

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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., May 25, 2010.

REPORTED BY: Rachelle Primeaux CSR No. 370

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

CHAIRMAN:

JONATHAN STARR

COMMISSIONERS:

KENT HIRANAGA
WARD MARDFIN
LORI SABLAS
WARREN SHIBUYA
ORLANDO TAGORDA
DONNA DOMINGO
JACK FREITAS

CORPORATION COUNSEL:

JAMES GIROUX

AKAKU VIDEOGRAPHER:

KENNY HULTQUIST

1 MAUI COUNTY PLANNING COMMISSION

2 TRANSCRIPT OF PROCEEDINGS

3 * * *

4 CHAIRMAN STARR: Okay. Good morning, everyone.

5 And I would like to thank everyone for joining us today.

6 This is the May 25th meeting of the Maui Planning

7 Commission. We are here. I would like to introduce the

8 hardworking commissioners. We have Commissioner Kent

9 Hiranaga, Commissioner Jack Freitas, Commissioner Orlando

10 Tagorda, Commissioner Ward Mardfin. I'm Jonathan Starr on

11 Chair. We have Commissioner Donna Domingo, Commissioner

12 Warren Shibuya and Commissioner Lori Sablas.

13 We also have with us our corporation counsel, who
14 represents the Commission and does a great job in allowing
15 us to understand the complex laws and issues, James Giroux.16 We have Ann Cua, the Deputy Director of Planning, and our
17 expert on current division matters. We have our -- Kathleen
18 Aoki, our Director of Planning there, also there to help us
19 out and keep us on track. We have Planner Danny Dias, who
20 has some issues today for us. He's going to present issues.
21 He doesn't have issues. We have -- it's early, okay.22 Mike Miyamoto is Deputy Director of Public Works.
23 He's the County expert on roads and other Public Works
24 matters. We have also Carolyn Takayama-Corden, our
25 Secretary for the Commission. We also have Kenny Hultquist

1 from Akaku and our venerable court reporter.

2 We will begin, as we always do, with public
3 testimony. We welcome the public to come and give testimony
4 on every regular agenda item. We ask that you keep it
5 short, no more than three minutes. We do have an item on
6 the agenda today that will start at 1:00, which is a
7 contested case hearing where the body is serving as the
8 hearings officer. On that item, which is the Hana-related
9 item, we will not be taking testimony because our
10 consideration is only done with that which is on the formal
11 record. However, the public is welcome to offer comments on
12 that item, but it will not be considered testimony.

13 With that, we have a few people who signed up to
14 testify. The first is Darlene Baines followed by Eva
15 Miyahira. Please come join us, introduce yourself for the
16 record, and welcome.

17 MS. BAINES: Good morning, my name is Darlene
18 Mahialana Baines. I was born in Kahului in 1936 to parents
19 who were members of the Church of Jesus Christ of Latter Day
20 Saints. So, consequently, I am a life member of this
21 church. I was educated in Honolulu and spent -- taught for
22 30 years in the San Francisco Bay area. Currently, I'm a
23 homeowner and resident in Maui Lani. And I'll be speaking
24 with a historical perspective.

25 There were two extraordinary women also born in

1 Maui. Kaahumanu and Keopuolani were the first in 1820 to
2 embrace Christianity. Having lived under the cruel and
3 capricious kapu system, they sought guidance from God to
4 bring Hawaii out of confusion and to establish laws that
5 were guides to good conduct.

6 Kauikeouli, named as Kamehameha III, made Lahaina
7 the capital of the Kingdom of Hawaii. Lahainaluna, the
8 first school, the first public school in Hawaii, attracted
9 people of all ages who were eager to become literate. In
10 1850, the first Mormon missionaries arrived in Maui. First
11 to be baptized was high chief and judge Jonathan Napela.
12 Napela opened the way for about 700 people to be baptized
13 and to accept the Book of Mormon as the companion scripture
14 to the Bible. He donated land for a chapel in Pulehu. In
15 1905, the chapel was built and is now a historic monument in
16 Kula.

17 This modest chapel became the prototype for all
18 other chapels. Incidentally, the Kahului chapel was built
19 in the same way, and is now -- was located now where the
20 Kahului post office is. The smallest membership in the
21 church is called a branch. There are three branches in this
22 tri-county; Hana branch, Lanai branch, and the Kamehameha
23 branch for single adults. The largest membership unit is
24 called a ward. We have the Pukalani and Makawao wards,
25 Lahaina first and second wards, Kihei and Piilani wards,

1 Wailuku, Waiehu and Kahului wards, and Kaunakakai and
2 Hoolehua wards. These three branches and eleven wards
3 comprise what is called the Kahului stake.

4 The church at Maui Lani will not only house at
5 least two wards, but it will have the significance of being
6 a stake building, a place that periodically brings the
7 entire membership together. However, with closed circuit
8 TV, it is no longer necessary for members to travel the long
9 distance for meetings. A church is a place where people go
10 to find comfort and hope. The beauty of this meeting house
11 will enhance the Maui Lani development.

12 From it will emanate the spirituality, which is a
13 legacy of this island. I've kept my comments very brief and
14 will be glad to answer any historical questions. Mahalo.

15 CHAIRMAN STARR: Thank you. Members. Next
16 testifier is Eva Miyahira followed by Alfredo Bulusan.

17 MS. MIYAHIRA: Aloha, everyone. My name is Eva
18 Miyahira. The year June 2nd, 1969 will be 41 years living
19 at 631 South Papa Avenue, Kahului. My three children were
20 only -- the only children living in the eleventh increment
21 at that time; my son, 15; my daughter, 12; and my youngest
22 one, 9 years old entered into elementary school and high
23 school. Today you can see how fast the community has
24 developed. We have homes, Waiena Middle School, community
25 centers, swimming pool, parks, Luana Gardens housing, Maui

1 Lani and more.

2 Many young and old families with children live
3 here. Every day of all ages of children pass my home
4 laughing, playing the ukulele, bouncing their basketball,
5 talking their way home, happy kids. When I look at all
6 these families here, it would be so important to have a
7 facility built here in our community. My home is a home for
8 families and their friends. I have 20 grandchildren, 21
9 great grandchildren and three children. I love them all.
10 Thank you. By the way, I'm the member of the Church of
11 Jesus Christ of Latter Day Saints.

12 CHAIRMAN STARR: Thank you very much for
13 presenting to us. Our next testifier is Alfredo Bulusan.
14 And that's followed by, I think it's Michele Gaddis. And
15 anyway, please, sir, introduce yourself, and welcome.

16 MR. BULUSAN: Aloha. My name is Alfredo Bulusan.
17 I live in Waiehu. I was born in the Philippines, but I came
18 here when I was five years old, and I've lived on Maui ever
19 since. I came to testify on behalf of the church, because
20 44 years ago while I was in the service, I joined the
21 church. And my wife has always been a member. So, I guess
22 you could say I've been a member along, too, but I'm a
23 convert. But, you know, this Maui Lani project is a good
24 project because it's going to be a beautiful building. It
25 will enhance the neighborhood, and it's going to be, you

1 know, someplace safe that the neighborhood would never be
2 afraid of. And it's family-oriented in the gospel. We also
3 are very service-oriented. We try to always help in the
4 community as members of the church. And as you might know,
5 that anytime there's a disaster elsewhere, the Mormon church
6 is always one of the first responders to disaster areas.
7 And we always try to be helpful in the community or
8 wherever, you know, we can.

9 So, like I said, it's good for the community, and
10 we hope that you'll consider this special permit process.
11 Thank you.

12 CHAIRMAN STARR: Okay. Thank you very much. Next
13 is Michele followed by Arnold Wunder. And please introduce
14 yourself, and welcome.

15 MS. GADDIS: Hi, aloha. My name is Michele
16 Gaddis. And I'm a convert to the Mormon church. I grew up
17 in foster home, in State facilities, and found no source of
18 support for wholesome, clean values until I discovered the
19 Mormon church. I'm a retired school teacher. I have done
20 research in the local prison system for the last five years
21 and two years on the mainland. I stand before you to ask
22 for the support of this church to be built for the following
23 reasons.

24 Out of 100 students in the ninth grade that enter
25 Hawaii schools, 40 percent of these kids do not make it to

1 grade 12. In the prison system, some years ago in the '70s,
2 we had less than 75 people in the system on paperwork.
3 Today we have over 1,000. Recently, a public study was done
4 that evaluated our school system, and our average was about
5 a C plus. We have challenges in the school system. We have
6 economic challenges today.

7 The solutions that we are looking for in our
8 community for family values and family support is found
9 within a church unit that stands for all the things that
10 strengthen families and supports all the rights that
11 children are entitled to. This particular facility will
12 accommodate and house services for over 1,000 people. These
13 1,000 people are those that you will find in every aspect of
14 leadership in our community. I ask for the opportunity to
15 support the facility that will address the challenges and
16 provide solutions for our community through the leadership
17 of this particular faith. Thank you very much.

18 CHAIRMAN STARR: Thank you. Next testifier.
19 Arnold Wunder.

20 MR. WUNDER: Mr. Chairman, if it's okay, I would
21 like to reserve my comments for when the actual presentation
22 is made for the church.

23 CHAIRMAN STARR: Okay. Yeah, that's fine.

24 MR. WUNDER: Thank you.

25 CHAIRMAN STARR: Next testifier is, looks like

1 Johanna Kamaunu. Please come and introduce yourself.

2 Kaniloa Kamaunu will be next.

3 MS. KAMAUNU: Aloha, my name is Johanna Kamaunu.

4 I live in Waihee, and I am also a member of this church.

5 I'm here testifying today, because I'm not sure everybody

6 understands what is at stake here. When the project came

7 before us, we were very pleased that we had a place in which

8 we could have a new building.

9 However, in the last few years that I've been

10 before this Planning Commission regarding the iwi that's

11 found in the Maui Lani projects, I'm still really concerned

12 about that. At one of our meetings where they presented the

13 idea to us and told us what was going to happen, I had asked

14 if there was any discussion about the iwi. And I was told

15 at that time that they were promised there would not be any

16 iwi found on the lot that we have acquired.

17 Okay. So, I said if you can get that in writing,

18 I will be more than supportive of this project. Now, we've

19 been here for -- at least, I've been here for two years, and

20 we have not found any acreage of that size without any iwi

21 being discovered. And what's really unfortunate is there is

22 really no place to bring this group or the archeologists who

23 are making these statements to be accountable for what

24 they're saying. My concern is that, and I tell you this

25 much, I will support this project. I'm wholeheartedly

1 behind this project. I've been a member my whole life.
2 I've served a mission for this church. I raised my family
3 in this church.

4 I doubt that we would be made to do anything that
5 would be wrong, but I think this is a part that you as a
6 Planning Commission is privy to information that we may not
7 all be aware of and might be able to make a decision here on
8 behalf of us that will be fair and equitable. I'm really
9 concerned. But if there are no iwi, as they say, in this
10 area, and as they continue to break ground and grade, then,
11 yes, please allow this project to go through. Thank you.

12 CHAIRMAN STARR: Hold on a second. Commissioner
13 Shibuya.

14 COMMISSIONER SHIBUYA: Thank you, Johanna, for
15 your testimony. I am concerned in a sense that we can
16 avoid, or we can mitigate if an iwi is located on the
17 property. What is your position? Is it avoid, or is it
18 mitigate?

19 MS. KAMAUNU: The problem is I can't speak on just
20 the iwi that we find on our property. What about all the
21 iwi that's been discovered so far? We're talking about
22 300-plus, and we're still adding to that list.

23 COMMISSIONER SHIBUYA: Well, in this particular
24 case, we're just talking about the property for the church.
25 And if we do find the iwi, then can we mitigate the iwi or

1 somehow place -- place it respectfully in an area that is
2 not covered by the parking lot or the structure itself?

3 MS. KAMAUNU: You know, I would like to think that
4 I could make that decision on my own. But that's really not
5 my decision to make alone. You've had people that have come
6 before you on behalf of their families for this. I would
7 hope that there would be some way to arrive at a solution
8 that's fair for everybody.

9 COMMISSIONER SHIBUYA: Yeah. I'm just trying to
10 reach that decision, too.

11 MS. KAMAUNU: Trying to put me on the line here.
12 If it were my family buried there, I would have issues with
13 that. But I suppose I would try to make some arrangements
14 for its relocation to a site that would be more appropriate
15 remembered for them. But if moving them would mean that all
16 these others who have been found and the countless more that
17 are yet to be found, as they do the same thing to that, I
18 really can't speak to that.

19 It's like saying let's take Punchbowl and relocate
20 it so that we can build something here. As good as this
21 organization is and the benefit that it will be to the
22 County of Maui, you know, I have a real concern about that.

23 CHAIRMAN STARR: Okay. Thank you very much.

24 MS. KAMAUNU: I'm sorry, Kaniloa is not here at
25 the moment. Oh, sorry.

1 CHAIRMAN STARR: Come, Kaniloa Kamaunu. Please
2 come, introduce yourself, and welcome.

3 MR. KAMAUNU: Good morning. My name is Kaniloa
4 Kamaunu. I'm from Waihee valley. This -- this is kind of
5 hard, because these people that's behind you I've known all
6 my life. Two men I work with many years, who I have great
7 respect for and love dearly and support them in all that
8 they do. At this time, with the knowledge I have, and we've
9 been pursuing on many cases from this area, my concern is,
10 and I present the 1860 log, which protects the burials. And
11 it states unless some kind of authority is shown to be able
12 to move the iwi, and that's my whole concern is proper
13 authority shown, what gives the right to the State and the
14 County to make those judgments about whether or not those
15 bones should be removed, displaced, discerned?

16 According to the law, anyone without the
17 authority, anyone with knowledge, previous knowledge and
18 they let this happen is also under the same I guess
19 condemnation or effects of the law. In 1992, a case of the
20 Pele Defense Fund versus Paty, they quote, Hawaii State --
21 Hawaii Supreme Court, "Under the Native Hawaiian rights
22 protected by Article 12, Subsection 7, may extend beyond the
23 ahupua'as in which a Native Hawaiian resides where such
24 rights have been customarily and traditionally exercised in
25 this manner. These customary rights do not depend on land

1 ownership and a transfer of ownership of land on which such
2 rights were exercised and no way extinguishes the rights of
3 access."

4 So, the thing is you have to understand, these
5 people you're talking about or the iwi that you're talking
6 about have those rights. Those rights are bestowed upon
7 them. Just because they pass on doesn't alleviate them of
8 their rights. Where they are buried, they already have
9 those rights. And then I have to ask about jurisdiction.
10 Because do you have jurisdiction over these to make these
11 decisions in a time period where these people were born of a
12 different government? Their rights are protected by the
13 Kingdom of Hawaii.

14 So, I have to look if we're going to go back and
15 you're deciding now that you have jurisdiction over such
16 things, how can you move them?

17 COMMISSION SECRETARY: Three minutes.

18 MR. KAMAUNU: Because they come from a different
19 period of time with rights vested to them. So, the question
20 is where is the authority to be able to make such decisions,
21 and who is going to be responsible? And these things are
22 going on for years. And who is responsible to answer to
23 those that actually have authority? This is the problem.
24 The thing is we're taking action. Action is being taken on,
25 one, for those who cannot speak for themselves; two, for

1 families that have been displaced because of what's happened
2 over the years of Hawaiian families.

3 And we know that there are LCA's and RP's in this
4 area. So, where is the consultation with these people?
5 Just because someone has purchased the property does not
6 extinguish the people who actually are from there. All it
7 does is transfer the interest of the person that they bought
8 it from. This doesn't distinguish anybody else's rights.
9 These are the things you have to look at, because
10 legality-wise, this is the problem it's going to be. It may
11 not come up today, but it's going to come up.

12 So, my whole things; one, there is the law that
13 protects them; two, 1992 Hawaii Supreme Court already made a
14 ruling that Native customary rights are protected. So, you
15 have to look at the whole picture. Do you have the right to
16 do that? Is that the right of anybody to do that? And if
17 you do have the right, it needs to be shown. If we're
18 looking at just because it's customary practices now, that
19 does not make it right to continue. Thank you.

20 CHAIRMAN STARR: Before you go, Members, any
21 questions? Commissioner Shibuya.

22 COMMISSIONER SHIBUYA: Mahalo, Kaniloa. I know
23 it's very troublesome. Because we had to dig up our -- my
24 grandfather and grandmother or else they would be under a
25 home in Dream City today. And they're now in another place.

1 But I just wanted to ask you because of your citations,
2 you're talking in terms of avoidance, not mitigation. That
3 that's the way I'm interpreting your testimony.

4 MR. KAMAUNU: What's missing, and I've been
5 talking to the County Council for the last couple of years,
6 is there is no -- there is no consultation between the
7 families that have iwi. You know what I mean? It's really
8 up to them. I mean I know it's a process that is how are we
9 going to find these people. But isn't it due diligence to
10 do the right thing? Because for progress to continue, it's
11 not proper to have one-sided that we have to go on and
12 forget about what's there, like you said, but had the
13 opportunity to you, your family, who has rights to these
14 people or to the bodies of the iwi to remove. So, we're
15 talking about compliance with the law that is there, which
16 is to contact the people that have interest there.

17 You know, we know that the list of LCA's, RP's are
18 listed. We can make some kind of public contact with the
19 people and sit down and talk to them. You know, this is the
20 process. The process of just removing because someone says
21 they own it doesn't give them ownership over the bodies.
22 So, you have to do some kind of consultation. You have to
23 find some way to be able to alleviate that situation. And
24 if the person does not want them to be moved, then there has
25 to be settlement of how we can do it respectfully, so

1 there's a way to do it.

2 The process that's going on now doesn't give any
3 opportunity for those families that have kupuna there to be
4 able to be in the consultation.

5 COMMISSIONER SHIBUYA: So, Kaniloa, in this
6 particular case, let's say we find an iwi. Do we make a
7 public notice that, yes, we found an iwi, and that we would
8 like to find the relatives or families? And if after this
9 period in terms of notification, we have no relatives or
10 anyone, ancestors coming forward, then do we proceed?

11 MR. KAMAUNU: I would say, according to the law,
12 no. Because according to the law itself, it states so
13 just -- to make a public notice. And what we noticed or
14 what we've seen is even though public notice is given out,
15 it doesn't get circulated to everyone. It's like, you know,
16 we have a lot of public meetings. But yet, is a public
17 meeting for the public, or is it just so that the process
18 can move on? Because what I've seen through public meetings
19 is, yes, we had a meeting, okay. But we're still going to
20 go on.

21 And that was a conceived plan from the get-go.
22 Whereas, the public interest should be met first. So, you
23 know what I mean? Just giving the public notice and seeing
24 how things work doesn't always make it -- you know what I
25 mean, it's not that simple. Because a lot of times we see

1 that process doesn't work.

2 COMMISSIONER SHIBUYA: Thank you very much.

3 CHAIRMAN STARR: I'm sure you're aware, you know,
4 this is a burial plan. And if iwi are found, then the
5 Burial Council, the Maui-Lanai Island Burial Council comes
6 into play, and they fulfill those functions that you
7 described. I'm going to let Commissioner Mardfin ask a
8 question if you want to asked something, Commissioner
9 Mardfin.

10 COMMISSIONER MARDFIN: Yeah. Aloha, Kaniloa.

11 MR. KAMAUNU: Aloha.

12 COMMISSIONER MARDFIN: Usually when we get
13 requests, there's a whole list of documents. We get letters
14 from the State Historic Planning Preservation Division. We
15 often get other kinds of things. This one did have a letter
16 from the State Historic Preservation Division. I don't know
17 if you've seen it or not. Let me just, for the record, read
18 in one paragraph of it.

19 And they say, "A search of our records indicates
20 that we received and accepted an archeological inventory
21 survey report assessment for the subject parcels area of
22 potential effect conducted by" blah, blah, blah, blah, "in
23 2006 during which no culturally significant historic
24 properties were identified. Additionally, all ground
25 disturbance within the project area is covered by a

1 longstanding precautionary archeological monitoring plan
2 also prepared by Archeological Services Hawaii in accordance
3 with an undocumented decision made by former SHPD
4 Administrator Melanie Chin regarding the necessity of having
5 a separate monitoring plan prepared for each phase of the
6 larger Maui Lani development."

7 And basically, it says we believe no historic
8 properties will be affected, because it's undergone historic
9 preservation review process. And basically, they're saying
10 they don't have a problem with it.

11 MR. KAMAUNU: Well, again, I have to say you're
12 talking about apples and oranges. Because that's the County
13 or State, State of Hawaii, but the people we're talking
14 about are not of that time, not under that governance. And
15 also, I have sat in a lot of the Burial Council meetings.
16 In fact, I come every month. And I find that it's a lot of
17 times in disarray. Because they themselves don't feel that
18 they have any authority given to them to act upon a lot of
19 stuff.

20 They're just given or asked for their
21 consultation, but they have actually no real authority to
22 act upon anything. And a lot of the statements that are
23 made, if I haven't sat in the meetings, I would probably
24 accept them. But because I've sat in the meetings and I
25 know the people you're talking about and I've been able to

1 sit and listen to a lot of the archeologists, I have to say
2 I don't accept that. Because a lot of times, we find that
3 what they're saying and stating is not so.

4 I've also been working with people that have been
5 actively members of the community that actively have done a
6 lot of research in this area of Maui Lani. I mean extensive
7 research dates back a while. And they've really taken the
8 time to research the area. And you'll be surprised how much
9 information they have that's actually not coming out. So,
10 you know what I mean? I would accept what you're saying.
11 But because I've sat through these meetings for the last two
12 years and I've gone to a lot of the Commission meetings, I
13 know what the standings are.

14 COMMISSIONER MARDFIN: It's not what I'm saying.
15 I'm just reporting what they're saying. And this is the
16 only information -- and your testimony is the only
17 information we have.

18 MR. KAMAUNU: Yeah.

19 COMMISSIONER MARDFIN: What would your overall
20 position be, that no development occur in Maui Lani at this
21 stage?

22 MR. KAMAUNU: I would like to see, and we've been
23 sitting with -- talking about burial plans. I think a
24 cohesive burial plan needs to be really looked at, because
25 what they have right now, from what we've learned and sat

1 through the meetings, is not really -- it doesn't really
2 protect the iwi. A lot of times we only talk about those
3 that are registered already compared to the inadvertent
4 finds that they have, and they're treated differently, which
5 to me is not a good thing.

6 I mean if it's a body that they find, it still
7 should be treated the same way that if it was cataloged.
8 It's the same thing, but we're finding out this is what's
9 happening in Kula. It's happening in Maui Lani and
10 happening in Makena. You know, these things are being --
11 well, they weren't registered. They weren't cataloged. So,
12 we'll just throw them on the side and we're not going to
13 really worry about them. And that's what's been happening.
14 And that's the -- you know, we've been sitting through this
15 and listening to these things happen.

16 So, my thing is why are they treating -- they come
17 over there and we figured out how they measure and
18 everything. Well, this place has it. This doesn't. And
19 but they don't go research the area. They just take the
20 findings they get from this one area and say that this is
21 for the rest of the -- that doesn't work. You know, that's
22 what I'm saying. The information that you're actually
23 getting is not a full, in-depth report of actually what's
24 happening. And when they come upon these finds, they, you
25 know, mitigate it differently, you know, so the project can

1 go on. So, you know what I mean?

2 COMMISSIONER MARDFIN: Mahalo for sharing your
3 mana'o.

4 CHAIRMAN STARR: Thank you very much. And thank
5 you for being involved in this. And I hope someday you
6 apply for Burial Council, because I think you would be good
7 on that. Sione Olevao. Welcome. Please introduce
8 yourself.

9 MR. OLEVAO: Hi, my name is Sione Olevao. I live
10 in Lahaina. I'm here testifying in support of the project.
11 And to hear one of my fellow members speak about the iwi,
12 I'm pretty sure, as a church, we are concerned for
13 everything that goes on within the community. We are so
14 involved within the Maui communities. Recently we had the
15 Mormon Helping Hands project where we go and do service
16 projects for around -- around the island of Maui on Molokai
17 and Lanai.

18 The church is growing here on Maui. And the
19 project is one that would benefit a lot of our members both
20 incoming and our members currently. And although we live in
21 Lahaina, we come here for stake conferences. And the
22 building that we're at right now, it doesn't really house
23 everybody. And that project would really make it beneficial
24 for everybody that comes from all parts of the island. And
25 that way we can all share in, which is one thing is

1 perfecting ourselves, perfecting those that are incoming and
2 continuing to live what we've been taught. And like I said,
3 I am in support of this project. And I hope that you would
4 allow this despite the findings that have occurred.

5 And I feel for the families. We do work for the
6 dead. And we are concerned for our dead. Thank you.

7 CHAIRMAN STARR: Mahalo. Next testifier is
8 Ke'eaumoku Kapu. And could someone stick their head out and
9 -- Ke'eaumoku Kapu.

10 MR. KAPU: Ke'eaumoku Kapu from Lahaina. Boy, I
11 came here in the nick of time, yeah. First of all, I think
12 the topic at hand is in the wrong format, and it should
13 actually go through the Burial Council first. I'm a member
14 of the Burial Council. This will be my second term. We
15 have a lot of questions based upon the archeological
16 analysis survey. We have also have questions about the
17 reinternment process. And I think we all understand that,
18 because of the State's at the moment being questioned on
19 their dysfunctionality of conducting themselves, I think the
20 State has a lot to do based upon this agenda item and the
21 Burial Councils have been pending with this issue,
22 especially with the archeologists.

23 I have mountable questions, and I'm at the point
24 of sending this matter in front of the Office of Quality
25 Control to make sure that every T is crossed and I is

1 dotted.

2 So, for this agenda's item to be placed in front
3 of you and the discussion is based upon burials, I think you
4 guys need to really recuse yourselves from this issue until
5 the matter of clarency (sic) within the Burial Council, the
6 State Historic Preservations are met. If not, then I may
7 have to, as a public constituent, file something in these
8 proceedings that may cripple, not only the County Planning
9 Department, but the State as well. Thank you.

10 CHAIRMAN STARR: Members, any questions?
11 Commissioner Mardfin.

12 COMMISSIONER MARDFIN: Mahalo, Ke'eaumoku. Am I
13 to understand from what you said, has Maui Lani project as a
14 whole gone before the Burial Council?

15 MR. KAPU: Yes. There's mountable issues on the
16 last time this issue of the development of the church came
17 before us. Basically, it was deferred. An archeologist was
18 to come back to us with something, very, I guess, discretely
19 placing upon the scope of the project and the mountable
20 burials. There was a discussion prior to the church
21 being -- the constituents that purchased the property. So,
22 they knew -- the property owner knew before of the mountable
23 burials and the issues that were at hand, and all of the
24 sudden, this goes to the church.

25 But we still have a lot of unanswered questions as

1 pertaining to the careship of those iwi kupuna that is
2 placed there. And not only the careship, but the management
3 of those kinds of things, that should be in the State's
4 jurisdiction. I like know why it's being discussed here in
5 the Planning Committee.

6 COMMISSIONER MARDFIN: Let me understand
7 something. And you're telling me, giving me some very
8 important information, I think. But I want to make sure
9 that I precisely understand you. My earlier question was
10 about Maui Lani in general. Are you saying the land where
11 this church is proposed went before the Burial Council, and
12 you said you needed more information?

13 MR. KAPU: Yeah.

14 COMMISSIONER MARDFIN: They didn't provide the
15 information?

16 MR. KAPU: It's still pending.

17 COMMISSIONER MARDFIN: And now they're here.
18 Thank you very much.

19 CHAIRMAN STARR: Okay. Thank you. Wait a second.
20 Commissioner Sablas.

21 COMMISSIONER SABLAS: Aloha, Ke'eaumoku. As a
22 member of the Burial Council, are you aware of an iwi having
23 been found in this particular parcel?

24 MR. KAPU: What was placed on our agenda's item --
25 let's look at Maui Lani in general. There has been families

1 that live adjacent to the project area that gave a list -- I
2 also sit on the Native Hawaiian Historic Preservation
3 Council. We're an advisory to the Board of Trustees Office
4 of Hawaiian Affairs. There's over 300 burials that came
5 before us in that commission, yeah.

6 The part I don't like about this whole thing is
7 how the agenda is circumvented and separated. To say there
8 isn't 300 burials, that if there is a cluster of burials
9 here, then the agenda only addresses 25. But then the next
10 parcel over addresses another 25 and addresses another 43.
11 So, the separating of the agenda item makes it seem that
12 it's palatable to only address a small amount of burials.
13 But within the whole project, there's over 300-plus burials,
14 I would say.

15 So, my concern is -- isn't just based upon -- and
16 you know what? The development of the church, hey, mahalo
17 ke akua for those kinds of things. But we need to make
18 precautionary measures to make sure that these things are
19 set aside. Based upon whatever the decision is going to be,
20 whether or not it's going to be a reinternment process,
21 whether or not it's going to be preservation in place
22 process, those are the kind of issues that we're dealing
23 with right now with the Burial Council.

24 We don't have an archeologist that represents the
25 Burial Council on Maui. There isn't an archeologist that

1 represents us. So, our process is being at the moment
2 circumvented where the archeologist is allowed to send all
3 the information directly to Oahu for final review and
4 rubber-stamped.

5 But in our Commission, we bring up the concerns
6 pertaining to the careship of how these iwi kupuna is going
7 to be taken. And it's -- it's astounding to me that I come
8 here. The issue is on this agenda. We still have a lot of
9 issues that hasn't been addressed in our committee, and it
10 seems like we don't even have -- well, I would say this
11 department don't even have the courtesy to inform the Burial
12 Council based upon what is going to be done here. So, I
13 answered your question.

14 CHAIRMAN STARR: Thank you. Mr. Kapu, I have a
15 question. Our documentation shows that no burials have been
16 found on the property, we have no way of knowing if that's
17 true or not. And I know we certainly have a lot of respect
18 and appreciation for the importance when burials are found
19 to make sure that the Burial Council is able to take care of
20 them properly. But since our reports say there have been no
21 burials found, I mean what -- can you tell us -- do you have
22 a belief there have been burials found here?

23 MR. KAPU: Just prior to me walking into the
24 meeting --

25 CHAIRMAN STARR: On this property, on this

1 particular property.

2 MR. KAPU: Just prior to me walking into this
3 meeting, the discussion was based upon burials. Now, if the
4 issue is pertaining to how these kinds of things are going
5 to so precede itself, my walking in here, that was based
6 upon what occurred in the discussion. Now, even though
7 there isn't any report, we haven't received anything yet, we
8 requested for a full report, and nothing has come forward to
9 the Burial Council as of even today.

10 So, it's kind of premature. Wouldn't you say it's
11 kind of premature that the Burial Council, Maui Island
12 Burial Council hasn't given their recommendations? The
13 State, did they give any recommendations based upon the
14 project? If not, then why would the discussion matter?

15 CHAIRMAN STARR: Okay. Mahalo. Thank you for
16 being involved in this. Next is Darlene Baines.

17 MS. BAINES: I did talk.

18 CHAIRMAN STARR: I'm sorry. Uilani Kapu. Please
19 come introduce yourself, and welcome and thank you for being
20 here.

21 MS. KAPU: Aloha kakahiaka, Commission. I just
22 wanted to just give a testimony to Ke'eaumoku's. It's
23 Office of Information Practice is what we are going forward
24 and proceeding with, only because a lot of the agenda's
25 items on the Burial Council have not been addressed. Maui

1 Lani has been a big issue. It's been in front of the Burial
2 Council, and then it hasn't been for six to eight months.
3 And then it's being brought up.

4 It's in front of Native Hawaiian Historic
5 Preservation Council on Oahu. And now it's in front of you.
6 As you have said -- you asked if there was any iwi found on
7 this project. I don't see Lisa, who was their archeologist
8 for Maui Lani, here present. I don't know the scope of
9 investigation she has done within this project. I know that
10 there has no grading or grubbing been allowed. So, how are
11 we to dictate if there is iwi or not?

