

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
FEBRUARY 9, 2010**

**Approved: 4/13/10**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:02 a.m., Tuesday, February 9, 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: Meeting of February 9<sup>th</sup> will come to order. We would like to open our meeting with some words of wisdom from the Planning Director pro tem.

Mr. Yoshida: Well I don't know if they're necessarily words of wisdom but maybe words of caution. Good morning, my name is Clayton Yoshida. I'm the Administrator for the Current Division of the Planning Department. I'm subbing this morning for the Planning Director, Jeff Hunt, who is attending the Council Planning Committee meeting which starts now. Again, as you all know this is the off week for the Council however they're meeting four days this week on the Maui Island Plan and the Lanai – County's Lanai 201H project. So I'll be here until the Planning Committee meeting finishes or until this meeting finishes whichever occurs first.

I would caution the commission again we have two appeal items. Well, the DIRE Coalition matter is just for information purposes pursuant to your rules which is item F-2 and we have some scheduling matters on the Stice, Hana Beachfront Associates appeals. Again, I would caution the commission that under your rules Section 12-202-31 requires you to hold a contested case hearing on these appeals and therefore, you are sitting as judges on the appeals and we are dealing with sort of pre contested hearing matters. So I would caution the commission against making any position statements if people come up to testify at this time or otherwise a party may ask for your recusal. Those are my comments Mr. Chair.

Mr. Hedani: Thank you very much Clayton for those wonderful words of wisdom. Public testimony will take at the start of the meeting on any agenda item in order to accommodate individuals who cannot be present when the agenda item is considered by the commission. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limits on individual testimony is three minutes. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered. Are there any members of the public who would like to offer testimony at this time? Seeing none, public testimony is closed. Clayton.

Mr. Yoshida: Yes, Mr. Chair our public hearing item for this morning is a request from Steven Sadler for State Land Use District Boundary Amendment from the State Agricultural District to the State Rural District and a Change in Zoning from Interim District to the RU-0.5 Rural District for property situated at 132 Makaena Place, TMK 2-3-032:013, Pukalani, Maui. The staff planner is Paul Fasi. Again, if the commission may recall about three and half years ago it deal with similar type applications for about 10 properties on Makaena Place but this was one of those residual properties. So Paul Fasi is the staff planner.

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

- 1. 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)**

Mr. Paul Fasi: Good morning and welcome everyone. This matter arises from applications for a State District Boundary Amendment from State Ag to State Rural and a Change in Zoning from County Ag to County Rural RU-0.5. The applicant is doing this in order to comply with the Makawao-Pukalani-Kula Community Plan.

Pursuant to HRS Section 205-3.1, amendments to district boundaries pertaining to petitions for boundary amendments of which this is involving land areas 15 acres or less, except in conservation districts, shall be determined by appropriate county land use decision making authority which is the County Council.

Also in addition, Maui County Code, Title 19, Chapter 19.68, State Land Use District Boundaries certain responsibilities for the administration of boundary amendments are delegated to the Maui Planning Commission. The Planning Commission is delegated to making a recommendation to the County Council.

So what this means is today you will be making recommendations only to the County Council on both applications.

On August 22, 2006, the Maui Planning Commission approved recommendations to the County Council on identical applications for the district boundary amendment and change in zoning for 10 other parcels. This is the 11<sup>th</sup> parcel. The reason this 11<sup>th</sup> parcel is being taken up at that time is that the 11<sup>th</sup> owner at that time refused to participate in the applications for the district boundary amendment and the change in zoning. And subsequent to that happening the applicant Mr. Steve Sadler purchased the property and now wants to bring it in conformance with the other 10 parcels.

It is the department's intent that we attach the identical conditions to this 11<sup>th</sup> parcel just for consistency sake. The 10 parcels had already passed reading at the County Council and is awaiting final passage at full reading of the Council and it is the department's intent to move this along and catch up with the other 10 parcels.

For the record, the applications were recommended for approval by the planning commission August 22, 2006 which is Exhibit 15, and subsequently updated on August 4, 2008 which is Exhibit 16. The updates are basically splitting up the two conditions and putting some time limits on them for clarity.

On February 2, 2009, the applications passed first reading at the County Council. They are currently scheduled to be – right now they're pending before the County Council for a full reading.

There has been no change to parcels. No development is proposed at this time and the department will recommend that this body recommend approval that will have identical conditions as in the previous approvals. Thank you.

Mr. Hedani: Are there any questions from the commission? Commissioner Starr.

Mr. Starr: When the other lots came before us I remembered a discussion and some agreement about creating a safe pathway for children to walk to the school and crosswalk, but I didn't – I don't remember specifically seeing that in the conditions and unless I'm mixing something up I know that there was some agreement reached that a crosswalk and a sidewalk to that crosswalk would be part of the conditions.

Mr. Fasi: I was not the planner at that time. However, living in the area I can tell you that there is a crosswalk crossing Kula Highway. There are no sidewalks in the area. Sidewalks in that area would be out of character and probably unnecessary at that particular location. There's a huge, there's a very wide berm on the side of the highway which affords plenty of pedestrian access.

Mr. Starr: So in other words, there was a crosswalk put in though there wasn't at that time.

Mr. Fasi: I can't say when that crosswalk was put in. The State did resurface the highway maybe two, three years ago and maybe they repainted that crosswalk but it's a very prominent crosswalk in that area because it's so adjacent to the school.

Mr. Starr: And how about – and you say there's no sidewalk but there is

Mr. Fasi: That sidewalk if I remember correctly the sidewalk butts up, the crosswalk may butt up to a corner of a curbing on King K side but then on the opposite side of the highway there is no sidewalk. There's an entrance into King K parking lot right there with some curbing and I believe the crosswalk comes off of one of those concrete curbs there.

Mr. Starr: I'm concerned with kids from this subdivision being able to safely walk to school.

Mr. Fasi: There is a crosswalk further down at the intersection at the corner of Haleakala Highway and Kula Highway where the corner of King Kekaulike High School with a light and a crosswalk and I would say that the majority of the students use that crosswalk not because there's a light but because it goes directly down into Pukalani.

Mr. Starr: But how about from this subdivision? How?

Mr. Fasi: Then again, it's a very small subdivision. I would also say that most of the kids are coming from the Pukalani subdivision and they will use that Haleakala crosswalk.

Mr. Starr: Can I continue because I'm not getting a straight answer. I'm getting B.S. here from our planner.

Mr. Hedani: Lets have a question from Commissioner Shibuya, Warren.

Mr. Shibuya: I'm along with the same line of thought with Commissioner Starr. I was not here when this – the first 10 lots were passed and I was reviewing last night Chapter 19.30A, Agricultural District in the Maui County Code says that we need to implement HRS 205 which is the state law, the goals and policies of the Maui County General Plan and community plans and also to promote the agricultural development, preserve and protect ag resources and support ag character and components of the county's economy and lifestyle.

I'm very concerned here that we are actually creating a conflict with the various aspects of encroaching non ag uses in this ag area. I'm not too sure that I would even allow for the first 10 to be part of the subdivision. Okay. So lets start with that. Then you can straighten me out.

Mr. Fasi: In response to that I fully concur with your sentiments and your logic unfortunately the realities of the code and the entitlements that the property owners have do – are in conflict – they are in conflict with the general policy of the Hawaii State Plan. I would love to have that implemented islandwide it would eliminate all of these gentleman estates in Makena, Lahaina, everywhere and it's a shame that we don't enforce that more on a state level because if we did there would be no gentleman estates and it's really a shame when I see plans come across my desk that we have to approve because of the way the code is written.

Mr. Shibuya: May I follow up Chair?

Mr. Hedani: Go ahead.

Mr. Shibuya: I have this idea here we need to discourage non-ag type subdivisions and this is a non-ag type subdivision. Unless you are going to have a production of agricultural products. At the same time we have on County Code that says 18.20.280, Family Subdivision, which allows for transfer of properties, subdividing that property, the ag property to their spouses and children. So there is this opportunity to subdivide. However, it still remains in ag production that's the basic intent that I have that we would not take away these ag lands because I've never seen an ag land converted to urban and then later on come back to ag again. I've never seen that.

Mr. Fasi: But you are correct. A case in point would be the Sprecklesville area. I mean, that was all ag and now it's nothing but residential. I think we have to keep in context the applicant's request here is for a single lot and we're not looking at the greater General Plan intent. I think it would be grossly unfair if this application were to be not approved because it was supposed to be originally part of the 11 parcels that were approved by a previous body and it is not in agricultural production at this moment. It has a single family house on it.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: As a condition then if it's not having any ag production then I would like to change it to urban and then also because you're increasing the population per that square footage or area then these are urban type amenities should be added in such as sidewalks and utilities that could be helpful to the residents in this area. Sidewalks are very important. Here we have an increased number of children, students that are accessing or getting to and from this crosswalks that you

provide but you don't provide any sidewalks. There's grass, uneven ground, you even have barriers placed there by the State and the County which are signs on highway signs that go right between the open field or property line and the highway. So whoever's walking is going to smack right into the signs. This is unconscionable. We need to provide access that allows for these residents for safe passage. If you're going to have residential type of operation then one of the conditions would be sidewalks. The next condition is that you're not using it for agriculture then rezone to urban.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Just a comment. I'm all for farming but you need water. You get droughts upcountry so you can say all you want about farming, with no water you got no farming. I know people prior coming in here for the same type of approval, they was looking for affordable housing for their family and I know some of the people came before us and that's part of the reason because it's so expensive so the own a property that they want to give to their kids and they have that right to do that. I think if you going start adding sidewalks I think it will change the character of upcountry in certain areas personally. It's not a bad place I feel to change the zoning because it's neighboring a school. It might be a good place because it's neighboring a school, but again, that's just my personal opinion.

Mr. Fasi: Commissioner please kind in mind also that the intent of this application is conformance and compliance to the Makawao-Pukalani-Kula Community Plan and to single out this small piece of property and rezone it as property would be basically spot zoning which is not supported by the Planning Department in general. And secondly, in regards to sidewalks that is a state highway and that would be a state responsibility to put in those sidewalks. They just recently resurfaced and recently put those lights up when they did the Kulamalu Marketplace and at that time I would imagine that they saw a need for sidewalks at that time they would have installed them at that time.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, I don't seem to be getting a straight answer about what will happen if some family here has kids which they do and those kids happen to be going to school at King Kekaulike which is right across the highway and those unfortunate kids should want to try to walk or bicycle to school. Now when we discussed the other nine lots, the other 10 lots I'm sorry, there was a lot of discussion about this and there was at that time an agreement to create not a sidewalk but pathway that would allow the kids to get to a crosswalk and where they could safely cross. And I don't honestly remember whether it was a condition or whether this was something was just agreed to and we took it on good faith, but I, for one, see a need if we're going to take this land out of ag and put it into a situation where is residential that kids living there can walk safely to school which is right across the road. And if they can't do that I certainly can't be in favor of it. If it's not a condition, if it's not being done as part of the other 10 then I certainly can't support this and if we don't have information or the minutes handy you know I, for one, would want to defer it because, you know, I just remember that this conversation occurred, a solution was reached and now we're being told that it's not happening.

Mr. Hedani: Clayton.

Mr. Yoshida: Yes, Mr. Chairman, Commissioner Starr. I would refer the commission to Exhibit 16 of the staff report which is a letter from the Planning Director to then Land Use Committee Chair Michael J. Molina in it lists the three recommended conditions from the planning commission as well as from revisions made by the Planning Department but it does list those conditions as recommended by the planning commission back in August 2008.

Mr. Hedani: Clayton, so you're saying it's in there?

Mr. Starr: Yeah –

Mr. Yoshida: I think Commissioner Starr is kind of concerned about proposed Condition No. 1 regarding left turn movements being prohibited from Makaena Place and that a median refuge lane on Kula Highway and pedestrian path connecting Makaena Place with the existing crosswalk at Haleakala Highway/Jacaranda Junction shall be designed and constructed at no cost to the State.

Mr. Hedani: Any further questions for staff? Commissioner Shibuya.

Mr. Shibuya: Clayton, since you're mentioning this, I had it marked here on my notes, what's the jurisdiction of the county? Do they have the power to dictate to the State as to placing in the sidewalks because there's also the restriction here that these students cannot be afforded bus transportation if they're a mile and a half from – that type of a restriction. So they have to walk. Does the county enforce it with the state or does the state take it upon themselves to go ahead and build it or is it something that the county works with the state to get the sidewalks in?

Mr. Yoshida: Well, Commissioner Shibuya I believe one of the agencies that we circulate the application to is the State Department of Transportation and also when the Land Use Committee reviews the matter often they bring in agency representatives including members from the state where they feel that it is primarily the state's jurisdiction to see if concern petitions can be ironed out to the satisfaction of these lead agencies.

Mr. Hedani: Commissioner Starr.

Mr. Starr: So I'm a little confused with the August 4<sup>th</sup> transmittal and the conditions that are recommended as part of this. I see it very clearly states about the pedestrian path that shall connect Makaena Place with the existing crosswalk at Haleakala Highway. So is that being made as a part of our conditions with this lot as well?

Mr. Fasi: Yes. These conditions that were amended by the Council will be attached to this application.

Mr. Starr: Okay, so it's there.

Mr. Fasi: Exactly.

Mr. Starr: Okay, then I have no problem with it.

Mr. Fasi: Again, if I could repeat it's the department's intent to attach the identical conditions to this 11<sup>th</sup> parcel for consistency sake, everything is applicable.

Mr. Hedani: Paul in this particular case they're not requesting subdivision right? They were just requesting a change in zoning?

Mr. Fasi: I don't believe they're requesting subdivision at this time just the district boundary amendment and the change in zoning that's all we're –

Mr. Hedani: To be in compliance with the community plan?

Mr. Fasi: That is correct.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I just want to note that I drive by this – the King Kekaulike High School area and the Kam High School access area and there's limited sidewalks available to students coming from Kula 200, students coming from the new subdivision that has been constructed across Longs Drug. There's also no sidewalks for students coming from Makawao that go to King Kekaulike. They're not afforded bus transportation because sorry they're within one mile. There's also Pukalani students that are not afforded bus transportation so they must walk and this is unconscionable. This area is damp, it rains and in the morning sometimes it's foggy so you're just waiting for something to happen and it's not going to be a pleasant happening and I just want somehow, maybe Clayton can take it back that we need to start putting in the sidewalks and allowing for the students to have access to the highschool. Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have two sets of things. The first might be the easiest. Is this within a rural – we know the Maui Island Plan is currently with the Council. With the recommendations that came out that were forwarded to the Council was this property included within a rural growth boundary?

Mr. Fasi: That would be a Long Range question but my educated guess would be yes. You might ask the –

Mr. Mardfin: Would anybody else happen to know?

Mr. Fasi: But I will say this that in the rural design guidelines they do not specifically call out for crosswalks. It's totally against rural character.

Mr. Mardfin: I wasn't asking about the crosswalks. Other people were but I was not asking about crosswalks. Can I ask a second question?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: My second question, set of questions maybe, on page 11, under archaeological,

historic and cultural resources the second paragraph, are we together, page 11.

Mr. Fasi: Line 29.

