.

Mr. Abbott: Thank you very much for your time.

Mr. Starr: Excuse me Mr. Chair.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, are we going to have public testimony?

Ms. Cua: We could do that before I go onto the recommendation. Yes, we should.

a) Public Hearing

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

I have five people that have signed up for testimony on the time extension for the Kaanapali Beach Hotel One individual has requested if he can go first although he's listed fourth on the agenda or the sign up sheet. There are three other people that signed up before him, Noe Akima, Hanalei Peters and Thomas Muromoto. The request is from Keeaumoku Kapu and the question to the first

three people is do they have any objection to my taking Mr. Kapu first? Okay, so hearing no objection, we'd like to ask Mr. Keeaumoku Kapu to come to the stand and identify himself for the record. You have three minutes.

Mr. Keeaumoku Kapu: Aloha mai kakou, Council Members. Mahalo for giving me this opportunity to testify early. I have great kuleana elsewhere but hopefully I can be brief in my speech. I'm here on behalf of just sharing some manao based upon your agenda item for Kaanapali Beach Hotel. I think at this time because you know, the trials and tribulations we face within the State of Hawaiian the economy I think it's very detrimental that the planning commission really look into allowing three-year extension for the hotel.

The reasons for that is because it has a lot to do with economics and my perspective on this whole thing has a lot to do with the whole ambience or enhancement of our culture and why I say that is because Kaanapali Beach Hotel with Mr. Michael White also contributes highly to the native Hawaiian culture in everything they do at the Kaanapali Beach Hotel. They also supported a lot of non profit organizations in every field, in every aspect they try to bring honor and prestige to the people that basically live in Lahaina. It's not only to contribute to also the tourism part, but it also helps stimulate the economy by providing jobs for our local people. I have a lot of families that also work with Kaanapali Beach Hotel and I think it's really, especially at this time, because of the I guess the decline in our economics today and that, you know, for our hotel to take on a challenge like this at this very specific time is kind of challenging for them but I really support them 100% and what their whole mission is all about.

You know, highly, highly consider when we did a torch march, the Kaapuni Torch March around the island basically we ended at Kaanapali Beach Hotel. This sort of enhanced everybody's idea of pertaining to why we did that march around the island and it was very supportive from Kaanapali Beach Hotel's side as pertaining to us even being allowed to go there to extend that educational component to the people that came here as well from the mainland. So I think it's for myself alone it's very at this point highly needed.

You know, everybody knows Kaanapali Beach Hotel as being the most aloha hotel here. I've done a lot of extensive things to help stimulate not just the economy but the workforce in that hotel by contributing our services during the Makahiki programs, the Aloha Week programs and things like that. I believe that there is a cohesive partnership between the Kaanapali Beach Hotel Association and the native Hawaiian community because you know, there's only a few places that us kanaka can go and be welcomed as such. I can mention some other hotels that, you know, literally we gotta go through the back door. This is one hotel that allows us to go through the front. So I would like to take this time to ask the council to highly consider the three-year extension for Kaanapali Beach Hotel. Mahalo.

Mr. Hedani: Thank you very much. Next person to testify is Noe Akima.

Ms. Noe Akima: Aloha, good morning. My name is Noe Akima, the Co-Director of Na Kamalii O Ke Akua hula halau of Lahaina. A beneficiary of the Kaanapali Beach Hotel generosity. I am blessed to speak on behalf of the Kaanapali Beach Hotel's request for the time extension to build a restaurant on the property's beach front that will house the canoes of our local canoe clubs. An idea that once again the community is in the hearts of the Kaanapali Beach Hotel. This idea will also enhance the hotel's existing beauty and simpleness. Most importantly, the idea will allow the

hotel to continue to exhibit its love for the Hawaiian culture.

It is true Hawaii's most Hawaiian hotel that each employee is educated through the Pookela classes. This enables the employees to give our visitors from all over the world and even from here in Hawaii an opportunity to learn and discover the knowledge and wisdom of our ancestors and whose culture is rich in tradition that from the beginning of their stay to the aloha chant that they receive as a makana from the hotel that each visitor can experience the Hawaiian experience to remember.

So ask that you please grant the request for this time extension so that the Kaanapali Beach Hotel may continue to share a beautiful culture experience with the world. Aloha ke akau and mahalo.

Mr. Hedani: Thank you very much. Next person that we have to testify is Hanalei Peters.

Mr. Hanalei Peters: Can I wait for the agenda item?

Mr. Hedani: It's the first item on the agenda.

Mr. Hanalei Peters: Hi my name is Hanalei Peters. I'm with the Kaanapali Beach Hotel. I've been there for 36 years. I also represent 210 employees that work there. This man here has been gracious in not laying off any of our guys. We have had some hour cuts but not employee lay offs and with this extension of this agenda item I can see more, the future of our hotel and our employees having a place to work, having a place to call home so to speak. We spend eight hours of the day there. It's more home than being at home. And the way they treat us there is like family. I can bring the whole hotel inside here and one and after the other going tell you the same story, so I came myself.

I know we only get three minutes, but I support this three-year extension of SMA and hope you guys do too. Thank you.

Mr. Hedani: Thank you very much Mr. Peters. Next person to testify is Thomas Muromoto.

Mr. Thomas Muromoto: Aloha. My name's Thomas Muromoto. I'm the Executive Chef at Kaanapali Beach Hotel. Been there 11 years now. I just want to say on behalf of the hotel and my employees that we have, you know, being there 11 years I have seen so much and learned so much in the culture of what we're trying to achieve there. Our employees, we didn't – it was a small organization in the kitchen where we provided, you know, very little until now. We have grown and it has never stopped growing. We provide information, knowledge to all new students from MCC Culinary Arts Program. The people that work there has been with me for several years and we believe this gives us an opportunity expand more and give more people more added information to what we have learned. And like Hanalei said, you know, we didn't lay off, we cut back very minimal hours. In fact, maybe about a half hour. I make all the schedules for my people and you know, we stayed open. During the hard times we stayed open and Mr. White have provided us such a great opportunity. Speaking from my heart, the hotel does give back a lot, more than I've seen any other hotel. I've come from Grand Wailea and other hotels and this hotel mainly gives to the community, to the culture, to everyone. I would really wish you guys would consider the extension and you know, I plan to stay there much longer if given the opportunity as time goes on that it will just give us better opportunities. Thank you.

Mr. Hedani: Thank you very much Mr. Muromoto. Next person to testify is Kekai and Colleen Kapu.

Ms. Colleen Kapu: Aloha, my name is Colleen Kapu and I am a resident of Maui residing the Upcountry Kula. I am a cultural crafter servicing the guests at the Kaanapali Beach Hotel. This morning I stand in front of you, the planning committee to speak on behalf of Kaanapali Beach Hotel renowned for sharing excellent values in cultural preservation. Moreover, a true host to our island guests and community representing Maui. During my year and a half serving as a cultural crafter I have seen so much involvement and commitment that the Kaanapali Beach Hotel has to offer to their guests and to our community. I have seen so much people who just come to site and experience the old Hawaii ambience that Kaanapali Beach Hotel brings to our island. Due the economic situation I give testimony today to urge you to grant the extension of their permit for Kaanapali Beach Hotel. It is my belief that their restaurant will providing hotel guests and our community alike with the finest venue in Hawaiian Polynesian entertain, food service and enhanced experience for all who will have the opportunity of a fine dining restaurant. Mahalo.

Mr. Hedani: Thank you very much. Next person to testify is Thomas Fairbanks.

Mr. Kekai Kapu: E kala mai ia`u Kekai Kapu. Aloha, good morning. I'm in here to also to support what my youngest brother had shared at first this morning. As a cultural practitioner for myself I share so much about the histories of who we are in the kanaka maole. Many of you know what Kaanapali Beach Hotel is all about. So much love and so much aloha especially sharing among our guests but most important opening the doors for so much of our kanaka, people, you. Many of you have been there eating, you know, enjoying your time over there. This is one hotel that opens the doors for so many of us yeah. I also support that pick up the pen, extend the permits for the hotel for us. I mean, you know, because it makes a big difference you know now, especially what's happening right now, but it also brings a lot of jobs, jobs to the community and the people. So as I stand here before you guys, you know, hearing so much of the testimony going on especially for the wonderful commitment that KBH has, Kaanapali Beach Hotel has you know, for the community, from Lahaina all the way to Kahului to Hana and that's how rich the program and as I share the mo`olelos that goes on with the hotels, that's what I do there three days out of week, just to open up the hearts and so much of us as kupunas that forget of what happened in the past, yeah, and to bring that back to them also. Mahalo.

Mr. Hedani: Thank you Mr. Fairbanks. Next person to testify is Rick Tanner. Oh, I'm sorry, Kekai Kapu.

Mr. Hunt: No, that was.

Mr. Hedani: Oh, sorry. Thomas Fairbanks.

Mr. Thomas Fairbanks: Aloha, 17 years ago I made the change to Kaanapali Beach Hotel from 'Wailea. I was there 16 years. One of the big things we were going to do at that time was just, when I arrived there they just decided not to do a big extension. So Mike White said well, you know we want to work on this restaurant. This has been a long gestation period for me and very exciting to be this far along where we are now. Just want to share that with you.

This is really important to me just from the standpoint of just practicality for the operation, the guest experience and also for, particularly for our staff. Many of our staff in the Food and Beverage

Department, and that's the department that I run they have been with us, some of them up to 40 years. Some of them, most of them are at least five, most are 10 or more years with us. There's a lot of dedication and commitment. We have a very high level of guest satisfaction and right now the restaurant that we've been operating for the – It's been operating I think since 1980 is about 360 feet back from the shoreline.

Our employees don't have the opportunities of having a restaurant that's really desirable for the customer nowadays. The expectation is to be up near the ocean, to enjoy the ocean. Because our employees are long term. They have gone through Pookela program. They even learned about Hawaiian navigation and that's one of the big selling points of our location. We need to be near the ocean to help with this connection with the sea.

When you look at – one of the things that was very striking for the previous commission when they made that decision in favor of this was the close proximity of the other restaurants at Whaler's Village. Some of them are only 40 feet from the shoreline. We're not asking to be 40 feet from the shoreline. I think we're 180 or 120 or something like that. But that would give us and our employees the opportunity to make a fair and competitive living with those people at the surrounding restaurants. The hotel spends like millions of dollars, close to \$5 million and all our marketing efforts to bring people to our hotel. When they go out and they go to the next door restaurants because they're on the ocean. And we pay \$8.20 per thousand dollars of valuation and we pay TAT and we have this empty land right there and we're paying the money on that. The restaurants next door they're paying a commercial rate, \$6.85. All the pay is GET and they don't do marketing on the mainland.

So all we're asking is give us the opportunity to, you know, make up for the additional taxes we pay and also give our employees the opportunity to have a standard of living that, the opportunities that other employees have at those restaurants. Thank you very much for your time.

Mr. Hedani: Question from Commissioner Mardfin.

Mr. Mardfin: I'm sorry. You neighbors don't pay real property taxes?

Mr. Fairbanks: No, they do. They do pay real property tax. But they pay at the commercial rate.

Mr. Mardfin: And you pay?

Mr. Fairbanks: Hotel rate.

Mr. Mardfin: Thank you.

Mr. Fairbanks: So there's a two something dollar difference.

Mr. Hedani: Thank you Mr. Fairbanks. Next person to testify is Rick Tanner.

Mr. Rick Tanner: Good morning and thank you for the opportunity to speak before you which I consider a privilege. I've been at The Whaler for going on a year and a half now. I've in the industry managing hotels and convention centers all across the country and including the Big Island for the last 20 years. In that time, I can safely say that I have never experienced a neighbor like the

KBH Hotel. They have gone above and beyond in our efforts to remodel and improve our property for our owners and for our guests. That however is not why I'm here and not why I'm speaking in favor of this. We have much more selfish reason unfortunately and that is ownership, the value of our property and the experience that we would like to give during their stay for both guests and owners alike.

The Whaler does not have any food and beverage outlets. We never have and we probably never will. I think the closest I have is a snack machine down in our employee lounge and that's about the extent of it. So we rely heavily on our neighbors food and beverage outlets for the guest experience that our owners and guests expect to have when they come here and they come a very long way. They spend a lot of money and it's, you know, nothing against Outback but it's not to go to places like that, it's to have an experience that is uniquely Hawaiian. Very few places offer that like KBH does. I think they're looking to enhance that and if they enhance their food and beverage that enhances our ability to improve the guest experience and long term that will enhance our occupancies we hope. What's important about this, more so than something in Lahaina or in Kapalua is it gives our guests the ability to have that experience within a walking distance, very close. There is nothing closer to us than Kaanapali Beach Hotel. So for them to have a restaurant like Tom just mentioned that is more in keeping with what the guests are looking for these days is highly valued and highly important. We would consider that an amenity that we would actually market to our guests this is what we have now. We would push that I think. I think we would help to make that successful and in turn it would benefit us and that's what I'm here speaking on behalf of and speak on behalf of the entire nine member board of directors of The Whaler who also submitted a letter to the commission from the president of the board. We are very enthusiastic about this. You know, our position is kind of the sooner the better. It definitely fits The Whaler and that's what I'm here speaking on behalf of. Thank you.

Mr. Hedani: Thank you very much Mr. Tanner. Next person to testify is Makalapua Kanuha.

Ms. Makalapua Kanuha: Aloha ka kahiaka ka ko...(inaudible)... Makalapua Kanuha. Good morning to all of you Mr. Chair and the rest of our commissioners. Thank you for allowing me this opportunity to come before and speak on behalf of Kaanapali Beach Hotel. For the record my name is Makalapua Kanuha and I am one of three cultural resource advisors for Kaanapali Beach Hotel. My main function there is in the Education Department. I've been employed for about going on three years now. My desire was never to work for any hotel including Kaanapali Beach Hotel who is known throughout the world as being Hawaii's most Hawaiian hotel.

My reason is as a kanaka maole Hawaii my fear was if I went into the tourism industry that it would totally change my behavior, the way I think, the way I talk, the way I was thought. So as kanaka maole Hawaii, as a Hawaiian person it is my kuleana, my responsibility to perpetuate na moololo o Hawaii nei, which is the stories of Hawaii that was taught by my kupuna, my makua. So that is what I do at Kaanapali Beach Hotel as cousin, Kekai Kapu and cousin, Keeaumoku Kapu came before you, before me. They shared their main functions in our hotel.

Like cousin, Kekai Kapu, my main function is to share the stories of our kupuna and that is exactly what I do on Monday's and Thursday evenings with our guests. But with this, I come before you in support of our restaurant and we're asking that you grant our extension of our permit. Why? Because this – what I do is I talk about the migration of our kupuna. We have four evenings that we share in our moololo o Hawaii nei and with this restaurant, a part of it will become our

classroom. My main function at the hotel too is I am one of four kumus. We started this Pookela program. Pookela means striving for excellence in everything that we do culturally especially at Kaanapali Beach Hotel. These Hawaiian classes that we educate our employees, we empower them with what is very important na mea Hawaii, things that are Hawaiian so it empowers them to enhance the visitor's experiences. Yeah, because as cultural resource advisors we cannot be 300 places at one time. So these classes are very important and they have been ongoing for over 20 years. This is one of the deciding factors that made me accept employment at Kaanapali Beach Hotel because it allowed me as a Hawaiian to be able to share the stories and to educate not only our employees but our guests as well. And by what we do at Kaanapali Beach Hotel, we have return visitors that come back for the spirit of our people in our hotel over and over again. We have returnees that been coming back over 20 something years.

So with that in closing I just wanted to say that Kaanapali Beach Hotel also supported me for about a year and a half. I was one of 16 students throughout the State of Hawaii that was – that participated in Ola Hawaii which is a pilot program that was extended from Native Hawaiian Hospitality an Association that comes Hawaii Tourism Authority. So I'm just proud to say that I'm part of this hotel and I think I'm going to be there for a very long time. So with your help and your support I highly plead with you to please grant us the extension of our permit. Mahalo nui.

Mr. Hedani: Thank you Maka. Next person to testify is Uilani Kapu.

Ms. Uilani Kapu: Aloha ka ko. I am Uilani Kapu. I just wanted to – you've heard everybody talk on the extension. This restaurant has been buzzing around the hotel for years. And it's so good to see that it's coming before you folks and asking to be extended on this behalf. The visitors that return to the hotel are so anxious to see this restaurant come forward. The canoe clubs that will be using the hale are excited. I don't know which ones have taken that advantage yet, but if I had one I would. It's right there. I mean, the spot that is chosen for this restaurant is perfect. It's not too close and it's not too far away from the visitors to always be there. My husband and I do at the hotel is we participate in makahiki. We've been doing that for about five years with the hotel. We've been bringing the concept of na mea makamae to the employees not just to visitors. We've been having the employees get involved in being proud of who they are and the hotel that they work for. In sharing and they can walk around and they can educate all the visitors not just a specific group of people that are hired for that. That you can have the maids explain to them on what the hotel is all about. We can identify everything that is showcased in their lobby for their visitors and you don't have to have one person there. This restaurant is a good thing. My children have kind of grown up in that area and have seen the expansions around Kaanapali Beach Hotel and sometimes they don't like it because it's too loud for Lahaina where this restaurant would blend in with the area. It won't be huge like everything else around it. The surroundings within the property are perfect. And you folks have heard a lot and I hope and wish ...(inaudible)... will guide that through you folks in allowing the hotel to do what they have always set out to do for many years. Mahalo.

Mr. Hedani: Thank you very much. Next person to testify is Jeremy Kozuki.

Mr. Jeremy Kozuki: Mr. Chairman, Mr. Director, staff, Board Members, name is Jeremy Kozuki and I'm also a former member of the planning commission. I'll be honest, I was asked by Tom Fairbanks of the hotel to come in and offer a brief history of the background to this. So it's not necessarily as an advocate of the extension but to provide some background. Previous speakers

have probably added onto everyone's perception of the hotel. The same perception we had. They are very user friendly facility from management with Mike White, Tom Fairbanks and on down to all the workers, it's a very pleasing experience. If this was a popularity contest, I don't think we're going to have too many people objecting to Mike White's ...(inaudible)... the Kaanapali Beach Hotel. Unfortunately, you know, I was on your side of the podium for five years and our job again, well, I don't think it would be that simple, and if it was, I mean, you know, I mean, who would vote against it. You know, the Pookela Program, the whole mind set of the hotel. Again, unfortunately we were based with – we needed a criteria, I mean, we had to justify this variance.

And a background to this became a contested case, by a member who lived at The Whaler and we had opportunity to hire an attorney to do the contested but the three of us offered to be the hearings officers, Herman Nascimento, Bob Carroll and myself. It was quite an experience. It was a learning experience. My recollect we had nine meetings. These meetings lasted I'd say anywhere from five to six hours. It was intense. So we put in a whole 50 hours, at least 50 hours into this contested case. Again, we couldn't just consider, is this a good thing or not, I mean, it's not that simple. And there are a lot of moving targets, things to consider.

The setback rules for the hotel, for this project was actually instituted in 1990, 1991. But that made anything built before 1990 when the setbacks procedure was set in, were legal, take a look at the hotel. As you know, it's a U-shape so there's two wings, definitely violating the new setback rules. You go back along the walkway, and I enjoy that I go there once every couple years you know, to restaurants. At the time there were Leilani and Hula Grill. I could walk on the walkway and grab somebody's drink on the table. That's how close the restaurant was to the walkway. Those two restaurants could not be built unless a variance was given, but they were built in 1990. So all of a sudden you have these structures that were built before 1990. I mean, they would not have been built. I wouldn't want to say they're illegal or immoral, but this structure and you've heard a lot of reasons why they wanted from a practical level, from an economic level to bring this restaurant close to the ocean. I was taught very simply, you know, as a hotel or as somebody paying for beach front experience -

Mr. Hedani: Jeremy time's up.

Mr. Kozuki: Time's up.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Thank you very much Mr. Kozuki for serving. I just have a couple questions. I appreciate your vision in approving this project. I did read about it and it was extensive types of reading that I went through. I just wanted to ask you looking back and looking forward now in terms of the drainage easements, and requirements and this level of standards that are now today because we need to protect the shoreline do you see us moving in the right direction and was this project in a accordance with that?

Mr. Kozuki: You know, being familiar with the three-minute limitation I would appreciate if someone would ask me what were the three or what were the elements that we granted the variance on which I think is the crux because what I was trying to development in this argument this was not a popularity contest. We were based on, we had criteria to meet and someone would ask me what they were I'd love to share it with you. It won't take three minutes. If not, I'll go and answer Mr.

Shibuya's -

Mr. Hedani: If you could just answer his question Jeremy.

Mr. Kozuki: Okay, somebody ask me the question. As a matter of fact, Warren, one of the criteria of granting of a variance is to make sure it doesn't affect the shoreline processes. And there were studies done that it would not. This was granted in 1991, so that was eight years ago and there's been no significant erosion near this area, you know, since then. So I don't know if that answers that question. But I think the proof is in the pudding that, yes, it's possible. You know, I was born and raised on Maui. I've seen Kamaole 1 come up almost to South Kihei Road, okay, that's erosion part. But for this particular area for what I understand there's been no significant erosion. But again, that's only one of the three criteria that we were faced with. Nobody's interested in the other two?

Mr. Hedani: Commissioner Guard?

Mr. Guard: Curiosity killed the cat. I gotta know.

Mr. Kozuki: All right, thought you'd never ask. I think it's important like I said it's not popularity contest. If it was that simple, no problem, right? There were five criteria and according to the rules if any one of these criteria was met, it was grounds to grant the variance. One of them was, is, whether it was boating, maritime or water sports recreational facility. They had an agreement with Kahana Canoe Club, that definitely - they were going to store the canoes there. They were going to practice right off of the beach there. So that definitely we felt met that criteria. Another criteria was was it in the public interest. Okay, that's another criteria for granting of this variance and with their Pookela program, with the different programs that they had set up at the hotel besides the canoe club, we felt that was definitely, okay, in the public interest. And the third one going back to Warren is whether or not it would adversely affect the beach process. And we had evidence back then that this facility would not adversely, and again, time has shown that those studies were correct.

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

Mr. Kozuki: Thank you. Thanks for the opportunity to speak on this project. Thank you.

Mr. Hedani: Mr. Kozuki was former chairman of the commission. Are there any other members of the public that would like to offer testimony at this time? Mr. Hultquist.

Mr. Kenny Hultquist: Good morning Commissioners. I'm not for or against this project. Hold on. I have a friend of a friend, Randy Draper, took some pictures of coastal erosion. By the way, I really like the hotel. But, as you guys well know, every once in a while people will come before you and an agenda item will afford them the opportunity to show things that happened in the past that aren't really exactly relevant to the hotel. So these pictures of coastal erosion that happened in January of 1998, these three laminates were part of State Coastal Land Conference that took place I'm not quite sure when so I was asked by a friend of this photographer to show you guys this erosion at Kaanapali Beach and to pass these around. I don't know, they're kind of big, I don't know how you want to do that. So anyway, that's the extent of my testimony.

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

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

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

b) Action

Mr. Hedani: Staff recommendation.

Ms. Cua: Before I go onto the recommendation, I wanted to go over a couple of points in the analysis. First on page 5 under Analysis No. 1, as I mentioned the time extension request was filed back in November of 2008 prior to the expiration of the permit and therefore the proposed request was timely filed. The department does support a three-year time extension. Due to the length of time that the permits have been valid, the department will be recommending that no further extensions be granted for completion of this restaurant canoe hale. The department will further support a time extension of three and a half years to complete construction from the date of project initiation or until August 31, 2012 and that's because we've kind of lost six months since they did their – since they put in their request. So this will give the applicant three full years to obtain building permits and complete construction of the project. We did discuss this with the applicant and informed up front that we are not going to be supportive of future extensions and they do indicate that they fully intend to complete construction and have all already as you know, submitted the building permits to do so.

Again, I just want to reiterate the reason why we're having a public hearing. What was mentioned by the – I can't remember if it was Commissioner Hiranaga or Commissioner Starr, yes, we would have been here on the agenda anyway, you could or could not have waived your rights to review it, but in reviewing it it would not have been a public hearing. Today's extension request is a public hearing because there was previous intervention and the applicant was not able to obtain written waivers from all parties. That's the way the rules read. So that's why we're here for the public hearing.

One other point that I want to mention which is additional information, since the granting of the SMA permit and SSV permit and amendments, Department of Land and Natural Resources, State Historic Preservation Division provided additional comments by letter dated April 8, 2009, and that's attached as Exhibit 20.

Their most recent comments states that because the area of the proposed project is located within dune land and beach sand deposits which are known to contain both isolated and clustered human burials as well as other types of culturally significant subsurface deposits a traditional archaeological inventory survey or AIS shall be conducted prior to the commencement of any construction related ground altering disturbance. So the Planning Department in our recommendation, we're recommending to add an additional condition.

So with that, I'd like to go onto our conclusions. That the proposed amendment to extend the time period to complete construction of the project is reasonable under recent economic conditions and

the applicant is confident that they will complete the project within the additional three-year period.

