

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JANUARY 12, 2010**

Approved: 3/9/10

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:03 a.m., Tuesday, January 12, 2010, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hedani: Planning Commission meeting of January 12th will come to order.

B. INTRODUCTION OF NEW MEMBER - ORLANDO TAGORDA

Mr. Hedani: We'd like to take this opportunity to welcome our new commissioner Orlando Tagorda.
Mr. Tagorda.

Mr. Tagorda: Hi. Thank you Mr. Chairman Wayne Hedani and fellow members of the Planning Commission. Hi and good morning to everyone. My name is Orlando Tagorda and I'm excited to be a member of this planning commission. It's quite an honor, but I'm here with a goal that I'm setting for myself. I'm going to work for Maui County and its people only and I will engage effectively with fellow members if I need to and I will contribute constructively during the discussion. And I'm just so proud to be here, you see but with mixed emotion that there's a lot of work to be done in both a lot of work and we have so much difficult times ahead of us and that's why I'm here and that for one purpose only. Thank you Mr. Chair.

Mr. Hedani: Thank you very much Mr. Tagorda. Commissioner Starr.

Mr. Starr: Yeah, Mr. Chair, thank you very much. I just want to give a special welcome to Mr. Tagorda. I had the honor of serving with him on the Maui Board of Water Supply for a number of years and it was a great experience and I'm really glad to see him here.

Mr. Hedani: Very good. Welcome on board. I'm sure you'll do an excellent job. Okay, at this time we'd like to wish everybody a Happy New Year and open it up for public testimony at the start of the meeting on any agenda items in order to accommodate those individuals who cannot be present at the meeting when the agenda item is considered. Public testimony will also be taken up when the agenda item is taken up by the commission and maximum time limits is three minutes. A person testifying at this time will not be allowed to testified again when the agenda item comes up before the commission unless new or additional information will be offered. I have three people that have signed up for testimony this morning and if you can indicate whether you'd like to testify now or later. Steve Sutrov.

The following individuals testified at the beginning of the meeting:

Mr. Steve Sutrov - Item G-1, Scheduling of Kula Lodge Phase 2 Project District Approval

Ms. Irene Bowie - Item G-6, SMX 2009/0361

Ms. Richelle Kawasaki - Item D-2, Maui R&T Partners, County Special Accessory Use Approval

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

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Director Hunt I believe is in Honolulu attending a legislative meeting and we have Clayton Yoshida here from the administration.

Mr. Yoshida: Good morning Mr. Chairman, Members of the Commission, Happy New Year. Clayton Yoshida, Planning Program Administrator with the Current Planning Division. As the Chair had stated the Director, Jeff Hunt, is attending a panel presentation on the Hawaii 2050 Sustainability Plan at the State Capitol which is being presented before the legislature opens next week. He was on the committee for the Hawaii 2050 Plan in 2007 and 2008 and they're making a presentation prior to the legislative session.

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

1. **MR. JEFFREY HUNT, AICP, PLANNING DIRECTOR transmitting proposed amendments to Chapter 19.32 Planned Developments, Chapter 19.36A Off-Street Parking, Chapter 19.40 Conditional Permits, and Chapter 19.45 Project Districts of the Maui County Code that would delegate approval and/or renewal of permits to the Planning Director and other miscellaneous revisions. (J. Alueta)**

With that, for the public hearing item which is the Planning Director transmitting proposed amendments to Chapter 19.32, Planned Developments, the Off-Street Parking Ordinance, Additional Permit and Project Districts in order delegate approval and/or renewal of permits to the Planning Director and other miscellaneous revisions, that public hearing has been renoticed for your January 26th meeting as the Planning Director wanted to be here for that presentation so it will be on your January 26th agenda.

2. **MR. STEVEN SADLER requesting a State Land Use District Boundary Amendment from the State Agricultural District to the State Rural District and a Change in Zoning from the Interim District to the RU-0.5 Rural District for property situated at 132 Makaena Place, TMK: 2-3-032: 013, Pukalani, Island of Maui. (DBA 2007/0005) (CIZ 2007/0009) (P. Fasi)**

With regards to the second public hearing item, Steven Sadler requesting a State Land Use District Boundary Amendment from Ag to Rural and a Change in Zoning from Interim District to RU-0.5 Rural District for property at 132 Makaena Place in Pukalani. That matter had to be renoticed because the applicant didn't fulfill the notification requirements for this meeting. So that has been rescheduled to your February 9th meeting.

So that brings us to Public Hearing No. 3 which is a request from David Tamanaha, Vice-Chancellor of Administrative Affairs at Maui Community College for a Special Management Area Use Permit for the Lau'ulu Center, a single-story building approximately 29.5 feet high, 74 feet long and 29 feet wide, the construction of a pole-mounted windmill to generate electricity and related improvements at TMK 3-7-002: 011, Kahului. The staff planner is Gina Flammer.

3. MR. DAVID TAMANAHA, Vice-Chancellor of Administrative Affairs at Maui Community College requesting a Special Management Area Use Permit for the Lau'ulu Center, a single-story building approximately 29.5 ft. high, 74 ft. long, and 29 ft. wide, the construction of a pole-mounted windmill to generate electricity, and related improvements at TMK: 3-7-002: 011, Kahului, Island of Maui. (SM1 2009/0010) (G. Flammer)

Ms. Gina Flammer: Good morning Chair Hedani and Commission Members our first item this morning is a review of Special Management Area Use permit submitted by the University of Hawaii, Maui Community College for the construction for a single-story, 2,300 square foot building on the existing concrete slab that was the foundation for a previous building torn down due to termite damage. The project also includes a windmill, photovoltaic panels to serve the energy needs of the building, a rain catchment system and pervious concrete are also proposed to reduce stormwater runoff and to reduce the use of potable water for landscaping. Related improvements include the replacement of underground utility service and the creation of new parking stalls including a handicap stall, ramp and a trellis that will go over that.

The building is to serve as the Lau'ulu Center providing services to native Hawaiian students. As such the building's design has used Hawaiian design elements. The applicant will talk about more these aspects of the project in just a moment.

The parcel is over 12 acres of land in the urban state land use district. The building area including the parking is approximately 4,500 square feet and the windmill will be located on the same parcel about 250 feet away from the building. The community plan designation is public/quasi-public and the county zoning is M-1 Light Industrial.

Due to the use of public land the action triggered compliance with Chapter 343 Hawaii Revised Statutes relating to environmental impacts statements. As noted in the staff report a declaration of exemption was declared because it's the replacement of an existing structure or facility. The exemption letter can be found in Exhibit 1.

To give you a better idea of the location of the proposed project I have a few slides to show. So this is the campus right here. The building is the red area behind the health center down on the right side. If you come towards this way you can see a small little dot that will show you where the windmill is proposed. The rock wall is where Kaahumanu Avenue is to your back. So if you're looking straight, if you see the flagpole that is the area that where the proposed windmill is. I put a little red dot there as well. That's kind of closeup to show you where it's proposed for. This is the type of windmill that is proposed and one has just gone up in front of MECO. So anybody driving by there you can see it. It's really something when it's spinning with the wind going. This is the existing concrete slab and the part of the parking area that will be right in front of it. That's it from another side. You can see how high up it is already. The applicant to meet the flood elevation requirements will be putting another foot of concrete to raise it. This shows you the back side of it. The building will be opening up onto where that tree is right there and looking out that way and that's a rendering of it.

So what I'd like to do right now is introduce David Tamanaha who's the Vice-Chancellor of

Administrative Affairs at the college. He's going to introduce his project team who will then give a presentation. You can then ask questions of myself and the team and then after public testimony I can come back and give you the department's recommendation.

Ms. Suzette Robinson: Good morning Chair Hedani and Planning Commission Members, David is taking a backseat to me right now. My name is Suzette Robinson, I'm the Vice-Chancellor of Academic Affairs at Maui Community College and I want to thank you for the opportunity to present to you our plans for the Native Hawaii Student Building called Lau'ulu Center. With me are the following team members, Gordon Mann who is our Project Manager, Dwight Kauahikaua who is our project architect, Andy Carson who is our Program Manager, David Tamanaha who is our Vice-Chancellor for Administrative Services, Ben Guirrero who is our former Program Manager and now the Program Director for our Title 3 Native Hawaiian Strengthening Institution Project and the Robert Burton who is our Operations and Maintenance Supervisor. We brought these people because they provide, will provide you with some details that will give you much better idea as to the complexity of the project itself. And before I go on, I would like to publicly thank Gina Flammer, our County Planner who has been with us along with the whole project and who has given us the kind of guidance that has helped us to bring us to this point this morning.

I'd like to give you a very quick overview of the project itself, a little bit of a background. Lau'ulu which means to grow or inspire people is being built so that we can provide our students especially our Native Hawaiian students with a sense of place and belonging and a place in which they can have a safe learning environment where comprehensive support services such as tutoring can occur. Our goal is to promote and to insure students success and we would like to do that through the establishing of the social network of students and faculty and to provide workshops such as cultural and financial workshops that could be held in the evenings and on the weekends.

At Maui Community College about 25 to 28% of our students are a Native Hawaiian or have declared themselves Native Hawaiian students and as such, are a large part of our population. Unfortunately they are not as successful as the larger student population. For example, in terms of passing math classes about 48% pass a math class whereas over – excuse me 55% of our general student population would pass a math course. We also know that Native Hawaiian students have the lowest mean income and the highest poverty rates with almost 75% having some kind of health issues. So we're trying to break through – the center – our one effort in trying to break that cycle and we believe that by providing this kind of environment where they get the kind of support system that will help them we will provide the next generation with a much better possibility of success. So are there any questions? Let me say this, after our presentation, we'll be happy to answer any questions. Dwight shall we go to – okay, Dwight our architect will now do our presentation.

Mr. Dwight Kauahikaua: My name is Dwight Kauahikaua, I'm the project architect.

Mr. Hedani: I don't think your microphone is on.

Mr. Kauahikaua: Is it on? Okay, the first drawing I'm going to show you is a location map again of where the building is just to make sure everybody is aware of where the project is. This is the plan of Maui Community Plan. Kaahumanu Avenue runs along the south side of the campus. Kahului

Beach Road runs along the east. Kahului Harbor is to the east of the campus and then Wahine Pi'o Avenue is to the north. The project is over on the east side of the campus. This is Harbor Lights apartment building which is on the next parcel from the campus. This is the Lau'ulu Center and as Gina had mentioned this is where the windmill would be located about 250 feet south of where Lau'ulu Center is going to be.

Have a little better drawing of the vicinity around the project itself. This is Lau'ulu Center. We're proposing to construct an additional nine new parking spaces along the campus road. This is the existing campus loop road. We're expanding an existing parking lot by restriping and getting one more stall and then we adding one handicap parking stall and one loading stall next to the building.

The windmill is located 250 feet south of the building here and we're – it's approximately 45 feet tall, 20-foot of windmill actually on a pole that extends to about 25 off the ground.

Before I leave this drawing I wanted to maybe point out that we're using as Gina had mentioned permeable concrete for paving new surfaces outside the building. So all of the nine new parking stalls are permeable concrete. You're familiar with how permeable concrete works. It basically allows water to percolate through the asphalt rather than collecting it as runoff. We're doing all the sidewalks in permeable concrete. We're using a rainwater catchment system off of the down spout and gutter system on the roof of the building which goes into barrels that collect the water and then discharges it through soaker hoses into the landscaping.

In the landscaping we're using native beach material, naupaka, pohinahina, materials that would normally be found along the beach and the sandy areas which is kind of where this part of Maui Community College is so the materials should be easy establish and should be able to survive with minimum amounts of water. So it shouldn't take a lot of water to continue growth or sustain growth in the landscape material.

This is our rendering of the building. Very simple rectangular building. The entrance to the building is on the north side around in here. Basically I'm using a hip type of roof but we're using materials which are very economical for this type of structure so we're using basically a siding with a grid on it and the grid I'm using, if you saw In my writeup on the design and architectural base design I talked about using the grid as a representation of the traditional framing structure of the Hawaiian hale, be basically thatch and lats. So I'm using a grid that's about four-foot on center with integral spacing in it as well using it as a module to set up a surface on the walls.

The roof is basically an asphalt shingle. We're using tube skylights to bring natural light into the classrooms and the ...(inaudible)... building so we can minimize our use of artificial lighting. We're using a waterless urinal in the men's toilet inside as well. So we're trying to use as many of the sustainable type technologies available to us now in the project.

You know, at this point if there are specific questions, I think we could answer and you have a number of things that you may be interested in.

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

Mr. Starr: Yeah, will you be going for LEED certification?

Mr. Kauahikaua: We will not be going for LEED certification although I thought about the subject and basically we could probably have a fairly high score on it if we did, but there's a cost associated with filing for the LEED certification which the job's on a very, very tight budget.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Yeah, my understanding was that all of state buildings were going to be LEED certified and that included all university buildings both on Maui and the other islands. So I'm wondering why it's not, you're not following the requirement, the state requirement.

Mr. Kauahikaua: Well that's a good point. I think you are right. I think the university projects are to go to LEED certification. I think we could probably file and get certification for it but I don't think we – we hadn't really thought about doing it at this point. It's not a part of the project at this moment I can tell you.

Mr. Starr: My understanding is that it has to be and I believe it has to be LEED Silver.

Mr. Kauahikaua: Yes I think you're right.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I know it will be very difficult to decide on this one if it seems as though you're not in conformance with the state ordinance and maybe you can discuss that and get back to us.

Mr. Kauahikaua: Sure, point well –

Mr. Starr: I'd like to know a little more about the pervious pavement system. I'm glad you're using it. We've been looking for examples that are easy for people to see.

Mr. Kauahikaua: Right.

Mr. Starr: Do you have any details on the pervious system you'll be using and what the maintenance requirement will be. I know the ones I've seen in Portland, in Minneapolis and other places on the mainland required a cleaning with a –

Mr. Kauahikaua: Vacuum truck or something.

Mr. Starr: Well, I mean, they use a little riding mowing thing that – the ones I've seen.

Mr. Kauahikaua: Which removes the finds that fall between?

Mr. Starr: Yeah.

Mr. Kauahikaua: Right. You're right. That's one of the solutions but apparently, you're right, there

aren't many examples of pervious concrete. I think there are one or two on Maui already, but there aren't a lot of examples so you're right, we're trying to use the pervious concrete and see – to learn more about it is one of the things about it, but currently from the examples I have seen the percolation is still very good even if the finds fall into the openings in the concrete. Does everybody on the commission understand what and how pervious concrete works? Okay.

Mr. Starr: Can you give an explanation?

Mr. Kauahikaua: Okay. It's actually a – it's a concrete that – you know, normally concrete has a mixture of large gravel and sand and cement mixture in it. The pervious concrete actually has cement in it and it has larger granules without any finds. So in other words, when you look at concrete you see a solid surface. This thing looks like rice crispy crunch as an example. There's a lot of voids between the larger gravel pieces that are held together. There's generally no reinforcing using in pervious concrete so the material has a fairly high strength because we're talking about 3,000, 4,000 ...(inaudible)... concrete. You put a gravel base under it to allow the water to percolate through it and then you put a filter fabric to keep other kinds of finds from percolating into the gravel, but basically it's a cemented gravel surface is what it is and it just allows water to pass through as opposed to collecting and creating an impervious surface like asphalt or true concrete slab.

Mr. Hedani: Any additional questions from the commission? Commissioner Shibuya.

Mr. Shibuya: While we're on the subject of impervious or pervious type material. I've seen in Japan but I've also seen it with steam cleaning because the cars would park and the oils would drip and they would have to clean it and they actually did it at night. Are there plans to do this type of maintenance?

Mr. Kauahikaua: I think as – talking about, pervious concrete is a very new product particularly in Hawaii and on Maui especially. I think total wide state, statewide I think there are probably no more than five examples of pervious concrete in the whole state. I know there are at least one or two on Oahu and maybe one or two on Maui and I think that is it. So there's – some contractors have training in placing it and it does take a little bit of training to place it but it's not widespread at the moment. So I think we're doing it mostly to understand the assets and liabilities of pervious concrete at the moment.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Sir, going back to that land use analysis this is in relation to Commissioner Starr's question. I look at this, I don't know who prepared this item here on page 11, it says, "the proposed project is in conformance with the goals, objectives and policies of Chapter 226 HRS, also known as the Hawaii State Plan." It's the same plan that Commissioner Starr is talking about?

Mr. Kauahikaua: I don't believe so. I think his question was related to LEED certification. I don't think – it's not the same section I don't believe.

Mr. Starr: I don't think it's in 232 but I know there was – it is somewhere in, but I think it supercedes

232 I don't think it's actually in the State Plan at this time.

Ms. Flammer: I can address that if you'd like. The State Plan is a general policy document providing general policies and objectives for the entire state. What you're talking about is probably written in different regulations requiring that. It's much like our county's General Plan the Hawaii State Plan.

Mr. Hedani: Got a follow up question?

Mr. Tagorda: Yeah, I have a follow up questions. I have problem understanding the numbers of parking stalls that's being provided to this Lau'ulu Center. Do you have any formula why you came to 11 parking stalls?

Mr. Kauahikaua: Yeah, it's calculated based on the type of use in the building and the numbers of people in there and it should be in the SMA application. So total requirement I calculated was 11 stalls total.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Given that permeable concrete is relatively new, given that this is at a university facility do you have any sensors underneath the amount of percolation and that sort of – rate of percolation?

Mr. Kauahikaua: No because –

Mr. Mardfin: The kind of stuff that you'd need to know to really judge it as an experiment.

Mr. Kauahikaua: No there aren't sensors in it and basically because it looks like – it's permeable basically on all four sides, right. But because of gravity water is going to flow out on all sides. It's hard really to understand how you can control and measure the amount of water percolating through it. I mean, you gotta make an enclosed basin to really understand if you're trying to measure water and its percolation. Is that what you're asking?

Mr. Mardfin: It is but now you're telling me something that I didn't think about. This is going down into it and then zipping out to the sides?

Mr. Kauahikaua: Well, it goes out on all sides. In other words, if you had a – you have a –

Mr. Mardfin: It's not going down into the ground?

Mr. Kauahikaua: It is, it's going down into the ground, sideways it's going in the ground, down on the bottom, it's a permeable piece of concrete that has openings on all sides the water will just ooze out of the thing from everywhere.

Mr. Mardfin: Will it ooze out onto the surface of the road, the adjoining road?

Mr. Kauahikaua: No because the surface of the concrete is level with the road, the top of the concrete is level with –

Mr. Mardfin: So it's oozing out into the ground underneath?

Mr. Kauahikaua: Right.

Mr. Mardfin: Okay.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Just a comment. You know, at Minneapolis at the American Planning Conference we did a tour of quite a few pervious pavement uses and demonstrations and one of them was an really thick rain and it was really easy to judge how it was working because all of the normal concrete and blacktop areas the water was puddling and then it was running off and that's where we always have the problem because it runs off into a drainage system and then carries stuff out into the shoreline and is destructive on the reef. The pervious pavement that we saw there was no puddling, the water just went down, you know, except when it would – you'd get a real cloudburst and then it would puddle a little bit and then when the rain would slow down it would just disappear through the pavement. The pavement has a coarser surface to it, you know, when you drive on it you kind of hear it, it's kind of – you know, on your tires and you can feel it, but it's real easy to see when it's working. But you know, the examples we saw they have a maintenance cycle where every I believe it's two months or so they drive a machine on it that looks, it looked like a miniature Zamboni, you know, it's like a garden tractor size thing and it's sprays hot water into it and then sucks it up into – the dirt into a tank and you know, the guy just kind of drives along the sidewalk around the parking lot with that every couple of months. They're using it extensively through the mainland where they don't want to have runoff going into say the Mississippi River.

Mr. Hedani: Any additional questions for the presenter? Commissioner Mardfin.

Mr. Mardfin: Given that you're going to have the permeable concrete primarily in the parking places what happens to the petroleum products?

Mr. Kauahikaua: You mean if there's dripping oil off of a car?

Mr. Mardfin: Right.

Mr. Kauahikaua: It will drip onto the pavement like it would in the parking lot and in this case it probably get diluted with water and rainwater it falls on.

Mr. Mardfin: And will it permeate down through the concrete?

Mr. Kauahikaua: It will fall into the concrete.

Mr. Hedani: Additional questions? Commissioner Sablas.

Ms. Sablas: I appreciate the examples provided on indigenous architecture, in looking over in my familiarity with Hawaiian architecture it's usually connecting to the outside environment. In designing the building in your meeting room has any thought been given to having maybe sliding panel doors or open lanais so that you can have a meeting with the open environment as opposed to having it in closed doors?