12 Just their findings within this project is over
13 300 iwi kupuna. We all know that sand dunes hold iwi. We
14 all know that there is a lot of transporting of sand from
15 this property to other places, which we are trying to stop
16 sand mining. There is a lot within Maui Lani that has woken
17 up a lot of people. I understand that the church would be a
18 perfect spot to protect iwi kupuna. But there are other
19 people that need to be addressed within this project.

20 We have worked with some people that have been
21 working in Maui Lani project that have -- they have done
22 magnificent history of what this property is. They have
23 worked since 2003 on this property. They have identified
24 each area of where iwi have been found. And they have put a
25 whole scope together of Maui Lani. It's hard for them to

1 testify on a bunch of things because they know -- their
2 hearts are there. They are in the process of putting
3 together a burial treatment plan that is proper, is
4 respectful to all cultures, not just Native Hawaiian
5 cultures.

6 We need to remember that our Hawaiian islands have
7 been filled with all different types of cultures. But the
8 history goes back to kupuna that have died in battle within
9 this area. And I hope you folks were given that information
10 so you folks know what Maui Lani is about.

11 COMMISSION SECRETARY: Three minutes.

12 MS. KAPU: Yes, this is a small project coming
13 before you, but I'm pretty sure this is not the last. But
14 right now, they have not found iwi kupuna, but not to say as
15 soon as grading and grubbing comes up, they won't find it.
16 But we are tired of inadvertent findings. And it comes
17 before the Burial Council, so Ke'eaumoku, as a Councilman
18 for Burial Council, has come before you folks to state that,
19 you know, it's been in front of them. And there's no way of
20 saying that there won't be, but we're here to tell you that
21 there has been found -- finds of iwi kupuna.

22 And Burial Council should be looking at this
23 project also. And I would like to thank you folks for
24 taking the time. And I know it's hard to discuss putting
25 projects together to make it available for everyone. But we

1 need to take a step backwards and think of what that area
2 signifies to everyone and the hard work that people have put
3 into researching and documenting all iwi kupuna that have
4 been found in Maui Lani. Mahalo.

5 CHAIRMAN STARR: Wait one second, please, Uilani.
6 Commissioner Mardfin.

7 COMMISSIONER MARDFIN: Uilani, mahalo. I think I
8 heard you say you were in the process of developing a plan
9 for dealing with the bones.

10 MS. KAPU: The people that have been working on
11 this project since 2003, they are looking into putting
12 together their own burial treatment plan that they feel is
13 significant with the history and culture of that area.

14 COMMISSIONER MARDFIN: Do you have any -- I know
15 it's beyond your scope, but do you have any guesses to when
16 that plan might be completed?

17 MS. KAPU: I would have to talk with them. I was
18 hoping they would be here, but I do not know.

19 COMMISSIONER MARDFIN: Thank you very much.

20 MS. KAPU: You're welcome.

21 CHAIRMAN STARR: Thank you. And I encourage you
22 to work with OIP and try to improve the process and the
23 State where Burial Council can get involved. Everyone does
24 share those concerns.

25 MS. KAPU: I definitely will. Mahalo.

1 CHAIRMAN STARR: Anyone else wishing to offer
2 testimony on any of our agenda items today, please come
3 forward. Not seeing any, the initial public testimony
4 portion of our meeting is now closed. We will move on to
5 our first item. And Deputy Director Cua will introduce our
6 item.

7 MS. CUA: Our first public hearing is an
8 application from the Corporation of the Presiding Bishop of
9 the Church of Jesus Christ of Latter Day Saints requesting a
10 County Special Use Permit and a Phase II Project District
11 Approval for the LDS Church at Maui Lani Project District in
12 the vicinity of the intersection of Kuikahi Drive
13 (extension) and the Maui Lani Parkway at TMK: 3-8-007,
14 portion of Parcel 151 in Kahului. The planner on this
15 matter is Danny Dias.

16 MR. DIAS: Thanks, and good morning, Chairman
17 Starr, Members of the Maui Planning Commission. I'll keep
18 my portion brief and let the Applicant do the majority of
19 the presentation. I'm going to have to sort of shift gears
20 here, and I'm just going to briefly talk about the project
21 itself and what's going to happen on this four-acre parcel.

22 As stated, the project before you involves a
23 request for a County Special Use Permit in the project
24 district Phase II approval for the Church of Jesus Christ of
25 Latter Day Saints or the LDS Church proposed to be

1 constructed in Maui Lani.

2 The reason a County Special Use Permit is required
3 is due to the property being located in an area that's zoned
4 for residential use. Churches aren't outright permitted in
5 residential areas, but they are allowed to be built if a
6 County Special Use Permit is granted by this Commission.
7 The proposed church would be constructed on a 3.9-acre
8 portion of land. The property is located on the corner of
9 Maui Lani Parkway and Kuikahi Drive. And as of right now,
10 Maui Lani Parkway and Kuikahi Drive aren't accessible by the
11 public.

12 But in talking with Maui Lani, I believe they're
13 planning on opening it in about two weeks. So, the church
14 itself is proposed to be approximately 24,000 square feet in
15 size and will include a main church building and
16 1,800-square-foot detached pavilion and a 382-stall parking
17 lot. The main church building itself will consist of a
18 chapel, meeting rooms, indoor recreation area,
19 administrative offices and storage areas. The LDS Church
20 will be used for worship and other activities or functions
21 approximately three to four days a week.

22 The church anticipates having two services on
23 Sunday, one in the morning, and one in the afternoon,
24 approximately three hours each and attended by about 150 to
25 200 members. The church also plans on having religious

1 studies on certain weekdays from approximately 6:00 to 9:00
2 in the evening with about 40 to 60 members attending each
3 weekday session.

4 As stated in the report, the church is located in
5 the State Urban District, Wailuku-Kahului Community Plan
6 Project District 1, otherwise known as Maui Lani, and zoned
7 as Wailuku-Kahului Project District 1. And as I stated,
8 this is located in the residential subdistrict. So, that
9 concludes the Department's brief summary of this project.
10 And with that, I would like to hand it off to Mich Hirano of
11 Munekiyo & Hiraga for the presentation.

12 CHAIRMAN STARR: Mr. Dias, about how long will the
13 Power Point be? It's no rush.

14 MR. HIRANO: About ten minutes.

15 CHAIRMAN STARR: Ten, 15 is fine.

16 MR. HIRANO: Thank you, Danny. Good morning,
17 Chair Starr, Commissioners. My name is Mich Hirano with
18 Munekiyo & Hiraga. Our firm is assisting the LDS Church
19 with this application before you this morning. And we've
20 prepared a Power Point presentation to provide some
21 information on the project for the Commission.

22 The project team, I would just like to identify
23 the project team, who are in attendance this morning and who
24 will be available to answer any questions that the
25 Commissioners may have. The Applicant is the Corporation of

1 the Presiding Bishop of the Church of Jesus Christ of Latter
2 Day Saints, a Utah Corporation Sole. And hereinafter, I
3 will be referring to the organization as the LDS Church.

4 The land owner is the LDS Church. The project
5 architect is GYA Architects. The project engineer is Warren
6 S. Unemori Engineering, Incorporated. The traffic
7 consultant was PB Americas, and the planning consultant
8 Munekiyo & Hiraga. The archeological inventory survey was
9 carried out on the project, and it was carried out by
10 Archeological Services Hawaii. And I will be providing more
11 information on that in the Power Point.

12 Just to give the Commissioners orientation of the
13 project area in the Maui Lani Project District, the LDS
14 Church is located within the Maui Lani Project District.
15 Overall, the Maui Lani Project District is approximately
16 1,069 acres, and it's bordered by Kuihelani Highway to the
17 east. The border to the north runs along the Kahului urban
18 area over to Kaahumanu Avenue, and that is the northern kind
19 of perimeter of the project district. And then roughly, it
20 goes behind what is the Sand Hills or in front of the Sand
21 Hills development and then up along Waiale Road.

22 This is Honoapiilani Highway further to the west.
23 Kuikahi Drive is extended now from Waiale Road down to this
24 intersection with Maui Lani Parkway. And Maui Lani Parkway
25 from Kuihelani Highway travels in a westerly direction and

1 is now intersecting with Kuikahi Drive. This is the
2 Pomaikai Elementary School location just again to give
3 reference to the Commissioners.

4 Kamehameha Avenue. And eventually, the Maui Lani
5 Parkway will be extended to join with Maui Lani Parkway near
6 the Islands and Bluffs subdivision. The area right now is
7 the -- the LDS Church will be the first development in this
8 area. The project district is zoned single-family. The
9 Commissioners may know and remember that the VMX project
10 area is over to the west of the proposed LDS Church site.
11 The project area is approximately 3.9 acres.

12 As Danny had mentioned, the need for the
13 special -- the Project District Phase II approval and the
14 County Special Use Permit, the subject property is located
15 in the Maui Lani Project District. The LDS Church is zoned
16 as a residential area. And according to the County
17 ordinance and the standards and uses within the Maui Lani
18 Project District, churches are permitted as a special use in
19 the residential area.

20 So, the entitlements that will be required for the
21 project to move forward is the Project District Phase II
22 approval and the County Special Use Permit approval. And
23 those are the applications before you this morning. This is
24 the site plan for the church. The church floor area is
25 approximately 24,000 square feet. As I noted earlier, this

1 is Kuikahi Drive to the left of the church and Maui Lani
2 Parkway. Access off of Maui Lani Parkway will be a right-in
3 and right-out turn only.

4 There is a median strip in Maui Lani Parkway and
5 currently is built out as a two-lane arterial roadway. And
6 Kuikahi Drive, there will be full access movement in this
7 driveway into the church property. There will be full
8 movement right-in, right-out and left-out and left-in to the
9 -- off of Kuikahi Drive. The church area also will -- or
10 the proposed improvements, there will be 282 parking stalls
11 that will be built with the church property. There's the
12 main church building and as well there will be a outdoor
13 pavilion of approximately 1,800 square feet.

14 This is the floor plan for the church. There will
15 be two main entries. This is the sanctuary. And the
16 rostrum is up in this area. The area can also be expanded
17 to accommodate larger meetings. As was represented this
18 morning, once in a while they'll have these large stake
19 meetings. And so, they will be able to accommodate larger
20 meetings. But for the most part, this particular area would
21 be the sanctuary and worship area of the church. There will
22 also be meeting rooms to the side of the church building.

23 And these will be small meeting rooms for 20 to 15
24 people, and it will be for religious studies. There are
25 also offices that will be built as part of the church

1 facilities. However, there are no full-time paid members
2 with the church. All the staff and the services are
3 performed by volunteers. This is the east elevation of the
4 church, and this is looking at the church if you were
5 driving along Maui Lani Parkway. This is the from the east.

6 And this is from the front of the church. And
7 then along the Kuikahi Drive elevation, this is the north
8 elevation, and this is the church building from the north
9 side. And as you can see, it is a -- it is a very
10 attractive building. Overall, the building, it's a
11 single-story building. The height of the building is
12 approximately 28 feet in height. And then the steeple, it
13 goes beyond the 28 -- or the 30-foot height limit imposed at
14 the Maui Lani as a development standard.

15 But a height variance was approved by the Board of
16 Variances in January of this year to allow the steeple to be
17 built. This is just a elevation of the outdoor pavilion.
18 It will be used for outdoor activities, social gatherings.
19 This is the project site as it was in January, and further
20 improvements have been made along Kuikahi Drive in Maui Lani
21 Parkway. But I would like to point out that the area has
22 been cleared and grubbed and graded. This area actually is
23 a tough situation.

24 And this is the approximate, I guess, elevation of
25 what the finished grade will be of the site. And it has

1 been inventoried, archeological inventoried. And it has as
2 well been developed and graded. And this is looking towards
3 the west from Maui Lani Parkway, and this is the Kuikahi
4 Drive extension. This is looking kind of to the west,
5 southwest across the site. And again, this site is fairly
6 level. And it will be -- the LDS Church will be the first
7 development in the neighborhood.

8 So, it will not adversely impact existing
9 single-family homes. And as you can see from the building,
10 it's a very attractive building and will not visually
11 negatively impact future single-family residential
12 development. This is the VMX area to the right-hand side of
13 the screen. In terms of church use, the general worship
14 will be on Sundays. There will be a morning service
15 approximately from 9 a.m. to 12 p.m., which will be attended
16 by about 175 to 200 members regularly.

17 And then in the afternoon, there will be a p.m.
18 service afternoon service from about 1 p.m. to 4 p.m., and
19 that would be attended by approximately 150 to 175 members.
20 There will be religious studies during the weekday. There
21 will be a morning session as well from 6:30 a.m. to 7:30
22 a.m., and this is a seminary class for the high school
23 students that are going to the high schools in Central Maui.
24 And they will be attending religious studies. And then in
25 the evenings from 6 p.m. to 9 p.m., there will be again

1 religious studies, from approximately 40 to 60 members in
2 attendance.

3 As well, the church will be used for special
4 events, funerals and social activities and as well as stake
5 meetings for the larger members. In terms of the special
6 use permit justification, the LDS Church will be the first
7 development in the area. The LDS Church at Maui Lani is a
8 standard LDS Church design. They have a number of plans for
9 churches of various sizes. So, it is a standard design, and
10 this standard, this church design has been built throughout
11 the U.S. and has successfully integrated the church into the
12 residential communities.

13 So, adverse impact to single-family residential
14 areas are not anticipated as a result of the church being
15 built in Maui Lani. As I mentioned before, the height
16 variance building design had been approved or recommended
17 for approval. Board of Variances approved the steeple
18 height variance to allow the steeple to be built in January.
19 And then in May of this year, the Urban Design Review Board
20 reviewed the building design and recommended approval.

21 The building also has a number of sustainable
22 design features that the LDS Church is looking at as they
23 develop their churches throughout the world. They look at
24 photovoltaic panels, solar panels that would supply all the
25 electrical needs of the church building, the instantaneous

1 tankless water heaters, dual-flush water efficient toilets.
2 They have bicycle racks in their buildings.

3 They look at xeriscape landscaping, and in this
4 particular case, the reduction of grassed areas. They have
5 as well looked at underground water sensors and landscape
6 irrigation with smart sensors that limit irrigation during
7 wet periods as well as laser-activated drip irrigation
8 systems.

9 Archeological resources, I would like to just
10 address those issues. The archeological assessment for the
11 site was carried out in 2006. During that archeological
12 inventory survey, subsurface testing was carried out
13 throughout that site. No subsurface cultural remains or
14 deposits were found. There was as well archeological
15 monitoring during the grading of that site. And again, no
16 features were found. And as the State Historic Preservation
17 Division had commented during the review of the application,
18 they felt that the existing archeological monitoring plan
19 that is current for the Maui Lani Project District would be
20 followed during construction.

21 Drainage. Maui Lani has a overall master plan,
22 drainage plan. And all pre and post-development generated
23 storm water runoff will be retained. It will be transferred
24 from the site to the Maui Lani master drainage system, which
25 has a detention basin on the Maui Lani golf course land.

1 In terms of roadways, the traffic impact
2 assessment report indicated approximately 20 total trips in
3 the a.m. peak hour and 28 total trips in the p.m. peak hour.
4 Most trips would occur off-peak periods with the two Sunday
5 services. Traffic signal at Kuikahi Drive and Waiale Road,
6 the roadway is scheduled to be opened on June 8th of next
7 month. And the traffic signal will be operational at that
8 time. The signalization as well the Maui Lani Parkway and
9 Kuikahi Drive will be carried out when warranted by Maui
10 Lani Partners.

11 So, all the roadway improvements have been
12 developed by Maui Lani Partners, the master builder of Maui
13 Lani. And they have extended the Kuikahi Drive and the
14 Waiale Road to provide access to the site. I don't know if
15 some of the Commissioners were not here when the Maui Lani
16 VMX project was reviewed, but this is the sidewalk along the
17 Kuikahi Drive side of the LDS Church. This is a wide
18 sidewalk. It's a ten-foot-wide sidewalk, so it's
19 a multipurpose sidewalk, which would allow -- and it was
20 presented during the VMX application that the sidewalk would
21 allow multiple use of not only pedestrian walkways, but
22 strollers and bikeways. So, it is a multipurpose walkway.

23 This is down to the corner of -- this is Kuikahi
24 Drive and down to the corner of Maui Lani Parkway. There is
25 a crosswalk at this intersection. The sidewalk transitions

1 from ten feet wide to six-foot wide along the Maui Lani
2 Parkway LDS Church side of the roadway. But on the opposite
3 side, on the northeast side of the Maui Lani Parkway, that
4 walkway transitions to an eight-foot wide multipurpose
5 walkway/bike lane.

6 In terms of infrastructure access mentioned will
7 be provided by the right-in, right turn off of Maui Lani
8 Parkway and full access movement at Kuikahi Drive. The
9 sewer system has been installed by Maui Lani. There's an
10 18, or sorry, 12-inch gravity sewer line within the Maui
11 Lani Parkway right-of-way. Estimated sewage flows about
12 2,000 gallons per day. The water system improvements have
13 been provided by Maui Lani Project District Master Plan Maui
14 Lani Partners.

15 There is a 12-inch water line in the Kuikahi Drive
16 right-of-way, which will service the project site. It's
17 estimated that water demand is approximately 18,000 gallons
18 a day. And it will be covered by the Department of Water
19 Supply agreement with Maui Lani Partners. So, there is an
20 allocation that has been agreed to overall for Maui Lani.
21 And the church will be serviced by that agreement. This is
22 just the site plan of the utilities and the right-of-way.
23 So, all the utilities are underground. And so, very little
24 trenching will be required now. As I mentioned, the site
25 has already been graded. It's at probably close to finished

1 grade.

2 So, the trenching that will be involved will
3 basically be for the utilities, the sewer into the Maui Lani
4 Parkway right-of-way and the water connection to the Kuikahi
5 Drive water line and then underground hydro and telephone
6 and electric. I'm sorry, yeah, telephone and electric
7 connections. So, very minimal trenching will be required or
8 ground alteration. And that's the end of our presentation.
9 So thank you.

10 CHAIRMAN STARR: Okay. Thank you, Mr. Hirano.
11 Members, questions for Mr. Dias? Or Mr. Hirano, what
12 resource people do you have today?

13 MR. HIRANO: I have President Wunder, Arnold
14 Wunder, who is with the LDS Church. Alvin Yoshimori is the
15 project architect. Rocky Snyder is with the LDS Church.
16 He's the project manager and oversees the construction of
17 the LDS Churches in their western region. Darren Unemori
18 from Unemori Engineering is here, and we also have
19 representatives of Maui Lani Partners.

20 CHAIRMAN STARR: Do any of the representatives of
21 the church, would any of them like to say a few words?

22 MR. HIRANO: Yes, President Wunder.

23 CHAIRMAN STARR: Yes, Mr. Wunder, please.
24 Welcome.

25 MR. WUNDER: Chairman Starr and Members of the

1 Commission, thank you for giving us the opportunity to
2 appear before you today. My name is Arnold Wunder. I am a
3 lay leader in the Kahului, Hawaii Stake of the Church of
4 Jesus Christ of Latter Day Saints. The basic unit of our
5 church is the family. A group of families in a geographic
6 area forms a ward or a branch, depending on the number in
7 that congregation. The group of wards and branches in a
8 geographic area form a stake. The Kahului, Hawaii Stake
9 encompasses the islands of Maui, Molokai and Lanai.

10 There are eleven wards and three branches with a
11 membership of approximately 5,300. We have seven meeting
12 houses for the gathering of our members; one on Lanai, one
13 on Molokai and five here on Maui. Our church membership
14 ranges across multiple cultures, ages, backgrounds and
15 socioeconomic boundaries. The hub of our stake is called
16 our stake center and is located currently on the corner of
17 Kamehameha and Lono Avenues. This building was built in the
18 late 1950's and has served the needs of several generations
19 of Latter Day Saints.

20 There have been a number of upgrades and additions
21 to this meeting house over the years to meet the needs of
22 the membership. Currently we have had three wards in our
23 branch with a total of 1,590 members that share that meeting
24 house on a weekly basis. The proposed Maui Lani church that
25 we are here discussing today is necessary to meet the needs

1 of a growing church population in the Central Maui area.
2 Two congregations will be housed in this building along with
3 the administrative offices of this stake.

4 As you've heard, in addition to regular Sunday
5 worship services, there will be weekend and some weeknight
6 activities to strengthen individuals and families. There
7 will be opportunities for conferences and gathering where
8 members from other congregations may travel here to join in
9 fellowship and worship. The location at the corner of Maui
10 Lani Parkway and Kuikahi Drive is a centralized location
11 with easy access for members coming from thoroughfares like
12 Honoapiilani or Kuihelani Highway.

13 As we've sat here today and heard the things that
14 have been expressed, I was particularly moved by those who
15 expressed concern about the iwi and the cultural background
16 of this area. However, I think it's important that we look
17 at the fact that we're talking about a 3.9-acre parcel in
18 1,000-acre subdivision. And what we're looking at is a very
19 small area. We've been looking at property in Central Maui
20 for the last five years. And there were several lots
21 presented to us by Maui Lani. And there's two things I
22 would like to point out. I am not speaking as a cultural
23 specialist or anyone with any background in that.

24 But one of the lots we looked at with the Maui
25 Lani people was one that we were told there were known

1 burials on, and we were told if we chose that lot, that
2 those burials would have to be kept and preserved in place.
3 The church is very sensitive to that. A good number of our
4 membership are people born and raised in Hawaii. My
5 ancestors date back the 1700's, so I'm very sensitive to
6 those issues.

7 I was very impressed that Maui Lani was very
8 straightforward with us in telling us their concerns
9 regarding that. Secondly, the property that we're looking
10 at is not an untouched area with sand dunes, but it is a
11 graded area that has been already cut, and in some places,
12 cut down to nine feet. As you have heard, archeological
13 studies have been done. Trenching has been done. No iwi
14 has been found in the trenching. And in the areas that have
15 already been cut as part of the subdivision, no iwi have
16 been found on this lot.

17 Again, we're sensitive to this. And I think that
18 Maui Lani will be able to answer the broader questions that
19 have been raised regarding the entire subdivision. That's
20 not my place to do that here today. I would like to ask on
21 behalf of the members of our stake that you approve our
22 request for the special use permit. And I'm open to any
23 questions anyone may have.

24 CHAIRMAN STARR: Members. Thank you very much.
25 We're going to take a short recess. We'll be back at 10:30.

1 (Recess taken.)

2 CHAIRMAN STARR: Everyone, the Maui Planning
3 Commission meeting of May 25th is back in order. We just
4 had a presentation on the LDS Church for Maui Lani. Now is
5 the time for members to ask questions of the -- our planner,
6 Mr. Dias, the consultant or the Applicant or their different
7 architects. Someone. Who has got a question? Commissioner
8 Mardfin and Commissioner Shibuya.

9 COMMISSIONER MARDFIN: I think this is for Mich.
10 Mich, you said the grading and grubbing has already been
11 done largely on that property?

12 MR. HIRANO: Yes.

13 COMMISSIONER MARDFIN: And when did that take
14 place?

15 MR. HIRANO: 2000 -- I believe 2008. 2008.

16 COMMISSIONER MARDFIN: 2008. And how many big
17 vehicles did you have working on it, backhoes, that sort of
18 stuff?

19 MR. HIRANO: I will have to ask representatives of
20 Maui Lani. Darren Unemori, who is the project engineer.

21 COMMISSIONER MARDFIN: Okay. At any given time,
22 how many large, you know, Caterpillars, backhoes, et cetera,
23 did you have on the grubbing and grading?

24 CHAIRMAN STARR: Mr. Unemori, please introduce
25 yourself.

1 MR. UNEMORI: My name is Darren Unemori. I'm the
2 civil engineer for the Applicant. In the four-acre area, in
3 particular, I don't know the specific number at any one
4 time. But generally, heavy equipment like bulldozers and
5 loaders, that type of heavy equipment --

6 COMMISSIONER MARDFIN: Yeah.

7 MR. UNEMORI: -- were used in that area, not only
8 to excavate the current church site down to its present
9 grade, but also to construct the embankment to Maui Lani
10 Parkway, which runs alongside it. So, it's the usual mix of
11 road building machinery, compactors.

12 COMMISSIONER MARDFIN: Like three or four at a
13 time?

14 MR. UNEMORI: I would say given the area's size,
15 that's probably a good guess.

16 COMMISSIONER MARDFIN: And how many archeological
17 monitors were there?

18 MR. UNEMORI: I believe they monitor one per piece
19 of equipment.

20 COMMISSIONER MARDFIN: So, if there were three
21 pieces of equipment, there would be three monitors?

22 MR. UNEMORI: Particularly, pieces of equipment
23 that are excavating. So, if there was a bulldozer there,
24 there would be monitoring.

25 COMMISSIONER MARDFIN: Not the dump truck that

1 carries --

2 MR. UNEMORI: Exactly, that's the normal
3 procedure.

4 COMMISSIONER MARDFIN: They're there full-time?

5 MR. UNEMORI: As long as the equipment is
6 operating.

7 COMMISSIONER MARDFIN: And how trained are these
8 observers?

9 MR. UNEMORI: Well, I can't really speak to their
10 level of training, because they're under the supervision of
11 a professional archeologist. But I understand they're
12 qualified at their jobs.

13 COMMISSIONER MARDFIN: And did they find any
14 evidence of bones?

15 MR. UNEMORI: I do not know of any finds on that
16 particular site.

17 COMMISSIONER MARDFIN: So, let me interpret that
18 answer. To the best of your knowledge, no, but there could
19 have been?

20 MR. UNEMORI: Well, to the best of my knowledge, I
21 don't know of any finds. As to whether there could have
22 been, I guess there's, I guess, always a possibility.

23 COMMISSIONER MARDFIN: If they had found some,
24 would they have notified you?

25 MR. UNEMORI: They probably wouldn't have notified

1 me. They would have notified the Historic Preservation
2 representative for the area.

3 COMMISSIONER MARDFIN: Would they have notified
4 the Burial Council?

5 MR. UNEMORI: I believe that is the procedure
6 if -- before a determination is made on the disposition of
7 an inadvertent find. I'm sorry, I'm not an expert in --

8 COMMISSIONER MARDFIN: There seems to be a
9 gentleman behind you that looks like he has something to
10 say.

11 MR. UNEMORI: Yeah, that might be better.

12 CHAIRMAN STARR: Introduce yourself.

13 COMMISSIONER MARDFIN: Thank you very much, by the
14 way.

15 MR. SUZUKI: My name is Darren Suzuki. I'm the
16 development manager of Maui Lani, and I'm also familiar with
17 the area in question. I am not the Applicant, but I am just
18 representing -- I'm speaking on behalf of Maui Lani. To
19 answer your question, there was an archeological inventory
20 survey or archeological assessment that was done for the
21 project. Based on that assessment, which was done in 2006,
22 the Department of Land and Natural Resources Historic
23 Preservation Division determined that there were no
24 culturally significant or historic properties associated.

25 So, all of the testing or archeological trenches

1 and the testing in the survey which was done, the DLNR found
2 nothing in terms of bones or even artifacts. After the
3 inventory survey was done, there was grading of the
4 property, which, as President Wunder mentioned, up to nine
5 feet of cut in the area. Based on that, that grading
6 activity and based on monitors, which were monitoring each
7 piece of excavation equipment, nothing was found on
8 that property, on this four-acre property. Should something
9 have been found on that property, work, according to the
10 monitoring plan, work would have stopped in the immediate
11 area.

12 There would be a construction buffer that would be
13 posted around wherever that find was. And DLNR would be
14 notified. And if there were bones found, it would also be
15 placed on the Burial Council agenda as an inadvertent find.
16 But since we found nothing on the property, that's -- we
17 haven't gone that far in terms of those type of
18 notifications.

19 COMMISSIONER MARDFIN: And would you have been
20 notified if anything would have been found?

21 MR. SUZUKI: Yes, the Applicant would have been
22 notified. We at that time were the owners of the land when
23 the grading activities were being done.

24 COMMISSIONER MARDFIN: Okay. Thank you.

25 CHAIRMAN STARR: Yeah.

1 COMMISSIONER SABLAS: I have a question for you.
2 You mentioned about the grading going down nine feet in the
3 one area. Was that just one specific area, or why was that
4 particular area selected to go down nine feet? And as a
5 followup question, were there other areas that you had
6 gone -- graded deep?

7 MR. SUZUKI: Thank you, Commissioner. I do have a
8 grading map. I said nine feet as kind of an average. The
9 cut in that area ranged from -- and I'm sorry, I'm just
10 looking at, if you would, this is -- this is Kuikahi Drive
11 and Maui Lani Parkway. The subject property is located
12 approximately in this location. If you can kind of see the
13 red in here, that is indicated as a cut, and the green is
14 indicated as a fill.

15 And if you look at -- I'm just kind of reading it
16 kind of randomly. You've got five feet here, four feet
17 here, five feet here, up to 12 feet here. So, when
18 President Wunder mentioned nine feet, that was more of an
19 average. So, as you can see, it was more of a cut in that
20 area.

21 COMMISSIONER SABLAS: Thank you.

22 CHAIRMAN STARR: Commissioner Shibuya.

23 COMMISSIONER SHIBUYA: Mine deals with civil
24 engineering and then goes into architecture. I'll start off
25 with the water runoff. And you currently have estimated 4.2

1 cubic feet per second. And you expect it to be estimated
2 going to 9.3 cubic feet per second. And this water is going
3 to be channeled into the storm drainage system, is it not?

4 MR. UNEMORI: That's correct.

5 COMMISSIONER SHIBUYA: And the capacity of the
6 storm drainage system, can you give me that capacity?

7 MR. UNEMORI: Well, the portion of the storm
8 drainage system that it goes into is the large drain line on
9 Maui Lani Parkway, which eventually empties into the
10 retention basin on the golf course. That particular line, I
11 believe, has a capacity of about 300 cfs. It's a 78-inch,
12 six-and-a-half-foot diameter, which is a very large line.

13 COMMISSIONER SHIBUYA: I just wanted to be assured
14 there was no constipation here.

15 MR. UNEMORI: Oh, no.

16 COMMISSIONER SHIBUYA: Also, in terms of -- I
17 don't know if this is a civil engineering question or
18 architecture question. The fire hydrant, that closest fire
19 hydrant was, I believe, 472 feet away from this structure.
20 Why is it not any closer?

21 MR. UNEMORI: I don't believe that's correct. I
22 think there is one on the frontage of the property. And
23 there are at least two more, I think, across the street on
24 the 100-foot right-of-way, so I don't think 400 --

25 COMMISSIONER SHIBUYA: I would just like to verify

1 that. Because such a large footprint, we're talking about
2 2,400 square feet on one main building and 1,800 square feet
3 on the second auxiliary structure. We're talking a lot of
4 people, too. Also, the way the architecture is such is that
5 you don't have side doors. They have to exit the same way
6 they came in.

7 MR. UNEMORI: If I can speak to the hydrant
8 spacing. Aside from the three that are along the major
9 roadways, I believe the utility plan also plans to put three
10 more inside the site to provide the level of protection you
11 need for the auxiliary building, the pavilion as well as the
12 rear of the main building.

13 COMMISSIONER SHIBUYA: Okay. So, if you can show
14 it to us, I would be satisfied.

15 MR. UNEMORI: Certainly.

16 COMMISSIONER SHIBUYA: It's of a more public
17 safety question.

18 CHAIRMAN STARR: Can you show us where the
19 hydrants and standpipes will be located?

20 MR. UNEMORI: Sure.

21 CHAIRMAN STARR: Take the hand-held mic.

22 MR. UNEMORI: Can you hear me? So, there are fire
23 hydrants, which is a little hard to see close up, but I
24 believe there is an existing fire hydrant along Maui Lani
25 Parkway in this area. There's another one. Here we go.

1 They're marked here. Existing fire hydrant. Existing fire
2 hydrant. Existing fire hydrant here. And also, we're
3 bringing in a fire line into the rear of the lot where at
4 least three more hydrants will be placed. These are
5 protecting the rear of the large main building as well as
6 the pavilion down here in the corner.