Two, the proposed amendment complies with the applicable regulations for a Special Management Area Use Permit pursuant to Section 12-202-17, amendments to and determinations of permit terms, conditions and time stipulations.

The Planning Department recommends approval of the Special Management Area Permit amendment to extend the time period to complete construction of the project for a period of three years subject to the following conditions and actually this should read, recommends approval of the Special Management Area permit amendment and Shoreline Setback Variance amendment to extend the time period to complete construction for three years subject to the condition that full compliance of the conditions of approval as identified in the decision and order dated March 13, 2001, and approval letter dated February 19, 2002 shall be rendered with the exception of Condition 2 which is amended to read, that construction of the project shall be completed by August 31, 2012 and no further extensions to complete construction of the project will be granted beyond this time period.

In addition, based on updated agency review and updated standard conditions, the department is recommending five additional conditions.

28 is the archaeological inventory survey condition as recommended by SHPD. 29 is a compliance report condition where we're asking for preliminary compliance report before issuance of a building permit for the restaurant and canoe hale and then a final compliance report prior to issuance of a certificate of occupancy for the restaurant canoe hale. Condition 30 is the commission's standard energy conservation condition. 31 is your standard lighting condition. And 32 is that water conservation measures shall be incorporated with the design and operation of the project.

In consideration of the foregoing the department recommends that the planning commission adopt as – adopt the Planning Department's report and recommendation prepared for the July 14, 2009 meeting as its findings of fact, conclusions of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the planning commission.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Motion to approve as recommended by staff.

Mr. Guard: Second.

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

Mr. Starr: Yeah, I have a question for staff. I actually wanted to get that in earlier, but the exemption as it now stands would allow several different designs. In other words, it would not necessitate this being built as a hale. It would not necessitate it being utilized for storage of canoes. It could also be a wood frame more standard restaurant has you mentioned. What – since what is before us is a time extension, what possible action could we take to see that what is being presented before us is what is actually going to get built?

Ms. Cua: Well, I mean, if there is any doubt whatsoever, there's always, I believe still on the decision and order and I can go back and check the condition there's usually a standard condition about representations made to the commission at the hearing. But to be doubly sure and I'm assuming your question is relating to the construction of the ohia with the thatched roof design, you could always add an additional condition that as represented by the applicant, the project will be designed with ohia posts and thatched roofing as represented.

Mr. Starr: Mr. Chair.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'd like to offer an amendment that utilizes the wording that was just presented to us by Ms. Cua.

Mr. Hedani: Motion to amend to add a condition that the construction will be as represented to the commission.

Mr. Mardfin: Second.

Mr. Hedani: Seconded by Commissioner Mardfin. Discussion? Ready for the question? All those in favor, signify by saying aye. Opposed nay.

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

VOTED: To Add a Condition that as Represented by the Applicant, the Project Will be Designed With Ohia Posts and Thatched Roofing as Represented to the Commission.
(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, J. Guard, D. Domingo, W. Shibuya)
(Recused - L. Sablas, W. Hedani)

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

Mr. Starr: Okay, now that we're back to the main motion I want to say that I cannot support this motion. I feel that this has been ongoing and revised and changed around for almost 20 years. In the meantime our rules, our entire outlook on shoreline has changed and it's not the right way to go about things. I feel that Kaanapali Beach was one of the great gems, one of the real pearls that made Maui really desirable as a destination area and as a great place to live. I see it by the encroachment on the shoreline being greatly diminished. At this north end of the beach I remember very clearly in 1998 and 1999 when the walkway fell into – fell down because the waves were pounding below it and undermined it and we were told today that the walkway was never affected but it was. It was taken out not only at the Sheraton but down toward the KBH as well. There were steel plates sticking into the sand just to prevent any greater disaster. We're looking at sea level rise, we're looking at a meter of sea level rise and I just don't see any reason to be building in the shoreline setback. You know, we've seen further south at the Kaanapali Alii where there were walls of sandbags and steel plates not too many years ago. I think we're going to be seeing more and more of that and by not utilizing the tools which have been created to try to ameliorate which is the shoreline setback ordinance and the 150-foot or difference setback depending on conditions we're

making a precedent which is really wrong and when we make a lesser applicant live with the law and then we grant a variance time extension to someone because they do a lot of things right, it is just not fair. So I for one cannot support it although I really appreciate all of the good works that the hotel does.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Thank you. I'm in favor of the motion mainly because with the variance they're not looking to build another tower right there. I think that's a big factor in my decision that if it was going to be a eight to ten-story tower in the setback that would really encroach on the public's use and right of way, it's somewhat within the almost as if this was a bay, the two wings being a bay this is kind of sheltered within that bay and it's not going to affect the beach any greater than the rest of the hotel structures up and down the beach. With the post and pier structure, elevated, no concrete slab, I think they're doing it the right way and hopefully it will be an example for future people that come before us but they are – this is a unique example, in no way it should represent that we're trying to get people to build closer to the shoreline for a future reference.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: A building within the 100-foot, 150-foot shoreline setback I'm not sure how that number was selected but it is the current law but there is also a shoreline setback variance process and I feel that the applicant has met the tests in order to qualify for a variance. Therefore, I will be voting in favor of the extension.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to ask a question of Ann. Were the intervenors of many years ago specifically notified about this time extension?

Ms. Cua: Oh, yes.

Mr. Mardfin: Did have any comments or they just didn't show up?

Ms. Cua: Yeah, nobody contacted me. I did not receive any letter from any of the intervenors. I did receive. We did have one letter that came back and I could get that receipt if needed. No, I haven't – the only that we've received are the ones that are attached to your report and I believe with the one that I gave you today, we have a total of three letters in support and one letter of concern. And the letters in the report are attached as Exhibit 17 and 18, that's the two letters of support and then you received one more today. And then one letter of concern Exhibit 19.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I want to applaud Kaanapali Beach Hotel for what they do culturally. I think it's wonderful. I want to applaud them for what they're doing in terms of canoeing and other kinds of activities. I think it's a wonderful thing, but neither of those would affect my decision as to how to deal with this. I don't think it's relevant to that. I think the big concern is the setback rules and potential for impact. However, there are some things that I do think are relevant and one is that we've been given evidence that the shoreline is not significantly advancing and maybe in fact

accreting. So that in my mind mean that's not the concern it would be – if this were the Sheraton, I'd have huge concerns, but it's not because they have red bars under theirs.

My fellow Commissioner U'u hit for me made a huge difference when he asked about the construction. If this were on the ground, I would be adamantly opposed to it. But the pier construction strikes me as an adequate way to deal with the issues of potential beach erosion in the future. So, I do intend to vote in favor of this motion. I think the fact that it's surrounded by two towers has a small impact but not a huge impact. I mean, they are already there we're not talking about making them take them out even though they encroach. I do appreciate the fact that in response to a question by Commissioner Hiranaga that they have redesigned the pool so that that which could easily have been moved was in fact moved to the surrounding area. So it sounds to me like they've made at least a moderately good faith effort to minimize the within setback thing.

I'm also not entirely convinced of the value of – I do agree with Commissioner Hiranaga that a 150 feet does sound extremely arbitrary to me and particularly if a adjoining property has a significantly different setback. And so as a result of all this I will be able to vote in favor of it.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I would be in favor with this because they expressed and demonstrated best management practices both by the architect as well as the hotel management today and in the previous years. The post and pier type design is an excellent way of absorbing or allowing the ocean energy to dissipate without causing much damage to structures and I see that as a big plus. Also, the moving of the swimming pool that was proposed to be built outside of the arbitrary 150 feet shoreline is a good factor for me. I did see a little differences like Commissioner Mardfin. In terms of the impacts of existing structures that you have there. This is seemingly a structure that won't last probably 200 years but at least during that time it will provide much needed services and conveniences to all the workers not only in the hotel but the adjoining hotels as well as visitors who are visiting the beaches. So I see this as a tremendous plus so therefore, members I will be voting for it. Thank you.

Mr. Hedani: Any additional discussion? Corp. Counsel did you have a comment.

Mr. Giroux: I just want to address the staff on this issue of the condition, you're referencing to Condition No. 2, and because it's not Ramseyered I'm going back to the original order and I'm looking at that condition and I notice that there's significant language missing and I'm wondering is that the intent of your recommendation to this body? You're taking Condition No. 2, completely deleting it and inserting on the green sheet your Condition No. 2. There's significant language missing as far as whether or not it actually terminates the Special Management Area Use permit and it's silent as to whether or not it would terminate the variance.

Ms. Cua: Actually that's a good – it really should – we should just really modify that Condition No. 2 in the order and include the remainder of the language.

Mr. Hedani: So it's just that one sentence Ann that's being modified to read as proposed.

Ms. Cua: Right, correct. Correct.

Mr. Giroux: So you would be inserting your recommendation into deleting the first sentence of Condition No. 2?

Ms. Cua: Correct.

Mr. Giroux: I also gotta point out to you that this the puka that I saw where it only references the special management permit. Can you address that?

Ms. Cua: Yes. The decision and order, at the start of the decision and order talks about the Special Management Area permit and the Shoreline Setback Variance. In the condition on the order though it had only addressed the SMA permit, but when the commission looked at an amendment in 2002, let me find that letter, oh here it is, Exhibit 6, where the initiation of construction condition was mentioned, it referenced a Special Management Area permit and Shoreline Setback Approval so that was just I believe an oversight when the order was prepared. The request today is to amend the SMA permit and the Shoreline Setback Variance Approval to extend it for three years subject to termination if they don't construct within that time period.

Mr. Hedani: Corp. Counsel.

Mr. Giroux: As long as it's clear to the body that that's a clear decision that you're making I don't think it should be done by default or typo or anything like that.

Ms. Cua: Thank you.

Mr. Hedani: Questions from the commission? Any additional discussion on the motion on the floor? All those in – Commissioner Starr.

Mr. Starr: Yeah, I'm unclear on what the motion is because we've just been told that the motion as presented by staff had some omissions. So I believe that it should be amended if we're going to reflect that.

Mr. Hedani: Corp. Counsel.

Mr. Giroux: Yeah, the maker can accept a friendly amendment.

Mr. U'u: Yeah, I'll accept a friendly amendment.

Mr. Guard: Second.

Mr. Hedani: Amended by – well, accepted as a friendly amendment by Commissioner U'u and the seconder Commissioner Guard. So the language would be corrected to read that both the SMA as well as the Setback Variance would be both included in the time extension request that's being considered for three years.

Ms. Cua: Right, and in addition to that that the amendment of Condition No. 2, the language that is on page 9 of our recommendation replaces the first sentence of that condition that's in the decision and order, but the remainder of that the Condition No. 2 in the decision and order would still remain which means failure to complete construction of the project will automatically terminate

the SMA permit and we will add the Shoreline Setback Variance.

Mr. Hedani: Okay, do we all understand what we're voting on at this point? Director Hunt.

Mr. Hunt: By adding the proposed language into or substituting the proposed language for the first sentence, are we running into a contradiction further down in Condition No. 2 where it speaks to a time extension?

Ms. Cua: Oh yes, we'd have to strike that. I'm sorry.

Mr. Hedani: Can you clean all of this stuff up Ann?

Ms. Cua: You want me to read it to you then? So the Condition 2 would then read, "that construction of the project shall be completed by August 31, 2012. No further extension to complete construction of the project will be granted beyond this time period. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use permit and Shoreline Setback Variance."

Mr. Hedani: Okay, are we all clear? All those in favor of the motion signify by raising your hand. One, two, three, four, five, six. Opposed same sign. One. And two recusals, Commissioner Sablas and myself.

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

VOTED: To Approve the 3-Year Time Extension Amendment to the Special Management Area Use Permit and Shoreline Setback Variance, as Amended.
(Assenting - B. U'u, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, W. Shibuya)
(Dissenting - J. Starr)
(Recused - L. Sablas, W. Hedani)

Mr. Hedani: So the motion passes.

Mr. Mardfin: Was that the friendly amendment or was that the total thing?

Mr. Hedani: That was the main motion. You want to revote. Did you think we were only voting on the friendly amendment?

Mr. Mardfin: I thought we were voting on the friendly amendment.

Mr. Hedani: Okay, why don't we vote on the friendly amendment to adjust the language to what Ann just read as part of the main motion. All those in favor signify by saying aye. Oppose nay.

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

VOTED: To Amend Condition 2 to Read, "That construction of the project shall

be completed by August 31, 2012. No further extension to complete construction of the project will be granted beyond this time period. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use permit and Shoreline Setback Variance."

(Assenting - B. U'u, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, W. Shibuya, J. Starr)

(Recused - L. Sablas, W. Hedani)

Mr. Hedani: Carried. Lets revote on the main motion to approve the main motion as amended. All those in favor raise your hand. Six in favor. Opposed same sign. One opposed, Commissioner Starr. Two recusals, Commissioner Sablas and myself.

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

VOTED: To Approve the 3-Year Time Extension Amendment to the Special Management Area Use Permit and Shoreline Setback Variance, as Amended.

(Assenting - B. U'u, J. Guard, K. Hiranaga, W. Mardfin, D. Domingo, W. Shibuya)

(Dissenting - J. Starr)

(Recused - L. Sablas, W. Hedani)

Mr. Hedani: Motion passes. Thank you very much Ann.

Ms. Cua: Thank you very much Commissioners.

Mr. Hedani: It's 12:00 p.m., we're going to go ahead and take a break for lunch and we'll reconvene at 1:00 p.m.

Mr. U'u excused himself at 12:00 p.m.

Mr. Hedani: Meeting of July 14th is reconvened. Congratulations, we're on Item No. 2. Director.

Mr. Hunt: Item No. 2 involves Mr. Hunton Conrad requesting a Special Management Area Use Permit in order to construct a new single family residence and two-car detached garage and pool pavilion structure at 313 Paani Place, TMK 3-8-002: 064 in Sprecklesville. The file number is SM1 2007/0014 and Danny Dias is the planner assigned to the project.

- 2. MR. HUNTON CONRAD requesting a Special Management Area Use Permit in order to construct a new single family residence and a 2-car detached garage and pool pavilion structure at 313 Paani Place, TMK: 3-8-002: 064, Sprecklesville, Island of Maui. (SM1 2007/0014) (D. Dias)**

Mr. Danny Dias: Good afternoon Chairman Hedani, Members of the Commission I know you have a long agenda so I'll try to keep this brief. As mentioned this project involves the construction of a 1,500 square foot dwelling, replacement of a garage and in addition construction of a pool

pavilion. For the record, the reason why we're here with an SMA major permit is because SMA rules don't allow us to exempt the second main dwelling on a property and the reason why we can't issue a minor permit because minor permits have a valuation ceiling of \$125,000 which this project exceeds that.

With respect to zoning and land use designations, this project is located in the State Urban District. It's community plan designation is Single Family Residential and it's zoned by the County as R-3 Residential. Please note that the R-3 Residential District allows for one main dwelling for every 10,000 square feet of property and this property is a little over 35,000 square feet so a second main dwelling is allowed.

There's one little correction I want to make before I hand this over to the applicant and it's, you don't have to turn to it but it's on page 12 and it has to do with the beach protection section. Basically it states that the using annual erosion hazard rate the shoreline setback area for the land area makai of the subject property ranges from 95 to 107.5 feet and the average distance of the subject property to the shoreline is 269 feet, 269 is inaccurate, it should be more about 200 feet. So it's still well outside the shoreline setback area but instead of a 169 feet away from it, it's actually about a 100 feet away from that line. So with that, I will turn it over to the applicant for a brief, maybe three, four minute presentation.

Ms. Brandis Sarich: Hello, my name is Brandis Sarich and I'm here with Hunton Conrad. We are working on a project to build a new cottage and to replace the existing garage and add a pool pavilion at an existing home in Spreckelsville.

The project is located on Paani Place and it is on the mauka side of that street. You can see in yellow the TMK, across the street from another home and the ocean.

As far as shoreline, flood and erosion considerations as Danny just discussed we're a 100 feet from the shoreline setback area. Between the property and the shoreline is the street and another residence. In that area the erosion rate is between -1.25 to 2 feet per year. And we're also proposing construction in an A4 flood zone and we've designed everything in accordance with that. All dwellings are above flood levels.

This is the existing home and existing garage which we are proposing to replace the existing garage and the existing home stays as is.

This is in the vicinity on the left is looking east so the property would be on the left, kind of where that white Jeep is and then looking the other way down the street, the property is on the left. You can just see the existing home up on the hill there.

There's a photo of the home directly across the street and a photo of the area behind the home that we - the lot that we're proposing to develop on.

Here is our proposed site plan and maybe I can stand there to point things out. This is the existing home which you saw in the photograph and this is Paani Street out here. We're proposing the new cottage be right here with a geo block paver driveway so it will look like a lawn and also able to absorb rainwater. Here is the existing pool on the property. This is where the existing garage is and where we're proposing a new garage and this would be a new pool pavilion.

This is a rendering of the cottage. It's a two-story cottage. The dwelling is on the second floor above the flood levels. I don't know if you can see the plan but it's a two-car garage with storage and then upstairs we have living room, kitchen, two bedrooms and a bath and then a covered lanai.

This is the garage and pool pavilion. The pool is existing. This part is the garage and this is the pool pavilion with a small covered lanai. They're under one roof. So two-car garage, some equipment and then a pool pavilion. And that is our project.

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

Mr. Starr: Yeah, does this have a fence around it?

Ms. Sarich: It does around the entire property.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Just to confirm, the top of the roof is about 20 feet high?

Ms. Sarich: That is correct. Let me just look that up for a one second. Oh, the existing house?

Mr. Hiranaga: No, the new dwelling.

Ms. Sarich: The cottage. It is approximately 20 feet, but I can get you an exact number if you want to wait one second.

Mr. Hiranaga: Well, I looked at the drawing, but I couldn't read the numbers, too tiny.

Ms. Sarich: The height is 20 feet, 6 inches.

Mr. Hedani: Additional questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: Is this intended as TVA or B&B operation?

Ms. Sarich: No, it's to be a long term rental.

Mr. Mardfin: Long term rental.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: Is this sort of ohana zoning type of building?

Ms. Sarich: It's a second dwelling because their lot is big enough, they can have actually three dwellings on that lot.

Mr. Mardfin: They can have three dwellings on it.

Ms. Sarich: It's R-3 zoning. They can have one dwelling for every 10,000 square feet and it's a

35,000 square foot lot.

Mr. Mardfin: And they have the existing house, they're going to build the cottage, they're going to have a third building, that one there, but that's not a dwelling. So they could still do one more dwelling in addition to that.

Ms. Sarich: Yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: The flood zoning rating of A4 what are the building requirements to comply?

Ms. Sarich: Just that the dwelling has to, the dwelling areas have to be above flood level. We actually designed the whole project because it's so close to the V Zone so it has wash out walls and everything that would be needed in case a tsunami hit it.

Mr. Hiranaga: What is the flood level there, height?

Ms. Sarich: It varies between 15 to 18 feet, 15 to 17 feet.

Mr. Hiranaga: Okay. Thank you.

Ms. Sarich: It's on the site plan. I can point out the levels if you want.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: And connected with that, what is the elevation of the lot?

Ms. Sarich: It's about 10 feet.

Mr. Mardfin: So when you get that 17-foot flood you're seven feet under water.

Ms. Sarich: The garage would be under water, but the dwelling is on the second floor so it's above that.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, who's Eugene Wasson

Mr. Hunton Conrad: I'll answer that.

Mr. Hedani: If you could state your name for the record please.

Mr. Conrad: I'm Hunton Conrad. The previous owner to the property before my client, the Spees

purchased it was Dr. Wasson. So when we originally started the design work the state had not changed, had recorded the change in owner so his name appears on some of the early documentation.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Okay, has it been changed over because the current tax status stills shows Wasson.

Mr. Conrad: It has been recorded, but it hasn't shown up in the tax office here on Maui yet, but it has been recorded. So it's been legally recorded as of the date of closing which was about three years ago.

Mr. Hedani: Any additional questions for the applicant? Commissioner Shibuya.

Mr. Shibuya: I just wanted to find out, I understand it's bordered on three sides with concrete block and so that the drainage actually is towards the concrete block is it not so?

Mr. Conrad: Well, the drainage is mainly held on the property in the very permeable lawn areas because of the kinds of soil that it is, that our engineer report shows. But there is a couple of places where water could touch the foundation of those walls, but then it would percolate down so the walls are keeping the water from moving off property.

Mr. Shibuya: And then the third, I mean, the fourth area is not bordered by any fence so how is the water runoff addressed at that point?

Mr. Conrad: There is going to be a fence on the back if you're talking about the back property between where the pool pavilion is there will be a wall there as well and the ground is raised right there so that the water is actually held in the lawn area.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Any additional questions? Seeing none, we'd like to open this up for public testimony.

a) Public Hearing

Mr. Hedani: Is there any member of the public that would like to offer testimony at this time? Seeing none, public hearing is closed. Staff recommendation.

b) Action

Mr. Dias: Thank you Chair. One change to the standard conditions in the recommendation and this was recommended by Corp. Counsel, we would like to strike standard Condition No. 4. If you look at the Condition No. 11, it's basically saying the same exact thing so to –

Mr. Giroux: Danny, my suggestion is tag in the language after permit, and add, "and with preliminary plans received on October 2007." I think that will take care of your –

Mr. Dias: Okay.

Mr. Giroux: And then strike Condition 4.

Mr. Dias: Okay. So just to summarize, basically we will strike Condition No. 4, and then Condition No. 11 in its entirety will read, "that the applicant shall develop the property in substantial compliance with the representations made to the commission in obtaining the Special Management Area Use permit and with preliminary plans received on October 2, 2007. Failure to so develop the property may result in the revocation of the permit."

So with that, the Maui Planning Department recommends approval of the subject application subject to 11 condition standard conditions and 3 project specific conditions and I'm just going to take a minute to go over those project specific conditions.

13. That a noise permit be obtained from the Department of Health. 14. That the approved monitoring plan be implemented and that a qualified archaeological monitor shall be present during all ground altering activities. And that's recommended by SHDP. And last, that basically no – nothing but wastewater be discharged into the county's wastewater system and that was recommended by the County's Department of Environmental Management.

In consideration of the forgoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the July 14, 2009 meeting as its findings of fact, conclusion of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the planning commission.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Move to approve per recommendation.

Mr. Hedani: Is there a second?

Mr. Shibuya: I'll second it.

Mr. Hedani: Seconded by Commissioner Shibuya. All those in favor signify by saying aye. Opposed nay.

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

VOTED: To Approve the Special Management Area Use Permit as Recommended.
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, L. Sablas)
(Excused - B. U'u)

Mr. Hedani: Carried. Thank you.

Mr. Dias: Thank you.

Mr. Hedani: Director.

Mr. Shibuya: Chairman Hedani?

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: On Condition No. 12 and I'm not going backwards here I just want to address this with the entire group here. No. 12 talks about conservation measures that are actually being encouraged and it includes at the very end after the state of the art air-conditioning system, photovoltaic systems. Photovoltaic is not an energy conservation measure. It's actually renewable generating system. So do we have an intent here of adding energy conservation and renewable energy generation. Is that the intent?

Mr. Hedani: I think the intent was to include photovoltaic as an energy conservation measure from the standpoint from reducing loads on the energy producer which is the electric utility in this case.

Mr. Shibuya: Right, I understand, but it is actually not a conservation per se, but it is something that generates power.

Mr. Hedani: I understand.

Mr. Shibuya: Yeah, okay. It's just a discussion. Maybe Director Hunt can clarify.

Mr. Hedani: It's kind of a hanging condition with an etc., anyway.

Mr. Shibuya: That's correct.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I think the intent is that in the SMA we are dealing with the effects on the shoreline and sea level rise caused by global warming is an issue that is related to the shoreline. So if we can save greenhouse gas emissions through energy savings through solar hot water or by replacing fossil fuel or coal burning with photovoltaic then that's a useful thing, but it's not something we're ready to mandate yet, but to request.

Mr. Hedani: Maybe staff can take a look at that language and consider possible modifications in the future.

Mr. Shibuya: Sure. Thank you.

Mr. Hedani: Director.

Mr. Hunt: We can further discuss that or at least our response to it under the Director's Report, there's an item ...(inaudible - changing of tape) ... Mr. Peter Ziebelman requesting a Special Management Area use Permit for the Ziebelman Renovation in order to renovate the first floor and construct a dormer and a two-bedroom, two-bath living area on the second floor at Puamana, TMK 4-6-029: 011 in Lahaina. The file number is SM1 2008/0016 and Livit Callentine is the planner assigned to this project.

3. MR. PETER ZIEBELMAN requesting a Special Management Area Use Permit

for the Ziebelman Renovation, in order to renovate the first floor and construct a dormer and a 2-bedroom, 2-bath living area on the second floor at Puamana, TMK: 4-6-029:011-0000, Lahaina, Island of Maui. (SM1 2008/0016) (L. Callentine)

Ms. Livit Callentine: Good afternoon Commissioners and thank you for your time and continued service to the County of Maui. I'll wait a minute for you to get your handouts or do you want me to just go ahead. Just go ahead. Okay.