Mr. Kauahikaua: In this case, we're trying to make the use, the most use out of the rooms so actually initially we had thought about putting larger opening in it but in the classroom we basically got three walls and for a university classroom it's important to have a lot of writing surface especially when you teaching a Hawaiian language course where students need to practice their writing skills. We've opted to go with less windows and more wall surface for writing surfaces inside the room. So in the classroom itself we don't have sliding doors to the outside in this case.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: And that's my question in terms of permeable type of maintenance and that's what I was asking because the architect seems to be more in terms of ...(inaudible)... piping, coming up with a design that looks good but in terms of the maintenance guy they have to be concerned in terms of the operational cost and that in terms of maintaining it. We don't have freezing temperatures here so we don't have that problem but in Japan they do. We have the oil drip, Japan has that and as Commissioner Starr said they have this small machine, it's a Zamboni looking thing, it does steam and it does loosen up the impurities and it does suck it out, not 100% but it does a very good job.

Now the other aspect since I've got the floor here, you're looking in terms of being more sustainable. We look at the trellis and it's on – I believe it's on the north side is it not?

Mr. Kauahikaua: It is.

Mr. Shibuya: The hot side is on the south side.

Mr. Kauahikaua: Well actually a portion of it is on the north but it extends to the west of the building.

Mr. Shibuya: Understand. But now we want to protect the south side and we're not dealing with that sort of thing too. If you're going to put the trellis there, put the trellis on the south side too so that the sun doesn't come right into the meeting room. That's my consideration. Also you have photovoltaic where are you putting it on the roof, it's a small strip just to say you have PV or are you covering the entire roof?

Mr. Kauahikaua: No, we're not covering the entire roof.

Mr. Shibuya: Yeah, that's my point. We're just giving shibai to some of these things. I look at it as shibai. I want to see something that's real. If you're talking about sustaining it, do it right make it so that this is a good example of sustaining. Put the photovoltaic in there and I'm – also if you're going to put light ventilation why not put the light ventilation on the north side and put the PV on the south side? That's a consideration.

Mr. Kauahikaua: The light ventilation you're referring to is?

Mr. Shibuya: The light –

Mr. Kauahikaua: The light tubes?

Mr. Shibuya: Rather than light tubes have the whole skylight. Light tubes are small.

Mr. Kauahikaua: Right they are small.

Mr. Shibuya: That's correct.

Mr. Kauahikaua: But they're –

Mr. Shibuya: Then it's real shibai.

Mr. Kauahikaua: No, I don't think so. The rooms are – the only one large room in the building which is a classroom. There's more than one light tube in that classroom. So the building – the classroom should be able to operate without the lighting operating.

Mr. Shibuya: It's a surface area that allows light in.

Mr. Kauahikaua: Right.

Mr. Shibuya: Okay, and that's the principle I'm looking. If you have a small little circular circumference a square is not limited by pi, we're doing math. Okay, the area.

Mr. Kauahikaua: Right.

Mr. Shibuya: Okay, so you do a square or rectangle you are actually increasing the amount of light that is available and that you're capturing not something circular. Circular is reduced by pi in the total volume of the surface area. So now we have just something that looks good, I want something that's functional.

Mr. Kauahikaua: No, I think it is. Have you seen these light tubes? There's quite a bit of light that comes through them.

Mr. Shibuya: I have skylights on my house.

Mr. Kauahikaua: No these are different than skylights. There's a reflective surface in the tube which transmits the light from the roof surface all the way down.

Mr. Shibuya: I'm just saying that we just have to have the light available and another thing is that the trellis is on the wrong side or maybe you can put the trellis by the meeting room at least on the south side and put more photovoltaic. That's my comments.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: Later on I'm going to have a whole bunch of questions for the academic people, but you referred to this, the room, the major room as a classroom. On your Exhibit 3 it's called a meeting room. Is it intended as a classroom or a meeting room?

Mr. Kauahikaua: It functions as both.

Mr. Mardfin: It functions as both.

Mr. Kauahikaua: Right.

Mr. Mardfin: So you're using the term interchangeably.

Mr. Kauahikaua: Right.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Suzette, does this conclude your presentation or do you have other people that are going to be working on your presentation?

Mr. Kauahikaua: We have other people if there were questions about other subjects.

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

Mr. Starr: Yeah, and you know, I just wanted to say I appreciate the attempt to move in a green fashion with this and I know probably the design is at an early stage and that's some of your constraint. I just would like to suggest and ask, you know, if it's feasible there is a School of Sustainability at the college, Alex and his people they are teaching LEED, they are teaching a lot of these technologies. It might be something that would be really useful in several ways to get them involved with them in some of the design of these aspects and perhaps you know, since they are teaching LEED and there are some LEED certified people involved with that maybe they could even do the LEED certification in-house as an exercise and also help with you know, the energy production and light tubes by the way are great. They are the equivalent of several hundred watts of a fairly high efficiency lighting. I've been using it for 15 years. They will light up a room.

Mr. Kauahikaua: Thank you.

Mr. Hedani: Any additional questions for the applicant? Seeing none – Commissioner Hiranaga.

Mr. Hiranaga: I've seen the windmill at the Maui Electric. Is there any noise generated by that?

Mr. Kauahikaua: No, the manufacturer did a study about – within the last six months and we went over and we stood a foot away from the pole and you can't hear anything. The study would indicate that sound levels transmitted by that thing maybe five, ten feet away are in the range of 30 or db. So in other words, when you think about traffic noise from Kaahumanu Avenue, the traffic noise is

going to exceed the amount of noise that thing generate, will put out. So we've not seen both in reality and in the study any indication that noise is going to be any problem at all.

Mr. Hiranaga: Was there any consideration regarding the placement of the windmill and the fact that it will be a visible from Kaahumanu Avenue?

Mr. Kauahikaua: Obviously a windmill needs wind to operate so it was actually – the site was chosen, we looked at several sites around campus. It was chosen based on access to the wind. So the reason why it's not closer is because there are objects in the environment around Lau'ulu Center that would cause the wind to not be able to reach the building – the mill as effectively. Yeah, we did look it.

Mr. Hiranaga: Yeah, I guess you know generating electricity through wind is a good thing but from a visual perspective that windmill to me is not visually appealing.

Mr. Kauahikaua: Aesthetically –

Mr. Hiranaga: Yeah, visually appealing because it's actually a distraction. If you see the one at Maui Electric it's spinning and when you first see it you kind of look at it and say, oh what's that?

Mr. Kauahikaua: Yeah, right because it's not common to see it anywhere.

Mr. Hiranaga: Yeah.

Mr. Kauahikaua: So what I did was actually this is a photo taken from Kaahumanu Avenue and what I did was I superimposed on it the windmill. So I don't know if you can see it because you know, you've seen the one at Maui Electric. It's basically a pole and then it has – the windmill runs – it's called a vertical access windmill which means that it's a cylinder that runs but it's not a complete cylinder because the vanes are sporadic there's three of them on, but what I did was I drew it on here, on there so you know, this is – you can see this is the wall next to Kaahumanu Avenue. So that's what you're going to see and you can tell from the photograph that there's a lot of stuff in the environment already. There's light poles, there's flag poles, there's trees, there's all kinds of things in there. So I think you know, it'd be hard to pick out one object out of all the other things that we've already got sitting in the area around it. That's not to say, I disagree with you in terms of its aesthetics but.

Mr. Hiranaga: Just one last question. So the Maui Electric windmill I believe is not as tall.

Mr. Kauahikaua: It is not as tall. Correct.

Mr. Hiranaga: So what determined the height of the windmill.

Mr. Kauahikaua: Pretty much the wind, access to the wind coming off of Kahului Harbor.

Mr. Hiranaga: And there's no variance required for the height.

Mr. Kauahikaua: No, we're within the height limit in the zoning we're in.

Mr. Hiranaga: Okay. All right thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I like the concept that we use – be more sustainable in using that vertical access type of turbines. I've been asking for that ever since I guess we got the windmills, wind turbines up in Kaheawa. The reason why it's less visually – visible the problem here is that we need to place this in such a way and location where we can take advantage of the venturi effect between buildings when the wind comes it speeds up the wind. The wind velocity is greater at that point. We can have landscaping that can be visually blocking the wind turbines and yet funnel the wind to maximize the amount of wind speed velocity coming into these energy capturing systems. I don't know if you follow what I'm saying.

Mr. Kauahikaua: I understand where you're going with your presentation go ahead.

Mr. Shibuya: If we place them between some buildings it would be less visually visible and yet we can use the venturi effect. We can make the landscaping in such a way that it moves the wind towards these energy capturing machines. Have this been considered?

Ms. Flammer: I think the most appropriate person to answer the energy related questions would be Andrew Carson who is the head of the college's Sustainable Technology Building program. I'm not sure that's the exact name but maybe he could come up and ...(inaudible)...

Mr. Andrew Carson: Hi, yeah the program that I teach is the sustainable construction technology program and we actually have looked at that and the problem is that we don't really have a good venturi effect within proximity to the project that's worth considering over the fact that just going for the height that we get a more laminar flow the higher we go and so we just tried to maximize that within the limits of the building restriction. I have considered that typically the evidence that I reviewed suggest that existing buildings while they do create somewhat of a venturi effect it's better to actually design the outlay of the buildings and the buildings themselves to develop that venturi effect in conjunction with windmills but it's really difficult to take advantage of with the existing buildings. So we went for the high and the laminar flow.

Mr. Hedani: Any additional questions? I have a question, is there – I'm sorry, Commissioner Hiranaga, go ahead.

Mr. Hiranaga: Could you tell us what is the change in the amount of surface runoff that's being created by this proposed development?

Mr. Kauahikaua: You mean the – drainage you're talking about?

Mr. Hiranaga: Right. Is there an increase or decrease?

Mr. Kauahikaua: Let me show you, Gina you mind holding that side? I made this drawing, what you

see in the color is the lightest blue is the areas that we're going to use the permeable concrete. The dark blue area is the roof surface which is collected into rainwater harvesting and then into soaker hoses and the yellow area is the amount of impermeable concrete surface that we are adding to the project that's not there now. So everything else that's white is actually there now. So only the things that are colored are new to this project. So you can see that we're talking about 97, 98, 99% of the surface area created by this project is already handled through alternate stormwater systems to allow more permeability and less collection of rainwater and stormwater. Does that answer your question?

Mr. Hiranaga: No, my question was is there an increase or decrease?

Mr. Kauahikaua: There's a slight increase. There's a increase in this one. All of this yellow area adds up to maybe less than a 100 square feet. And the building on here, just for your reference the building is about 2,300 square feet in area.

Mr. Hiranaga: So when you say there's a slight increase you're assuming an existing condition which is the existing slab?

Mr. Kauahikaua: Right, existing slab.

Mr. Hiranaga: So does the permeable concrete decrease the surface runoff?

Mr. Kauahikaua: It does.

Mr. Hiranaga: So I'm kind of surprised there's no calculation. Typically in the SMA area there's a drainage calculation as far as showing what the current situation and what's the change.

Ms. Flammer: I think we should have the Vice-Chancellor talk about their drainage retention system which captures both off-site and on-site, if you'd like he could address that or – that was one of my questions to them was how are they going to handle the extra.

Mr. David Tamanaha: Good morning Commissioners, Chairperson Hedani, Fellow Commissioners, Happy New Year. I'll just explain what I know in terms of how –

Mr. Hedani: David, if you could just introduce yourself for the record.

Mr. Tamanaha: David Tamanaha, Vice-Chancellor Administrative Affairs. I'll try best to explain what I know in terms of how the campus drainage system works and basically the campus is primarily surface percolation but there is a large drainage basin which currently we lease to Maui Swap Meet and that large basin is where most of the drainage storm water flows and enters into and basically it also serves Wakea and Kaahumanu Avenue areas and I think for the long term and I think Mike Miyamoto might actually know better than I do but we have an easement with the County that allows future installation of a drainage to get into that large drainage basin. Any further questions?

Mr. Hedani: Does that answer your question Kent? I think you were looking for how many cfs was the delta gain or –

Mr. Hiranaga: Again, I'm kind of surprised that the report doesn't provide a drainage report. I know that – well I don't know, I believe that you have ample storage right now on site but as you build out the property at some point you will reach a point where possibly storm water will overflow into Kahului Harbor. One of my goals is to prevent that from happening. You know, so just kind of curious why –

Ms. Flammer: I'll provide that to you.

Mr. Hiranaga: Why there's no drainage report.

Ms. Flammer: Well, first of all when I inquired about the drainage the existing system is designed with a full build out of the college and the numbers that you would like is, the estimated runoff increases are .43 and .53 cubic feet per second. And the existing system that they have can handle the additional .3 to .5 runoff.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I think my question is probably for Mr. Tamanaha. When this was – how long ago was this a nursing program building?

Mr. Tamanaha: Okay, I think it was built originally constructed in 1949.

Mr. Mardfin: And when was it demolished?

Mr. Tamanaha: Roughly around I'd say 1998.

Mr. Mardfin: 1998?

Mr. Tamanaha: I think that's around the –

Mr. Mardfin: Okay, so a decade ago, a little more.

Mr. Tamanaha: Yes.

Mr. Mardfin: In the nursing program building were there offices?

Mr. Tamanaha: Correct.

Mr. Mardfin: Was there a classroom?

Mr. Tamanaha: There was a classroom.

Mr. Kauahikaua: Yes, there was.

Mr. Tamanaha: There was a classroom.

Mr. Mardfin: Thank you, that takes care of one of my major concerns.

Mr. Hedani: Any additional questions from the Commission? Seeing none –

Mr. Mardfin: Are we asking everybody, anybody?

Mr. Hedani: Anybody in –

Mr. Mardfin: I have some academic questions.

Mr. Hedani: Anybody's that part of the presentation team. Questions? Commissioner Shibuya.

Mr. Shibuya: Chancellor Tamanaha, what's the possibility of constructing a trellis on the south side and increasing the number of wind turbines?

Mr. Tamanaha: Thank you, we really appreciate your suggestions and your comments. What we're really going to do now is go back with our architects and our consultants to analyze some of these concerns that you've raised and the possibility of maybe moving some or adding some of the trellis, but would like to also say that we really had a struggle with this project. Because it's Federally funded we have a set amount of funds and we're trying to make sure we can at least build the facility but at the same time try and make it sustainable.

Mr. Shibuya: Thank you.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Yeah, just in that vein and you know I know we're still at an early stage with this but I would like to ask that you look at making it possible to not have to air condition it all the time for all the uses. It looks it's designed right now as a closed box with a air conditioner chiller running all the time. I think that you know, with air flow through it and a way for heat to get out the top it might be possible, you certainly have the expertise on campus to figure this out. So I'd just like to request you give that kind of stuff some thought about how you cannot have to run the AC all the time.

Mr. Tamanaha: Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Now my questions probably not for Mr. Tamanaha, it's probably for some of the academic people. I want to have a good understanding of what this is for. It was a little cryptic in the report as to – I couldn't tell whether this was a meeting place for off campus groups to discuss housing for Native Hawaiians or quite what the deal was if you can explain it to me, I'd appreciate it.

Mr. Ben Guerrero: Good morning Commissioners, my name is Ben Guerrero, I'm the Project Coordinator for Title 3 and our project is to support Native Hawaiian success by strengthening the institution, strengthening MCC. Now originally the program was a HUD project and the Civic Clubs

for Lahaina and Central Maui were involved. They were going to be put a afterschool childcare program for homeless in there and they also are planning on doing financial literacy workshops for Native Hawaiians. The project I think has gone a little longer than expected and the childcare program is housed at Queen Liliuokalani Children's Center right now. So what's left is the financial literacy workshops that they plan on doing. So we've been in contact because Louie Hokoana is the President of both of those Civic Clubs so he knows exactly what's been going on with the project and what they plan on doing is having that done in the evenings, sometimes on the weekends. So we had an opportunity for the daytime use, use it for the Title 3 program.

And so the room because there's not a lot of dedicated space for Native Hawaiians the room is going to be multipurpose. That's probably why you saw it as a meeting room and you saw it as a classroom because it will be both and it will also be a community place too for those programs I just mentioned. So what we envision is about 24 computers and that's where the AC issue comes in. It's going to be a lab so students can come there during the day usually I think we're talking about six to seven hours a day where they can come and get focused support services, academic advising and counseling, free use of the computers. We're going to have student assistance, peer mentors there to help students succeed especially focusing on developmental education. So that's during the day.

We're also going to have Hawaiian studies or Hawaiian language classes there too, to attract the students to the center and then have them hang around afterwards so that we can work with them so they can develop relationships with us, with each other, with the staff and hopefully through that because we've kind of learned over the years that those connections that they build that's what keeps them coming back and that's what keeps them going for it hopefully graduating and transferring.

So it's kind of a multipurpose room. We envision a lot of things for the room and we've had a lot of discussions with the architect about how the room could be broken down to where we'd have the lab and classrooms set up, the lab would have 24 computers, but we could have 40 students. If we wanted to break the room down, we'd put the tables to the side, we could break out more chairs and we could put up to 48 people to have a community meeting. We could also break it down and we could have it used for halau for people to do hula, you know for other things. So really wanted to make this room useful in a multitude of ways. We think we're doing a good job in that respect because of the use during the day and in the evening and on weekends and we're going to be helping hopefully a large number of students.

Over the last several years Native Hawaiian enrollment has gone up quite a bit and my concern is that the students that are coming basically going through a revolving door because we don't have enough support services directly for them. As Suzette mentioned earlier, Native Hawaiian students are lagging behind all other ethnicities and we want to be able to give them the best shot at making it. We know that there are a lot of social economic issues being Native Hawaiians and we want to try and give them the best shot possible. So we're trying to front load all the services and all the programs in their first year because the data that we've seen is if they can make through their first year they have a much greater chance of graduating.

Mr. Mardfin: As a kind of a followup. When I saw this whole thing I got online. I'm a former college

professor of economics so I really support your financial literacy program, that's super. But I went on line to the Maui Community College website and I found programs for Native Hawaiians and I found a Mohala Ka Ike Program, is that – it all going to be integrated?

Mr. Guerrero: It's no longer there.

Mr. Mardfin: That's too bad.

Mr. Guerrero: And that's one of the issues and that's something I'm trying to work with the administration to try and get more permanence and institutionalization because a lot of the monies right now are ...(inaudible)...monies and that's why we're hoping this building can bring some permanence that we'll be able to make a long term effort in helping the students exceed and it's really important because this is the only dedicated space for Native Hawaiians that I'm aware of on the campus. There's a lab that focuses on STEM, Science, Technology, Engineering and Math, that's also on ...(inaudible)...monies. So this a great opportunity.

Mr. Mardfin: I notice three offices in there those are going to be for scholars who are supportive of the Native Hawaiian population?

Mr. Guerrero: The offices we're planning on using it for a counselor, academic support services, there's also space for faculty to do some of their meeting hours, yeah, office hours, their office hours there so the students will come down and talk to them. Again, back to that thing about building relationships. There's also that small office space that's reserved for the civic clubs. So that's going to be dedicated just for them. They just need a little bit of space.

Mr. Mardfin: Thank you very much. It sounds like you've got some good ideas working there for the kids.

Mr. Guerrero: Thank you. Any other questions?

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Yeah, no question Chairman Hedani. I believe this project, I listen to all this presentations and discussions –

Mr. Hedani: Hold on, you don't have a question for the applicant?

Mr. Tagorda: No, no, just a comment to expedite things.

Mr. Hedani: Basically what I'd like to do is just close off the questions first.

Mr. Tagorda: One question to you sir, what I'm worried about is that area that you're going to build that Lau'ulu Center is being utilized by Harbor Lights residents to go to Kaahumanu to cross Kaahumanu. Is there any mitigation or things that you plan to do during construction to – for them still to use that area? I see some families and children crossing here.

Mr. Kauahikaua: Your saying residents?

Mr. Tagorda: From the Harbor Lights.

Mr. Kauahikaua: Where are they going?

Mr. Tagorda: Uses that area there – there's a roadways there, there's a chainlink fence,

Mr. Kauahikaua: Dwight Kauahikaua. Right.

Mr. Tagorda: That's – there's a chainlink fence that's sometimes it's open.

Mr. Kauahikaua: Right.

Mr. Tagorda: Sometimes it's not. And I see a lot of families and with kids uses that campus where that slab is.

Mr. Kauahikaua: Oh, I see what you're saying.

Mr. Tagorda: So I want to know if there's some kind of mitigation measure during construction.