7 So, there should be ample fire protection for the
8 sides of the structure.

9 COMMISSIONER SHIBUYA: Okay. Thank you.

10 CHAIRMAN STARR: Okay. Members.

11 MR. HIRANO: Chair Starr.

12 CHAIRMAN STARR: Yes, Mr. Hirano.

13 MR. HIRANO: Alvin Yoshimori is the project
14 architect, and he would just like to address the building
15 itself in terms of the exit, fire -- I guess the fire safety
16 of the building.

17 CHAIRMAN STARR: Yes, please.

18 MR. YOSHIMORI: Mr. Chairman and Commissioners, my
19 name is Alvin Yoshimori from GYA. In reference to your
20 question, Warren, regarding the exit standards that we have
21 on the plan, Mich will show you the floor plan. But we have
22 a number of exits going around the whole perimeter of the
23 building. Let me -- these are all exits here. The green
24 corridor is our one-hour corridor requirement that's going
25 to be taking on the perimeter of the building. All the

1 functions will feed off the corridors. So, these are exits
2 here, exits here, exits here, exit here, and out from this
3 side. So, those -- and the building we've completely fire
4 inspected.

5 COMMISSIONER SHIBUYA: Can you tell me where the
6 fire hydrants are located in reference to the exits?
7 Sometimes we have a cross traffic here where the firemen are
8 coming in, people are coming out the same way. Is that
9 where we have a little problem here?

10 MR. YOSHIMORI: Darren, you want to pinpoint the
11 fire hydrants? Are you talking about on site, Warren?

12 COMMISSIONER SHIBUYA: Yes, on site. I was
13 looking at the documents, and I couldn't figure it out.
14 Okay. Thank you.

15 MR. UNEMORI: So, the primary exits left and right
16 and the rear of the building. There's a fire hydrant here
17 off of the -- off to the side. There's a second one here
18 and a third one here, so they're fairly well clear of the
19 rear exit. Fire access by the fire department is possible
20 here from Kuikahi Drive as well as from Maui Lani Parkway.
21 And the parking lot loops through, so there's ample access
22 for the fire department as well as multiple exits for people
23 coming out. So, hopefully, that gives us enough flexibility
24 that there won't be a conflict between the fire department
25 personnel and the -- and anybody escaping the building.

1 COMMISSIONER SHIBUYA: Also, is a fire sprinkler
2 system installed in the structure?

3 MR. YOSHIMORI: Yes, it will be.

4 COMMISSIONER SHIBUYA: Thank you.

5 MR. YOSHIMORI: Sure. Any other questions?

6 CHAIRMAN STARR: Commissioner Tagorda.

7 COMMISSIONER TAGORDA: Good morning, sir. How are
8 you?

9 MR. YOSHIMORI: Yes.

10 COMMISSIONER TAGORDA: Let's go to the Figure 6.
11 Can you tell me where is the existing drain manhole and
12 existing catch basin there?

13 MR. UNEMORI: There are several inlets along Maui
14 Lani Parkway and Kuikahi Drive. There's an existing catch
15 basin here, and I believe there's another one here on
16 Kuikahi Drive and another one here along Maui Lani Parkway.

17 COMMISSIONER TAGORDA: The reason why I like to
18 point that out is if you look at the topography of that lot,
19 the bottom side is higher than your -- where your existing
20 manhole or drain basin is. Is that drain basin big enough
21 to take care of the runoff from the property?

22 MR. UNEMORI: Okay. Let me explain the drainage
23 plan for the site. Actually, we're not going to rely on
24 runoff going into the street before it goes into the inlets.
25 The site will actually be provided with its own set of

1 inlets as well as its own connection, underground connection
2 to the storm drain system. So, there are inlets in the
3 parking lot here, here and back here that will basically be
4 taking the runoff from the building underground into a
5 connection point into the underground storm drain here.

6 So, the site itself will be self-draining and
7 won't rely on runoff into the roadway.

8 COMMISSIONER TAGORDA: Let me get to another
9 subject that I'm interested to have an answer for.

10 MR. UNEMORI: Sure.

11 COMMISSIONER TAGORDA: Looking at the parking
12 stalls, the area, the size of the building and activities
13 involved in this project, I heard that sometimes they have
14 special events that will bring about 1,000 people in
15 attendance from all over the state. The parking stalls
16 maybe have a problem. We may be needing -- how do we lessen
17 the impact? And same with the comfort rooms, or the
18 restrooms that's been designed with that building.

19 MR. UNEMORI: Well, I don't know if -- Alvin.

20 MR. YOSHIMORI: Mr. Commissioner.

21 COMMISSIONER TAGORDA: Yes.

22 MR. YOSHIMORI: The parking ordinance requires
23 that we have one stall per 100 square feet of floor area.
24 That's according to church use. And right now, we're
25 providing 283 stalls. And what is required by Code is 263.

1 COMMISSIONER TAGORDA: My followup question is
2 though I'm just kind of concerned right now. Because right
3 now, it's okay. There's no units built there. But once the
4 development is built with all of this (inaudible) and all
5 that, and you have the special event, you will have
6 problems. And I want you to tell me how are you going to
7 lessen that impact from the neighborhood when you bring all
8 these events once in a while?

9 MR. YOSHIMORI: I'm not sure we understand your
10 question.

11 COMMISSIONER TAGORDA: What I'm saying is you will
12 have special events. You will have plenty attendees. The
13 parking stalls that are required to that building, although
14 you follow the County Codes and all that, will have an
15 impact to the neighborhood. So, how are you going to lessen
16 that impact when that special events for that church?

17 MR. YOSHIMORI: Well, the only thing I can tell
18 you, Mr. Commissioner, is with the parking ordinance, we try
19 to accommodate -- what the ordinance does, it tries to
20 accommodate uses that maximize the function of the building.
21 So, therefore, by code, they told us one per 100 for a
22 church is the maximum parking we'll be required to provide.
23 But we did provide additional stalls just to come and say --
24 for like you say, special events.

25 CHAIRMAN STARR: And can we have the -- why don't

1 we let the architect talk about restrooms, and then the
2 Applicant will talk about how they'll deal with special
3 events.

4 COMMISSIONER TAGORDA: Thank you, sir. Can you
5 talk to me about the restroom capacity and all that, too? I
6 think the way I look at it, it's not enough for that
7 functions. You have three or four in there?

8 MR. YOSHIMORI: We do have restrooms provided,
9 yes.

10 COMMISSIONER TAGORDA: Yeah.

11 MR. YOSHIMORI: I'll take you to the floor plan.

12 CHAIRMAN STARR: Can you bring that up?

13 MR. YOSHIMORI: So, the drawings that we show in
14 purple signifies the toilets. Okay. So, we've got a set
15 for men and women. We have a set here for one person. We
16 have a set here for a three-person toilet. We have a toilet
17 here for one person, and we also have toilets and a mother's
18 room located at this location for men and women. We think
19 we have ample toilet facilities for the use of the building.

20 CHAIRMAN STARR: Can we have the Applicant talk
21 about special events? Commissioner Tagorda, please
22 continue.

23 MR. WUNDER: Mr. Tagorda, thank you for the
24 opportunity. The special events you asked about would
25 probably happen no more than once or twice a year. It's

1 during what's called a stake conference. Currently in our
2 current meeting house there in Kahului, at our most recent
3 stake conference, we had 1,068 people in attendance. We
4 have far less parking there than when we in this proposed
5 facility.

6 So, in cases like these in the future where the
7 need may arise, we may have -- we will probably have to have
8 people bussed in from the remote areas like upcountry and
9 Lahaina. There's also work that we're doing to take what is
10 currently our stake and divide that in half. And hopefully,
11 that will be done in the next three to four years, which
12 would mean this will not necessarily have to worry about all
13 of the members in the church here on Maui, but only half of
14 the group, which would minimize the size of those very large
15 gatherings. Does that satisfy your question, Mr. Tagorda?

16 COMMISSIONER TAGORDA: I just want to make sure
17 there will be no parking off site, like using Kuikahi or
18 whatever parkway. There's no parking on the road, what I
19 mean to say.

20 MR. WUNDER: I see. That I think is going to be a
21 given, that our members would not be doing that. And even
22 in our current facility, we don't allow people to park on
23 the roads like that.

24 CHAIRMAN STARR: Commissioner Hiranaga.

25 COMMISSIONER HIRANAGA: Arnold, I may be mistaken,

1 but I thought I read in here there is an agreement that all
2 parking shall be on site.

3 MR. WUNDER: That is our plan, yes.

4 CHAIRMAN STARR: Mr. Hirano.

5 MR. HIRANO: Just to, as well, add to Commissioner
6 Tagorda's concern, parking is not allowed on Kuikahi Drive
7 or Maui Lani Parkway, so there's no parking allowed on the
8 roadways.

9 CHAIRMAN STARR: I have a question. Did you have
10 something, Commissioner Sablas?

11 COMMISSIONER SABLAS: I have a question for the
12 Planner Danny. We've heard earlier testimony that this
13 project was brought before the Burial Council, who asked for
14 a full report, and that it was not submitted to them. Could
15 you respond to that, please?

16 MR. DIAS: Yes, Commissioner. With respect to
17 this project, I'm not sure exactly what Mr. Kapu is talking
18 about. We sent this specific project on four acres to SHPD
19 for review. If there were anything outstanding, the
20 assumption is that they would let us know about it. And
21 what we got back from them was that, you know, everything
22 was basically okay.

23 So, if there's something for the greater Maui
24 Lani, we're not aware of that. But we did send it to SHPD,
25 and that was their official response.

1 COMMISSIONER SABLAS: Because this whole area is a
2 really sensitive area with sand dunes, maybe it's going to
3 be a condition later on, but I would like to suggest that we
4 have information that has gone before the Burial Council on
5 a sensitive projects, so that we know what their issues were
6 before it comes to us. And this is -- I would like to add
7 as a condition for further on, but that was a question I
8 wanted to pose.

9 CHAIRMAN STARR: I would like to suggest, you
10 know, in addition to a possible discussion as a condition
11 here, we have a discussion at a future meeting about the
12 process and maybe ask Burial Council to come and have a
13 discussion with us about how we can improve the process. I
14 would like to ask the Applicant, first of all, is your
15 archeological consultant here? And I would also like to
16 know if you -- what steps you had done, whether you had
17 taken it to the Burial Council or who you had taken it to.

18 MR. HIRANO: This project, Chair Starr, never was
19 reviewed by the Burial Council because of the fact that
20 there were no cultural resources found or iwi found during
21 the inventory survey process. So, it wasn't reviewed by the
22 Burial Council. Other projects in Maui Lani, as you may
23 recall, have been reviewed by the Burial Council. The VMX
24 project went before the Burial Council, but this particular
25 one did not.

1 The archeologist is not available, but the
2 cultural advisor to Maui Lani is available if there are
3 questions in that area.

4 CHAIRMAN STARR: I'm going to turn it over to
5 Commissioner Hiranaga. Then we will have the cultural
6 advisor to address this. Commissioner Hiranaga.

7 COMMISSIONER HIRANAGA: Yeah. Maybe staff could
8 explain the jurisdictions between State Historic
9 Preservation Division and the Maui Burial Council as to when
10 things are presented to them. Because I think there is a
11 methodology. And maybe some of the Commissioners may not be
12 familiar with that process, or forgot. But it might be
13 useful for them to understand.

14 CHAIRMAN STARR: Yeah, Mr. Dias.

15 MR. DIAS: Thanks, Commissioner Hiranaga.
16 Basically, the distinction between when SHPD has
17 jurisdiction versus the Burial Council, from what I
18 understand is SHPD has jurisdiction up until to point
19 something is actually found. Once something is actually
20 found, then SHPD comes in. They do their studies and so
21 forth. And then, it becomes the jurisdiction of the Burial
22 Council. And I think that's why the Applicant is saying it
23 never went to SHPD, because there was no finds.

24 Until they find something, it doesn't go to the
25 Burial Council.

1 CHAIRMAN STARR: Yeah. Ms. Cua, you had something
2 to add, please.

3 MS. CUA: Just very briefly to reiterate a little
4 bit more what Danny is saying. That in this particular
5 application, and that's what's before this body, you know,
6 the application did come in. They had done an archeological
7 inventory survey. That survey must be reviewed and
8 commented on by the State Historic Preservation Division.
9 And the Department sends that report along with the entire
10 project report to State Historic Preservation Division.

11 And we wait for direction, because we don't have
12 the expertise on our staff to be able to review that kinds
13 of reports and say whether it's adequate or not. So, we
14 have to rely on what the process is and whether the process
15 is flawed or staffing issues. I mean we know that there's
16 staffing issues with SHPD. And sometimes there's a longer
17 wait for us to receive comments. But once we receive
18 comments from SHPD, they have the technical expertise to
19 review these type of documents.

20 And we have to, as planners, rely on that, because
21 we don't have the expertise to say otherwise. And in this
22 particular case, it did come back, a letter did come back
23 from SHPD saying that they've accepted the archeological
24 inventory survey and reminded the Applicant and the
25 Department that there is a monitoring plan for Maui Lani

1 that's going to have to be followed. And if something is
2 found during construction, as construction is being
3 monitored, and if by some reason a burial is found, then
4 what Danny was mentioning is that would become an
5 inadvertent find.

6 And then the jurisdiction of that find would be
7 with the Burial Council. And that's our understanding, and
8 we have a member here.

9 CHAIRMAN STARR: Ms. Cua, just to kind of follow
10 up, and it's not something I'm looking for action today, but
11 just for discussion purposes later on. Is there a mechanism
12 where when we have a project in a sensitive place, in a
13 place where there, you know, are known burials in the
14 vicinity, that we could utilize the expertise of the Burial
15 Council to kind of give us a, you know, a screening or an
16 opinion in advance over whether this is a project that we
17 should have concern over?

18 Can they function -- is that part of the charter
19 that they fulfill that role?

20 MS. CUA: For the Department, we would rely
21 heavily on SHPD to make the determination as to what needs
22 to go to the Burial Council and what should not go to the
23 Burial Council and advise the Department and the Applicant
24 accordingly. You know, nothing precludes an applicant, you
25 know, from going to the Burial Council. However, you know,

1 if there's a situation where there's nothing there, that
2 normally doesn't happen.

3 But again, for the Department, we do have to
4 rely -- the process is that we rely on State Historic
5 Preservation Division. And if they're going to come back
6 and they're going to say, you know, this is an area that is
7 heavy with burials, and so we recommend X, Y and Z, then,
8 you know, the Planning Director would discuss with the
9 Applicant and take the necessary steps. But again, just on
10 our own sending stuff to the Burial Council, you know, the
11 process -- we're understanding that we have to go through
12 SHPD for that, because they're the ones that schedule.

13 CHAIRMAN STARR: We can have a discussion further
14 on this. Commissioner Sablas, did you have something?

15 COMMISSIONER SABLAS: No, no.

16 CHAIRMAN STARR: And I don't know if you have any
17 questions of -- wait. If anyone has any questions for --
18 Commissioner Mardfin.

19 COMMISSIONER MARDFIN: Yeah, I earlier asked a
20 testifier, Ke'eaumoku Kapu, about whether this had been
21 before the Burial Council. And I believe the testimony was
22 that this -- not only had Maui Lani in general gone before
23 them, but this site in particular had. Now, Mich has said
24 it didn't. And it may have gone there before the LDS Church
25 was involved. I don't know. But I would kind of like

1 Ke'eaumoku Kapu to come up and address some of the issues,
2 and then I would like to make a comment after that.

3 CHAIRMAN STARR: So, you want to ask him a
4 question and he as a member of the Burial Council as a
5 resource person?

6 COMMISSIONER MARDFIN: That's exactly correct.

7 CHAIRMAN STARR: Please, get the mic and introduce
8 yourself, and Commissioner Mardfin will ask you a question.

9 MR. KAPU: Ke'eaumoku Kapu.

10 COMMISSIONER HIRANAGA: Mr. Chair, just
11 clarification. This person is speaking for the Burial
12 Council or as an individual?

13 CHAIRMAN STARR: That is up to how he introduces
14 himself.

15 MR. KAPU: Hi, Ke'eaumoku Kapu. It sit on the
16 Burial Council, but I'm here representing myself at the
17 moment. Thank you.

18 COMMISSIONER MARDFIN: I thought I asked you
19 earlier when you gave your testimony whether Maui Lani in
20 general had been there. And not only did you say yes -- had
21 been before the Burial Council, but not only did you say
22 yes, but you said this particular site had been.

23 MR. KAPU: Maui Lani, the whole broad project -- I
24 also talked about the separating of agenda, which is the
25 problem. When they find 25, they separate another agenda.

1 See, the problem exists within the Kuikahi Drive and the
2 Maui Lani. That's where most of the burials were found.
3 That's adjacent to the project.

4 Now, for the State to give recommendations, was it
5 from Oahu, or was it from the Maui division? If it's from
6 the Oahu division -- and I also question the archeologist,
7 Patty Conte, because she only worked here to alleviate the
8 problems that Maui had. There was 120-something projects
9 pending. When she did the original survey, it was sent to
10 Oahu for final approval. Then Oahu gave the recommendation
11 in signing this thing off. At the same time, we were
12 pending a lot of questions based upon the inadvertent finds
13 along Kuikahi and Maui Lani Drive. There's a lot that was
14 found in that area.

15 But it's not initially the same project we're
16 talking about. It's a different agenda.

17 COMMISSIONER MARDFIN: And you had said that you
18 had asked -- when they did come before the Burial Council,
19 you had said you folks, the Burial Council, had asked for
20 additional information. Can you be -- do you happen to
21 remember what additional information you asked for?

22 MR. KAPU: Yeah, the Chair at that time, Charlie
23 Maxwell, had questioned based upon the development and what
24 archeological inventory assessment was done in that area,
25 whether or not there was a -- whatever type of management

1 plan that was going to oversee in this area because of the
2 great concerns that was found adjacent to this site.

3 Kuikahi and Maui Lani Parkway, major burials. So,
4 just because there is a separate agenda, the issue still
5 pends based upon whether or not we're going to find any
6 other so-called inadvertent discoveries. That's our
7 concern. It's not necessarily we're talking about this
8 agendaed project. It's about everything else that
9 circumvents or butts up against this project is our concern.

10 COMMISSIONER MARDFIN: Let me ask one more
11 question of you. After you gave testimony, we've heard a
12 lot from -- you've been here hearing a lot from the
13 developer. And it sounds like they basically finished their
14 grubbing and grading. It sounds like they had monitors. It
15 sounds like nothing had been found. I understand your
16 concern with the larger area. But for this particular
17 project, does the fact that all the grubbing and grading has
18 taken place give you any assurance, any comfort that bones
19 will not be found in this particular area?

20 MR. KAPU: No, it doesn't give me any assurances.
21 I think the archeologist that originally did the project
22 should come here and give you guys an overall view as
23 pertaining to what was found within the whole scope of the
24 area, which actually would fall within the Maui Lani area of
25 where this project is located. The only way we're going to

1 figure out whether or not there was a reinternment or
2 internment plan that was done, that may be even ten feet or
3 20 feet away from the project area. That doesn't really say
4 that that burial isn't within this project area or whether
5 or not it is.

6 So, that's my -- I guess that's the whole
7 dysfunctionality based upon what the State's responsibility
8 is and what our responsibility is. This project came in
9 front of us -- well, not specifically this project came in
10 front of us to address burials, but other projects adjacent
11 to this project came in front of us with multiple burials.
12 That's the issue.

13 COMMISSIONER MARDFIN: Thank you.

14 CHAIRMAN STARR: Thank you very much.
15 Commissioner Shibuya.

16 COMMISSIONER SHIBUYA: Ke'eaumoku, you know that
17 I'm not a cultural expert or an archeological person,
18 however, I have common sense. When we were digging up
19 grandpa and grandma's bones and remains, they were very
20 visible. But yet, they were only 20 years old. We talk
21 about the bones that we do find. What area or what year
22 periods do we suspect these from, and what happens to those
23 that I suspect 1600, 1500, what happens to those remains?
24 Do bones really exist that long?

25 MR. KAPU: Yeah. I think, you know, it boils down

1 to once an internment is set in place, whether or not it's
2 precontact, post-contact, in a spiritual sense, we have to
3 give that bones time to be a part of the land again. Once
4 it deteriorates, then it's gone through its final process.
5 It's gone through its final process as pertaining to where
6 this ancestor needs to go.

7 We're not giving them the opportunity to continue
8 that process in the end. One it's inadvertent, it's a
9 burial that was highly desecrated, and we need to all answer
10 for those kinds of things on what would be the better
11 treatment, what would be the better process, what would be
12 the recommendation process, not only from this body, the
13 State body as well as the public community, what would be
14 the most fairest process to take care of this iwi kupuna
15 that was here before us.

16 If the bones don't deteriorate, then we're stuck
17 with the responsibility of what we need to do to more
18 malama, more take care that process to allow that
19 continuance through life and through death. So, what I'm
20 just saying is we need to really unfold the logistics on how
21 we're going to more manage our resources. That's a
22 resource. That's not just one iwi kupuna. That's a
23 resource that we need to take highly as individuals of this
24 community, as well as representatives that make decisions
25 for our future generation.

1 CHAIRMAN STARR: Commissioner Shibuya.

2 COMMISSIONER SHIBUYA: Ke'eaumoku, my question
3 deals with the precontact. Do bones exist at that time, in
4 other words, today? I was under the impression that bones
5 may not exist. They may be ashes, in a different state, not
6 a solid bone like we had grandma's and grandpa's 20 years
7 ago.

8 MR. KAPU: Yes. We have different types of
9 burials. You have ana burials, which is cave burials.
10 Those have a chance to deteriorate a lot more rapidly,
11 because it's intertwined with air and different elements.
12 And that's cave burials. I have seen a lot of cave burials.
13 Everything disintegrates, all except for the teeth. The
14 teeth is like -- we still got to address the teeth.

15 When it comes to sand burials, that's a total
16 different -- it's more preserved. It's way preserved where
17 it can be there from, I don't know, the recordation of some
18 burials can be four, five, 600 years old, maybe older than
19 that. And it's chocolate brown. So, it depends. And if
20 it's earth burials, it may deteriorate a lot faster. But
21 sand burials, there's a reason why they plant it in the
22 sand. There's a reason why family practices called for
23 burying in caves. There's also a reason why some other
24 family practices where they actually gave the iwi kupuna or
25 the burials to the ocean.

1 So, that question is kind of hard. I mean I not
2 one scientist, but, yeah, I've seen a lot of different types
3 of burials in its state.

4 CHAIRMAN STARR: Thank you very much.
5 Commissioner Hiranaga.

6 COMMISSIONER HIRANAGA: Actually, I'm going on to
7 a different subject. This is to staff. Did you include in
8 our packet the Urban Design Review Board comments, or were
9 there no comments?

10 MR. DIAS: I don't think I did, because the
11 meeting was held earlier this month. We did send a letter
12 to the Commission on behalf of the Urban Design Review
13 Board. Just to give you an idea of what their comments
14 were, basically they had no recommendations for conditions.
15 They just suggested to the Applicant that they incorporate
16 various energy conservation type things into their building.

17 COMMISSIONER HIRANAGA: Okay. Thank you.

18 CHAIRMAN STARR: Commissioner Mardfin.

19 COMMISSIONER MARDFIN: Mich, is there a commercial
20 kitchen involved with this structure?

21 MR. HIRANO: Not a commercial kitchen, but there
22 is a small preparation area.

23 COMMISSIONER MARDFIN: This reason I asked is
24 Exhibit 16 mentioned a commercial kitchen.

25 MR. HIRANO: I think that was if there was.

1 COMMISSIONER MARDFIN: Exhibit 16 was a letter
2 from Department of Environmental Management. They have Item
3 H, Commercial kitchen facilities within the proposed project
4 shall comply with pretreatment, and that made me think maybe
5 there was a commercial kitchen.

6 MR. HIRANO: But there isn't a commercial kitchen.

7 COMMISSIONER MARDFIN: Okay. Thank you.

8 CHAIRMAN STARR: Commissioner Hiranaga.

9 COMMISSIONER HIRANAGA: Yeah, I'm moving on to the
10 so-called standard LDS Church design. And I'm wondering per
11 Code, what is the maximum height allowed before you are
12 required to obtain a variance?

13 MR. YOSHIMORI: Thirty feet.

14 COMMISSIONER HIRANAGA: And the steeple was
15 granted a variance up to 67 feet 8 inches, which is more
16 than double the permitted height; is that correct?

17 MR. YOSHIMORI: That is correct.

18 COMMISSIONER HIRANAGA: So, my question to the
19 Applicant why was there not an attempt to make the building
20 appear more Hawaiiana/Polynesian versus your standard church
21 design, which appears throughout I guess the Continental
22 United States?

23 MR. YOSHIMORI: Commissioner Kent, just for your
24 information, when we worked with this particular building,
25 it was our intent to keep the roof line within the 30 feet

1 regulation as required in a residential zone. Consequently,
2 the design of this particular building had a steeper roof
3 profile. And because of snow load that occurs in the
4 mainland and being -- just being in Hawaii, we decided to
5 reduce the height of the building itself.

6 So, we kind of flattened the building out to a
7 4/12 slope instead of going to 6/12. And consequently, the
8 materials that were considered for the typical LDS Church in
9 the mainland is a brick veneer building with stud walls
10 backing the brick configuration. This building, however,
11 will be more with local materials. We intend to use
12 split-face concrete block, which will be eight inches in
13 width. And the rest of the building above the block line
14 will be timber with plywood sheeting and asphalt shingles
15 representing the Presidential Shake line by CertainTeed.

16 COMMISSIONER HIRANAGA: Was there any
17 consideration to doing a split pitch roof to try and --
18 split pitch roof, or maybe I'm not using the right
19 terminology, hip roof?

20 MR. YOSHIMORI: You mean double-pitch?

21 COMMISSIONER HIRANAGA: Yes.

22 MR. YOSHIMORI: No, we didn't intend to do that.

23 COMMISSIONER HIRANAGA: Why wasn't that given
24 consideration to make it appear more Polynesian in
25 character?

1 MR. SNYDER: Chair Starr and Commission, my name
2 is Rocky Snyder, project manager for the LDS Church. I'm
3 based in Southern California, and I'm responsible for the
4 construction of our buildings in parts of Southern
5 California as well as here in Hawaii. And I thought I might
6 be better able to address that next question.

7 We have, the LDS Church, for quite sometime, but
8 especially I would say the last 30 years, has standardized
9 their drawings just because of the amount of buildings we're
10 building. We complete on an average about one building per
11 day somewhere in the world. And so, we've relied heavily on
12 standardizing our construction to try to take advantage of
13 the economy of scale, not having to always redesign a
14 building every time we're going to build one somewhere.

15 And that's the main reason why we don't -- we
16 don't do too much custom tailoring in any location. If we
17 change a roof line, if we change a footprint to any
18 significant degree, it affects everything else in the
19 building. It affects heating, the air conditioning in the
20 building. It affects the plumbing in the building, all of
21 the utilities. All of the various systems inside the
22 building are affected by that, so it's not just a simple
23 change.

24 So, it really means taking our standard plan and
25 starting over. So we -- wherever we can, we try to keep

1 from doing that. We tried to blend into various locations
2 with pleasing buildings, pleasing architectural elements,
3 but without having to completely redesign our standard plan.
4 Does that help at all?

5 COMMISSIONER HIRANAGA: It does not help, but it
6 explains your position.

7 CHAIRMAN STARR: I have a question for you. Our
8 community plan talks about encouraging energy efficient
9 building design. We've also had comments from the Urban
10 Design Review Board. There's definitely an attempt to here,
11 as well as other communities, to try to move away from
12 buildings that are going to be energy hogs, not just for the
13 expense that this will place on the church, but also to
14 reduce greenhouse gas emissions and so on. This building
15 looks like there's been -- it was designed for a cold
16 climate. And it looks like no attempt has been made to --
17 for daylighting or to reduce the air conditioner load.

18 Can you speak to that? Is the LDS organization
19 still just ignorant about the energy efficient design?

20 MR. SNYDER: No, not at all, Chair Starr. We have
21 even given the current design of LDS Churches about 75
22 percent of the elements that go into LEED certification are
23 already incorporated in LDS churches and have been for a
24 number of years.

25 In addition to that, we are currently building

1 five prototype buildings on the mainland that are taking it
2 to -- really to the, not just the next level, but the next
3 couple of levels incorporating photovoltaic solar panels as
4 well as xeriscaping, the smart controllers for irrigation,
5 dual-flush toilets. We're building, as I say, five
6 prototypes now utilizing all this technology to see what our
7 next generation of buildings are going to be.

8 In this particular facility, we -- well, you
9 mentioned daylighting. All of our windows in our buildings
10 are fully operable windows. They always have the option of
11 not having the air conditioning running and having the
12 windows open on those days. We also -- our air conditioning
13 controls are able to be remotely accessed by our facilities
14 managers. They can program each building based on the rooms
15 that are being used, the zones that are being used.

16 And, for example, if we take just one example, we
17 have a congregation that will be meeting in the morning and
18 a congregation that will be meeting in the afternoon. The
19 congregation that meets in the afternoon, they would
20 typically start with their worship service that takes place
21 in the chapel. Once that second congregation has used that
22 room, there's no more need for it the rest of the day, so
23 the system is programmed to shut off the air conditioning in
24 that zone. And that's true for the other zones throughout
25 the building.

1 And that is all able to be accessed remotely and
2 programmed remotely to tailor that to the specific use.

3 CHAIRMAN STARR: Okay. I just ask as this moves
4 forward, please do everything in your ability to make this
5 as efficient as possible.

6 MR. SNYDER: And I appreciate -- and we're moving
7 forward full-speed ahead with the prototypes to try to
8 incorporate everything we can as soon as we can.

9 CHAIRMAN STARR: Commissioner Mardfin.

10 COMMISSIONER MARDFIN: This is a followup, because
11 I had the same kind of concerns. And let me tell you what
12 my concern is first, and then I'll be asking a question of
13 you. The way this is coming to us is this is a Phase II
14 approval. And Phase II approval is sort of the last bite we
15 get at it. After that, there's Phase III. And it says the
16 Director shall approve the final site plan if it conforms in
17 all substantive respects to the approved preliminary.

18 Well, the approved preliminary is coming to us on
19 Page 8. As the Applicant intends to incorporate, intends to
20 incorporate energy conservation measures into the project.
21 Some of the measures being considered are photovoltaic,
22 instantaneous tankless water heaters, and et cetera,
23 et cetera, et cetera. So, you're considering it. That's
24 not a commitment.

25 You come back -- if we approve it today as is, it

1 comes back in Phase III. They may or may not put those in.
2 Well, you say, well, we considered it and decided not to.
3 And then the Director is kind of forced to say, well, they
4 considered it, so we approve it. I'm not happy with that.
5 If it's not going to come back to us, I don't want what
6 you're going to consider. I want a minimum of what you'll
7 commit to today. Because also, as one of the conditions,
8 what you commit to today, you're bound to do.

9 And then the Director has grounds for denying if
10 you don't do sufficient. So, what are you willing to commit
11 to today in terms of energy conservation?

12 MR. SNYDER: Well, two things; one general, and
13 one specific. One, wherever we build, we comply with all
14 existing requirements by ordinance or code and so forth.
15 That's the general one. Number two, other than the
16 photovoltaic solar panels that are listed in your list,
17 that's one that we're -- I cannot commit today that by the
18 time we build this, that that will have been suitably
19 analyzed, researched by the church, and established as part
20 of our building program.

21 Everything else on that list, most everything else
22 on that list is already in use today. And everything other
23 than the solar panels will be in use by the time we build
24 this building.

