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PLANNING COMMISSION  
COUNTY OF MAUI  
STATE OF HAWAII  
  
REGULAR MEETING

Held at the Planning Department Conference Room, Kalana  
Pakui Building, 250 South High Street, Wailuku, Maui,  
Hawaii, commencing at 9:00 a.m., March 23, 2010.

REPORTED BY: Rachelle Primeaux CSR No. 370



1 MAUI COUNTY PLANNING COMMISSION  
2 TRANSCRIPT OF PROCEEDINGS

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4 CHAIRMAN HEDANI: March 23rd meeting of the Maui  
5 Planning Commission is called to order. We will take public  
6 testimony at the start of the meeting on any agenda item,  
7 except for contested cases under Chapter 91 of the Hawaii  
8 Revised Statutes.

9 In order to accommodate those individuals who can  
10 not be present at the meeting when the agenda item is  
11 considered by the Commission, public testimony will also be  
12 taken when the agenda item is taken up by the Planning  
13 Commission. Maximum time limit on individual testimony may  
14 be established by the Planning Commission. It has been  
15 established at three minutes. A person testifying at this  
16 time will not be allowed to testify again when the agenda  
17 item comes up before the Commission, unless new or  
18 additional information will be offered.

19 COMMISSIONER HIRANAGA: May we have order, please?

20 CHAIRMAN HEDANI: Anyone in the public that would  
21 like to offer public testimony at this time?

22 UNIDENTIFIED SPEAKER: Early testimony or --

23 CHAIRMAN HEDANI: If so, please step to the  
24 microphone and identify yourself for the record.

25 MR. CROLY: Hi, my name is Thomas Crolly, and I'm

1 speaking on my own behalf today. I would like to speak to  
2 three agenda items. The first is the resolution thanking  
3 Bruce U'u and Wayne Hedani for their service on the  
4 Commission. For five years, you guys have served here, and  
5 I just want to add my mahalos to the effort that you've put  
6 in.

7 As you know, I've been a regular suspect at this  
8 podium, and through Kenny's efforts, have observed almost  
9 all the meetings on Akaku. And I've recognized that this  
10 has not been an easy effort for anyone to put in. And to  
11 put in five years of service of your time, it really needs  
12 to be recognized. I especially want to recognize  
13 Mr. Hedani's ability to be the Chair of this Commission. Of  
14 all the folks that I've seen chair commissions, he does the  
15 absolute best job of maintaining fairness and keeping --  
16 keeping order. So, again, I thank you for that.

17 I will say I can't say that I've agreed with every  
18 decision that each of you have individually taken or that  
19 this Commission has taken. However, I see this Commission  
20 as reflective of the diversity in our community. And I  
21 think that each of you very well represents a segment of  
22 that community. So, again, mahalos for your efforts, your  
23 volunteer efforts to that end. And good luck in future  
24 endeavors.

25 The second item that I would like to speak to,

1 which is the public hearing for the State Land Use  
2 Commission special permit and bed and breakfast permit for  
3 Sandra Atherton and Henry Vandervelde. This -- I don't live  
4 in this community, but these folks were part of the effort  
5 to come about with this new permitting process. And I hope  
6 they'll be treated fairly through it. It comes before you,  
7 because there's two bed and breakfasts that are within 500  
8 feet. I live on a street where you approved the third bed  
9 and breakfast within 500 feet of my property. And I can say  
10 that there haven't been any issues with neighbors or with  
11 impacts and so forth there.

12           And if there were impacts that might have affected  
13 this one, I would look to the existing bed and breakfast as  
14 opposed to this particular applicant in this case. I would  
15 give them their opportunity to function in this setting  
16 before denying them their opportunity to get this permit.  
17 And closer to where I live, in my neighborhood, one of the  
18 communication items that you'll be hearing later concerns a  
19 renewal of a bed and breakfast or not -- actually, of a TVR  
20 conditional permit for a TVR in Maui Meadows, which is the  
21 neighborhood I live in. I walk past this particular  
22 property every day. It's generally vacant.

23           COMMISSION SECRETARY: Three minutes.

24           MR. CROLY: It's generally quiet as I go by. And  
25 I see that it fits into the neighborhood without any

1 obstructions. So, again, I would support the renewal of  
2 that particular permit. Thank you.

3 CHAIRMAN HEDANI: I also have six people that have  
4 signed up for testimony. The first person is Charlene  
5 Parker. Next person is Tom Croly. Just completed it.  
6 Christian Tangatai'oa. Please step to the microphone.

7 MS. HENDRICKS: Is it all right -- I put a caret  
8 to ask if I could introduce my students. Would that be  
9 proper?

10 CHAIRMAN HEDANI: Sure. Identify yourself for the  
11 record.

12 MS. HENDRICKS: Aloha, my name is Susan Hendricks.  
13 I'm the principal at Sacred Hearts School in Lahaina. You  
14 will hear very soon some testimonies from some of our eighth  
15 grade students. They're the oldest grade in our school. We  
16 learn by doing. All of you, I thank you for allowing my  
17 students here to learn and see for themselves the process of  
18 decision-making in our County.

19 I thank you for the opportunity for supporting and  
20 nurturing the virtue of tolerance of them being able to hear  
21 more than one side of a story in learning how to make  
22 decisions for themselves as they continue to grow. We are  
23 here today to support Frederick Honig and the gardens that  
24 he supports, the temple, the Spirit of Aloha, which he was  
25 asking to be changed into the temple of -- the spirit of --

1 the Temple of Aloha, excuse me, Frederick. We've been there  
2 with our class. We have enjoyed the setting. We have seen  
3 the work. When I say we learn by doing, Mr. Honig has  
4 learned by doing. In the 16 years he's been a caretaker of  
5 this property he has learned to play the game of the culture  
6 of power. He has done what's he's been told to do. And he  
7 has supported the 'aina with aloha.

8 That Spirit of Aloha is not just a name he picked  
9 because it sounded good because we're on Maui. I believe  
10 that what you'll hear from the students behind me is true  
11 testimony to what they learned in a short time, in a short  
12 visit on the property we are speaking of now. So, I am here  
13 in support by proxy just to introduce my students. They  
14 wanted to deliver a brief oli, a welcoming aloha oli for the  
15 Commission. Thank you.

16 Would that be okay, Mr. Hedani and Mr. U'u, that  
17 you're leaving that students are allowed to give you a lei  
18 after they do their oli?

19 CHAIRMAN HEDANI: Sure.

20 MS. HENDRICKS: Okay. Come on up, kids.

21 COMMISSIONER STARR: I object to Commissioners  
22 being given gifts and being honored by people who are  
23 supporting an applicant. I think that's really uncalled for  
24 and improper.

25 CHAIRMAN HEDANI: Objection noted. Why won't we

1 defer that. Okay. Let's take the first testifier.  
2 Christian Tangatai loa. My apologies if I butchered up your  
3 name. Pull the microphone down and speak directly into  
4 the -- you're being recorded.

5 MR. TANGATAI LOA: Okay. Good morning. My name is  
6 Christian Tangatai loa. I'm in eighth grade, and I go to  
7 Sacred Hearts School in Lahaina. I had the opportunity to  
8 go with my class to the Spirit of Aloha botanical gardens in  
9 October 2009. I understand that Mr. Honig is applying for a  
10 permit to hold weddings on the property. And it is an  
11 amazing place for people to have weddings there who are  
12 looking for a beautiful place.

13 And Mr. Honig has been working for many years to  
14 make his dream come true. And he's caring, respectful,  
15 patient and also loyal to everyone he meets there. I think  
16 it is right to let people have wedding there. Please accept  
17 his permit. Thank you.

18 CHAIRMAN HEDANI: Thank you very much, Christian.  
19 Next person to testify is Alicia Huli ganga.

20 MS. HULI GANGA: Hello. My name is Alicia  
21 Huli ganga, and I'm an eighth-grader at Sacred Hearts School.  
22 Just like my classmate Christian said, I had the opportunity  
23 to visit Frederick at his garden. And though the time spent  
24 with Frederick Honig was brief, it was conspicuous on how  
25 much he loved the Spirit of Aloha botanical gardens. It was

1 his dream to create a place similar to the Garden of Eden, a  
2 place you feel at ease and peaceful.

3 Frederick knew that it would not be an easy dream  
4 to complete. Despite knowing the difficulties ahead, he  
5 pursued his dream and fulfilled it. Now, his dream is to  
6 share all of his work and effort with everyone. To be told  
7 and to believe that you can fulfill your dream and that no  
8 one can stop you, but watch your friend's dream be taken  
9 from underneath him, you don't know what to believe. So, I  
10 ask you today to please allow -- to please grant Frederick  
11 his special use permit. Thank you.

12 CHAIRMAN HEDANI: Thank you very much, Alicia.  
13 Next person to testify is Misha Whitehead.

14 MS. WHITEHEAD: Good morning, everyone. My name  
15 is Misha Whitehead. Peace be with all of you. I also had  
16 the opportunity to visit the Spirit of Aloha botanical  
17 gardens. And I thought that when we were going, I thought  
18 it was just going to be a regular garden. But once we got  
19 there, it was huge. It was amazing, and I left saying it  
20 was one of the most beautiful places I've ever seen. And  
21 also, I went home and went to my backyard and got the plants  
22 and made my own little garden. I personally met  
23 Mr. Frederick Honig. And in one day, I learned what type of  
24 person he is and why his gardens are special.

25 I believe that you should grant Frederick a permit

1 to hold weddings in his gardens because it's such an amazing  
2 place and it's so peaceful that it will influence other  
3 people to create and find their place of peace. Thank you.

4 CHAIRMAN HEDANI: Thank you very much, Mi sha.  
5 Next person to testify is Stephanie Lawless.

6 MS. LAWLESS: Hi, my name is Stephanie Lawless,  
7 and I go to Sacred Hearts School. I'm an eighth-grader.  
8 Peace be with you. Frederick Honig deserves the grant of  
9 the special permit for weddings for many reasons. His goals  
10 for the Spirit of Aloha botanical gardens range in endless  
11 possibilities. They don't just include having weddings and  
12 having a nondenominational church.

13 He can inspire people to have a well-balanced life  
14 in their health, relationships with others, connecting with  
15 the 'aina and themselves. Mr. Honig is preserving and  
16 protecting the land. He caretakes, unlike places that the  
17 government isn't aware of. I've seen so many places that  
18 are completely trashed on Maui, and it's really depressing.  
19 He uses the land in a way we all should where everything is  
20 natural and balanced. Mr. Honig will ensure care in all of  
21 his guests that come to the Spirit of Aloha botanical  
22 gardens. Thank you.

23 CHAIRMAN HEDANI: Thank you very much, Stephanie.  
24 That concludes the list of people that have signed up for  
25 public testimony. Are there any other individuals that

1 would like to offer testimony at this time? Seeing none,  
2 public testimony is closed.

3 COMMISSIONER MARFDIN: Mr. Chair.

4 CHAIRMAN HEDANI: Mr. Marfdin.

5 COMMISSIONER MARFDIN: I was wondering if St.  
6 Anthony's -- Sacred Hearts, excuse me -- if Leimana Hassett  
7 is here.

8 MS. HENDRICKS: No, she's not.

9 UNIDENTIFIED SPEAKER: She couldn't make it.

10 COMMISSIONER MARFDIN: She couldn't make it, okay.  
11 Thank you.

12 MR. MAXWELL: Point of information, Mr. Chairman,  
13 I have the chance to testify when the subject comes up,  
14 right?

15 CHAIRMAN HEDANI: You'll have the chance to  
16 testify when the subject comes up also, right.

17 Okay. That concludes our public testimony for the  
18 opening of the meeting. Director.

19 DIRECTOR HUNT: Your first item involves  
20 resolutions thanking the outgoing members Bruce U'u and  
21 Wayne Hedani. I'll read the resolutions into the record.  
22 We also have a letter from the mayor.

23 Resolution of the Maui Planning Commission.

24 Whereas, the Maui Planning Commission was  
25 established in 1958; and whereas, since April 1st, 2005,

1 Bruce U' u has served as a member of the Maui Planning  
2 Commission and has served as vice-president of the Maui  
3 Planning Commission from April 2009 to March 2007.

4 And whereas, Bruce U' u has served the Maui  
5 Planning Commission with dedication and provided valuable  
6 guidance in serving the needs of the people of Maui County;  
7 and whereas, Bruce U' u's term of office will expire on March  
8 31st, 2010.

9 Now, therefore, be it resolved by the Maui  
10 Planning Commission that it does hereby express its deepest  
11 gratitude and appreciation to Bruce U' u for his service  
12 during the past five years, and does hereby extend its best  
13 wishes in his future endeavors. And be it further resolved  
14 that copies of this resolution be transmitted to the  
15 Honorable Charmaine Tavares, mayor of the County of Maui,  
16 and the Honorable Danny Mateo, Chairman of the Maui County  
17 Council. And we believe it's appropriate for you to receive  
18 a lei from a staff member.

19 The second resolution of the Maui Planning  
20 Commission. Whereas, the Maui County Planning Commission  
21 was established in 1958. And whereas, since April 1st,  
22 2005, Wayne Hedani has served as a member of the Maui  
23 Planning Commission and has served as chairperson of the  
24 Maui Planning Commission from April 2006 to March 2007 and  
25 April of 2009 to March 2010 and vice-president of the Maui

1 Planning Commission from April 2007 to March 2008.

2 And whereas, Wayne Hedani has served the Maui  
3 Planning Commission with dedication and provided valuable  
4 guidance serving the needs of the people of Maui County; and  
5 whereas, Wayne Hedani's term of office will expire on March  
6 31st, 2010.

7 Now, therefore, be it resolved by the Maui  
8 Planning Commission that it does hereby express its deepest  
9 gratitude and appreciation to Wayne Hedani for his service  
10 during the past five years and does hereby extend its best  
11 wishes in future endeavors. And be it further resolved that  
12 copies of this resolution be transmitted to the Honorable  
13 Charmaine Tavares, mayor of the County of Maui, and the  
14 Honorable Danny Mateo, chairman of the Maui County Council.

15 (Applause.)

16 DIRECTOR HUNT: We also have a letter from the  
17 mayor. It's addressed to both of them. They will receive  
18 an individual letter, but for the sake of time, I'll read  
19 one letter.

20 Congratulations on a job well done. On behalf of  
21 the people on the County of Maui, please accept my deepest  
22 appreciation and gratitude for your dedication and service  
23 on the Maui Planning Commission. Your efforts and  
24 contributions have made a positive difference. I truly  
25 believe that it is important for citizens to play an active

1 role within both our community and government. The process  
2 of recruiting and selecting nominees to the various Maui  
3 County boards and commissions has given me a greater  
4 appreciation for volunteerism and community service.

5 I would like to commend you for your willingness  
6 to devote your time, energy, resources and insight to the  
7 betterment of Maui County. Once again, thank you very much  
8 for doing your part to make our County the best that it can  
9 be. I hope that your experience has been rewarding and  
10 worthwhile. Sincerely, Charmaine Tavares, Mayor, County of  
11 Maui.

12 (Applause.)

13 DIRECTOR HUNT: And finally, I would just like to  
14 offer some comments. First, with Mr. U'u, it's important  
15 that the community know the reasons behind a decision or a  
16 vote that somebody makes. And with Mr. U'u, we always knew  
17 where he stood. He was upfront with his positions to the  
18 point where he suffered as a result of that. And I think  
19 it's unfortunate, but I believe it's symptomatic of the  
20 divergent views that we have in our community regarding  
21 growth and development.

22 And hopefully, someday we can learn to discuss our  
23 differences without personal attacks, but I don't think  
24 we're there yet. But I admire Mr. U'u for his courage. And  
25 again, I appreciate the fact that he voiced his opinion and

1 gave his reasons for where he stood and the reasons why he  
2 voted.

3 For Mr. Hedani, who has been our Chair, one of the  
4 roles of the Chair is to focus on running an objective and a  
5 fair meeting to the point of even sacrificing your personal  
6 views. And I think Mr. Hedani, his abilities as a Chair has  
7 been demonstrated by the business-like and efficient  
8 meetings that the Planning Commission has conducted.

9 And I'll give one concrete example. Regarding the  
10 review of the Maui Island Plan, the General Plan Advisory  
11 Committee needed a five-month extension to finish their  
12 review. The Maui Planning Commission had an extra day  
13 scheduled and got to the end of the review and didn't even  
14 use the last day. So, they came in within their time period  
15 and skipped the last day because they didn't need it because  
16 you're so efficient and business-like in your proceedings.

17 So, again, I would like to offer my mahalo for  
18 your efforts on behalf of the community and on behalf of the  
19 Planning Department. Thank you very much.

20 CHAIRMAN HEDANI: Thank you very much. Do you  
21 have any comments that you would like to make at this time,  
22 Bruce?

23 COMMISSIONER U'U: I'll make a brief comment.  
24 That was one of the nicest speeches I heard about myself  
25 recently. I would just like to add a comment that it's been

1 an incredible five-year experience. Something you can't  
2 read about in a book. Something you can't read about in a  
3 brochure. You're going to have to practically live with the  
4 experience we lived through for the last five years.

5           And I volunteered for many things in my life.  
6 This is probably the hardest volunteer job anybody would  
7 ever take on. For five years, you sacrifice your time. I  
8 think it's one of the toughest five years because of the  
9 Maui Island Plan, the General Plan. We went through the  
10 TVR, B&B. We went through a hoop of things where our  
11 meetings wasn't just twice a month. It was three, four  
12 times a month, special meetings.

13           It took a lot of people, including myself, but it  
14 was very rewarding. So, that in the end run, it was an  
15 incredible experience. I would encourage anybody to do it.  
16 And even though I went through some flack, the end  
17 experience, the greater experience at the end was well worth  
18 it. And almost I feel like it's graduation day. Thank you  
19 guys. And I appreciate it.

20           (Applause.)

21           CHAIRMAN HEDANI: My own comments is that at the  
22 beginning of my five-year term on the Planning Commission,  
23 my hair was black. I've actually appreciated the efforts of  
24 all of the commissioners, your attendance at all of the  
25 meetings and your participation towards providing a full

1 discussion of all of the issues that come before us. I know  
2 we haven't always agreed on everything at times, but I think  
3 the discussion has always made the end product better as a  
4 result. I think we have excellent staff. I would like to  
5 express my appreciation to the staff from the secretaries to  
6 all of the staff planners that put in so many hours to  
7 present the items that come before us as well as the  
8 director.

9           And for Commissioner U'u, I would like to say that  
10 he's gone through a tumultuous confirmation proceedings for  
11 the Cultural Resources Commission. And although I didn't  
12 testify on his behalf before the County Council, I know that  
13 they made an excellent choice by confirming him. Because  
14 his credentials are not on the wall to serve on that  
15 particular position. His credentials run through his veins,  
16 and I appreciate his efforts in that regard.

17           And I think if the Hawaiian culture needed a  
18 champion, I think they can find one in Bruce U'u. Thank  
19 you.

20           (Applause.)

21           CHAIRMAN HEDANI: With that, we have seven items  
22 on our agenda for today. So, let's go ahead.

23           DIRECTOR HUNT: The first public hearing item is  
24 C(1). The applicant is Frederick Honig, President of Well  
25 Being International, Inc., requesting a State Land Use

1 Commission Special Use Permit to operate the Spirit of Aloha  
2 Temple on State Agricultural District Land to allow  
3 nondenominational church and wedding uses on an 11-acre  
4 property located at 800 Haumana Road, TMK: (2)2-8-004, Lot  
5 32 in Haiku. The file number is SUP2 2007/2009.

6 And Joe Prutch is the planner assigned to this  
7 application. I would like to say before we get into it,  
8 that there has been some issues that have surfaced since the  
9 staff report was forwarded to the Planning Commission. And  
10 I would like to say we've been doing some further analysis  
11 amongst staff. And there's a -- we will wait until public  
12 hearing and Commission deliberations. But we may be  
13 changing our recommendations in the staff report.

14 MR. PRUTCH: Thank you, Director Hunt.  
15 Congratulations, U'u and Hedani. It's been good working  
16 with both of you guys. What we have before you today, of  
17 course, is a Special Use Permit, Land Use Commission Special  
18 Use Permit for Mr. Frederick Honig for his Spirit of Aloha  
19 Temple church and wedding proposal.

20 What he's asking to do, the project description is  
21 he's asking to establish the Spirit of Aloha Temple in order  
22 to provide weekly Sunday services from 10 a.m. to 1 p.m. for  
23 approximately 20 people at -- 20 people. Proposing wedding  
24 ceremonies, approximately two per week, for a total of 100 a  
25 year. These would be, for approximately about 90 of these

1 100 wedding ceremonies would be for 15 people or less.  
2 Eight of them per year would be from 15 to 20 people, and  
3 two of them, two of the 100 per year would be for 50 to 100  
4 people.

5 He's also requesting to do seminars, guest  
6 lectures and retreats, special events. He is requesting to  
7 include a helicopter landing site on his property for church  
8 and wedding guest drop-off. And he, of course, wants to  
9 continue with his botanical garden operation. It's been in  
10 operation for quite sometime now. And with the botanical  
11 garden, currently he does and will continue to do four tours  
12 per week with anywhere from 10 to 20 people. I'll show you  
13 where the location map, where the property is. It's at 800  
14 Haumana Road, at the end of Haumana Road off of Hana  
15 Highway.

16 It's about a mile from -- it's about a mile from  
17 Hana Highway here. It's accessed here at the end of Haumana  
18 Road. And it's this 11-acre portion of the property here.  
19 He's got the ocean obviously on the north side. He's got  
20 four neighbors surrounding his property and all the state  
21 and Paia-Haiku Community Plan and zoning, they're all  
22 agricultural district. As far as the site plan is  
23 considered, you do have this in your staff report. It might  
24 be easier to see, but this is the 11-acre site.

25 Haumana Road road comes in here. The ocean is on

1 this side. There's a shoreline here. It's a very steep  
2 pali, probably about 100 feet tall. Some of the buildings,  
3 he does have -- let's see, he's got 12 buildings on site.  
4 Four of them are storage building mainly for the botanical  
5 uses. Two of them are residences. There's a main residence  
6 here and a second dwelling is down here. And my  
7 understanding is he has I think like two or three of the  
8 farm laborers working -- living in that.

9           He's got two decks with tents, which is the Aloha  
10 Temple here. That's the location he's proposing to do the  
11 wedding receptions and some of the special events for either  
12 church functions or for the botanical garden as well. And  
13 the other tent deck structure is the waterfall pavilion site  
14 here, which is at the edge of the pali. That one is used  
15 for performing the weddings itself.

16           The Kealii stream runs basically along his  
17 property boundary here, and it dumps out over here at a  
18 little waterfall, and comes out into a pool, and it falls  
19 over the pali into the ocean. I may get back to this later  
20 and talk about some of the other -- other issues, other  
21 properties and different things on the site. But for now,  
22 I'll skip to some photos of the property. This is the -- on  
23 the left, there is the Spirit of Aloha tent structure, which  
24 I said was used for the reception and for some of the  
25 special events and botanical gardens tours.

1           On the right side is the waterfall pavilion. That  
2 is where his weddings take place. Here in the top is a view  
3 from the Aloha Temple looking out. It is set back 150 feet  
4 from the edge of the pali there. And the bottom is one of  
5 his taro patches. He's got I believe about eight different  
6 terraces that are recognized as historical sites on his  
7 property that are pretty well-preserved.

8           Some of the public testimony I received, the two  
9 shown here are just the two that are in the vicinity of his  
10 property. The one closest to him is Mr. Knowlton's, who is  
11 opposed to the project. His is not quite touching his  
12 property, but is very close. He's right across, I don't  
13 know how far, but within 100 feet I'm guessing. But he's  
14 right across from the property. He's submitted some letters  
15 in opposition to the application.

16           And down Haumana Road not too far is Lussman  
17 property owner that's in support of the project. I just  
18 want to say also I received, and it's in your staff report,  
19 too, there were 19 support letters. Of those 19, 14 of the  
20 support letters came from the Sacred Hearts eighth grade  
21 students. There was one opposition letter in your staff  
22 report. So, the totals are there's 20 support letters,  
23 including the 14 of the students, and there were two  
24 opposition letters.

25           And today, you should have received two additional

1 testimony letters; one from Mr. Knowlton concerning the SHPD  
2 issue, the other one from Mr. Hammatt, who did the  
3 archeological inventory survey for the site.

4 He discussed about the preservation of the  
5 existing sites on Mr. Honig's property. You should have  
6 also received prior to today from Carolyn, you should have  
7 received another letter from Mr. Knowlton about a TVR  
8 accusation, vacation rental accusation, and a letter from  
9 Mr. Pierce on behalf of the PATH group about the trails.

10 Okay. Let me get to the archeological map. He  
11 does have four known sites listed on the property according  
12 to the archeological inventory survey. Once again, this map  
13 is a little hard to see. Essentially, the entrance to the  
14 Honig property is over here. The 11 acres head out north,  
15 and the shoreline is up here. Now, what he has, his Aloha  
16 Temple is somewhere in this vicinity. His waterfall  
17 pavilion is over here.

18 Behind that, he has site numbers -- what are they  
19 -- 57, 58, 59, 60 -- I'm sorry, and 57. The one on the left  
20 here, 575, is a burial crypt. And Mr. Hammatt has explained  
21 there are no bodies upon this crypt, but there is a burial  
22 crypt located here. This site here adjacent to that is, I  
23 believe it's eight taro terraces that are in pretty good  
24 shape, according to Mr. Hammatt. Further along back here  
25 kind of out of the church function here way back in this

1 portion of the property is some remnant agricultural  
2 terraces. And then down here along the stream, there are  
3 some channel modifications. So, there's four sites that  
4 have been recognized through his archeological inventory and  
5 SH -- or the archeological inventory, and SHPD is  
6 recommending preservation of all these sites.

7           The preservation plan has not been done yet by  
8 Mr. Honig. It's something that he's working to do and  
9 desires to do, but he has not completed at this time. There  
10 also is a grave site adjacent to his property. It's  
11 actually that purple property is the gravesite. It's one  
12 and a half acres of (inaudible), I'm sorry. It's basically  
13 between Mr. Honig's property and Mr. Knowlton's property, so  
14 there is a known burial site on that location. From what  
15 Mr. Hammatt said in the cultural inventory survey, he said  
16 there were no grave sites found on Mr. Honig's property  
17 other than the crypt that was located.

18           I would like to discuss some of the issues, as  
19 Mr. Hunt brought up, that have come up and that we have been  
20 wrestling with since the staff report went out your way from  
21 various testimonies we got and from various agencies that  
22 we've discussed. The first one is the trail, which is  
23 access to the shoreline. Of course, with any special use  
24 permit for shoreline access, you need to provide shoreline  
25 access. You need to maintain that. There's -- there is a

1 historical trail that has come down I believe mostly along  
2 the stream or one of them, along the stream. It's called  
3 the Wires Trail. Mr. U'u has probably heard of it. And at  
4 the end of it, it gets to his -- the pali, and then it's a  
5 100-foot drop straight down. Well, the locals in the past  
6 have hooked telephone wires up to trees and rocks, and they  
7 were able to shimmy down, rappel down and get back up.

8           Mr. Honig, since he's been on that property, he  
9 went ahead and he made some improvements to going up and  
10 down that pali. He made some concrete steps, put in some  
11 more secure ropes. He made it easier to pass up and down.  
12 Well, he did that, but he did do that without state permit,  
13 and it's state conservation land. So, DLNR found out. DLNR  
14 went out to the property, inspected it and told him that he  
15 needed to remove all the improvements and take them out.

16           He went to BLNR in Honolulu, tried to get them to  
17 remain. The state said, no, take all that out. So, all the  
18 improvements have been taken out. It's my understanding --  
19 and also, I guess there is a -- there was a sign put at the  
20 end of the trail, a DLNR sign, saying that it's -- basically  
21 saying that the trail is closed from this point on. It's  
22 not safe to pass. Now, I've heard some of the locals still  
23 go down there, and I've heard some ropes have been tied to  
24 trees again. So, they can get up and down if they're risky  
25 and if they're brave enough to make that descent.

1           But so, that is an issue that's come up where the  
2 trail no longer goes down to the pali in a safe manner;  
3 however, the state did dictate that he did take all those  
4 improvements out. So, there is that one issue that's come  
5 up. The second one, there was an issue with noticing from  
6 -- you got a letter from Mr. Knowlton, the neighbor I  
7 mentioned. In the green here, parcel number 36, you can see  
8 that he's very close to Mr. Honig's property, but the grave  
9 site separates him from Mr. Honig's property.

10           Mr. Knowlton claimed that his property actually  
11 did touch Mr. Honig's in a corner over here, and that may or  
12 may not be true. If he's got some surveys to prove that, it  
13 may be true. But this is our TMK maps from Real Property,  
14 and Real Property Tax shows the layout of the properties in  
15 this manner. I talked to Scott over at Real Property Tax,  
16 who assured me that parcel 32 and parcel 36 are not  
17 adjacent. Mr. Honig notified four neighbors; Mr. Nais, a  
18 gentleman here, I'm forgetting the names right now. This  
19 gentleman here, and Kai ea. So, he notified the four  
20 adjacent neighbors. Mr. Knowlton claimed he should have  
21 been notified, but from talking to Real Property, Mr. Honig  
22 notified the correct four neighbors.

23           The SHPD issue had come up. They did review and  
24 accept the archeological inventory survey that was submitted  
25 back in 2005-2006. The survey did recommend preservation of

1 those four sites that I mentioned. And the SHPD letter that  
2 I received that's in your packet that's Exhibit 18 did  
3 mention that no action shall be taken on the application  
4 until a preservation plan is submitted, reviewed and  
5 accepted by SHPD.

6           What I did at this time is from the direction of  
7 Mr. Hammatt, talking about how well-preserved these sites  
8 were already, and with Mr. Honig's desire to preserve these  
9 sites, but I also talked with some of the community to  
10 figure out different ways to preserve these sites and with  
11 the fact that the -- the request of the SUP is for the  
12 church and the wedding facilities functions. And the church  
13 and wedding functions are going to take place in this temple  
14 mainly and maybe along here and these waterfall pavilions,  
15 so between these two areas.

16           The taro patches and the crypt are over in this  
17 area kind of behind a small hill from the waterfall  
18 pavilion. And then the other items are somewhere over in  
19 this area and somewhere over in this area. So, with that, I  
20 went with the idea of conditioning the project to have  
21 Mr. Honig do his preservation plan, but do it prior to  
22 renewal of his permit in light of those different things.

23           However, SHPD does have, you know, a strong desire  
24 to have the preservation plan done prior to, so that's an  
25 issue that has come up that could be an issue with today's

1 testimony. There's some building permit issues. Mr. Honig  
2 did get two SMA minor permits for all the buildings on the  
3 site back in 2004 and 2008.

4           However, he still is trying to get some of the  
5 building permits final. There's -- I think there's six  
6 buildings on the property that he's close to getting his  
7 finals on, but there's some things he hasn't been able to  
8 get yet. He doesn't have those yet, but they are in the  
9 process. As far as code enforcement issues on the site, I  
10 did talk to Jay Arakawa. He told me there were no  
11 violations sited on the property; however, there were  
12 warnings issued for SMA approvals for the use permit for the  
13 church, which he has applied for. He has got his SMA  
14 approvals. And for his closure of his vacation rental units  
15 that he was doing in the past.

16           Mr. Honig did apply for a conditional permit for a  
17 vacation rental back in 2007 when he applied for this SUP  
18 for the church and the weddings. But since that time, he's  
19 decided to forego the vacation rentals and has actually  
20 withdrawn that application. As far as I can tell from doing  
21 a quick search on a web site where he used to advertise, I  
22 didn't find an advertisement for his vacation rentals. And  
23 also, the heliport request that he had, what he has is he  
24 has a white painted circle on a grassy field on his  
25 property. And I guess he's been doing helicopter landings

1 there maybe once per month for wedding or botanical  
2 purposes.

3 Staff is actually recommending denial of the  
4 heliport for the SUP because of two things. For one, in  
5 County Code 1930(a) for ag, it does -- the code does  
6 prohibit heliports in the ag district. Now, unfortunately,  
7 our code doesn't have a definition of heliport. So, what is  
8 a heliport? When I looked up the definition in two  
9 different dictionaries, both of those dictionary definitions  
10 basically said the same thing, that a helicopter is  
11 basically a landing area for a helicopter.

12 Well, then in that case, that's what it is. So,  
13 the staff is recommending denial of the heliport for that  
14 reason. Also, if it were an allowed use, if a heliport  
15 really is supposed to be defined like an airport for  
16 helicopters, and a helicopter landing site is maybe a  
17 helipad, there are different definition of the words;  
18 according to our Enviro Chapter 343, construction of a  
19 helicopter facility is a trigger for environmental  
20 assessment. And it's definitely a trigger when it is -- a  
21 helicopter is either going to affect shoreline properties or  
22 if it's going to affect state conservation land, which in  
23 this case, both of those would be impacted by the  
24 helicopters coming and going.

25 So, if the helicopter was allowed to be on his

1 property, it would have to go through the environmental  
2 process from the planning staff's point of view. I think  
3 that is all I have at the moment. Is there anything I'm  
4 missing?

5 CHAIRMAN HEDANI: All right.

6 DIRECTOR HUNT: Joe, could you address the letter  
7 from OHA?

8 MR. PRUTCH: Let me get that.

9 Could you maybe give me a couple of minutes to  
10 find it and kind of just go through it real quickly again;  
11 would that be okay?

12 DIRECTOR HUNT: It's Exhibit 13.

13 MR. PRUTCH: 13, okay. Bear with me with this.  
14 OHA writes lengthy letters. They have made obviously some  
15 comments about Mr. Honig's proposal and some of the  
16 activities that have gone on on his property. I think what  
17 I'll go through is I'll just kind of go through and just  
18 highlight each section, each paragraph as they come along.  
19 Okay.

20 They do discuss the substantial modifications to  
21 the cliff face in form of the large steps that were  
22 included. And with that issue, as I mentioned, the DLNR has  
23 had him remove all of that. But from talking with DLNR,  
24 they have verified that all that improvements have been  
25 removed. They mentioned that some of the work was done

1 within the shoreline setback and within the special  
2 management area. They asked if SMA applications and  
3 approvals were submitted and given.

4           They talk about the Hawaii waters classified as  
5 Class A or Class AA with Class A waters having strict  
6 pollution discharge regulations. Discharge should not be  
7 permitted unless they have received the best degree of  
8 treatment or control compatible with the established  
9 criteria for the receiving water. The State Health Clean  
10 Water Branch would have required that these actions -- that  
11 these actions and potential impacts to state waters meet the  
12 following criteria. And they list some criteria for  
13 discharge from the property to the ocean for some different  
14 grading and some different work that Mr. Honig has done on  
15 the property.

16           They requested environmental review of the  
17 property, of the project, based on the following: that  
18 there's uses within the shoreline setback area and the  
19 construction or modification of the helicopter facility pad.  
20 They mention that the helicopter facility pad does affect  
21 the shoreline area, which is a trigger for EA review. They  
22 mentioned some of the Hawaii Revised Statute Chapter 205A-2  
23 Coastal Zone Management Program objectives and policies.  
24 Some of the derivatives they mention are objectives of beach  
25 protection, protect beaches for public use. And some of the

1 policies are beach protection, locate new structures inland  
2 from the shoreline setback to conserve open space, minimize  
3 interference with natural shoreline processes, and minimize  
4 loss of improvements due to erosion, prohibit construction  
5 of private erosion protection structures seaward of the  
6 shoreline, minimize construction on public erosion  
7 protection structures seaward of the shoreline.

8           They do -- they do bring up the fact that the  
9 Applicant is enjoying 501(c)(3) nonprofit status, and they  
10 questioned the operation -- the operation of a commercial  
11 enterprise for botanical use, churches, weddings as  
12 proposed. They do obviously agree with his botanical garden  
13 and the organic use of it. They believe the Applicant is  
14 pushing the limit in definition of accessory agribusiness  
15 activities with church functions and wedding functions on ag  
16 property. That's what I see at the moment. It is Exhibit  
17 13 in your packets as well if you wanted to go through it in  
18 detail.

19           CHAIRMAN HEDANI: Director Hunt.

20           DIRECTOR HUNT: Thanks for the review of the OHA  
21 letter. I think you missed one, which is, Joe, at the top  
22 of Page 3, is the OHA is making an allegation that the  
23 waterfall was cemented. So, that's an issue that needs to  
24 be addressed.

25           MR. PRUTCH: Oh, yes. And that I believe is

1 where -- yeah, with the bottom of the waterfall, which is  
2 right next to that waterfall pavilion, was cemented in by  
3 Mr. Honig in order to -- for I guess two reasons -- one, to  
4 have a pond for aesthetic purposes; and two, that he  
5 mentions as well is that the water used to come, pick up  
6 some of the soil and just throw it over the pali and down  
7 into the ocean water. And by cementing it in, he's cut back  
8 quite a bit on the erosion of that waterfall in the pond  
9 side. But that is an issue that OHA brought up as well.

10 CHAIRMAN HEDANI: Okay. Any questions for staff?  
11 Mr. Marfdin.

12 COMMISSIONER MARFDIN: Yes, I have a number of  
13 things. Let me start with Page 5 of the report.  
14 Description of the project, Item 3, special events to  
15 include seminars, guest lectures and retreats. For these  
16 church events, guest speakers and their families may be  
17 housed in an existing dwelling on the property. Note:  
18 Special events -- when I read that, my mind asked the  
19 question is this a back door way to operate a B&B or a TVA  
20 without applying for the proper permits for that?