Mr. Kauahikaua: During construction you're talking about? During construction we're obviously, the contractor is going to be required to put a perimeter fence so that people do not walk through the construction zone. But after construction we've added a sidewalk so that which actually points toward Harbor Lights so that people coming through that fence line actually have a way to walk through. Yeah, people have to walk around the construction zone during the construction period.

Mr. Hedani: So the question David is that access to Harbor Lights through Maui Community College would not be impeded during the period of construction?

Mr. Kauahikaua: It's not, no.

Mr. Hedani: Any additional questions for the applicant at this point? I'm not sure Gina, you can direct this question to whoever you feel is appropriate but we had one question that came up about compliance with law relative to LEED certification and the question that I have is does the State have any funding in this project or is it totally Federally funded or is it exempt from the State Policy as a result of that. What's the answer?

Mr. Tamanaha: I believe Gina sort of talked about it.

Mr. Hedani: David if you can just state your name for the record.

Mr. Tamanaha: Vice-Chancellor of Administrative Affairs, David Tamanaha. I believe Gina talked about it earlier where she said it was a State Policy and in essence, couple of years ago president – the university president took this State Policy and issued out a what I believe was a mandate that state facilities that were to be constructed were to at least achieve LEED Silver, but my recollection

is the mandate applied to State-funded facilities through capital improvements. And because this one is being built with U.S. HUD funds, we're really strapped. We would like to reach LEED Silver but first priority is we gotta build something that's functional.

Mr. Hedani: Okay, and the other question that I had and I guess you can answer this one is that I noticed that most of the construction at Maui Community College has like a very – the architecture has a very beautiful aqua tile or green tile roof and that's obviously been substituted with asphalt ...(inaudible)... paving, asphaltic shingle in this particular case. Is that just a cost saving measure?

Mr. Tamanaha: Correct. I think for the most part earlier designs had asphalt that monier tile, the science building the new one that we're going to build, we're still using that same concept but there's a lot of photovoltaic that's going to be covering it. You know, although we started with monier tile we still using some of that but I'm not sure how we're going to go further considering some of the issues we've been learning with the monier tile. But this project here, asphalt because of the cost.

Mr. Hedani: What's the total cost of the project, David?

Mr. Tamanaha: The funding we got from U. S. HUD is \$800,000 but the total cost –

Mr. Kauahikaua: We're over, yeah, we're going to be over.

Mr. Tamanaha: We're over, we're over so we're going to have to seek assistance from the university system.

Mr. Hedani: Thank you. Are there any further questions? If there's no further questions, I'd like to open it up for public testimony at this time.

a) Public Hearing

Mr. Hedani: Are there any members of the public that would like to offer comments on this subject? Seeing none, public testimony is closed. Commissioner Starr.

Mr. Starr: I want to hear the recommendation and then I'll be willing to make a motion.

Mr. Hedani: Gina.

b) Action

Ms. Flammer: The Maui Planning Department recommends approval based upon the 15 conditions as stated in the department's report. The first 10 conditions are standard. I can review them if you like. Okay, seeing shakes of head no, there are five project specific conditions which I will summarize.

The first is that the archaeological monitoring plan that was accepted by SHPD shall be implemented and that includes having a monitor present during the ground altering activities.

The next three were provided by State DOT and they are:

That the college consult with State DOT prior to doing their traffic impact analysis report for the college's long range development plan.

No. 13. That the applicant shall obtain approval from State DOT if any oversized materials are to be transported on State Highways and also a DOT permit approval is required for all work involving state right of way.

And No. 15, was recommended by the State Department of Health. It required a noise permit shall be obtained before the commencement of this project.

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 January 12, 2010 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 half of the planning commission. Thank you.

Mr. Hedani: Commissioner? Commissioner Starr.

Mr. Starr: Move for approval as recommended.

Mr. Mardfin: Second.

Mr. Tagorda: Second.

Mr. Hedani: It's been moved by Commissioner Starr, seconded by Commissioner Mardfin for approval as recommended. Is there any discussion? Ready for the question? All those in favor of the motion to approve as recommended signify by saying aye. Opposed nay.

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

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

Mr. Hedani: Carried. Thank you. Clayton. Congratulations to the design team and best wishes for the success of your project.

Mr. Yoshida: Can we take a short recess Mr. Chair?

Mr. Hedani: Okay, why don't we go ahead and take a five-minute recess.

A recess was called at 10:21 a.m., and the meeting was reconvened at 10:32 a.m.

Mr. Hedani: The planning commission is back in session. Clayton.

Mr. Yoshida: Mr. Chairman, moving right along the Item 1, under Communications is a request from August Percha on behalf of the Maui Dive Shop Car Rental Kiosk for an off-site parking approval for 15 parking stalls located at 60 Halekuai Street at TMK 3-9-051:020 in Kihei in order to meet the required parking for the Maui Dive Shop car rental establishment located at 1455 South Kihei Road, TMK 3-9-051:015. Staff planner is Livit Callentine.

D. COMMUNICATIONS

- 1. MR. AUGUST PERCHA on behalf of the MAUI DIVE SHOP CAR RENTAL KIOSK requesting an Off-Site Parking Approval for 15 parking stalls located at 60 Halekuai Street, TMK: (2) 3-9-051: 020, Kihei, Island of Maui in order to meet the required parking for the Maui Dive Shop Car Rental establishment located at 1455 South Kihei Road, TMK: 3-9-051: 015, Kihei, Island of Maui. (OSP 2009/0001) (L. Callentine)**

Ms. Livit Callentine: Good morning Commissioners and Happy New Year. The reason that this item is coming before you is because of regulations in the Maui County Code Chapter 19.36A which require that any off-site, off-street parking which is off site will be approved by the commission if it's off site and that it shall be at no more than 400 feet from the nearest point of the lot.

The Maui Dive Shop property is located on approximately five acres of land and both properties are in the Kihei Franks Subdivision. The current property includes the Maui Dive Shop as well as an existing retail water – which is an existing retail water sports and supply and service establishment and also Pizza Madness which is a restaurant serving – seating approximately 80 patrons. Also on this property is an existing kiosk that is not being used at the time but which the property owners would like to put into a use in order to provide rental cars to visitors I believe is the main market.

Now they will have to store cars and they don't have enough room on this lot to store their cars so they own another lot about 250 feet away from this lot and that lot is where this off-site parking will occur. So that lot is also – well, it's just over – over half acre in size. As far as the land use designations, both parcels are in the urban district. They are designated business in both community plan and county zoning and they're both in the special management area.

Our Zoning and Enforcement Administration did a parking analysis for the properties and they determined that the current operation of the Maui Dive Shop with the addition of the car rental kiosk would require 39 parking stalls and the proposal today is to provide – the new parking lot will provide 20 parking stalls of which 15 of them will be designed for the location of the rental cars.

So the Planning Department concludes that the off-site parking lot will meet the requirements of the Maui County Code. We will also be issuing administratively a landscape planting plan approval and a Special Management Area Assessment for the construction of the parking structure, parking lot at 60 Halekuai Street.

The applicant's agent, August Percha is here today to answer any questions. He does not have

a presentation for you and so I would be happy to answer any questions you have as well as provide you with a recommendation from the department. Thank you.

Mr. Hedani: Thank you. Questions from the commission? Commissioner Hiranaga.

Mr. Hiranaga: Originally in the staff report it said that the parking requirement was 24 and then it was increased to 39, can you explain why?

Mr. Callentine: Actually I don't know what transpired except that – Oh, I think what it was the kiosk was in business and then kiosk stopped getting used and then they used this Pizza Madness store and that triggered more parking stalls. But then the kiosk went out of business so then the need for those – this is what I'm thinking but I'm going to ask the applicant if he can explain it in a way that you can have some assurance that it's not an educated guess on my part. That is my educated guess that the new stalls are being triggered by the fact that the site at 1455 South Kihei Road is fully built out and that the kiosk will now be in operation.

Mr. Hiranaga: Are you going to ask the applicant to answer my question?

Ms. Callentine: If you would like that Commissioner Hiranaga.

Mr. Hedani: If you could step to the microphone and identify yourself for the record.

Mr. Percha: Yes, I'm August Percha, I'm the agent for the applicant. A previous SMA action for the establishment of the pizza pub necessitated using I forget the amount about 11 of the 24 spaces that were available on the Maui Dive Shop site. The remainder were required as a continuing for the retail shop. Previous to that the kiosk was being used as a ice cream cone, slushy type of a roadside stand and with the establishment of the pub we didn't have enough parking on the site to continue using the kiosk and so it was closed. So now the opportunity for my client has come to reopen the kiosk so we need some additional parking for that and we also need to store cars on the site on Halekuai Street about 250 feet away.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My understanding of the County parking requirement is I guess one stall per 500 square feet of office or retail and one stall per 100 square feet of a restaurant use. So we're basically – I guess I'm having difficulty understanding why a kiosk which is going to be a rental office would require 15 additional stalls or were you basically not in compliance before and then they did a recalculation?

Mr. Percha: Well, the roadside stand itself has a requirement of two spaces for parking. So that was in I presume the calculated provided by Zoning Division. My customer's lessor requires 15 spaces for cars and that established that number.

Mr. Hedani: So it's the applicant's desire and not the Zoning Enforcement Division's requirement that's triggering it.

Mr. Percha: Correct. Plus his own need for additional employee parking.

Mr. Hedani: I see.

Mr. Percha: And I should say that the remote parking lot will not be open to the public.

Mr. Hedani: Additional questions from the commission? Commissioner Starr.

Mr. Starr: Yeah, the new remote parking lot what was the previous use for that and what is the situation with the runoff since it now be an automotive use?

Mr. Percha: Well, I should say that the automotive use will just be simply for storage of the cars. They will not be washed there nor will they will be serviced. The site is currently vacant and it's of such a large size, it's a little bit misleading. There's only 10,000 square feet that is what I call high and dry, the remaining portion of the land is drainage easements in that area if you under Halekuai Street and I can get a map and show you if that would be better.

Mr. Starr: Yeah, I would like to see a map.

Ms. Callentine: Commissioners, if you look at Exhibit 3 of your report that does show on the drawing the lot to the right on the drawing shows you the off-site parking lot and the area where the parking is proposed to take place is only one portion of that lot. It extends further to the north and east. It's that entire parcel. It's kind of an odd shaped piece of land.

Mr. Percha: When the subdivision, August Percha for the applicant, when the subdivision was created the bridge was put, this property in its low land area abuts that bridge and provides the avenue for upstream drainage to flow eventually down by St. Theresa and out to the ocean.

Mr. Starr: Is it paved currently?

Mr. Percha: There's a small portion that has some asphalt on it but it's a remnant from long ago.

Mr. Starr: And you plan on paving it?

Mr. Percha: We plan on about 6,000 square feet of asphalt.

Mr. Starr: So if you're paving it then you're adding to runoff and we don't have any runoff calcs. Frankly that should be an SMA.

Mr. Percha: I had runoff calcs from a previously proposed project for this same site. It shows the increased runoff of 600 cubic feet for storage.

Mr. Starr: I'd like to ask staff why they're not needing to get an SMA for this since they're increasing runoff and paving in the SMA area.

Ms. Callentine: Yes, Commissioner Starr, the valuation of the project is what determined for us that

this would be a minor permit. As far as accommodating the runoff I did have a discussion with Mr. Percha about this at one point in time and it was my understanding that there was going to be an onsite collection system for the runoff.

Mr. Percha: Again, for the 600 cubic feet that we're speaking about in increased runoff, this room is about a 1,000 square feet if it were filled a foot full that would be a 1,000 cubic feet. So I think we're talking about a volume of water that would fill this room about six inches deep. That volume exists on the pavement because the lot is virtually level and there's a six-inch cur surrounding the parking lot. So this 600 cubic feet which by the way was for a more intense project in calculation would be ponded in the parking lot by virtue of the curbs that surround it and would be allowed to evaporate.

The landscaping provided around the perimeter consists of hedging and pea gravel as ground cover. So should the volume of water happen to override the curbs, it would spill onto the pea gravel and percolate into the ground.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You mean, such as grease and oil that comes from the cars. I'm not sure if it will percolate. It seems to be a major runoff basin which means that it's moving straight into the wetlands and into the ocean. Frankly, I see this as something having a major impact and I really don't think it should be handled just as an off-site parking. This is a project that can have some serious impact on the wetlands and the shoreline situation. I'm still not clear. How large is the area that's paved, how large is the proposed additional paving and how much additional area will be utilized for parking cars beyond that paved area?

Mr. Percha: Well, beyond the paved area there will be not be any use and in order to accommodate the 20 stalls that land area required is about 6,000 square feet and so that's what I equate for the paved area being as that. Reviewing since we made the application 19.36 has changed somewhat in a sense that it allows us to do permeable surface parking for 25% or up to five spaces and we would be agreeable to do that.

Mr. Starr: Once again, I'd like to ask staff it seems to be a retention and runoff area that was created to service a large upstream community and now it's being paved over. I'm wondering about the legality of that.

Mr. Percha: I can address that Livit.

Ms. Callentine: Okay, and staff knows of no restriction on that area and also this - we can look at further the issue of the special management area protection. The application before you today is just to allow there to be an off-site parking lot not to specify its requirements and it will be required of course to meet any of the Development Service Administration Codes.

Mr. Starr: So you're saying it's premature to discuss SMA -

Ms. Callentine: Well, --

Mr. Starr: And that it will be looked at when the time comes.

Ms. Callentine: Yes, I am. And also just to make a correction, I'm not sure that it was clarified there is nothing on the lot right now. It is vacant. There's nothing paved yet. I thought you asked that question and maybe didn't get an answer to that. There's not currently any paving on the lot, is that correct?

Mr. Percha: There's a remnant, excuse there's just one remnant piece of asphalt no larger than your hall right here. That was put by some former trucking company owner lessor of the former owner.

Mr. Starr: I mean it sounds like a wetland drainage area.

Mr. Percha: If I may show the map. The lot in question is this piece, parcel right here. This pie shape is about 10,000 square feet and it's high and dry and it's what's vacant now. The remainder of the parcel here is all drainage easement and would be very difficult to build anything in because it's below flood level.

Mr. Starr: Okay, Mr. Chair, pardon me, just one last one, because of the drainage easement I really have concern about paving a drainage easement for another -

Mr. Percha: No sir, we're not paving on the easement that's what I'm trying to show. The easement exists here but was in ownership of this property owner. This is not in the easement. I have survey to be able to show that.

Mr. Hedani: August so what you're saying is that the 6,000 square feet of paving is going to be located on the 10,000 square feet of dry area that's not part of the drainage easement.

Mr. Percha: Correct, thank you.

Mr. Hedani: Okay, any additional questions? Commissioner Shibuya.

Mr. Shibuya: August I have a problem here understanding the topographical layout and if the water, if it was paved which direction would the water run toward this end or the street end?

Mr. Percha: It's virtually level. It's the only lot -

Mr. Shibuya: No, water has to go some place.

Mr. Percha: Well, it will marginally flow towards the rear of the property.

Mr. Shibuya: This side.

Mr. Percha: Yes, and front to rear there's less than four inches of height difference.

Mr. Shibuya: Okay, and what's in the back?

Mr. Percha: On our property there is an embankment. I think you see the top of and toe of the slope. It's about a eight-foot drop-off established previously by the subdivision developer.

Mr. Shibuya: Oh, is it a ditch?

Mr. Percha: No, sir. If you look at a aerial photo of this area it's the beginning of a vast low land wetland network that's allowed to drain under the bridge that's adjacent to this property and then out towards the ocean.

Mr. Shibuya: Okay, I just don't have enough information that I can -

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Returning back to the - first of all, this application is to obtain an off-parking approval which is separate from what you saying will probably end up to a minor SMA because of the cost of the improvements.

Ms. Callentine: That's correct.

Mr. Hiranaga: But I'm still puzzled why if 15 stalls is mandated by the lessee who's going to operate a rental operation why would that impact -- because in your staff report you say here, "Zoning and Administration Enforcement Division conducted a parking analysis for the property and determined that 39 parking stalls are required to meet the guidelines of Maui County Code." But you're saying 15 was mandated by the car rental company. I mean what is the actual requirement based upon the improvements on the main property?

Ms. Callentine: Okay if you would look at Table 3 on page 4 of our report.

Mr. Hiranaga: Right.

Ms. Callentine: Table 3 shows the breakdown for each type of use on the property and - which I can go through for you but I can see that you can see it, the u-drive parking business requires 17 stalls because there's a proposed 17 cars to be rented, but they do have room for 2 additional - they do have 2 additional stalls available on the parcel on South Kihei Road. So that's why there's only 15 being provided on the off-site parking lot.

Mr. Hiranaga: So that 17 stalls is that a County Code requirement for u-drive parking use or is that -

Ms. Callentine: Yes, in the zoning parking analysis they stated that this u-drive parking business takes one stall per car, per rental car and they plan on having 17 rental cars that's how they did it. It's just a simply one to one.

Mr. Hiranaga: Oh, so the applicant says I want to park 17 cars so they say well, you need 17 stalls.

Ms. Callentine: Right, and there are two available on the primary site and 15 proposed to be

available on this proposed off-site parking lot.

Mr. Hiranaga: Thank you.

Ms. Callentine: You're welcome.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: And if they said they were going to put 34 there, they would have needed 34 parking lots?

Ms. Callentine: If they said they were going to put 34 there they would need to 32 off-site.

Mr. Mardfin: And how once a business gets started is it going to be monitored so that they don't exceed the number of cars that they're supposed to have?

Ms. Callentine: Commissioner Mardfin, much like other permits and enforcement follow up on permits it is complaint driven to my – we will do a compliance report on it but unless there's any complaints there won't be follow up. There isn't staff time to go out and check on every single permit we grant.

Mr. Mardfin: My second as a follow up, my second concern, one of my concerns has been taken care by this exclusivity. I was bothered by the time we had an issue in Lahaina and they were going to provide off-site parking and I could see multiple, multiple companies using the same cars and the exclusivity is something I really appreciate. I think that's a good idea. What is to prevent the owner of the parking lot property from selling it off or changing the conditions or anything else that would make them ...(inaudible)...

Ms. Callentine: You mean from selling off the lot?

Mr. Mardfin: Yeah.

Ms. Callentine: It doesn't matter if they sell it. Condition No. 3 of off-site parking approvals requires that a unilateral agreement be filed with the Bureau of Conveyances and it will run with the land.

Mr. Mardfin: So as long as – whoever buys it will have to buy it knowing that those 15 parking lots, parking spaces are dedicated to a different property.

Ms. Callentine: That's correct.

Mr. Mardfin: Thank you.

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

Mr. Tagorda: Mr. Percha, I notice in this Exhibit 3 there are two vacant lots between Maui Dive Shop and your proposed off-site parking, what would be – does the Planning Department know

the permitted use of this vacant lot and the owners were notified of your intention to make the off-site parking? Did you get my question? Were the owners notified with your plan of ?

Ms. Callentine: There's no requirement for notification of neighbors with type of an application.

Mr. Tagorda: Okay, another question is in that parking, off-site parking that you're requesting beside on your right side, it's kind of a county easement so how would that drainage system will – will it go direct to road or – because I think if you look at that area it's really, really, really kind of cemented and some of this runoff will go into the gulch side if you don't prevent the runoff.

Mr. Percha: Excuse me, August Percha for the applicant. It's harder and it all runs into the drainage area now.

Mr. Tagorda: Yeah.

Mr. Percha: Exactly, 100%. None drains toward the street.

Mr. Tagorda: Nothing drains towards the street.

Mr. Percha: Nothing.

Mr. Tagorda: Can we prevent that runoff to be drained to the gulch area?

Mr. Percha: Well as I was trying to explain the volume of the runoff increase for this amount of paving which is all we're planning, excuse me, all that we're planning for improvements would fill this room about six inches deep and we have that area available to us at the rear site of the parking lot if it's paved on the existing grade without a lot of fill or anything like that to reverse the slope I think is what you're getting towards.

Mr. Tagorda: Yes, I want to have the slope goes toward the road since the roadway is well maintained and there's curbs and all that.

Mr. Percha: And excuse me, but those roadways drain into that drainage area.

Mr. Tagorda: So even if you make an onsite drainage system in the property it will go into the gulch area.

Mr. Percha: That's the unique nature of this site. The owner owns these areas.

Mr. Tagorda: And you said that you won't be washing cars, these are rental cars?

Mr. Percha: Correct.

Mr. Tagorda: And I believe there is also a water meter allotted for this lot.

Mr. Percha: Correct, but we will not be maintaining or washing cars. They'll be done offsite at Kihei

Shell Station at Azeka Place.