25 COMMISSIONER MARDFIN: So, you're committing to

1 Items 2 through 6?

2 MR. SNYDER: Would you read those items for me,
3 please?

4 COMMISSIONER MARDFIN: Instantaneous tankless
5 water heaters.

6 MR. SNYDER: Yes.

7 COMMISSIONER MARDFIN: Minimization of ground
8 cover and utilization of more xeriscaping.

9 MR. SNYDER: Yes.

10 COMMISSIONER MARDFIN: Incorporate weather gauges
11 into irrigation system for water conservation.

12 MR. SNYDER: Correct.

13 COMMISSIONER MARDFIN: Installation of bicycle
14 racks.

15 MR. SNYDER: Yes.

16 COMMISSIONER MARDFIN: Installation of dual-flush
17 water efficient toilets.

18 MR. SNYDER: Yes.

19 COMMISSIONER MARDFIN: So, you're committing to
20 everything on there; it's not just being considered, you're
21 committing to all these with the possible exception of
22 photovoltaic?

23 MR. SNYDER: That's correct. And these other
24 things were actually, other than Item Number 2, we're just
25 switching to that; other than that, the other things have

1 been a part of our program for a while.

2 COMMISSIONER MARDFIN: Okay. That helps. Because
3 now I have a commitment.

4 MR. SNYDER: I appreciate the clarification.

5 CHAIRMAN STARR: Commissioner Shibuya.

6 COMMISSIONER SHIBUYA: Okay. Thank you for coming
7 here and clearing up some of our questions.

8 MR. SNYDER: My pleasure.

9 COMMISSIONER SHIBUYA: I'm very interested in
10 renewable energy, conservation and also avoiding. And there
11 are three different conditions here that are actually mixed
12 up within the document. First of all, if you avoid using
13 the energy, that will be like using existing lighting from
14 the sunlight, and I don't see that in the design, that you
15 avoid using the electricity to lighten up the inside of that
16 structure.

17 CHAIRMAN STARR: Daylighting.

18 COMMISSIONER SHIBUYA: It's more daylighting. The
19 other side, if you put a cupola or something, then you have
20 a natural venting of the structure. You're avoiding use of
21 that energy. You can use Energy Star. That would be
22 conservation. Or if you have used more efficient lighting
23 fixtures, that's conservation.

24 The other one is generating renewable energy.
25 Wind turbines, or you can use photovoltaics. I don't see

1 any evidence here. I do see the south side, and this one
2 is -- I don't know in reference to when you place it on the
3 block, is it really facing south? And that's my question.
4 You say south elevation. Is it really looking south, or is
5 the north really looking north? And in the cross-section, I
6 don't know which side is the south side. And if you're
7 really concerned in terms of having photovoltaics, then you
8 would have a larger surface for the photovoltaic.

9 MR. YOSHIMORI: You want me to answer that? Okay.
10 Right now, Warren, the building orientation, the south --

11 CHAIRMAN STARR: Introduce yourself.

12 MR. YOSHIMORI: I beg your pardon?

13 CHAIRMAN STARR: Introduce yourself again.

14 MR. YOSHIMORI: Alvin Yoshimori from GYA
15 Architects. If you notice our building, the north side --
16 the north side is located where the sanctuary is. And the
17 south is the other entry. So, the exposure to the sun for
18 the afternoon sun is not very promising for this particular
19 site orientation.

20 COMMISSIONER SHIBUYA: That's what I thought I
21 saw, and that's why I'm saying there's a contradiction in
22 the actual application of the words. And that's what
23 Commissioner Mardfin is mentioning, too. So, if you move
24 the building in such a way or structure the roof line in
25 such a way that can take advantage of this photovoltaic,

1 then it makes sense.

2 MR. YOSHIMORI: Uh-huh.

3 MR. SNYDER: I agree with you. And the LDS Church
4 is, as part of our prototype, part of our due diligence in
5 that, we are working now to modify our standard drawings to
6 take better use of those technologies. We're not there yet.
7 We're not there yet, but we're working hard at it.

8 COMMISSIONER SHIBUYA: In this area, we have trade
9 winds, and we have Kona winds. If you situate the structure
10 in such a way, then you have natural ventilation. And the
11 cupola would take out the hot air. Then you avoid using
12 energy.

13 CHAIRMAN STARR: Obviously, they are not doing it,
14 or solar hot water. But I mean is there a possibility to go
15 back and look at these things?

16 MR. SNYDER: As far as reorienting the building on
17 the site and as far as changing the design to allow free air
18 flow through the building?

19 CHAIRMAN STARR: Yes.

20 MR. SNYDER: No, I certainly couldn't commit to
21 that today. And I hope you understand, at least to agree
22 what our position -- what our situation is, we build so many
23 buildings that we have to try to standardize them. We are
24 working to make them -- to bring them up to use all the
25 current technology that we can. And we're not there yet,

1 but we are working hard at it.

2 But I can't commit for this building that we will
3 be able to accomplish those things, no.

4 CHAIRMAN STARR: I would like to encourage,
5 Mr. Hirano, in future projects to talk to applicants early
6 to try to start getting ahead of the curve rather than
7 behind it. We were going to ask the cultural consultant to
8 come address us for a minute. And then Commissioner
9 Hiranaga has questions. We will get to him.

10 MR. KULOLOIO: Aloha, Chair, Commission Members.
11 My name is Leslie Kuloloio. I'm glad to be here this
12 morning to answer your questions. I've been consulting for
13 Maui Lani since 1994 during the construction period when
14 Maui was changing its total recipe in the environment in the
15 Central Maui, and so I'm here to answer questions. Any
16 questions by the Commissioners?

17 CHAIRMAN STARR: Commissioner Sablas, did you have
18 something that was unanswered?

19 COMMISSIONER SABLAS: I think most of my questions
20 -- I think overall on the surface, this is a wonderful
21 project. I commend all the members, the community members
22 and all they do for our community. Obviously, I think for
23 us, my question, my concern is mostly what's happening under
24 the surface. And I do respect your knowledge. I appreciate
25 that you're involved with this project. Because I know you

1 go back a long, long time and in taking care of our iwi.

2 So, I guess my concern, I just need to be assured
3 that, you know, and I've asked the question before. From
4 you I want to hear that, to your knowledge, Uncle Les, no
5 iwi has been found on this particular parcel?

6 MR. KULOLOIO: Yes, no iwi has been found on this
7 particular four-acre project. Even the adjoining lots that
8 no iwi has been found. And the reason why I wanted to bring
9 all of us up to par; archeology, ancient history,
10 factfinding and criticism, functioning of old Polynesia
11 past, present and future will continue and will have to be a
12 continuing educational process.

13 Like architecture designs and changes, archeology
14 need to learn and change. And so, what I'm saying is that
15 no bones or iwi have been found. In listening to the
16 questions asked, I've been part of the findings of the
17 original 1987 and 1989 Memorandum of Agreement that set up
18 to the findings of Honokahua. I was the community
19 representative under the Administration of John Waihee,
20 Mayor Hannibal Tavares and the County Council, who walked
21 through the process of the findings of the Honokahua burial
22 sites. Through that process, it took us, as Hawaii
23 activists, leaders, kupuna, et al, to bring together the
24 understanding of future findings on how to protect and to
25 care for our iwi kupuna on Maui County.

1 And so, through that, I'm grateful that the burial
2 laws put together by our legislative representatives and the
3 mayor and all the hard work together and community and
4 kupuna, we have put together a strong, a strong burial
5 program that would help facilitate, yeah, the findings of
6 ancient history, including the iwi. The burial program is
7 effective, like Planning Commission is effective. We need
8 to be specific, clear and to read what the law states and to
9 be clear upon its definitions. I am glad that Maui Lani,
10 with my commitment to Maui Lani, have been part and will be
11 part in having kuleana. Kuleana means protecting the
12 burials of my kupuna until and as long as we can and as long
13 as the development is there.

14 That's why I'm present with Maui Lani to be sure
15 that they follow the rules, that they follow the rules of
16 the State of Hawaii. And so, I'm here to say that all the
17 archeological inventory surveys that was done, in the olden
18 days, Charles Keau and our lady MacPhee, Auntie Inez, was
19 part of the cultural resource persons for the County of
20 Maui. I have worked with them to develop and understand,
21 and Rick Medina, Councilman. I was part with Velma Santos
22 to sit on the Cultural Resource.

23 So, putting this together, we have an effective
24 burial program. We have a Burial Council. I don't know the
25 politics, but I've worked on under six governors. And every

1 governor change.

2 CHAIRMAN STARR: Please stay to the point.

3 MR. KULOLOIO: And so, I'm here to say this. That
4 the cultural mandate in finding burials on Maui Lani, as
5 soon as there are burials found, we stop construction. We
6 report it to the SHPO. We have an archeologist that works
7 hand in hand with me, the company, and we put the dots with
8 the dots, because it involves the finding of ancient
9 history. And all I going to say is that the -- I want to
10 thank all those that are asking questions. And I hope that
11 we can improve the education more about how to handle the
12 iwi. But the State Historic Preservation Office is doing a
13 good job. Our representatives that make decisions is doing
14 a good job; Hinano Rodrigues, Coochie Cayan of the Honolulu
15 office.

16 CHAIRMAN STARR: Okay, thank you.

17 MR. KULOLOIO: I can go on and on.

18 CHAIRMAN STARR: No, please don't. One more
19 question.

20 COMMISSIONER SABLAS: One more question, Uncle
21 Les. I think I heard testimony that over 300 burials were
22 found. Do you have knowledge of them, and what time period
23 were they?

24 MR. KULOLOIO: Yes. The -- all the reports of the
25 findings, all of the iwi kupuna within the areas of

1 parameters of Maui Lani have been reported to the State of
2 Hawaii. It is not hidden use, secrecy. Everything has been
3 processed according to our mandate and law. There are a lot
4 of burials in Maui Lani; likewise, at (inaudible), likewise
5 at Wailea, 300-something at Grand Wailea.

6 COMMISSIONER SABLAS: Uncle Les, my question was
7 more specific to you as a cultural consultant for Maui Lani,
8 were you aware of these burials personally and the date and
9 you're pono with that?

10 MR. KULOLOIO: Yes, it's all pono. It's all been
11 recorded. Yes, it's according to the State. The State have
12 all the records. Nothing has been held back.

13 COMMISSIONER SABLAS: Mahalo. Thank you.

14 CHAIRMAN STARR: Thank you.

15 MR. KULOLOIO: Thank you.

16 CHAIRMAN STARR: Commissioner Hiranaga.
17 Commissioner Hiranaga, then Commissioner Tagorda.

18 COMMISSIONER HIRANAGA: This might -- actually,
19 this is a question for staff. Did you have a question?

20 COMMISSIONER TAGORDA: Yeah, I have a question for
21 Mr. Kuloloio. Since you're aware of this 300-plus burial,
22 Mr. Kuloloio, are they specifically marked in this Maui Lani
23 area so we can avoid it? And what are things that you folks
24 do to protect them?

25 MR. KULOLOIO: After the findings of these iwi

1 kupuna, we have to go through the process of after the
2 finding, fact and finding inventory, and there are a lot of
3 processes. What we do is we present a burial treatment plan
4 and a burial preservation plan. All the burials found so
5 far has been particularly set in place, covered, given an
6 area to preserve in place. It's been landscaped, protected.
7 And all these sites are available for all of you to visit.

8 COMMISSIONER TAGORDA: Are they moved, or they are
9 in place?

10 MR. KULOLOIO: No. All of the burials have been
11 kept in place, in situ, meaning in that area. And might be
12 we have to move two or three out of each area so that we go
13 compensate infrastructure changes and so forth according to
14 the review of DLNR and Burial Council.

15 COMMISSIONER TAGORDA: Because I've been around
16 that area many times, Mr. Kuloloio, and I see only one
17 burial that I saw that's been well-buffered, well-protected,
18 and there are 300-plus.

19 MR. KULOLOIO: Yeah, it's all over. We have
20 different areas since 1994 at Legends, at different places
21 that have mandated the protection and burial treatment
22 plans.

23 COMMISSIONER TAGORDA: The reason why I mentioned
24 this is this is going to come back to us often times. When
25 we deal with all the structures at Maui Lani, we're going to

1 go back again and ask the same questions over and over.

2 MR. KULOLOIO: Yeah.

3 COMMISSIONER TAGORDA: And I want those
4 protections to be in place now if there is a way to do it.

5 MR. KULOLOIO: It is.

6 CHAIRMAN STARR: Commissioner Tagorda, would we
7 like them, the Maui Lani people, to provide us with a map
8 showing where those protected --

9 COMMISSIONER TAGORDA: Yeah, I'm moved with these
10 things. I don't want this to be, these iwi's they call it,
11 to be disturbed. I don't know what the process, yeah. I'm
12 not Hawaiian, but I'm moved. I'm very sensitive.

13 CHAIRMAN STARR: We'll ask they provide it to
14 staff so it's available.

15 COMMISSIONER TAGORDA: Thank you.

16 CHAIRMAN STARR: Commissioner Hiranaga, we have to
17 wrap this up.

18 COMMISSIONER HIRANAGA: Yeah, I just have one more
19 subject. It's actually a question for staff. Thank you.
20 Looking at HRS 205-A, which is I guess there's some quotes
21 on Page 10, scenic and open space resources. Could someone
22 on staff explain to me what scenic and open space resources
23 are? Does that include view planes?

24 MS. CUA: Yes.

25 COMMISSIONER HIRANAGA: And I have a followup

1 question. Why does the steeple need to be 67 feet 8 inches
2 in height?

3 CHAIRMAN STARR: Mr. Hirano.

4 MR. HIRANO: Commissioner Hiranaga, during the
5 variance application, there was specific reasons, which were
6 religious, cultural or spiritual reasons for the
7 significance of the steeple in the LDS Church, that the
8 steeple represented the connection and the aspiration of the
9 human condition to -- towards God. And the steeple
10 represented the expression of that in its religious
11 symbology. So, it was a very important feature to retain in
12 the LDS Church, and it is a very important tradition in LDS
13 Church design.

14 And that was why the steeple was of a certain
15 height and was given and granted the variance. And that
16 height, where it did exceed the height limit, it was only
17 for the steeple. The rest of the church is, as I said,
18 below the height limit, so it's a very small portion of the
19 church.

20 COMMISSIONER HIRANAGA: Again, Mich, why does it
21 have to be 67 feet 8 inches in height? Why can't it be 55
22 feet, 50 feet?

23 CHAIRMAN STARR: Introduce yourself again.

24 MR. SNYDER: Rocky Snyder, project manager for the
25 church. I assume you're not -- you're not asking why

1 couldn't it be 66 feet or 65 feet. There's nothing -- but
2 just in case you're not, there's nothing magic to us about
3 that number. It's a -- it's a proper proportion for the
4 building. And as Mich mentioned, our tradition of building
5 a steeple that does reach towards God, so to speak. And
6 every time we drive up to that building, it reminds us, at
7 least members of the church, it's a visual reminder of us
8 what we're aspiring to.

9 Most of the buildings I've seen here on the
10 island, most of our buildings have steeples that are easily
11 that high. They're not always attached to the building.
12 Sometimes they're freestanding next to the building, but
13 it's very common, very traditional, at least with our
14 meeting houses. Does that -- that's really the only answer
15 I have.

16 COMMISSIONER HIRANAGA: Okay. Thank you.

17 MR. SNYDER: Thank you.

18 CHAIRMAN STARR: We need to move along to public
19 testimony. But Commissioner Shibuya, if you have a last
20 quick one.

21 COMMISSIONER SHIBUYA: I did have a question in
22 line with Commissioner Hiranaga, and I just did not like it
23 at that tall height. I would like something closer to 40
24 feet. Would that be workable?

25 MR. HIRANO: The building height variance has been

1 approved by the BVA, so that's kind of the process that the
2 church went through.

3 CHAIRMAN STARR: Okay. Are we ready to move along
4 with public testimony? Okay. First, if there are any
5 members of the public that wish to give testimony on this
6 item who have not given testimony before, please make
7 yourself known. Not seeing any, public testimony is closed.

8 Mr. Dias, please give the recommendation.

9 MR. DIAS: Thank you, Mr. Chair. This application
10 complies with the applicable standards for a County Special
11 Use Permit in Project District Phase II Approval as stated
12 in the conclusions of law listed on Page 2 of the
13 Department's recommendation. And based on those conclusions
14 of law, the Maui Planning Department recommends approval of
15 the County Special Use Permit subject to seven conditions.

16 COMMISSIONER HIRANAGA: We're listening. Go
17 ahead. We're listening.

18 MR. DIAS: And recommend approval of the Project
19 District Phase II Approval subject to 12 standard conditions
20 and two project-specific conditions.

21 CHAIRMAN STARR: Commissioner Mardfin.

22 COMMISSIONER MARDFIN: Mr. Dias, the only
23 conditions I was looking at that I was concerned about were
24 the project district approval conditions. You had nine and
25 ten, and I think we've dealt with it. Ten was that

1 appropriate energy conversation measures shall be
2 incorporated, which may include, but are not limited to,
3 energy -- "may include" is a word that bothers me.

4 I like "shall include". But we got the
5 commitment, so condition nine covers what my concerns were.
6 Because it says, "The Applicant shall develop the property
7 in substantial compliance with the representations made to
8 the Commission." And so, we got them on the record as to
9 what they're going to do, so that takes care of my big
10 issues there.

11 CHAIRMAN STARR: Okay. Members, would anyone like
12 to make a motion? Not all at once, please.

13 COMMISSIONER FREITAS: So move that we accept the
14 recommendation of the planner.

15 COMMISSIONER TAGORDA: I second, Mr. Chair.

16 CHAIRMAN STARR: Okay. So, we have a motion by
17 Commissioner Freitas, seconded by Commissioner Tagorda.
18 That motion is?

19 MS. CUA: For approval of the County Special Use
20 Permit and a Phase II Project District application for the
21 LDS Church in Maui Lani Project District.

22 CHAIRMAN STARR: As recommended.

23 MS. CUA: As recommended by the Department.

24 CHAIRMAN STARR: Okay. Members, any discussion?
25 Commissioner Hiranaga.

1 COMMISSIONER HIRANAGA: I have an issue with the
2 height of the steeple. And I know this is your standard LDS
3 Church design, which you apply to the other 49 states within
4 the United States of America. But most of those states do
5 not have ocean views. Personally, I like to look at the
6 ocean, and it bothers me when structures start to encroach
7 into the people's ocean views. I know it's -- I'm not
8 opposed to the church for this property, but I have issues
9 with the design.

10 And unless we can somehow mitigate the impact of
11 that steeple, I will be voting against the motion to
12 approve. We had a similar application, I believe, for a
13 church just below Honoapiilani Highway above Waiale Road
14 where they picked the highest elevation on their site, and
15 they wanted to build a church and say this will be become a
16 landmark. Well, to some people, it may be a landmark. To
17 the people in Wailuku Heights, it may become an eyesore.

18 And so I think the church needs to be more
19 sensitive to the wants and needs of the local population. I
20 brought up the issue regarding the roof design trying to
21 make it more Polynesian, Hawaiian in appearance. I
22 understand you want economies of scale, which means you want
23 to save money and not do additional design work, because
24 it's going to cost more money. I understand your point of
25 view. But I hope you understand my point of view.

1 Orientating the building for a south face so that it is not
2 perpendicular to your boundary lines, I don't understand why
3 you would not consider that.

4 So, I think for this Project District Phase II
5 Approval, to receive my approval to proceed, I think the
6 Applicant needs to look at this project a little bit more
7 and take into consideration the impacts to this island
8 county. Yet, if you're in the middle of the Midwest, which
9 I happen to have spent some time, there's not a whole lot to
10 look at, maybe it's nice to see a church out in the
11 distance. But over here, I like to look at the ocean. It's
12 dynamic. Haleakala is fine, but to me, the ocean is more
13 important.

14 CHAIRMAN STARR: Commissioner Hiranaga, would you
15 like to offer an amendment?

16 COMMISSIONER HIRANAGA: I don't want to really set
17 a height limit, because like you said, there's proportions
18 of scale. But I think 67 feet is a little extreme,
19 especially if you're located in the residential area.

20 CHAIRMAN STARR: Yeah, Mr. Hirano, I think you had
21 a comment about the height issue.

22 MR. HIRANO: I would like to have Rocky Snyder
23 just address that. I think the LDS Church will be amenable.

24 CHAIRMAN STARR: Good.

25 MR. SNYDER: Yes, we -- we're more than willing to

1 work with Planning staff, whoever we need to, to come up
2 with something to be more mutually agreeable. Are you
3 asking for a specific height?

4 CHAIRMAN STARR: What I'm hearing is you're asking
5 for a deferral, which -- or would you like to say you will
6 reduce it to X number of feet or something, and we can deal
7 with it now; or we can defer it, and they can have that
8 discussion? One or the other.

9 MR. SNYDER: We are willing to reduce it to 50
10 feet. That's 17 feet below what it's currently approved at.

11 COMMISSIONER SABLAS: Can you bring up a slide
12 that shows the steeple, please?

13 CHAIRMAN STARR: Yeah. And one of the members may
14 consider offering an amendment that would -- if they wish.

15 COMMISSIONER HIRANAGA: Just a question regarding
16 the elevation. Technically, the steeple is the white
17 section, or is the entire structure above the roof the
18 steeple?

19 MR. SNYDER: The entire structure above the roof
20 is the steeple, yes.

21 COMMISSIONER HIRANAGA: So, what's that on the
22 bottom base; are you going to have clocks in there or a
23 bell?

24 MR. SNYDER: No, it's just decorative
25 architectural features. There's no lighting. There's

1 nothing that functions or operates, just an architectural
2 feature.

3 COMMISSIONER HIRANAGA: So, your proposal to
4 reduce the height to 50 feet, how would you proportionalize
5 that structure?

6 MR. SNYDER: That bottom section we would have to
7 reduce in height as well.

8 CHAIRMAN STARR: Okay. Would any of the members
9 like to offer an amendment to take that into account?
10 Commissioner Shibuya.

11 COMMISSIONER SHIBUYA: I, too, have the objections
12 in terms of coming in for a special use area, especially in
13 a residential use area, and being such a large facility, and
14 with this additional height, it's imposing. It's beyond
15 acceptability in my mind for the community, residential
16 community. So, I was thinking less invasive, visually
17 invasive, closer to 40 feet. That would be acceptable, but
18 you're mentioning 50 feet.

19 Also, in terms of saying that you would like to
20 have it more energy efficient and more renewable energy
21 type, I don't see those features in this design. So, as far
22 as I'm concerned, what you propose and what you say and what
23 you actually demonstrate are all different features that I
24 really am very uncomfortable in approving. And so, I just
25 want you to understand that I like the concept of a church,

1 a large church like this to accommodate the conferencing of
2 all of Maui and, in fact, some of the Oahu people, too.

3 I do have that problem of the largeness, the
4 massiveness that you would like to portray that is not
5 Hawaiian, that is not native, and it's intrusive to the very
6 visual aspects of Maui. So, take it as it is.

7 CHAIRMAN STARR: Okay.

8 COMMISSIONER HIRANAGA: Just a quick question.

9 CHAIRMAN STARR: Commissioner Hiranaga.

10 COMMISSIONER HIRANAGA: Does staff recall what the
11 height agreement was for that previous special use permit
12 application we had off of Waiale Road?

13 MS. CUA: No, I'm sorry, we do not. We can check.

14 CHAIRMAN STARR: Commissioner Mardfin.

15 COMMISSIONER MARDFIN: I just want to explain
16 where I am. And I, to be honest at this stage, I don't know
17 how I'm going to vote, but let me go through my thinking
18 process. When I read the material at home, I was -- my view
19 was that's fine. Then I was here and I heard testimony this
20 morning about iwi, and I got particularly the lack of the
21 fact that this was -- that the Burial Council's input was
22 not finalized, because there was a request for them to
23 provide information, and they didn't do it.

24 And that made me feel that I should vote against
25 doing the project at this time. The project itself, by the

1 way, has no problem for me. It's the design. That -- my
2 concerns on that area have been pretty much resolved in the
3 fact that all the grubbing and grading has been done, that
4 we found that there were no iwi found, that there won't be
5 anymore significant grubbing and grading. So, my concern
6 about the iwi has been somewhat ameliorated. That made me
7 back onto the project.

8 The steeple height itself doesn't bother me. I
9 don't think you see the ocean from there. You're looking
10 up, not down. But I am more concerned about the issues that
11 were brought forward in terms of energy conservation. We
12 got the commitment from you that you would put in all but
13 the first one. And that's nice and made it more acceptable.
14 On the other hand, I understand the reason to want to do it
15 like we do it in all the other 49 states. But I think
16 Mr. Shibuya and Mr. Hiranaga have good points in the fact
17 that small changes in orientation and changes in lighting
18 and other things could make it much more energy sustainable.

19 I'm not sure how I'm going to vote. And when we
20 get to the vote, I'll have to decide. I think going back to
21 the drawing board a little bit, you could dramatically
22 improve the quality of the project through a little
23 orientation and a little redesign and make it fit much more
24 into this climate, which is different from the other 49
25 states. We're the southernmost state.

1 I have not heard -- well, the steeple size itself
2 doesn't bother me. I haven't heard a motion to amend to
3 change the steeple size, so as far as I'm concerned, you're
4 still up to your 67 feet. I'll wait for the rest of the
5 discussion to decide where I'm going to go.

6 CHAIRMAN STARR: Commissioner Sablas.

7 COMMISSIONER SABLAS: I'm okay with the steeple.
8 If you look at Wailuku Town and think what stands out in
9 Wailuku is the steeple that we have here. If you do a lot
10 of traveling like I do in little towns, what to me is
11 appealing is when you have a church with a steeple as part
12 of the community. So for me, I have no problem with that.
13 And I'm ready to vote. I've had my concerns taken care of,
14 and I'm ready to vote.

15 CHAIRMAN STARR: Commissioner Hiranaga.

16 COMMISSIONER HIRANAGA: Do you happen to know what
17 the steeple height is for your church on I believe it's --
18 is it Papa Avenue, or it's just off of Papa?

19 MR. SNYDER: Well, currently, it's zero. We just
20 demolished that one because of some structural problems. We
21 had an emergency permit to remove that one. And we'll be
22 replacing it next year with a steeple on top of the building
23 similar to this is what we will be proposing to do. But
24 prior to its demolition, I don't know the height. But it
25 was easily this high.

1 COMMISSIONER HIRANAGA: Sixty-seven feet? This is
2 the one near Kahului Elementary School?

3 MR. SNYDER: This was a masonry steeple attached
4 to the front of the building that went up -- I'm guessing,
5 but I would say it was in the 60, 65 foot range.

6 COMMISSIONER HIRANAGA: Above grade?

7 MR. SNYDER: Yes, above grade.

8 MR. HIRANO: But it was ground mounted.

9 MR. SNYDER: It was ground mounted. It was a
10 masonry foundation.

11 COMMISSIONER HIRANAGA: Is there a steeple on the
12 church on, I believe it's, Kauhikoa Road?

13 MR. WUNDER: My name is Arnold Wunder responding
14 to Commissioner Hiranaga's question. We have steeples on
15 our chapels in Lahaina, which is on the corner of Malo and
16 Honoapiilani Highway; on our chapel in Pukalani, which is on
17 Kihapai Place in Pukalani, which is just off of the
18 Haleakala Highway. But all of these meeting houses do have
19 steeples. And our church in Kihei has a freestanding
20 steeple that is adjacent to the building, but they all have
21 steeples like that.

22 COMMISSIONER HIRANAGA: Kauhikoa Road, Haiku, I
23 thought you had a church there.

24 MR. WUNDER: We do not have a church on Kauhikoa
25 Road. We have and old church many years ago --

1 COMMISSIONER HIRANAGA: Kokomo Road, I'm sorry.

2 MR. WUNDER: Kokomo Road, that's not us. Kihapai
3 Place in Pukalani, Lahaina, Kihei and Hana all have
4 steeples.

5 COMMISSIONER HIRANAGA: All right. Thank you.
6 Commissioner Freitas.

7 COMMISSIONER FREITAS: Yes, I'm the maker of the
8 motion. And I believe all of my concerns has been
9 addressed. I have absolutely no problem with that steeple
10 height, and I'm ready to vote.

11 CHAIRMAN STARR: Okay. Commissioner Tagorda.

12 COMMISSIONER TAGORDA: Mr. Chair, just a few
13 words. Yeah, I have no problem with the church. I think
14 the church there is going to enhance Maui Lani and the local
15 community. And I saw all those testifiers. I think they
16 are respectful, respectable people here, so the steeple also
17 before the meeting starts, I have a problem. Because it
18 symbolizes Mormon faith. I have no problem with that. But
19 if you try to symbolize something in Maui, I go along with
20 the cutting down the steeple height, because I don't want to
21 see that way up.

22 I have no problem with Mormon faith or the church
23 teachings and all that, but it's just the steeple. So, I'm
24 ready to vote, Mr. Chair.

25 CHAIRMAN STARR: Commissioner Hiranaga, last

1 question before we vote.

2 COMMISSIONER HIRANAGA: Actually, for the record.
3 I will propose an amendment as suggest -- the height as
4 suggested by the Applicant. I will make an amendment
5 another condition be added that the steeple shall not exceed
6 50 feet above I guess finished grade.

7 CHAIRMAN STARR: Is there a second? Is there a
8 second to the --

9 COMMISSIONER SHIBUYA: I'll second it.

10 CHAIRMAN STARR: So, we have an amendment by
11 Commissioner Hiranaga, seconded by Commissioner Shibuya.
12 That amendment is?

13 MS. CUA: That as represented by the Applicant,
14 the steeple height shall not exceed 50 feet above finished
15 grade.

16 CHAIRMAN STARR: So, we're going to vote on the
17 amendment. Okay. The amendment is being voted upon. All
18 in favor of the amendment, please raise your hand. All
19 opposed. One clarification.

20 COMMISSIONER SABLAS: He's amending it to 50 feet,
21 right?

22 CHAIRMAN STARR: Yeah.

23 COMMISSIONER SABLAS: I'm okay with the original,
24 so I'm voting against.

25 CHAIRMAN STARR: So, what is the count?

1 MS. CUA: I'm sorry. Can they vote again, please?

2 CHAIRMAN STARR: I'm sorry. One more time, please
3 raise your hand for the amendment.

4 All opposed.

5 MS. CUA: So, six, six aye's.

6 CHAIRMAN STARR: Six aye's, one nay. Chair is not
7 voting.

8 MS. CUA: Motion carried.

9 CHAIRMAN STARR: Motion carried. Commissioner
10 Shibuya.

11 COMMISSIONER SHIBUYA: I would like to make
12 another amendment. That amendment would be to relocate,
13 slightly relocate so that the structure is better suited for
14 photovoltaics as well as accommodating and taking advantage
15 of the natural trade winds.

16 COMMISSIONER MARDFIN: Second.

17 CHAIRMAN STARR: We have a motion by Commissioner
18 Shibuya, seconded by Commissioner Mardfin. That motion is?

19 MS. CUA: That the proposed structure be relocated
20 so that it is better suited for photovoltaic, and what, I'm
21 sorry?

22 COMMISSIONER SHIBUYA: Natural trade winds.

23 MS. CUA: Natural trade winds.

24 CHAIRMAN STARR: Commissioner Hiranaga, discussion
25 on the amendment.

1 COMMISSIONER HIRANAGA: Yeah. I would like to see
2 if the Applicant would like to comment on that amendment.
3 If they have any technical issues we may not be aware of
4 that might preclude them from complying.

5 MR. SNYDER: Rocky Snyder, project manager. I
6 just want to make sure it's clear to me. We're talking
7 about reorienting the building on the site. It was also
8 mentioned to take advantage of the trade winds. The
9 building designed currently, no matter how it's oriented,
10 isn't going to allow free flow of air through there, so
11 we're not going to accomplish anything with that by
12 reorienting it. So, I'm just wondering what purpose we're
13 serving with that.

14 CHAIRMAN STARR: Okay. We have an amendment on
15 the floor. Commissioner Shibuya, you want to speak to that?

16 COMMISSIONER SHIBUYA: I'll address Mr. Snyder's
17 comment about trade winds. They can still accommodate with
18 reorienting the floor plan to accommodate at least the
19 renewable energy, which is the photovoltaics. And they have
20 an opportunity because of this realignment taking advantage
21 of the trade winds with minor modifications on the
22 structure.

