

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MAY 12, 2009**

Approved: 8/11/09

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 8:30 a.m., Tuesday, May 12, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Hedani: Planning Commission of May 12th will come to order. Public testimony will be taken at the start of the meeting on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda item is considered. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limits on individual testimony is three minutes. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered. I have two people that have signed up for public testimony and I'd like to call on them at this time if you'd like to either speak now or when the agenda item comes up. C. Mike Kido. When the agenda item comes up, very good. Mr. John Pye, okay, when the agenda item comes up, very good. Thank you. I'd like to welcome everybody here and we'll proceed with Item B, Director.

Mr. Hunt: The commission's first item involves Mr. David Tamanaha, Vice Chancellor of Administrative Affairs at Maui Community College requesting a Special Management Area Use Permit for the Maui Community College Science Building project, the construction of a one-story, approximately 33,000 square foot building, a one-story, 650 square foot observatory building, a 61-stall paved parking lot, access road, chiller building, landscaping, associated utilities and infrastructure at 310 Kaahumanu Avenue, TMK: 3-8-007: portion of 040. The file number is SM1 2008/0008 and Danny Dias is the planner assigned to this project.

Mr. Hedani: Danny can you hold one. I'm sorry to interrupt, but I failed to call if any other members of the public wanted to testify at this time. We have one individual that would like to testify, Peter Martin.

The following person testified:

Mr. Peter Martin - Item E-1, Peter Martin Filing of an SMA Appeal

Mr. Martin's testimony can be found under the item on which he testified on.

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

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

1. **MR. DAVID TAMANAHA, Vice Chancellor of Administrative Affairs at MAUI COMMUNITY COLLEGE requesting a Special Management Area Use Permit for the Maui Community College (MCC) Science Building project, the construction of a 1-story approximately 33,000 square foot building, a 1-story, 650 square foot observatory building, a 61-stall paved parking lot, access road, chiller building, landscaping, associated utilities and infrastructure at 310 Kaahumanu Avenue, TMK: 3-8-007: 040 (portion), Kahului, Island of Maui. (SM1 2008/0008) (D. Dias)**

Mr. Danny Dias: Good morning Chair Hedani, Members of the Commission. The applicant has a very good power point presentation on the MCC Science Building project so I'll be brief.

As stated, the item before you involves an application for a new science building at the Maui Community College campus. It goes without saying, but I know, we, at the Planning Department we're pretty excited about it. It's a very innovative building, not just for Maui Community College but also for the University of Hawaii system and the Island of Maui in general.

This type of building is I guess for lack of a better term is the wave of the future and it's very fitting that it's located on the MCC campus because of location and because it exposes present and future college students to the type of building that should be built in the future.

Before I hand it over to the applicant, there's just one little thing that we want to clarify for the record and you don't have to turn there, but it's on page 8 under Description of the Project, sentence number two says, "that the existing MCC campus is approximately 48.61 acres in size." It's actually 76 acres in size, 48.61 is the size of the actual parcel of land that the new building is going to be on. So we just want to clarify that. So with that, I will hand it over to the applicant.

Mr. Clyde Sakamoto: Thank you Mr. Dias. I'm Clyde Sakamoto, Chancellor of Maui Community College and I'm here with a very simple request and that is to seek your approval and support to replace our old science building. It's approximately 40 years old and as you can well imagine science has eclipsed our facilities and our equipment and our structure and so we're seeking your expeditious approval of this project. As you know, our resources will expire and lapse in July of 2010 and so we're wanting to move ahead as quickly as you can help us manage. This is a rational behind what it is that we're wanting to do with our science facility.

The kinds of labs that will be displayed before you this morning are ones that relate to Maui County's most sustainable living wage careers. The STEM, Science Technology and Engineering Math programs are all connected with the best paying, best compensated jobs within our County of Maui. And what we are attempting to do is to prepare our students through state of the art facilities, equipment, to allow our students access to these kinds of careers. So we'd be very grateful for your support. Any questions that you may have, we'll be pleased to respond to. Thank you very much.

Ms. Gail Renard: Good morning Chair Hedani, Members of the Commission. My name is Gail Renard. I'm with Helber, Hastert & Fee planners. I'm here on behalf of Maui Community College and University of Hawaii. I want to thank you for the opportunity to present this briefing on this project to you this morning. I'm going to be using this power point presentation, but before I get into the actual presentation I'd like to introduce members of the design team that are here with us this morning. The architect is here, Kendall Ellingwood and Vernon Inoshita from Design Partners. If you could just identify yourselves as I read your name. The civil engineer is Diane Kodama with AECOM. Mechanical engineer is Barry Jim On with Insynergy Engineering and in addition to Chancellor Sakamoto we have several representatives of the University of Hawaii and Maui Community College. David Tamanaha is the Vice Chancellor for Administrative Affairs. Marvin Tengan is the MCC's Capital Improvements Coordinator. From University of Hawaii, Associate VP

for Capital Improvement is Brian Minai and the Manager of Facilities, Planning and Design Maynard Young. So we'll all be available for your questions later.

Just to go over what some of what Danny, Mr. Dias, had mentioned. The building is approximately 34,000 square feet. It's a one-story building. It will contain laboratories, class room and a lecture hall and a big part of this building is as you know, is how it incorporates sustainable design features in its design and at a minimum it will meet Leadership in Energy and Environmental Design, Silver Certification requirements and it actually has a very good chance of attaining Gold Certification status. The building itself it's been designed as a instructional tool for the students. It will also demonstrate the university's commitment to energy savings and sustainable design.

This is a priority project for MCC. It's needed to support the existing science program. As Chancellor mentioned it does replace a dated facility. It will enable MCC to meet current programmatic and design requirements for instruction, lab and chemical storage space. And finally it will allow MCC to enhance the quality of its science curriculum and better serve the residents of Maui.

This is a plot plan showing the location of the facility, new facility on campus. I know you're all very familiar with the campus. This is Kaahumanu Avenue, main entrance across Wakea Avenue. So it's on the western end of the campus on an existing unpaved overflow parking area and an unused volleyball court.

The building has a number of sustainable or green design elements, not a number, I would say numerous and a key element in the design that influenced, actually its exterior appearance is the provision of onsite renewable energy systems in the form of photovoltaic panels and wind turbines located on the roof structure. Together these wind turbines and PV panels will produce approximately 10% of the building energy load. In addition to actually generating power on site, the building's been designed to have an overall reduction in electrical load when it's compared with a similar building of conventional construction and design.

High efficiency plumbing fixtures will be used to achieve approximately 40% reduction in potable water demand. Landscape irrigation will be provided through Maui Community College's existing nonpotable water source. The science building also incorporates what's called a green roof which is a vegetated surface that provides some insulation so there's less heat transfer to the interior spaces of the building and it also improves storm water management.

This is a computer rendering of what the science building may look like. It's viewed from the southeast corner. These are some of the roof elements, the wind turbines and PV panels. You'll notice that the roof is offset so the majority of the roof will be south facing in order to maximize the solar exposure for the PV panels. You'll also notice there are very large windows and you can't really see it in this shot but there are sky lights and also light tubes that will bring natural day lighting into the interior spaces to reduce the need for artificial lighting.

This is the landscape and site plan. This is the one-story building. There's also a chiller building and a one-story observatory building which will house a telescope. The landscape design concept integrates the facility with the existing landscape, the rest of the MCC landscape concept and

adjacent pedestrian pathways and walkways. You'll see that this is the – an existing pedestrian mall will be extended in front of the new building. This is a 61-stall paved parking area. The landscape design incorporates either native Hawaiian or Polynesian introduced species with the exception of the turf grass. And again, irrigation will come from MCC's nonpotable source.

This is the floor plan. The gray area here shows all the instructional labs which surround a central prep area. There are teaching labs. The green down here to the left is a lecture hall that will be used by the entire campus. There is a general purpose classroom, library resource area surrounded by instructors offices. There's a large lobby area which will also double as an educational display area.

So this is the roof plan. The exposed parts of the roof are concrete clay tile in Kapalua Green. The roof that will underlie the PV panel is a green metal standing seam roof. As you can see there are numerous light tubes and sky lights and these elements here are the wind turbine. This is the main entrance and the green roof that I mentioned earlier. It's about 2,000 square feet, vegetated with native grasses or ground cover.

As utilities and infrastructure for the new facility, the increase in storm water flows that will result from the increased impermeable spaces will all be accommodated on site. It will flow through a pipe system to water quality units and then underground infiltration chambers. The water quality units will capture and remove pollutants according to Department of Health and NPDES requirements. The building's potable water system will connect to the existing MCC system, and the new demand would be accommodated by MCC's existing master water allocation. Sewer system will connect to existing system and again, no potable water will be used for irrigation.

Finally, we prepared a three-dimensional computer-animated fly through showing the exteriors of the building as you move around it through campus. So this slide just shows you the orientation that the fly through will take. So this yellow star in the southwest corner that's where the fly through will start and then it will move around the building through the campus out to the harbor return along Waihine Pio and then circle around the building and end in the southeast corner. The roof line, now we're going to move onto the east through campus. That's the main parking lot. Moving back along Waihine Pio to the north side of the building. This is the west elevation and that's the chiller building there. This is the observatory building with the retractable roof. The east elevation, wind turbines on the top. This is the green roof you'll see here. This is the north elevation. Again, the chiller building. Notice how the roof is offset. This is a view of the observatory main entrance. That concludes my presentation. Thank you very much for your consideration and we welcome any questions you might have on the project.

Mr. Hedani: Any questions for Gail at this time? Commissioner Starr.

Mr. Starr: First of all, I want to thank the organization for trying to do such a great job with this project and create, you know, as well a great facility for the students a real demonstration of these technologies. I hope that, you know, at the point when the LEED check sheet is completed that maybe you could come and run us through the way the LEED Silver or maybe even Gold is being attained so we can get a better understanding of how that works in a workable project. I was very surprised to see green roofs. I was just at the American Planning Conference in Minneapolis and

went on two all day tours of green roofs. Saw about 25 green roofs. They cannot put any additional water into the Mississippi so any property that has impervious surfaces has to pay a tax of 70 cents a square foot that will be raised, rising up to \$2.00 a square foot. So it makes economic sense for them and I know they're spending about \$15.00 a square foot for the green roof. I was curious if you cost it out about what the green roof will be to build and maintain?

Ms. Renard: I would like to turn that question over to Kendall.

Mr. Hedani: Can you step to the microphone and identify yourself please?

Mr. Kendall Ellingwood: My name is Kendall Ellingwood, I'm a architect with Design Partners and the first part of your question, yes, we do. We have a working LEED scorecard that we've studied very thoroughly and it's incorporated into our design. So if needed we can send it through Gail right a way so you know where we stand. Currently we're at LEED Gold, but we're not assuming anything. So you know, we're just going to proceed as we can achieve LEED Gold but we're thinking that at the very minimum, we'll get LEED Silver. And yes, we have cost it out the green roof. It is quite expensive, but I think it's worth it because we're looking at this building as a kind of a prototype LEED building for the entire county. So we're looking at this building as a case study for sustainable design.

Mr. Starr: No, that's great, how about pervious surfaces?

Mr. Ellingwood: Again, we're trying to minimize them, but for the parking area I believe the county requires a paved area to count as official parking. So there we had no choice.

Mr. Starr: Okay, because I know, you know, in Minneapolis and Portland and I recently viewed quite a few public facilities that are using pervious paving to increase the recharge and decrease the runoff. It's pretty much becoming a standard. I would love to see a test bed for pervious paving even if it's in the walkways or somewhere just so we can you know, have some place on Maui where people can look at it because it's really getting prominence throughout Europe and the U.S. and thank you very much for what you're doing.

Mr. Hedani: Any other questions for the testifier? Commissioner U'u.

Mr. U'u: Yeah, I agree with Commission Starr. I like the project. I would also like a follow up on the LEED sheet but my concern is what Mr. Sakamoto said earlier. We're jumping ahead of the gun by saying we want to see the LEED sheet when the concern in my mind is the resources may lapse in 2010. So that my concern is getting this project moved forward so we can see the LEED sheet and that's part of my concern. Thank you.

Mr. Hedani: Any other questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: Yeah, I'm on the same page here I think. But, you build it as a demonstration project. What I would like to see and I'd even like to add it as a condition is that there be a report done after the fact. You have a priority projections of what it's going to cost extra, what the savings are going to be and what I would really love to see is an after the fact, after it's built, after it's been operating

a study done on what's saved in terms of electricity, what saved in terms of water. You might want to work with Cynthia Foreman on this, you have a great economist in there or maybe somebody in the business office to actually prepare and publish a study of how this works in practice because very, very often these things come up, they're projected, they're projected – there's never any follow through. You can't expect maybe a commercial operation to do the follow through but an educational organization has the ability to do a good solid study of what was saved, what are costs, what the payoffs would be, internal rate of return, calculations can be made. I know as an economist, I know there's all kinds of things that could be done and I urge that it be done and I'd like to add that as a condition at some point.

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

Mr. Shibuya: Thank you Chair. I have several comments here, but I'll defer my time to other members if they have questions so just let me know if you – if I'm taking too much time. I'm concerned about the impact of the drainage system and this is probably my biggest issue because we're close to sea level and the grade of the property is sloping towards the sea, toward the harbor and the area that you mentioned in terms of this particular structure is going to have some catchment or some means of capturing the water that is sheeting off of the impermeable structure. How are you treating this and how is it actually accommodated for? Your answer is going to ask for another question that's why.

Ms. Renard: Well in general the water will be collected into a pipe system, flow to what's called water quality units that will capture and remove pollutants and then move off into underground infiltration chambers where they'll infiltrate, I believe they're located under the parking area, so they'll be infiltrating into the ground and not flowing off site.

Mr. Shibuya: And the catchment basin that it is currently advertised or at least listed on the property is implied that this water runoff would go there, would it not?

Ms. Renard: I think I better leave the detailed explanation to the civil engineer.

Ms. Diane Kodama: Hi, I'm Diane Kodama from M&E Pacific AECOM. We do have the underground storage system and then overflow for like really big rain it will flow into the existing storm drainage system and then it will go into the campus's retention basin.

Mr. Shibuya: And can you describe the size of that catchment system, the depth of it as well as the size and the quantity of water that you're –

Ms. Kodama: We'll be sizing it so that there is no increase in runoff to the existing system. The chambers look like, like a half pipe with gravel underneath and then it stores it within the gravel and within the chambers.

Mr. Shibuya: Okay, so the chamber is actually constructed out of?

Ms. Kodama: Plastic.

Mr. Shibuya: Plastic?

Ms. Kodama: Right. There are several types of – it's all the same type of system, they have different vendors that sell it now.

Mr. Shibuya: You're aware of the rising of the oceans?

Ms. Kodama: Yes.

Mr. Shibuya: If the sea level rises, what impact will it have on these plastic catchment systems?

Ms. Kodama: The elevation in the area is about 40. We didn't hear from the, you know, the agencies yet that it doesn't, it won't work because in a large rain, I mean, everything will be saturated and it would eventually flow, but the purpose of the retention system is to take the first flush pollutants from the water. So you know, like the oil, any oil on the thing or any sediment it won't go to the ocean.

Mr. Shibuya: I like that design, however, I'm very concerned about a floating plastic container coming through the landscape as the ocean level rises and/or it's over saturated. There's a tendency for that kind of thing to happen.

Ms. Kodama: It's under pavement. It's going to be – the pavement, the parking area is going to be above it. I'm not sure – I mean, it is widely used right now because that's one of the few natural type of retention basins that, you know, without taking too much space in a urban area.

Mr. Shibuya: This you've actually constructed this drainage system to accommodate this structure.

Ms. Kodama: Right.

Mr. Shibuya: You haven't considered the total build out capacity of the MCC area because we don't know the total structures that is programmed for it.

Ms. Kodama: In each project will have some kind of drainage system.

Mr. Shibuya: Okay, and that catchment that you have next to the harbor or the highway will be adequate to accommodate much of the runoff?

Ms. Kodama: The existing retention basin.

Mr. Shibuya: That's correct. With the existing structures that you have.

Ms. Kodama: What we are required to do is not increase the runoff by the NPDES and DOH rules and the county. So we won't be doing that.

Mr. Shibuya: Okay, thank you.

Mr. Hedani: Any other questions for the testifier? Commissioner Starr.

Mr. Starr: I just want to clarify a comment I made earlier. The LEED check list that I'd like to be brought back before us, I don't want to stop the project and wait for them to do it now, as the project develops and you see what you're really going to accomplish then later maybe a year from now I'd love to have that brought before us as a way to see what's possible and how it works. You know, actually see a check list in your EA that, you know, that was really preliminary, but I would like to see it later and also a comment as far as the economics of it, I don't, you know, it's worthwhile doing it this way as a science and teaching facility. It's probably going to be quite expensive, a lot more than it needs to be to be LEED Silver certified because it's a – you know, it's a demonstration mule for a lot of different products and technology. The windmills that are that close to the ridge line won't make a lot of power but it's an opportunity to teach students about, you know, about wind power and so on. So you know, I think if we're trying to be cost effective it would probably be done differently, but I think they're doing it just right in the way they're doing it now. As a student teaching tool.

Mr. Hedani: Did you have a question for the testifier?

Mr. Starr: No, just comments and appreciation.

Mr. Hedani: Okay, Mr. Shibuya.

Mr. Shibuya: I have three comments unless other members.

Mr. Hedani: On comments on project maybe what we should do is restrict that to the period when we're deliberating the approval or disapproval of the project and at this point what I'd like to see if there's anybody that has questions for the applicant, you know, that haven't been answered at this point.

Mr. Shibuya: I'll state it in the question, I have three of them. Number one would be astronomy. I like that introduction or at least that structure there. However the way it's structured and the way it's located you're going to limit your north horizon view if you're considering that? Or have you considered that? And have you considered also since you have university contracted up in the summit having live feed brought into the science structure?

The second would be you have a classroom right next to the auditorium. Having taught at University of Hawaii Manoa for four years I did not like having my classroom right next to the auditorium because when they break, it's just very loud. Noise level is just horrendous. I can close the door but it's not very friendly for presentations or class activities. So you may want to consider some other location for it.

The third item that I have was you have much energy initiatives here, sky lights, large windows, perhaps maybe some of the design can be restructured in a sense that the classrooms could be facing the north side where the sun does not have direct access to, but yet you have the light. Also, if you have large overhangs or some treatment on the other sides then yes, classrooms would be advisable especially when classrooms have to be semi-darkened so that you can make your

presentations. These are some of the practical things that came to my mind as I read through this thing. Thank you.

Mr. Hedani: Any response Gail?

Ms. Renard: Sure. Actually, I'd like to call Mr. Ellingwood and also, I'd like to take this opportunity to identify two MCC faculty who actually may be available to answer questions as well Carlton Atay and John Pie from the Science Department. We'll have Mr. Pye answer the astronomy question and Mr. Ellingwood will come up and answer the other questions.

Mr. John Pye: Morning, I'm John Pye from MCC. I'm the Astronomy/Oceanography faculty member. I can address the first question specifically. Yes, we considered a number of different orientations for the observatory building and actually it's preferred for us to have a more southerly exposure. It gives us a wider swath of the sky for the students to work with. And the other important thing is it takes us out of the direct impact of the tradewinds which would create a great deal turbulence over the observatory side, so we're sheltered quite a bit from the building. We also do have plans because of our contacts at the summit to have direct live feeds where we'll do educational projects with our students using telescopes at Haleakala that will be learning teaching facility and our hope is also to utilize it as sort of public outreach education type of facility as well. So it will be utilized for a number of different things but predominately for our students in various programs. Thank you.

Mr. Hedani: Can you identify yourself again for the record?

Mr. Ellingwood: I'm Kendall Ellingwood, architect. Your second question about the classroom and lecture hall being together. I think that's a valid point, but being that there are not too many components within this building that through our analysis during the functional analysis that we thought that that would be the best pair to be together because those are two components of the building which will be shared by the rest of the university. We have provided sound insulation between the walls to minimize the noise infiltration and also if you look above the lecture hall in the classroom there is a very wide corridor which we have named as the prefunction area. We've added that as a large place where students actually gather and they can look at displays on the wall. So we're looking at the whole area as a teaching area as part where people can just after classrooms, after lectures they can stand out there and talk to each other, talk about what they were instructed that day. So maybe it might not be the quietest type of environment but we feel that that is the best learning environment where people are talking together, talking to each other about the curriculum. The same goes next to the library, it's surrounded by the offices, it's done that way so that the students can go knock on the teacher's door and it fosters talking between the teachers and the students. And as for the amount of, you know, the daylight going into the classrooms and so forth, we do have a LEED consultant and energy consultant that really did a model of the entire building and we have sunshades and so forth so that all of the daylight it's maximized that we're using the amount as much as possible without disturbing the teaching curriculum. We have three types of different sunshades within the classrooms also. So as needed they can block out the light.

Mr. Hedani: Okay, are there any other questions for the applicant at this point? One comment that I'd like to offer at this time is that what we're evaluating in this particular case is the special management area permit for the applicant. You know, we're not necessarily in the business of

designing the facility for them. We're evaluating the impacts of the project as it relates to the special management area. Questions? Commissioner Mardfin.

Mr. Mardfin: I have a couple questions. Three. One is, it's been mentioned that the funding will lapse. I personally don't like to get projects where we have to do this right a way or something disasters will happen. Why did it take so long to come here?

Ms. Renard: What happened was we started the whole process a little over a year ago. We submitted an application for the SMA use permit. Between that time and this time, funding for the facility was cut. So instead of a I think it was \$42 million, it got cut to \$26 million, something around there. So it went from a two-story structure to a one-story structure. So there had to be a whole redesign of the building and actually incorporation of the changes into the environmental assessment as well too. So that process extended this process for several months. So it's basically a cut in budget.

Mr. Mardfin: So had that not happened, you would have come earlier to us and so there would have been more time, there wouldn't be this implied time pressure.

Ms. Renard: Yes.

Mr. Hedani: Any other questions? Commissioner Mardfin.

Mr. Mardfin: This is a science building and I notice you have a women's chemistry lab in here.

Ms. Renard: Yeah, that –

Mr. Mardfin: I presume that's a typo actually.

Ms. Renard: Yes, we did correct that, thank you.

Mr. Mardfin: It's a chemistry lab and women's go over with the men for the –

Ms. Renard: Yes, that was changed in the plan.

Mr. Mardfin: I was glad it was in there as a typo. It was kind of amusing actually. But there is a chem lab here and probably some other labs that may probably have some dangerous chemicals and other things. What sort of facilities do you have for two things, one disposal of dangerous materials and two, if there are any accidents in there, I know in our high school in Hana we have wash down areas. You know, if acid splashes on your face there's a place to pull a shower lever and clean yourself off. What do you in terms of protecting personnel and disposal materials?

Ms. Renard: Okay, disposal of materials I believe that the hazardous materials are properly stored. Once they are used, they are accumulated and when there's a large enough amount, they're disposed of by a third party vendor according to federal, state and county requirements for handling that kind of material. The protecting the personnel and students, I will either call on Mr. Pye or Mr. Ellingwood or this is Barry Jim On, the mechanical engineer with Insynergy.

Mr. Barry Jim On: Morning Chair and Members of the Committee. We do have emergency eye washes and emergency showers as you mentioned in the laboratories that were deemed I guess where hazardous materials would be handled. Ventilation system is quite robust as well. We have – there are hoods, where they will be handling the hazardous materials and these hoods are exhausted all the time and basically it's pretty energy intensive because of that but we've incorporated a lot of features that will try and minimize the amount of exhaust during off hours.

Mr. Mardfin: Where is it exhausted to?

Mr. On: ...exhaust into the roof, about 10 feet above the roof. You have that plan? That's recommended guidelines by NFPA to exhaust –

Mr. Mardfin: Do you have any radioactive materials?