So I'm here today to provide project background and analysis for your review of an application for a Special Management Area Use permit for a proposed remodel and second floor addition to an existing dwelling unit in a building housing four such units in the planned unit development known as Puamana. The application was filed by Maria Isotov-Chang on behalf of the owners, Cynthia and Peter Ziebelman of Palo Alto, California.

Your land use designations for this parcel are Urban State Land. The West Maui Community Plan designates it as single family. Zoning, it's in Interim zoned, but it has a PUD, a Planned Unit Development Overlay and it's in the Special Management Area. This parcel is surrounded on three sides by the rest of the Planned Unit Development and on the west by the Pacific Ocean.

Briefly for those who aren't familiar with it Puamana was Maui's first planned unit development and it was recorded, their declaration was recorded with the Bureau of Conveyances in 1968. Section 19.32.010 of the Maui County Code spells out the purpose of planned development is in order to encourage desirable design and land use pattern, protect natural environment, minimize traffic congestion and enhanced living and working conditions it is deemed desirable to provide for tract development of land in planned development.

Section 19.32.020 requires the commission to review the unified site and building program which has been done over the years. The Puamana Community Association has come before the Urban Design Review Board and the Maui Planning Commission for amendments to the originally approved planned unit development. Amendments that were approved apply to particular buildings and include allowing for construction of dormers, sun decks and shade covers and increasing the height of the building and this is unit by unit. These approvals were provided in your Exhibits 19 and 20 of the department's report. The approvals of this body required that all such improvements shall be completed by October 2012 or the association would need to return to the commission for an overall time extension of the amendment approvals.

A similar project was reviewed by this body on January and approved on January 8, 2008 shown as your Exhibit 18. And the Puamana Community Association approved project plans on January 17, 2008 and that's shown in your Exhibit 21. That's just a brief background.

So right now I'm going to let the applicant's representative take the podium and she's going to give a very brief description of the project and then I will return to summarize the department's analysis of the project.

Ms. Maria Isotov-Chang: Hello, my name is Maria Isotov-Chang and I'm the land use planner that the owner of the project has asked me to help with the processing of this permit. Peter Ziebelman, the owner, is here today also for question. The subject project is in keeping with the previous

approved expansion designs. And just step over to over here.

The subject project is located along the shoreline. It is 25 feet – all proposed improvements are located 25 feet outside of the shoreline setback area. There is a portion of the existing lanai that is within the existing shoreline setback area and there's no proposed improvements there that will remain.

Here's the fire apparatus turnaround. That was one of the items that Fire Department had not finished responding to. They gave us a big requirement. But basically the unit is located here. The previous approved fire truck turnaround for this unit was this fire truck turnaround right here and you can see it on the plans that I've given out to all of you on Sheet A2. So that issue will also, again, come up through the building permit process. So the project won't get built without the building permit so you can be assured that the fire truck turnaround will be adequate if it's approved.

On Sheet A3 you can see the shoreline setback line is drawn in the proposed first floor and you can see that there's no proposed improvements within the shoreline setback area. There's a small portion of the existing lanai that's in the shoreline setback area.

The overall height is 20 feet and 7 inches which is the allowable limit for the unit. I have attached here some visual representation of adjacent units that have similar improvements that have been approved. This is a front yard visual representation of what you'll see and the back – back yard view will have the deck and front facade of this unit here.

The project is located outside of the flood zone area it's in and if you have any additional questions?

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

Mr. Mardfin: This may have legal implications. I don't know. Could you tell me the land area of this? The report has three different numbers.

Ms. Isotov-Chang: The parcel depth is 66 feet. If you look on the – I'm not sure what your question is then.

Mr. Mardfin: I'm talking about on the first page of this in the notification it says 1,098 square feet of land.

Ms. Isotov-Chang: Is that the Planning Department report?

Mr. Mardfin: Probably. On page 5, maybe it's – Livit that would respond to this, on page 5 it refers to 1,181 square feet, under application it says 1,881 square feet, on page 8 it goes back to the 1181. Some of this is maybe typo.

Ms. Callentine: Yeah, I think it's probably a typo. I'm sorry. I didn't catch the middle reference.

Mr. Mardfin: The first one is on the first page 1,098.

Ms. Callentine: Yeah.

Mr. Mardfin: Page 5 at the top, it says 1,181, "in the matter of the application," you know that little block on the top.

Ms. Callentine: Right, right, right.

Mr. Mardfin: And then under the application, the forth line down at the end it says, "1,881."

Ms. Callentine: What page is that?

Mr. Mardfin: The same page, page 5. So you have two different numbers on the same page.

Ms. Callentine: I'm sorry Commissioners, I apologize for that.

Mr. Mardfin: No, it's probably just a typo.

Ms. Callentine: Yes it is.

Mr. Mardfin: But the 1,881 is probably supposed to be 1,181 I'm guessing.

Ms. Callentine: I think it is 1,181. I think the middle one is a typo. Maria, can you verify that?

Mr. Mardfin: Because on page – you're back to the 1,181.

Ms. Isotov-Chang: Hello, this is Maria Isotov-Chang. On the site plan we have the square footage of the lot at 1,889.58 square feet. If you want we can just get out a calculator here and just calculate it up.

Mr. Mardfin: I don't care how you do it and it doesn't matter to me but there may be legal implications for the way you notice things. I don't know.

Ms. Callentine: I'll correct it in the – I'll note that in a subsequent letter following this meeting.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, is this a duplicate of the one we approved a couple years back?

Ms. Callentine: Yes, that was the Salvador project and it was virtually identical.

Mr. Hedani: Additional questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: This may be for the applicant or for staff. The existing building encroaches into the shoreline setback area so I'm just wondering what the county regulations are that allows?

Ms. Isotov-Chang: It's --

Ms. Callentine: Actually, let me take it. The existing building does not encroach into the shoreline setback area. It is 25 feet from the shoreline setback line and the lot depth is 46. So the requirement is 25 feet.

Mr. Hiranaga: So Exhibit 8 in your staff report is in error? Of is that showing the PUD boundaries not showing the building.

Ms. Callentine: I'm sorry, the dotted line is that what you're referring to?

Mr. Hiranaga: Well, you show Lot T-2 is that the lot boundaries and not the building or is that the building?

Ms. Callentine: That's the lot boundaries. And in Puamana generally speaking the buildings encompass the entire lot. They each have individual TMKs.

Mr. Hiranaga: So does the vertical structure encroach into the 25-foot shoreline –

Ms. Callentine: Yes, it's an existing nonconforming structure. This was built before shoreline rules were implemented so they're not making any improvements to that corner. There's two very small corners that are in the 25-foot setback but they're not changing those at all.

Mr. Hiranaga: Okay, so my original question is, I just want to understand when it comes to improving or repairing an existing structure within the shoreline setback what are the rules? Is there a dollar or percentage – I'm speaking – is there a percentage, you know, limit or a dollar limit that allows you to improve an existing building within the shoreline setback area?

Ms. Callentine: I do not believe so. I consulted with Thorne Abbott on this and he –extensively actually and he was quite clear that this is outside of the setback and is an allowable action.

Mr. Hedani: Livit, I've heard several references to the setback line, 25 feet behind the setback line. Can you explain to me what the setback line is from the edge of the vegetation line and whether it's 50 feet from the edge of the vegetation line, being 25 feet behind the setback or whether it's within the allowable 25-foot setback and why is it 25 feet?

Ms. Callentine: All right. The way that shoreline setback lines are established according to the shoreline rules and I beg you pardon me if I do slip because I am not the shoreline planner, I have been advised by him but I am not the expert but I do have the shoreline setback of the shoreline area rules before me and Section 12-301-06, Establishment of Shoreline Setback Lines, all lots shall have a shoreline setback line that is the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of such distances. 25 feet plus a distance of 50 times the annual erosion hazard rate from the shoreline. Now this particular parcel and quite a large parcel of Puamana is fronted by a revetment out in the water so there's actually accretion at this – not accretion, I'm sorry, but there's zero erosion at this portion. So 50 times the annual erosion rate is zero. So 25 plus zero is 25. That's how the shoreline was determined to be 25 feet from the setback line.

Mr. Hedani: It's 25 feet from the shoreline. It's greater the –

Ms. Callentine: 25 feet from the shoreline, yes. The setback line is 25 feet from the highest wash of the highest waves, how the shoreline is established.

Mr. Hedani: I understand. Did that answer your question Commissioner Hiranaga.

Mr. Hiranaga: My question was or is, is there a limit to amount of improvements you can do to an existing structure that encroaches into the shoreline setback area.

Ms. Callentine: I am unaware of such a limit.

Mr. Hiranaga: Is it 50% of the replacement value? I mean, you can't keep building on something forever.

Ms. Callentine: You know what –

Ms. Isotov-Chang: I'd to make a clarification.

Ms. Callentine: No Maria, Maria wait till you're asked to please.

Ms. Isotov-Chang: Okay.

Ms. Callentine: Sorry, Maria. The commissioners need to control their meeting.

Mr. Hedani: Livit, is there anybody that can shed additional information on this area?

Ms. Callentine: Well, I think the applicant would like to try.

Mr. Hiranaga: That's fine.

Mr. Hedani: Please.

Ms. Isotov-Chang: This is Maria Isotov-Chang, I'm the representative of the applicant. I think the – the point that I'd like to clarify is that there is not structure in the shoreline setback area. This is a lanai that's an existing lanai. It's not a structure. The dwelling is not located in the setback area. It's a cement concrete pad, it's about five inches thick and that's it.

Mr. Hedani: So your position basically is that the lanai is not a structure?

Ms. Isotov-Chang: Yeah, I would say and the applicant, if you know, the board sees that it's warranted needs it to be, you know the foot or whatever that's hanging over needs to be removed, then you know, we can do that if there's – I don't know if it's going to make a difference on your, you know, it's not a structure.

Mr. Hedani: Okay, any additional questions for the applicant or staff? Commissioner Hiranaga.

Mr. Hiranaga: Because there's a encroachment into state lands I guess by that rock revetment, you're unable to certify the shoreline so I'm wondering I thought there was an issue if you're unable to certify your shoreline, you can't get a building permit. Is that correct or wrong? Because I know that there are other dwellings I'm aware of that have existing rock revetments, they're unable to certify the shoreline so they can't either demolish the existing home and build a new or renovate them. So I'm just wondering what is the law. Can you get a building permit for a structure if you can't get a certified shoreline because of a encroachment into state property.

Mr. Hedani: Staff.

Ms. Callentine: I would defer to the Deputy Director of Public Works. I cannot answer whether a building permit could be issued or not.

Mr. Hedani: Mr. Miyamoto.

Mr. Mike Miyamoto: Mr. Chair, I will check with staff but what you're talking about is a setback issue. You know, you're talking about the shoreline issue and typically that does not relate to the structure per se, but I can check with staff and get back to you during this meeting.

Mr. Hedani: Any additional questions for the applicant?

Mr. Hiranaga: If Thorne Abbott might have the answer, you might try to find him.

Ms. Callentine: I have already called him. He was going to standby.

Mr. Hedani: Additional questions for the applicant from the commission? Commissioner Mardfin.

Mr. Mardfin: Again, this is more clarification. Under description of the property on page 11, it says, "first level construction will occur inside the boundaries of the existing exterior walls. The next sentence says, the new second floor will require two posts be placed within the existing first floor lanai areas." If it's in the lanai then it's conceivable it's within the setback. Can somebody clarify whether or not it is?

Ms. Isotov-Chang: Because the setback –

Mr. Hedani: If you could state your name for the record Maria.

Ms. Isotov-Chang: This is Maria Isotov-Chang again. Because the setback was the – the lanai was encroaching into the setback in that small area, we've specifically designed it so that those posts would go into the setback area. And if you look at the plans that I handed out for you earlier, lets see what sheet it is, you have on A3, Sheet A3, you have a floor layout of the first floor and second floor with the shoreline setback line drawn on. It's the dashed line. It kind of bends across the straight lines on both the first and second floor and you can see that the deck of the second floor is probably at least six feet, seven feet, eight feet in, eight feet on top and six feet on the bottom from the setback. So it is well within the buildable area.

Mr. Hedani: Maria, the property was surveyed and the shoreline certified?

Ms. Isotov-Chang: The property was surveyed in October 2008 by Bruce Lee. The shoreline survey is on the back sheet of the 11x17's that I handed you. We actually didn't get a certified shoreline, we have actually done several projects where if the project is outside of the shoreline setback area. There hasn't been a request to have it certified. To my knowledge, the CRM revetment has been in place since the project has been built which was in 1968. We were never requested to go get a certified shoreline. We had the Joe Salvador project that came through last year, there was no certified shoreline. It hasn't been done. We never approached the issue because there was no request.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm looking at Sheet A3, and I'm looking at the bottom diagram, it's the lower level, I'm looking at the 25-foot shoreline setback and I'm looking at the lanai and you have three arrows going to it. You have— the top one is labeled line end deck above which is well inside, the second one is edge of the roof above which is well inside, and the third is edge of the lanai and at least to my eye it looks like even the lanai is not encroaching the shoreline setback unless I'm missing something.

Ms. Isotov-Chang: You know, I think you're correct there. If you look on the –

Mr. Mardfin: It's close at the bottom like an inch, but –

Ms. Isotov-Chang: Just as a comparison and I want to highlight what you're saying here, if you look at Sheet A1, this is a property boundary survey that Bruce Lee also did. He surveyed the whole Puamana property and you'll see here that the lanai is also inside the property boundary, this cross hatch, yeah. So that would also echo what you're seeing here in terms of the location of the lanai and the property boundary.

Mr. Mardfin: No I suppose it depends on how accurately that 25-foot shoreline setback was drawn or whether it was conveniently drawn to avoid the building.

Ms. Isotov-Chang: The project was designed with the fact that there's, you know, shoreline setback in the area. So I don't know about this specific corner of the project here but I do know that everything that is proposed is outside of the shoreline setback area and if there's a small section coming into the area, I'm not sure that it's significant enough to warrant you know, resurveying it. If you want, there can be a request to remove, cutoff a portion, a condition of approval that would provide comfort to know that there is nothing located.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Two questions. On the last page it shows some CRM revetment, who owns that?

Ms. Isotov-Chang: That's Puamana property. Puamana owns all the common area and then each, there's like four unit section buildings and each section is its own TMK, it's not a condo, condominium property. So they're all separate owners of the housing units and then Puamana owns the overall open space.

Mr. Shibuya: And they maintain the CRM revetment.

Ms. Isotov-Chang: I don't know if they're maintaining it. I know they maintain the grass and the common areas.

Mr. Shibuya: I think staff can probably advise me in terms of is that an accepted practice to do that and the next one is on the last page it has a Bruce Lee surveyors stamp on it and it shows a 25-foot shoreline setback dotted line and encroaches on lots T-1, T-2, T-3 and I would guess it goes into T-4. Which unit are you talking about?

Ms. Isotov-Chang: We are lot T-2. That's the property we're working on here.

Mr. Shibuya: According to this it shows that there is an encroachment.

Ms. Isotov-Chang: Yeah, that's the property boundary. That's the property boundary. The unit if you look on Sheet A3 is setback from even the property boundary pin by lets see here, eight feet for the lanai then three feet, eight inches for the area that separates from where you have your exterior sheds, storage areas and a gas grill. And then you have, I don't know, from that area to the property boundary you have five feet, six feet. It looks like six feet right there between the developed area and the property pin to the shoreline area.

Mr. Shibuya: So who owns the setback area?

Ms. Isotov-Chang: The property owner. The shoreline setback is not owned by the state. Is it owned by the state? It's just a safe zone and everything makai of the shoreline is state. So the state has no landownership in this area. It would be –

Mr. Hedani: Maria, is this land courted property?

Ms. Isotov-Chang: You have the deed in your –

Mr. Hedani: It appears to be land courted property because the property boundary is makai of the vegetation line. It's that straight line that you see at the end of this exhibit. So unless the state has filed for either accretion or erosion or filed to amend with land court, the boundary is where you see it.

Ms. Isotov-Chang: The state was contacted for comments. The Maui Land Agent sent a letter of no comment and the Coastal Zone Office was contacted twice, second time to request comments and no comments were received.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, tax map shows that the setback area is owned by the Puamana Association.

Ms. Isotov-Chang: The greater setback area.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm just trying to clarify the situation. When you said the lanai was eight feet that was not correct. The deck above the lanai will be out eight feet. The lanai itself appears to be 11 feet, 8 inches, if you add the – look at the lower diagram, you have the eight feet out to the line of the deck above and then it looks like another 3. – 3 feet, 8 inches out to the edge of the lanai. So the lanai itself by this diagram would be 11 feet, 8 inches. There is another 2 feet, 4 inches to the property line. So it's 2 feet, 4 inches back from the property line and to me it looks like the 25-foot shoreline does not touch the lanai. It looks like the lanai is completely within.

Ms. Isotov-Chang: I would agree with you.

Mr. Mardfin: But the lanai is not 8 feet. The lanai is –

Ms. Isotov-Chang: I guess what I was establishing is the built area with the storage sheds and the gas grill. But I would agree with you, the copy is a little bit faded.

Mr. Hedani: Okay, we have Thorne Abbott the shoreline person for the county here. Whoever had that question if you want to restate the question was that Kent? Hi, Thorne welcome back.

Mr. Abbott: Thank you very much, always a pleasure.

Mr. Hiranaga: Thanks for standing by. My question is if your shoreline property and you're unable to obtain a certified shoreline survey from the state, are you still able to obtain building permits?

Mr. Abbott: Typically you would apply for a shoreline setback determination which would determine what your setback is and whether you plotted that on your site plan correctly. If you had shoreline hardening such as a wall, then the state would when you get to your state certified shoreline survey they put a little red line on there and determine whether the wall was legal or nonconforming or legitimate and it may be and usually is that the wall is encroaching onto DLNR regulated lands and they usually request an easement. They rarely ask for it to be removed and then that line serves the base line for your setback. Once that's done then you apply for your SMA. Once those two are approved you get your building permits. Building permits should not be issued if you don't have an SMA and shouldn't get an SMA necessarily if you don't have a determination of what the shoreline is. In this particular case, DLNR Land Division made no comment on this particular project so I think their assumption was there is not an encroachment issue at this site. I can't speak categorically for DLNR but they had an opportunity to comment and they didn't.

Mr. Hiranaga: You mean, no they answered to this. Did they actually send a letter saying no comment or they did not respond to the inquiry?

Mr. Abbott: My understanding is they sent a letter of no comment. To make a short answer to your question, can you get a building permit? You can. People make mistakes. You can certainly get like interior remodeling permits, but technically you should get an SMA assessment and that would you know, trigger this whole process.

Mr. Hedani: Additional questions for Thorne? Commissioner Shibuya.

Mr. Shibuya: Thorne, I don't know if you're familiar with this revetment whether it's permitted, accepted or is it a variance? What's the status on this revetment that's owned by Puamana. Appears like it's owned by Puamana.

Mr. Abbott: Yeah, we tend to be compliance driven so we don't go out there looking for seawalls to cite people on and try to get them to come into conformance with today's standards and engineering standards and legal standards. Usually we do that through the process and you know, like Commissioner Hiranaga mentioned, building permits triggers SMA assessment, SMA assessment triggers a determination if you're outside the shoreline setback in this case the applicant is and that would – you know, we'd send that application over to DLNR and they'd look at it and say, oh, well is this wall legal? Is it, you know, legal because it was there back in 1930's before we had laws? Is it legal because they got a permit? I don't know. That's DLNR's

jurisdiction. All I know is they provided a letter of no comment.

Mr. Hedani: In this particular case Thorne, since it's a planned unit development isn't likely that they would have applied for all of the permits for whatever revetments they have?

Mr. Abbott: You would think so especially out there tends to be a fair amount of revetment area.

Mr. Hedani: Thank you. Any additional questions for Thorne? Thank you for coming back.

Mr. Abbott: Thank you very much.

Mr. Hedani: Commissioners any additional questions for the applicant or for staff? Commissioner Mardfin.

Mr. Mardfin: Livit, I know we're looking at this particular project but would there be any impacts if everybody in this whole complex does a similar action, go up another floor and go out stuff. Would the cumulative impact be of concern?

Ms. Callentine: I don't know if I can really answer that question having not seen the application for all impacts. They could probably be mitigated as this one is proposed to be and because this body approved blanket amendments to the planned unit development such that it would allow most units to do what this owner is proposing to do, I would make the jump from there that at the time this body decided there would not be significant impacts in making that determination.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions for staff? Okay, we're going to open it up for public testimony.

a) Public Hearing

Mr. Hedani: Are there any members of the public that would like to offer testimony in this agenda item, if so, step to the microphone. Seeing none, public testimony is closed. Staff recommendation.

b) Action

Ms. Callentine: With you indulgence I will remain seated because my knee is a bit impaired today. The proposed project conforms to the Hawaii State Plan, state land use, the General Plan, the West Maui Community Plan, county zoning and planned unit development standards and approvals for Puamana. The project is located outside the shoreline setback area and involves no encroachment seaward as depicted in your Exhibit 8 which is the shoreline survey map that you've previously reviewed. The project will be carried out entirely within previously developed area and will not encroach into the Puamana Community Association.

There were no significant agency comments. Comments from the Department of Public Works, Water Supply and the Fire Department will be addressed during the building permit process. And as of July 13, 2009 the department has received no letters of concern, in support or in opposition to the project.

Therefore, the Planning Department based upon facts presented in the department report finds that the proposed action will not have a significant adverse environmental or ecological effect provided mitigation measures are incorporated into the project. The proposed action meets the objectives, policies and guidelines of the SMA rules, the standards of planned developments and is consistent with the West Maui Community Plan.

The department recommends approval of the Special Management Area Use permit based upon 13 standards and 5 project specific conditions as shown in the department's recommendation.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the July 14, 2009 meeting as the findings of fact, conclusion of law and decision and order and authorize the Director of Planning to transmit said written decision and order on behalf of the planning commission. Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have one more question. This is a planned unit development, does the community association for these units do they – have they been informed of this, do they have concurred, do they support it?

Ms. Callentine: Yes. Thank you for asking your question Commissioner Ward Mardfin. Your Exhibit 21 is a approval letter from the Puamana Community Association and with this particular association and so far as I know this is the only association we have asked that they, and that was established by again, the commission in earlier years that there would be a stamp of approval on plans. And the plans that are in the staff report have the emblem from the Puamana Community Association on them. I am not sure that the exhibit that ended up getting to you has that stamp of approval of it. But the staff records, the application itself does have the approved plans. So they sent a letter and they also stamp the plans.

Mr. Mardfin: Thank you.

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

Mr. Starr: Move to approve as recommended.

Mr. Hedani: Is there a second?

Ms. Sablas: Second.

Mr. Hedani: Seconded by Commissioner Sablas. Discussion? Director Hunt.

Mr. Hunt: On the advice of Corporation Counsel, I believe we are going to suggest similar to the previous application that Condition 4 be deleted and that wording be inserted into Condition 11.

Mr. Hedani: Staff can handle that.

Ms. Callentine: Yes, as Planner Dias is aware of what that language is. I was not here. I was

moving over here at the time. So I am not aware of what you decided.

Mr. Hedani: Okay, lets assume that the appropriate changes would be made per the director's recommendation. Any additional discussion? All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Starr, seconded by Ms. Sablas, then

VOTED: To Approve the Special Management Area Use Permit as Recommended.
(Assenting - J. Starr, L. Sablas, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo)
(Dissenting - W. Shibuya)
(Excused - B. U'u)

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

Mr. Hunt: You're next item involves Mr. Brian Hecktman of Greymark Waiale Road Associates, LLC requesting a Change in Zoning from the R-3 Residential District to the M-1 Light Industrial District for a 30,166 square foot property situated at 485 Waiale Road, TMK 3-4-003: 009 in Wailuku. The file number is CIZ 2006/0014 and the planner assigned to this is Jeffrey Dack.

- 4. MR. BRIAN HECKTMAN of GREYMARK WAIKALE ROAD ASSOCIATES, LLC requesting a Change in Zoning from the R-3 Residential District to the M-1 Light Industrial District for a 30,166 sq. ft. property situated at 485 Waiale Road, TMK: 3-4-003: 009, Wailuku, Island of Maui. (CIZ 2006/0014) (J. Dack)**

Mr. Jeffrey Dack: Good afternoon. The applicant stated that they are requesting a change in zoning from the R-3 single family residential district to the M-1 light industrial district in order to establish an appropriate area for neighborhood M-1 light industrial use consistent with the Wailuku-Kahului Community Plan. The applicants further indicated that the ability to achieve financing associated with the property would be enhanced by a rezoning.

The state land use district for this site is Urban. The community plan designation is Light Industrial. The zoning is R-3 Residential and it's not located in the SMA.