23 CHAIRMAN STARR: Commissioner Hiranaga.

24 COMMISSIONER HIRANAGA: Maybe as a friendly
25 amendment, optimization of trade winds and the southern

1 exposure for photovoltaic may not be compatible. So, I
2 suggest you just say that the south-facing slope of the
3 building's roof shall be so oriented to optimize
4 photovoltaic energy.

5 COMMISSIONER SHIBUYA: Okay. It's acceptable.

6 CHAIRMAN STARR: And to the second?

7 COMMISSIONER MARDFIN: It is acceptable.

8 CHAIRMAN STARR: Can you read the new wording of
9 the amendment, Ms. Cua?

10 MS. CUA: That the south-facing slope of the
11 building roof shall be so oriented to optimize photovoltaic
12 energy.

13 CHAIRMAN STARR: Okay. Let's vote on that
14 amendment. All in favor, please raise your hand.

15 All opposed. The count.

16 MS. CUA: Five aye's. Two nays. Motion is
17 carried.

18 CHAIRMAN STARR: Amendment passes. We're on to
19 the main -- Commissioner Mardfin.

20 COMMISSIONER MARDFIN: I just want to comment that
21 I voted for the last amendment. I seconded it. I -- you
22 have to understand that they're not committed to doing it.
23 It just makes it a little easier to do it, because it would
24 be more efficient to do it. Given that, I'm prepared to
25 vote on the main amendment -- I mean the main motion. The

1 one last comment I would like to make is I agree with what
2 the Chairman said earlier.

3 Because of the particulars of this, I can vote for
4 it because no iwi were found and the grubbing had been done.
5 Any future project in Maui Lani I would expect to have gone
6 before the Burial Council for approval; otherwise, I would
7 be voting no on future Maui Lani projects.

8 CHAIRMAN STARR: That's a discussion we'll have at
9 a future meeting, because it's not pertaining to this item.
10 But we'll have that discussion. Commissioner Hiranaga.

11 COMMISSIONER HIRANAGA: Just clarification. The
12 second amendment that was passed, it's a mandate? I didn't
13 listen to the exact words. You said the Applicant shall, so
14 it's not an option.

15 COMMISSIONER SHIBUYA: It's not an option.

16 COMMISSIONER HIRANAGA: It's a condition of the
17 SUP.

18 CHAIRMAN STARR: Go ahead, Commissioner Mardfin.

19 COMMISSIONER MARDFIN: It's a condition they
20 reorient the direction. It's not a condition they use
21 photovoltaic.

22 COMMISSIONER HIRANAGA: Right.

23 CHAIRMAN STARR: We're onto the main motion. The
24 main motion is to approve as recommended with the two
25 amendments. All in favor, please raise your hand.

1 All opposed. Okay, the count.

2 MS. CUA: Seven. Sorry about that.

3 CHAIRMAN STARR: Okay. Congratulations. Build a
4 wonderful project.

5 MR. SNYDER: Thank you very much.

6 CHAIRMAN STARR: Members, before we break for
7 lunch, we're coming back to a contested case where we're the
8 hearings officer. I would like to request that someone make
9 a motion that we shuffle our agenda so that all items
10 including the director's report and --

11 COMMISSIONER MARDFIN: I so move that we amend the
12 agenda to deal with Item C.

13 CHAIRMAN STARR: Just for the contested case,
14 Item G.

15 COMMISSIONER MARDFIN: That we deal with Item G
16 when we return.

17 CHAIRMAN STARR: Is there a second?

18 COMMISSIONER TAGORDA: Second.

19 CHAIRMAN STARR: All in favor. All opposed.
20 Okay. Good work. Have a great lunch. Come back with your
21 judicious hats on.

22 (Lunch recess.)

23 CHAIRMAN STARR: Good afternoon, everyone. This
24 is the Maui Planning Commission, the afternoon of May 25th,
25 2010. We're about to embark on a contested case issue. And

1 the Maui Planning Commission is acting for the second time
2 as a hearings officer, the hearings body. We will first
3 have just a very brief explanation of our duties and how it
4 fits into our rules from our counsel, Mr. James Giroux.

5 And then we'll have an introduction to the item by
6 Trish Kapuaala. And then we'll move on to the presentations
7 by the two parties. Just to identify everyone and have it
8 clear who -- who they represent and who they are, first, for
9 the Appellant, I know that Mr. Stice is here. And I --

10 MR. TANAKA: My name is Tamotsu Tanaka. I'm a
11 small investor in the project, and I'm here on behalf of
12 the --

13 CHAIRMAN STARR: Mr. Tanaka, are you serving as
14 representation, or are you serving -- what is your role? I
15 just want to be clear.

16 MR. TANAKA: I'm serving because of my investment
17 in the project and speaking as if the entity is representing
18 itself. I am a retired attorney, by the way.

19 CHAIRMAN STARR: Okay. So, I just want to be
20 clear. Will you be speaking for the Appellant?

21 MR. TANAKA: I will be conducting the proceedings
22 for the Appellant, yes.

23 CHAIRMAN STARR: And Mr. Stice, is that okay?

24 MR. STICE: Yes.

25 CHAIRMAN STARR: Okay. Thank you very much. And

1 so the Appellant is Mr. Stice. Mr. Tamotsu Tanaka will be
2 representing and as part of -- also serving as part of that
3 entity. We have the Appellee, and the Appellee is defending
4 the decision. For that, the Appellee is represented by Mary
5 Blaine Johnston.

6 MS. JOHNSTON: That's correct, Deputy Corporation
7 Counsel Mary Blaine Johnston on behalf of the Department of
8 Planning Director and the Planning Department.

9 CHAIRMAN STARR: And also on that team is the
10 former director, Mr. Jeff Hunt, and Planner Jim Buika, our
11 shoreline planner, and also the new Director of Planning
12 Kathleen Aoki is here. And to be clear, both Mr. Giroux,
13 who also works for corporation counsel, but is separate from
14 the section that Mary Blaine Johnston is in, represents this
15 Commission and this Commission only. He does not have
16 sides. He's fair, sometimes to the point of distraction,
17 but he's fair, and also Trish Kapuaala, who is also not on a
18 side, but is here to serve the process.

19 So, Mr. Giroux, why don't you start things here.

20 MR. GIROUX: Thank you, Chair. The Chair just
21 wanted me to address a couple of the issues that I brought
22 up previously when we were doing our workshop. So, I just
23 want to remind you guys that you are now in what's called a
24 formal adjudicatory role. And you will be listening to
25 arguments. You will be listening to evidence. Your

1 decision today has to be based on evidence presented at this
2 hearing. And you will be hearing from witnesses.

3 Those witnesses will be asked questions by the
4 attorneys of the representatives, and you will also be given
5 a chance to ask those witnesses questions. I'm just going
6 to ask you not get argumentative. Ask the questions you
7 need, and you can follow up with further questions, but
8 don't enter into an argument with the witness. Also,
9 refrain from making any kind of conclusory remarks while
10 asking questions, nothing like "I'm going to do this" or
11 "I'm going to vote this way" or whatever until all of the
12 evidence is heard, so that both sides have confidence in the
13 tribunal that they're listening to all of the evidence.

14 And at the end, there's going to be closing
15 remarks. And those closing remarks aren't evidence, but
16 they're there to -- the intent is to frame the issues so
17 that when you get into your discussions, that you can
18 actually grapple with those issues and try to put the law in
19 order with the facts that you did hear and then make a
20 conclusion that can be supported by the facts on the record.
21 So that being said, I'm going to give it back to the Chair.

22 CHAIRMAN STARR: Thank you, Mr. Giroux. Now, we
23 have to make sure that everyone, all parties are in
24 agreement that the order that we will proceed. And I've
25 heard that there was an agreement that we would start with a

1 presentation by Ms. Kapuaala, and then the Appellee would
2 open and give an explanation of their -- their side. I want
3 to be sure that if that is the case and that is okay that we
4 put that on the record. So, I would like to ask first,
5 Mr. Tanaka, is that how you would like to proceed, or is
6 there a different way?

7 MR. TANAKA: I just want this clarification. I
8 understand the initial presentation by Ms. Kapuaala would be
9 basically the background of the case.

10 CHAIRMAN STARR: Correct.

11 MR. TANAKA: What the request was, what the
12 circumstances of the proposed action concerned, and that's
13 without coming to any conclusions, et cetera. And from
14 that, the Appellee will then call Mr. Hunt to present his
15 decision, the basis for it, et cetera. And then we would
16 have the right to cross-examine. And subsequent, after they
17 close their case, we would have a right to present our case.

18 CHAIRMAN STARR: Yeah, you would have your right
19 to open, and then the Appellee would have their right to
20 call witnesses, and then you would have an opportunity to
21 call witnesses and then cross-examine and so on.

22 MR. TANAKA: We've discussed it, and we have no
23 problems with that procedure, Mr. Chairman.

24 CHAIRMAN STARR: Okay. Is there a desire to set a
25 time limit on any of this exposition?

1 MR. TANAKA: We don't have any desire to set any
2 time limits.

3 CHAIRMAN STARR: How about on the closings, can we
4 get a rough idea, are we talking an hour or ten minutes?

5 MR. TANAKA: I don't think you're talking an hour.

6 CHAIRMAN STARR: And Ms. Johnston, are you content
7 with all of that? And please use the microphone.

8 MS. JOHNSTON: Yes, I think, just so I'm clear, is
9 after Trisha gives her presentation, my understanding was
10 that we would each give just a very short opening statement
11 before we start our testimony. And we had agreed, I talked
12 to both Mr. Stice and Mr. Tanaka, that it seems to make more
13 sense for the County to go first, although normally in
14 court, the Appellant would go first. They give a statement,
15 and then I would put my witness. I may have Mr. Hunt. I
16 may have Ms. Aoki also testify. And then they would put on
17 their witnesses.

18 CHAIRMAN STARR: Okay. So, to be clear, what --
19 although the usual process is for the Appellant to go first,
20 what you're suggesting is first the Appellee will give a
21 short opening statement. Then the Appellant would give a
22 short opening statement, and then the Appellee would call
23 witnesses. And then the Appellant would have an opportunity
24 to cross and so on and then redirect. And then the
25 witnesses will be called after that by the Appellant. Is

1 that -- did I express that correctly, Ms. Johnston?

2 MS. JOHNSTON: Yeah. Well, just we will put on
3 witnesses. They will have a chance to cross-examine. They
4 will then put on witnesses. And after their witnesses,
5 usually we might have a chance to put on a rebuttal witness.
6 Normally, the order is the other way around. But I think
7 for this circumstance, it will be easier for the Commission
8 and the witnesses to deal with what Director Hunt's decision
9 was, and then they could respond to that.

10 CHAIRMAN STARR: Okay. So, both sides will have
11 a -- an opportunity to examine, to cross-examine, to
12 redirect, and then afterwards, to present rebuttal witnesses
13 if desired?

14 MS. JOHNSTON: Correct.

15 CHAIRMAN STARR: Okay. Mr. Tanaka, are we good?

16 MR. TANAKA: We stipulate to that.

17 CHAIRMAN STARR: Okay. Thank you very much.

18 Ms. Kapuaala, please proceed.

19 MS. KAPUAALA: Thank you, Mr. Chair. Trish
20 Kapuaala with the Zoning Administration and Enforcement
21 Division. This is the Hana Beachfront Associates appeal
22 before the Maui Planning Commission APPL 2008/0004. Today
23 we have an appeal by Mr. Gary Stice, who was granted -- I'm
24 sorry, a decision was made by the Planning Director that a
25 Special Management Area Major Permit would be required for

1 the construction of a single-family dwelling at this -- at
2 the subject property. TMK 1-4-008, Parcel 1, SMX 2008/0321.

3 Mr. Stice subsequently appealed that decision that
4 the SMA major permit would be required. To focus you in on
5 the proceeding today, Section 12-202-32 of the SMA Rules
6 says that the Commission may reverse the decision of the
7 director if the substantial rights of the Appellant may have
8 been prejudiced because the decision is either one of these
9 three. And we have to find either one of these three.

10 Based on clearly erroneous findings of material
11 fact or erroneous application of the law, or the decision is
12 arbitrary or capricious in its application, or the decision
13 is a clearly unwarranted abuse of discretion. Section 91-10
14 Subsection 5 of Hawaii Revised Statutes, which governs this
15 proceeding today says that, except as otherwise provided by
16 law, the party initiating the proceeding; in other words,
17 the Appellants, Mr. Stice and Mr. Tanaka, shall have the
18 burden of proof, including the burden of producing evidence
19 as well as the burden of persuasion.

20 The degree of quantum of proof shall be the
21 preponderance of evidence. And I think Mr. Giroux touched
22 on this in the contested case introduction, the training,
23 that preponderance, if you want to quantify that, is 51
24 percent. If you can find the evidence to be over 51 percent
25 persuasive, then the Appellant has been successful. So

1 basically, the order of procedure today would be, like the
2 parties stipulated, the opening arguments with the County
3 going first. They will call their witnesses, take oaths.

4 There will be a direct examination, then a
5 cross-examination. The Commission may then take their turn
6 to examine the witness. There may be redirect. During the
7 testimony, there may be entering the exhibits into the
8 record. There will be closing arguments, and then you may
9 deliberate, vote and decide. That's basically it. Thank
10 you.

11 CHAIRMAN STARR: Okay. Thank you.

12 MR. TANAKA: Mr. Chairman.

13 CHAIRMAN STARR: Yes, Mr. Tanaka. Please use the
14 microphone.

15 MR. TANAKA: Just to be clear, at this particular
16 juncture, redirect is by the County. We would normally have
17 the right to recross if we so desire. So, I just wanted to
18 point that out.

19 CHAIRMAN STARR: I know in the previous one we've
20 done, we didn't have recross. I have no problem with it as
21 long as both parties are willing to accept that. So,
22 Ms. Johnston, is that acceptable to have recross?

23 MS. JOHNSTON: Absolutely.

24 CHAIRMAN STARR: Okay. So we're adding another
25 possible step, which is recross. And everyone else is --

1 Mr. Tanaka, you're in agreement with all of that?

2 MR. TANAKA: Yes.

3 CHAIRMAN STARR: And Ms. Johnston?

4 MS. JOHNSTON: Yes.

5 MS. KAPUAALA: I do have the maps and some
6 exhibits digitally, so I can pull that up if you need to.
7 So, thank you.

8 CHAIRMAN STARR: So, please request if you want
9 those put up on the screen. And also if either side does
10 have an objection, I request that you stand up so that I
11 don't miss it, and we can deal with it in a timely fashion.
12 Okay. Next we're going to go to Ms. Johnston to give a
13 short opening.

14 MS. JOHNSTON: Okay. Thank you very much. The
15 County filed a prehearing memorandum, which each of you
16 should have received a copy of just to shortly summarize
17 what's at issue here, and I'm not going to repeat that.
18 Basically, we're here today because Jeffrey Hunt, who was
19 then the Director of the Department of Planning in December
20 of 2008, entered after an assessment by the Department
21 recommendations that the SMA assessment application
22 submitted by the Hana Beachfront Associates seeking
23 exemption from the SMA requirements, it was his
24 determination that based on a full consideration of all the
25 information in front of him, that that exemption should be

1 denied and that the -- that Hana Beachfront Associates
2 should proceed with an application for a major permit.

3 And I just want to -- just at the very guts of his
4 letter in making that determination was, I'm quoting from
5 Page 2 of the memo, "The proposed action has the potential
6 for adverse impacts to resources and/or processes that are
7 provided protection within the Hawaiian Coastal Management
8 Act HRS 205-A; and therefore, the proposed action; i.e.
9 project, cannot be granted an SMA" exception -- "exemption."

10 My understanding is I know the Commission
11 frequently sits and hears applications for permits, major
12 permits, minor permits, emergency permits. It's my
13 understanding that seldom does the denial of an exemption of
14 a single-family dwelling come before the Commission. In the
15 testimony that will be given today, primarily by Jeffrey
16 Hunt, I'm going to have him explain the purposes of a SMA
17 chapter just briefly and address himself to the goals and
18 objectives and how those goals and objectives are used by
19 the Planning Department and the Planning Director, in this
20 case, by him, in making the determination that the applicant
21 should go for or needs to apply for a major permit.

22 I've provided you with a number of exhibits. You
23 should have a packet. We'll be referring to them. In
24 conversations with Mr. Stice, I told him feel free, since
25 we're putting them together and I have the staff, that he

1 could also make reference to them. So, the fact that he may
2 make reference to the County's documents should not be
3 waived. It's just, as I said, it would be easier. So, you
4 may want to put those exhibits in front of you because
5 reference will be made to some of them. You may want to ask
6 questions about them.

7 But anyway, primarily, Director -- former Director
8 Hunt will testify. I may have current Director Ms. Aoki
9 also testify. And if there are questions that come up, the
10 current planner assigned to the case is Jim Buika. He may
11 have additional information. So, that's who I plan on
12 calling at this point in time. I may have
13 cross-examination, not -- cross-examination questions of
14 either Mr. Tanaka or Mr. Stice when the time comes. The
15 Commission has been dealing with this matter for quite a
16 while. And hopefully, we can bring it, you know, to a
17 conclusion today and in a very timely fashion. And we'll
18 proceed.

19 CHAIRMAN STARR: Okay. Thank you, Ms. Johnston.
20 Mr. Tanaka, please give us your opening.

21 MR. TANAKA: The application was to request an
22 exemption from the Shoreline Management Area Rules and
23 Regulations. The law is that if you're a developer, then
24 you're subject to a major SMA permit. A single-family
25 residence is excluded from the definition of a development,

1 so, therefore, you're exempted. However, if the Director
2 finds that the proposed action would have a cumulative
3 impact or significant impact on the environment, then he can
4 require a major SMA permit. So, the statute is structured
5 so that the construction of a single-family residence is
6 generally considered exempt, unless the Director finds that
7 it cumulatively impacts the environment or has a significant
8 impact of the environment.

9 The Director's finding in this particular case was
10 that the project has the potential for adverse impacts on
11 the environment or the processes. We look at that, and we
12 will request that we go through his decision in detail as to
13 how he considers particular things that he mentioned in his
14 decision to have an impact on the environment. And when we
15 go through all of the evidence, we would ask you that we
16 find that there is no substantial evidence to indicate that
17 there is a cumulative impact or that there is a significant
18 effect on the environment, and, therefore, that the action
19 by the Director was clearly erroneous by law or an abuse of
20 discretion, capricious and nonobjective.

21 So, that's what we're focused on. We hope that we
22 would be successful in presenting the evidence to you, and
23 we thank you for your participation.

24 CHAIRMAN STARR: Okay. Thank you, Mr. Tanaka. I
25 would like to ask Ms. Johnston to call her first witness.

1 MS. JOHNSTON: Okay. I would like to call former
2 Director Jeff Hunt. And I think they want you to come sit
3 up here.

4 CHAIRMAN STARR: Mr. Hunt, please remain standing
5 for a moment. Mr. Hunt, do you affirm that you are indeed
6 Jeffrey Hunt and that everything you are about to tell us is
7 the truth?

8 MR. HUNT: I do.

9 CHAIRMAN STARR: Thank you. You can be seated.
10 Ms. Johnston, please proceed.

11 DIRECT EXAMINATION

12 BY MS. JOHNSTON:

13 Q. Okay. Please state your name and your current
14 position with the Planning Director for the record.

15 A. My name is Jeff Hunt, and I'm a Senior Planner
16 with the Department now, though I like to think I'm a saner
17 planner now.

18 Q. In 2008, you were the Director of the Planning
19 Department, correct?

20 A. Yes.

21 Q. In that capacity, you made a determination on the
22 SMA assessment application submitted by Hana Beachfront
23 Associates for the property located in Hana; is that
24 correct?

25 A. Yes.

1 Q. Okay. If you would look at the pile of exhibits,
2 the list exhibits you have in front of you, and turn to
3 Exhibit 1. Is Exhibit 1 a letter that was signed by you?

4 A. Yes, I did sign Exhibit 1.

5 Q. And that is your signature on the fifth page of
6 that letter?

7 A. That's correct.

8 Q. And can you just in very general terms describe
9 what determination was made by you in this letter?

10 A. The letter is a determination that the proposal is
11 not exempt from the SMA.

12 Q. Okay. Now, I want to ask you just a few general
13 questions about the SMA and the objectives just to sort
14 of -- I know there are some newer members of the Commission.
15 It helps me. It's a complicated area of law, and just a
16 little foundation would be useful for all of us. Briefly
17 explain what the SMA is.

18 A. The SMA is created by the State Legislature. It's
19 described under Hawaii Revised Statutes as a strip of land
20 along the shoreline that requires special control in order
21 to achieve public benefits such as protection of resources.

22 Q. Okay. And are there specific goals that the SMA
23 contemplates? And if it will help you, you can refer to
24 Exhibit 15 of the exhibits in front of you if you need to.

25 A. The Hawaii Revised Statutes, which technically is

1 the Coastal Zone Management policies or statutes, they set
2 out specific policies and objectives, and those can be found
3 in Exhibit 15. Some of those objectives address historic
4 resources, scenic resources, coastal resources and improving
5 public participation just for some examples.

6 Q. Okay. How -- planning commissions of the various
7 counties are charged with carrying out the goals and
8 objectives of the SMA Act, correct?

9 A. Yes.

10 Q. And how does the Planning Commission, Planning
11 Department/Planning Commission go about carrying out the
12 goals, implementing the goals of the SMA?

13 A. The state statutes provide authorities to the
14 counties to adopt regulations in the SMA. And the SMA Rules
15 that the Planning Commission adopted contains objectives and
16 policies along with guidelines and standards to review
17 development. The objectives and policies, as adopted by the
18 Planning Commission, are the same as the objectives and
19 policies in the Hawaii Revised Statutes.

20 Q. And Exhibit 16 that you have in front of you, is
21 this a copy of the Special Management Area guidelines set
22 out in Chapter 205-A-26 of the Hawaii Revised Statutes?

23 A. Yes, it is.

24 Q. Okay. And I referred previously to the goals and
25 objectives. And I'll ask you the same question. Exhibit

1 15, are these objectives and policies set out in Hawaii
2 Revised Statutes 205-A-2 of the Coastal Zone Management
3 program policies and objectives?

4 A. Yes, it is.

5 Q. Okay. How does the Planning Department go about
6 implementing the goals of the objectives of the SMA for
7 proposed projects to be built in the Maui County? And if it
8 may help you, look at Exhibit 13. Identify what Exhibit 13
9 is.

10 A. Exhibit 13 is Special Management Area permit
11 procedures. This is a part of the Special Management Area
12 Rules adopted by the Planning Commission. The Planning
13 Commission, as well as the Planning Department, reviews
14 development proposals for consistency and compliance with
15 the SMA Rules. And that is how they implement the
16 objectives and the policies of the SMA.

17 Q. Okay. Looking at Exhibit 13, which these are the
18 rules for the Maui Planning Commission, correct?

19 A. A portion of the rules, yes.

20 Q. Looking specifically at Section 12-202-12, which
21 says, "Assessment and determination procedures." Does this
22 set out the method by which the Planning Department
23 evaluates applications that are made?

24 A. Yes, it does.

25 Q. And were these guidelines and procedures that you

1 used in making your assessment?

2 A. Yes, the Department followed these guidelines in
3 making our assessment.

4 Q. At the same statute on page -- it's numbered
5 202-11 at the bottom, Subsection (E). It specifies, "In
6 considering the significance of potential environmental and
7 ecological effects, the Director shall evaluate" and then
8 there's a list of I believe 12 different areas or items that
9 the Director is to use in the evaluation; is that correct?

10 A. Yes, we refer to them as the significance
11 criteria.

12 Q. And were these, as far as you know, these -- were
13 each of these details items that were considered in
14 evaluating the application of the Hana Beachfront
15 Associates?

16 A. I believe it was, or they were.

17 Q. Okay. Now, Mr. Tanaka in his opening statement
18 made a comment that there is an exception for single-family
19 dwellings in HRS 205-A, Section 22 under definition. Is
20 this correct?

21 A. Section 22 of the Revised Statutes addresses
22 definition. And in that section, they define development
23 because the statutes and the codes go to -- on to regulate
24 development. So, if something meets the definition of
25 development, then it is regulated by the SMA.

1 Q. Okay. So, is it correct that there's not a
2 blanket exemption for a single-family dwelling, that each
3 proposed project has to be evaluated on its own merits?

4 A. I believe there's maybe 16 specific items listed
5 that are defined to be not development. But immediately
6 after those 16 items in the Revised Statutes, there's a
7 clause that says, provided that whenever any excluded use --
8 those 16 excluded uses -- may have a significant
9 environmental effect, the use shall be defined as
10 development.

11 So, if the use -- if the Department determines
12 that it may have a significant environmental effect, then we
13 have to define it as development.

14 Q. Okay. If a single-family dwelling is found in an
15 assessment process to be exempt, what power does the County
16 have in regard to that project once it is deemed exempt?

17 A. It would go through the standard permitting
18 process for building permits, electrical permits, et cetera.

19 Q. As far as any impacts it might have that fall
20 under the protections of the SMA, would the County having
21 any power to further regulate any problems?

22 A. If we exclude it, then it's excluded from the SMA
23 regulations.

24 Q. Okay. And if the -- conversely, if the
25 determination is made that the single-family dwelling is not

1 exempt as in this instance, what authority does the County
2 then have over the project?

3 A. The County is required to assure that it doesn't
4 result in environmental impacts or is contrary to the
5 objectives and policies of the Coastal Zone Management and
6 the SMA. We could achieve that through conditions of
7 approval at the Planning Commission level.

8 Q. And their requiring that the Applicant apply for a
9 major permit would initiate that process where it would be
10 looked at by the Commission and conditions imposed if
11 necessary?

12 A. That's correct. We cannot condition an exemption.
13 We can only put conditions on a permit.

14 Q. If you go back to Exhibit 1, which is your letter,
15 and I asked you just generally why you determine that this
16 particular single-family dwelling would require a permit and
17 not be exempt. Could you maybe go through and explain the
18 specifics in your assessment that gave rise to your
19 conclusion that they should apply for a major permit?

20 A. I'll go over it briefly, and if you want more
21 detail, of course, you can ask.

22 Q. Okay.

23 A. The recommendation that came to me from the staff
24 planner addressed several issues and had analyses of several
25 issues. One was a flood hazard zone, and the recommendation

1 noted that footings would be -- have to be dug
2 two-and-three-quarters foot deep for each of the columns.
3 The columns would be ten feet high, and these columns would
4 raise the building up out of the flood zone.

5 The recommendation also noted that this is -- the
6 land is within a tsunami zone, and I believe there is
7 evidence that in 1946, three dwellings were destroyed on the
8 site. The recommendation also notes that the site is
9 outside of the range of the tsunami siren that I think is
10 over in Hamoa By. The recommendation notes that the design
11 measures, the mitigation measures for the flood hazard zone
12 were not included for the ohana unit. They were only
13 addressing the main dwelling unit.

14 And finally, the recommendation notes that the
15 site itself is a peninsula jutting out into the ocean, and
16 it has low and flat topography. The report or the
17 recommendation goes on to address public views and notes
18 that the site is next to Koki Beach Park. The buildings
19 would have a 35-foot building height, and that the massing
20 of the structures could potentially affect public views.
21 The report and recommendation goes on to address historic
22 resources and notes there's burials that have been found on
23 the site, historic trash pit, a historic rock wall. There's
24 a historic fish pond adjacent and that perhaps through an
25 access agreement would be -- it would be good to list the

1 names and have letters of acceptance regarding that access
2 agreement.

3 The recommendation addresses water quality and
4 notes that there's a septic tank and leach field that has to
5 be anchored to prevent potentially floating away. This
6 would be anchored with 1.4 yards of concrete. This would be
7 one foot below the sea level. The report and recommendation
8 notes that with a sea level rise, that the septic tank and
9 drain field may not function if inundated with sea water.
10 And finally, there's the report and recommendation has a
11 concern of effluent reaching the coastal waters.

12 The report notes that no drainage plan was
13 submitted for the proposal, and the report also notes that
14 -- the report and recommendation notes that there's no
15 evidence of public input that was received for the proposal,
16 even though there was a number of requests for public input.
17 One even came in front of the County Council elected
18 representative from the Hana District requesting public
19 process. And finally, there was the report notes that the
20 transient vacation rental use of the property would not
21 occur. That would be an issue that we would have to
22 condition.

23 So, when -- the law says that we look at the sum
24 of these issues, and if there's a potential for impacts,
25 based on our rules, then we make a determination that -- we

1 have to make a determination that it's not exempt.

2 Q. Okay. Just very generally, there's a process that
3 the applicant will have to follow in applying for an SMA
4 major permit. How would that application cure some of the
5 problems you find inherent in giving an exemption at this
6 point in time?

7 A. The application would be similar to the
8 information that's been provided. We may require more
9 information, more agency review. We would send out notice
10 to neighbors, or the Applicant would be required to send out
11 notice to neighbors. There would be notice in the
12 newspaper, and it would require a public hearing held before
13 the Planning Commission where public testimony would be
14 available.

15 Q. This -- your determination was written December
16 2nd, 2008. Now, we're about a year and a half past that
17 date. Would your determination be the same today if you
18 were to be looking at the assessment?

19 A. Yes, it would.

20 MS. JOHNSTON: I don't have anymore questions.

21 CHAIRMAN STARR: Okay. Thank you very much,
22 Ms. Johnston. We now turn to Mr. Tanaka for
23 cross-examination.

24 MR. TANAKA: I would like to call the Members of
25 the Commission's attention to Exhibit 1. By the way,

1 Mr. Chairman, I don't have any objections to introduction in
2 evidence to all of the exhibits that the Appellee has
3 presented.

4 CHAIRMAN STARR: Okay. And I assume that's okay.

5 MS. JOHNSTON: I was going to ask for it at the
6 end. But since we'll be using the same ones, I agree they
7 should all come in.

8 CHAIRMAN STARR: These exhibits Numbers 1 through
9 18, correct me if I'm wrong on the numbering, 1 through 18,
10 these are all entered into evidence as of this time.

11 MR. TANAKA: Right, okay. So, I would like to
12 request the Commission Members to review along with me,
13 because I'll be asking detailed questions relative to
14 Exhibit 1, the decision letter dated December 2nd, 2008 by
15 the Director.

16 CROSS-EXAMINATION

17 BY MR. TANAKA:

18 Q. Mr. Hunt, can you provide us information relative
19 to your educational background?

20 A. I have a bachelor's of science in environmental
21 science and economics from Willamette University in Salem,
22 Oregon. I have a master's in public administration with a
23 focus on local government management from the University of
24 Colorado at Denver. I have passed the American Institute of
25 Certified Planners Examination, so I am an AICP member.

1 Q. Okay. And how long have you been on the planning
2 staff with the Maui County?

3 A. Since June of 2005.

4 Q. Now, you've gone through the Coastal Management
5 Regulations of Chapter 205-A, so I assume you are very
6 familiar with the law and the regulations and the objectives
7 and policies of the coastal management area; is that
8 correct?

9 A. I believe I'm familiar.

10 Q. Okay. Very familiar, right?

11 A. I would label myself as being familiar with them,
12 yes.

13 Q. So, right now in terms of your decision in this
14 case, it was made in full compliance with all of the laws
15 and regulation and ordinances applicable to the application;
16 is that correct?

17 A. I believe it is, yes.

18 Q. Prior to your signing the letter, did you have
19 many discussions with staff, or did you have just one
20 discussion with staff?

21 A. I don't recall the number of discussions. There
22 was at least one.

23 Q. Okay. There could have been more?

24 A. Yes, there could have been.

25 Q. Did staff draft the letter?

1 A. Yes.

2 Q. And did you have any member of the Corporation
3 Counsel advising you relative to this decision?

4 A. I don't recall.

5 Q. Did you make any changes to the letter after
6 discussions with staff?

7 A. I don't recall exactly.

8 Q. Okay. But you did go over in detail the draft
9 letter, and this is -- the letter that you sent out is the
10 same, if not very nearly the same, as the draft that was
11 presented to you; is that correct?