Mr. On: You see up on the roof the parapet there in the middle of the roof, that brown parapet area, you see those little exhaust shrouds that's where we're exhausting up into the tradewinds there.

Mr. Hedani: Any other questions for the applicant at this time? Commissioner Shibuya.

Mr. Shibuya: I just have a question on the weight of those wind turbines. Can you tell me? I'm concerned about the student safety or occupant safety.

Mr. Ellingwood: Hi, I'm Kendall Ellingwood again. I don't have the weight off the top of my head but we have been working closely with the manufacturer and our structural engineer. So there will be separate vertical pipe columns that would be tied to the building and it meets all of the wind, seismic requirements. So I don't think it would be an issue to have the wind turbines flying off in case of a hurricane or typhoon.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I attended a very excellent training course in LEED at the college at the school of sustainability a while back. One of the points highlighted over and over again is that high level LEED certification requires a very different ...(inaudible - changing of tape)... a building will look and then they pass it to someone who will figure out how the windmills will be, then it goes to the mechanical, to the HVAC and all that stuff is kind of done in a linear fashion whereas with LEED design to be successful at a high level, you know, at a realistic cost it has to require a team of people working through all the different problems, you know, from the beginning of the design. And I assume that, you now, I'd like to know is that the way this is being done and if so, will that process in itself which is different from the way people are used to working here be used as a teaching tool?

Mr. Ellingwood: You're absolutely correct. We did the – it's called the integrated design approach and we had a couple of charrettes at the MCC campus with all of the stakeholders and at that time, we had all the members of our design team including our sustainability consultant and that from the very first time that we started sketching and outlining what the building would like we were taking sustainability measures in hand and we did exactly what you had noted and we even, from the first meeting that we had, we have a kind of a sustainability report that was the first document that was

really produced for this project and we have that on file so we could provide that for you as well if you would like a copy.

Mr. Hedani: Okay, for the record, that was Kendall Ellingwood, the architect for the project. Are there any other questions for the applicant at this time? Commissioner Shibuya.

Mr. Shibuya: I just have a question relating with the total photovoltaic generating capacity. I think you have several sections there on the top roof as well as the sides of the building.

Ms. Renard: Actually it's only on the top right now.

Mr. Shibuya: It's only on the top?

Ms. Renard: It's only on the top, yes.

Mr. Shibuya: Because I read that you have on the side.

Ms. Renard: I believe when the environmental assessment was prepared, they were considering putting it on the side as well, but do – it's not very efficient to be on the side, so they eliminated – and it's very costly. So they eliminated that and it's limited to the roof top.

Mr. Shibuya: And what capacity is that?

Ms. Renard: The total, 3 megawatts I am told.

Mr. Shibuya: Three megawatt hours.

Ms. Renard: Oh, the total with the wind turbines and PV panels would be 365 kilowatt hours.

Mr. Shibuya: Wait a minute, I just want the PV portion.

Ms. Renard: Okay, PV –

Mr. Shibuya: The reason why I'm saying that is that is it 10% of the MCC campus power requirements or 10% of the building power requirements?

Ms. Renard: The building's power requirements and it seems like it's a small amount, but these types of science lab building are energy hogs if you will. So, and I have some notes here, it's a seven kw roof mounted PV system. Seven.

Mr. Shibuya: Seven zero or seven?

Ms. Renard: Seven. Just seven. Oh, Seven zero? Excuse me 70.

Mr. Shibuya: 70 sounds more reasonable because I have 7 kw at my house only. This is much larger than my home.

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

Mr. Mardfin: I don't know whether this is for the chancellor or for the academic vice president or for the science faculty, but do you folks envision any environmental science courses that would incorporate this building into a classroom setting on an ongoing basis? I was looking in the disciplines you cover and I didn't see anything like environmental science.

Ms. Renard: Okay, Mr. Pye.

Mr. Hedani: John, can you identify yourself again for the record because it's being transcribed?

Mr. John Pye: Sure, John Pye, science facility member at MCC. Actually one of our philosophies with this building is to not just make it a group of static science labs but to actually to make it a living, breathing building in the sense that we do have some environmental science courses or components of those course in a number of our science courses. We have more courses that we're looking at developing specific to that and most of the faculty I think one of the reasons we're so excited about this building is that we plan to incorporate what the building is actually doing into existing courses that we already have. And your previous comment about doing case studies down the line, I am personally involved with a number of students that have research projects going with that I work with a collaborators on. And so I see the real benefits of getting students involved in real hands on types of science and other types of activities and I see the science, the economics and a number of different things with a lot of our students is being a real perfect hands on ability to see the benefits of this kind of structure, this kind of construction and how it benefits the larger county. So our plans are definitely to incorporate a lot of what's going on in this building into our curriculum and into education in general.

Mr. Mardfin: As kind of a follow up, I would strongly suggest that you have some independent monitoring of water and electricity and special metering so that you can actually test it. I mean, if it hooks up to college wide electrical system so you can't figure out how much this building is using you're going to be hopeless in terms of trying to figure out the impacts.

Mr. Pye: I think Kendall can speak a little bit better to this than I can although this is something we've discussed. We do plan to have as part of our display area which will incorporate a whole number of science projects students are working on and things, actual displays of what's being generated by the PV system. It will actually be there in real time. So even people that may not be using this in other types of projects, just by walking into the building and maybe to take classes will see what's actually going on in real time.

Mr. Mardfin: And I would again urge you to get the economist or the business people, whichever, involved at an early stage so that they can give input as to what they would need in order to do a legitimate study. And I agree with Commissioner Starr that this may not be cost benefit as a demonstration but you'd have the data so you could figure out if you did it on a commercial basis what could be done. Any good economist could make that kind of adjustment for you.

Mr. Pye: Yeah, and I think that's a good point because we're very interested in interdisciplinary approaches to things and so we don't want this just to be limited to science students or faculty but

bringing in people in economics, business and other things and we do have a number of students in programs that involve entrepreneurial types of activities. This is a perfect way to bring all these people in to present a larger scale benefit of this.

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

Mr. Mardfin: Do you folks have construction trade programs at the college? If you do, you might get the construction trades people involved so they learn how to install things like this because I know at Hana School we have Rick Rutiz and he gets – we have a good dozen Hana School students who know how to put these kinds of – a lot of these kinds of things in and so I'd just involving your construction people in this as learners so they will have the skills coming out.

Mr. Clyde Sakamoto: Thank you for that. Clyde Sakamoto, Chancellor for Maui Community College, we as a matter of fact have Carlton Atay here who is our sustainable construction technology faculty member and he and his students have been involved in ground mounting PV panels is about to roof mount PV panels on the high school sector. We have faculty members in each of the public high schools teaching in the construction academy environment. At last count, last semester we had some 377 high school students involved. And so these students are going to be schooled in the basic kinds of skills but then move into construction technology with a sustainable orientation built into their curriculum.

Mr. Mardfin: That's wonderful because that's where you're going to get the high paid jobs and the synthesis and multiplier effects out of this whole thing.

Mr. Sakamoto: So that's our hope.

Mr. Hedani: Any other questions for the applicant? Okay, we have – Commissioner Hiranaga.

Mr. Hiranaga: Question about drainage. I guess after the project is completed according to the staff report the runoff will be 10.2 cfs. It doesn't say in here what standard meets. Is that a 50-year, one-hour storm or?

Ms. Diane Kodama: Diane Kodama, AECOM. Yeah, it would be a 50-year because it's a ...(inaudible)... condition.

Mr. Hiranaga: One of the standards that this commission has been sort of establishing recently is we're trying to prevent all the runoff, predevelopment, post development from entering the ocean, and we're hoping that you're going to be able to contain the 10.2 cfs on site and not have any of it enter the Kahului Harbor, Kahului Bay. And I'm sure you have that capacity at this point because the campus is not totally built out, but I guess for future consideration as the campus is being built out, hopefully you'll keep that in mind because I know you meet the minimum standard of capturing the increase but what many of the commissioners now are hoping is that you'll capture all the surface runoff and based on your current capacity for retention for the campus, any of this 10.2 cfs be entering the ocean during a 50-year, one-hour storm?

Ms. Kodama: No, because it's going to go to the retention pond for any overflow, the existing

retention pond.

Mr. Hiranaga: Is that where the swap meet is?

Ms. Kodama: It's – yeah.

Mr. Hiranaga: So but for future consideration as you do your design you can keep that in mind because I'm not sure when you're going to reach full build out of the campus but that may become an issue and we're trying to educate the applicants that that's what many of the commissioners are looking for.

Ms. Kodama: Is that what Public Works is going to be requiring or is it's just –

Mr. Hiranaga: No, but it could be a condition of the SMA permit if the commission –

Ms. Kodama: For every project.

Mr. Hiranaga: Well, we're leaning towards that.

Ms. Kodama: And they're going 50-year, one-hour.

Mr. Hiranaga: Yeah. We've asked a lot of the private developers in Kihei and Lahaina to do that. Something to keep in mind.

Ms. Kodama: Okay, we'll keep it mind.

Mr. Hiranaga: Thank you.

Mr. Hedani: Any other questions for the applicant? Okay, seeing none, Director.

a) Public Hearing

Mr. Hedani: We're going to open up the meeting for a public hearing on this agenda item. Are there any members of the public that would like to offer testimony at this time? We have two individuals that have signed up. C. Mike Kido.

Mr. C. Mike Kido: Good morning Chair and Members of the Commission, in deference to your agenda, if I could stand on – my testimony is submitted with this parting comment. PRP strongly supports this project based upon its design, but more so, we'd like to leave you with the thought that we view it as a economic stimulus project of a local nature. I won't repeat what you've probably heard as far as the construction industry is concerned especially Maui County. So again, we strongly support this project and ask for your favorable consideration. Thank you.

Mr. Hedani: Thank you. Any questions for Mr. Kido? Commissioner Mardfin.

Mr. Mardfin: Will you be getting one of the contracts to build this thing or is – do you have a vested

interest in this is what I guess what I'm asking?

Mr. Kido: Vested in the sense that I'm part of the construction industry, but I defer to the administration, but I believe it's going to be a bid situation.

Mr. Mardfin: So you may or may not have fiduciary concern here?

Mr. Kido: It will help the economy and the construction industry in general.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Any other questions for Mr. Kido? Seeing none, thank you very much Mike. Next testifier is John Pye.

Mr. John Pye: Good morning again. Chair Hedani, Members of the Commission. I'm John Pye, I've been a faculty member at Maui Community College for 27 years and I think it's pretty safe to say for 27 years we've needed a new science building on the campus. The current facility is not only over utilized but very nonfunctional. It was built probably a decade before I even got to the campus and was already outdated by the time I arrived. We cannot accommodate current programs. We have students spread all over the campus. We have faculty spread all over the campus. Constant money is going into keeping the building just operating. It's a facility that is not allowing other programs on the campus to accommodate current demand because we can't take any more people in the very few labs. We only have three labs in the entire building which are shared by a number of different faculty. We have issues with different programs having to use the same labs so experiments can't be left set up. We have to constantly tear things down and reset them up again. So it's not efficient. Every lab has its own individual little storage space so there's issues with that in terms of sharing supplies and things like that. One of our ideas with this particular design was having a centralized location where all the programs could share things. So we're looking at being much more efficient and also having much more interaction between faculty and students and making science a user-friendly place where students are excited to come and there'll be a lot more interaction with different programs on the campus which no longer or are currently not happening. So we see this as I said earlier as a living, breathing, learning facility with labs that are dedicated to the different programs. It will accommodate our students and we're actually very excited about it. We put a lot of work into trying to make it as efficient as possible and to benefit the students and residents of Maui County. Thank you.

Mr. Hedani: Questions for the testifier? Commissioner Mardfin.

Mr. Mardfin: You seem to imply that the science facility had a lot to do with the design of this. Is that correct?

Mr. Pye: That's correct. I'm I guess what you would call the lead faculty in the sense that I'm main liaison between the architects and our capital improvements people. But from the beginning, you know, I've observed science buildings all over the country and some our other faculty have as well and from the very beginning this building was designed with everybody's interests and needs in mind. So we sat down as a group, we've planned it from the beginning to integrate as best as we

can and to meet everybody's needs. So it's definitely been a community effort.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: What's going to happen, I read it in here but for the record, what's going to happen to the existing science facilities?

Mr. Pye: I could tell you what I would like to happen to those existing facilities, but the plan is and I don't know if I can say this exactly but I think the plan is that it's going to eventually be refurbished and used for our oral hygiene and some of our nursing program because where they currently are is essentially over utilized. So this is going to be a place where many of those programs are going to –

Mr. Mardfin: So this basically benefits the science people but it also benefits a lot of other faculty and students on campus.

Mr. Pye: Exactly, right.

Mr. Mardfin: By freeing that space up, you get to use it for other things.

Mr. Pye: Right. And the science programs do support pretty much every other program on campus. So that's also a benefit as well. So it's going to free up and we do have very tight space constraints on the campus with all of our programs. And because science, the current building that we have is so small and it doesn't accommodate too much we have to be everywhere which then limits space for other programs. So this is going to free up a lot of other campus resources for programs and allow them to function better.

Mr. Mardfin: How many faculty are there in the science program?

Mr. Pye: Lets see, I can't tell you exactly. We probably have probably about eight or nine-full time faculty in the various different disciplines, number of lectures as well.

Mr. Mardfin: And every faculty member will get their own office?

Mr. Pye: Yes.

Mr. Mardfin: Lecturers?

Mr. Pye: For the most part we hope, especially the full time lecturers will have their own office and then for people that may come in and teach only one or two courses we will have a slightly bigger office where they'll be able to share.

Mr. Mardfin: Yeah, that makes sense.

Mr. Hedani: Thank you very much Mr. Pye. Are there any other members of the public that would like to offer testimony at this time? Please step to the microphone and identify yourself for the

record.

Mr. Willy Gregg: Aloha, my name is Willy Gregg. Aloha Chair Hedani and Vice Chair U'u and Planning Committee Members. My name is Willy Gregg, business agent of Hawaii Operating Engineers, Local Union 3. Our out of work list is at a record high of 75%. Never in the history of Maui County has it been ever this high. We are in tough economic times and want more of a greater time to move forward with a project that will help the future education of Maui County. Yes, we need the work as construction trades for – we are a short term employment industry. Yet, when our job is done and over with, the benefits is for the future of our children from all over the world to have the opportunity to learn and study with the modern tools of technology. We have a time frame for this project so the saying is “use it or lose it.” So please support the SMA for the Maui Community College Science Building project. Mahalo for allowing me to testify.

Mr. Hedani: Thank you Mr. Gregg. Are there any questions for Mr. Gregg? Commissioner Mardfin.

Mr. Mardfin: How many union workers do you expect to be used on this project and for what length of time?

Mr. Gregg: It all depends on the planning of it.

Mr. Mardfin: Ballpark, 10, a 100, 10,000?

Mr. Hedani: Commissioner U'u.

Mr. U'u: One to add comment to the question was, you're never guaranteed it's a union project because it goes out as a lowest bid. So it could be zero.

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

Mr. Hunt: At this time we'll have Danny Dias give the department recommendation, and following the recommendation, this is the opportunity for the commission, this is a reminder, this is your opportunity to offer your comments and your opinions and compliments and that kind of thing. The earlier part of the presentation and your session was supposed to focus on questions and to clarify facts and get all the information out on the table. Then you go to public hearing and you listen to the public and you don't want to offer your opinion before you listen to the public because it's disrespectful of the public. So now that we've had the public hearing and you've got all your facts laid on the table, you can start offering your opinions.

Mr. Hedani: Thank you Director. We're all properly chastised, but I'd like to acknowledge Mr. Mardfin's comment in that women's chemistry and men's chemistry are totally different. Mr. Dias.

b) Action

Mr. Dias: For the recommendation, the Maui Planning Department recommends approval of the

MCC Science Building subject to 11 standard conditions and eight project specific conditions and recommends that the Maui Planning Commission adopt the Planning Department Report and Recommendation prepared for the May 12, 2009 meeting as its Findings of Fact, Conclusion of Law and Decision and Order.

Mr. Hedani: Commissioners? Commissioner U'u.

Mr. U'u: At what appropriate time would it be, I guess, will be to make a condition? Would it be now to make a – make a condition now or after the motion is made?

Mr. Hedani: The floor is open for either discussion or motions at this time.

Mr. U'u: I want to add a condition to the project. One, I want to see the project move forward in a timely manner. I know Commissioner Mardfin brought up that he doesn't want projects at the tail end to kind of be shoved to us, but at times that is just part of the process. Case ...(inaudible)... my house which was a SMA Minor, one bedroom, took a year. It's just reality. I don't want it to happen here because it's going to affect a lot of people. I want to make a condition to propose that the Planning Department work with the applicant to expedite or assist in gaining the approvals needed. That will be a condition. In fact I will state that as a condition. Hopefully I have a second.

Ms. Sablas: Second.

Mr. Hedani: Okay, that would be a modification to the staff recommendation. Do you want to make a motion to accept the staff recommendation at this time? Commissioner U'u.

Mr. U'u: I'll make a motion to accept the SMA. Motion to approve.

Mr. Hedani: Motion to approve.

Mr. Starr: Excuse me Mr. Chair, point of order. There was just a motion made –

Mr. Hedani: Commissioner Starr.

Mr. Starr: There was just a motion made with a second and now you're asking for another motion. Could you clarify?

Mr. Hedani: The motion was a condition, as a modification to the staff recommendation. We don't have any motion on the floor for consideration of the staff recommendation.

Mr. Starr: When one motion is on the floor.

Mr. Hedani: So it's out of order for failure of having a main motion to which it amends.

Mr. Starr: So the first motion is out, you're ruling the first motion out of order?

Mr. Hedani: No, I'm not. I'm ruling the first motion held in abeyance until we can take up the main

motion is to consider the recommendation and then at that point we can add conditions.

Mr. Starr: I don't believe that held in abeyance is part of parliamentary procedure as part of Robert's Rules of Order. If it's –

Mr. Hedani: I can ask the maker of the motion to withdraw the motion until such time as the main motion is presented on the floor if that's your pleasure.

Mr. Starr: I just want clarity and procedure.

Mr. Hedani: Commissioner U'u.

Mr. U'u: To add some clarity, I withdraw my motion.

Mr. Hedani: Okay, your motion to –

Mr. Starr: Excuse me, does the second withdraw the second?

Ms. Sablas: Second withdraw.

Mr. Hedani: Second withdraws.

Mr. Starr: Thank you.

Mr. Hedani: Motion on the floor at this point is to consider approval of the staff recommendation.

Mr. U'u: Motion to approve with conditions added, with amendments to the motion.

Mr. Hedani: Okay. Motion on the floor is to approve the staff recommendation. We'll cover the amendment next. Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion?

Mr. Starr: Could you please restate the motion because what I heard the maker of the motion say is different from what you just said.

Mr. Hedani: Motion is to approve the staff recommendation. Commissioner U'u.

Mr. U'u: I want to add a condition. My condition will be to the Planning Department to assist the applicant to expedite the permit process so we don't have a chance, oh and that's it. Expedite and assist the applicant for the necessary permits needed.

Mr. Hedani: Director, you have any comments? First is there a second?

Ms. Sablas: Seconded by Commissioner Sablas.

Mr. Starr: Yeah, was that an amendment?

Mr. Hedani: That was an amendment.

Mr. Starr: Okay, I didn't hear the word amendment.

Mr. Hunt: It's somewhat of a all encompassing proposed condition to assist them with all necessary permits. There's a lot of permits that are outside our jurisdiction or our authority. We certainly want to expedite any kind of permitting that goes through us. I'm not sure how, I'm not sure the limits or how we would check for compliance.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Where applicable. And the reason I state this because we did make a condition at one time for the Parks Department to work with the people in Leialii to help expedite a park and that is my reasoning behind the condition. If it's achievable by the Parks Department, I was hoping it will be achievable by the Planning Department. In fact, I know it's capable with Jeff Hunt as Director.

Mr. Hunt: Well, when you put it that way –

Mr. Hedani: I hundred percent agree with the intent of Commissioner U'u's motion but normally the conditions are put on the applicant. This is a condition that the applicant can't comply with because it's a condition on the Planning Department. So I would just so that we get things in the right order, while I hundred percent agree with your intent, I would suggest that it not be added as a condition to the applicant but an urging of the Planning Department to cooperate.

Mr. U'u: The reasoning for making the motion was to the applicant and the Planning Director assist each other. I'm not putting it on the Planning, it's the two parties. Granted you cannot make a condition on the county, but I'm making it as a condition with the applicant and the Planning Department to fast track the permit. And like I said earlier, it's been done with the Parks Department at the Villages of Leialii Hawaiian Homes and that was held recently, maybe a year ago, maybe six months ago.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'll be voting against the amendment made by the member from the Carpenter's Union. I'll also be voting against the main motion if the amendment is attached even though I absolutely love the project and want to see it move forward as fast as possible. Because this would set a very, very bad precedent of instructing the Director which project should be expedited and which projects they should pressure other agencies to speed up and then maybe other projects that you know, might not be as attractive for any member's specific purpose, you know, could be told to slow down or whatever. I happen to have a lot of faith in the planners and in the director and in the department that they do their best. I know how hard they work and they try to move things through as fast and as properly as possible. But, I, for one, don't want to see them cut corners in

their process and especially I don't want to be in a position of instructing them to cut corners for one particular project because we love this project or you now, starting to grade projects and tell them how fast they should, you know, and what corners they should cut and what other agencies they should pressure. I think this is a bad precedence and I do not think this is something we've done before. In fact, since I've been on the board we've never instructed them to you know, to fast track one project and not another.

Mr. Hedani: Any other discussion? Commissioner U'u.

Mr. U'u: One. Yeah, I'm not shoving it down their throat. The word I used was "assist" and correct, I do work for the Carpenter's Union. But there's no guarantees that we got this project at all. It goes to the lowest bid and that's a fact and that's how it works. That's fair play. I'm just concerned about it lapsing. That's all. That's my only concern. And you can either vote for it or not and it's up to you, but I'm not shoving anything down anybody's throat. Like I said, it took one year for my house to get permitted. That's all I'm saying.

Mr. Hedani: Commissioner Sablas.

Ms. Sablas: And the reason why I second the motion because I really agree hundred percent with your intent. We had public testimony earlier about a single home and the delay in the process it took. So I am concerned because we do have a window of opportunity to build something on Maui that we will all be proud of. And I think the intent of your motion is to be able to do all we can as citizens to make sure this project moves along in a very timely basis for very many reasons and I think it's wise to put it down that that is a real concern for us because it is for education. I think around the board we've seen, we're all excited about this project. So actually I would like to ask the opinion, I mean, I respect Commissioner Starr's input too about what he said about setting precedence, but I'd like to ask the opinion of our Planning Director about this and does it make sense.

Mr. Hunt: I understand the idea to urge the department to work with the college to get this project moving forward and we would certainly do that. The difficulty I have with it is unless it's amended it seems to argue that we are responsible for any necessary permitting and the department doesn't have the authority. We get saddled with a lot of the burden of streamlining when in reality, the delays are based on other agencies in other departments and other laws and other processes. Because we're the central clearinghouse, the focus seems to be on the Planning Department and I understand that some of its frustration and some it's lack of knowledge but in terms of a solution, it's not a good solution to focus just on the Planning Department. If this commission wants to urge us to work with the college on expediting this permitting, it's within our authority, I don't have a problem with urging us to work with them. But I think the expectation has to be realistic on what you're expecting of us.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I don't believe this is an appropriate project specific condition to placed on this application. I'd like to invite our distinguished Corp. Counsel to provide comment.

Mr. Hedani: He has his tie on today so we can get really good advice. Corp. Counsel Giroux.