21 MR. PRUTCH: My understanding -- I did bring that  
22 up with Mr. Honig. My understanding, from what he  
23 mentioned, is that he won't be charging these people to stay  
24 there. It is a -- I guess the fee they're paying is that  
25 they're going to speak to his clients on the next day or the

1 day before or something like that. So, he refers to it as  
2 guests staying at your property. They're not paying for  
3 staying there. I guess they are paying generally by  
4 providing a service the next day to the church or users of  
5 the property.

6 But with his TVR that you mentioned, he had been  
7 doing TVR's in the past. He was given a notice of warning  
8 to close down. My understanding is that he did close down.  
9 I wasn't able to find a listing of his property. So, as far  
10 as I can tell, he's not doing vacation rentals. But I did  
11 forward Mr. Knowlton's letter on to Jay and the code  
12 enforcement guys to pursue that if there is truly  
13 allegations of TVR activities.

14 COMMISSIONER MARFDIN: At the time I read this, I  
15 didn't even know about that issue, that he had in the past  
16 been doing it. It just looked to me like it raised a flag  
17 about what the potential would be going forward.

18 MR. PRUTCH: And, like I said, he did had a  
19 conditional permit application in for vacation rental, but  
20 he withdrew that application. So, it's not part of the  
21 application today.

22 CHAIRMAN HEDANI: Any additional questions for  
23 staff? Mr. Shibuya.

24 COMMISSIONER SHI BUYA: This is a followup question  
25 to Mr. Marfdin's question. Are the facilities that were

1 providing TVR type services, are these buildings and  
2 structures still on the property?

3 MR. PRUTCH: I don't know which buildings were  
4 being used as vacation rental back at the time, but I  
5 believe all the same structures are there. I don't know  
6 that anything has been removed. And I don't know which  
7 buildings were being used for vacation rental back then.  
8 Mr. Honig might be able to explain that later.

9 CHAIRMAN HEDANI: Additional questions for staff?  
10 Mr. Starr.

11 COMMISSIONER STARR: There is a letter about the  
12 public access through the traditional trails and access to  
13 the shoreline has been disrupted. I would like to know if  
14 anything has been done to bring back the ability of people  
15 to traverse his property doing traditional pathways.

16 MR. PRUTCH: Mr. Honig would be able to elaborate  
17 a little bit more on this as well. But my understanding is  
18 the trails -- they're not -- for one, they're not state  
19 recognized trails. I did talk to DLNR about that. They  
20 don't recognize them as trails. They did have Mr. Honig  
21 remove all the improvements down the pali. Besides that, my  
22 understanding is the trail still meanders, and the locals  
23 can find it, along the stream. I think there's three  
24 points. I don't know where the other two are.

25 They can get down to the shoreline. The one that

1 comes through his property to get down to the shoreline, it  
2 comes along, and it ends at the bottom of his waterfall  
3 pavilion site. The trail comes down to that point. And  
4 then from that point, I guess the access down to the  
5 shoreline used to be there with different wires and ropes  
6 that were installed. Now, Mr. Honig removing all that  
7 stuff, the trail is there; however, it seems to be quite  
8 impassable to get down to the shoreline anymore. I'm sure  
9 some locals can figure out how to get down there and maybe  
10 get back up.

11           But my understanding is it's very impassible  
12 without some of those wires and improvements to be put in  
13 being able to shimmy down the rock. My understanding is the  
14 shoreline itself is accessible from the east and the west  
15 side. So, there is, my understanding -- I don't know. It's  
16 rocky area and all that stuff and rough waters, but my  
17 understanding is you can still traverse east and west back  
18 and forth along the shoreline. I talked to DLNR. They  
19 really didn't seem interested in wanting people to go up and  
20 down that pali for liability issues on state conservation  
21 land. And that's where it's at.

22           So, it might be an issue of working with DLNR to  
23 try to get some of that back so that the locals can get down  
24 that pali. But from talking to DLNR, it just doesn't sound  
25 like they're interested, at least in my conversation with

1 them last week.

2 CHAIRMAN HEDANI: Mr. Shibusya.

3 COMMISSIONER SHIBUYA: Joe, can you tell me on  
4 this OHA letter mentioned about the illegal taking of ceded  
5 lands in 1893. It's a general statement, but the  
6 applicability on this specific parcel of property, is that  
7 ownership still in contention, or that has been resolved, or  
8 either issues relating, land ownership issues relating to  
9 this parcel?

10 MR. PRUTCH: I don't know of issues with land  
11 ownership. I really don't have an answer for you for that.  
12 I mean I got a warranty deed in the application showing  
13 Mr. Honig is a owner of an 11-acre parcel. As far as I  
14 know, his parcel ends at the top of the pali. I believe  
15 Mr. Honig had thought in the past that his property line  
16 might actually go out to the shoreline, which in case, if  
17 that is true, then he would actually -- onto the shoreline,  
18 he would own the pali. And I guess in that case, he could  
19 do the improvements, but it would be his property

20 But right now today, it looks like his property  
21 ends at the top of the pali, and it's state conservation  
22 land down to the shoreline. That's all I can tell you about  
23 land ownership of the property.

24 COMMISSIONER SHIBUYA: Thank you.

25 CHAIRMAN HEDANI: Mr. Marfdin.

1           COMMISSIONER MARFDIN: This is sort of a followup  
2 to Commissioner Starr's concern, but this didn't trigger an  
3 EA, so we don't have the kinds of examination and  
4 information generation that an EA would generate. But that  
5 doesn't extinguish the idea of customary and traditional  
6 access. And customary and additional access by Native  
7 Hawaiians, kanaka maoli, are -- still must be adhered to.  
8 And I was wondering if there was any -- I hope at some point  
9 during today's testimony that there will be -- somebody will  
10 refer to this and find out what the issues are and ensure  
11 that traditional access is provided to kanaka maoli.

12           MR. PRUTCH: And I believe Mr. Honig will speak on  
13 that. And I know one of the testifiers as well will  
14 probably speak on behalf of the trails with some knowledge  
15 of it.

16           CHAIRMAN HEDANI: Mr. Tagorda.

17           COMMISSIONER TAGORDA: Going back to OHA letters,  
18 which I believe there are so many issues, and you read all  
19 of them. I don't have to read one by one. But is this  
20 letter given or communicated to Mr. Honig? And why is it  
21 that on Exhibit 13-A looks like Mr. Honig write a letter,  
22 but did not address all the issues of concerns of OHA? They  
23 got invited. That's all it is. So, do you have any  
24 followup response from Mr. Honig?

25           MR. PRUTCH: No, I don't. This is the only letter

1 I received from Mr. Honig. I understand that he's been in  
2 conversations with Grant Arnold, who I believe has left OHA  
3 now. But I believe he was in conversations with Grant  
4 beforehand. This is the letter I got in response. It  
5 really doesn't answer any of the concerns of OHA. I believe  
6 he wanted to get OHA to the property to try -- maybe he can  
7 elaborate on that. I believe he wants to try and have them  
8 be stewards of the land in the future and maintain that  
9 property in perpetuity. But that's between him and OHA.  
10 This is the response letter that I have.

11 COMMISSIONER TAGORDA: Thank you again. Let me go  
12 back to letters, responses from the Applicants. On DLNR  
13 issues, there's so many concerns from DLNR, too, about these  
14 activities they conducted in this parcel. But it looks like  
15 there's no response again from the Applicant/Owner. Do you  
16 have letters from him?

17 MR. PRUTCH: If I have a letter from him, it's in  
18 the report. Did he respond to DLNR? I don't recall.  
19 Whatever letters I got from Mr. Honig are included in your  
20 staff report.

21 COMMISSIONER TAGORDA: Thank you so much. I hope  
22 Mr. Honig will be ready to answer all these questions  
23 brought up by these department agencies.

24 MR. PRUTCH: Yes, he will be.

25 COMMISSIONER TAGORDA: Thank you.

1 CHAIRMAN HEDANI: So, does the Applicant have a  
2 presentation he wants to make at this time?

3 MR. PRUTCH: Not a presentation, but I believe he  
4 wants to speak and answer some questions.

5 CHAIRMAN HEDANI: Mr. Marfdin.

6 COMMISSIONER MARFDIN: Joe, my next issue on Page  
7 8 of your report; on Page 8, you refer to the Pai a-Hai ku  
8 Community Plan. Under land use objectives and policies.  
9 Item 10, it says, this is in the Pai a-Hai ku Community Plan.  
10 Discourage -- discourage approvals of special permits in the  
11 State Agricultural District unless they're, A, necessary to  
12 serve the immediate community in remote areas, and this  
13 doesn't seem to fall under that, at least in my mind. B,  
14 supportive of agricultural uses. Maybe, maybe not. C,  
15 needed for the use or distribution of locally-produced  
16 products and services that otherwise do not adversely affect  
17 the environment. Maybe, maybe not.

18 I was -- but I didn't -- I think that's one issue  
19 that needs to be thoroughly resolved, because it's in the  
20 Pai a community -- Pai a-Hai ku Community Plan. And without  
21 that being met, there aren't grounds for approval.

22 MR. PRUTCH: And I think with this one, kind of  
23 similar to B&B's where there's a farm plan, there's an ag  
24 property. The B&B in staff's mind was kind of supporting  
25 the ag use financially. Because the ag use wasn't making

1 enough money to do its own thing, the B&B money was  
2 supportive of the ag use.

3 In this case, I have this kind of analyzed in the  
4 same way. He does have a quite large, very nice botanical  
5 garden on his property. And in order to maintain that, I  
6 don't know costs, but I assume it costs quite a bit of money  
7 to maintain that facility to keep it clean, to keep it the  
8 way it looks, to hire, I don't know, he's got two or three  
9 full-time staff that maintain the property, maintain the  
10 gardens.

11 I'm assuming the money from, and I don't know  
12 costs, from the botanical garden tours is probably not  
13 sufficient to cover the ag use, the botanical garden use.  
14 So, in this case, I believe we thought that the  
15 wedding/church functions were supportive of the agricultural  
16 use of the botanical gardens. And then kind of look at  
17 botanical gardens, Mr. Honig will tell you, but I can't  
18 verify that, that every botanical garden in the county or in  
19 the state supplies weddings as part of their botanical  
20 garden use. I can't verify that, but it does seem  
21 appropriate that botanical gardens and weddings seem to  
22 coincide. So, that's where we went with that one.

23 CHAIRMAN HEDANI: Mr. Tagorda.

24 COMMISSIONER TAGORDA: Mr. Prutch, let me go back  
25 again to the old Special Management Use Permit that was

1 approved by the recent administration under Mike Foley. So,  
2 this new permit request is only for two nondenominational,  
3 for the church and related services, or is this -- will take  
4 care of all of this usage here?

5 MR. PRUTCH: The botanical garden already has  
6 permits to operate as a botanical garden. The botanical  
7 garden is okay. The church and wedding functions that he  
8 has been doing, or I believe he's been told to stop  
9 recently, the permit is for that. The code requires --  
10 well, it says the following uses, church and church  
11 facilities can only be approved for ag property if he  
12 obtains a Special Use Permit.

13 COMMISSIONER TAGORDA: Did the Planning Department  
14 staff have a chance to go back and read the specific  
15 conditions that was given when the Planning Commission  
16 approved this SMU permit?

17 MR. PRUTCH: I'm not sure which permit you're  
18 talking about.

19 COMMISSIONER TAGORDA: The old one. To me, this  
20 is just a renewal?

21 MR. PRUTCH: No, this isn't a renewal at all.  
22 This is a brand new application for church and wedding  
23 functions.

24 COMMISSIONER TAGORDA: It only says the two  
25 activities, the nondenominational wedding and church and

1 things like that.

2 MR. PRUTCH: Yes.

3 COMMISSIONER TAGORDA: Again, we have so many  
4 activities in that property. So, are those all permitted?

5 MR. PRUTCH: The only thing permitted on his  
6 property as of now is the botanical uses, the tours of the  
7 botanical gardens. I believe the Sacred Hearts kids went  
8 there as kind of a tour of the site of the botanical  
9 gardens. Anything related to the botanical garden is  
10 A-okay. Anything, church functions or the weddings that he  
11 has that goes on, no, that can't happen until he has a  
12 Special Use Permit.

13 COMMISSIONER TAGORDA: Would you have any idea if  
14 you go back to those old specific conditions whether there  
15 were violations or compliance for the specific permit that  
16 was given before?

17 MR. PRUTCH: I'm not familiar with approval, with  
18 the conditions of the botanical garden.

19 COMMISSIONER TAGORDA: I want to see the old  
20 Special Management Area Permit, Special Use Permit from the  
21 recent administration. Because I would like to see if this  
22 is really how the Applicant/Owner is operating in that,  
23 without even thinking of complying to those specific  
24 conditions. I want to see if there are violations and  
25 compliance, how we are going to grant this new permit

1 process again.

2 MR. PRUTCH: So, the conditions of the SMA  
3 approval s?

4 COMMISSIONER TAGORDA: Yes, the old one.

5 MR. PRUTCH: For the botanical garden?

6 COMMISSIONER TAGORDA: Yes, everything that's  
7 permitted. Because I know a lot of these structures in that  
8 property had no permit, and we let that happen. And from  
9 what time, what year was that, 2004?

10 MR. PRUTCH: 2004 was the first SMA permit.

11 COMMISSIONER TAGORDA: 2004, and now is 2010. I  
12 want to see why we -- where we faulted here. Why is it that  
13 some of this agencies of the state, county government, you  
14 know --

15 MR. PRUTCH: I believe I do have the SMA permits,  
16 both of them, in my file, so I can get that and hand them to  
17 you.

18 COMMISSIONER TAGORDA: I would just like to know  
19 if this was being ignored by both sides, or I would like to  
20 see.

21 MR. PRUTCH: The one thing I do know from those  
22 SMA conditions was that he had a time line for getting  
23 building permits. And as time went on, he submitted a  
24 request to extend that. We gave him permission to extend  
25 his time period for building permits because we realized he

1 was making some efforts to get them. From that point on,  
2 time went on. He didn't ask for renewal. So, technically,  
3 I guess the time period ran out for building permits. And  
4 he didn't have them obtained at the time. We brought that  
5 up.

6 He requested more time, and he submitted a bunch  
7 of information to us to show us that he had been in contact  
8 with Fire. He had been in contact with people doing  
9 plumbing work on his property. So, we kind of went with the  
10 assumption he's still working on it, albeit slowly, but he's  
11 working on it. So, we gave him an extension from May of  
12 this year to get his building permits together for the SMA  
13 permit. And I think this time, we were strict about saying  
14 future renewals may not occur.

15 CHAIRMAN HEDANI: Additional questions for staff?

16 MR. PRUTCH: But I'll get those SMA approvals for  
17 you.

18 CHAIRMAN HEDANI: Mr. Starr.

19 COMMISSIONER STARR: Yes. I'm -- I'm a little bit  
20 curious why the departments proceeded with that considering  
21 there's a lot of burials in the area. There's a burial  
22 crypt on the property. There's a number of other  
23 archeological features, yet there's no preservation plan.  
24 It seems like in general, in this type of thing, we would  
25 have a preservation plan to deal with these issues before it

1 came before us.

2 MR. PRUTCH: And that was one of the things I  
3 mentioned earlier that in light of -- there was two factors.  
4 In light of the fact that the uses themselves for the church  
5 and weddings were going to be in a different location than  
6 where the sites were located on the property, we felt that  
7 the church/wedding functions would not impact those sites.

8 Mr. Honig submitted a letter saying that he didn't  
9 have the finances to pay for the preservation plan, and he  
10 also has this desire to -- let's see, how does he put it --  
11 he has his desire to meet with knowledgeable members of the  
12 community in formulating the elements of this plan, which  
13 could include restoring this complex of terraces to its  
14 traditional use for wetland taro cultivation and developing  
15 the site as an educational resource.

16 Between those two things, we recommended the  
17 condition saying that you still need to do the preservation  
18 plan, but because the usage on the property are not in a  
19 location to impact the sites that are known from the survey,  
20 we felt that we can give him time to get his weddings going,  
21 get the money, pay for the survey, do it the way he wants to  
22 do it and get it done before renewal. But, like I said  
23 also, that's one of the issues that's come up since the  
24 staff report that because of the state's requirement for a  
25 preservation plan, and I did talk to Nancy McMahon at SHPD a

1 few days back. And she mentioned that obviously they prefer  
2 to have the preservation plan. But she said she did  
3 understand in light of his situation, that it may be okay to  
4 condition. But if she has her preference, she would rather  
5 have the preservation plan in place before the permit.

6 So, in light of that, that's what's come up today  
7 where we may change our recommendation based on the fact  
8 that SHPD wants the preservation plan first.

9 CHAIRMAN HEDANI: Thank you, Joe. We're going to  
10 have to take a break for our stenographer. But before we do  
11 that, I was wondering does the Applicant wish to address the  
12 Commission?

13 MR. PRUTCH: I'm sure he would. I'm sure he's  
14 going to want to address the Commission for more than just a  
15 few minutes. Take that into effect if she needs her break.

16 CHAIRMAN HEDANI: Why don't we take any last  
17 questions for staff before we take a recess. Mr. Marfdin.

18 COMMISSIONER MARFDIN: I have some minor stuff,  
19 but this is my last major one. On Page 13 and 14 of your  
20 report, you talk about water, okay. And in Exhibit 17,  
21 we'll be flipping back and forth here. On Exhibit 17, we  
22 have the letter from the State Department of Health  
23 basically saying what the conditions are to require a public  
24 water system.

25 MR. PRUTCH: Yes.

1           COMMISSIONER MARFDIN: And you quote that on Page  
2 13 basically as saying it needs -- a private water system  
3 becomes classified as a public water system if it serves at  
4 least 15 service connections, which doesn't apply, or serves  
5 an average of at least 25 individuals daily at least 60 days  
6 of the year. At the top of Page 14 in Number 17, you say  
7 the Applicant states that he will maintain the 24 persons or  
8 less for all but 60 days of the year to avoid to having to  
9 upgrade to a public water system. Yet, he's expecting to  
10 have weekly church services, so that's 52 out of the 60.

11           MR. PRUTCH: But that's 10 to 20 people.

12           COMMISSIONER MARFDIN: Okay.

13           MR. PRUTCH: At least what he's stating.

14           COMMISSIONER MARFDIN: That could be a real  
15 problem. You have weddings, and you have seminars. And the  
16 three of them together strike me as you're likely to well be  
17 over 60 days. So, I think we've -- he needs to think about  
18 being faced with a public water system.

19           CHAIRMAN HEDANI: Additional questions for staff?  
20 Joe, what are the criteria for helicopter pads? Where is  
21 the nearest helicopter pad next to this location, Kahului  
22 Airport?

23           MR. PRUTCH: The airport for sure. I thought  
24 there was a helipad on top of the hospital.

25           CHAIRMAN HEDANI: Hana Airport.

1 MR. PRUTCH: I guess I don't really know where  
2 helicopter landings are.

3 CHAIRMAN HEDANI: Okay. The staff recommendation  
4 is for denial of the helicopter?

5 MR. PRUTCH: Based on Webster's definition of a  
6 heliport and the fact that our code doesn't define a  
7 heliport and the fact that the code for the agricultural  
8 district does seem to prohibit heliports specifically.  
9 Based on those facts, and the fact that even if it was  
10 allowed, it looked to trigger 343. And that was not done.

11 CHAIRMAN HEDANI: The other question I have is the  
12 public allowed through his property to access the ocean?

13 MR. PRUTCH: Not through his property per se from  
14 the entrance. My only understanding is --

15 CHAIRMAN HEDANI: Along the stream?

16 MR. PRUTCH: -- along the stream. My  
17 understanding from talking to Mr. Knowlton about the trail,  
18 he traverses it quite often, is that the trail kind of comes  
19 down on both sides of the stream back and forth, so a little  
20 on his property, a little on the neighbor's property. And  
21 when you get to the bottom where the waterfall is, you come  
22 out on Mr. Honig's corner of the property before you go down  
23 the pali. That's my understanding, but I'm sure they can  
24 elaborate a little more since they are users of the trail.

25 CHAIRMAN HEDANI: And the actions of the Applicant

1 has caused the Department of Land and Natural Resources to  
2 consider that particular path closed?

3 MR. PRUTCH: I believe so. I have to see that --  
4 he's got a picture of the sign. Do you have the wording on  
5 the sign? Here we go. And this sign is he placed just  
6 before you get to the waterfall. So, this is the sign that  
7 DLNR had him post at the end of the trail before the  
8 waterfall, so I guess before you get to his property is my  
9 understanding.

10 And it says, "Danger, trail improvements have been  
11 removed by order of Department of Land and Natural  
12 Resources. No access to ocean."

13 So, they are specifically saying no access to  
14 ocean for their state conservation land. Now, what I've  
15 heard from talking to Mr. Honig, there's still a few people  
16 going down there, go fishing or swimming or whatever they're  
17 doing down there. But there are still some people that get  
18 down there. And I've heard some people have tied some ropes  
19 back in there again to be able to come up and down the pali.  
20 So, my feeling is the locals will still get down there  
21 however they need to get down there. But there's a sign  
22 saying no access.

23 CHAIRMAN HEDANI: It's 10:15. We've gone an hour  
24 and 15 minutes for the court reporter, so why don't we go  
25 ahead and take a ten-minute recess at this point. We can

1 come back with a presentation or questions or comments from  
2 the Applicant as well as a recommendation.

3 (Recess taken.)

4 CHAIRMAN HEDANI: The Planning Commission of March  
5 23rd is back in session. We would like to go ahead and  
6 provide an opportunity for Mr. Honig to address the  
7 Commission.

8 MR. HONIG: Aloha, Chairperson Hedani,  
9 Commissioners, beloved family and friends. In my life, I  
10 have really felt that service is the greatest joy and the  
11 greatest vision, and I have attempted in my life to dedicate  
12 my life to service. I became a monk when I was 21 years  
13 old. And I helped from the time I was 21 to 40 to build one  
14 of the most beautiful communities in the world dedicated to  
15 old world religions, an interfaith community in Virginia  
16 where I served probably 80 hours a week and made \$20 a  
17 month.

18 We built a shrine dedicated to old world religions  
19 called LOTUS, Light of Truth Universal Shrine. I took the  
20 vow of being celibate from the time I was 21 to 40. And I  
21 dedicated my life to helping humanity to come together, to  
22 live together in a spirit that I feel is totally aligned  
23 with the spirit of aloha. And when I came --

24 CHAIRMAN HEDANI: Mr. Honig, could you hold the  
25 microphone closer to you?

1           MR. HONIG: Closer, thank you. You know, by God's  
2 miracle, you know, I was led to this island, and I was led  
3 to this land. And I didn't know how I would pay for it. I  
4 felt that -- I went to the United Nations at one point, and  
5 I thought that it would be possible to have peace on the  
6 planet earth. And it's conceivable it could be done.

7           And it seemed difficult at the United Nations to  
8 achieve that, because -- and then I thought, well, maybe  
9 it's possible to achieve it by creating one cell of heaven.  
10 And then just do a mitosis like a cell division. From that,  
11 it would grow. So, I had the vision of just creating one  
12 cell of heaven. And I could visualize what would heaven be  
13 like. And I thought it would be like the ocean, you know,  
14 and somehow by God's grace, you know, I was led here to Maui  
15 where I feel in a certain way, this is the closest place to  
16 heaven. And I could even hear from all of your questions  
17 that you're asking, you know, the sincerity of your heart to  
18 try to serve the island and the people of this island.

19           And I definitely have that in my heart. Like I do  
20 not have children, and my dedication to this land is to  
21 ultimately be able to pass it on to these kids and to their  
22 generation. And I believe that these kids have the purity  
23 of heart that they see, you know, the vision of what I have  
24 to offer. And I think that's why they're coming forth to  
25 support it. And I have such confidence in them and in the

1 other kids of this island that they could really come  
2 together, and we could create for this world on this island  
3 the greatest experience of the spirit of aloha.

4           But we have the law. There's a spirit of aloha  
5 law. And I believe ultimately, as an island, we could  
6 create a global renaissance. I think as an island, we  
7 already have people that are the most dedicated people, I  
8 believe, on the planet earth. And I believe that the  
9 Hawaiian spirit is so sacred. And I am so honored to have  
10 had the opportunity in these last 16 years to serve this  
11 land which I love so much.

12           Like to me, this land is as sacred as any temple  
13 on planet earth. And to me, the entire land is a temple.  
14 And I dedicated each of the 12 gardens to one of the core  
15 religions, which is so that every person from any persuasion  
16 could feel that they're at home there, and they could  
17 understand that it's not necessary to fight in the name of  
18 religion. And I'm also interested in promoting a deeper  
19 understanding of the spirit of aloha, that this is a place  
20 where people of this island and of the world can come  
21 together and discuss what does it mean to live in the spirit  
22 of aloha and how could we as a people actually manifest that  
23 in our lives.

24           And I would like to have one place on planet earth  
25 which we call the Spirit of Aloha Temple that's dedicated to

1 that mission of preserving -- the true essence of the  
2 Hawaiian culture is the Spirit of Aloha. Everything else is  
3 just the form. What is the essence of? It is that.

4           And I believe that essence is alive, and I believe  
5 that -- I believe that the sacred mana of the spirit of  
6 aloha energy is on that land. And I believe that those taro  
7 fields are sacred. We all measure -- and I am so honored to  
8 have had -- given the right and the vision to help to  
9 nurture that land in its development. And -- and I offer it  
10 to this island. Like I don't -- I'm not trying to take this  
11 with me. I'm trying to create something that will be a  
12 lasting benefit to this island and to the world.

13           And I believe that we could create on this island  
14 with these children a vision for a life that we could all be  
15 so proud of, that as an island, we the people of Maui will  
16 offer to the world a vision of aloha that will spread all  
17 over the world. And I believe that these kids will, in  
18 fact, do that, and that they will get on their Twitter and  
19 their Facebook and they'll create movies and, you know, all  
20 kinds of way to -- you know, beyond what we as now could  
21 imagine heaven on earth could be.

22           You know, that, and I believe that in a way, Maui  
23 is the closest thing to heaven right now. And that all of  
24 you are blessed. All of us are blessed to have been born to  
25 be here at this moment and to have the opportunity to stand

1 on the shoulders of the great Hawaiian spirit, which I honor  
2 deeply. And I have reached out to OHA, you know, and also  
3 to all other ways. Like I was hoping -- you know, I'm just  
4 a single monk. I came here with no money. I left the  
5 ashram with \$20 in my pocket.

6 I lived for 20 years on \$20 a month. For 20  
7 years, my spending money was \$20 a month. I live more  
8 simply than any person you could imagine. I'm a pure vegan.  
9 I don't eat any meat. I'm 100 percent plant. I've been a  
10 vegetarian since I was 21. I grow my own food. I live as  
11 simply as any human being on planet earth. I could live in  
12 a tent. You know, I don't need the big house for myself.  
13 And I'll just be in nature. And that land loves me, and I  
14 love it. You know, we have the deepest of connections.

15 And when I walk around the land, it tells me, and  
16 it has told me every step of the way of what to do. And  
17 when I'm not sure what to do, I walk around this one  
18 grandmother tree, and it dawns on my consciousness, you  
19 know, how to do -- and infinite miracles have happened here.

20 Like this is not the work of me, one clever person  
21 or something like that. From the moment I got to this land,  
22 like every single step unfolded to make this miraculously  
23 happen, the unfolding of this project, infinite miracles.  
24 And even last night, you know, like when Joe Prutch -- I'm  
25 so grateful to Joe for your generous help and to all of the

1 county people, to Jeff and to all of you, for, you know,  
2 guiding me through.

3           And I know it's not an easy thing to guide someone  
4 through this process, particularly that I have no money. I  
5 have -- like every cent that I made with that property went  
6 back into the property itself. My parents were so generous  
7 and contributing toward the down payment and to help me  
8 through all kinds of difficult moments. And I've had  
9 students who I've helped with health problems, you know, who  
10 were so grateful that they had donated even \$100,000 over  
11 the last decade to help us along the way. And they've  
12 helped with guidance with financial questions and things  
13 like that, you know.

14           And I've had one accountant, who is a living  
15 saint, who did our books for 12 years without charging us  
16 anything, completely volunteered, you know, because of the  
17 vision that we have and his, you know, hope to see this  
18 dream come to fruition. And dozens and dozens of other  
19 people through their generosity and kindness have gotten us  
20 through to this moment. And people who charge like the --  
21 we have the same gardener for 12 years who has been doing  
22 all the mowing, and he charges me half as much as he charges  
23 anybody else. And he does such a beautiful job. And --

24           CHAIRMAN HEDANI: Mr. Honig.

25           MR. HONIG: Yes.

1 CHAIRMAN HEDANI: Are you available for questions  
2 from the Commission?

3 MR. HONIG: Okay. I'll take questions. I'll just  
4 do that, and I'll answer your questions. So, like my -- for  
5 myself, you know, I could be -- I live so simply, I could  
6 sell just one little piece of this property to any friend of  
7 mine who would say, okay, I'll pay you so much money and let  
8 me live on the land. And I could just retire. You know, I  
9 don't have to do this for myself. It's not for myself that  
10 I'm doing this. It's because I believe in service. I  
11 believe anyone who dedicates their life to the service of  
12 humanity is blessed.

13 You know, and I believe that's the greatest  
14 blessing, and that's what I want to share. And I believe  
15 that's what the spirit of aloha is. And I'm so honored to  
16 be able to be an instrument of that, of its movement  
17 forward. And I have done my best in every little moment of  
18 this, you know, transaction of this property to be in total  
19 alignment with integrity from my heart. Within my being, I  
20 am with integrity of my own self. Every step of the way, I  
21 did not lose one spoonful of topsoil. In anything that we  
22 did, I preserved everything as carefully as humanly  
23 possible.

24 I would get up in the middle of the night  
25 sometimes if I forget a plant wasn't watered, sometimes at

1 2:00 in the morning. Last night I didn't sleep more than  
2 two hours, you know, in my -- you know, because I was  
3 working to prepare all of this, you know, for you. I got up  
4 at 5:30 this morning to do the rest of the preparation, so  
5 that I could as best move this project forward.

6           And I invite all of you to be -- to guide us, and  
7 I was trying to get this -- like I cannot guarantee the  
8 success of this property from my own financial where --  
9 wherewithal. I've spent all of my family's money, you know.  
10 I'm putting things on credit cards right now trying to like  
11 figure out how to get through this moment. And for many  
12 years, I've tried to get the property into the Maui Coastal  
13 Trust with Dale Bonar. And he says he will not take the  
14 property even if I want to give it to him other than to say  
15 that he will put it in conservation. But he won't maintain  
16 it.

17           That property takes three people working full-time  
18 to maintain that property. It's the most beautiful and  
19 sacred botanical garden. It's so inspiring. And we have a  
20 complete, you know, the entire 11 acres is under  
21 cultivation. We've completed our farm plan. We have the  
22 most sophisticated irrigation system of any property on  
23 Maui. So, even in case of a drought, we have some of the  
24 rarest palms on Maui. And we're just starting. You know,  
25 16 years is not a long time for a botanical garden to

1 establish. In 16 years from now, it will be world famous,  
2 this botanical garden. And I -- and my vision is all of you  
3 will come there. Like I think that you as a Planning  
4 Commission should have your meetings there sometimes at that  
5 temple and feel the mana of the land.

6           And I think it will inspire you. And my vision  
7 for the property, because if you just let me talk, I'll  
8 answer all your questions if you want to. Or if you want me  
9 to, I'll stop and I'll answer them. But I wrote down all of  
10 your questions, so if you want to, I'll just read them in.

11           CHAIRMAN HEDANI: Because we have seven items on  
12 our agenda for today, we're going to have to recess at 11:15  
13 for lunch, why don't I go ahead and take questions from the  
14 Commission at this time. Any members with questions for the  
15 Applicant? Mr. Tagorda.

16           COMMISSIONER TAGORDA: Good morning, sir,  
17 Mr. Honig.

18           CHAIRMAN HEDANI: Orlando, if you could use the  
19 microphone.

20           COMMISSIONER TAGORDA: I'm sorry. I believe  
21 you're a good person. I heard it from those students from  
22 Sacred Hearts you're caring, respectful, all of the above,  
23 all the good traits that a human being has. However, we  
24 have some regulatory applications to be followed, agencies  
25 and things like that.

1 MR. HONIG: Yeah.

2 COMMISSIONER TAGORDA: And I believe no one should  
3 be above all these rules and regulations that the county and  
4 state does implement.

5 MR. HONIG: Yes.

6 COMMISSIONER TAGORDA: And I happen to have the  
7 old SMA permit that the Planning Department approved in  
8 2004.

9 MR. HONIG: Yeah.

10 COMMISSIONER TAGORDA: And also the 2008. This is  
11 things that I don't know if you're kind of insulting this  
12 department or agencies or just an arrogance on your part, or  
13 you must be a busy man not to comply with all of these  
14 conditions. Let me read things to you on the 2004 SMA  
15 permit that was approved.

16 CHAIRMAN HEDANI: Orlando, is this a question that  
17 you have for him?

18 COMMISSIONER TAGORDA: Yeah, I will ask him a  
19 question. I just want to know -- for everybody to know that  
20 this is just becoming a habit, you know, in 2004, in 2008  
21 and now in 2010. And I don't know, Mr. Honig, if you're  
22 going to comply with all the conditions that the department  
23 will impose again on you or not.

24 MR. HONIG: My intention has always been to  
25 comply. You know, I have done my best. You know, I'm not a

1 big corporation. So, like, you know, we have to come up  
2 with the money somehow to comply and to do everything that  
3 we're trying to do. I have very much -- like I'm the only  
4 botanical garden on Maui that's been asked to get a Special  
5 Use Permit. Every other botanical garden in the State of  
6 Hawaii is doing weddings without that.

7 So, they asked me to get that Special Use Permit,  
8 and I'm trying to do that. So, I'm doing my best to do  
9 that. But we're already permitted as a botanical garden.

10 COMMISSIONER TAGORDA: I'm really confused,  
11 Mr. Honig.

12 MR. HONIG: Yes.

13 COMMISSIONER TAGORDA: Up to this present time,  
14 looks like you're not complying and those building  
15 structures that you have on the property are not permitted.

16 MR. HONIG: Everything -- everything is permitted.  
17 The only thing -- you know, everything right now is --  
18 everything is, as far as I know, everything that we -- that  
19 they asked us to do has been completed. Scott English had  
20 us spend a whole year putting in different type of sprinkler  
21 systems in these buildings, which we finally did. We took  
22 out one type. We put a different type in so that he would  
23 have the sprinklers that he wanted. And he said that he --  
24 I talked to him yesterday. He's ready to sign off. He said  
25 he did not sign off so far, because only one of the copies

1 was with the new system, and the other two copies of the  
2 paper had the old system still on them.

3 So, he asked me to do that. That's the one person  
4 that still needs to be done. It's virtually done. And I  
5 asked him many, many times that I wanted to have that done  
6 by the 23rd.

7 CHAIRMAN HEDANI: Thank you, Mr. Tagorda.  
8 Additional questions from the Commission? Mr. Hiranaga.

9 COMMISSIONER HIRANAGA: Just a simple statement.  
10 You know, the Planning Commission is not tasked with  
11 enforcing conditions. We place or we may apply conditions  
12 based upon the vote of the Commission. But commissioners  
13 should not be concerned about enforcement. That is done by  
14 state and county agencies.

15 CHAIRMAN HEDANI: Additional questions for the  
16 Applicant? Mr. Tagorda.

17 COMMISSIONER TAGORDA: Thank you, Mr. Chair.  
18 Mr. Honig -- thank you for your statements, Mr. Hiranaga.

19 Mr. Honig, on the letter that was given to you by  
20 Department of Water Supply, since you talk about the  
21 sprinkler system, it states right here that adequate fire  
22 protection shall be provided in accordance with the  
23 Department of Water Supply standards. The department  
24 requires you --

25 CHAIRMAN HEDANI: Mr. Honig, because it's being

1 transcribed, only one person at a time.

2 COMMISSIONER TAGORDA: -- the Applicant submit  
3 fireproof calculation to the Department of Water Supply.  
4 Did you submit a fireproof calculation?

5 MR. HONIG: Yes, yes. It's all completely done.  
6 And I promise you that I just talked to Scott English  
7 yesterday. At the end of this very day, I will go, because  
8 I saw Robin on the way in here. He assures me he will sign  
9 off. He's ready to sign. All of the calculations for the  
10 water flow have been completed. All of the sprinkler  
11 systems have been installed. According to his standard,  
12 everything is totally completed. Every -- every  
13 infrastructure, the septic is all done. The water is all  
14 done. Everything is completed.

15 And Rulan has not signed off for some reason. I  
16 don't know. I've asked her for two weeks please sign. Why  
17 aren't you signing? She won't tell me why she hasn't  
18 signed. And also, Milton Arakawa, he is also ready to sign.  
19 I sent the last letter to him, too.

20 CHAIRMAN HEDANI: I think you've answered his  
21 question.

22 COMMISSIONER TAGORDA: Thank you so much, sir.

23 CHAIRMAN HEDANI: Any additional questions for the  
24 Applicant? Mr. U'u.

25 COMMISSIONER U'U: Good morning, Mr. Honig.

1 MR. HONIG: Mr. U'u.

2 COMMISSIONER U'U: The concern I have is I've been  
3 hearing by you that they're ready to sign. So, we're  
4 basically asked to make a determination on your answer  
5 saying they're ready, but they haven't signed. For myself,  
6 it would be a lot easier if they signed prior to coming.