12 A. I don't recall whether there were revisions to the
13 draft that was submitted to me or not.

14 Q. Okay. But you -- today you confirm everything
15 that's stated in the letter; is that correct?

16 A. The letter was a recommendation from a planner to
17 the Director, and the Director by signing it makes a
18 determination based on that recommendation.

19 Q. Right. And that determination becomes your
20 determination; is that correct?

21 A. Correct.

22 Q. Okay. And as you sit here today, there are no
23 changes that you would want to make in the letter; is that
24 correct?

25 A. That's fine, yes.

1 Q. Prior to you signing the letter, did you visit the
2 site?

3 A. I'm not sure if I visited the site on an actual
4 site visit. I was familiar with the site from visiting it
5 on other occasions. It's actually the place that I first
6 surfed when I moved to Maui in Koki Beach there. So, I was
7 somewhat familiar with the site already.

8 Q. All right. Okay. And in terms of the location of
9 the property, looking at it from the ocean, on the left-hand
10 side of the property is Haneo'o Road, right; is that
11 correct?

12 A. I don't understand your description.

13 Q. If you're looking at the property from the
14 ocean -- can you put up a map? Do you have a general map of
15 the area first?

16 MS. KAPUAALA: I don't have a TMK map. I do have
17 a cultural survey map.

18 CHAIRMAN STARR: Can you take a microphone,
19 Mr. Tanaka? And let me know if we need to recess and get
20 another map or if you're satisfied with this.

21 MR. TANAKA: Oh, okay. Do you have the TMK map?

22 MS. KAPUAALA: I do not have the TMK map site
23 plan, no. This is -- this is the ocean, and here is
24 Haneo'o.

25 Excuse me, sorry.

1 Q. (By Mr. Tanaka) Mr. Hunt, this is Haneo'o Road
2 coming around. Koki Beach is on the left, I'm sorry, as
3 you're looking at the map, to the left of the property, and
4 along Haneo'o Road over here is Loko Nui fish pond; is that
5 correct?

6 A. I believe is it is.

7 Q. And along Haneo'o Road in this -- going in this
8 direction, which would be going generally south, there are
9 lots of homes built up there; is that correct?

10 A. I believe there's homes in that area, yes.

11 Q. All right. Okay. And currently on the property,
12 there are no improvement located on the property; is that
13 correct?

14 A. There weren't any when I visited the site
15 recently.

16 Q. What improvements were there?

17 A. I don't recall any improvements.

18 Q. Did you look -- you're familiar with the fish pond
19 that adjoins the property?

20 A. How do you define familiar?

21 Q. Well, right now as you're sitting there, do you
22 recall it?

23 A. Yes, I recall it.

24 Q. Okay. As you're sitting there, in your
25 recollection, do you recall the condition of the seawalls on

1 the seaward side of the fish pond?

2 A. No, I don't.

3 Q. Would you be surprised if I told you that the
4 condition of the walls were fairly poor?

5 A. I wouldn't have an emotional reaction to that,
6 surprise or whatever.

7 Q. How about a logical reaction?

8 A. I'm not sure what you're trying to achieve by
9 whether I'm surprised by that or not.

10 Q. Okay. Have you heard any report of pollution in
11 the fish pond?

12 A. No, I haven't.

13 Q. Have you heard any report of algae bloom in the
14 fish pond?

15 A. I have not.

16 Q. The homes along Haneo'o Road that you're familiar
17 with, they all have cesspools, do they not?

18 A. I don't know.

19 Q. Sir, can you refer to Exhibit 1, Page 4,
20 Subparagraph 8. Have you read it?

21 A. Yes.

22 Q. It says, "based on the project description and
23 itemized analysis above." I take that to mean the project
24 description and itemized analysis that's started on Page 1.
25 Can you refer to Page 1?

1 Is that the project that's the start of the
2 project analysis and itemized -- I'm sorry, project
3 description and itemized analysis?

4 A. I believe it is.

5 Q. And it starts from the flood hazard?

6 A. Correct.

7 Q. And that analysis runs until Page 3, category
8 Subdivision; is that correct?

9 A. I think you can interpret it that way, yes.

10 Q. Okay. Now, in Page 4, Item 8, you concluded that
11 the proposed action -- I'm sorry, let me read the whole
12 thing. "Based on the project description and itemized
13 analysis above, the proposed action has the potential to
14 have adverse effects on ecological, environmental, cultural
15 and/or archeological resources." Is that correct? That was
16 your conclusion; is that correct?

17 A. Yes.

18 Q. Okay. And if you go down to Item Number 10, two
19 paragraphs down, you concluded that the project has the
20 potential to be inconsistent with the objectives, policies
21 and/or SMA guidelines set forth in Hawaii Revised Statutes
22 HRS Chapter 205-A; is that correct?

23 A. Yes.

24 Q. All right. Then in the second sentence of the
25 next paragraph on Page 8, this is on Page 4, the last full

1 paragraph, the second sentence, do you see it?

2 A. I see the last full paragraph, yes.

3 Q. The second sentence in the last paragraph, can you
4 read it to yourself?

5 A. Yes, I've read it.

6 Q. Okay. It refers -- it finds that the proposed
7 action has the potential for adverse impacts; is that
8 correct?

9 A. That's a correct reading of that statement.

10 Q. And today, you stand by that finding; is that
11 correct?

12 A. Yes.

13 Q. All right. There's no mention of cumulative
14 impacts, is there?

15 A. In that sentence?

16 Q. In that sentence.

17 A. The word cumulative is not in that sentence.

18 Q. And, in fact, there is no reference to any
19 significant effect on the environment; is that correct?

20 A. The word significant is not in that sentence.

21 Q. All right. Okay. Now, HRS -- in the definition
22 in HRS 205-A, Section 22, it provides that the construction
23 of single-family residence is not a development, it's
24 excluded from the definition of the development; is that
25 correct?

1 A. I would describe that as being partially correct.

2 Q. Okay. But up to that point, it's correct; is that
3 right?

4 A. Up to that point. If you continue reading on, it
5 qualifies that.

6 Q. Yes. But up to that point, it's correct; is that
7 right?

8 A. Yes.

9 Q. Then it goes on to say that if the authority finds
10 that the proposed action had a cumulative effect or
11 significant effect on the environment or ecological sources,
12 then the -- a authority can provide that the proposed action
13 is a development; is that correct?

14 A. I read it stronger than that. I read it that we
15 have to find it as development then, because of the word
16 shall.

17 Q. Now, in the SMA Rules in Section 12-202-12(f), the
18 Director is required to notify the Applicant within 30 days
19 after the SMA application is complete, whether or not the
20 proposed action is exempt or requires another SMA
21 application; is that correct?

22 A. That is what the language says, yes.

23 Q. All right. Okay. Do you know whether or not
24 the -- your letter of December 12th, 2008, was dated within
25 30 days after the application was deemed complete?

1 A. I don't know.

2 Q. Okay. But you do know that the application was
3 deemed complete; is that correct?

4 A. I would assume it was deemed complete if it was --
5 if -- actually, I don't know if it was deemed complete.

6 Q. But it would not have come up to you for action or
7 decision if it were not complete; is that right?

8 A. I think that's logical.

9 Q. So, you would agree with this statement that the
10 application was complete?

11 A. No, I already answered that. I'm not sure. I'm
12 not aware of whether there was a determination as to whether
13 the application was complete.

14 Q. But at least you agree that before a decision you
15 would have to make on an application, you -- the application
16 would have to be complete, right?

17 A. I agree the law says that -- pardon me, the rules
18 say that the Director shall make a determination and notify
19 the Applicant in writing within 30 days, calendar days after
20 the application is complete.

21 Q. Okay. And you don't know whether or not it was,
22 in fact, deemed complete within 30 days of December 2nd,
23 2008; is that correct?

24 A. Yes, I think I've answered that twice. For the
25 third time, I'm not aware of whether it was deemed complete

1 or not.

2 CHAIRMAN STARR: The question has been answered.

3 MR. TANAKA: Thank you, sir.

4 Q. (By Mr. Tanaka) Now, in making your analysis
5 relative to the items set forth in project description, an
6 itemized analysis, did you -- you're saying that these have
7 a potential for adverse effects; is that correct?

8 A. I believe that's the conclusion recommendation of
9 the report in the letter that I signed.

10 Q. All right. Okay. And in terms of the potential
11 for adverse effects, that projects a period of time; is that
12 correct?

13 A. I'm not sure.

14 Q. Okay. What did you -- well, I'll put it this way.
15 That if, for example, the flood hazard, right, if it has --
16 your conclusion is that it had a potential for adverse
17 impacts, and this potential does not have any time
18 reference; is that correct?

19 A. I don't believe there's a time reference in the
20 December 2nd, 2008 letter.

21 Q. All right. In reviewing of all of the items in
22 the project description and itemized analysis, did you put
23 any time value as to the likelihood as whether these events
24 would occur or not occur?

25 A. I'm not sure.

1 Q. And you recall a potential for adverse impacts.
2 Did you put -- now, the word adverse is relatively broad; is
3 that right?

4 A. I believe it is.

5 Q. And on a scale of one to ten, ten being the worst,
6 right, did you put on a value as to which one of these seven
7 events would have more likelihood of having adverse effects?

8 A. Which seven events are you talking about?

9 Q. Seven events, okay. We start with flood hazard,
10 public views and view plane analysis, historic
11 considerations, water quality and pollution control,
12 shoreline setback determination, single-family use and
13 subdivision; those total seven, do you they not?

14 A. Yes, they total seven.

15 Q. Okay. Now, let me just rephrase the question
16 then. Making your determination of adverse impacts, did you
17 consider which one of these of the seven would have worse
18 adverse impacts than the others?

19 A. I don't believe we did.

20 Q. You don't believe, okay. Did you look at it as
21 all of these events would have equal ecological effects?

22 A. I don't believe we did.

23 Q. In your statement on direct examination, you
24 indicated that the -- there can be no conditions attached to
25 an exemption; is that correct?

1 A. That's correct.

2 Q. Can I call your attention to single-family on Page

3 3. Can you read that, please?

4 A. Okay.

5 Q. Sir, particularly starting with the second
6 sentence, I read this as a condition to the issuance of an
7 exemption. Do you read it in the same way?

8 A. No, I don't.

9 Q. You don't. Because the language says, "Should the
10 Applicant fail to comply with these representations, the
11 representation being that neither the main residence or
12 ohana shall be used for short term rental income, the
13 Department may at its sole discretion rescind its
14 determination, require a new determination, determine the
15 project to be a development."

16 Isn't that statement saying that we give you this
17 exemption, but if you violate this representation that you
18 made, we're going to take away this exemption; is that
19 correct?

20 A. Could you rephrase the question?

21 Q. Isn't it a fair reading of this second sentence
22 that this involves the granting of an exemption and that on
23 the failure of the Applicant to live up to its
24 representation of not using the property for short term
25 rentals, you would remove, rescind your determination and

1 determine the project to be a development?

2 A. The staff recommendation notes that the Applicant
3 as part of the application --

4 Q. You refer to the staff application. This is your
5 letter, right? And you, therefore, are making your decision
6 based on -- this is your letter of decision; is that right?

7 A. Yes, it's my letter of decision. I don't think
8 that's in dispute.

9 Q. Go ahead, I'm sorry.

10 A. The staff report and recommendation in the letter
11 that I signed essentially was saying that, as represented to
12 staff, there will be no short term rental in this property,
13 so it's not a condition of approval. It's the fact that if
14 you change, and if you don't live up to the representation
15 made, then the exemption, which was based on that
16 representation, can be voided. What point would -- what
17 would be the effect of issuing an exemption if you didn't
18 have to live up to the represented --

19 CHAIRMAN STARR: The question has been answered.

20 Q. (By Mr. Tanaka) First of all, this is a
21 condition; is that correct?

22 A. I already answered that, that I don't believe it's
23 a condition.

24 Q. You don't believe it's a condition, okay. You
25 don't believe that it's a condition when it says, "Should

1 the Applicant fail to comply with this representation"?

2 CHAIRMAN STARR: It's been answered.

3 Q. (By Mr. Tanaka) All right. Mr. Hunt, relative to
4 the flood hazard regulations, a federal agent -- a federal
5 agency has the obligation or the responsibility to establish
6 the minimum height level before the first living level can
7 be placed; is that correct?

8 A. The federal agency has?

9 Q. That responsibility to make the height
10 determination.

11 A. I'm not sure.

12 Q. You're not sure, you're not sure that FEMA has the
13 obligation and responsibility to make that determination?

14 A. I'm not sure.

15 Q. Refer to your letter, sir, on Page 1, flood
16 hazard, Line 6. A flood hazard determination permit was
17 approved on November 2nd, 2007, right? That's a factual
18 issue, right; it's in there in the files; is that correct?

19 A. That's what the letter says.

20 Q. Okay. And my question to you was that's a factual
21 issue, the letter is in the files; is that right?

22 A. I don't know if the letter is in the file.

23 Q. But you wrote this, that it was approved?

24 A. I signed the letter that states it was approved.

25 Q. And it's your letter under your signature; is that

1 correct?

2 A. I don't dispute I signed it.

3 Q. Then the letter goes on further to say that the
4 proposed ohana must also be built in compliance with Federal
5 Emergency Management Agency (FEMA) standards; is that
6 correct?

7 A. That's correct. And that's what the letter says.

8 Q. Does that refresh your recollection as to whether
9 or not FEMA is the federal agency responsible for
10 determining the heights of a building to be constructed
11 within a flood hazard zone?

12 A. I interpreted your earlier question as was FEMA
13 obligated to determine those heights. And I'm not sure that
14 FEMA is obligated to determine the flood, the base flood
15 height. There may be -- as far as I know, the individual
16 applicant through a survey could determine that height. So,
17 my answer was I'm just not sure of who is obligated to
18 determine that height.

19 Q. My question was obligated and responsible. Does
20 that make a difference in terms of your response?

21 A. No.

22 Q. Now, so are you saying that the Applicant himself
23 can make a determination as to how high the building can be
24 constructed before the living level starts -- starts being
25 built?

1 A. No, I didn't say that.

2 Q. What are you saying then as far as whether or not
3 there is a separate governmental agency that will set the
4 standards?

5 A. I'm not intimately familiar with the process to
6 determine the base flood elevation, whether it's FEMA that
7 determines it or the Applicant through their own surveyor,
8 as in some jurisdictions, or the Planning Department. I'm
9 just -- I don't know.

10 Q. Sir, as an administrator, as the Director of the
11 Planning Department, you are charged with enforcing laws,
12 ordinances and regulations that apply to your department; is
13 that correct?

14 A. Yes.

15 Q. Now, whether or not you agree or disagree with the
16 law, ordinance or regulation, you still must enforce it; is
17 that correct?

18 A. I believe we must administer the law whether we
19 agree with it or not, yes.

20 Q. Now, at the bottom of your letter, you indicate
21 that design considerations such as breakaway walls and
22 elevated structures are prudent mitigation measures that
23 have been incorporated into the main residence, but has not
24 yet been included in the ohana unit, okay. Do you see that?

25 A. Yes, I see that.

1 Q. And breakaway walls, are those walls on the --
2 between ground level and the highest then level above which
3 the living quarters are built; is that correct?

4 A. I believe it's correct.

5 Q. Okay. Now, you go on to say that, "However, they
6 do not inherently avoid coastal hazards in flood height, and
7 basic flood elevations are primarily established based on
8 previous measured occurrences"; is that correct, I read it
9 to you correctly?

10 A. You read as -- yes, I believe you read it
11 correctly.

12 Q. Okay. Now, in terms of previous measured
13 occurrences, you're referring to a tsunami that had
14 occurred, right?

15 A. I'm not sure what the extent of previous measured
16 occurrences would entail.

17 Q. You're the author of the letter; is that right?

18 A. I already explained to you I didn't author the
19 letter. I signed the letter.

20 Q. But you reviewed it before you signed it, did you
21 not?

22 A. I did review it, yes.

23 Q. And if you're not familiar with anything in the
24 letter, would you not have questioned staff relative to why,
25 what is this inclusion in the letter for?

1 A. If it had caught my eye, I would have questioned
2 staff. Unfortunately, the author of the letter no longer
3 works for us, or he would be sitting in this seat in my
4 behalf.

5 Q. You have no recollection today that you did
6 discuss this particular provision with the author of the
7 letter?

8 A. I have no recollection one way or another.

9 Q. All right. Now, on the last sentence, you say,
10 "Given the site is situated on a peninsula or spit, its
11 history of inundation by coastal hazards, and its relatively
12 low, flat topography, the Department finds that there is the
13 potential for adverse impacts in structures and life at the
14 site," right? What did you mean by that?

15 A. I think it's self-explanatory.

16 Q. Well, I'm asking for your interpretation of that.

17 A. You have a piece of land that's a peninsula
18 jutting out into the ocean in an area that has been
19 subjected to flooding and tsunamis in the past; therefore,
20 there's potential for impacts to structures and life.

21 Q. All right. Now, the permit to construct something
22 in the flood hazard zone had been reviewed and approved on
23 November 2nd, 2007, right? So, what --

24 A. I believe so, yes.

25 Q. Right, okay. Now, assuming that you would -- is

1 it fair to assume that you would not have gotten permission
2 to construct in the flood hazard zone if your design did not
3 meet the criteria for the approving agency?

4 A. I think it's safe to assume that the permit met
5 the standards for a flood permit.

6 Q. Right.

7 A. But this is in the SMA.

8 Q. Okay. But would you assume that the approving
9 agency would have considered the potential for adverse
10 impacts based on the design before it made its approval?

11 A. I believe those are separate regulations. The
12 flood plain permit, as I understand it, says you have to
13 raise your property to a certain height. That doesn't mean
14 that a flood that's higher than that won't come along.

15 Q. Well, you would have to design your structure to a
16 particular standard, right, such as 100-year anticipated
17 tsunami level, right?

18 A. I'm not aware of 100-year tsunami level. I
19 believe they would have to raise the base floor to a
20 100-year flood plain level. But again, if there's a flood
21 or a tsunami that comes along that's greater than that,
22 there's still a potential.

23 Q. Okay. So, based on that fact, that's the basis
24 for your conclusion here, your finding?

25 A. I believe it is.

1 Q. Looking at the next paragraph, sir, public views
2 than and view plane analysis. The second sentence says that
3 a view plane analysis has been included with the proposal,
4 right, and that the maximum building height is 35 feet as
5 required by the Maui County Code. The finished floor is
6 elevated to a height of 16.75 feet above sea level with a
7 finish grade of 5 feet ASI, which I take to mean above sea
8 level, or ASL; is that correct?

9 A. Either that, or average sea level, I'm not sure.

10 Q. And that this leaves a window underneath the house
11 and through the column in areas which are unscreened and
12 unobstructed, right? And taken as a whole, the proposed
13 structure obstructs 30 percent of the view in context with
14 the lots with and maximum building height when viewed from
15 the frontage road. Do you see that?

16 A. Yes, I see that.

17 Q. Now, 30 percent obstruction is a very good -- it's
18 a small obstruction; is that correct?

19 A. It's smaller than 40.

20 Q. Well, relative to a -- let's assume if you go to a
21 lot that is 60 feet wide with a ten-foot side yard setback;
22 therefore, a property owner can build a building with a
23 width of 40 feet, right?

24 A. If there's not other controls or regulations.

25 Q. Right. And if you built such a building with a

1 width of 40 feet, then he would be obstructing two-thirds of
2 the view plane; is that correct?

3 A. Under your scenario, yes.

4 Q. Yes, okay. From your recollection of the homes
5 along Haneo'o Road, would you consider -- would you say that
6 they were relatively small lots ranging from 6,000 to 10,000
7 square feet?

8 A. I don't recall.

9 Q. You don't recall, okay. Do you recall any large
10 lots in that area?

11 A. I don't recall off the top of my head.

12 Q. Okay. In your experience, is an obstruction of 30
13 percent a positive improvement or a negative improvement?

14 A. I would describe it as an issue that needs to be
15 addressed. The laws and the regulations speak to public
16 views.

17 Q. Okay. But, okay, so you concluded that the
18 massing of the structure may be -- may substantially
19 contrast with neighboring structures in the community, most,
20 if not all, of which are located mauka of the public road,
21 okay. The massing of the structures, sir, that refers to
22 the 30 percent obstruction; is that right?

23 A. The 30 percent obstruction refers to a view. The
24 massing would be the size. So, I would say they're slightly
25 different things.

1 Q. But isn't the massing taken into consideration in
2 determining the obstruction?

3 A. I believe there is some commonality, yes.

4 Q. Now, in terms of the contrast that you're talking
5 about, it relates -- doesn't it relate to the fact that the
6 other lots are smaller lots, and so therefore, the
7 obstruction is a greater percentage than 30 percent?

8 A. I don't know whether that's what it was based on
9 or not. The -- my analysis is that given the location, and
10 that's noted in the beginning of the paragraph, it's a
11 sensitive area. We've also had letters and concerns
12 expressed about that site. When we went out and did a site
13 visit, people who were at the beach recreating expressed
14 concerns about impacts to the beach.

15 Q. When was that?

16 A. I'm not sure of the date. It was after this
17 December 2nd, 2008 letter.

18 Q. So, that didn't go into consideration when you
19 typed -- when you signed this letter, right?

20 A. That's correct. That -- I probably shouldn't have
21 said that.

22 Q. But the contrast with the neighboring structures,
23 I mean it -- you're basically talking the view from the
24 road, right, looking at the property; is that correct?

25 A. I believe that the view plane or the public views

1 is from any public land, including roads and parks,
2 publicly-owned land, if there's state land in the area,
3 et cetera.

4 Q. But the massing of the structure -- I'm sorry, let
5 me take that back. What in your mind is the contrast,
6 substantial contrast with the neighboring structures with
7 regard to massing?

8 A. I believe the -- actually, I'm not sure, but I
9 believe the size of the building and the fact that it's up
10 on ten-foot tall columns, given its location, those
11 combination of factors is what the concern was regarding
12 public views.

13 Q. Well, that's -- has nothing to do with the
14 contrast with the neighboring structures; is that right?

15 A. If the neighboring -- it could. I'm not sure.

16 Q. You're the author of this letter. You signed this
17 letter. And you're saying you're not sure as to what made
18 you determine that it could have this potential negative
19 impact?

20 A. I signed the letter. We've already gone through
21 this. I didn't author the letter, and I just a moment ago
22 tried to give you my explanation as to impacts to views.

23 Q. Okay. But -- yes, but on the other hand, you have
24 no idea as to what substantial contrasts with the
25 neighboring structures means right now today?

1 A. I don't have facts regarding the specific
2 conclusion that was made by the author of the letter.

3 Q. Which you signed?

4 A. Which I signed. Maybe we could just come to an
5 agreement that I didn't author the letter, and I did sign it
6 and I agree to that.

7 Q. Well, it's your letter?

8 A. So, we don't have to keep going over that again
9 and again maybe. I think people have other things to do.

10 Q. Move on to the next paragraph, sir, Historic
11 Considerations. Now, the paragraph states all of the
12 approvals that the Applicant got as far as the burial sites
13 is concerned; is that correct?

14 A. Could you repeat the question?

15 Q. The paragraph other than the last sentence states
16 the factual presentation of all of the approvals the
17 Applicant obtained for the burial sites on the property; is
18 that correct?

19 A. It's a statement of a preservation plan for
20 certain sites that was approved by the Burial Council.

21 Q. And it was also approved by the State Historical
22 Division; is that correct?

23 A. As I interpret it, the SHPD reviewed the In Situ
24 agreement for the property.

25 Q. Prior to your signing of the letter, did you

1 review the In Situ agreement?

2 A. No, I did not.

3 Q. The In Situ agreement is part of the exhibits that
4 have been introduced into evidence. Did you believe that it
5 was not important for you to review the In Situ agreement?

6 A. No, I did -- I don't agree with that statement.

7 Q. It was important?

8 A. The way the process works is my staff planner --
9 when I was director, the staff planner would do the
10 research, make a recommendation, and we would discuss it.
11 The staff and the Planning Department consists of 69
12 positions. It's virtually impossible for the Planning
13 Department to be completely versed in every permit
14 application that comes before them. There's an element of
15 trust that is inherent in being a director.

16 You trust your staff to do your research, and you
17 take the recommendation, and if there's concerns, you
18 discuss that with them.

19 Q. Okay. And in --

20 A. I don't think Mr. Obama is aware of every single
21 detail of every law the Federal Government passes.

22 Q. All right. Okay. Do you have any present
23 recollection of asking the staff member whether or not he
24 read the In Situ agreement?

25 A. I don't recall.

1 Q. Would that have been your standard practice?

2 A. Would what have been?

3 Q. To ask your staff whether or not they have read
4 the agreement for which you make a reference to in a letter
5 for which you're going to sign.

6 A. It wouldn't be standard procedure for me to ask
7 them that.

8 Q. It would not be?

9 A. No.

10 Q. Did you inquire of staff at that time before you
11 signed the letter whether or not the burial sites have been
12 maintained?

13 A. I don't believe I did.

14 Q. Do you have any knowledge as to whether or not the
15 burial sites have been maintained?

16 A. No, I don't.

17 Q. Okay. If you had that knowledge, would you have
18 revised the letter?

19 A. I don't know.

20 Q. Can you read the last sentence in that paragraph,
21 sir?

22 A. Yes, I've read it.

23 Q. Now, does the fact that the In Situ agreement does
24 not or may not provide the same language that you are saying
25 that should be included in -- I'm sorry, let's go back a

1 step. By this wording, are you recommending that certain
2 language be incorporated into the In Situ agreement?

3 A. I believe it was further justification to deny the
4 exemption and require an SMA major with the conditions of
5 approval and a public hearing before the community with
6 opportunities for public testimony.

7 Q. So, as part of the SMA approval or where you would
8 have made it a condition that the names, the names of living
9 individuals who may exercise these visitation rights be
10 listed, and that they affirm the acceptance of the In Situ
11 agreement; is that correct?

12 A. I wouldn't say absolutely we would make it a
13 condition of approval. It would be an issue that would be
14 vetted through the public review process of an SMA major.
15 What the outcome of that process would be I can't predict.

16 Q. All right. Okay. So, do you have a copy of the
17 In Situ agreement with you?

18 A. No, I don't.

19 Q. I think it might be in the exhibits. Exhibit 10.

20 A. Correction. Yes, I do.

21 Q. I refer you, sir, to Page 2, paragraph 6. Have
22 you read it?

23 A. Not all of it.

24 Q. Could you read it and let me know when you're
25 finished?

1 A. Okay. I've read it.

2 Q. All right. I call your attention to the third
3 line, third sentence, I'm sorry, starting on the fourth
4 line. And it reads, "The list of names and contact
5 information of the cultural and lineal descendants shall be
6 provided to the land owner by the SHPD-Burial Sites
7 program." Do you see that?

8 A. Yes, I do.

9 Q. Okay. In fact, this, the In Situ agreement
10 already provides for how a list of names and addresses of
11 the descendants should be gotten; is that correct?

12 A. Could you repeat the question?

13 Q. In fact, the In Situ agreement provides a method
14 whereby the names and contact information of the descendants
15 shall be provided to the owner?

16 A. The parties -- my reading of it is the parties
17 agree to do that, yes.

18 Q. Now, isn't this the same thing that you've
19 mentioned in your -- the last sentence of the historic
20 considerations paragraph on Page 2 of your letter?

21 A. I'm not sure.

22 Q. What are you not sure about?

23 A. Whether it's exactly the same or not.

24 Q. Isn't it -- isn't the essence the same; namely,
25 the providing the list of names and addresses of the

1 descendents who would have exercised visitation rights?

2 A. It appears that there's some similarities. I
3 would have to sit down before I made a definitive statement
4 that they are exactly the same.

5 Q. I'm not asking whether it's exactly the same. I'm
6 asking doesn't it contain the essence of your proposal?

7 CHAIRMAN STARR: This has been answered. Twice
8 it's been answered.

9 MR. TANAKA: Thank you.

10 Q. (By Mr. Tanaka) Sir, as you sit here today, if
11 you had read the In Situ agreement prior to your signing the
12 letter, would you have included the last sentence of the
13 Historic Considerations paragraph?

14 A. I'm not sure.

15 Q. Why are you not sure?

16 A. I haven't read the In Situ agreement.

17 Q. Paragraph 6, sir. You just indicated you read it.
18 Excuse me. Did you not indicate that you had read this
19 paragraph 6?

20 A. Yes, I've read paragraph 6.

21 Q. Of the In Situ agreement?

22 A. Yes.

23 Q. Right. Okay. And my question -- okay, I'm sorry.

24 CHAIRMAN STARR: Excuse me. Mr. Tanaka, if you're
25 going to go a while further, we'll take a break. We're

1 going to take a ten-minute recess.

2 (Recess taken.)

3 CHAIRMAN STARR: Okay. The Maui Planning
4 Commission meeting is back in session. We are in the middle
5 of cross-examination of our first witness. Let the record
6 show that Mr. Jeffrey Hunt, former Planning Director, has
7 been -- is under oath and is back in position.

8 Mr. Tanaka, please continue your cross.

9 MR. TANAKA: Thank you, Mr. Chairman.

10 Q. (By Mr. Tanaka) Mr. Hunt, going back to the
11 Historical Considerations section on Page 2. I pointed out
12 the language in the In Situ agreement, paragraph 6, relative
13 to the state agency being responsible to provide the names
14 and contact information of the cultural and lineal
15 descendants. Does that fact -- doesn't that fact make this
16 particular paragraph no longer a negative or adverse impact?

17 A. I can't make that conclusion at this time.

18 Q. And you can't make it for what reason, sir?

19 A. I believe, like I said previously, I would want to
20 sit down and do a thorough analysis and then come to a
21 conclusion.

22 Q. How much time do you need to --

23 CHAIRMAN STARR: It's been answered, Mr. Tanaka.

24 MR. TANAKA: Your Honor -- I'm sorry,
25 Mr. Chairman, I think we are -- he's saying this has an

1 adverse impact. And we've provided information that the
2 concerns that he has been addressed by the In Situ
3 agreement. All right. We want him to discuss whether or
4 not because of the language in In Situ agreement there is no
5 adverse impact, which he made a finding that there is.

6 So, I'm just asking that if he says he needs some
7 time in order to review the separate paragraphs and make his
8 own judgment as to whether or not there is an adverse
9 impact, then I would say, you know, I would be willing to
10 give him the time to do that.

11 CHAIRMAN STARR: Please, you know, redefine your
12 question. Because you asked the same question twice. On
13 the third time, I denied it. If you wish to ask a different
14 question or ask it in a different way say with a time
15 element involved, that would be acceptable.

16 Q. (By Mr. Tanaka) Yeah, all right. Mr. Hunt, how
17 much time would you need in order to make the analysis
18 between the language in Historic Considerations paragraph
19 and the language of the In Situ agreement in paragraph 6?

20 A. I don't know. I would have to read the entire
21 document, analyze it. And I'm not sure if that would lead
22 to other issues. So, I can't give you an amount of time it
23 would take for me to analyze that.

24 Q. It might have saved time if you had read the
25 In Situ agreement in the first place, would it not?

1 MS. JOHNSTON: I would like to note -- I'm going
2 to object that it's argumentative. If you want to make a
3 closing statement argument to argue the point, that's fine.
4 But you keep try to get him to say, oh, yeah, yeah, I agree
5 with you. The letter is the letter.

6 CHAIRMAN STARR: The objection is noted. Please
7 continue, and please don't keep asking the same question.

8 MR. TANAKA: Well, I'm not asking -- I'm sorry,
9 Your Honor. I'm sorry. I don't believe I'm asking the same
10 question. But I'll go with your ruling.