Mr. Giroux: Thanks Kent, thanks Chair. I think this is one of those conditions that's wide open for debate. I think you've heard the department's position. I mean, from a pure legal sense, a condition that doesn't have an enforceability clause is really a moot issue being that if it were to pass and to be on as a condition, it wouldn't be illegal yet it would not be enforceable. And unenforceable condition does not necessarily make the whole permit moot. It would just be seen it's own individuality of well, the department's unable to enforce it. I think it does send a strong message though to the department that this body does see it as a something that it sees as a policy issue that should be looked at and I think it should put a red flag into the department that the project shouldn't be seen sitting on anybody's desk not moving. So again, how you're going to send that message I think the clearest way is to just state it but being that if it were to be in a condition, again, unenforceability doesn't necessarily make an illegality. So again, the debate can rage on, ...(inaudible)... can come to a vote and still be friends.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I would like to thank the legal counsel. He's not wearing cowboy boots so I can take his comments even more to heart. I just want to say that I probably, with this amendment, with all fairness, I am not too keen about it because it's a joint type of effort between the developing agency which the Maui Community College as well as the various community activity elements as well as the county agencies. And so it is understood and it does not have to be a part of this approval process and so I'd probably since I second the actual adoption of the staff position, I will probably be voting against this amendment because I think there's another amendment that is more meaningful and I think we can address that additional amendment was suggested by Commissioner Mardfin. Thank you.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: You know, I just feel this is really the wrong way of going about trying to accomplish what we'd all like to see. I think the department has received the message. You know, I just am really concerned about setting a precedent and for a number of reasons. One is that, we do set conditions and they're important, but we set them on the applicant and we say the applicant has to do this or that. In this case, we're making a condition on the department. And I don't know if that really is a sensible. You know, we could just as well say you know, lets make a condition that the Government of China do x, y and z or lets make a condition that, you know, some other third party do something because the department is not the applicant. The department is trying to serve the applicant and I just don't want someone else coming through and saying well, our project was slow because you know, other projects had conditions to expedite and then ours wasn't expedited. I don't think that's the place we want to be. I think more we want to be is with the knowledge the department is doing its very, very best in this case and in other cases as well.

Mr. Hedani: Planner Dias.

Mr. Dias: Okay, if I can just clarify two things. As far as expediting this project, we're on the same page and we have, we've done our very best. The problem, if you're wondering why it took so long

to come before you, a lot of that had to do with the funding and that's why the applicant made that point that, you know, they're concerned about funding because they already lost some funding for this building and that's why, you know, if you're wondering why it took almost a year to come before you it's because they had to do a complete redesign of the building. And any time you do that, that adds time.

Now as far as the condition, you know, like I said, we're on the same page, we're trying to expedite this as much as possible and we have done a few things that we normally wouldn't do like for example, one month ago, this project was before the Urban Design Review Board. Usually we wait until the meeting is over before we schedule before this commission. This time we did it before sort of crossing our fingers and you know, just doing the little things that we could do.

Now as far as our role, this is basically the biggest obstacle right now. As far as planning is concerned, once they get that permit it's Public Works, it's Water, it's a lot of other agencies. So just to clarify that.

Mr. Hedani: Commissioner U'u.

Mr. U'u: No, I agree, and I made the motion to bring attention to the project, and whether it was negative or positive I think I got the attention. So we can vote on the motion, and whether it passes or fails, I think the attention was brought up on how we feel about the project.

Mr. Hedani: Chair would invite the maker of the motion to withdraw the motion at this point.

Mr. U'u: I'll withdraw the motion.

Mr. Hedani: Is that consent of the second?

Ms. Sablas: I withdraw my second.

Mr. Hedani: So the motion to amend has been withdrawn. What we have on the floor is a motion to approve the staff recommendation. Is there any further discussion? Commissioner Mardfin.

Mr. Mardfin: I move to amend by adding a condition that from this point on in the planning, design, construction, implementation that people from the college be involved in doing systematic studies of the impact of this on actual energy, water and other resource needs, and that this studies be published at some point in the – within five years of the occupancy of the building.

Mr. Shibuya: Second.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion?

Mr. Hiranaga: Point of order. Did the staff actually read the recommendations before we start amending the recommendations shouldn't we hear the recommendations first?

Mr. Hedani: Danny. Director.

Mr. Hunt: It's up to the commission if you want us to read every condition. In the past, sometimes we simply said as recommended in your packet. We can read them if you'd like. We could read the project specific ones. It's up to you.

Mr. Hiranaga: I would prefer at least brief discussion but on the project specific.

Mr. Hedani: Okay, Danny, do you want to go through the project specific recommendations.

Mr. Dias: Read every one?

Mr. Hiranaga: Summarize.

Mr. Hedani: Danny, hold on, we have a motion on the floor to amend, I'm not going to try to restate the motion because it was a very long motion. Director do you have the motion to amend adding the condition to conduct studies, etc.?

Mr. Hunt: It's cryptic. People at the college do systematic studies on actual resource impacts and needs and this be published and that's where I lost –

Mr. Mardfin: Within five years.

Mr. Hedani: Discussion? There's a second Commissioner Shibuya. Does the college have any comments on this? Clyde, do you have any comments on this?

Mr. Sakamoto: On the SMA generally or on the condition?

Mr. Hedani: On the condition to add studies to evaluate the performance of the building.

Mr. Sakamoto: I was just conferring with my colleague John Pye and was curious to know whether or not we had designed specific metrics and instrumentation for water as an example. And what we are hoping not to do is to add any additional costs at this point or any additional requirements to prolong, lengthen our permitting process. What we will pledge to do because we are committed to being a sustainable campus is to create the kind of instrumentation and metrics that will allow us to report on all of these different kinds of energy related systems. So we're pledged to do that for an educational standpoint, for community benefit, community education. So we're pledged to do that. Having a five-year period within which to do that is not a problem for us. We are going to have to take a look at how specifically we're going to undertake those studies, but I don't think that those are insurmountable kinds of tasks for us at all.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'm going to be voting against this amendment. I don't want to burden the applicant again. I would urge the commission to bring this to a vote. I am confident the Governor, the Mayor, the Chancellor and the Director will work together to bring this project to fruition and the sooner we get to a vote, the quicker they can start working on this project. So I urge the commission to bring this to a vote.

Mr. Hedani: Discussion? Ready for the question? Question on the floor is the amendment to the main motion adding a condition. Director.

Mr. Hunt: The college do systematic studies on the actual resource impacts and needs and this be published within five years.

Mr. Hedani: Discussion? Commissioner Starr.

Mr. Starr: Yeah, I believe that part of the wording and the intent of the motion was that this be used as a teaching program for the school of sustainability. I understand the college will do it but I just think the motion should, as originally made did reflect that. Perhaps Commissioner Mardfin can rephrase that.

Mr. Hedani: Do you want to restate your motion?

Mr. Mardfin: I don't. I agree with Jonathan that I did have other things in there including getting people involved from now, at this point and going forward, but the Chancellor understands the intent of this. They're accepting it. I don't think we need to burden. I think the wording is sort of immaterial, the essence of it is in here. I'm happy to go with it the way it is.

Mr. Hedani: Are you ready for the question? All those in favor of the motion signify by saying aye. Opposed, nay. All those in favor of the motion signify by raising your hand. Opposed same sign.

Ms. Sablas: Wait, I'm sorry, what motion – is this motion?

Mr. U'u: Is it amendment?

Ms. Sablas: Condition is that what we're talking about?

Mr. Hedani: Motion on the floor is to amend by adding a condition for the college to do studies on the efficiency of the building. You want to restate it again, Jeff.

Mr. Hunt: That the college to do systematic studies on the actual resource impacts and needs and this be published within five years.

Mr. Hedani: That gist of it. So what we're voting on is on the amendment. All those in favor of the amendment signify by raising your hand. Four in favor.

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

**The Motion to Have the College do Systematic Studies on the Actual Resource Impacts and Needs and the Results be Published Within Five Years, Failed.
(Assenting - W. Mardfin, W. Shibuya, J. Starr, L. Sablas)
(Dissenting - K. Hiranaga, B. U'u, D. Domingo)
(Excused - J. Guard)**

Mr. Hedani: Any other discussion on the main motion? Commissioner U'u.

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

Mr. Hedani: That's already on the floor. Any additional discussion? You ready for the question. Commissioner Mardfin.

Mr. Mardfin: I'm going to vote in favor of this because even though the amendment died, I believe the Chancellor's made a commitment to go ahead with this. So if I thought there wasn't the commitment I'd maybe vote against it. But I think there's a commitment there so I'm happy to vote for the main motion.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: Yeah, Mr. Chair, one of the members had asked that the project specific conditions be read, are we just blowing that off?

Mr. Hedani: Oh, lets go ahead and do that. Danny, the project specific conditions.

Mr. Dias: All the project specific conditions are basically stuff that we got from comments from different agencies so I'll just be very brief here. Project specific condition no. 12 reads, "that verification shall be provided by registered civil engineer that the grading and runoff generated by the project will not have an adverse effect on the adjacent and downstream properties." That's from Public Works.

Also from Public Works is condition no. 13, "that the applicant shall be responsible for all required improvements as required by the Hawaii Revised Statutes, Maui County Code and all pertinent rules and regulations."

Condition no. 14, "that the detailed and final drainage report and best management practices plan shall be reviewed and approved by the Department of Public Works prior to issuance of grading permits. A copy of the approved document shall be filed with the Maui Planning Department prior to initiation of construction."

From the State of Hawaii, DLNR Engineering Division, "that the applicant shall provide the water demands and calculations to the State of Hawaii, DLNR Engineering Division so it can be included in the State Water Projects Plan Update."

"That the archaeological monitoring plan approved by the State Historic Preservation Division for construction of the new MCC Science Building shall be implemented and a qualified archaeological

monitor shall be present during ground altering activities as required by SHPD.”

From DAGS, “that DAGS be contacted prior to any potential disturbance of bench mark F22 which is near the proposed project site.”

From State of Hawaii, Department of Transportation, condition no. 18, “that the applicant shall obtain approval from the State Department of Transportation for the transport of oversize or overweight materials and equipment on state roads.”

And lastly, condition no. 19 which is from the State DOT, “that the applicant shall obtain approval from the State DOT for all work done within adjoining or affecting state highway rights of way.”

Mr. Hedani: Okay, additional discussion? Commissioner Starr.

Mr. Starr: Yeah, I just once again want to thank the applicant, without adding any additional condition or trying to slow the project down I would like to request if possible to try to decrease the runoff because we know that all runoff that’s coming from landscape and you know, sod grass that enters the ocean is helping to destroy our reefs. So to the maximum extent you can engineering wise and also if possible utilize some pervious pavement and build a great project the students of the future will thank you for.

Mr. Hedani: Additional discussion. Seeing none, ready for the question? All those in favor of the motion signify by saying aye. Opposed nay.

It was moved by Mr. U’u, seconded by Mr. Shibuya, then

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

Mr. Hedani: Carried. Thank you. Congratulations, excellent project.

Ms. Renard: Thank you very much.

Mr. Mardfin: Vote count.

Mr. Hedani: Vote count has been requested. Vote was unanimous.

Mr. Mardfin: Eight - zero.

Mr. Hedani: We’ll take a five-minute recess.

A recess was called at 10:09 a.m., and the meeting was reconvened at 10:19 a.m.

Mr. Hedani: Director.

Mr. Hunt: Your next item involves Mr. Vince Bagoyo, Jr., on behalf of Maui Waiohuli, Partners requesting a Special Management Area Use Permit for the Hoonani Subdivision in order to subdivide to create 28 single-family residential lots and a larger lot to include the drainage retention basin for property situated on Hoonani Street at TMK: 3-9-001: 007 in Kihei. The file number is SM1 2008/0024 and Jim Buika is the staff planner assigned to this.

This project's a little unusual in the sense that we scheduled it for public hearing and I think the staff planner and I believe the applicant is in agreement with this they've discussed a deferral to get more information. There's some concerns about the design and the development within the flood plane but that's what it's zoned for. So I think the staff planner will go through the – we're recommending that we go through the presentation and you listen to the applicant and you can clarify and ask question and then give direction as to when we do bring it back what kind of additional information you would like to see. So with that point, I'll turn it over to Jim Buika.

2. MR. VINCE BAGOYO, JR. on behalf of MAUI WAIQHULI PARTNERS requesting a Special Management Area Use Permit for the Hoonani Subdivision in order to subdivide to create 28 single-family residential lots and a larger lot to include the drainage retention basin for property situated on Hoonani Street at TMK: 3-9-001: 007, Kihei, Island of Maui. (SM1 2008/0024) (J. Buika)

Mr. Jim Buika: Thank you Jeff, and just to clarify, as well as conduct the public hearing today on the project. So that if we do defer it, we can continue. Good morning Chairman Hedani and Commissioners. My name is Jim Buika with the Planning Department. I'd like to thank each of you for your expertise and continued service to the people of Maui County.

I have with me today, Mr. Vince Bagoyo, the project consultant, who will present the project to you. We also have the one of the owner representatives, the project engineer and engineer who has completed a FEMA Flood Hazard Study from San Francisco and also the traffic engineer. I'll allow Vince Bagoyo to introduce the project team to you. I have also asked Joe Krueger from Public Works to be here today to answer any Public Works questions you may have for Public Works projects in the area.

With the Chair's permission, I would like to proceed by first giving you a brief background on the project stating our department's position on the project which Jeff actually has done, the director and then ask Vince Bagoyo to brief you on the project and its associated proposed mitigation measures. So proceed.

Mr. Hedani: Please proceed.

Mr. Buika: Thank you. As background the proposed project is to construct 28 lots only, Hoonani Subdivision for single family homes and a small number of ohanas with associated infrastructure on a vacant parcel that is 12.88 acres in size. So only 28 lots are proposed for the 12.88 acre parcel.

The project is located in Kihei mauka of South Kihei Road and will extend the existing Hoonani Street further mauka of South Kihei Road. The project is located just south of the new Kamalii Alayna Subdivision, Betsill project. The project has all of its land use entitlements to construct single family dwellings within R-2 residential zoning. Waipuilani Stream and the Waipuilani Gulch run through the property approximately diagonally and we'll show you that. Thus the proposed subdivision will be located within the 100 year flood plane and is prone to flooding for which base flood elevations have been determined by a detailed flood, FEMA flood plane hazard study. Besides having proper land use entitlements the project has proposed to comply with the county flood hazard development ordinance and will elevate the homes above the known flood plane elevations. So it does have many good mitigation elements built into the project and does recognize where they are building.

Regarding the history of the project, the project first was submitted as an SMA application in 2003, virtually the same project. At that time, the Planning Department asked for a detailed FEMA flood hazard study. That study went forward with the concurrence of the applicants. It took two or three years to complete and get the FEMA review. By the time it got the FEMA review, the Planning Department had actually closed the original 2003 SMA application. And so right after the closure of the application, of course, we got the FEMA approval for the study, so in November of 2008, a second application which was virtually the same as the first, came in for the revised SMA application. So we do have the FEMA study which does confirm the flood plane in excellent detail. So it was a two-year expensive study that went through ...(inaudible)... with FEMA. We do have Dan Mathias, Wood Rogers engineer available to answer any questions and he will give you a short presentation on the FEMA study associated with the project.

The purpose of today's hearing just to reiterate what the Planning Director stated, it's for the planning commission to review and comment on the special management use area permit application for the proposed Hoonani Subdivision. We are asking the commission today to hold the public hearing on the SMA application, conduct the project briefing and to deliberate on the project. However, the Planning Department recommends holding the application in abeyance and defer approval until the Planning Department receives additional information to meet the SMA standards for review and to insure that there are not any potential cumulative adverse impacts to the environment and I can explain all of these later on in my recommendations.

The department has worked extensively with the applicant and I would like to acknowledge that the project will incorporate all the mitigation required to meet Maui County Code and beyond. So they are doing good mitigation on this project and that's very positive.

And again, the reason for requesting the deferral is that after scheduling the public hearing notice with the commission, the department's analysis and findings of fact has concluded that there may be potential cumulative adverse impacts to the environment under the Coastal Zone Management Act, HRS 205A and the SMA Rules for the Maui Planning Commission. So the department's intent today is to receive additional commission comments on the project before we proceed.

The applicant does concur with the department's recommendation but of course, seeks approval for the SMA permit by addressing all of the department's outstanding issues today and they will present their mitigation and their project to you now.

And finally, their reasons for the deferral are spelled out in the recommendations memorandum attached to the department report that you have in front of you. And with the Chair's permission, I can present the department's concerns regarding potential cumulative environmental impacts following the applicant briefing and public testimony to the commission if this is okay with you.

Mr. Hedani: Okay, Commissioners? Commissioner Starr.

Mr. Starr: Yes, while, you know, I'm looking forward to the presentation on this, I do not think that it's proper to have the public hearing today since what's being presented we know does not meet the criteria especially regarding the flood zones and the SMA criteria. So I don't think it's fair to have a public hearing when the project is going to go away and come back changed to meet the criteria. I think the spirit and the letter of the SMA is that there should be a public hearing on the project as it's going to be actually done and that it's premature at this time and could leave us subject to problems later if we hold the public hearing now. And at a later date when the project comes before us in a realistic form, not hold a public hearing and not go through the notice requirements at that time. So my feeling is we should have the presentation but hold off on the public hearing until the project is in its – closer to its final form.

Mr. Hedani: Any questions for staff at this point? Commissioner Hiranaga.

Mr. Hiranaga: If the applicant's presentation is not in its final form, I'm kind of questioning why you are even going to be reviewing this presentation because we're going to have questions that will probably be resolved with the final product. So I'm just wondering why we are even going through this exercise.

Mr. Buika: May I comment? I mean, it is the applicant's proposed final product. And of course, we can condition or the commission can condition the final product and it does meet code. However, just the department feels there are potential cumulative impacts including life/safety hazards and I would like to hear your comments on the project also so that it can be crafted so that when the project does come back it will meet the desires of the commission and gain approval from the commission.

Mr. Hiranaga: One follow up question.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: What is the difference between abeyance and deferral? Why didn't the department recommend deferral of this matter after the presentation?

Mr. Buika: Well, there really is no difference between abeyance and deferral.

Mr. Hiranaga: Okay.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm kind of viewing this like a draft EA where you're getting comments from us at this

stage and then it comes back as a final EA. Now I know there's not an EA involved here, but that's how I'm viewing it. So I have no objection to having a presentation now, getting comments from us. But I do concur, and I have no problem – I have no problem having public hearing now but I agree with Commissioner Starr that when all the questions have been answered that there be a public hearing at that point also. So I don't want to say we won't have a public hearing today because people may have come to speak on it, but I do think at the time the final comes before us there ought to also be a final – a public hearing at that point also.

Mr. Hedani: Is that the staff recommendation Jim?

Mr. Buika: Yes, that would be agreeable. May I ask the applicant if they're agreeable to that? Would that be, a second public hearing? Yes, they're agreeable to that. There are public here today that can have positive input on the project I do believe.

Mr. Hedani: Okay, thank you. Corp. Counsel.

Mr. Giroux: I just wanted to – Jim did call me about this issue and I told him that, you know, the department really has to study the Topliss case to understand the situation they're in. They've got an application, there's been an recommendation and basically because all of the public hearing notices have gone out, this is the public hearing date. Now as a commission, you have to listen to the applicant. You have to listen to what his project is. If that project is not going to meet the standards of the SMA, then the duty of the department and of the board is to come up with mitigative measures. At this point, what's going to happen is that if the mitigative measures are so drastic that the applicant has to go back to the drawing boards and actually come up with new blue prints and schematics and engineering counts then the next hearing because it's on the agenda, the public will have a chance to testify. It's just not going to be called a public hearing. A new public notice is not going to go out in the paper, it's not going to go out to the neighbors, but because today is the public hearing, if it's continued, anybody who had interest would have come to this meeting and would have been notified of the next hearing and they would have gotten the Sunshine Law notice six days prior to the hearing and I think they could also contact the department to find out when the next hearing date is. So what we're dealing with is, is the difference between a public hearing and a hearing and since the public hearings all went out, I think it's the duty of the department to actually conduct the public hearing and then let the commission put its input in and allow the applicant a chance to react to the comments of the commission.

Mr. Hedani: Okay, if there's no objection what we'd like to do is proceed. We'd like to proceed with the applicant's presentation.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, thank you very much Mr. Chair. I still believe that we should be holding an additional public hearing with notice at the time when this comes back in a form that may be different since life and safety issues are apparently of concern to the department that I do feel that we should create a mechanism to have a public hearing at a later date. I don't believe that that's

problematical for Corp. Counsel as long as we do have process today since it has been noticed to require it to be noticed for a second public hearing. Can I get comment from the Corp. Counsel on that?

Mr. Hedani: Jim.

Mr. Giroux: I think it's a matter of cost and logistics. As far as the letter of the law, they're required to send out certain amounts of notices and also the department is required to send out those public notices. After that, it's a matter of you know, procedurally how if this board doesn't set a date certain in the future, then obviously the project becomes in limbo. But again, if you don't set a day certain, it could also be as a denial and if you have a denial without mitigation, then again, we're going to fall right into a lawsuit. So you have to – I think the best thing is to listen to what the applicant has and see with all of the facts that they have today what you can do with this and at the end through discussion we can cross that bridge.

Mr. Buika: Hopefully we can come very close I think with your input.

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

Mr. Buika: I'd like to introduce Mr. Vince Bagoyo who is the consultant on the project.

Mr. Vince Bagoyo: Good morning. Thank you Chairman Hedani and Members of the Commission. The applicant is Maui Waiohuli Partners. One of the general partners is Mr. Rodrick Fong. They're not your typical developer. They're actually long time local residents here on Maui. They've been here for generations. Some of them are here this morning and I'll introduce them to you some time this morning.

The project team, myself, Wayne Arakaki who is our civil engineer. Mr. Phillip Rowell and Associates did our traffic update. And of course, Mr. Dan Mathias, who prepared the FEMA approved plan for this project and Xamanek Research did the archaeological plan.

The project profile it's total of 31 lots, 28 single family lots and two roadway lots and one large undeveloped single family that will contain about 1.5 acres of retention basin. The minimum lot size 7,500 square feet. The total land area is about 12.886 acres.

This is project location. It's located in South Maui. It's about a half a mile north of Azeka Shopping Center if you're familiar with that area. This is Hoonani Street right here and it's bounded by Piilani Highway and for South Kihei Road. The project is actually surrounded by both single family and condominiums and apartments on South Kihei Road.

This is your TMK. Once again, this is the project, proposed project site. This is proposed subdivision plan. It's about 28 residential lots. This is going to remain undeveloped and a drainage retention basin will be constructed around this vicinity.

Just to give you some aerial photo of the project site. The property is actually right here and Waipuiani – that's the Piilani and that's Waipuiani Stream that comes through half of the property.

This property is the Betsill's project that you approved in 2005. Actually the density of Betsill's – our proposed density is only 27, 28 lots on a 12.886 acres. You approved Betsill's – I believe about 95 residential lots and some of it is the R-0 Zero Lot Line properties. I think you have about 95 lots on a 12-acre parcel. This is the grading and drainage plan and Dan and our civil will probably give you more detailed presentation on the drainage and grading plan. This is the proposed retention basin.

This is the proposed improvements to drainage improvements. The proposed drainage improvements will consist of about 1.5 acre detention basin to provide adequate storage area for off site runoff to mitigate potential flooding and also act as a sedimentation basin. Right now we don't have a sedimentation that catch a flow. It's now, it's a free flow into the ocean onto the shore on South Kihei Road. The other is improved drainage channel within project and along Hoonani Street. The Hoonani improvement is recommended by the Public Works which we have concurred. There will be grass landscaping on the project site to minimize and mitigate soil erosion and increase runoff absorption and protection the surrounding areas.