7 MR. HONIG: I wanted them to.

8 CHAIRMAN HEDANI: Mr. Honig, let him ask the  
9 question.

10 MR. HONIG: I'm sorry.

11 COMMISSIONER U'U: Personally for myself, it would  
12 ensure me to make it easier for me to vote if we had them  
13 sign. Not whether they're going to sign. They didn't sign.  
14 It's coming up. It's next week. It's next month. For  
15 myself, I cannot vote until I have assurances that it's  
16 signed. I can't take your word for it.

17 You said you don't know why somebody upstairs  
18 doesn't want to sign. Well, me too. I got the same problem  
19 you got. I need that signature to make my vote. It would  
20 be hard-pressed for me to vote on it without the proper  
21 agency signing off.

22 CHAIRMAN HEDANI: Additional questions for the  
23 Applicant?

24 MR. HONIG: May I answer that question?

25 CHAIRMAN HEDANI: Go ahead. Very briefly, please.

1 MR. HONIG: You know, I've done everything that I  
2 can do. They've promised me they're ready to do it.  
3 They're not asking me did you do this or not do that. And I  
4 think what you should do is just sign and make that  
5 conditional. Say, okay, I will approve this conditional on  
6 that happening, you know, because that will happen. And so,  
7 if you can do it that way, that's what I would appreciate.

8 CHAIRMAN HEDANI: Mr. Marfdin.

9 COMMISSIONER MARFDIN: Mr. Honig, I want to  
10 preface this with a couple of statements. Nobody is  
11 questioning your intentions, your good will. All that is  
12 fine. But as Mr. Tagorda, Commissioner Tagorda mentioned,  
13 we have to make sure that the law is complied with, so  
14 that's why we're being kind of picky on some things.

15 MR. HONIG: Thank you.

16 COMMISSIONER MARFDIN: Secondly, I like to say I  
17 like the fact you didn't hire a bunch of consultants to do  
18 this. These are all from your heart, your -- the letters  
19 and responses. I think it's good that people can come with  
20 a proposal before the Maui Planning Commission without  
21 having to lay out a lot of money for paid consultants. I  
22 appreciate that. I have a number of concerns, as you heard  
23 me raise earlier, but the largest one I have is this water  
24 system.

25 And I understand because of the expense why you

1 really, really, really want to keep this from becoming a  
2 public water system. I totally get that. My problem with  
3 this is on Page 5 of the analysis, you're wanting weekly  
4 Sunday service. That's 52 weeks. You say 20 attendees, but  
5 I don't see you -- it's -- in my mind, it's hard for me to  
6 picture you standing at the gate to your property and  
7 saying, okay, 23 comes in, 24, no, you can't come in.

8           So, I'm having a hard time seeing how the weekly  
9 services at least maybe half the time doesn't go over the  
10 mark, the 24 mark, which is a legal requirement. If it  
11 does, then it counts. You want two weddings a week. That's  
12 102 weddings. Now, you say most of them are going to be 15  
13 or fewer people. Maybe, maybe not. Again, I don't see you  
14 standing at the gate saying, okay, the 23rd guest, 24th  
15 guest can't come in.

16           You talk about seminars. You want these once a  
17 week 20 to 30 people. So, at least half are likely to be  
18 over the 24 mark. So, you have a very ambitious program,  
19 and I can see that. The problem is if you do all of these  
20 things, I don't see how you avoid coming under public water  
21 system. So, at some point, I think some of these need to be  
22 scaled back or eliminated or something. And if you would  
23 like to respond to that, please do.

24           MR. HONIG: Okay. Thank you. I just spoke  
25 with -- this issue just came up last night from Joe, that

1 Joe told me, and I spoke with Linda Tava last night, who is  
2 our engineer, who spoke with Stuart Yamada last night.  
3 They -- the thing about the 25, so you understand what that  
4 is, is that that does not -- that is only how many people  
5 will come into contact with your water system. The only  
6 place where they're coming into contact with our water  
7 system is when they wash their hands in the bathroom.

8 I am not, and I do not have the intention of  
9 having people stay overnight. I do not want that. I just  
10 want to be able to do day programs, that people who are  
11 living on the property are all on staff. And if people come  
12 onto the property, we can put just a little, you know,  
13 thing, turn off the sink. And put a sink, or you could just  
14 have a Port-a-John. I'm allowed to have as many people as I  
15 want on the property. I'm only allowed to have 25 of them  
16 touch our water system.

17 It's not how many people are coming onto the  
18 property. It's how many people are using the bathroom. And  
19 the only place where they're using the bathroom where -- the  
20 toilets are allowed, you know, so it's only the sink. So,  
21 Linda Tava talked with Stuart Yamada last night. And they  
22 will come up with a system. They have different proposals  
23 of how they're going to do it.

24 One thing is we could put it -- the only place  
25 where the people touch the bathroom is the tent structure.

1 We have two bathrooms. We could put our own water system in  
2 there with our own tank and just use water -- you know, have  
3 water delivered just for the sinks, you know, for those two  
4 sinks. We'll have our own system for that. Or we'll make a  
5 deal with them that we'll just have those squirt bottles.  
6 Because we're allowed to have a Port-a-John, for instance.  
7 We could say no bathrooms, just use the Port-a-John. Then  
8 we have no problem. So, we will come up with a solution to  
9 that. That will not be a problem.

10 CHAIRMAN HEDANI: Additional questions?

11 Mr. Shibuya.

12 MR. HONIG: And you can make that as a condition.

13 CHAIRMAN HEDANI: Mr. Honig.

14 COMMISSIONER SHIBUYA: Mr. Honig, in terms of your  
15 ownership, what type of ownership do you have? Is it a  
16 warrant, or what kind of deed do you have to this property?

17 MR. HONIG: I believe it's a warrants deed, yes.  
18 And I hold the property in a trust. You know, I keep the  
19 property in a trust for my vision for this. And I --

20 COMMISSIONER SHIBUYA: How is it financed?

21 MR. HONIG: How do we finance the property?

22 COMMISSIONER SHIBUYA: Yes. Do you purchase it  
23 outright?

24 MR. HONIG: Yes. I mean we have a mortgage. We  
25 have a mortgage. But I'm the owner of the property at this

1 time. It's in my name.

2 COMMISSIONER SHIBUYA: And how is this related  
3 with the 501(c)(3)?

4 MR. HONIG: The 501(c)(3) is recorded with the  
5 Department of -- the Department of Commerce and Consumer  
6 Affairs with a perpetual lease. It's a long-term lease. It  
7 leases the property from me.

8 COMMISSIONER SHIBUYA: So, it's not with the IRS,  
9 it's with the State of Hawaii?

10 MR. HONIG: That, the -- the lease agreement?

11 COMMISSIONER SHIBUYA: Yes.

12 MR. HONIG: The lease agreement is with the State  
13 of Hawaii, that's correct.

14 CHAIRMAN HEDANI: Mr. Hiranaga.

15 MR. HONIG: And also, you know, my --

16 CHAIRMAN HEDANI: I think the question was asked  
17 and answered. Mr. Hiranaga.

18 COMMISSIONER HIRANAGA: Approximately how far is  
19 your property from Hana Highway?

20 MR. HONIG: One and one-eighth mile.

21 COMMISSIONER HIRANAGA: Haumana Road is basically  
22 a -- let's just say it's not up to county standards.

23 MR. HONIG: It's an -- am I responding?

24 COMMISSIONER HIRANAGA: No, I'm making a  
25 statement. My belief. I haven't been out there for several

1 years, but when I have been out there. My concern is the  
2 500-foot radius notification requirement, because there are  
3 numerous property owners along Haumana Road for that  
4 one-mile length that really may not be aware of your  
5 application. And the traffic that's going to be generated  
6 from your proposed activity will be impacting all the  
7 property owners that live along Haumana Road.

8 So, I personally feel that a wider radius of  
9 notification might be warranted. And I'm just wondering  
10 would you be willing to do that if this matter is not  
11 decided today?

12 MR. HONIG: Well, I hope very much that this  
13 matter is decided today. I really pray for that, because I  
14 have -- you know, I'm under a very difficult financial  
15 moment. And I've put all of our family's money, all of my  
16 money into this. I don't have -- I don't have the  
17 wherewithal to create, you know, more and more of this time.  
18 I need to be able to actually do what we need to do to keep  
19 this place going. Dale Bonar said that he would --

20 CHAIRMAN HEDANI: Mr. Honig, the question  
21 basically was whether or not you would agree to notification  
22 to more than 500 feet.

23 MR. HONIG: It's over a thousand of feet away from  
24 our road on Haumana Road that the next neighbor is who has  
25 not been notified. Because the property next to us is 73

1 acres. The property next to that is a large property. So,  
2 the next neighbor on Haumana Road that has not been notified  
3 is well over a thousand feet.

4 In fact, I can tell you how far it is. It's 1,700  
5 feet away to the next neighbor.

6 COMMISSIONER HIRANAGA: Second question.

7 MR. HONIG: Yeah.

8 COMMISSIONER HIRANAGA: Is there another access to  
9 your property besides Haumana Road from Hana Highway?

10 MR. HONIG: No.

11 COMMISSIONER HIRANAGA: So, everyone that goes to  
12 your property must come down Haumana Road?

13 MR. HONIG: That's correct.

14 COMMISSIONER HIRANAGA: And go by all the property  
15 owners on Haumana Road?

16 MR. HONIG: May I answer that? One thing I'll say  
17 about that is we have been on Haumana Road -- when we got  
18 the property, there were only two other houses on Haumana  
19 Road. We are the ones who put in Haumana Road. Like it's  
20 by our effort that we paid for the surveying. We dealt with  
21 the -- with the Public Works people to have Haumana Road put  
22 in. We paid for the electricity to be put in that all our  
23 neighbors enjoyed was because we fronted the money for the  
24 electricity. We fronted the money for the phone lines to  
25 come in.

1           So, all of the infrastructure for the last half a  
2 mile was done by us. We mow along Haumana Road for the last  
3 quarter of a mile on both sides of the road, too, so we've  
4 done our best. And we've been wonderful neighbors. And in  
5 16 years, Commissioners, I want you all to know this well,  
6 not one person on Haumana Road has complained about us in 16  
7 years, not one person. And I don't -- and I will tell you  
8 this. In the next 16 years, I don't believe we'll have one  
9 more complaint either. Because I'm not --

10           CHAIRMAN HEDANI: Thank you, Mr. Honig.

11           MR. HONIG: Yeah, thank you.

12           CHAIRMAN HEDANI: I think you've answered the  
13 question.

14           MR. HONIG: Thank you.

15           CHAIRMAN HEDANI: Commissioner Shibusya.

16           COMMISSIONER SHIBUYA: Mr. Honig, this question is  
17 actually aimed towards the staff, and I hope that you can  
18 hear what they're going to say. For either the director or  
19 the planning staff, I would like a brief summary in which  
20 land use is actually managed. And this is done through the  
21 Paia-Haiku Community Plan in the State Coastal Zone  
22 Management Act, that's a state agency, and the State  
23 Conservation Land Use. This all -- your property actually  
24 falls within all of them. And so, if they can, or explain  
25 basically.

1 CHAIRMAN HEDANI: Warren, hold that thought, and  
2 we can get to, you know, back to the director and to staff.

3 COMMISSIONER SHIBUYA: Okay. Thank you.

4 CHAIRMAN HEDANI: When we deliberate on the issue.

5 COMMISSIONER SHIBUYA: Okay. Thanks.

6 CHAIRMAN HEDANI: Mr. Marfdin.

7 COMMISSIONER MARFDIN: As a former teacher, I do  
8 pay attention to letters that students write. And let me  
9 ask you about two of them in particular. There was a letter  
10 by Kimberlie Nguyen saying thank you for reading my letter,  
11 and I hope you will reconsider.

12 And to me, that was a strange word to use. And  
13 then I read again in, I believe it's Nalu Laurel's letter,  
14 she said, I was informed that Frederick Honig has applied  
15 for a special permit to host weddings and preach to masses.  
16 His request was denied, which raised a question in my mind.

17 The last sentence, please reconsider. What is  
18 this reconsider and denied business?

19 MR. HONIG: I think that was a misunderstanding  
20 that a couple of the students had thinking that you had  
21 already denied us, that they were trying to get you to  
22 revoke your denial of us, of us being able to --

23 COMMISSIONER MARFDIN: You hadn't told them  
24 anything like that?

25 MR. HONIG: No, no. And I did not set these kids

1 up to come here. I just mentioned to one of the teachers  
2 that I wanted her to write a referral for us. And somehow,  
3 she let -- the kids found out, and they were the ones who  
4 volunteered and said they wanted to come here.

5 COMMISSIONER MARFDIN: Do you have frequent --  
6 this is one class that went down there and generated a lot  
7 of letters. Do you have a lot of classes going there?

8 MR. HONIG: That is my hope that we will.

9 COMMISSIONER MARFDIN: Not in the past?

10 MR. HONIG: No, they were our first kids' group.

11 CHAIRMAN HEDANI: Additional questions?

12 Mr. Tagorda.

13 COMMISSIONER TAGORDA: Mr. Honig, I have a couple  
14 more questions. Mr. Chair.

15 CHAIRMAN HEDANI: Orlando, can you make it brief?  
16 I'm sure there's also people that want to provide public  
17 testimony.

18 COMMISSIONER TAGORDA: Very brief. Two questions  
19 right away for Mr. Honig. After the fact building permit  
20 application, how many do you think structures are not  
21 permitted in that property that you know of?

22 MR. HONIG: The only thing -- the only --  
23 everything is permitted, except for the spirit of -- the  
24 tent structures, the two tent structures are, like I said,  
25 everything has been completed. Everything has been

1 completed. They just haven't had the final inspections.  
2 The two tent structures and the steps, like this one set of  
3 steps, and the office structure, which is a 600-square-foot  
4 gardens office structure. Those are all in the final  
5 boarding stages. Like I really think --

6 COMMISSIONER TAGORDA: Thank you, Mr. Honig. I  
7 think there are six structures not permitted in that area,  
8 in that land. The next question, sir. What happened -- did  
9 you receive a letter from the Department of Land and Natural  
10 Resources citing you violations and fining you some kind of  
11 money?

12 MR. HONIG: Yes.

13 COMMISSIONER TAGORDA: What happened to that  
14 violation? Did they fine you, or did you settle it or what?

15 MR. HONIG: What happened there, I'll just tell  
16 you in a nutshell, because I could write a letter and tell  
17 you. Someone complained that there were these steps going  
18 down there. Someone, you know, wrote a letter to the  
19 mayor's office that was forwarded to the zoning enforcement  
20 people, and they made me call the Department of Land and  
21 Natural Resources to have them come and look at the trail.

22 When those people came and looked at the trail,  
23 they said that, oh, this is too dangerous. They made me  
24 come to a court case in Honolulu. I spent pages and pages  
25 of letters from Hawaiian elders, from anyone to try to keep

1 that trail open. I spent \$2,000 with legal costs. I did  
2 everything humanly possible, the same energy I'm offering  
3 you now, to try to keep that open.

4 COMMISSIONER TAGORDA: Thank you, Mr. Honig.

5 MR. HONIG: They closed that trail. Unanimously  
6 they decided. I have the letter that I could write -- you  
7 know, you could see. You could see. They were the ones who  
8 closed it. It was not me. I did everything humanly  
9 possible to keep it open. And all of you, I give you all my  
10 greatest blessings to go and talk with those people see what  
11 you can do. I had no success with them.

12 CHAIRMAN HEDANI: Thank you very much.

13 Mr. Marfdin.

14 COMMISSIONER MARFDIN: As a followup, Commissioner  
15 Tagorda's question was did you pay any fines on this?

16 MR. HONIG: Oh, no, I still owe them a fine. I  
17 still owe them a fine. Thank you.

18 CHAIRMAN HEDANI: Commissioner Starr.

19 COMMISSIONER STARR: Yeah. Please tell us about  
20 the helicopters and the heliport.

21 MR. HONIG: I'll tell you my sense of that. For  
22 many years, I volunteered as a volunteer firefighter for  
23 free. I wasn't paid anything. I took firefighting 1 and 2.  
24 I'm very aware of danger and what happens. This island is  
25 so vulnerable. Like we need helicopters. Like if that

1 tsunami had hit, Paia would have been closed. You could not  
2 have gotten past Baldwin Beach. All of those people from  
3 Haiku would not be able to get to the hospital.

4           And I met with Ross Scott just last week at  
5 Sunshine Helicopter. He said that he would try with the  
6 mayor to get so there could be emergency coordination  
7 between the helicopters and all the helicopter companies.  
8 And I want to be one of those places where people can come  
9 and land. I have in the last year not done even one  
10 helicopter landing, but I hold it open. Because I believe  
11 this property will be ultimately used by the Governor to  
12 entertain people or to have things like that. And I think  
13 it's an important thing that dignitaries be able to come to  
14 the gardens by helicopter.

15           And also, I believe that it's very important to  
16 support helicopters on this island, because we critically  
17 need those in times of emergency.

18           CHAIRMAN HEDANI: Thank you very much, Mr. Honig.

19           MR. HONIG: And also, it's totally legal. There's  
20 nothing illegal --

21           CHAIRMAN HEDANI: Mr. Honig.

22           MR. HONIG: Thank you.

23           CHAIRMAN HEDANI: Any further questions?

24 Mr. Shibusha.

25           COMMISSIONER SHIBUYA: Mr. Honig, on this Well

1 Being International, Inc., Spirit of Aloha Temple, do you  
2 make donations to educational institutions or schools?

3 MR. HONIG: Well, we don't donate -- all of the  
4 school kids when they come, we charge them nothing. They  
5 pay for their own meal. You know, they may pay for their  
6 meal, the cost of the meal they're getting there. And but  
7 we offer that service, and I offer that freely to the  
8 children of Maui, and the seniors also. If we had time, I  
9 would love to read you from the various groups.

10 COMMISSIONER SHIBUYA: I'm talking about donations  
11 in terms of financial contributions.

12 MR. HONIG: We are a nonprofit organization. The  
13 donations that we do is we make available this site for the  
14 children and for the seniors free. We need to make an  
15 income somehow, so the income is from the weddings so that  
16 we can -- we are in the position to be able to offer our  
17 services freely.

18 CHAIRMAN HEDANI: Thank you very much. Any other  
19 questions from the Commission? Thank you, Mr. Honig.

20 MR. HONIG: Okay. Thank you so much.

21 CHAIRMAN HEDANI: We would like to go ahead and  
22 open this item up for public testimony at this time. Are  
23 there any individuals that would like to offer testimony?  
24 Please step to the microphone and identify yourself for the  
25 record.

1 MR. MAXWELL: Mr. Chairman, Members of the  
2 Planning Commission, my name is Kahu Charles Kauluwehi  
3 Maxwell. I am a cultural practitioner. Also, I'm the Chair  
4 of the Maui Island-Lanai Burial Council. I have witnessed  
5 today and read the documents of the greatest manipulator  
6 that I have ever heard. I'm sorry, but what he has done is  
7 manipulated for 15 years the property he's on. He's graded.  
8 He's moved things around, ground-altering. Nobody watched  
9 him. There's burials on the land. Nobody seemed to care.

10 Every -- the Planning inspectors go down. For  
11 years, I have made complaints to them about his illegal  
12 weddings that are going on. Even until last week, it still  
13 goes on. That's how he makes his money. But the thing that  
14 I resent most of all is him using the Hawaiian culture in  
15 his spirit of aloha. That is a total insult if he does not  
16 treat the land, and he is not treating the 'aina, and he --  
17 you know, when Clyde Namu'o in the OHA letter wrote about  
18 him violating, with all the violations, Jeff Hunt was going  
19 to approve the permit. That's ridiculous.

20 I mean what is happening? What does this man have  
21 over the Planning inspectors? That is really suspect. And  
22 you're using, you know, people paying violations for other  
23 things. How come not him? The \$2,500 that he degraded  
24 the cliff and made cuts in the DLNR, and that is the land  
25 that Clyde was talking about that is ceded lands. And

1 that's -- there's no right. As Native Hawaiians, there's  
2 supposed to be access to the ocean. And he eliminated this  
3 access because of the construction of the steps.

4 And from what I heard, the concrete is still  
5 there. It's still blocking the stream down there. I mean  
6 somebody has got to go watch this guy what is happening.  
7 They can come to Hawaii and manipulate and do everything for  
8 some new age religion under the guise of a 501(c) and cover  
9 everybody. And just listen to this man. I don't know him.  
10 Never met him before, but I read all the documents. Again,  
11 it's shocking. It's shocking how the Maui Planning  
12 Department, the Planning Department does not regulate this  
13 person.

14 And he's been violating the -- look at Mike Foley  
15 in 2004 --

16 COMMISSIONER SECRETARY: Three minutes.

17 MR. MAXWELL: -- said cease and desist. You  
18 cannot go on.

19 CHAIRMAN HEDANI: Can you wrap up?

20 MR. MAXWELL: Yeah. So, thank you for this  
21 opportunity. But it's really suspect as to what is  
22 happening. I do question it, and I thank you Commissioners  
23 for asking these pointed questions. But my recommendation  
24 that he is to do an archeological survey of everything that  
25 is there, come to the Maui Island Burial Council, and then

1 come to you guys if he ever follows directions. Like you  
2 have 12 stipulations, Jeff, for him to follow. Who will  
3 enforce that that he's going to follow?

4 CHAIRMAN HEDANI: Thank you, Charles. Questions  
5 from the Commission? Mr. Starr.

6 COMMISSIONER STARR: Yes. Charlie, the fact that  
7 there's a known burial crypt on this land and there are  
8 known burials on adjacent property, I'm wondering what that  
9 tells us and whether this area has ever been under scrutiny  
10 by the Burial Council.

11 MR. MAXWELL: It has never been under scrutiny  
12 because it's never come before us. And even if we make  
13 complaints, I have a priest here, a kahu, who did some  
14 blessings there. And he can feel the other burials in this  
15 area. So, that is why I'm so upset. That is the -- he  
16 builds buildings. Even the tent, they put stakes in the  
17 ground. What if he's going through our kupuna? Who knows?  
18 Or who cares? Nobody has directed him, no archeologist,  
19 nothing, so that's frustrating.

20 CHAIRMAN HEDANI: Questions from the  
21 commissioners? Commissioner Starr.

22 COMMISSIONER STARR: What would be the proper  
23 process, since there is a reason to believe that there may  
24 be some concern?

25 MR. MAXWELL: You know, his archeologist is Hal

1 Hammatt, should go and do a whole, entire archeological  
2 survey on the buildings that's there, whether he disrupted  
3 burials or any ground-altering things that occurred on the  
4 property, and then come before us and give us an idea of  
5 what's on the property. We don't know, but we suspect  
6 there's burials. There's high probability there's more  
7 burials.

8           And bringing the helicopter over there is not  
9 pono. But please don't use our Hawaiian culture. Thank  
10 you.

11           CHAIRMAN HEDANI: Additional questions for the  
12 testifier? Thank you.

13           MR. MAXWELL: Thank you.

14           CHAIRMAN HEDANI: Are there additional -- are  
15 there other members of the public that would like to offer  
16 testimony? Please step to the microphone, and state your  
17 name for the record. Thank you. You have three minutes.

18           MR. KNOWLTON: Can I make a suggestion, please?  
19 If Mr. Honig is done with his presentation, could we make  
20 some space?

21           MR. HONIG: I could make some space. I would  
22 actually like to respond to this. I'm hoping I'll have the  
23 opportunity to.

24           CHAIRMAN HEDANI: Mr. Honig, this is just public  
25 testimony that we're taking at this time, so any member of

1 the public can provide testimony. It's not testimony that's  
2 open to rebuttal.

3 MR. HONIG: Will I at any point have a time to  
4 rebut that?

5 CHAIRMAN HEDANI: When the deliberation over the  
6 application is being done, you would be invited to provide  
7 additional comments.

8 Go ahead, sir.

9 MR. KNOWLTON: Good morning, my name is William  
10 Knowlton. I'm a teacher in Haiku. I was born and raised  
11 here. I have gone down to that property many times. I'm an  
12 adjoining land owner. I want to thank all of you for being  
13 very patient and listening to all of this. If I could give  
14 you a present, it would be a big box of aspirin, but I don't  
15 think there's a box of aspirin big enough for this case.

16 I make plenty mistakes, and my wife will tell you  
17 that. I do want to correct some information. And number  
18 one, I have his original application right here. And what  
19 he is applying for has not been addressed in this staff  
20 report. It says very clearly he is applying for a church, a  
21 church-operated bed and breakfast establishment, weddings,  
22 social events, day seminars and helicopter landing pad. The  
23 staff report does not address the bed and breakfast issue.

24 The staff report does not address the vacation  
25 rental issue. So, that's one thing I would like to put on

1 the record as being corrected. I also would like to say  
2 that I am an adjoining land owner of this Land Commission  
3 Award 5511. And speaking of archeologists, what the  
4 archeologist missed was that this stream bed that flows  
5 along here is terraced with both -- on both sides with  
6 stones. And the ancient Hawaiians actually channelized the  
7 stream and turned the stream with stones. So, talking about  
8 the trails, there is what I call the Stream Trail or the  
9 Kuleana Trail where the ancient Hawaiians could pass stones  
10 from one man to another to line the stream. So, there is  
11 a -- the Kuleana Trail along the stream bed.

12 The other trail that I -- the other two trails  
13 that I have seen the public use, including myself, one on  
14 the east side goes right down Mr. Honig's driveway. And I  
15 have seen members of the public and traditional Hawaiian  
16 access coming down through his driveway before he purchased  
17 his stream -- sorry, before he purchased his property. And  
18 then the other trail starts on the west side, and it goes  
19 down the pali. And they -- the three trails converge at the  
20 waterfall. And then they go down the side of the waterfall.  
21 And when I first bought my property, there's -- when you  
22 walk along the lateral access along the ocean, it's called  
23 Long Walk.

24 And we started from this other trail called Keoni  
25 and we walked all the way to what was called the Wires Trail

1 at that time. Traditionally, it's called Kealii Trail. So,  
2 the three trails from like Hana Highway or the nearest roads  
3 all converge at the --

4 COMMISSION SECRETARY: Three minutes.

5 MR. KNOWLTON: The waterfall. I'll try to make  
6 this brief.

7 CHAIRMAN HEDANI: Just conclude your remarks,  
8 please.

9 MR. KNOWLTON: I'm sorry.

10 CHAIRMAN HEDANI: Just conclude your remarks,  
11 please.

12 MR. KNOWLTON: I don't believe that this body, the  
13 Planning Commission, can pass this, because the project does  
14 not comply with 205-A, the Special Management Use Permits,  
15 the Haiku-Pai'a Community Plan. Like Uncle Charlie said,  
16 there's too many unanswered questions, including building  
17 violations.

18 CHAIRMAN HEDANI: Thank you very much. Questions  
19 from the Commission? Mr. Starr.

20 COMMISSIONER STARR: Yeah. Could you point out on  
21 the map -- just walk over there and show where traditional  
22 access was that was used for a long time.

23 MR. KNOWLTON: The oldest trail would be --

24 COMMISSIONER STARR: I would ask you not to speak  
25 while you do that, because you won't be on the record.

1 MR. KNOWLTON: I'm sorry. Anybody have any  
2 questions? The question was the trails -- one is along the  
3 stream bed. The other comes down the driveway, and the  
4 other is off the map. And it comes from the west, the  
5 adjoining subdivision. It goes down the pali. They come to  
6 -- I guess this is the waterfall right here. It goes down  
7 the side of the waterfall.

8 And at the base of the waterfall was a fresh water  
9 stream, which was -- a fresh water pond, which was also  
10 concreted in on the ocean edge. And I in July looked over  
11 the pali, and I did not see that that concrete had been  
12 removed. That concrete is still there. And I spoke with a  
13 person yesterday who had gone down this trail in December,  
14 and that person stated that the concrete was still there.  
15 And for Mr. Honig to comply with the State of Hawaii's order  
16 to bust out that concrete, what they told me was, the guys  
17 that went down there in December, was that he just  
18 jackhammered it out and threw it over the side. So, it's  
19 laying there in the Coastal Conservation Zoned Land.

20 I don't believe -- he admitted he hasn't paid his  
21 fine, and he has not complied with busting out that  
22 concrete.

23 CHAIRMAN HEDANI: Thank you very much,  
24 Mr. Knowlton. Any additional questions for the testifier?  
25 Thank you.

1 CHAIRMAN HEDANI: How many additional people would  
2 like to offer testimony on this item? One person. Okay.  
3 Why don't you come up and state your name for the record.

4 MR. BIATA: Good morning. Thank you for your  
5 time. My name is Antonio Biata. I am the land owner across  
6 the stream from Mr. Honig. I will be very brief.

7 Imagine you're sitting down with your family for  
8 dinner. It's a lovely evening, balmy breeze wafting in.  
9 Suddenly a DJ starts blasting through loud speakers top ten  
10 music, and pretty soon he's leading a chant of drunken  
11 partygoers in, "Aloha." That's the reality of what is  
12 happening with the weddings. Thank you.

13 CHAIRMAN HEDANI: Thank you very much. Any  
14 questions from the Commission? Mr. Starr.

15 COMMISSIONER STARR: Yeah. How often is the  
16 solitude disturbed by this type of thing?

17 MR. BIATA: Every time there's a wedding. And  
18 that has been -- it's on a random basis. But I wanted to  
19 add one thought. I agree it is not the job of this  
20 Commission to enforce regulations. It is a good idea to see  
21 what is happening though, so you can be mindful of what kind  
22 of regulations you want to set in response to any particular  
23 kind of application. Is it going to take some partygoer  
24 pitching over that cliff and hitting the county and hitting  
25 the state with a crippling lawsuit before something is done

1 here? I do not like getting into fights with my neighbors.

2 I've been silent about this. I have been enduring  
3 it. But the thought of him expanding it -- I hope that was  
4 responsive.

5 CHAIRMAN HEDANI: Any initial questions for this  
6 testifier?

7 DIRECTOR HUNT: Have the weddings still been going  
8 on recently?

9 MR. BIATA: I cannot personally tell you when the  
10 last most recent one was, but by recent if you mean during  
11 the course of this year, yes. And if you look at his web  
12 site, which is still up, there is no mystery to why  
13 Mr. Honig wants to do this. He charges up to \$10,000 per  
14 wedding putting him in tremendously unfair competition with  
15 people who think they are not above the law, who do play by  
16 the rules, who pay commercial taxes on commercial properties  
17 so that they can host weddings.

18 CHAIRMAN HEDANI: Thank you very much. Any  
19 additional questions for the testifier? Seeing none, it's  
20 11:20. We needed to take a break at 11:15 for lunch.

21 What time do we get back from lunch, Carolyn?

22 COMMISSIONER MARFDIN: You have one more  
23 testifier.

24 UNIDENTIFIED SPEAKER: There are other testifiers.  
25 I could wait if you want to wait.

1 CHAIRMAN HEDANI: How many other testifiers would  
2 like to offer testimony here? Just one. Two.

3 Mr. Starr.

4 COMMISSIONER STARR: I would request we finish  
5 testimony and then break.

6 CHAIRMAN HEDANI: Go ahead. Just come to the  
7 microphone. State your name for the record.

8 MS. SHEPHERD: Aloha, my name is Rebecca Shepherd.  
9 And I wasn't planning on testifying today. I was bringing  
10 Uncle Charlie because he had been asked to. And after  
11 hearing all of this, I really within my being, I know I have  
12 to. Because there's so many dishonesties and things that  
13 have been going on here that I have to say I was -- I'm a  
14 wedding event professional, and I've done weddings out at  
15 Kealii Nui for many years.

16 I was told he was told to cease and desist in  
17 2005. I believe you might have that in your package. When  
18 I found this out, I was kind of compromised, you know, with  
19 working out there. But I continued -- I didn't work for  
20 him. I worked for other coordinators. And then I became a  
21 coordinator there. And I was managing the wedding company.  
22 And I came to realize that it was completely illegal. None  
23 of the employees had -- were paying taxes. None of them  
24 were 1099'ed. And I was charging these brides excise tax  
25 for these packages. Then I came to find out there was no

1 legitimate business. Guess where the excise tax was going?  
2 Into his pocket. Then when I questioned it, I said this has  
3 to be pono; otherwise, I can't be a part of it.

4 Oh, we don't have to pay taxes because I'm a  
5 church. You see, I have this church. Well, there is no  
6 church there. At least there wasn't up until last year. He  
7 had no church. That was another thing. Well, if we would  
8 be a church, and we'll have pictures. He asked me, in fact,  
9 asked me to take pictures of friends in this place to make  
10 it look like that was his church. It's a loophole. And he  
11 said he didn't have to pay taxes because -- he was making,  
12 that year I think it was close to \$400,000 on weddings. He  
13 didn't have to pay taxes, because he was a church.

14 So, soon after, I said I can't be a part of this,  
15 then they were worried I was going to report them. They  
16 went to the state and supposedly filed as a business. So,  
17 this has gone on for many, many years. There's weddings  
18 there a lot. I work with a lot of those professionals. And  
19 they just told me, oh, yeah, last week, we did a wedding  
20 there last -- you know, this has been going on.

21 No one has -- the county, they've been cited, and  
22 no one has fined them. So, is it -- you know, is it the  
23 commissioners? What's going on here? And why is this like  
24 this where others are getting fined for minimal things and  
25 paying their fines? This whole thing is a scam. And you

1 all need to have your eyes open and look at it, and really  
2 read between the lines here and do a little research.

3 And --

4 CHAIRMAN HEDANI: Thank you very much. I'm sorry.  
5 Questions from the Commission? Thank you. Were you done?

6 MS. SHEPHERD: I'm okay. Yeah, I'm done.

7 CHAIRMAN HEDANI: Any other members of the public?  
8 Mr. U'u, did you have a question?

9 Are there any other members of the public that  
10 would like to offer testimony? Please step to the  
11 microphone, and state your name for the record.

12 MR. BUSTILLOS: Good morning, everybody.

13 CHAIRMAN HEDANI: Please use the microphone.

14 MR. BUSTILLOS: Good morning, everybody,  
15 Commissioners. I was sitting back there. I'm a kanaka  
16 maoli. My name is Marcelo Bustillos. My kupuna is already  
17 passed on, and my kupuna is from the Island of Niihau. And  
18 I'm so glad the island is still the way it is. If not, it  
19 would be like this, like what I was listening to. Anyhow,  
20 I'm glad we have a Commission that looks at all areas in  
21 our -- in our Land Commission and when you guys have to give  
22 permits.

23 I give honor to Kahu Charles Maxwell. I believe  
24 all our kupunas mean a lot to us. And when I met Bill, I  
25 met Bill in Haiku in I think it was 1987. He told me, hey,

1 Kahu, can you come and bless my house? And I said, sure, I  
2 can.

3 So, I went down there bless his hale. And I says,  
4 you know, I need to bless your 'aina, too, so can I go on  
5 your 'aina? And as I went on the 'aina, I said, 'aina, can  
6 I come into this place to do ho'omaika'i to the 'aina? And  
7 when I was walking through the 'aina, I felt all the  
8 kupunas. And as a kanaka maoli, I feel that we violated a  
9 lot of things, and a lot of things on the 'aina was  
10 violating our kupunas' iwi, means our kupunas' bones.

11 And I believe they were crying out to me and  
12 telling me, boy, when will this stop? And I said that's why  
13 I'm here this morning to address this -- this -- this  
14 kuleana. And it's my kuleana to make sure that everything  
15 is addressed and my kupuna -- my kupunas' bones and iwi is  
16 addressed. So, this morning, I thank you so much for giving  
17 me this time. Thank you.

18 CHAIRMAN HEDANI: Thank you very much. Are there  
19 any other members of the public that would like to offer  
20 testimony? Seeing none, public testimony is closed. Staff  
21 report? I'm sorry. It's 11:25. We're ten minutes past  
22 where should have adjourned for lunch, I mean recessed for  
23 lunch. We're going to take a recess from 11:25 until 12:30  
24 for lunch. Okay. Going to reconvene at 1:00, I'm sorry.

25 (Lunch recess.)

1 CHAIRMAN HEDANI: The Planning Commission of March  
2 23rd is back in session. I think we were completed with  
3 public testimony, and we're ready for the staff  
4 recommendation.

5 COMMISSIONER HIRANAGA: Mr. Chair.

6 CHAIRMAN HEDANI: Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: Would you just like to  
8 check if there's anyone else that might want to provide  
9 public testimony?

10 CHAIRMAN HEDANI: Are there any other members of  
11 the public that would like to offer testimony on this item?

12 MR. McMAHON: I would.

13 CHAIRMAN HEDANI: Please step to the microphone  
14 and identify yourself for the record.

15 MR. McMAHON: Hello, my name is Dan McMahon. As  
16 you can tell, I'm a videographer. I've known Frederick for  
17 well over 10 years, probably closer to 15 or 16. I've done  
18 hundreds of weddings on his property over that time. And I  
19 just want to clarify some things from what I've been hearing  
20 so far today. In that time of hundreds of weddings, I think  
21 I've done maybe six that had amplified music.

22 It's very -- because of where he is, you don't see  
23 a sunset from there, so most of his weddings are like 1:00,  
24 3:00 in the afternoon. And they're only about an hour and a  
25 half to two hours long. This is more of a tourist wedding

1 type place.