11 Q. (By Mr. Tanaka) Moving on, sir, to water quality
12 and pollution control. The first sentence provides that the
13 septic system and leach field and anchored septic system,
14 all right, would serve as the individual wastewater system,
15 that they would have a concrete aerobic septic system and is
16 designed for a five-bedroom dwelling. Okay.

17 And it goes on to say that the septic tank is
18 anchored to prevent flotation. Our anchor would be
19 provided. And the elevation is six foot below grade or one
20 foot below mean sea level. The septic system conforms to
21 Department of Health requirements as noted by the July 24th,
22 2006 letter from the agency. It goes on further to say that
23 the residential dwelling's life span will potentially exceed
24 50 years, especially given the use of concrete and other
25 long-lasting materials used for its construction.

1 Sea level is projected to rise in Hawaii during
2 that period primarily from thermal expansion. Sir, thermal
3 expansion here refers to the ozone layer being contaminated
4 by carbon emissions; is that right?

5 A. I don't believe so.

6 Q. What does it refer to?

7 A. I believe it refers to the warming and expansion
8 based on that, but I'm not sure.

9 Q. As sea level rises, so, too -- I mean there's an
10 error, right -- does the water table at most locations. Did
11 you make a determination that the water table in this
12 location would rise as a result of rising sea level?

13 A. I'm not sure, but I don't believe so.

14 Q. You don't believe that you made a determination?

15 A. I don't believe that a determination was made that
16 it would absolutely rise in that area.

17 Q. So, as far as you know, there is no evidence one
18 way or the other whether or not as sea level rises, the
19 water table would rise; is that correct?

20 A. Well, I think the paragraph is self-explanatory.
21 It says sea level is projected to rise in Hawaii. This
22 Commission has had lots of information regarding that that's
23 not in this report. The report goes on to say if sea level
24 rises, so does the water table at most locations.
25 Accordingly, there is potential, and that's what the planner

1 concluded, that there is a potential for effects to the
2 coastal resources.

3 Q. Sir, you refer to the planner concluded. But I
4 refer to the fact that you're the signer of the letter, so
5 therefore, that's your conclusion. Can we agree that it's
6 your conclusion?

7 A. I would agree to that, as long as we can let that
8 go. I think everyone is getting a little tired of that.

9 Q. Well, if you don't refer to the fact that the
10 planner recommended it and then say you concluded it, then
11 we won't have any arguments.

12 And you go on further to say that, "Accordingly,
13 there is a potential that the septic tank and absorption
14 field may not fully function if inundated with ground
15 water."

16 A. That's correct. When the septic tank is one foot
17 below the mean sea level, and you have sea level rise, I
18 think it's reasonable to conclude there's a potential.

19 Q. Now, is this statement based on the fact that you
20 would expect sea level to rise above the level of the ground
21 level, so that the sea water would then inundate the septic
22 system?

23 A. I'm not sure it's based solely on that.

24 Q. What else might it be based on?

25 A. When sea level rises, sometimes the ground absorbs

1 it, and the water comes up through the ground, too.

2 Q. And so, therefore, into the tank?

3 A. I think potentially that's what they're saying is
4 the system could get inundated.

5 Q. Did you look at the plans for the aerobic septic
6 system?

7 A. No, I did not.

8 Q. Did you ask the person who authored the letter
9 whether or not he reviewed the plans?

10 A. No, I did not.

11 Q. If I told you that the tank which receives the
12 wastewater is water tight, would that change your review and
13 analysis?

14 A. The review and the analysis was performed back in
15 December 2nd, 2008.

16 Q. But the tank had been approved prior to that time,
17 had it not?

18 A. I don't know if it had been approved. Whether it
19 was approved by Department of Health or not isn't the issue.
20 The planner made a conclusion that the potential exists for
21 the septic tank and absorption field to not fully function
22 if inundated with ground water.

23 Q. You're saying even if the tank is water tight,
24 there is still a potential for adverse impacts due to
25 inundation, water getting into the tank?

1 A. I'm not sure how a -- are you saying that the
2 septic tank is waterproof and the absorption field is
3 waterproof?

4 Q. I'm saying that the -- I'm just referring to the
5 tank itself as being water tight. And if the tank is water
6 tight, would that knowledge change your analysis whether or
7 not there is a potential --

8 A. No.

9 Q. I'm sorry, let me finish the question.

10 A. No.

11 Q. And what reason do you base that analysis on, just
12 your answer on?

13 A. I don't have conclusive evidence for me to change
14 the conclusion that is in this report and letter that I
15 signed.

16 Q. Okay.

17 A. You can offer me information. And you asked me if
18 giving that information I would change my report or
19 recommendation or letter. The answer is no, not at this
20 time.

21 Q. Okay. Now, you go on to say that, furthermore,
22 the location of the septic tank and absorption field are in
23 close proximity to historic fish pond, right, okay.

24 Now, should the IWS, which is individual
25 wastewater system, fail, wastewater effluent could enter

1 fish pond thereby diminishing water quality and nutrients
2 from the effluent could add stress to the marine ecosystem.

3 All right.

4 And you never reviewed the plans for the
5 individual wastewater system, that's right, isn't it?

6 A. My answer is the same as I gave the previous
7 answer.

8 CHAIRMAN STARR: Please, just give an answer.

9 Q. (By Mr. Tanaka) All right. Going back to the
10 previous page, Page 2, the second line says, "The IWS
11 consists of a concrete aerobic septic system and is designed
12 for a five-bedroom dwelling." Do you know what a concrete
13 aerobic septic system is?

14 A. I couldn't explain it, no.

15 Q. And you didn't ask the planner what is a concrete
16 aerobic septic system; is that correct?

17 A. No, I did not ask him.

18 Q. All right. Do you know what a secondary
19 treatment, wastewater treatment process is, involves?

20 A. Not exactly.

21 Q. Do you know that the secondary water treatment
22 removes most, if not all, of the contaminants leaving
23 beneficial nutrients in the water?

24 A. I'm not aware of that.

25 Q. You're not aware of that, okay. Now, from this

1 statement, am I -- am I correct in assuming that you're
2 meaning that the sea level will rise to a level above the
3 current five-foot elevation, and therefore, inundate the
4 septic system causing it to fail; is that right?

5 A. Can you repeat the question?

6 Q. Is it fair to assume that your conclusion is based
7 upon the fact that sea level will rise to be above the
8 existing ground level, and thereby, inundating the septic
9 system; is that correct?

10 A. I'm not sure if that's the -- like I said earlier,
11 I'm not sure if that's the only way the sea water could
12 influence the system.

13 Q. Well, you made the statement of potential adverse
14 impacts. So, I'm trying to find out from you what is the
15 potential adverse impacts?

16 A. The potential adverse impact is the system could
17 fail if sea water inundates it.

18 Q. Okay. That means that the sea water would be
19 higher than the level of the septic system; is that right?

20 A. It says -- that's one scenario where it could be.
21 It could also be coming up from the ground, as I understand
22 it.

23 Q. Now, can you alleviate that adverse impact by
24 raising the height of the septic system?

25 A. I think that's a possible way to address that

1 issue.

2 Q. All right.

3 A. There may be other issues that that entails or it
4 brings up.

5 Q. All right. Now, in terms of the rise of sea
6 level, do you -- you anticipate that it will rise on an
7 incremental basis, very slowly; is that correct?

8 A. It seems reasonable.

9 Q. Okay. And if it rises incrementally, very slowly,
10 how much time would you estimate it would be before sea
11 level rises to a level equal to the existing ground level?

12 A. I couldn't estimate.

13 Q. Okay. Did you -- you did not make that analysis?

14 A. I did not.

15 Q. Okay. You refer to the fact that the structure
16 can have a life span of more than 50 years, but you never
17 made the analysis relative to the rise in the sea level,
18 whether or not it would occur within the 50-year time span
19 or later; you don't have any knowledge of that?

20 A. I'm -- I don't have any knowledge whether that
21 analysis went into making this conclusion.

22 Q. At least you're saying if there is any rise, it
23 will be very slowly, on an incremental basis; is that
24 correct?

25 A. Can you repeat the question?

1 Q. I just want to confirm that you agree that the
2 rise in sea level, if it does occur, will occur very slowly?

3 A. I think my previous statement was that that seems
4 reasonable, logical. I can't predict how a sea level will
5 occur.

6 Q. If it does rise slowly, does that provide an
7 opportunity for the land owner to take protective action?

8 A. I think it would.

9 Q. All right. Does that provide the opportunity for
10 the Department of Health to institute new regulations
11 relative to -- taking into fact that the sea level will
12 rise?

13 A. I think it could.

14 Q. Does that give ample time for the County, for
15 example, to build a sewer line and a wastewater treatment
16 plant in that area?

17 A. I doubt that.

18 Q. Well, does that give them the time to do that?

19 A. I really doubt it gives them the time to do that,
20 knowing the County as well as I do.

21 Q. Now, it's fair to assume that if sea level is
22 rising and the land owner wants to continue to live there,
23 that the land owner would take corrective action?

24 A. The first part of the question was it's safe to
25 assume?

1 Q. Yes. That's a fair assumption, isn't it?

2 A. I -- I can't answer if it's safe to assume what
3 the land owner would do.

4 Q. All right. Did you take that fact into
5 consideration in making your conclusion?

6 A. I believe the conclusion is based upon the
7 proposal and the analysis of sea level rise.

8 Q. In making that analysis, you did not consider that
9 the Department of Health may issue new regulations to deal
10 with the rise in sea level; is that correct?

11 A. I'm not sure if that was included in the analysis.

12 Q. Well, your concern is that the failure of the
13 septic system would lead to potential pollution in the
14 adjoining fish pond?

15 A. I think the concern is that there's a potential
16 that the septic system would fail given its location at one
17 foot below sea level near the shoreline.

18 Q. If the sea level does rise, it will rise all over
19 the island, right?

20 A. I wouldn't make a statement that the sea level
21 would rise all over the island, no.

22 Q. All right. Well, certainly it will rise in the
23 same proportion, same magnitude as in the adjoining fish
24 pond; is that right?

25 A. I haven't done an analysis how sea level rise

1 would affect the fish pond.

2 Q. Then, if sea level rises and causing the sea water
3 to breach or go over the sea level of the fish pond, thereby
4 increasing circulation within the fish pond, would there be
5 a negative impact by the failure of the septic system?

6 A. I believe there's potential.

7 Q. There's a potential. That certainly wouldn't be a
8 significant impact though, right?

9 A. Significant is -- the word is used and has
10 definitions or criteria based on the SMA Rules.

11 Q. Well, I'm asking you a question. It would not be
12 a significant effect, would it not?

13 A. Based on the SMA Rules, I think potentially it
14 could be.

15 Q. And what rules are you referring to?

16 A. The SMA Rules.

17 Q. In terms of your use of -- in your letter, right,
18 is there any mention of significant effects?

19 A. Pardon me?

20 Q. In your letter of December 2nd, 2008, is there
21 mention of -- any mention of significant effects?

22 A. The phrase that is used is potential adverse
23 impacts.

24 Q. Okay. Right. But there is no mention of
25 significant effects, right? If you just answer yes or no,

1 we can get on the with the question.

2 A. I believe I already answered that. Why do you
3 keep asking the same question?

4 MR. TANAKA: Mr. Chairman, may I ask him for a yes
5 or no answer?

6 CHAIRMAN STARR: You've asked it several times
7 before.

8 MR. TANAKA: I'm sorry?

9 COMMISSIONER TAGORDA: You've asked it several
10 times before. I'll allow you to ask it one more time.

11 MR. HUNT: I actually don't know if the word
12 significant is in this report or not. I haven't reviewed it
13 to look for that word.

14 Q. (By Mr. Tanaka) Sir, let me call your attention
15 to Page 1, Flood Hazard. The last complete sentence, which
16 reads, "The parcel is currently out of range of the warning
17 siren located at Hamoa Beach." Did you go on site when the
18 sirens are turned on for every month on the first day of
19 every month?

20 A. No.

21 Q. Did any of the member of your staff go on site
22 when the sirens are tested the first day of each month?

23 A. I don't know.

24 Q. Yet you made a statement that the parcel is
25 currently out of range of the warning siren. What's the --

1 what's the facts to justify that?

2 A. The planner who did the research and
3 recommendation apparently came to the conclusion that it was
4 out of the range of the siren at Hamoa Beach.

5 Q. Whether or not it's within the siren range, isn't
6 that a significant fact in coming to your conclusion that
7 there may be potential adverse impacts?

8 A. No.

9 Q. No. So, whether the siren -- whether the property
10 is within range or out of range has no bearing on your
11 determination?

12 A. I didn't say that.

13 Q. Can you answer the question, sir?

14 CHAIRMAN STARR: Could you rephrase the question,
15 please?

16 Q. (By Mr. Tanaka) All right. You make a statement
17 here that -- your statement is that the parcel is currently
18 out of range of the warning siren located at Hamoa Beach.
19 And I'm asking you what facts do you have to justify that
20 conclusion, and you don't know, right? And you're the
21 signer of the --

22 CHAIRMAN STARR: Let him answer your question.

23 Q. (By Mr. Tanaka) Right, okay.

24 A. The planner who made that conclusion did research.
25 I did not perform the research that led to that conclusion.

1 Q. And so, my question to you is the fact that the
2 siren may be out of range is not an adverse impact to this
3 property; is that correct?

4 A. Could you ask that one more time?

5 Q. All right. Is the fact as you state that the
6 parcel is currently out of range of the warning siren, that
7 fact does not impact on whether or not there is a negative
8 impact relative to flood hazards?

9 A. I think it's a contributing factor.

10 Q. Okay. So, if, in fact, the warning siren can be
11 heard at the parcel, would you change your analysis and
12 conclusion?

13 A. No, because again, it was a contributing factor.
14 It wasn't all based on that.

15 Q. So, in terms of the importance of the siren being
16 heard, that's one of several factors that you would
17 consider?

18 A. Yes.

19 Q. And if, you know, going -- reviewing it in your
20 mind now all the factors you consider in saying that there
21 is a potential for adverse impacts for structures and lives
22 at the site, would the fact that the warning siren can be
23 heard at the property alter your conclusion?

24 A. I don't know that's a fact. If it were a fact,
25 again, this issue or this conclusion is only one of many.

1 And so, the answer to your question is, no, it would not
2 alter our conclusion.

3 Q. Okay. Now, and what are the other considerations
4 you're taking about in making that, still maintaining that
5 conclusion?

6 A. The staff report that I signed speaks for itself
7 and all the conclusions that came to the determination that
8 this project shall not be exempt and shall be considered as
9 development.

10 Q. I'll refer you to shoreline setback determination
11 paragraph on Page 3. Have you read it, sir?

12 A. Not completely.

13 Q. Oh, okay.

14 A. Okay.

15 Q. Essentially, this paragraphs states that as far as
16 the application is concerned, the shoreline setback
17 determination is in compliance with the rules and
18 regulations; is that correct?

19 A. I believe it is.

20 Q. All right. So really, there is no negative impact
21 included in this paragraph; is that correct?

22 A. I would need a minute to analyze the second to
23 last sentence.

24 MR. TANAKA: Please, Mr. Chair, can we give the
25 witness time to analyze the last sentence?

1 CHAIRMAN STARR: Yeah, he can take his time.

2 Q. (By Mr. Tanaka) Okay.

3 A. My answer would be I'm not sure.

4 Q. Sir, on page 10, I'm sorry, on Page 4, paragraph
5 8, you state that, "Based on the project description and
6 itemized analysis above, the proposed action has the
7 potential to have adverse effects on ecological,
8 environmental, cultural and/or archeological resources."
9 Now you're saying you're not sure?

10 A. You're switching questions on me.

11 Q. Now you're not sure? I'm sorry?

12 A. I didn't say I wasn't sure in regards to Number 8.
13 That wasn't your question.

14 Q. No, you're not sure relative to shoreline -- the
15 paragraph beginning with the title Shoreline Setback
16 Determination, okay.

17 A. Could you repeat the question?

18 Q. The question is that the Shoreline Setback
19 Determination paragraph contains no adverse impacts; is that
20 correct?

21 A. I believe I answered that before, that I'm not
22 sure.

23 Q. Okay. Can you move on to Single-family Use? Can
24 you read that to yourself?

25 A. Yes, I've read it.

1 Q. Okay. What is the negative impact relative to
2 this paragraph? I'm sorry, what is the adverse impact?

3 A. The report is not concluding that an adverse
4 impact would occur, because the Applicant represented that a
5 transient vacation rental will not occur. So, in answer to
6 your question, as represented by the Applicant, this
7 particular paragraph doesn't make a conclusion that there
8 would be a negative impact.

9 Q. Going to the next paragraph, Subdivision, can you
10 read that paragraph, sir?

11 A. Yes, I've read that.

12 Q. Is there any negative impact contained in this
13 paragraph?

14 A. The conclusion is that the conditions of the
15 preliminary subdivision approval dated December 16th, '95
16 have not been fully satisfied.

17 Q. Is there any negative impact, adverse impact?

18 A. The criteria law says that in the SMA, we have to
19 look at compliance with applicable regulations.

20 Q. But is this an adverse impact on the environment?

21 A. On the environment?

22 Q. Yes. Does this paragraph contain any adverse
23 impact is my question?

24 A. I suppose if you're in noncompliance with the
25 local regulations, that's an adverse impact.

1 Q. Well, if you're not in compliance with respect to
2 subdivision, then you would not get subdivision approval; is
3 that correct?

4 A. That's correct.

5 Q. So that by itself, the other rules and regulations
6 and laws governing subdivision would take care of that
7 situation; is that right?

8 A. The law doesn't say whether the situation would be
9 taken care of by other regulations. The law speaks to being
10 in compliance with the regulations. So, I believe the
11 conclusion was made that the subdivision, preliminary
12 subdivision approval has not been complied with, has not
13 been fully satisfied.

14 Q. In your judgment, this is a minor, if any, adverse
15 impact; is that correct?

16 A. In my opinion, this application is a bundle of
17 concerns. And when you add them all up and you take a look
18 at the sum of the concerns that this particular property
19 raises, then the determination is justified that it is not
20 exempt from the SMA regulation.

21 Q. Okay. My question was that this paragraph is a
22 minor, if any, adverse impact?

23 A. I don't put labels on them. I don't judge them as
24 minor, et cetera. Again, this proposal has a bundle, a slew
25 of issues related to it, and you can try and pick them apart

1 one at a time. But when you look at it as a whole and you
2 look at our regulations that tell us to look at these as a
3 whole, the determination that this should not be exempt from
4 the SMA is justifiable.

5 Q. All right. And when you're talking about the
6 issues as a whole, you're referring to the seven items set
7 forth from Page 1 to Page 3; that's right, isn't it?

8 A. You mean in addition to the other regulations that
9 were subject to review.

10 MR. TANAKA: Mr. Chairman, can I have two minutes?

11 CHAIRMAN STARR: Yes, there will be a two-minute
12 recess.

13 MR. TANAKA: Thank you, sir.

14 (Recess taken.)

15 CHAIRMAN STARR: We're back in session. Please
16 proceed, Mr. Tanaka.

17 MR. TANAKA: I conclude my cross-examination.

18 CHAIRMAN STARR: Okay. Thank you very much. So,
19 now the cross-examination has been completed. We're going
20 to allow the Commission to examine Appellee's first witness.
21 If any Commissioners have any questions, now would be the
22 suitable time. Commissioner Mardfin.

23 COMMISSIONER MARDFIN: Mr. Hunt, were there plans
24 given for the ohana unit included in the application?

25 MR. HUNT: As far as I know, there weren't plans

1 that addressed the flood plain issue. I believe the site
2 plan shows the ohana.

3 COMMISSIONER MARDFIN: Would you consider -- but
4 since they didn't address the flood hazard with respect to
5 the ohana, would you consider the application complete?

6 MR. HUNT: Again, I don't know if the planner made
7 a determination that the application was complete. I
8 believe the conclusion that the ohana unit didn't have
9 design addressing the flood hazard issues was a -- was one
10 of the criteria that the determination was made that it
11 should not be exempt.

12 COMMISSIONER MARDFIN: Mr. Hunt, there was some
13 discussion during the examination about the view plane and
14 the difference between massing and obstruction. Did that
15 all have to do with the distance from where the viewer is;
16 that is, if a house is further back, then there's less
17 obstruction, and if it's close to the road or where the
18 viewer might be, there would be more obstruction?

19 MR. HUNT: It could.

20 COMMISSIONER MARDFIN: So, it's not the absolute
21 size of the house so much -- it's partially that, but it's
22 also partially where it's located vis-a-vis observers?

23 MR. HUNT: I agree with the second part,
24 especially the location near a public highway and also the
25 beach park, which is fairly popular by Hana standards.

1 COMMISSIONER MARDFIN: There was also in the
2 cross-examination made about sea level rise in fish pond,
3 and if sea level rose, and especially if it came as much
4 from underneath, that the ocean might overtop the seawall.
5 Is it possible that people maintaining the seawall -- it's
6 not a wall, it's a rock wall that's permeable to the ocean
7 anyway -- but that they could add to the size of that to
8 prevent general overtopping?

9 MR. HUNT: I don't see why it would not be
10 possible.

11 COMMISSIONER MARDFIN: And that could be done in a
12 short term time frame, relatively short term, you know,
13 within a year?

14 MR. HUNT: I don't know how long it would take to
15 put the rocks in there. It seems logical that they could
16 raise the seawall to stay atop of the sea level rise, or
17 rock wall to stay above the sea level rise.

18 COMMISSIONER MARDFIN: Much was made about the
19 warning siren being heard or not heard there. Regardless of
20 whether the siren could be heard from that location, a major
21 tsunami effect could still raise serious concerns about
22 perhaps not loss of life, because police could go down and
23 warn people to get out. In the event of a tsunami, there's
24 usually some warning for that. But you can't move a house
25 in the hours that you might have as warning.

1 So, the conclusion about the flood hazard, while
2 it might not cause loss of life, could still cause serious
3 destruction of property and impacts on pollution and that
4 sort of thing, is that not correct?

5 MR. HUNT: I agree with that conclusion. The
6 flood zone designation in that area is a V, which means
7 velocity. So, it's not just a matter of flood waters
8 rising, but that site is subjected to wave action coming in,
9 and the velocity adds another hazard. A V zone is also
10 subject to hurricane strength winds, so they have to build
11 to withstand a certain level of velocity and a certain level
12 of hurricane winds.

13 Obviously, if the level of the water goes higher
14 than what they're built to or the velocity exceeds that or
15 the hurricane winds exceeds what they're built to, you're
16 going to have damage.

17 COMMISSIONER MARDFIN: And so, it would be a
18 reason to have a closer examination of this whole project
19 vis-a-vis an SMA major rather than an SMA exempt?

20 MR. HUNT: The Commission can conceivably put a
21 higher threshold of protection against the wave velocity,
22 the hurricane strength winds, the level of sea level rise,
23 et cetera. So, that would be an opportunity for the
24 Commission to go further.

25 COMMISSIONER MARDFIN: I think this is my last

1 one. You mention -- much was made of the fact that there
2 were seven paragraphs of analysis, what's called itemized
3 analysis. And several of them, particularly flood hazard,
4 public views, water quality seem to have serious negative
5 impacts in your report; whereas, others were minor, moderate
6 or not of huge concern such as shoreline setback
7 determination.

8 My understanding from your testimony was that it
9 was the totality of the analysis that caused you to
10 recommend against an SMA exempt, not any one thing in
11 particular; is that correct?

12 MR. HUNT: That's absolutely correct. And the
13 conclusions are based not just on Pages 1 through 3, but the
14 items listed on Page 4 as well. No site-specific drainage
15 plans were submitted for the application. There's no
16 evidence of community input. That one from our mind is also
17 a very large one. We had a letter -- again, we had a letter
18 from the Council elected representative from Hana, who
19 suggested that this site was very sensitive and that there
20 should be community input.

21 COMMISSIONER MARDFIN: And you had that evidence
22 before you signed this letter?

23 MR. HUNT: That's correct.

24 COMMISSIONER MARDFIN: And the no site-specific
25 drainage plans would make the plan incomplete, would it not?

1 MR. HUNT: I'm not sure if it would be incomplete.
2 To me, it's one of the reasons to conclude that it should
3 not be exempt. And during the SMA major application, that
4 would be an issue that we would review with the Planning
5 Commission.

6 COMMISSIONER MARDFIN: Thank you very much.

7 CHAIRMAN STARR: Thank you. Any members have any
8 other questions? I'm not seeing any. We will move along to
9 redirect. Do you need a break, Mr. Hunt, or are you okay?

10 MR. HUNT: I'm okay.

11 CHAIRMAN STARR: We're ready for redirect,
12 Ms. Johnston.

13 MS. JOHNSTON: Commissioner Mardfin asked most of
14 the questions I would redirect with Director Hunt, so I have
15 no redirect questions.

16 CHAIRMAN STARR: Okay. And since no redirect,
17 we'll move along to recross. Mr. Tanaka, please take your
18 opportunity.

19 MS. JOHNSTON: Excuse me, with no redirect,
20 normally he would not be entitled to any recross, because
21 there's -- he's already cross-examined on everything.

22 MR. TANAKA: Well, I can recross based upon
23 questions by Mr. Mardfin, can't I?

24 CHAIRMAN STARR: I'll allow him the opportunity.
25 You know, I -- if I err on the side of allowing access, I

1 don't think there's any harm.

2 MS. JOHNSTON: That's fine.

3 MR. TANAKA: Okay.

4 RECROSS-EXAMINATION

5 BY MR. TANAKA:

6 Q. Sir, with regard to the -- your letter and the
7 issue as to whether or not the application was complete, I
8 want to revisit that again. And this is with respect to no
9 site-specific drainage plans within the application.

10 If the application were not complete because of
11 lack of site-specific drainage plans, would it not be proper
12 for the planner in charge of reviewing the application to
13 require that the drainage plans be submitted prior to making
14 a determination that the application was complete?

15 A. I think that may have been an option.

16 Q. And if the planner did not require that drainage
17 plans be submitted, is it fair now to say that there are
18 potential adverse impacts because of a failure to submit the
19 plan?

20 A. I'm not -- I don't have knowledge of whether the
21 planner asked for drainage plans and didn't get them or
22 didn't ask for them. The knowledge that I have was in the
23 report and recommendation that I signed that stated or
24 concluded that drainage plans were not submitted, and
25 therefore, that was one of the issues of determination.

1 Q. Did you raise any questions as to why it wasn't --
2 why the application is ruled complete, but without any
3 drainage plans?

4 A. I didn't inquire as to drainage plans. I didn't
5 inquire as to whether the application was complete or not.

6 Q. Thank you, sir.

7 MR. TANAKA: No further questions.

8 CHAIRMAN STARR: Okay. Thank you very much.
9 We're moving to -- on our list of exhibits, I believe that,
10 in fact, I know these have already been entered into. Are
11 there any additional exhibits that -- and I'm sorry, I'm
12 jumping the gun here. Before I do that, I would like to ask
13 the Appellee whether they have additional witnesses?

14 MS. JOHNSTON: No, I don't have any further
15 witnesses.

16 CHAIRMAN STARR: Okay. So, the Appellee states
17 that they don't have further witnesses at this time. And
18 I'll go to the Appellant and ask who, if any, they would
19 like to call as a witness. Please use the mic.

20 MR. TANAKA: I would like to call Mr. Gary Stice.
21 For before we do that, Your Honor -- I'm sorry,
22 Mr. Chairman, can I have a five-minute recess?

23 CHAIRMAN STARR: Okay, a five-minute recess.

24 (Recess taken.)

25 CHAIRMAN STARR: Okay. Maui Planning Commission

1 meeting of May 25th, we're back in order. Mr. Stice, I'm
2 going to ask you to stand up for a moment. I would like to
3 ask you if your name is Mr. Tracy Stice?

4 MR. STICE: No, Tracy is the real estate guy. I'm
5 Gary.

6 CHAIRMAN STARR: I apologize. So, please state
7 your name.

8 MR. STICE: My name is Gary Stice.

9 CHAIRMAN STARR: Mr. Stice, do you affirm that
10 everything you're about to say is the truth?

11 MR. STICE: Yes, I do.

12 CHAIRMAN STARR: Thank you. Now, you can be
13 seated. And I apologize for making you stand.

14 Mr. Tanaka, your witness.

15 DIRECT EXAMINATION

16 BY MR. TANAKA:

17 Q. Mr. Stice, can you describe your educational
18 background, please.

19 A. Oh, well, my bachelor's degree in Stanford
20 University in geology way back about 1961. Ph.D. from the
21 University of Hawaii in geophysics, 1965. And I've worked
22 since that, my doctorate degree, at the Hawaii Institute of
23 Geophysics, University of Hawaii, for approximately ten
24 years. More like, yes, ten years.

25 And then I transferred upon losing my vision to

1 teaching duties at Windward Community College. And I
2 retired about ten years ago.

3 Q. Okay. And what was your Ph.D. in, what field of
4 study?

5 A. Pacific island geology, primarily volcanology and
6 marine geology, beaches and coral reefs.

7 Q. Okay. And did you have anything to do with or did
8 you participate in the tsunami warning system?

9 A. Yes.

10 Q. Establishment of the tsunami warning system in
11 Hawaii?

12 A. Yes. After the 1960 tidal wave that inundated
13 Hilo, the Hawaii Institute of Geophysics started trying to
14 develop a more adequate warning system, which entails for
15 Hawaii getting information from all over the Pacific. We
16 already had a considerable good seismic analysis at the
17 Hawaii Institute of Geophysics, but we needed to get better
18 information on sea level changes in the immediate area of
19 the seismic disturbance to determine whether or not a wave
20 is generated.

21 One of the problems was that a lot of false alarms
22 were being called because there would be a significant
23 seismic wave, but no actual motion in the water. So, people
24 were beginning to ignore the alerts, which were frequent.
25 So, after working initially on that study for several -- a

1 couple of years, other people took over in setting up tide
2 gauges throughout the Pacific, so we could monitor the
3 actual waves that were recorded. And later, we developed,
4 with computers and satellites improving, a technique where
5 we could get realtime data into the Pacific Warning Center,
6 which was now moved out to Ewa and get much better
7 information on warning people of tsunamis and whether they
8 were real or potential.

9 Q. There has been some discussion relative to the
10 warning siren located at Hamoa Beach can't be heard at the
11 property. Do you have any experience with that?

12 A. Yes, I've heard the siren during the test days,
13 first of the month, from the property, and you can hear it.

14 Q. So, the warning system currently is very effective
15 insofar as notifying people in Hawaii about the potential
16 existence and arrival of a tsunami; is that correct?

17 A. Did anybody in Hana not know about the last
18 tsunami a couple of months ago?

19 CHAIRMAN STARR: I would ask --

20 Q. (By Mr. Tanaka) Could you just answer the
21 question?

22 A. I'm sorry. Yes.

23 Q. Sir, in terms of the flood hazard, adverse impact
24 that's noted in Mr. Hunt's letter of December 2nd, 2008, he
25 states that, what the elevations of the structure will be

1 and that a flood hazard determination permit was approved
2 and that there have been mitigation measures such as
3 breakaway walls and elevated structures.

4 Can you describe the effort that was made in order
5 to comply with whatever rules and regulations there may be
6 relative to construction of the residence?

7 A. Well, we designed the building in accordance with
8 the rules set out, the FEMA standards. So, I would assume
9 that since we complied with those rules, the purpose of
10 which is to protect the property from potential negative
11 impact, I don't know what further mitigation you can do with
12 a special use permit to mitigate that.

13 Q. You mentioned special use permit. Did you mean
14 Special Management Area permit?

15 A. I'm sorry, I did. Special Management Area permit.

16 Q. In terms of establishing a standard that FEMA has
17 in flood hazard zones, can you state your experience as far
18 as the process that an agency that's responsible for
19 determining the heights that a building must provide in a
20 flood hazard area?

21 A. Well, there is the best effort that can be, you
22 know, possible. It's impossible to get data on every
23 portion of every coastline. But there is an analysis made
24 as to what the potential wave, I believe 100 years is off
25 the criteria, but, of course, we don't really know. We

1 don't have any data beyond a couple-hundred years.