Mr. Mardfin: Yeah, well around, yeah. I think you maybe know where I'm going with this, the Department of Land and Natural Resources, State Historic Division, by letter dated December 9, 2004 and April 26, 2009, commented that their record indicated that an acceptable archaeological assessment inventory survey found no historic properties, thus they believe no historic properties will be affected by this undertaking and yet when I read Exhibit 17, fourth paragraph down, about the second sentence it says, "referenced archaeological reconnaissance survey conducted by Scientific Consultant and Services, Inc., in 2003 does not meet the standards." Not that there's no effect, it does not meet the standards for an archaeological inventory survey and was not formally accepted as such by the State Historic Preservation Division. The two seem at best inconsistent with each other.

Mr. Fasi: I understand your dilemma there. If you go to Exhibit 18. If you look at Item No. 1d, "we believe that there are no historic properties present because an acceptable archaeological assessment inventory survey found no historic properties." There is an apparent disagreement between the two letters here.

Mr. Mardfin: Maybe that's where the inconsistency is.

Mr. Fasi: And that's the inconsistency. We basically go with the DLNR's recommendations and if that's one of their recommendations we have to support it.

Mr. Mardfin: Well, I mean, the letter saying an acceptable archaeological assessment found no historic properties is received December 9, 2004. It's in an April 26, 2009 letter that they say it doesn't meet the standards.

Mr. Fasi: And if we submitted for an archaeological assessment again we may have a third answer.

Mr. Mardfin: I'm just really bothered by this and I don't know – maybe we should add a condition that they do a archaeological inventory survey that's acceptable to the current DLNR.

Mr. Fasi: You know, why don't we say that SHPD has gone through some minor turmoil within that department and a lot of times you'll have conflicting opinions on the same parcel. This is not the first time this has happened. And because you've got one person reviewing it and then at another time a different archaeologist reviewing it that may have a different opinion. And so the Planning Department needs to make a judgement as to which one to go with and we made the decision to go with the Exhibit 18 which accepts their archaeological findings. And may I remind you at this time also that there is no proposed development at this time. So it really doesn't come into play right now.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Yeah, was it not all pineapple fields at one time?



Mr. Fasi: I believe it was.

Mr. Hedani: Any further questions for staff? Commissioner Starr.

Mr. Starr: Yeah, you know I usually agree with Mr. Fasi on most things, I'm a little bit amazed though that he expressed that Kula Highway should be treated to rural standards and that crosswalks and sidewalks and bike lanes are things that would be unsuitable. To me this seems to be the wrong recipe and it seems to be against a lot of what we have in our planning documents and philosophy. I do agree that the rural roads in Kula should be treated that way but when it gets to Kula Highway even though it's you know, in agriculture and rural we gotta put them there otherwise people won't be able to walk, won't be able to bike or they will die.

Mr. Fasi: I agree with you and just to set the record straight, I agree with you 100%. I like the bike lanes and I like the crosswalk and you know that crosswalk there by all means should be a raised crosswalk at the very minimum. There is a caution light there to tell people to slow down and it's a dangerous highway. You see memorials all over that place and I see bikers on that highway and frankly I wouldn't bike on that highway it's dangerous.

Mr. Starr: Okay, case closed.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I just want to read the recommendation of the draft traffic impact assessment report that was prepared by Phillip Rowell and Associates dated December 18, 2002 and the final TIAR was prepared February 3, 2006 and submitted to the DOT on February 8, 2006, they consider the Kula Highway access route to be level of service F, F as in Frank. A being the highest, F being the lowest. This is the kind of situation that we're facing and yet at the same time we're asking the students to walk and they do walk not all of them drive and so you have this huge amount of traffic and then a large number of students trying to cross the street or even walk along the highway. We are asking for it. So I would recommend that you – the county at least work with the state immediately to get this thing fixed up.

Mr. Fasi: I have a son that attends King K and every day he walks that highway down to Pukalani and I would think he has enough common sense to stay on the inside of the unpaved area. Being at a level of service, service level F, that's just an indication that upcountry is overbuilt and has been and continues to be overbuilt and it's a bigger picture than just one crosswalk.

Mr. Hedani: Any further questions? No further questions, shall we open it up for – does the applicant wish to make a presentation at this time?

Mr. Steven Sadler: ...(inaudible - speaking from the audience)...

Mr. Hedani: You've heard a lot of the questions I guess that came up from the commissioners during you know preceding 20 minutes. Are there any comments that you'd like to offer?

Mr. Steven Sadler: Yeah, I've been listening in and also I was here as part of – a participant in the

other 10 lots that applied and I understand your concerns and if you have any questions on those I may be a little more – I might remember a few details about those conditions and where we went with the County, with Mike Molina’s Land Use Committee.

Mr. Hedani: Do you have any children that walk to King Kekaulike School?

Mr. Sadler: No my kids are driving and one is just getting out of college this year so they don’t. However, I’d like to answer that sidewalk issue which is a great idea and wish that the road was wide enough to do that and actually as part of our conditions on the other 10 lots we did look into a road widening with the Department of Transportation in doing a refuge lane, the prices came back at about \$350,000. The problem is that all the utilities are parked so close to the highway and there’s a steep embankment, not steep but it will have to be excavated that the prices are just pretty huge for a small – for the 10 lots that are there. And since they have convinced the Land Use Committee with the Council that it would be unnecessary because the existing conditions are relatively safe for walking on a highway that the Council decided that it wasn’t a necessary condition to be imposed upon us to do that sidewalk. There are currently sidewalks designed and built by the DOT that go from the highschool with a curb separating it from the bike lane paved all the way down to the signal Pukalani and then sidewalk across the signal, from there there’s no sidewalk it’s just grassed just like it is going to Makawao. Kids walk on the grass and the same is true on the other side of the road where Makaena Place is there’s a six-foot wide bike lane that was recently restriped just a couple years ago that went from four feet to six feet and again, the traffic speed limit there is 20 miles an hour when kids are walking to school and there’s also a 15 or 20-foot wide grassy shoulder to walk on. So it’s not as unsafe as it sounds and I wish that the highway was wide enough. I believe I was the person that recommended that we put the refuge lane in and agreed to the sidewalk because I thought wow that should be pretty easy you know, you restripe and move lanes around and it would work. But the Department of Transportation will not cooperate with restriping at all. They want full 12-foot wide lanes, full six-foot wide bike lanes and the road is currently about seven feet short too narrow to do any of that. And as much as I would like to do it with my application, I’m just one guy and couldn’t come up with \$350,000 to do that either.

You have another question on the archaeological – I’m sorry, – answer the sidewalk first. Any questions on the sidewalk?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, my understanding is that there’s still a condition that a pedestrian path shall be designed and constructed in accordance with standards at no cost to the State of Hawaii the pedestrian path shall connect Makaena Place with the existing crosswalk at Haleakala Highway/Jacaranda Junction. Are you saying that that’s not going to be done?

Mr. Sadler: The County Council or the Land Use Committee decided that that wasn’t necessary. One reason was is that the kids don’t walk that direction. If they come out of our street they’re not going to do a roundabout, go left, go straight and then right into the entrance of the school. They will do what kids will naturally do and take the shortest direction which is along the highway over the width of the six-foot bike lane and the grassy shoulder to the crosswalk that’s in front of the school and that was the County Council decision.

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

Mr. Tagorda: Sir good morning.

Mr. Hedani: Orlando, you need to use the microphone.

Mr. Tagorda: I write on my notes that the property is still served by a cesspool and is your property still served by cesspool?

Mr. Sadler: Yes. And further buildings would have to use a septic system, but in the past that was the accepted method.

Mr. Tagorda: And when do you plan to put the septic tank?

Mr. Sadler: As soon as I build a house.

Mr. Tagorda: You have two houses there now, right?

Mr. Sadler: No, there's one cottage there right now about a thousand square feet, and it's 25 years old I believe and at that time that's what was required was a cesspool all throughout Maui County in rural areas.

Mr. Hedani: Any further questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: I think the applicant was going to address my concerns about the archaeological survey.

Mr. Sadler: Yes, yes, and the archaeological survey I believe when you're reading into that this I think the term was in the lasted comments it was just the applicant doesn't meet the standards for archaeological survey. I think what they were intending to say there if you read it further is it doesn't meet the standards to the – for an inventory to be taken. In other words, they haven't found any signs of archaeological sites so therefore, it doesn't meet the standards to have to have any further archaeological surveys done. Out of memory that's what I remember.

Mr. Mardfin: That's not the way I read it but that's okay.

Mr. Sadler: ...(inaudible)...

Mr. Mardfin: Let me ask you, if you would have – let me read both paragraphs, parts of both paragraphs to you. "The referenced archaeological reconnaissance survey conducted by blah, blah, blah, does not meet the standards for an archaeological inventory survey."

Mr. Sadler: Right.

Mr. Mardfin: So he's saying that the survey didn't meet the standards not that the property did or did not need them and was formally accepted. The next paragraph says, "even though the parcel

in question may have been formally utilized for agriculture and more recently residential activity significant historic properties are often identified in areas which have been impacted by such disturbance, therefore, upon review of future permit applications for the subject parcel we will recommend an inventory survey which includes subsurface testing be conducted.” Would you have any objection to us adding a condition that such archeological inventory survey be done prior to you applying for any kind of permit?

Mr. Sadler: For any kind of building permit that’s fine. I believe that’s the way it was written and that’s the way the –

Mr. Mardfin: You would accept that as a condition to your – the change you’re asking for.

Mr. Sadler: Yeah, believe that’s already established on the rest of us as law.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I was listening to your comments relating to the sidewalk and you’re saying that I want to interpret it correctly here, that the Land Use Commission allowed you people not to put in the sidewalk but lets say we make it a condition that the sidewalk must be put in. What’s your feeling in terms of having the entire subdivision being assessed and to provide for this sidewalk?

Mr. Sadler: As I mentioned it’s largely a thing that would be nice to have but at the price the people that are trying to rezone their properties right now which we’re almost under final reading on they are mostly retired, they want to give this property to their kids. They don’t have money, they’re just normal people that have worked a life and are now in retirement. Their kids are you know, just barely, is about my age and are getting around 50 also and they’d like to be able to build their own house on it and they’re just simply. This is not a development designed to make money. We’re not you know Dowling anybody else and there’s a limit to how much money we can afford to put into this as far as getting the zoning done.

Mr. Shibuya: I understand but there is also a speculation effort here too in terms of you have an opportunity to obtain gains here and so I’m looking in terms of having the assessment, having a condition and also the changing in the zoning as well as a condition to connect to as a gravity feed type connection of the sewage line to the existing line that is available to the Pukalani community.

Mr. Sadler: I believe that sewer line would have to go over private property because we downhill of Kula Highway and I believe Ann Cua answered that question regarding the lower property being connected to Loha Place is that you can’t impose a condition on us because we don’t have the legal right to ...(inaudible).. another person’s private property or grant or get an easement on.

Mr. Hedani: Commissioner U’u.

Mr. U’u: I’ll be voting no on Commissioner Shibuya’s request. One it would be too expensive. Two, you would put a sidewalk that would end 10 feet and go nowhere.

Mr. Sadler: I have one other comment I’d like to make about the sidewalk issue too, you read that

the traffic report granted us an F on our intersection I mentioned I was the guy that stood up and said we would like to as a group come together and widen our road together as a group because none of us have a plan of subdividing today. You know, they all have their own time frame, they're going to give it to their kids, their kids will subdivide or will take their half acre parcel and build a house on it when they can afford to and so we wanted to prepare all the ground work for all our own little community down there and for our kids to have affordable housing we wanted to say okay, we'll all go together build the road, do the improvements on the highway, lets make a refuge lane make it safe. I volunteered that, I would love to take it back now because it's turned into such an expensive proposition. After they restriped the road they took our refuge lane away, so it's not a simple matter of restriping now it's road widening. And the reason that we got an F on that intersection is not because of the traffic generated by the 10 houses that are down there right now it's because there's Carden Academy School started there several years ago after we had already tried to rezone and generates all the traffic. There's a 104 kids going there at 8:00 in the morning, it's an F. The rest of the day it's fine. So you know, these traffic conditions and sidewalks largely are imposed because not because of traffic that we generate or will generate in the future. I think there will be a build out of about 40 houses there when it's completed.

Mr. Hedani: Any further questions? Commissioner Mardfin.

Mr. Mardfin: I had earlier asked the planner if this was in the rural growth boundary that's currently being considered by the County Council, do you happen to know that the answer to that tentatively?

Mr. Sadler: The rural growth boundary, I'm sorry I'm not familiar with that however, Louie Cambra is in the room right now and he was the one that filed the changes in zoning, community plan change back like 15 years ago when there were all these people got together back when they were younger than me and wanted to plan out to give these properties down to their kids, they got together and changed the Pukalani-Kula Community Plan and at that time Pukalani of course down in the center is urban, get further away in the edges it's rural half acre and Kamehameha Schools came and rezoned for their school and residential also. So we're kind of a hole in the center of this community that's still agricultural even there hasn't been agriculture on it for 30 years. Maui Land and Pine couldn't – soil conditions in our report there are not very good for agriculture so they abandoned that field long ago. Also with the change in climate it is bone dry up there all summer. My lawn looks like a beach for six months straight. And I can't afford to water it, the cost of county water and the water cuts demanded from us.

Mr. Mardfin: The short answer to my question is we still don't have any authoritative statements as to whether it is or is not within the rural growth boundary as set to.

Mr. Hedani: John Summers is in the audience I don't know whether or not you care to chime on this issue John.

Mr. Yoshida: That's his brother Mike.

Mr. Hedani: Okay.

Mr. Starr: Go to public testimony.

Mr. Hedani: Are there any other questions for the applicant?

**a) Public Hearing**

Mr. Hedani: Okay, why don't we open it up for public testimony at this time. Are there any members of the public that would like to offer comments on this application please step to the microphone and identify yourself for the record.

Mr. Louis Cambra: Yes, my name is Louis Cambra and I'm one of the people on Makaena Road. I've been there the longest person there anyway. My comments would be many too, to answer some questions to Mr. Shibuya and especially on the sidewalks, etc.

Mr. Shibuya, you say you pass through the school every day, you know you're there. Sidewalks I know what you're referring to, you're talking about a cement slab, a sidewalk, but today the county and state are using pavement, asphalt as part of the walkways for the kids and if you go down there from Five Trees there's two crosswalks next to the traffic light for the kids to cross to King Kekaulike High School and also there is a paved portion above by the entrance of King Kekaulike High School there is two crosswalks. And what upsets me the most is that we 10 people, we 10 people okay, and everybody want to impose all this conditions and all this money and studies, etc., you know how money cost. I'm retired. I'm 70 years old. All I want to do is give my kids their property, half acre lots.

Mr. U'u: That's right.

Mr. Cambra: Under the community general plan we the only area that's agriculture everybody else is rural half acre or residential already. You know, the thing is --

Mr. U'u: I agree.

Mr. Cambra: Lets be fair. You know, I came before you people before and testified and ...(inaudible)... the same way. I don't mean to be hardcore but I get upset about it. I mean well, but I apologize if I hurt anybody's feelings but the thing is we're agricultural land okay, I've been there all the time. I want to give my kids the land and now you're talking about the land like Mr. U'u says was pineapple land. So what are we going to do a study do for what, agricultural what Mr. -- was saying about the findings on the land. You know, if you guys want to impose conditions please help pay for it you know what I mean. I mean, that's only being fair.