Relative to surrounding land uses immediately to the north on the west side of Waiale Road is residential. The east side of Waiale Road is a cemetery, on the north side immediately east across the Waiale Road is marine product sales and light industrial uses. To the south is Spreckles ditch, equipment storage, stormwater area used as a park and to the west is equipment storage. There's a variety of designations under the community plan for those respective areas as indicated in your staff report some being light industrial, public/quasi-public and single family as well as there's – most of the area immediately adjoining the site is still zoned R-3 Residential with a small portion zoned light industrial.

The property is roughly triangular shaped. It's developed with three older buildings and a mainly asphalt equipment yard and parking area between the buildings. Regarding services to the site,

it's currently served by a 5/8-inch water meter. Fire protection to the project site is provided by an existing fire hydrant located at the northeast corner of the lot which is connected to an old 4-inch water line. There is a newer 12-inch water line available in Waiale Road. There's an existing 10-inch sewer line behind the property that was installed again in the 1930's, an older line obviously and there's an 19-inch more recent, much more recent line from the 1970's in Waiale Road.

Based on site topography a small portion of the site along Waiale Road drains onto the road. Runoff of the remainder of the site converges at the low area behind the building that fronts Waiale Road.

According to the applicant's project assessment report, over the past 60 years prior to the adoption and prior to the adoption of the comprehensive zoning ordinance for Maui County light industrial uses have remained consistently at 485 Waiale Road as an existing and nonconforming use.

The subject property has been located in the State Land Use District Urban since 1964, and subsequently the county zoned the property R-3 Residential District. The Wailuku-Kahului Community Plan which was adopted in 1987 and updated in 2002, designates the subject property for light industrial uses in order to establish consistency.

The rear metal building is an existing and nonconforming structure with the standards of the M-1 Light Industrial District. Therefore, the applicant will seek a variance in order to achieve zoning conformance.

The site contains a gross area of 30,166 square feet as mentioned by the director and with buildings with 9,080 square feet of usable floor area. No new or future development on the remaining portion of the site is proposed as part of the application.

Consultants for the applicant have prepared landscape and parking plan with 13 striped parking stalls. They indicate it also includes a shrub hedge landscape buffer along the existing fence between the site and the adjacent residential property as well as six trees. As no building development is proposed at this time, no road improvements, site drainage improvements or water or fire protection upgrades have been proposed by the applicant.

The applicant indicates that the existing buildings at 485 will continue to operate as light industrial use. Currently there's an equipment dealer, a bail bonds business and a water distributor. There are 12 employees at the property and the hours of operation run from 8:00 a.m. to 8:00 p.m.

Chris Hart would now like to further present the project then I'll return to present the department's analysis. Thank you.

Mr. Hedani: Mr. Hart.

Mr. Chris Hart: Thank you Mr. Dack. Thank you Mr. Chairman and Members of the Commission. We have a short power point presentation that we'd like to make. By the way, Mr. Hecktman, Brian Hecktman is present in the audience and he can also be available during the question and answer period.

As Mr. Dack indicated to you this is an application for a change in zoning for property located at 485

Waiale Drive basically in Wailuku. And this is a shot of the property basically at the intersection of Wainu Drive and Waiale Drive. Wainu is this road coming down and then Waiale is fronting the project site. One of the important aspects that I want to bring up in the context of our presentation is the fact that the area is predominantly industrial in character. You can see by this major Maui Electric transmission line. The Quonset hut and this building were actually built back in 1947, after World War II and this is before Maui had zoning. And as Mr. Dack indicated that when the State Land Use Law was adopted in 1964, this property was identified among others as Urban and subsequently it was zoned R-3 Residential.

This site plan aerial actually shows a little bit more detail about the project location. The site is located here. This is Wainu Drive. This is Waiale Drive. And in terms of the area across the street, diagonally is the Valley Isle Marine Center, across the street directly along Wainu Drive is Maui Memorial Park which is a cemetery site. This is Koa Drive which is actually not a street but it's actually a storage area for construction equipment. This is the – it's called the – drainage retention basin for the Kehalani ...(inaudible - changing on tape)...

... is north and this purple actually identifies the area that's proposed in the community plan for industrial. The state land use classification has been indicated is Urban. Maui County zoning is R-3 Residential. Wailuku-Kahului Community Plan has identified the site since 1987 and again in 2002 as Light Industrial, M-1 Light Industrial and the applicant is requesting that change to be in compliance or conformity with the community plan. Again, this is the community plan map which shows the light industrial. This is the portion of the site that is in question at this time. And then it identifies also the public/quasi-public as the cemetery, Maui Memorial Park and also this is the Valley Isle Marine site. This is land zoning map which shows basically the site and it shows the portion of the site that's being proposed as light industrial. I also would like to mention that along the back boundary is the Spreckels Ditch which actually we'll see some shots of that. It's been in existence since 1882.

Again, this is the building and the site with the buildings, commercial building fronting Waiale and the Quonset storage hut in the back and again, when Mr. Brian Hecktman purchased the property it was in a pretty dilapidated condition and he has taken steps to basically improve the site, improve the facilities on the site.

This is a shot of the Spreckels Ditch. You can see the ditch underneath and this is basically a water transmission line on top but it runs along the – it would be the southerly boundary of the site. And this is Koa Drive as I indicated. The site is actually used as a construction equipment parking site. This is the Kehalani retention basin that's further to the south. Now this essentially shows, this is looking north on Waiale Drive and essentially shows some other industrial related uses namely like the Valley Isle Marine Center. Again, this is site photos. This is at the intersection of Maui Memorial Park. I just think the Maui Electric transmission lines basically changed the character of the neighborhood if it ever was a residential neighborhood, it really kind of changes the character with those major transmission lines.

This is next door neighbors adjacent to the subject parcel. You can see the subject parcel. Give you a sense of development in the area that's immediately adjacent. It supposed to be "residential." Kind of being used as storage site. And a lot of the buildings there are pretty dilapidated condition.

The project description, we're not proposing any development on the site. We're just proposing to

continue to take measures to improve the quality of the site. We've done some things that are pretty obvious. And you know, we are looking to make some additional improvements. The intent is to maintain the existing light industrial uses. At the subject property we're not proposing to do something that's you know, has no noxious uses. Essentially we're talking about, you know, maintaining the mixed use character of the M-1 Light Industrial District which would be retail or commercial uses and related industrial uses. There will be landscape improvements provided.

This is gives you a sense of what it did look like and this is, you know, basically since the improvements were made. Mr. Hecktman actually consulted with a local architect August Percha and the idea was to try to, you know, basically brighten up the site and to make it interesting.

This is the equipment rental area on the site. Currently there's more pieces of equipment obviously here than would normally be here because of the downturn in the construction industry but it is an equipment rental and storage area which is a permitted use in the light industrial. This is the proposed parking and landscape plan and one item that we can – can we look at the slide of the front of the building? Actually you can see the cars actually back out into Waiale Drive and you know, it's our intent to basically correct that because essentially there should be the maneuvering for automobiles should be on the site. So lets go back to the site. So what we're proposing is to widen the sidewalk to provide parallel stalls and to provide a bike path along Waiale Drive. And then of course, in terms of the square foot area and the uses we're required to have 10 parking stalls, automobile parking stalls. We're proposing to provide 13 and with the appropriate landscape planting.

The project benefits. The change in zoning request meets the intent and purpose of the district being requested, M-1 Light Industrial District. The change in zoning request is consistent with the 1987 and again, with the 2002 community plan land use map. A landscape buffer would be created for privacy along the property line adjacent to the residential parcel. Two fire hydrants will be installed along Waiale Drive. Pedestrian and bicycle safety will be provided. Reconfiguration of the existing parking fronting Waiale Drive to four parallel stalls will occur. The applicant will provide a striped bike lane in the front of the property to participate in the Bike Plan Hawaii initiative.

Can we go back to the landscape plan again? This just shows you the area that's to the north that is residential that's where those dilapidated houses and so on are, we're proposing to provide a landscape planting buffer along the property boundary there. We thank you for your patience and are open for questions.

Mr. Hedani: Questions from the Commission? Chris, the shaded area that was shown in the last slide is that where the Quonset hut is right now so that's not a new building.

Mr. Hart: No, no, those buildings have all been there. Well, the main building, the building fronting Waiale Drive and the building – the Quonset hut have been there since 1947.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Is American Machinery still in there?

Mr. Hart: Excuse me?

Mr. Starr: Is American Machinery, the John Deere, American Machinery?

Mr. Hart: I'm not sure. Mr. Hecktman, this is Brian Hecktman.

Mr. Brian Hecktman: Hi, Brian Hecktman, the applicant. Yeah, American Machinery is the equipment dealer in the Quonset hut buildings B and C.

Mr. Hart: It has a John Deere color scheme.

Mr. Starr: Bought a lot of tractor parts out of there. The right star, Maui Memorial who is that? That's shown as the owner of record, was that something to do with the Memorial Park?

Mr. Hecktman: Yeah, they were the prior owner. They owned the memorial park. They actually went into bankruptcy. I think they had some ...(inaudible)... dealings and ownership when they came out of bankruptcy I bought that property in order for them to have more cash on hand. They were selling the property.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: If this is granted, what impact will it have on the property taxes paid by the owner?

Mr. Hart: By the owner, well, you know obviously the assessment based on the zoning would increase probably because of the industrial zoning. So I would say that it would end up raising the taxes.

Mr. Mardfin: Assuming the rates were the same.

Mr. Hart: Yes.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Can you explain to me why you want this done? If it's not going to help your taxes and it's just continuing the existing usage why go to all this trouble?

Mr. Hart: In the context Mr. Mardfin, of the planning process that we go through here on Maui you know, my feeling is professionally that you know, lets say in 2002, it took from 1992 to 2002 to adopt the updated Wailuku-Kahului Community Plan that's 10 years. You know, so the Council certainly knows a lot about Wailuku-Kahului. It would be appropriate at that time for the Council to initiate or implement the zoning. In other words, there should be consistency and conformity. Without it, it really creates problems as far as the opportunities for development or if there's going to be a proposed subdivision you don't have to consistency and conformity. What we do in Maui is that we basically wait and let the owner apply for the change in zoning and obviously if it's consistent with the community plan which is the proposed zoning in the area, you know, it should be a relatively easy process and it basically enhances the value and it makes opportunities to do any future – to take on any future building permits easier or do a subdivision, it makes it easier. You know, it's not so much a matter of raising your taxes. It's just really a matter of being able to say that the uses that you have are legitimate and permitted in terms of the zoning as opposed to being existing and nonconforming.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I think the staff planner mentioned that it was easier to obtain financing because when you have an existing nonconforming use, it becomes more difficult to obtain financing because if the structures were destroyed you would have a very difficult time rebuilding.

Mr. Hart: Right.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Yeah, a lot of 90 weight and transmission fluid and antifreeze hits that tarmac, all the broken down bulldozers and tractors end up there. Where does that go and where will it go?

Mr. Hart: At this time essentially it all stays on site. There's cleaning that goes on regarding the parking area but you know, essentially there's no process or system set up to collect it and just, you know, basically dispose of it. There is a disposal but it's just basically cleaned up as a surface.

Mr. Starr: So when rain hits I mean, it's got to go somewhere when you have a rain storm, it gets washed somewhere. Does it get ...(inaudible)... into the ditch? Does it wash into the road?

Mr. Hart: A lot of it goes into the ditch yes.

Mr. Starr: And there's a different expectation with industrial compared to residential as far as the you know, what's going to happen environmentally. And I do agree that it should be made industrial because that's the use, but I also know that you know this is a relatively dirty use and if we were going to have someone come before us for process to create an industrial use for repair and parking of heavy equipment we would make a provision for dealing with the runoff from the machinery. So I, for one, would like to see something like that is in place because right now it's either going into the ditch which isn't good, you know, which means it will end up in a treatment plant or in ...(inaudible).. or it's going to into the county, state drainage system and then end up directly in the ocean.

Mr. Hart: No, I stand corrected about the ditch. It doesn't actually go in the ditch. It's basically retained on site and it percolates on site.

Mr. Starr: Through the tarmac?

Mr. Hart: Well, it's the – drainage system yeah.

Mr. Starr: Can you describe the drainage system in detail please?

Mr. Scott Crawford: Hi, my name is Scott Crawford and I'm a broker for C.B. Richard Ellis. I was involved with overseeing the installation of a retention basin that was permitted about two and a half years ago and I don't remember the size of it but it was designed by Kirk Tanaka to handle all the onsite drainage.

Mr. Hedani: So all of the drainage is retained on site, Scott?

Mr. Crawford: Yeah, everything in the back. I think the front just goes out onto the street which isn't much but most everything is handled on site.

Mr. Hedani: Additional questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: On the report we have on page 11, at the very top, it says, it has lines that always drive me nuts, "no new or future development on the remaining portion of the site is proposed as part of this application." And two paragraphs later it says, "as no building development is proposed at this time, no road improvements, etc., are being proposed." That makes me think what are the, even though it's not part of this application what's being contemplated down the line because I think we ought to be thinking about that. If we're go change in zoning we ought to be thinking about what uses are being contemplated at least for this area.

Mr. Hart: There's no proposed new development. What we are proposing as we indicated on the site plan we are proposing to make improvements along Waiale Drive. And we are proposing – I think it's important to consider the fact that the property was purchased by Mr. Hecktman. The buildings have basically been there since 1947. He wants to clean up the project, the property. He would like to get the zoning consistent and in conformity with the community plan. There could be in the future proposals to development but Mr. Hecktman doesn't have any proposals to develop.

Mr. Hedani: I guess the response to that Commissioner Mardfin would be what other uses are appropriate for M-1 Light Industrial would be what you would contemplate at this time. Commissioner Mardfin.

Mr. Mardfin: Well, that brings me to page 14 of the report, and on page 14, under Environment and Objectives and Policies, Objectives and Policies 8, "minimize noise, water and air pollution from industrial uses, electric power generating facilities and waste water treatment plants." Under Discussion, the second paragraph down it says, "the M-1 Light Industrial Districts allows a broad range of uses, permitted uses with no discretionary review by the planning commission." "No discretionary review by the planning commission. Given the limited size of the site major light industrial are clearly not likely to be developed but some uses permitted in the light industrial which could possibly be established in smaller scales could lead to some levels of noise, water and air pollution, most likely noise. See that's the part that makes me worried. I mean, it seems like this is being got at in bits and pieces. You know you're going to go for little this bit now get the thing rezoned and then it's out of our purview down the road instead of having a comprehensive plan for what's going to go on here. I'm just, you might have an answer for this but it's just the sort of thing that bothers me.

Mr. Hart: Well, there's of Maui especially Kahului that's zoned M-1 Light Industrial District. You know, it's a basic mixed use zone and in this particular case this individual bought essentially a derelict property and he wants to fix it up and he wants to basically have the zoning in compliance or in conformity. He doesn't have any - he has long term leases with his tenants. He has a cash flow. He doesn't have any - I have a property in Wailuku that has potential but I don't have any money to basically tear down my building and rebuild it. You know, I'm content with what I have. You know, there are a lot of people that are like that. I mean, it may be that someone will come along in the future and want to buy the property and demolish the buildings and redevelop but that's going to be handled through the building permit process and there are basic requirements for infrastructure improvements and -

Mr. Hedani: Director Hunt.

Mr. Hunt: Most jurisdictions you have a community plan designation and then you have a zoning that's consistent with that. And then as individual projects come in you have a regulatory scheme through the zoning ordinance that regulates those uses so that they're not coming for a public hearing before the planning commission and there is a discretionary review. The community merely sets up regulatory scheme and says if you do something in the industrial district you have to take care parking and noise and etc. Because Maui has this inconsistency with our zoning and community plan we have a system where there's all these change in zoning and because our regulatory scheme is somewhat lacking we're always looking at this as an opportunity to regulate the use and it really shouldn't be. I mean, the applicant is coming in to change the zoning of his property which is consistent with the community plan. So he really should be applauded for achieving consistency and if he proposes future industrial uses, the zoning ordinance in theory should take care of that.

Mr. Hart: And the building permit process.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm still concerned about drainage and I'm looking at drainage in the report on page 20, and what it tells me is not what we just heard. There's not a retention basin that was created there is a low point in the paved area behind the front building which my recollection is filled with mower decks and other equipment and it says that it ponds there till it reaches several inches and then it runs off. So in effect what's happening is that there's no way for this stuff to be filtered or percolate but rather it's running - it's ending up in the greater environment. So I know I for one would not want to proceed without having a drainage report. You know they say that Tanaka did one. We should have that certainly with us and we should make sure that if we do turn this to industrial since there is a dirty industrial use on it that is generating a lot of oils and other toxic fluids on the ground that it's being contained on the site. So my feeling is probably that we should wait for that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I just - first just one comment. My parents live about a quarter mile from this property so I've looked at this place for 40 something years and it has greatly improved in appearance.

Mr. Hart: Thank you.

Mr. Hiranaga: One question. I know on the parking you're going to allow parallel parking on Waiale Drive. So parallel parking is allowed by the County Code.

Mr. Hart: It's on our private property.

Mr. Hiranaga: No, I understand that your current configuration is not really legal to back out onto a public street, but if the County Code allow parallel parking.

Mr. Hart: Yes it does. Chapter 19.36.

Mr. Hiranaga: Okay, that's all I wanted to know. One more question and I'll let the floor go. As far as the edge between the buffer of your residential neighbors, are you also considering a fence?

Mr. Hart: There is a fence.

Mr. Hiranaga: Okay, what kind of fence is it?

Mr. Hart: It's a chain link fence.

Mr. Hiranaga: How high?

Mr. Hart: It's six feet, the chain link fence I think it is.

Mr. Hiranaga: All right, thank you. Just one, on that parallel parking, you know, hard habits are hard to break so I know you're widening the sidewalk.

Mr. Hart: Right.

Mr. Hiranaga: But is there still room with the bike path if someone wanted to not follow your striping to still be able to pull in straight or their tail is going to stick out.

Mr. Hart: It would stick out into the street.

Mr. Hiranaga: Okay.

Mr. Hedani: Commissioner Starr.

Mr. Starr: It might be a good place to try reverse diagonal parking.

Mr. Hart: Yeah, well.

Mr. Starr: I know it's going to take a while to train people for that but it's safe and it probably would allow you some more spaces.

Mr. Hart: In our discussions with Mr. Hecktman, you know, Waiale Drive is going to become kind of a bypass. It's going to intersect Honoapiilani Highway past Waikapu, so there's going to be a lot more traffic on it and people backing out into a - you know, it's not necessarily the best way to go. So we basically talked to him about the parallel parking because people can, you know, take advantage of the parallel parking, go to the shops in the front and then put the rest of the parking in the back and it worked out well as far as providing bike path. So that's our solution and that's why we did it.

Mr. Hedani: I have a question Chris. You mentioned Koa Drive. That's not part of this particular property right?

Mr. Hart: No, it's not.

Mr. Hedani: Was it intended at some point in time to connect to Koa Subdivision was that the

original intent of that so that you have more interconnectivity?

Mr. Hart: I really don't know. Koa Subdivision is quite far away. It's actually a private road and it has an area farther mauka where they have a lot where they have an additional group of construction equipment.

Mr. Hedani: So that's not part of this project at all?

Mr. Hart: No, it's not at all.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: You received one letter from I guess a person who owns parcel 19 opposing the application but all the other residents that abut this property did not respond.

Mr. Hart: They were all notified. Nobody responded. The person that has parcel 19 is actually abuts that area that's being used. It's farther mauka, but it's within 500 feet but it's farther mauka and it abuts the area that where all the construction equipment is parked. So they were concerned about that primarily.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: This is kind of a new thing. Well, actually this might be more of a question for the director, so I'm not sure if it's appropriate at this time to ask him that question.

Mr. Hedani: Toss it out there.

Mr. Hiranaga: Recently an ordinance was brought to us regarding stacking of uses within zoning designations. So one of the concerns about removing the ability or the stacking practice within existing industrially zoned properties was you were going to make the B-1, B-2 and B-3 existing uses nonconforming. So I'm wondering if this is a candidate to remove the B-1, B-2 and B-3 zoning uses.

Mr. Hunt: I think it is a candidate. I think you'd want to do some analysis. We need to be careful not to create nonconforming uses. I mean, that's as argued earlier that's one of the reasons for the change in zoning in the first place is to get rid of nonconformity. So with some discussion and conceptually the Planning Department could support some restriction to business uses being ancillary to the industrial uses and so it doesn't turn into a business park.

Mr. Hiranaga: Well, what I'm looking at is you know, when it was previously proposed it was going to be like a blanket removal of B-1, B-2 and B-3 uses overall existing M uses on this island. But now we have someone who's coming to try and obtain a M-1 zoning, rezoning and so to me, if we're going to start moving to the future of trying to insure that there is M-1 land available for M-1 uses this is a candidate where you say yeah, we'll give you the M-zoning but we're not going to allow you to stack the B-1, B-2 and B-3 uses on it.

Mr. Hunt: Again, conceptually the department could support that idea. When we discussed that bill the department's position was we should create a new M-3 Industrial District that would allow

only businesses that are ancillary to the industrial use. The classic example is, and this is an agricultural use, but the classic example is if you have a winery you crush the grapes on the site and you're allowed to sell your bottles out front in a little tasting room. You sell that product. So there's a retail component but it's definitely attached to the industrial use. The Planning Department supports that same concept. So we would not support a blanket no businesses at all. We would soften that and say businesses would only be allowed if they're ancillary to the industrial use.

Mr. Hedani: Additional questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: Now I'm on page 17, Item 3 right near the bottom, it says, "the cultural resources planner for the department commented in an email dated March 4, 2009, Exhibit 26, in part, there needs to be an architectural inventory survey of the site before further work can be approved." And if you turn to Exhibit 28, there's an email from Stanley Solamillo saying, "I concur with the SHPD findings. Concerns over the adaptive reuse and requiring a cultural resource inventory of the site. Changes have been made to one building after the fact fees should be assessed. There needs to be an architectural inventory of the site before further work can be approved."

And the memo from, the email from Jeffrey Dack that I think got to that response it said, "there expressing some concerns about the proposed, "building modifications." And then a sentence or two later it says, "raised issued about the paint color which does not appear in keeping with the Wailuku-Kahului Community Plan, planning standards, No. 3."

I guess I'd like you to respond to the idea that when - if you plan to do an archaeological inventory survey since you are planning to put in parking lots and planting that a full architectural inventory site should be done before hand and also to the point that these changes to whatever building you have be in conformity with community plans and historical considerations.

Mr. Hart: Okay, the community plan really only has, what you already quoted by Mr. Dack it says, "emphasize contrasting earth tone schemes for buildings. Of course, Mr. August Percha chose some pastel colors. His choice was to try to brighten the area. There is definitely an interest in acknowledging the fact that the buildings are from 1947 and that there would be an acknowledgment of that in the context of basically a survey of the architecture and we would work with Mr. Solamillo about that or with him concerning that.

Mr. Hedani: Additional questions from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: If this request is granted, aren't there Department of Health regulations regarding drainage and retention for industrial wastes.

Mr. Hart: Yes there are.

Mr. Hiranaga: So you would be complying with whatever federal, state laws that are applicable to industrially zoned land as far as drainage is concerned?

Mr. Hart: Yes. And in the drainage report that was prepared by Kirk Tanaka he basically talks about you know the fact that the site is developed now. So we're not proposing any development. But he also talks about you know, improvements to the drainage system in the context of an issuance

of a building permit. Which basically he says, the drainage pattern might be altered if the redevelopment will involve the reconfiguration of existing building footprints. The change however, will be internal. It is not anticipated to affect off site drainage conditions. But there definitely would be improvements to the drainage system in the context of any redevelopment of the site.

Mr. Hiranaga: My concern is on page 20, it says that that the water ponds up to a depth of eight and a half inches before it overflow occurs across the northern boundary onto the lower adjacent property.

Mr. Hart: Right.

Mr. Hiranaga: And that would be the residential property.

Mr. Hart: That's correct.

Mr. Hiranaga: The northern ends. So I think I would want the landowner to remedy that condition as a condition for the rezoning.

Mr. Hecktman: Yeah, we did remedy those drainage issues with ...(inaudible)... Kirk Tanaka did where we essentially installed a some sort of retention basin in the center. So now it drains towards the center. There's a basin there and it catches everything so we no longer have an overflow issue.

Mr. Hedani: That was Mr. Hecktman for the record. Commissioner Hiranaga.

Mr. Hiranaga: So then you allow the water to evaporate and then you scrap up the sludge? Where does the sludge go?

Mr. Hecktman: To the extent there's any sludge, I believe it stays in there.

Mr. Hiranaga: It's a underground retention?

Mr. Hecktman: Right.

Mr. Hiranaga: Or it's a vault?

Mr. Hecktman: I believe so. I don't have the plan in front of me.

Mr. Hedani: Commissioner Guard.

Mr. Guard: So if there's a catch basin is there the opportunity to put something that would catch the petrochemicals when it does rain to filter that out? As it evaporates or percolates into the ground after the fact?