And this is kind of unique eight-foot wide bike path and the reason that we included this is because when we met with the – when the applicant met with the Kihei Community Association and also Kihei community this is one of their request is to have an eight-foot wide bike path within the project area that ultimately will connect to the north-south collector road you're familiar with the proposed project that Public Works has.

As Jim mentioned, our drainage and flood control mitigation plans have been reviewed and approved by the U.S. Department of Homeland Security, FEMA. It was an extensive review and approval. It took about two to three years and the approval was sent to Mayor Tavares on April 17, 2008 and also to the Planning Department.

Again, this is our landscaping plan as required under the Code.

The existing land use designation is State Land Use District Urban. It's single family on the Maui Community Plan designation. The Maui County zoning is R-2 which a minimum of 7,500 square feet per lot. It's within the Special Management Area and of course, the flood hazard designation is A3, AO and C.

Just to kind of give you some of the view photos of the project. This photo is looking – this is Hoonani Street actually looking northeast. This view photo is from the north boundary of the property which is right here and Betsill's project is right over here and just looking south.

Again, this is, there is this wall that's on this west side of the property. The property is currently used for kind of a landscaping parking area for I think for one of the tenants that's using this facility. Again, this is the frontage of the property. It's a view from the property frontage which is really ... (inaudible).. And this is looking northeast. This is a view Waiono which is the last street on Namauu Street. This is looking north. Just to kind of give you a flavor of the surrounding area which is really single family. It's an old subdivision. And this is a view from Aina Street which is right next to the Waiono Street again looking north.

This is on the south boundary of the property just looking north. This project right here is currently under construction. This is actually, this is one of the Betsill project, that 95 lots. This is currently the stream by bisect the property and it's now being used for I think there's some gardens there. Whether or not they have permission to use it, but there's some gardening going on and it actually pretty good garden and maybe one of the general partners, maybe Roderick can explain a little more about the garden whether or not they have permission to use it. But it's a fairly, it's in the middle of the drainage system. Again, this is the drainage which is the upper portion of the property.

This view is again, just looking west and this is Hoonani and this is the South Kihei Road right three in the background. These are the condo units and apartments. This are on the old residential subdivisions. In fact my best man lives right in this property. This is a view along Hoonani Street looking east and this is South Kihei Road right here. Just wanted to again, show you the – this is the upper portion of the property. Again, this is looking north and that's again, the Betsill, portion of Betsill's project.

Just to give you an idea of the stream that connects to the Waipuilani Street and this is going to be undeveloped at this point in time.

Just wanted to kind of give you some – this is the proposed north-south collector road that's currently dirt road and the paved road is I think ends right here. Namauu Street is along this area and this is again, this is looking north. This is the proposed north-south collector road and this is the boundary, the upper boundary of the proposed project site. The reason I wanted to show you this is because one of the concerns from the Planning Department is to how can we move people in case there's some flooding in emergency. And so we have agreed that, you know, there's actually at the end of Namauu Street there's a barricade actually right now that can be used in case you move people to higher ground if ...(inaudible)...

This is the Betsill, I believe this is 95 lots subdivision. The reason I wanted to show you this because you did approve this in 2005. This is the drainage improvement that they have that you approve for this particular project. Our proposal is actually more extensive improvements than what the planning commission had approved in 2005. We have a retention basin and also improvement to existing drainage channel.

Just to kind of, again, give you another view of the drainage channel that this planning commission approved in 2005. You know, it's a grassed area. It's fairly shallow. I believe they have about close to about two acres if I'm not mistaken. I was just reviewing your staff report when you approved this in 2005.

For the key project key points and community benefits, we'll definitely create a direct construction jobs. It will be fee simple affordable lots for Maui's residents. Under the Work Force Housing, we are required to provide 40% of the total developed lots with different price range. And it also will provide cash contributions to Parks and Recreation for South Maui. The current assessment fee in South Maui is about \$17,240 per lot. We are providing an eight-foot bike path along the proposed drainage way within the subdivision that will ultimately connect to the north-south collector road. The sewer assessment and of course the water system development fee.

Like I said, right now there's really no improvements, currently improvements within – with regards to the drainage within the project site and also the downstream property. This project will construct a retention basin and drainage improvements to minimize and to mitigate potential flooding within the project and downstream properties. The proposed detention pond will also act as sedimentation basin to mitigate and to minimize potential pollution along shoreline and South Kihei Road. We'll improve the existing drainage channel along Hoonani Street and that's the recommendation by the Public Works which we have agreed and of course, the bike path. And the proposed drainage and flood control have been reviewed and approved by FEMA. It's a very extensive plan that we were asked to do. As Jim have stated earlier, we have I believe the improvement that we have agreed to do is beyond what the ...(inaudible)... calls for.

The applicant had to community meetings with the Kihei Community Association and the Kihei community for their input. The input that they have suggested again is the bike path. That's all I have. If I may, I'd like to ask, you know, Mr. Dan Mathias to give the FEMA and I would be more than happy to respond to any questions that you may have later. We had – just a final note, I just want to thank the Planning Department, Jim Buika for their help and their guidance through this process. We do have different opinion. We feel that we have met all of the conditions under 205. In fact, I think the improvements that we are proposing are more than what the code calls for. But we also have agreed to work things out if there's any other standing issues that this planning commission may have and we are in concurrence with that. We want to listen to you and give us your ideas as to how we can make it even better and I just ask you for your patience and for your support. Again, your developers are not your typical developers. They are local. They've been here for generations. Some of them have died. They've been waiting since 1970. And you're going to meet them today. Some of their sons and daughters. So they're not your typical. They've been here. They know the island. They know South Maui. I think some of them probably have built many of the affordable housing that many of us enjoy here today. And so with that, I'd like to ask Dan to make a presentation. Thank you so much.

Mr. Hedani: If you could identify yourself for the record please?

Mr. Dan Mathias: Good morning Chairman and Commissioners. My name is Dan Mathias. I'm a certified flood plane manager. I was tasked by the Maui partners to work with the Maui partners and their civil engineer to verify that the development will meet the criteria set forth by FEMA. We went through the FEMA Conditional Letter of Map Revision process. Put in an application and after a lot of work with FEMA had that approved.

When you got through the CLOMR process there was really two things that we did. One of them was that we defined the existing 100-year flood plane as best as we possibly could. The older maps were kind of very broad brushed and general so we wanted to make sure that the elevations for the 100-year flood through the site were well-defined so that the civil engineer could design the development to insure that the residences are as safe as possible.

The second thing that we did was to verify that the design of the site would not increase flooding off site for the 100-year event. The means to which that was done by the civil engineer was a broad channel for Waipuilani Gulch. He also provided a retention and detention on site just to take care of the on site runoff. And then lastly made sure that all the residential structures were at least one

foot above the new well-defined 100-year water surface elevation and that any structures that are non residential that are in flood plane are either without walls or have breakaway walls so that water doesn't pile up behind them in case of a flood.

This is the grading plan for the site. I think you've already seen this. But north is to the top of the page and Waipuilani Gulch flows from the right side to the left side through the property and the retention pond is on the north side of the property.

This is the existing effective FEMA map through the site and the orientation has now changed so that north is to the left. This is the site. The site right here and this is Waipuilani Gulch and this was the really broad brushed flood plane that they had estimated many years ago. And so part of the CLOMR process was to update that and go to the next page and you can see what we've got here. This is the site right here, and what we found was that when we took the new topographic data that we had, elevations provided by the design engineer and LIDAR provided by Maui County, we found that the existing Waipuilani Gulch can't really convey the 100-year flow and what really happens is a lot of that flow spreads out to the north through these other areas. And so with a lot of work with the design engineer and a lot of work with local surveying and a lot of work with Maui County we've defined the existing 100-year flood plane before any development happens as best as we possibly could. And we have concurrence from FEMA that this is the existing 100-year flood plane.

This is the 100-year flood plane after the proposed project. And so, we took special care to make sure that we were conveying flow through the property so that we weren't increasing any flooding up here and that we weren't making this open channel so efficient that we were increasing flooding down here. So if you turn back to the last slide, kind of go between the two, and you can kind of go back and forth a couple times and see, not that one, yeah, this one and the next one, kind of go back and forth, you can see that a lot of care has been taken to provide a design that insures that flood plane doesn't change. And then lastly, of course is that we will use these elevations in the final design to insure that the residences are above this flood plane. Thank you.

Mr. Bagoyo: That's all I have Mr. Chairman and Commission Members. Again, you know, we feel, the applicant feel that we have met the requirements. However, we have also concurred after the commission's have their input we have concurred to put this in abeyance until your next available meeting and the idea for that is to kind of also listen to your concerns. And so if we can even make this project a lot better, it is good for us. But we also ask that you consider this project and we do want to ask for your support. Again, the applicant's representatives are here. Mr. Roderick Fong is here. Actually his dad, Danny, owned this property with several local partners in the 70's. They have been very patient and they want their children and grandchildren to have a lot, to have some ownership. This is why they're here before you. If you feel as commissioner members feel that we have met those conditions which we believe we did, we ask for your concurrence. With that, I'll be more than happy to respond. Again, we have the traffic engineer. We have the civil engineer is Mr. Wayne Arakaki here this morning and again, thank you so much.

Mr. Hedani: Thank you very much Vince. Any questions from the commission at this time? Commissioner Mardfin.

Mr. Mardfin: Jim is this basically an infill project? What you'd call an infill project?

Mr. Buika: Yes, it is. And you know, it is community planned single family, R-2 zoning, State Urban. So it is an infill in a residential neighborhood.

Mr. Mardfin: And it totally meets what the proposed Maui Island Plan at this stage, what the Maui Island Plan says, it's all in conformance with that?

Mr. Buika: Yes.

Mr. Hedani: Additional questions? Commissioner Shibuya.

Mr. Shibuya: Mr. Buika, can you tell me where this 24-inch culvert is located in South Kihei Road in relation to this project?

Mr. Buika: Yes I can. It – the project is mauka of South Kihei Road and it is a 24-inch culvert that – it's a 24-inch culvert that runs under South Kihei Road. We do have Public Works, Joe Krueger, here who can explain the drainage for the area from the Public Works Department point of view if you would like.

Mr. Shibuya: In my readings I had some question in terms of its capacity of taking the flow.

Mr. Hedani: Mr. Krueger.

Mr. Buika: Could I call up Joe? Joe Krueger from Public Works.

Mr. Joe Krueger: I don't know where that 24-inch culvert is. But the Waipuilani Stream crosses South Kihei Road at a undersized bridge. The bridge that is on South Kihei Road now is undersized.

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

Mr. Hiranaga: Just clarification. When you say, undersized bridge are you talking about the width for the roadway or for the channel passing under the bridge?

Mr. Krueger: Actually right now, the channel is not big enough to carry the water. The road, we were going to widen the road but the community wants to keep it at two lanes. So we're doing another long range study to justify keeping South Kihei Road and the north-south collector road at two lanes. So our road projects for the north-south collector and the South Kihei Road are basically on hold or waiting for that long range study which is going to take two to four years.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, Mr. Krueger while you're up there. I have some real concerns about what could happen here and I don't want to see the County end up being left holding the bag and there is a potential. This is being built in a river, and you know, we all have seen the amazing things that can happen when the right storm comes and dumps the right rain, in the right place and the river runs. What, you know, especially considering that the road culvert is undersized what do you see as a

potential liabilities that could happen if there is a big event and suddenly the thing is a raging river and there are houses built there up above it?

Mr. Krueger: This will not be built in the stream itself, but it will be built on the banks, but it's part of the flood plane. As happened the last storm we had, you know was pretty big. It wasn't real big, but it was big enough to flood the banks and the area had water. Because the bridge was undersized, we did have water on South Kihei Road but that didn't last too long and it eventually flowed through. The next subdivision that is adjacent to the stream did have water go through it, but since the homes were built above the flood water elevation, none of the water got into the house. But they were all, you know, they're all put on notice that it's a flood zone and when they get their mortgage the mortgage company say, well, you're in the flood zone, you have to get flood insurance. So they all have flood insurance. But we can't stop them building within the flood zone because we have the flood zone ordinance which allows building in a flood area.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: I don't think this is for you, maybe for James or maybe Mr. Bagoyo. It looks like Lot 29, subtracting the detention basin, to my eye looks like about a quarter of the property, is there any potential to – what do you plan to do with that Lot 29?

Mr. Bagoyo: Again, thank you so much for your question. Part of the Lot 29 of course is going to be a 1.5 acre retention basin. Ultimately, the applicant will probably gonna have to come back and see what they can do on the remaining acreage. Keep in mind they are allowed as a density I believe a total of about 60 lots. And one of things that the Planning Department have asked us to do and I think this is one of the issues to come up with some alternative design, subdivision design to include this area. And what we have designed for, but they're not planning to do it, actually we can probably come up with another – a total of 52 lots. Again, the density is 60, but you know, you may want to ask the applicant, the owner in terms of their long term plans, but right now, it's just for the retention basin. This is really quite expensive to develop at this point in time until you develop the north-south collector road it will probably economically expensive to develop this remaining. North-south collector has been in the planning stage for some time if I recall.

Mr. Mardfin: So they're not willing to preclude any further development on that. They may subdivide that also?

Mr. Bagoyo: That's correct.

Mr. Mardfin: Are they planning on in the interim using it as a park area for the development?

Mr. Bagoyo: Maybe that question could be asked to the applicant when he come up to testify. Again, the Kihei Community Association – we've asked the Parks and Recreation Department if we could – initially we planned to dedicate about 14,400 square feet of park area. They prefer not to. We met with the Parks and Recreation. They just want to concentrate on the regional park as opposed to individual small parks. And so the assessment fee currently on South Maui per lot is about \$17,240.

Mr. Mardfin: On scaling, how steep is that Lot 29? I mean, I don't have a feel for – I know those are probably 20 feet –

Mr. Bagoyo: It's actually pretty flat.

Mr. Mardfin: Okay.

Mr. Hedani: Any additional questions for the applicant at this time? Commissioner Mardfin.

Mr. Mardfin: I'm concerned about the terrestrial biota. It's on page 13 of the full report and it's on page 7 of the conclusions. But it said that, "the field assessment," I'm reading from page 13, "the field assessment inspection work was performed on June 11, 2008 on the property by Mr. Vince Bagoyo," yourself. Do you need any special qualifications to be able to do that?

Mr. Bagoyo: No, actually I've done this several times. There's a number of references that you could use to do the flora and fauna. One of which I have used is the "Field Guide for Birds of Hawaii Tropical Pacific that was under Douglas Pratt, 1989." Also, I've used the "Hawaii Invasive Species by Bishop Museum, by George Staples, 2004." And the "Manual of Wayside Plants of Hawaii, by Willis Pope in 1968." And of course the "Hawaii Land Mammals." So there's a number of references that you could use to do that study. I did a quadrant and looked at from east to west and from north to south. The property is quite – it's a vacant property and it's mostly haole koa and kiawe and some grass. That report was submitted to the Federal and the only the comments that they have, it's probably in your staff report that there's a potential – it's not within the property, it's outside the property which is quite a ways to keep in mind when you're doing your construction some of the moth that's supposed to be and also the blind spider which is endangered species. There's only one that I know of, blind spiders that's endangered species that's in Kauai that has to be protected. But you know, those things that they have they have noted in their recommendations to us.

Mr. Mardfin: I'd like to follow up with James.

Mr. Hedani: Any additional questions for Vince at this point? Commissioner Starr.

Mr. Starr: I have a number of questions that I'll want answered but I just want to stay on this terrestrial biota. On page 13, it's kind of a curious statement and I'd like you to explain that. "The subject property is undeveloped. The vegetation on the property is predominately formed of invasive species associated with being undeveloped, vacant land." It seems to lead one to believe that undeveloped vacant land is by nature predominately formed of invasive species.

Mr. Bagoyo: Yes, buffalo grass, kiawe are pretty much, those are the invasive species that you have. And for Mammals mostly it was just the mongoose that predominately within those open areas and I have noticed quite a bit of wild chickens that are present during my field research and field inspection.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I was just looking at the exhibit up there of the site plan and I'm looking at Exhibit 3 of the staff report, and the lot configurations seem to differ especially those lots within the proposed loop there. You've got on the far left, lower left-hand corner, you've got four proposed lots. And your site plan here has three. So I'm just wondering which is the correct site plan.

Mr. Bagoyo: Yeah, this is the flood study.

Mr. Hiranaga: Well, it says up there "proposed site and grading plan." So which plan, which site plan is the correct plan?

Mr. Bagoyo: It's actually Exhibit 3 in your –

Mr. Hiranaga: I guess, and I don't know if maybe this is a comment instead of a question. I'm not a civil engineer, but I'm not –

Mr. Bagoyo: Mr. Wayne Arakaki is here also. He did the design.

Mr. Hiranaga: You have a lot of flag lots in there. I think you need to go back and revisit the configuration of lots to try to make them more regular shaped instead of these flag lots and private roadways. If you're going to be coming back to us if you don't get approval today, that's one of my concerns is all these flag lots and private roadways you're proposing.

Mr. Bagoyo: Yeah, and this is one of the discussions that we have with the Planning Department to minimize the flag lots. So we're trying to see if there's any way that we could reconfigure this site plan without losing any more, any more lots. And so there's actually several alternatives in terms of redesigning it and to minimize some of the flag lots that you have noted Commissioner Hiranaga and thank you so much for that suggestion.

Mr. Hedani: Okay, Commissioner Mardfin. Before you begin Commissioner Mardfin, there is six people that have signed up to testify on this particular issue, but go ahead.

Mr. Mardfin: Now I'll do my follow up with James. Back to page 13 of the terrestrial biota, are these normally done by biologists or botanists?

Mr. Buika: I checked with U.S. Fish and Wildlife Service, and unlike State Historic Preservation Division that has strict monitoring, inventorying, monitoring guidelines, they do not have specific regulations and monitoring guidelines for doing these reports. They did tell me that usually they have people who are familiar with these types of surveys consult with applicants to do that. Mr. Bagoyo who has experience I think in this probably has done a good job. Part of my problem was that I did not see any study or outcome of the field survey. The comment was that there are no endangered species on the property and as the application was sent over to U.S. Fish and Wildlife Service, they came back with an extensive letter that the sea birds require mitigation, there's a black sphinx moth, there's the hoary bats that need to be dealt with in terms of endangered species, the habitat and the individual and then the I guess the dwarf naupaka was the fourth one. And so those, I didn't see – and that was part of my concern that potentially there might be potential adverse impact to endangered species because U.S. Fish and Wildlife has come back with

comments after submitting their result, after the applicant submitting the results to Fish and Wildlife Service. So concluding the loop – I think we can – to me, if you approve the project, we could condition the project that the applicant work closely with Fish and Wildlife, get guidance, possibly redo these surveys to insure that there will be no potential or no adverse impacts to endangered species. At this point, because I don't feel there's been a conclusion on this between Fish and Wildlife and the applicant that there potentially could be adverse impacts to endangered species.

Mr. Mardfin: So that's why in your recommendations on page 7, Item F-1 you wrote, "lack of verifiable evidence that no endangered species or its habitats would be adversely impacted." Is that correct?

Mr. Buika: Yes. Right now there is lack of verifiable evidence. I do believe we could or at the – you know, if the commission wanted to, they could condition it prior to beginning of construction that they work closely and that we conclude and get a concurrence letter from Fish and Wildlife Service that they're satisfied that these conditions have been met, no endangered species are at risk.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes, this is – the neighboring project, the Betsill project in recent rains, in fact the last two big events, there was a lot of public comment that damage was done to the reef, that there was a lot of dirt that ran off when this river ran and that there was irreparable harm done to the nearshore waters. I have a real concern with the amount of earth that's going to be moved on this site to change the existing river bed and build the retention basin and I want to ask I'm not sure if Mr. Krueger or Mr. Miyamoto would be the right person on this, but I mean, what could we do short of stopping it to make sure that we don't really have a problem. It seems like you know, the normal BMP is to put these little silt fences and then all of a sudden there's a raging river and that becomes a joke. You know, you have mountains full of dirt being washed into the ocean.

Mr. Hedani: Joe.

Mr. Krueger: The amount of dirt that occurred along the shoreline especially the condominium in their parking lots was two to four feet deep. Up Kula, you know, there was so much debris in the stream that it plugged up all the culverts and it overflowed into the road, it moved one house a block down the road. I mean, it was a really bad. A big storm like and when we have that steep grade, it's very difficult to stop a muddy water. And the water, you know, the mud dissolves into the water so the water already has – and you can't filter that out. You can't stop that from getting into the ocean on a major storm. On a low flow, you know, the water's clean. You can see the bottom. So that's no problem. But when you have a major storm event, it's very, very difficult to prevent the muddy waters from getting into the ocean. But what we have in Honolua, we have those desilting basins and where it used to take six months for the ocean to get clear again, it takes maybe two, three weeks, but it does turn color after a big storm, but it doesn't last as long because we have all those desilting basins in place.

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

Mr. Mardfin: I guess this is for James, for staff. On page 10 of your recommendations, under L, you said, "provide an opportunity for the Kihei Community Association to once again review and comment on the proposed project design as well as alternative project designs. The Kihei Community Association has not reviewed the project proposal since 2004 and I presume this what Mr. Bagoyo meant when he said it had been reviewed twice. But not since 2004. Are there plans before it comes back to us to have the community, Kihei community have another go at this?

Mr. Buika: That is my recommendation or the Planning Department's recommendation. And the reason for that is also part of the Planning Department's recommendation is to ask the applicant to provide alternative site designs and through that alternative site design process possibly the site design they have now is the best mitigation alternative and that's what I had hoped that they would have done. I had asked for some alternative designs and really didn't get what I wanted prior to this public hearing. So we're kind of left there. But my – what I'm talking about here is, when I gave you a quick recap of the history of the project, the first application was sent to the Kihei Community Association. They had two meetings, not sent to it, but they had two public meeting and I stand corrected, I think it was 2005 when they had those meetings and there were no objections at the time, but they only saw the one site design. So the process that I'm encouraging now is that the applicant come up with alternative site designs. How about putting these same properties on the other side of the stream so that they're not within the flow pattern of a large storm. How about a less dense pattern rather than 28 potentially, 26 or 24, how about rerouting the Hoonani Street. One of the problems I see is that the – some of the homes back up their backyards will be right along that gulch, right along the stream. How about moving Hoonani Street as a buffer up along that potential drainage there so that we have some separation between the homes and the direct channel and the water. I've talked with the applicant. The applicant is willing to potentially increase the size of the retention pond that would eliminate some of these nuisance storms, some of the lesser storms, the 25-year storm, you know, I'm not talking as a professional engineer, but some storms will not have water running underneath homes if you increase the size of that detention basin to say double the size as an example.

So those are, also an evacuation route, alternating moving Hoonani Street down directly as it comes into the neighborhood. Excuse, I just want to get the pointer here. Run, this is a private road, but potentially run Hoonani Street down towards the south, run it along here, along this part of the property, run it out this lot in between the drainage, out to the north-south collector road which runs – bounds this property here providing an evacuation route.

One of my main concerns was, is life safety is that the Hoonani Street runs out into this other neighborhood and what it will do is route the traffic, say if there's one or two feet of water in the neighborhood, it will route traffic back out to South Kihei Road down here potentially putting people's lives in danger in flooded area. However, I was incorrect in that there is a route as Vince presented, showing those pictures of the north-south collector road, Namauu Street here which runs parallel where I'm showing you, runs out and runs perpendicular to the north-south collector road. So there is a way out. So my main concern of life safety actually I think has been solved here. So anyway, my thought is if we do require the applicant to come up with alternative site designs, present those to the Kihei Community Association which I believe is much more active now, much more organized now than it was then. I'm not sure, but I think they potentially would have some positive feedback and potentially improve the project.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Jim, when you talk about evacuation route is this for a tsunami or a downstream flooding?