Mr. Hedani: Questions? Commissioner U'u.

Mr. U'u: Mr. Cambra.

Mr. Cambra: Yes.

Mr. U'u: I agree with you 100%. We making it unaffordable for local people and I don't want to be a part of that.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Mr. Cambra, if a child gets injured are you willing to pay a million dollars to three million dollars to repair the child?

Mr. Cambra: Injured in what sense Mr. Shibuya?

Mr. Shibuya: Dies.

Mr. Cambra: No, what the cause, what is it, from what? Falling from the air, from what it is, from the highway.

Mr. Shibuya: Traffic.

Mr. Cambra: Traffic. The problem been there all the time.

Mr. U'u: That's right.

Mr. Cambra: So if you have a hang up on that then I think you should contact and go strongly with the state and have the state make the corrections. That's state land, that's state highways. So why impose all these things on us 10 people?

Mr. Shibuya: When you look at the total plan and development in the area we look at improvements for the general public, we're not looking for improvements just for your sake. We're looking at the public benefit and in this particular case I am looking in terms of the public benefit having greater safety for this so that you can have people walking there. I know you have to cross the highway to get across to the asphalt sidewalk. On your side, there is no sidewalk, there is a steep hill and that is slippery when it's wet and I'm not going to have any more arguments on this and that's the access that you have people coming in from Pukalani accessing it they have to access at Five Trees.

Mr. Cambra: Mr. Shibuya like Mr. Sadler said, there's a six-foot walkway right there now. They've been walking in there all this time. There's a walkway there and there's an embankment.

Mr. Hedani: Mr. Cambra thank you. I would not encourage arguing within people that are testifying. You know, they're here to offer their opinion to the commission. If you have a question that you want to ask them that adds additional information please ask your question but I don't want to discourage anybody from coming up and testifying in front of the commission. Are there any further questions for the testifier? Thank you very much Mr. Cambra.

Mr. Cambra: I apologize if I got a little out of hand but I just wanted to say what I had to say.

Mr. Hedani: Understand. Are there any other members of the public that would like to offer testimony at this time? Okay, seeing none, public testimony is closed. Commissioner Starr.

**b) Action**

Mr. Starr: There's no way on earth I can support this. The villain right now is the Land Use Committee of the County Council. I'm really aghast at what it is, what kind of special interest or what happened up there but we sent the original 10 lots up there with a condition that there be a pedestrian walkway or sidewalk created and this was part of the director's recommendation. You have two schools across a major highway and these lots are being changed from agriculture which they've always been to rural to allow families to subdivide and build houses and it's you know, for young families who will have kids who should be able to walk to school. Instead the Land Use Committee took out those requirements and they seem to be making a statement that you can have two schools, you can have a high speed road that's rated F and we don't need to have sidewalks or bikeways for kids to be able to get to school. I, for one, you know, really feel upset. I don't feel it should all fall on this one property owner, but right now it is and that's who's before us. We made the statement once before, but it in as a condition, the Land Use Committee of the County Council for whatever reason doesn't think kids upcountry need to be safe so I make a motion for denial, to recommend denial.

Mr. Shibuya: Second.

Mr. Hedani: We need to hear the recommendation first. We haven't heard the recommendation.

Mr. Starr: I make a motion for denial and it's been seconded Mr. Chair. The motion is on the floor.

Mr. Hedani: Okay, the motion is out of order until we hear the recommendation.

Mr. Starr: No. Unless you're –

Mr. Hedani: You're denying something that hasn't been put forth before the commission. So hold your motion until Paul has a chance to make his recommendation. Commissioner Shibuya.

Mr. Shibuya: In this particular case then I just want to read into the record. That one of the inputs from the County Police Department shows out that the future build out of 39 additional single family residences in this area, this is the impact. That's the kind of human traffic that we're talking about and no sidewalk? This is unconscionable.

Mr. Starr: Mr. Chair?

Mr. Hedani: Okay, I think what you need to remember is what we're doing at this particular point is making a recommendation to the County Council. We are not the deciding authority on this particular issue. We can make whatever conditions we want –

Mr. Starr: So if you disagree with – you don't allow a motion because you disagree that's not in Robert's Rules. I'm sorry, Mr. Chair, do your job.

Mr. Hedani: Commissioner Starr, I am doing your job. I'm your out of order. We're going to hear the recommendation.

Mr. Starr: Wonderful.



Mr. Hedani: Thank you. Paul please proceed.

Mr. Fasi: Thank you. In consideration of the foregoing the Maui Planning Department recommends that the Maui Planning Commission adopt the Maui Planning Department's Report and Recommendation prepared for the February 9, 2010 meeting as its finding of fact, conclusions of law, decision and order and authorize the Planning Director to transmit the report and recommendation to the Maui County Council. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Move for denial.

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Shibuya for denial of the recommendation. Discussion? Commissioner Starr.

Mr. Starr: Yes, I'd like to read from the record here, this is from Department of Planning, County of Maui, dated August 4, 2008, and it's from Honorable Charmaine Tavares for transmittal to Honorable Michael J. Molina, Chair of the Land Use Committee. This is related to this project and it's states, "that within one-year from the effective date of this ordinance the median refuge lane on Kula Highway and a pedestrian path shall be designed and constructed in accordance with State Department of Transportation standards at no cost to the State of Hawaii. The pedestrian path shall connect Makaena Place with the existing crosswalk at Haleakala Highway."

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I have to apologize, I did arrive a little late so I do have a couple questions. This application if it is recommended for approval will it be integrated into the other 10 applications or does it have to run its own path. Are you planning to amend the other – include this with the other 10 applications?

Mr. Fasi: Yes, that is –

Mr. Hiranaga: Because the other ones have gone through first reading I guess before the Council.

Mr. Fasi: That is correct. And Commissioner Starr is referring to Exhibit 16 and Exhibit 16 applies fully and is applicable fully to the two applications.

Mr. Hiranaga: No, there's 10 applications plus this one right?

Mr. Fasi: The 10 have already – they have already been inbound by Exhibit 16. It is the request of the department to hold these same conditions to the 11<sup>th</sup> parcel.

Mr. Hiranaga: But my question is are you attaching this applicant along with the other 10 so they all go together or –

Mr. Fasi: If I can logistically do it time wise, yes, that would be ideal.

Mr. Hiranaga: I have one more question.

Mr. Hedani: I think Clayton has a comment.

Mr. Yoshida: Mr. Chairman, Commissioner Hiranaga, as stated in the department's recommendation on page 3, second full paragraph, on February 2, 2009, the applicant passed first reading at the County Council. The matter has not been dealt with for second reading because not all of the land owners have executed a unilateral agreement so the matter of the district boundary amendment and zoning change for the other 10 parcels are still pending before the Council for second and final reading. So it hasn't been decided on fully yet.

Mr. Hiranaga: I understand that. My question is is this application going to be piggybacked on the other 10 or not or does it have to go through it's own Land Use Committee process?

Mr. Yoshida: This application would go to the Land – this application would go to the Land Use Committee. They would have reference that for the other 10 this is the condition that – these were the conditions that were recommended by the Land Use Committee. Those applications for the other 10 rest with the full Council.

Mr. Hiranaga: I understand that, I read that.

Mr. Hedani: So the answer is it will have to go on its own.

Mr. Hiranaga: Right, okay. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, we were told that that condition was dropped by the Land Use Committee, is that – and that it was passed onto the County Council without that condition in which case if this was piggybacked on it would drop in here too. So in other words, the Land Use Committee doesn't seem to think we need sidewalks for the kids. Paul can you give us a definitive answer of what happened.

Mr. Fasi: I was not there. I was not the planner at the time when this went to Council. I don't have an answer for your Commissioner Starr.

Mr. Starr: Commissioner U'u.

Mr. U'u: And I agree we made the recommendation to the Council but if some of the commissioners have a problem maybe they should run for Council that's how I feel. We do what we can here and we pass it on and that's all we can do and I think we did that. And if they failed, they failed on their part but I'm not going to go calling anybody names up there, but if they feel they should run for Council, they should.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Paul I just want to be clear. In your recommendation you've incorporated Conditions 1, 2 and 3. Those are the essentially it's the three conditions that were in Exhibit 16 isn't that correct?

Mr. Fasi: That is correct.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Again, because I was late. What is a median refuge lane?

Mr. Fasi: I'm going to direct that question to Mike Miyamoto, Public Works, he would probably give you a more definitive answer. Sorry to take you by surprise Mike, but I think he can give you a better answer.

Mr. Hiranaga: It is just an island, median island.

Mr. Miyamoto: Actually it's a striped area where someone coming out of Makaena could make a left turn and wait in the median area so that when the traffic has a gap then they can enter into the flow of traffic heading down the hill.

Mr. Hiranaga: So it's not accel lane.

Mr. Miyamoto: You could consider it somewhat of an accel lane but it's more of an refuge area actually so that they can wait for the opportunity for a gap in the traffic to enter into it.

Mr. Hiranaga: Now, I heard a statement saying the State DOT was against restriping but isn't this median refuge lane just restriping, you're not creating a raised area?

Mr. Fasi: I don't believe the State's going to put a raised area in there. I believe it would basically would be restriping.

Mr. Hedani: Paul didn't you say that the State was opposed to that?

Mr. Fasi: No, I think the applicant said something in reference to the State being opposed to it.

Mr. Hedani: Because the State wanted to require 12-foot lanes versus something less than that and they were seven feet short over refuge lane.

Mr. Fasi: I believe that's correct.

Mr. Hedani: Commissioner U'u.

Mr. U'u: One comment. I agree with the commissioners, sidewalk, I agree with the crosswalk but I also agree to myself that the houses were there before the school. The houses were there before

the school and then you're going to put a burden or a tax on the 10 owners of the housing when I feel it's the State's fault. Same on the State not shame on the homeowners.

Mr. Hedani: Mr. Fasi.

Mr. Fasi: Yeah, I would also like to point out that the further up the road you have Kula Elementary School. It's an elementary school not even a high school with young, young kids and currently they're operating under worse conditions than they are down at King K. So before we make improvements down at King K, it ought to be done up at Kula Elementary where we've got real young kids and so far the State hasn't stepped up and done anything up there.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah as far as sidewalks on state highways, I believe the only state highway that I know of on Maui that has sidewalks is Kaahumanu Avenue. I think because of the speed limits allowed you want to have – allow vehicles to exit the roadway and come to a safe stop at 45 or 55 miles an hour. So if you put up a four-inch raised sidewalk it's going to create a hazard and I think that's why the state opposes raised sidewalks.

Mr. Hedani: It will turn the cars into airborne aircraft. Commissioner Shibuya.

Mr. Shibuya: As a compromise, it says here that the pedestrian paths shall be designed and constructed in accordance with the State Department of Transportation standards at no cost to the State of Hawaii. How about if we say they will contribute to this?

Mr. Fasi: Again, it's the department's intent to apply the same conditions verbatim word for word to this 11<sup>th</sup> parcel. It would be unfair and frankly in my opinion, unethical to do otherwise.

Mr. Shibuya: Well, I take issue on the 10 or 11 because here the Police Department is saying 39 because that's a final build out and I'm not just looking right now today, I'm looking at the total picture and we got to look in the total picture because at that time when we have a build out of 39 units we won't have that opportunity to fix this. We need to fix it now.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Paul, I know it was mentioned early on in the meeting the reason this was not included with the other 10 is because the owner didn't want to. What's changed? Has the owner changed his mind or was it sold to somebody?

Mr. Fasi: It was sold to the applicant.

Mr. Hedani: Any further discussion? The motion the floor is for denial. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I understand some of the commissioner's concerns regarding total build out and if this was say one developer those types of improvements would be placed as part of the condition for final subdivision approval. And so if these people receive the zoning but nobody

subdivides you really don't have that type of a build out. So it's kind of a chicken and the egg situation. You're placing these conditions now because it's under our jurisdiction but when, if and when these people subdivide I mean, there are what, 1,200 on the waiting list for a water meter and you know they're not going to be able to subdivide unless they get water meters or they go to water catchment or they buy water meters from a private developer so to place this one-year time frame I doubt the state will implement this in one year and if you were able to design it. Maybe we could just make some type of recommendation that prior to the subdividing of any of these lots that these types of traffic controls be implemented. So you're going to create a bottleneck here. You've granted them the zoning but they can't subdivide. If enough people in the future want to subdivide they'll get together and put their money out and say okay we'll do the improvements. Sure the zoning now with the rural you'll go from a farm dwelling and a thousand square foot accessory farm dwelling, with half acres you can go to three dwellings and a cottage probably if they can keep the fixture count under one water meter. So you still might have increased density but it's not really subdivided. Maybe we can craft some – if the motion on the floor fails craft some type of language that prior to the subdividing of any lot ...(inaudible – audio feedback)....

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: First thing is I want to make clear what the motion is.

Mr. Hedani: Motion is for denial.

Mr. Mardfin: Does that mean recommend denial from the Maui Planning Commission.

Mr. Hedani: Motion is to recommend denial the Maui County Council.

Mr. Mardfin: Recommend to the Maui County Council.

Mr. Hedani: Any further discussion? Commissioner Tagorda.

Mr. Tagorda: Just a quick question. On your recommendation on page 4, number 3, let me read it to you, "that road improvements on Makaena Place shall address fire safety concerns including a 20-foot wide paved roadway," but on a comment made by I think the Department of Public Works has commented that the road widening lot shall be provided for Makaena Place for a future 40-foot wide right of way and improved to county standards. Is that something different from your recommendation. Page 14, line 36 and your recommendations on page 4, number 3 condition.

Mr. Fasi: Line 35.

Mr. Tagorda: Yeah, 36.

Mr. Fasi: Line 36.

Mr. Tagorda: Page 14.

Mr. Fasi: Page 14.

Mr. Hedani: Mike you want to chime in on this one?

Mr. Miyamoto: Thank you Mr. Chair, our comments were basically that if you notice the 40-foot refers to the right of way width. It's not the paved surface. The 20-foot of paved surface is pretty standard for the fire department for that they can pass two pieces of apparatus side by side in that area. So the paved right of way – I mean, the pavement is one thing, the right of way is a separate issue. So the 40-foot is just so that we can have that clear space to maintain the pavement.

Mr. Tagorda: Thank you.

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

Mr. Starr: Yeah, I'd like the department to let us know definitively whether the ordinance that has gone through the Land Use Committee and is before the County Council for first reading has dropped the condition to have that was recommended by the commission and the director. Can you call up Clayton?

Mr. Yoshida: Yes, I believe the conditions are that are before the Council, full Council for second and final reading are the three conditions that are listed in the recommendation.

Mr. Starr: So, the pedestrian path is in there? Because the applicant came to us and said that they dropped that condition. The Land Use Committee of the County Council that this went to dropped it. If it's still in there I have no problem with it. If they dropped then I have a lot of problem with it. Can we get a definitive answer from whoever's staffing the Land Use Committee.

Mr. Hedani: Paul.

Mr. Fasi: I just asked the applicant and the Council did drop that condition. Now that's not to preclude this body from going again and recommending that you put it back in. I mean, you can certainly make that recommendation again.