Mr. Hecktman: I would have to check with Kirk Tanaka.

Mr. Guard: So I guess for director that could possibly be something that we put if it moves forward as a recommendation for the change in zoning to do that.

Mr. Hunt: You have the ability to condition zoning based on the criteria in your zoning code which I believe speaks to public welfare and public interest, fairly broad.

Mr. Guard: Right. Because right now I live in a residential neighborhood and I don't think all the neighbors would like me doing heavy equipment repairs right there in a residential area if the water went into their property either.

Mr. Hedani: Commissioner Starr.

Mr. Starr: We've gotten three different answers over what exactly happens with the drainage. Now we're told that there was a underground retention system installed. I really think we need to see the drainage report before we go any further. And I know I would want to have a commitment that if improvements are going to be necessary to deal with the existing heavy industrial use and a sense of use of lubricants on the site that that be rectified in a time of the essence manner. So you know, I'm happy to defer this pending that and if the Chair would be open to a motion for deferral at this point, I believe we can see if there's willingness.

Mr. Hedani: I think we haven't had the public hearing and we haven't had the staff recommendation, yeah.

Mr. Starr: If you'd like to do that, that's fine. I'd be happy to defer within out it, but if you want to proceed that's fine.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I think I read this in the staff report, but any road widening requirements on Waiale Road have been satisfied Mr. Public Works Deputy Director?

Mr. Hedani: Mr. Miyamoto.

Mr. Miyamoto: As identified by the planner as there is no development for this proposal there is no trigger at this point for that. At building permit we'll reevaluate it.

Mr. Hiranaga: Waiale Road is being proposed I think for four lanes and would you have to go through condemnation to obtain those right of ways?

Mr. Miyamoto: The plan cross section for Waiale Road is still at debate as the crossing underneath the overpass at Kaahumanu is very restrictive at this point. We can barely if we're lucky to get three lanes under there. So if anything Waiale may be a three-lane roadway which consists of one lane each direction with a possible center turn lanes for the adjacent properties. As you're aware, the current corridor has a lot of right of way on the mauka end towards the old cane haul road portion of the corridor. So until the cross section for that roadway is determined whether it's going to be four, three, with a turn lane isn't determined at this point. You know, we're pretty much, we withdrew the comment because there was no proposal for development, but if there is anything we'll look at it. On this side of the property as you can see from the photos you see the high tension lines, the utility lines, those would be extremely expensive to relocate at that point in the future. So at this point, we're pretty much on that side of the roadway, the right of way lines, probably pretty much be about where it is now.

Mr. Hiranaga: Thank you.

Mr. Hedani: Any additional questions for the applicant? Okay, if not we'd like to open it up for a public hearing at this point. Are there any members – Jeffrey?

Mr. Dack: Would you like to have the department's analysis or just go to public hearing? Just keep in mind we haven't provided analysis yet. If you wish to go to public hearing, that's fine.

Mr. Hedani: Why don't we go ahead and do the public hearing at this point?

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 hearing is closed. Staff recommendation.

b) Action

Mr. Dack: The application complies with the applicable standards for a change in zoning. The department recommends that the commission in turn recommend approval of the change in zoning to the County Council subject to 15 conditions that are listed in your staff report as I'll now summarize for each one.

The owner will achieve full compliance of all current and proposed site improvements and uses with the standards of the M-1 Light Industrial District and any other applications provisions of the zoning code.

Number 2. That uses which are permitted within the M-1, Light Industrial District which are not permitted within the R-3, Residential District and which are not connected wholly within a completely enclosed building shall be established only upon the approval of a County Special Use Permit until such time that there is no longer any residentially zoned land within 150 feet of the property which is not committed to be used as drainage facility.

Number 3. The applicant shall comply with off street parking and loading ordinance.

Number 4. Landscape and irrigation plan approval and installation is required.

5. Landscaping shall provide a buffer between uses on the property and the adjoining residential uses. Incorporate native and drought tolerant species, xeriscaping and the owner shall plant the existing and future right of way with appropriate trees, etc.

Item 6 or Condition 6. That plans shall be submitted to and approved by either Current Division or the Urban Design Review Board to meet the community plan provision to emphasize contrasting earth tone schemes for buildings and said plan shall thereafter be implemented.

Number 7. Striping a bike lane in an appropriate location fronting the subject property.

Mr. Hedani: Mr. Dack.

Mr. Dack: Yes.

Mr. Hedani: All of the commissioners have the report. You're not going to read all 15 conditions are you?

Mr. Dack: No. And if you wish me to not summarize any of the rest of them, I'll just conclude with the – actually I've got a couple typographical errors I'd like to correct in Condition 13, fourth line, where it says, "within" should be "with in" please. And typo in Condition 15, the second line, should read, "compliance report shall be submitted to the Department of Planning." So again, if you don't wish me to summarize any more of the conditions. In consideration of the foregoing, in both the written department report and recommendation report, the Planning Department recommends the commission adopt the two reports prepared for this meeting as its report to the County Council and authorize the Planning Director to transmit the report and recommendation to the Council. Any questions?

Mr. Hedani: Commissioners? Commissioner Mardfin.

Mr. Mardfin: I have some questions. One. On Condition 6, you're talking about the contrasting earth tone schemes as opposed to the green and yellow that was for commercial purposes despite the fact that they're pastel. Would this require them to repaint that building?

Mr. Dack: It might. They could have the opportunity to under this condition go to the Urban Design Review Board which might conclude that the existing color scheme meets the policies in the community plan. That could be an opportunity in which case they would not have to repaint, but in any case they would have to either obtain approval of those colors or any modified colors from the Current Division of the Planning Department or the UDRB.

Mr. Mardfin: And Condition 8, in recognition of potential historic resources an architectural inventory of the building shall be prepared prior to any future exterior modifications, but exterior modifications have already taken place and it seems to me I would prefer to see this saying – this is my personal view – something like an architectural inventory of the buildings will be performed before the rezoning takes place. I'm just forecasting where I'm likely to be.

Mr. Dack: I can speak to that if you wish me to. The way the application was written, I personally found a little bit confusing. It referred to proposed modifications to the exteriors of the buildings which had already occurred. So when the Cultural Resources Planner received the application he saw that there were proposed modifications and wrote back that there should be an architectural inventory survey. Well, there are no modifications, with further discussion with the applicant, I received clarification that there were no proposed modifications beyond those which had already taken place. And so, we took the wording from the Cultural Resources Planner and suggested that should there be any future modifications beyond those that have already taken place then that would be the appropriate time for the inventory survey. We weren't asking that they go retroactive although that could be a condition that the commission could recommend to Council.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Yes, is the repair and storage of heavy machinery a permitted use in R-3?

Mr. Dack: In R-3?

Mr. Starr: Yes.

Mr. Dack: No, not in R-3. No.

Mr. Starr: So that would mean that they would have to – they would not be able to do that use.

Mr. Dack: If they were to establish – if that use didn't exist right now, they were to have the zoning in place with the conditions as recommended they would have to, and involved in exterior use then they would have to come back to the planning commission for a discretionary review and approval of a County Special Use Permit to do that.

Mr. Starr: But why if they are getting a change in zoning doesn't that mean that use is starting fresh on new zoning and they would have to comply at that point with Condition 2?

Mr. Dack: No, because – if it were determined that that use was an existing nonconforming use, then that would be allowed to continue even after the change in zoning occurred. If there was a new use like that established then that would be fresh zoning, a fresh new use which would then be subject to the condition. But any use that was existing prior to the – an existing and...(inaudible)... part of the change in zoning would be allowed to continue.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: Yeah, I move for deferral pending drainage report from an engineer and remediation plan if called for.

Mr. Mardfin: Second.

Mr. Hedani: Moved and seconded to defer. Seconded by Commissioner Mardfin. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'm just wondering if staff and the applicant can come up with language for a new condition that would insure that they will meet all Department of Health requirements that are necessary for M-1 zoning with regards to storm water retention and drainage for future – existing and future uses.

Mr. Dack: I believe we could work on such a condition.

Mr. Hiranaga: The basic intent is to bring them into conformance with the current uses allowed and not have those be grandfathered in so that they would meet whatever federal, state standards are required for a commercial M-1.

Mr. Dack: Relative to drainage and any leakage so to speak from the current equipment that's the boundaries of your suggestion correct?

Mr. Hiranaga: Yeah, storm retention and treatment of the storm water so it doesn't percolate untreated into the soil maybe that would satisfy some of the commissioners concerns.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Jeffrey, I'd also like you to think about a wording of the architectural survey such that it be done – architectural. The archaeological part seems to be okay. They've got a plan in there. There are two conditions for that that seem adequate but the architectural thing, maybe the horse is out of the barn already, but to avoid any future horses leaving that same barn, I think it ought to be done now not later. So I'm not asking for it to be done before our – whatever our deferral date is but that you consider a condition such that it would have to be done before the zoning would take place.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My request that I made was, yeah, in lieu of deferring this matter if we could take a recess since we've been in session for two hours if you can come up with language during that recess that would satisfy at least a majority of the commissioners. The applicant – is that something the applicant would consider?

Mr. Guard: Lets take a recess then.

Mr. Hedani: Does the commission desire a recess at this point?

Mr. Guard: Sure. It's been two hours.

Mr. Hiranaga: Well, it depends if they're going to work with them or not.

Mr. Hedani: Mr. Hart.

Mr. Hart: Yes, Condition No. 1 is something that, obviously this is an existing and nonconforming uses on this particular site. And Condition No. 1 talked about in order to achieve consistency of site improvements with the proposed new M-1 Light Industrial zoning and to the satisfaction of the Department of Planning that we confirm consistency with and/or necessary measures to achieve full compliance or conformance of all current and proposed site improvements and uses with standards of the M-1 Light Industrial District. In other words, that was the intention of that condition. Obviously we're not saying that a project that was built you know, basically in 1947, you know, completely complies with today's standards. Obviously in the context of the parking plan that we're doing, the change in the parking in the front of the building, you know, we totally understand that. I do believe that there have been drainage improvements although unfortunately it wasn't communicated in the way that it should have been and I apologize for that. And I also apologize for the fact that work was done on the building, but we did make the submittal back in 2006 and it's just getting to you in terms of the planning commission. So there was a period of time in which, you know, tenants were occupying the building and some things had to be done. Everything's that been done has been done with a building permit. So they have gone through the building division. It's not a matter of avoiding compliance with county requirements. But you know, we would certainly look at the whole site and be able to come up with basically a plan for conformance to the standards to the M-1, Light Industrial District.

Mr. Hedani: Why don't I take that as a yes, and we'll take a 10-minute recess.

A 10-minute recess was taken after which the commission then reconvened.

Mr. Hedani: Discussion on the motion to defer? Commissioner Starr.

Mr. Starr: Yeah, I believe there was an attempt to try to create some wording that may satisfy those of us that have concerns on this so could we ask Mr. Dack to.

Mr. Hedani: Jeff.

Mr. Dack: Yeah, just before you broke, took your break, you had testimony from Chris Hart or actually comment from Chris Hart relative to Condition No. 1 which currently as it's written requires full conformance of all current site improvements with standards of M-1 District and that to occur within three years. And so that made us, the applicant and the department think that we could basically add onto that fairly simply and so we would like to recommend wording that would just simply be added to each of those two sentences in Condition 1. The first sentence would read as it is right now with the addition of the following wording, "as well as all current Department of Health standards for storm water disposal." So in other words, they would need to achieve full compliance with all current – of existing and proposed site improvements with DOH standards for storm water disposal.

And then the second sentence refers to a time frame within which things need to occur in that case provides three years for zoning. The applicants indicated that they actually have already carried out the improvements even though – when we unfortunately weren't aware of that until just during the hearing. But in any case, since they've already done it right now, they would be willing to have addition to that last sentence be, "zoning and compliance would be within three years," and then the additional wording would say, "and shall demonstrate full conformance with all current Department of Health standards for storm water disposal within 30 days of the approval of the change in zoning."

Mr. Hedani: Commissioner Starr.

Mr. Dack: And they would intend to demonstrate that prior to actually going to the Council.

Mr. Starr: I'm a little confused by that. Maybe Mr. Miyamoto can help because my feeling is that since it's an existing use compliance with the standards would be to keep doing what they've been doing. Mr. Miyamoto, could you?

Mr. Hedani: Mike.

Mr. Miyamoto: Thank you Mr. Chair. Regarding what the County enforces, we're mainly looking at the quantity of water that impacts an adjacent property. As like you say, it is an existing use, you know, there would be basically no change in quantity of water that impacts the adjacent property. Regarding quality, yes it is a Department of Health area of responsibility but whether or not they would be looking into the storm water disposal, I think they would need a trigger which would probably be some kind of a complaint or action taken by the adjacent property owner who may be affected by this water. So there would have to be proof provided by someone that there was some kind of a contamination occurring and that's about as far as that I can recall.

Mr. Starr: Is there a way we can trigger that?

Mr. Hedani: Or you could condition it as a part of this approval.

Mr. Miyamoto: Yeah, that's the only way that I think you can somehow trigger is by making it a condition of this approval.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm concerned because if this is done within three years after they get the rezoning it seems to me there's no teeth in it anywhere so I don't – I have a real problem with this whole thing.

Mr. Dack: The suggestion, the suggestion is that the demonstration of conformance with Department of Health standards for storm water disposal be done within 30 days of the approval not three years. The three years would be for zoning, 30 days for storm water, but the applicant indicates it's already done. So I expect they would be demonstrating it before it gets to Council.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Well, that's the point, 30 days after doesn't make any more difference than three years after once rezoning has taken place, rezoning has taken place. So I think it should be before hand. I'm going to support the motion for deferral. I think we could see the report of what's there. It would take care of all our concerns probably but we'd have a chance to look at it and see whether they've done what we think they ought to be doing. If we think they should be doing more, we could make conditions at that point with better knowledge. Right now we have incomplete knowledge. So I'm going to vote for deferral.

Mr. Starr: Could we call the question Mr. Chair?

Mr. Hedani: Commissioner Guard.

Mr. Guard: I guess for the applicant, I don't know the water way right there. I know right up the street there's actually water flowing in there and where does this water if there's any water, the picture on the screen showed about a I don't know two to four-foot diameter pipe above ground so I don't know if there's still water in that ditch and if so, where it goes and what it's used for.

Mr. Hedani: I think it goes to Waiale reservoir. Chris.

Mr. Hart: Chris Hart. Actually it's Spreckels Ditch which was built in 1882 and it runs right by my house that's why I know. It actually is designed basically to pick up storm water. So during the storm season a lot of storm water goes into the Spreckels Ditch. It goes to the Waiale reservoir and you know, I've talked to Jeff Eng about it, Director of Department of Water Supply. You know the water quality because of the fact that all along the ditch at least during, when it gets to the urban areas does take water from basically storm water from streets and yards and so on. They don't look at it as high quality opportunity for treatment of surface water, but it is used for agricultural irrigation. But that's the way the ditch was designed and it may not be the way that it should have been designed but that's the way it is designed.

Mr. Guard: Well, a lot of things could have been done different a hundred years ago. Then I guess follow up question. On most either retail shopping centers we've seen, industrial ones and this might be just education for your client as well, anyone who's doing automotive or parking lots mostly have some type of a catch basin to catch some of those petrochemicals. So with this knowing that tenant's use I mean, would it be the right thing to do more than anything?

Mr. Hart: Yes, it would and we certainly agree with it. In the context of again, this being existing and nonconforming, this condition that Mr. Dack came up with, in other words, we're starting with a clean slate we've got something that is existing. The intention was that you know within a period of three years that we would comply in all areas in the context of the requirements of M-1 Light Industrial District zoning. We found out today you know there is, there has been improvements that were installed that were designed by Kirk Tanaka. Unfortunately we didn't know that, I apologize for that, but the idea is you know, we are fully – our intent and I think that Mr. Hecktman's intent you can tell is not to just desert the property and leave it in its current condition. He does want to comply and he has done – he's got plans to do more with the parking. He's done some things with the buildings and so the drainage is another improvement that's he's provided. We do want to make sure and that's why we added when we were in the recess added the desire to discuss it with the Department of Health that it meets the requirements that Mr. Starr is concerned about and you know, we will do that.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: Just to make it plain and simple so all existing nonconforming uses which will become conforming uses if the zoning is granted will meet all Department of Health regulations per M-1 zoning. Is that what you just said? And could I have Jeffrey repeat the verbiage, proposed verbiage change.

Mr. Dack: Okay, wording added to the end of the first sentence in Condition No. 1 would be, "as well as all current Department of Health standards for storm water disposal." Wording added to the end of the second sentence would be, "and shall demonstrate full conformance with all current Department of Health standards for storm water disposal within 30 days of the approval of the change in zoning." I can read the entire condition as it would be changed if you would like.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'd be willing to accept if tacked on the end would be, "as though it were a new use," "as though the current use were a new use."

Mr. Dack: That would be easy to accomplish.

Mr. Hedani: Is that something the applicant is agreeable to?

Mr. Hart: Yes, we're not – obviously the standards are the standards and you know, certainly we would want to meet the requirements of today as if it was a new use. Yeah, that's fine.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'd like to withdraw my motion for deferral if the second agrees with it.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'll withdraw the second if I'm allowed to make a motion to defer. I still think that there are issues I'd like to see the report of what is already there and I'd like to have a condition in there on an architectural survey.

Mr. Starr: Mr. Chair, I will not withdraw my motion in that case and I wish we would call the question.

Mr. Hedani: Any further discussion on the motion to defer? Okay, all those in favor of deferral please signify by raising your hand. Three. All those opposed, three four.

It was moved by Mr. Starr, seconded by Mr. Mardfin, and

**The Motion to Defer the Matter to Obtain Additional Information, Failed.
(Assenting - J. Starr, W. Mardfin, W. Shibuya)
(Dissenting - K. Hiranaga, J. Guard, D. Domingo, L. Sablas, W. Hedani)
(Excused - B. U'u)**

Mr. Hedani: Chair votes opposed. Motion is lost. What's your pleasure? Don't all speak at once. Commissioner Guard.

Mr. Guard: This is for someone on the applicant's side. Scott, you seem to have the best ability to maybe describe what Kirk did on this property if you oversaw it. Scott Crawford who testified earlier, if that's okay Chair?

Mr. Hedani: Sure.

Mr. Crawford: Scott Crawford. Did you have a specific question?

Mr. Guard: Well, it sounded like you knew, you worked with Kirk with the drainage plan or what you did and then when the owner came up it sounded like it was just a sump in a low area and you could go in with a shovel and shovel out sludge and I don't know if that's what the intention was on the -

Mr. Crawford: I never saw sludge, but my involvement was overseeing -

Mr. Guard: I mean, is it just a sump or does it go underground.

Mr. Crawford: What used to happen is it would flood and then it would go into the neighbor's yard and so the system that was designed was to handle all the storm water on site so it didn't flood onto the neighbor's property.

Mr. Hedani: So to your knowledge Scott, it doesn't leave the property at the current time?

Mr. Crawford: Everything is handled on site. The only part that isn't is the smaller area on front on Waiale Road that's higher, but everything else is handled on site.

Mr. Hedani: Commissioner Mardfin, did you have questions that you wanted to ask the applicant? Commissioner Hiranaga.

Mr. Hiranaga: Scott, can you describe those improvements?

Mr. Crawford: There was a retention basin that was dug up that was approximately 30 x 30 feet and probably 20 feet deep and then there was some type of plastic perforated pipes that were put in there and then an inlet to that. So it was about a \$200,000 drainage job and it was permitted and designed by Tanaka.

Mr. Hedani: Commissioner Starr.

Mr. Starr: When was this done?

Mr. Crawford: Approximately a little over two years ago I believe.

Mr. Hedani: Commissioner Shibuya.

Mr. Crawford: I wasn't involved with any of the application so I guess that's why I didn't get -

Mr. Shibuya: I just wanted to confirm with you, are there petrochemical absorbents or catchments or separators.

Mr. Crawford: Not that I'm aware of. I think it's just a straight inlet.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I really question that. I've been a pretty steady customer down there and I sure didn't see that especially pretty active down there about two years ago.

Mr. Crawford: As far as the drainage?

Mr. Starr: As far as excavation and the large retention basin and pipes being put in. You know, some of that equipment that's parked down there has been mine.

Mr. Crawford: Maybe it was more than two years ago, but I watched it happen and definitely it was there.

Mr. Hedani: Okay, Commissioners what's your pleasure.

Mr. Crawford: Thank you.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Just wondering if there'd be any room in item one for the petrochemical. I don't know if DOH is going to make that a mandatory item as we saw with Maalaea Boat Harbor. They didn't mind, state didn't mind it running right into the ocean. So I don't know if that might have to end up on our doorstep to have that be taken care of on the - maybe Jeffrey knows about that.

Mr. Dack: Well, I'm just thinking I don't have wording in front of me but I know it's a very standard condition these days to require oil/grease separators in Special Management Area Use permit and even some time frames for review and cleaning and monitoring and all that. It seems like you might be interested in having a condition that would require that kind of mechanism be established if it doesn't already exist. It's just another option.

Mr. Guard: The last one to take care of that was probably at the airports maybe where we had a similar situation with it running right into the ditch that tried to catch it and absorb it.

Mr. Dack: Yeah, I think one of those was my project relative to National Alamo Rental Cars and yes, I ...(inaudible)...

Mr. Guard: There was another one as well.

Mr. Hedani: Any further discussion? Those who are not in favor of deferral should have a motion to do something at this point.

Mr. Guard: If we can - I don't want to have rewrite Item 1 myself to add that in.

Mr. Hedani: Can have a motion to approve and then amend by adding on language specific to that condition if that's what you want.

Mr. Guard: I'll make the motion to recommend approval to the Council for the change in zoning.

Mr. Hedani: As amended?

Mr. Guard: As amended.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

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

Mr. Mardfin: I'm going to vote against this motion. I still think that there needs to be requirement for a architectural inventory. I think there should - we should see the reports that were done in terms of what's being done with water and runoff and this waste water and so I'm prepared to vote this whole project down until that's done.

Mr. Hedani: I'm sorry; you're taking about an architectural inventory of building that are on the site?

Mr. Mardfin: That's what was requested in there.

Mr. Hedani: Archaeological inventory.

Mr. Mardfin: Architectural inventory.

Mr. Hedani: There's no such thing as an architectural inventory.

Mr. Starr: 17.

Mr. Mardfin: If you look at Condition 8. Condition 8 says, "that in recognition of potential historical resources presented by buildings on the property and to the satisfaction of the Department of Planning an architectural inventory of the buildings shall be prepared prior to any future exterior modifications to the buildings." I think they should be done before any recommendation for rezoning is done.

Mr. Starr: On page 17 as well.

Mr. Hedani: Okay, so this is for historical architectural purposes?

Mr. Mardfin: Yeah.

Mr. Hedani: Any additional discussion? Commissioner Starr.

Mr. Starr: I do agree with Commissioner Mardfin, but I as a point of order I'd like to know if the wording that we discussed was part of the motion that was made the one about as if it were a new project and so on.

Mr. Hedani: Commissioner Guard.

Mr. Guard: I believe the applicant was okay with that. So I'd be fine with that and I just hope that they would just add a little more by putting something in for the petrochemical filters, filtration. And then one quick item was I guess on Item 8 to - my thought on the architectural inventory was as long as nothing was happening to the exterior of the buildings the architecture was going to be the same. So that's why I thought that was okay to wait until the next building permit round. If that helps.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I was going to propose a amendment to include the petrochemical collectors as well as separators and some filtering system and to insure that all water drainage did not go towards the neighbors all around except maybe the highway but it would end up primarily on the property of the owner.

Mr. Hedani: That's a long motion. Is that in a form of a motion?

Mr. Starr: Can I try to save it for you?

Mr. Hedani: Commissioner Starr.

Mr. Starr: The amendment would read that an additional condition be added, "that 100% of the drainage resulting from a hundred-year storm be filtered for petrochemical residue and retained on site."

Mr. Shibuya: Fine.

Mr. Hedani: What about the Waiale Drive section?

Mr. Starr: It's still a parking area.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion? Mr. Hart.

Mr. Hart: Well, the Department of Public Works only requires a 50-year storm, 100-year is a huge amount of collection that's really - I think that's beyond the requirements you know, of anybody else in the county.

Mr. Starr: I'd be willing to go with a 50-year storm as long as they're doing all of it.

Mr. Shibuya: Fine.

Mr. Hedani: So a 50-year is acceptable Chris?

Mr. Hart: Yes.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Well, my concern on the amendment was he stated a 100% Chris. You know, you've got four parking stalls on Waiale Road. It's going to be a lot of money to put in drainage pipes to capture that and transport it to the rear of the property.

Mr. Hart: There is going to be a gutter along Waiale Road.