2           So, you really only have a lot of times just the  
3 couple, or maybe six or seven people with them. So, when  
4 you're talking about the water use and that, he doesn't have  
5 many weddings that have 50, 60 people at it. It's not like  
6 a local wedding where you've got hundreds of people there.  
7 I mean he might have those. But like I said, doing hundreds  
8 of weddings there, I think I've done maybe six that were big  
9 weddings with amplified music and things like that. And I  
10 just wanted to add that.

11           CHAIRMAN HEDANI: Any questions for the testifier?  
12 Thank you very much. Are there any other members of the  
13 public that would like to offer testimony at this time?  
14 Please step to the microphone and identify yourself for the  
15 record.

16           MR. NAI SH: My name is Robbie Nai sh. I'm  
17 actually the next-door neighbor to the subject property, 600  
18 Haumana. And although I haven't spoken to Frederick about  
19 it, we're, you know, good neighbors and whatnot, my concerns  
20 are that I don't really understand the parameters with which  
21 our property becomes scrutinized when it becomes a church in  
22 terms of usage, et cetera. We're at the end of a very  
23 narrow roadway, which by, you know, county records is not up  
24 to standard. That's my biggest concern.

25           You know, there are already several dwellings on

1 the subject property. Whether they're legal or not is not  
2 my concern, not my business. The problem that I have  
3 already is the density down there. And although there's  
4 weddings and whatnot going on, on a fairly constant basis,  
5 we get people coming to our gate, probably weekly, looking  
6 for the subject property thinking maybe we're it. And we  
7 send them on, you know, down to the end of the road.

8           It is the end of Haumana, so every car that comes  
9 and goes to that property has to go down the entire length  
10 of Haumana Road, which is an average of 15 feet wide, and  
11 gets down to ten feet wide at many spots. We have accidents  
12 all the time. Fortunately, they're low speed accidents, but  
13 the problem is and my concern depending on what the scope of  
14 this new usage would be is if there are continued people,  
15 tourists -- you know, the vacation rentals are one issue --  
16 but if there's a lot more people coming down and going for  
17 the weddings and whatnot or whatever is going to be going on  
18 down there, people who don't know the road drive too fast.  
19 And they almost drive right down the middle of the road like  
20 it's a driveway.

21           And if you don't go about ten miles an hour,  
22 you're going to have a head-on, which happens all the time.  
23 I've come around the corner twice -- I've only lived down  
24 the street for five years, and twice come along upside down  
25 cars on a roadway that basically the speed limit is ten

1 miles an hour. Because people go too fast. There's nowhere  
2 to pull off. They go up the embankment, and then upside  
3 down. Both times were locals. They weren't tourists, but  
4 believe me, I've come so close so many times to getting into  
5 head-ons around the corners because there's nowhere to go.  
6 The road is so narrow and nowhere to pull off.

7           Increasing that saturation, especially from people  
8 that don't know the road, to me is a safety concern.  
9 Everything else I'm not worried about. But if we're going  
10 to increase the traffic -- like when I bought my property, I  
11 put in an application for a three-lot partition. And I was  
12 shut down by Isaac Hall. Everyone and their brother was  
13 adamantly against me doing that, so I pulled my application.  
14 I'm like, okay, well, if that's such a big deal.

15           Since I built, 11 more homes have been built on  
16 Haumana, not counting however many have been built on  
17 Kulike. So, in that four-and-a-half-year period, 11 more  
18 homes since mine.

19           COMMISSION SECRETARY: Three minutes.

20           MR. NAISH: So, saturation has also increased  
21 quite a bit. And my concern is just I don't know what being  
22 a church allows at the end of the road. And every one of  
23 those people going to and from that property are passing by  
24 this very, tiny, little rural road. And if you guys want to  
25 widen the roadway, I'm all for it. I wouldn't be worried at

1 all, so we have a two-lane road going two and from the  
2 property.

3 CHAIRMAN HEDANI: Thank you.

4 MR. NAI SH: Thank you.

5 CHAIRMAN HEDANI: Questions from the  
6 Commi ssi oners? Commi ssi oner Starr.

7 COMMI SSIONER STARR: Mr. Nai sh, how do you feel  
8 about the helicopter? I see an advertisement dated March  
9 23rd, 2010. I'm not sure where this came from, and it says  
10 private helicopter service as part of the package.

11 MR. NAI SH: It -- honestly, that's less of an  
12 issue. I've got helicopters going constantly over my home  
13 all day, every day. We seem to be part of the tourist stop.  
14 They circle around my property and continue on. That's less  
15 of an issue for me honestly. We're pretty much out in the  
16 middle of nowhere. Other than Mr. Honig, I have no real  
17 neighbors. I'm sure the people on the adjoining road would  
18 be much more concerned, because the noise from the  
19 helicopters would go straight down onto Holokai, I guess the  
20 end of Holokai, where I'm upwind of it.

21 But there are a bunch of homes directly above the  
22 subject property that might have different concerns than I  
23 would.

24 CHAIRMAN HEDANI: Commi ssi oner U' u.

25 COMMI SSIONER U' U: So, you would say that

1 limousines going down that road could potentially have a big  
2 impact on the neighborhood?

3 MR. NAISH: Well, we've already got limousines  
4 going down there now for the weddings that are already  
5 taking place. It's not just limos. Any car going down that  
6 road. I've got neighbors that are as inconsiderate as  
7 anyone. And it's amazing that people go as fast as they do  
8 down a road with such bad sight vision, because it winds at  
9 the top, as fast as they do.

10 You know, approaching speed, two guys going 20  
11 miles an hour is 40 miles an hour. I'm constantly yelling  
12 at my own wife to slow down, because there's certain points  
13 where any car is a problem, but especially as the saturation  
14 increases, and you get more and more that simply don't know  
15 the road, it's amazing how they drive. They think it's a  
16 one-way street. And it simply isn't. But it's a function  
17 of how much that's going to expand.

18 See, I haven't spoken to Frederick, if it's just  
19 an asset protection exercise or a tax exercise or what. But  
20 the problem is it opens up a huge variable that the property  
21 could then be sold. And someone else is running the church  
22 or whatever it is. And that variable is what scares me.  
23 And that's why I would need substantial clarification to be  
24 comfortable with it, because I think it opens up  
25 possibilities that could be scary.

1 CHAIRMAN HEDANI: Thank you. Any additional  
2 questions? Thank you very much. Are there any other  
3 members of the public that would like to offer testimony on  
4 this item? Seeing none, public testimony is closed. Staff  
5 recommendation?

6 MR. HONIG: Excuse me, do I get an opportunity to  
7 respond to any of these?

8 CHAIRMAN HEDANI: You will get an opportunity  
9 after we have the staff recommendation.

10 MR. PRUTCH: Okay. We have our recommendation  
11 previously from a few weeks back when we drafted the staff  
12 report. In light of the testimony we've heard today, some  
13 of the issues that have been raised, some of the issues that  
14 we knew about that were still questionable and we just  
15 couldn't get answers for before today, in light of all that,  
16 we would like to change our recommendation to a  
17 recommendation of deferral to allow the Applicant to, at a  
18 minimum, pursue the SHPD issue, go to the Burial Council,  
19 get his preservation plan reviewed and approved by SHPD, and  
20 as Mr. U'u said, get those building permits in place so that  
21 they're done so he knows they're done and he doesn't have to  
22 be told I'm working on it, they're almost done.

23 Just in light of those two things, we would  
24 request a deferral to allow the Applicant to have the time  
25 to get that stuff done. Some of the other issues may be

1 lengthier, may not be solvable. But I guess we're  
2 recommending to give him the time to get this stuff and then  
3 come back to you with hopefully something that's a little  
4 more tightly wrapped.

5 CHAIRMAN HEDANI: I think the Applicant had some  
6 comments that he wanted to make as a result of the testimony  
7 that was given. Mr. Honig.

8 MR. HONIG: Like a lot of these things that are  
9 brought up have nothing to do with me. You know, like I --  
10 first of all, I would just tell you in order to be able to  
11 even give -- like I was trying to get this into Maui Coastal  
12 Trust. They will not take this property unless it has some  
13 way of generating income. The National Tropical Botanical  
14 Gardens will not take this property unless there's some way  
15 for it to have an income.

16 So, I would ask all of you that this is a place  
17 where you have some of the best preserved taro walls. It's  
18 a very historic property, and I would like to read to you  
19 what -- last night what Dr. Hal Hammatt, our archeologist --  
20 and he is not someone who is lightly doing this. This was  
21 the -- we paid thousands of dollars.

22 CHAIRMAN HEDANI: Mr. Honig, you need to use the  
23 microphone, because it's being recorded.

24 MR. HONIG: Yes, we paid thousands of dollars for  
25 this archeological survey to be completed. This is not a

1 light thing that that was done. And this is what his  
2 comments were last night that I would like to read to you  
3 addressed to Mr. Hedani about this issue.

4 Greetings. Cultural Survey Hawaii has completed  
5 an archeological inventory survey of this property Spirit of  
6 Aloha Ocean Front Botanical Gardens in December of 2005. It  
7 is our understanding that each -- that SHPD has requested a  
8 preservation plan for the various sites on the property, and  
9 particularly, the small lo'i complex of the makai portion of  
10 the property. This is a well-preserved site with a still  
11 intact 'auwai.

12 And we believe it is -- has been in use in the  
13 recent past. Mr. Honig has indicated his intention to  
14 prepare such a plan to comply with H -- with SHPD  
15 requirements and has also indicated a desire to involve  
16 knowledgeable members of the community in formulating the  
17 elements of this plan, which could include restoring this  
18 complex of terraces to its traditional use for wetland taro  
19 cultivation and developing the site as an educational  
20 resource. We believe this is a compatible idea for  
21 preservation as well as reuse of the site.

22 In order to make the required contacts and to  
23 formulate the various components of this plan, we understand  
24 he has requested a year's time to complete the work. Under  
25 the circumstances and complexities involved, we think this

1 is a -- this is reasonable.

2           There is an historic area burial crypt carved into  
3 the hillside adjacent to the lo'i complex. During the  
4 inventory survey, we verified that this crypt does not  
5 contain a burial. Also, we did not locate burial sites in  
6 any other portion of the property. Many thanks. So, you  
7 know, he believes that it's safe, you know, for us to wait  
8 for the year, and he is willing to help us in fulfilling  
9 that and for making this a historic place. Like this is a  
10 sacred space. And all of you are the gardeners of this  
11 'aina.

12           This is a very sacred space that should be  
13 preserved. It's not because one person says, oh, they hear  
14 something from there or somebody hears, but for the benefit  
15 of the entire island, of the children of this island, this  
16 is the heritage of your island. And I'm a steward trying to  
17 give it to you. I'm not trying to tell what the spirit of  
18 aloha is. I'm trying to give you a format for keeping that  
19 going and presenting that and showing it and the heritage of  
20 how I would like to see these students come back and take  
21 care of those lo'i and take care of that and see that as a  
22 park, as a garden.

23           And in 16 years of -- on this land, I have never  
24 had one complaint from a neighbor. And I will promise you  
25 16 years from now, the same thing will happen. Robbie Nais

1 will not be bothered. No one will be bothered, because I am  
2 more concerned about them than I am about doing anything  
3 else. I have never created problems, and I will not. I am  
4 not trying to significantly increase the amount of the  
5 usage.

6 I'm just trying to find a way that I can -- can  
7 maintain this. Because you need to make some money in order  
8 to maintain a property like this. I have not taken a salary  
9 from this. There has not been one penny for my wealth. All  
10 of my wealth has gone into this. I'm not trying to make a  
11 living on this. I'm not trying to make any money on this.  
12 I'm trying to create a park and a beautiful place that  
13 people can come for generations to come to enjoy this land.  
14 And if any of you can guide me, I have tried everything.

15 I've tried to the botanical -- the National  
16 Tropical Botanical Gardens to see if they would take it  
17 over. They say no, because they don't want any negative  
18 cash flow on their books. The Coastal Trust will not. But  
19 maybe with your guidance, you'll help. I'm hoping OHA maybe  
20 would help with it or someone else would help with it. It's  
21 a jewel. It's a treasure, you know. And you have to  
22 somehow create a system, and I don't care what kind of  
23 regulations.

24 You can say, okay, you can only do this and this.  
25 And that's okay with me. The only thing I want to do is --

1 to be able to do is figure out way a way to preserve it to  
2 move it forward.

3 CHAIRMAN HEDANI: Thank you very much, Mr. Honig.  
4 Any additional questions from the Commission for the  
5 Applicant? Mr. Marfdin.

6 COMMISSIONER MARFDIN: Yeah. You just mentioned  
7 you have a negative cash flow.

8 MR. HONIG: Yes.

9 COMMISSIONER MARFDIN: Before we went to lunch,  
10 there was testimony that you made \$400,000 a year or this.

11 MR. HONIG: Yeah, that -- we lost \$20,000. I  
12 have -- I am not -- I have a C.P.A. doing our bookkeeping.  
13 Everything is kept in there. I have not -- you know, we  
14 spent thousands of dollars on advertising trying because our  
15 business was going down. And we're not able to advertise in  
16 the papers because of you people. Like otherwise, we could  
17 put in the paper let's have an event here, something like  
18 that, but we have not.

19 So, we spent all of this money on advertising and  
20 running a business. And I'm not the greatest businessman.  
21 It's not my forte. I'm a monk, and I've done my --

22 CHAIRMAN HEDANI: Mr. Marfdin.

23 MR. HONIG: I've done my best to, you know, to  
24 keep this financially moving.

25 CHAIRMAN HEDANI: Mr. Marfdin.

1           COMMISSIONER MARFDIN: Do you file general excise  
2 tax forms?

3           MR. HONIG: That is -- yes, we have totally taken  
4 care of that. And I can show you the paperwork for that.

5           COMMISSIONER MARFDIN: Do you file income tax  
6 forms?

7           MR. HONIG: Absolutely.

8           COMMISSIONER MARFDIN: Do you pay real property  
9 taxes?

10          MR. HONIG: Absolutely.

11          COMMISSIONER MARFDIN: I would just like to make a  
12 comment, if I may. There's a lot of stuff that you've just  
13 attested to that we didn't get. We didn't see the  
14 archeological study. Don't give it to me now, please. We  
15 didn't get that. We haven't seen your GET taxes. We  
16 haven't seen your real property taxes. We haven't seen your  
17 income taxes. Without that kind of information coming  
18 forth, at least some of it, I have a hard time being able to  
19 vote either yeah or nay on approval at this point.

20          MR. HONIG: Well, you know, that IRS stuff --

21          CHAIRMAN HEDANI: Mr. Honig, that was just a  
22 comment. Mr. Shi buya.

23          COMMISSIONER SHI BUYA: Mr. Honig, have you filed a  
24 foundation or a nonprofit organization type of annual  
25 report?

1 MR. HONIG: Yes, the 990's, yes, we did.

2 COMMISSIONER SHIBUYA: How long ago have you sent  
3 that in?

4 MR. HONIG: We are -- this year, we still have to  
5 do our one for this year. But other than that, we're still  
6 not out of, you know, the normal thing. We're still in  
7 format of doing that.

8 COMMISSIONER SHIBUYA: How far back have you filed  
9 it?

10 MR. HONIG: The last 990 is -- we have until May  
11 15th to file from our last 990.

12 COMMISSIONER SHIBUYA: I understand. But previous  
13 to that, how many years previous to that have you filed?

14 MR. HONIG: 990's?

15 COMMISSIONER SHIBUYA: Yes.

16 MR. HONIG: Sixteen years.

17 COMMISSIONER SHIBUYA: And you have that on  
18 record?

19 MR. HONIG: Oh, yes.

20 COMMISSIONER SHIBUYA: And you have the  
21 verification from IRS?

22 MR. HONIG: Oh, yes.

23 COMMISSIONER SHIBUYA: And the DCCA?

24 MR. HONIG: The what?

25 COMMISSIONER SHIBUYA: DCCA. That's the State of

1 Hawai i .

2 MR. HONIG: Yes, yes.

3 CHAIRMAN HEDANI: Any additional questions from  
4 the Commission? Thank you very much, Mr. Honig.  
5 Mr. Starr.

6 COMMISSIONER STARR: Yeah, I have a motion if  
7 that's in order.

8 MR. HONIG: There is some beautiful letters.

9 CHAIRMAN HEDANI: Mr. Honig, thank you.

10 MR. HONIG: Thank you.

11 CHAIRMAN HEDANI: Do the Commissioners want to  
12 hear the full recommendation from staff, or have you gone  
13 through it? Commissioner Hiranaga.

14 COMMISSIONER HIRANAGA: Mr. Chair, I believe staff  
15 has revised their recommendation to a recommendation to  
16 defer, so I'm not sure what conditions you're alluding to.

17 CHAIRMAN HEDANI: I just want to make sure that  
18 everybody has had an opportunity to read through the entire  
19 recommendation. Mr. Starr.

20 COMMISSIONER STARR: Yeah, I move for denial.

21 COMMISSIONER SHIBUYA: Second.

22 CHAIRMAN HEDANI: The motion is for denial.

23 Mr. Starr -- moved by Commissioner Starr. Seconded by  
24 Commissioner Shibuya. Discussion. Commissioner Starr.

25 COMMISSIONER STARR: Yeah, I find that many of the

1 or a number of the items in the application such as the  
2 helicopter pad are contrary to community plan, are contrary  
3 to an ordinance. I find there are existing violations and  
4 find it's a business that's projected to occur in an  
5 unpermitted structure at this time.

6 So, I really see that denial is the right course  
7 of action. They can resubmit when they've gotten all the  
8 DLNR taken care of, when they've made their peace with the  
9 archeological, to the satisfaction of the Hawaiian community  
10 and put in the preservation plan and all of that. They can  
11 come back then. But I really at this point feel that denial  
12 is the proper course.

13 CHAIRMAN HEDANI: Additional discussion?  
14 Mr. Shibusya.

15 COMMISSIONER SHIBUYA: I feel accordingly, the  
16 Pāia-Haikū Community Plan and the state-controlled zone  
17 management have been not complied with fully. There's a  
18 commercial concern that agricultural land is not for  
19 production of products or produce, but to produce a  
20 commercial value or a commercial service. And that's very  
21 different.

22 And if you did want to have that kind of a  
23 business, then it should be rezoned or at least applied for  
24 a business license type operation, not an agriculture type  
25 of zoning land use. I'm quite concerned in terms of the

1 State Conservation Land Use. This is not being in  
2 accordance with the State Conservation Laws. And I find  
3 this very troubling that we can rationalize various  
4 activities, especially preserving the host nations -- I mean  
5 host countries or host cultural values and burial grounds  
6 and the sacredness of those kupuna that have been buried  
7 there.

8 I'm very upset about this. I think we need to  
9 take back and come back with more information like the maker  
10 of the motion. I certainly agree that we need to deny this,  
11 and we can come back, and if you do feel that you have the  
12 right data, that you can apply again. Thank you.

13 CHAIRMAN HEDANI: Mr. Hiranaga.

14 COMMISSIONER HIRANAGA: I'll be voting against the  
15 motion to deny. I think it's more appropriate to defer the  
16 matter because it is incomplete. When commissioners say  
17 deny and come back when you're ready, I think deferring is  
18 more appropriate until the application is complete. So, I  
19 will not be supporting the motion on the floor.

20 CHAIRMAN HEDANI: Mr. Tagorda.

21 COMMISSIONER TAGORDA: Mr. Chair, point of  
22 inquiry. If we deny the application, what's going to  
23 happen? Is Mr. Honig going to cease and desist operations  
24 in that property?

25 CHAIRMAN HEDANI: Director.

1           DIRECTOR HUNT: The question, I interpret it is if  
2 you deny the application, will Mr. Honig cease his  
3 operations? And we can't speak on behalf of Mr. Honig. We  
4 can tell you that we will try to enforce the laws that the  
5 county has adopted. To be up front, enforcement is a  
6 difficult task. And there's been some criticism of the  
7 department regarding enforcement in this particular  
8 application and others.

9           And it's a legitimate criticism, but we all have  
10 to understand the limitations and constraints that  
11 enforcement entails. Gathering evidence is difficult. We  
12 have six inspectors for all three islands. We have a past  
13 history or culture of permissiveness and turning the other  
14 way, looking the other way. Our process is somewhat  
15 complaint driven. We have some organizations in our  
16 community and even editors of papers that have openly  
17 suggested that enforcement of our laws is wrong.

18           So, it's -- it's a challenging situation. The  
19 department will enforce the law. We've instructed Mr. Honig  
20 to cease his operations until he gets the necessary permits.  
21 Whether he complies with that or not is up to him.

22           CHAIRMAN HEDANI: Mr. Starr.

23           COMMISSIONER STARR: Yeah, I just was looking at  
24 an advertisement that was apparently downloaded from the  
25 Internet today. It's dated today. I don't know where it

1 came from. But it is advertising for wedding service on  
2 this property. I believe it's \$9,900 for the package. And  
3 so, it is being -- business is being solicited as we speak.  
4 And I'm wondering if that is legal. I'm asking the  
5 director.

6 CHAIRMAN HEDANI: Director Hunt.

7 DIRECTOR HUNT: Well, we would have to take a look  
8 at the advertisement. I'm not questioning the authenticity  
9 of that advertisement, but we have to be objective in our  
10 investigation, make sure somebody didn't gin it up or that  
11 it's not outdated or whatever. So, I can't make a  
12 conclusion as to whether Mr. Honig is operating illegally  
13 currently. We will certainly investigate and continue to  
14 investigate. I believe the staff planner contacted the  
15 enforcement officers, and they have been investigating.

16 In this particular case, we will talk to our  
17 inspectors to make sure that this one is not just sliding  
18 through the cracks. Apparently, it needs a little bit more  
19 attention without picking on anyone unfairly.

20 CHAIRMAN HEDANI: Any additional discussion? A  
21 question for the director. If the motion to deny is  
22 approved, can the Applicant resubmit?

23 DIRECTOR HUNT: He can resubmit. He would have to  
24 go through the process from step one. So, he would have to  
25 submit a new application, new fees. We would send that out

1 to agencies, neighbors, put notice in the paper and schedule  
2 a brand-new item on your agenda. The option to defer is we  
3 would still have to put it on your agenda. We would  
4 instruct him to address these issues and don't come back, or  
5 we will not schedule it until the issues as we understand  
6 them have been addressed. So, it's -- it's an easier  
7 process on behalf of the Applicant.

8 CHAIRMAN HEDANI: Any additional discussion?  
9 Ready for the question? Motion on the floor is to deny the  
10 application. All those in favor, please raise your hand.  
11 One, two, three, four, five.

12 Opposed, same sign. Three opposed.

13 Motion is carried. The application is denied.  
14 Director.

15 DIRECTOR HUNT: Your next item is C(2) under  
16 public hearings. Sandra Atherton and Henry Vandervelde  
17 requesting a State Land Use Commission State Land Use Permit  
18 and Bed and Breakfast Permit, because it is located within  
19 500 feet of two permitted bed and breakfast operations to  
20 operate the Kukui Plantation LLC Bed and Breakfast,  
21 consisting of using up to five bedrooms in the owners'  
22 residence as part of the bed and breakfast operation located  
23 in the State Agricultural District at 60 Kapuaimilia Place.  
24 I may not have pronounced that correctly. TMK: 2-8-004, Lot  
25 99 in Hai ku. The file number is SUP2 2004/1 BBPH T2009/20.

1 And Gi na Flammer is the planner assigned to this  
2 appl icati on.

3 MS. FLAMMER: If you would just give me a moment  
4 to pull out my remarks.

5 DIRECTOR HUNT: Do you need a few minutes?

6 CHAIRMAN HEDANI: Why don't we go ahead and take a  
7 fi ve-mi nute recess.

8 (Recess taken.)

9 CHAIRMAN HEDANI: Planni ng Commi ssi on is back in  
10 sessi on. Gi na.

11 MS. FLAMMER: Good afternoon, Commi ssi oners. Thi s  
12 next item is a little less complicated. It's an agenda for  
13 a B&B permit and a Special Use Permit. The Applicant is  
14 requesting a B&B permit to operate a five-bedroom B&B in the  
15 main farm dwelling. They're rented out as an entire unit.  
16 It's rented to families or groups. The Applicant lives on  
17 the cottage on the property.

18 The property is the 2.12 parcel. The surrounding  
19 properties are the large lot agricultural properties. Some  
20 of the lots in the area are two-acre lots with homes. Some  
21 are vacant two-acre lots that haven't been developed yet.  
22 And some are fallow pineapple fields. This is the fourth  
23 application the Commission is reviewing pursuant to the B&B  
24 ordinance, which states that if there's another B&B within  
25 500 feet, the Commission is the reviewing authority.

1           In this case, there are two B&B's within 500 feet.  
2 And the Special Use Permit, you guys are always the  
3 reviewing authority for that one. So, because this is in a  
4 neighborhood that has two of them, I'm going to show you a  
5 lot of photos of the neighborhood and try to give you guys  
6 a real understanding of what you're looking at. I do want  
7 to point out that while this property does have a lot of  
8 agricultural activity on it, it does not receive  
9 agricultural water rates.

10           Part of that is because they were the ones that  
11 developed the agricultural activities on the land, and they did that  
12 in accordance with wanting to use less water. And they  
13 planted with a lot of native plants. I'm going to plug in  
14 and show you some photos. Okay. So, here is a map of the  
15 area. You can see the A is where the property is. It's  
16 about 14 minutes outside of Paia Town. Here is a Google map  
17 showing you. You can see Hana Highway up here. Here is the  
18 intersection as you turn left onto North Holokai Road, which  
19 is the -- which is what I called the collector road or the  
20 access road to where the B&B is. There is a newer road, so  
21 it is built to urban standards.

22           We come in. Here is where you take a right into  
23 the subdivision. Now, the other two B&B's are located on  
24 North Holokai Road. They're down where those mailboxes are.  
25 If you take a right onto Kapuaimilia, you can see large lot

1 agricultural properties. Those are two properties right  
2 there. Then you have the vacant land. Then you have the  
3 proposed B&B. You've got the entrance to the driveway. If  
4 you were to keep going, that's what the cul-de-sac looks  
5 like.

6           Here is when you turn into the entrance. Here is  
7 another view. Some of these photos are already in your  
8 packet. Here is another view of the entrance. Then these  
9 are just the interior photos. Okay. Now, we'll move into  
10 the ag operations. You can see the kukui nut trees down  
11 there for which the property is named for. You can see  
12 where some of the food is grown. Here are some of the  
13 oranges. They do sell their produce. Here are some of the  
14 pineapple, banana, some of the baskets and flowers that they  
15 put out. Here is the noni. I'll let you read a little bit  
16 about that. They haven't marketed it yet, but they have  
17 been fermenting it.

18           They also have a landscape nursery. There are  
19 some of those plants. When they get big enough, they put  
20 them into the ground to grow. Okay. So, next I'll talk a  
21 little bit about the neighbor. Down here are the two other  
22 B&B's. The Maui -- no, it's the Hai ku Makai you guys heard  
23 this summer, the Ludwig property. Maui Ocean Breezes,  
24 that's three bedrooms total. Hai ku Makai is three bedrooms  
25 total.

1 All B&B's did operate during that period of  
2 amnesty, 2004 to 2007. For Maui Ocean Breezes, that's  
3 probably been permitted the longest. The application was  
4 submitted in January 2001. The Planning Commission did  
5 approve it in 2002, so it went through the process of the  
6 conditional permit. It was approved by the Council in 2005.  
7 Under the new B&B ordinance, it was converted to a B&B  
8 administratively.

9 We have two bedrooms in the main house. Owner  
10 lives in the main house, and you have the cottage that's  
11 rented. It's just to show you the lot where it is. You can  
12 tell these are large lots. It's got the fruit trees and  
13 other things around the perimeter. Here is what it looks  
14 like. This is what the cottage looks like. The next one is  
15 the Haiku Makai B&B. That was also submitted in 2001. It  
16 did cease operation when it was ordered to shut down by the  
17 county. It did receive an approval this summer from this  
18 body. It has one bedroom in the main house and two bedrooms  
19 in the cottage. And the owner lives in the main house. He  
20 did write a letter of support for this proposed B&B coming  
21 to you today. It's in the packet.

22 That shows you what the lot looks like. He's got  
23 most of his activities in the back. There is the property.  
24 Okay. Here are letters of support, all the yellow ones.  
25 The big property on the right that's behind there, there's

1 reference in the file -- now, this file goes back to 2003.  
2 There's reference of a support letter in there. It's not  
3 until I dug through that I couldn't find it. And I called  
4 them last night, and they weren't able to pull it up. So, I  
5 just gave it another color. That is a part-time resident  
6 that lives there. And there you go. So, I would be happy  
7 to answer any questions. The applicants are here.

8 CHAIRMAN HEDANI: Questions from the Commission.  
9 Any comments from the -- I'm sorry, Commissioner Hiranaga.

10 COMMISSIONER HIRANAGA: Just a technical question.  
11 On the map showing letters of support, you're not showing  
12 property to the east of it. I'm wondering why.

13 MS. FLAMMER: Which east?

14 COMMISSIONER HIRANAGA: To the right. I know  
15 there's a lot there.

16 MS. FLAMMER: That's one lot.

17 COMMISSIONER HIRANAGA: One big lot?

18 MS. FLAMMER: Yeah, that's what the --

19 COMMISSIONER HIRANAGA: Is that the Christmas tree  
20 lady?

21 MS. FLAMMER: No, it's 33 acres, I think. And  
22 there's reference for a support letter in the file. I just  
23 wasn't able to locate it. He's a part-time owner, I  
24 believe, who has a house in Wailea as well as California who  
25 is here rarely.

1 COMMISSIONER HIRANAGA: Okay. Thank you.

2 CHAIRMAN HEDANI: Any additional questions for  
3 staff? Mr. Marfdin.

4 COMMISSIONER MARFDIN: I could have missed, but  
5 were house policies in our package?

6 MS. FLAMMER: Yeah, I'll tell you where the  
7 exhibit is. Because it's one of the longer house policies  
8 I've seen.

9 COMMISSIONER MARFDIN: I think I remember seeing  
10 it. But I didn't see anything about amplified sound.

11 MS. FLAMMER: It's Exhibit 8 is the letter. And  
12 then attached to that, so I believe it says no parties,  
13 barbecues, excessive noise after 8 p.m. I would assume that  
14 would include amplified sound.

15 COMMISSIONER MARFDIN: But it says -- well, it's  
16 debatable what this means. Under Q on Page 17 of your  
17 report, it says, Post house policies. Quiet hours are 9  
18 p.m. to 8 a.m. A second item is amplified sound that is  
19 audible beyond the property boundaries of the B&B. I  
20 interpret that -- I interpret it to mean 24/7. But I don't  
21 know whether that was the intent.

22 And if it is the intent to be 24/7, this says no  
23 excessive noise after 8 p.m. They need to say no amplified  
24 sound before 8 p.m.

25 MS. FLAMMER: We can ask them to put that in their

1 house rules.

2 COMMISSIONER MARFDIN: They'll need to make that  
3 adjustment.

4 CHAIRMAN HEDANI: Any additional questions for  
5 staff? Mr. Starr.

6 COMMISSIONER STARR: Yeah. Has the Applicant, to  
7 the best of your knowledge, ceased operating from the time  
8 when they were I guess approached by the department up until  
9 now?

10 MS. FLAMMER: I was unable to find anything on the  
11 web, on the Internet, which I did look several times, and so  
12 did other people. There is also someone in the neighborhood  
13 who does on a regular basis report B&B's.

14 CHAIRMAN HEDANI: Can we ask the Applicant that  
15 question?

16 MS. FLAMMER: Would you like to respond?

17 CHAIRMAN HEDANI: Just state your name for the  
18 record.

19 MR. VANDERVELDE: My name is Henry Vandervelde.

20 CHAIRMAN HEDANI: Pull the microphone up.

21 MR. VANDERVELDE: My name is Henry Vandervelde,  
22 and we have not had rentals since receiving notice from the  
23 county.

24 CHAIRMAN HEDANI: Thank you. Mr. Marfdin.

25 COMMISSIONER MARFDIN: While you're still up

1 there, Mr. Vandervelde, would you have any problem changing  
2 your house rules to prohibit any amplified noise?

3 MR. VANDERVELDE: No, no problem with that. That  
4 is our intent. You should never be able to hear the guests  
5 from off the property under any circumstances.

6 CHAIRMAN HEDANI: Thank you very much. Any  
7 additional questions? Commissioner Shibusya.

8 COMMISSIONER SHIBUYA: I just wanted to find out  
9 the sewage capacity of the septic tank. I believe you have  
10 a septic system.

11 CHAIRMAN HEDANI: Yes, we have a septic system,  
12 and we recently added a second septic system for the --  
13 specifically for the cottage. So, the main house has a  
14 fully-authorized septic system. And now the cottage has its  
15 own, so we have two septic systems. I'm sure we're fully in  
16 compliance.

17 COMMISSIONER SHIBUYA: Did the Department of  
18 Health address that in terms of the adequacy of the septic  
19 system to support probably ten more individuals?

20 MS. FLAMMER: If you look at Exhibit 15, it does  
21 list all the Department of Health requirements. It has  
22 actually a photo of the -- or diagram of the system. And  
23 then it does show their approval letter at the end.

24 COMMISSIONER SHIBUYA: Thank you. Okay.

25 CHAIRMAN HEDANI: Any additional questions for

1 staff? Mr. Marfdi n.

2 COMMISSIONER MARFDIN: Gina, I didn't see any, but  
3 there were no letters of complaint?

4 MS. FLAMMER: No.

5 COMMISSIONER MARFDIN: Thank you.

6 CHAIRMAN HEDANI: Any additional questions?

7 Mr. Shi buya.

8 COMMISSIONER SHI BUYA: I believe there's three, if  
9 this is approved, there will be three B&B's within a 500  
10 feet radius. Is that what it is?

11 MS. FLAMMER: Yeah, from the boundaries of the  
12 property.

13 COMMISSIONER SHI BUYA: That's correct.

14 MS. FLAMMER: Yes.

15 COMMISSIONER SHI BUYA: So, this group is approving  
16 the third B&B within a 500 foot radius?

17 MS. FLAMMER: Yes.

18 CHAIRMAN HEDANI: Gina, what is the total number  
19 of B&B permits that have been issued today?

20 MS. FLAMMER: Well, there's 17 -- 18 in the  
21 Paia-Hai ku region. I don't know the full number.

22 CHAIRMAN HEDANI: In the particular region?

23 MS. FLAMMER: What? Eighty-eight. There will be  
24 70 available to the community if this is approved.

25 CHAIRMAN HEDANI: I see. Any additional

1 questions? Director Hunt.

2 DIRECTOR HUNT: I believe we're up to about 35  
3 under the new ordinance with 12 under the preexisting  
4 ordinance, so perhaps around 47 total now legally operating  
5 and permitted happily in our County.

6 MS. FLAMMER: And I do want to point out that  
7 there was criteria issued by the Director at that time  
8 September 22nd meeting. So, I did include that in the staff  
9 report. And that does apply specifically to multiple B&B's  
10 in one area, so I did make sure that analysis was done.

11 CHAIRMAN HEDANI: Mr. Shibusya.

12 COMMISSIONER SHIBUYA: I'm troubled, because now  
13 you're increasing the density of commercial activities  
14 within an agricultural area, which really doesn't produce  
15 products and produce. And so, the problem comes in in terms  
16 of zoning. Will there be a possibility of rezoning this  
17 area from agriculture to a commercial business-type  
18 operation?

19 MS. FLAMMER: Did you see Exhibit 23?

20 COMMISSIONER SHIBUYA: Go ahead.

21 MS. FLAMMER: The farm plan is fully implemented  
22 and very strong, and they do produce agricultural  
23 activities. I don't know if that would be hampered by --

24 COMMISSIONER SHIBUYA: No, it's not hampered.  
25 It's just more in terms of zoning the property, because now

1 you have three. The density of the commercial type  
2 activities within 500 feet; instead of two, we're talking  
3 three. And we're multiplying that and increasing the  
4 density, so now it's no longer agriculture. The emphasis is  
5 really more on lodging.

6 CHAIRMAN HEDANI: Any additional questions for  
7 staff? Seeing none, we will go ahead and open it up for  
8 public testimony on this agenda item. Are there any members  
9 of the public that would like to offer testimony on this  
10 agenda item? If so, step to the microphone and identify  
11 yourself for the record. Seeing none, public testimony is  
12 closed. Staff recommendations.

13 COMMISSIONER STARR: Mr. Chair.

14 CHAIRMAN HEDANI: Mr. Starr.

15 COMMISSIONER STARR: I don't know if the Applicant  
16 is here, and if so, if they want to comment on anything.

17 CHAIRMAN HEDANI: Does the Applicant wish to  
18 address the Commission?

19 MS. ATHERTON: I just have one thing to say.

20 CHAIRMAN HEDANI: If you could just state your  
21 name for the record.

22 MS. ATHERTON: My name is Sandra Atherton. Thank  
23 you for the opportunity to address you. I would just like  
24 to explain one fine point. Our B&B is different in quality  
25 from the other B&B's. A typical B&B, which the other two

1 fall into, will rent a room to an individual party. So, a  
2 couple may be in one room that's totally unrelated to the  
3 two girlfriends in the cottage that are here to windsurf and  
4 may be totally unrelated to the other single person in the  
5 main dwelling.