Mr. Starr: Well, clearly they'll take it out again therefore, whatever their special interest is they took it out so that we end up with a substandard, you know, project and houses getting built with no way for kids to walk to school.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I want to explain my thinking out loud on this. One because it will help me understand what I'm thinking more clearly. I'm really torn on this motion to recommend denial. Leading me in favor of that is the considerations that have been raised about walkways and safety. The second concern I have is whether or not this is within the rural growth boundary, the other 10 properties were recommended by this committee before we have done the Maui island Plan recommendations. And I've tried to get a hold of Long Range Planning by phone and they're all busy so I can't find out for sure whether or not this is within the rural growth boundary. If it is, that would be in favor or the recommendation of the department, if it's not, it would be a factor against it. But that would make me want a motion to defer not a motion to deny. The thing that's causing

me to vote against the motion to deny and would ultimately lead to a motion to approve is this is one of 10 and it strikes me as a little bit unfair to treat this one guy differently than the other 10.

However, if the motion to deny fails and we have a motion to recommend approval I probably want an additional condition on it even though Planner Fasi recommends that we keep the wording identical, but its identical that land use planning has already changed so there's nothing major in that. But I'd want to see a condition that before any permits to – any building permits are applied for that a full archaeological inventory survey be conducted because I think the 2009 letter in my mind supercedes the 2004 document and therefore, in my mind Historic Preservation has not gone ahead with appropriate mitigation of potential archaeological problems. So I'm caught in the middle, until we have the vote I don't know how I'm going to vote but there's some things in favor of the recommendation, some things opposed to it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Again, I apologize for being late, but this 20-foot wide paved roadway that's going to be in the existing - it's a private road I guess? This is a private road?

Mr. Fasi: Yes it is.

Mr. Hiranaga: Will be within the – is it unpaved now or?

Mr. Fasi: No, it is paved.

Mr. Hiranaga: So what's the result of this 20-foot wide paved roadway?

Mr. Fasi: I can't answer that.

Mr. Hedani: I think the applicant can answer that.

Mr. Hiranaga: Or Public Works.

Mr. Miyamoto: If you look at the staff's report they clearly identify that as the Fire Department regarding fire safety is requesting the 20-foot pavement width.

Mr. Hedani: Steve, do you have any additional information on that? You need to use the microphone.

Mr. Sadler: Yes. Hi, my name is Steve Sadler the applicant and yes, currently we do have an 11-foot wide paved road going down a 40-foot wide easement and it is private and the Fire Department did issue their recommendation that we have a 20-foot wide road for their vehicles. However, at the Land Use Committee they also, we brought up the point that some requirements in rural, the road would have to end up being 22-feet wide so they reworded it as at least 22 feet wide – at least 20 feet wide was the requirement.

Mr. Hedani: So the requirement still stands?

Mr. Sadler: Yes.

Mr. Hedani: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Again, I find this a little odd. This would seem like a condition you would place for final subdivision approval. I find it a little odd that it's being placed on a zoning request.

Mr. Hedani: Thank you Mr. Sadler, that's all.

Mr. Sadler: Well, I could answer that question too if you'd like.

Mr. Hiranaga: Sure.

Mr. Sadler: When we came before the planning commission we were a group of 10 lots. There's about eight owners and 10 lots and as I mentioned there was no master plan for a subdivision we just wanted to pass it down to the kids and we didn't want the first applicant to have to do all this extra work so we came together as a group and said we want to split the road widening between us have it done as part of the zoning requirements. We asked for that requirement as well as the refuge.

Mr. Hiranaga: And how you regret it because –

Mr. Sadler: I regret the refuge lane but the road widening needs to be done. Our road is old and beat up.

Mr. Hedani: Thank you. Commissioner Mardfin.

Mr. Mardfin: I believe Planner Fasi wanted to respond to some of my comments and got cut off.

Mr. Hedani: Paul.

Mr. Fasi: Thank you for the opportunity Commissioner Ward Mardfin. In response to your request for the archaeological inventory survey it's been this planner's experience in the past that in every instance of parcels that have had agricultural production, SHPD has basically threw up their hands and say well, it's already been disturbed and there won't be any findings there and so they don't even go down that path of requesting any kind of survey be done. The only exception being unless it's some kind of a above surface heiau or something that you could see, but once it's been in ag production as Commissioner U'u pointed out it's really a waste of resources and money for the SHPD and the applicant to do an inventory survey that basically is going to be waive by SHPD.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: And Public Works can correct me but you know, if someone goes in to subdivide these rezoned properties that's when SHPD would have an opportunity to review it again. So I can't see – again for a zoning – a requirement for building permit that you need to go get an archaeological inventory. They're going to subdivide it's party of the process.



Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I'm willing to soften my stance here. I'm willing to accept this owner's proposal however, with a condition that if there's an subdivision, family subdivision or whatever the it starts to kick in motion that would start contributing towards the construction of the sidewalk and the safety improvements along this Kula Highway. It is not a roadway and I just want to reiterate that is a Kula Highway.

Mr. Hedani: Any further discussion on the motion on the floor. Commissioner Starr.

Mr. Starr: Yeah, this is an answer to Commissioner Mardfin.

Mr. Mardfin: I don't have the final version of the maps, but the versions we were working on this was included in the Pukalani UGB. Not rural but the urban growth boundary.

Mr. Mardfin: Thank you.

Mr. Hedani: Any further discussion? Ready for the question? Question on the floor is to deny. The motion on the floor is to recommend denial of the change of the district boundary amendment and the zoning change. All those in favor signify by raising your hand. Opposed same sign.

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

**The Motion to Recommend Denial of the State Land Use District Boundary  
Amendment and Change in Zoning was Lost.**

**(Assenting - J. Starr, W. Shibuya)**

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

**(Excused - L. Sablas)**

Mr. Hedani: The motion is lost. Further Discussion? Commissioner U'u.

Mr. U'u: I want to make a motion to approve the district boundary amendment and the change in zoning.

Ms. Domingo: Second.

Mr. Hedani: As recommended.

Mr. U'u: As recommended.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo. Discussion?  
Commissioner Shibuya.

Mr. Shibuya: I would like to make a friendly amendment to include that these 11 owners once they start subdividing or have made proposals for subdividing that they start contributing towards the

pedestrian safety improvements along Kula Highway fronting their properties.

Mr. Hedani: Is there a second?

Mr. Starr: I'll second.

Mr. Hedani: Seconded. Moved by Commissioner Shibuya, seconded by Commissioner Starr to add an amendment on future subdivision of the properties. I'm not sure Warren that you can impose a condition on other properties other than the applicant because he's the only one that's here before us. So if you include you know the 10 other applicants it's not something that he can force them to do.

Mr. Shibuya: I understand.

Mr. Hedani: So it should be applicable only to him.

Mr. Shibuya: Okay.

Mr. Hedani: Discussion? Commissioner U'u.

Mr. U'u: The maker of the motion would not want to accept the friendly condition. How does it work? When you say I would like to make a friendly condition when the maker –

Mr. Hedani: Well, it's been moved and seconded so we can actually vote on the amendment.

Mr. U'u: Okay.

Mr. Hiranaga: It's unfriendly.

Mr. Hedani: Any further discussion? Commissioner Starr.

Mr. Starr: Yeah, I think it really is important to make whatever degree or statements we're able to and this is to the Land Use Committee because you know, the department did the right thing, this commission did the right thing but the Land Use Committee is really not doing the right thing and however we can send a message them to deal with this before it goes to first and second reading that this may be helpful in that regard.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Would Corporation Counsel care to comment about amendment to place conditions on other private property owners that are not part of the application?

Mr. Giroux: I think the Chair addressed that already.

Mr. Hiranaga: Okay, I just wanted to know, official comment, that was his own. Layman's opinion.

Mr. Giroux: He's actually doing an awesome job.

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: The whole intent here as Commissioner Starr mentioned that it is sending a message, it is highlighting and is not addressing only Mr. Sadler. It allows the committee to revisit this whole issue and this is the wedge in which it allows the Council members to reconsider and that's all it is.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm going to vote in favor of the amendment, I hope it passes because I agree with the maker and the seconder that this is a message. It's reiterating, it's limited to this one property, it's not addressing the other properties but it is sending a message to the Council that we really consider it important so we're basically saying it in Condition 3 and then underlining it with this proposed Condition 4. And the reason I really hope it passes is because if it fails I'll probably vote against the motion to approve. If it passes, I'll probably vote in favor of the motion to approve.

Mr. Hedani: Paul did you have a comment to offer?

Mr. Mardfin: And again, let me add one quick thing. And I have to thank Commissioner Starr for giving me the information, but it turned my vote from yes to a no.

Mr. Fasi: I've just been handed a map here by my fellow planner and the particular area in question is outside the urban growth boundary.

Mr. Mardfin: It's outside the urban growth.

Mr. Fasi: It is outside the urban growth boundary. And I'd just like to make one little comment here that you know it's very onerous to put these kind of conditions on 10 individual homeowners. Coming before this body very soon may be the huge build out of the senior housing project about King K and at that time it's more appropriate to ask a development to make these types of improvements. When you've got multi-million dollar project coming before this body.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Paul did you say that the Council or the Land Use Committee dropped Conditions 2 and 3 or they left 3 in, the 20-foot wide pavement.

Mr. Fasi: I believe they took was it the pedestrian path Steve? Just the pedestrian path was taken out. Now you can also recommend to put it back in if you want.

Mr. Hiranaga: Again, I think these two conditions should be placed upon the applicant when they're applying for a subdivision. I would think rather than putting it as a condition for the recommendation for the change in zoning we could make comment that we urge the Council to place these conditions when an – one of the 11 owners comes forward to request a subdivision and then he can go around and rally up the other 10 guys to pitch in, but it seems to me this is not the appropriate

place to place these types of conditions in a change in zoning.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I want to point out that the motion to amend says they will contribute to it. It doesn't say they're going to have to necessarily bare the full cost of and the suggestion that when the senior housing project comes they would contribute also fits in that mode. So I'm ready to vote in favor of the amendment but given the additional information that it is outside the urban growth boundary should the amendment fail I will definitely vote against voting for approval.

Mr. Hedani: Paul, do you have the language for the amendment?

Mr. Fasi: No, I don't. The amendment was, could you repeat that please?

Mr. Hedani: The amendment was would you repeat that please, Warren?

Mr. Shibuya: Okay, the amendment was that any further subdivision of the properties, of this one particular property will incur that requirement to contribute towards the pedestrian safety and highway safety along the Kula Highway fronting their properties.

Mr. Hedani: Okay, that's a restatement of the motion basically.

Mr. Shibuya: Yeah.

Mr. Hedani: With the consent of the second. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I have a question for Corp. Counsel. Are you, is it proper or appropriate to place a condition to contribute to a fund that has no methodology established? I thought there was an issue with roadway improvements where you couldn't place some type of a condition on a developer that you will contribute when there is no methodology. So he has no way of quantifying what his obligation will be at this time so he can make a decision to say yes or no. So I'm wondering you know, you're setting this precedent to provide – if the improvements end up to be \$10 million their share is \$900,000 there's no established methodology to give him a scope of what he agreeing to.

Mr. Hedani: Jim.

Mr. Giroux: Thank you Kent. Anticipating that I have a bullet point and outline to discuss the issues of exactions. I fully advised this board before about exaction type of requirements and if – I mean you use the word "precedent" you know, I mean it's kind of because of this board has in the past done these types of things even with Corp. Counsel's disapproval you know it tends to go on. So we tend to deal with it in a different way, but being that you know if you're going to create these types of exactions without creating a clear way or having a clearly established law that allows you to do it, it does make the condition kind of moot when it hits the Council floor or when it hits the lawyers table and we have to go into court and defend it. So you know, what you want to avoid is this type of exaction that becomes a retroactive past where the developer is not aware of what his possible liability would be. So that being said.

Mr. Hedani: Mr. Shibuya, do you want a dollar or do you want \$300,000?

Mr. Shibuya: Yes. I do want to clarify that because you have a total build out that's quantifiable and total build out is 39 lots. And so in terms of dividing the cost there was an assessment right now I think it was mentioned about \$300,000 – \$336,000 divide that by 39 and that would be the exaction.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I think we just heard from Corp. Counsel, it's border line illegal what we're doing and I guess some people just don't have the clarity of the image to foresee that what we're doing is wrong and unfair for the 10 individuals. I'm so happy to be out of here by March.

Mr. Hedani: That's why you and I are the only ones smiling.

Mr. U'u: Yeah, I can't wait.

Mr. Hedani: Any further discussion? The amendment on the floor is to add a condition regarding participation in the cost of safety improvements to Kula Highway for pedestrians.

Mr. Fasi: That sounds pretty good to me.

Mr. Hedani: And the basis of the participation would be on the basis of ultimate subdivision of the total project.

Mr. Fasi: Total build out.

Mr. Hedani: Are we clear? All those in favor of the amendment signify by raising your hand. Three. Opposed same sign. Two, three, four, Chair is opposed.

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

**The Motion to Add a Condition of the requirement to contribute towards the pedestrian safety and highway safety along the Kula Highway fronting their properties on the basis of ultimate subdivision build out was Lost.  
(Assenting - W. Shibuya, J. Starr, W. Mardfin)  
(Dissenting - K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, W. Hedani)  
(Excused - L. Sablas)**

Mr. Hedani: Motion is lost. Any further discussion on the main motion? Commissioner Hiranaga.

Mr. Hiranaga: This recommendation to approval is basically a recommendation. So if it's approved, denied, no action it just goes forward to the Council.

Mr. Fasi: That is correct.

Mr. Hedani: Any further discussion? Commissioner Mardfin.

Mr. Mardfin: In light of the failure of the amendment I hope you understand why I'll vote against approval.

Mr. Hedani: Any further discussion? Ready for the question. The question on the floor is to approve as recommended. All those in favor signify by raising your hand. Opposed same sign.

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

**VOTED: To Accept the Recommendation to Recommend Approval of the State Land Use District Boundary Amendment and Change in Zoning (Assenting - B. U'u, D. Domingo, K. Hiranaga, O. Tagorda, W. Hedani) (Dissenting - W. Mardfin, W. Shibuya, J. Starr) (Excused - L. Sablas)**

Mr. Hedani: The motion is passed five to three. Thank you Paul. Paul our condolences on the lost of Mayor Fasi.

Mr. Fasi: Thank you very much.

Mr. Hedani: Okay, we'll go ahead and a take a 10-minute recess.

A recess was called at 10:37 a.m., and the meeting was reconvened at 10:48 a.m.

### **C. NEW BUSINESS**

- 1. HALE HUIKAI A O A O requesting an Environmental Assessment determination on the Final Environmental Assessment prepared in support of the Community Plan Amendment from Single Family to Hotel to conform to the existing hotel use at 2994 South Kihei Road, TMK: 3-9-004: 025, Kihei, Island of Maui. (EA 2008/0009) (J. Dack) (Draft EA reviewed at the July 14, 2009 meeting.)**

**The EA trigger is the Community Plan Amendment.**

**The project needs a Community Plan Amendment. The public hearing on this application will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Jeffrey Dack: Yes, good morning the Final Environmental Assessment for this project is prepared by Munekiyo and Hiraga on behalf of the applicant, Hale Hui Kai Association of Apartment Owners. The changes include agency and public comments received during the 30-day public review period along with the applicant responses by way of letters and text changes to the draft environmental assessment.