Mr. Hiranaga: Yeah, I don't know if I can support the amendment if you're saying a 100%. I think there has to be some practical reasonableness when you're dealing with -

Mr. Hart: In the context of most businesses you know, the front of the business, the sidewalk drains into the street and you know, basically the water is carried away and I believe that it's normal for something like that to happen.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: All the noxious industrial uses are to the rear of the property. So I think my focus is to treat that water and not be concerned about four parallel parking stalls on Waiale Road.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'd be willing say with the exception of the four parallel parking stalls and the bikeway.

Mr. Hedani: Is there consent of the second?

Mr. Shibuya: Second.

Mr. Hedani: Okay, so the amendment is to add a condition basically requiring filtering of petrochemicals from a 50-year storm from the remainder of the property. Any further discussion on the amendment? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Add a Condition, "that 100% of the drainage resulting from a fifty-year storm be filtered for petrochemical residue and retained on site with the exception of the four parallel parking stalls and bikeway on Waiale Road."
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, L. Sablas)
(Excused - B. U'u)**

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

Mr. Mardfin: I'm still going to vote against it. There's no architectural inventory.

Mr. Starr: Make an amendment.

Mr. Shibuya: Amendment.

Mr. Mardfin: I don't want to do that I want to vote against it. I want it deferred.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor of the main motion to approve as recommended as amended signify by raising your hand. Opposed same sign.

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

**VOTED: To Accept the Recommendation to Recommend Approval of the Change in Zoning from R-3 to M-1 Light Industrial District to the County Council with Amended Conditions.
(Assenting - J. Guard, W. Shibuya, K. Hiranaga, D. Domingo, L. Sablas,
J. Starr)
(Dissenting - W. Mardfin)
(Excused - B. U'u)**

Mr. Hedani: Motion is carried. Thank you.

Mr. Hart: Thank you.

Mr. Hedani: Thank you very much Chris. Director.

Mr. Hunt: The planning commission's next item involves Square Feet Management LLC requesting

a Special Management Area Use Permit for the Wailea Professional and Storage Center and related improvements on a 4.165 acre parcel located on Kalai Waa Street, TMK 2-1-008: 127 in Wailea. The file number is SM1 2008/0017. The planner assigned to this project is Danny Dias.

B. PUBLIC HEARING

- 5. SQUARE FEET MANAGEMENT, LLC requesting a Special Management Area Use Permit for the Wailea Professional & Storage Center and related improvements on a 4.165 acre parcel located on Kalai Waa Street, TMK: 2-1-008: 127 (portion), Wailea, Island of Maui. (SM1 2008/0017) (D. Dias)**

C. COMMUNICATIONS

- 1. SQUARE FEET MANAGEMENT, LLC requesting a Step 2 Planned Development Approval for the Wailea Professional & Storage Center and related improvements on a 4.165 acre parcel located on Kalai Waa Street, TMK: 2-1-008: 127 (portion), Wailea, Island of Maui. (PD2 2008/0003) (D. Dias)**

Mr. Danny Dias: Good afternoon Chairman Hedani, Members of the Commission. As stated this project involves the construction of two office buildings, four self-storage buildings and a possible large scale photovoltaic field on a property in Wailea. This property is located in the State Urban District. Community planned as Business and Open Space and zoned as B-2 Business and OS-2 Open Space. This property is also located in the Special Management Area and the Wailea Planned Development area.

I just want to briefly talk about permitting. As far as permitting is concerned, at this meeting there's basically three approvals being sought. First is the Planned Development Step 2 Approval and that includes everything proposed before you, the total of six buildings, the PV field and all related improvements. The second approval is the SMA permit and includes everything but the large scale PV field and the reason for this is basically SMA rules require that an SMA permit can only be issued for a permitted use and right now the PV field is proposed to be placed in the OS-2 Open Space portion of the property and right now that's not an outright permitted use and they need a County Special Use Permit. So the department encouraged the applicant to seek approval of the County Special Use Permit when they come back for Step 3 Approval which will probably take place in a few months. Lastly, is the commission's approval of a storage facility in the B-2 Business District. Storage facilities is not an outright permitted use, however, the code allows for businesses or business uses similar to those in the district with the commission's approval and the department feels that you know, a self storage facility is acceptable and is pretty consistent with other type uses in the B-2 Business District. So with that I will hand it over to Dean Frampton for a short, five, ten-minute presentation.

Mr. Dean Frampton: Thank you Danny. Mr. Chairman, Members of the Commission thank you. Just going to go through a quick power point presentation on this project. As you know, it's the Wailea Professional and Storage Center. Take a moment to tell you that John or Jack Kean from Square Feet Management LLC is the applicant. The architect is Mr. Steve Marlett from MC Architects. He's actually not with us today but his assistant here Mr. Dio Pilar. Stacy Otomo is the civil engineer. Bill Mitchell is the landscape architect. Our traffic engineer was Randy Okaneku.

The subject property is located in Wailea. You will see that this is the end of Piilani Highway. There's Wailea Ike and this is Kalai Waa. The properties on both sides of the property to the north and the south area vacant. Wailea Ekolu is right here on the makai side of the property. Wailea Fairway Villas is just makai and to the south. I want to point out that in the processing of our application and the processing of our application with the county during that time we did do extensive review and consultation with the Wailea Community Association as well as the owners association for Wailea Ekolu and Wailea Fairway Villas.

Just a little bit about the subject property. As I noted, the affected portion is owned by Jack Kean, Square Feet Management. It's identified by TMK 2-1-008:127. Existing use right now is temporary storage and there's actually an old house on there that's used as a base for Wailea Security.

State Land Use is Urban, community plan is commercial and open space and Maui County zoning is B-2, Community Business and Open Space. The county zoning is actually determined by the property's location within the Wailea Resort Planned Development. The subject property is also located within the mauka limits of the SMA.

I'd like to take a moment just to run you through the Wailea Resort Planned Development map. The latest version that was approved in July 2005 by the planning commission. I've highlighted here where the subject property is located and I'm just going to blow it up for you there. That's actually parcel 127 and our affected portion of the property is right there. That's our subject property. As you can see the area in blue is B-2 zoned, approximately three acres. The residual area surrounding the property approximately 1.6 acres is in open space.

Now I'm just going to run you through a couple photos of the subject property. This is Kalai Waa frontage looking north. Kalai Waa frontage looking south. You can see right here there's a little driveway here. The next few are going to be looking makai from that vantage point. This is across Kalai Waa looking mauka. Notice in the background the utility lines that crisscross this property. Another mauka view of the property crisscrossing utility lines. I mentioned just a moment ago there's the Wailea Security, the home used by Wailea Security as their bases. Another interior view of the property again crisscrossing utility lines. And at the very back portion of the property is just adjacent to the back corner of the property is a MECO Wailea substation and that will become important a little bit later in our discussion.

So I wanted to just talk a little bit about the project itself. It's designed to meet the back of house needs for the larger Wailea community. It will include neighborhood type services such as a postal shop, copy center, Laundromat, professional offices, etc. The project will include two, two-story commercial office buildings, four commercial storage buildings, landscaping and site improvements and eventually and hopefully a large scale photovoltaic field. I will note that the two-story commercial office buildings and the commercial storage buildings will be outfitted with PV to provide power for the storage and commercial operations.

I'm just going to brush on this really quickly. Danny mentioned that per the County Code self-storage was not a use that was originally included in the code. It was really wasn't a use at the time it was adopted. But the County Code for B-2 Community Business does allow for commission approval for similar uses. So we are requesting that. We will note that the planning commission has approved similar situations, similar B-2 zoned properties including Anchor Square in Lahaina, 4A

Rent a Space in Honokowai and Aloha Self Storage in Kihei.

The two office buildings will be connected by a drive thru archway second floor connection. Office building 1 will be approximately 12,000 square feet. Office building 2 approximately 28,000 square feet. There will be four storage buildings located on site. The square footages would be approximately 5,900 square feet for building 1, building 2 approximately 5,400 square feet. Building 3 will be two stories approximately 40,000 square feet and building 4 would be approximately 6,800 square feet of storage.

Here's the site plan here. I think you have that in your packet. This is the office building 1, office building 2, there's the archway connection point, this is self-storage building 1, self-storage building 2, a two-story large storage building and storage 4.

You also have the elevations before you as well. These were completed by Steve Marlett. There you can get an idea of what that archway is going to look like. This is the front elevation. This is the elevation looking south. This is the makai elevation if you would from the very back of the property and this is the property elevation from the Makena side looking north.

Wanted to take a minute just to kind of talk about the project itself and what some of the components will be and relative to impacts. A traffic impact analysis was completed for this property by Randy Okaneku. He's here and he's available for specific questions after the presentation. Upon project build out the TIAR estimated the project would generate approximately 71 trips in the morning peak hour and approximately 75 trips in the p.m. peak hour. The TIAR concluded that the project will not significantly impact the existing roadway network and as such no improvements are warranted. Nevertheless, the applicant has agreed to work with A&B Wailea as well as the DOT, State DOT to determine an appropriate fairshare cost contribution. But the TIAR does not state this but we feel is very important part of this project is that there will be traffic reduction from this project and ultimately this project will provide neighborhood services to the Wailea community and ultimately reduce the number of necessary southbound trips into Kihei by Wailea residents. The net result would be more options for Wailea residents to not drive rather to walk or bike for services within their own neighborhood.

Landscaping. I'm going to skip ahead to the landscaping plan and you'll note that there's a 40-foot wide landscape buffer along Kalai Waa Street consistent with the open space requirements of both the Wailea Planned Development area and the Wailea Community Association Design Standards. So right there, a 40-foot wide landscape buffer. The property will be extensively landscaped along the north and south boundary lines. But I say extensive and I want to be clear that water conservation was a key consideration in working out the landscape plan and more specifically the irrigation plan. The plan proposes drought tolerant, climatically adapted native landscaping. No turf grass will be planted. And watering will be completed entirely by drip irrigation, no overhead spray.

Want to take a moment to talk about the large-scale photovoltaic field that is being proposed in the mauka portion of the property. Its physical location in Wailea and its proximity to existing power lines and the MECO Wailea substation make the site an ideal candidate for PV energy production. Mr. Kean's currently working with Maui Electric in getting the necessary approvals and agreements to move forward with this plan. Assuming the PV field moves forward it's estimated the project may generate approximately 250 kilowatts. Here's another view of the, a mauka view, a schematic of

the PV field and the mauka portion of open space area.

You know, we've been talking with Danny about the permitting for this project. The project is a very straight forward project. It's office and storage in the front and PV in the back in the open space. The result is that it's a little bit confusing in terms of how the permits have to shake out. So what I want to do is quickly show you overall what approvals are required, the approvals we're requesting today and then the approvals we're going to come back and ask for at a latter date.

So just to be clear, I'd say the lower two-thirds of the makai portion of the property are the office and the storage components. They require Planned Development Step 2, SMA Major and Planned Development Step 3. The PV field in the mauka portion require Planned Development Step 2, Special Use Permit because its location in the open space, SMA Major and Planned Development Step 3 permit. So that's ultimately what's required.

What we're here requesting approval on today is Planned Development 2 for the office and the storage component and Planned Development 2 Approval for the project district, I'm sorry, the Planning Development Step 2 Approval and of course SMA for the lower component or the storage and office components.

What we will come back to you, the commission with assuming we have favorable review either today or at a later date would be Planned Development 3 Approval, Step 3 Approval for the office and the storage. We would also be asking for Planned Development 3 on the PV system. We would then be asking for a Special Use Permit approval for the PV system and then an amendment to this existing SMA to allow the PV system in the mauka portion. So it's a little bit confusing. Again, it's a straight forward project but the reason being was that the Special Use Permit is required for the open space and the process will require us coming back for Step 3 and at that time if we have favorable approval it will be Special Use Permit and an SMA. Okay.

At this time, I'm going to ask Stacy Otomo to just come up very quickly and address the drainage scenario at the submit property. At that point we're just going to have Jack Kean talk very quickly about what his goal is for this property and then we're open for any questions or comments that the commission may have. Thank you very much.

Mr. Stacy Otomo: Good afternoon Mr. Chair, Members of the Planning Commission, my name is Stacy Otomo. Just to run over the drainage very quickly. There's an existing drainage way that basically runs through the middle of the property. It crosses Kalai Waa with four 60-inch culverts. The plan, the drainage plan would include undergrounding this portion of the drainage way underneath the buildings and the parking area and as Dean mentioned we have 1.6 acres of open space and what we want to do as part of the drainage scheme is to utilize the open space to do retention on site. Basically these basins back here as well as the planting buffer in the front and what we would be able to accomplish is to actually handle all of the onsite runoff for a 50-year storm on the site.

Mr. Starr: It's for all 14?

Mr. Otomo: All four acres, 4.6 acres.

Mr. Starr: 14 cfs.

Mr. Otomo: That's correct.

Mr. Jack Kean: Good afternoon Commissioners. Thank you for hearing this. I wanted to add a couple things. One, it's probably obvious to several members here is that on the roofs of the buildings we're going to be adding the PV system as well. It will come close to matching the size of the rear portion. We don't have all the specifics because we haven't done the mechanical which there'll be a lot of air conditioning and so forth up on the roof but we will add PV on the buildings as we go.

The other thing I wanted to point out was regarding the open space. There's really two different types of open space at least in my mind. One is in 2005, when the planned development was adopted by the planning commission there was a mandate that 20% of the land would go into open space which is approximately 40,000 square feet. In one of the earlier photos that Dean showed you the one with the bubble it showed three acres of business and the balance is open space. And what that represented was when Wailea shuffles their zoning around, they only had three acres of business left so by default the difference between the 40,000 square feet and the net between three acres and 4.615 acres just went into open space. It wasn't for any particular preservation. It was more of a default thing. So what we did is we took the differential, the 30,000 square of additional open space and concentrated it into the rear where Stacy has shown some retention and then in our future application we intend to apply for PV which is right off of Maui Electric's substation.

What the vision of this center is is Wailea's a mature resort. It's down to a handful of parcels left to be developed and there is a need although it's not as a great now as when I started but there is a need for a certain amount of storage and sorts of uses within the resort that really are just used for the resort and this site traditionally had been used for a lot of these. It had been a nursery, a sod farm, they landed helicopters here, there had been the security guard, various containers have been stored there. Over the years it's had a long track record of a variety of uses. As far as the actual site and the issue of open space, it's been totally ravaged for different uses over the time. And anyway there's an obvious need for things when we consulted with some of the condo owners they confirmed what we realized are some of the older condominium complexes have a shortage of parking. Back in the day when parking was required at a 1.25 stall per unit, many of the early phases in Wailea were built as such. You see people attempting to keep their cars covered up in the parking lots, the associations would like them to park somewhere else. We can accommodate some of that. Same with boats that the resort has, small trailer boats. There's a variety of uses that in a mature resort need accommodation. Also, the hotels will be a consumer. They, not as much this year as last year or the year before, but from time to time you may see containers out in the parking lots of the different hotels. This is now an opportunity to get the storage in a uniform sort of place and so anyway the concept was it's as the resort is winding down that we're going to try to accommodate these and yet screen it out in the Wailea sort of fashion. We have a building going all the way across the front.

The market is slower that it was when I started this application. I plan on phasing this. First phase would be the screening out. The building across the front which right now there's a large bestill hedge for the most part across the property blocking out the activities that have gone on, but we would go in with the building across the front so that what is behind is sheltered from visibility. Anyway, that's the vision of the project and I'd be happy to answer any questions?

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

Mr. Starr: What we have is Exhibit 2, the site drawing. It's actually shown as being part of TMK 2-1-008:128 which is the large portion with the water tank on it. I assume that's a mistake and it's really part of 127, and has it been subdivided out or is it still - you guys are going to be part of the A&B parcel?

Mr. Kean: Good question. It has - the subdivision requirements have all been completed which had to do with some water requirements although the water tank is not on our property. All the improvements are done. I check with A&B Wailea frequently and I'm being told any month now that it should be done. They expect, honestly they expected it to be completed about 18 months ago. But I'm working with them on the completion.

Mr. Starr: Next question. Mr. Otomo said I believe that you'll be able to retain all I believe it's 14 and change cfs in a 50-year storm which is the pre and post development on site. I just want to be clear and if so, I would assume that staff would be starting to write that so we'll have it when the time comes.

Mr. Otomo: Stacy Otomo again. That's correct Commissioner Starr. It's 14.5 cubic feet per second.

Mr. Starr: And thank you for doing that and thank you for doing the photovoltaic.

Mr. Kean: You're welcome. I think it's an ideal location. One caveat with the photovoltaic is we can't utilize that much power. We do need the cooperation with Maui Electric and I'm sure everybody reads the paper there's a lot influx right now about putting power back into the grid. We're hoping we can do it and we're trying to negotiate it with Maui Electric.

Mr. Hedani: Commissioner Mardfin

Mr. Mardfin: I just want to make sure I understand the handout you gave us here. It looks to me like the first page is a blow up of Exhibit 11. The second page is blow up and in color of Exhibit 12 and the third page is a blow up and in color of Exhibit 10. Did I kind of get it right?

Mr. Frampton: I'll just double check the staff report very quickly.

Mr. Hedani: Any additional questions from the Commission? Commissioner Mardfin.

Mr. Mardfin: I'm looking at Exhibit 13 in the staff report and lets say Exhibit 10 in the staff report and for that back portion I see two different things. Either I see photovoltaic and no trees or a see a lot of trees and no photovoltaic. If you do the photovoltaic will it just be a stark plantation of voltaic or will there be trees there also?

Mr. Frampton: I'll ask Bill Mitchell to address that second part of the question. The first part of the question, Exhibit 10 was a little bit of an outdated. That was our original landscape plan when we were still in the stages there wasn't a high degree of certainty about whether or not the panels could go in. So what we did was just basically throw some general trees back in that area. But as you can see that figure has since been revised and I would like actually Mr. Mitchell to address the second part of your question regarding what will be back there.

Mr. Bill Mitchell: Thanks Dean. My name's Bill Mitchell. I'm the project landscape architect. In the event that the solar panels are utilized in the detention basin we would maintain landscaping along the edge of the parking area as per Maui County Code for off-street parking and loading. The trees obviously within the basin would have to be relocated not to obstruct the PV system.

Mr. Mardfin: So Exhibit 13 incomplete in terms of showing trees along the probably makai border.

Mr. Mitchell: Yeah, that did not reflect the current landscape plan. Yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: Who owns the property mauka of the subject lot?

Mr. Kean: I believe that's a remnant of what was to be the 670 project. There's a triangular piece, you can see between the extension, the proposed extension of Piilani Highway and the property there's this triangular piece which is part of the 670 structure. I don't know that that piece has any particular plans. Right above that is the project that has been proposed for many years.

Mr. Hiranaga: Just a question for staff.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: When you do the 500-foot radius for notification do you notify neighbors who are outside of the SMA area also? So whoever owns that property receive notice?

Mr. Hunt: The distance is based on footage irregardless of any zoning or overlay district.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, just for Commissioner Hiranaga, that's part of a 568 acre piece, WCPT2W Land Associates.

Mr. Hedani: Additional questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: I'm just wondering how wise is it to cover a natural drainage channel? There's no opportunity for debris coming from above blocking those I guess pipes which would then cause the water to overflow the system.

Mr. Hedani: Mr. Otomo.

Mr. Otomo: Commissioner Hiranaga, Stacy Otomo again. The drainage actually comes down here. We're going to keep this portion open right here. Any photovoltaic that's implemented in the back of the property would be elevated substantially above the ground. I think there was a previous slide that was shown. So it wouldn't interfere with any kind of flow within the drainage way.

Mr. Hiranaga: How about debris from up above clogging the drainage way?

Mr. Otomo: There would be stands for the photovoltaic panels themselves, but we haven't gotten to a specific design but it will be such that it wouldn't affect the drainage way.

Mr. Hiranaga: No, I'm talking about like trees coming down the channel from above. Would that be - there's no concern of that possibly blocking the underground channel mouth?

Mr. Otomo: Well, what we would do right at the inlet structure of the drainage system is put some kind of grating on there so in terms of physically getting into the box culvert, you know, that will protect it from doing so.

Mr. Hedani: Any additional questions for the applicant? Director Hunt.

Mr. Hunt: Mr. Kean.

Mr. Kean: Yes.

Mr. Hunt: The Kihei site elevation on A1, is that a wall that's just off the property line or is that buildings behind it or?

Mr. Kean: The concept is to make it look like a wall. It will be ultimately the back of storage facilities. There's a page 1 on your handout has a long thin basically designed to be storage lockers with roll up doors and the back is made to look like a wall. And the idea behind this project was that it - it is in Wailea Resort and we're trying to screen it out and have it consistent with the neighborhood and we met with Wailea as Dean mentioned.

Mr. Hunt: Has there been any discussion about softening that wall. I mean, frankly in Wailea, ...(inaudible)... pretty high standard. I guess my opinion is this one's falling a little short.

Mr. Kean: Yeah, Wailea actually given what there is, there's a field of power poles there and some brush and given what there is they like it better than what they have. On the south side, and Dean mentioned that that's a vacant lot. It actually has a warehouse and a fueling station and some containers. I think it's owned by Golf BC and it's kind of been the headquarters for the resorts back of house, not for individuals, but anyway, that's what's on that side. And that is how we're going to feed the power in. We're trying to consolidate a series of power poles that go all over this property. There's really three different sets. We'll try to consolidate them on the south side and then drop underground before we get to the front of the building trying to hide everything. But as it stands there's a lot of above ground power because of this large substation.

Mr. Hunt: So on the Kihei side elevation the Wailea Association is okay with essentially having a blank wall with some landscaping?

Mr. Kean: Yes, and we have a 15-foot area there although as Dean pointed out we were sensitive to the conservation of water so Bill could maybe give you a little information as to what we was planning.

Mr. Mitchell: This elevation doesn't reflect but we're going to have a continuous hedge down that whole side, it's 8 to 10-foot oleander hedge on drip irrigation. They're showing, accurately showing the trees but it doesn't really show articulate that the continuous hedge both on the north and south

boundaries on the blank wall sides.

Mr. Hunt: Thank you.

Mr. Hedani: Bill, I shared the Director's concern. What you're telling us is that from the Makena side and the Kihei side elevation what you're essentially going to see is an oleander hedge?

Mr. Mitchell: That's correct. You know, similar to what you see along Wailea Alanui Drive breaks it about 8 to 10 feet ...(inaudible)... just let it go.

Mr. Hedani: Okay. Because I had the same comment about the buildings.

Mr. Mitchell: No, we agree. Absolutely, yeah.

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

Mr. Starr: Yeah I'm confused. Is that hedge going to be on the road frontage side or is that - why not something on the road frontage side either ...(inaudible)... or a hedge there?

Mr. Mitchell: We've got that 40-foot buffer on the road frontage side will be heavily landscaped. We don't have a continuous hedge but we have clusters of trees and shrubs and native plant material and drip on that side. That side's actually the easiest one to deal with because we have enough width to actually articulate some things happening.

Mr. Starr: So we won't be looking at the -

Mr. Mitchell: No, no, ideally you really won't see it from the road.

Mr. Hedani: Any further questions for the applicant? I have one last question. From the perspective of any proposed future extension of Piilani Highway above the property. Will there be any makai views toward the ocean that would be impeded by the project?

Mr. Kean: There is quite an elevation change. To say that there wouldn't be any view, I haven't walked that whole section. I mean, you can't see when you do walk it's covered with kiawe and grass right now and if you walk you can't even look back. But it does slope up quite a bit in that area and there is the MECO power station on the Makena side. You'd have to look through all that stuff before you even saw our building. So there's a lot going in. And plus, because it is a major station there's a lot of power lines going in and out that would be on the mauka side of our project.

Mr. Hedani: I'm not that concerned, I don't even know that the Piilani extension is ever going to happen within my lifetime, but at some point in time I'm just questioning whether or not there's a spectacular view that's going to be wiped out by the construction of this building.

Mr. Kean: You know, at the rear of it, grade wise we're really at about one-story height coming into the full elevation at the rear. It does slope up. In fact it's one of - if you notice on those sidewalls that we were just looking at for landscaping that wall terraces down because the buildings have to terrace down because there is a lot of fall. So by the time we get to the back it's not the full two story that you see on the street side, it's more like a single story at the rear.

Mr. Hedani: What is the lineal distance between this property and the proposed extension of the highway?

Mr. Kean: We can kind of guess.

Mr. Hedani: Just a rough idea.

Mr. Kean: Good question. It does change because it's angular. I would say that's on one end it's - on the closer end which would be the Kihei side, that would be maybe 250, 275 feet and on the other side 300 plus to the right of way, not even to the road. I assume that line represents the rough right of way. More like 300, okay.

Mr. Hedani: Thank you.

Mr. Kean: Sure.

Mr. Hedani: Any further questions for the applicant? If not, we'd like to open it up for public testimony.

a) Public Hearing

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

b) Recommendation

Mr. Dias: Okay, just to be consistent with the changes that we've been making to the conditions today. Before I get into the recommendation we would like to strike Condition No. 4 and add to Condition No. 11 after the word, "permit," "and with preliminary plans received by the Department of Planning on July 16, 2008."