Mr. Tagorda: Thank you Mr. Chair.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess maybe this is a question for Clayton or, but is it appropriate to place conditions which typically would not be required for a off-site parking approval that may be considered more SMA conditions because since it's not going to be coming before us because of the dollar threshold. I have concerns about this property being located next to a wetland. There will be petroleum products on the hard surface. Eventually you may have a large storm which creates overflow over the six-inch high curb and you'll have petroleum products entering the wetland. So I'm just wondering from a procedural perspective if we're able to place conditions on this type of request.

Mr. Yoshida: Commissioner Hiranaga, I believe the SMA assessment is not before you the commission but they can raise their concerns you know relative to our review of any assessment that may be filed and of course, the commission is the appeals body on any SMA decision which the director makes, but they could raise their concerns at this time.

Mr. Hiranaga: No, my question is can we place a condition on this application because we've raised our concerns it doesn't mandate that the director to place that condition on a minor SMA permit up to the department's discretion. I'm not saying I'm going to do that, I just want to know the answer.

Mr. Yoshida: The commissioners could make suggestions on specific conditions.

Mr. Hiranaga: No, – say a place a condition not suggest a condition, place a condition. It wouldn't be a suggestion. It's like in order to get this off-site approval you need to do this or comply with this.

Mr. Hedani: My guess Kent and Jim can correct me if I'm wrong is that you could probably place a condition on the approval by the commission on the approval of off-site parking if the ...(inaudible).. a negative determination. Commissioner Starr.

Mr. Starr: I'd like to follow up on that. What is the process if a minor is granted without conditions that this body feels are appropriate? What would be the process for a member of this body to contest the director's finding of a minor or exemption of an SMA?

Mr. Hedani: Livit.

Ms. Callentine: I believe, and I'm going to look at Clayton here and ask his collaboration I believe it could be appealed to this commission.

Mr. Yoshida: Yes, I believe you would follow the SMA appeals process.

Mr. Starr: And could you outline what that is and how that's initiated and by whom?

Mr. Yoshida: Upon notification of the action of the director through the commission in terms of reports that we provide ...(inaudible)... that they have, individual aggrieved party has 10 working days to file an appeal, a timely appeal. And then typically it would go through, you know, some sort of contested case.

Mr. Starr: Is the commission considered one of those parties?

Mr. Yoshida: I refer to your attorney.

Mr. Starr: Mr. Giroux. Because this may come up later today.

Mr. Giroux: I kind of red herring because I was looking at 19.36, but actually your question is within the rules of the planning commission. We have looked at that and we've come up with any definitive answer as far as how that process works. I think it's a little awkward for the community because the amount of notice that community actually gets of the exemption decision and we've had to deal with it in a couple of different forms. We haven't to date had a commissioner actually have an appeal of a exemption. However, rather than deal with it in an appeal fashion, I think the hopes was that – that if it – because you are given an exemption list that at the time it's actually given to you that the director would be requested to give that project higher scrutiny and to find out why wouldn't the director put that on, if the community didn't already appeal. From the date that you receive the notice that the exemption has been given, the community only has 10 days to appeal. But with the review of the commission, I think the hopes was that the commission would have actually an extra eye on the exemption process to bring it to light to the director but not as an official appeal. Because then it – it would be awkward.

At this point I can't tell you that it would be legal or you know, but it raises some procedural issues that I don't think have been dealt with yet. The idea of impartiality, the adjudicatory and – you know, nature of a contested case, having a member of the board being a advocate as well as a finder of fact, I think those kinds of issues would – we would have to address them at that time, but they would definitely be difficult to grapple with. I think conceptually the idea was that the commission gets at least one more eye on it on what the director's doing.

Lanai and Molokai have dealt with this situation by making a different type of exemption process. I don't know if you've gotten a chance to look at their rules, but their exemption process is a little different where they've taken on the role of actually being a first review of an exemption. The director would review an exemption, give his recommendation and if the board doesn't act on it or doesn't request that it be you know, put on as a major then the director would be instructed to go back and proceed with the exemption.

So it is – as far as the rules go it's something that the board does have some control over as far as the procedure, but as the rule is written now it would be awkward to have a commissioner actually raise the appeal. But is it foreseeable that a member would raise the issue with the director as far as why certain types of cases or why a certain case wasn't brought up as a major. And so right now, the short answer is is that it – the procedures are mostly looked at for why the public would use the appeal process.

Mr. Hedani: That was the short answer?

Mr. Giroux: That was the short answer.

Mr. Hedani: Okay, let me just ask a question of the applicant. If there was a condition attached to approval would that be something that you could live with?

Mr. Percha: Yes we could. And actually, again given the time line that has transpired we'd rather do permeable surfaces rather than asphalt and so we would accept that condition. Given the unique location, nature and terrain of the site and its intended use.

Mr. Hedani: May not be permeable asphalt. It may be another condition that's attached to it but you know, where the commission I think is coming from is that they want petroleum products ending up in the ocean.

Mr. Percha: I understand that.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, what I'm thinking of is that a SMA major be required of this and whether the applicant will be amenable to a condition on the off-site that a SMA major process be followed for the new parking lot.

Mr. Percha: The time line is distressing on that suggestion. The time line going forward.

Mr. Starr: How about denial, how's the time line with denial? ...(inaudible)..

Mr. Percha: Excuse me, that's essentially what this would do given the arrangement of the lessor and the time that's transpired so far. That's why I offered the condition so we could move a long.

Mr. Hedani: Additional questions from the commission? Okay, we need a public hearing on this item Livit?

Ms. Callentine: No sir.

Mr. Hedani: Let me just ask are there any members of the public that would like to offer testimony on this item? Seeing none, public testimony is closed. Clayton, you had a comment?

Mr. Yoshida: No, I just would say that again, any item on your agenda unless so specified is subject to the sunshine law.

Mr. Hedani: Okay, Livit you want to make your recommendation?

Ms. Callentine: Pursuant to the foregoing the Maui Planning Department recommends approval of the applicant's off-site parking request subject to the following conditions. That this off-site parking approval shall be valid until such time as the parking lot and related improvements are completed,

that 15 parking stalls located at 60 Halekuai Street shall be used to satisfy a portion of the parking requirements for the Maui Dive Shop car rental establishment. I'm not going to read all of the conditions in entirety but the last one is important, "that full compliance with other applicable government requirements shall be required." And in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Director's report and recommendation prepared for the January 12, 2010 meeting as its findings of fact, conclusions of law and decision and order and to authority the Director of Planning to transmit said decision and order on behalf of the commission.

And if I could just point out to Commissioners that the department would not be issuing an exemption, it would be an SMA Minor and therefore, we can place conditions and we will place a condition on the runoff, on preventing any runoff from affecting the nearshore waters. I know we have a standard condition, I don't have that at my fingertips because again, we weren't considering the SMA permit at this time, but just so you that we will placing conditions on that and apparently if you would like to place a condition on this off-site parking, an additional one, I'll be happy to record that for you.

Mr. Hedani: Does SMA Minor come before the commission or is that an administrative function?

Ms. Callentine: No, the Minors do not come before the commission.

Mr. Hedani: Okay, so it would be – basically a condition that this commission has to establish for incorporation into the minor?

Ms. Callentine: You could do that yes.

Mr. Hedani: Or incorporation into this approval since it already has conditions.

Ms. Callentine: Yes, you could add a condition to this permit that any SMA permit that's issued on this project would be required and then word your condition how you want to word it.

Mr. Hedani: Okay, thank you. Commissioners? Commissioner Starr.

Mr. Starr: Yeah, move for denial.

Mr. Hedani: Is there a second?

Mr. Shibuya: I'll second it for discussion because I want to propose an amendment.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Shibuya for denial, discussion? Commissioner Starr.

Mr. Starr: Just to go on record in saying that motion for denial is based on the belief that this – issuing this could have an adverse impact on the shoreline and on the recreational and environmental and other facilities of the County of Maui.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: My discussion would be in terms of coming up with an amendment to insure that the owner of the property that's going to be used for parking lot contain all hydrocarbons that is deposited or left on that property. That means they would have to not only capture it and the runoff but insure that it doesn't go into the ground.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm a little bit confused by Commissioner Shibuya's suggestion because if you deny it then you don't put a condition on it. So I think what we need to do if what you want is to get what you want you defeat the motion to deny and then in a motion to approve you attach that kind of condition and I have to say that well, I'm sympathetic to the position of Commission Starr, I'm going to vote against the motion.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor signify by raising your hand? Two in favor. All those in opposed same sign. One, two, three, four.

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

**The Motion to Deny the Off-Site Parking Approval, was Lost.
(Assenting - J. Starr, W. Shibuya)
(Dissenting - K. Hiranaga, O. Tagorda, W. Mardfin, L. Sablas)
(Excused - B. U'u, D. Domingo)**

Mr. Hedani: Motion is lost. Additional discussion Commissioners? Commissioner Shibuya.

Mr. Shibuya: I would like to propose, make a motion to accept with a condition that all hydrocarbon materials be captured onsite and disposed of properly.

Mr. Hedani: Motion to approve with the stated condition. Is there a second?

Mr. Hiranaga: I'll second for discussion purposes.

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

Mr. Shibuya: The reason why I'm making this condition is because I think it's a good use of the property. However, hydrocarbons in the wetlands and hydrocarbons within the shoreline area are actually detrimental to any wildlife and that's what we're trying to protect the shoreline and the coastal areas as well as the wetlands and so therefore, we should take due care to capture all of this hazardous material that is very possible if we use this as a parking lot.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I agree with the basic concept of the proposed additional condition but I would offer substitute language to the effect that predevelopment and post development surface runoff be

retained on site and treated via filtering system for petroleum products that way – it will still be allowed to percolate into the ground but it will be treated. So something to that effect.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I can accept that as long as the hydrocarbon materials or these hazardous materials even battery materials are not leached into the ground. I can agree with that.

Mr. Hiranaga: Filtering system.

Mr. Shibuya: That's right. It's captured in the filtering system. That would be fine.

Mr. Hedani: So the motion basically would read to approve the recommendation with the addition of a condition that pre and post development be maintained on site.

Mr. Hiranaga: Be retained on site and treated via a filtering system.

Mr. Hedani: And treated for petroleum distillates.

Mr. Shibuya: Or any hazardous material. There could be some batteries that have –

Mr. Hedani: Livit you got all that?

Ms. Callentine: Well lets see if I can repeat this back to you because I heard quite a bit of different language. That pre and post development runoff shall be retained on site and treated via a filtration system. Did I get that?

Mr. Shibuya: To capture hydrocarbons and hazardous material.

Ms. Callentine: Oh you're combining with it with that one. Okay.

Mr. Starr: Capture and remove.

Mr. Shibuya: Capture and remove.

Ms. Callentine: Capture and remove hydrocarbon materials.

Mr. Shibuya: And hazardous materials.

Ms. Callentine: Or just hazardous materials. Do you want to spell out hydrocarbon?

Mr. Hiranaga: Yes.

Mr. Shibuya: Yes.

Mr. Hedani: Or just for my understanding hydrocarbon materials coming off – doesn't that come out

of the exhaust of the car?

Mr. Shibuya: Well, not much actually. But you do have the oil dripping, gasoline leaks. You do have battery.

Mr. Hedani: Those are the kind of things that you're concerned about.

Mr. Shibuya: Electrolytes.

Mr. Hedani: Right.

Ms. Callentine: Okay, should I read this again now with the addition of that last language?

Mr. Hedani: Please. And check with your applicant if that's an acceptable condition.

Ms. Callentine: Yeah. That pre and post development runoff shall be retained on site and treated via a filtration system to capture and remove hydrocarbons and other hazardous materials. Does that say it?

Mr. Shibuya: Yes.

Mr. Hedani: Says it for me. Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I have two questions. One is for Livit and that is, how would – does this get implemented? Is this – does this go to the director at the time that a SMA Minor is being issued to enforce it to bring it into effect?

Mr. Hedani: It goes into effect with our approval if we approve it.

Ms. Callentine: Yes. Yes, this approval is what puts it in motion. I might suggest that you consider – you could consider taking this language and framing it in the context that an SMA permit, any SMA permit that's issued on the site contain this condition. Which I would like to do anyway. But if you want to – I mean, just this as it stands is okay, the language is okay with me, we haven't asked the applicant yet.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: The second question I'd like to ask of Commissioner Hiranaga and normally you don't like to specify the mechanism for doing something just the goal that it be done. Is the filtration system an essential element of this or could they find some alternative way of preventing the hydrocarbons and hazardous materials from entering the watershed area?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'm not the maker of the motion. You're asking the wrong person.

Mr. Mardfin: But you were the maker of –

Mr. Hiranaga: It was a friendly amendment.

Mr. Shibuya: I accepted it.

Mr. Mardfin: Okay, then I'll ask you. Is the filtration system an essential element or is the way you had stated the motion before it got friendly amended, you didn't specify how it be done you just said that they not go in and I agree with that. I'm wondering why the filtration system is an essential element. Are there other ways to accomplish the same goal. Maybe there aren't. If a filtration system is the only way to accomplish this then that's fine. But if there are other ways I don't know why we would specify one particular way.

Mr. Shibuya: It's a way of treating captured water.

Mr. Mardfin: Is there an alternative way to treat it?

Mr. Shibuya: Well, you have the entire area covered.

Mr. Mardfin: If filtration system is the basic way of doing it then I don't have a problem with this. I just – normally we don't specify the mechanism, we specify the goal.

Mr. Shibuya: I understand, but the objective was and it's a compromise.

Mr. Mardfin: And the objective is the goal and I have no problem with that at all.

Mr. Shibuya: That's correct.

Mr. Hedani: Okay, you guys are making Carolyn's job impossible to do minutes for this meeting at this point. Let me ask a question, is that something you can live with August?

Mr. Percha: Yes.

Mr. Hedani: Yes. Okay. Commissioner Starr.

Ms. Callentine: So go ahead and repeat that that is something you can live with in the mike.

Mr. Percha: August Percha. We can live with that condition of filtration removing hydrocarbon and other volatile fluids.

Mr. Hedani: Thank you. Commissioner Starr.

Mr. Starr: I still have a concern that an SMA process might be avoided and I'm not exactly sure what the triggers are. I would feel more confident if added to the wording that an SMA process be actually – that it occur perhaps Ms. Callentine can suggest a way to make sure because I'm concerned they say, well okay, you know, later they say, well we're just going to put gravel which

means that all of it will go into the ground but then it might not trigger an SMA.

Mr. Hedani: Livit can you incorporate that into your recommendation?

Ms. Callentine: I'm a little confused about what it is you want me to incorporate into the recommendation.

Mr. Starr: Just that there will be some kind of SMA and you know it's not to us to decide whether it's a major or minor but that –

Ms. Callentine: Well, I can tell you right now that I actually have the SMA application it's been assigned to me. I have it and based upon this discussion I will be requiring a description of a filtration system. I don't think that they're going to be able to use gravel because that doesn't meet the parking code. So unless –

Mr. Starr: So they're going to have to do an SMA no matter what.

Ms. Callentine: Oh yes, it's in the SMA, they have to do an SMA and we will not be issuing an exemption for this. There will be conditions.

Mr. Hedani: Okay, so it's going to be required to have an SMA permit.

Ms. Callentine: Yes.

Mr. Hedani: Any additional questions? Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I just wanted to clarify that this condition regarding retention of storm runoff is only for the portion of the lot that's going to be utilized for parking because it is a portion of a larger lot.

Mr. Hedani: Right.

Mr. Hiranaga: We don't want him having to retain the entire water –

Mr. Hedani: Including the drainage easement.

Mr. Hiranaga: Right.

Ms. Callentine: Actually that – if I might suggest an amendment then to this condition for you to consider. That pre and post development for the parking lot.

Mr. Hedani: For the proposed improvements.

Ms. Callentine: For the proposed improvements.

Mr. Hiranaga: Approved area.

Mr. Hedani: Any additional discussion? Is that okay with you Warren?

Mr. Shibuya: That's fine.

Mr. Hedani: Any further discussion? Ready for the question? August you have a comment?

Mr. Percha: Thank you Mr. Chair, yes we are subject to the SMA area rules and regulations. I just wanted to be sure that we're not talking about SMA major and to further clarify I think what you all want is the more traditional underground retention system with the culverts that have the scrubbers that are removable and we would do that. What we were trying to avoid in this area on this particular site given its disposition is a duplicative to effort and I'll leave it at that.

Mr. Hedani: I think what we've seen in other cases that have come before the commission was an intercept system with a filtration system that captures everything and needs maintaining.

Mr. Percha: That's what I mean and we can accept that condition.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor of the motion to approve subject to the condition signify by saying aye. Opposed nay.

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

**VOTED: To Approve the Off-Site Parking Approval With Amended Conditions.
(Assenting - W. Shibuya, K. Hiranaga, O. Tagorda, W. Shibuya,
L. Sablas, J. Starr)
(Excused - B. U'u, D. Domingo)**

Mr. Hedani: Carried. Thank you. Why don't we take a five-minute recess before we move onto the next item?

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

Mr. Yoshida: Mr. Chairman we're on Item D-2 which is a request from Maui R&T Partners, LLC for a County Special Accessory Use Approval for a long term care and skilled nursing facility on approximately five acres of land in Kihei Research and Technology Park at TMK 2-2-024:004 and 008, Kihei, Island of Maui. Staff planner is Gina Flammer.

2. MAUI R&T PARTNERS, LLC requesting a County Special Accessory Use Approval for a long term care and skilled nursing facility on approximately 4.97 acres of land in the Kihei Research & Technology Park at TMK: 2-2-024:004 and 008, Kihei, Island of Maui. (ACC 2009/0002) (G. Flammer)

Ms. Gina Flammer: Still good morning. Good morning Commission Members. Today we're here to review an accessory permit application for the use of two adjacent lots in the Maui Research Technology Park for a long term care and skilled nursing facility.

Briefly, the Kihei-Makena Community Plan sets aside 300 acres mauka of Piilani Highway as Project District 6, a 150-acre portion of that site is classified as State Urban District and zoned Kihei Research and Technology Park District in accordance with Chapter 19.33 of the County Code. The Maui Research Technology Park is a subset of lands owned by Maui R&T Partners and comprises about 59 acres which are currently accessed off of Lipoa Parkway. Maps are shown in Exhibit 4.

The proposed project is a 100 to 125 bed long term care and skilled nursing facility to be operated by Regency Pacific Inc., who is a national provider of skilled nursing facilities with 50 facilities on the mainland and four facilities here in Hawaii. According to the applicant an agreement will be established with the University of Hawaii, Maui Community College Nursing Program to provide a teaching and training lab at the facility to help train certified nursing assistants and geriatrician and physical rehabilitation workers. The cost of the project is estimated to be \$18 million and according to the applicant the facility is anticipated to create a 187 jobs, 80 of those which will be skilled jobs such as physicians, nurses, physical therapists.

As background, in July of last year Regency Pacific entered into a sales agreement with Maui R&T Partners, the landowner. As part of that contract a land use confirmation is required as well as a CON approval. The land use confirmation is being done through this Accessory Use Permit application that we're reviewing right now. Now in the past six months the commission has reviewed three accessory use permits. We've done the Wailuku Morgue, we've done the environmental program at the Ritz-Carlton and also the Puunene Shell HI-5 Redemption Center.

In this case the proposed project is located within Project District 6, the Kihei Research and Technology Park. So the accessory use permit is reviewed pursuant to Title 19, Zoning, Chapter 19.33 and Section 010 states, "the purpose of the district is to provide for the establishment of a research and technology park pursuant to the findings and recommendations of the General Plan and community plan." Now Section 030 defines the permitted uses and as many codes they put an accessory use clause. In this case it's Item G and it states, "other uses of similar and/or supporting service character may be permitted," the code then goes on to list out a few examples, "and requires review by the planning commission and consistency with the General and Kihei-Makena Community Plan."

Now as we discussed in previous meetings it's not possible to list out all the uses in the code so that's why they put in these clauses. Now that was the case with the morgue. There's also times change and our understanding of land use planning evolves and code writing naturally lags behind this, this is the case with the recycling center accessory use permit that you've reviewed. In this case the concept of research and technology parks both here and in Hawaii, I mean here in Hawaii and on the mainland have evolved with experience. Now recognizing this in 1989, just three years after the ordinance was passed the planning commission approved a definitive interpretation of uses under Item D, those uses were approved and they specifically include medical uses.

So if you read the code and you look at the law the first criteria is, "is the proposed use of similar character and/or supporting use character." In 1989 the planning commission through its definitive interpretation included medical as a similar and/or supporting use. The 1989 determination also further described a supporting use as a mixed use that supports the parks overall ability to be economically viable.