Among the responses and text changes is an update to the former seawall on public land adjoining the property about which the Maui Planning Commission had commented. These updates conclude with a report that the seawall has been removed as requested by the Department of Land and Natural Resources.

An application for a community plan amendment from single family to hotel has been filed with the Department of Planning and is held in abeyance pending completion of the Chapter 343 HRS process. No development is proposed at this time.

The commission may either accept the final EA and issue a finding of no significant impact determination, defer the final EA or require the applicant to prepare an environmental impact statement.

The department has reviewed the final EA and concludes the environmental document meets the various criteria for acceptance of an EA and we recommend that the commission accept the final EA and issue a FONSI determination. But before you take action, the applicant's consultant would like to make a brief presentation highlighting comments received on the draft environmental and updates on the site area and the applicant's responses to the comments received. Any questions before the presentation?

Mr. Hedani: Go ahead.

Mr. Mark Roy: Good morning Chair and Members of the Maui Planning Commission. My name is Mark Roy with Munekiyo and Hiraga. I'm here today representing the applicant, the Hale Hui Kai Association of Apartment Owners, the AOA.

The Hale Hui Kai is an existing 41-unit resort condominium complex situated on a one-acre parcel of land on the makai side of South Kihei Road. This is bird's eye view of the property's location. As you can see it's next to Keawakapu Beach just down from the Mana Kai, and here's the Mana Kai.

Here we have a site plan showing the layouts of the existing condominium buildings. Here's Keawakapu Beach on this side and South Kihei Road on this side. And this is photo looking makai towards the existing buildings looking towards the beach from the parking lot.

Hale Hui Kai Resort was constructed almost 40 years ago now in 1971 in accordance with the property's hotel designation which was set forth at the time by both the 1970 Kihei Civic Development Plan and also the Maui County Zoning Ordinance. This slide just summarizes the land use entitlements in 1971 when the project was constructed. You had urban state – from a state perspective, hotel from 1970 Kihei Civic Development Plan and then hotel zoning.

Both of the Kihei Civic Development Plan and the County zoning documents designated much of the Kamaole area in Kihei to the north for hotel use. You can see on this slide this is the Civic Development Plan from 1970, here we have the Hale Hui Kai property and in brown the Mana Kai area and then Kamaole was designated for hotel use back in 1970.

Many years after the construction of the resort, the adoption and subsequent update in 1985 and 1998 of the Kihei-Makena Community Plan resulted in the Hale Hui Kai property being redesignated for single family use. This mapping area may have occurred as a result of assigning future single family use designations to the beach lots immediately to the south of the Hale Hui Kai property which at the time had not been, many of which had not been developed.

This redesignation to single family did not reflect the intended hotel use for the Hale Hui Kai property nor did it acknowledge the presence of the existing resort at the time. Furthermore, the designation appears to have been assigned without the prior knowledge, consent or notification of the landowners at the time.

To reestablish consistency to the parcel's underlying land use designations the AOA is proposing to change the community plan designation for the parcel from the single family to hotel as reflected in this slide. A similar request for the Sarento's property immediately to the north of this property has recently been recommended for approval by this commission.

I'd like to emphasize at this point in the presentation that there are no plans to further develop or intensify the current use of the property as a resort condominium. As such, there are no public infrastructure or environmental impacts associated with this particular land use action. Approval of the request would assign an appropriate community plan designation to the property one which would reflect the existing land use that has been present for almost 40 years. Completion of this amendment would simply restore consistency to the land use designations for the property and would enable permits to be obtained from the county for repair and maintenance work that may become necessary as the condominium ages. The amendment would also allow the owners to rebuild the current condominium if the property was seriously damaged by a catastrophic incident such as fire or hurricane something that they would be unable to do under the current situation.

As Mr. Dack mentioned in his presentation we're here before you this morning to request review of a final environmental assessment that has been prepared as part of the proposed community plan amendment application process.

The draft EA was published in June 2009 last year and underwent a 30-day agency and public review period. The comment letters in the document before you today received as part of this process have been fully reviewed and responded to as part of the final EA and revisions to the narrative of the document have been made where necessary.

The commission completed its review of the draft EA in July last year. I would like to now focus the remainder of my presentation to address the commission's comment that they gave last year and give a brief overview of the work that has been completed by the AOA in regards to addressing as Jeffrey Dack mentioned some shoreline repair work that was conducted back in the early 1980's.

This slide summarizes quite significant work that has taken place since we were last before the commission. The shoreline repairs that the commission commented on at the last meeting consisted of a sprayed layer of gunite concrete that was put in place in 1982 as an emergency measure in response to some fairly significant erosion damage that had occurred along the shoreline following Hurricane Iwa which hit Maui back in 1982. The repairs were actually identified



by the Planning Department during a site visit that occurred in February of last year as part of the community plan application process and when I say identified the current situation has these improvement beneath a fairly thick hedge of naupaka that grows along the shoreline that you'll see in a subsequent slide.

At that point the issue was raised to the status of permitting for those particular improvements and there was significant review of files both at the AOA and also in the county and state levels as to whether or not any permits were issued back at the time. There was significant correspondence between the applicant and the county back in 1982 and 1983 that requested after the fact permits for these emergency repairs but unfortunately there were no specific permits or approvals that were able to be gathered through that research process.

So which led us to the next step which was in June of last year. It came to our attention that some of these – the improvements may have indeed fallen within a State Beach Reserve that falls between this particular property and Keawakapu Beach and so the applicant sat down with DLNR Land Division to discuss the site plans and the metes and bounds data and it was a fairly extensive review and the repairs were indeed confirmed as actually falling beyond the property line and were deemed to be an encroachment within the state owned beach reserve that I just discussed. DLNR's position was that they were requiring removal of the encroachment.

So the applicant worked on the addressing the permits necessary or the authorizations, excuse me, necessary to remove those encroachments and the DLNR issued what's termed to be "A Right of Entry Permit," for the owners to go ahead and remove those encroachments. DLNR issued that authorization in November of last year and the Hale Hui Kai and also another landowner to the north the Mana Kai I believe proceeded to conduct removal of encroachments within state land. So that was completed back in November.

This slide I just wanted to give the commission a perspective on what the AOA was dealing with back in 1982. This shows Keawakapu Beach or lack of beach I guess following the hurricane. It came in and ripped out a majority of the sand along the beach and significantly eroded the shoreline and the years subsequent to that the beach has regenerated itself but it was a significant event.

This slide was back from 1982 and just shows this sprayed gunite being placed on the shoreline to like I said, the emphasis at the time was to restore the shoreline that had been pretty significantly eroded from the hurricane.

This is the naupaka that pretty much covers the entire or did cover the entire gunite repair work up until the end of last year and I'm sure commissioners know that Keawakapu Beach this naupaka goes the entire length of the shoreline. So the naupaka has actually – this is the area of the encroachment that was defined just falling on the makai side of the existing swimming pool and this shows the removal following DLNR's requirement to remove the encroachment from the state owned beach reserve. As you can see, the Mana Kai is at the top of this picture and this is the orange fencing over here this delineates I believe the area that the Mana Kai they didn't have any gunite to my understanding to resolve but they had naupaka that was also encroaching within beach lands and they were also required to remove.

So just to kind of close the work that has been completed by the AOA, DLNR did a follow inspection in December of last year just to verify that the encroachment had been fully removed by the AOA and this letter was issued in December, December 18 of 2009 that DLNR basically verified that the AOA is in compliance with the requirement to remove the encroachment from the State Beach Reserve. So like I mentioned, it was a fairly significant desk research exercise and also you know, a lot of work to actually address this encroachment that had come up during the processing of the community plan amendment application. The encroachment area as you can see from this slide now has been returned by request of the DLNR to its preexisting condition and now represent an extended area for the beach.

In closing today, we'd like to concur, we obviously concur with the Planning Department's analysis that the final EA before you today meets the criteria for acceptance of an EA and respectfully request issuance of a finding of no significant impact for the proposed community plan amendment.

As noted by staff the next step in this process following completion of the EA which is a technical analysis of the request at hand will be the scheduling of the community plan amendment request by the commission at a future date. Thank you very much.

Mr. Hedani: Any questions for the applicant? Okay, since there's no questions we'll go ahead and open it up to the public for testimony on this agenda item. Are there any members of the public that would like to offer testimony? Please step to the microphone and state your name. Seeing none, public testimony is closed. Staff recommendation.

Mr. Dack: Staff already provided our recommendation it was that the commission accept the final EA and issue a FONSI determination. Thank you.

Mr. Hedani: Thank you very much. Commissioners? Commissioner Mardfin.

Mr. Mardfin: Yeah, I probably want to ask the developer or the consultant for the developer about the Isaac Hall letter that you received on July 8, 2009 and I know you had a follow up letter to that where you explained it but would you deal with it directly.

Mr. Hedani: Would you like him to restate the letter or what are you asking?

Mr. Mardfin: Well, there are a bunch of things. I mean, there's Isaac Hall basically says that we shouldn't issue a FONSI because it fails to address indirect and secondary impacts because it fails to address beach access, it's inadequate and unsupportable and he argues that we should deny a FONSI and I wanted to give a developer a chance to or his representative a chance to comment on it before I ask more specific questions.

Mr. Roy: Sure and we'd be happy to just give the commission –

Mr. Hedani: Need to restate your name for the record.

Mr. Roy: I'm sorry. My name is Mark Roy with Munekiyo and Hiraga. We received a comment letter from Mr. Isaac Hall who I believe in this case represents an owner to the south of the Hale

Hui Kai parcel of land and as commissioners can see, Mr. Hall brings up several comments regarding the environmental assessment process in general and the scope of analysis that is presented within the environmental review document. He also touches upon beach access to Keawakapu Beach and I think it's important to note at this particular point that there is existing beach access from the Hale Hui Kai property down to Keawakapu Beach and as you can see in the response that was –

Mr. Mardfin: Could you show me that on a map where that is? Excuse me for interrupting.

Mr. Roy: Sure. I actually have – commissioners can see the site plan on the screen, there's an existing easement that the Hale Hui Kai acquired from the neighboring landowner to the south. This is the neighboring parcel of land and this is where you start getting pretty high-end single family residences along Keawakapu Beach. The access easement generally speaking calls for access pretty much down where this laser pointer is going down to the beach here. I do have a photo which may give a better idea as to what the access looks like down to the beach. This is the side of the property where the access actually connects down to the beach. You've got the Hale Hui Kai in the top left-hand corner going back towards South Kihei Road and then the neighboring single family residence on the south side.

Mr. Mardfin: And how does the public – oh, that may help.

Mr. Roy: This delineates the actual easement that the Hale Hui Kai AOA possesses that basically allows access down onto Keawakapu Beach.

Mr. Mardfin: And how does the public get to that easement?

Mr. Roy: In regards to public access opportunities on Keawakapu Beach I believe there are two existing access points along Keawakapu Beach. One is termed to be sidewalks –

Mr. Mardfin: And then it hooks up to that pathway?

Mr. Roy: No, it does not. That pathway is actually not a public access onto the beach, but commissioner's question regarding public access if we look at Keawakapu Beach as a whole, sidewalks I believe is there and there's a parking lot just on the corner of Kilohana Drive and South Kihei Road where people park and actually walk down a paved access way is ...(inaudible).. sidewalks down onto Keawakapu Beach. There's also another access further to the north towards Wailea side.

Mr. Mardfin: Is there one through the hotel to the left?

Mr. Hedani: Through the Mana Kai?

Mr. Roy: I'm not actually sure if that's a designated public accessway but people in the room are nodding so it was suggested there is public access on that side.

Mr. Mardfin: And what's the distance between the Mana Kai access and the other public access

you showed me?

Mr. Mardfin: It can't be that big.

Mr. Mardfin: It's not that fair. Mana Kai is here on the point and then you see the white dot here which I think was a remnant from a previous figure that's sidewalk access down onto Keawakapu Beach. So it's not a considerable –

Mr. Mardfin: 100 yards, something like that, 100 meters, sorry.

Mr. Roy: Yeah, a little longer than 100 yards but still not considerable.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, why is the one that is controlled Hale Hui Kai not open to the public?

Mr. Roy: Just to reiterate the question, Mr. Starr you're talking about the existing easement that goes down from Hale Hui Kai parcel down onto Keawakapu Beach?

Mr. Starr: Yeah, it looks like a pathway from almost from the road down to the beach.

Mr. Roy: It is. Lets just go back to that particular photo. So this is the access easement that goes down from Hale Hui Kai. I'm not particularly sure if it's open per se to the public but I'm sure if the public were to be along that area of the shoreline they could utilize the easement but there is a fairly limited parking facility at the Hale Hui Kai Resort so there are limited parking opportunities that would basically provide access to the public onto this particular area of the shoreline.

Mr. Starr: I mean, can the public walk through there? Is there any – is there a gate that controls to keep the public from using that?

Mr. Roy: There is no access precluding public access down onto that site.

Mr. Starr: Because I didn't think there was.

Mr. Hedani: Any further questions for the applicant? Thank you very much. Commissioners what's your pleasure? Commissioner Starr.

Mr. Starr: Yeah, move to accept the recommendation as presented.

Mr. Tagorda: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Tagorda to accept the final environmental assessment and issue a finding of no significant impact. Discussion? Commissioner Starr.

Mr. Starr: Yeah, I want to compliment the department especially the shoreline planners for their

diligence you know I know that basically doing the research and finding out about the hardening and also I would like to compliment the applicant for doing the right thing and removing that and providing more beach access and the elimination of hardening in the shoreline area.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Can somebody tell me where page 8 of this document is because something seems to be missing. Maybe 8's a map but then there's still something missing between page 9 and what's labeled page 7.

Mr. Roy: This Mark Roy with Munekiyo and Hiraga. To address the commissioner's question, I believe that figure 6 I believe we're in the right place.

Mr. Mardfin: What my problem is look at page 7, the last few words is "a copy of this memorandum is," and then at page 9 it says, "applications would be deemed acceptable." Something disappeared. I don't know if it's a page, a sentence, five words or what.

Mr. Roy: It's a small part of a sentence. And you're correct, I didn't realize that in the actual document. That can certainly be corrected. Basically what commissioners see so that we're being clear as to the modifications that were made to the document from the draft EA which was reviewed back in last year to the final EA we actually call out the changes in red lining and shading and the red lining deals with text that has been deleted from the document for whatever reason whether it be responding to agency comments. In this particular instance Commissioner Mardfin the section that deals – that has been deleted at the bottom of the page there – sorry, deals with some initial meetings that occurred with the Planning Department based on a policy that was in effect at the time that commissioners may remember that the department was not – was only supporting processing of community plan amendments on a limited basis during the general plan update process. That policy has since been rescinded. I believe the commission conducted a review of that also and so, we thought it best in that particular instance to remove that section that dealt with there's a policy that deals with situations where community plan amendments can proceed given that the general plan is going forward. So that crossed out text will come out of the document.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Is this, the Maui Island Plan recommendations of the Department of Planning that are now sitting with the Maui County Council for the place where we're talking about this location is it within a Maui Island Plan growth boundary as recommended by the director?