With that, the Maui Planning Department recommends approval of the proposed project and recommends 13 standard conditions along with 11 project specific conditions and I assume I don't have to read all of them. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report and recommendation prepared for the July 14, 2009 meeting as its findings of fact, conclusion of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the planning commission.

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

Mr. Starr: Yeah, did you add the wording about the retention of a pre and post development flows?

Mr. Dias: No, I can do that.

Mr. Starr: On a 50-year event.

Mr. Dias: Okay, so add a Condition No. 26 that says, that the applicant -

Mr. Starr: Shall retain on site.

Mr. Dias: Shall retain on site -

Mr. Starr: All pre and post development drainage flows originating on site. I don't think you want it retaining of off site.

Mr. Dias: Originating on site. Okay.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Just for your info the elevation change from the front of this property to the proposed Piilani Highway it's about 50 feet.

Mr. Hedani: 50 feet. Any additional questions for staff on the recommendation? What's your pleasure? Commissioner Starr.

Mr. Starr: Move to approve as recommended.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Commissioner Starr.

Mr. Starr: Since subdivision has not taken place is that any concern, do we need add anything in light of that fact?

Mr. Hedani: Mr. Dias.

Mr. Dias: I think we would before we bring you know, the Planned Development Step 3 Approval we would like to see that subdivision, the applicant wants to address that.

Mr. Kean: Excuse me, we considered this and A&B and myself have an agreement that if for some reason subdivision which we believe is happening any time now doesn't occur that we can deal with condominium documents and so I can severed as an individual plot to be built on.

Mr. Hedani: Any additional discussion? Danny what are we approving as far as the three approvals that you're seeking? Is it all wrapped into one ball of wax or what are we doing?

Mr. Dias: Okay, if you're adopting the recommendation basically the recommendation includes approval of the entire project everything that was before you, approval of a Step 2 Approval for everything, SMA approval of everything but the proposed photovoltaic field and also the commission's approval of allowing storage facilities in the B-2 Community Business District.

Mr. Hedani: We're not covering agenda Item C-1 simultaneously are we?

Mr. Dias: Agenda Item C-1, okay, I believe you are, I guess because -

Mr. Hedani: So this is consolidated?

Mr. Dias: Yes.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'm a little uncomfortable with you know, this package of approvals without the subdivision. I'm a little concerned that we may in effect granting some entitlements to the rest of that TMK. I would really like to make it subject to subdivision within that in mind, I'd like to offer an amendment that these approval shall be subject to subdivision into a - of that, 2-1-008:127 into a separate - how many acre parcel? Four acres -

Mr. Dias: 4.16

Mr. Starr: Into 4.16 acre parcel.

Mr. Hedani: 165.

Mr. Dias: Okay, if I could respond to that and then let the applicant respond to that?

Mr. Hedani: Mr. Dias.

Mr. Dias: I think basically our thought process was the applicant can't do anything without Step 3 Approval, nothing at all. So we're hoping that the subdivision will take place at that time and regardless of what approvals they get today they can't do anything until they come back anyways. And if I can let the applicant add a comment?

Mr. Frampton: If I may Mr. Chair? I understand the concern that you've expressed Mr. Starr. We have submitted drawings and we are actually conditioned that only approval that you're granting are the plans that you've actually, that we've submitted and approved. So I can't understand - I don't see the entitlements being transferable in this case. I mean, we submitted a site plan and we need to come back for Step 3. I don't understand the transfer situation that you're referring to.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I would like to offer that amendment if anyone seconds it because -

Mr. Hedani: You want to restate your amendment?

Mr. Starr: Yeah, these entitlements are subject to subdivision and apply to a new - to the resulting 4. somewhat acre -

Mr. Kean: I'm okay with that. I feel comfortable that it's going to happen some day.

Mr. Starr: Honestly I'm not concerned with Mr. Kean. I'm concerned with granting entitlements outside of you by doing this.

Mr. Kean: Fair enough and we will get it subdivided. I'm fine with that.

Mr. Hedani: Mr. Dias.

Mr. Dias: Okay, so -

Mr. Hedani: Is there a concern about subdivision timing not occurring before Step 3 is ready to proceed or no?

Mr. Dias: I don't have a concern with that but we can add a condition. Condition No. 7 that would read, "that the project shall not be - you want to help me out here?"

Mr. Starr: That the entitlements granted herein are subject to the parcel being subdivided into a new 4.

Mr. Hedani: 165.

Mr. Starr: acre parcel and these entitlements shall apply to that parcel.

Mr. Dias: Okay.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Add a Condition, "that the entitlements granted herein are subject to the parcel being subdivided into a new 4.165 acre parcel and these entitlements shall apply to that parcel.
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, S. Sablas)
(Excused - B. U'u)**

Mr. Hedani: Carried. Any further discussion on the main motion? All those in favor of the motion to approve as amended, signify by saying aye. Opposed nay.

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

**VOTED: To Approve the Special Management Area Use Permit and the Step 2 Planned Development with Conditions as Amended.
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, J. Guard, W. Mardfin,
D. Domingo, L. Sablas)
(Excused - B. U'u)**

Mr. Hedani: Carried. Thank you.

Mr. Dias: Thank you.

Mr. Hedani: Director.

Mr. Hunt: Need some advice from our Corporation Counsel. The next item technically was the Step 2 but we just approved that so can we simply that item.

Mr. Giroux: As long as, he combined it on the record.

Mr. Hunt: For the record, the previous approval also involved Communication Item C-1 on your agenda.

Mr. Starr: Mr. Chair?

Mr. Starr: Just want to make it clear that the intent of the original motion was for that as misguided as it seems in hindsight.

Mr. Hedani: Right. Director.

Mr. Hunt: The next item is new business. Mr. Mike Yamamoto of McDonalds Restaurants of Hawaii, Inc. requesting comments on the Draft Environmental Assessment in support of the Special Management Area Use permit application for the proposed Lahaina McDonalds Restaurant reconstruction for the demolition and reconstruction of the Lahaina McDonalds Restaurant addition of a double drive thru land and landscaping, parking and related utilities improvements at 885 Waivee Street, TMK 4-5-001:19 in Lahaina. The file numbers are EA 2009/0009 and SM1 2009/0004. The planner assigned to this Kurt Wollenhaupt and I'm not sure if you've been introduced to the planning commission, have you?

Mr. Wollenhaupt: I'm new. This is my first time. So we shall hopefully beg the indulgence of the commission in case if there are any improprieties in the way we present this, but hopefully this will be a relatively smooth sailing today.

Mr. Starr: Welcome.

Mr. Wollenhaupt: Thank you.

D. NEW BUSINESS

- 1. MR. MIKE YAMAMOTO of MCDONALD'S RESTAURANTS OF HAWAII, INC., requesting comments on the Draft Environmental Assessment in support of the Special Management Area Use Permit application for the proposed Lahaina McDonald's Restaurant Reconstruction for the demolition and reconstruction of the existing Lahaina McDonald's Restaurant, addition of a double drive thru lane, and landscaping, parking, and related utilities improvements at 885 Waivee Street, TMK: 4-5-001:019, Lahaina, Island of**

Maui. (EA 2009/0009) (SM1 2009/0004) (K. Wollenhaupt)

Mr. Kurt Wollenhaupt: I think there's been a technical issue with the CD regarding the project from the consulting firm so I'm not sure if -

Mr. Hunt: You could introduce the topic for them and then if we still need time we could take a break.

Mr. Hedani: Two demerits Kurt, proceed.

Mr. Starr: I don't think it was his problem.

Mr. Wollenhaupt: Thank you. Good afternoon Honorable Chairperson and the other members of the Maui Planning Commission. The issue before you today as was indicated by Director Hunt an issue to look at the Draft Environmental Assessment for the proposed Lahaina McDonalds. The proposal is to demolish the current McDonalds and to reconstruct a McDonalds Restaurant to provide facility upgrades at the site in Lahaina to meet new corporate design standards.

The new facility will be 4,635 square foot restaurant which will replace the existing 4,274 square foot establishment on an area of approximately .51 acres. By use of the land designations it's zoned and the state land use is Urban, the community plan is Business and Commercial, the county zoning is B-2 Community Business District and it's in the SMA and also the Lahaina National Historic Landmark District. The last being the reason that we're here today for the Draft Environmental Assessment is because this project is indeed located within the National Historical District in Lahaina. Consequently that triggered Chapter 343 for an environmental review and that is what we're here today to get the commission's comments on the Draft Environmental Assessment that you've been looking at over the past couple of weeks.

Procedural matters were followed according to state law and the department has reviewed the draft EA document and has sent it to the Department of Health and Office of Environmental Quality Control and we are anticipating a Finding of No Significant Impact. Consequently, the applicant has requested comments from the Maui Planning Commission today on the draft EA. There is to be a presentation that will be forthcoming from Munekiyo and Hiraga by Ms. Skogg.

Mr. Hedani: Mr. Starr.

Mr. Starr: Considering that all of us commissioners sent hours going through this EA document with a fine tooth comb, can't we just proceed with comments?

Mr. Hedani: Proceed.

Mr. Starr: Okay, I think I'll start with Mr. Neiss since he's always fun to attack. Actually it's a nice looking project Jim. I want to know what you're planning to do to keep it energy efficient. I assume it's air conditioned space.

Mr. Hedani: Jim, can you state your name for the record please?

Mr. Jim Neiss: Yes Mr. Hedani. Jim Neiss, Maui Architectural Group. And to address some of the

energy comments I think I will have Mr. Mike Yamamoto come up because McDonalds does have considerable progressive thought in their own sustainable approach to these new restaurants. The building envelope of course will be well insulated. It's a concrete block core with a historical wrapper if you will around it to blend well into the neighborhood. The roof system again will be thoroughly insulated just looking at a product that Mike Conway has been promoting here on the island called Isonene which is a very efficient insulator. But let me bring Mr. Yamamoto up here to discuss how McDonalds approaches their new projects.

Mr. Hedani: Mr. Yamamoto.

Mr. Mike Yamamoto: Hi, good afternoon. I'm Mike Yamamoto. I'm the area construction manager for McDonalds. Good afternoon. To your question Sir, starting at the roof, our air conditioning units are we use scroll compressors which are highly efficient. It's about 11.2ER rated so it's efficient AC units. Our roofing system is a single-ply energy star rated roof system which decreases our heat load into our building by about 10%. Then going down into our restaurant, our gas fryers are at least 85 to 90% efficient. Our water heater is like 95 to 97% efficient. We use this ream sealed combustion vortex water heater. It's highly efficient. In fact the ...(inaudible)... gases are so low in temperature that you use PVC pipe as the exhaust. So it's a highly efficient. In terms of the dining room, all of our lights in our dining room are what we call can light using CFL. So only our accent lighting which is pendant lights may not be CFL. In kitchen we'll use 4-foot fluorescents; it's the efficient T-7 or T-9 lamps.

Mr. Starr: T-7 not T-8?

Mr. Yamamoto: T-8, I'm sorry, lamps. So that's what we've done to try to conserve on energy and to make the environment a better place. As Mr. Neiss said our building is a CMU building. All the cells are grouted solid so it's highly insulated and on top of that we're putting on hardy board on the outside so it's a double insulation.

Mr. Starr: So the surface is hardy plank?

Mr. Yamamoto: Yeah, hardy plank to look like T1-11. Does that answer your question Sir?

Mr. Hedani: Any additional questions for the applicant? Comments on the SMA assessment? Commissioner Hiranaga?

Mr. Hiranaga: I would like them to look at improving their storm water drainage retention capacities on site. If you look at the feasibility of retaining the entire 1.86 cfs on site, and if not, reasonable then at least filtering whatever runoff that leaves the property since this property is located very close to the shoreline.

Mr. Hedani: Mike.

Mr. Mike Munekiyo: Thank you Mr. Chair. Commissioners, my name Mike Munekiyo. We prepared a draft EA on behalf of McDonalds. May I ask our civil engineer because I think he has the responses that Commissioner Hiranaga is asking for?

Mr. Hedani: Sure. If you could state your name for the record?

Mr. Conrad Shiroma: Hi, Conrad Shiroma, Kim Shiroma Engineering. We're the civil engineers for McDonalds. When our drainage study was conducted we did reduce the hard surface areas and in turn there will be a reduction in flow. In anticipation of coming in for the SMA we are filtering the runoff going into the drainage - into the Papalaua drainage system. We will be filtering it out.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'd like you to look at retaining more on site. Because even though filtered water is better than unfiltered water, it's preferable not to have fresh water running into the ocean.

Mr. Shiroma: We are reducing what is going off right now.

Mr. Hiranaga: I understand that. I read the report.

Mr. Hedani: The request basically is that you consider measures to increase the retention on site.

Mr. Shiroma: We can look into different ideas. I'm going to have to go back into the soils report and see what can be done in terms of retention.

Mr. Hiranaga: That's what I'm asking for you to look at it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: One way that would probably be - some pervious surfaces. It doesn't even have to be most of the parking lot but if you do walkways across, walks in you know, say a colored contrasting pervious surface it will look good and you can move the water to some of that. So please look at different alternative means of reducing the runoff.

Mr. Shiroma: Okay.

Mr. Hedani: Any additional comments on the Draft Environmental Assessment? Okay, thank you very much. Commissioner Mardfin.

Mr. Mardfin: I was just going to say I looked at the archaeological and cultural practices and it seemed like nothing would be fundamentally changing there so that cares of my usual concerns.

Mr. Hedani: Any additional comments? Commissioner Shibuya.

Mr. Shibuya: I just had the drainage part here on page 36, the drainage; you're saying that some of the drains would be draining toward the roadway. Is that just for landscaping or is this natural runoff.

Mr. Shiroma: That's just the existing landscaped area that there's a five-foot strip along the sidewalk area that right now is draining that way that we're going to retain as such.

Mr. Hedani: Can you state your name for the record again?

Mr. Shiroma: Conrad Shiroma.

Mr. Hedani: There's a poor secretary that's going to have to transcribe every single word we say.

Mr. Shibuya: And also I had a concern about the windows. The windows would be double-paned and/or energy efficient panes?

Mr. Hedani: Mr. Neiss.

Mr. Neiss: Yes, absolutely. I mean, it's going to be required by the energy code. This building will conform to the county's energy code which is pretty restrictive.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Any further comments on the draft EA? Okay, if not, there's no - I'm sorry, Director Hunt.

Mr. Hunt: Mr. Neiss, you did the architecture.

Mr. Neiss: Yes.

Mr. Hunt: We're supposed to keep our personal comments out of these things and I'll probably regret this if I'm ever nominated to the Supreme Court but I would like to say this is a huge improvement over the existing building. I've always considered the existing building somewhat of an eyesore and incompatible with the Lahaina neighborhood. So I just wanted to thank you.

Mr. Neiss: Thank you. You know, you look at a corporation like McDonalds where they had a set piece, these red roof things, but now in communities all across the country they've been far more sensitive to the local environment and I think really the corporation deserves as much credit as we do.

Mr. Hedani: Okay, there's no action required by the commission on this particular item other than providing comments on the draft EA and acting as the accepting authority for the draft EA. So, with that, thank you very much. Mr. Mardfin.

Mr. Mardfin: Mr. Chairman, I'd like to ask whether we should retain this draft EA for the future or should we throw it away and they'll give us a new one.

Mr. Hedani: It's up to you Ward. I'm going to toss mine. They're going to give me a brand new one later. Director.

Mr. Hunt: Your next item involves Hale Hui Kai AOA requesting comments on the Draft Environmental Assessment prepared in support of the Community Plan Amendment from Single Family to Hotel to conform to the existing hotel use at 2994 South Kihei Road at TMK 3-9-004: 024 in Kihei. The file number is EA 2008/0009 and Jeffrey Dack is the planner assigned to this project.

2. HALE HUI KAI AOA requesting comments on the Draft Environmental Assessment prepared in support of the Community Plan Amendment from Single Family to Hotel to conform to the existing hotel use at 2994 South Kihei Road, TMK: 3-9-004: 025, Kihei, Island of Maui. (EA 2008/0009) (J. Dack)

Mr. Jeffrey Dack: Good afternoon again. The proposed action involves a request for Community Plan Amendment from Single Family to the Hotel land use designation. No development is proposed at this time. The application for community plan amendment has been requested in order to achieve consistency between that proposed community plan designation and the existing hotel zoning as well as the related use on the property.

The department has reviewed the Draft Environmental Assessment document and finds that pursuant to OEQC's guidelines the document meets the requirements of a draft EA. Earlier today I placed on the table for each commissioner a brief packet which includes correspondence between the Department of Planning and the Land Division of the Department of Land and Natural Resources. After the preparation of the draft Environmental Assessment and during the department's review it came to light that there had been shoreline protection measures added immediately adjoining the northerly portion of the western site boundary following Hurricane Ewa in 1982. Although this was not directly related to the request for a community plan amendment and the draft Environmental Assessment the department felt it was important to publicly disclose the situation and related communication at this meeting. A permit for the work was requested for the work done in 1982 after the hurricane was requested by the Association of Apartment Owners in 1982 and 1983 but it doesn't appear to have ever been concluded.

Also included in this brief packet placed at your places at the table are a diagram of an area gunite work that was done at that time as well as a statement from the AOA's engineers and ...(inaudible)... portion of a 1983 certified shoreline survey.

In that same packet you'll see the recent letter from the Department of Land and Natural Resources states that the shoreline protection measure was built encroaching in the state beach reserve needs to be removed. This matter is within state jurisdiction and no county action's required. The AOA will be meeting with DLNR separately but in parallel with the county EA and community plan amendment processes to resolve that matter.

The department is requesting concurrence by the Maui Planning Commission on filing the draft EA and an anticipated FONSI determination with OEQC for publication. The applicant's requesting comments from the commission on the draft EA at this time and as I understand it have a very brief presentation they'd like to make.

Mr. Mark Roy: Thank you Jeffrey. Good afternoon Chair, Members of the Maui Planning Commission. My name is Mark Roy with Munekiyo and Hiraga. I'm here today representing the applicant, the Hale Hui Kai AOA. We had prepared a presentation however, in the interest of brevity I know we've only got a short time remaining, I just wanted to hit on some key I think historical facts regarding this community plan amendment request.

Hale Hui Kai is located on South Kihei Road. It sits adjacent to Keawakapu Beach and is one-acre parcel of land. It's an existing condominium that was constructed over 30 years ago now, I believe in 1971. So it's been existing on the site for over 30 years and at the time it was developed in

accordance with both county zoning which was and still is till this day hotel and was also developed in accordance with a document which predates the community plans today which was referred at the time as the 1970 Kihei Civic Development Plan. And that development plan actually designated this site in addition to the Sarento's property which is immediately to the north of Hale Hui Kai property as hotel parcels of land. Much of the Kamaole area to the north beyond the boat ramp area was also designated hotel.

At some stage during the community plan update process and preparation process for the Kihei-Makena Community Plan in 1985, the update was in 1998, the process resulted in a single family designation being given to this particular property. We believe this mapping error may have occurred as a result of assigning future single family use designations to the beach lots immediately to the south of the Hale Hui Kai property many of which had not been developed at that time.

So basically they're just essentially trying to reestablish consistency between the land use designations for the property. There are no development plans at this time for the property and you know, as the property ages further and becomes over 30 years old, they'll be seeking to undertake repair and maintenance at the property and would be seeking the applicable permits to do so which would require the AOA to demonstrate conformity and consistency with their designations for land use one of which would be the community plan designations. So with that, I'll close presentation to you this afternoon and thank you very much.

Mr. Hedani: Questions from the commission? Comments on the draft Environmental Assessment? Commissioner Mardfin.

Mr. Mardfin: I'd like to ask Jeffrey. I think you were speaking about this letter we got from DLNR Land Division and would you - I kind of missed some of it I think. Is this going to be - this is talking about them unauthorized seawall, irrigation, induced vegetation encroachments and so forth. What's the status of this with respect to the EA?

Mr. Dack: It was - the situation was discovered after the draft EA had been prepared so it's not addressed within the draft EA but we wanted to bring it to your attention even though it's being - it is being addressed by the applicant and by DLNR in separate parallel tracks to the draft EA and the community plan amendment. So you don't have any obligation with regards to it and you won't and the county doesn't except we wanted - we felt it was something that given the history of the site there should be a disclosure done and that's really all I was doing was a disclosure.

Mr. Mardfin: So probably the final EA would be addressing this issue?

Mr. Dack: Yes, the final EA would have to address it to some degree as a comment having been made on the draft, yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Any additional comments? Commissioner Starr.

Mr. Starr: Yeah, I would like to have a full set of options and alternative actions regarding curing the issues with DLNR and also examining removing the seawall and trying to restore the shoreline there.

Mr. Hedani: Additional comments on the draft EA? Commissioner Mardfin.

Mr. Mardfin: No, sorry.

Mr. Hedani: Any additional comments? If not, we don't need to take any action on this beyond accepting the draft EA and providing comments and look forward to receiving the final EA on this matter. Thank you very much. Director.

Mr. Mardfin: Mr. Chairman?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I would ask the project people you intend to just put a short addendum to this so we should hang onto it or are you going to give us a whole inch of documentation?

Mr. Roy: As part of the Chapter 343 process Commissioner, we'll be preparing a final Environmental Assessment so it will be a separate document which will be a little bit more extensive.

Mr. Mardfin: So I don't need to hold onto this?

Mr. Roy: No you don't.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Mr. Chair, it's a quarter to 5:00 p.m. I have to leave. I know I have a lot of question and concerns regarding our next item on the agenda. If the Chair and Members would allow, I would love it if we could defer that item till we can give it a thoughtful inquiry that it requires and just finish up our housekeeping items?

Mr. Hedani: The applicant has waited all day for this presentation and they've been present since 9:00 this morning so if there's no objection, I'd like to at least hear what they have to say for the remaining time that we have.

Mr. Starr: Will we be adjourning at 5:00?

Mr. Hedani: We should be adjourning at 5:00.

Mr. Starr: Okay, if we're going to adjourn at 5:00 I'd be happy to hear them out.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I did want to make a special request to be able to do what is this, agenda G, Director's Report Item No. 2, Planning Commission Projects and Issues. I wanted an opportunity to discuss the Deputy Director's letter dated June 29, 2009 regarding the Hawaii Congress of Planning Officials Conference. I'm hoping maybe five minutes would all be necessary.

Mr. Hedani: Okay.

E. UNFINISHED BUSINESS

- 1. KAA NAPALI RESORTS AOA requesting a Special Management Area Use Permit for Kaanapali Alii Resort Improvements consisting of a) improvements to existing drainage facilities; b) addition of a 1,200 sf swimming pool and a 155 sq. ft. keiki pool as well as a new pump station; and c) the addition to the 2nd story to the administration building to create a fitness complex at 50 Nohea Kai Drive, TMK: 4-4-008: 022, Kaanapali, Lahaina, Island of Maui. (SM1 2008/0012) (T. Abbott) (Public hearing was conducted on June 23, 2009.)**

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: We're not going to be able to take action on the next item. I really feel we'd be better off to defer and let them give the presentation when we're ready to give it a real hearing. I would assume that the applicant would agree that they would like to be able to have the time to do it properly.

Mr. Hedani: Does the applicant have any comments? Mr. Hart.

Mr. Chris Hart: Chris Hart, Chris Hart and Partners representing the applicant also with me is Jeff Halpin from Classic Resorts. You know we did comply with the request by the commission at the last meeting on June 23rd and we did transmit the application report together with two transmittals of additional information that we tried to address the concerns of the commission brought up at that June 23rd meeting. We were hoping that that information would be sufficient and that there would be brief opportunities to discuss the project and answer any questions. So we're not anticipating that it would take very long. And we were not anticipating essentially that we wanted to defer.

Mr. Hedani: Okay, can we - Jeff do you have a staff member that's working on this project?

Mr. Hunt: The staff planner assigned to it is Thorne Abbott, he's not here. We could try and allow the applicant to present their information. Again, the commission already heard this back in June so the applicant could be afforded an opportunity to respond the concerns that were expressed on June 23rd and hopefully our staff planner would show up by then or Jeffrey Dack, his supervisor and myself can pitch hit.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, we've been here almost eight hours Mr. Chair. You know, I'm sorry that the applicant, you know, the time is what it is, but we've been working all day. I really think that this matter should be deferred because I also want to discuss the item that Commissioner Hiranaga mentioned and I do have a lot of concerns with this project and will not be willing to just rubber stamp it really fast. I don't think that that's in the cards.

Mr. Hedani: If you would like to defer the project for a future meeting you should make a motion to that extent.

Mr. Starr: I move to defer till the department is able to reschedule it.

Mr. Hedani: Is there a second?

Mr. Hiranaga: Second.

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

Mr. Mardfin: I'm perfectly willing to vote in favor of the deferment because I think it's right but I'm a little concerned you know, if they get put at the end of an agenda next time the same thing potentially could happen. Is there a way to deal with it earlier in the day so that they're certain to get it dealt with?