Mr. Buika: For downstream flooding because the last thing we want to do is if water, you know, these homes – another good mitigation measure that the applicant has agreed to, we've talking about, is potentially conditioning the project so that – with the detailed flood study they are willing to raise on large concrete piers and columns, the homes, two feet above base flood elevation. Right now the FEMA regulation is at base flood elevation. So at the 100-year storm, the water would run at the floor level. Our code, our Flood Hazard Development Ordinance asks that the or requires elevation to one foot above that so we have more mitigation. In this case, because we potentially could have velocity of water running underneath the homes to raise it two feet above elevation. So that's for the 100-year storm. So the homes will be elevated with a well-defined flood plane through the flood study, we have raise these up above what the 100-year flood waters would be. So if the flood waters are two feet in one place, the homes would be elevated four feet high. So back to your question, I forgot what the question was, but just to make sure I do answer it.

Mr. Hiranaga: The evacuation route for downstream flooding and not tsunami evacuation.

Mr. Buika: Right, it's not for tsunami. We're up about 16 feet we're almost a half mile from the ocean. There is not a defined tsunami inundation zone. There is a kind of a draftsman best guess at what an evacuation zone. The tsunami evacuation zone actually does touch a couple of these properties here, everything from the ocean out to here. But that the – evacuation zone is a very, I guess it would be a liberal zone that has no scientific basis for the evacuation zone. So I think we're out of it, and yes it is. So it would be rerouting people in their cars. If water started running my scenario is people want to save their car, they want to get their families out of there, they're going to move down Hoonani Street and come back into a worst flooded area down on South Kihei Road.

Mr. Hiranaga: Just a follow up question, when you say the developer is willing to require two feet elevation above the flood zone, they're selling vacant lots, so they're just going to make that a requirement, a building requirement as a CC&R?

Mr. Buika: Yes. We have discussed CC&Rs and we can condition it so that all of the flood hazard information is revealed and that strict compliance with the flood hazard ordinance is adhered to during construction.

Mr. Hiranaga: One of the concerns I have is when you trying to meet the 40% affordable housing requirement, you're just based on the price of the vacant lot. Then you're going to have all these additional costs such as elevating the house, flood insurance premiums. So it would seem like you'd want to make the affordable lots outside of the flood zone because you're going to burden these people once they bought the lot with these additional costs in order to build their homes.

Mr. Buika: Yes, we realize there will be additional costs, flood insurance will be required.

Mr. Hiranaga: It's very expensive.

Mr. Buika: Yes, but the applicant is – but because we are meeting flood, FEMA flood insurance rate map criteria, it will lower the insurance as low as possible and Maui is participating in the community rating system. Is the only island in the community rating system and it's lower. So there will be some costs associated with the affordable housing. However, the applicant is willing to go with the affordable housing.

Mr. Hedani: Thank you Jim. Commissioner Starr.

Mr. Starr: Part of the functions that are supposed to make this work under flood conditions are that they'll be – the water will be able to flow through the area that is in the flood zone that it wouldn't be blocked. But I know that over time what happens in neighborhoods is people build stuff. You know, they add stuff. They add little walls. They add gardens. They add berms. They add things, pools, things that will block the flow of water, but we're being told that if that happens then it's possible that it will create additional flood danger, but there's no mechanism that I know of to really stop that especially since only vacant lots are being sold. You know, if the harm was only that it could harm – you know, do damage to that person's property is one thing, but here it could put other people upstream their life or limb at risk. Are there any mechanisms to ensure that stuff doesn't get built after the fact, that will change these flow patterns?

Mr. Buika: I'm not sure of any. We do have the Flood Hazard Development Ordinance which restricts development in the flood plane to minimize these things. Certainly it is a concern. I don't know of any mechanism.

Mr. Hedani: Okay, I'd like to go ahead and consider taking testimony from the public. We've had about six people that have waited since 8:30 this morning to testify on this agenda item and we can question the applicant as well as all of his consultants after lunch again, but if we can give the public an opportunity to testify at this time. I'd appreciate it if you would withhold any further questions until afterwards.

a) Public Hearing

Mr. Hedani: If there's no objection I'd like to go ahead and open this up for public testimony at this time. The first person that we have signed up is Mr. Mike Williams. Is Mike still here? Thank you Mike. Thank you for your son's service to our country. By the way, Mike's children have served collective five tours in the Middle East.

Mr. Mike Williams: Thank you very much for recognizing that. My name is Mike Williams. I am a part owner of Waiohuli Partners. I ask you to consider our SMA approval. My family has been on Maui for five generations and this project is very important to us. My 84-year-old dad would like to see this approval before his time on Maui comes to end. We've already lost three of our partners waiting all these years. I also would like a chance for my sons to come back from the service and have a place that they can build their home. So please give careful consideration to our project. Thank you.

Mr. Hedani: Thank you very much Mike. Next person to testify is Norman Franco.

Mr. Norman Franco: Thank you Chair Wayne Hedani and Commissioners. Little history on the property and how it came about. Back in 1978, Danny Fong and Max Maude, Danny is Roderick's dad and I got together to provide affordable housing and purchased this property from the Thompson family and the Kenolios and it was two-time process because we had to close escrow with one group and then the other group. We brought in our friends and family members. You might recognize some of the names. Dave McClung who was a former State Senator president was one of the investors. Joe Williams, Mike Williams, Kathy Hew Victor Endo, ..(inaudible)... Sakakihara and Arizumi Brothers. These are all local people and we've been waiting patiently all these years and I thank Roderick for carrying the ball after his dad passed away. Just lost Max Maude recently. It's been a long, long haul since 1978. So we know the problem with drainage. When we purchased this property Piilani Highway wasn't even put in at that time. So that kind of changed the configuration on how the water flows downhill. So appreciate your time and effort in trying to get it approved. Like Mike said, now it's next generation we're looking for, because you know, the old timers are fading away. I'm one of the last guys standing and I'm 63. So you know, I have three children that are also looking to have a place to live on this island that they are born and raised in. So it's a local family trying to provide housing their next generation and other people that need affordable housing. Thank you very much.

Mr. Hedani: Thank you Norman. Questions? Commissioner Mardfin.

Mr. Mardfin: You say you've waited all this time. Did you put in applications like 20 years ago or something for this?

Mr. Franco: I think some time in Hannibal Tavares administration we had tentative approval but the drainage was always the consideration. I remember talking to Alice Lee and some other members of the County Council. In fact, we had a onsite visitation. George, I forget his last name, Kaya, George Kaya was the county engineer that met us at the property. I think we had Wayne Nishiki there, Alice Lee and some other people and they pretty much left it up to us to come up with a plan and in the interim Danny Fong passed away and luckily Roderick took it over and got it to the point it is now, but it's been a long haul.

Mr. Mardfin: So it wasn't the county that ...(inaudible)... from –

Mr. Franco: No, we took it to the county, that time the engineer was Warren Unemori and Ralph, I don't know who the Public Works Director back then but we had tentative approval subject to the question of drainage. We actually went on the property a few times, Danny and I went when it was raining quite bad. Didn't see really lot of water coming down, but like I said the whole thing got reconfigured when Piilani Highway was built. So now I guess it is a problem since the last rains they've had. Yeah, we've tried everything and it always boil down to the drainage and what kind of plan we can come up with and I think they have an excellent plan now.

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

Mr. Shibuya: I'm very concerned. Thank you for testifying and informing me of the problem that the

Piilani Highway has an impact on the flow rate that Waipuilani is now receiving. Can you describe that a little bit better for me?

Mr. Franco: Well, one of the things that was created above our property was the Peter Baldwin project, what's it called? Piilani Village. Piilani Village if you look right above the property, there's this huge, huge canal that comes almost up to our property line. It's up to where that north-south collector road will be. These are things done you know, before we even started making a proposal to develop our property. Our property is probably one of the last makai of Piilani Highway vacant parcels that are subdividable. So we impacted by everything around us. I'm not an engineer, who can give you a study or anything like that, but we're near this huge canal, how wide do you think that is? The Piilani? It's about a 150 feet wide and if you put that kind of a canal through a property, makes our property useless.

Mr. Hedani: Additional questions for the testifier? Thank you very much Norman. Mr. Roderick Fong.

Mr. Roderick Fong: Thank you Chairman Hedani and Members of the Commission. My name's Roderick Fong. I'm a general partner in this probably about 20-member hui, somewhere between 15 and 20 members. They bought this property in the '70's and I just remember Max Maude and my father and Norman getting together and it was like going nowhere and I remember saying, well it's been 13 years, but now it's been 30 years, so I guess it's been 17 years with me. It's been slow and long process and you know, we're just trying to, you know, sort of expand what the existing conditions in Namauu Subdivision and so forth is. I decided a long time ago and the concept hasn't changed very much in the last 15 years that I just said, I'll concentrate on just expanding from the existing subdivision outwards and not worry about – we talked about drainage basins and so forth. So the sizing and what will be required because of the existing drain. We didn't want to work on the northern side of the project. So that was the biggest reason for this 27, 28 lots design that we have.

Talking to the residents, being around that area, going down there during some of the heavy storms I've never seen sheetflow on the, you know, that area of the – like I say, 20 or so lots and it just maintained running through the existing drainage area which isn't very deep. If you stand on the property looking towards the ocean, it's a very flat property with the channel being only probably have the size of this room and maybe not any deeper than this room in the deepest area. So less than eight feet or five feet. So briefly I can come back and answer questions. I just wanted to testify a little and if you had a brief questions. But I wanted to also introduce one of the residents on the property Mele Nalu who will be speaking next. She's been helping me watch this property, kind of watching for any homeless and any problems in the area of people doing drugs and everything else. We would like to, you know, do a good development and see that this area is taken care of in terms of hazard from fire and from just people going in and throwing rubbish and making it look like a mess out there. We always had that problems. If you have any questions?

Mr. Hedani: Commissioner U'u.

Mr. U'u: Just one question Roderick, I know a lot of talk has been about the drainage and you said you never seen the sheetflow up to that area. Would you be, will you – say you make this

subdivision, you feel it's safe enough to where even your own kids could live there?

Mr. Fong: Yes, in fact I felt that we weren't going to really market this property, it was just among the hui members like Mike said and Norman saying, get lot of the members to go into this property. I like this property. I mean, it's really a nice property and as far as sheetflow and stuff, I've never seen it. I've never seen the flooding. Some of the Hoonani residents talked about it backing up and just coming up but never overflowed that wall on the side of them on the north side of their properties.

Mr. Hedani: Commissioner U'u.

Mr. U'u: So you're saying that by raising the two feet which is a foot over and above what is recommended that would be adequate?

Mr. Fong: Oh yeah.

Mr. U'u: Because exceeding already, correct?

Mr. Fong: I think the majority of, you know, this last 50 years, okay I don't want – yeah, I'm 50 years old. So the last 50 years I would say that property's been dry. You know, so I wouldn't have – I have never seen a 100-year storm and I don't want to see it, but I felt this whole property has been dry all this time. I've never seen you know, running water on this property. So the two feet would really, you I mean, according to the FEMA maps and everything else, there is that 100-year storm that could flood this area.

Mr. U'u: Speaking of FEMA, my next question is, is that typically normal? I don't know if the director can ask to wait for three years for a FEMA report. I have no idea believe me, but just a question.

Mr. Fong: Yes.

Mr. U'u: It's a norm?

Mr. Fong: Like we said earlier, we were ready to – we had the SMA application, we were going to have actually the dated hearing but it was recommended from the Planning Department, I've talked to Francis Cerizo and because Betsill turned in their – had their hearing and turned in their FEMA report, they felt that we should – there wasn't requirement but they felt that it would be a great asset to do it now instead of being assigned to do it when the project – ...(inaudible)... way it would have to be done or whether it needed to be done for approvals through the planning commission.

Mr. U'u: Thank you.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: If these aren't planned on being marketed too much or at least mostly to the existing members, which lots would be low cost housing and when and how would they be sold?

Mr. Fong: Well, this affordable home requirement came in the last few years of the 40%. So that was new to me. I mean, so –

Mr. Mardfin: You don't know which of these lots would be for the –

Mr. Fong: No, we haven't even looked into that. I mean, it's all the same lots, right now it's 7,500 square feet minimum. I thought about, I asked the question now because of this affordable home ordinance does it change, you know, if I was the one getting the affordable I would love to have the 7,500 and build a small cottage and rent that out and be extra affordable on top of what I'm getting in the market out here most places. Everyone told me that not to change the zoning. Don't get into changing the lot sizes and the requirements that you have on the lots.

Mr. Mardfin: I guess I'm concerned because every subdivision needs some infrastructure to be put in before you can sell the lots. So you'll have a lot of up front money. But if you're not selling these on the open market then you're not going to have the revenue stream to pay for the infrastructure so that the affordable housing lots will be sold.

Mr. Fong: No, we're still selling it to the members. I mean, whatever the market price is. We're not giving it away.

Mr. Mardfin: Okay.

Mr. Hedani: Additional questions? Thank you Roderick. Next person signed up is Mele Fnefeuiaki. I hope I didn't mess that up too bad.

Ms. Mele Fnefeuiaki: That's right. Thank you. I stay in the Hoonani Street and I have two house over there from I say about over 15 years I stay there and I never see any problem for flood in that place. I'm the one who take care the people who always throw rubbish, homeless for this property. That's it.

Mr. Hedani: Thank you. Questions for Mele? No questions. Thank you Mele. Tali Vaha.

Mr. Tali Vaha: My name is Tali Vaha. I live 53 Hoonani. Four houses away from this subdivision. I hope this subdivision will be soon approved to keep away the rat and centipedes and the chicken from this area. I live there for nine years and no problem about this place. Thank you.

Mr. Hedani: Thank you. Any questions for Tali? Commissioner Shibuya.

Mr. Shibuya: I just wanted to find out if you had any knowledge or you understand that area to have some cultural significance. Was there a heiau there before or was there a separate activities going on in that area?

Mr. Vaha: No.

Mr. Shibuya: Thank you.

Mr. Hedani: Any other questions? Thank you very much Tali. Jennifer Stephens.

Ms. Jennifer Stephens: Hi, aloha, my name is Jennifer Stephens and my family and I have lived on the end right near the proposal for about 35 years. We just have two main concerns. One would be traffic. There are a lot of kids on the street and there's not much parking due to all the people building on their lots. And also flooding, evacuation. We've never seen flooding in that area or near our house, but South Kihei Road always during the last few years has been closed down due to flooding. No emergency vehicles have been able to get in and out of our street during that time. So those are just mainly our concerns for that area. We would love to see maybe speed bumps if the project did go through on our street so we could slow down traffic. Thank you.

Mr. Hedani: Thank you. Questions? Commissioner Starr.

Mr. Starr: Thank you for testifying. In the bad flooding instances, you mentioned that vehicles could not get into the street. How deep was the water between – on South Kihei Road or between South Kihei Road and your house?

Ms. Stephens: On South Kihei Road right at the entrance of Hoonani Street I would say at the worse I've seen it, probably about waist high. So it's been pretty bad and there's no other way out of that street and I'm assuming there will be now. You know, but like Mr. Buika was saying when – if they do reroute it to Namauu Street and then the only way out is South Kihei Road that doesn't really help.

Mr. Starr: Okay, thank you.

Mr. Hedani: Thank you very much. Questions? Commissioner U'u.

Mr. U'u: Maybe this is for Director Hunt. Being that north-south collector road is being studied again, does that have an effect or was that the motive to get that north-south collector road to open up access because of flooding in that area? And has the – it said it was community driven to go back and study. So in essence, did we dig themselves a hole by doing that?

Mr. Hunt: I would believe that there would be a number of traffic issues generating the need for that collector road, but maybe Public Works could tell us more specifically.

Mr. Hiranaga: Mr. Chair, shall we close the public hearing before we go into discussion?

Mr. Hedani: You have a comment Mike?

Mr. Miyamoto: Actually the north-south collector is primarily a north-south corridor roadway to add additional capacity in that direction. Since as you've heard Director Morioka from the State DOT mention that in their review they estimate about 12 lanes are necessary to parallel the shoreline of which originally we had four planned for South Kihei Road, four planned for the north-south collector and four planned for Piilani. Since the community has – you know, as a result of the community input, South Kihei Road is somewhat limited to two lanes, the north-south collector will be limited to two lanes and Piilani Highway will be limited for four lanes. So funding for the north-

south collector has been contingent upon a study being done for additional mauka lanes to provide that total of 12 lanes at this point. And the State is in the process of doing their update at this point. They do have a consultant on board. When that project starts I'm not aware of the State's standpoint.

Mr. Hedani: Thank you. Are there any other members of the public that would like to offer testimony at this time? Seeing none, the public hearing is closed. Staff, do you want to revisit this after lunch? It's five minutes to 12:00. So do you want us to go ahead and take our break for lunch now or what do you want to do?

Mr. Buika: Yes, please.

Mr. Hedani: Okay, we're going to break for lunch at this time and we'll reconvene at 1:00 p.m. Thank you.

A recess was called at 11:55 a.m., and the meeting was reconvened at 1:00 p.m.

Mr. Hedani: We're going to have a few words of wisdom from our esteemed Director.

Mr. Hunt: From the Director anyways. I just thought I'd give you a little background on how we got to where we are. Generally speaking flood planes are areas that we should avoid development and a lot of communities and even in our community we have some that we zoned open space. In other communities they are actively moving density and homes out of flood planes just because they're problem areas. In our community we don't quite have that strict of an interpretation. Kihei for example has many areas that are subject to flooding. The examples have been shown that the Betsill Brothers have obtained development in that area and the department certainly supports affordable housing but we need to make it clear that development in a flood plane is a problem generally speaking.

Now the specifics of this one is the County didn't designate it as open space. It's community planned for single family. It's also zoned for residential. At the same it's in a flood plane as has been noted and it's also within the SMA which our interpretation of the State's statutes gives you authority to regulate development in the flood plane and I think Jim's staff memo speaks to protecting flood planes or regulating development to an extent within the flood planes and Jim can speak to that more succinctly. So some of the issues that we raised in talking to the applicant is how much density should we have in this flood plane. Even though it's zoned for that, should we at least try and mitigate the impacts through reducing density, perhaps through designing the subdivision.

Another option is to increase the size of the detention basins. So some of the concerns that we're trying to mitigate, not to deny the project, but to mitigate its impacts to the neighbors, impacts to the culvert that has been noted that is undersized. The problem with culverts is if we have a lot of development upstream, the flood waters come in and it knocks a lot of the loose stuff down, even though these homes will be raised two feet above the base flood level, there's going to be debris in the yard. There's going to be storage sheds, there's going to be play pens, there's going to be lanai furniture, bicycles. A lot of people when you raise your home up on posts to get it out of the

flood plane, they put lattice around it to make it look nicer. Well, the flood waters come in and knocks that stuff right away. So as a body we have to wrestle with what I consider somewhat of a delicate balance on this particular project to provide for affordable housing, to give the applicants a right to develop their land in compliance with our community plan and zoning, yet at the same time to mitigate this potential impact which the scientists are saying it's in a flood plane. So it's not a matter of if, it's just a matter of when. It's in a 100-year flood plane and flood planes are interesting when you study them. Hundred years doesn't mean okay, every hundred years exactly it floods. It means that's a likelihood. There's a likelihood there's a 200-year flood that's going to come through. So it's going to flood. There's not much question about that. So we're working with the applicant and we're trying to work with you now is what kind of mitigation do you folks believe is adequate. If you believe it meets the intent of the law right now as it is that's fine. We'll work with the applicant and implement that. If you think there's some potential mitigation that should be explored and I've alluded to that and Jim has then we will work with the applicant on that and come back to you.

Mr. Hedani: Discussion? Commissioner Starr.

Mr. Starr: Yeah, we've all seen what happens when people build houses, and you know, an area develops and then all of a sudden a problem, you know, loss of property, loss of life and it seems that at that point memories are short and you know, the fact that there were warnings done when it was ...(inaudible)... you know, like the problems in Lahaina. Where does the liability lay? I mean if we're the agency responsible and we're being told it's in a flood plane and at some point there's a likelihood of flooding and there's a problem with evacuating the area. You know, we're looking at a subdivision with all these flag lots where the driveways are very likely to be washed away or inundated. I mean, whose liability is it? You know, can they sue the county, can they sue us, can they sue the developer or is it just buyer beware?

Mr. Hunt: I wouldn't worry about liability in terms of you getting sued or the county getting sued. That's why we have excellent attorneys like James Giroux to defend us. Anyone can file lawsuits and believe me they file them all the time. Most of them are frivolous or baseless. But none the less, what I would caution you or advise you to do is to look at the criteria and the laws that are before you, and again, it's community planned single family, it's zoned residential, it's within a flood plane and it's within the SMA. Oftentimes in planning we get competing goals and I think to some extent this is one of those projects. I wouldn't advise you to deny the project. I would advise you to explore mitigation of these impacts.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Director, when you were describing the problems that can arise with a flood it had to do – you had mentioned several things but you talked about bikes and lattice work and stuff like that and all that stuff has to deal with the development after the lots have been sold off. It seems to me one of the things that was discussed earlier is it CCNR or –

Mr. Hedani: CC&R.

Mr. Mardfin: CC&Rs. Maybe the CC&Rs should be developed before the subdivision's allowed to

subdivide. Where you would have sufficient information in that that would serve as a mitigator.

Mr. Hunt: I believe it's within the power of this commission to ask for CC&Rs to designate or to mitigate against potential impacts. I didn't mean to – I kind of went long on the debris flowing down. I mean, one of the concerns the Planning Department has is you've got a dense residential subdivision that's subject to flooding. Is that good public policy? I mean, we all want affordable housing. Do we want it all up on four, five feet – if they're going to raise it two feet – in some areas it's three-foot flood, some of them are going to be five feet up on piers, post. It's a delicate project. It's a tough one.

Mr. Hedani: Thank you. Any additional discussion? Commissioner Shibuya.

Mr. Shibuya: I tend to look at this situation and problem little bit more in a global fashion here. As Mr. Franco mentioned when he testified, that there's a problem in terms of the water being more plentiful these years because of upstream kind of developments. And so that starts out in terms of I would like to have the county take a look or have some kind of study identifying areas that are zoned for urban development especially in the higher elevations and how are we going to slow this water that's coming down the slopes and how we're going to have this best management practices of desilting these gulches and especially Waipuilani Gulch that we can mitigate this amount of water we can have more permeability in the gulches so that the problem, the pilikia down at sea level where this proposed development is happening that we can minimize this stress.

The other part is when we start as you probably know is that when we start developing these lands, these lands today have no impact because you don't have water runoff because you have – the land is not built on and everything is permeable except for the large rocks. But now you're going to have 7,500 square foot lots and probably going to have at least 20% of that impermeable, now you got a problem. We've got to deal with 20% of the water that's going to runoff and it's not going to go down into the ground. So now we gotta put conditions on so called affordable houses that have some kind of catchment or some way of mitigating this water drain off so it doesn't impact the minimized culvert. And that's why I brought up that culvert situation because now a culvert can't handle it, cannot handle it and so the water backs up and that's causing the flooding. So we need to look at it, if you have alternatives and I'm talking to the county, if the county can start looking some ways in providing us with some tools in which we can look at and consider that be very helpful in this area. Thank you.

Mr. Hedani: Mike, do you have any comment on that?

Mr. Miyamoto: Thank you Mr. Chair. This year we did put in additional funds in the FY2010 proposed budget to come up with a couple joint studies with the Army Corps of Engineers to do watershed area studies. The two areas that we did identify were one South Maui and the other one being the Kaunakakai area on Molokai. So we are beginning that process with them. Joe, our engineer, has already a project to start looking at the drainage master plan for South Maui. So that is in progress. So we are looking in those directions.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So the drainage system for this proposed subdivision all the additional runoff created by the improvements will be channeled into that detention basin?

Mr. Buika: Yes, plus it will be able to handle more than the runoff according to the engineering calculations. So the detention basin is larger than the runoff calculated for the subdivision.