Now the second criteria of the law is, "is the use consistent with the General Plan." If you can see from the staff report analysis of General Plan policies they're found on page 8 and 9 of your report that the answer's yes. The project provides for economic and social benefits.

The third criteria of the law is, is the use consistent with the community plan? Again, you can see from the report the analysis it says yes. So we all know about the new General Plan, the Maui Island Plan which this body reviewed just a couple months ago. So I was curious about how this would fit into future, our future plans. I consulted with the Long Range Division and they confirmed that the proposed project supports many of the economic and social policies in the plan. So I also inquired while I was up there, down there about the future of research and technology parks and again they explained to me that the project is indicative of other areas where mixed uses are being incorporated into research and technology parks specifically to improve their overall viability and to better serve community needs.

I also want to note before I have our consultant come up and do the presentation that there we no significant comments from any of the agencies that reviewed the application. There's also been two letters of support submitted this morning which Richelle Kawasaki from the HHSC Maui Region read to you from the CEO, Wes Lo and also another one which I just put on your desk which is from the Maui Economic Development Board. So before I move onto the department's ...(inaudible – changing of tape)...

Mr. Chris Hart: Thank you Gina that was very good. My name is Chris Hart, Chris Hart and Partners and we are the planners on this particular project and I wish everybody a Happy New Year and we would like to do a brief power point for you. I'm going to share the power point, it's going to be shared between myself and Steven Oldfield who is the Development Manager for Regency Pacific.

This is the Regency Pacific Skilled Nursing Facility request as Gina said for accessory use permit. Our project team, Pacific Rim Land is the applicant and the Maui Research and Technology Park Partners are the owner and Steve Perkins is here representing both the applicant and the partners. Regency Pacific is the perspective owner and developer of the 4.9 acre, two parcels within the research and technology park and Steve Oldfield is present as the Development Manager for Regency Pacific and myself representing Chris Hart and Partners with Mike Summers who has been the planner on this project.

Gina went through some of the history and the purpose of the research and technology park and you know that in the 1980's we had a really strong agricultural component of our economy and our visitor industry was certainly thriving. In 1981 there was a symposium actually held at Kapalua and Colin Cameron was very much involved in that and a guy by the name of Don Malcolm and the idea was to develop, to basically develop a research and technology park component of our Maui economy that it would be basically the third leg of a three-legged stool.

The current conditions at the park, 10% of the project has been built out or 40 acres have been developed since the inception. There are 180,000 square feet of existing office space. 20 businesses at the park with 400 employees. Currently the partners are involved in an updating of the park master plan. It was really interesting recently to meet with some of the 400 employees at

the research and technology park. They really – they are really technical people and they really like the environment of being able to associate with other technical people at the research and technology park. The way the research and technology park is developed, was initially planned as a campus research and technology park with five acre and two acre parcels. It's really – these individuals are very entrepreneurial but it's designed to be a campus for you know, like General Electric, Microsoft and to have individuals walking around with tweed jackets on the shaded walkways but really these people are entrepreneurial and they want to have the opportunity to be able to live and to work in the research and technology park perhaps buy something smaller live/work units and get together with friends and actually be like the ...(inaudible)... jobs of the research and technology park industry. And so there is an energy for that here on Maui and therefore there is a revisioning going on the park master plan and it's been basically, it's being worked through with the Planning Department, the director and the Long Range Division together with introduction of some of the revisioning to the County Council currently in the context of the Island Plan.

The Kihei Research and Technology Park Ordinance is Maui County Code 19.33. We will be rewriting that. And then the permitted uses in Chapter 19.33 there are as Gina said other uses of a similar and/or supporting service character are allowed. Back in December of 1989, and I was Planning Director at that time the planning commission basically made a determination that Maui County Code Chapter 19.33.030(G) medical uses were considered permitted uses in the park. You know, that same thought process has been carried on most recently remember the proposal by Dr. Ron Kwon to do the Malulani Hospital at the Research and Technology Park so that's not something new. In September 2008, the Planning Director confirmed that medical is a permitted use in the park.

This is our location, of course, this is the ocean at the bottom. This is Lipoa Street with Lipoa Parkway. Piilani Highway is the major north-south arterial and that is also the, Piilani Highway is also the boundary, the mauka boundary of the special management area. So the Research and Technology Park is outside of the special management area.

This shows an aerial of the development within the park. This is Piilani Highway and Lipoa Parkway.

This basically shows the Elleair Golf Course and the Research and Technology Park in the context of the subdivision. Very important to note that all of the – in the context of the subdivision essentially all of the infrastructure to service the Research and Technology Park has been established. There is a left – there's a traffic signal at the intersection of Lipoa Parkway, left turn lanes, there are drainage retention basins that have been installed as part of the Research and Technology Park and essentially the concept is that each individual parcel would be sold and developed and each individual developer would have to go through the requirements of the building permit process in order to end up being able to obtain a certificate of occupancy for their particular project.

This is our community plan. It shows again Piilani Highway, Lipoa Street, Lipoa Parkway and identifies the Research and Technology Park as Project District No. 6.

This basically again shows the Research and Technology Park. The portions of the parcel that are within the ag district still identified in green and this would be the portion in the urban district.

These are some site photos. This is looking mauka across the subject property from the corner of North Hinau Street and Lipoa Parkway.

Now Steven Oldfield will give you a little bit of more detail presentation about the Regency Pacific project.

Mr. Steven Martin Oldfield: Good morning. My name is Steven Martin Oldfield. I am the vice-president of Regency Pacific Inc. who will be managing the project and I am the managing member of Kihei Molohia LLC which would be the company which will develop and own the facility itself. I'm a resident of Kilauea Town on the Island of Kauai and would with today is James Mahealani Reese who is also from Kauai. James would be the one who will be overseeing this project and he is the one who currently is working on our certificate of need for the project.

Regency Pacific Incorporated is one of the largest providers of senior housing and care of our kupuna in the western United States. There's approximately 57 facilities throughout the west United States caring for over 10,000 of our senior citizens. In Hawaii we have four existing facilities and we've been offering care in Hawaii for over 30 years starting with our original project in Hawaii which is the Kauai Care Center in Waiamea on the Island of Kauai.

The past 10 years we've been trying to expand our services to the citizens and the seniors of Maui County and it has been a daunting task both because of the specific needs we have as company, the type of land and facilities we have, frankly the cost of land on Maui and the requirements that we need to meet. We're thrilled to death that after this length of time we have been able to come up with a site and some property and a location that was first referred to us by Wes Lo of MMMC and suggesting that we talk with Steven Perkins and his group which we were happy to be able to do and last year were able to go under contract on this nearly five acres of land.

The property is actually perfect for us. It is in a great location. It is central to the island. It has convenient location to the highway. It has easy access to the hospital. It is an attractive area. It is an area where families will be comfortable taking their kupuna and helping them to have the best years of the rest of their life.

We are proposing to build a facility of approximately 60,000 square feet which will service approximately a 125 residents. We are currently in the process of doing the CON, the Certificate of Need for the project as well as to meeting with the county and the members of the health community to find out exactly how to structure and to offer in this project. Some might think it's as simple as saying great we'll build a 125-bed facility and we're there. There are specific needs that need to met and so part of our job in the CON process is to find out what are the needs of the citizens of Maui County and that is done by meeting with other senior providers and other health providers in the County as well as the CON process itself.

A project of this size will create approximately 187 jobs and 80 to 90 of those will be in highly skilled positions. One of the first questions that comes up is always where are you going to find 90 skilled

employees on Maui? And the answer is, we will train many of them ourselves. We are the only senior housing provider I know of that is licensed to train certified individuals in this industry. Our hope is to do here what we have done at other locations in the past and that is to work closely with the college and work with their nursing program to provide, number one, employment for their students in the nursing program, and number two, to give them onsite instruction on how the process works. And our country as I know you must be aware the demographics are very simple. We're getting older. Baby boomers are beginning to come to the age where we need housing facilities for them and historically in our nursing industry we do not have a lot of people going into geriatric care and so this is an area that we will need to work with.

We always give preference to local individuals in our hiring practices wherever we're located. So we will try to hire number one, Maui people for jobs to help our Maui kupuna. The reality is yes, some of the people we'll have to bring in from other facilities. We're very fortunate to have 57 facilities throughout the west United States and so if we are short of people locally at least initially it's pretty easy when word goes out that we're opening a facility in Maui to get people from the mainland to want to come over at least on a temporary basis until we fill the positions permanently.

Maui has a senior population according to most recent demographics of approximately 16 to 17,000 individuals. Maui has an acute shortage of skilled and long term facilities for our patients. Maui County has the lowest ratio of beds to population of any county in the state. It's part of why we've been trying for 10 years to be able to locate here. Currently there are fewer than 500 utilized long term care and skilled nursing beds in Maui. Our facility will add approximately 125 more than that number.

We have and will continue to work as Wes Lo's letter said early with the community to try to determine exactly what the needs are so we can provide the services most needed. The number one area we've located so far is in fact with MMMC and their need to get wait listed patients out of ICU into a long term care facility.

We also offer dementia, I know that's difficult for a lot of us to think about but dementia is one of the fastest increasing health problems in the United States and it takes a very special training and very special facilities to be able to give our dementia kupuna a healthy and happy existence.

We're excited to be able to come to Maui. We're excited to be able to come our project here and to work with you and I appreciate the opportunity of talking to you this morning. Mahalo.

Mr. Hart: In summary then, thank you Steven, our justification for the accessory use permit approval, the request is consistent with Maui County Code Chapter 19.33.030(G) which allows for medical uses. It facilitates economic development and provides for diversification of Maui's economy. It addresses Maui's skilled nursing and long term care shortage. It strengthens the Maui Research and Technology Park by bringing a strong tenant to the park and a critical mass of users. It aligns with the park's master plan update. This is a revisioning of the park that is going on now and we thank you very much for the opportunity.

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

Mr. Starr: It's good to see projects like this coming to Maui. I do have a question and I'm really surprised that your consultants didn't have any analysis of transportation. For a while Chris was always making sure to do it and I'd like to know what happens if people who are visiting patients and of course, people who work here or maybe even ambulatory patients want to come here without using a car is it possible and if so, where is the nearest Maui Bus and how far do they have to walk, etc. I really like to see that as part of the report so I don't have to ask this question over and over.

Mr. Hart: I apologize Commissioner Starr and I'll ask Steven Perkins because there is bus service to the Research and Technology Park.

Mr. Steven Perkins: I'm Steven Perkins. I'm with Pacific Rim Land, the Project Manager for the Maui R&T Park. There is bus service, county bus service to the R&T Park and the stop that the bus currently uses is within a good city block of the facility and we are pleased that we're starting to see usage of that bus increase. We'd encourage the county to provide extended service especially when we get into a project like this. With our master plan update that Chris referred to one of the components of that is a circulator bus that will take folks both above mauka of the highway and below and we think that we'll see some significant usage of a circulator bus.

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

Mr. Shibuya: I was just wondering if you wouldn't mind sharing that master plan with us. I'm interested in seeing what types of facilities, you know, necessarily research and technology but specifically what uses you have in this area. Are residences close by? Are there pedestrian and bikeways? Are there golf cart ways that can be used? I'm looking at alternatives and open space too.

Mr. Perkins: Sure. We've recently started on a update of our master plan. We've retained Cal Forbe Associates out of Berkeley, California. A very world renowned urban planning firm that's very well regarded in the urban design and planning field. Probably one of the top five in the world. Essentially what happened is I was brought on board about a year and a half ago to kind of lead this update process. We went around. We went to the mainland for a couple weeks, visited on the order of a dozen employment centers elsewhere and come to find out essentially what is state of the art in these types of developments are mixed use develops where you're able to have residences and other services in close proximity to where work forces instead of having a silo development approach where everybody has to drive everywhere. So yes, there is workforce housing contemplated for the R&T Park. We will be coming before this body when we change of the entitlements. We're on a about 24-month –actually we can bring our designer in and provide a workshop for you folks. Maybe you could come up if there is interest to the R&T Park and we could run through kind of our plans and what's going on currently and we're really pretty excited about this and we're pleased in this economic, these economic times that we're kind of moving forward with this. So yes, you will have a chance to review this in detail and we'd be very pleased to bring more information to you on it.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have a couple questions. For I believe it's Mr. Oldfield. I apologize if I got your name wrong. I have one that people often get wrong. Sir, I wanted to ask a couple questions. One, you said you have a facility on Kauai. What other facilities do you have in Hawaii?

Mr. Oldfield: We have four in Hawaii, three of which we own and operate and one in which we operate for another owner. On Kauai we have the Kauai Care Center in Waiamea, we have Regency at Puakea in Lihue, in Kona we have Regency at Hualalai and then we have recently begun management of basically a troubled property on Oahu on the Ponds of Punalu'u. By the way, and the question earlier, I'm sorry, but you asked about transportation. We do provide transportation for our residents. So we do have buses.

Mr. Mardfin: At your other facilities in Hawaii are the workers unionized?

Mr. Oldfield: They are not.

Mr. Mardfin: They are not union. Are you intending to do any pharmaceutical or medical research at your facility?

Mr. Oldfield: Formally we don't have any plans at this time. The reality is in senior care and especially in dementia we do end up doing a lot of research and so while it's not formally part of our presentation the reality is it's always a part especially in a skilled facility.

Mr. Mardfin: The reason I mention it is because you said you're going to hook up with the University of Hawaii.

Mr. Oldfield: We hope to, yes.

Mr. Mardfin: And if you do that, you might do that, and if you do, there's a permitted use (E) that would help to where you'd fit in, (E) was lets see, in Exhibit 1, page 3 of 15 it says, "permitted uses (E) pharmaceutical, biological, medical and agricultural research and production facilities."

Mr. Oldfield: Correct.

Mr. Mardfin: So that would just be one other hook to put your project on. I think that's all I have for you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: This is for Mr. Oldfield too. I asked this question earlier and this one is in terms of economies of scale. I do want you to succeed. So what is the types of bed size that you would need to be sufficient, operation sufficient.

Mr. Oldfield: Normally it takes 75 to 80 beds. Cost of construction and operations in Maui tends to run a little higher so we're probably looking at around a hundred beds. This property fits a 125 and the need for a 125. The need in Maui far exceed the 125. We do have to go through the Certificate of Need process with the State that will determine what the actual need is but the question is

whether it's 300 or 400 not whether it's a 125.

Mr. Shibuya: Okay, I was thinking a little higher that's why. But the other aspect that I have is in terms of gerontology you would now have a doctor, a physicians or physician's aides and this nature. The economies of scale of having something like this or some services in addition to just the beds but you would need the ...(inaudible)... type of services advising and –

Mr. Oldfield: We have not only the beds in the facility, we also have a pharmacy in the facility. We will have an onsite geriatric specialist on the facility. We have rehabilitative services. So yeah, there's substantial additional services above and beyond just the beds.

Mr. Shibuya: I understand and those I appreciate because now these are creature comforts and conveniences for the patient itself and it's easier, however, pharmacy in itself, you know, is very expensive not only because of the materials but the expiration of that thing as well as the size of just having a pharmacist there. The manpower, the cost of manpower is tremendous at this type of facility. Is the size adequate and that's what I'm really after and I'm trying to do a rough estimate in my mind.

Mr. Oldfield: The size normally on the mainland, 75 is the number we use that works. On Hawaii I think it's a little higher. It means it's going to be more like a 80 to 100. We have our own pharmacy company. We have to, the cost of pharmaceuticals are so high that we can cut out the middle person that way and so our savings in pharmaceuticals far outweighs the cost of having a pharmacist having a facility onsite.

Mr. Shibuya: And in terms of having one individual on Maui lets say for interaction just on pharmacies, pharmacies distribute as a doctor see it but now you have interaction between different types of medications and that is not the field of the pharmacist.

Mr. Oldfield: Correct.

Mr. Shibuya: And that's what lacking on Maui too. People go and see one doctor, another doctor and they get three different types of prescriptions they add them in together, more is better, not necessarily.

Mr. Oldfield: You just stated a part of why we want our kupuna like this so we can control those issues. Our patients in our beds use – do not see – do not go to multiple doctors and get multiple prescriptions. Correct.

Mr. Shibuya: That's what I really like. A centralized type of system.

Mr. Oldfield: Exactly.

Mr. Shibuya: I have taken a look at it, unfortunately I was with the General Planning group and I know that Maui has a need and has the population outgrown its capacity to serve. These people have – we're talking about 169% overall growth in the population and we're actually under served by that amount.

Mr. Oldfield: Correct.

Mr. Shibuya: I am concerned because I'm at that age, after I finish serving here I may be a patient here.

Mr. Oldfield: I looked around, a lot of us fall into that category.

Mr. Shibuya: And I promise here if we don't have a mass transit system I will be driving down Haleakala Highway 40 miles an hour and too bad you going follow me because that's as fast as I can go. So now, being that as it may I just add here too we are as you said 500 beds but that includes Molokai and Lanai and I'm looking at the overall picture for Maui County as well as Lanai and Molokai. This 125 is like a drop in the bucket. You know you stick your hand in the bucket and you take it out the water it doesn't seem like it's empty at all. The displacement is not really there. So I'm looking at ways in which you can succeed and that's why I'm looking at economies of scale, getting the professional staff as well as the next issue would be sustaining yourselves to renewable energy. What initiatives are you planning to have in that area too?

Mr. Oldfield: The economy scale works two ways, not only how big you have to be but how big can you get to be and our experience is when – different people have different philosophies, this is our company philosophy, when you start exceeding about 150 beds you lose the ohana. It's gone. And we're not willing to do that. So do we have multiple facilities of the same community we do in Kauai. We have two facilities. There's only 60,000 people in Kauai but I'm not willing to give up that when my children take me to one of our facilities I'm not willing to give up feeling of ohana and family that we know everybody and care about everybody. So you're right, this is not a drop in the bucket. We have not completed the CON, James is working on it, the number's going to be scary on how many beds we need. It's going to be frightening. So I guess my point is, we do it a 125 beds at a time.

Mr. Shibuya: Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I know it's really hard to predict these things in advance but what would it cost for a person to stay there on a per night basis?

Mr. Oldfield: You want to check you?

Mr. Mardfin: I know these are tough numbers and it depends on what you have and everything else but –

Mr. Oldfield: It varies tremendously on what your care is, what your need is and so forth and this is a skilled facility not an assisted living facility so the cost is significantly higher. Our average cost per night is \$285 but that can be as low as \$185, \$175, that can be as high as \$400 or \$500 a night depending on what the services that are needed. This facility will probably be, and it's too early to know these exact numbers yet, but this facility will probably be 80 to 90% public pay and 10 to 20% private pay. And Hawaii, our ratios of public pay are enormously high and it makes very difficult.

There has not been a new skilled facility built in the state in over 10 years because you can't make the numbers work.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Yeah, I'm really happy to see that Cal Thorpe is coming into the park. I've seen them at Urban Land Institute and APA, they're great. I hope when that process is occurring we can really take the opportunity to learn from those guys. This facility will there be energy efficiency play a role in the design of it?

Mr. Oldfield: We're one of these companies, we've been around for 35 years and we've gone from building an old-fashioned to a very modern. My business partner James Clay just finished his Masters degree in Sustainable Technologies from Gabbard College in Vermont. So yes, he insists on it.

Mr. Starr: And Gabbard is a great community.

Mr. Oldfield: Yep.

Mr. Hedani: Additional questions? Commissioner Tagorda. Orlando you can use the mike? It's being recorded by our secretary.

Mr. Tagorda: Yeah, I have some concerns about this project although I believe it's a well-planned, well-needed at this time because for our dire economic needs. I want you to succeed but on my Exhibit 4 map there is some ag land above – below your project and on your left side and over the years I kind of envision a problem might arise. Since your project is way at the end of the Lipoa Parkway long way to the highway and about only for 40% of that Maui Research and Technology are completed when that Maui Research and Technology are completed in the near future there will be a problem ingress and egress. There's only one way in and one way out. What about evacuation things that you have planned?

Mr. Perkins: Steve Perkins, the Project Coordinator for the R&T Park. In the master plan update process that I discussed earlier part of that is an environmental impact study and associated with that will be a traffic impact analysis report. We've just now filed for the EIS prep notice and are working on – working with our traffic engineers and our master planners at Cal Thorpe to come up with the best possible design. The mixed use route is going to reduce the amount of traffic versus what we are currently entitled to do. Right now as it is there's no amenities on site so everybody leaves at lunch, at the beginning of the day, at the end of the day, and for any type of services it's all – goes down and hits that highway. So we're hopeful that our update will help rather than hinder the expansion because everybody desires the positive economic benefits of the park but we want to be good neighbors and address our traffic as well.