Mr. Roy: It's within the urban growth boundary for Kihei-Makena.

Mr. Mardfin: It's within the urban growth boundary.

Mr. Roy: It is.

Mr. Hedani: Any further questions? Discussion? Any further discussion? Ready for the question?  
Commissioner Mardfin.

Mr. Mardfin: If you look at Exhibit G in here and I think there might be several G's. I'm talking about the one where you have the foldout with four photos over time 1975, 1987, 1992, 1997. It's hard for me to – I can't describe it any better.

Mr. Roy: Okay.

Mr. Mardfin: If look at that it looked like between '75 and '87 to my untrained eye it looked like the beach either stayed the same or widened. Between '87 and '92, it looks like the beach disappeared. Is that Hurricane Iwa effect? And then 1992 it looks like it went out to about half of what it used to be. I'm not doing it the way the real planners do it, they look at the underlying where it cuts off but I'm looking at what I can see. You see what I'm saying? '87 to '92 – '92 it looks like it almost disappeared the beach, and in '97, it looks like about half of it has come back and I guess I'm curious about you know, four photos don't tell the whole story what's going on here with the beach?

Mr. Hedani: I believe in 1992 there was a severe storm event that was about the same time that the Sheraton's walkways collapsed into the ocean.

Mr. Mardfin: So that's why '92 looks really bad and then by '97 –

Mr. Hedani: It comes back.

Mr. Mardfin: It basically come back. Thank you. That takes care of that question.

Mr. Hedani: Any further discussion Commissioner Mardfin.

Mr. Mardfin: Maui Electric made a comment in here I believe it is probably the next to the last letter or something like two back from the beginning. Just before Isaac Hall's letter and it says, in pursuing the hotel designation there's a discrepancy between the current condo unit layout which contains the kitchen room as compared to the hotel resort land use categories which states, transient accommodations which do not contain kitchens within individual units in the Kihei-Makena Community Plan and then your response is something about inclusion of condominium units as recognized as permitted and I guess my question is more to the department as to maybe Jeffrey as to whether this is an appropriate answer to this – and maybe it's to Clayton.

Mr. Hedani: Jeff.

Mr. Dack: I'm having to read it as you speak because I don't recall it unfortunately. Guess I'd have to respond that the not having the wording, the exact wording of the community in front of me, when the community plan makes descriptions of its land use designations they're not an ordinance of kind of level of specificity. There's a little more generality to their descriptions and so I would say there should be some flexibility with – little bit of flexibility within them and in this case I would look to the actual zoning for the greater specificity of things like whether units can having kitchens or not and if the underlying hotel zoning allows the kitchens I think that would be more controlling because that's as I say the more appropriate level of specificity.

Mr. Mardfin: Does it in fact? Does hotel zoning allow kitchens?

Mr. Hedani: Yes.

Mr. Dack: Thank you. Yeah, I don't have my zoning ordinance with me.

Mr. Mardfin: So essentially the response by Munekiyo and Hiraga is accurate.

Mr. Hedani: Well, to give you an example the Maui Marriott was on hotel zoned property H-2 property and that's been converted to a timeshare condominium with kitchen units. Any further discussion? Commissioner Mardfin.

Mr. Mardfin: This is now going to be more discussion rather than question. I'm really concerned about this whole thing but the current motion before us is whether to issue a FONSI or not. It's not appropriate to put conditions on an environmental assessment. I can either ask for more information or I can – we can wait until the community plan update is done or some other thing. But I'd like to make the comment that while I won't stand in the way of this EA being accepted as a FONSI when the community plan amendment comes before us I'm going to want to see some sort of condition that there be no future intensification of use. I'm kind of laying this out in advance, but if it comes before while I'm on the commission, you know, this idea about we're accepting a FONSI there's no plans to do anything more blah, blah, blah, you know that's fine but if there ever is an application to do more, then are they going to go back and redo the CA and my hunch is no. So I will want as a condition of acceptance of the community plan amendment that there be absolutely no intensification of use as a condition of giving the community plan amendment. I'm just letting you guys know where I'm going to be coming from the next time this hits us.

Mr. Hedani: Any further discussion? Okay, the motion on the floor is to accept the staff recommendation for the finding of a FONSI and the acceptance of the final EA. All those in favor signify by raising your hand. Opposed same sign.

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

**VOTED: To Accept the Final Environmental Assessment and Issue a Findings of No Significant Impact (FONSI).  
(Assenting - J. Starr, O. Tagorda, B. U'u, W. Mardfin, D. Domingo, W. Shibuya)  
(Excused - K. Hiranaga, L. Sablas)**

Mr. Hedani: Motion is carried. Thank you very much.

Mr. Yoshida: Thank you Mr. Chair. We're under Communications. We have a request from the Friends of Mokuula, Inc. for a four-year time extension on the Special Management Area Use Permit relating to the period to initiate construction for a 84-stall parking lot and ancillary improvements at TMK 4-6-007: 001, por. of 002, and 036, Lahaina, Island of Maui. The staff planner is Erin Wade.

#### D. COMMUNICATIONS

1. **FRIENDS OF MOKUULA, INC. requesting a four-year time extension on the Special Management Area Use Permit condition relating to the period to initiate construction for the proposed construction of an 84 stall parking and ancillary improvements at TMK: 4-6-007: 001, por. of 002, and 036, Lahaina, Island of Maui. (SM1 2003/0008) (E. Wade)**

Ms. Erin Wade: Good morning Chair Hedani and Commissioners. In 2003, the Friends of Mokuula received an SM1 approval for their project at 162 Shaw Street. The project includes an 84-stall parking lot and ancillary improvements. In 2005, the Friends of Mokuula were granted a two-year time extension pursuant to 12-202-17 of the Maui Planning Commission Special Management Area Rules.

Due to the illness of the board's executive director as well as some design issues that they encountered in trying to obtain building permit approval, the Friends of Mokuula were unable to begin construction. In 2007, the applicant applied for another two-year time extension. To explain why this is now a four-year time extension this project was originally assigned to another planner in the department. It was reassigned to me this summer. I contacted the applicant and at the time they were still waiting to resolve some of the design issues. We rescheduled this as a communication item when the applicant informed me that they were ready to proceed.

If this application was processed in 2007 as a two-year time extension it would simply be communicated to you in the Director's Report as the report has not changed since the original approval in 2004.

The Planning Department recommendation at this time is for to approve the four-year time extension of the Special Management Area Use Permit subject to the two standard conditions of the special management area.

Just for information, Mich Hirano is the applicant's representative and he is here in the audience and we also have the Executive Director Shirley Kahai and the President of the Board, Kimo Falconer to answer any questions you may have.

Mr. Hedani: Erin, does the applicant have any comments that they want to offer at this time, no?

Ms. Wade: No comments.

Mr. Hedani: Okay, any questions from the Commission? Commissioner Shibuya.

Mr. Shibuya: I have a simple one, it's the flood zone area. I just was reading that there's inundation of six feet and even three feet and on the map here it doesn't show that. Can you describe for us where the inundation would be?



Mr. Hedani: Mich.

Ms. Wade: I will let Mich.

Mr. Hedani: You weren't going to get away that easy.

Mr. Mich Hirano: Thank you. My name is Mich Hirano with Munekiyo and Hiraga. I'm just referring to the final environmental assessment that was done for the project.

Mr. Hedani: This is the reestablishment of the historic pond.

Mr. Hirano: Yes, the Mokuula site was a historic fish pond for the alii and King Kamehameha III. This is the reestablishment of it. So it is within the flood plane area and the Department of Army is working with the Friends of Mokuula to try and establish it as a wetland restoration.

Mr. Hedani: So they would welcome the flooding into the pond.

Mr. Shibuya: Understand. No, I'm aware of the wetland issue and here we are putting some structures in and so that's where I'm coming from and I want to see where the –

Mr. Hirano: Yes, I have the inundation map that this was of course the older one. There are a number of parcels that make up the Mokuula site. The restoration area is within the restoration – is within the flood zone portion of it but the parking lot is outside the flood zone and that's where the first part of the action will take is the reestablishment of the – or relocation of the parking lot. The existing parking lot is on the actual Mokuula site where the Mokuula Fish Pond was. So the project involved the relocation of the parking lot to a more mauka site and then the excavation of the Mokuula site under the existing parking lot and that's where the flood plane inundation limits are.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: How is the water actually – the water's going to be collected there and then it overflows into the ocean? Is that how it works?

Mr. Hirano: In the historic pond there was a outlet, a fresh water outlet on the – from the pond to the ocean, but I don't know how the exact restoration plans will evolve. It hasn't been that far designed for the restoration.

Mr. Shibuya: Because I'm concerned about sediment and some other materials going out. But I do, I was aware of the access route.

Mr. Hirano: The fresh water outlet.

Mr. Shibuya: That's correct. And there's also underground outlets too.

Mr. Hirano: That's right, yes, underground feeding.

Mr. Shibuya: The underground feeding and they had nice beds of ogo in that area and not too much today. But when you restore it I'm sure the shoreline would become more healthy.

Mr. Hedani: Any further questions? Ready for the question? Commissioner Mardfin.

Mr. Mardfin: On page 8.

Mr. Hirano: Of the staff report?

Mr. Mardfin: No, of the – I don't know how to describe it. Sort of toward the end there's a – before the Maui Planning Commission – I guess it's the original application and on page 8 of that document it says, relationship of the proposed project to the restoration of Mokuula.

Mr. Hirano: I don't have the original – oh, thank you. Yes.

Mr. Mardfin: And it says, a conceptual plan of the restored Mokuula site has been prepared for this purpose, Exhibit 4. That wasn't included to us, with us, was it? This is just a time extension so I presume you thought that it wasn't necessary.

Second thing is that same document, that same section on page 16, it refers to – section 4 refers to indigenous architecture.

Mr. Hirano: Yes.

Mr. Mardfin: And the last sentence says, upon – the held public hearings on the proposed rules on October 2003, upon adoption of the rules, a process through DPDEM could approve the indigenous structures. That's been successfully completed hasn't it?

Mr. Hirano: Yes it has.

Mr. Mardfin: Yeah, I was pretty sure it had. I know there are people in Hana had a lot to do with ..(inaudible)...

Mr. Hirano: Yes.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I just want to make a comment. I'm the – as you probably know I'm the Treasurer for the Hana Cultural Center and I love things like this that preserve indigenous ways of doing things and preserve culture and I love projects like this. Good luck. And it's nice to have a parking lot where you can support yourselves because that's a continual challenge to our organization is getting money to keep us going. Good luck.

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I just wanted to have more specifics in terms of how you're handling this sediment and

other materials perhaps even hydrocarbons that may be existing on the parking area, how are you treating this?

Mr. Hirano: There will be a complete excavation of the site. Right now there's an asphalt parking surface so everything will be removed and all materials will be tested and as well as not for – for the archaeological significance of it and as well as for chemical make up as it is required. Hopefully if the Department of Army gets involved to restore the wetland then of course, there will be chemical analysis of all the soils as well that will be needed to be carried out to reestablish the wetland. So I think to answer your question it will be tested. It carefully will be excavated and separated, categorized and tested.

Mr. Shibuya: And the drainage somehow, you're going to be able to capture the sediment?

Mr. Hirano: Yes –

Mr. Shibuya: Or that has not been addressed?

Mr. Hirano: The pond will be very still so the sediment won't be flushing out of the restoration wetland. It will be pretty much contained and then it will settle to the bottom of the pond.

Mr. Shibuya: Because the water comes in from Lahainaluna side and it comes down Shaw Street and then inundates that area so how are we dealing with this because during the turbidity that's when you have the access out to the ocean.

Mr. Hirano: Those plans have not been finalized but when I was involved with the project it was to not – not to replenish the wetland with surface flow but actually to find underground sources to keep the spring and the water within the pond. So it's not relying on surface flow for the establishment of the wetland and therefore I think the sediments would not enter the pond from that source.

Mr. Shibuya: Thank you.

Mr. Hedani: Any further discussion? Motion on the floor is for approval of the extension. Commissioner Mardfin.

Mr. Mardfin: I was curious maybe you did this when I was out of the room but whenever there are time extensions I always like to ask the reasons and this one seems to rely on the long big illness of Mr. Akone Akana. Can I inquire as to how he is doing?

Mr. Hirano: I'd like to just ask Shirley to come up. Akone was the guiding light for the Friends of Mokuula for many, many years so Shirley Kahai, who is the acting executive director.

Ms. Shirley Kahai: Aloha I'm Shirley Kahai and I'm the acting executive director. Akone Akana was with the Friends of Mokuula for many, many years and it was through his insight that we started friends of Mokuula and it started back in 1990 when he had this brainstorm, but he took ill a few years ago. He's had diabetes and through that it continued on into other areas where he's had problems with kidneys. So in December of 2008 he went into the hospital and just got last week

actually and he's doing better but he's in a foster care home but recovering. You know we want to see this project move ahead and do it –

Mr. Mardfin: And so you're the person now that's basically in charge of this?

Ms. Kahai: Yeah we've got a – I'm the acting ED and we have a small staff working on this project and we want to see it happen, move forward and we've got a lot of exciting things that have been occurring.

Mr. Mardfin: Well I think Mr. Akana's vision was a good one and I hope that you are able to carry out the successful conclusion.

Ms. Kahai: Yeah, we've got a great board of directors and with everyone's support in the community, the county, we know it will happen and we thank everyone for your support.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I just want to thank you for your efforts. Akone is a great man and I really send him the best wishes and hope this moves forward rapidly and with steadfast support.

Ms. Kahai: Thank you. Thank you very much.

Mr. Hedani: Okay, any further discussion? All those in favor please signify by saying aye. Opposed nay.

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

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

Mr. Hedani: Carried unanimously.

Mr. Hirano: Thank you. I'd just like to let the commission know that the project is moving forward. There's Maui Community College is doing a class on the restoration, on the archaeological side and the Friends will be pulling the grading permit pretty soon to start on the new parking lot. So things are moving. So thank you very much for your support.

Mr. Hedani: Thank you Mich. Clayton.

Mr. Yoshida: Mr. Chairman we're under approval of minutes, approval of the Action Minutes of the January 26, 2010 meeting and Regular Minutes of the November 11, November 24 and December 8, 2009 meetings.

**E. APPROVAL OF ACTION MINUTES OF THE JANUARY 26, 2010 MEETING AND REGULAR MINUTES OF THE NOVEMBER 11, 2009, NOVEMBER 24, 2009 AND DECEMBER 8, 2009 MEETINGS.**

Mr. Hedani: Any additions, corrections, deletions to the minutes? If not, the minutes will stand approved as circulated. Director's Report.

**F. DIRECTOR'S REPORT**

1. **Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following requests:**
  - a. **LAHAINA CANNERY MALL, LLC requesting a two-year time extension on the Special Management Area Use Permit condition to initiate construction of the Lahaina Cannery Mall Expansion Project at TMK: 4-5-011: 002, 003, and 004 and TMK: 4-5-008: 001 (por.), Lahaina, Island of Maui. (SM1 2006/0002) (P. Fasi)**

Mr. Yoshida: So Mr. Chair, under Item 1, we have the Planning Director notifying the commission pursuant to Section 12-202-17(e) of your SMA Rules of his intent to issue time extensions on the following requests. First request is from the Lahaina Cannery Mall, LLC for a two-year time extension on the SMA Use Permit condition to initiate construction of the Lahaina Cannery Mall expansion project at TMK4-5-011: 002, 003, 004 and TMK 4-5-008: 001 (por.). Paul Fasi was the project planner. The commission is asked whether it wants to waive its review or review the time extension request at a future meeting.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Is a motion in order or do we have to take public testimony on it? Why don't you open up just in case and then I'll say something.