Mr. Hiranaga: So the predevelopment and post development surface runoff will be channeled into the detention basin and retained there for a 50-year – is it a 50-year or 100-year storm?

Mr. Buika: I'd like to have the engineer, drainage engineer answer that, Wayne Arakaki.

Mr. Hedani: Please state your name for the record please.

Mr. Wayne Arakaki: Wayne Arakaki, engineer. Yeah, as far as the runoff is concerned we're going to handle pre and post drainage quantities.

Mr. Hiranaga: And additional offsite runoff coming from above stream?

Mr. Arakaki: That's right.

Mr. Hiranaga: So in effect what will be flowing into the existing drainage channel makai of the project, the flow will be reduced by these improvements?

Mr. Arakaki: That's right.

Mr. Hiranaga: Thank you. One more question to Public Works. I'm not that pleased with this channelization where you're creating hard surface culverts basically which, you know, I'm hoping that the Public Works Department can come up with a way to make the gulch more permeable versus requiring the developer to gunite basically the Waipuilani Gulch. And one of my concerns is when you do that channelization you increase velocity of the flow and the existing drainage channel makai of the project which is a straight line to the ocean, I mean, that's like the worst thing you can do now is to create a concrete channel straight lined to the ocean because you just increase velocity. There's no absorption. So I'm hoping that there's ways to create this drainage path through Waipuilani Gulch without requiring the applicant to create these hard surface sides and bottoms.

Mr. Hedani: Mike.

Mr. Miyamoto: Mr. Chair, if he's referring to the drainage – the existing drainage ditch that's along the north side of the property, that's been a source of maintenance problems for our staff. Obviously it's well vegetated and any flow that goes in there we tend to get a lot of debris that comes down through that corridor that then causes the backup at South Kihei Road. So that's why our maintenance staff was the one that really put in the request that that channel be hardened so that we can try to eliminate some of that debris that currently blocks that small culvert, that undersized culvert that goes under the roadway. That's the problem we've been having, maintenance on that facility. That's the only portion that we're looking to have hardened at this

point because of its maintenance challenges.

Mr. Hiranaga: Which portion?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Which portion again, I'm sorry.

Mr. Miyamoto: That very small, very narrow channel that's along the north end of this project. If you look along the – yeah, it's right from there that – it's been that property and the adjacent residential property.

Mr. Hiranaga: Oh, that's not an existing?

Mr. Miyamoto: It's an existing channel that's like you said, it's in the very natural state that has a lot of vegetation and it's a very maintenance problem for us.

Mr. Hedani: So that, Mike does that have a dirt floor to it?

Mr. Miyamoto: Pretty much. At this point, yes, there's a lot – it's a lot of vegetation. We can't get any equipment in there because of its narrow width. So basically it's all hand cut and it's become a problem. It's an ongoing challenge that we suffer with the debris going down in that area plugging the crossing.

Mr. Hiranaga: So that's an offsite drainage improvement?

Mr. Miyamoto: Actually it's on their property.

Mr. Hiranaga: This is the channel, existing drainage way running parallel with Hoonani Street?

Mr. Miyamoto: Yes.

Mr. Buika: Vince Bagoyo can answer that question.

Mr. Bagoyo: Commissioner Hiranaga, that is an offsite from our property.

Mr. Miyamoto: Yeah from this side.

Mr. Bagoyo: Yeah, it's actually makai of our project site.

Mr. Hiranaga: That's what they want hardened?

Mr. Bagoyo: That's their recommend – recommendation is to harden that – it's a short, I would say about 250 feet maybe or less channel and there's an existing old plantation home on the north, immediately north of that channel.

Mr. Hiranaga: Okay, I just hope the county can come up with something better than hardening that existing drainage way.

Mr. Hedani: Additional discussion?

Mr. Buika: May I comment on that also? I did do a site visit and I'm an engineer, I am a scientist. It's overgrown right now. There's a lot of vegetation in it. So if you do have a significant amount of water coming down, what will happen is it will clog that culvert at South Kihei Road and cause more flooding than I believe if it was engineered to some extent.

Mr. Hiranaga: Or it could be maintained on a more regular basis.

Mr. Hedani: Mr. Bagoyo.

Mr. Bagoyo: Thank you. The challenge right now is actually, I think you're correct Commissioner Hiranaga, there's no access, easy access to maintain it and this is why the eight-foot bike path will also act as an access to maintain not only the Hoonani drainage way but also the new channel, drainage channel that will be developed in conjunction with this project. And so you're going to have an easy access to maintain it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I have a few questions if it's okay to ask several of them. I've been waiting a while so that I could ask. First of all, Waipuilani Gulch, could we get an idea of where that starts and how long that is? It is this just little short thing in Kihei? Or is this something that goes quite high?

Mr. Buika: I do believe the Waipuilani Gulch is a watershed that goes – correct me if I'm wrong Public Works, but it drains a lot of water off of Haleakala so it contains water, significant amount of water mauka of Piilani Highway that comes down through underneath that bridge.

Mr. Starr: Like it crosses Kula Highway, right? Yeah, I think that's one of the ones that crosses Kula Highway and goes up to Polipoli.

Mr. Buika: Joe Krueger responded affirmatively. Joe, you want to come up here? But it does have origins mauka of Piilani for sure.

Mr. Starr: Okay, and now, you know, I have real concerns about some catastrophic thing happening and the people getting trapped in here. I'm a little confused about, testimony about there being no way out except to South Kihei Road and that has, you know, in the last year flooded to at least waist deep. Is there another way out of this pocket?

Mr. Buika: Yes, I'll let Vince Bagoyo answer that.

Mr. Hedani: Mr. Bagoyo.

Mr. Bagoyo: Thank you Commissioner Starr. One of the concerns that were raised by the Planning

Department is to have some kind of an emergency exit to, you know, from the existing project from the neighboring subdivision and so the idea, if you could move that next map, the drainage map, yeah, right now, the road actually ends right here and so this residence right here they really don't have any access out of Hoonani Street except South Kihei Road. There is a private road here, narrow but it's blocked. I think this is a private road, it's blocked right here. And so the idea is to have a emergency evacuation if that is necessary is to move Hoonani – this is Namauu Street and to south collector road as an emergency. The south collector road is right here, it's currently not paved. It's quite wide access and it connects to the paved – of the end of the paved collector road. It's about, I would say about 150 feet from the Namauu, not that far away.

Mr. Starr: So who will connect it to north-south collector? Is the north-south collector a viable road and are you going to connect it with the north-south collector?

Mr. Bagoyo: One of the things that ultimately on the bike path it's going to gonna connect right here to the south collector road. And that's the – actually request by the Kihei Community Association. Right now there is a boulder that's blocking this road. The road ends, the paved road at Namauu ends right here and there's boulders because this is not a paved road. This is a dirt road, I would say probably over a hundred feet wide for the north-south collector road. That's Safe Way right there. I mean, this north-south collector road for many of us who have been in the county for some time that's been in discussion for as long as I could remember, but it is – this is going to be important corridor you know, between Piilani and South Kihei Road.

Mr. Starr: Can we hear from the County as to what the exact date when this will be connected to the north-south collector road and boulders removed and people able to evacuate to the north-south collector and out from there?

Mr. Hedani: Joe.

Mr. Krueger: There's no set schedule right now because it's on hold till the long range master plan is completed in two to four years. So I would say four to eight years before the north-south collector road is improved.

Mr. Starr: It sounds like maybe that would be a good time to consider this project.

Mr. Hedani: Any other questions? Staff recommendation.

Mr. Starr: Excuse me Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: I have a few more questions. Yes. This is on a – first of all for Mr. Krueger, one of the problems with the reason why there's so much flooding of the South Kihei Road in this area is that it backs up at the culvert under South Kihei Road which is undersized. You know, if there's lattice work and washer dryers and all that from this project being washed into it, it could be very worse. Would it be fair to have the applicant widen that culvert under South Kihei Road as part of this or is there some other mechanism to have that happen?

Mr. Krueger: Not only is the culvert undersized, but the size of the ditch from South Kihei Road to the ocean is also undersized and there's a condo on both sides. So on the north side, there's a parking lot and we're considering building the other half of this as a box culvert from South Kihei Road to the ocean under the parking lot. That's when we do South Kihei Road improvements.

Mr. Starr: That's not just a culvert. And I have one last question on a different subject.

Mr. Hedani: Proceed.

Mr. Starr: Which is, I'm looking at page 15 of the application. With respect to educational services and the applicant's earlier SMA application, State Department of Education standards is ...(inaudible)... that 7 to 10 students in elementary grades, 3 to 5 students in high school is anticipated as a result of the proposed subdivision. However, these families for the most part will be local families already resident in the area, therefore, the project's impact to school facilities are not considered to be significant. And then it says that the schools are adequate. I guess, now I notice the Department of Education objected to this and said that, you know, that's a shell game. You know, you actually are adding more students, you're not just moving them from one place to the other. You know, I'd like to know what the status is regarding schools and I also want to ask Mr. Buika since this is in our staff report, I mean, is this a comment from our planners who believe that since they're local families there's no impact on the schools or is this, you know, the developer's comment and how do we tell in these reports where it's being – a claim is made from the developer or where it's comment from the planners? I'm sorry to put this on you Jim, but you know.

Mr. Buika: That is a developer's comment. Usually the reports are a combination of the developer's comments, the original report and the staff's report. Yes, the Department of Education did comment on that. However, I didn't see it – I mean, it is, I agree it's probably inaccurate information, all of the education impacts now we expect from this project and all the other projects to be mitigated through Act 245 through the each lot will have to pay a impact fee. I mean, that's not perfect but it's the mitigation measure that Department of Education is asking for. So I think there are a couple actually with Heidi Meeker. The applicants did correspond several times back and forth and updated that information. I think two of the responses are in there and Vince Bagoyo may have something.

Mr. Hedani: Mr. Bagoyo.

Mr. Bagoyo: Yes, thank you so much. Yeah, with respect to the anticipated number of students, those numbers are from the Department of Education. We had the meeting with the Department of Education when we refiled this application. And in 2007, the Legislature actually approved what they call the Act 245. They're still in the process of formulating what the impact fee will be. They're starting with Kona. What we have told Ms. Meeker with the Department of Education is that whatever the rules are going to be that the developer will agree with those rules, whatever that impact will be ultimately. That we don't have any objections. That that condition will be placed on this project. They gave us a number to kind of think about so that we can at least plug it into our pro forma especially the affordable lots will remain the kind of prices that the Human Concerns have asked us to do. So in response to your question, we will agree with that condition.

Mr. Starr: And to the department, this is a major change. Because up till now whenever it's been a small project we've been told there's not.

Mr. Hedani: I think in the past, anything under 50 lots, the Department of Education has said there's no impact and there was no assessment.

Mr. Bagoyo: If I may, in fact, they're also going to be hitting those who are coming in for ohana units. So whether or not you're going to have an existing main dwelling, if you come in for ohana unit they have certain figures under Act 245 that they will impose upon – before granting the building permit. So my understanding is that they're going to be coming in for public hearings on South Maui quite shortly.

Mr. Starr: Thank you.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: One last final comment, I just wanted to kind of just – this is not a question, I could wait. Are we doing discussion or questions only?

Mr. Hedani: It's open for questions to the applicant on the presentation.

Mr. Hiranaga: I'd just like to say, just because their underlying zoning is R-2, 7,500 square foot minimum lot size, it does not preclude you from building larger lot sizes. Being in a flood zone, I'm not sure flag lots are the right thing to be doing. I noticed, you've stated there'll be no on-street parking. So I'm just wondering where all these people will park on a 7,500 square foot lot with a house and ohana on it. And even if four, five or six cars be parked on these lots in a flood zone. So I think you guys should look at the density of the project in relation to it being in a flood zone.

Mr. Buika: Thank you. That was a similar comment that the Police Department is concerned about also.

Mr. Hedani: Any additional questions? Commissioner Shibuya.

Mr. Shibuya: ...(inaudible - changing of tape)... Will include our perhaps making larger retention basins higher up, more mauka of this problem area. Rather than trying to make retention basins in the problem area where the problem area is so close to the sea level that the drainage opportunity is less. It doesn't make sense, so I would prefer having it at a higher levels where you have a smaller amount of water draining down to the problem area and that would be one mitigation. The other one would be the stream closest to the culvert, deepen it, that's one alternative. And so include more water outflow but yet have it more broad so that you don't have sediment being shipped out into the ocean. So you may have to have some best management practices exercised at this point. That's why I'm asking for design alternatives that this body can be aware of and then we can make a better judgement on it. Thank you.

Mr. Hedani: Okay, any other questions for Jim or the applicant? Seeing none, staff recommendation.

b) Action

Mr. Buika: Just a comment, real quick to Warren. Obviously this single project cannot be responsible for mitigating all of the flooding in the area. I think over time if can come to some mitigation agreement here where we do mitigate for most of the storm, storm events, protect the people and with a master plan, a Public Works master plan especially slowing some of the water down upstream which is an obvious solution, I think over time we will be able to lessen the flood impact to this particular project here. So with that, I'll provide you with the department's conclusion of law and recommendation.

The application as presented to the Maui Planning Department does not comply with the applicable standards for the Special Management Area Use permit application as listed in your recommendation the various SMA criteria there. I won't go through those. Based upon the findings of fact presented in the Maui Planning Department's report to the Maui Planning Commission on May 12, 2009, it is determined that, one, the development has the potential to have substantial cumulative adverse environmental or ecological effects; two, the development is not consistent with the objectives, policies and Special Management Area guidelines of the Special Management Area Rules for the Maui Planning Commission and any guidelines enacted by the Legislature; and three, the development is consistent with the County General Plan, the Kihei-Makena Community Plan, zoning and other applicable ordinances.

The recommendation. The Maui Planning Department recommends that the subject application for the Special Management Area Use Permit be held in abeyance until alternative mitigation strategies are presented to the satisfaction of the Planning Department that will reduce the potential for a significant cumulative adverse effect on the environment under the Special Management Area standards of review. I'll just list the letters here right now, C, E, F, G, H, J and L.

And also under the 205A the authority shall seek to minimize where reasonable any development which would adversely effect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats and that's where it's impacting here is on the wildlife habitats or potential or existing agricultural uses of the land. Based on the design presented and the outstanding concerns by the Police Department, the United States Fish and Wildlife Service and the Planning Department, the potential for an accumulation of adverse impacts exists under HRS 205A, Objectives and Policies, Review Criteria and the SMA Rules for the Maui Planning Commission, standards for reviewing an SMA application.

And that proposed project, one, potentially conflicts with the state's long term environmental policies or goals; two, potentially involves secondary traffic impacts; three, potentially affects an endangered species; four, substantially effects an environmentally sensitive area such as a flood plane; and five, potentially is contrary to the objectives and policies of Chapter 205A HRS specifically regarding public participation.

I will not go through each of the SMA review criteria but I thought what I would rather do is kind of group together the summary of outstanding issues relative to the Police Department, the U. S. Fish and Wildlife Service and the Planning Department for your consideration to shorten it somewhat.

Regarding the Police, there actually still is a traffic report that's still outstanding. They updated the traffic report. The Police wanted an updated traffic report past the 2002 one. It has been completed. It was just transmitted about a week and a half ago. So the conclusion of the traffic report is not, that there is not substantial traffic impact. However, I would like to close the loop with the Police Department on that and get their concurrence on that. So we can actually condition that in the SMA. I don't think that's any large concern.

Second is the neighborhood design leading to crime prevention. Too many flag lots, congested neighborhood, lack of subdivision design alternatives. This was brought up by the commission several times. This goes along with the Planning Department's request of an alternative site design. Flooding and drainage issues to the surrounding properties. Again, lack of subdivision design alternatives that would minimize flooding to the residents and again, this parallels the Planning Department's concern for alternative site designs. So that's the Police. So really, the Police outstanding comments or outstanding concerns are alternative site design mostly to minimize crime and to get rid some of the flag lots but also the flooding.

Second is the U. S. Fish and Wildlife Service. At this point there is a lack of verifiable evidence that no endangered species or its habitat would be adversely affected. The field survey conducted as part of the project concluded that there are no rare, threatened or endangered species of flora and fauna at the project site. However, the U. S. Fish and Wildlife Service felt there may be threatened species and in its comments the U. S. Fish and Wildlife Service did suggest mitigation for the sea birds which it's in terms of lighting. The hoary bat which is in terms of preservation of their habitat, the wooded plants which we can do that. Do not do any grading or grubbing for a certain period when the breeding period comes along. We can condition that. And also that we lack a survey for the blackburn's sphinx moth and I think we can achieve that survey also. And then there's the threatened dwarf naupaka that we can survey. So the department believes that the applicant can provide mitigation for each of these four concerns and we could ask that the applicant work with the U. S. Fish and Wildlife Service to the satisfaction of the Fish and Wildlife Service that they concur, that the Fish and Wildlife Service concurs that there are no adverse impacts to endangered species. So I think we can actually condition all of that also as part of the SMA and have them work on those things also.

And then the third department, the Planning Department, the main concern is with alternative design to minimize life safety concerns as well as public participation. Also reducing sediment entering the ocean obviously through detention basins. So we brought up issues of alternative site designs, reducing the density of the project, elevation which the applicants are agreeing to, water retention through larger detention basins and the issue of evacuation. We should explore a little more evacuation. So we feel, you know, they haven't addressed the Coastal Zone Management Act, Policy B, control development in areas subject to flooding, substantially enough. The project does about the stream. There is flooding that will overtop and there potentially could be a velocity underneath the homes, so life safety is a concern. Flood control can be used to protect life safety through alternative subdivision designs. I won't go through all of them. We have discussed them earlier about alternative site designs and I can work with the applicant for various alternative site designs before we bring it back to the commission for deliberation again. I have seven different, or actually six different site designs that I would like them to work on.

And then finally, the Planning Department believes that if we do have alternative site designs, I think it would be worthwhile to bring the alternative site designs in front of – have it more public participation under the Coastal Zone Management Act and bring it back to the Kihei Community Association. That's our recommendation. We could leave it to the Commission to circumvent that, that public participation if you feel that they had adequate public participation and this body can deliberate accordingly with the alternative sites. But I think it would be a good idea to look at those alternative sites and get impact from the actual community. We had some good community participation today and I think we can improve the project through more public participation.

So that concludes my recommendation. That it's not in compliance and that we would like to defer this for further action according to the recommendations in the Planning Department recommendations memorandum to the Planning Commission May 12, 2009.

Mr. Hedani: Okay, and this has been reviewed with the applicant and the applicant is in concurrence?

Mr. Buika: Yes or actually I would like to have the applicant respond to some of these conditions that or some of these concerns that we have.

Mr. Hedani: Mr. Bagoyo.

Mr. Bagoyo: Well, obviously we do have some differences but you know, what we would like to ask the commission, we feel that the facts before you meets the rules and 205 HRS. I think what the Planning Department have asked us to do is to look at the redesign and come up with different alternatives. The end result may not change, it may be still 28 lots.

With respect to the drainage, I think we are meeting more than what is required by the code as been approved by FEMA as well.

With respect to the U. S. Fish and Wildlife, we have responded to their comments. I think one of their major concerns is the lighting and the lighting we have addressed. Said we will comply with whatever the conditions set forth with respect to the lighting scheme.

I think the major concerns that the applicant have heard from the Planning Department is that you know, how do you access in case of an emergency when there's flooding? Two things that we have agreed, one is that we will increase the elevation from a foot to two feet which is more than what is required by the code. And secondly, I think Jim initially wasn't aware that there's actually access. In fact, it actually improved our road at Hoonani actually improved the emergency access to Namauu and then potentially to north-south collector road. I mean, it's easy to just get rid of the boulders in case of an emergency, the road is there. And so, we feel that we have addressed that.

And secondly, the drainage channel that we are required to do it's probably, I may be wrong, but I did look at and reviewed the Betsill project which is north boundary of this property that you have approved in 2005. We're just asking the same fairness. The same courtesy. We feel that the improvements that we're agreeing to do meets those guidelines. I think the final note is, obviously we can't solve problems that been created by others.

Piilani Highway, when they did Piilani Highway it would have been simple to do a retention basin below the highway at Waipuilani. When Piilani Subdivision, Peter Baldwin project some time back, you know, they actually channeled the drainage into the Waipuilani without major improvements and so now we're – the owner who are all local people from here, they're saddled with this potential problem and they are agreeing to make those improvements so that we can minimize the potential flooding not only within the project site, but downstream. And so we're agreeing to build the retention basins so that it also act as a sedimentation basin so that you don't pollute the shoreline which many of us grew up here enjoy. And also we have agreed to improve the existing Public Works Hoonani drainageway which is off site of this project. So I think overall, I think we have met not only the intent but also the letter of the law of your rules and also 205 HRS.

However, if the commission, what I urge the commission is to move this project today and if there's any other conditions. I heard some conditions that you may want to consider, you know, we're willing to consider them and listen to them and see if it's something that we can do and agree on today. We will certainly respond to that.

With respect to the community participation, I think this 27 lots probably have more citizens participation in South Maui than most of the projects besides 670. But in addition to the two meetings that they had I've also met with the Board of Directors of the Kihei Community Association in 2006 or 2007 with David Fraiser was the president. And so, you know, we think that we have met no just the spirit of the law but also the intent of the law.

So I urge the commission. The owners are just getting old. They're anxious about moving this project forward. They want their children to have a place and also create some affordable lots because the lots, we are required to provide 40 lots at a specific price.

Mr. Hedani: 40%.

Mr. Bagoyo: 40% of them and 30% of the 40% will be priced at a level of 80% to 100% of the median income. What that means is that the lots cannot be sold more than \$159,000 under the current median. That's a good price. So, you know, I urge this commission to, if you feel that we met, which we believe that we met the letter of the law. We ask you to move this project forward so that we can move to the next phase. Thank you so much.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Mr. Chair, I will be making a motion in support of the recommendation of the department and you know, probably adding some additional mitigation strategies which I think we were being –

Mr. Hedani: Would you like to put that in a form of a motion?

Mr. Starr: Yeah, I just have one quick clarification before I do that. The recommendation uses a word, "be held in abeyance," and I just want to go to counsel whether that's a proper term or should it be deferral?

Mr. Giroux: Yeah, I would prefer the word defer and actually in the motion have a date certain.

Mr. Starr: I don't think that's possible because I think that we're calling for some very substantial mitigation and research issues. So if there's a date certain, it's probably going to be quite a ways off from that. I don't think these are the type of issues that can be cured in a month. So, –

Mr. Hedani: Jim, do you have any idea of when you're going to bring this project back if it gets deferred? Before all the partners end up deceased?

Mr. Buika: I have not discussed that with the applicant. I should have. I was hoping in July either the first or second meeting in July. We're May 12th.

Mr. Hedani: And your feeling is that they can make the conditions that are being imposed in that time frame?

Mr. Buika: Well, I would like to hear what Commissioner Starr has to offer. I think that yes, we can meet it probably for either the first or second meeting in July. Let me see if I get agreement from Mr. Bagoyo.

Mr. Hedani: Mr. Bagoyo.

Mr. Bagoyo: I just confer with my client. They feel it's – I think it's achievable. I think if we can all just kind of work together on it I think – some of the issues I think we're almost there and we're okay with that.

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

Mr. Starr: Yeah, I am making a motion as soon as I find a date of the July meeting.

Mr. Hedani: You can just say the first or the second meeting.

Mr. Buika: Second Tuesday of July or the fourth Tuesday of July.

Mr. Starr: Okay, so motion is that to go along with the recommendation, department's recommendation with the modification that the words, "held in abeyance," be exchanged for "deferred until the second July meeting, the fourth Tuesday in July."

Mr. Hedani: Is there a second?

Mr. Mardfin: Second the motion.