2 But anyhow, that is figured as what a reasonable
3 height would be to avoid most of the damage from a tidal
4 wave. And then there's usually a little safety factor to --
5 added onto that.

6 Q. And in terms of the project, so it went through
7 all of the required approvals in order construct a residence
8 in the flood hazard area; is that correct?

9 A. Yes.

10 Q. And do you have any comments then about the
11 Director finding that there will be or there's a potential
12 for adverse impacts due to the construction of the house?

13 A. Well, yes. I feel that the rules are set up so
14 that people can follow the standards and comply. And if
15 they comply with the recommended rules, that it should end
16 there. I don't see how any further monitoring is going to
17 mitigate that. The loss of life I believe is a minimal risk
18 because of our excellent tsunami warning center that we have
19 now. It's the best in the world.

20 And there's just very little likelihood that
21 anyone is going to lose their life from not being aware of a
22 tsunami coming onto the property.

23 Q. Okay. Sir, with regard to public views and view
24 plane analysis, Mr. Hunt's decision letter states that, "The
25 proposed structures obstruct 30 percent of the view in

1 context of the lots with the maximum building height when
2 viewed from the frontage road," all right. Now, and he
3 further states that, "The building materials and proposed
4 colors and materials (green standing seam metal roof, beige
5 smooth acrylic plaster finish, rock faced columns, etc.) are
6 in keeping with the surrounding visual environment and
7 architectural styles of the area."

8 Thus far, from your reading of this, there is no
9 adverse impact; is that correct?

10 A. Well, it sounds like -- it sounds very good to me.
11 Most buildings on a lot are going to be way more than 30
12 percent obstruction. And we feel that this is a totally
13 reasonable number. If you look on our Exhibit C, we did
14 view plane analysis. And you can see that there's very
15 little visual impact even from the road with the existing
16 plantings. And, of course, we're not going to expose the
17 house for people to view. We're going to increase the
18 plantings and camouflage the impact even more.

19 And I want to add, that the issue about viewing
20 the house from the beach; if you go down to Koki Beach, you
21 cannot see the house because we're down six feet lower. And
22 as you look up towards the house, your line of vision is
23 going to shoot way over the top of the house. You can only
24 see the top of some of the coconut trees that are close to
25 Koki Beach. By the time you get to where the location of

1 the house is, you will not be able to see the house from the
2 beach. So, there is no impact as far as visual from the
3 beach itself. And there's a minimum impact from the road
4 itself. I don't see how you could put a house that would
5 have less visual impact.

6 Q. The building code provides a height limit for
7 residences in that area, does it not?

8 A. Yes.

9 Q. And so, you can't exceed that height limit, right?

10 A. Right, yes.

11 Q. Okay. And you have to come up ten and a half feet
12 before your living quarters can be built; is that right?

13 A. Correct.

14 Q. All right. As a result, the space within which
15 you can construct the building is relatively limited, right?

16 A. Yes.

17 Q. Now, in terms of the last sentence of the
18 paragraph relating to public views and view plane analysis
19 reads, "However, the massing of the structure may
20 substantially contrast with neighboring structures in the
21 community, mostly, if not all, of which are located mauka of
22 the public road." Do you have any comments on that?

23 A. I'm befuddled by that statement. I don't
24 understand. The intent, if you look in the view plane
25 analysis, the view from Haneo'o Road looking directly to the

1 ohana unit with the house in the background is even less
2 than a 30-degree obstruction. If you get at an angle where
3 you get the view plane of the house and the ohana unit, then
4 it goes up to 30 percent.

5 But to me, this is at minimum intrusion on the
6 view plane.

7 Q. So, but in terms of the massing of the structure
8 may substantially contrast with neighboring structures; from
9 your viewpoint, is that a positive statement because of the
10 30 percent obstruction?

11 A. Yes, it could be interpreted as that. And
12 furthermore, the houses further down the road, some of them
13 are older. And but some are also at the same elevation as
14 the proposed house that we're -- the house we're proposing.

15 Q. And the lots, the adjoining lots along Haneo'o
16 Road are -- how would you describe the area of those lots?

17 A. They are considerably smaller. There may be a few
18 lots that are one acre. But they're long and skinny, so the
19 frontages are much less than our property.

20 Q. And if the frontages are less than your frontage,
21 the obstruction from the road and even from the back looking
22 at the beach, those properties would have a greater
23 obstruction than your property?

24 A. Much greater.

25 Q. So, with regard to this paragraph about Historic

1 Considerations, and this is in relation to the In Situ
2 agreement, and in this particular sentence, which I'll read
3 at the end of the paragraph of Historic Consideration, "It
4 may be prudent to list the names of living individuals who
5 may exercise these visitation rights and have letters
6 affirming their acceptance of the agreement in order to
7 facilitate the agreement's implementation in the future."

8 Do you have any -- what are your comments relative
9 to that sentence?

10 A. Well, I think, as you pointed out, the -- this is
11 already covered in the In Situ burial agreement, and it
12 seems redundant to try to say it another way, but this is
13 already covered and has been recorded and accepted.

14 Q. All right. And since that is the case then, does
15 this last sentence, in your judgment, have a adverse impact?

16 A. Definitely not.

17 Q. Sir, with regard to water quality and pollution
18 control, this is in regards to the aerobic septic system and
19 leach field. And the paragraph talks about the fact that
20 the residential building's life span would potentially
21 exceed 50 years and that sea level is projected to rise in
22 Hawaii during that period. And if sea level rises, so, too,
23 does the water table at most locations.

24 Accordingly, there is the potential that the
25 septic system tank and absorption fields may not fully

1 function if inundated with ground water. The plans and
2 specifications for the septic system were approved by the
3 Department of Health; is that correct?

4 A. Yes.

5 Q. All right. Do you have then any comments relative
6 to the statement that I just read to you?

7 A. Well, I don't think you can -- I would call it
8 arbitrary. You don't have any real numbers to project what
9 sea level rise might be. This is very speculative. I don't
10 think that Planning Department policy should be based upon
11 something that's speculative like that. We had computer
12 models from a decade ago that predicted a rising sea level,
13 and these models we're finding can't even predict the
14 climate for next year, let alone the next hundred years.

15 Q. And if sea level does rise, would it rise
16 incrementally at a very slow pace?

17 A. Yes, it would. Even if we accept the numbers,
18 which are something on the order of one inch per decade,
19 you're talking a couple of millimeters a year. A
20 millimeter, about the thickness of a dime, this would be a
21 very slow encroachment giving you many, many years of time
22 to prepare and mitigate any adverse effect of rising sea
23 level. However, we really can't be assured that sea level
24 is going to rise.

25 Q. All right. Sir, in terms of the system, it's an

1 aerobic septic system?

2 A. Correct.

3 Q. Can you describe the aerobic septic system?

4 A. Yes. First of all, you have your normal primary
5 treatment with collection of solids and sludge in your tank.
6 Then that goes over a baffle into -- the effluent then goes
7 through and is aerated by a pump, which the oxidation
8 destroys the harmful bacteria and returns to the
9 distribution box effluent that is essentially void of any
10 pathogens.

11 And then that water is dripped through the leach
12 field in a very -- well, without harmful bacteria, but with
13 an enrichment of nutrients, which would then leach into the
14 water table. Now, nutrients leaching into the water table
15 and eventually working their way into the ocean in that area
16 would not have any adverse effect. It's a well-circulated
17 area. Like off that point and even in the lagoon, the walls
18 are in very bad condition there and have not been rebuilt,
19 so the circulation is even greater through that lagoon. And
20 if sea level were rising, the circulation would increase in
21 the lagoon as well.

22 But the nutrients coming into that area, if
23 anything, we find in sewer outfalls in other areas, they
24 actually contribute to productivity in the area. You
25 probably find more fish there than you would ordinarily.

1 So, I see no adverse impact of that septic system. It's way
2 better than the cesspools that are in the houses along
3 Haneo'o Road that are many of which are set back no greater
4 than ours. Some are even closer than our septic system, yet
5 these are cesspools with no integrity for taking out the
6 harmful bacteria.

7 Yet these have been leaking into the offshore area
8 including several fish ponds with no adverse impact that be
9 noted; therefore, our system is hard to imagine is going to
10 have an adverse impact.

11 Q. Sir, with regard to single-family use, the -- I'm
12 sorry, the shoreline setback determination, I believe the
13 Director's testimony is that this does not -- this paragraph
14 has no adverse impact. Did you hear that testimony?

15 A. Yes.

16 Q. And you concur with that?

17 A. Yes.

18 Q. With regard to single-family use, you have
19 presented a letter to the Department that neither the main
20 residence or the ohana unit shall be used for short term
21 rental income; is that correct?

22 A. Yes.

23 Q. And the paragraph goes on to say as follows,
24 "Should the Applicant fail to comply with this
25 representation, the Department may in its sole discretion

1 rescind its determination, require a new determination,
2 determine the project to be a development and subject to
3 public review, comment and decision-making and/or issue
4 fines and penalties until permits or appropriate approvals
5 for short term rental and/or commercial use of the
6 structures and/or property have been obtained."

7 Do you have any comment on that statement?

8 A. I have no problem with that condition.

9 Q. Does it appear to you that this is a statement of
10 a condition to a granting of an exemption to the property?

11 A. Yes, that is the way I would interpret it.

12 Q. And as part of that exemption property, are you
13 saying that you have no objection to putting on this
14 condition?

15 A. I have no objection.

16 Q. Sir, with regard to subdivision, the paragraph
17 recites, events that occurred relative to a subdivision of
18 the property with the last -- I'm sorry, with one of the
19 dates saying that conditions for preliminary subdivision
20 approval dated December 16th, 1995 have not been fully
21 satisfied, nor final subdivision approval granted for the
22 property. Do you have any comments on that?

23 A. Well, we have no plans to continue the subdivision
24 if we obtain a building permit for the present project.

25 Q. Are you in active pursuit of the subdivision?

1 A. No, but we do not want to withdraw it until we get
2 our building permit.

3 Q. Do you have any knowledge as to whether or not the
4 ordinances provide for a termination of any subdivision
5 approval if you had not proceeded beyond a certain period of
6 time?

7 A. No, I've been told on the contrary, that it's
8 still valid.

9 Q. All right. Okay. Now, the decision letter of
10 Mr. Hunt lists ten points, okay, and the first of which is
11 the project is to build a single-family residence and ohana;
12 that's a true statement, is that correct?

13 A. Yes.

14 Q. And that the second paragraph says, "As
15 represented by the Applicant to the Department, the project
16 is not part of a larger development and is not for short
17 term rental, vacation rental and/or commercial activities
18 and purposes." Is that a correct statement?

19 A. Yes.

20 Q. And the third paragraph says that the property has
21 a valuation more than \$125,000 (valuation \$456,000). Is
22 that a correct statement?

23 A. That's the estimate.

24 Q. You're talking about valuation of \$456,000?

25 A. Yes, yes. I hope it's less.

1 Q. All right. The next paragraph 4 says, "No
2 structures are proposed within the shoreline setback
3 according to site plans submitted with the application noted
4 as Z1 and stamped by the DSA as revised July 9th, 2008." Is
5 that a correct statement?

6 A. Yes.

7 Q. So far, do any of these statements, in your
8 judgment, have any adverse impacts on the environment?

9 A. None whatsoever.

10 Q. Paragraph 5 says that, "The project requires a
11 flood development permit for all proposed structures to
12 ensure compliance with FEMA, FEMA standards, for building in
13 a flood hazard zone (V23, bfe 15 feet)." Do you have any
14 comments with regard to that?

15 A. Well, we designed the house to comply with those
16 FEMA standards.

17 Q. Okay. Did you -- the ohana house, does it have a
18 FEMA permit?

19 A. No, we were advised by staff that in light of not
20 knowing whether we were having an exemption or not, we could
21 just indicate the footprint of the ohana unit and proceed
22 with our application.

23 Q. Okay. On paragraph 6, it says, "There are no
24 site-specific drainage plans within the application." Is
25 that a correct statement?

1 A. Yes.

2 Q. Can you describe why there are no site-specific
3 drainage plans?

4 A. Well, first of all, we -- all of the time we've
5 owned that lot, which is over ten years, we have not seen --
6 experienced any problems with the drainage. So, we did not
7 see the need for a drainage plan. A drainage plan is not
8 required with an exemption for the SMA, but we would be
9 willing to accept it as a condition if there were some valid
10 reason that this would be desirable. It's not a difficult
11 thing to do.

12 Q. Were you told that unless you submit the drainage
13 plans, the application would be incomplete?

14 A. No.

15 Q. Paragraph 7, "The project proposes to implement
16 several best management practices (BMP's) to avoid, minimize
17 and/or mitigate adverse environmental or ecological effects.
18 These include, but are not limited to, an SHPD-approved
19 archeological monitoring plan during ground altering
20 activities, the use of silt fences during construction and
21 grading activities, and buffer areas around sensitive
22 sites." Do you agree with that statement?

23 A. Yes.

24 Q. In fact, you have submitted a monitoring plan?

25 A. Yes.

1 Q. And the SHPD has approved that monitoring plan; is
2 that right?

3 A. Yes.

4 Q. Now, based upon the product description -- and I'm
5 sorry, this is paragraph 8 -- "Based upon the project
6 description and itemized analysis above, the proposed action
7 has the potential to have adverse effects on ecological,
8 environmental, cultural and/or archeological resources." Do
9 you have any comments on that?

10 A. Well, I think as we go through the steps one by
11 one, we don't find really any valid reason for saying
12 there's adverse impact on any of those issues. So, I don't
13 see how you can have a cumulative adverse impact. If we
14 have adverse impacts, then I don't know why the rules are
15 written to protect from arbitrary reasons given and for
16 misuse of discretion.

17 Q. You realize that the Chapter 205 of the Hawaii
18 Revised Statutes in defining what is a development excludes
19 single-family construction of a single-family dwelling?

20 A. Yes.

21 Q. Correct?

22 A. Uh-huh.

23 Q. And however, if that construction of the residence
24 has a cumulative impact or a significant effect on the
25 environment, then the Director can require that a major SMA

1 permit be obtained, is that your understanding?

2 A. Yes.

3 Q. All right. Now, is that in reference to -- that's
4 a reference you're making to saying that if you comply with
5 all of the requirements and the Department is coming and
6 saying there still are adverse impacts despite your
7 compliance, that we're disregarding the language of the law?

8 A. I believe so.

9 Q. Now, paragraph 9 states, "The Department has
10 received three inquiries requesting an opportunity for
11 public participation or review of the proposed action.
12 Although recommended by the Department, no evidence of
13 community input, meetings or comment have been provided by
14 the Applicant within the SMA assessment application as
15 mentioned in 12-202-2(K) of the SMA Rules for the
16 Commission." Do you have any comment?

17 A. Yes. We are not trying to get this exemption to
18 avoid a meeting with the community or the Hana Community
19 Council. In fact, I'm in favor of that. But this is not a
20 condition for the exemption, and with scheduling and such,
21 we did not propose the meeting before turning in our
22 application. But we are willing to make that a condition of
23 our exemption. We have other conditions in here.

24 We just believe that the major SMA permit is
25 overburdened on regulation for a single-family residence, but

1 we would do anything reasonable, that entire reasonable
2 condition that would be put on the exemption, we're
3 perfectly willing to accept that, depending on the Planning
4 Department's judgment.

5 Q. In fact, in terms of the public meeting, there was
6 a public meeting scheduled, in fact, albeit relative to this
7 appeal?

8 A. Yes. But we would be willing to have more
9 specific community input on the -- regarding the
10 recommendations of the project itself. We would not object
11 to that.

12 Q. With regard to paragraph 10, it reads as follows,
13 "The project has the potential to be inconsistent with the
14 objectives, policies and the SMA guidelines set forth in the
15 Hawaii Revised Statutes, Chapter 205-A." Do you have any
16 comments on whether or not the project has the potential to
17 be inconsistent?

18 A. Well, it seems that we've gone point by point
19 through the purported adverse impacts, and I just feel
20 there's no significant impact or even a cumulative impact of
21 any building that's being built on the shoreline. We've
22 complied with all the rules that mitigate for flood hazard
23 and septic systems and so on. So, it just seems that if
24 you're going to have a rule that says that houses that are
25 not developments are exempt, how are we stretching to put me

1 in a category or put us in a category of a cumulative
2 negative impact? It seems that there was an attempt to
3 exaggerate these conditions in order to somehow qualify for
4 the cumulative negative impact. I do not believe this is
5 the case.

6 Q. All right. Thank you, sir.

7 MR. TANAKA: No further questions.

8 CHAIRMAN STARR: Okay. Thank you, Mr. Tanaka. I
9 would like to turn this over to Ms. Johnston for cross.

10 MS. JOHNSTON: I have no cross-examination.

11 CHAIRMAN STARR: Okay. So, there's been no
12 cross-examination. I would like to open the opportunity for
13 Commission Members to examine, ask questions of the witness.
14 Commissioner Mardfin.

15 COMMISSIONER MARDFIN: Dr. Stice, you mentioned
16 the In Situ agreement. How many people are on the list of
17 living individuals who may exercise visitation rights?

18 MR. STICE: The Historic Preservation has not
19 given me a list, so I have none. However, we have worked
20 with the Cullen-Mynar family, and they have open access to
21 the site. And they and their children are the only
22 descendents I know of that would have access to the
23 property. It doesn't bother me if they care to have others
24 come to the property. There's supposed to be a 48-hour
25 notice. I don't care about that. They can come at any

1 time. They're welcome to come at any time. Terry has been
2 helping to maintain the property and the graves, and it's
3 been a very good relationship, as far as I'm concerned. And
4 I don't think it needs any further correction or rules being
5 made.

6 COMMISSIONER MARDFIN: So, even though there's a
7 requirement in the In Situ agreement for such a list, that
8 hasn't been complied with at this point; is that correct?

9 MR. STICE: Not by the State, no. They are
10 supposed to provide it to me.

11 COMMISSIONER MARDFIN: You keep referring to
12 conditions that you're willing to agree to, but an SMA
13 exempt has no conditions. An SMA exempt is an SMA exempt.
14 And what would -- once you got the SMA exempt, what would
15 stop you from doing whatever you wanted to with the ohana
16 dwelling?

17 MR. STICE: Well, it seems to me in the statement
18 there of the assessment letter, that it clearly says that
19 the exemption would be withdrawn if I were to violate the
20 conditions, and they are conditions. I don't see how we can
21 interpret that any other way. And I'm in agreement with
22 that. And I don't see why I couldn't agree to other things
23 upon accepting the exemption.

24 We're not afraid of -- what we really fear in
25 denying the exemption is regulations and restrictions that

1 are going to result in us not being able to have enjoyment
2 of our property in a reasonable manner. And we feel that
3 we've complied with all the rules and that we should be
4 able -- we've already agreed to certain things, and we do
5 feel that there can be conditions for this exemption.

6 All I have to do is before you give me the
7 exemption, say, okay, I'm going to do these things before I
8 get the exemption. I don't know why that can't be done.

9 COMMISSIONER MARDFIN: What would the remedy of
10 the County be if you were to build your ohana and your home
11 and then use it for a TVA?

12 MR. STICE: You could enforce -- well, in the
13 letter, it states that you could enforce this, so I'm just
14 taking that at the face value. And I assume that you could.

15 COMMISSIONER MARDFIN: But if the enforcement were
16 at that point to do an SMA major, it seems to be sort of
17 strange, since you would have already had your building.

18 MR. STICE: Could you repeat that? I didn't quite
19 follow.

20 COMMISSIONER MARDFIN: Right. We won't know for
21 sure whether or not you use it for a transient vacation
22 rental until after it's built. At that point, if the
23 Department were to say, okay, you don't get your SMA exempt,
24 you have to do an SMA major, it seems to be totally
25 toothless since your buildings will already have been built.

1 MR. STICE: No, but didn't it say in the
2 assessment that if I did not comply with what I had
3 presented to the Department, that the exemption would be
4 withdrawn?

5 COMMISSIONER MARDFIN: And a withdrawn exemption
6 means you do an SMA major. But at that point, an SMA major
7 is toothless, because your buildings would have existed.

8 MR. STICE: Well, an SMA major includes much more
9 than simply evaluating or putting in the condition about a
10 TVA. And that's what we are objecting to. We feel that the
11 burden of all the overregulation and restrictions is not in
12 spirit of the rules, which state that we should be exempt.

13 So, to say that because you might do a TVA, we're
14 not going to give you an exemption, I don't see anything in
15 the rules that say that. It says that we, unless there's a
16 cumulative net -- negative impact, we should be allowed this
17 exemption. We feel we qualify for this exemption.

18 COMMISSIONER MARDFIN: Thank you.

19 CHAIRMAN STARR: Members. Commissioner Shibuya.

20 COMMISSIONER SHIBUYA: Thank you, Dr. Stice. I
21 just have a question in terms of you being a geophysicist.
22 You understand that there are more forces related with sea
23 level rise, not only in melting of glaciers, but you have
24 geotectonic types of movements, especially in Hawaii.

25 MR. STICE: Yes.

1 COMMISSIONER SHIBUYA: Can you elaborate?

2 MR. STICE: Yes, that is an excellent point. I
3 would venture to say that there is probably a greater
4 potential impact from possible volcanic activity on the Hana
5 Rift Zone, which could cause subsidence or uplift, than the
6 very gradual, slow level sea level rise, so you're correct.
7 There are a lot more impacts on sea level besides global
8 warming.

9 And by the way, notice we don't say global warming
10 anymore. It's climate change. Because in the last several
11 years, we have not only not noticed the predicted increases
12 in temperature, but temperatures have actually, by many
13 studies, been cooling.

14 COMMISSIONER SHIBUYA: I understand. And it's
15 also in the atmosphere that we also observe that there is an
16 increase in number CO2 as well as methane. The methane is
17 probably the most invidious of all the gases. Do you agree
18 or disagree?

19 MR. STICE: Yes, I do. But I would like to point
20 out that between the '40s and the '70s, there was actually a
21 global cooling. Back in the '60s, we were concerned about a
22 mini ice age coming on. It seems that these fluctuations
23 are kind of on a multi-decade cycle, 20, 30 years. But
24 during that time between the '40s and '70s, the CO2 and the
25 methane in the atmosphere did not offset the cooling.

1 So, we don't know what the impact -- the jury is
2 still out on this. We don't know what the impact of man's
3 activities and the CO2 and the hydrocarbons in the
4 atmosphere really do contribute to the overall global
5 warming. There's no question we're in an interglacial
6 period. For the last 11,000 years, we've been experiencing
7 global warming, but it is not an a steady upcurve. It is up
8 and down, up and down, up and down, and you do not know
9 where you are at any given time on that course.

10 COMMISSIONER SHIBUYA: I agree. Also, in terms of
11 your subdivision application, it stills exits, does it not?

12 MR. STICE: Yes.

13 COMMISSIONER SHIBUYA: Do you have any intention
14 of withdrawing it?

15 MR. STICE: Yes.

16 COMMISSIONER SHIBUYA: I think there's a problem
17 here in terms of reviewing your home permit and approving
18 that versus the subdivision application. And somehow, it's
19 getting confounded. Do you see that aspect as a problem?

20 MR. STICE: Well, I would be willing to -- to, as
21 a condition of the permit again, first withdraw the
22 subdivision plans if I were going to be able to obtain a
23 building permit. I just don't want to give up that option
24 if I'm going to -- I mean I would have to consider that if
25 I'm not going to get my building permit for the proposed

1 project.

2 COMMISSIONER SHIBUYA: Okay. Now, going back to
3 this drainage plan. New houses in developments that we have
4 on Maui, this Commission has been very concerned in terms of
5 the problem of putting more impermeable types of structures,
6 and if we do, then we have to put in some means in which it
7 absorbs the moisture rather than transferring this problem
8 to your neighbors or into our coastal ecology. And how
9 would you minimize this problem --

10 MR. STICE: Well, first of all -- I'm sorry.

11 COMMISSIONER SHIBUYA: -- being that your water
12 table is so close to the ground?

13 MR. STICE: Yeah, well, first of all, we are in
14 our water collection with tanks, so there's not going to be
15 any runoff from the roof into the surrounding area. And
16 secondly, as you noticed in the site visit, the footprint of
17 the buildings on that lot amount to about eight percent of
18 the total area. So, there's going to be a very minimal
19 impact of water runoff from the structures onto the
20 property, because it will be collected in tanks.

21 However, I still say if this is a concern of the
22 Commission or the Planning Department, I have no problem
23 with going ahead and getting that drainage permit subject to
24 getting my exemption.

25 COMMISSIONER SHIBUYA: In terms of the SMA major

1 versus SMA exemption, these rules were not made by the
2 Commission as you probably know. What are -- see, your
3 interpretation of it seems like it's annoying. And I agree.
4 How can having experienced this, how would you improve this
5 process?

6 MR. STICE: Well, it is. It's frustrating.
7 There's so many hoops to jump through. I'm just a private
8 citizen trying to put a house on a beach lot. It seems I
9 have to have a cadre of lawyers and professional planners in
10 order to go through all of the requirements. It is a
11 tremendous burden, and I believe in the case of a
12 single-family residence, as it seems to me, the guidelines
13 are providing the protection of overregulation in a
14 situation where it is unneeded, it is unnecessary or not
15 warranted.

16 I just feel that the rules would not be there and
17 be so clear to protect the arbitrary reasons and abuse of
18 discretion, which I think we have here.

19 COMMISSIONER SHIBUYA: Thank you very much,
20 Dr. Stice.

21 CHAIRMAN STARR: We are going to have to finish
22 this meeting at 5:00 no matter what. Even if we wanted to
23 stay, there's a necessity to evacuate the building, so we
24 have ten more minutes. Commissioner Mardfin.

25 COMMISSIONER MARDFIN: I need to ask one more set

1 of questions. You have in Exhibit 9 a monitoring plan for
2 the construction of single-family dwelling, an accessory
3 dwelling. You have on Figure 3 on Page 5 a site plan
4 basically with your house shown there. You have on Figure 9
5 on Page 17 a site location map by Masterson showing the
6 location of backhoe testing and historic properties within
7 the project area.

8 I see on that Page 17 a bunch of graves that are
9 indicated, a bunch of -- kind of looks like a shoeprint of
10 an area where you've done, where backhoeing has been done to
11 check for historic properties. But then there is a rather
12 large peanut-shaped oval or an oval tract where it says
13 "pile of graded/grubbed material (excavation not possible
14 within this area)".

15 So, I take it there's been no trenches done there.
16 And yet, when I flip back and forth between the two
17 diagrams, it looks very much like your house is planned to
18 be in that area where you haven't done any trenching. Am I
19 reading the maps wrong?

20 MR. STICE: The houses are located -- I'm not
21 positive that the trenches are exactly under where the
22 houses are located; however, the construction monitoring
23 plan provides for an archeologist on site wherever we
24 excavate for our trenches, for our power lines and for our
25 columns. So, that's covered in the construction monitoring

1 plan.

2 COMMISSIONER MARDFIN: Are you aware of any heiau
3 on the property?

4 MR. STICE: No. I've heard stories of the heiau.
5 I believe Sharon Mynar mentioned that their house was over
6 the site of an old heiau. However, the complete
7 archeological study with 32 trenches, several-hundred feet,
8 have not discovered any archeological materials of any
9 significance, except a broken 'ulu maika. And I feel that
10 it is clear that that whole area, if there were any
11 structures in there, have probably been removed by tsunamis
12 or whatever. And I won't disagree that that was an
13 important historical site in the past.

14 However, it's pretty clear from our studies with
15 the archeological report that we are not impacting or
16 threatening any of the sites.

17 COMMISSIONER MARDFIN: Thank you very much.

18 CHAIRMAN STARR: Okay. We are going to have to
19 continue this on another day. We do have to be out of here
20 in seven minutes. There's a problem upstairs. First of
21 all, Commissioners are there any other questions? I'm
22 trying to figure out what we're going to need to do next
23 time. Is that it for questioning of this witness? Is there
24 going to be --

25 MR. TANAKA: When will this be continued?

1 CHAIRMAN STARR: We will get to that. Is there
2 going to be cross or recross on this witness?

3 MR. TANAKA: I think very short, not more than ten
4 minutes.

5 CHAIRMAN STARR: We don't have time for that
6 today.

7 MR. TANAKA: I agree.

8 CHAIRMAN STARR: My suggestion, and I apologize to
9 everyone and the people who have waited all day for the next
10 items, the next time we can schedule this would be on June
11 8th. We had another contested case, so we've been asked to
12 move back. My understanding that both sides are saying it's
13 okay to move that back. So, could I guess we get a motion
14 to defer this to June 8th? And before I do that, will that
15 be acceptable to both sides here?

16 MR. STICE: I'm not -- I'm supposed to be in
17 California until June 9th. I might be able to change that.

18 CHAIRMAN STARR: Would you like to move it back
19 further, Mr. Yoshida? June 21st is full. It would be July,
20 yeah.

21 MR. STICE: I'll try to find a way to get June
22 8th.

23 CHAIRMAN STARR: So, June 8th is acceptable to
24 you?

25 MR. STICE: I'll just change my --

1 MS. JOHNSTON: Yes, that would be fine.

2 CHAIRMAN STARR: So, Members, could we have a
3 motion to defer to June 8th?

4 COMMISSIONER SHIBUYA: Move to defer this to June
5 8th to be heard.

6 MR. YOSHIDA: Is there a specific time?

7 We have one public hearing item, which is the
8 Council Resolution on Small Wind Energy Systems.

9 CHAIRMAN STARR: We can work that out and inform
10 everyone. Is there a second, first of all, to that motion?

11 COMMISSIONER DOMINGO: Second.

12 CHAIRMAN STARR: Okay. We have a motion by
13 Commissioner Shibuya, seconded by Commissioner Domingo to
14 defer this item to June 8th. Everyone in favor, please
15 raise your hand. And could we get a motion to defer all the
16 other items on our agenda to the -- excuse me.

17 Ms. Kapuaala.

18 MS. KAPUAALA: Thank you, Mr. Chair. The Waipio
19 Bay Benevolent Society Appeal, who was supposed to be
20 scheduled on June 8th, did request a rescheduling to a
21 future date. Could we also reschedule that today as well,
22 so I can notify the parties of their contested case hearing
23 date?

24 CHAIRMAN STARR: And that would be in July,
25 Mr. Yoshida?

1 MR. YOSHIDA: Yes. The Commission is dealing with
2 the Honua'ula EIS on June 22nd.

3 CHAIRMAN STARR: July 13th perhaps.

4 MR. YOSHIDA: If that's agreeable to the parties.

5 CHAIRMAN STARR: So, to defer that to July 13th,
6 and to defer everything else to as soon as possible time.
7 Would someone make that motion, please?

8 COMMISSIONER SHIBUYA: I so move.

9 COMMISSIONER DOMINGO: Second.

10 CHAIRMAN STARR: Moved by Commissioner Shibuya,
11 seconded by Commissioner Domingo. And just for discussion,
12 you know, I know I had some questions. I had some questions
13 on the EA/EIS report. So, that will be pushed forward.
14 That will not be deemed accepted, since we're deferring.
15 All in favor, please raise your hand.

16 All opposed. And okay. Meeting is --

17 MR. YOSHIDA: For the Stice appeal, is there a
18 specific time to deal with that?

19 CHAIRMAN STARR: Yeah, okay. It will be -- how
20 about shortly -- shortly after 1:00. Because I promised the
21 Maui Land & Pine guys that they, who have been waiting here
22 all day long, that we could give them a fixed time, so I was
23 going to give them 1, and then as soon as that's done.

24 MR. TANAKA: Can we say 1:30?

25 CHAIRMAN STARR: It will be shortly after 1:00.

1 Is that acceptable?

2 MR. TANAKA: Okay.

3 CHAIRMAN STARR: Meeting is adjourned.

4 (The meeting adjourned at 4:58 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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