6 We only rent to one family at a time. So, we rent  
7 when there are groups of four, six, eight, ten people that  
8 need time together. And if you see our letters, a lot of  
9 our letters are from doctors from the other islands who are  
10 in the process of opening clinics here when they come. And  
11 they want to have conferences, and they don't want to buy a  
12 property on the island. We have had families who have lost  
13 a family member who come here to grieve and be together with  
14 their family and throw leis and ashes into the ocean from  
15 their loved ones.

16 So, the -- we've had hula halaus from other  
17 islands. And we have the StaLocal Network, which was  
18 founded by Char Parker, who is our property manager who  
19 manages everything for us, the housekeeping team and  
20 everything. And she has booked Villa Pacifica as a future  
21 site for all of the StaLocal events. I think there's an  
22 exhibit here about the StaLocal Network from Char Parker.  
23 So, we are a completely different character.

24 We also require a week minimum stay. The majority  
25 of our guests stay anywhere from a week to a month. We have

1 several two weeks, or doctors coming over for a month. And  
2 we have letters from all of these different groups. So,  
3 we're not -- don't have the coming and going traffic of a  
4 hotel or a motel, typical B&B. And then our -- the turn-off  
5 to our property is before you pass the other properties.  
6 So, the traffic that they get and the traffic that we get is  
7 different. And typically, if a large family of eight comes,  
8 they'll rent one large van or a small car and a van.

9           Typically, we have no more than two cars,  
10 occasionally three, although we have parking for five. But  
11 if it's one family group, they economize on every couple  
12 needing a car and pool their resources and buy one car or  
13 rent one car for the whole family. Or, you know, if it's  
14 business, we have business people from Oahu that in the past  
15 have come and do seminars as well. So, I just wanted to  
16 make that distinction.

17           CHAIRMAN HEDANI: Questions from the Commission?  
18 Mr. Marfdin.

19           COMMISSIONER MARFDIN: You live on the property?

20           MS. ATHERTON: Yes.

21           COMMISSIONER MARFDIN: You don't do the cleaning  
22 though, you hire that out?

23           MS. ATHERTON: Of course, yes. It's too big for  
24 one person.

25           COMMISSIONER MARFDIN: And you said you have an

1 agent, a managing agent?

2 MS. ATHERTON: A housekeeping manager.

3 COMMISSIONER MARFDIN: Oh, not -- you handle the  
4 bookings?

5 MS. ATHERTON: Yes, we handle -- Henry and I  
6 handle the bookings. But Char Parker handles the  
7 housekeeping. She helps with the stocking, you know, of all  
8 the paper goods that we need. And also, she is a kupuna,  
9 and her husband is a groundskeeper for all Kamehameha  
10 Schools. He does to the flowers, and they have a vast  
11 knowledge of native plants. And her letters are in here.  
12 And so, they -- she does a lot of things with the guests  
13 with the native plants. We have over 400 native plants on  
14 the property, which we purchased from Hoolawa Farms.

15 And we're in kind of a coalition with Anna  
16 Palomino with Hoolawa Farms and Wendell and Char Parker.  
17 So, they share the plant knowledge with our guests as well.

18 CHAIRMAN HEDANI: Thank you very much. Mr. Starr.

19 COMMISSIONER STARR: If approved, would this the  
20 B&B help or hinder your agricultural operations?

21 MS. ATHERTON: Help. We have good agricultural  
22 operations now, as you could see from the pictures. We  
23 did -- we have our revenues -- I don't know if they put them  
24 in here. But before we were shut down, we got up to -- this  
25 is -- okay. We're small potatoes. We're not A&B, but we

1 got up to \$4,500 a year before 2008. And that was because  
2 we had the income to buy the fertilizer, to hire the people.  
3 That's why we have all those trees and all those plants now.  
4 And we're waiting for our noni to mature more, because we  
5 have a lot of noni plants.

6 CHAIRMAN HEDANI: Mr. Tagorda.

7 COMMISSIONER TAGORDA: Ma'am, good afternoon. In  
8 line with agricultural activities that you have, I see you  
9 have very nice, a lot of fruit trees, a lot of nice plants.  
10 Do you have a permanent laborer that works in your farm that  
11 will -- if we approve your B&B request will not diminish  
12 your agricultural activities?

13 MS. ATHERTON: We have a -- a landscaping and, you  
14 know, gardening team. And we only can afford right now to  
15 have them come a few times a months, and we do the rest  
16 ourselves. If we have more income, then we can have them  
17 come more times a month, and we can actually collect more of  
18 the produce that we're growing.

19 COMMISSIONER TAGORDA: So, where do you market all  
20 this produce that you are getting from your yard?

21 MS. ATHERTON: Some of it was Mana Foods. Some of  
22 it -- we will sold a lot of plants to, ornamentals and  
23 fruit-growing plants and noni plants to some homeowners on  
24 the west side, who were implementing their farm plans. And  
25 we had a fruit stand, too. When we were gathering, we had a

1 fruit stand.

2 Oh, and our guests. When we had our B&B going,  
3 every guest got a huge basket of flowers and a huge vase of  
4 -- several vases of flowers and baskets of fruit. And our  
5 guests actually, when they ran out, they came to our fruit  
6 stand and bought from us.

7 COMMISSIONER TAGORDA: Thank you.

8 CHAIRMAN HEDANI: Any additional questions from  
9 the Commission? Thank you very much.

10 MS. ATHERTON: You're welcome.

11 CHAIRMAN HEDANI: Staff recommendation.

12 MS. FLAMMER: As addressed in the written report,  
13 the application meets the criteria as set forth in the  
14 County Code. The application also meets the additional  
15 criteria presented by our Director. As such, the Planning  
16 Department recommends that the Commission approve the B&B  
17 permit and SUP permit subject to the 20 conditions listed in  
18 the staff report.

19 I assume you're not going to want me to go through  
20 all 20 of them, but I will go through two of them that are  
21 new. The first one is the date for the SUP. B&B permits  
22 can be granted for three years, so what we've done is we've  
23 kind of done a -- we've added that onto the SUP. So, it's  
24 for eight years. So, when it comes back, the B&B comes back  
25 in three years, the SUP doesn't come back. It's not until

1 the next time. That's the department's policy.

2 The second one is we have a new condition, which  
3 is listed in Number 19 under the B&B permit area, which is  
4 water. And what it does is it addresses the fixture counts  
5 and areas that don't have water meters available. In  
6 consideration of the foregoing, the Planning Department  
7 recommends that the Commission adopt the Department's report  
8 and recommendations prepared for this meeting and authorize  
9 the Director of Planning to transmit the findings of fact,  
10 conclusions of law, decision and order on behalf of the  
11 Planning Commission. Thank you.

12 CHAIRMAN HEDANI: Commissioners, what's your  
13 pleasure? Commissioner Starr.

14 COMMISSIONER STARR: Yeah, move for approval of  
15 the State Land Use Commission Special Use Permit and Bed and  
16 Breakfast Permit as recommended.

17 COMMISSIONER U'U: Second.

18 CHAIRMAN HEDANI: Moved by Commissioner Starr.

19 Seconded by Commissioner U'u to recommend.

20 Discussion. Mr. Hiranaga.

21 COMMISSIONER HIRANAGA: I would like to say that  
22 clustering of B&B's may not necessarily be a bad thing. If  
23 the neighboring property owners are not opposed to it, maybe  
24 it is a good thing to cluster the B&B's versus having them  
25 sprinkled throughout the agricultural district, so I'll be

1 voting in favor of the motion.

2 CHAIRMAN HEDANI: If there's no discussion,  
3 Mr. Starr.

4 COMMISSIONER STARR: Yeah, I feel this supports  
5 the ag use of the property. I really think this is a  
6 positive example of a B&B in an agricultural area, and I  
7 also thought the thought presentation was very well done,  
8 too.

9 CHAIRMAN HEDANI: Additional discussion?  
10 Mr. Shibusya.

11 COMMISSIONER SHIBUYA: I will be voting against  
12 it. I feel that at this point in time, we have a hotels in  
13 the hotel districts. We have commercial and business  
14 operations in the business area. In this particular case,  
15 you are actually emphasizing a greater amount of gross  
16 income from the lodging type of operation. And it is no  
17 longer at this point agriculture.

18 CHAIRMAN HEDANI: Additional discussion? Ready  
19 for the question? All those this favor, please signify by  
20 raising your hand.

21 Opposed, same sign.

22 Opposed. Motion is carried. Thank you.

23 Director.

24 DIRECTOR HUNT: Your next item involves  
25 Communication Item D(1). Kathleen Gildred and Marc and Ane

1 Takaha requesting a transfer of permit holders from Kathleen  
2 Gildred and Sean Brunwin to Kathleen Gildred and Marc and  
3 Ane Takaha and a five-year time extension on the State Land  
4 Use Commission Special Use Permit and Conditional permit to  
5 continue the operation of the Hale Alana TVR, a transient  
6 vacation rental, within the County Rural District at 3378  
7 Keha Drive, TMK: 2-1-017, Lot 40, in Maui Meadows, Kihei.  
8 Joe Prutch is the planner assigned to this project, and here  
9 he comes now.

10 MR. PRUTCH: Sorry, it's been a long day. I don't  
11 have a Power Point presentation for this one. Sorry about  
12 that. This is a request for an extension of an existing  
13 Special Use Permit and a conditional permit for the Hale  
14 Alana TVR located on a half-acre lot at 3378 Keha Drive in  
15 Maui Meadows. What exists on the property is a  
16 three-bedroom main dwelling with a two-car garage and a  
17 one-bedroom cottage at the back of the property. There's  
18 four parking spaces for the main dwelling, two in the  
19 garage, two in front of the garage, which is sufficient for  
20 a three-bedroom vacation rental.

21 There's also two parking spaces back in front of  
22 the cottage, which is sufficient for a one-bedroom cottage.  
23 The Applicant is here in the audience. Her name is Kathleen  
24 Gildred. She lives the majority of the time in California.  
25 She does come here and stay at her house in Maui Meadows

1 occasionally. She also has -- she has on-site managers  
2 living in the cottage, and she rents out the three-bedroom  
3 house. Her SUP was approved by your body way back in  
4 September of 2000. Then the conditional permit was  
5 eventually approved in January 11th, 2008, by Ordinance  
6 Number 3518.

7           The Council gave them a two-year time period.  
8 Your Commission gave them two years or until the expiration  
9 of the conditional permit. So, technically everything  
10 expires on January 11th, 2010. She had requested an  
11 extension of her permit approximately 96 days prior to the  
12 expiration of her permit. So, she put in her valid request  
13 for extension. We've been processing it since then. I did  
14 receive some agency comments from ZAED saying that the  
15 parking was adequate for what she's proposing, what she's  
16 operating.

17           And I had some back and forth with the fire  
18 department, who finally commented that everything was  
19 satisfied, and I believe they were going to get out to her  
20 property for an inspection. I've got no letters in  
21 opposition that I've received. You did have testimony this  
22 morning from Tom Croy in support of her operation. And  
23 KIVA, I didn't see any request for service for this  
24 property. The police department I questioned, and they sent  
25 a letter back with no comments. So, I assume there's no

1 police record of any action on her property. Otherwise,  
2 they would have commented. There's been no change to the  
3 use. It's still the same as it was two years ago when they  
4 approved their conditional permit.

5           There are new property managers however. I guess  
6 when the permit was originally approved, it was approved for  
7 Sean Brunwin. That person has moved on. Now, she has some  
8 new property managers, Marc and Ane Takaha, that I believe  
9 have been there for almost two years. And they are now, or  
10 we're now making a request that they are named on the  
11 conditional permit for the Council to approve. She's asking  
12 for a five-year time period for her operation.

13           Because we had no letters of opposition, no  
14 neighbor complaints, no police responses, and there's been  
15 no changes to the use at all other than new property  
16 managers, we will go ahead and recommend the five years as  
17 well. Should I get into the conditions now and some of the  
18 changes I'm requesting or talk, and then when I get to my  
19 recommendation, I can do that?

20           CHAIRMAN HEDANI: I think you should probably  
21 address it now.

22           MR. PRUTCH: Address it now, okay. For your  
23 Special Use Permit, I've requested some changes. I'll just  
24 go through them each one by one, so if you want to follow me  
25 along on Page 4.

1 COMMISSIONER HIRANAGA: Mr. Chair. Are we --

2 CHAIRMAN HEDANI: Mr. Hiranaga.

3 COMMISSIONER HIRANAGA: Are we straying off the  
4 normal process of staff presentation, Applicant's  
5 presentation, public comment and then go to the  
6 recommendations?

7 CHAIRMAN HEDANI: We can reverse that if you like.

8 COMMISSIONER HIRANAGA: I think it's more  
9 appropriate to follow the regular process.

10 CHAIRMAN HEDANI: Okay. If we can get a  
11 presentation from the Applicant if you have any comments.

12 MR. PRUTCH: She is here, and I believe she might  
13 want to share a few words.

14 MS. GILDRED: Hello, members of the Planning  
15 Commission. Thank you for letting me speak for you.

16 CHAIRMAN HEDANI: If you could just state your  
17 name for the record.

18 MS. GILDRED: My name is Kathleen Gildred, and we  
19 have operated this vacation rental for the last few years.  
20 As you know, we were approved for our Special Use Permit in  
21 2000 and our Conditional Use Permit a couple of years ago.  
22 The couple years went by like that, which is the reason I  
23 requested five years. Ane and Marc Takaha sitting on the  
24 front row here are on-site managers. They've been there for  
25 almost two years now. They haven't had any problems.

1 They've done a very good job. And like they told -- last  
2 night they told some people they had to keep the noise down.  
3 So, they're really on the case of making sure everything  
4 goes smoothly.

5           We've paid our taxes regularly. We've got our  
6 comprehensive liability insurance like we were supposed to  
7 as a vacation renter -- vacation rental. We hire a lot of  
8 people for the maintenance and repair. We enforce the quiet  
9 times that we're required of 10 p.m. until 8 a.m. and no  
10 on-street parking. I don't know if you noticed the letter  
11 that should have been in your packet from Bob Babson across  
12 the street, who said the people staying there come into the  
13 garage, close the door. They never hear anything. They  
14 hardly even know anyone is there.

15           We've been told by people who stay at our vacation  
16 rental that many of them wouldn't even have come to the  
17 island if they didn't have a private home to stay in,  
18 because they don't like staying in hotels. TVR's, of  
19 course, by necessity have to be kept in excellent repair, so  
20 it improves the appearance of the neighborhood. And also,  
21 having my home as a vacation rental allows me to come here  
22 sometime.

23           I plan on retiring here, but I'm not able to do  
24 that yet. So, I really would appreciate approval of this  
25 permit. Thank you.

1 CHAIRMAN HEDANI: Questions for the Applicant?

2 Mr. Hiranaga.

3 COMMISSIONER HIRANAGA: Hi.

4 MS. GILDRED: Hello.

5 COMMISSIONER HIRANAGA: Since the B&B ordinance  
6 has been adopted, why have you not applied for a B&B permit?

7 MS. GILDRED: My understanding is because I don't  
8 live on the property myself, it can't be a B&B. I wish  
9 there was a TVR ordinance. I would really encourage that to  
10 go forward.

11 COMMISSIONER HIRANAGA: Thank you.

12 CHAIRMAN HEDANI: Mr. Tagorda.

13 COMMISSIONER TAGORDA: Thank you, Mr. Chair.  
14 Point of inquiry, Mr. Chairman. I believe this thing, that  
15 we have now Kathleen Gildred is an ordinance before that was  
16 approved in 2008, and it says in this ordinance that the  
17 conditional permit shall be nontransferable unless the  
18 Council approves the transfer by ordinance. It seems I  
19 heard that it was the name of Sean.

20 MS. GILDRED: Sean Brunwin.

21 COMMISSIONER TAGORDA: Had been replaced by Marc  
22 and Ane Takaha, and they've been working as a manager of the  
23 property for two years. Does this -- is there any  
24 conversation of this ordinance, or should they continue?

25 MS. GILDRED: May I speak to that, please?

1           COMMISSIONER TAGORDA:   Either way.

2           CHAIRMAN HEDANI:   I think, Joe, you should cover  
3 that.

4           MS. GILDRED:   I have something specific that he  
5 might not know, which is that when they first moved onto the  
6 property, my manager, my general manager took them to Mike  
7 Molina and introduced him to them.   And I even have a letter  
8 from Mike Molina thanking, you know, them for introducing  
9 Ane and Marc.   And we assumed at that time that we had done  
10 what we were supposed to do.   We didn't know we were  
11 supposed to do anything else.   It seemed that everything was  
12 complete.   Because he thanked us, and --

13           COMMISSIONER TAGORDA:   Can I have the opinion of  
14 our Corporation Counsel, Mr. Chairman, about this transfer?

15           CHAIRMAN HEDANI:   Sure.

16           MR. GIROUX:   I'm not sure about transfer -- are  
17 you saying -- are you asking me if a transfer occurred?

18           COMMISSIONER TAGORDA:   It looks like it occurred,  
19 because it's already Ane and Marc Takaha, and that is Sean  
20 Brunwin.

21           MR. GIROUX:   That's what we're here for today is  
22 that they're applying for an extension and which would amount  
23 to a transfer.   So, they're following -- I believe they're  
24 following the ordinance and the procedures in order to  
25 accommodate the wording of the ordinance.   They're going

1 through the process of getting a transfer.

2 COMMISSIONER TAGORDA: So, they're coming in to us  
3 for two years for our recommendation?

4 MR. GIROUX: Yeah. So, the process would be your  
5 recommendation goes to Council and Council --

6 CHAIRMAN HEDANI: Okay. Any additional questions  
7 for the Applicant? Commissioner Shi buya.

8 COMMISSIONER SHI BUYA: Yes. Just a point of  
9 information here. What's the difference between substantial  
10 compliance and full compliance?

11 CHAIRMAN HEDANI: The question you're referring  
12 to?

13 COMMISSIONER SHI BUYA: This was the letter that  
14 was written in 2000. And it was from the department --

15 CHAIRMAN HEDANI: What exhibit is this?

16 COMMISSIONER SHI BUYA: That's Exhibit 4, Page 2.  
17 Let's see, Page 2 of an attachment. Oh, the ordinance.  
18 Exhibit 5. I stand corrected. Exhibit 5, Page 2,  
19 paragraphs 5 and 6. This is part of the ordinance here.  
20 That property will be developed in substantial compliance  
21 with the representations made to Maui County Council in  
22 obtaining the conditional permit. And the other one is that  
23 full compliance with the conditions of the Land Use  
24 Commission Special Use Permit shall be rendered. I  
25 understand full compliance. What is substantial compliance?

1 CHAIRMAN HEDANI: Almost full.

2 COMMISSIONER SHIBUYA: Almost full. Fifty-one  
3 percent substantial.

4 MR. GIROUX: I think that the use of substantial,  
5 we've been using that in our SMA and in other applications,  
6 because the Planning Department has gotten itself in  
7 situations where somebody says, you know, I'm going to do a  
8 blue roof, and then I'm going to plant these, you know, mock  
9 orange trees. And it just so happens that really might not  
10 be appropriate for the area or, you know, maybe a --  
11 something outside of the scope of what the Applicant at the  
12 time knew that they could or couldn't do, you know, with the  
13 CC and R's or whatever.

14 And so, what they would do is they would come to  
15 the department and say we know we said that we would do this  
16 color and this type of tree, but this is our situation. And  
17 then the department would make an analysis and say, well,  
18 that doesn't seem to be a major problem. And then they  
19 would proceed to okay, you know, that minor change, what  
20 they perceived as a minor change. So, when we say  
21 substantial, we're not looking at floor area or height or  
22 things like that.

23 We're saying, you know, minor things, minor, you  
24 know, adjustments that may not have been foreseen to need to  
25 happen. The Applicant would be able to go to the department

1 and administratively be able to deal with it without going  
2 through a whole ordinance to change one thing they said they  
3 were going to attempt to do or said they were going to try  
4 to do it.

5 CHAIRMAN HEDANI: Mr. Shibuya.

6 COMMISSIONER SHIBUYA: In other words, full  
7 compliance being literal and specific and full compliance;  
8 whereas, the substantial compliance would be something like  
9 a tofu description of a cube and could squish it this way  
10 and squish it that way, but yet, the spirit and intent would  
11 be complied with?

12 MR. GIROUX: Right. Minor deviation would be a  
13 good way to look at that.

14 COMMISSIONER SHIBUYA: Thank you.

15 CHAIRMAN HEDANI: Mr. Shibuya, that's the first  
16 time I've heard substantial compliance related to tofu. Any  
17 additional questions? Mr. Hiranaga.

18 COMMISSIONER HIRANAGA: Yes. Ms. Gildred, based  
19 upon the staff report provided to me, I -- and with the  
20 adoption of the B&B ordinance by the Council, I don't see a  
21 reason why you should be granted a Conditional Use Permit  
22 for a TVR in a rural area. There are avenues now to operate  
23 short-term accommodations, which is the B&B permit.

24 I know you have a challenge because of the  
25 ownership structure you have for the property. But we've

1 had other applicants who have come in and given their  
2 on-site manager a one percent interest in the property, and  
3 they were granted a B&B permit. So, unless you can provide  
4 me additional information that's not in this packet, I don't  
5 see the justification for an extension of a transient  
6 vacation rental Conditional Use Permit. I may be missing  
7 something.

8 CHAIRMAN HEDANI: Do you have any comment on that?

9 MS. GILDRED: I'm not quite sure what to say. I  
10 know that there -- there hasn't been any problem with the  
11 vacation rental. We haven't had any neighbor complaints.  
12 We have, you know, a letter from a neighbor, you know,  
13 saying that there haven't been any problems. You know, I  
14 gave the different things, the ways that it's benefitted the  
15 island having us as a transient vacation rental. And  
16 because I don't live there, it's not possible for it to be a  
17 B&B.

18 This is why I would recommend that there be an  
19 ordinance for the transient vacation rentals so that they  
20 don't have to go through this very lengthy process.

21 CHAIRMAN HEDANI: Mr. Hiranaga.

22 COMMISSIONER HIRANAGA: You realize that under the  
23 proposed transient vacation rental ordinance, it would not  
24 be permitted in the Maui Meadows area because it's not part  
25 of a resort area? It's a rural area. So, even if a TVR

1 ordinance was passed, you wouldn't, as it's being proposed,  
2 you would not be in compliance. So, you would still need a  
3 CUP.

4 MS. GILDRED: Yeah, okay.

5 CHAIRMAN HEDANI: Any additional questions?  
6 Director.

7 DIRECTOR HUNT: Just to respond to the last issue,  
8 the County Council I believe has now approved 15 TVR's in  
9 our County. I believe -- I'm going off the top of my head,  
10 but I believe eleven of those had either an owner or manager  
11 on site or adjacent to the property. There's been four  
12 where the owner or manager was not on site or adjacent.

13 So, there is precedent within our community. The  
14 Council has allowed TVR's where the owner does not live on  
15 the site. The idea of providing a one percent ownership to  
16 the on-site manager, the department actually has some  
17 concerns with that approach. We think it's -- we think it  
18 doesn't comply with the spirit of the B&B law, and the B&B  
19 law was for the owner to live on site.

20 And if the owner lives on site, then there's an  
21 abbreviated process. In this case, the owners don't live on  
22 site. And so, to insincerely make it a B&B and give them an  
23 abbreviated process, the department actually thinks this is  
24 a better way to go for this specific situation. If it's a  
25 TVR, let's call it a TVR. The Council has approved 15

1 TVR's, even with an owner or manager on site or adjacent,  
2 so this is not unprecedented.

3           So, that's the department's analysis. Again, the  
4 intent of most TVR's, except for those four -- most TVR's  
5 have an owner or manager on site or adjacent. In this case,  
6 the proposal is to have a manager on site. And so, it is  
7 similar to a B&B in that regard. When we went through the  
8 B&B ordinance, that was one of the concerns we heard from  
9 our community loud and clear was that they prefer to have an  
10 owner or manager on the site, so if there's a problem, you  
11 can just go up and knock on the door and not have to call  
12 somebody and have them drive in or whatever.

13           In terms of the TVR bills that are up at Council,  
14 those are just draft bills. They would, if passed as they  
15 are now, would not allow TVR's in this type of situation,  
16 but those are drafts. A lot of our bills are drafts. As a  
17 starting point for discussion -- the B&B bills were sent up  
18 as a starting point for discussions, and they were modified  
19 somewhat. And so, what we send up there isn't always what  
20 they adopt verbatim.

21           CHAIRMAN HEDANI: Jeff, in this particular case,  
22 if the ordinance is passed in the current draft form and  
23 they're outside of the boundaries, would the existing  
24 approval be grandfathered in until it expired?

25           DIRECTOR HUNT: I believe if they had an existing

1 permit, we would try and accommodate that. And again, those  
2 bills at the Council are a starting point. They were  
3 drafted back in 2007. The atmosphere was rather charged at  
4 that time. I think we would consider those bills a starting  
5 point. And the department is open to revisions and  
6 modifications of those bills, so that whatever the Council  
7 is comfortable with eventually adopting. We shouldn't  
8 assume that what we send up to Council is going to be  
9 adopted.

10 CHAIRMAN HEDANI: Additional discussion,  
11 questions? Mr. Marfdin.

12 COMMISSIONER MARFDIN: My questions are for Joe, I  
13 think, because they're more technical in nature.

14 CHAIRMAN HEDANI: Thank you.

15 COMMISSIONER MARFDIN: Joe, is there a cesspool on  
16 this property?

17 MR. PRUTCH: I had that somewhere in here, I'm  
18 sorry.

19 CHAIRMAN HEDANI: Well, you said there was  
20 supposed to be a cesspool information card, and then you  
21 said this is submitted, so the condition is no longer  
22 necessary. So, I guess it's on Page 5.

23 MR. PRUTCH: Okay. So, I did not include the  
24 cesspool information card with the exhibits, I don't  
25 believe.

1 Do you have information on your cesspool?

2 MS. GILDRED: I know that I have a letter in 2007  
3 from EPA that we are in compliance with their requirements.

4 MR. PRUTCH: Okay. Sorry, I did not include this.  
5 She's got a letter here from August 3rd, 2007, from the  
6 United States EPA. Thank you for providing the required  
7 closure information for the above-referenced property.  
8 Based on information submitted, the cesspool has been closed  
9 or converted in accordance with federal regulations and  
10 state guidelines.

11 COMMISSIONER MARFDIN: So, it no longer has a  
12 cesspool, it's some sort of septic system?

13 MR. PRUTCH: Yes.

14 COMMISSIONER MARFDIN: Okay.

15 COMMISSIONER HEDANI: Mr. Shi buya.

16 COMMISSIONER SHIBUYA: I'm glad to hear that in  
17 confirmation, because I had my question on cesspools on  
18 this. And that would be in line with substantial  
19 compliance, and it's now changed to Jello without gelatin.  
20 And the definition, too, in terms of TVR's and bed and  
21 breakfasts, you have a problem here in terms of where the  
22 owner is located. And I have a problem. I have no problem  
23 with B&B's in rural areas. I do have a problem in  
24 agricultural areas.

25 I do have this question, and that's where you have

1 gelatin with -- in the Jello, or Jello without gelatin. And  
2 it comes really squishy at this point for me. And I would  
3 like to have the TVR's really located in the zoning areas  
4 with the hotels. And in the rural areas, put the B&B's  
5 there, so that's where I stand.

6 CHAIRMAN HEDANI: Additional questions?

7 Mr. Marfdin.

8 COMMISSIONER MARFDIN: Joe, on Page 6 of your  
9 first green sheet. You say testimony as of March 8th, 2010,  
10 the Planning Department has received no letters or phone  
11 calls in opposition. Was there notification?

12 MR. PRUTCH: No, there is no notification for a  
13 extension if there's been no changes to the proposed use or  
14 no changes to the existing use.

15 COMMISSIONER MARFDIN: In my mind, that means the  
16 statement there's no letters or phone calls is kind of  
17 meaningless if nobody has been notified.

18 MR. PRUTCH: That's true. I see your point now.

19 COMMISSIONER MARFDIN: Kind of my tint on that.

20 MR. PRUTCH: That makes sense.

21 COMMISSIONER MARFDIN: I think she wants to say  
22 something.

23 MS. GILDRED: But there also haven't been any --

24 CHAIRMAN HEDANI: Identify yourself for our  
25 transcript.

1 MS. GILDRED: Kathleen Gildred, owner. There also  
2 haven't been any neighbor complaints that we have received.

3 COMMISSIONER MARFDIN: That may or may not mean  
4 there is unhappiness among neighbors. If there was no  
5 formal notification, things can come up. They might not  
6 want to go to the full extent of making a formal complaint,  
7 but they might not be happy with it either. We just don't  
8 know because they weren't notified.

9 MS. GILDRED: I know we're on good relations with  
10 our neighbors. I talked to Bob about getting a letter. Jay  
11 next door had moved. The other side is an empty lot. The  
12 guy on the other side of that died. There aren't a lot of  
13 neighbors that would be impacted.

14 CHAIRMAN HEDANI: Mr. Marfdin.

15 COMMISSIONER MARFDIN: Back to Joe. It's kind of  
16 complex, but on Page 3, under background information, would  
17 you kind of run me through this? Well, let me see what I  
18 think went on. And correct me, because I've probably got it  
19 wrong. September 2000, we approved a Special Use Permit?

20 MR. PRUTCH: Yes.

21 COMMISSIONER MARFDIN: The Land Use Commission was  
22 approved, was valid until September 2002?

23 MR. PRUTCH: The SUP permit was valid until 2002,  
24 yes.

25 COMMISSIONER MARFDIN: What happened between 2002

1 and 2008?

2 MR. PRUTCH: The item was up at Council waiting to  
3 be heard. And probably, at that time, I wasn't here. I  
4 assume that was the time when TVR's were -- didn't know what  
5 to do with them. Everything was sitting in abeyance. So,  
6 between 2000 when you guys approved it and you recommended  
7 approval of it to the Council for the conditional permit,  
8 it --

9 COMMISSIONER MARFDIN: It just sat there in limbo  
10 for six years?

11 MR. PRUTCH: It was from 2000 to 2008 until the  
12 Council picked it up and approved it.

13 COMMISSIONER MARFDIN: And she was, of course,  
14 able to operate during that time period?

15 MR. PRUTCH: Yes.

16 COMMISSIONER MARFDIN: Thank you. I just wanted  
17 to know the situation. Thank you.

18 CHAIRMAN HEDANI: Wheels of government grind slow.  
19 Mr. Shibuva.

20 COMMISSIONER SHIBUYA: I would like to ask Public  
21 Works if they've taken a look in terms of the capacities to  
22 provide infrastructure such as roadways, are they up to  
23 standards where it can handle the capacity of this TVR?

24 Also the water, I believe there's a five-eighth  
25 inch line. Would that be sufficient to support as well as

1 the hydrant system located close by and/or other utilities  
2 that support this for public safety as well as convenience  
3 of the customers?

4 CHAIRMAN HEDANI: Mike.

5 MR. MIYAMOTO: Thank you, Mr. Chair. I think the  
6 only question I can really respond to is relative to roadway  
7 capacity. As other projects are doing roadway improvements  
8 for the access to the Maui Meadows subdivision to Piilani  
9 Highway, I think the roadways are far -- have far more  
10 capacity than is necessary that this proposed development  
11 would place upon it. I can't speak to water. I know  
12 drainage in this area is a concern, but we're reevaluating  
13 that. We're working with Corps to come up with a plan to  
14 handle drainage in this area.

15 CHAIRMAN HEDANI: Additional questions for staff?  
16 Mr. Hiranaga.

17 COMMISSIONER HIRANAGA: I just wanted  
18 clarification from staff that having full-time property  
19 manager on site does not qualify you for a B&B permit?

20 MR. PRUTCH: Not unless they're part ownership,  
21 like you had mentioned. We have seen in the past where  
22 somebody gives ownership, a one percent piece to the  
23 property managers that live on site, when the actual owner  
24 of the property lives elsewhere. And then they're allowed  
25 to go forward with the bed and breakfast approval.

1           COMMISSIONER HIRANAGA: Maybe a more proper term  
2 is the partial owner lives off site and the other partial  
3 owner lives on site?

4           MR. PRUTCH: Yeah, but as Jeff mentioned, it does  
5 kind of seem let's just say not the spirit of the Bed and  
6 Breakfast Permit. It wasn't drafted to allow for this  
7 giving one percent ownership to a property manager when the  
8 Applicant lives off site.

9           COMMISSIONER HIRANAGA: Not to get into a debate,  
10 but my recollection with the deliberations by Council was  
11 there was a discussion about five percent minimum, ten  
12 percent minimum. And they decided not to put a minimum.  
13 So, if you're unhappy with the ordinance, you should have  
14 the ordinance amended. Until that's done, this is the  
15 ordinance.

16           CHAIRMAN HEDANI: Any additional discussion?  
17 Mr. Marfdin.

18           COMMISSIONER MARFDIN: Joe, I'll wait until you  
19 finish writing.

20           MR. PRUTCH: Yeah.

21           COMMISSIONER MARFDIN: On page -- Exhibit 5. Page  
22 2, Item 7. This was the ordinance, and it required quiet  
23 hours between 10 p.m. and 8 a.m. What do we use for B&B's?

24           MR. PRUTCH: I think it's either 8 or 9 p.m. It's  
25 not as late as 10, I don't think. I don't recall. Do you

1 remember, Jeff, the B&B ordinance, is it 9 p.m.?

2 DIRECTOR HUNT: Not off the top of my head. We  
3 could research that for you quickly.

4 COMMISSIONER MARFDIN: I would -- we looked for it  
5 in the ordinance and couldn't find it. But we have a policy  
6 on B&B quiet hours. I would just ask that that be a  
7 condition, so that it be consistent with whatever the B&B  
8 ordinance is on quiet hours.

9 MR. PRUTCH: Okay. That makes sense.

10 CHAIRMAN HEDANI: Any additional questions for  
11 staff? Mr. Marfdin.

12 We're going to go ahead and take our recess in a  
13 couple of minutes for our court reporter, but go ahead with  
14 your question.

15 COMMISSIONER MARFDIN: Back to your analysis on  
16 Page 8. It's a green page. I'm slightly ahead of  
17 ourselves, but you have a Condition 10 that you crossed out.

18 MR. PRUTCH: Yes.

19 COMMISSIONER MARFDIN: It says parking shall be  
20 provided on site. And I presume you're proposing to delete  
21 that because they already have parking.

22 MR. PRUTCH: Yes, I was, but --

23 COMMISSIONER MARFDIN: But I would not -- when we  
24 get to it, I would prefer not to delete it. I would prefer  
25 it said that parking shall continue to be provided on site,

1 that it can't get changed.

2 MR. PRUTCH: That's something we can discuss when  
3 we get to it. I think that makes sense as well.

4 COMMISSIONER MARFDIN: Thank you.

5 CHAIRMAN HEDANI: Any additional questions for  
6 staff? Okay. If not, before we go to public testimony, I  
7 would like to go ahead and take a recess for ten minutes for  
8 our court reporter and then reconvene at 2:40.

9 (Recess taken.)

10 CHAIRMAN HEDANI: Planning Commission is back in  
11 session. We would like to -- are there any further  
12 questions for staff? If not, we would like to go ahead and  
13 see if there's any public testimony on this item.

14 Are there any members of the public that would  
15 like to offer testimony on this agenda item? If so, please  
16 step to the microphone. Seeing none, public testimony is  
17 closed.

18 Commissioners, you want to hear the recommendation  
19 again or what? Joe.

20 MR. PRUTCH: You haven't heard the recommendation  
21 yet.

22 CHAIRMAN HEDANI: Okay, sorry.

23 MR. PRUTCH: I started.

24 CHAIRMAN HEDANI: It's been a long day. I just  
25 had water at lunch, I promise. Go ahead.

1 MR. PRUTCH: Okay. Recommendation. The Planning  
2 Department is requesting that the Maui Planning Commission  
3 approve the Applicant's request for a five-year time  
4 extension with the proposed amendments of the Land Use  
5 Commission Special Use Permit conditions below.

6 Now, I have requested some changes to the  
7 Commission, so -- I mean to the conditions. So, under Land  
8 Use Commission Special Use Permit Number 1, obviously I need  
9 to change the date from September 30th to March 31st, 2015.  
10 Condition Number 6, I'm requesting, instead of it saying the  
11 compliance report shall be reviewed and approved by the  
12 planning director prior to the establishment of the special  
13 use -- that doesn't make sense -- I'm saying the compliance  
14 report shall be submitted with amendment or time extension  
15 request for the next time she comes in.

16 Condition Number 10, as Marfdin had mentioned, I  
17 had taken that -- requested that be stricken, taken out.  
18 Because she does have the adequate parking on site, but I  
19 can see your point of leaving that in just to make sure she  
20 always had adequate parking on site. So, that's up to you,  
21 but right now, I'm proposing to strike that.

22 Condition Number 12, the completed cesspool  
23 information card, that's been done. The cesspool has been  
24 removed. It's no longer needed. And I have to explain  
25 Number 13. Provide access to the project site in compliance

1 with Public Law Americans With Disabilities Act. I put in  
2 my staff report and I put in the rules from the Americans  
3 with Disabilities Act Title 3 Technical Assistance Manual.