Mr. Tagorda: So can you explain to me what are these updates that you folks have in mind while the project is ongoing?

Mr. Perkins: We're in very early draft stages at this time and as it unfolds and as we finalize our

design and get it engineered we will appear again before this body and you will be able to review and comment that time sir.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: Mr. Perkins, I have some more questions for you if you don't mind. Do I understand that there are 19 lots in the technology park?

Mr. Perkins: I don't have the exact count of the lots but that's sounds essentially correct developed. There's an eight-lot subdivision with one lot currently sold out of that. That's the current product that we have and one existing lot that is in the inventory with 11 lots sold. So that's about –

Mr. Mardfin: That's 19. And so how many have been sold?

Mr. Perkins: We've sold 11.

Mr. Mardfin: 11. Does that include this property we're talking about here or would this be number 12?

Mr. Perkins: This is actually two lots.

Mr. Mardfin: 12 and 13.

Mr. Perkins: That's correct.

Mr. Mardfin: I'm looking at Exhibit 6 which has your tenant list. This has five on it not 11, but of the – is this only a partial list?

Mr. Perkins: There's only five buildings. There's on the order of 11 lots sold and but there's only five buildings.

Mr. Mardfin: Okay.

Mr. Perkins: A number of the lots are undeveloped. They're sold to other entities but have not yet been developed.

Mr. Mardfin: Okay. Well lets take the ones that have been developed, are these all R&D or some of them what you'd call service?

Mr. Perkins: Essentially I'd say the great majority of it is R&D and probably 10 to 20% of it is service related.

Mr. Mardfin: Okay, and this new facility we're talking about on Lots 12 and 13 would be all service.

Mr. Perkins: I'm not sure where that falls, it falls in the uses, medical in our understanding of it and reading of the – is an acceptable use. I don't know if you have to qualify it as service or research

or what, but the reason we understand that we're here before you today is essentially that the Zoning Enforcement folks didn't think that this was a medical facility.

Mr. Mardfin: And didn't think it was research and technology.

Mr. Perkins: No, they did not think it was a medical facility.

Mr. Mardfin: Okay.

Mr. Perkins: Medical is an acceptable use but we were not – they wanted clarity on – to have your blessing that it was indeed a medical facility.

Mr. Mardfin: And the limitation on, in Exhibit 2, page 2 is that services, office and business be 40% of the total lots and it sounds like you're under that. You're not pushing that limit that's –

Mr. Perkins: No.

Mr. Mardfin: That was what my questions were gearing to, to make sure that it wasn't being pushed and it sounds like it's not.

Mr. Perkins: No sir.

Mr. Mardfin: Okay, thank you.

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

Mr. Hiranaga: Just curious, does the Workforce Housing Ordinance apply here?

Mr. Hedani: Chris.

Mr. Hart: Not that I'm aware of. Not in the context of medical facilities. You know, it's not a hotel. It's not –we're not building an apartment project, we're not building a single family residential subdivision.

Mr. Hedani: Gina or Clayton do you folks have an opinion on it?

Mr. Yoshida: Commissioner Hiranaga, I do not believe that the Workforce Housing Policy applies to this project.

Ms. Flammer: I think it might help to understand the two uses. It's not just long term care in which residents may stay through hospice care and on, there's also skilled nursing and that's a temporary type of stay. So they're going to be serving people that may stay through the end of their life but they're also going to be serving a population where you come in temporarily and you rehab there or you're treated for infection or a wound.

Mr. Hiranaga: Well, for the employees that – the 187 employees that are going to be – jobs are

going to be created so you may want to pass it by Housing and Human Concerns.

Mr. Hedani: Chris.

Mr. Hart: Steven Oldfield in his due diligence did have an opportunity to talk to Department of Housing and Human Concerns and I'd like to ask him to communicate with you about that.

Mr. Oldfield: We met with them this summer before we actually even wrote an offer on the property to make sure and they said no, we were exempt from it that medical is not included.

Mr. Hedani: Additional questions? Commissioner Shibuya.

Mr. Shibuya: No, it's more of a statement. In Kula Hospital where long term care is provided there – I've been asking the administrator there to insure that you have more housing, temporary housing at least for the workers. There was one nurse that got into an accident and luckily it wasn't fatal but at least the problem here is that you have 24 hours, seven days a week type of operation and they have very extended hours of work and being located in Kihei as well as in Kula it's a very trying experience and I would like to increase the quality of life for these workers and that's why I'm encouraging housing in that area or close by so that they can have access to their workplace. I think that's the only way we can help each other, help ourselves become even better. Thank you.

Mr. Hedani: Any additional questions for the applicant? We'd like to take this opportunity to open it up for public testimony. Are there any members of the public that would like to offer testimony on this item at this time?

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

Ms. Richelle Kawasaki: Good morning, my name is Richelle Kawasaki and I'm the attorney for the Maui Region of the Hawaii Health Systems Corporation. I'm here this morning to read testimony prepared by our Regional Chief Executive Officer, Wesley Lo. He apologizes he's not able to be here today. He's on Oahu attending to corporate business. Mr. Lo prepared:

Dear Chair Hedani and Members:

Thank you for this opportunity to testify in strong support of ACC 2009/0002 Maui R&T Partners, LLC requests for a County Special Accessory Use Approval for a long term care and skilled nursing facility at the Kihei Research and Technology Park, TMK 2-2-024: 004 and 008.

As the Regional Chief Executive Office for Maui Memorial Medical Center, Kula Hospital and Clinic and Lanai Community Hospital I support the addition of long term care and skilled nursing beds in our community. There is a shortage of these types of beds in our county which causes acute care beds at Maui Memorial Medical Center to be used as long term care or skilled nursing beds while patients are waiting to be transferred to a healthcare facility that is more appropriate to their needs.

MMMC loses approximately \$1,300 per day caring for a wait list patient because MMMC is licensed for and required to provide enough staff for each bed to provide for a patient needing acute care.

What this means is that once a patient is downgraded from acute to long term care or skilled nursing status their insurance will no longer cover the cost associated with being in an acute care facility.

I must also stress that it's extremely important that any developer of long term care work collaboratively with other healthcare providers in the community to insure the proper type of beds and facilities are built to promote the viability and sustainability of all existing providers and the entire healthcare continuum.

I understand that Maui R&T Partners, LLC will be working with Regency Pacific in its endeavor. Regency Pacific has been extremely collaborative, has a good understanding of the fragile nature of our healthcare system in Maui and has assured us of continued cooperation. Patients with long term care and skilled nursing needs are more appropriately served at long term care skilled nursing facilities and improving this application will allow for these types of beds to be developed to help meet the needs of our community.

Thank you again for the opportunity to testify in support of ACC 2009/0002. Sincerely, Wesley P. Lo, Regional Chief Executive Officer. Thank you

Mr. Hedani: Thank you very much Richelle. Questions from the Commission? Commissioner Shibuya.

Mr. Shibuya: Richelle, is there a economy scale, a break point where it becomes profitable if you have these long term care facilities such as what is being proposed?

Ms. Kawasaki: I'm sure there is a breaking point and I believe that Regency Pacific would probably be in a much better position to tell you what their business model is and what their, you know, breaking point is or their, you know, point of profit would be.

Mr. Shibuya: I understand what MMMC's problem is when you're talking in terms of accommodating the long term care as well as those that have more serious needs and they're very close to the specialists at this point. So if you can decentralize that or move the long term care as well as seniors as other type of – to another location where you have professionals also readily available like clinics if we plan it correctly I think we can all survive, we can all help each other and be more sustainable.

Ms. Kawasaki: Yes, I believe that's one of Mr. Lo's primary concerns is that there be lot of collaboration in this effort such that the proper beds are built under the correct models because as you know Maui Memorial Medical Center is only licensed for acute and so therefore, you know, the services that we provide and the staffing model that we are regulated and required to maintain requires that we provide a certain staffing ratio for each bed and you don't really need that staffing model for the long term care or skilled nursing bed. And so that really puts us at a disadvantage and if there were more places that we could transfer these patients to that would accept them and that the patients were appropriate for it would really alleviate the drain on the healthcare community.

Mr. Shibuya: Thank you Richelle.

Mr. Hedani: Any additional questions from the Commission? Seeing none, thank you very much Richelle.

Ms. Kawasaki: Thank you.

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

Mr. Hedani: Seeing none, the public hearing is closed. Staff recommendation.

Ms. Flammer: The Department of Planning recommends that the Maui Planning Commission approve this accessory use permit subject to the following seven conditions. I did notice a numbering error that I'd like to bring to your attention. There is no number 2, Condition No. 2 in the report and it's a numerical error there was not a condition that was accidentally dropped. So the first six conditions are standard conditions which I can read if anybody makes a request.

I do want to point out the only project specific condition which now No. 7 states, "that once the property is acquired by Regency Pacific they will become the permitholder." I wanted to make sure everybody had an opportunity ask questions.

In the consideration of the foregoing the Planning Department recommends that Maui Planning Commission find the proposed use to be a medical use that is consistent with the General Plan and the Kihei-Makena Community Plan and in conformance with the intent of Title 19.33.030 of the Maui County Code. Further, the Department recommends that the Planning Commission adopt the Planning Department's Report and Recommendation prepared for the January 12, 2010 meeting subject to the stated conditions of approval as its findings of fact, conclusions of law and decision and order and authorize the Planning Director to transmit said findings of fact, conclusions of law and decision and order on behalf of the Planning Commission.

Mr. Hedani: Thank you Gina. Any questions for staff? Commissioners what's your pleasure? Commissioner Starr.

Mr. Starr: Move for approval as recommended.

Mr. Tagorda: Second.

Mr. Hedani: Moved by Commissioner Starr for approval as recommended. Is there a second?

Mr. Tagorda: I second it.

Mr. Hedani: Seconded by Commissioner Tagorda. Discussion? Ready for the question? Commissioner Shibuya.

Mr. Shibuya: I just wanted to say that I became more convinced that the medical application of this skilled nursing facility it did apply and I looked at the letter of the previous 1989 Planning

Commission review and their decision and I support the decision and I think that – I'm just what I'm doing now is putting it in the record that we've considered it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I just want to say I'm really happy to see this happening. My mom was kind of in and out of a facility like very similar to his in Florida for the last several years of her life and maybe if we had more of that type of thing here she could have been living here instead of there.

Mr. Hedani: Additional discussion? My personal comment on this particular project is that I'm encouraged that you're considering you know, the Maui Research and Technology Park. Initially I was hesitant because the R&T Park as it was originally envisioned was for research and technology, however, basically I think that the people that come to a research and technology park take a lot into consideration and it's the holistic nature of the facility, the island, the standard of living, the ability to get care as you age and if you're really smart and use up all your brain cells in the research and technology park you're going to need a facility like this when you're done. So I support the project entirely with high paying jobs, highly skilled jobs. I think it's what it was envisioned by both Colin and Don Malcolm when they first conceived the research and technology park. Commissioner Mardfin.

Mr. Mardfin: I support this also and I just – I would urge you to work with the University of Hawaii and see if you can get more formal research in there. I just think it's an added bonus if you do and maybe another source of funding.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: This is more of a comment for Steven Perkins. It's the master plan that I'm looking at too and it is the philosophy that we have I actually worked many years, maybe 30 years in this kind of community where we had research and development and our labs were there and it was actually a college campus type of layout. Our communities were around that and I actually rode my bicycle to and from work and the real reason was is that I couldn't ride my bicycle at night so therefore, I couldn't spend 14 hours a day. That was my excuse to do this, but it was – we spent nearly six and a half days there because of this collegial type of atmosphere and I hope that you can design something that we can walk towards, ride our bikes, do our shopping, taking care of our seniors, have our recreational areas. These are the qualities of the life that I hope people on Maui can experience what I've experienced. Thank you.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Approve the County Special Accessory Use as Recommended.
(Assenting - J. Starr, O. Tagorda, K. Hiranaga, W. Mardfin, W. Shibuya,
L. Sablas)
(Excused - B. U'u, D. Domingo)**

Mr. Hedani: Carried. Thank you. It's 12:30, we're going to go ahead and take a break for lunch at this time. We'll reconvene at 1:30.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:34 p.m.

Mr. Hedani: Mr. Yoshida.

Mr. Yoshida: Thank you Mr. Chairman, we're on Unfinished Business request from Ms. Edith Blas for a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit to operate the Kula Glen Estate Bed and Breakfast, three-bedroom bed and breakfast located in the State Agricultural District at 24 Ohelo Place, TMK 2-3-060: 066, Kula, Island of Maui. Public hearing conducted on December 8th and the B&B Permit is being reviewed by the commission because a permitted bed and breakfast operation is located within 500 feet of the subject property. The staff planner is Livit Callentine.

E. UNFINISHED BUSINESS

- 1. MS. EDITH BLAS requesting a State Land Use Commission Special Use Permit and a Bed and Breakfast Permit to operate the Kula Glen Estate Bed and Breakfast, a 3-bedroom bed and breakfast located in the State Agricultural District at 24 Ohelo Place, TMK: 2-3-060: 066, Kula, Island of Maui. (SUP2 2009/0012) (BBMP T2009/0006) (L. Callentine) (Public hearing was conducted on December 8, 2009.)**

Commission review of the bed and breakfast permit is needed because a permitted bed and breakfast operation is located within 500 ft. of the subject property.

Ms. Livit Callentine: Thank you Clayton and good afternoon, nice to see you again Commissioners. I hope you all enjoyed our lunch. As Clayton mentioned to you held a public hearing on the item on December 8th. What you should have before you today is the department's report and recommendation that were prepared previously for the December 8, 2009 meeting and the addendum and second addendum reports prepared for the January 12, 2010 meeting. I would like to make a correction to the original staff report and first addendum report which listed the incorrect TMK and Clayton correctly noted the TMK as 2-3-060:066.

The item was deferred on December 8th and the concerned discussed at your last meeting were that the applicant only owns a 2% share in the property and while the ordinance governing B&Bs does not set forth a percentage requirement some commissioners felt that owning such a small percentage was not in the spirit of the B&B ordinance. Two, that approving this B&B may lead to proliferation of other such minority ownership arrangements. And three, by the testimony of neighbors it appeared that there's general opposition to the B&B.

The department would like to bring to your attention that two other bed and breakfasts have been approved where the applicant hold a minority share of ownership in the property. One of these is the Ho'oilolo House B&B where a daughter of the original applicant was granted a share of 16 or 18%

share of the property and is the applicant and proprietor of the B&B and the other one was the Maui Pole House B&B which – the first one I mentioned was done administratively and the second one, the Maui Pole Inn B&B was approved by this body and the caretaker has a small percentage ownership, percentage of ownership in the property.

Since December 8, 2009, the department has received 13 letters in support from neighbors within 500 feet of the property. This represents approximately 48% of all owners within 500 feet. Three of these letters were from neighbors who had previously registered concerns about the project. There were three letters from neighbors in opposition to the project, two are within the 500 feet and one is outside 500-foot boundary and one of the two within the 500 feet has since passed away. There are 27 properties within 500 feet of the project. These letters provided as exhibits in the department's report prepared for the December 8, 2009 meeting.

The concerns expressed by the neighbors were fairly general in nature. Concern about the impact of the B&B on the upcountry water system, how enforcement of the B&B Ordinance would be carried out and what would – would the B&B be allowed to operate while the owner is away? Would the B&B operation be impacted in the owner became disabled, whether there are notification requirements prior to renewal or expiration and if none, how neighbors could register a request for revocation of the B&B permit, whether signs advertising the B&B would allowed near Holopuni Road or on Kula Highway and the potential for increased traffic, decrease in property values and increase in crime in the area.

Also since December 8th, the Department of Water Supply has submitted an additional letter stating that the 5/8 inch water meter does meet the domestic demands. I also queried the writer of the letter from the Department of Water Supply to make sure that they had also reviewed for the irrigation demands and that was confirmed to me by telephone yesterday actually.

The applicant did submit a draft of house rules which the department reviewed and found that one of those rules was not – would not have been in compliance with the ordinance and so we requested that that rule be amended. That's the rule that they're required to park the – the guests are required to be instructed to park on site and that rule has been amended and I do have copies of that should you wish to review them.

So the Planning Department hereby states that the bed and breakfast application does meet the restrictions and standards as set forth in the Maui County Code Chapter 19.64. I went through all of the criteria that was provided to you by the director in his memo of September 10, 2009 and I don't think you need me to go through that again. The applicant is here represented by the firm of Munekiyo and Hiraga and Gwen Hiraga is here and I would like to turn the podium over to her to say a few words and then she and I are both available for questions. Thank you.

Ms. Gwen Hiraga: Thank you Livit. Good afternoon Chair Hedani and Members of the Commission. My name is Gwen Hiraga and I am here to assist Edith Blas, the applicant for this B&B application. I would like to focus on this handout that Livit was kind enough to distribute to you. Since your meeting of December 8th the applicant has met with neighbors and has been able to – I believe at that meeting there was a letter signed by three of the neighbors expressing some concerns and a meeting was held at the neighbor's house and they have since sent in a letter of support by all three

neighbors.

As Livit mentioned there are 13 letters of support. There is one letter of support, the person does live within – outside of the 500 feet. With regard to the opposition there is one letter of opposition from an individual that also resides outside of the 500 feet. There are two letters remaining and as Livit mentioned one of them, the person has since passed away unfortunately and the other one is from a Mr. and Mrs. Chuck Horsman and they have expressed general concerns about B&Bs in general.

We are available to respond to any questions the commissioners may have and I thank you for this time.

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

Mr. Shibuya: Just curious Gwen, I don't know whether you asked these individuals but there are some white blocks within the 500 area. I know the survey is not 100% but were these people approached?

Ms. Hiraga: These people were approached only in terms of receiving the notice of hearing and they have not expressed any opposition. So we didn't want to mislead anybody by coloring it in even if there was no opposition, I didn't feel it was appropriate for me to put in a color. So the white are those within the 500 feet but were not directly approached. And for the most part, gulches separate these neighbors from the bed and breakfast home. I have an aerial that I don't know if it will help to maybe better visualize.

Mr. Shibuya: These two-dimensional charts somehow can be misleading.

Ms. Hiraga: Yes, and that's why I left the white. You know I didn't want to mislead anyone by viewing the exhibit that you know, there was any kind of support for it. Now what Livit is pointing out and I know one of the issues that had come up the last time was the proximity of another approved B&B. So we did this exhibit and dual purpose for the exhibit is that the other B&B is located at Pea Place but the entrance to the B&B is off of Pulehu Road. So you know, you do not get to the B&B from Pea Place and this was done so that the commissioners can better see the gulches, the trees that separates the properties, but in response to your question, no we did not make any personal contact with those other remaining nine I guess neighbors.

Mr. Hedani: Additional questions? Gwen, what was the nature of the opposition from parcel 2 or the immediately adjacent neighbor?

Ms. Hiraga: That's the person that passed away and her letter was I believe it was like a one sentence letter just saying that –

Ms. Callentine: Yes, her letter just said I am opposed to bed and breakfasts.

Mr. Hedani: Okay, just in general. Commissioner Shibuya.

Mr. Shibuya: I have another letter here, December 4th and the signed individuals are three couples, Berger, Leuteneker and Maloney.

Ms. Hiraga: Yes, that's correct.

Mr. Shibuya: Are these somehow related with the numbers that you already have?

Ms. Hiraga: Yeah, these were – the December 4th letter was submitted prior to your commission hearing on the 8th and subsequent to the commission meeting there was a meeting with these three neighbors each having individual parcels and they met at the Berger residence and these three couples have since sent in letters of support.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: My understanding from our last meeting that there were three owners of this parcel. What are the names of the three owners?

Ms. Hiraga: The three owners are Edith Blas, she's the applicant.

Mr. Mardfin: Right.

Ms. Hiraga: The second owner is Allan Robb and I think you may have seen some correspondence in your packet and the third owner is Larry Piech all three are present this afternoon.

Mr. Mardfin: Larry ?

Ms. Hiraga: Piech P-i-e-c-h.

Mr. Mardfin: Now you say Edith Blas is the applicant, aren't all three applicants?

Ms. Callentine: No, she's the only applicant.

Ms. Hiraga: She's the only applicant of record, yes. But there is multiple ownership on the property. She is the one that lives in the house.