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

Mr. Starr: I'll move to waive.

Mr. Hedani: Motion by Commissioner Starr to waive.

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. Discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Acknowledge Receipt of the Request and Waive its Review of the Time Extension.**  
**(Assenting - J. Starr, B. U'u, O. Tagorda, W. Mardfin, D. Domingo, S. Shibuya)**  
**(Excused - K. Hiranaga, L. Sablas)**

Mr. Hedani: Carried. Clayton.

- b. A&B PROPERTIES requesting a two-year time extension on the Special Management Area Use Permit condition to initiate construction on the Kahului Town Center Project, located on approximately 19.9 acres of land at TMK: 3-7-007: 005, 008, 009, 010, 027, and 050, Kahului, Island of Maui. (SM1 2006/0010) (A. Cua)**

Mr. Yoshida: The second request is by A&B Properties for a two-year time extension on the SMA Use Permit condition to initiate construction of the Kahului Town Center project located on approximately 19.9 acres of land at TMK 3-7-007: 005, 008, 009, 010, 027 and 050, Kahului, Island of Maui. The staff planner is Ann Cua. The commission is asked again to decide whether it wants to waive its review or review the time extension request at a future meeting.

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

Mr. Starr: Once again, move to waive.

Mr. U'u: Second.

Mr. Hedani: Motion by Commissioner Starr, seconded by Commissioner U'u to waive review. Discussion? Commissioner Shibuya.

Mr. Shibuya: On Item No. 35. There's a statement saying that the Department of Education classroom facility improvements in Kahului area – all I see is Maui High School. This impact fee does not include Lihikai? I'm just asking. Does it?

Mr. Hedani: You got me. Department of Education doesn't know how to accept contributions.

Mr. Shibuya: Well, Maui High School definitely knows how to accept it because –

Mr. Hedani: I don't know if Ann is around. Clayton do you have an answer to that? I think the contribution to Maui High School if I recall correctly we had Randy Yamanuha here from the high school and they had been working with them in the past and that's how that contribution came about if I'm not mistaken.

Mr. Yoshida: Yeah, I believe that's something that the applicant had worked out with the Maui High School. I don't know if the applicant want so expand on that or their consultant.

Mr. Hedani: Is there anybody here from the applicant, A&B Properties? Mr. Murashige, you're elected.

Mr. Clyde Murashige: Mr. Chairman, Clyde Murashige from A&B Properties. On that issue, there had been some discussion with Maui High School in terms of the contributions to them and as we get into the project then we'll see what actual improvements they need and have further dialogue with them.

Mr. Shibuya: So it does not include Lihikai then?

Mr. Murashige: My understanding is that that's correct. It was specific to Maui High.

Mr. Shibuya: Okay, then I think needs to be changed here – public schools serving the Kahului area, I think that should be serving Maui High School.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I think the way it's agendaed, the item before us is just to waive. I do think Commissioner Shibuya did find something that I'm sure the applicant note. I just want to say I look forward to them moving forward with this. This is a great project apart from it being a LEED ...(inaudible)... pilot in its original conception it's a real good mixed use example of what can be done. So I hope they move forward expeditiously.

Mr. Murashige: Thank you. We will.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: My question to the department and to the developer I guess is will two years be enough because the Department of Health NPDES deadline is fast approaching and the noise permit will expire soon and I don't know if your two years is going to be sufficient to get you through this. But –

Mr. Yoshida: I believe by your SMA rule amendments it allows for the department to issue an administrative waive – I mean, to issue a time extension if the commission waives for time extensions of period of two years or less. Otherwise, the commission would have to consider it.

Mr. Mardfin: Oh so it's in here at two years so that we can just waive it. If they ask for three years then we'd have to deal with it is that?

Mr. Yoshida: That is why the Friends of Mokuula which was a four-year time extension although they applied back in 2007, so we're kind of going retroactive two years.

Mr. Mardfin: I was wondering why they couldn't just get a waiver too.

Mr. Yoshida: Yeah, that's why it had to come before the commission.

Mr. Mardfin: Thank you.

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

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

**VOTED: To Acknowledge Receipt of the Request and Waive its Review of the Time Extension.  
(Assenting - J. Starr, B. U'u, O. Tagorda, W. Mardfin, D. Domingo, S. Shibuya)  
(Excused - K. Hiranaga, L. Sablas)**

Mr. Hedani: Carried. Thank you.

Mr. Yoshida: Can we take like a five-minute recess before we push to the end. We're going to lose a commissioner at 12:00 p.m. Lets take a five-minute recess.

A recess was called at 11:45 a.m., and the meeting was reconvened at 11:50 a.m.

Mr. Hedani: Planning Commission is back in session. Clayton.

**2. Pursuant to the Maui Planning Commission's Special Management Area Rules, the notice of the filing of the following SMA appeal:**

**DIRE COALITION and SAVE KAHULUI HARBOR submitting a Statement of Objection, Request for Reconsideration and/or Appeal to the Maui County Planning Director and the Planning Commission dated January 25, 2010 on the Special Management Area Exemption to MR. DAVID TAYLOR, Chief of the WASTEWATER RECLAMATION DIVISION, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT for the replacement of two Injection wells and appurtenant facilities at the Wailuku-Kahului Wastewater Reclamation Facility at TMK: 3-8-001: 188, Kahului, Island of Maui. (T. Kapuaala) (APPL 2010/0001) (SM5 2009/0360) (SMX 2009/0362)**

Mr. Yoshida: Thank you Mr. Chair, we're under Item 2 under Director's Report which is notification to the commission of the filing of the following SMA appeal, the DIRE Coalition and Save Kahului Harbor submitting a Statement of Object, Request for Reconsideration and/or Appeal to the Maui County Planning Director and the Planning Commission dated January 25, 2010 on the Special Management Area Exemption to Mr. David Taylor, Chief of the Wastewater Reclamation Division, Department of Environmental Management for the replacement of the injection wells and pertinent facilities at the Wailuku-Kahului Wastewater Reclamation Facility at TMK 3-8-001:188, Kahului, Island of Maui.



Again, this is pursuant to Section 12-202-26 of your rules which state that the department shall notify the commission at the commission's next regularly scheduled meeting of the filing of a notice of appeal and this also starts the clock on any petition to intervene pursuant to the filing 12-202-31 which states in part that petitions to intervene on an ...(inaudible)... appeal shall be filed with the commission no later than 10 days after the meeting at which the commission received notification of the filing of an appeal.

Mr. Hedani: Clayton, is there any action that the commission is being asked to take at this time?

Mr. Yoshida: No, this is just for information purposes.

Mr. Hedani: Are there any members of the public that would like to offer testimony on this item? Hearing none, public testimony is closed. Next Item. Commissioner Mardfin.

Mr. Mardfin: That was public testimony. I still wanted to ask questions.

Mr. Hedani: Go ahead.

Mr. Mardfin: My question is at the last meeting we were told that Maui Tomorrow might and others might work this out and I wanted to know what the status of that was. I see someone in the audience that might be able to help answer the question.

Mr. Yoshida: Well I believe that the department had a meeting with some members from the DIRE Coalition and Save Kahului Harbor yesterday just to clarify their position. I guess no commitments were made relative to reconsideration and so forth but we did have a meeting.

Mr. Mardfin: So, –

Mr. Hedani: The commission's action at this point is just to note that the filing has been made with the –

Mr. Mardfin: And what will happen at some future point? What's the next?

Mr. Hedani: The clock starts from today for 10 days for the filing of –

Mr. Yoshida: Petitions to intervene.

Mr. Hedani: Petitions to intervene.

Mr. Mardfin: Can I ask somebody from Maui Tomorrow to give their perspective, is that appropriate?

Mr. Hedani: Can you state your name for the record please?

Ms. Irene Bowie: Irene Bowie, Executive Director of Maui Tomorrow Foundation and a member of the DIRE Coalition. Thank you for asking that question. We did meet with the Planning Director yesterday. It did not seem like the director was inclined to reconsider the exemption. So we were

told this would be, you know, on the agenda today and the next will be some type of a hearing. That's our understanding. We are also looking forward to Surf Rider Foundation intervening in this and joining on the appeal of the exemption.

Mr. Mardfin: And you're aware of what deadlines are appropriate for this?

Ms. Bowie: Yes, yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much Irene. Clayton.

**3. The briefing and contested case meeting schedule on the following SMA appeal where the Maui Planning Commission is the hearings body:**

**MR. GARY STICE of HANA BEACHFRONT ASSOCIATES appealing the Planning Director's decision requiring a Special Management Area Major Permit on the Special Management Area Assessment for proposed residential structures at Mauka Haneoo Road, Koki Beach, Hana, Island of Maui. (APPL 2008/0004) (T. Kapuaala) (The Commission was notified of the SMA Appeal as an agenda item on its February 24, 2009 agenda.)**

Mr. Yoshida: Under Item 3 we have the briefing and contested case meeting schedule on the SMA appeal which the commission has declared it's going to be the hearings body on which is the Gary Stice of Hana Beachfront Associates appealing the Planning Director's decision requiring a SMA major permit on the SMA Assessment for the proposed residential structures at Mauka Haneoo Road, Koki Beach, Hana, Island of Maui.

At your last meeting on January 26<sup>th</sup> the commission stated that or decided that you wanted to go out to Hana, conduct a site inspection, receive public testimony and conduct the contested case. What it didn't declare is a specific date, at least vote on a specific date. We are looking at potentially March 23<sup>rd</sup> with the public – receipt of public testimony and contested case being at the Hana School Cafeteria because the Helene Hall, the Parks Department is reroofing Helene Hall so there will be air compressors and hammers and whatever blazing there so if you want to sit through that then you can have it Helene Hall. The old Hana School Cafeteria I believe is rather small. We have had our Hana Advisory Committee meetings there on less controversial projects. But we have Mimi Johnston from the Corporation Council's Office and I guess Mr. Stice can be contacted by cellphone and I had laid out a tentative schedule if we're going to have the meeting on the 23<sup>rd</sup> but we need to decide on a date so that we can start doing noticing and logistics planning.

Mr. Hedani: How many commissioners would be available for March 23<sup>rd</sup>?

Mr. U'u: Not a hundred percent until I check my schedule but pretty certain.

Mr. Hedani: One, two, three, four, five. You have five.

Mr. Yoshida: Remember that since the commission is the hearings body we must maintain a quorum at all times in order to have any kind of a meeting.

Mr. Hedani: Commissioner Starr.

Mr. Starr: What's the time projected?

Mr. Yoshida: We had –

Mr. Hedani: Why don't you go over the schedule.

Mr. Yoshida: Okay, I had circulated a – well, staff had circulated a memo dated February 8<sup>th</sup> from myself which was essentially leaving the building – on March 23<sup>rd</sup> if you want to carpool out we leave here at 7:00 a.m., we have a 9:00 site inspection. We start receiving public testimony at Hana School Cafeteria from 10:30. We have a lunch break at 12:30 p.m., we reconvene at 1:30, we recess for dinner at 5:30 and reconvene at 6:30 and adjourn or recess at 8:00 and get back here at 10:30.

Mr. Hedani: Clayton goes to bed at 11:00. Ward.

Mr. Mardfin: I believe Corp. Counsel wanted to say something. I'd kind of like to hear what she has to say.

Mr. Hedani: Mimi.

Ms. Mary Blaine-Johnston: Yes, Mary Blaine-Johnston, Deputy Corporation Counsel appearing on behalf of the director. I don't really have much to say. I did speak with Mr. Stice yesterday. He's standing by if we need him. He understands that this is a scheduling meeting and I told him I would call him with you know whatever you come up with. So he is aware of that. I don't know if there's any need to get him on the phone.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I just received this today so I haven't had too much to look at it but I see a couple of issues. One issue is we don't have place for public testimony after the working hours. It says we continue the contest case 1630 – at 1830 hours 6:30 in the evening, but the public testimony ends at 1:30. So we have public testimony at 10:30 and 1:30 when most people in Hana are working. So I really think that the time ought to be changed so that there's public testimony in the evening and that might mean people come out later in the afternoon but stay later.

The second issue dealing with this is I would recommend that it not be done at this – the last meeting of the – it's not quite the fiscal year but the meeting year for the commission because that's the day when we generally honor the outgoing board members, commissioners. And so, I would highly recommend that we hold the meeting in either second meeting – the first meeting in April is for orientation, either the second meeting in April or sometime in May so that the new commissioners can go to the Hana and be oriented. I would recommend that we go out a little bit

later and then we go to visit the landfill which is going to be hot on our agenda in the coming year or so, the Paani Mai Park which is likely to hit us again as well as the Koki location and that it be held later in the evening so that people can finish work and come and make testimony. So I would argue both for a later meeting day and a later in the day time schedule with additional meetings – additional site visits to orient incoming board members as to issues going on in Hana so that our future meetings will be more efficient.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I just want to second what Commissioner Mardfin said I think he's right on all points.

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I was just going to ask if we did run over when would be the next meeting that we would have because then we would conflict with the terms of the some of the commissioners.

Mr. Hedani: The Chair would encourage consideration after March 31<sup>st</sup>.

Mr. Shibuya: I'm leaning towards that.

Mr. Hedani: Bruce.

Mr. U'u: I was looking for that plate lunch that we ate the last time underneath that tent, chicken and the steak. And I'm serious.

Mr. Hedani: Commissioner Starr.

Mr. Starr: How about we bring Bruce one of the plate lunches?

Mr. Hedani: Mary.

Ms. Johnston: I think the March 23<sup>rd</sup> date was picked because it was last meeting for two of you on the commission and the fear was that you had public testimony and you had site visit and then two of the commissioners were no longer there. Kind of have to start from scratch. James can correct me if I'm wrong but public testimony is not a part of the contested case because the public comes in and – they tell what they feel about the project but they're not part of the evidence that you will be considering in your contested case hearing and in fact you can't consider unless the parties stipulate that you can. So it may be possible to divide up public testimony, site visit in one day and you can cover your other things and then actually have the contested case hearing in a different time. I don't know if that works. And there are some other problems having you all together as part of the contested case going to look at the site because you know, you're not really supposed to be talking to each – and that's not right, it's just the public view that you're not supposed to be communicating with each other because of the Sunshine Law. So maybe James can fill in on that.

Mr. Hedani: Mr. Giroux.