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

Mr. Starr: I'd like to add a few other items regarding mitigation and one is that – in dealing with the life and safety issue, I feel that proper mitigation would be to no allow any construction to take place until the access through the north-south collector road is in place.

And as far as the accumulation of waters above the constriction that construction not take place until the culvert has been enlarged under South Kihei and adequate channelization between South Kihei Road and ocean been constructed so that the water will not, no longer be dammed up by the road and the area below.

Mr. Hedani: Is that in a form a motion to amend?

Mr. Starr: Yes, that is a amendment to add those two mitigation strategies.

Mr. Hedani: Is there a second?

Mr. Mardfin: Second.

Mr. Hedani: Moved and seconded by Commissioner Starr, seconded by Commissioner Starr to add conditions which is three paragraphs long but we're going to hit the highlights of it.

Mr. Hunt: The first condition, these are added mitigation to not allow construction until access to the north-south collector takes place.

The second one is construction shall not take place until the culvert under South Kihei Road is increased. And that the – little foggy here – adequate capacity of the flood plane or –

Mr. Starr: Of channelization between South Kihei Road and the sea.

Mr. Hedani: Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I will be voting against the amendment. I prefer to just allow the applicant the time till the next meeting that they will be presenting their revised proposal before we start placing project specific conditions. As you recall those of you who attended the meeting at the Haiku Community Center we talked about tsunami evacuation. The planner said what you should do when there is a tsunami approaching is not to get into your car, it is to run uphill. So whether that road is there or not, whether the boulders are there, you shouldn't be getting into your car anyway, you should just be running uphill.

As far as the other issues, I think we should just look at what they're going to propose. Their proposed drainage plan right now is to retain predevelopment and post development surface runoff from the site in addition to additional offsite runoff coming upstream. So they will actually be reducing the surface runoff problem impacting South Kihei Road. But I think it's premature at this time to be placing project specific conditions on a motion to defer.

Mr. Hedani: Further discussion? Commissioner U'u.

Mr. U'u: I agree with Commissioner Hiranaga. I think they dealt with FEMA. They addressed the issues in FEMA. And I guess the last developer gets the shaft in this case be them. I think we're dealing with the people, persons who are not here today, gone tomorrow. With all the conditions and all the proposals we're looking at you might as well just change the zoning to open space

because it is single family, it is R-2 Residential and it is State Land Use classification of Urban. I feel they've exceeded – I personally feel they exceeded, I think we're adding conditions that don't exist. We adding burdens that shouldn't be placed personally because we're kind of making it up as we go right now. Because it is like I said, county zoning R-2 Residential. I really feel that the last person you know, developing gets the last straw. So again, I'll be voting against the recommendation.

Mr. Hedani: Further discussion? Commissioner Mardfin.

Mr. Mardfin: I'm going to be voting for the motion, the amendment. However, I'm not – I think that, but I'll also be voting for the main motion even if the amendment fails, I do think that by the time they come back they should have addressed these issues. Whether or not it's a formal amendment or whether it's – if either there's an amendment but the motion go through these are things that they ought to consider.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor of the amendment, signify by saying aye. Oppose, nay. All those in favor, raise your right hand. Four in favor. Opposed same sign.

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

The motion to add condition a condition to not allow construction until access to the north-south collector takes place, and that construction shall not take place until the culvert under South Kihei Road is increased and that adequate channelization between South Kihei Road and ocean been constructed, was Lost.

(Assenting - J. Starr, W. Mardfin, W. Shibuya, L. Sablas)

(Dissenting - K. Hiranaga, B. U'u, D. Domingo)

(Excused - J. Guard)

Mr. Hedani: Motion is lost. Main motion on the floor is to defer. Commissioner Mardfin.

Mr. Mardfin: I'd like to make a motion to amend. I have three concerns. The motion to amend would be that they consider these things before they bring it back to us. One would be that Wildlife confirm or refute the endangered species issues. Two, would be that there be formal input from the Kihei community. The third thing which I think is the most important from my point of view is that CC&Rs be brought back to us because I would have a difficult time approving a subdivision without CC&Rs that would put constraints on which could provide safety.

Mr. Starr: I second.

Mr. Hedani: Okay, we have a motion and second. Moved by Commissioner Mardfin, seconded by Commissioner Starr for three different conditions. Director.

Mr. Hunt: The first condition would be consider U. S. Fish and Wildlife to refute the endangered species issues. The second one is to have formal input from the Kihei community. And the third one is that CC&Rs be brought back.

Mr. Hedani: Discussion? Commissioner Hiranaga.

Mr. Hiranaga: On your first proposed condition, are you certain with the word "refute" or you want them to "confirm?" You want them to refute the applicant's decision?

Mr. Mardfin: I want the issue to be clarified either positively or negatively.

Mr. Hedani: Jim are these part of your recommendation already?

Mr. Buika: Yes, we'll have the endangered species in. I'm asking to have a concurrence letter from U. S. Fish and Wildlife Service regarding endangered species.

Mr. Mardfin: If that's the case, that section can be dropped.

Mr. Buika: And formal input, I had asked the commission whether or not they would like formal input from the Kihei Community Association.

Mr. Mardfin: I guess that's already a condition. Then we can drop that one. So my remaining amendment is that CC&Rs be provided.

Mr. Hedani: Applicant?

Mr. Bagoyo: I think they're reasonable. The CC&Rs normally takes place when you file for your subdivision because some of the conditions that you will impose it will be included in the CC&Rs. So I'm not sure whether or not it's premature to give you a CC&R when we meet again. Normally those restricted covenants normally takes place during the subdivision process. So that we include all those conditions that are imposed on this project.

Mr. Hedani: Thank you Mr. Bagoyo.

Mr. Mardfin: I might be satisfied with drafts, it could be later revised.

Mr. Bagoyo: Okay.

Mr. Hedani: Okay. Commissioner Hiranaga.

Mr. Hiranaga: Rather than have the applicant draft the restricted covenants, we can request they provide bullet points that they would be providing or incorporating into these CC&Rs because the CC&Rs can be quite lengthy and it's prepared by an attorney and it is at this point extremely premature to be drafting CC&Rs for a project.

Mr. Mardfin: That's acceptable to me. Lets make it a motion.

Mr. Hiranaga: So are you removing your –

Mr. Hedani: Okay, you want to restate your motion at this point?

Mr. Hiranaga: Or remove it.

Mr. Mardfin: Let me do it simply. With the concurrence of the second or I'll rescind my amendment.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I will make a new amendment that they – before they come back that the developer come up with bullet pointed CC&Rs that would give me some reassurance that the safety of the people that ultimately build there will be taken into account.

Mr. Hedani: So the motion is to add a condition that consideration be given to bullet points for consideration by the commission on items that would be included in the CC&Rs. Is there a second?

Mr. Starr: Second.

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

Mr. Hiranaga: I'm wondering if that's an appropriate amendment. I think the developer has gotten your message. And if he wants your vote he's going to be working on that. So why can't we just make a motion to defer to a date specific. I don't see the need for this amendment and I'm going to be voting against it if it comes to the floor.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor raise your right hand. one, two, three, four. Opposed same sign. One, two, three.

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

The Motion to Add a Condition that Consideration be Given to Bullet Points for Consideration by the Commission on Items that Would be Included in the CC&Rs, was Lost.

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

Mr. Hedani: Motion is lost. Any further discussion on the main motion? You ready for the question? All those in favor of the motion to defer to the second regularly scheduled meeting in July signify by saying aye. Opposed nay.

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

**VOTED: To Defer the Application to the July 28, 2009 Meeting in order for the applicant to address concerns raised.
(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, D. Domingo, W. Shibuya, L. Sablas)
(Excused - J. Guard)**

Mr. Hedani: Carried. Thank you.

Mr. Starr: Mr. Chair.

Mr. Hedani: Commissioner Starr. Yeah, the motion did reference the recommendation by staff. That's correct.

Mr. Starr: So using the language of the recommendation.

Mr. Hedani: That's correct. Thank you Mr. Bagoyo. Thank you for the partners for hanging in there for 50 years. Director.

Mr. Hunt: Your next item involves a communication item, it's a resolution agreement between the County of Maui and Andrew Castellini for a Notice of Violation for activities with the Special Management Area without a permit for property located at 213 Hoolawa Road, TMK: 2-9-003:002 in Haiku.

C. COMMUNICATIONS

- 1. Resolution Agreement between the County of Maui and Andrew Castellini for a Notice of Violation for activities within the Special Management Area without a permit for property located at 213 Hoolawa Road, TMK: 2-9-003:002, Haiku, Island of Maui. (T. Kapuaala)**

Mr. Hunt: The planner is Trish Kapuaala. She is sick today and we also by coincidence, the representative of Mr. Castellini is sick to day. On the advice your legal counsel, we're suggesting that you defer this until both people are available.

Mr. Hedani: Discussion? Mr. Starr.

Mr. Starr: Mr. Chair, I move to defer until the parties are ready to proceed.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Mr. U'u to defer. All those in favor signify by saying aye. Opposed nay.

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

VOTED: To Defer the Matter Until Both Parties are Ready to Proceed Due to the Applicant and Planner Both Being Sick.
(Assenting - J. Starr, B. U'u, W. Mardfin, K. Hiranaga, D. Domingo, W. Shibuya, L. Sablas)
(Excused - J. Guard)

Mr. Hedani: Carried. Thank you.

D. ACTION MINUTES OF THE APRIL 28, 2009 MEETING AND REGULAR MINUTES OF THE FEBRUARY 24, 2009 MEETING

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Move to accept those minutes.

Mr. Hedani: Is there a second?

Ms. Sablas: Second.

Mr. Hedani: All those in favor, signify by saying aye. Opposed nay.

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

VOTED: To Accept the Action Minutes of April 28, 2009 and the Regular Minutes of February 24, 2009.

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

Mr. Hunt: Your next item involves the Director's Report. The first one is a notification of the submittal of the following Special Management Area Appeal pursuant to Section 12-206-26 of the Maui Planning Commission Special Management Area Rules:

Thomas D. Welch, Esq., of Mancini, Welch & Geiger representing Peter Klint Martin and Deborah Lee Martin appealing the Planning Director's decision to take no further action on a Special Management Area (SMA) Assessment application SMX 2008/0330 for a proposed single-family dwelling due to inconsistency with a community plan designation of open space for Lot 46-A, Olowalu Makai-Hina Subdivision, TMK 4-8-003:046 in Olowalu. The file number is Appeal 2009/0001.

E. DIRECTOR'S REPORT

- 1. Notification of the submittal of the following Special Management Area Appeal pursuant to Section 12-206-26 of the Maui Planning Commission's Special Management Area Rules:**

THOMAS D. WELCH, Esq. of MANCINI, WELCH & GEIGER representing PETER KLINT MARTIN and DEBORAH LEE MARTIN appealing the Planning Director's decision to take no further action on a Special Management Area (SMA) assessment application (SMX 2008/0330) for a proposed single-family dwelling due to inconsistency with the community plan designation of open space for Lot 46-A, Olowalu Makai-Hina Subdivision, TMK: 4-8-003: 046, Olowalu, Island of Maui. (APPL 2009/0001) (T. Kapuaala)

The planner assigned to this is not here. She's sick. The action before the commission is – well, there is no action to be taken by the commission. This item is agendaed just for notification purposes. There was public testimony this morning regarding this issue, but again, this is just to notify you it will be coming back to this body.

Mr. Hedani: Is this matter something that's being litigated at this point Director?

Mr. Hunt: I would refer that to your legal counsel. At this point, it's not in the court system. They have hired an attorney and it is an appeal. So I'm not sure what the technical term of litigation, how inclusive that is.

Mr. Giroux: My understanding is because it's an SMA issue is that it's going to be basically turned into a contested case. I haven't looked at all of the pleadings but I believe that's the process because it's a – I believe regarding the Director's determination over an SMA issue. So this body is the ultimate authority in the CZMA. So they'll probably be coming before just to determine whether or not you are going to actually handle the actual taking of evidence during that contested case or he's going to be hiring a hearings officer.

Mr. Hedani: Okay, are there any members of the public that would like to offer testimony on this item?

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

Mr. Peter Martin: I apologize for not signing up, but I thought you'd ask for additional testifiers. I'd like to pass something out. It is an agenda item later, if somebody could, I'll maybe pass them to Mr. Hiranaga.

I'm the owner, my wife and I are the owner of that subject parcel, 46-A here in Olowalu. We bought it from Olowalu Land Company a few years ago, but the property's been – we bought it basically about 10 years ago in the company and I bought it about four years ago with the idea of building a single family residence on it. I came here to both use this property as my complaint and also to help you folks when we get into the General Plan that we don't have these problems and the problem with my particular property, parcel 46, as you can see it's not ocean front, it has some land in front of it, but it's in the conservation state land use. My problem is I did get a CDUP and it took you know a couple of years and I got this which means that state said, and I had to do an environmental assessment and we got a finding of no significant impact and significantly I just got a bill from Munekiyo this morning, I mean, just on that one side I spent about \$50,000 on that. That does include flying everybody over and all the attorneys fees too. So I think I'm over a hundred grand trying to get a permit to build a house on this. And we applied for a SMA assessment in July 8 and I didn't get an answer for nine months. The law says you're supposed to get an answer in 30 days. I got an answer nine months later saying my SMA exemption could not be processed or is basically rejected because my land is zoned open space.

So on your agenda today they're going to, and we're appealing this decision. My complaint is that you're going to get it today, I'm not going to actually be on the agenda for maybe three months, four months and then finally, you might send it to a contested case. It might go to a hearings officer. I'm

going to be ..(inaudible)... for a year or so. I eventually believe I'll prevail and – or somebody is going to have to buy this land if I can't build a house on it. It's been a lot of a 160 years from the Great Mahele. So the waste of time to ...(inaudible)... this, what I'm asking you to do is hear me next month and decide to hear this the thing yourself. Decide to hear it yourself. I think the issues if you read them are straightforward. Make a decision, save us all money and then I'll either go to court, or if your decision is favorable, I won't but lets try to save some money and be on this. Thank you.

Mr. Hedani: Thank you very Mr. Martin. Any questions for the testifier? Seeing none, thank you very much.

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

Mr. Hedani: Seeing none, we'll accept the notification as received and proceed onto the next item. Commissioner Hiranaga.

Mr. Hiranaga: So the Planning Director has the concurrence of Corporation Counsel on his position regarding his determination?

Mr. Giroux: Well, it's his determination, so –

Mr. Hiranaga: He's consulted with Corporation Counsel?

Mr. Giroux: Me personally?

Mr. Hiranaga: No, Corporation Counsel.

Mr. Giroux: I don't know, the Director's got to answer that.

Mr. Hedani: Jeff.

Mr. Hunt: Each government entity has their own Corporation Counsel. Your Corporation Counsel today is James Giroux. We have Mike Hopper who represents us and we have conferred with Mike Hopper regarding this issue.

Mr. Hiranaga: Okay, because I just hope we don't go down the same road as Montana Beach and end up in a eight-year litigation that cost the county millions and millions and millions of dollars and we end up with a house that we really don't want. There's no house now, but I'm just hoping –

Mr. Hunt: Montana Beach was a rescinded, a permit was issued and then rescinded. In this case, we're not issuing the permit and they're appealing that.

Mr. Hiranaga: I understand.

Mr. Hedani: So there's no action to be taken by the commission at this time. Jim are you in concurrence?

Mr. Giroux: Yeah, it's just a matter of rules say that you have to be given notice and then that starts the ball rolling for a contested case proceeding.

Mr. Hedani: Okay, next item, Director.

Mr. Hunt: Next item involves several communications. The Planning Director is notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Planning Commission's SMA Rules of the intent to issue time extensions on the following requests. You want to take these one at a time?

Mr. Hedani: Sure.

2. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following requests:

- a. MR. MILTON M. ARAKAWA, Director of Public Works requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Kaholopoo Bridge Replacement Project at TMK: 1-4-007, Hana, Island of Maui. (SM1 2001/0019) (J. Buika)**

Mr. Hunt: The first one is Mr. Milton M. Arakawa, Director of Public Works requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Kaholopoo Bridge replacement project at TMK 1-4-007 in Hana. The file number is SM1 2001/0019 and Jim Buika is the planner assigned to it and he is here to discuss this if you'd like. Again, the general process as stated by your rules is the commission shall acknowledge receipt of the request and the commission then may review the time extension request or waive its review.

Mr. Hedani: Jim.

Mr. Buika: Can I start of with a joke?

Mr. Hedani: Please.

Mr. Buika: Well, Alaska has their bridge to nowhere, right? Well, Maui has its bridges that will cross when we get them I guess. Not a very good joke, but. This project is scheduled to be bid out in fiscal year 2010. All conditions remain the same as when the permit was issued and the department recommends waiver by the commission so that it can be – the time extension can be administratively approved by the Planning Director. We have Joe Krueger here from the Public Works Department to answer any questions on these three bridge time extensions.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to know, there's a brief sentence in there about the reasons, but I want to say two things first. One, people in Hana want this done. Two, I don't know if you know, but it's called

Make Man Bridge because there was an accident there in 1920 where several people died. So there's some historical significance to this. But you know, we don't want to stop the project clearly, but I would like to know why it hasn't been done.

Mr. Buika: I'll have Joe Krueger address that.

Mr. Hedani: Joe.

Mr. Joe Krueger: Our primary reason is our permitting. So, what we're doing is, while we're processing the permits, we went ahead and put in a temporary bridge so we can close the permanent bridge until we get our permit to replace the permanent bridge. But that's our biggest holdup there, our permits.

Mr. Hedani: Who's dragging their heels Joe?

Mr. Krueger: There's one State agency called the Water Quality Certification and it's like – it's got like one or two people in that section and they review these permits statewide for all these river crossings. They're inundated with work and when you turn in your permit, they go, oh it's incomplete resubmit it, and then they put it on the bottom of the pile and then they take top out, it's incomplete, resubmit it and it's two years long. We've taken two years to get their permit reviewed. But they have agreed for these Federal Aid projects put it on a special lower file to get it reviewed sooner and it's a Federal Aid project and they have promised to review it faster.

Mr. Mardfin: Only six month.

Mr. Krueger: ...(inaudible)...

Mr. Hedani: There's no drop dead time frame where if they don't respond in so many days it's automatically approved?

Mr. Krueger: No.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, are you putting in the bridge from Paiihi over there?

Mr. Krueger: Yes. We're moving the temporary Paiihi Bridge to Papahawahawa.

Mr. Starr: You know, far from being the bridge to nowhere, this is the bridge to Ward and my house. So please do what you can.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: Since he raised Paiihi, is that going to be – I know they're working right now on removing the temporary structure and open the other one. Is it going to be finished by June 2nd, when this commission goes over there?

Mr. Krueger: Sure.

Mr. Mardfin: Guaran?

Mr. Krueger: Guaran. The permanent bridge is in. After we take the temporary one out, then we have to repair that road of the side where the temporary was and then we're finished.

Mr. Hedani: Any additional questions? Commissioner Shibuya.

Mr. Shibuya: No, I'd just like to go ahead and make a motion to accept all three delayed projects to extend them.

Mr. U'u: Second.

Mr. Starr: Mr. Chair.

Mr. Hedani: I think we have a motion on the floor already.

Mr. Starr: Mr. Chair, I think it's an incorrect motion. I think the motion should be to waive our review and allow the director to.

Mr. Mardfin: For this bridge.

Mr. Starr: I would do all three, but I believe the motion's for the one.

Mr. Hedani: You want to restate your motion Commissioner Shibuya?

Mr. Shibuya: Okay, the intent is to accept all three, having the commission to review the time extension request be waived and to go ahead and approve this time extension.

Mr. Hedani: Is there a second?

Mr. Starr: I'm willing to second it philosophically but I want to go to the director so we state it properly.

Mr. Hedani: That's a second?

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. Discussion? Director.

Mr. Hunt: I appreciate the streamlining approach. ...(inaudible - changing of tape)... I could either read the other two or we can just take them one at a time and get over with.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Should the public be offered an opportunity to comment?

Mr. Hedani: Are there any members of the public that have anything to say about this issue or any of the three issues we're going to take up together? Thank you. Public testimony is closed. So the motion on the floor, moved and seconded by Commissioner Shibuya and U'u is to approve the time extension request for items a, b and c, 2a, b and c, and to waive review. Discussion? Commissioner Mardfin.

Mr. Mardfin: I had only been asking questions about the first one. So I will ask about the other two bridges. Basically the same reason?

Mr. Krueger: And they're on the next two federal fiscal years for federal funding. So Kaholopoo is on 2010 and Waiohono is scheduled for 2011.

Mr. Mardfin: And the third?

Mr. Krueger: Papahawahawa is scheduled this year.

Mr. Mardfin: So we have 2009, 2010 and 2011. We get one bridge a year.

Mr. Krueger: Federal fiscal year now.

Mr. Mardfin: Okay.

Mr. Hedani: Okay, as a matter of house cleaning, do you want the Director to actually read the other two items in? Director.

Mr. Hunt: So we'll read Item B and C into the record so we can vote on all three. The second item is Mr. Milton M. Arakawa, Director of Public Works requesting a two-year time extension on the period to initiate construction on the Special Management Area Use permit for the Papahawahawa Bridge replacement at TMK 1-5-006: 001 and 15-007: portion of 001 in Hana. The file number is SM1 2001/0015.

And Item C is Mr. Milton M. Arakawa, Director of Public works requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Waiohono Bridge Replacement at TMK 1-4-012: 002, 016 and 019 in Hana. File number being SM1 2002/0025.

- b. MR. MILTON M. ARAKAWA, Director of Public Works requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Papahawahawa Bridge Replacement at TMK: 1-5-006: 001, 1-5-007: 001 (por.) , Hana, Island of Maui. (SM1 2001/0015) (J. Buika)**
- c. MR. MILTON M. ARAKAWA, Director of Public Works requesting a two-year time extension on the period to initiate construction on the Special**

**Management Area Use Permit for the Waiohono Bridge Replacement at
TMK: 1-4-012: 002, 016, and 019, Hana, Island of Maui. (SM1 2002/0025)
(J. Buika)**

Mr. Hedani: Okay, discussion? Commissioner Mardfin.

Mr. Mardfin: I listened very carefully to the motion that Commissioner Shibuya made and I think it isn't exactly as said, incorrect. He said we approve deferment, and I don't think we're approving deferment. I think he, he made it a two-part motion. The second part I think is correct that we waive review of the time extension. And if the maker of the motion will take that as a friendly suggestion think we're all on the same page.

Mr. Shibuya: Accepted.

Mr. Hedani: Discussion? Commissioner Starr.

Mr. Starr: Yeah, we should be clear on this that according to the way our rules were changed. If we waive review, then we cannot approve it. However, we're leaving the way clear for the Director to approve it if he feels that correct. So my belief is that the motion should be that we waive review and leave it up to the Director.

Mr. Shibuya: Is that a friendly amendment?

Mr. Starr: Yeah.

Mr. Shibuya: Accepted.

Mr. Hedani: Okay, the motion has been amended to read, waive review of Items 2a, b, and c. Discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Waive Review of Items E, 2a, 2b and 2c.
(Assenting - W. Shibuya, B. U'u, K. Hiranaga, W. Mardfin, D. Domingo,
L. Sablas, J. Starr)
(Excused - J. Guard)**

Mr. Hedani: Carried. Thank you. Director.

Mr. Hunt: The next item, another time extension. A&B Kane, LLC requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Kane Street commercial mixed use project on property bounded by Vevau Street and Kane Street, TMK: 3-7-005: 0034, 011 and 023 in Kahului. The file number is SM1 2005/0004 and Jim Buika is the planner.