Mr. Mardfin: My concern as I expressed last time is that there's a potential to scam the system and I expressed that quite strongly at the last meeting. After the meeting I talked with Director Hunt and it was his view I believe I'm not –I'm stating what I believe his view was, I wish he was here to reinforce this but that the B&B ordinance allows for one B&B for a person. And the director's view as I understood it was that this one B&B would be the B&B for all three owners. So Mr. Robb and Mr. Piech cannot come in with another piece and say I want to do a B&B on that with a different 2% owner.

Ms. Hiraga: I don't know what Director Hunt had in mind or what his intentions were but for this particular B&B yes, there is one applicant, Edith and that's the only application that's before you. In terms of whether or B&B applications may or may not be I have no knowledge of that.

Mr. Hedani: Livit.

Ms. Callentine: Commissioners I met with Director Hunt yesterday and this was one of the issues that we did discuss and is generally agreed upon. I don't know of any disagreement with this interpretation of the rules but this is the only – that neither of the two owners could come in for a B&B on another property. They haven't indicated to me that they were thinking of doing that either.

Mr. Mardfin: Well, I'm not saying they were –

Ms. Callentine: But they would be prohibited.

Mr. Mardfin: But in approving this I'm going to ask for a condition put on that those names be listed and that they be barred from coming in with another application for a B&B.

Ms. Callentine: Okay, I they'd be amenable to that.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Does Corporation Counsel know if there's any significance regarding being the applicant which is the property owner – being a property owner and not being an applicant? I haven't read the ordinance.

Mr. Hedani: Jim.

Mr. Giroux: I haven't read the ordinance with that eye on, but from my experience of you know, dealing with Council and in that arena of you know, we've had to deal legislatively a lot with the issue. I think what the intent was was that you don't have offshore owners. You don't have corporations that type of proliferation of use of dwelling that are being basically taken out of the housing market. But I think as far as the administration, it looks like they've looked at a way that they could probably cross track and make sure that people are not using this percentage ownership to cross, you know, to go and proliferate and have a end run around it. It seems like they've come up with some type of – just because you're not an application they're going to be keeping records of who are the owners of the properties that actually have bed and breakfasts being run on them and that would be a red flag to the administration.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess, you know, in other applications not necessarily for B&B permit the applicant may be different from the owner. So is there some type of legal liability exposure that would differentiate the applicant from the owner?

Mr. Giroux: It becomes a private contract and insurance issue. We've had to deal with this because even Maui County policy of trying to avoid giving conditional permits to corporations really isn't a consistent application because we have different types of projects going on that are essentially corporation run projects like batching companies and quarrying companies which are getting conditional permits and again, those are corporations. And we run into the issue of those

corporations subleasing land to other corporations who are then doing the same operation but the main applicant is not actually running the operation, they're allowing a corporation to run a quarry. So individually on the conditional permit side and that's how we were traditionally dealing with transient vacation rentals it was a case by case basis to see that if the spirit of this was actually working. To see who is the application. The idea was that to get the person who was going to be most readily available and most able to take responsibility of the operation to be named as the applicant and that was the idea. But again, there's no rule. These are all coming out of policy from the administration and also concerns coming out of the legislature. But there hasn't been any codified rule as to that scenario.

Mr. Hedani: Additional questions? Seeing none, – Commissioner Hiranaga.

Mr. Hiranaga: I have a question for the applicant. Is there a particular reason why the other owners are not on the application? Is there an insurance issue?

Ms. Hiraga: I'm not sure of that answer. I don't know how to answer you Mr. Hiranaga, but I thought that there was a discussion with the department that there would just be one applicant.

Ms. Callentine: Each applicant, the B&B ordinance requires that each applicant live on site and each applicant must also be an owner. So in this case there – but not all owners have to be an applicant. So we have three owners but one applicant who lives on site. The other two owners do not live nor do they plan to live on site.

Mr. Hedani: So Livit as a matter of policy the administration has taken a position that if you have an ownership interest in a B&B property you're prohibited from having more than one B&B?

Ms. Callentine: Yes.

Mr. Hedani: Any further questions? Okay, we'd like to open it up at this point for public testimony. Are there any members of the public that would like to offer testimony at this time? Please step to the microphone and state your name. Seeing none, public testimony is closed. Staff recommendation.

Ms. Callentine: The Maui Planning Department recommends that the Maui Planning Commission grant approval of the Land Use Commission Special Use Permit for – now, our original recommendation was for approval of the special use permit for three years because there have been some concerns although not the majority, there have been concerns expressed by owners so the applicant is amenable to doing one or two years depending upon the commission's pleasure on that. But the department has struck a middle ground and said recommending that it's approved for two years subject to six standard conditions and there will be an amendment to number one if you choose to not – if you choose to limit the number of years. And the bed and breakfast permit for two years subject to 20 standard conditions with an amendment to condition no. 1 to reflect the date change and also one additional condition and the additional condition for the bed and breakfast permit would be condition no. 21 and it would read, "that the owner/proprietor shall provide written verification of tax payments when filing a renewal request. The written verification shall be the State of Hawaii Department of Taxation Form A-6 Tax Clearance Application," and then

based upon your comments an additional condition which I hadn't factored into this report and let me just get my notes. I did draft a condition for you if you want to adopt it. I don't know if you want to wait and have a discussion first or do you want to hear my draft of this condition? Okay, "that all three owners of the property identified as," and then I would list out the location of the property, "Edith Blas, Larry Piech and Allan Robb are prohibited from operating a bed and breakfast on another property."

In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's report prepared for the December 8, 2009 meeting, the addendum report and second addendum report prepared for the January 12, 2010 meeting, the recommendation prepared for the December 8, 2009 meeting and revised recommendation presented today at the January 12, 2010 meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on the behalf on the planning commission.

Mr. Hedani: So the department's recommendation includes condition 21?

Ms. Callentine: Yes, 21, yes. And then 22 would be the condition that the commission recommends. 21 would be the condition about the tax payments.

Mr. Hedani: So the draft language that you suggested is not incorporated as condition 22?

Ms. Callentine: Well it can be today. It wasn't prior to our discussion today.

Mr. Hedani: So we're going to have to amend your recommendation in order to include that?

Ms. Callentine: Yes.

Mr. Hedani: Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: Is condition 21 is that a new – going to be a new standard condition or does that apply here for some specific reason?

Ms. Callentine: I don't – I haven't been part of any discussion where we stated that that would be a new standard condition. I think that would require some discussion and certainly some input from the director. We have been discussing, I have taken part in a couple of discussions recently about adopting the administrative rules which the new bed and breakfast ordinance does allow the director to adopt administrative rules and we are wanting to address this issue of ownership in the administrative rules and other such issues that come up that haven't been – that weren't foreseen when the ordinance was drafted.

Mr. Hiranaga: I thought 21 was the tax clearance.

Ms. Callentine: Yes, 21 is the tax clearance and 22 I'm sorry – I thought you were asking me about 22. 21 one is a standard condition that's why I incorporated it into this. Yes, it became a new standard condition after the time that the first report was written.

Mr. Hiranaga: Right.

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

Mr. Starr: I'll move for approval as recommended.

Mr. Hedani: Motion for approval as recommended. Is there a second?

Mr. Tagorda: I second for discussion.

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

Mr. Starr: Yeah, you know, I've done a lot of soul searching over this and at the last meeting I was very adamantly opposed and you know, I don't like the precedent or the idea of a 2% owner running a B&B and the fact that there was a lot of neighborhood opposition really cemented that. I think that opposition seems to have dissolved and although I don't like the precedent I think without opposition it's kind of – it seems difficult to go against it. I think that in the next go around there should be some change in the rules to define what ownership means but since we don't have it now I think it's kind of a shaky ground to stand on.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move the adoption of rule 22 – to amend by adding 22 as read by Livit. It seems to me to be a way to handle issue which I thought was really messy but his will clarify it and basically – that's my motion.

Mr. Hedani: Motion to amend to add condition 22 by Commissioner Mardfin. Is there a second? Seconded by Commissioner Hiranaga. Discussion on the amendment? Commissioner Mardfin.

Mr. Mardfin: The reason I'm doing this I mean, without this I wouldn't vote in favor of this at all. I think it's an end run around the idea of be it the spirit of the owners are on the property as a way to keep order. I can sort of go along with it as long as this isn't used to proliferate and have one owner have 50 of these little deals with different 2% owner on each one. If this is the one and only then I'm fine with it.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I have a concern and that concern deals with the public safety. Again, I come back to this public safety issue. In this particular case it's pretty clear in my mind that a 2% person has a 2% liability or insurance coverage or at least protection responsibility versus 100% responsibility for the safety and welfare of the guests. This is really troublesome for me. You have two other major owners not living on the property and a 2% owner living on the property has 100% interest in getting the money but only 2% liability and insurance, that is not what I consider a fair square deal.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I didn't read the ordinance again, what is the minimum ownership requirement?

Ms. Callentine: There isn't one. I have a copy of the ordinance here.

Mr. Hedani: Livit.

Ms. Callentine: There is not a minimum ownership requirement at all. It's only a requirement that the proprietor be an owner of record on the deed.

Mr. Hiranaga: I remember when Council was debating this ordinance. There was talk about various percentages and for whatever reason did pass the ordinance without a minimum ownership requirement so I'm not one to second guess their wisdom. They did spend a lot of time going over it. So until they change the law and put some type of a minimum this is the law whether we like it or not.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Mr. Chairman, I have also concerns in line with Commission Shibuya about the liability and it's only 2% ownership it complicates the matter with three owners and they're not liable for the operation of the B&B and there's on 2% ...(inaudible)... so I'm kind of concerned where the county will be you know, do we impose some kind of insurance liability on Ms. Edith Blas and not on the two owners?

Ms. Callentine: The bed and breakfast all standard condition is that the owner/proprietor of the permitted B&B shall exercise reasonable due care as to third parties with respect to all areas affected by subject B&B home permit and shall procure at its own cost and expense and shall maintain during the entire period of this B&B permit a policy or policies of comprehensive liability in the minimum amount of \$1 million naming the County of Maui as an additional named insured and that goes on in more legal clarification. But from the department's perspective whether we're being insured regardless of whether it's from an owner that has a 2% ownership or a 49% ownership, the county will be protected as much with this B&B as with any other. Hope that answers your question.

Mr. Tagorda: My also concern is I don't know that's good enough having a insurance liability I really don't want to impose to this people those conditions of having insurance. I think what would be better is just to put in an agreement that it's a contract between the owner Ms. Blas and the county that they will hold harmless the county for whatever liability that might occur.

Ms. Callentine: Clayton can you address that?

Mr. Yoshida: This has been a standard condition in your SMA permits and previously we've had the hold harmless condition and we've had the problem with the Maalaea Triangle project where they was supposed to grade not during the rainy season and only one acre at a time. They graded the whole 15 acres and then there was a big rain and it silted the Maalaea Harbor and then the construction company went bankrupt. So when people sue, they sue everybody and anybody that had anything to do with the operation. So they started suing the county.

Mr. Tagorda: Yeah, I don't have any – I'm not against this B&B project but Ms. Blas is requesting us I'd like to make it a try and see what happen. So if we only give her probably a year we can go back find out instead of a longer term, I'm for a short term approval of a year.

Ms. Callentine: So that would be an amendment.

Mr. Tagorda: Yeah, I put it as an amendment.

Mr. Starr: I second it.

Mr. Hedani: I'm sorry, did we vote on the first amendment? Not yet, yeah. We're discussing the first amendment which is to add condition 22 which would limit the bed and breakfast to this one bed and breakfast for the three owners, the three current owners. And we can tackle the second amendment after that. Any further discussion on the amendment. Commissioner Starr.

Mr. Starr: I'm a little confused, I thought that when the recommendation was made that was part of it and in other words –

Mr. Hedani: I was hoping that it was part of it but it wasn't.

Mr. Starr: I mean, when I made the initial motion I thought that was part of my motion, but if not, I certainly support the amendment.

Mr. Hedani: Additional discussion on the amendment? If it helps I think from a perspective of liability in Hawaii even if you have a 1% interest in any liability case you can be held a 100% liable for the cost of that case and Jim can correct me if I'm wrong.

Ms. Callentine: Could I clarify what the staff recommendation was on the condition?

Mr. Hedani: Please.

Ms. Callentine: I'm sorry for the confusion. But what we actually recommended but with total openness to your going anyway you want to on it was a two-year period. But the applicant is agreement as the department to your accepting, your granting a one-year approval. We had initially recommended approval of a three-year approval, of a three term.

Mr. Hedani: What are you recommending right now Livit?

Ms. Callentine: Two years.

Mr. Hedani: We can change that in a second amendment if we need to.

Ms. Callentine: Yes you can. Thank you.

Mr. Hedani: What we're discussing right now is the amendment to add condition 22.

Ms. Callentine: Understood.

Mr. Hedani: Further discussion on the amendment? If not, all those in favor of the amendment to include condition 22 relative to the ownership restriction for one B&B signify by saying aye. Opposed nay.

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

**VOTED: To Add Condition No. 22, Relative to the ownership restriction of being prohibited from operating a bed and breakfast on another property.
(Assenting - W. Mardfin, K. Hiranaga, O. Tagorda, W. Shibuya, L. Sablas, J. Starr)
(Excused - B. U'u, D. Domingo)**

Mr. Hedani: Carried. Any additional discussion? And an amendment at this point to adjust the time frame is in order if that's what you folks want to do. I would need a motion to that effect. Commissioner Tagorda.

Mr. Tagorda: I would like to make an amendment that we approve – I'm sorry I'd like to make an amendment to approve the request of Ms. Blas to one-year term.

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

Mr. Mardfin: I have a question. My understanding was that in the recommendation they – the idea was to align the – we're doing two things I think. We're trying to align the special use permit with the B&B permit and the reason it was 2017 in the original one was for three years plus five years which is eight years from 2009 to 2017.

Ms. Callentine: Correct.

Mr. Mardfin: If we're going to go with one year are we then saying it would be five years so it would be to five and 2010 would be 2015, January.

Mr. Hedani: Livit, add some clarity here.

Ms. Callentine: Yes, well you know what you do with the special use permit because that will come before you again. The B&B renewal would come to the Planning Department and be approved or denied by the Planning Director. The special use permit will come back before you for a time extension request. You know, since they both will have to be processed there's no reason not to align them and both of them be granted for a year. I mean if you want to hear this and review this again in a year on the special use. If you don't, I mean, that's entirely up to you. I feel that you decide what term you want to give the special use permit. If you give a year on the B&B but you give three years on the special use you could do that. But it's entirely you –

Mr. Hedani: Livit what is the staff recommendation? What are we approving?

Ms. Callentine: Yeah, I think since most of the conditions are attached to the bed and breakfast permit you have quite a bit of freedom on the special use permit. So we would recommend what we did just recommend was two years on the special use permit but we're more than happy to go with a longer period of time on special use permit if the commissioners desire it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: If the B&B permit is not extended or renewed by the department there really is no value to the SUP.

Ms. Callentine: Correct.

Mr. Hiranaga: So rather than burden us with them having to come back for an SUP extension if the department is going to going recommend an extension on the B&B permit I would just assume leave the original recommendation to the SUP as is because if the department in a year from now denies the B&B permit, who cares about the SUP. We trying to minimize these reappearances and if there's real no net effect why fool with it.

Mr. Hedani: So the amendment that Commissioner Tagorda has proposed would just limit the bed and breakfast permit to one year.

Ms. Callentine: So the original conditions –

Mr. Hedani: And the original staff recommendation was for a two-year SUP.

Ms. Callentine: No. Well, original in December it was until December 31, 2017. So it was a eight-year permit for this –

Mr. Hedani: And what is the current recommendation?

Ms. Callentine: Well in light of what Commissioner Hiranaga just brought up we'll stick with that. But again, this is your decision. We feel the condition – the conditions and the concerns –

Mr. Hedani: No, Livit I'm not arguing whether the logic of what you're doing, I'm just saying what is your recommendation that we're approving.

Ms. Callentine: Lets do eight years on a –

Mr. Hedani: So the recommendation is eight years for the SUP, one year for the B&B.

Ms. Callentine: Well, my recommendation for the B&B was two years, you guys are deciding it's one year. So it's eight years on the SUP.

Mr. Hedani: But your original recommendation was for eight years for the SUP?

Ms. Callentine: Yes.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, I don't think we get to say what the B&B is. It's an administrative decision by the department.

Ms. Callentine: Not in this case I'm sorry Mr. Mardfin.

Mr. Hedani: Livit, let Ward finish.

Ms. Callentine: Sorry, you're right.

Mr. Mardfin: I thought that the department does that and so we only vote on the SUP part. Is that incorrect? Sounds like I am incorrect.

Mr. Yoshida: For the most part that is the case, but in this particular case there is – for the B&B there is that trigger that it's located within 500 feet of a permitted B&B. It's the same instance as that one next to Angele D'Sure the first one that we dealt with where Angele had a special use permit and a B&B permit and then a neighbor Mr. Ludwick came in for a special use permit but because he was located adjacent to Ms. D'Sure's property where there was a permitted B&B, Mr. Ludwick had to come in for both a special use permit and a B&B permit with the commission. So the commission grants the initial B&B permit as well as the special use permit. The special use permit keeps coming back to the commission. The B&B permit time extension gets processed by the director, the department and the applicant needs both in order to continue operation.

Mr. Hedani: Okay, are we all clear? Commissioner Mardfin.

Mr. Mardfin: Let reiterate this in my own words so I make sure I'm clear. There are two things in here. We have conclusions of law on both the land use commission special permit and a bed and breakfast permit. Then we have recommendations for the land use commission special use permit with a date of 2017 in this, December 2017. Then on the following page we have a bed and breakfast permit where Item 1 says 2012. Am I to interpret that the motion to amend would change December 2012 – if passed would change December 2012 to January 2011, one year.

Ms. Callentine: That is what your amendment – that's the amendment you're considering now.

Mr. Hedani: That's where we're at. Additional discussion? Ready for the question on the second amendment? The amendment on the floor is to restrict the time limit to one year on the B&B. Any further discussion? All those in favor, signify by saying aye. Opposed nay.

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

VOTED: To Amend the Time Period to One Year for the Bed and Breakfast Permit.

(Assenting - O. Tagorda, J. Starr, K. Hiranaga, W. Mardfin, L. Sablas)

(Dissenting - W. Shibuya)
(Excused - B. U'u, D. Domingo)

Mr. Hedani: One nay, the motion is carried. Any further discussion on the main motion as amended? Ready for the question. Main motion is to approve as recommended subject to the two amendments that have been passed. Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I'm just going to reiterate what I've been saying before. This is agriculturally zoned. It's a hotel use and it's not a proper use in zoning and I think we need to be consistent. Here we are in economic times where we have economies of skill, the most inexpensive type of lodging available in the hotel district and here we are trying to go around it and put in and allowing for hotel or lodging uses in agricultural area where we should be producing food. If this is not an agricultural area then it should be a rural area or a urban area. In this particular case all of the houses are together it's an urban area, so that's where I stand.

Mr. Hedani: Any further discussion? All those in favor of the motion to approve as amended signify by saying aye. Opposed nay. All those in favor please signify by raising your hand. One, two, three, four. Opposed same sign. Two opposed motion is carried.

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

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

Mr. Hedani: Mr. Yoshida.

Mr. Yoshida: Yes, I believe we've dealt with both of those permit applications. So we're on Item F now which is the approval of the action minutes of the November 24, 2009 and December 9, 2009 meetings.

F. APPROVAL OF ACTION MINUTES OF THE NOVEMBER 24, 2009 AND DECEMBER 8, 2009 MEETINGS AND REGULAR MINUTES OF THE JULY 28, 2009 MEETING

Mr. Hedani: Are there any corrections to the minutes as circulated? If not, it will stand as approved as circulated. Director's Report.

G. DIRECTOR'S REPORT

- 1. Scheduling of the date, time, and place for the following public hearing in the Makawao-Pukalani-Kula Community Plan region:**

MR. FRED ROMANCHAK, Owner of the KULA LODGE, requesting a Phase II Project District Approval for the redevelopment of the existing Kula Lodge at 15200 Haleakala Highway, TMK: 2-3-022: 087, Kula, Island of Maui. (PH2 2008/0001) (P. Fasi)

Mr. Yoshida: Thank you Mr. Chairman. The first item that we have is a scheduling item for the date, time and place of the public hearing in the Makawao-Pukalani-Kula Community Plan region for the Phase 2 Project District application by Fred Romanchak of the Kula Lodge for the redevelopment of the existing Kula Lodge for property located on Haleakala Highway.