4 And the one thing I will say that came out of that  
5 is the one thing -- let's see. What it says is places of  
6 lodging require ADA requirements; however, except for  
7 owner-occupied establishments of renting fewer than six  
8 rooms. So, in this case, it makes sense that she would be  
9 exempt from, and all these B&B's would be. Now, I don't  
10 know where this condition came from back in 2000, because I  
11 have still not seen one B&B application come through with an  
12 ADA requirement or one TVR come through with ADA  
13 requirement, except for this one. So, I'm requesting that  
14 we strike that condition because of the rules I supplied  
15 that seem to show that owner-occupied establishments renting  
16 fewer than six rooms are exempt from the ADA requirements.

17 CHAIRMAN HEDANI: Except if it's not owner  
18 occupied.

19 MR. PRUTCH: It's -- I still see it -- well --

20 CHAIRMAN HEDANI: Is the Applicant in compliance  
21 with ADA?

22 MR. PRUTCH: No.

23 MS. GILDRED: It's not an issue.

24 MR. PRUTCH: I mean she didn't install any of the  
25 -- whatever ADA requirements there were because of this

1 stipulation that it was not necessary.

2 Did you want to respond at all to that?

3 MS. GILDRED: Do you have a copy of the e-mail I  
4 sent you from their web site?

5 MR. PRUTCH: This?

6 MS. GILDRED: Okay. Because basically -- okay.  
7 Basically, between the last time I was approved and now, I  
8 have -- before the last time I was approved, I spoke with  
9 four different people at the Department of Justice about ADA  
10 requirements. And every single one of them said the same  
11 thing. They said, okay, if you don't have centralized  
12 bookings, if you don't have six rooms or more that you rent  
13 separately. They gave me the whole long list of things.  
14 They said if you aren't any of those things, then you are  
15 not a hotel, and you don't need to meet ADA requirements.  
16 This does not apply to a private residence, which is what  
17 you're referring to.

18 And every one of the people I talked to told me  
19 the same thing. So, I passed that information on to Joe.  
20 And that I guess is what this says if you read through all  
21 the wording here.

22 MR. PRUTCH: And what you mentioned about the  
23 owner occupied, I mean the one thing I saw or what I see, it  
24 says except for owner-occupied establishments. It's still  
25 an owner-occupied establishment. I'm not sure.

1 CHAIRMAN HEDANI: Commissioner Hiranaga.

2 COMMISSIONER HIRANAGA: Just for clarification,  
3 this is a Conditional Use Permit for a transient vacation  
4 rental, because you seem to interchange B&B and TVR in your  
5 dialogue. So, I'm just wanting to make sure that this is a  
6 TVR application and not a B&B application?

7 MR. PRUTCH: Yes, definitely not a B&B  
8 application.

9 COMMISSIONER HIRANAGA: I just want to clarify  
10 that.

11 MR. PRUTCH: TVR, transient vacation.

12 CHAIRMAN HEDANI: Mr. Marfdin.

13 COMMISSIONER MARFDIN: Reading the same page you  
14 are, and it says place of lodging, except for owner-occupied  
15 establishments. Well, it's not an owner-occupied  
16 establishment. She lives somewhere else.

17 MR. PRUTCH: I still see it as an owner-occupied  
18 establishment. It's not a corporation that own it. It's  
19 not a large business that own it. It's not -- it's not  
20 Hilton Hotels that owns the establishment. I see it as an  
21 owner-occupied -- that's the way I see it, as an  
22 owner-occupied establishment.

23 COMMISSIONER MARFDIN: Could our Corp Counsel  
24 weigh in on this?

25 MR. PRUTCH: Wake him up.

1           COMMISSIONER MARFDIN: Or the director. The  
2 director seems eager to answer.

3           DIRECTOR HUNT: The department does not enforce  
4 the ADA law. There's a number of issues that are involved  
5 with it. It's a technical law. It's complex. I believe  
6 Public Works does the same thing in terms of their building  
7 permits. They don't enforce the ADA law. It's up to the  
8 individuals to seek enforcement through the courts. Similar  
9 to -- we wouldn't put a condition on this permit or other  
10 TVR's or B&B's about not discriminating against people in  
11 compliance with the Civil Rights Act or something like that.  
12 It's just that's a separate issue.

13           To the best of my knowledge, the 15 TVR's and the  
14 47 B&B's, none of them require compliance with ADA.

15           CHAIRMAN HEDANI: Mr. Marfdin.

16           COMMISSIONER MARFDIN: I can understand that, and  
17 I wouldn't want to single this one establishment out for  
18 special owner's requirements. And we do have in Condition 5  
19 the phrase that full compliance with all applicable  
20 government, full requirements shall be rendered. So, we'll  
21 let somebody else enforce it, but it's already there that  
22 she -- if she's subject to it, she's got to do it. If she's  
23 not subject to it, she doesn't. So, I don't think we need a  
24 special condition to deal with that one.

25           CHAIRMAN HEDANI: Will you continue with the rest

1 of the recommendations?

2 MR. PRUTCH: So, strike Condition Number 13.  
3 That's for the Land Use Commission Special Use Permit. Do  
4 you want me to just go ahead and go with the Conditional  
5 Permit, and you can do it all at once? Further, the  
6 Planning Department requests that the Maui Planning  
7 Commission recommend to County Council approval of the  
8 conditional permit extension request with the following  
9 amendments to their ordinance conditions.

10 Obviously, Condition Number 2, changing the date  
11 to March 31st rather than for a two-year period. And  
12 anywhere you see Sean Brunwin, striking his name and putting  
13 Marc and Ane Takaha. And that's about it on their  
14 conditions. It's pretty much every single one is just  
15 taking out Sean's name. In consideration of the foregoing,  
16 the Planning Department recommends the Maui Planning  
17 Commission authorize the director of Planning to transmit  
18 the findings of fact, conclusions of law, decision and order  
19 to the Maui County Council for appropriate action if you  
20 guys should approve the Special Use Permit and recommend  
21 approval of the conditions.

22 CHAIRMAN HEDANI: Commissioners, what's your  
23 pleasure? Mr. Starr.

24 COMMISSIONER STARR: Yes. I move that the  
25 Commission approve the transfer and extension to the State

1 Land Use Commission Special Use Permit and recommend  
2 approval for the conditional permit as recommended in its  
3 entirety by the department.

4 CHAIRMAN HEDANI: Moved by Commissioner Starr. Is  
5 there a second?

6 COMMISSIONER U'U: Second.

7 CHAIRMAN HEDANI: Seconded by Commissioner U'u.  
8 Discussion. Commissioner Starr.

9 COMMISSIONER STARR: Yes, you know, I do feel this  
10 is a proper procedure. Although it is very much like a B&B,  
11 it's slightly different. And so, the Special Use Permit and  
12 conditional permit kicks up a higher level of scrutiny, you  
13 know. That's why we're here with a time extension. It's  
14 before the Council. So, you know, I do definitely feel this  
15 is a better process than to try to squeak through a loophole  
16 in the B&B ordinance. And I just wish to thank the  
17 Applicant for doing it right and not trying to take  
18 advantage and also for the planner for doing a good job.

19 CHAIRMAN HEDANI: Mr. Marfdin.

20 COMMISSIONER MARFDIN: I move for an amendment to  
21 the motion. My amendment would be to restore Condition 10  
22 with slight two additional words. Conditional -- 10 would  
23 be that parking shall, and add the words "continue to".  
24 Then continue to be provided on site in accordance with  
25 Chapter 19.36, off-site parking and loading, Section

1 19.36.010(36). In other words, it's Item 10 with just the  
2 words "continue to" following the word "shall".

3 COMMISSIONER STARR: I'll second that.

4 CHAIRMAN HEDANI: Moved and seconded to amend by  
5 reinserting Item 10 with an amendment to the language  
6 "continue to". Moved by Commissioner Marfdin. Seconded by  
7 Commissioner Starr. Discussion. Mr. Starr.

8 COMMISSIONER STARR: Yes, just want to ask the  
9 planner, is this problematic in any way?

10 MR. PRUTCH: No. No, no, no, no problem.

11 CHAIRMAN HEDANI: Any additional discussion?

12 COMMISSIONER HIRANAGA: On the amendment?

13 CHAIRMAN HEDANI: On the amendment.

14 MR. PRUTCH: One more thing Marfdin may want to  
15 add or somebody might want to add. You mentioned in  
16 Condition Number 7 that the quiet times be --

17 COMMISSIONER MARFDIN: We'll do that later.

18 CHAIRMAN HEDANI: Any further discussion on the  
19 amendment? The amendment is the reinsertion of Item 10  
20 reworded to include the words "continue to". All those in  
21 favor, signify by saying aye.

22 Opposed, nay. Carried. Mr. Marfdin.

23 COMMISSIONER MARFDIN: I move the -- I move to  
24 amend by adding the section that we used for the B&B House  
25 Rules into this as a condition. And the B&B House Rules

1 I've been told has about three items, one of which is quiet  
2 hours between 9 p.m. and 8 a.m.

3 CHAIRMAN HEDANI: The motion is to add B&B House  
4 Rules including quiet hours. Is there a second?

5 COMMISSIONER SHI BUYA: Second.

6 CHAIRMAN HEDANI: Motion by Commissioner Marfdin.  
7 Seconded by Commissioner Shi buya. Discussion. Are you  
8 including all of the House Rules for B&B's?

9 COMMISSIONER MARFDIN: All of the B&B House Rules  
10 that -- that we applied -- we have a section about what the  
11 House Rules are for B&B's. I want the identical House Rules  
12 for this operation.

13 MR. PRUTCH: Thank you.

14 CHAIRMAN HEDANI: Do we have a copy of the House  
15 Rules for B&B's, so we can distribute it?

16 MR. PRUTCH: None of us seem to have it right here  
17 right now. But I believe there's three different criteria,  
18 one to do with time, and two other criteria. I can't recall  
19 what they are right now.

20 CHAIRMAN HEDANI: Any other additional discussion?  
21 Ready for the question?

22 MR. PRUTCH: Jeff probably has it.

23 DIRECTOR HUNT: According to the  
24 Atherton/Vandervelde B&B -- I would trust that Gina would  
25 copy these correctly -- there's three conditions. One is

1 quiet hours maintained from 9 p.m. to 8 a.m. Amplified  
2 sound audible beyond the property boundaries is prohibited.  
3 And, C, vehicles should be parked in designated on-site  
4 parking and not on the street overnight.

5 MR. PRUTCH: Thank you.

6 CHAIRMAN HEDANI: Okay. Any further discussion?

7 All those in favor, signify by saying aye.

8 Opposed, nay. Carried.

9 Any further discussion on the main motion as  
10 amended? Commissioner Hiranaga.

11 COMMISSIONER HIRANAGA: I'll be voting against the  
12 motion on the floor, and for these reasons. Number one,  
13 although not required, no notice was sent to neighboring  
14 properties within a 500 foot radius. Number two, with the  
15 adoption of the B&B ordinance, I personally believe that  
16 these types of transient vacation rentals operating under a  
17 Conditional Use Permit should be phased out and not be  
18 extended. I did have a third reason, but I kind of combined  
19 it, but let's just say two reasons.

20 We adopted a B&B ordinance for a reason, and if  
21 you're unable to comply with it, I personally don't see any  
22 justification in this presentation that would make this  
23 Applicant's situation any different from many other people.  
24 So, I mean why have an ordinance? I know there's a CUP  
25 process. But the CUP process permit is basically our

1 responsibility, and that's what she's asking for.

2 CHAIRMAN HEDANI: Any further discussion?

3 Mr. Marfdin.

4 COMMISSIONER MARFDIN: I'm going to be voting for  
5 this. I 100 percent concur request Mr. Hiranaga's statement  
6 about nonnotification. I think that was an error. But in  
7 my mind, it's not enough reason to hold this up. With  
8 regard to the B&B -- this one percent ownership to qualify  
9 as a B&B strikes me as much, much worse than using a Special  
10 Use Permit. But I do hope that the County Council will  
11 enact a specific TVR ordinance at some point in the near  
12 future.

13 CHAIRMAN HEDANI: Mr. Starr.

14 COMMISSIONER STARR: Yeah, I agree with  
15 Commissioner Marfdin, and I agree with one point that  
16 Commissioner Hiranaga made. And although it doesn't change  
17 my opinion in this matter, I do feel that it would be better  
18 if some mechanism for notification of surrounding property  
19 owners be made. Because that's really why we're here is to,  
20 you know, to hear what the neighbors have to say about it.  
21 And if they don't know we're hearing it, then, you know,  
22 they don't have that opportunity.

23 So, I would like to make a request to the director  
24 to look into that and come back to us at a future date with  
25 some possible mechanism that we can make sure that next

1 time, if there is a next time, that there would be better  
2 notice.

3 CHAIRMAN HEDANI: Ready for the discussion? Ready  
4 for the question? Motion on the floor is to approve as  
5 amended. All those in favor, please raise your hand.  
6 Opposed, same sign.

7 Abstention. One abstention. Motion is carried.  
8 Director.

9 DIRECTOR HUNT: The Commission's next item is  
10 communication item D(2), Mr. Clyde Muri shige of A&B Wailea  
11 LLC requesting a Step 3 Planned Development Approval for the  
12 proposed Wailea MF-10 Development --

13 COMMISSIONER HIRANAGA: May we have order, please?  
14 Please go outside if you're going to have discussion.

15 DIRECTOR HUNT: Mr. Clyde Muri shige of A&B Wailea  
16 LLC requesting a Step 3 Planned Development Approval for the  
17 proposed Wailea MF-10 Development consisting of ten  
18 single-family residential lots, 36 multi family units in four  
19 buildings, 64,000 square feet of commercial space and  
20 related improvement on approximately 13 acres of land at  
21 TMK: 2-1-8, Lot 121 in Wailea. The project file number is  
22 PD3 2010/1. And Danny Dias is the planner assigned to this.

23 MR. DIAS: Thanks, Jeff. Good afternoon, Chair  
24 Hedani, Members of the Commission. I'll keep this very  
25 brief. Basically, in a nutshell, that's what this project

1 involves. Wailea MF-10 has three components. I handed out  
2 a colored site plan to you folks about 15 minutes ago. On  
3 the mauka portion of the property, there are about ten  
4 single-family lots that are proposed to be constructed. On  
5 the makai portion of the property, there is four multi family  
6 buildings proposed for a total of 36 units.

7           And in between is a commercial component involving  
8 a total of 64,000 square feet of commercial space. With  
9 that, I wanted to just briefly go over Step 3, Planned  
10 Development Step 3 Approval for those that aren't very  
11 familiar with it. Basically, this project received full  
12 approval in this Commission on -- almost exactly a year ago,  
13 on March 24th, 2009. What was approved was Step 2 Approval  
14 and a Special Management Area Use Permit. It was during  
15 that phase that the Commission reviewed the merits of the  
16 project and placed conditions on it and so forth. What  
17 we're here for today is just approving actual plans that the  
18 Applicant is going to submit for building permit approval.

19           So, the department received those plans. We  
20 reviewed them in detail, and everything that was proposed  
21 when you folks reviewed it a year ago, it's exactly what  
22 they're going to build. It was just in greater detail. So,  
23 with that, that concludes what I wanted to say. I don't  
24 know if the Applicant wants to make a quick presentation.  
25 He's indicating that he -- he's available for questioning.

1 CHAIRMAN HEDANI: Any questions for staff?

2 Mr. Marfdin.

3 COMMISSIONER MARFDIN: In here, there is on Page 3  
4 of your analysis, top paragraph, it said pursuant to section  
5 blah, blah, blah, upon approval of the sketch, the owner  
6 shall proceed to prepare unified site building program,  
7 blah, blah, blah, building plan of each building and  
8 structure and the financing and timing program.

9 I don't see the financing and timing program in  
10 here. And that concerns me because of the number of time  
11 extensions for other projects that we've received over the  
12 last year or two. And I would be very interested in seeing  
13 the financing and timing program so that we're not faced two  
14 years from now with a time extension request.

15 MR. DIAS: Okay. If you look on Page 5, right  
16 above -- the paragraph right before where it says analysis,  
17 it gives an indication of what the Applicant is proposing to  
18 do. And I'll just read from it. The Applicant anticipates  
19 to commence construction during the first quarter of 2012.  
20 And it's estimated that the entire project will take 48  
21 months to complete.

22 So, they anticipate to complete in the last  
23 quarter of 2016. And the total project cost is currently  
24 estimated to be \$56 million.

25 COMMISSIONER MARFDIN: And that's considered to be

1 the financing and construction plan?

2 MR. DIAS: That's generally what we've accepted,  
3 because that can fluctuate. We haven't really asked them  
4 anything that's more detailed than that.

5 COMMISSIONER MARFDIN: So, we don't ask where  
6 they're going to get the 56 million from?

7 CHAIRMAN HEDANI: The Applicant is here if you  
8 want to ask him that.

9 MR. MURISHIGE: Mr. Chairman, Members of the  
10 Commission. Clyde Muri shige representing A&B Wai lea. The  
11 internal -- the financing will be internally financed  
12 through A&B.

13 COMMISSIONER MARFDIN: So, you're not going out  
14 for any external financing?

15 MR. MURISHIGE: No.

16 COMMISSIONER MARFDIN: So there should be no  
17 reason for a need for a time extension?

18 MR. MURISHIGE: I would not say that. And let me  
19 qualify that in the sense that, as an example, our -- we  
20 have asked, put in a request to have an extension on our  
21 MF-7 condominium project. And the reason for is that we  
22 have actually submitted our building permits almost 20  
23 months ago. And we have gone through most of the approvals,  
24 and we're still waiting on two agencies to approve the  
25 plans.

1           COMMISSIONER MARFDIN: Let me revise my statement.  
2 That means you won't be applying for a time extension due to  
3 lack of financing?

4           MR. MURISHIGE: Correct.

5           COMMISSIONER MARFDIN: That's sufficient for me.

6           CHAIRMAN HEDANI: Any additional questions? Okay.  
7 Mr. Shibuya.

8           COMMISSIONER SHIBUYA: This is for Mr. Muri shige.  
9 In this development here, we're talking about 36 multi family  
10 units, and we're expecting children to be part of these  
11 family units, are we not?

12           MR. MURISHIGE: We could. We could. We don't see  
13 a whole lot of that in the resort. We see more  
14 empty-nesters, but we could.

15           COMMISSIONER SHIBUYA: Sure. I understand. Is  
16 there a difficulty in terms of coming up with some school  
17 impact type of fee that you do it by child for a limit,  
18 let's say the first ten years to provide to the schools for  
19 operation and maintenance of their facilities where these  
20 children attend?

21           MR. MURISHIGE: Although not part of the PD  
22 review, I would be happy to address that. A number of years  
23 ago, we actually ended up paying a predevelopment education  
24 fee in the sum of several million dollars to construct  
25 Kamalii Elementary School. So, this particular parcel was

1 part of that contribution.

2 COMMISSIONER SHIBUYA: And not part of any high  
3 school, either Maui High School, Baldwin High School or  
4 Kihei High School?

5 MR. MURISHIGE: No. At that time, the DOE had  
6 focused on construction of Kamalii.

7 COMMISSIONER SHIBUYA: I was looking in terms of  
8 more general type of assessment that would be more  
9 responsive to the actual students. Thank you.

10 CHAIRMAN HEDANI: Any additional questions for the  
11 Applicant or staff? Seeing none, are there any members of  
12 the public that would like the offer testimony on this item?  
13 If so, please step to the microphone. Seeing none, public  
14 testimony is closed. Danny.

15 MR. DIAS: Pursuant to the foregoing, the Maui  
16 Planning Department recommends approval of the Step 3  
17 Planned Development application and recommends that the Maui  
18 Planning Commission adopt the Planning Department's report  
19 and recommendation prepared for the March 23rd, 2010 meeting  
20 as its findings of fact, conclusions of law and decision and  
21 order.

22 CHAIRMAN HEDANI: Commissioners. Commissioner  
23 Starr.

24 COMMISSIONER STARR: Yeah, I move to approve the  
25 Step 3 Planned Development Approval as recommended.

1 CHAIRMAN HEDANI: Is there a second?

2 COMMISSIONER U'U: Second.

3 CHAIRMAN HEDANI: Seconded by Commissioner U'u.  
4 Discussion. Commissioner Starr.

5 COMMISSIONER STARR: Yes, I was very strongly  
6 against this project when it came before us. I felt it was  
7 very sorely lacking in connectivity and would create a  
8 dangerous situation for people living there, especially if  
9 there were children not being a way to cross over -- cross  
10 the street or get down to the beaches or the shopping  
11 center. However, although I was against it, it did pass.

12 And I believe that this would be the wrong time to  
13 impose any new conditions or to be against it. For that  
14 reason, I'm supporting it, although I still have problems  
15 with it. But I feel it would be wrong to try to get  
16 anything to change at the Step 3.

17 CHAIRMAN HEDANI: Any additional discussion?  
18 Mr. Tagorda.

19 COMMISSIONER TAGORDA: Just a very brief question,  
20 Mr. Dias. Help me understand what was discussed on the Step  
21 1, Step 2 Planned Development when they got approval.

22 MR. DIAS: Okay. In Step 1, that was -- I'm not  
23 going to pretend I know exactly when that was, but I'm sure  
24 it was over ten years ago, probably more like 15 or 20 years  
25 ago. And during Step 1, the developer, which would be A&B

1 Wailea, they come in, and they give the department and the  
2 Commission a very brief idea of what they're planning on  
3 doing with the whole Wailea area.

4 At that point, anytime they come in for a project,  
5 it would be Step 2 approval. And that's when it comes  
6 before you. They show, you know, basically their site plans  
7 what they think they're going to do, and that's where it  
8 gets worked out and so forth. And like I said earlier, at  
9 Step 3, it's the actual plans that they're going to submit  
10 for building permits.

11 COMMISSIONER TAGORDA: Thanks.

12 MR. DIAS: You're welcome.

13 CHAIRMAN HEDANI: Any further discussion?  
14 Commissioner Shibusya.

15 COMMISSIONER SHIBUYA: I just want to make a  
16 comment. Many of these developments have impacts in terms  
17 of the children getting the proper type of education. And  
18 most of the problems arise when these facilities, whether  
19 it's public or private, have inadequate maintenance.  
20 Parents have to pay towards the child's education. And yet,  
21 they are willing to pay into these developments because they  
22 want a shelter.

23 The problem here comes in they want the other  
24 person to pay for their child's education or the maintenance  
25 of their schools. If we make a child impact assessment

1 based on their rental or based on their lease terms, this  
2 could be a possibility in terms of supporting our schools.

3 And I'm making a plea at this point that it could  
4 be to anyone, especially those schools that these children  
5 attend. And this was one suggestion that I'm hoping that  
6 would be providing an avenue of bootstrapping; in other  
7 words, pulling ourselves up, allowing our children to attend  
8 better facilities. And so, that's why I'm making this  
9 suggestion. Thank you.

10 CHAIRMAN HEDANI: Any further discussion? Motion  
11 on the floor is for approval as recommended. All those in  
12 favor, please signify by raising your hand.

13 Opposed, same sign. The motion is carried. Thank  
14 you.

15 DIRECTOR HUNT: The next item is D(3)  
16 Communications. The Planning Director requesting  
17 clarification of the Maui Planning Commission's February  
18 2008 request for additional information regarding the Final  
19 Environmental Assessment for the entitlements action for the  
20 Palaeua Beach Lot located at TMK's: 2-1-011, Lots 13, 14,  
21 15, 16, 17, 18, 19, 20, 21, 22 and 23 in Palaeua, Kihei.  
22 The file number is EA 2006/14 and Jeffrey Dack is the  
23 planner assigned to this. Essentially, the department is  
24 asking if the information that was requested in the past can  
25 be reduced or eliminated. Jeffrey Dack will go into the

1 details.

2 MR. DACK: Good afternoon. Although not part of  
3 your memo, I first wanted to at least briefly remind you of  
4 what the underlying project is for which the final EA was  
5 produced. This relates to eleven lots that are on Palaua  
6 Beach in Makena. Here is an aerial view. There's five lots  
7 on the north, if I remember right; two that are privately  
8 owned, two that are -- actually, there's six on the north  
9 that are privately owned. Two in the middle that have  
10 been -- were publically acquired a good long time ago; and  
11 then there are four additional parcels, or five -- my math  
12 is losing me at the moment -- on the south side that are  
13 still privately owned that are the subject of this  
14 consideration.

15 Here is another view that shows some of the  
16 development that's been approved, a subdivision on the mauka  
17 side of Makena Road. The -- there's a Palaua Cultural  
18 Reserve that is directly across the street from the parcels  
19 13 through 17, again, mauka of the subject lots. As you can  
20 see, a little bit more that there's been lotting and grading  
21 of the subdivision mauka. And then also the subdivision on  
22 the south side mauka, you can see there's actually some  
23 development now that has occurred, which is a little bit  
24 different than what was in the aerial slide a few moments  
25 ago. This is the lotting. That actually helps me count the

1 lots correctly. Again, five on the north, two in the  
2 middle, four on the south side, the two in the middle being  
3 publicly owned at the moment.

4 This is also in your exhibits showing the current  
5 and proposed zoning and community planned designations for  
6 all eleven parcels as well as what the proposals are.

7 Again, this is the actual -- the entitlements is certainly  
8 not before you now. Actually, the Environmental Assessment  
9 is really not before you now. But it's just simply for sake  
10 of orientation, particularly for folks who may not have been  
11 a part of the previous considerations of this, that the  
12 general subject, I wanted to reorient you.

13 The -- a little bit more on the -- the actual item  
14 that would be considered should the Final Environmental  
15 Assessment get approved sometime would be a proposed  
16 community plan amendment and change in zoning that would  
17 establish consistency between the intended uses of the  
18 property and which you can see on the next page as far as  
19 what their intents are and I guess what some of the  
20 objections are.

21 CHAIRMAN HEDANI: Jeff, could you pull the  
22 microphone a little bit closer?

23 MR. DACK: Sure, I'm sorry. Would maintain  
24 consistency or achieve consistency between the intended use  
25 of the property and the land uses identified in the

1 community plan and zoning. The current inconsistencies have  
2 led to litigation and appeals during recent special  
3 management area permitting processes. It actually goes back  
4 a good number of years. I shouldn't have used that term,  
5 pardon me.

6           The county has purchased two of the parcels as  
7 indicated. And there are several vacant parcels for  
8 development. In order to prevent future problems associated  
9 with the inconsistencies between the Kihei Community Plan  
10 Zoning, the planning director proposes to initiate land use  
11 amendments that would reflect the existing residential use  
12 of the developed properties and the existing use of the  
13 foregoing properties, for the remaining vacant parcels, the  
14 planning director proposes to change the community plan and  
15 zoning to residential uses. And this shows which are vacant  
16 and undeveloped, and this is the current and proposed  
17 entitlements.

18           Deputy Corporation Counsel Mimi Johnston wishes to  
19 briefly comment on the present and anticipated legal  
20 situation regarding some of these parcels relative to the  
21 proposed entitlement actions. And then I would come back  
22 and actually speak directly to the memo and item we're  
23 requesting on this afternoon's agenda.

24           MS. JOHNSTON: Good afternoon. Good afternoon,  
25 Deputy Corporation Counsel Mary Blaine Johnston appearing on

1 behalf of the director. Jeff asked me if I would come  
2 before you and give you an update on what has happened since  
3 the last time this Commission took this matter up, which was  
4 in February of 2008. And I think he has provided you with  
5 copies of the minutes both from that meeting and the meeting  
6 the previous year, which was in March of 2007, where the  
7 Commission also discussed the matter of the Palaua Beach  
8 Lots and the Environmental Assessment that the department  
9 was in the process of preparing.

10           At the last meeting in 2008, this Commission had  
11 made a request that the department gather further  
12 information in the form of a further archeological study,  
13 historical narrative and acquisition study. And Jeff will  
14 speak to that when he comes back. What I wanted to do is  
15 tell you what has happened in the meantime. In November of  
16 2007, owners of parcel 15, the Leones, filed a lawsuit  
17 against the County of Maui seeking inverse condemnation,  
18 claiming that the park use designation kept them from making  
19 any viable economic use of their property, requesting that  
20 they be awarded \$10 million for the purchase price for that  
21 parcel plus another \$50 million in punitive damages for  
22 alleged comments made about what the county could do with  
23 this property if they didn't go forward with buying it and  
24 didn't go forward with making the use designation change.

25           On behalf of the county, I filed a motion to

1 dismiss this lawsuit on the basis that it wasn't ripe to be  
2 presented to the Court. It's a legal argument for two  
3 reasons. One, they had taken appeal from Director Hunt's  
4 determination letter that their SMA assessment application  
5 could not be processed because of the inconsistency between  
6 the use of what they wanted to do, which would be single  
7 family or creating the house on there, and the park use  
8 designation. And second, we moved that they had not  
9 received a final decision from the final decisionmaker on  
10 how this property could be used, with the final  
11 decisionmaker being the County Council, who can change the  
12 use designation of the park -- the community plan by way of  
13 an amendment.

14 This suit appeared in front of Judge Cardoza. The  
15 attorney for the Leones claimed he needed discovery, which  
16 we went through about eight months of very torturous  
17 depositions, producing thousands and thousands of pages of  
18 documents, which they copied. And in the end, when I went  
19 back to court, the judge did grant the county's motion to  
20 dismiss and found that, in fact, the Leones first had to  
21 come to the Commission and appeal the director's decision.  
22 And they've also taken the position that they do not have to  
23 seek a community plan amendment because it's a legislative  
24 change, and they don't have to go to legislation to change  
25 the use of their property; that is, they appealed the

1 decision. That appeal has been briefed out. It's pending.  
2 In the meantime, the Larsons, the adjoining property owners,  
3 who own Lots 16 and 17, represented by the same attorney in  
4 June of 2008 filed virtually an identical complaint with the  
5 Circuit Court. This one was in front of Judge Raffetto. We  
6 filed basically the same motion. And Judge Raffetto granted  
7 that motion to dismiss simply on the point that they had  
8 appealed the decision to the Planning Commission.

9 He didn't rule on the issue of whether or not they  
10 needed to get a change in the community plan. Judge Cardoza  
11 did. As we speak, I'm in the process of doing the answering  
12 brief in that, and that will probably -- the briefing will  
13 take several months before the briefing is completed. At  
14 that point in time, I don't know what will happen. Either  
15 the intermediate court may set it for oral argument. They  
16 may not set it for oral argument. The Supreme Court may  
17 take it. I have no idea. One of the things that I wanted  
18 to point out to you that they have presented in their  
19 complaint and that they argue in their briefs has to do with  
20 you guys.

21 It was presented to them that the department  
22 starting in 2006 had taken on the job of getting a community  
23 plan amendment. Their comment to that is that it's never  
24 going to happen, that the commissioners are not going to let  
25 that happen. They're going to hold onto this property.

1 They're not going to go forward with making any  
2 recommendations to the Council to change the community plan.  
3 As of the date of the filing several months ago, referring  
4 to your request in 2008 for further studies, this is from  
5 the opening brief in the Larson case, the one I'm working on  
6 and replying to. It says, to date, the county has not  
7 undertaken the necessary studies. Director Hunt admitted it  
8 was not until October 2008, nine months after the vote to  
9 defer to the Planning Department even submitted an  
10 application for funds.

11           Even then, the department applied for only a  
12 portion of the funds. The record of the Court below  
13 contains not a scintilla of evidence that the county is  
14 going to move forward with funding for an archeological  
15 study or any other action and on and on and on. It's sort  
16 of irrelevant to the appeal, but this is the representation  
17 that's being made. And I will say that this is not even  
18 true, because it was presented to the Court that, in fact,  
19 the department had proceeded to get funds allocated to  
20 proceed forward with doing the studies that you  
21 Commissioners asked to be done.

22           But -- and in talking with Jeff, Jeff got assigned  
23 to take this on, much at my pushing of saying, you know, if  
24 we go down the line and even if the Supreme Court says, yes,  
25 people, you should have appealed to the Commission, they

1 just go back to square one. They write another letter, same  
2 director who says, no, can't process. Then they come to  
3 you. I don't know what you guys would decide. And then we  
4 could take another appeal. But at some point in time, the  
5 question has got to be answered whether the county is going  
6 to change the designation so they can build or whether it's  
7 not going to change it.

8           If the designation is ultimately not changed,  
9 let's say the Council says, no, we're not going to change  
10 it, we want a park, everybody wants a park, they're going to  
11 have to be selling a lot of sweet bread to raise money  
12 because it's going to be very, very expensive. They value  
13 the lots, the three lots that are in litigation at 10  
14 million a piece. I know Mr. Altman, who is represented by  
15 Mr. Luna, who is here, paid I think 7 or 8 million for his  
16 lot. The Leones and the Larsons in 2000 paid about a little  
17 over 2 million for each of their lots. So, the price tag is  
18 going up. The revenues of the county are going down.

19           But at some point, there's a moment of truth. And  
20 it's really up to you guys to decide the scheduling on that  
21 moment of truth. The appeal is going to delay things  
22 probably easily for another year or so. But something needs  
23 to happen. If you are serious about wanting to acquire it,  
24 you should take that direction. If you don't feel you can  
25 for whatever reason, then you need to address that. But I

1 would just urge you when Jeff presents to you his proposals,  
2 that you seriously consider them. Because we're -- you  
3 know, we're in an economic crunch. And whatever, we all  
4 would love to have that beautiful beach to go as members of  
5 the public. But, you know, we've got to pay for it.

6 So, if you have any questions about the  
7 litigation, I would be happy to answer them or the status of  
8 the litigation of the appeals.

9 CHAIRMAN HEDANI: Questions from the Commission.  
10 Commissioner Shibuska.

11 COMMISSIONER SHIBUYA: I fail to see the value of  
12 the property being so high, especially when we have sea  
13 level rise, and it will be inundated. Is that a  
14 consideration?

15 MS. JOHNSTON: Well, if we get to the point where  
16 the designation remains park, and it's clear that's what's  
17 going to happen. Let's say the Council says, no, we're not  
18 going to amend it, then there's a trial on what the value of  
19 that property is. And they can ask for 10 million. That's  
20 what they picked out of the air. But yes, they would  
21 certainly, the county would certainly get an appraiser to  
22 come back with whatever an appropriate appraisal would be at  
23 that point in time. So, as I say, it could be another year  
24 or two years. So who knows where it's going to go from  
25 there.

1 CHAIRMAN HEDANI: Commissioner Starr.

2 COMMISSIONER STARR: Yeah. I want to ask a  
3 hypothetical question. And if I were to go to a  
4 municipality where there are hundreds or thousands of lots  
5 that have inconsistency between them, zoning and community  
6 plan, and if I were to purchase in that place a -- you know,  
7 and it didn't have Hawaii law there -- a parcel that was  
8 inconsistent, and knowingly purchase it with inconsistent,  
9 would I, you know, have the ability to feel that something  
10 is being taken, that it's a taking, even after I've  
11 purchased it with -- and isn't the onus on me to change, to  
12 initiate a change in the community plan and not on the  
13 county that that would be in?

14 MS. JOHNSTON: Okay. All right. That's two  
15 questions. So, okay, first of all, oddly enough and  
16 researching this, when the Leones and the Larsons bought  
17 their properties in 2000, of course, it was already zoned.  
18 It was zoned by the, I mean already community plan  
19 designated by the 1998 Kihei Community Plan. Oddly enough,  
20 the law says it doesn't make any difference. Even if they  
21 walked in there and they knew they had this problem and they  
22 knew they were going to have to resolve it; and, in fact,  
23 they did on their own up until about 2004 take steps to go  
24 forward with the community plan amendment, that at some  
25 point in time, they just quit. And then a couple of years

1 later, Director Foley said I can see a problem coming.  
2 They're not going to do it, and they refuse to do it. And  
3 one of the issues before the court is do they have to, as a  
4 matter of law, change it this way.

5 The administrative process is one thing, but do  
6 you have to actually go and get a law to change the law?  
7 And they're claiming we don't have to change the law, that's  
8 not what we have to do. That is an issue that's up for  
9 argument. They have a couple of cases that are really  
10 distinguishable from this situation that they are waving  
11 around. I can't tell you how that appeal is going to come  
12 out. It's a very significant and serious determination,  
13 because basically, if you buy property that doesn't conform  
14 in some way, and you say I don't have to do anything, so now  
15 I'm going to sell it back to you, County, I think that's a  
16 real -- very real issue, and that's one that the Court will  
17 have to decide.

18 Now, I'm sorry, your second question was that --  
19 sorry, what was the second part of your question?

20 COMMISSIONER STARR: Whose responsibility is it?

21 MS. JOHNSTON: Okay. We argue, the county argues  
22 it's their responsibility, I mean you have the  
23 responsibility of going forward. They're saying, no, we  
24 don't. We've done everything we did. We wrote a letter to  
25 the director. He turned us down. That's the final decision

1 on how we can use our property. And I won't go into their  
2 argument on why they feel they don't have to appeal. They  
3 say that your appeal, the section of your rules that  
4 provides for appeal doesn't apply to processing SMA  
5 assessment applications. It's a very convoluted argument.  
6 I won't go into it.

7           And I think they definitely will probably not  
8 prevail on that. But our position is, yeah, you have the  
9 obligation, but they're not doing it. And the department,  
10 there are other lots besides -- you've got two lots with  
11 houses, the Lambert and Sweeney, they're park designated.  
12 They've got houses on them, and Warmenhoven. So, there's a  
13 lot of other cleanup that needs to be done along with this.  
14 And we just figure if the department carries it forward and  
15 takes a spearhead, in the long run, it's going to save a lot  
16 of time and money for the county having to go through the  
17 litigation process over and over. It's a much more  
18 efficient way to do it and one in which you can get the  
19 public input that you need.