Mr. Hunt: By law we have to notify public hearing items and so we schedule those first but we could make this the first of the none public hearing items and In all likelihood it would get addressed. The other thing is the body could be a little bit more expeditious.

Mr. Hedani: Okay, does the commission have any particular questions that have not been addressed in the SMA document that has been provided to you in the interim which is what you requested that still needs to be addressed? Commissioner Hiranaga.

Mr. Hiranaga: The beach parking. There's signage there I can't read it but I guess it notifies the public that that's beach parking?

Mr. Hart: The beach parking sign that was shown in the -

Mr. Hiranaga: Photos. I can't read the verbiage but I'm assuming it notifies the public.

Mr. Hart: It's a standard county beach parking notice sign.

Mr. Hiranaga: And you have policing policy to insure that non beach users are not using that, you know, like employees are using that parking?

Mr. Hart: It's basically secure. There is. Yes.

Mr. Hiranaga: That's my only question.

Mr. Hedani: Any other questions for the applicant? Any further discussion on the motion to defer? Ready for the question? All those In favor of deferral signify by raising your hand. Opposed same sign. One, two. Can we get that again? Motion to defer. One, two, three, four, five.

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

**VOTED: To Defer the Matter to the July 28, 2009 Meeting.
(Assenting - J. Starr, K. Hiranaga, J. Guard, W. Mardfin, W. Shibuya)
(Dissenting - D. Domingo, L. Sablas)
(Excused - B. U'u)**

Mr. Hedani: Sorry Chris.

Mr. Hart: Okay.

Mr. Hedani: Spent a lot of time here today but we like seeing you around.

Mr. Hart: I guess. So are we talking about July 28th?

Mr. Hedani: Director, I know there's one regular meeting that's going to be superceded by our General Plan I believe, right?

Mr. Hunt: Your next meeting is July 28th. We could if you defer to that meeting then we don't have to notify. So that would be our suggestion.

Mr. Hedani: Commissioner Guard.

Mr. Guard: I think July 28th there's a lot of TVR, B&B applications.

Mr. Hunt: B&B, no TVRs.

Mr. Guard: Okay, there's no way to let these guys go at 9:00 or anything like - we got an amended agenda for today.

Mr. Hedani: We'll try to schedule them for the front of the agenda for that day.

Mr. Hunt: We'll try and put them in at the first of the Unfinished Business. Again, you've got some other unfinished business.

Mr. Guard: That's what they were today.

Mr. Hunt: Those people are going to come and ask to be prioritized also.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I would suggest that it go to our first August meeting and then put it at the very beginning of the agenda.

Mr. Hart: Can I comment on that? You know, we got into this situation because information was not transmitted regarding the project. We worked diligently to prepare all the information that was requested of us. It was transmitted in a timely manner to the commission for this meeting. We've done that. You know, there is a window of opportunity that the applicant has for the construction of this project. It is a shovel ready project that they want to proceed on. And they just won't be able to do that if we cannot do this in the month of July. It's just the way it is.

Mr. Hedani: Okay. Director, do you have a recommendation for scheduling?

Mr. Hunt: I would recommend you defer specifically to July 28th and we'll try and be, all of us expeditious in our time. There are four B&B applications but three of them are merely SUPs and

you folks have dealt with those before. I don't see those being all morning like this morning's hearing was.

Mr. Hedani: Is there any objection to scheduling it for the 28th meeting? Okay, hearing none, we'll go ahead and schedule it for the 28th meeting. I'm sorry Chris, you're going to have to come back. I would like to express my disappointment that the staff planner that is assigned to this particular project is not present for the presentation.

Mr. Hart: Thank you very much.

Mr. Hunt: We share that disappointment. And for the record, I don't believe I read it into the record. For the record that was Item E-1, Kaanapali Resorts AOA that we just deferred. That you guys just deferred.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, I'd just like to say that I don't think whether the planner was here or not would have made a difference in our deferral and I wanted to express to the planner that I think he did an excellent job helping us with earlier issues. So I want to support him.

Mr. Hedani: Director.

Mr. Hunt: Your next item involves the Planning Director notifying the planning commission pursuant to Section 12-202-17(e) of your rules of the intent to issue a time extension on the following request. Mr. Mike DezaHD requesting a two-year time extension on the period to initiate construction on the Special Management Area Use permit for the Kihei Hanalei Condominium project at TMK 3-9-005:019 in Kihei. Gina Flammers is the planner assigned to this. This was deferred from your June 23rd meeting. The commission may take action to review the time extension request or you may waive the request or the review.

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 a time extension on the following request:

MR. MIKE DEZAHD requesting a 2-year time extension on period to initiate construction on the Special Management Area Use Permit for the Kihei Hanalei Condominium project, a 4-unit condo project at TMK: 3-9-005: 019, Kihei, Island of Maui. (SM1 2004/0037) (G. Flammer) (Deferred at the June 23, 2009 meeting).

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I see the letter dated June 26, 2009 from Mike DezaHD addressing surface runoff retention. I find that acceptable so I'll make a motion to waive review by the planning commission.

Mr. Hedani: Is there a second?

Mr. Starr: Second.

Mr. Hedani: Seconded by Commissioner Starr. Discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Waive Review of the Application.
(Assenting - K. Hiranaga, J. Starr, J. Guard, W. Mardfin, D. Domingo,
W. Shibuya, L. Sablas)
(Excused - B. U'u)**

F. APPROVAL OF MINUTES

- 1. Portion of the June 23, 2009 meeting relating to the proposed amendments to Chapter 19.62 of the Maui County Code, Flood Hazard District Ordinance. (Due to time sensitivity to transmit to County Council and approve the bill.)**

Mr. Hedani: Carried. Thank you.

Mr. Hunt: Your next item involves approval of minutes, the first one and we really need to get this one done is portion of the June 23, 2009 meeting relating to the proposed amendments to Chapter 19.62 of the County Code Flood Hazard District Ordinance. There's a time sensitivity in regarding the transmittal. But again, you should only approve these minutes if they're accurate.

Mr. Hedani: Commissioners?

Mr. Hiranaga: Motion to accept.

Mr. Hedani: Is there a second?

Mr. Hedani: Motion by Commissioner Hiranaga, seconded by Commissioner Starr. All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Accept the Portion of the June 23, 2009 Meeting Minutes Relating to Proposed Amendments to Chapter 19.62 of the Maui County Code.
(Assenting - K. Hiranaga, J. Starr, J. Guard, W. Mardfin, D. Domingo,
W. Shibuya, L. Sablas)
(Excused - B. U'u)**

- 2. Action Minutes of the June 23, 2009 meeting.**
- 3. Regular Minutes of the April 14, 2009 meeting.**
- 4. Regular Minutes of the April 28, 2009 meeting.**

Mr. Hedani: Carried.

Mr. Hunt: I'll lump the next three together. They're items F-2, 3 and 4 on your agenda, Action Minutes of June 23, 2009, Regular Minutes of April 14, 2009, Regular Minutes of April 28, 2009 meetings.

Mr. Hedani: Is there a motion to approve? Commission Shibuya.

Mr. Shibuya: Motion to approve.

Mr. Hedani: Second?

Mr. Starr: I'll second.

Mr. Hedani: Seconded by Commissioner Starr. All those in favor, signify by saying aye. Opposed nay.

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

**VOTED: To Accept the Action Minutes of June 23, 2009, the Regular Minutes of the April 14, 2009 and the Regular Minutes of the April 28, 2009 Meetings.
(Assenting - W. Shibuya, J. Starr, K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, L. Sablas)
(Excused - B. U'u)**

Mr. Hedani: Carried. Director.

Mr. Hunt: Next item involves the Director notifying the commission pursuant to your rules of the intent to issue a time extension. The first one is on Elleair Hawaii Inc., requesting a two-year time extension on the SMA permit to complete construction of the Maui Palms Hotel project at TMK 3-7-003: 007 and 009 in Kahului. The commission may acknowledge receipt of the request, pardon me, shall acknowledge receipt of the request and the commission may review the time extension or waive its review.

G. DIRECTOR'S REPORT

- 1. 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 requests:**

ELLEAIR HAWAII, INC. requesting a two-year time extension on the Special Management Area Use Permit to complete construction of the Maui Palms Hotel Redevelopment Project at TMK: 3-7-003: 007 and 009, Kahului, Island of Maui. (SM1 2001/0012) (J. Buika)

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Question is this their first request for an extension?

Mr. Hunt: Mr. Dack do you know anything regarding this one?

Mr. Dack: I'm sorry, I do not.

Mr. Hunt: I don't know either. There's Mr. Roy's at the -

Mr. Mark Roy: I can answer that question. In regards to this specific condition which is completion of construction for the project this is the first time extension request.

Mr. Hiranaga: I make a motion to waive review by the planning commission.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Moved by Commissioner Hiranaga, seconded by Commissioner Guard to waive review. All those in favor signify by saying aye. Opposed nay.

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

VOTED: To Waive Review of the Request.
(Assenting - K. Hiranaga, J. Guard, W. Mardfin, D. Domingo, W. Shibuya,
L. Sablas, J. Starr)
(Excused - B. U'u)

Mr. Starr excused himself at 5:00 p.m.

Mr. Hunt: The next item is the designation of the Hana Advisory Committee to provide comments on the following proposed legislation. The Director is transmitting Council Resolution 09-53 to the three planning commissions and the Hana Advisory Committee a draft bill pertaining to Rural Districts. The bill creates R-2, R-5 and R-10 Districts.

2. Designation of the Hana Advisory Committee to the Maui Planning Commission to provide comments on the following proposed legislation:

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 districts. (RFC 2009/00)
(J. Alueta)

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move we ask the Hana Advisory Committee to provide comments on the proposed bill.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. All those in favor signify by saying aye. Oppose nay.

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

**VOTED: To Designate the Hana Advisory Committee to Provide Comments on Council Resolution No. 09-53.
(Assenting - W. Mardfin, J. Guard, K. Hiranaga, D. Domingo, W. Shibuya, L. Sablas)
(Excused - B. U'u, J. Starr)**

Mr. Hedani: Carried.

2. Planning Commission Projects/Issues

Mr. Hunt: The next item involves Planning Commission Projects/Issues. There's been several mentioned today, I'll let you guys raise them. Somebody asked about the HCPO attendance. There was also talk about the standard condition no. 12 that we need to revise that. You've also revised conditions no. 11 and 4. Staff unless there's opposition we'll just revise the template on 11 and 4. Condition no. 12 regarded energy conservation.

Mr. Hedani: Any objection? Commissioner Hiranaga.

Mr. Hiranaga: I wanted to talk about the HCPO Conference.

Mr. Hedani: Wait Kent, if there's no objection we'll go ahead and incorporate those standard changes to the recommendation.

Mr. Hunt: I need a little more direction on 12, and I think Warren did you have some language or do you want to get us that language?

Mr. Shibuya: I'll send it over.

Mr. Hunt: Okay.

Mr. Shibuya: Okay, thanks.

Mr. Hedani: So you can review that.

Mr. Hunt: Yes.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, regarding the letter sent by the Deputy dated June 29, 2009 regarding the HCPO Conference. I wanted to ask the Director are there any other boards or commissions Chairs or the Vice Chairs that are being sponsored by the department other than the Maui, Molokai and Lanai Planning Commission Chair and Vice Chairs? You know, such as BVA, Urban Design Review Board, Maui Redevelopment Agency.

Mr. Hedani: While the Director is contemplating that answer, in this particular case when I got Kathleen's memo I indicated to Jeff that I would prefer to send a commissioner to the meeting that is going to be here beyond April of next year because I'm not going to be here beyond April of next year so if there's a representative from the commission that's interested in attending, I don't know how you guys do it by raffle or whatever, but I will not be attending that particular conference so someone is welcome to take that place at the conference.

Mr. Hiranaga: Actually can I continue with what I was going to say?

Mr. Hedani: Sure.

Mr. Hiranaga: I would like the department to look at you know, possibly in order to allow more commissioners from the Maui Planning Commission to attend look at the option of having us obtain our own air travel, could be members and staff because I've got miles, I can get my own tickets. We could, members and staff could forfeit their per diem because the conference offers breakfast, lunch and dinner. So if the department would pay for the seminar and say car rental, you know, we could find our own way there and forfeit the per diem maybe more commissioners could attend. And also, if you are sending chairs or vice chairs of other departments - other commissions and boards that you sponsor such as BVA, Urban Design Review and Maui Redevelopment Agency, I think it to me and maybe I'm biased but it more important that the Maui Planning Commissioners attend than say chairs or vice chairs of the BVA or the Urban Design Review or the Maui Redevelopment Agency. So I'd like you to explore those options and maybe have some answers for us at the next regular scheduled meeting in two weeks.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: As a follow up to that. Last week I asked the Deputy Director if they'd be willing to pay for the conference fee. I'd go a step further than my colleague here. I'd pay my own - I can stay - I wouldn't stay at the conference hotel but there's a fairly cheap one near there. It's within walking distance so I wouldn't need a car. I'd pay my own airfare. But if the conference fee could be paid that would make life nice. In follow up to the Chairman's position if we were to choose somebody that we were going to pay the full fare for I would make it a commission who hasn't been to any. I went to the one last year in Wailea and found it extremely valuable. But if you haven't been to any it would be really helpful for that person I would think.

Mr. Hiranaga: Lets keep our eye on the ball. Look at that option. Okay, we're looking at getting everyone there.

Mr. Hedani: My only comment is in the past we've enjoyed the ability to send as many members of the commission to the conference as were interested in attending which was very helpful actually

for future years. Commissioner U'u is on his own as far as deciding whether he wants to go or not, but my seat is up for grabs. You guys can draw straws or something or whatever.

Mr. Hunt: Just so everyone understands the situation. We support sending all of you if we could. The budget is extremely tight this year, as I understand it and I'll check on it, but as I understand it in the past we sent all the planning commissioners and the chair and vice chair of the other commissions or boards or whatever and this year we're only sending the chair and vice chair of the planning commission. But let me confirm that. We're also cutting back on staff training and it's just - I mean, as everyone knows, it's very tight times. The long term hopeful solution is that eventually when the economy turns around everyone will go again. So this is only during the economic downturn.

Mr. Hiranaga: Mr. Chair, I just want to say that I think if there's a way to find, you know, I think it's important that the commissioners be exposed to what's provided. You know, we make a lot of important issues that have impact the future of Maui and I think education and training is very important because I did not major in planning or urban development.

Mr. Hedani: I agree. Commissioner Shibuya.

Mr. Shibuya: Yes, I agree in a sense that I also benefited quite a bit because I network and develop my sources there and even saw some of my colleagues there too. So it's very, very helpful. Thank you.

Mr. Hedani: Just for the commission's information, when I served on the Maui Police Commission not only did we attend statewide conference to network with other police agencies and commissioners but we also sent two delegates to the national conference for the - It's the National Citizens Oversight of Law Enforcement Conference in Boston which was very, very helpful. So in future years the commission should consider attending national conferences that focus on planning issues I think is something to be considered in better times.

Mr. Hiranaga: Just to continue on that point. When I served on the Board of Water Supply the department sent us to the national conference every year. And there were over I think 5,000 attendees and the conference were held in D.C., New Orleans, Orlando, San Francisco and Los Angeles. Of course at that time, prior to the charter change the board had the right to fire and hire the director, so maybe that might have influenced the -

Mr. Hedani: Come to think of it, the police commission could hire and fire the Police Chief also, so that must have had something to do with it. Try as we might, we can't fire Jeff so.

Mr. Hunt: You guys should work on the Charter amendment first.

Mr. Hedani: Any other issues?

Mr. Hunt: We'll respond. I appreciate giving us the opportunity to respond and so we'll come back with information at your next meeting.

Mr. Hedani: You might double check with Commissioner U'u because I believe he's probably of the same persuasion as I am relative to that in deferring to another commissioner.

Mr. Hiranaga: Well we're hopefully not going to get to that.

3. Discussion of Future Maui Planning Commission Agendas

a. July 28, 2009 meeting agenda items

Mr. Hunt: The public hearing items you have four B&Bs, one of them is actually - pardon me, you have four SUPs. One of those also requires a bed and breakfast permit approval by this commission. So we can't approve it administratively because there's already an approved B&B within 500 feet. We'll be talking about that process and this is your first one so we're going to probably be a little more particular about it. We're going to talk about having consistent conditions. We don't necessarily want to have a broad divergence of well, if you go through the Planning Department you get these conditions. If you go to the planning commission you get these, but you know, you do have the ability to put conditions on a specific project.

You also have the return of the Waiohuli Partners and that was the Hoonani Subdivision that's in the flood plain district. We asked them to make some potential revisions and redesign and come back so that's scheduled and then you have a time extension for Maui Land and Pine. And we will add the item that was deferred today.

Mr. Hedani: What about the Wailea Fire Station? When is that coming back Jeff?

Mr. Hunt: I believe that was deferred to August but I'm not sure. I'm trying not to say things if I don't know for sure because every now and then it comes back to bite me.

Mr. Guard excused himself at 5:10 p.m.

4. EA/EIS Report

5. SMA Minor Permit Report

6. SMA Exemptions Report

Mr. Hedani: Okay, EA, SMA Minor, SMA Exemptions. Any comments, questions? If not, those reports will stand accepted as presented.

**7. Special Maui Planning Commission Meeting on the Maui Island Plan Review
- July 16, 2009, 9:00 a.m., Planning Conference Room, Wailuku, Island of Maui**

Mr. Hedani: Special Maui Planning Commission meeting for Maui Island Plan review July 21st.

Mr. Hunt: So this is your special meeting and based on -

Mr. Hedani: That's the developer's meeting.

Mr. Hunt: Correct. Based on the motion by this board we are scheduling a - some people call it developer's meeting, we're calling it just a special meeting where developers and non profits and even citizens I suppose can come forward and they get five minutes I believe, that's still to be

ironed out and the idea being that in exchange for that we can request them or this body can request that people don't then pack the agendas in the future and bring you know, crowds and people reading letters. So this is their time to explain their project and in exchange for a little extra time, five minutes and questions and answers if you wish, it will expedite your review of the Maui Island Plan in the future and I believe and was trying to speak for the body on that. That was as I understood the deliberations from this body. And so that is your next meeting on July 21st.

Real quickly as long as we're on the subject, August 4th is then your next meeting after that on the Maui Island Plan and that's in Lahaina and that's a regional meeting and that could, I would anticipate a lot of public testimony on that one. So we did schedule on July 21st, a review of the land use element if there's time allowed. So hopefully we can get to that and maybe finish it on the 21st. That is optimistic, but I'm an optimist.

Mr. Hedani: Question for the Director. Should we be considering because the amount of testimony that we get, well, at the Kihei meeting that we had, should we be considering reducing the time limit for public testimony from three to two minutes?

Mr. Hunt: That's one of our tools. To your credit, I believe at the Kihei meeting you ran a fairly well organized meeting and I talked to several people who all agreed that was pretty functional. You had a lot of testimony, you got through it and a lot of it was frankly the Chairman saying your time's up, thank you, next. Everyone - that's fair, everyone gets their three minutes and people learned to anticipate it. I even think Susan Moikeha at one time kind of voluntarily she heard the little beeper going off and oh, I guess my time's up and she quit talking.

Mr. Hedani: Maybe we should have a beeper that doesn't turn itself off.

Mr. Hunt: Just to finish up real quick on it. The body does have the ability to limit testimony but you have to be fair. You can't do it half-way through a meeting. Just because you gave three minutes at the last meeting, doesn't mean you have to give three minutes in the future meeting. So you could go to two minutes but you wouldn't want to do it midway through the meeting.

Mr. Hedani: Okay, that's just something to think about. For the next meeting anyway, I guess we'll still hold to the three minutes until we actually have a public announcement that we're changing our policy and we'll just try to electrify the chair so it's connected to the timer.

Mr. Hunt: And I think your next meeting actually is the five minutes for everybody, nonprofits, developers, etc. So in Lahaina you can revisit that issue.

Mr. Hiranaga: But you can't limit just individual testimony to three minutes, you'd have to make it across the board everybody has five minutes. Is that's what's happening next week?

Mr. Hunt: On the 21st? I believe that if they - we're asking for people to come forward and if they're a developer or a nonprofit then we're giving them five minutes. Now internally we try and brainstorm and anticipate problems. What if just a citizen says I want my five minutes? I think it would be difficult for us to say no on free speech issues.

Mr. Hiranaga: Maybe you should ask James.

Mr. Hunt: We can do some more research on that.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Just a question in terms of when we listen to five-minutes, are the commissioners going to have any questions? Maybe one, 30 seconds? 30 second response kind of thing?

Mr. Hedani: Everybody can ask one question and if you want to ask a second question you have to buy it from another commissioner.

Mr. Shibuya: Yeah, that's right. Something like ...(inaudible)... credits.

Mr. Hunt: One thing to remember is that the idea is that they can come forward with a packet and most of them are very professional, they're prepared and they're going to hand you written information. So you can take that home and study it.

Mr. Hiranaga: I mean, not to be flippant but you know, some projects will be for five acres and some projects will be for 500 acres. So to say you're going to limit yourself to one question for each developer is not a reasonable.

Mr. Shibuya: I understand.

Mr. Hedani: I'll try to make sure everybody gets a question in, you know, so that everybody gets a chance to ask a question.

Mr. Shibuya: I'm sort of hesitant to ask question for that reason. The time is running and I'm saying well -

Mr. Hedani: I'm told that the reason we have two ears and one mouth is so we can listen twice as much as we ask.

Ms. Domingo: Okay, I have a question.

Mr. Hedani: Commissioner Domingo.

Ms. Domingo: For myself, I haven't been in all the meetings for Maui Island Plan so I was going to see if you could give me an update matrix that you guys been working on. I would rather have it on hard copy, for myself, if the other commissioners would like to have it just to update what we already worked on. And then I got the minutes, from the first meeting and we asked for a few information, because we deferred a few things, so would you guys be able to go ahead and give us that? When are we going to be expecting those information?

Mr. Hunt: The minutes?

Ms. Domingo: No, in the minutes, we got the first meeting minutes and there was some information that we requested in some of the areas and we haven't received those so we can make that determination and even going back -

Mr. Hedani: Do you know what in particular that was on?

Ms. Domingo: I can read. I gotta read the minutes. But also we also received the other three meeting minutes and there's some information that a few people asked for. So I wanted to know where is it at so we can make some determinations.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Well come of the items I asked was I wanted an overlay of the current community plan and the proposed community plan to see what's being added and what's being removed and then also I think Jonathan wanted to know what's already been built out, what hasn't been built out because some people look at these maps, they go oh my God, you're planning all these area, well 80% is already built out.

Ms. Domingo: So let me look at the minutes because on the first meeting there was a few information requests regarding to tourist, the tourist areas, so I gotta go back.

Mr. Hedani: If you could just email those to Jeff.

Ms. Domingo: Yeah that information.

Mr. Hunt: If you email those, we'll send them to the Long Range and hopefully they can respond. I think some of the comments from the Long Range was that we'll bring that up at the appropriate element. So for instance the community plan, the mapping section, the GIS, I mean these guys got an incredible system and they'll have an overlay and they can pull it up. Warren's seen it. You know, not to brag about my staff, but these guys are good.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: On some of the things where asked about particular items in the elements, they were given to us but they were given to us orally the next time around. So they'd probably be in the minutes but they'd be very hard to dig out.

Ms. Domingo: I know.

Mr. Mardfin: But some of it that we asked for was given to us. The mapping has not and there are a lot of us anxious to see that.

Ms. Domingo: Okay.

Mr. Hunt: And if you send an email they can probably respond saying here's what we said verbally at that meeting I would think.

Ms. Domingo: I'll catch it in the next meeting. We just got it. So that means I have -

Mr. Hedani: It's nice to know someone's reviewing the minutes.

Ms. Domingo: Okay.

Mr. Hedani: Any other items for the good of the order.

Mr. Shibuya: No, I want to thank the Planning Department, Long Range sent me my minutes on the CDs. So I love that. Or at least the files. I just don't want hard copy.

Mr. Hedani: The items that Commissioner Shibuya drafted for the Maui Island Plan has that been distributed to all of the commissioners?

Mr. Shibuya: No, not yet.

Mr. Hedani: Not yet.

Mr. Shibuya: No, we're still going back and forth and that's the iterative process.

Mr. Hedani: Okay, fine. Commissioner Mardfin.

Mr. Mardfin: .-personal privilege.

Mr. Hedani: Proceed.

Mr. Mardfin: I would like to invite you all to the August 8th Hoolaulea at the Hana Cultural Center. I have a few of these posters if anybody knows good places to put them around here, I'd appreciate you posting.

Mr. Hedani: Thank you. We're adjourned. Thank you very much.

H. NEXT REGULAR MEETING DATE: July 28, 2009, 9:00 a.m.

I. ADJOURNMENT

The meeting was adjourned at 5:20 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 (excused @ 12:00 p.m.)
Donna Domingo
John J.B. Guard IV (excused @ 5:10 p.m.)
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr (excused @ 5:00 p.m.)

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works