- d. **A&B KANE, LLC requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Kane Street Commercial Mixed Use Project on property bounded by Vevau Street and Kane Street, TMK: 3-7-005: 003, 011, and 023, Kahului, Island of Maui. (SM1 2005/0004) (J. Buika)**

Mr. Jim Buika: Yes Chairman, this is an excellent project that I've worked on and it just needs a time extension to begin construction and the department recommends that the Maui Planning Commission approve waiver of review by the Maui Planning Commission to allow the Planning Director to approve the time extension to begin construction by June 30, 2011.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Yeah, I have a question. Is this project part of the Kahului Town Center? Does it kind of fit into that and if so, what's the status of that?

Mr. Buika: Yes it is and I have Mike Summers and –

Mr. Starr: Yeah, could I hear from Grant or Mike?

Mr. Buika: Sure. I have consultants here on the project.

Mr. Hedani: Mr. Chun.

Mr. Grant Chun: Hello everybody. I'm Grant Chun from A&B Properties. Yes, Mr. Starr, the project that is the subject of this extension request is a part of the Kahului Town redevelopment. It's located just a block off of the Kahului Shopping Center block near the student housing for Maui Community College.

Mr. Starr: I had read somewhere that these were – that they were canceled or put on indefinite hold and I hope that's not the case because we love these projects. These are our ...(inaudible)... pilot, you know, when do we look like we're going to be seeing them moving a long?

Mr. Chun: Well, on this particular project we're hoping that we'll be able to obtain building permits by the end of the year. And for the Kahului Town Center project which is what we're referring to the shopping center block as we figure the first permits hopefully will follow a year after that.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: When this SMA permit was granted by the Maui Planning Commission I was not on this commission in June of '05 and I think many of you were not also. And when the first extension was granted in August of '07, I was on this commission but I was relatively still wet under the ears. So I had requested to the director and I guess it was communicated to the planner that the applicant provide us a brief presentation on this project and I wanted more specifically information regarding their drainage plan and their drainage retention. So I'm wondering if the applicant is prepared to do that at this time?

Mr. Hedani: Mr. Chun.

Mr. Chun: Yes, Mr. Chair. We're aware of Mr. Hiranaga's request and to speak to that specific issue, the design for the drainage system for the project goes far beyond what is required. Its design will contain all post development runoff as well as pretty much all of the predevelopment runoff. The plan calls for of course, you know, the standard drainage lines as well as storage capacity that is accommodated for within the gravity lines if you will. And so, in this particular instance, the situation will actually be far improved as a result of the work that will occur in conjunction with the infrastructure for this project.

Mr. Hedani: Additional discussion?

Mr. Hiranaga: So clarification, you're saying all predevelopment, post development surface runoff will be retained on site for a 50-year, one-hour storm?

Mr. Chun: I'm not familiar with those technical standards but we do have our engineer here if you'd like for him to come forward. Stacy Otomo is our project engineer.

Mr. Hedani: Sure. Mr. Otomo.

Mr. Otomo: Good afternoon Chair Hedani, Members of the Planning Commission. My name is Stacy Otomo. To answer Commissioner Hiranaga's question, we will be retaining 100% of the post development flow on site for a 50-year one-hour storm.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: How about the predevelopment surface runoff? And what volume is that?

Mr. Otomo: We are looking at roughly about 15,500 cubic feet and that's going to be accomplished through a onsite detention basin as well as perforated pipes and there are some gravity lines that have storage in them also.

Mr. Hiranaga: But you're not capturing and retaining the predevelopment surface runoff?

Mr. Otomo: When I refer to post development, I mean predevelopment plus the increase. So we are retaining all of that on site.

Mr. Hiranaga: So total runoff?

Mr. Otomo: That's correct.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Additional questions? Discussion? Commissioner Mardfin.

Mr. Mardfin: This wouldn't be for Stacy. I guess it's probably for Jim. While I believe in no fault

divorce, I'm just kind of curious, whose fault is this? Is it A&B's problem or is it the county's problem for the need for the time extension?

Mr. Buika: I'll fall on the sword and say it's the county problem. But it is, I think it has been an issue of obtaining all the required permits, correct? Yes, I'm getting a nod from the planners.

Mr. Mardfin: So they've what they can do and it's just the bureaucracy is taking time.

Mr. Buika: Yes.

Mr. Hedani: Jim, who's dragging their heels?

Mr. Buika: Pardon?

Mr. Hedani: Who's dragging their heels?

Mr. Buika: I cannot tell you that.

Mr. Hedani: State DOT?

Mr. Buika: DOT.

Mr. Mardfin: Then you're saying, I was not correct. It isn't the county. It's the state.

Mr. Buika: I guess not.

Mr. Hedani: Jim falls on a very broad sword. Commissioner Shibuya.

Mr. Shibuya: As a member of the Board of Variance and Appeals, did issue did come up and so I'll take partial blame for it. If there's blames to be passed around.

Mr. Buika: As far as the zoning of?

Mr. Hedani: It was all Warren's fault.

Mr. Buika: They are doing due diligence to gaining their permits. It's just taking additional time. There are no changes to the project.

Mr. Hedani: Is there any other discussion? What's your pleasure? Commissioner Shibuya.

Mr. Shibuya: I just had a question for Stacy in terms of retention basins. I see a lot of impermeable areas here. Is the parking lot surface permeable or impermeable?

Mr. Otomo: It's impermeable.

Mr. Shibuya: And also, where is the retention basin and is there a catchment system underneath and

are you aware of the possible, very good possibility of ocean rising?

Mr. Otomo: Let me get a map. Commissioner Shibuya, this is actually a portion of the construction plans. The detention basin is down here in red. All the red lines that you see on the plans signifies the perforated drains. The blues are the catch basins as well as the gravity lines that you see in there. In terms of the influence of the tide. You know we're at an elevation where there shouldn't be ground water in the drainage system.

Mr. Hedani: Additional discussion. We don't have a motion on the floor. Commissioner Mardfin.

Mr. Mardfin: I move we waive review of this time extension.

Mr. Starr: Second.

Mr. Hedani: Moved and seconded to waive review after we've beat them all up. Is there any further discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Waive Review of the Subject Item.
(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, D. Domingo,
W. Shibuya, L. Sablas)
(Excused - J. Guard)**

Mr. Hedani: Carried. Thank you.

Mr. Buika: Thank you.

Mr. Hunt: Your next item involves Mr. Steward Norrie requesting a two-year time extension on the period to initiate construction on the Special Management Area Use permit for the Kihei Rentals and Supplies project, a two-story office and shop complex of approximately 4,700 feet on 13,000 square feet of land in the Kihei Business Park at 100 Kio Loop, TMK: 3-9-51: 033 in Kihei. File number is SM1 2003/0027 and Paul Fasi is the planner assigned to this.

- e. MR. STEWART NORRIE requesting a two-year time extension on the period to initiate construction on the Special Management Area Use Permit for the Kihei Rentals and Supplies project, a two story office and shop complex of approximately 4,762 square feet on 13,243 square feet of land in the Kihei Business Park at 100 Kio Loop, TMK: 3-9-051: 033, Kihei, Island of Maui. (SM1 2003/0027) (P. Fasi)**

Mr. Paul Fasi: Good afternoon, the project came before this planning commission on June 13, 2006 and at that meeting, it was recommended for approval. The applicant is appealing to the Planning Department to extend their SMA permit to give them more time to start construction. They are requesting the maximum amount of time for their extension which I believe is two years. So they want to extend the window of construction from June – which shall be initiated by June 30, 2009 and

change that date to June 30, 2011. There have been no changes whatsoever in any respect regarding this project at this particular location.

Mr. Hedani: Discussion? Questions? Commissioner Mardfin.

Mr. Mardfin: Quick question. The letter from Richard Young asks for a one-year extension and then –

Mr. Fasi: Well, he was aware that – he was under the impression that only a one-year extension could be granted. If we could give him five years, he would take five.

Mr. Mardfin: My second question is the same one I asked the previous thing. Whose fault is this? Is this the developers for not getting their act together and doing it or is it –

Mr. Fasi: I don't think you can point to any one single fault. I think what I was told by the applicant is just that money is tight and the economy is in such bad shape and he's not in the position to start construction at this time.

Mr. Hedani: So it wasn't Commissioner Shibuya again? Commissioner Starr.

Mr. Starr: Move to waive review.

Mr. Hedani: Is there a second?

Ms. Sablas: Second.

Mr. Hedani: Seconded by Commissioner Sablas to waive review. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: Once again, in June '06 I was not on this planning commission, so I had requested the applicant provide us a brief presentation on this project with special emphasis on drainage. So is the applicant here with his consultant to answer those questions?

Mr. Fasi: I don't believe the applicant's here.

Mr. Hiranaga: So I will be voting against the request to waive the review because I made this request about 10 days ago. So I'm disappointed the applicant or their consultants are not here to answer my questions.

Mr. Hedani: Further discussion? Commissioner Mardfin.

Mr. Mardfin: I'll vote for waiving. However, if it wasn't the county or the state that slowed this thing down and it's the economy. The economy didn't tank till about October of 2008, and if this was approved several years ago, they could have gotten going on it. So, that takes a little of my sympathy away for them at least.

Mr. Fasi: I can't answer for the applicant but in the approved SMA permit Commissioner Hiranaga as a small defense for the applicant, one of the best management practices says to keep runoff on site. I know you had some drainage concerns but at that time in 2006, I don't believe drainage was a big issue with this project. So at that time, I understand you weren't on this commission, that's all they felt was necessary is to keep runoff on site so that means 100% of everything.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Well, again, I'm disappointed the applicant is not here to answer my questions, but – so in '06, was the standard to retain additional runoff from the site and predevelopment runoff was allowable to flow into the ocean untreated.

Mr. Fasi: I don't recall exactly but the fact that it says keep runoff on site I would assume that would mean all pre and post development. Keep runoff on site, I mean, it's all runoff on site.

Mr. Hiranaga: I don't care for the word "assume" myself. Again, we've been trying to establish this standard especially nearshore projects of trying to get them to retain post development which is all development surface runoff on site. A&B made the effort of being here to explain their project. If this person didn't want to come under additional scrutiny he should have started construction during the time period that was allotted on his initial permit. I think standards continue to evolve. If he continues to say well, I'll just comply with the '06 standards to me that's not an acceptable position. We're trying to help the reefs to survive and just by not showing up there's a motion on the floor to grant his extension I don't think that's – well, it's not acceptable to me.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: Yes, I'll be voting against this because I would like – because I was not a member on this commission at the time it was presented nor was it presented to the Board of Variance and Appeals so I'm not familiar with this project and I feel very uncomfortable about that especially on issues that you're not willing to present on the drainage system issues. I, too, like Commissioner Hiranaga would like to know about this project and I'd be open to hearing from you. So therefore, I'm going to be voting against this.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, my recollection was that there was a spirited discussion on this at the time and that that's why there is a condition that they're keeping all the runoff on site, so I believe that, you know, although they should be here and they should be presenting. I don't believe there's really a problem on the ground so to speak.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm going to vote for the waiver primarily because we're just waiving the review, it's still in the Director's hands as to whether to grant the extension or not, he's heard our concerns. He can look into them if he thinks they're meritorious. He can deny the extension request. If he thinks that they can be mitigated or there's reasons, legitimate reasons for needing this extension he can grant

that. So I have trust in the Director.

Mr. Hedani: Additional discussion? Mike, did you have something to add?

Mr. Miyamoto: Yes, Mr. Chair. Typically on a site like this you know, when they're doing drainage collection they may not have the retention that requires, that would have the capacity to hold the entire post development runoff, but generally they'll have the system that captures all the runoff first goes through their system and then the overflow which is more than their usual amount would go back into the natural channel. So if the concern is about any pollutants or sediment, I think, you know, developing the drainage system takes care of that and the clear water that exceeds the amount of the capacity is what goes back into the streams.

Mr. Hedani: Thank you. Is there any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: What troubles me is the applicant did not find it important enough to appear here. Hopefully he was notified of my request and I hate to make assumptions about projects. I don't even know where this project is, what it looks like, I know absolutely nothing about this project except its in Kihei and it's in the SMA area. I'm having a very difficult time voting for this motion to grant the review by the commission.

Mr. Hedani: Mr. Fasi.

Mr. Fasi: This is in Kihei in the Kihei Franks Subdivision, the business subdivision formerly known as the Kihei Franks Business Complex Park where all of the lots are pre graded and they're sold ready to build type lots in Kihei. This Kihei Rentals is a equipment rental business. They're going to rent pressure washers and forklifts and drills and saws and so forth, similar to FKS Rentals with a single warehouse type structure on it.

Mr. Hedani: Paul, do you know why the applicant is not here today?

Mr. Fasi: Well, I did see Mr. Arakaki here and I was assured by the parties that they would be present at this meeting. However, I don't know why they are not here.

Mr. Hedani: Okay, thank you. Further discussion? Ready for the question? Question is to waive review. All those in favor signify by raising your right hand. Opposed same sign. Motion fails. Further discussion.

Mr. Mardfin: Mr. Chairman, what was the vote on that?

Mr. Hedani: Vote was four to two.

Mr. Mardfin: And there are –

Mr. Hedani: With one abstention I guess.

Mr. Mardfin: I thought that a non vote would count it as a yes.

Mr. Hedani: All those in favor signify by raising your right hand. One, two, three, four. Opposed, same sign. One, two. Abstentions, one.

Mr. Mardfin: And if that counts as a yes, we have five.

Mr. Hedani: Two.

Mr. Mardfin: With you it's six.

Mr. Giroux: It passes.

Mr. Hedani: Motion passes. Chair stands corrected.

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

VOTED: To Waive Review of the Subject Item.
(Assenting - J. Starr, L. Sablas, B. U'u, W. Mardfin, D. Domingo,
W. Hedani)
(Dissenting - K. Hiranaga, W. Shibuya)
(Excused - J. Guard)

Mr. Hunt: Next item involves Planning Commission projects and issues.

3. Planning Commission Projects/Issues

Mr. Hunt: This is the opportunity for you folks to raise issues, ask questions generally. If they're too in-depth, come back with additional information at a subsequent meeting.

Mr. Hedani: Any items for discussion? Seeing none, next item.

Mr. Hunt: Next item is discussion of future Maui Planning Commission agendas.

4. Discussion of Future Maui Planning Commission Agendas

a. May 26, 2009 agenda

Mr. Hunt: Your next regular meeting is on May 26th. There's a memo regarding your three public hearing items. The first is your first bed and breakfast under the new bed and breakfast rules. This is entirely under the new rules. It's not one of the conversions from a conditional permit. It is on agricultural land. That's why it's coming to you folks. We have – the department has been working a lot on this bed and breakfast ordinance. It took us a month approximately to get the system up and running to where we had a new permitting system, a new web page, new application, etc. Then we had to deal with the existing permits and the existing conditional permits in order to get them under the cap. Then we started processing new applications.

The biggest delay that we're running into besides the applicant's incomplete applications and

notification lists and poor site plans is the agency requirements. Agencies are putting a lot of requirements on these B&Bs. Some of them are even considering them as commercial operations now when in the past they didn't. Why they're doing that I'm not sure, but we've been working with them to try and come to some resolution on that. That whole discussion with these agencies has taken a lot of time. As a result, you haven't been getting these as quickly as we would have liked, but again, there's many reasons why the process has taken so long and the Planning Department is trying to move them along as fast as we can.

The other two items are legislative items and these are bills that have generated a lot of interest in the community and discussion. Generally speaking we don't like for you folks to pre discuss issues, pardon me, applications, but these two items are legislation and you should feel welcome to talk to the citizens in the community and get input and –

Mr. Hedani: Jeff, what is the stacking of residential in apartment uses?

Mr. Hunt: The stacking is a term that says essentially in the industrial – which one's listed first.

Mr. Hedani: Item 2.

Mr. Hunt: The first one is hotel. So in the hotel district right now it refers to any use that's permitted in a residential or apartment district is also permitted in the hotel district. So it's a simple way of saying all these uses are also allowed in the hotel district. So you go to the residential zone and look at that list of uses. The concern that has been raised is because single family dwellings are allowed in the residential district obviously, they're permitted outright in the hotel district and the concern is that we're eroded our hotel base. The opposite concern is that first of all, there's a number of single family dwellings that have already been approved. I think we did a quick inventory and found 60. So those would have to be grandfathered in some how. The other concern is that a lot of resort development includes single family dwellings. This is the fourth community that I would consider resort influenced at least and it's standard practice for these second homes to come in. The Planning Department understands the concern of having too many second homes and wiping out our hotel district, but the – we're probably going to propose maybe a percentage or some kind of a in-between rather than just prohibiting them outright. The other problem just mechanically is by deleting the residential district you delete parks, you delete day cares, you delete commercial, I mean, pardon me, county or government buildings from the hotel districts. There's no reason why shouldn't have a park in a hotel district. So we have to be very careful. So we're probably going to not suggest that you wholesale, delete that reference to residential uses, but take a finer, more surgical, precise approach.

The next item involves similar issue in the industrial district. The industrial district allows businesses, commercial uses and as a result, our industrial zones have started to become eroded because it's cheaper land and so the businesses are going to these industrial areas. There's also just because of the way the ordinance works, there's large ...(inaudible)... of industrial land that has huge commercial projects. Kaahumanu all the way through Dairy Road to the other side, the other side being Home Depot and Lowes and all that is industrial land. The Queen Kaahumanu Center is industrial land. The land or the commercial area by the Wailuku Post Office is industrial. So, again, it seems like, we recognize the concern, this seems drastic in the sense there's so much, so much

existing businesses out in industrial lands. We can't support this approach.

Mr. Hedani: Are these bills that are being advocated by the Planning Department or coming to you from the Council?

Mr. Hunt: They both came from Council.

Mr. Hedani: I know usually the stacking situation is – in the existing ordinance is that the less intensive uses are allowed in the higher intensive use zonings.

Mr. Hunt: Yes, essentially.

Mr. Hedani: And they're proposing to eliminate that?

Mr. Hunt: They're proposing to eliminate both and outright prohibit no more businesses allowed in the industrial zone. So again, our approach is it's too drastic given the large amount of existing uses. We need to grandfather in the existing uses. Or a better approach we'll probably recommend that we just defer this until a community plan inventory is done. It's that broad.

Mr. Hedani: It's kind of almost counter intuitive to the mixed use concept though isn't it?

Mr. Hunt: Yeah, it is.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Is this coming from the Planning Committee or the Land Use Committee or somewhere else?

Mr. Hunt: It was introduced by the Chair at the time Riki Hokoma. So then procedurally it has to be referred to the Planning Committee. They recommended it go to the commissions. We raised some of these issues at the Planning Committee meeting and they said, that's fine, go ahead and raise your issues to the Planning Commission but we don't want to kill the bill at this point. Go ahead and just raise those issues and lets hear from the commissions.

Mr. Starr: And when are we likely to see this?

Mr. Hunt: This is on your May 26th meeting, regular meeting.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: You said something earlier that we should go out and talk to our communities about this. Does this violate any Sunshine Laws or anything like that or?

Mr. Hunt: Just to be precise, I think I said, you're not prohibited or – normally like on the B&Bs you shouldn't. On this one it's okay. James correct me if I'm wrong but I think it's fine.

Mr. Mardfin: You mean on specific B&Bs?

Mr. Hunt: On a specific application, yeah.

Mr. Hedani: Talking about legislation.

Mr. Hunt: Because it's legislation, I mean, people come to me all the time. I'm in a grocery store or something they come up and bend my ear about legislation. So I don't think there's anything wrong with you guys going and talking to the citizens about what do you think about legislation.

Mr. Giroux: Yeah, it's not one of your contested case situations where everything has to be on the record. It's legislative so you're going to put in input at this level then it's going to go up to Council.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Just to add comment, Sam Sato's is in a light industrial area.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Looking at this agenda, it appears relatively light. I may be mistaken. So I'm wondering if we can add the continued review of the Maui Island Plan since we've fallen behind.

Mr. Hunt: I'll talk to Clayton about that. These are just public hearing items and sometimes for instance today there's a lot of communication items. But I agree with your general comment that it looks light. I thought today's was light.

Mr. Hiranaga: It is it's only 3:00 p.m.

Mr. Hunt: I don't like to talk about our internal workings too much. I'm going to talk to Clayton and say why is the agenda so light and why can't we get more items on here. We got a backlog of applications and yet they're not coming to the planning commission.

Mr. Hiranaga: But if there is room and they don't have anything to put on there, possible to continue reviewing the Maui Island Plan?

Mr. Hunt: It's possible, yeah, we'll take a look at that.

Mr. Hedani: It's just notice questions that you have to make sure you dot the i's and cross the t's. Commissioner Shibuya.

Mr. Shibuya: Yes, I appreciate Jeff Hunt's description of the issues here coming up. I would appreciate some kind of a bullet point or some kind of written explanation on this so that I can talk more intelligently with the Kula people. Because I know they're very active and they've been bending my ear on many issues. So I appreciate that.

Mr. Hedani: Maybe they get you the draft ordinances ahead of time.

Mr. Hunt: The ordinances should be on line somewhere since they're not department generated they're not on our website or our page. It takes us a while to formulate our opinions and so we'll have our formal opinion in a staff report which we'll get to you a week before the meeting. That's why I tried to have some discussion today just to give you an overview. It'd be difficult for us to give you a pre-staff report and so if we can just go with verbal comments. Anything else on these items?

Mr. Hedani: Are those legislative items on the county's website?

Mr. Hunt: They should be.

Mr. Hedani: Yeah, so you could access it by the title. Any further discussion? Okay, thank you very much. EA/EIS report.

Mr. Hunt: The next three items we generally take them as group is the reports on the EAs and EISs, the SMA Minors and the SMA Exemptions. This is your opportunity to ask any questions on these actions. These are the ones in the back, they're spreadsheets in the back of your packet.

5. **EA/EIS Report**
6. **SMA Minor Permit Report**
7. **SMA Exemptions Report**

Mr. Hedani: Any questions Commissioners? Seeing none, those will be acknowledged as received.

Mr. Hunt: The item involves a special Maui Planning Commission meeting and this is on the Maui Island Plan review. This is scheduled for next Tuesday, May 19th. So this is just a reminder. It's right here in Wailuku. This is the daytime meeting so we will stick to the agenda. It won't be the regional land use map issue or discussion. It will just be, I believe we're dealing with heritage resources and perhaps economic development and natural hazards.

8. **Special Maui Planning Commission Meeting on the Maui Island Plan Review - May 19, 2009, 9:00 a.m., Planning Conference Room, Wailuku, Island of Maui**

Mr. Hedani: Director, are all of our future meetings scheduled for 9:00 a.m. in this?

Mr. Hunt: The meetings that are on the third Tuesday of the month that are here are at 9:00 a.m.

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

Mr. Mardfin: That was my question whether it was 9:00 a.m. or not for next week.

Mr. Hunt: I think the commission agreed to say even the regular meetings are at 9:00 starting in June is what Carolyn is saying.

Ms. Domingo: As of June it's 9:00 a.m.

Mr. Hedani: Okay, as of June. Next regular meeting date is May 26th.

Mr. Hunt: And we always ask is there anyone who's not going to be here on the 26th?

Mr. Hedani: For the new commissioners also, our trip to Haiku, you know, future trips to Hana, etc., keep track of your mileage because that's reimbursable by the county. From wherever you live to the meeting and back.

Mr. Hunt: We're getting very precise to cut costs and we will try and analyze where you would have gone during that normal day anyways. We had people who were reporting to work in Wailuku or Spreckelsville and then charging us mileage to Spreckelsville because they lived in Kihei. He would have gone there anyways.

Mr. Hedani: Yeah, just be honest. Thank you. Any other items for discussion? If not, I think we've come to that time of the day. We're adjourned. Thank you very much.

F. NEXT REGULAR MEETING DATE: May 26, 2009

G. ADJOURNMENT

The meeting was adjourned at 2:57 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Bruce U'u, Vice Chairperson
Donna Domingo
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr

Excused

John J.B. Guard IV

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works