20           CHAIRMAN HEDANI: Mr. Hiranaga.

21           COMMISSIONER HIRANAGA: What is the status of the  
22 existing dwellings? Is it existing nonconforming?

23           MS. JOHNSTON: Well, I don't know. They're just  
24 sitting there built on park-designated property. Because  
25 the previous Commission, there was an appeal. A Hearings

1 Officer was appointed by the Commission, Judge McConnell,  
2 who recommended against it, saying, no, they can't build.  
3 And the Commission overturned that and just said, no, they  
4 can. So, it's sort of an odd situation.

5 I mean they're sitting there. Whether or not that  
6 would impact the value of those properties in the future  
7 because even though they got their houses, they still don't  
8 have their correct -- they're in conflict with the community  
9 plan. I don't know. It's a very odd situation. And I  
10 think part of the purpose, one of the things the department  
11 wanted to do is clean it up, clean up all of the lots.

12 CHAIRMAN HEDANI: Mr. Hiranaga.

13 COMMISSIONER HIRANAGA: Do you or staff know if  
14 those existing dwellings are occupied?

15 MS. JOHNSTON: I'm pretty sure they are, yes.  
16 They're about 5,000 square-foot homes. There was -- I don't  
17 know. I don't think it was one of them, but there was a  
18 property sold. But I'm not sure whose it was. There are a  
19 couple of lots in here that are correctly community plan  
20 designated as part of the original eleven lots.

21 CHAIRMAN HEDANI: Do you have any recommendation  
22 to the Commission?

23 MS. JOHNSTON: My recommendation would be is  
24 Mr. Dack is going to talk about the requirements, the things  
25 that you asked for the last time. And he is -- he has done

1 some further study on -- you asked for the archeological  
2 survey. And, in fact, they were done by the owners of the  
3 two -- for the two properties that the Larsons own, and  
4 Altman, who is in connection with what they were doing.

5 My understanding, and he can correct me if I'm  
6 wrong, that the Leones had the surveys done, but it has not  
7 yet been finalized. So, at least for those four lots, there  
8 are existing archeological studies. I think something has  
9 to be done as far as the two county lots. There will have  
10 to be something done. As far as historical narrative, I  
11 think he's better able to address that than me. And as far  
12 as spending money to see if you can get -- if you can  
13 acquire the lots, come up with the money to acquire the  
14 lots, that's up to you.

15 I think that's -- now in 2010 is a very different  
16 place we were in fiscally in 2008. So, maybe that's just  
17 something you need to weigh.

18 CHAIRMAN HEDANI: Mr. Marfdin.

19 COMMISSIONER MARFDIN: I was looking at the dates  
20 of this. And it was my third meeting that I was at, and I  
21 left at 2:00. So, I wasn't around for the final vote. And  
22 I don't know whether this question is going to be relevant  
23 or not, but do you know what the real property tax  
24 assessment on these lots is? I'm presuming it's not 10  
25 million?

1 MS. JOHNSTON: No. I don't know. I have --  
2 somewhere I have that. I don't have that on me as we speak,  
3 but I could find that out, yeah.

4 COMMISSIONER MARFDIN: It's considerably less?

5 MS. JOHNSTON: I would think so. For some reason,  
6 4 million rings a bell. Because I did have that in front of  
7 me at one point in time, but I can't say for sure. Don't  
8 hold me to that.

9 COMMISSIONER MARFDIN: Thank you.

10 CHAIRMAN HEDANI: Any additional questions for  
11 Mary Jane? Commissioner Hiranaga.

12 COMMISSIONER HIRANAGA: I'm not sure if you have  
13 the answer, but on the lime kiln litigation, how much did  
14 the county spend on legal fees, and what was the outcome?

15 MS. JOHNSTON: I -- Benny D'Enbeau handled that  
16 case. That was before my time, so I can't really give you  
17 an answer. But I'll find that out for you if you would like  
18 to know it.

19 COMMISSIONER HIRANAGA: Was it a million, 2  
20 million, 3 million?

21 MS. JOHNSTON: I don't know what the legal fees  
22 were. We would have to go back and check that out, yeah. I  
23 know they had to pay some legal fees, and I don't know what  
24 the total amount was on that one. That was -- hopefully  
25 this won't turn into that kind of a situation. That

1 wouldn't be too good.

2 CHAIRMAN HEDANI: Mr. Shibuya.

3 COMMISSIONER SHIBUYA: It brings back the Mala  
4 Wharf situation as well as the Montana Beach situation.

5 COMMISSIONER HIRANAGA: That's the lime kiln.

6 MS. JOHNSTON: That's the lime kiln. Yeah, it  
7 does. And, you know, we try to avoid that, if at all  
8 possible.

9 CHAIRMAN HEDANI: Thank you very much. Any  
10 further questions for Mary? Thank you. Jeff.

11 MR. DACK: You asked what Corp Counsel's  
12 recommendation was on that. I must admit in prior  
13 conversations, she told me that, Mimi told me that she  
14 mainly hoped that the county would be able to proceed ahead  
15 as quickly as we reasonably could, acting today, trying to  
16 move ahead, so that hopefully by the time and before these  
17 matters under litigation would make their way to any final  
18 decision that could be adverse to the county, that hopefully  
19 the legislative matter will have made its way to the  
20 Council. The Council will have been able to act upon it and  
21 make all of the -- the lawsuits moot. I should pass that  
22 on. I don't think I'm speaking out of turn when I pass that  
23 on.

24 CHAIRMAN HEDANI: I'm sorry, Jeff, you need to  
25 speak directly into the microphone, because I can't

1 understand what you're saying.

2 MR. DACK: Okay. Thank you. So, as Ms. Johnston  
3 indicated, there is three items addressed in your memo,  
4 which the Commission had requested further information  
5 about, to be inserted in the Final Environmental Assessment  
6 when you heard the matter in February 2008. The first --  
7 the first couple she mentioned were actually the  
8 archeological study. I'll mention that staff considers that  
9 the funds that you have, that the County Council has  
10 allocated to try to fulfill your requests should be adequate  
11 to complete a full archeological study of the only parcels  
12 where none exist right now, those are the two county-owned  
13 parcels, as well as to take all the field work and the prior  
14 notes from the only other parcel for which an archeological  
15 study has been completed and actually translate that and  
16 create an archeological study.

17 So, we believe we can proceed on ahead with that  
18 one. The acquisition study, we're also comfortable we  
19 should be able to proceed ahead with that within the  
20 budgeted funds. And the only thing we're bringing to you  
21 today is asking for your reconsideration of whether the  
22 county should be spending in the range of the budgeted  
23 \$15,000 to prepare a study of the acquisition feasibility  
24 and options for the vacant parcels. In coming to even  
25 bringing that question to you, we began to scope out and

1 converse with folks who might be in a position to actually  
2 prepare such a study and/or be in the position of possibly  
3 acquiring the land for public and/or other open space uses.

4           As you'll see in your memo, the first conversation  
5 was held with Executive Director of the Maui Coastal Land  
6 Trust. And we've also spoken with another person who has  
7 had a lot of land trust experience about those matters. And  
8 you'll -- there's a letter been submitted by Dale Bonar,  
9 Executive Director of the -- the Maui Coastal Land Trust.  
10 And in the -- in conversations, he indicated that he felt  
11 the acquisition for park and open space would take a lot of  
12 money, effort, determination, leadership, would be an uphill  
13 battle in this climate.

14           I'm sorry, those were from actually the other  
15 gentleman. But you'll -- the assessment from both the  
16 individuals is that it is actually probably rather difficult  
17 to be able to obtain the funding to be able to get public  
18 acquisition. Mr. Lyons, who is the second person I'm  
19 referencing, has indicated that subsequent to the  
20 preparation of your memo, that he could conceive the  
21 possibility that this could be publicly acquired, but would  
22 take an extremely high priority effort within the county,  
23 probably to the level of being a full-time job working  
24 directly out of the mayor's office. That would kind of put  
25 it on the same level of priority as, you know, having a

1 person, executive assistant to the mayor's office working on  
2 energy independence or something like that. That's kind of  
3 the level of effort that that gentleman felt would be  
4 necessary to be able to achieve public acquisition.

5           Given that, those assessments, staff considered  
6 that and probably wasn't the best use of the department,  
7 probably wasn't the best use of \$15,000 in county money at  
8 this time to proceed ahead with an acquisition study. But  
9 since you have made that request, we felt obligated to  
10 return to you with that recommendation that you no longer  
11 ask us for that piece, the document. And then should you do  
12 so, or should you accept that recommendation, we will  
13 dutifully proceed ahead quickly to obtain the archeological  
14 and the narrative, and try to get this in a form to come  
15 back to you as soon as possible.

16           I also wanted to mention that I was approached by  
17 one of the attorneys representing a number of the land  
18 owners this morning, Mr. Tom Welch. And he just asked me if  
19 I could pass along to you that he supports the department's  
20 recommendation. Any questions?

21           CHAIRMAN HEDANI: Questions for staff. Mr. Starr.

22           COMMISSIONER STARR: Yes. How many parcels are  
23 there in the County of Maui that are inconsistent between  
24 zoning and community plan? Not exact, but give me an idea.

25           MR. DACK: I personally have no idea whatsoever.

1 I'm sorry.

2 COMMISSIONER STARR: I mean would there be one or  
3 two or 1,000, or many? Maybe director can --

4 DIRECTOR HUNT: Many, many.

5 CHAIRMAN HEDANI: That's more than two.

6 Commissioner Starr.

7 COMMISSIONER STARR: How many in your time as  
8 director have you initiated a change in community plan as a  
9 department?

10 DIRECTOR HUNT: Director-initiated?

11 COMMISSIONER STARR: Uh-huh.

12 DIRECTOR HUNT: I'm not aware of any.

13 CHAIRMAN HEDANI: Mr. Starr.

14 COMMISSIONER STARR: Yeah, I have a real problem  
15 with this being initiated by the director. And I understand  
16 it, and I understand the logic. And perhaps it would be the  
17 easiest or most economical course, but to me, it just seems  
18 wrong that, you know, there are many struggling families who  
19 would love the director to initiate something so that they  
20 could build their home.

21 And here, it's being initiated maybe for some  
22 folks who aren't quite as needy, though, you know, I  
23 understand their concerns. And I just feel it's really  
24 wrong. All of the -- first of all, I really believe that it  
25 should occur with the update of the community plan. You

1 know, once the Maui Island Plan is done, then there would be  
2 community plan updates. And if it's impossible for the  
3 property owner to wait that long, then they should do it,  
4 which is what everyone else does. And here I feel like  
5 we're kind of being, you know, railroaded into it through  
6 litigation and threats of ongoing litigation. So --

7 CHAIRMAN HEDANI: Clayton, did you have a comment?

8 MR. YOSHIDA: Thank you, Mr. Chair. Can I amplify  
9 on Commissioner Starr's question? I believe it is rare for  
10 the director to introduce a community plan amendment, but it  
11 has been done. I believe in recent years, the Commission  
12 may remember the Chuck Nunez property over in Honokowai,  
13 which was kind of landlocked by the Intrawest property. And  
14 they were involved in some kind of land swap, so that his  
15 property would be new property, be closer to the Lower  
16 Honoapiilani Road.

17 There was the Old Maalaea Store property that was,  
18 a portion of it was designated open zone or whatever. And  
19 it was changed to business. There's the Kihei Police  
20 Station property where the director initiated the Community  
21 Plan Amendment District Boundary Amendment and zoning  
22 change. So, it is rare, but it has been done.

23 CHAIRMAN HEDANI: Director Hunt.

24 DIRECTOR HUNT: Mr. Yoshida, correct me if I'm  
25 wrong, but the director did not initiate this community plan

1 amendment. As I recall, this was back in the prior  
2 administration, and the director suggested to the property  
3 owners that they initiate it. And we are -- the department  
4 got caught up in the acquisition study as one of the  
5 conditions of the Final Environmental Assessment, so it's  
6 not our initiation.

7           It's just that we felt that the acquisition study  
8 should be pursued by the county, because the private lot  
9 owners would certainly not be initiating an acquisition  
10 study. Is that accurate, Clayton?

11           MR. YOSHIDA: I believe it was the intent of the  
12 prior planning director to initiate this, but it was carried  
13 forth in this administration.

14           MR. DACK: Along with that, I understand that  
15 occurred as a result of discussions between the land owners  
16 and the prior planning director. And the land owners did  
17 front, and actually I shouldn't say front, but they actually  
18 paid the cost of the Environmental Assessment through the  
19 draft and the initial draft final report. When the Draft  
20 Final Environmental Assessment was brought back to you  
21 folks, you requested three more items. At that point, the  
22 land owners didn't choose to proceed ahead any further with  
23 their funding of the project.

24           And so, given there was litigation going on, we  
25 felt the determination was made within the county that it

1 would be better to spend a modest amount of money in trying  
2 to complete the prior process that had been principally  
3 funded by the land owners and through the legislative  
4 action, and hopefully, to forestall much greater risks that  
5 could occur through adverse judicial action.

6 CHAIRMAN HEDANI: Mr. Hiranaga.

7 COMMISSIONER HIRANAGA: It is my understanding  
8 that in order for the county to develop Parcel s 18 and 19,  
9 which they own, that the community plan needs to be amended  
10 to provide consistency before an SMA permit can be issued  
11 for any improvements. And so, the county would have  
12 initiated this process anyway for their two parcels or wait  
13 until the community plan is amended who knows when.

14 MR. DACK: That sounds correct.

15 CHAIRMAN HEDANI: Any further questions for staff?  
16 Mr. Starr.

17 COMMISSIONER STARR: Yeah. Why would the county  
18 need to change park for park?

19 MR. DACK: Well, I guess -- okay, let me back up.  
20 The underlying zoning is hotel. That's the difficult -- I'm  
21 sorry, on the county property, there isn't an inconsistency  
22 with the community plan, but there is with the zoning still.

23 CHAIRMAN HEDANI: So, the underlying zoning is  
24 hotel?

25 MR. DACK: Right.

1 CHAIRMAN HEDANI: The county owns two parcels.  
2 And the request from the original applicant was for  
3 single-family residential?

4 MR. DACK: Correct.

5 CHAIRMAN HEDANI: Mr. Hiranaga.

6 COMMISSIONER HIRANAGA: Yeah. So, I mean I see  
7 this as being you could either wait for the community plan  
8 to be updated, or I would hope that the property owners,  
9 including the county, would do some type of a cost-sharing  
10 to move forward to alleviate these issues. I see it very  
11 remote that the county will have funds to be purchasing  
12 these parcels in the near term at which point the owners  
13 will not be willing to wait for us to accumulate those  
14 funds. So, those are my comments.

15 I mean, you know, people want a parking lot and  
16 rest rooms there, but you can't do it until this thing is  
17 resolved.

18 CHAIRMAN HEDANI: Okay. So, Jeff, what you're  
19 asking the Commission at this point is whether or not we  
20 want to drop the requirement for an acquisition study,  
21 correct; that's the only thing you're asking?

22 MR. DACK: And if you do happen to have any other  
23 comments on the approach in the memo relative to fulfilling  
24 your requests for information and further information on the  
25 archeological study and the historical narrative; if you

1 have any other comments, I would like to hear them now. But  
2 we're happy to proceed ahead as we've indicated in the memo.

3 CHAIRMAN HEDANI: And those are comments on the  
4 FEA for the single-family residential developments that have  
5 been proposed?

6 MR. DACK: Those are comments on the FEA for the  
7 changes in zoning and community plan amendments, the various  
8 ones to all eleven lots.

9 CHAIRMAN HEDANI: Mr. Starr.

10 COMMISSIONER STARR: Yes. Well, first of all, I  
11 strongly disagree with the county getting involved with the  
12 community plan amendment, and especially not without the  
13 process involving the community. These lots were --  
14 thousands of people came out and testified. If you remember  
15 back when, you know, it seemed like a third of the cars on  
16 Maui had "Save Palaua" bumper stickers. The County Council  
17 did some kind of action to instruct the mayor to purchase  
18 the lots. The mayor at the time only purchased two lots.  
19 You know, that's water under the bridge. What's done is  
20 done.

21 You know, I have no problem with the owners doing  
22 it. I have a real problem with the county spending money to  
23 do that. And if -- you know, if over my objection the  
24 county continues to do it, I really think that the EA must  
25 include an option, you know, the options, the alternate

1 options to doing that, and the alternate option is  
2 acquisition. So, even if acquisition is not ultimately  
3 performed as part of the EA, I think that's a necessary  
4 part.

5           And it seems like that will, when the EA, if it  
6 does come back before us, and that will be the next comment,  
7 that we need to have that alternative done. Because that's  
8 one of the things you get in an EA is alternatives to the  
9 standard proposal. So, to take that out of it is just  
10 adding more bad to bad.

11           CHAIRMAN HEDANI: Any further discussion?  
12 Mr. Hiranaga.

13           COMMISSIONER HIRANAGA: I have a question  
14 regarding the need for archeological studies, because if and  
15 when you apply for an SMA permit, wouldn't that come under  
16 the SMA rules?

17           MR. DACK: Yes, it would at that time.

18           COMMISSIONER HIRANAGA: So, does the county still  
19 feel that they need to do an archeological study as  
20 requested by the Planning Commission, or is it more  
21 appropriate at the time when development is proposed?

22           MR. DACK: Well, the department didn't actually  
23 suggest the further acquisition study. It was the  
24 Commission that did so when you saw the Final Environmental  
25 Assessment. But part of why we think that you might have --

1 well, we are comfortable given 176.

2 That there's been funds budgeted that your  
3 original request, that your question from a couple of years  
4 ago, an archeological study is something we could carry out  
5 reasonably.

6 If you wish to further change that and not request  
7 that study be done anymore, that would probably be  
8 acceptable also. That was originally acceptable to the  
9 department two years ago.

10 CHAIRMAN HEDANI: Mr. Hiranaga.

11 COMMISSIONER HIRANAGA: The narrative history, is  
12 that part of -- also part of an EA typically?

13 MR. DACK: A history of the property as to at  
14 least land use designations, land use history is typically  
15 part of an EA. There was information on that two years ago.  
16 However, there was a lot of testimony and discussion at your  
17 meeting two years ago where a lot of information was brought  
18 forth. And it's my interpretation, although I wasn't a  
19 planner at the time, but reading your minutes very carefully  
20 a few times, that you wished to have the historical  
21 narrative in order to try to pull together second -- do a  
22 double-check on the facts and information that was provided  
23 to you at the time, pull it together into one comprehensive,  
24 coherent piece. And we're comfortable that that can be done  
25 reasonably.

1 COMMISSIONER HIRANAGA: Just a followup.

2 CHAIRMAN HEDANI: Go ahead.

3 COMMISSIONER HIRANAGA: So, this historical  
4 narrative is different from a cultural assessment?

5 MR. DACK: Yes. As we understand it from again  
6 closely reading your minutes, it looked more like you  
7 were -- what came before you was a lot of discussion about  
8 the land use history of these properties and the vicinity.  
9 And so -- and the request for historical narrative was  
10 brought up in that context. So, it appeared that that was  
11 the kind of thing that you were looking for. There wasn't  
12 much discussion at your meeting on cultural -- further  
13 cultural or request or further cultural information.

14 CHAIRMAN HEDANI: Any further questions for staff?  
15 Mr. Starr.

16 COMMISSIONER STARR: Yeah. This is one of the --  
17 according to testimony we've received in the past, this is  
18 one of the most archeological diverse spots in Maui County.  
19 We've heard that there are burials there. I don't know if  
20 any of that is true or not, but if we were to take that out  
21 and/or if we were to take out the alternative from the EA,  
22 then all we're doing is preparing a flawed EA at which point  
23 there is a likelihood that the county will be doing  
24 something, which I, in my opinion, they shouldn't be doing  
25 in the first place. But by doing it, they'll be getting

1 nailed from both sides. Because it will get challenged by  
2 those who think it's insufficient. And it will probably  
3 continue to be challenged by the property owners.

4 So, you know, I just don't see to proceed with the  
5 EA and to proceed in a way that is insufficient. It's  
6 just -- it just seems kind of crazy.

7 CHAIRMAN HEDANI: Mr. Hiranaga.

8 COMMISSIONER HIRANAGA: \$15,000 for an acquisition  
9 study does not seem like a significant amount of money  
10 considering what we're dealing with. But I wanted maybe  
11 Corporation Counsel to comment that with the lack of  
12 acquisition study, would that make the EA flawed?

13 CHAIRMAN HEDANI: Jim.

14 COMMISSIONER HIRANAGA: Acquisition scenario.

15 MR. GIROUX: You're looking at 343 requirements.  
16 And when you look at 343, the litigation that's gone on in  
17 the State of Hawaii, it usually is because we just  
18 absolutely don't do one, you know, Superferry and stuff like  
19 that. The litigation around sufficiency is the really gray  
20 area. The amount of information that a decision-making body  
21 needs is a lot of times dependent on the factfinding  
22 necessities of that informational body.

23 A lot of times when you're dealing with shoreline  
24 areas, SMA's, things like that, you know, there's a lot of  
25 information, technical studies about, you know, what's the

1 sand doing, where is the drainage. There's a lot of  
2 technical studies that need to be done. Because if you deny  
3 a permit for those reasons, you have to have had a  
4 scientific basis pretty much. And so, you have to look  
5 at -- that's why they have it set up that the accepting  
6 authority is usually the authority that does that first  
7 initial discretionary permit.

8           So, that's why I believe the department is asking  
9 you, because you're the one who is going to have to decide  
10 on what is the information you need. The information right  
11 now is a community plan amendment. And that's as vague as  
12 you can get. Because what's going to happen is something on  
13 a piece of paper will change. An ordinance will be passed.  
14 That's as vague as you can get. Because everything else  
15 after that is an assumption. You're going to assume that  
16 it's going to be developed. You're going to assume that  
17 there's going to be impacts. You're going to assume there's  
18 going to be a special management permit. You're going to  
19 assume that it's a major. You're going to assume.

20           There's all of these assumptions after assumptions  
21 after assumptions, and that's why when you're looking at  
22 sufficiency, it really -- you have to go back to the body  
23 that's going to accept it, that they have the expertise to  
24 know what is the information they need to make the decisions  
25 they're going to make. And that's what the department is

1 asking you. Because your -- you're going to be the  
2 accepting authority. Corporation Counsel has already opined  
3 that community plan amendments, even though ultimately are  
4 done by ordinance through Council, you as being the Planning  
5 Commission, is really the earliest practical time to review  
6 possible environmental impacts.

7 So, the issue of sufficiency does come down to the  
8 expertise of the body that's going to review that first  
9 review, that first recommendation that's going to kick this  
10 up to the Council level.

11 CHAIRMAN HEDANI: Commissioner Shibusya.

12 COMMISSIONER SHIBUYA: So, I want to make the tofu  
13 a little harder, so it's a little tougher. I want to  
14 quantify it more. So, legal sufficiency right now is more  
15 like Jello without gelatin. And so, the shoreline erosion,  
16 sea level rise would be quantified with gelatin. It would  
17 have more substance to it. Is that the kind of data we need  
18 to have, Jim?

19 MR. GIROUX: I think if you're doing an SMA  
20 review, I mean if you think that there's an SMA review that  
21 is going to go on, but you've got to remember that the 343  
22 is an informational document. You know, meaning that the  
23 law, because you're doing a community plan amendment  
24 triggers -- it triggers a review now. But when this  
25 property in the future is going to do -- let's say there's

1 an SMA. You know, each lot is going to have to do either an  
2 SMA minor or an SMA major, there's no trigger. There's no  
3 trigger. If they're going to work in the setback, then  
4 there's a trigger. So, you have to look at what is the  
5 information you need to make the decision of whether or not  
6 a community plan amendment is appropriate.

7           And so, it gets -- you know, I mean and if you ask  
8 another attorney who is on the other side of the fence,  
9 they're going to tell you something different. This is  
10 where -- you know, this is where the two bulls are pushing  
11 against the line, and because guess what? The Supreme Court  
12 is going to get the issue, and they're going to be like,  
13 wow, we haven't decided this before. You guys are on the  
14 front line. You're on the front line. We rely on your  
15 expertise, and we are trying to advise you that these are  
16 the things that we hope will do the job, do the job of  
17 giving you the best information you need at the time about  
18 whether or not a community plan amendment is necessary. Or  
19 advisable I guess is the --

20           CHAIRMAN HEDANI: Okay. Everybody confused?  
21 Good. Commissioner Marfdin.

22           COMMISSIONER MARFDIN: Jeffrey, I'm reading this  
23 document from Dale Bonar dated -- Exhibit 4, dated February  
24 22 this year. And on Page 2, he says, on a separate note,  
25 folks must realize that it's likely this beach will

1 disappear in the next 75 years as climate change and sea  
2 level rise, erode the shoreline. Then he goes on to suggest  
3 that shoreline owners apply for permits, sign a release that  
4 notes the county will not be allowing shoreline armory or  
5 anything but public utilities and will not be buying back  
6 properties consumed by nature.

7           In the February 12th, 2008 memo that we received  
8 on this subject, it says the 2006 Hawaii Coastal Mitigation  
9 Guidebook recommends a 40-foot buffer and 70-year multiplier  
10 for structures less than 5,000 square feet and 100-year  
11 multiplier for larger structures. My question is this was  
12 several years ago that we got -- this EA was started. Have  
13 there been changes and we've learned more about sea level  
14 rise in the intervening years? Have there been any changes  
15 in the Hawaii Coastal Mitigation Guidebook or any policies  
16 that would mean that this particular EA would be deficient  
17 in terms of shoreline processes when it comes to us?

18           MR. DACK: I'm not aware of any particular changes  
19 in those -- in that guidebook. We do still have the same  
20 shoreline rules with the same erosion hazard rates at this  
21 point as the county did two years ago. Everyone is learning  
22 new information all the time, so yes, there probably is new  
23 information. But new information hasn't been applied into  
24 any changes and policy guidance to my knowledge at this  
25 point. That's not to say it won't in the future.

1 COMMISSIONER MARFDIN: Thank you.

2 CHAIRMAN HEDANI: Any further questions?

3 Commissioner Starr.

4 COMMISSIONER STARR: Yeah, and I think what  
5 Mr. Bonar was referring to is there has been a policy shift,  
6 although our setback requirements have not changed. And  
7 they're based on the Sea Grant, Sea Grant transects. At the  
8 Hawaii Conference of Planning Officials Conference in  
9 Honolulu several months ago, there was a presentation put on  
10 jointly by the State of Hawaii Coastal Zone Management, by  
11 Sea Grant and by NOAA. And where the -- the current erosion  
12 rate setbacks do not take sea level, the rise of sea level  
13 due to climate change into account.

14 The projections from Sea Grant, the state and the  
15 feds has now been raised to two to three meters over the  
16 next hundred years, which would, of course, change the  
17 landscape down there a bit.

18 CHAIRMAN HEDANI: Any additional questions?

19 Commissioner Tagorda.

20 COMMISSIONER TAGORDA: Yeah, I feel like I want to  
21 jump in. I really don't know anything, most of those things  
22 that's being discussed. But I heard that there was a  
23 litigation; one was dismissed, and one is ongoing?

24 MS. JOHNSTON: Let me correct that. There are two  
25 lawsuits identical, two different two lawsuits, identical

1 complaints; one by the Leones and one by the Larsons. And  
2 they said this is a taking of our property by the county, so  
3 we can't do anything, make any economically viable use of  
4 our property when it's designated park, okay.

5 Both suits were filed in the Circuit Court. The  
6 county moved that they were not properly before the Circuit  
7 Court, because the claims weren't ripe, because neither the  
8 Leones or the Larsons had come before the Commission to  
9 appeal the director's decision, which is part of the  
10 administrative process. And under a matter of law, you have  
11 to exhaust the administrative remedies available to you  
12 before you can go to court for the reason that it's a lot  
13 easier to do it and cheaper to do it here rather than just  
14 flying into court, so that's the main thing.

15 So, the cases are still -- they're out of the  
16 Circuit Court. Both judges said, County, you're right, they  
17 shouldn't be here. But they've taken it up to the Appellate  
18 Court, so the cases are pending before the Appellate Court  
19 to see whether the Court will uphold the judge's dismissal.  
20 If they do, it comes back, and they've got to start all over  
21 again if they want to pursue that.

22 COMMISSIONER TAGORDA: Thank you. I have with me  
23 on Page 7, Table 2, there were those proposed community plan  
24 amendment and change in zoning from the old one, which is  
25 hotel and apartment A2 to single family and park, which is

1 the Parcel 18 and 19 that belongs to the county.

2 MS. JOHNSTON: Right.

3 COMMISSIONER TAGORDA: If we go ahead and go for  
4 this change, community plan amendment and zoning, the three  
5 to four EA, which is HRS 343, will come in, are we not  
6 encouraging more litigation from those owners of the  
7 property when we forced to change the zoning and the land  
8 use designation?

9 MS. JOHNSTON: Would they come in and oppose you  
10 trying to do that? No, they would be very happy. I mean  
11 that takes the burden off them to have to go forward, and I  
12 think probably that's part of the whole, you know, what's  
13 guiding the lawsuits.

14 COMMISSIONER TAGORDA: That's why I like to learn  
15 more about this.

16 MS. JOHNSTON: That's true. I mean if you do it,  
17 are they going to go before the County Council and say, no,  
18 we don't want to change? They're going to say fine, because  
19 then they've won because they haven't had to incur the cost  
20 and go before the Council and keep fighting along that line,  
21 which would be, by the way, a process much cheaper than the  
22 litigation, which has been very costly at this point.

23 CHAIRMAN HEDANI: I have a question, Mary Jane.  
24 How much have we spent in terms of litigation at this point,  
25 and how much would they spend in order to resolve it?

1 MS. JOHNSTON: I can't tell you. We don't keep  
2 that close of record of attorneys' fees. You know, we come  
3 in 7:45 to 4:30 and do our job. There's been -- first of  
4 all, there was an enormous amount of time, legal time that  
5 went in there. I actually did go for fees, and I can't  
6 remember what it was. It was a significant amount of fees.  
7 I would have to go back and check. We did get an award of  
8 about \$15,000 in costs from that court.

9 The second lawsuit was -- they were in and out of  
10 the Circuit Court so fast, you know. I kind of recycled the  
11 previous memos, so that was much less, and much less time,  
12 although I'm having to spend a good deal of time doing the  
13 -- answering briefs. So, we don't usually keep track of  
14 fees. I keep track of time. If we have to go back, I can  
15 reconstruct. But it's not like in a private practice where,  
16 you know, every time you talk to your client, you ding them  
17 with something.

18 The Leone case, because it was a very difficult  
19 litigation posture taken by their attorney, we had to spend  
20 a lot of time. We had to interrupt the Planning Department  
21 and the Office of Council Services to get documents. The  
22 judge could have shut it down sooner. He didn't, but the  
23 judge in the other case did shut it down right away. But  
24 it's not over. We're still spending time on appeal.

25 CHAIRMAN HEDANI: So, in this particular case,

1 they haven't ruled on the merits of the case?

2 MS. JOHNSTON: No, no.

3 CHAIRMAN HEDANI: The only thing they've ruled on  
4 whether or not they're before the correct body?

5 MS. JOHNSTON: Right, it was a jurisdictional  
6 issue. And the courts decided we don't have jurisdiction to  
7 hear your claim, so we can't make any other ruling other  
8 than to say we don't have jurisdiction of your claim, so  
9 there's been no addressing of the merits.

10 CHAIRMAN HEDANI: There's still the potential the  
11 county would be on the hook for \$60 million possibly at some  
12 point?

13 MS. JOHNSTON: Correct.

14 CHAIRMAN HEDANI: Per lot?

15 MS. JOHNSTON: Yes -- no, per lot whatever they're  
16 appraised. They're asking for 10 million per lot, but even  
17 that's a lot of money.

18 CHAIRMAN HEDANI: So, in this particular case,  
19 doing nothing is not an acceptable solution?

20 MS. JOHNSTON: Doing nothing will mean we'll just  
21 go through the litigation process. And then if they lose,  
22 they'll start over again. And they'll do the same thing,  
23 and they'll refuse to proceed forward with seeking a  
24 community plan amendment, unless Court, Appellate Court  
25 says, no, you have to do that. And I can't tell you that

1 the Appellate Court is going to say that. Who knows?

2 CHAIRMAN HEDANI: Okay. Are we ready for staff  
3 recommendati on?

4 MR. DACK: Staff recommendation was simply to  
5 delete your request for an acquisition study again hoping  
6 that the kinds of information you have from Maui Coastal  
7 Land Trust and gathering from others should be adequate,  
8 that we would insert into the -- as far as options and  
9 feasibility for acquisition in the final EA, and that should  
10 you have any comments on the approach to the archeological  
11 study and historical narrative in the memo, that you provide  
12 us those comments.

13 CHAIRMAN HEDANI: Commissioners, what's your  
14 pleasure?

15 COMMISSIONER STARR: Public testimony?

16 CHAIRMAN HEDANI: We would like to open it up for  
17 public testimony at this time. Are there any members of the  
18 public that would like to offer comments at this time or  
19 testimony? Martin, you're sitting as quiet as a mouse over  
20 there. Do you want to offer any comments?

21 MR. LUNA: Mimi just asked me, and I said only if  
22 somebody asks. You asked. I'm Martin Luna. We represent  
23 three property owners, but we don't represent any of the  
24 owners that are vacant lots. They all have houses on their  
25 properties due to administrative procedures that were

1 undertaken several years ago. Mr. Altman had been a client  
2 and he has a vacant lot, but I think he's representing  
3 himself. I think Mr. Dack had contacted him directly. I  
4 can understand the cost of litigation. The administrative  
5 process was very costly as well.

6 But I think the -- the Court litigation will be  
7 even more costly, not just for the county, but for the  
8 property owners. So, I think that's a serious consideration  
9 on the part of the Commission. Thank you.

10 CHAIRMAN HEDANI: Any questions for Martin?

11 MR. LUNA: Thank you very much.

12 CHAIRMAN HEDANI: Mr. Shibuya.

13 COMMISSIONER SHIBUYA: I was just concerned. In  
14 terms of doing this feasibility study, would the appraisal  
15 be part of it? Would the sea level rise be part of it?  
16 Would ocean beach erosion be part of this -- this  
17 assessment?

18 CHAIRMAN HEDANI: Jeff.

19 MR. DACK: I don't believe we considered an  
20 appraisal to be part of the acquisition study. We probably  
21 would have to come to some kind of -- the people conducting  
22 would have to come to some kind of estimated value. But  
23 then the best options and feasibility of acquisitions is the  
24 principal thought. Sea level rise, erosion, they wouldn't  
25 be part of an acquisition study, but they can be at least

1 touched on in the final EA in any case.

2 COMMISSIONER SHIBUYA: Okay. That at least gives  
3 some idea over a 10-year, a 20-year period, a 30-year period  
4 of what's the rate of erosion or what's the rate of rise and  
5 what would be some of the impacts in the future?

6 MR. DACK: Yeah, we can certainly report on what  
7 would be the erosion based upon the erosion hazard rate  
8 that's been adopted, and we'll see if further information is  
9 available on sea level rise at that time.

10 COMMISSIONER SHIBUYA: The troubling fact is  
11 setbacks. Are the lots more than 300 feet from the ocean?

12 MR. DACK: I don't recall a distance  
13 unfortunately.

14 COMMISSIONER SHIBUYA: I was looking at it, and it  
15 doesn't appear like it's 300 feet. So, if you say 300 feet  
16 setback for hotel as it's currently zoned, then you don't  
17 have any property.

18 CHAIRMAN HEDANI: They would propose not to build  
19 a hotel. Single family has a different setback. Any  
20 further questions for Jeff? What do you want to do?  
21 Commissioner Marfdin.

22 COMMISSIONER MARFDIN: Jeff, what would an  
23 acquisition study be determining, how much it would cost, or  
24 how to get the money, or --

25 MR. DACK: We would have to have some estimate in

1 value, and then it would address options and feasibility of  
2 acquiring the land. And frankly, we probably would have a  
3 hard time finding somebody to do it, probably have a hard  
4 time finding three bidders to do it. Maui Coastal Land  
5 Trust was the first party we spoke to, and they said they  
6 could do that kind of thing, but they had other jobs. So,  
7 it could be hard to even acquire the consultants to do that.

8 COMMISSIONER MARFDIN: But you're basing it on the  
9 owners' statement that it's 15 to 20 million, so we  
10 basically have a number, at least an approximate number, is  
11 that --

12 MR. DACK: Yeah, and I'm hearing the 10 million.  
13 We report them on whatever information we had, such as in  
14 the letter, such as Ms. Johnston's point where the owners  
15 are claiming 10 million a lot.

16 COMMISSIONER MARFDIN: And you could look at the  
17 county real property assessment?

18 MR. DACK: Certainly would do that, yes.

19 COMMISSIONER MARFDIN: So, you're basically asking  
20 us to pass a request for an acquisition study given that  
21 there needs to be some numbers around anyway, and going  
22 forward with the full-blown acquisition study probably  
23 wouldn't generate a -- if it could be done, probably  
24 wouldn't generate a whole lot more information anyway; is  
25 that the position of the department?

1 MR. DACK: That it wouldn't -- that it probably  
2 wouldn't generate enough information that would make --  
3 provide a lot of information to really help people change  
4 their mind or make up their mind one way or the other on the  
5 questions of the land use entitlements.