Mr. Giroux: Well, we did put some thought into this but there's a lot of things flying around and I want to nail them all down one by one because I mean, I know Ward's brought up the issue of going and seeing other things and then there's the issue of public testimony and contested case and then the other issue is timing for losing of commissioners. I'm not sure exactly what you want me to nail down. I can tell you right now I want you guys to be as focused on the contested case possible because I'm not very happy about everything else coming into this. The contested case is the epitome of what we need to do as our job and I really, as your attorney I really want to emphasize that that needs to be as clean as possible because if we want to get out of this without a lawsuit we need to make sure that we do our job there and understand you guys wanting to clean up everything else as you go along but you really have to look at this because we're already getting into some gray area by allowing public testimony on this issue that is not part of the contested case and I really like the suggestion from the county attorney over there is that maybe you want to go over there and do a site visit and do the other five areas and do site visits and then that's not part of your contested case. The way I envisioned it though because I am very focused on the contested case was that we were going to go to Hana. That site visit would be part of the contested case and the public was not going to be allowed because it's going to be allowed because it's going to be very difficult to monitor what is on the record and what is not on the record. If I've got nine members walking around Koki Beach talking story, I have to warn you that your decision is going to be very scrutinized as far as was your decision based on what was on the record and that means we have to take a record of the site visit if it's part of the contested case. So I just want to make that really clear there.

Mr. Hedani: Commissioner Starr.

Mr. Starr: How, how can we structure a site visit to the location because I do think it kind of makes sense for some of the commissioners that have never seen the place to you know to see it but not get into the problem of discussions and inter reactions. I mean if we're as a group then we're under the Sunshine Law and we kind of have to – we have to allow the public into it. We can't just –

Mr. Giroux: Well, let me clarify. Depending on how you treat that site visit and that's why I don't want to be getting into the dump and everything else because now that's going to cause confusion as is this site visit going to be treated as a public meeting where we do have to follow Sunshine Law but it's not going to be part of the contested case or is it part of the contested case where we don't need the follow the Sunshine Law but we need to record everything that happens in order to make it part of the record of the contested case. And so the decision has to be very clear as what do you want to do.

Mr. Hedani: Commissioner Starr. I mean, would kind of a verbal agreement by the commissioners to not make comments or have discussion on that part of our tour when we go to Koki and regarding that matter. Would that go toward helping us you know maintain a kind of a separation between that and if we also go do other things that same day?

Mr. Giroux: Yeah, I'm not saying you can't do what was suggested, it's just that I want to give you the admonition that it's got to be very clear of what you're doing. You can go you know to the dump, to the cinder pit, to the harbor, but when it has this you know, contested case it should probably be very clear that it is a contested case because if the public shows up to that and starts

asking questions and dah, dah, dah, dah, it's going to cause confusion because people are going to want to answer those questions and really the site visit for this contested case should be purely just to get a scope of the area. There shouldn't be a lot of questions. It should be you know, this is the shoreline, this is the border, this is where the proposed structures are going, these are these, these are that, you know, it should be very – based on what you see because there's not going to be a lot of confusion in the fact that most of that is going to be in the record anyway. It's going to be in the documents that are submitted. It's just so you can get a feeling for what we're talking about so it's easier conceptually to talk about it.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I like two of the comments James made. I like a lot of them actually, but one I idea that was proposed is that it be done in two pieces and I think there's a great deal to speak to that. One is to go to Hana do a site visit of this particular location and hold public testimony at a time when people can testify and then that becomes part of the record. And then at a future meeting, and it's a case that the applicant can refute –

Mr. Hedani: I think we've already covered that Ward. In fact I think the motion that was made at the last meeting was that it be the only item on the agenda and that if we decided at one time.

Mr. Mardfin: The Corporation Counsel was wincing when I said some of that stuff.

Mr. Hedani: We shouldn't even be discussing a lot of this stuff already.

Mr. Giroux: There goes my poker face. I wanted to comment because it was agreed on the record that the public testimony was not automatically going to be made part of the contested case. We were going to leave it up to the participants that they could look over the transcript and if they agreed that portions of it were going to be submitted for the record then it would be submitted for the record of the contested case but not all testimony was automatically going to be made part of the contested case.

Mr. Hedani: That all very clear?

Mr. Mardfin: What if, I'm posing hypothetical. What if one side of the contested case wanted some of the testimony admitted and the other side didn't, does that mean that it wouldn't go in?

Mr. Giroux: Not without agreement. I mean, it would have to be by agreement because the failure of the public testimony is that the person is not under oath. They're not under cross examination and that the ability to test their credibility is very limited and so when you're trying to be a fair tribunal what you're trying to do is let both parties enter into evidence everything that they have that they feel supports their position and allow the other side to cross examine and ask questions that would bring to light whether or not that information was accurate or not.

Mr. Hedani: I have a question James. In terms of due process for Mr. Stice is there a time frame that we're obligated to react by? Is there a deadline?

Mr. Giroux: I could check with the rules but I believe once it's in contested case that we're pretty much are allowed – as long as it's not unreasonable. I mean if we sat on this for four years I'm sure we could look at a lawsuit, but we have to look at our ability, you logistics and –

Mr. Hedani: I think the only thing we have to decide here today is what date you want to have the meeting? That's it right Clayton?

Mr. Yoshida: Well, yes, well also if the schedule is suitable because we have to make logistical plans for transportation and so forth.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, as far as the date, it seems to me that there's a good possibility that this may – would we want it to or not become an extended process and if it does to have it on the last meeting on of a term is probably not a good idea so we probably should move it forward.

The other is just a question for Mr. Giroux. It's my understanding that once we become the hearings officer in a contested case then basically this body takes the role of the judge and if both parties agree on something then it kind of becomes a slam dunk you do that if they don't then we're judge we have to decide what's going to happen of course, you know, using the wisdom of our counsel as a tool.

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

Mr. Mardfin: James, would it be possible for this meeting in Hana to include two things, one, unsworn testimony that would not become part of the record and also sworn testimony that could be cross examined by the applicant that would become part of the record.

Mr. Giroux: The sworn testimony is usually because the applicants or the parties have a witness list. They bring in the witnesses that they feel will augment their position. I think I want – I want to avoid causing more confusion in this area because we are not under law required to have the public testify at any time about this process. It is already a contested case. What you're doing is you're looking at the policies and objectives of 205A and saying it would be a nice thing. So I want us to get – you know what, I would love to just fly to Hana open up the meeting, get everybody's thoughts and feelings and then fly back here and have a contested case. You know what I mean? We have to do our job. You are given the ultimate authority in the CZMA. I want to see that job done and I want to respect that you also want the public input, I don't want you guys to cross these lines that are going to get you into a lawsuit. I don't want to see that because now people who are leaving the board are going to be named in lawsuits that they didn't need to be in, you know, I mean, I don't want to see that for you guys, but I want to help you guys get this process done but I also want to really make it clear that once we're in contested case we're in a litigious situation and we need to travel cautiously but at the same time do the job that you have the powers to do.

Mr. Hedani: With all that said, what's your pleasure? Commissioner Starr.

Mr. Starr: Yeah, one other quick question. I mean is there any reason not to hold the contested

case physically in Hana?

Mr. Giroux: I'm just saying you know, in an attorney's perfect world where I know that I'm going to get out of here with a result that would be my best case scenario but you don't have to do that. I mean, you can go to Hana have your public hearing have your contested case and you know. But I'm just saying in my world where I just want to keep you guys clean.

Mr. Starr: And is there anything to preclude us going to Hana, you know, and starting the contested case process and then if it's not possible to wrap it up to defer it to another day and finish it up you know in this room.

Mr. Giroux: Yeah, that is done often in the Land Use Commission. They will have a meeting in Kihei and then they will have a meeting on the Big Island but as long as the parties, remember again, this is for the parties, fairness to the parties, the parties have to have notice of that next hearing and where it is and they have the ability to prepare for that.

Mr. Starr: So I have a motion Mr. Chair.

Mr. Hedani: Please.

Mr. Starr: The motion is that this item be scheduled for Hana in late April or May and that it begin at say after lunch time in Hana.

Mr. Mardfin: And continue into – past working hours so people can have the opportunity for public testimony.

Mr. Starr: Yes, and either be concluded or deferred.

Mr. Mardfin: I'll second the motion.

Mr. Hedani: Want to restate the motion? Defer it to April or May after lunch –

Mr. Starr: And begin after lunch and you know, continue as long as it needs to be.

Mr. Hedani: Okay, moved by Commissioner Starr, seconded by Commissioner Mardfin to defer to late April or May beginning in the afternoon, after lunch and continuing on as needed. Any discussion?

Ms. Johnston: Just an idea. Is there any reason why, I think this was a question that was asked at the contested case part could start in the morning and then recess and then take the public testimony which is not part of the contested case and the site visit later and then restart up the contest case hearing. You may end up having to come back here to finish the contested case because that might go on. I don't know just a suggestion whether that can be done or not.

Mr. Hedani: Any further discussion? All those in favor signify by saying aye. Opposed nay.



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

**VOTED: To Schedule a Date for the Site Visit, Public Testimony and Contested Case in Late April or Early May and for the Matter to Begin in the Afternoon.  
(Assenting - J. Starr, W. Mardfin, O. Tagorda, D. Domingo, W. Shibuya)  
(Excused - K. Hiranaga, L. Sablas, B. U'u)**

Mr. Hedani: Carried. Thank you.

Mr. Yoshida: So we would have to come back later and you would have to select a date.

Mr. Mardfin: And maybe the roofing will be finished at Helene Hall.

Mr. Starr: It's a much better venue.

Mr. Yoshida: So when should we bring this up again?

Mr. Starr: Next meeting.

Mr. Yoshida: Because I guess the briefing schedule and all of that is kind of dependent on when the hearing is going to be.

Mr. Hedani: I would say schedule it.

Mr. Yoshida: Yeah, in the mean time we're scheduling public hearings 45 days in advance.

Mr. Mardfin: 45 days from?

Mr. Yoshida: Oh yeah we notify, well we'll deal with this when we do the orientation but typically for public hearing items we notify the applicant 45 days in advance of the hearing date and they send out the notice 30 days in advance and we publish our public hearing notice 30 days in advance. So, if we reserve some date in May regularly scheduled meeting date then in April, early April or late March we'd have to say that these public hearings that we would like to schedule are preempted by this having to go to Hana.

Mr. Hedani: Okay, so you're going to get back to us at the next meeting with the date?

Mr. Yoshida: Yeah, I guess we would kind of check with the parties and try to nail down a date so we can have a schedule. I guess if we're moving on, are we moving on?

Mr. Hedani: Yes.

#### **4. Planning Commission Projects/Issues**

Mr. Yoshida: Okay, Planning Commission Projects and Issues. You know if there's anything –

Mr. Starr: I have something.

Mr. Hedani: Commissioner Starr.

Mr. Starr: There is a bill before the State Legislature that is coming up for hearing tomorrow and this would exempt State DOT that means Highways, Harbors and Airports from County process which means that Harbors, you know none of that would go through SMA or you know, wouldn't be subject to community plan and all of that. I was wondering if the County was going to comment on that. I would hope they would.

Mr. Yoshida: I'm not aware of our department is going to comment, but I would check with the Mayor's Office, you know, if they would comment because I guess all of the County testimony is going to run through the Mayor's Office.

Mr. Starr: I want to ask Mr. Giroux. I mean, with the agenda item as it is, I mean is this something we can – I mean, if I were to make a motion that the commission make a statement on it because it basically takes our SMA powers away. We are the authority. Is it something we can do today?

Mr. Giroux: I don't see anything on the agenda that would be like for legislative comment or you know, something like that if that was on the agenda I wouldn't – you know, I wouldn't say you had to specifically say you're going to comment about this, but I don't see anything about any comment or –

Mr. Hedani: We'd need a copy of the bill and all that jazz for –

Mr. Starr: Okay, can I – I'll email it to Clayton and Clayton can email it around to commissioners a little later today and if we want to separately comment on it or comment to the department or Mayor's Office we could do it that way.

Mr. Hedani: Any objections? I think individually – we'll be acting as individuals.

Mr. Mardfin: Mr. Chairman?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd also like to suggest Clayton talk to the director about this. I think Jonathan raises an interesting point. I would think the department itself would want to have input into the Mayor to have input into the legislation, but just take that for what you will.

Mr. Hedani: Except the State would be exempt from the County's control then the County should be exempt from the State's control.

Mr. Starr: I'll go for that. I mean, the State made the SMA rules putting it on the County and now they're trying to exempt themselves.

Mr. Giroux: Jonathan you gotta realize the question we just had about the Sunshine Law, the State Legislature doesn't have to follow that rule either just to bring up the irony of it.

**5. Discussion of Future Maui Planning Commission Agendas**

**a. February 23, 2010 meeting agenda items**

Mr. Hedani: Discussion of future Maui Planning Commission agendas.

Mr. Yoshida: Yes, we had circulated a memo regarding upcoming agenda items for your February 23<sup>rd</sup> meeting. I will note that the Maui Memorial Park Land Use Commission Special Use Permit public hearing has to be rescheduled because the applicant didn't send out the notice to the neighboring landowners so there's a procedural flaw so that will not be on the agenda. We will put on the – we've issued another emergency permit, SMA emergency permit for a building at Kahana Sunset and we will be notifying the commission formally at that meeting. And we'll further discussion on the scheduling of the Stice site inspection, public testimony and contested case hearing.

We circulated the SMA Minor Report and SMA Exemption Report, we've circulated some information which Commissioner Starr had asked about regarding the SMA Minor permit for the demolition of buildings and other related structures at the former Central Maui power plant along Haleakala Highway. We would note that back in December of 2008 the applicant did provide a Historic American Building Survey ...(inaudible)... level mitigation as recommended by our Cultural Resources Planner, Stan Solamillo with that the department stated that for the above documentation which meets the HAB standards and consequently no further documentation is recommended or required. So that's some additional information that Commissioner Starr had asked about relative to the issuance of an SMA Minor Permit.

**6. EA/EIS Report**

**7. SMA Minor Permit Report**

**8. SMA Exemptions Report**

Mr. Hedani: Okay, any other questions on the EA/EIS, SMA Minor or SMA Exemptions? Commissioner Starr.

Mr. Starr: Can I ask a follow up question on that?

Mr. Hedani: Sure.

Mr. Starr: My concern with this was not the historical nature but the ground pollution that has occurred there whether that's being mitigated and I once again ask just that the question be asked, have they done an environmental, you know, phase 1 or phase 2 on that and is that being mitigated or is it being – is that aspect of it being ignored.

Mr. Yoshida: Yeah, I don't believe they did it as part of the SMA minor permit application though they did file the application back in 2008 and the SMA minor was issued in January of 2010 but we probably could check with Public Works Department if that was done relative to building permit, well demolition permits or other permits that were issued.

Mr. Starr: Yeah I mean, that's my one concern because I do know that there are some very serious contamination, soil contamination issues there and I just want to know that that's being mitigated, that it's in the SMA area.

Mr. Hedani: Okay, our next meeting is scheduled for February 23<sup>rd</sup>, and with that we're adjourned. Thank you very much.

**G. NEXT REGULAR MEETING DATE: February 23, 2010**

**H. ADJOURNMENT**

The meeting was adjourned at 12:29 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Wayne Hedani, Chairperson  
Bruce U'u, Vice Chairperson (excused @ 12:04 p.m.)  
Donna Domingo  
Kent Hiranaga (in attendance @ 9:22 a.m. and excused @ 11:00 a.m.)  
Ward Mardfin  
Orlando Tagorda  
Warren Shibuya  
Jonathan Starr

**Excused**

Lori Sablas

**Others**

Clayton Yoshida, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works