If you recall from our ... (inaudible - changing of tape)... for project district applications Phase 1 and Phase 2 requires a public hearing in the community plan region. We would have to give the applicant a 45-day notice. So they send out the notice to the surround landowners and recorded lessees within a 500-foot radius at least 30 days prior to the hearing and we publish a public hearing notice in the newspaper, 30 days prior to the public hearing. So we're looking at February or early March at the earliest public hearing.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I have a question. Are we able to schedule this public hearing during our regular, one of our regular Tuesday meeting dates and conduct other business beyond it?

Mr. Yoshida: Well, we would have to obtain the facility in the Makawao-Pukalani-Kula Community Plan region and I guess a lot of our community centers, our schools are utilized and a lot of our community centers are utilized for adult programs run by various county agencies and so we could, I mean, there's nothing that prohibits that but it's just trying to find a facility.

Mr. Hiranaga: Kula Lodge. I want it from 9:00 a.m. to 5:00 p.m.

Mr. Hedani: Commissioner Starr.

Mr. Starr: My preference would be to do an evening meeting and to do it in Kula if possible and at the same time to see if there are other Kula or at least upcountry issues that we could add onto that agenda as well.

Mr. Hedani: I know the testifier this morning suggested the Kula Community Association Hall so that could be a possible for the department if you wanted to schedule the –

Mr. Yoshida: I think we would have to check with the Parks Department. You know we had looked at the Hannibal Tavares Community Center in Pukalani simply because having dealt with this 10 years ago. It was somewhat controversial. You know there may be a lot of people that show up for the meeting and it seemed like the Tavares Community Center in Pukalani was a larger facility with more parking. But we would have to check with Parks Department. And again, due to the popularity of the community centers for dance lessons and what have you. If the commission may remember when it reviewed the Maui Island Plan the reason the upcountry meeting was on a Wednesday night, Wednesday late afternoon and evening because that facility, those facilities are

utilized heavily on Monday and Tuesday. So we're looking possibly on a Wednesday night during a meeting week or off meeting week.

Mr. Hedani: Are the commissioners in conducting a normal meeting on the daytime hours and moving into a evening meeting for this particular subject? Commissioner Hiranaga.

Mr. Hiranaga: Well, our typical daytime meeting is a eight-hour meeting. I really don't want to be there till 3:00 in the morning. So if we're going to do an outreach meeting it should just be for this agenda item because the sooner I can get home, the better. I'm not a night owl. I used to be when I was young, but now days I have a hard time you know watching the news at 10:00.

Mr. Hedani: Okay, Clayton for this item you're basically asking for feedback from the commission and you'll get back to us with the final?

Mr. Yoshida: Yes, because we want make sure we have a quorum there because if we don't have a quorum, we don't have a meeting and also we're going to spend time and money in terms of publishing the public hearing notice.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: If we're expressing druthers for me it's easier, I know you said they're tied up Monday night then maybe a different venue. It's easier for me to come in on a Monday night, spend overnight here in Kahului or Wailuku and then come to the meeting, the regular meeting on Tuesday. If it's a Wednesday meeting, it becomes much more problematic.

Mr. Yoshida: Well the thought the possibility of maybe having it during the off like March 3rd or something.

Mr. Mardfin: Then if it's an off week then it doesn't matter.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I would prefer it to be an off week and if it gotta be a Wednesday I'd rather have it an off week because if I go to a meeting Monday night, I might not be in a very pleasant mood Tuesday morning to sit through an eight-hour meeting again.

Mr. Hedani: Just approve everything on Tuesday morning. Any further comments? You're going to get back to us Clayton?

Mr. Yoshida: Well, I think you know we're looking at the Tavares Center it's available on March 3rd, and then what time you folks want to start 6:30, 6:00?

Mr. Mardfin: If it's March 3rd I can't make it. That's the day of the democratic party caucus across the state and I suspect Commissioner Starr can't make it either. We're gonna have to be in Hana.

Mr. Hedani: Any further discussion?

Mr. Hiranaga: It doesn't matter to me as long as it's an off week and I would prefer to start at 6:00. You know people get through work at 5:00, we're going to be there a while. I know sometimes public testimony can take hours.

Mr. Hedani: Is there an alternate date?

Mr. Yoshida: Well, I think we had looked at possibly February 24th but that's a meeting week.

Mr. Hedani: So the answer is no.

Mr. Yoshida: Not for the off week.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: The 3rd I know is out for me, but the 17th would work. I mean, it's only. It just happens to be the one Wednesday I couldn't do it. But Wednesday on the 17th which would be two weeks later would be perfectly fine for me.

Mr. Yoshida: I believe our problem with the 17th is our newspaper notice because the applicant would have to get out the notice – well we would have to publish it by the 18th.

Mr. Hiranaga: He's talking about March, March 17.

Mr. Yoshida: Oh March, March 17. We could check on March 17th. We would have to check on March 17.

Mr. Mardfin: I'm sorry, my math was wrong, March 17. You said March 3rd which was a Wednesday, two weeks later would be March 17 which would be a Wednesday.

Mr. Yoshida: We could check.

Mr. Hiranaga: We'd all have to wear green because that's St. Paddy's day.

Mr. Hedani: Okay, why don't you get back to us on that. If you need a decision today we can make a decision today. If not then just get back to us since it's a March meeting.

Mr. Yoshida: I think we just have to check with Parks Department on availability of facilities.

Mr. Hedani: Yeah, we can decide on the next meeting.

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

Mr. Steve Sutrov: Good morning my name is Steve Sutrov. I'm a resident of Kula. I'm here to testify on a portion of the agenda is under the Director's Report, location for a hearing for the Kula Lodge Redevelopment and time and date for that.

I'm within 500 feet of the Lodge property and I'm in contact with a number of the neighbors there, owners and residents in regards to this project. We have some major concerns that we've been expressing to the Kula Community Association and to the planning commission already.

This is a project that is very important to us and to the community of Kula also. The demolition of the existing lodge and reconstruction into a completely different entity of commercial activity there is going to be a bit more than a lot of the neighbors are going to be able to accept easily and it's going to be an important meeting and I think it should be held in Kula if at all possible at the Kula Community Association Hall which is a county building which would be appropriate and in the early evening would be best for good attendance from most of the residents and people that work during the day and have families that ...(inaudible)... for mornings and late afternoons. So that's what I'm asking for basically the meeting to be held in Kula and in the evening and hopefully secure the hall for an appropriate date. And I do understand also that residents within 500 feet would probably have to get one month notice on this also. So thank you very much for your work and your time.

Mr. Hedani: Thank you very much Steve. Any questions from the Commission? Seeing none, thank you very much.

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

2. Planning Commission Projects/Issues

Mr. Yoshida: The second item is your commission projects and issues.

Mr. Hedani: Anybody have burning issues? Commissioner Starr.

Mr. Starr: I do and it's also kind of relates to one of the SMA Exemptions and some discussion we had earlier today but I want to, we'll get to that specific item when we get to the SMA exemptions but I would like to have an upcoming meeting a agenda item to discuss the process for SMA exemptions and the decision making between major and minor and a better presentation on what options are open to us especially understanding that Lanai and Molokai handles it quite differently. So I'm requesting that that be – that that discussion be on an upcoming agenda.

Mr. Hedani: Any objection from the other commissioners? If not, we'll go ahead to ask the department to consider that. Commissioner Hiranaga.

Mr. Hiranaga: Would the second Tuesday in April be soon enough for you because that's when we would have new commissioners on board because typically it's orientation day.

Mr. Starr: Yeah, it's a process issue and rule making so it's going to take months and months to do it no matter what we do.

Mr. Hiranaga: Then maybe you can look at the second Tuesday in April.

Mr. Starr: And it could also be part of our orientation as a better explanation of the SMA.

Mr. Hedani: This would be a discussion item on SMA Minor Permits and Exemptions process for consideration in April preferably. Any further questions, planning issues? Clayton.

3. Discussion of Future Maui Planning Commission Agendas

a. January 26, 2010 meeting agenda items

Mr. Yoshida: A memo was distributed regarding items that have been scheduled for your next meeting on January 26th. We have three public hearing items and three communication items.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just looking at communication no. 2 regarding contested case hearing. Are we going to be selecting the hearings officer for that or – this Gary Stice regarding his SMA Assessment application?

Mr. Hedani: Clayton.

Mr. Yoshida: That will be a possibility. I think the commission has selected hearings officers for the past contested cases on SMA appeal.

Mr. Hedani: I think the department makes a recommendation with several and then we pick one. Commissioner Mardfin.

Mr. Mardfin: Would another possibility be that the Hana Advisory Committee to the Maui Planning Commission be the hearing body?

Mr. Yoshida: I guess it's up to the commission.

Mr. Hedani: It's a court officer that does that. I know we normally have somebody like retired judges or something, with a judicial background for a contested case. Commissioner Shibuya.

Mr. Shibuya: I just want to give everybody notice I will not be able to attend the January 26th meeting. I'll be on vacation skiing.

Mr. Yoshida: The next items are the EA/EIS, SMA Minor Permit and SMA Exemption Reports.

4. EA/EIS Report

Mr. Hedani: Let's go over EA/EIS Report first. Commissioner Hiranaga.

Mr. Hiranaga: I'm looking at page 1 of 1, third from the bottom. Mehehune Shores remove and replace one Cook Pine Tree. I didn't realize you needed an SMA permit to remove a tree in the SMA area.

Mr. Hedani: Clayton.

Mr. Hiranaga: It's on the front page, that front page, third from the bottom.

Mr. Yoshida: I believe that is a shoreline property. I don't know if there were other irrigation issues that are related to that replacement.

Mr. Hiranaga: Oh, okay, so it's not pulling a tree out, they're putting a new one in because it's in the shoreline setback area did you say?

Mr. Yoshida: No, it's in the SMA minor permit.

Mr. Hiranaga: Because there's other improvements going in besides one Cook Tree.

Mr. Yoshida: Yes.

Mr. Hedani: Probably a question of irrigation within the SMA area. Irrigation within the shoreline area, I know they've argued a lot about that.

Mr. Yoshida: ...more details and we can report at your next meeting.

Mr. Hedani: Any additional questions on the EA/EIS Report?

5. SMA Minor Permit Report

Mr. Hedani: SMA Minor Project Report, Permit Report?

6. SMA Exemptions Report

Mr. Hedani: SMA Exemptions Report.

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

Mr. Hedani: Irene Bowie, Maui Tomorrow.

Ms. Irene Bowie: Good morning Chair and Commissioners. I'm Irene Bowie, Executive Director for Maui Tomorrow Foundation and I'm here to speak today on the SMA exemption that was given to the replacement of two injection wells at Kahului Wastewater Treatment Plant. I just wanted to – Maui Tomorrow is also a member of the Dire Coalition and I am on the Mayor's Wastewater Community Working Group for wastewater.

I just wanted to state for the public record our dismay that this SMA Minor Exemption was granted without any type of public notification or meeting allowing the public to discuss issues of concern regarding this.

Kahului, although it doesn't get as much attention as the issues of injection wells in Kihei and Lahaina is also used quite extensively for recreational uses, fishermen, divers, canoe paddlers, surfers, the tourists from the cruise ships all frequent the waters near the wastewater treatment

plant, Kanaha Beach and health issues should be weighed in on this.

I find it equally disturbing that at the December 3rd meeting of the community working group when asked about the status of the eight injection wells at Kahului Plant we were told that all eight wells were operating. There was no mention of any replacements that were needed for this yet the exemption was granted just two weeks later on December 18th.

Kahului Treatment Plant has no R1 water so there's really no reuse going on there. It's an issue that should be looked at because all of that water is being dumped into the injection wells and has been discussed at this body before that also there is an amount of sludge that comes from the liner of the Central Maui Landfill going into these injection wells. So I think that warrants further discussion.

My questions on this are what other permits are required and did the county acquire them? What conditions were placed on the SMA permit to insure compliance with Coastal Zone Management Policy including enforceable policy such as adopting water quality standards and regulating point and nonpoint sources of pollution to protect the recreational value of coastal waters and why is the county continuing to pursue the replacement of the injection wells given the discussion with EPA in late 2009 when EPA advised the county not to pursue injection well replacement?

We believe the county is in violation of the Clean Water Act because it discharges pollutants through the injection wells to ground waters that are hydrologically connected to the ocean so that the pollution from the injectate reaches nearby ocean, nearshore ocean waters and this is done without an NPDES permit. Under the Federal Clean Water Act the discharge of pollutants to waters of the United States from a point source such as injection wells without an NPDES permit could subject the county to severe civil penalties.

Mr. Hedani: Irene, three minutes are up.

Ms. Bowie: I'll just wrap this up. The USGS will soon publish a report making the connection between hydrological injection – between the hydrological connection between injection wells and nearshore waters very clear. So lastly I would just say it is disturbing that once again the applicant for this SMA Minor Permit is also the accepting authority. Thank you.

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

Mr. Starr: Yeah, Ms. Bowie, you know I'm also concerned that since an SMA Exemption was given this body will not get to hear this item. We did have some spirited discussion on this one or two meetings back when questioned and Cheryl Okuma was here and the Director both did say that they were putting in wells and that the accepting agency was the department. Did I hear right that at the community working group meeting that they basically lied and said that these wells are not going to be drilled new?

Ms. Bowie: Well, I guess I'm not going to term it that way but at that meeting I did ask the question what is the status of the injection wells at the Central Maui plant and I was told that all eight wells are operating period. So there was no discussion. And that, you know, that community working

group is the body that's supposed to be looking at this to plan for the phasing of injection wells which is the mayor's stated goals. So it's confusing and it's disturbing and you know, I'm sure if there had been any more public notice of this there would be more people here today to speak on this than just myself.

Mr. Hedani: Additional questions from the Commission? Thank you very much.

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

Mr. Hedani: SMA Exemptions Report? Commissioner Starr.

Mr. Starr: This is in relation to item SM5 2009/0360, this is replace injection wells No. 1 and 2. It's at the Kahului Wastewater Treatment Plant. I have a – I'm very upset about the way this is being handled and I want to request that the director come before us and explain not only what's happening and basis for the decision but why it was kind of handled in what I feel is a little bit of a underhanded way because there's some history in discussing this. Several meetings ago when the item first appeared on our sheets we discussed it. I brought it up and I had asked for more information and to be kept informed of the progress and the next thing was at the December 8th meeting we were given a sheet signed by Mr. Yoshida that gave the status of this particular item unfortunately for some reason it seems to be the number's slightly different. One of them is 360 and this other one it says 362. So it seems to be a discrepancy in the number.

It talks about the proposed action. I don't know if everyone has this, the proposed action is to replace in kind two existing injection wells that have declined in capacity due to age, etc., etc., etc. The staff planner conducted a site visit on December 1, 2009 and it awaiting the environmental assessment determination by the Department of Environmental Management. The project is under review by the State Department of Health for underground injection control permits.

Now at that December 8th meeting a month ago, both and the director was here and Cheryl Okuma and was here as well as Dave Taylor. We did have a little bit of discussion with the director and the director said that he understands the concerns and will keep us informed. And my understanding was he was saying he would keep us informed before any action was taken and that it was you know, on hold because they're awaiting the environmental assessment determination. Then next thing it shows up on the exempt projects that an exemption has been issued and we did have testimony this morning. Now the director said that he would keep us informed before action was taken and that it was awaiting review from another body. And then meanwhile on December 18th that was 10 days after that statement he issues the exemption and there's no public notice. Now if the public has a concern with this they are allowed to file a legal claim, a legal action within 10 days of the exemption being issued. But it seems that by the fact that the director issued it after saying that he was telling us at a public meeting when this item was being discussed that he was awaiting information that it certainly not a – you know it seems to be a way to kind of sneak through the exemption and get the 10-day period would expire over Christmas to occur without any – anyone in the public being able to notice it and challenge it especially since it's all one body, the director is County of Maui, the applicant is the County of Maui, the approval agency for EIS is the County of Maui. This really reeks of insider duplicity. So I don't quite know what formal action we can take at this point but I definitely would like to have the director come before us at our next

meeting and explain what's going on and I really think in all fairness, the window should be open for the public to be able to act on it after receiving notice which is contrary to what's occurred so far. So I would like to have it come back before us and start fresh. I'm not happy with the current situation.

Mr. Hedani: Maybe what we can do in this particular case is make a motion to approve the or accept the approved SMA Exemptions Projects Report for today's meeting with the exception of that one line item and have them come back at the next meeting and go over that particular line item.

Mr. Starr: Okay, in other words we're making a statement that we're not accepting that?

Mr. Hedani: Right. If you want to do that.

Mr. Starr: Okay. Yeah, I think that's a good idea.

Mr. Mardfin: Second his motion.

Mr. Starr: Okay, I move that.

Mr. Hedani: Okay.

Mr. Starr: Thank you for that suggestion.

Mr. Hedani: Okay, so the SMA Exemptions Report would be accepted as submitted with the exception of 2009/0360. I think Irene mentioned 361, but it's 360 because it's split on the second page.

Mr. Starr: Yeah, but the report that came to us on December 9th said 361.

Mr. Hedani: Yeah, it's actually 360 on this report.

Mr. Giroux: Jonathan just for clarity. Your understanding is this the first time that this was placed on our agenda though? I mean, is this the first time we've – the board has gotten notice of this action, exemption action per the agenda?

Mr. Starr: We discussed it twice both of them under the, you know, this sheet of items.

Mr. Giroux: But the times that it was discussed, it hadn't been approved is my –

Mr. Starr: No. But you know, it not only hadn't been approved but we got a written report at our last meeting and that written report said that it's under review by the State Department of Health and it's awaiting an environmental assessment determination. So – and we were told nothing would happen, nothing was eminently happening.

Mr. Giroux: So this is the first time this body has gotten –

Mr. Starr: Notice that's it's done.

Mr. Giroux: Indication that it has been given an exemption.

Mr. Hedani: Notice that the decision was approved.

Mr. Starr: Yeah.

Mr. Hedani: In the exemption.

Mr. Starr: Or that it was even under consideration for exemption.

Mr. Hedani: Okay, any further discussion? All those in favor of the motion to accept the Exemptions Report with the exception of 360 signify by saying aye. Opposed nay.

Mr. Tagorda: Chair, can I be abstain since I don't know all of this?

Mr. Hedani: Sure.

Mr. Tagorda: Thank you.

Mr. Hedani: All those opposed same sign.

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

VOTED: To Accept the SMA Exemption Report with the Exception of Item SM5 2009/0360 and that Item SM5 2009/0360 be Placed on the Agenda for Discussion.
(Assenting - J. Starr, W. Mardfin, K. Hiranaga, W. Shibuya, L. Sablas)
(Abstained - O. Tagorda)
(Excused - B. U'u, D. Domingo)

Mr. Hedani: Motion is carried.

Mr. Hedani: Any further discussion for the good of the order? I think we're at the end of the agenda.

Mr. Mardfin: Mr. Chairman, I know about it because of my situation. I want to make sure everybody else knows. I got a call, an email I guess about two weeks ago from Agnes saying that she wanted me to pick up the Maui Island Plan that was going to the County Council and said, isn't that same one that I brought to them a month ago? And she said, no, it's different. And so I went by on Monday, I guess, this last Monday or Thursday, some day last week and I picked it up and it's I think very well done. It's been reworked. That stuff that we worked on with the GPAC recommendations and the commission recommendations was that big monstrous thing that they have sort of a background. This is kind of a finalized report. I think it looks very nice. It's much better organized and set up. Some words have been changed. It's been massaged. I think, personally I think it's to the better enough there are few items hadn't gotten massaged that way, but

it's a much more readable document. I don't know whether there's a plan to get us that or not. The reason I was asked to pick it up was to take it back for the Hana Library which I have done. But I think it's immeasurably better than it had been. It looks very readable. I think whoever worked on it did a good job, but I wanted the rest of you to know that my understanding is that this is what went to the Council some time this month.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I took a look at it. It is on line. It is available on line. In fact it's been – it's kind of been advertised around by emails and so on. I like the look of it too. It looked very different but the actual changes in content is very small, but it's been made to look like a real plan and instead of just a box of paper, you know. So I, for one, feel that they did good work and that really the changes of what came through here I didn't find any ones that were really substantive but just rather – that it looks like something you can use not just chaos.

Mr. Hedani: Okay, very encouraging. If not, we're adjourned. Thank you very much. Happy New Year to everybody.

G. NEXT REGULAR MEETING DATE: January 26, 2010

H. ADJOURNMENT

The meeting was adjourned at 2:45 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Kent Hiranaga
Ward Mardfin
Orlando Tagorda
Lori Sablas
Warren Shibuya
Jonathan Starr

Excused

Bruce U'u, Vice Chairperson
Donna Domingo

Others

Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works