6 COMMISSIONER MARFDIN: Thank you.

7 CHAIRMAN HEDANI: Mr. Shibuya.

8 COMMISSIONER SHIBUYA: I was just looking at the  
9 study. If we did conduct such a study, what would be the  
10 implications of our doing that study? Perhaps maybe counsel  
11 can reflect on that. If we did it, what would it imply,  
12 that we're ready to buy it, or are we intending to purchase  
13 it? You know, I wouldn't want to do it if I would be  
14 tipping my hand to the property owners.

15 MR. DACK: I think it would be -- it would be  
16 prepared for the Environmental Assessment, which is  
17 principally an information document, so it would be  
18 information available to the commissioners when you're  
19 making a recommendation to Council and the Council when  
20 they're making a decision on your recommendation. That  
21 would be the primary purpose.

22 CHAIRMAN HEDANI: Mr. Hiranaga.

23 COMMISSIONER HIRANAGA: Just to clarify, my  
24 understanding of an acquisition study is to try to identify  
25 sources of funding. And basically, it's hypothetical

1 because today's sources of fundings may be different from  
2 sources of fundings next week or six months from now. So,  
3 we're not really talking about valuing the properties in  
4 question. It's where could sources of funding be procured  
5 if we decide to do condemnation; is that correct?

6 MR. DACK: I think that would be part of it, but  
7 again, as you indicated, the principal options and  
8 feasibility for the possibility of acquisition for public  
9 use or permanent open space. And, yeah, it would need to  
10 include all the factors you mentioned as well as some idea  
11 of value, of course, to be able to discuss feasibility.

12 CHAIRMAN HEDANI: Commissioners, what's your  
13 pleasure? Commissioner Starr.

14 COMMISSIONER MARFDIN: Can I ask another question?

15 CHAIRMAN HEDANI: Commissioner Starr.

16 COMMISSIONER STARR: I have a motion to make.

17 COMMISSIONER MARFDIN: Could I ask a question  
18 first?

19 CHAIRMAN HEDANI: Mr. Marfdin.

20 COMMISSIONER MARFDIN: I want to get the big  
21 picture here. After the historical narrative has been done,  
22 after the archeological studies have been complete, after we  
23 either do or do not do an acquisition study, this will be  
24 back before us asking for a FONSI; is that correct?

25 MR. DACK: A final -- another draft, another

1 proposed Final Environment Assessment will be back before  
2 you with probably recommendation of a FONSI, yes.

3 COMMISSIONER MARFDIN: So, we either can at that  
4 time say, yes, there is no significant impact, in which  
5 case, we approve the FONSI, or we say there is a significant  
6 impact, in which case, the Applicants, somebody has to go  
7 back and do a full EIS; is that correct?

8 MR. DACK: Someone would have to do a full EIS in  
9 order to continue on with the project if that was your  
10 determination.

11 COMMISSIONER MARFDIN: Thank you.

12 CHAIRMAN HEDANI: Mr. Starr.

13 COMMISSIONER STARR: Yeah, I have a motion to  
14 make. And I leave it up to the Chair and corporate --  
15 Corporation Counsel to decide, A, whether it's in order, and  
16 B, whether it's legal. But I do wish to make it. And that  
17 motion is that the department should not initiate a change  
18 in community plan for the Palaeua parcels from park to  
19 residential.

20 CHAIRMAN HEDANI: Jim. Oh, wait a minute. Is  
21 there a second?

22 COMMISSIONER SHI BUYA: Second.

23 CHAIRMAN HEDANI: Moved by Commissioner Starr, and  
24 seconded by Commissioner Shi buya that the department should  
25 not initiate the change from hotel to single-family

1 residential .

2 COMMISSIONER STARR: No, from park to residential .

3 COMMISSIONER SHIBUYA: Park to residential .

4 CHAIRMAN HEDANI: The community plan amendment  
5 from park to residential .

6 COMMISSIONER STARR: Yeah.

7 CHAIRMAN HEDANI: Jim.

8 MR. GIROUX: Thank you, Chair. Looking at the  
9 agenda, and the item is to clarify the information that was  
10 requested during an EA -- EA process. So, your motion -- I  
11 mean it doesn't necessarily -- it's not germane to what's on  
12 the agenda, because -- I'm sure at some time, that motion  
13 will be proper. It's just not proper on this agenda item.  
14 They are already in the process of preparing an EA for that  
15 process.

16 And I think we're jumping the gun a little bit.  
17 The Environmental Assessment is part of their administrative  
18 duties at this point in order for them to go forward with  
19 the legislative process. But they have to do one before  
20 they can do the other. I don't think that that's going  
21 to -- I think it's more procedural .

22 CHAIRMAN HEDANI: I think that's a big picture  
23 question, you know, that we can provide to the department as  
24 a comment to withdraw their request for the changes or  
25 whatever. But I think at this point, the question on the

1 floor is the staff's recommendation relative to the  
2 acquisition study, archeological study and a narrative  
3 history. Mr. Starr.

4 COMMISSIONER STARR: You know, I understand that,  
5 but I feel like we're not being asked the real question.  
6 We're being asked do you want salt or pepper on it. And you  
7 know, my feeling is we don't want the -- we don't want the  
8 cutlet, and that the cutlet is highly unusual for the  
9 director to be initiating this community plan amendment  
10 from. So, you know, I understand that perhaps it is out of  
11 order, but I would like to see that put on the agenda so  
12 that we can at least address that question.

13 And I would ask that that be put on the next  
14 possible agenda if it is going to be ruled out of order,  
15 which you probably should rule it out of order.

16 CHAIRMAN HEDANI: Why don't you withdraw your  
17 request -- withdraw your motion at this point and tackle in  
18 terms of future discussion.

19 COMMISSIONER STARR: Yeah, I'm willing to withdraw  
20 it, but I will ask that it be put on a future agenda so we  
21 can discuss the main issue.

22 CHAIRMAN HEDANI: Director, do you have any  
23 comments?

24 DIRECTOR HUNT: No.

25 CHAIRMAN HEDANI: No comment. You can bring it up

1 under Other Planning Issues under -- for the Commission to  
2 consider. What we're dealing with right now is whether or  
3 not to spend \$15,000 on an archeological study and if you  
4 have any comments on the archeological and narrative  
5 history, okay, on litigation that's already scoped out at 60  
6 million per lot. Mr. Marfdin.

7 COMMISSIONER HIRANAGA: Mr. Chair, correction, it  
8 was \$15,000 for the acquisition, not archeological study.

9 CHAIRMAN HEDANI: Right, acquisition study.

10 COMMISSIONER MARFDIN: Is it proper -- Jeffrey, is  
11 it proper for the EA when it comes back to us after the  
12 historical narrative and maybe part of the historical  
13 narrative as well as the archeological study to, as part of  
14 the historical narrative, to include issues such as the  
15 change in zoning and change in community plan amendments as  
16 an issue within the EA, or is that just beyond the scope of  
17 what the EA is supposed to do?

18 MR. DACK: I don't really understand how it would  
19 actually be in the -- in a bigger -- go ahead.

20 COMMISSIONER MARFDIN: In an EA, you usually have  
21 alternatives.

22 MR. DACK: Yes.

23 COMMISSIONER MARFDIN: And I can see a couple of  
24 the alternatives being the county stop processing a  
25 community plan amendment, or another alternative could be

1 the county initiates a change in zoning to park for all the  
2 parcels. I mean there are all kind of alternatives that  
3 could be addressed, but I don't know if that's environmental  
4 or if that's just legal assessments.

5 MR. DACK: Those are reasonable kinds of  
6 alternatives. Yes, certainly a standard alternative within  
7 an EA is a no project alternative. Basically, say you don't  
8 proceed ahead with the requestor's suggested action. The  
9 public acquisition already was an alternative within the EA,  
10 so it will remain so. In any case, we'll have further  
11 information even without an acquisition study, so you'll  
12 have a kind of that broad range it sounds like before you.

13 COMMISSIONER MARFDIN: Okay. Thank you very much.

14 CHAIRMAN HEDANI: Why don't we tackle this in  
15 terms of the order of the recommendation that's coming from  
16 the staff, take the items one at a time. Number one is  
17 whether or not to withdraw the request for the acquisition  
18 study regarding the four privately-owned vacant lots in the  
19 project area of the proposed Palaea Beach Community Plan  
20 Amendment and change in zoning.

21 COMMISSIONER SHI BUYA: Mr. Chair.

22 CHAIRMAN HEDANI: Commissioner Shi buya.

23 COMMISSIONER SHI BUYA: I believe we have a motion  
24 on the floor. Do you want to withdraw?

25 COMMISSIONER STARR: Will you withdraw the second?

1 COMMISSIONER SHI BUYA: Yes. It's okay?

2 COMMISSIONER STARR: Yeah.

3 COMMISSIONER SHI BUYA: Okay. Continue. Thank  
4 you.

5 CHAIRMAN HEDANI: So, the recommendation from the  
6 department is the withdraw the request for the acquisition  
7 study. What's your pleasure?

8 COMMISSIONER U'U: Motion to withdraw.

9 CHAIRMAN HEDANI: Motion by Commissioner U' u to  
10 withdraw for the acquisition study. Is there a second?

11 COMMISSIONER DOMINGO: Second.

12 CHAIRMAN HEDANI: Seconded by Commissioner  
13 Domingo. Discussion.

14 Personally, I think the atmosphere for acquisition  
15 of additional parcels, whether you set the price at 4  
16 million, or whether the assessed value of 10 million per  
17 parcel is somewhere between slim to none right now, and that  
18 spending money on an acquisition study is nice if you're in  
19 the business of preparing acquisition studies. But rather  
20 than that, it will be pointless. Any further discussion,  
21 comments? Commissioner Marfdin.

22 COMMISSIONER MARFDIN: With some reluctance, I'm  
23 going to support the motion on the grounds that an EA is an  
24 informational document. Even with the crude numbers that we  
25 have from Dale Bonar and we've been told we'll get assessed

1 values by the Real Property Division of the county and some  
2 other things, it seems to me there's sufficient information  
3 that we don't need a full-blown acquisition study.

4 I would hope that acquisition forms an integral  
5 part of the alternatives that are presented in the final EA.

6 CHAIRMAN HEDANI: Commissioner Shibuya.

7 COMMISSIONER SHIBUYA: I'm concerned in terms of  
8 the shoreline that's available for our residents and our  
9 visitors, and that's part of your economic engine, the  
10 tourism, the eco aspects of and the beauty of Maui. And I  
11 would like to somehow come up with some quantification in  
12 terms of assessing what beach space that we have now per  
13 population, resident and visitor, and then ten years from  
14 now, because of the sea level rise, we can project that  
15 ratio, is it going to go higher, or is that ratio  
16 decreasing. And with that in mind, we can look ahead and  
17 determine whether we really want to do this acquisition.

18 CHAIRMAN HEDANI: Mr. Starr.

19 COMMISSIONER STARR: Yeah, I have a comment that  
20 stems from Commissioner Shibuya's comment, which is this is  
21 going to be impossible during the next fiscal year. Because  
22 all of our data as far as sea level rise, as far as  
23 shoreline erosion rates and so on is based on the Sea Grant  
24 program. And the department has curtailed the -- our  
25 participation in Sea Grant for the new fiscal year starting

1 July 1st. So, by making that choice, the department has put  
2 us in a position where next year we will not be able to get  
3 any expertise or discuss sea level rise or shoreline  
4 erosion.

5 CHAIRMAN HEDANI: Any further discussion on the  
6 motion on floor? Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: I thought we were talking  
8 about an acquisition study.

9 CHAIRMAN HEDANI: Yes.

10 COMMISSIONER HIRANAGA: Okay. I just want to make  
11 sure.

12 CHAIRMAN HEDANI: Director Hunt.

13 DIRECTOR HUNT: I just want to make it clear that  
14 the department supports the concept and the need for parks,  
15 open space, publicly-owned lands along our shoreline. But  
16 you have to take a look at the circumstances on this  
17 particular property. It was designated as park in the  
18 community plan. Acquisition went through, but because of  
19 the funding at the time, there was only two lots purchased.  
20 Since then, we've done analyses that shows that the  
21 likelihood of purchasing the remainder lots is slim at best.

22 So, it's -- it's a situation where you have a  
23 number of small subdivided lots along the shoreline. When  
24 we talk to the open space experts, they suggest that the  
25 better bang for the buck, the better way to use your money

1 is to focus on larger acquisition lots. Lipoa Point north  
2 of Kapalua would be a good example. So, when you take it  
3 all into consideration, it's not that the department doesn't  
4 -- and if we could wave our magic wand and acquire these  
5 properties for park for the citizens, believe me, we would  
6 do that, and we support that.

7           It's just a reality. I mean I wish I could take a  
8 vacation to Europe once a month. I can't. I don't have the  
9 money for that, and that's the situation. If we continue to  
10 hold this process up and tell these property owners they  
11 can't build on their lands, then there's legal implications.  
12 You had an attorney come forward. When attorneys come to  
13 our podium, and they're county attorneys, there's a reason.  
14 And so, again, I don't want the public or the Commission to  
15 think that the Planning Department is cavalier about these  
16 Palaua lots. We would love to have them as open space.  
17 It's just that the money isn't there.

18           CHAIRMAN HEDANI: In this particular case, my own  
19 comment is that the County has taken action. They've  
20 acquired two of the lots. Access in perpetuity is already  
21 preserved to Palaua Beach. If they had \$15,000 to spend on  
22 an acquisition study, I would suggest they spend the \$15,000  
23 on improving those two lots, because they're basically  
24 unimproved right now. I went and visited them. I used  
25 them. You know, we accessed the area. There's unimpeded

1 access in the area. And I think, you know, at some point in  
2 time, somebody has to either -- or get off the pot. And I  
3 think we're rapidly approaching that point at this point.  
4 Nothing is happening. Nothing is going to happen in the  
5 foreseeable future. They have the right to their property.

6           And I think the second point that I would like to  
7 make is that in terms the community plan amendments, when  
8 the Commission or the county or the Council makes a  
9 community plan amendment, that's something to think about  
10 when you take property that's rezoned one zoning; in this  
11 case, it was zoned hotel, and you add a layer on top of that  
12 called community plan and call it park and then expect  
13 everything to just work out hunky-dory, it doesn't work out  
14 that way.

15           Ready for the question? Any further discussion?  
16 All those in favor of the motion, please signify by raising  
17 your hand.

18           Opposed, same sign. One opposed. Motion is  
19 carried.

20           Items 2 and 3. Item 2. Provide any comments if  
21 the Commission has any on the department's planned approach  
22 to the archeological studies as described in the memorandum.  
23 Commissioner Starr.

24           COMMISSIONER STARR: It should be complete.

25           CHAIRMAN HEDANI: Any additional comments? Okay.

1 I don't think we need a motion for that. They're just  
2 asking for comment. Item 3, provide any comments if the  
3 Commission has any on the department's draft work scope for  
4 the requested narrative history as described in this  
5 memorandum. Mr. Marfdin.

6 COMMISSIONER MARFDIN: I've already made comments  
7 to Jeffrey in the course of this that I think they ought to  
8 really broaden out the alternatives in the alternatives  
9 section as a way of doing that. And I think the narrative,  
10 the historical narrative is another way to get at this.

11 CHAIRMAN HEDANI: Any additional comments? My  
12 only comment would be that the narrative history of these  
13 lots would be that it was amicably resolved expeditiously if  
14 we can do that in the future. Okay. Jeff, do you have any  
15 other items for this particular agenda item?

16 MR. DACK: No, that's fine. Thank you very much.

17 CHAIRMAN HEDANI: Okay. It's been about an hour.  
18 Why don't we go ahead and take a ten-minute recess at this  
19 point.

20 (Recess taken.)

21 CHAIRMAN HEDANI: Planning Commission is back in  
22 session. One, two, three, four, five down, and two to go.  
23 Director.

24 DIRECTOR HUNT: The next item is D(4),  
25 Communications. Mr. John Rapacz, attorney for SVOP,

1 submitting by letter dated February 11, 2010, SVOP's annual  
2 report of its disbursements of funds to Intervenor West Maui  
3 Preservation Association and to the West Maui Community  
4 Benefit Fund pursuant to the Lot 3 settlement agreement  
5 between the Applicant and the intervenor as required by  
6 Condition Number 44 of the SMA use permit for Kaanapali  
7 Ocean Resort Villas. TMK: 4-4-14, Lot 5, portion of, in  
8 Kaanapali. File Number SM1 2006/18.

9 Paul Fasi is the planner assigned to this, but  
10 Clayton is substituting on his behalf.

11 MR. YOSHIDA: Good afternoon, Mr. Chair, Members  
12 of the Commission. Back in February of 2008, the Commission  
13 issued an SMA permit use permit for the Westin Kaanapali  
14 Ocean Resort Villas Lot 3 project. The attorney for SV0 has  
15 provided their annual report dated February 11th, 2010.  
16 Again, this is for Lot 3, the SV0 timeshare project, not to  
17 be confused with Lot 4, the Honua Kai Intrawest project,  
18 which the Commission heard the annual report back in  
19 November of last year. So, with that, Mr. Rapacz is here,  
20 and he can answer questions.

21 CHAIRMAN HEDANI: John.

22 MR. RAPACZ: Good afternoon, Mr. Chair and  
23 Commissioners. John Rapacz on behalf of SV0 Pacific or  
24 Starwood, as its known. Excuse me, just a little bit of  
25 background for the commissioners that aren't familiar. In

1 pursuing the SMA permit for Lot 3, there was an  
2 intervention. Starwood entered into a settlement agreement  
3 with the intervenors. Part of that settlement agreement  
4 said that Starwood would make contributions both to the  
5 intervenor, which is West Maui Preservation Association or  
6 WMPA, W M P A, and then also make contributions to a  
7 community benefit fund that that WMPA initially established,  
8 but now it's an independent fund.

9           You'll see in the February 11th report that the  
10 two contributions that Starwood has made were both made in  
11 April '08. The reason that and those were both made to West  
12 Maui Preservation Association as part of the settlement  
13 agreement. The reason that Starwood has not made any  
14 contributions yet to the community benefit fund is that that  
15 obligation does not kick in until Starwood gets building  
16 permits, and Starwood does not have the building permits  
17 yet.

18           When we get the building permits, then we begin  
19 the contributions. So, as to the Lot 3, you won't see any  
20 contributions until we actually get the building permits.  
21 Other than that, I can entertain any questions.

22           CHAIRMAN HEDANI: Any questions for Mr. Rapacz?  
23 Commissioner Starr.

24           COMMISSIONER STARR: There's been some discussion  
25 about the length of time it's taking for those funds that

1 have been distributed to actually be out in the community  
2 doing some benefit. I'm wondering if you have any  
3 recommendations for that.

4 MR. RAPACZ: I'm sorry, I don't. As I said,  
5 that's an independent fund and organization, and Starwood  
6 has no say in what happens to those funds. I should say  
7 we're not aware of what happens to those funds.

8 CHAIRMAN HEDANI: Commissioner Starr.

9 COMMISSIONER STARR: Okay. One more question,  
10 which is what is the projected timeline now for the other  
11 funds to be put in? What entity will they go to? And what  
12 is the dynamics or, you know, approximate amount?

13 MR. RAPACZ: Okay. Essentially, we don't know  
14 when we'll receive the building permits. There is a  
15 question that has come up within the county even though you  
16 folks approved an SMA permit when we got to the building  
17 permit stage. In a nutshell, we were told we needed to  
18 change our zoning. It goes back to something similar to a  
19 consistency issue. So, we filed an appeal with the BVA of  
20 that. And also, there's an ordinance working its way  
21 through County Council, which might resolve that problem if  
22 it passes. So, we don't know how long either of those two  
23 processes will take.

24 Assuming we do get the building permits  
25 eventually, there would be an initial payment to the

1 independent benefit fund of \$425,000. And then upon  
2 issuance of the first certificate of occupancy after  
3 completing construction on the first phase, there would be  
4 another \$725,000. But I'm sorry, I can't give you time  
5 frames for those. I just don't know.

6 CHAIRMAN HEDANI: John, the request to change the  
7 zoning, that was to change hotel zoning to apartment?

8 MR. RAPACZ: No, it's because there is a community  
9 plan designated open space strip along the highway where  
10 it's community plan open space, but the whole parcel is  
11 zoned hotel. The same thing is true along the shoreline.  
12 It's all zoned hotel, but there are these two strips of open  
13 space. When you seek a building permit for more than four  
14 dwelling units, that is considered to be a subdivision, and  
15 you are now subject to the subdivision process.

16 Where the SMA has a consistency test, the  
17 subdivision process has a consistency and conformity test.  
18 The county interprets the conformity test to mean that the  
19 maps must match exactly. So, the fact that the maps don't  
20 match exactly means that we can't get building permits. The  
21 only way to fix it is change the community plan designation  
22 or change the zoning on those strips.

23 CHAIRMAN HEDANI: And those are for the setbacks  
24 for open space along the highway and along the ocean?

25 MR. RAPACZ: Essentially, that's the purpose for

1 them, yes. And the projects, because you folks approved the  
2 projects, the projects are designed with open space in those  
3 areas. Otherwise, we wouldn't have gotten the SMA. But  
4 that's a whole other issue.

5 CHAIRMAN HEDANI: Mr. Marfdin.

6 COMMISSIONER MARFDIN: Mr. Director, I thought we  
7 dealt with this issue of consistency and conformity a few  
8 months ago. Does that not apply here, or that's still in  
9 the process of being worked out or what?

10 DIRECTOR HUNT: The Planning Commission reviewed a  
11 bill that was drafted by the Planning Department and the  
12 Public Works Department that would alleviate this issue of  
13 conformity as described by Mr. Rapacz. That bill has gotten  
14 to Council, but they haven't acted on it fully.

15 COMMISSIONER MARFDIN: And if they did act on the  
16 way it was recommended, then this probably would have been  
17 settled?

18 DIRECTOR HUNT: Yes, they did hold one hearing on  
19 it. There were some questions and issues. The bill has  
20 been revised slightly. And due to their time reviewing the  
21 county-wide policy plan and the Maui Island Plan -- pardon  
22 me, there was other issues. That went to a different  
23 committee. That other committee was busy, and then we got  
24 into budget.

25 CHAIRMAN HEDANI: I think relative to gelatin and

1 tofu, it's a question of moving at the rate of molasses.  
2 But Ellie is going to fix that once she gets on the Council.  
3 Thank you, John.

4 MR. RAPACZ: And I also wanted to thank  
5 Commissioners U'u and Hedani for their service. I really  
6 think that there are very few people in the county that have  
7 enough frequent contact with the Commission to give them any  
8 idea of what kind of sacrifice that you folks make. It's  
9 just incredible to me that you can set aside that much time  
10 of your own as community service, and I really appreciate  
11 it.

12 And if I ever am out of this line of work, then  
13 hopefully I can sit here as well.

14 CHAIRMAN HEDANI: Thank you.

15 MR. RAPACZ: Thank you.

16 CHAIRMAN HEDANI: Approval of action minutes of  
17 the March 3rd meeting. Any additions, corrections? If not,  
18 the minutes will stand approved as circulated. Director's  
19 report.

20 DIRECTOR HUNT: This is Item F(1) on your agenda.  
21 Rescheduling of the date of the Maui Planning Commission  
22 contested case site inspection and receiving of public  
23 comments in Hana on the following SMA appeal. Mr. Gary  
24 Stice of Hana Beachfront Associates appealing the planning  
25 director's decision requiring an SMA major on the SMA

1 assessment for the proposed residential structures at Haneo  
2 Road, Koki Beach, Hana. Application 2008/4.

3 The Commission was notified of this as an agenda  
4 item on its February 24th agenda. Mr. Yoshida, can you help  
5 us with this?

6 MR. YOSHIDA: Yes, Mr. Chairman, Members of the  
7 Commission. Back on I think February 23rd, we had decided  
8 that we were going to Hana on April 27th to visit the site  
9 in the context of a contested case and to receive public  
10 comments from people in Hana. On March 9th when we were  
11 dealing with the DIRE Coalition/Save Kahului Harbor appeal,  
12 the Commission decided it's going to be the hearings body.  
13 It's going to have the contested case on April 27th here in  
14 this -- in this room. So, therefore, we have to reschedule  
15 that Hana visit.

16 And I guess I'm here with Mary Blane Johnston, who  
17 is the attorney for the Planning Department regarding the  
18 Gary Stice appeal. We've looked at possibly rescheduling it  
19 to a Tuesday before or the Tuesday after the April 27th  
20 meeting, so April 20th or May 4th. And having the public  
21 comment session over at the Helene Hall at Hana Bay. We've  
22 also looked at possibly, since we're out in Hana, possibly  
23 conducting some site inspections pending applications which  
24 will come before the Planning Commission at some point in  
25 time.

1 I believe Tricia said that she had talked to  
2 Mr. Stice, and who is not here, but I thought either of  
3 those dates was okay. Maybe Ms. Johnston can shed further  
4 light on this.

5 CHAIRMAN HEDANI: All you're asking for is a  
6 change in date, right?

7 MR. YOSHIDA: That's correct, and maybe the  
8 ability to do some of these site inspections since we're out  
9 there anyways.

10 CHAIRMAN HEDANI: Commissioner Marfdin.

11 COMMISSIONER MARFDIN: Clayton, the one thing -- I  
12 don't want to deal with the date issue yet. We're going to  
13 deal with that right now. But I would add at least three  
14 things to your list. When you do -- and maybe one of them  
15 is implied. Where it says Hana Landfill, you also want to  
16 get the quarry in there. I would also add Paanimai Park,  
17 because I think that comes back to us after the subdivision.

18 MR. YOSHIDA: I believe the Commission approved  
19 the SMA for Paanimai Park after the Council acted on the  
20 community plan amendment and State Land Use District  
21 Boundary Amendment in the fall of last year.

22 COMMISSIONER MARFDIN: Okay, if that doesn't come  
23 back, fine. And the third thing is the wharf and the  
24 approach to the wharf.

25 MR. YOSHIDA: I believe the Commission did grant

1 the SMA for the Hana Bay Wharf improvements. It's not a  
2 pending item. The Commission is going to be out at Hana Bay  
3 anyways, so they can take a look at that.

4 COMMISSIONER MARFDIN: Okay. Thank you.

5 CHAIRMAN HEDANI: Ladies and gentlemen, what's  
6 your preference? Commissioner Starr.

7 COMMISSIONER STARR: First of all, I want to  
8 apologize to Mr. Yoshida and Ms. Johnston that we made this  
9 more complicated. And I would like to ask if May 4th, if  
10 you have Helene Hall, if that's works okay?

11 MR. YOSHIDA: Yeah, I think actually Carolyn had  
12 to do the brunt of the work, because she had to contact  
13 Parks Department and say we're not coming on April 27th,  
14 what about April 20th or May 4th.

15 CHAIRMAN HEDANI: Mr. Starr.

16 COMMISSIONER STARR: I want to thank Carolyn, and  
17 I would like to move that it be done on May 4th.

18 MR. GIROUX: May 4th, I just got notice we're  
19 going to have one attorney on leave. And I'm actually going  
20 to be covering a hearing here just to let you know.

21 DIRECTOR HUNT: On May 4th?

22 MR. GIROUX: May 4th.

23 CHAIRMAN HEDANI: How about April 20th?

24 MR. GIROUX: That should work. That should work  
25 better.

1 CHAIRMAN HEDANI: Commissioners. Mr. Marfdin.

2 COMMISSIONER MARFDIN: My concern -- I think Mary  
3 wanted to speak.

4 MS. JOHNSTON: Yes, go ahead.

5 COMMISSIONER MARFDIN: My concern with April 20th  
6 is we had said April 27th. I had gotten the word spread  
7 throughout Hana. It's when we canceled last time, I spread  
8 the word, no, it's canceled. I think to move it earlier is  
9 doing them a disservice. Now, maybe we could do May 18, but  
10 I would be hesitant to go earlier than what we earlier  
11 announced given the fact that we canceled that.

12 COMMISSIONER STARR: I have a problem with April  
13 20th, and I would very much like to be there as well.

14 CHAIRMAN HEDANI: My only comment is that we  
15 jerked this guy around for a really long time, and I think  
16 we need to make resolution as expeditiously as possible one  
17 way another. Mr. Starr.

18 COMMISSIONER STARR: Yeah, I really like to have  
19 Mr. Giroux with us, because I think he's really -- really  
20 does a great job. But I'm wondering if there are other  
21 options since we're not going to be really doing any  
22 business. We're going to be looking at some stuff, and  
23 we're going to be hearing some stuff, and hopefully, we're  
24 going to be keeping our mouths shut.

25 MR. GIROUX: I usually try to convince my office

1 that I don't need to go to this. But, you know, I just  
2 wanted to throw that out, just because I know sometimes  
3 people aren't comfortable when I don't show up to things.  
4 And, you know, our office right now, I think we're -- we've  
5 got two possibly on leave. I just got notice that one more  
6 was going to be a vacation on the 4th.

7 And that means I'll be in town covering something  
8 for that attorney. So, I mean I'm not saying -- I just want  
9 you guys to know that, I mean, so there's not a surprise.

10 CHAIRMAN HEDANI: Can you turn the vacation  
11 request down?

12 MR. GIROUX: I think I just signed it this  
13 morning.

14 CHAIRMAN HEDANI: Mr. Starr.

15 COMMISSIONER STARR: Can Mimi keep us out of  
16 trouble, and I'll promise you a trip to Hana. You can come  
17 visit sometime.

18 MR. GIROUX: Yeah, I think that's a reasonable  
19 alternative. I've given you guys the drill already on how  
20 to not violate the Sunshine Law. But again, it's  
21 self-regulating, so it really depends on you guys really  
22 understanding, you know, what the liabilities and duties are  
23 of meeting and not discussing anything without your, you  
24 know, agenda or being on the record and things like that.

25 CHAIRMAN HEDANI: Do we have a motion for May 4th?

1 Is there a second?

2 COMMISSIONER STARR: Well, I want her to ask --

3 MS. JOHNSTON: Let me make a representation. I  
4 did talk to Mr. Stice this morning, and he's okay with  
5 either date. And he's not -- at this point, you know, he's  
6 fine with that. May 4th is actually better for me. I have  
7 something on April 20th, which I could move off. And I  
8 would point out that because the contested case hearing is  
9 set now, and I think it's set in May, I can't remember the  
10 exact date here, it makes a really clean -- 25th? Okay,  
11 25th.

12 So, that makes a very -- you're not going to be  
13 doing any kind of deliberation. There have been a couple  
14 of -- about three letters that Tricia provided me from  
15 residents in Hana who have indicated they want to come and  
16 participate and give public testimony. They want to come  
17 and give public testimony during the contested case hearing,  
18 too, but they didn't understand that that's not the time for  
19 them to do it. So, they would just need to be notified of  
20 the change in time.

21 CHAIRMAN HEDANI: Mr. Starr.

22 COMMISSIONER STARR: Yeah, before I make a motion,  
23 I just want to ask Ms. Johnston, I mean can you kind of be  
24 our conscience a little bit if we need it, if we step out of  
25 line?

1 MS. JOHNSTON: I can bring a ruler, yes, slap you  
2 on the wrist, yeah.

3 CHAIRMAN HEDANI: Commissioner Starr.

4 COMMISSIONER STARR: Move for May 4th.

5 CHAIRMAN HEDANI: Is there a second?

6 COMMISSIONER MARFDIN: Second.

7 CHAIRMAN HEDANI: Moved by Commissioner Starr.

8 Seconded by Commissioner Marfdin for May 4th. Discussion.  
9 Mr. Hunt.

10 DIRECTOR HUNT: Just to be clear, we'll do these  
11 other items as long as we're out there.

12 CHAIRMAN HEDANI: So, that would include -- the  
13 motion would include site inspections for those listed  
14 items.

15 MS. JOHNSTON: Is there a specific time for this?  
16 So we'll need to let those people know immediately.

17 MR. YOSHIDA: Yes, I believe for the Gary Stice  
18 appeal, the Commission's site inspection with the parties is  
19 scheduled for 3:00. And the public comment session with the  
20 Commission at Helene Hall is scheduled for 5:00.

21 CHAIRMAN HEDANI: And when are the site  
22 inspections?

23 MR. YOSHIDA: Site inspections probably would be  
24 before the contested case. Site inspections, I would say,  
25 maybe 12:30 or so.

1 CHAIRMAN HEDANI: Lunch is on Clayton, everybody.

2 MR. YOSHIDA: Okay. I'll bring my fishing pole.

3 CHAIRMAN HEDANI: Any discussion? Can everybody  
4 make it? I think we're not going to be able to make it.  
5 Yeah, breaks our heart. All those in favor, signify by  
6 saying aye.

7 Opposed nay. Okay. Carried. Okay. Thank you.

8 DIRECTOR HUNT: The next item is Planning  
9 Commission projects and issues. The this is the opportunity  
10 for you to raise issues that the department generally comes  
11 back with later in response.

12 CHAIRMAN HEDANI: Any issues or problems? Next  
13 item.

14 DIRECTOR HUNT: Next item is your discussion of  
15 the next Planning Commission agenda. April 13th, 2010.  
16 Mr. Yoshida, can you give a sound byte on that?

17 MR. YOSHIDA: Yes. The Council last week Friday  
18 approved one of the two mayor's nominees to the Maui  
19 Planning Commission, Jack Freitas. And so, we will have one  
20 new member on board as of April 13th. So, we will have an  
21 election of officers, chair and vice-chair for 2010-2011  
22 Commission year. We'll have our annual orientation session  
23 providing you with some grounding and rules, regulations,  
24 policy documents and like.

25 And in the afternoon, we'll be having a public

1 hearing starting 1:00 or soon thereafter on the improvements  
2 to the Wailea Ike-Wailea Alanui intersection and the  
3 Community Plan Amendment for the Hale Hui Kai project in  
4 Kihei, as well as we'll be scheduling or determining the  
5 hearings officer or hearings body for the Waipio Bay  
6 Benevolence Society Appeal three-lot subdivision out in  
7 Haiku. And we'll also be scheduling the date for the  
8 Commission's comments on the Draft EIS for the Honua'ula,  
9 formerly known as Wailea 670 project.

10 CHAIRMAN HEDANI: Thank you. Any questions for  
11 Clayton? Commissioner Starr.

12 COMMISSIONER STARR: I saw I think it was a letter  
13 to the Maui News about the intersection change, and there  
14 was some concern, I think Wailea Community Association, that  
15 proper notice wasn't done. Is there any issues with that?

16 MR. YOSHIDA: I guess we would check on that  
17 between now and the April 13th meeting.

18 CHAIRMAN HEDANI: Thank you, Clayton.

19 MR. YOSHIDA: And we do have a special meeting  
20 next week Tuesday. We can't let the volunteers get off that  
21 easily. So, we have a special meeting next week Tuesday at  
22 9:00 on the Kula Lodge Phase 2 Project District Application.

23 CHAIRMAN HEDANI: 9:00 here, right?

24 MR. YOSHIDA: Yes, 9:00 here.

25 DIRECTOR HUNT: And that's the only item on that

1 agenda, Clayton?

2 MR. YOSHIDA: So far, unless you want to put any  
3 other items on the agenda.

4 COMMISSIONER U'U: Breakfast.

5 CHAIRMAN HEDANI: EA/EIS report. Mr. Marfdin.

6 COMMISSIONER MARFDIN: Mr. Director, on your list  
7 of SMA open, I guess it's SMA exempts, there is SMX  
8 2010/0092. It says Hana Plantation, but I'm assuming it's  
9 Hana Plantation. The planner is Paul Fasi. It's TMK:  
10 2-1-3: 002, 002. And I would just like to get a  
11 presentation on or at least a whole lot more information on  
12 it.

13 It's the Jim Neighbors' property, and they're  
14 planning it looks like an eight-lot -- seven-lot  
15 subdivision. But I don't -- I would just like to know more  
16 information.

17 DIRECTOR HUNT: Clayton, we'll get back to him  
18 next meeting on that?

19 MR. YOSHIDA: Yes.

20 CHAIRMAN HEDANI: SMA minor or SMA exemptions  
21 report? Okay. With that --

22 COMMISSIONER STARR: Mr. Chair.

23 CHAIRMAN HEDANI: Commissioner Starr.

24 COMMISSIONER STARR: Just before we go, I just  
25 want to say that I've given you a hard time, difficult time

1 quite a few times. I've given Commissioner U'u a hard time  
2 a few times, and it really was not done with malice. And I  
3 really appreciate you putting up with me, and thank you for  
4 your service. And you're great guys, and I'm proud to serve  
5 with you anytime in the future.

6 CHAIRMAN HEDANI: Thank you very much. If I have  
7 treated you cruelly in the past, I apologize. And your  
8 comments were never taken personally and always for the good  
9 of the Commission, so they were appreciated. Bruce.

10 COMMISSIONER U'U: See you guys next week.

11 CHAIRMAN HEDANI: Okay. Our next regular -- your  
12 next regular meeting is April 13th. We do have a March 30th  
13 meeting at 9:00 here. And with that, we're adjourned.  
14 Thank you very much.

15 (The meeting adjourned at 5:10 p.m.)  
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C E R T I F I C A T I O N

I, RACHELLE PRIMEAUX, Notary Public for the State of Hawaii, certify:

That the proceedings contained herein were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am neither attorney for any of the parties hereto nor in any way concerned with the cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC, State of Hawaii  
My commission expires 6/14/2012